



COMISIÓN DEL MERCADO DE LAS TELECOMUNICACIONES

IGNACIO REDONDO ANDREU, Board Secretary of the *Comisión del Mercado de las Telecomunicaciones* (Telecommunications Market Commission, CMT), by means of the capacities bestowed upon him by article 40 of that Commission's Regulations, approved by Spanish Royal Decree 1994/1996, of 6 September,

HEREBY CERTIFIES:

That in Meeting number 30/09 of the Board of the Comisión del Mercado de las Telecomunicaciones, held on 17 September 2009, the following agreement was adopted.

AGREEMENT

By this we hereby approve the following:

Resolution on the modification of the current wholesale broadband access services (DT 2009/871).

I BACKGROUND

One.- Proceedings on wholesale broadband service proposal

On 2 April 2009, this Commission began proceedings (DT 2009/497) to examine the wholesale broadband service proposal presented by Telefónica de España, S.A.U., (hereinafter Telefónica) in response to the requirements of the corresponding reference market (market 5).

Two.- Verification of the cost accounting results presented by Telefónica with regard to 2007

On 7 May 2009 the Resolution on the verification of the cost accounting results presented by Telefónica with regard to 2007 was approved.

Three.- New proceedings for the review of the current wholesale broadband access services. Communication of start of the procedure

This Commission, in accordance with the provisions of Act 30/1992, of 26 November, of the Public Administrations Legal System and of the Common Administrative Procedure, modified by Act 4/1999, of 13 January, (rule followed by this Commission in the exercise of the public functions entrusted to it), considered it expedient to start an administrative procedure for the review of the Bit-stream Access Broadband Offer (OIBA) of Telefónica for the introduction of the improvements considered appropriate.

On 3 June 2009, said proceedings were communicated to the interested parties.

Four.- Document drafted by Telefónica

On 30 June 2009, a document was received from Telefónica with proposals for the modification of the current services, said document being attached to these proceedings.



Five.- Services Report

On 9 July 2009, the Services issued a report in this procedure.

Six.- Requests for information

On 13 July 2009, Telefónica is required to provide proof of the cost orientation of the prices proposed in its document for the new provincial level of the ADSL-IP service.

Seven.- Hearing procedure

Vodafone España, S.A. (hereinafter Vodafone); France Telecom España, S.A. (hereinafter Orange); Cableuropa, S.A.U. (hereinafter Ono) (in a joint document with Tenaria, S.A.); and Telefónica made allegations in the hearing procedure granted for the purpose.

In its document of allegations, Telefónica also responds to the demand for information made.

II LEGAL BASIS

II.I Authorisation for Competition

In accordance with article 48.2 of General Telecommunications Act 32/2003, of 3 November, (hereinafter, LGTel) "the purpose of the Comisión del Mercado de las Telecomunicaciones shall be the establishment and supervision of the specific obligations which operators have to fulfil in telecommunications markets, and the promotion of competition in audiovisual services markets, in accordance with the provisions of its regulations; the resolution of disputes between operators and, where appropriate, the exercise as arbitrary body of the controversies arising between the same."

At the same time, article 7.3 of the Regulations on electronic communications markets, network access and numeration, passed by Spanish Royal Decree 2296/2004, of 10 December (MAN Regulations), establishes that the Comisión del Mercado de las Telecomunicaciones may introduce changes in the reference offers in order to make the obligations take effect.

In turn, article 9.2 of Directive 2002/19/CE of the European Parliament and the Council, of 7 March 2002, regarding access to electronic communications networks and associated resources, and their interconnection (Access Directive), also establishes that national regulation authorities may, among other things, introduce changes in the reference offers in order to bring into effect the obligations imposed by this Directive.

Therefore, this Commission is empowered to introduce changes in the reference offers of Telefónica, in accordance with the provisions of article 9.2 of the Access Directive and article 7.3 of the MAN Regulations.

II.II OBJECT OF THE PROCEEDINGS

Even though the adaptation of the wholesale broadband service proposal of Telefónica to the imposed obligations and to the regulatory requirements must be assessed in the DT 2009/497 procedure, the periods for the implementation of the new service which



can be estimated at the present time justify the initiation of proceedings for the immediate introduction of improvements in the current wholesale broadband access services.

The purpose of this procedure is to analyse the need for a review of the bit-stream access broadband offer for the immediate introduction of improvements in the current services.

II.III OBLIGATIONS OF TELEFÓNICA IN THE WHOLESALE BROADBAND ACCESS MARKET

In compliance with its function of definition and analysis of markets, on 22 January 2009, this Commission adopted the Resolution which approves the definition and analysis of the wholesale (physical) access market to network infrastructure (including shared or completely unbundled access) in a fixed location, and the wholesale broadband access market, to designate an operator with significant market power and to enforce specific obligations, and agreed to notify the European Commission of the same. Said Resolution entered into force the day after its publication, on 18 February 2009, in the Spanish Official Journal (BOE).

Said Resolution established that Telefónica, individually, has significant power in the reference markets, in accordance with the provisions of section 2, article 14, of the Framework Directive, and of Annex 2, section 8 of the LGTel. Therefore, said Resolution imposes obligations on Telefónica to provide access, to apply cost orientated prices, to be transparent and not discriminate and to keep separate accounts.

In particular, said Resolution establishes that Telefónica must offer a new wholesale broadband service which fulfils the following requirements:

- Sufficient options, both in terms of quality and price structure parameters, to permit the flexible configuration of retail products and their independence from the retail offers of Telefónica;
- Offer of connections unlinked to the telephone service of Telefónica;
- Connection interfaces which include Ethernet bundling network traffic;
- Substantially lower number of delivery points than those of the current GigADSL service. The demarcations structure shall be made bearing in mind the whole national territory and population.
- Delivery points coinciding with those of the current GigADSL service.

Nevertheless, until said service is available, Telefónica shall continue under the obligation of maintaining the GigADSL and ADSL-IP services currently in force, ensuring the provision of the services both for existing and new clients. On the other hand, once the new service is available, in the coinciding fields of coverage, Telefónica shall no longer be obliged to accept new clients for the current GigADSL and ADSL-IP services.

