

Infrastructure sharing strategies

Portugal was one of the first European Union Member States to compel the incumbent operator to have a regulated offer for access to conduits.

In Portugal, it has been considered that the efficient use of existing infrastructures is an extremely important matter as far as the promotion of conditions for competition and development in the communications market is concerned, by creating externalities for the Portuguese economy resulting from investments made by several economic actors, which also stems from the promotion and checking of the conditions of access to the ducts of the public service concessionaire and to those of other public entities.

Therefore:

- Firstly, the concession agreement of the telecommunications public service guaranteed the access by other operators to the conduits engaged to the basic telecommunications network¹;
- Secondly, the Law n° 5/2004, of 10 February² has placed utmost importance on the PTC duty to provide³, by agreement, access to conduits, poles, other equipment and facilities it owns or the management of which falls under its responsibility, as well as provide⁴ an offer of conduit access, in which it should be included the conditions for access and use, in the terms to be defined by ICP-ANACOM.

The main goal of the imposition of this obligation⁵ of infrastructure access and sharing was to overcome some problems faced by the entities that offer electronic communications networks and services accessible to the public in doing further investments in conduits in certain geographic areas, in an economically efficient manner, existing also physical limitations to the feasibility in investing in conduits, the latter being conditioned, on certain conditions, by restrictions of occupation of the underground due to saturation of the same or, further more, by municipal restrictions.

In this context, ICP-ANACOM considered the effective and timely implementation of the Reference Conduit Access Offer (RCAO) an extremely important matter as far as the promotion of conditions for competition and development in the communications market is

¹ Pursuant to Article 7 of the Bases of Concession approved by Decree-Law n.º 31/2003, of 17 February

² <http://www.anacom.pt/template20.jsp?categoryId=103282&contentId=159011>.

³ Pursuant to n°1, Article 26º

⁴ Pursuant to n°4, Article 26º

⁵ Provided for in Article 26º, Law n.º 5/2004.

concerned, by creating externalities for the Portuguese economy resulting from investments made by several economic actors. Furthermore, the investment in conduits and associated infrastructure must be compatible with economic efficiency criteria, by avoiding the inefficient duplication of infrastructures as well as inconvenience for citizens and economic activities resulting from the frequent and extensive work on the ground and underground, with the subsequent disruption at the level of traffic and territorial planning, not to mention the environmental repercussions involved.

In this way, ICP-ANACOM has worked, since the beginning of 2004, in several matters related with the installation of the PTC conduits access by doing the following:

- Fixing the general principles and conditions that should be followed in case of use and access to pipes and infrastructures of the concessionaire, as well as the main elements that should be included in the RCAO, namely, prices, time indicators and standard-procedures⁶;
- Establishing a rule that determines⁷ that PTC should leave, to be used by the beneficiary entities, in each pathway, an area corresponding to at least 20% of the internal area of each conduit⁸
- Determining the possibility of conduits works (namely cable installation) by beneficiary entities or collaborators of subcontracting companies duly identified and accredited by PTC, in a transparent and non-discriminatory manner.
- Obliging PTC to proceed with the creation, maintenance and update of a database with descriptive information on conduits and associated infrastructure.

On the basis of the Portuguese experience, the European Regulators Group (ERG) has prepared an opinion on the conduits sharing that, apparently, was taken into account by the European Commission in the Recommendation 2007/879/CE, when defining the wholesale supply market of physical access to the network infrastructure at a fixed location, and in the explanatory memorandum that states: *“Access to ducts could be an important part of any remedy imposed to address problems associated with physical network access”*.

⁶ Decision of 17/07/04, available at <http://www.anacom.pt/template31.jsp?categoryId=211482>.

⁷ Notwithstanding the space intended to the maintenance and repair works of conduits and associated infrastructure and or intended to cable installation maintenance or repair works.

⁸ Or of each pipe in the cases where the conduits accommodate several pipes, or of each sub-conduit in the cases where the conduits or pipes accommodate sub-conduits.