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Determination of 12.4.2002

DRAFT DECISION ON THE REFORMULATION OF PT COMUNICAÇÕES, S.A.'S LEASED LINES OFFER .

I. BACKGROUND

1. The leased lines market is of vital importance for the development of electronic communications, and has a decisive role in the proper functioning of the Information Society and "e-Europe".
2. Within this context, the Autoridade Nacional de Comunicações (ANACOM) has paid close attention to the supervision of this market, identifying factors that favour its sound development, and, when necessary, adopting regulatory measures that, when applicable, effectively contribute to the pursuit of the principles of transparency, non-discrimination, cost-orientation, promotion of fair competition and safeguard of user interests.
3. In particular, a series of situations have been registered recently that establish grounds for re-analysis of the conditions of the provision of leased lines by PT Comunicações, S.A. (PTC), as concessionaire of the basic network and operator notified as an entity with significant market power under the terms of, and for the purposes of, the Regulations for the Operation of Public Telecommunications Networks.
4. In this context, the following points should be emphasised: (a) the European Commission's research on the state of competition in leased lines markets in various Member States (including Portugal) and results of various studies undertaken by ANACOM related to (b) the current and likely conditions of development of competition in this market; (c) the possible impact of operationalisation of 3rd generation mobile networks; (d) recent minor changes in most leased lines prices and the relative ranking of prices practised in Portugal compared to those in other European Union countries (namely the positive deviation recorded in most domestic leased lines with capacity of 2 Mbps and 34 Mbps compared to average prices of other historic operators in the European Union, with a consequent impact on the global competitiveness of the economy); (e) recorded and likely variation of costs and margins associated to the provision of leased lines (reflecting margins that are not completely balanced in certain types of leased lines, namely in terms of 2 Mbps lines); (f) the evolution of conditions related to quality of service; (g) and finally a series of concerns raised by different market players.
5. On the basis of the analysis undertaken and in order to satisfy the aforementioned principles, ANACOM's Board of Directors, on 29/11/01, decided to request PTC to reformulate its supply of leased lines by 14/12/01, in respect for the principles of transparency, non-discrimination and cost orientation, considering that the following was necessary: (a) global reduction in the price of leased lines, (b) revision of the prevailing discount system (in order to simplify the system and bearing in mind the necessary relationship between discounts granted and cost savings actually achieved, irrespective of their nature) and (c) dynamisation of provision of high capacity lines.

II. PTC'S PROPOSAL

6. On 14/12/01 PTC submitted a proposal to ANACOM on the pricing of digital leased lines with capacities between 64 kbps and 34 Mbps, that was forwarded for the purpose of comments to public telecommunications network operators, the Associação Portuguesa de Bancos (Portuguese Association of Banks), Associação Empresarial de Portugal (Portuguese Business Association), Associação Industrial Portuguesa (Portuguese Industrial Association) and the Confederação da Indústria Portuguesa (Confederation of Portuguese Industry). Comments were received from Jazztel, the Associação Portuguesa de Bancos, ONITELECOM, Optimus, RDP and Vodafone.
7. The proposal presented by PTC may be summarised as follows:
 - a) A significant overall reduction in the level of wholesale prices of leased lines, whose prices were reformulated, except in the case of national lines of 64Kbps, where a price increase was introduced in most distance categories.
 - b) A revision of the discount policy resulting in a significant reduction in the average level of discounts, accompanied by the elimination of current discounts for aggregation of debits, band aggregation, digitalisation and retail discounts, substituted by a volume-based discount and permanence bonus that, according to PTC, would facilitate a more correct understanding of prices.
 - c) Rebalancing of the monthly fee of leased lines between the fixed and the variable price components (respectively increased and reduced) for certain distance categories, specifically for leased lines with main link below 30 km.
 - d) For the case of circuits with a main link of above 300 km, payment for additional km - not currently considered for billing purposes.
 - e) Extension of the concept of routes - currently applicable exclusively to 2 Mbps lines – also to 34Mbps lines.
 - f) Elimination of payment exemptions, when currently applicable, for installation and alteration charges for digital lines.

