

Recommendation No. 2/2005

“The form and the places for the presentation of mobile telecommunications prices”

I. Introduction

1. The Competition Authority’s mission is to guarantee application of the competition rules in Portugal, in compliance with the principle of a freely competitive market economy, taking into account the efficient operation of the markets, the effective division of resources and consumer interests¹.
2. It is the Competition Authority’s responsibility to implement the powers of the state enshrined in Article 81 e) of the Constitution of the Portuguese Republic, i.e. to guarantee the efficient operation of the markets in order to ensure a competitive balance between undertakings, oppose monopolistic forms of organization and curb abuses of a dominant position and other practices that harm the common interest.
3. To assure the success of the mission with which it is entrusted, it is the Competition Authority’s duty to contribute to improving the Portuguese legislative system in all areas that may affect free competition, on its own initiative or at the government’s request. It is the Competition Authority Council’s duty to propose to the government any legislative or regulatory amendments that may help to improve the legal framework for the safeguarding of competition².
4. The Competition Authority’s powers include the right to make a pronouncement, on its own initiative or at the government’s request, on any issue that may put the freedom of competition in question and to adopt, and apply to the economic agents, the recommendations that prove necessary for the proper application of the competition rules and the development of a culture that favours the freedom of competition³.
5. In compliance with its mission and in pursuance of its powers, the Competition Authority issues this **“Recommendation on the form and the places in which the prices of services provided by mobile telecommunication operators are to be presented”**.
6. This Recommendation analyzes the present situation, gathering data on (a) the Consumer Institute’s understanding of the issue; (b) the proximity of tariffs to the consumers’ usage profiles; (c) the European Commission’s understanding of the development of competition levels in the Portuguese market; (d) a comparison of tariffs with other European Union countries; (e) developments in the regulation of the wholesale prices charged by mobile operators; and (f) the development in these operators’ average revenue per customer. In the sections below, this recommendation proposes a strategy and makes suggestions that are intended to offer an effective contribution to increasing competition in this sector.

II. Background

¹ Article 1 (2) of the Competition Authority’s statutes, approved by Decree-Law No 10/2003 of 18 January

² Article 6 (1) f) and Article 17 (1) g), respectively, of the Competition Authority’s statutes

³ Article 17 (1) f) and i) of the Authority’s statutes

a. The Consumer Institute's understanding of the issue

7. The contact established with the IC (Consumer Institute) resulted in a show of interest, by both bodies, in taking action on tariff transparency in the mobile communications market, this corresponds, at the same time, to consumer protection and the promotion of competition in the market place.
8. The bodies agree that *(i)* mobile operators offer an huge number of tariff plans; *(ii)* this may limit the consumer's ability to make informed decisions; and *(iii)* the limited tariff transparency may remove the markets from the typical competitive equilibriums.
9. In concrete terms, regarding point *(i)*, it is to be concluded that mobile communication tariffs vary greatly. There is a wide array of minute-packages, postpaid plans (subscriptions) and prepaid plans (with or without a top-up requirement), with both types of service being able to offer, or not, a number of minutes or an amount of credit in calls.
10. Furthermore, comparing tariffs is a highly complex matter. It involves taking a vast number of variables into account, thus making comparability more difficult, as well as the choice of the most suitable tariff for each consumer. These variables include, in particular:
 - the service type (with or without a subscription or top-up requirement);
 - the number of minutes included in the tariff;
 - the credits for calls received;
 - the price of the first and additional minutes;
 - the prices of each type of call (on-net and off-net for each of the other networks, off-peak times, weekends and peak times);
 - the prices of calls for a pre-defined number of users;
 - the prices of short message and multimedia messaging services.
11. The Consumer Institute, it may be added, has mentioned that mobile operator tariffs have been the object of complaints regarding alleged misleading publicity. They mainly come from the competitors.

b. The adequate tariff choice

12. A study published by DECO/PRO TESTE⁴ in February 2005 confirms the difficulties that consumers face in choosing the most appropriate mobile phone tariff.
13. The same organization carried out a survey of 1800 associates, confirming that over 90% of subscribers do not use the tariff that minimizes their mobile communication expenses.
14. The study revealed that, on average, consumers waste over 100 euros per year, with most respondents choosing their tariff alone. Moreover, on average, even the consumers who said that they did not wish to change operator would save between €52 and €106 per year, depending on the operator.

