



EUROPEAN COMMISSION

Brussels, 26.04.2012
C(2012) 2994

SG-Greffe (2012) D/7486

Autoridade Nacional de
Comunicações (ANACOM)

Avenida José Malhoa No. 12
P-1099-017 Lisboa
Portugal

For the attention of:
Mr José Manuel Amado da Silva
Chairman

Fax: +351 21 721 10 02

Dear Mr Amado da Silva,

**Subject: Commission decision concerning Case PT/2012/1312: Price control
for voice call termination on individual mobile networks in Portugal**

Article 7(3) of Directive 2002/21/EC: No comments

I. PROCEDURE

On 26 March 2012, the Commission registered a notification from the Portuguese national regulatory authority, the *Autoridade Nacional de Comunicações* (ANACOM)¹, concerning the setting of mobile termination rates in the wholesale markets for voice call termination on individual mobile networks².

The national consultation³ ran from 10 October 2011 to 22 November 2011.

On 4 April 2012, a request for information⁴ was sent to ANACOM and a response was

¹ Under Article 7 of Directive 2002/21/EC of the European Parliament and of the Council of 7 March 2002 on a common regulatory framework for electronic communications networks and services (Framework Directive), OJ L 108, 24.4.2002, p. 33, as amended by Directive 2009/140/EC, OJ L 337, 18.12.2009, p. 37, and Regulation (EC) No 544/2009, OJ L 167, 29.6.2009, p. 12.

² Corresponding to market 7 in Commission Recommendation 2007/879/EC of 17 December 2007 on relevant product and service markets within the electronic communications sector susceptible to ex ante regulation in accordance with Directive 2002/21/EC of the European Parliament and of the Council on a common regulatory framework for electronic communications networks and services (Recommendation on Relevant Markets), OJ L 344, 28.12.2007, p. 65.

³ In accordance with Article 6 of the Framework Directive.

⁴ In accordance with Article 5(2) of the Framework Directive.

received on 12 April 2012.

Pursuant to Article 7(3) of the Framework Directive, national regulatory authorities (NRAs), the Body of European Regulators for Electronic Communications (BEREC) and the Commission may make comments on notified draft measures to the NRA concerned.

II. DESCRIPTION OF THE DRAFT MEASURE

II.1. Background

The wholesale market for voice call termination on individual mobile networks in Portugal was previously notified to and assessed by the Commission under case PT/2010/1058⁵. ANACOM designated Telecomunicações Móveis Nacionais, S.A. (TMN), Vodafone Portugal, Comunicações Pessoais, S.A. (Vodafone) and Serviços de Comunicações, S.A (Optimus) as operator having significant market power and imposed the obligations of (i) access, (ii) non-discrimination, (iii) transparency, (iv) accounting separation and (v) price control and cost accounting. Regarding price control, ANACOM proposed a glidepath⁶ by relying on a benchmark based on best practice of six countries. The Commission did not comment on the method to set the price and its outcome⁷.

II.2. Regulatory remedies

The notified draft measure determines the details for implementation of the obligation of price control according to the BU-LRIC costing methodology and proposes the following mobile termination rates (MTRs) accordingly, along a glide-path:

30 April 2012	2.77 c€ per minute
30 June 2012	2.27 c€ per minute
30 September 2012	1.77 c€ per minute
31 December 2012	1.27 c€ per minute

ANACOM's LRIC model is a pure LRIC model which aims at fully reflecting the principles set out in the Recommendation on fixed and mobile termination rates in the EU (the "Termination Rates Recommendation")⁸, i.e., only traffic-related costs are included in the cost model to calculate the relevant increment to provide the termination service⁹. ANACOM thereby implements the principle of the Termination Rates Recommendation according to which MTRs should only include those costs which would be avoided if the wholesale voice call termination service were no longer provided to third parties¹⁰.

⁵ SG-Greffe(2010)D/5124.

