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Determination of 29.11.2001

## **DRAFT DECISION**

# **CONCERNING COMPENSATIONS FOR FAILURE TO COMPLY WITH THE DEADLINES DEFINED WITHIN THE FRAMEWORK OF UNBUNDLED ACCESS TO THE LOCAL LOOP**

Regulation (EC) no. 2887/00 of the European Parliament and Council, specifies in recital 10, and nr. D.2 of the annex to the same diploma, that the Reference Offer for Local Loop Unbundling (RUO) to be presented by the notified operator should contemplate, whenever appropriate, compensations for failure to comply with deadlines for responding to supply requests.

This matter was subject to a decision by ICP on 28/06/01, in the framework of “Alterations to be Introduced in the Reference Offer for Local Loop Unbundling 2001”, but PT Comunicações, S.A., has not integrated this matter into its RUO to date.

The absence of provisions for compensations within the scope of the RUO, means that the notified operator is not bound, in a clear and unequivocal manner, to comply with the service quality levels defined in the RUO. Hence, any form of non-compliance in this regard will cause prejudice to the market offer and public image of Other Licensed Operators (OLOs) providing this service, and will affect customer confidence and have a direct impact on the dissemination of the services offered.

For this reason, it is considered to be appropriate, at this stage of implementation of LLU, to set compensation amounts for failure to comply with deadlines for responding to supply requests, that, in addition to serving as an incentive to comply with the defined objectives, should be proportional to the losses suffered by the respective OLO.

In an initial analysis and taking into account the current scarcity of information in order to estimate likely revenues of OLOs, it is necessary to work upon the following assumptions:

- (a) The provision of Complete Access may be evaluated, in this stage, on the basis of estimates regarding the services provided in the retail market supported by the “PT ADSL Network” service;
- (b) The prices of services based upon LLU will be similar to prices of services currently offered in the market, and may compete with services supported by the “PT ADSL Network” service and the FTS;
- (c) Customers of OLOs will, in an initial phase, be uniformly distributed across services that are similar to those currently provided in the retail market supported by the “PT ADSL Network” service;
- (d) In addition to compensation for loss in revenue, compensation should also be paid for damages caused to the OLO’s public image. This may represent an equivalent loss, given that any of the following situations is very likely to occur: (i) loss in revenue from

customers that were not served during the delay period; (ii) loss in revenue from customers that, due to the delay, no longer want the service; iii) loss in revenue from customers that, as a result of the delay, have chosen to subscribe to retail services of other competing operators based on the “PT ADSL Network” service. Although there is a different probability for each situation arising, the latter two situations will result in a considerably higher loss of revenue than the first. It should also be added that potential users of the service might desist from the service as a result of being informed by third parties of negative experiences with the respective OLO.

In the event of collocation, there will be an amount of lost revenue that will be proportional, in addition to the number of days of the delay period, to the number of potential users for the service.

In this event, it is assumed that, in an initial phase, adhesion to the service, per operator, will be similar to that observed during the first half of 2001 for ADSL services currently provided by the historic operator’s subsidiary for the residential market. It is likely that with competition in broadband services, advertising and dissemination of the offer and the development of multimedia content, that the number of subscribers to DSL services will record significant growth. Portugal Telecom recognises in its first half year report for 2001 that “demand for broadband Internet access has had a slow start”. This suggests that the pace of adhesion is likely to increase. Such estimates may even be conservative in light of the penetration levels of DSL services in the other EU Member States. Finally, in an initial phase, the exchanges that are of priority for OLOs shall be made available, and it is therefore likely that such exchanges will be those of greatest interest to end customers. Thus the following additional assumptions must be considered:

(e) The exchanges that PT Comunicações, S.A. expects to be open by the end of 2001 for “PT ADSL Network” services (70 exchanges), were attributed on a homogeneous basis throughout 2001;

(f) Customers are uniformly distributed across the respective exchanges;

On the basis of the above assumptions, it is possible to estimate the average number of potential customers per day and per exchange that each operator will have within the scope of LLU. This amount should be weighted for each exchange taking into consideration the number of existing customers per exchange of PT Comunicações, S.A.

