
Determination of 24.1.2002

PRICES OF INTERCONNECTION SERVICES PRACTISED BY MOBILE TELEPHONE SERVICE OPERATORS

1. Background Facts

1.1. By determination of the ICP Board of Directors on August 3rd 2000 and under the terms of article 16 of Decree Law no. 415/98, the Instituto das Comunicações de Portugal, now known as the Autoridade Nacional de Comunicações (ANACOM) [National Communications Authority] in accordance with Decree Law no. 309/2001, determined that the maximum average termination prices of fixed-to-mobile calls would be €0.2369 (PTE 47.50) per minute for calls of 100 seconds, with the per-second tariff being applied utmost after the first minute. This consubstantiated a maximum reduction that, depending upon the operator, may be up to 27% when compared with 1999 prices.

The assessment of the average price should be made on the basis of the traffic pattern for the first six months of the year 2000.

This ruling took into consideration that, under the terms of no. 1 of article 16 of Law no. 91/97 and article 4 of Decree Law no. 415/98, ANACOM is responsible for safeguarding the interests of end users, guaranteeing a competitive market and contributing to its correct and appropriate development.

In this context the definition of fixed-to-mobile termination prices to be implemented after the alteration made to the traffic ownership regime on 01/10/2000 and an initial decrease in these prices were important regulatory measures made to achieve established public interest objectives, because:

- a. they represented the first step towards an evolution which was aimed at establishing a more balanced relative price structure, namely with regard to intra-network and inter-network traffic assessed within the global context of the interconnection market;
- b. they would contribute to the protection of consumer interests by limiting or avoiding the development of barriers to the full use of network externalities, including mobile networks by end users, particularly clients of fixed telephone networks,;

- c. they would promote the conditions needed to encourage the development of balanced competition between fixed and mobile networks.

As stated at the time, the ruling was to apply in spite of recognising the fact that sound competitive dynamics in the mobile market would lead to average penetration levels and retail prices that compared favourably with EU practices.

In the above mentioned determination of August 3rd 2000 it was concluded that in future, and still within a framework that gradually defines a more balanced relative price structure, consideration should be given to the evolution of the various termination prices currently practised in mobile networks.

1.2. On July 30th 2001, ANACOM issued a further determination after a request for intervention had been made under the terms of article 16 of Decree Law no. 415/98 by Oni Telecom - Infocomunicações, S.A. (Oni). This was a request for ANACOM to fix origination and termination prices in mobile networks for the respective year. ANACOM ruled that mobile telephone service operators must:

- a) under cover of and within the terms of paragraph c) of no. 1 of article 16 of Decree Law no. 415/98, conclude the negotiation of interconnection agreements to be celebrated with the interested parties within a period of 30 days;
- b) in compliance with paragraph c) of article 22 of Decree Law no. 415/98, present ANACOM with complete copies of all agreements already signed but not yet communicated to ANACOM and/or those agreements that are to be signed, within 10 days of the respective date of signing.

In accordance with the aforementioned determination of August 3rd 2000, ANACOM also recommended that the prices resulting from the negotiation process should evolve in such a way as to establish a more balanced relative price structure, especially in relation to intra-network and inter-network traffic, as well as upholding consumer interests, limiting or avoiding the development of obstacles that may not be beneficial to network externalities in end user terms, particularly fixed network clients, and help create conditions that motivate the development of balanced competition between fixed and mobile networks.

Following this determination, Vodafone and Optimus informed ANACOM that Oni was the only operator to ask for a fixed-to-mobile traffic price revision for the current year,

request that had been made during the first quarter, and at that time the two respective mobile service operators had informed ANACOM that given the amount of the reduction established on August 3rd 2000 which was applicable from October onwards, they were unwilling to make any further reduction. It was also stated that Oni had not contacted Vodafone and Optimus since that time to negotiate interconnection conditions.

Oni informed that it had submitted several communications to mobile telephone service operators, between August 16th 2001 and October 4th 2001, the last with a proposal of agreement.

Vodafone, TMN and Optimus submitted various documents to ANACOM that led to an agreed price for fixed-to-mobile traffic that is compatible with the determination of August 3rd 2000.

2. Present situation

To date no agreement has been established between Oni and the mobile service providers concerning the price of interconnection services applicable in 2001 and 2002. On November 13th 2001, Oni requested ANACOM to intervene under the terms of Decree Law no. 415/98 in order to defining the prices for 2001 and 2002.