The obligation has also been imposed to offer wholesale broadband access services at production cost orientated prices, said prices having to:

- Permit the recuperation of costs including the risk premium which the development of the new access infrastructure might involve;



- Permit those alternative operators which decide to use the wholesale broadband services to replicate the retail broadband offers of Telefónica or of any company of its group;
- Provide sufficient economic incentives to ensure the development of alternative networks, efficient investment and sustainable competition, in accordance with Article 13.2 of the Access Directive;
- Ensure the consistence of wholesale service rates, guaranteeing sufficient margin both between the services provided in the different demarcations (regional and national service), while both services are still regulated, and with regard to other connected wholesale services (local loop unbundled access service).

At the same time, Telefónica also has obligations on matters of IP telephone wholesale services, imposed after the call origination market analysis.¹ Said obligations are the following: within the access obligation, the obligation is imposed to *“provide access to third operators to specific elements and resources of its network necessary for the provision of a service of IP telephone packet traffic with nominal speeds in an upward and downward direction, and the guarantees of retardation, retardation variation, loss of packets and required error rate, for the provision of IP telephone services”*, and within the obligation of transparency, the obligation of publishing a Reference Offer is imposed, and it is established that *“likewise, this Reference Offer must include an IP telephone packet traffic service with voice quality and with the characteristics set out in section 1.a) of this Annex”*.

II.IV PRICE REVIEW: MONTHLY CONNECTION FEES

II.IV.1 Methodology used for current fees

Within the RUO, the GigADSL and ADSL-IP wholesale broadband access services are considered. Current fees are calculated, on the one hand, from the cost accounting results of Telefónica and, on the other, from a calculation model which justifies the additional margin or mark-up to be applied.

From the accounting, the unitary result is taken which admits an interpretation in terms of a mean monthly cost per connection.

To the above, an additional margin is added to ensure the consistence of the prices of the different access services. In this way, it was assumed that the prices set for wholesale broadband access services should, on the one hand, permit sufficient return to the operators which have opted to access the wholesale services ascending in the chain of value and, particularly, the unbundled loop, and, on the other hand, provide suitable incentives to the operators to develop their own infrastructures, moving from service-based to infrastructure-based competition.

A calculation model was developed, described in Annex I, by which it was established that in order for the number of “attractive” exchanges (for unbundled access as opposed to bit-stream access use) not to become lower than 743, and therefore for the operators to have incentives to add at least another 126 exchanges within their

¹ Resolution of 12 December 2008 which approves the definition and analysis of the wholesale market of access and call origination in the public telephone network in a fixed location, to designate an operator with significant market power and to enforce specific obligations, and agreed to notify the European Commission of the same.



coverage, it was necessary to add an additional margin (mark-up) of 37.5% to the mean cost of the GigADSL service.

In fact, it was decided to set mean prices for the GigADSL service on the basis of applying an additional margin or mark-up of 37.5% to the accounting result for 2006. The prices of the ADSL-IP and GigADSL services were calculated in a consistent way between the two, in accordance with the already existing relative margin of 29%.

In accordance with all the foregoing, the following prices were set (in €).

Current prices	GigADSL ²	ADSL-IP
128Kb/s	11.96	15.43
512Kb/s	13.36	17.24
1Mb/s	15.14	19.53
1Mb/s SCR=10%	15.55	20.06
2Mb/s	15.99	20.63
3Mb/s	16.42	21.18
4Mb/s	16.65	21.47
7,3Mb/s	18.04	23.27
10Mb/s	19.60	25.28
20Mb/s	24.46	31.55
2Mb/s SCR=50%	44.63	57.57
4Mb/s SCR=50%	77.67	100.20
7,3Mb/s SCR=50%	132.14	170.46
Sim 1Mb/s SCR=50%	52.88	68.21
Sim 1,5Mb/s SCR=50%	66.21	85.42
VDSL2 1Mb/s	15.14	21.58
VDSL2 3Mb/s	16.42	23.21
VDSL2 10Mb/s	19.60	27.23
VDSL2 25Mb/s (25/1)	26.91	36.64
VDSL2 25Mb/s (25/3)	28.68	38.91

In view of the foregoing, the possibility of reviewing prices on the basis of the cost changes observed in accounting should be considered and the review of the model which gives rise to the so-called mark-up which is applied should then be looked into.

II.IV.2 Possibilities of review with the new accounting

At the present time, the verified results of the accounting for 2007 are available.³ These show a downward variation of GigADSL and ADSL-IP service provision costs. The confidential Annex shows the aforementioned accounting results.

The results expressed as unitary cost can once again be interpreted in terms of a mean monthly connection cost. A small adjustment can be added to the above, arising from the extra-accounting study attached to the accounting reports to distinguish the recurrent costs from the costs linked to new registrations in the service.

It should be borne in mind that the cost of activities associated with registration or with the supply of connection ports (which although invoiced separately, applying their

²The prices of the VDSL2 modes in GigADSL correspond to a virtual service provided at a national level over ADSL-IP.

³ Resolution of 7 May 2009 on the verification of the cost accounting results presented by Telefónica de España, S.A.U. with regard to 2007.



corresponding fees, in the accounts are aggregated to the recurrent connection costs) are not yet broken down in the last verified accounting year. Therefore, by linking the unitary accounting result with the cost attributable to the monthly connection fee, the latter is overestimated to a certain extent. This is partially corrected by the data from the extra-accounting study, but, as Telefónica itself admits, said study underestimates the non-recurrent component.

Therefore, even after the correction arising from the extra-accounting study, the cost base adopted amounts to an approximation which, at all events, overestimates the service provision costs.

With a view to having more up-to-date cost information with a degree of reliability similar to that which served as a basis for the previous cost reduction, it is appropriate to review the prices on the basis of the new information available and transfer the cost reduction observed in the accounting to the current prices.

II.IV.3 Suitability of a price reduction

Regardless of available cost references, the suitability of a price reduction should be looked into, especially if one bears in mind that the consistency of access prices must continue to be guaranteed. In fact, the requirement established in Market 5 is still that the wholesale prices of the bit-stream access service must assure consistency with other wholesale services, thereby guaranteeing sufficient margin with regard to other related services such as the local loop unbundled access service.

18 months having passed, the operators are now present and unbundle pairs in 672 exchanges, that is, they have accessed pairs in 52 additional exchanges over the period between March 2008 and May 2009, demonstrating that the reduction in bit-stream access prices has been compatible with the extension of unbundled access coverage roll out.

A downward trend has been detected in the use of bit-stream access. This cannot be fully explained by migration to unbundled access solutions or by alternative network activity, given that said infrastructures have limited coverage.