III. ANALYSIS OF THE PROPOSAL

8. The proposal presented by PTC constitutes a rebalancing of prices resulting in a more transparent pricing structure in closer conformity with current European practices.
9. Implementation of the present price proposal, would result in a 32% reduction in the global wholesale price of lines with capacities between 64 Kbps e 34 Mbps, as a result of restructuring the discount policy. The variation between the current and proposed price proposal, in terms of net revenue, would nevertheless be lower than –1%.
10. This reformulation would make it possible to bring the level of maximum discount practised by PTC moderately closer (in terms of discounts volume), to the levels of maximum discounts practiced by the EU's other historic operators.
11. The implementation of the present proposal, in terms of international price comparisons, would result in wholesale prices lower than those practised by other historic

operators in EU countries, of up to 42% and 57% for the cases of national lines of 64 Kbps and 2 Mbps, respectively.

12. Also in terms of international comparisons, considering 34 Mbps lines, the relative position of leased lines of 2 Kms, 10 Kms, 50 Kms and 200 kms would be improved. Nevertheless, the prices of national lines of 34 Mbps capacity continue to stand above those practised by other historic operators in EU countries and the relative position of PTC's prices for lines of 400 Km distance would deteriorate, mainly as a result of the abolition of the existence of the maximum price per line (corresponding to a 300km line).
13. In terms of the prices of international digital lines of 64 Kbps and 2 Mbps, PTC's proposal would lead to an improvement in comparison with the EU average, in the average price of lines for the principal destinations (Spain, France, Germany, the United Kingdom, Brazil and the United States of America), with particular emphasis on the wholesale price of lines of 2 Mbps.

IV. MAIN RESULTS OF THE ANALYSIS OF PTC'S PROPOSAL

14. On the basis of the analysis carried out, the following conclusions were drawn:
 - i) The proposal presented by PTC results in a variation in prices that is not fully coherent with the principle of cost orientation.
 - ii) In leased lines in which margins exist that are not fully balanced, their rebalancing should be achieved on a gradual basis, in order to avoid sudden cost variations for leased lines customers, without prejudice to the possibility of considering the variation of prices of a complete circuit and not only its sections.
 - iii) The present price proposal may lead to contradictory effects in comparison with ANACOM's previous deliberations on leased lines, in particular those concerning leased lines destined for the Autonomous Regions (CAM).
 - iv) PTC did not present a suitable justification to underpin the variation in the prices of national digital lines of 34 Mbps, especially given the growing importance of services supported by broadband access for the development of the Information Society.
 - v) Any forecast of future demand for leased lines involves a degree of uncertainty due to current market circumstances.

V. ACTIONS

15. Given ANACOM's previous recommendation of 29/11/01, the proposal presented by PTC, the conclusions of the analysis carried out on this proposal, and having heard the respective interested parties, ANACOM's Board of Directors decided, in its ordinary meeting of 12/04/02, that PTC must reformulate, within a maximum of 10 days, its price proposal for leased lines, in accordance with the following principles and recording the following minimum reductions in terms of revenues, net of discounts, in comparison with

the proposal presented and based upon the set of leased lines used as reference for this purpose (June 2001):

- i) 9% for the set of leased lines with capacity between 64 Kbps and 2 Mbps.
 - ii) 10% for the set of leased lines of 34 Mbps.
 - iii) 21.4% for the main links of lines of 64 Kbps with length of up to 10 Kms.
 - iv) 18% for the set of digital lines of n*64 Kbps with length of up to 10 kms.
 - v) 26% for the main links of lines of 2 Mbps with length of up to 10 kms.
 - vi) 47% for the main links of lines of 34 Mbps with length of up to 10 Kms.
 - vii) 31% for CAM lines.
 - viii) 17%, 14% and 15%, for international lines with a capacity of 64 kbps, n*64 Kbps and 2 Mbps, respectively.
 - ix) Readjustments in PTC's proposal resulting from implementation of this deliberation must respect the principle of cost orientation on a case by case basis and presenting due grounds justifying each readjustment.
16. Interested parties may make a statement on the present draft decision, if they so wish, within a maximum of 10 days, in conformity with article 100 and following articles of the Administrative Procedure Code.