It should also be noted that on November 6th 2001, Optimus requested ANACOM to intervene in the negotiation of interconnection agreements with TMN under the terms of paragraph b) of no. 1 and paragraph c) of no. 2 of article 16 of Decree Law no. 415/98, regarding termination prices in the TMN mobile network for calls originated in the Optimus mobile network, applicable from January 1st 2001.

3. Thus:

- (a) Considering the background facts specified in 1. and the current situation identified in 2. regarding interconnection prices practised by mobile telephone service operators;
- (b) Taking into consideration the main guidelines defined in article 4 of Decree Law no. 415/98, with particular reference to the upholding of consumer interests,

fostering the development of national services and networks and respective accesses and promoting a competitive market;

- (c) Given that, under the terms of no. 1 of article 16 of Decree Law no. 415/98 and in the light of the above-mentioned guidelines and objectives, ANACOM may intervene at any given time on its own initiative and must always intervene at the request of any party in the negotiation of interconnection agreements and determine the inclusion of specific issues in the interconnection agreement and/or establish specific conditions that must be observed by one or more parties involved in the interconnection agreement;
- (d) Considering that the above-mentioned conditions may specifically include conditions intended to guarantee fair and effective competition and prices in accordance with paragraphs a) and c) of no. 2 of article 16 of the said legal diploma;
- (e) Given that the agreements between mobile telephone service operators and between these and fixed telecommunication network operators in general relative to the year 2001 have all been duly signed as a result of commercial negotiations;
- (f) Considering that, as a result of a request for intervention by Optimus, TMN was asked, under the terms of no. 1 of article 55 of the Administrative Procedure Code, to make a statement in reply to the questions raised. TMN replied by saying that a judicial action is in progress to resolve the problem and considering that this court case could, among other things, raise doubts about the existence of any agreement;
- (g) Considering that interconnection agreements generally include a provision specifying that negotiations should begin in the last quarter of each year in order to revise the remuneration conditions to be applied in the following year, which means that it is reasonable to assume that the said negotiation procedure is already under way between the interested parties;
- (h) Given that fixed-to-mobile prices in Portugal are among the highest in the EU;
- (i) Given the need to reduce interconnection prices of the mobile telephone service operators, especially in terms of fixed-to-mobile termination prices which carry the greatest weight and have the strongest impact on the revenue of these

operators, through gradual reductions in order to bring them closer to average EU prices, which are currently €0.1816 (PTE 36.41) per minute for an average 3-minute call;

- (j) Considering that the objective to aim at is that the reduction in interconnection prices be reflected in end-user costs, objective which, through the effects of no. 4 of article 34 of the Regulations for the Exploration of the Fixed Telephone Service, must be fulfilled by those entities with significant market power in the fixed telephone networks and FTS market;
- (k) Given the need to allow a reasonable period for the adaptation of end-user invoicing systems, it would appear that this will not be practicable before 31/03/2002;
- (l) Considering that the proposed objectives could be achieved if the two first reductions coincided with the said date (31/03/2002);
- (m) Considering that mobile telephone service operators freely agreed in the year 2000 that the mobile network termination price for calls originated in mobile terminals would be PTE 55.00 per minute, chargeable per second from the first second, with effect from the date which altered the ownership of fixed-mobile traffic, and the establishing of a price of PTE 55.00 per minute for termination in the mobile network for calls originated in mobile terminals in the agreement celebrated for 2001;
- (n) Also considering that there is no technical evidence to support the existence of differentiated prices for traffic terminating in mobile networks (fixed-to-mobile or mobile-to-mobile);
- (o) In spite of that described in the previous paragraphs, another transitory solution restricted to the price adjustment process may be analysed should it be negotiated by market operators;
- (p) Given that, in the sequence of the interested parties being notified of the draft decision made by ANACOM, Optimus and Vodafone informed that they had agreed a mobile network termination price for calls originated in mobile terminals for the year 2002 which was compatible with the maximum price established in the draft decision of 4/12/2001. It is therefore adequate to establish a reasonable period

for the agents in this market exercise the freedom of negotiation principle and conclude all interconnection agreements;