In fact, said change is worrying because the presence of alternative networks in certain areas of the country is non-existent, and for these areas the only alternatives to the services of Telefónica are those based on bit-stream access. But in the analysis of the so-called markets 4 and 5, it was pointed out that, bearing in mind the percentage of capture of market growth, the trend towards the growth of Telefónica's share is maintained. In fact, in the period studied in the market analysis, Telefónica has managed to capture a substantial portion of the new broadband Internet service customers nationwide, due to changes in the demand in the different zones. Therefore, its particularly solid position in these geographical areas becomes reflected in its market share at a national level. Therefore, the fact that Telefónica maintains such a relevant position in certain areas is giving it an advantage, not only in these areas, but also in those in which there is more competition, such that the availability of a bit-stream access service which places the operators in a situation of being able to compete in equal conditions takes on greater importance.

The foregoing confirms the advisability of lowering bit-stream access prices in the light of the new cost results, adjusting where necessary the additional margin or mark-up which guarantees the consistency of the different access prices.



II.IV.4 Adjustment of the mark-up

In accordance with the foregoing, besides taking the 2007 accounting as a new cost reference, it is still necessary to assess the mark-up which has to be applied to the mean cost obtained from the accounting, in order to maintain the standard of access price consistency.

For this purpose, the model developed in the previous price review is available. Therefore, it is possible to assess once again the mark-up percentage, reviewing where necessary the calculation model. As mentioned before, by means of said calculation model, a mark-up of 37.5% was obtained.⁴

Certainly, the aforementioned model did not bear in mind fully unbundled access or bit-stream access with no telephone service (known as naked access), but was based solely on the relative price of shared access with regard to the bit-stream access associated with Telefónica's telephone service.

It is advisable to review this situation, given that shared access is no longer the mode of reference in access to the loop. Since April 2008, the shared access mode has been in a minority in relation to the sum of fully unbundled and shared pairs without PSTN, now representing a proportion of 26% of the total of all unbundled pairs (fully unbundled, shared, and shared without PSTN), and with a downward trend. Therefore, the calculation model has been reviewed in order to introduce a weighting for fully unbundled, shared and shared-naked access and, analogically, between bit-stream access with PSTN and bit-stream-naked access.

With the new version of the calculation model, with weighting for unbundled and shared access, and which is also described in Annex I, the number of attractive exchanges for unbundling is obtained bearing in mind the real situation of use by unbundled access market agents, as opposed to the previous version, which only considered shared access.

Bearing in mind the cost reference of the last verified accounting and the aforementioned new version of the model, it is possible to recalculate the mark-up to adjust it to the reasonable horizon of roll out advance, which is estimated to be 743 exchanges.

With the calculation model, it is estimated that for the figure to be situated at 743, the mark-up must be 11.6%, such that the new calculation establishes that said mark-up value is sufficient at the present time to guarantee the price consistency of the different access services.

II.IV.5 Price review

In accordance with the foregoing, the GigADSL and ADSL-IP services are going to be aligned with the mean costs obtained in the accounting, including an additional margin or mark-up of 11.6% to assure the consistency of access prices. The proposed modification involves a significant reduction in prices without moving away from the CMT doctrine of price consistency between the different access services.

⁴ Based on the fact that the number of "attractive" exchanges should not fall below 743 and that, in this way, there would be an incentive for operators, already present in 617 centres, to add at least another 126 centres to their coverage.



The following table shows the values obtained for the different connection modes included in the reference offer. Any possible new modes would be subject to the review of the parametric expression included in Annex III.

	GigADSL	ADSL-IP
128Kb/s	8.84	11.91
512Kb/s	9.87	13.29
1Mb/s	11.19	15.05
1Mb/s SCR=10%	11.49	15.45
2Mb/s	11.81	15.89
3Mb/s	12.13	16.30
4Mb/s	12.30	16.53
7,3Mb/s	13.33	17.90
10Mb/s	14.48	19.44
20Mb/s	18.07	24.23
2Mb/s SCR=50%	32.98	44.46
4Mb/s SCR=50%	57.39	77.38
7.3Mb/s SCR=50%	97.63	131.63
Sim 1Mb/s SCR=50%	39.07	52.68
Sim 1,5Mb/s SCR=50%	48.92	65.96
VDSL2 1Mb/s	11.19	16.62
VDSL2 3Mb/s	12.13	17.87
VDSL2 10Mb/s	14.48	20.97
VDSL2 25Mb/s (25/1)	19.88	28.21
VDSL2 25Mb/s (25/3)	21.19	29.96

II.IV.6 Allegations made in the hearing procedure

II.IV.6.1 Price review

Vodafone considers that the Report makes a correct analysis of the serious competitive situation of the broadband services market and of the need for a considerable price reduction to be applied to wholesale services. Vodafone affirms that the previous price reduction was insufficient, in view of the gradual reduction in the number of connections, which is not justified by the migrations made to unbundled access solutions. According to Vodafone, the proposed reduction will permit an increase in the level of broadband competition and penetration, which at the present time is lower than the European average. Vodafone points out that since the last price review of March 2008 there have been significant events in the market which have worsened the margin narrowing situation, such as, for example: free duplication of retail speed, reduction of ADSL 1Mb/s service prices, commercialization of ADSL services by volume at a price of €19.90, aggressive capture or loyalty promotions by Telefónica which Vodafone considers irreplicable.

Orange declares that direct access is not a wholesale measure which currently permits the introduction of competition in the provision of broadband services and the maintenance of a mark-up, at the present time, in which the roll out of unbundled access to the local loop already presents levels of coverage close to the efficient maximums; even more so if one bears in mind the growing development of fibre to the home or of intermediate nodes which make current roll outs of unbundled access to the



loop obsolete or useless, thereby just hindering the development of alternative operators.

Orange points out that the promotions have had a significant and damaging effect on the market and, specifically, on Orange's market share. On the other hand, Telefónica's market share has undergone successive increases from 2006 to 2008, this increase being rectified in 2009, when it returns to the 2006 level, date at which the CMT pointed out the need to review the bit-stream access wholesale fees. Orange points out that, with the exception of Italy, international comparative studies demonstrate the difference between the strength of Telefónica's market share in Spain, as opposed to other incumbents, and the lower penetration of broadband services in Spain.