Finally, it is considered appropriate, in this phase, to set a maximum limit for individual compensations, in order to safeguard against anomalous situations.

In this context, ICP’s Board of Directors, under the terms of paragraph a) of point 2 and point 3 of article 4 of Regulation (EC) no. 2887/00 of the European Parliament and Council, decided, in a regular meeting held on 29/11/2001, to impose the following alterations to the RUO, which should be integrated within the said document within a maximum of 10 days:

1. In the event that the objective, per operator, defined in the decision of 28/06/01, has not been attained; for reasons that are of PT Comunicações, S.A.’s sole responsibility, and excluding grounds of *force majeure*; this entity must compensate the operator in question, under the following terms:

INDICATORS FOR THE SERVICE OF LOCAL LOOP ACCESS	MAXIMUM COMPENSATION PER LOOP
VERIFICATION OF CLIENT INFORMATION AND ELIGIBILITY	$d \times l$
TRIALS AND TESTS	
SUPPLY DEADLINE	
SHARED ACCESS TO FULL ACCESS TRANSFER DEADLINE	
INDICATORS FOR THE COLLOCATION SERVICE	MAXIMUM COMPENSATION PER OLO INVOLVED AND PER EXCHANGE
SUPPLY DEADLINE OF THE OPERATORS ROOM	$\frac{d}{2}(d+1) \times c \times k \times l$
SUPPLY DEADLINE OF MODULES IN EXISTING OPERATOR ROOMS	
SUPPLY DEADLINE OF EXTERNAL CABLE (600 PAIRS)	

INDICATORS FOR THE SIGNAL TRANSPORT SERVICE		MAXIMUM COMPENSATION PER OLO INVOLVED AND PER EXCHANGE
SUPPLY DEADLINE	OPERATORS' BOX TO BE INSTALLED	$\frac{d}{2}(d+1) \times c \times k \times l$
	OPERATORS' BOX ALREADY IN OPERATION	

Where

- $d$ , is the number of working days of delay in the exchange in question;
- $l$ , is the compensation per working day of delay per local loop, evaluated at €7,50 (1.503\$);
- $c$ , is the average number of potential customers per day and per exchange that each operator would have within the scope of LLU. For this purpose, in this phase, it is considered that  $c = 1$ , based on assumptions (e) and (f);
- $k = \frac{u}{m}$ , is the factor associated to the number of customers in existence per exchange (rounded to the closest decimal point).
- $u$ , is the number of PT Comunicações, S.A.'s FTS customers in the exchange in question.
- $m$ , is the average number of PT Comunicações, S.A.'s FTS customers per exchange. For this purpose, in this phase, during which POIs exchanges are provided, it is considered that  $m = 20.000$ ;

SERVICE QUALITY LEVELS	COMPENSATION
FULL ACCESS SERVICE TO THE LOCAL LOOP	IQSL1 – REPAIR DEADLINE
	IQSL2 – AVAILABILITY OF THE LOCAL LOOP
SIGNAL TRANSPORT SERVICE	IQSL3 – REPAIR DEADLINE

- The maximum compensation amount for each instance of non-compliance is: i) the price of each service, in the case of failure to comply with the indicators for the unbundled access to the local loop service, and ii) 20% of the price, in the case of failure to comply with the indicators for collocation services and the signal transport service.
- The objectives should be analysed on a six-monthly basis, starting from 01/01/02, and any eventual adjustments of accounts should be made, at the utmost, in the month following the notification sent by the OLO, concerning the previous six-month period.
- In situations in which the indicator has been defined for 95% of cases, this percentage should be based upon the relationship between the number of units supplied to a specific operator in the set deadline and the number of units requested by the same operator. In

the event of non-compliance with the defined service level, the compensations should be applied to the total number of units overdue for the operator in question.

5. The amounts set herein, as well as the indicators and the service quality levels defined in the determination of 28/06/01, may be revised or complemented, in light of evolution of the market offer and experience acquired in the interim period.