- (q) Given that, under the terms of paragraph c) of no. 1 of article 16 of Decree Law no. 415/98, ANACOM may determine that the negotiation of interconnection agreements must be concluded within a period of less than 30 days and that, in this case, consideration must be given to the content of paragraph g) above and the fact that the probable intentions of the ANACOM decision was communicated on 4/12/2001;
- (r) Given that, under the terms of no. 3 of article 6 of Decree Law no. 415/98 and in the absence of any condition or agreement to the contrary, the ownership of traffic belongs to the entity exploring the public telecommunications network or providing the telecommunication service for public use where it is originated, whereby it is the network operator where the traffic is originated who is responsible for fixing the price to be paid by the public, naturally paying the operator terminating the traffic the price defined by the latter for the termination service;
- (s) Considering that, under the terms of paragraph a) of no. 1 of article 8 of Decree Law no. 415/98, entities with significant market power referred to in no. 1 of article 6 of the same diploma, shall be subject to the principle of non-discrimination in the offer of interconnection;
- (t) Considering that an increase in the price of terminating an international call in the mobile network could have a negative impact on the end-user, even though it may be indirect and not immediate;
- (u) Considering that in the case of the termination of an international call in the mobile network, the elimination of unjustified differences in prices for the same service is also in question and without prejudice to the specifics of agreements celebrated with foreign operators, and that a reference price of €0.1870 (PTE 37.50) per minute is to be used to maintain price stability in the market and avoid oscillations;
- (v) Given that the impact of reducing call origination prices on the structure of revenue received by mobile telephone service operators is reduced, and that competition in indirect access for international calls from mobile networks should

be promoted and access to special services from mobile networks should be guaranteed and promoted;

- (w) Considering the flexibility that a price fixing rule may provide in the construction of interconnection tariffs;
- (x) Given that the ANACOM Board of Directors approved a draft decision on the present matter on 04/12/2001 after a prior hearing with the interested entities, under the terms of article 100 and following articles of the Administrative Procedure Code,

In a regular meeting held on 24/01/2002 the ANACOM Board of Directors ruled as follows:

- I. Under the terms of paragraphs b) and c) of no. 1 and paragraphs a) and c) of no. 2, both of article 16, and paragraph c) of article 22, all of Decree Law no. 415/98 of December 31st:
 - 1 The price of interconnection services practised to date by mobile telephone service providers, included in interconnection agreements already signed and duly communicated to ANACOM, shall also apply to Oni.
 - 2 The maximum average prices in 2002 for national termination in the mobile network for calls originated in fixed terminals per minute and for each call of 100 seconds duration, with per-second tariff being applied utmost after the first minute, will be as follows:
 - (a) €0.2170 (PTE 43.50) from 31/03/2002;
 - (b) €0.2070 (PTE 41.50) from 30/06/2002;
 - (c) €0.1970 (PTE 39.50) from 30/09/2002;
 - (d) €0.1870 (PTE 37.50) from 31/12/2002;
 - 3 Mobile telephone service operators must conclude negotiations for interconnection agreements to be celebrated between themselves for 2002 within 20 days.

- 4 The following points must be taken into consideration when negotiating interconnection agreements:
- a) The price of the termination service is established by the operator terminating the traffic;
 - b) Those entities notified as having significant market power are subject to the principle of non-discrimination in the offer of interconnection;
 - c) Complete copies of agreements celebrated must be submitted to ANACOM within 10 days of the respective celebration;
 - d) In the absence of an agreement, companies must inform ANACOM of the fact and may request the respective intervention.
- 5 Maximum termination prices for international calls in the mobile network will be €0.1870 (PTE 37.50) per minute, with the per-second tariff being invoiced from the first second, as from 31/03/2002.
- 6 Maximum origination prices for calls in the mobile network will be €0.1870 (PTE 37.50) per minute, with the per-second tariff being invoiced from the first second, as from 31/03/2002.
- 7 ANACOM will review prices to be applied in 2003 by the end of 2002, after studying market conditions.
- II. Under the terms of no. 4 of article 34 of Decree Law no. 474/99, PT Comunicações, S.A., shall rule on compliance with the obligations related to cost guidelines and inform the other fixed telephone service providers of the repercussions of interconnection price reductions on end-users.
- III. Not to intervene in the resolution of the litigation existing between TMN and Optimus due to the pending judicial action concerning this issue.