⁴ Cf. <http://www.deco.proteste.pt/index.htm> (in press releases)

15. The figures mentioned above mean that, even without changing operator, consumers could save over **700 million euros a year** if they used the most appropriate tariff for the use they make of their mobile⁵.
16. In addition, a certain proportion of mobile phone and tariff-plan sales take place through the mobile operators' agents, which means that the advice given may not be sufficiently independent.
17. As happens in other markets, even in situations in which the distribution channel chosen by the consumer is a 'mixed agent' (representing more than one mobile operator), the commission and bonus schemes for these entities may influence the advice given regarding one or another operator, without that operator being the most advantageous for the consumer.

c. The European Commission's understanding of competition in the Portuguese market

18. Regarding competition on the national mobile market, let us consider the content of the European Commission's report "EUROPEAN ELECTRONIC COMMUNICATIONS REGULATION AND MARKETS 2004 (10TH REPORT)"⁶. This recognises that the penetration of the mobile service is very high in Portugal, above the European average, and revenues from this service have increased progressively without the three mobile operators demonstrating aggressive policies to gain market share.
19. The report also reveals that in 2003 and 2004 all mobile operators raised the prices for telephone calls and, in the mobile telephony retail market, the competition is no longer as intense as it was in former years.

d. A comparison of tariffs with other European Union countries

20. In the same report, the two major Portuguese operators' prices for medium and high-use customers are ranked in the middle or bottom half of the listings for operators in the 25 European Union countries⁷.
21. However, for users with lower consumption, possibly those who may have greater difficulty in obtaining and processing the information, the operators mentioned above are ranked in the top half of the listings.
22. The document referred to also reveals that, between 2003 and 2004, mobile communications prices rose in Portugal⁸ whereas in most EU countries exactly the opposite happened. Moreover, for certain countries the reductions in prices were found to be quite significant (over 30%).

e. Developments in wholesale price regulation

⁵ Figure calculated on the basis of the number of active subscribers at the end of 2004, admitting that 20% of users have the business tariff that is perfectly adjusted to their user profile. With regard to the number of non-business subscribers, it should be noted that this is a conservative estimate, given that at the end of 2004, according to the statistical information available at the ICP-ANACOM site, 78.5% of cards acquired were prepaid and prepaid cards are bought massively by non-business customers.

⁶ Cf. http://europa.eu.int/information_society/topics/ecommm/doc/all_about/implementation_enforcement/annualreports/10threport/sec20041535VOL1en.pdf

⁷ Cf. also: http://europa.eu.int/information_society/topics/ecommm/doc/all_about/implementation_enforcement/annualreports/10threport/sec20041535VOL1en.pdf

⁸ For the tariff plans and operators considered

23. At the wholesale level, the fixed-to-mobile call termination charges in Portugal are by far the highest in the European Union, standing 45% above the European average in July 2004.
24. This, moreover, was one of the reasons why ICP-ANACOM decided it was necessary to impose cost-based call termination charges for the mobile network.
25. For this purpose, it introduced price controls based on international benchmarks, given that there are at present no suitably implemented costing models in Portugal⁹.
26. This measure corresponds to a fall in termination charges by 1 October 2006 of approximately 41% for TMN and Vodafone and 60% for Optimus (the operator that charges the higher prices).

d. Development in ARPU (Average Revenue per User)

