

**FINAL DECISION ON THE FAILURE BY PT COMUNICAÇÕES, S.A., TO
COMPLY WITH DETERMINATION OF THE MANAGEMENT BOARD OF
ICP - ANACOM ON 14 JUNE 2012, ON AMENDMENTS TO LLRO AND
RELLO**

1. Background

1.1. Determination of ICP-ANACOM

By determination of 14 June 2012, the Management Board of ICP - ANACOM required PT Comunicações, S.A. (PTC) to “*decrease in LLRO each and every element of prices (including CAM lines) for 2 Mbps, 34 Mbps and 155 Mbps lines by at least 35%, 40% and 45%, respectively*”¹ (emphasis added) - vide determination point D 31.

1.2. Amendments to LLRO made by PTC

By letter received at ICP - ANACOM on 23 July 2012, PTC informed that, in its opinion, determination point D 31 did not apply to the setup of local extensions, nor to setup prices and monthly fees of internal extensions of partial lines and internal extensions for traffic interconnection (at 2 Mbps), as according to costing results for 2010, these elements show negative margins. That is, PTC takes the view that determination point D 31 applies only to the monthly fee of local extensions and main sections of 2 Mbps, 34 Mbps and 155 Mbps lines.

In the same letter, PTC refers that although there are no specific prices in LLRO for all $N \times 64$ Kbps ($N = 1, \dots, 31$) speeds, technically it provides lines at any of those speeds, which are charged at the price of the next higher speed. In the case of lines at a speed over 1536 Kbps, especially 1920 Kbps ($N = 30$) and 1984 Kbps ($N = 31$), also known as structured 2 Mbps, the respective price has been equivalent to 2 Mbps unstructured lines (i.e. at 2048 Kbps or “pure” 2 Mbps).

PTC also refers that, considering the substantial reduction of 35% of prices to which 2 Mbps lines are subject, and given that the company does not intend to decrease prices of $N \times 64$ Kbps lines, it broke down in LLRO the 1984 Kbps speed, which will maintain the current price, this price then applying to any line of speeds higher than 1536 Kbps (and lower than 1984 Kbps). According to PTC, these lines should not be covered by that reduction, simply because the usual approach has been to charge them at the price of the next higher speed defined in the tariff.

In short:

1. For $N \times 64$ Kbps lines of speeds higher than 1536 Kbps, PTC has:

¹ According to point D 31 of the determination.

- (a) Maintained the previously charged monthly fee - that is, the former price of 2 Mbps lines - as regards end-to-end lines and half-circuit components of partial lines²;
 - (b) Increased the price of internal extensions of partial lines, both the monthly fee and set up price.
2. Prices formerly applied for internal extensions of partial lines at 2 Mbps, 34 Mbps and 155 Mbps were maintained.

1.3. Draft decision of 30 August 2012 on PTC's failure to comply with determination of 14 June 2012 on amendments to LLRO and RELLO

On 30 August 2012, the Management Board of ICP - ANACOM approved a draft decision on PTC's failure to comply with determination of 14 June 2012 on amendments to LLRO and RELLO (hereinafter referred to as DD), having notified PTC to assess the issue within 10 working days.

PTC provided its opinion by the defined deadline, comments received, the respective analysis and grounds for the decision having been included in the "Report of the prior hearing on PTC's failure to comply with determination of 14 June 2012 on amendments to LLRO and RELLO", which is an integral part of this determination.

2. Analysis

According to LLRO in force up to May 2012:

"Prices of 2 Mbps digital lines apply to speeds at 1920 Kbps, 1984 Kbps and 2048 Kbps.

In case the OSP wishes a speed between $N \times 64$ Kbps and 2 Mbps, exclusive, not covered by the price list, it shall be provided, and charged as if it were the next higher speed."

PTC has thus integrated $N \times 64$ Kbps lines of speed higher than 1536 Kbps in the generic term of 2 Mbps in the LLRO published and made available since 14 June 2006.

In line with terms in the offer in force at the time, the reference in the determination to "2 Mbps lines" concerns $N \times 64$ Kbps lines of a speed higher than 1536 Kbps and 2048 Kbps lines.

The assessment which motivated the determination for reduction of prices ordered by ICP - ANACOM was based on the offer and tariff of the LLRO in force and, consequently, the framework of $N \times 64$ Kbps lines of a speed higher than 1536 Kbps and 2048 Kbps lines as 2 Mbps lines.

As such, and for all purposes, the reduction of prices of 2 Mbps lines included in the determination of 14 June 2012 also applies to $N \times 64$ Kbps lines of a speed higher than

² And decreased the setup price from 750€ to 500€.

1536 Kbps, as referred in the offer and consequently an assumption of the analysis which led to that determination.

Further information addressed to ICP - ANACOM by PTC also supports this view. In fact:

- (a) The information submitted by PTC on levels of performance in LLRO includes information of the set of lines (amounts), broken down by speed, however $N \times 64$ Kbps lines of a speed higher than 1536 Kbps have not been specified, which indicates their integration in the information for 2 Mbps lines.
- (b) Information available in the CAS, compared to information on levels of performance in LLRO, also shows that $N \times 64$ Kbps lines of a speed higher than 1536 Kbps were integrated in the 2 Mbps product and not in the $N \times 64$ Kbps product.

PTC confirmed, in its reply to the DD, that lines with speeds higher than 1536 Kbps and lower than 2 Mbps had been reported in the information on PTC's CAS, in the product "Lines Leased to other Operators - Digital at 2 Mbps", on an aggregate basis with 2 Mbps lines.