Orange points out that, bearing in mind that, at the present time, the precariousness of competition in the zones not supplied with unbundled access to the loop is at a maximum; that Telefónica's capacity to control the intensity of competition is practically absolute, as demonstrated in 2007 and 2008; and that international comparison leaves no doubt as to the weakness of competition in Spain, the review of bit-stream access services is of maximum urgency and absolutely justified, in circumstances which, in short, are more adverse than those which gave rise to the prudential price review of December 2006 and which may get even worse with promotions like that of €19.90/month for the first year of DÚO ADSL 6Mbps.

According to Telefónica, the proposal signifies a drastic price reduction just one year after having made a substantial reduction in the prices of bit-stream services and with a retroactive effect. Telefónica considers that such low prices do not promote the roll out of networks and efficient investment, since they discourage possible investment by operators in alternative new generation networks and in direct access and, in short, long term investment, meaning serious discrimination against all those investing operators which have opted for and continue opting for the creation of said networks. Telefónica alleges that the broadband market is facing a key moment for the development of new services of great value for the final customer which require, on the one hand, a high level of investment in the access network and, on the other, a secure regulatory framework which protects investment and innovation, in accordance with the objectives of the LGTel.

Telefónica considers that the broadband market has functioned correctly and that, at the present time, there is no justification for the sudden price reduction proposed for bit-stream services, which discourages efficiency, innovation and sustainable competition and causes serious legal insecurity to Telefónica with regard to possible future investments, as well as to other investing agents, such as operators wishing to roll out new generation networks.

Telefónica declares that the operators have the possibility of using an optimum combination of wholesale products at averaged prices, which allows them to carry out an arbitration of the same and have a number of cost savings, a cost reduction obtained by the operator at Telefónica's expense, which in the medium term depending on the prices established might even cause negative margins in wholesale ADSL-IP services. However, it acknowledges that they are difficult to quantify because no non-averaged accounting has been defined geographically. Telefónica alleges that in this scenario subsidies would be made from Telefónica and its final customers in zones of coverage with lower unitary costs, to the alternative operators and their final clients in zones of higher unitary costs, such that it is necessary to bear this effect in mind when it comes to setting mean cost orientated prices and, particularly, in the establishment of



an additional mark-up in order to offer reasonable margins and prices higher than costs in the geographical zones in which the operators contract bit-stream services.

BT fully agrees with the diagnosis of the Report on the broadband market situation and the need to reduce wholesale service prices.

ASTEL points out in its document that most of its associates back the price reduction proposal, considering it to be a measure which is absolutely necessary and proportionate in order to respond to the strong pressure which Telefónica has been exercising in this market and which has limited the possibilities of the alternative operators to compete effectively. Nevertheless, ASTEL's document also affirms that, on the other hand, Ono and Euskaltel consider that the continuous reduction in bit-stream access prices devalues the infrastructures already rolled out by cable and unbundled loop operators and is a discouragement to new access roll outs.

Ono considers that the earlier price reductions have not created an increase in competition or a restriction to the drop in bit-stream access services and that, on the contrary, they are a considerable discouragement to investment in alternative infrastructures. It alleges that the reasons why the bit-stream access service is not competitive are not just the price, but mainly the technical limitations of the service and the serious deficiencies in the introduction of services such as the WLR, which would enable operators to receive more complete services, and until such time as said deficiencies are resolved, the bit-stream access service will continue to be a non-competitive service in relation to the more and more packaged services demanded by customers and offered by Telefónica, cable operators and ULL operators. In Ono's opinion, continuous price reductions will not manage to make the service competitive but, on the contrary, will lead to the ever greater devaluation of the roll out of access infrastructures.

According to Ono, the wide range of possibilities which will be offered by the new Ethernet based bit-stream access service which is already being developed, combined with the prices very close to costs which the CMT wishes to approve and which, especially for speeds of 10Mbps and higher, will be the basic reference of the new service, will mean that no alternative operator will have an incentive to take on investment projects in alternative new generation access networks.

With regard to the foregoing, it should be pointed out that this Commission has been characterized by a continuous search for balance between the promotion of competition based on access to the Telefónica network and the maintenance of incentives for investment in alternative networks. In the specific case of bit-stream access to the loop, this Commission has considered cost orientation in combination with a requirement for consistency between the different access prices to be in accordance with the above. Said obligation of the cost orientation of bit-stream access prices has been imposed by this Commission in accordance with the current legal framework and bearing in mind the objectives explained in the regulatory texts, and this resolution simply proposes the updating of prices on the basis of these principles.

In addition, the allegations of Vodafone, Orange, BT and ASTEL confirm the diagnosis of this Commission and the advisability of an updating of prices with the results of the accounting. Telefónica affirms that the broadband market has functioned correctly, but this is refuted by the data from the zones in which there are no alternative networks and in which bit-stream access is the basic tool for promoting competition.

A fact of which there is not doubt is that, because of its territorial complementarity and the experiences of migration of bit-stream access to unbundled access, the promotion



of competition based on bit-stream access, even supported by the cost orientation of its prices, has been compatible with competition in alternative infrastructures or competition based on unbundled access.

Ono and Telefónica appear to consider it necessary not to review prices in order to maintain incentives to investment in alternative infrastructures or even in new generation networks. Certainly, this Commission is aware that the price level of wholesale services is a reference point which market agents bear in mind in their future investment decisions. And at this time, as pointed out by Ono and by Telefónica itself, because of the market situation and technological development, new generation networks should be considered, the roll out of which will require high levels of investment subject to various sources of risk. But the allegations made seem to be unaware of the actual contents of this resolution, which is limited to the services currently contained in the RUO and does not deal with either fibre based home connections or connections with speeds of over 30Mb/s, and much less so with mechanisms for the broadcasting of audiovisual services. It is difficult to argue that the cost orientation of current bit-stream access services will be a decisive element in the decision to invest in new generation networks. Said networks are intended to offer very high transmission speed services and high definition audiovisual services, that is, services with much higher levels of performance than those permitted by bit-stream access, such that the direct relationship declared by Ono and Telefónica cannot be established.

Telefónica's references to supposedly negative margins due to the different geographical distribution of the demand for retail services and for bit-stream access are mere conjectures which Telefónica fails to back up with any data whatsoever. It is possible that in accounting with geographical differentiation, cost results would vary to a certain extent, but there is nothing to indicate that this effect would not be compensated perfectly by other effects which operate in the other direction. Among these, we can mention the time gap of the cost reference (in such a way that the cost reference applied does not take into account the scale economies reached with the current demand or the decrease in equipment cost from 2007 to now), the lack of breakdown of recurrent and non-recurrent costs, and the presence of a mark-up over costs.

