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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/2012/1353: Modification of remedies – Multiple Markets

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

I. PROCEDURE

On 12 July, the Commission registered a short notification from the Portuguese national regulatory authority, *Autoridade Nacional de Comunicações* (ANACOM)[1], concerning the update of PT Comunicações' (PTC)'s rate of cost of capital.

The national consultation[2] ran from 14 May 2012 to 26 June 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 MEASURES

II.1. Background

In 2009 ANACOM proposed to modify the methodology for calculating the rate of cost of capital of PT Comunicações (PTC). The draft measure was notified to and assessed by

[1] 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] In accordance with Article 6 of the Framework Directive.

the Commission under case PT/2009/1011[3]. At the time ANACOM decided that PTC had to: (i) maintain the use of the Weighted Average Cost of Capital methodology (WACC) for the determination of the cost of capital before tax; and (ii) continue using the Capital Asset Pricing Model (CAPM) for the calculation of the cost of equity. The rate of cost of capital was set at 10.3%. Moreover, a glide path[4] was implemented by ANACOM in order to allow PTC to adjust to the cost of capital resulting from the revised methodology. The Commission issued a no comments letter. ANACOM adopted the final decision on 10 February 2010 (Decision of 2010).

This decision also provided that the methodology could be subject to review if, in the considered period, an extraordinary situation occurred which would have a significant impact on the validity of the assumptions used for defining the cost of capital of PTC (particularly, with regard to parameters not controlled by PTC, e.g. the risk-free interest rate, the tax rates and the risk premium). Furthermore, the review could be carried out by ANACOM, at its own initiative, or on the basis of a request made by PTC.

Following a request by PTC in 2011, ANACOM reviewed and updated the rate of cost of capital, as set in February 2010, on the basis of the changes of the risk-free interest rate and the tax rate. Such review was notified to and assessed by the Commission under case PT/2011/1240[5]. The respective rates of cost of capital of 2010 and 2011 were proposed to increase from 11.3% and 10.3% to 11.6% and 11%, respectively. The Commission issued a no comments letter. ANACOM adopted the final decision on 26 August 2011 (Review of 2011).

II.2. The draft measure notified by way of a short form

Following a new request by PTC, ANACOM proposes to review the rate of cost of capital as set in August 2011. PTC proposes the update of the risk-free interest rate from 4.80% to 7.82% based on the 10 years Portuguese treasury bonds in 2010 and 2011[6].

ANACOM considers that the review requested by PTC is justified on the basis of the Decision of 2010.

However, ANACOM refers to the same decision which also sets out that the parameters can be modified in case of an extraordinary situation, which could have a significant impact on the assumptions used to calculate the cost of capital. In particular, ANACOM underlines that according to the Decision of 2010 the relevant market of treasury bonds should be national[7], but, in case the national treasury bonds were not released on a constant basis or did not possess sufficient liquidity, another market could also be taken as a reference.

On this basis, ANACOM observes that the macroeconomic context affects significantly the regularity and the liquidity of the emissions of public debt in Portugal. Under these circumstances, ANACOM concludes that it is not reasonable to consider only the Portuguese bonds as an indicator of the risk-free interest rate. Therefore, ANACOM

3 Case PT/2009/1011 SG-Greffe (2009) D/12031.

4 PTC's cost of capital for 2008 was 13.2%. Rates were lowered according to the following glide path: 12.3% in 2009, 11.3% in 2010, and 10.3% in 2011.

5 SG-Greffe(2011)D/13857.

6 According to ANACOM's decision made in February 2010, the monthly values of the 10 years Portuguese treasury bond related to the last two years should be used for the calculation of the risk-free interest rate.

7 This was actually the parameter used in the previous decisions.

proposes to estimate it on the basis of the 10 years treasury bonds in 2010 and 2011, in a set of countries, including Portugal, as presented in the following table[8]:

Country	Average of 10 years treasure bond (2010-2011)
Belgium	3,85%
Spain	4,85%
France	3,22%
Ireland	7,67%
Italy	4,73%
Portugal	7,82%
Average	**5,36%**

Given the resulting risk-free interest rate of 5.36%[9], ANACOM proposes to set the rate of cost of capital for 2011 at 11.7% instead of 14.78% as PTC proposes[10].

III. NO COMMENTS

The Commission has examined the notifications and has no comments.[11]

Pursuant to Article 7(7) of the Framework Directive, ANACOM may adopt the draft 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/EC[12] 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 Commission[13] 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.[14] You should give

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8 ANACOM explains that this approach (i) takes into account that Portugal belongs to the Euro area and, therefore, the value of the risk-free interest rate should not differ significantly and (ii) reflects the worsening of the macroeconomic Portuguese scenario.

9 ANACOM sets out that it is finalising the decision regarding the cost of capital for the period 2012-2014. This decision will reflect all the changes occurred since the adoption of the decision of 2010.

10 All the other parameters remain unchanged as regards the Review of 2011.

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

12 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.

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

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

reasons for any such request.

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