In this context, the only possible interpretation of point D 31 of the determination is that the reduction of prices by at least 35% covers $N \times 64$ Kbps lines of a speed higher than 1536 Kbps and 2048 Kbps lines, known as 2 Mbps lines. In fact, all these lines are integrated in PTC's CAS in the product "Lines Leased to other Operators - Digital at 2 Mbps" and charged, since the first version of LLRO, at the same price of 2 Mbps lines.

It should also be stressed that the reference, in determination of 14 June 2012, to "*each and every element of prices*" includes monthly fees of internal extensions³.

However, in its reply to the DD, PTC showed that products concerning internal extensions of partial lines and internal extensions for traffic interconnection exist autonomously in PTC's CAS, with negative margins. Moreover, the available data indicates that products concerned are not integrated in profit and loss accounts used by ICP - ANACOM for establishing the determined price reductions and consequently, the failure to reduce the prices of internal extensions does not affect the margin deemed to be appropriate by this Authority in the scope of the determination of 14 June 2012.

In any event, regardless of internal extensions of partial lines and internal extensions for traffic interconnection being autonomous from products "Lines Leased to other Operators - Digital at 2 Mbps", any increase of prices would not be allowed, either for set up or for monthly fees, without a new global and consistent review of leased line pricing, which would result in the margin deemed to be appropriate and which was introduced in the determination under consideration.

In fact, the reduction imposed by ICP - ANACOM maintains a positive margin for the leased lines global service which is deemed to be appropriate to accommodate:

³ Of partial lines and traffic interconnection lines.

- (a) A possible difference of costs between lines with main section in non-competitive routes and lines with main section in competitive routes, which has not yet been reflected in PTC's CAS.
- (b) Evolutions, namely a demand more focused in more remote areas, which may have an impact at the level of costs.

With the above-mentioned alterations, with impact both at the level of setup and monthly fee, which PTC carried out on its own initiative, the company increased the margin which was deemed to be appropriate. Moreover, according to available information, the billing of the main LLRO user outside the Grupo PT increased⁴, instead of decreasing, as one would expect given the determination.

It must be stressed in this context that operators that lease to PTC $N \times 64$ Kbps lines of a speed higher than 1536 Kbps made investments, took network options and developed retail offers based on a set of assumptions and expectations that would be hindered if the tariff applicable to those lines, especially as regards internal extensions, was suddenly and unexpectedly increased. It should be noted that any migration at the present time for 2048 Kbps lines would involve very high and intolerable costs at the level of interfaces on the side of final clients and consequently of the respective terminal equipment.

Lastly, it should be clarified that the reference to "*each and every element of prices*" does not cover the set up of (i) local extensions, (ii) internal extensions of partial lines and (iii) internal extensions for traffic interconnections, which has been reflected in the changes made by PTC to the LLRO tariff.

In fact, the changes determined are based on and refer to a graphic (considered confidential in the public version of the determination) that does not cover setup prices/costs, as the setup element has a negative margin as a general rule. However, the margin estimated on the basis of price reductions ordered in the determination - also referred to in the confidential version of the determination - takes due account both of the monthly fee element and of the setup element.

3. Conclusion

Bearing in mind the background and analysis above, and without prejudice to the ongoing analysis of changes made by PTC to LLRO and RELLO and their compatibility to ICP - ANACOM's determination, it is already apparent now that changes made by PTC to LLRO fail to comply with determination of 14 June 2012, given that this company:

- (a) Failed to reduce by 35%, relatively to the price previously in force, the monthly fee of end-to-end lines and half-circuit components of partial $N \times 64$ Kbps lines of a speed higher than 1536 Kbps;

⁴ For example, based on the set of end of July 2012, and setups occurred in that month.

- (b) Increased, relatively to the price previously in force, the monthly fee and set up price of internal extensions of partial $N \times 64$ Kbps lines of a speed higher than 1536 Kbps.

4. Determination

It follows from the above that changes to LLRO introduced by PT Comunicações, S.A. fail to comply with ICP - ANACOM's determination of 14 June 2012 and, as such, do not observe conditions imposed on that company under point a) of article 28 and articles 66 and 68 of the Electronic Communications Law (Law No 5/2004, of 10 February, as amended by Law No 51/2011, of 13 September).

Therefore, without prejudice to a possible opening of breach proceedings, the Management Board of ICP - ANACOM, in the scope of powers provided for in points b), e), f), h) and n) of paragraph 1 of article 6 of Statutes approved by Decree-Law No 309/2001, of 7 December, in the exercise of competences provided for in points b), f) and g) of article 9 and point l) of article 26 of the same Statutes, as well as point a) of paragraph 3 of article 68 of the Electronic Communications Law, taking into account regulatory objectives provided for in points a) and c) of paragraph 1 and b) of paragraph 2, both of article 5 of the same Law and having carried out a prior hearing under paragraph 1 of article 110 of the Electronic Communications Law, hereby determines, for the purposes of paragraph 2 of article 110 of the Electronic Communications Law, that:

1. PT Comunicações, S.A. must immediately correct and adjust LLRO, as follows:
 - (a) The monthly fee of end-to-end lines and half-circuit components of partial $N \times 64$ Kbps lines of a speed higher than 1536 Kbps must be reduced by 35%, that is, the price must be identical to that of 2048 Kbps lines;
 - (b) The monthly fee and set up price of internal extensions of partial $N \times 64$ Kbps lines of a speed higher than 1536 Kbps must remain at values that applied in the LLRO in force prior to determination of 14 June 2012.
2. Changes referred in point 1 must be retroactive to 6 August 2012, date on which all changes resulting from determination of 14 June 2012 should have taken effect.

Lisbon, 11 October 2012.