II.IV.6.2 Calculation method

Telefónica points out that the average price proposed by the CMT, using plant units in 2007 and as has been stated in the off-the-books report mentioned by the CMT, corresponding to the year in question, would involve a cost margin lower than the one indicated. It would therefore be necessary, in order to make assumptions based on accounting, to use aggregate data and average units from the same period in a homogenous way. Telefónica adds that in the determination of prices a relation between modalities is used that does not accord with the provisional cost distribution results being obtained from 2008 cost accounting.

In line with what Telefónica points out and for the sake of greater consistence, the report calculation has been revised in order to use average unit data in 2007, as the results of costs considered refer to this fiscal year and these are the results the mark-up is added to. Nevertheless, the differentiation between 50% "guaranteed high quality" or SCR connections in the 2mb/s, 4mb/s and 7mb/s modalities should not be omitted in the unit calculation. Telefónica did not take this distinction into account in the calculation they contributed.



On the other hand, it would be hasty to apply cost distribution by speed included for the first time in the 2008 accounts in the price determination for various modalities, given that the results require detailed verification, especially when the only precedent and first approach to this question, the off-the-books study that came with the 2007 accounts, was subject to serious remarks in the compatibility result verification resolution.⁵ It would therefore be premature to change the current price structure for the different modalities based on the new data, which is indeed interesting but requires due examination.

II.IV.6.3 Calculating the mark-up

Vodafone is of the opinion that the revision of the calculation model for the additional mark-up is most apt, as it is more coherent with the real market situation to add fully unbundled access scenarios and naked shared access rather than naked bit-stream access to the model. Vodafone believes that a correction factor should be included in the model to reduce the time frame bit-stream access will survive, the result of the closure calendar for exchanges and other steps adopted after the analysis of Market 4. Vodafone thinks that the goal of 743 exchanges for unbundling is an overestimate, and so a greater adjustment of the mark-up could be justified.

Orange points out that they have formally requested the deletion of the 37.5% mark-up on prices currently in force, which would reduce the deficit in profitability for services currently provided and bring conditions closer to those enjoyed by the incumbent operator, now that the roll out of unbundled access is almost at maximum efficient coverage levels. This is especially true if the growing implementation of NGN through intermediate nodes and also FTTH is taken into account (in the first quarter of 2009 Telefónica already had 5,210 FTTH lines), making the current roll out of unbundled access obsolete and unusable.

Orange understands that the proposal for revision is still conservative from a cost orientation perspective, as it does not completely eliminate the current mark-up, which remains even higher than the theoretical level, given the overvaluing of the recurrent off-the-books study quota. Neither does it include prospective cost reduction, as the data in the Report shows that since the last revision of the real mark-up it had gone up from 37.5% to its current 59.5%, due to c.14% cost reduction in this period, and so establishing prices for 2009 based on audited costs for 2007 leaves Telefónica with a margin that is no doubt conservative given the continuous reduction in costs as service penetration increases.

According to Telefónica, promoting direct access to 743 exchanges is the potential target, while as for the criteria for rolling out nodes, the parameter is that exchanges should have less than 2,250 lines and no co-located operator (i.e. that they are not among the 1,355 largest exchanges). Telefónica claims that on the one hand, in accordance with their own model, the CMT assumes that bit-stream prices would not be an incentive for direct investment outside these 743 exchanges, as bit-stream is the alternative, and on the other hand, it hinders and is an incentive against the roll out of nodes in exchanges that in their opinion would not be co-located, hindering both new and better broadband services and both Telefónica's and operators' providing these services to users with bit-stream access, which is absolutely inconsistent and lacks the due coherence that decisions taken by the CMT should have with each other.

⁵ "[...] this Commission finds the SVP proposal suitable, under which the criteria for distributing costs for ADSL services by speed is modified, as the operator's proposal in the off-the-books study in FY 2007 is not causal; costs by speed depend on the average user traffic model and not on the speed."



Telefónica points out that the model makes reference not only to the shared and bit-stream service but also to the unbundled service as against naked bit-stream, and it is this change that leads to the greater difference in the mark-up result, although the current extension of naked bit-stream access does not justify the inclusion of this change in the model, and consequently the above-mentioned reduction in the fixed mark-up neither. Telefónica finds it necessary to maintain the existing mark-up.

Jazztel states that the model described took purely economic aspects into account, where limitations in roll out only occur thanks to the relative size of the exchanges and the difficulty in access to them, based on the assumption that the services provided on fully unbundled access and bit-stream access with no telephone service are equivalent from the point of view of gaining and retaining clients, while in practice, these services are not comparable, especially with a solution based on WLR.

Jazztel claims that they are coming up against clear barriers to connectivity at the exchanges that are fundamental for this roll out, the clearest example being connectivity with territories outside the Spanish mainland. Jazztel considers that the criteria defined for the decision to roll out the RUO do not faithfully reflect the real criteria used. Jazztel considers that the roll out of unbundled access is preferable in any case to the use of bit-stream access regardless of the price, as it makes it possible to provide services that cannot be provided with bit-stream. Jazztel does not find the mark-up justifiable and thinks it should be eliminated.

As for the reduction in the mark-up, the ASTEL report points out that most related operators are in favour and think it should be applied to all modalities in coherence with the analysis of Market 5, while Ono and Euskaltel believe the reduction should not be uniform, but should rather be pondered according to speed, in such a way that the reduction is less for higher speeds, a field in which operators that invest in access infrastructure can compete.

Ono indicates that greater transparency is required in the model developed by the CMT to calculate the mark-up, as the reduction in the mark-up is not sufficiently justified. They highlight the fact that the broad margin for choosing the value of parameters in broadband Penetration (P) and operator market share (M) for application to the model leads to very different results.

As for Vodafone's and Orange's statement that 743 exchanges is an excessive number or that a maximum coverage point has already been reached, it should be stated that the Commission limits itself to maintaining the roll out horizon already considered in the previous price update and is a moderate increase from the situation of the main operators.

As for Jazztel's claim that unbundled access is always preferable to bit-stream, it should be admitted that the two services are not totally equivalent and unbundled access provides a flexibility that is not available in bit-stream, although it is clear that they are two options for market offers whose relative cost necessarily affects the choice of one or the other. The application of the mark-up enables the reinforcement of the incentive to use wherever possible the option that is more attractive thanks to its greater flexibility and independence of Telefónica's services.