27. The measure referred to above will tend to strengthen the progressive decline that has been recorded (at least since the year 2000) in the average monthly revenue per user for the two largest mobile telecommunications operators in Portugal¹⁰.
28. According to the information available from the Annual Financial Statements issued by Optimus, this operator's ARPU increased by 8.5% between 2003 and 2004, defying the trend apparent at its greatest competitor¹¹. It is also to be noted, as mentioned above, that the third operator in terms of the number of subscribers is the one that will suffer the greatest fall in call termination charges in its network: approximately 60% by October 2006¹².
29. The revenue loss at a wholesale level will have a negative impact on the mobile operators' ARPU and may possibly represent a disincentive to reduce retail prices.
30. It should be added that this view has already been communicated to the Competition Authority by various fixed communication service providers, who contend that retail prices are subsidized by the high termination charges for calls originating from a fixed line and terminating in the national mobile networks.
31. Accordingly, it is felt that (1) the concerns already voiced by the European Commission on the slackening of price competition in the mobile telecommunications market may, in the environment described above, intensify in dimension and relevance and (ii) an increase in tariff transparency will allow a reduction in consumer expenditure, weakening the incentives that may exist to reduce competition in the markets for mobile telephone services.

III. Proposal

a. Introduction

⁹http://www.anacom.pt/streaming/dec.contrprecos.pdf?categoryId=143262&contentId=258996&field=ATTACHED_FILE

¹⁰See the operators' annual financial statements.

¹¹ The 2004 ARPU for Vodafone is not yet known, as its fiscal year does not coincide with the calendar year.

¹² <http://www.anacom.pt/template15.jsp?categoryId=143822>

32. In the various assessments that the Competition Authority has been carrying out in the electronic communications sector, it has ascertained that, whenever the Portuguese market is compared with more competitive markets in European Union countries, **there is potential room for a reduction in consumer prices.**
33. The retail market in mobile communications, in particular for low-use customers, seems to be no exception.
34. As explained, mobile telecommunication tariffs are highly complex and every operator offers such a vast range of options that most non-business customers cannot make properly grounded tariff choices.
35. Moreover, the informed choice of the tariff or mobile communications operator that most closely corresponds to each consumer's planned use (i) is time-consuming, (ii) since it entails researching and analyzing a vast array of information, and (iii) also demands certain calculation skills that may not be accessible to most users.
36. As mobile operators' retail tariffs are not regulated, **a suitable means of raising competition between operators may consist of increasing tariff transparency**¹³ in order to give consumers the means to make the most appropriate choices.
37. Thus, the conditions should be created in which consumers may easily (i) have access to the various choices available on the market, (ii) identify what use they plan to make of the service or have made in recent months and (iii) obtain a swift, explicit and comparable answer about prices and other conditions, in particular the loyalty programmes that every operator is able to offer.
38. For this purpose, it is deemed appropriate that, in a form allowing intercomparison, mobile communications operators provide website simulators of monthly expenditure that, for each consumer, represented by an individual use profile, indicate the tariff plan, the associated monthly cost and other important conditions for their decision, in particular any contractual loyalty and penalty conditions.
39. In the paragraphs below, this Recommendation develops the terms of reference relating to the calculation and presentation method for each customer's monthly expenditure. It has also taken account of the fact that:
- a) It is necessary to allow customers who so desire to check if their tariffs (already in operation) are the most suitable, independently of whether those tariffs are no longer offered to new subscribers. This aspect is all the more important in that the penetration rate of the mobile service at the end of 2004 stood at 95%, 7 percentage points above the European Union average¹⁴. It should be noted that a penetration rate of this order means that (i) the great majority of the population already has a mobile telephone and (ii) a proportion of these customers will be on discontinued tariffs which will, necessarily, have to be considered at the time of the analysis/decision regarding a tariff or operator change.

¹³ Without prejudice to the recognition that excessive transparency can also facilitate the concertation of prices, which is prohibited by the Law on Competition and by Community legislation – an aspect to which this Authority will continue to pay attention.

¹⁴ <http://www.anacom.pt/template12b32e.html?categoryId=149862#2>

- b) There is no guarantee that the independent sites can provide this data with the updating (and size) that this type of instrument demands¹⁵; this could, at least partly, compromise the objectives that this Authority has set itself on the issue.
- c) Among others, DECO/PROTESTE offers simulators that calculate mobile communication expenditure on the basis of each user's consumption profile. However, access to these simulators is restricted to associates who are registered at the DECO/PROTESTE¹⁶ site. Subscription to this association's services, which includes access to these simulators, involves costs that consumers who are only looking for information on mobile operator tariffs may be unwilling to bear¹⁷. As a final point, the simulators presented by this body do not take international calls from a mobile into consideration.
- d) At the TMN, Vodafone and Optimus sites, it is only possible to obtain the tariff – of those available at present for new customers – that the operator advises for every consumer; this advice is based on a set of qualitative and limited information.
- e) As the advice is not based on quantitative data (e.g. the number of calls made, the length of calls, the period in which calls are made, etc.), it does not offer a monthly expenditure estimate for each consumer. Consequently, among the three operators, it is impossible to compare what the tariffs are that best suit each usage profile.