⁶ 1st February 2010: €0.06 per minute; 1st April 2010: € 0.055 per minute; 1st July 2010: € 0.05 per minute; 1st October 2010: € 0.045 per minute; 1st January 2011: € 0.04 per minute; 1st April 2011: € 0.035 per minute.

⁷ However, in its letter of 12 April 2010 the Commission commented on the retroactive effects of the glidepath.

⁸ Commission Recommendation of 7 May 2009 on the regulatory treatment of fixed and mobile termination rates in the EU, OJ L 124, 20.05.2009, p. 67.

⁹ Recommend 6 of the Recommendation.

¹⁰ Recommend 6 of the Recommendation.

The costing model is based on costs of a hypothetical efficient operator (HEO) (i) which offers national coverage, (ii) whose market share is 20% and (iii) which uses a NGN IP core network and a mix of 2G and 3G technologies reflecting a conservative estimate of 3G-roll-out of the operators. Licence costs and spectrum costs are not included in the calculation of costs as they are not traffic-related. Finally, ANACOM relies on a real-term WACC¹¹ of 9.2% pre-tax, i.e., the predicted inflation for 2011-2021 is deducted. Thus, by setting as of 31 December 2012 the MTRs at the level of 1.27 c€ per minute, calculated on the basis of a pure BU-LRIC-costing (bottom up long run incremental costs) model, ANACOM implements the Termination Rates Recommendation insofar that the termination rates are implemented at a cost efficient, symmetric level as of 31 December 2012¹².

In its answer to the request for information, ANACOM explains that the target MTR is 20% higher than the simple average of the MTRs calculated by the NRAs of other EU countries having implemented a pure BU-LRIC-costing model.¹³ ANACOM stresses that different geographic characteristics and usage patterns in Portugal lead to slightly higher incremental costs compared to the EU countries looked at. In fact, Portugal would be a relatively small country with a lower density of population, more remote areas and, therefore, lower economies of scale. Furthermore, the model would be based on a conservative estimate of development of mobile broadband usage, mandated by the observed usage. In its answer to the request for information ANACOM commits to reviewing and updating its cost model in due time, namely considering the experience and results of other models and a comparative analysis.

III. NO COMMENTS

The Commission has examined the notifications and the additional information provided by ANACOM and has no comments.¹⁴

Pursuant to Article 7(7) of the Framework Directive, ANACOM may adopt the draft

¹¹ Weighted Average Cost of Capital.

¹² Recommend 11 of the Recommendation.

¹³

Maximum values for mobile terminations based on “pure” BU-LRIC models	“Pure” LRIC based MTR	Application date
United Kingdom	0.77	1 April 2013
Italy	0.98	1 July 2013
France	0.80	1 January 2013
Belgium	1.08	1 January 2013
Spain	1.09	1 July 2013 (pending notification)
Average	0.94	

¹⁴ In accordance with Article 7(3) of the Framework Directive.

measure and, where it does so, shall communicate it to the Commission.

The Commission's position on this particular notification is without prejudice to any position it may take *vis-à-vis* other notified draft measures.

Pursuant to Point 15 of Recommendation 2008/850/EC¹⁵ the Commission will publish this document on its website. The Commission does not consider the information contained herein to be confidential. You are invited to inform the Commission¹⁶ within three working days following receipt whether you consider that, in accordance with EU and national rules on business confidentiality, this document contains confidential information which you wish to have deleted prior to such publication.¹⁷ You should give reasons for any such request.

Yours sincerely,
For the Commission,
Robert Madelin
Director-General

¹⁵ Commission Recommendation 2008/850/EC of 15 October 2008 on notifications, time limits and consultations provided for in Article 7 of Directive 2002/21/EC of the European Parliament and of the Council on a common regulatory framework for electronic communications networks and services, OJ L 301, 12.11.2008, p. 23.

¹⁶ Your request should be sent either by email: INFSO-COMP-ARTICLE7@ec.europa.eu or by fax: +32 2 298 87 82.

¹⁷ The Commission may inform the public of the result of its assessment before the end of this three-day period.