As for Telefónica's mention of a discrepancy between the figure of 743 exchanges and the maximum value of pairs in the general node authorisation, certain aspects need clearing up. Under no circumstances should a merely estimative criterion be compared to the criterion for authorising the establishment of nodes which has a direct impact on



the potential coverage of unbundled access. The reference of 743 exchanges is destined to calculate an additional margin to correct cost increase with no further material effect on the unbundling process; there is nothing to stop operators from using unbundled access in more than 743 exchanges or at an exchange that is not one of the 743 used by the Commission for its analysis.

With regards to the current extension of naked bit-stream, it can be supposed that it is mainly due to the considerable delay in the operative implementation of the automated solution by Telefónica (which led to the initiation of disciplinary proceedings) more than to any market-related circumstance. We therefore hope that it will reach a level of presence similar to that in other countries in our surroundings, and so it should be taken into account when it comes to revising the mark-up.

As for what Ono claims, the importance of the parameters mentioned should be recognised, but the values considered by the Commission are totally coherent with the real market situation.

II.IV.6.4 Other aspects

Orange points out that there is a carry-over of clients who for technical reasons (incompatibility of CPE's, etc.) are still using wholesale resale services, and requests certainty about the application of the principle of non-discrimination in the updating of wholesale prices for resale services.

In Telefónica's opinion, at no time should prices be applied from the time when the resolution is published, as this would imply certain retroactivity in the decision, which would make it ipso jure null and void. Telefónica claims that there should be a longer period to apply the new prices approved, in a similar way to what has happened on other occasions, one month after the date of approval of the resolution. This period is essential for the correct application of new prices, as all changes in invoicing services imply the modification of existing developments and in some cases, when a significant criterion is changed, as in the case in question, the implementation of new developments becomes necessary, and so a reasonable period of time is required.

Ono proposes a price structure based on the application of a reduction in current prices for bit-stream access for connection speeds under 10mbps, which at the most should be the same as the CMT approved some months ago for the monthly unbundled quota, i.e. 19.9%; and for speeds over 10mbps (in general not replicable in fully unbundled access) to maintain a mark-up of 37.5% on costs, to conserve sufficient economic incentives to ensure the development of alternative infrastructures and thereby ensure the feasibility of sustainable long-term competition.

Ono points out that in order to avoid short and medium term uncertainty about prices for operators that wish to roll out a new generation access network, a three-year cycle should be established, during which annual revisions of wholesale prices could be carried out, both upstream and downstream but within a range that has been previously approved, so that the maximum price changes would be defined on the basis of a maximum annual percentage increase or decrease in this report. Ono adds that from the regulatory point of view it could be a good idea to fix an upstream price path for bit-stream access to stimulate alternative operators to move up in the investment scale, progressively migrating from bit-stream access to their own fibre optics roll out through Telefónica channels.

As for what Orange alleges, we can but point out that these are services excluded from the ex ante regulation established by the CMT in virtue of the market analyses.



The question of the date when new economic conditions come into force has already been studied in detail and confirmed by the Commission in the appeal with reference number AJ 2009/36,⁶ and it was considered that updated prices should be applied immediately.

As for Ono's proposal, we should point out that it is not in accordance with the regulations brought in by the Commission, which opt for applying a differentiated regulation to services according to their nominal speed but situating the boundary value at 30mb/s. Ono's proposals for increasing prices go beyond the scope of this report; we can only point out that the framework applicable to these services was established after the corresponding market analysis, in the context of which the validity of the requirement for orientation according to costs was confirmed without the nuances now requested by Ono.

II.V PROVIDING TELEPHONE SERVICES

II.V.1 Package traffic service for IP telephones

In a resolution dated 12 December 2008, within the context of the call origination market (Market 2) Telefónica was obliged to provide third party operators with a package traffic service for IP telephones, *"with nominal speeds both downstream and upstream, and guarantees for delay, variation in delay, loss of packages and the required error rate for providing IP telephone services"*.

This Resolution came into force after its publication in the Official State Bulletin on 13 January 2009, and so over five months have elapsed since this obligation came into force.

However, the service in question is not available, as the current GigADSL and ADSL-IP services do not include the necessary devices. In fact, the current offer for bit-stream access is mainly aimed at Internet access in residential areas and data transmission in the business field, and should therefore be completed to host real time services such as IP telephones with greater guarantees. In terms of service quality, the wholesale offer should guarantee against the delay, variation in delay, loss of packages and upstream and downstream speeds in real time services in order to enable the operator to provide a quality telephone service that is suitable for top range applications, while currently the service is limited to not prioritising the rejection of packages in modalities with broadband (SBR).

As France Telecom España, S.A. has pointed out in various reports, it is essential and urgent to have a wholesale offer that will enable alternative operators to compete with Telefónica's retail services, packaging Internet access and telephone services in the whole country.

In information requirement DT-OTR 2009/186, formulated on 7 April 2009, the CMT asked Telefónica about when the corresponding service would be available. In their written reply dated 24 April, Telefónica explained that according to their broadband wholesale service proposal, the IP telephone service with quality parameters would be

⁶ Resolution dated 12 March 2009, concerning the appeal made by France Telecom España, S.A. and Telefónica de España, S.A.U. against the resolution dated 28 November 2008, concerning the revision of certain prices for reference offers based on results of Telefónica de España, S.A.U. cost accounting for FY 2006.



available in September 2009 for fibre access and in the second quarter of 2010 for copper access.

In fact, in their bit-stream access proposal Telefónica declared that the service for copper access would not be available until 2010,⁷ and so the implementation period proposed by Telefónica is over twelve months. Furthermore, in their written communication dated 30 June, Telefónica confirmed that the short-term implementation of the necessary devices is not possible in current services.

In light of the above, we have to conclude that the short-term implementation of the necessary devices for a quality service in IP telephones in xDSL access does not seem feasible. Operators are not going to have the service required by regulation. All of this should be examined according to the relevance of the non-availability of the service.

II.V.2 Relevance of the non-availability of the service

Offers based on bit-stream access are the only alternative to Telefónica's services in a large part of the country, and at present these areas are precisely the ones with the largest market growth. In this context, naked services are a very valid reference for extending the coverage of integrated telephone line and broadband access offers, but this implies the existence of the corresponding quality devices to enable operators to provide IP telephone services.