b. Recommendation

- 40. Thus, it is deemed appropriate that (1) at their websites and (2) among all the agents and sub-agents that sell their services, mobile operators provide simulators that determine the tariff plan, with its cost, best suited to the usage profile described by each consumer.
- 41. For the purposes referred to above, these comparisons/simulations should be carried out for all the tariffs in effect, regardless of whether they are or are not available for new subscribers.
- 42. In relation to the principle of making simulators available among the operators' agents and sub-agents, this can be done by installing a replica of the operator's website simulator at every sales outlet or, more simply and economically, by ensuring that these entities have access to the service providers' websites so that they can give consumers the proper information.
- 43. It is also considered highly beneficial that other entities such as the Consumer Institute, ICP-ANACOM and the Competition Authority (via links on their websites)

¹⁵ The site www.telemoveis.com provides tariff comparisons between the three mobile operators for user profiles defined by the visitors to that page. However, in addition to the fact that it is frequently unavailable, there is no guarantee that it is properly updated and it certainly does not consider tariffs that have been discontinued by the operators.

¹⁶ Cf. <http://www.deco.proteste.pt/index.htm>

¹⁷ Cf. http://www.servicoglobal.net/?par_id_c=siteDP&lge_id_c=P&bus_id_c=LINKDP&prm_id_c=LINKSIT&sit_id_c=Web_global

and community bodies such as local councils and public libraries (via internet access points) facilitate access to or dissemination of these instruments, in particular by providing interfaces where users can fill in the data.

44. Finally, with respect to the Proposal presented here, it is to be noted that whenever the justification exists – which is considered to be the case – the government can set out the terms on which the obligation to indicate prices must be complied with, by means of a joint ministerial order of the government members responsible for consumer protection, trade and the sector covered by the economic activity in question¹⁸.

c. Terms of reference for developing simulators of mobile communication expenditure

45. For the purposes of this Recommendation, there is a minimum dataset that the reference elements for developing expenditure simulators should contain for each consumer's usage profile.

46. This dataset should be at least as extensive as that presented below:

Table 1 Information on voice communications terminating in national networks

Voice calls	Av. no. of calls per month	Off-peak calls ¹⁹		Peak calls ²⁰		Weekend calls ²¹		Total %
		Average length (seconds)	% calls	Average length (seconds)	% calls	Average length (seconds)	% calls	
								100%
To the fixed network								100%
To the TMN network								100%
To the Vodafone network								100%
To the Optimus network								100%
To a preferential group – 5 pre-selected numbers (response optional)								100%
To a preferential group – 10 pre-selected numbers (response)								100%

¹⁸ Decree-Law No. 162/99 of 13 May

¹⁹ For this purpose, any call made at 10 pm on a working day is considered to be in the night-time period.

²⁰ For this purpose, any call made at 11 am on a working day is considered to be in the daytime period.

²¹ For this purpose, any call made at 11 am on a Sunday is considered to be in the weekend period.

optional)								
	Total calls/month							

47. The information requested in Table 1 corresponds to the base level of mobile communication usage. Customers who use a broader range of services may optionally fill in the information requested in Tables 2 – 4. When they do not complete these tables, the operators should consider that they do not make use of international and data communications and so, by default, these tables will be completed with zeros.