It should be pointed out that it is possible to provide packaged telephone and broadband access services with no need for the client to be hooked up to Telefónica. This is done by combining bit-stream access with WLR, so that it is in a way equivalent to the services operators wish to provide on naked access and IP telephones. WLR, however, has the following disadvantages:

- The monthly fee is 1.73 Euros higher than the corresponding charge for naked bit-stream connections (9.06 for ISDN): 11.28 (18.61 for ISDN) compared to 9.55 Euros per month;
- It involves paying a double registration fee (WLR and bit-stream access);
- It is based on technologies used by Telefónica and necessarily reproduces the characteristics of the service provided by Telefónica, and cannot be differentiated for the alternative operator;
- It forces the operator to pay for the corresponding interconnection access service and means the operator cannot collect the income from termination and origination;

It is therefore clear that the non-availability of package traffic services for IP telephones is highly relevant and justifies the adoption of corrective steps.

II.V.3 Alternative solution

Given that it does not seem feasible to implement the necessary devices for providing an IP telephone service on xDSL access in the short term, correction steps to find an alternative solution are justified. In other words, it is necessary to find alternatives enabling the client not to have to be hooked up to Telefónica's current offer, and to enable operators to compete with the current offer of packaged telephone and broadband access services.

⁷ The availability of Phase 4 when VoIP on copper is included is foreseen for the second quarter of 2010.



As we have stated, the joint availability of bit-stream access and WLR enables operators to provide a joint broadband Internet access and telephone access service. Providing WLR can be combined with non-naked bit-stream access and can be used to provide services that are to a certain extent equivalent to naked access with IP telephone devices. WLR is operative, and furthermore, by virtue of the DT 2008/787 report, there is a joint registration procedure for WLR and bit-stream access, among other services. Therefore, the correction steps could consist of solving the disadvantages in the above-mentioned WLR offer price.

We should not forget that the technical characteristics of WLR cannot be easily changed, and the fees for interconnection corresponding to certain lines are out of proportion, and these fees can be optimised with interconnection by capacity. The correction steps should therefore be limited to reducing the fees applicable to WLR on pairs where GigADSL or ADSL-IP bit-stream access is contracted. This should be understood as both the monthly fee, which would be equal to the so-called charge for naked connections, and non-recurring fees (registration, change in modality and cancellation, and the pre-selection fee). Nevertheless, given that the term non-recurring fees can refer a great variety of situations, the application of alternative prices could be difficult to implement. It is therefore advisable to restrict the step to the most relevant cases, registration fees applicable to joint WLR and bit-stream access, both in cases of active lines and new lines. In both cases, instead of WLR fees (and pre-selection if applicable) and bit-stream access, the naked bit-stream access registration fee would be applicable.

Telefónica itself formulates a proposal of this kind in its document dated 30 June, in the following terms, "In order to avoid the impossibility of developing a facility to provide VoIP on current services, Telefónica proposes the emulation of the service until the VoIP facility is available, via packaging a bit-stream access together with WLR in such a way that the Operator can provide a voice and broadband service. The registration fee for the package would be the same as that applied to a 'naked' bit-stream access service with facilities for VoIP, i.e. it would be the result of adding the price for bit-stream access to a fixed cost for the associated physical line in the naked model (€9.55). It is not therefore a proposal to reduce ADSL or WLR prices independently."

Telefónica also points out that the device should be applied from 1 January 2010. Nevertheless, they provide no reason to justify delaying the application of the economic conditions, and so they should become effective immediately.

In conclusion, Telefónica should apply a monthly fee to WLR access on bit-stream connection pairs that is the equivalent of the charge for bit-stream access with no telephone service. Likewise, Telefónica should apply a registration fee to joint requests for WLR and bit-stream access that is equal to that applicable to the registration fee for bit-stream access with no telephone service.

In accordance with the above, these steps, given that they are an alternative solution for the service required by law, should cease to be effective as soon as the CMT verifies the availability of package traffic for IP telephones stipulated in Market 2.

II.V.4 Allegations made in the public hearing period

Vodafone fully coincides with the Report analysis but considers that the steps proposed would lead to distortion in market dynamics, as they imply discrimination against operators that intend to sell Internet access products but not packaged with voice products, and at the same time they would give a competitive advantage to those



operators that have already launched products based on the WLR offer. According to Vodafone, the report does not take other possible options into account, such as voice services provided on the mobile network, using geographical numbering in fulfilment of certain regulatory conditions. Vodafone considers that the approval of this step would lead to discrimination, an artificial distortion of the rules of competition and a violation of the principle of technological neutrality. Vodafone thinks that the naked charge should be subject to the same reduction as determined for WLR. On the other hand, Vodafone also requested a reduction in the surcharge on the naked in order to ensure the achievement of the goals under pursuit. Vodafone refers to the Resolution dated 9 July 2009 *concerning the maximum authorised limit for variation in the monthly fee for FY 2010*, which in their opinion shows that the costs of access network elements have gone down, and in consequence, so have those of connection, wiring and the distribution frame, as to a great extent they have already been amortised. Vodafone thinks that these statements are not coherent with the current naked surcharge, which should consequently be reduced. This reduction would be in accordance with the prices established for this surcharge in countries like Denmark, France, the Netherlands and Portugal.

Our answer to the above is that it is understandable that Vodafone does not consider the use of WLR interesting if they intend to use the mobile network, although there is nothing to stop them from using the naked service under the conditions they desire and at an identical price. Furthermore, the lack of devices for IP telephones will not affect Vodafone, precisely because of the service design they foresee. Consequently their references to discrimination and distortion of competition have no basis and the steps proposed by Vodafone requesting a discount equivalent to the naked surcharge should be rejected.

As for an eventual revision of the surcharge, we should point out that the amount is derived directly from the results of the cost accounting presented by Telefónica and is therefore certainly in need of periodical revision, but this matter has not been included in this report.

Orange finds it essential to adopt this measure as it limits the disadvantages of WLR compared to naked access. Orange finds that the disadvantage in terms of registration is only compensated when both WLR and bit-stream access are contracted together, and given that this development is not available on Orange systems at present due to the fact that their development of procedures started before the approval of the joint registration procedure in November 2008, the measure in itself is theoretically impeccable although it lacks efficacy. Orange considers that a more effective step in the case of migrations would be for the registration to be invoiced to be the difference between registration for the naked service and the registration fee of the first service implemented, provided this difference is positive, and that registration is not invoiced in all other cases. If WLR clients who have already been charged a registration fee of €2.23 contract bit-stream access, they would have to pay a registration fee of €38.72 - €2.23 = €36.49, while for bit-stream access clients, contracting WLR would not involve any registration fees as the fees for bit-stream access are higher than those for the naked bit-stream service.