Table 2 – Information on voice communications terminating in international networks – Response optional

Voice calls	Av. no. of calls per month	Off-peak calls ²²		Peak calls ²³		Weekend calls ²⁴		Total %
		Average length (seconds)	% calls	Average length (seconds)	% calls	Average length (seconds)	% calls	
								100%
Country X fixed network								100%
Country X mobile network								100%
.....								100%
Country Z network ...								100%
	Total calls / month							

Table 3 – Information on voice communications received by each user – Response optional

Voice calls from:	No. of calls received per month	Average call length (seconds)
fixed network		
TMN network		
Vodafone network		
Optimus network		
international networks		

Table 4 – Information on data communications (SMS and MMS) – Response optional

No. of written and multimedia messages sent per month	To the fixed network	To the TMN network	To the Vodafone network	To the Optimus network
Short Message Service (SMS)				
Multimedia Messaging Service				

²² For this purpose, any call made at 10 pm on a working day is considered to be in the night-time period.

²³ For this purpose, any call made at 11 am on a working day is considered to be in the daytime period.

²⁴ For this purpose, any call made at 11 am on a Sunday is considered to be in the weekend period.

(MMS)				
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48. On the basis of the data entered by the consumer at the mobile operator's site or supplied to these operators' agents or sub-agents, the tariff simulator should indicate:

- (1) the tariff that minimizes the consumer's expenditure;
- (2) the monthly expenditure that the consumer will incur at the level of use indicated;
- (3) the most important contractual conditions tied to the tariff, particularly any minimum loyalty periods or penalties arising from early cancellation of the subscription.

49. This information should be kept up-to-date, with particular attention to the developments in tariff models and services for third generation communications.

d. Quantification of the beneficiaries of the Proposal

50. The latter scenario guarantees that the measure recommended here, particularly regarding the availability of expenditure simulators at mobile operators' agents and sub-agents, especially benefits consumers who do not have internet access and who would, otherwise, probably not have the means of acquiring accurate information on the most appropriate tariff for their needs.

51. It will be equally important to disseminate this strategy among mobile communications consumers with internet access.

52. According to the Survey on the Use of Information Technology among Families, carried out by the INE (National Institute of Statistics)^{25 26} in the first quarter of 2004, 41% of Portuguese households had a computer and 26% had internet access at home. The same report shows that 37% of those between 16 and 74 years old used a computer and 30% accessed the internet in that period.

53. It is also important to take into account that, on the basis of the figures in the DECO/PROTESTE study, it is estimated that, without even changing operator, consumers could save more than **700 million euros per year** if they subscribed to the most appropriate tariff for the use that they make of their mobile telephone.

54. Accordingly, considering (i) the INE statistics, (ii) the number of users who only have access to the internet at work, school or university and (iii) the potential number of consumers who will be able to receive the right information from the simulators provided by the mobile operators' agents and sub-agents and the independent bodies' websites, it is deemed that, at the limit, the conditions will be created for the whole Portuguese population to be able to benefit from the strategy of increasing tariff transparency in the mobile communications market, as sponsored by the Competition Authority.

²⁵ In co-operation with the Unidade de Missão Inovação e Conhecimento

²⁶ Cf. <http://www.ine.pt/temas.asp?ver=por&temas=I>

e. Complementary measures to the Proposal

55. It would also be of great interest if consumers were able to use the simulators recommended here **at one and the same website**, e.g. at an independent site, in particular of the associations representing consumers, or possibly at the sectoral regulator's or Competition Authority's site, in public places with internet access, such as the local council and public libraries.
56. The solution may consist of providing these websites with an interface where consumption profiles could be inputted and simultaneously forwarded to the three mobile operators, which, in turn, would perform the simulations and:
- a) return the results to the site of the independent body, which would show them at its internet site, or
 - b) more simply, send the replies to the email address indicated by the consumer.
57. It is appreciated that this solution would involve a certain investment at the computing level but, on the other hand, with a single visit to a single site, it would allow an answer to the question, 'What operator and tariff are best for an individual consumer?'

IV. Conclusion

58. On the basis of the above, in particular the assessment of the potential benefits for promoting competition and the highly significant impact that the proposed measure will have on consumer well-being, the timeliness of publishing a joint ministerial order on the terms on which the obligation to indicate mobile service prices must be fulfilled is submitted to the consideration of His Excellency the Minister for the Economy and Innovation and His Excellency the Minister of Transport, Communications and Public Works.