In relation to Orange's comments we should stress that the obligation imposed on Telefónica consists of providing a temporary solution that is "equivalent" to the one required as soon as is possible, which will enable operators to package telephone and broadband access. The main element is the reduction of the monthly fee for WLR in bit-stream access connection pairs. We should also make reference to non-recurring fees, although due to the variety of situations and as stated above, it is better to restrict



the measure to the most relevant cases, which are the joint registration of bit-stream access and WLR, both for active lines and new ones. Orange's solution would be extremely complex, as it would make the prices depend on amounts paid for services contracted previously, and in any case any operator who is interested is in conditions to adapt its procedures to the simultaneous contracting of WLR and bit-stream access.

Orange indicates that no solution is proposed to compensate the disadvantage involved in having to pay access interconnection costs, neither does it take into account the effects of loss of income from termination that Telefónica does take advantage of, and so they propose implementing a sharing device for interconnection income depending on the ratio represented by the retail costs avoided over the total costs incurred.

In the same line of argument, Jazztel requests that the solution should take access interconnection costs into account, as they do not exist in a bit-stream + naked solution, and furthermore, they should be assigned to Telefónica, thereby losing the income from interconnection derived from incoming traffic on geographical numbering, and outgoing traffic to free calls (outgoing calls to 800's/900's, free short numbers and 909). Jazztel points out that this economic impact justifies a downstream correction of the transitory price foreseen for the WLR service in regards to the naked service.

The joint WLR and bit-stream access solution makes it possible for operators to almost immediately start selling alternatives to Telefónica until VoIP is fully available. In any case, it is true that this should be understood as a transitory step to avoid differentiation among operators and that limits them to providing a telephone service that does not depend on Telefónica. However, we should emphasise the fact that the implementation of VoIP will not be free and implies various costs that operators will not have to pay while they use WLR.

As a mere observation we could state that the implementation of the IP telephone service involves the definition of service classes to prioritise voice traffic as against others that are less important. At interconnection points there will therefore be a broadband reserve to guarantee correct and quality delivery as demanded by all operators and for which the corresponding fees should be paid. In both solutions, therefore, the operator will have to pay interconnection costs as well as the additional equipment for implementing the VoIP solution, operating licences, management etc, aspects not mentioned by operators. Therefore, the above-mentioned cost for interconnection charges will exist but it corresponds to network activities that Telefónica will carry out and will not be paid by operators using WLR.

Orange finds it necessary for these steps to be extended to clients being serviced at the current time through wholesale resale services.

It should once again be pointed out that these services are not subject to Market 5 regulations and in particular, Telefónica would not be obliged to provide a naked resale service, and so the request made by Orange cannot be accepted.

Telefónica points out that they have given an alternative for providing IP telephone services given the non-availability of a short-term solution, consisting of applying WLR and bit-stream access, and specific economic conditions for cases so specified by operators as an alternative to providing a guaranteed service for VoIP, which would be applied at the beginning of 2010. Telefónica claims that the CMT have modified this proposal under their own criteria when nobody has so requested, bringing the application period forward. This action makes it difficult to reach any kind of agreement as any proposal or offer from Telefónica can just be "improved" by the CMT, and this in



practice works against a framework of collaboration and agreements among operators. Telefónica argues that the proposal was made to coincide with the launching of regional IP services.

It is very biased to refer to this device as if it were a proposal by Telefónica, when it was requested by Orange over a year ago in various reports. The reasons given by Telefónica for delaying the entry into force of these conditions until early 2010 are clearly inconsistent, even more so knowing that the technical solution is currently available and all that is needed is to readjust prices in the cases in question.

Jazztel believes that the meaning of commitment to migration should be specified, as if it is not described in detail it is an economic and commercial risk for alternative operators when it comes to developing the service. They cannot develop a trade model with the uncertainties that could arise. Jazztel points out that migration would mean a change in contractual conditions and a need for end users to accept and collaborate in the migration, when they have no need to become involved in this process. It also seems difficult for these obligations to be contractually transferred in customer relations as they are not defined either in period or detail.

In order to determine the time when the obligation to migrate comes into force, Jazztel believes that there should be a VoIP solution with no limitations on coverage, which would imply that the ADSL-IP service should be developed and operative at the end of the first quarter of 2010, and that the bit-stream solution with Ethernet delivery should be fully implemented, as this is the best solution to guarantee greater effective competition in services and costs. This would have to be available in the first quarter of 2011.

BT coincides with the CMT services in the need for approving immediate steps to make it possible to provide voice services on broadband for other operators. BT also believes, however, that it makes no sense to impose the commitment to migrate from WLR to naked on operators once the service is available. In the same way, they ask that certain details be better expressed, such as specifying that the reduction of the WLR price is applicable to both the Switched Network and the PSTN, that it is applicable to all operator lines (including those that are already on WLR) and that migrations, if applicable, take place with no interruption to service, should be paid for by Telefónica and should take place in massive migrations.

ASTEL does not agree on the need to impose the condition of a future commitment to migration, finding it more reasonable that the application of more favourable conditions be subject to the time when the service becomes operative, but that operators should not be forced to migrate. In this way, once the IP wholesale service is available, the operator is free to choose access migration or maintain the WLR service, and so the most favourable economic conditions fixed in the proposal would not be applied from that moment onwards.

After analysing the allegations presented by the various different operators and as a result of the potential economic and commercial risk for alternative operators, the complexity of follow-up and the potential conflicts in application, it was decided not to include the mention of a "*commitment to future migration from the WLR line*" in the Report.

In line with what Jazztel and BT allege, the reduction in fees will be applied to users who have contracted WLR and bit-stream access simultaneously, on both the Switched Network and the PSTN and will remain in force until the Commission verifies that the VoIP solution is correctly implemented on a regional level, provided that it is available



in all the regional areas and thereby covers the whole country. This will cease to be effective once the correct implementation of VoIP is certified and a sufficient period of time has elapsed (to be specified by the Commission) for operators to migrate to the new naked bit-stream access solution. During this period operators should be able to migrate joint WLR and bit-stream access solutions to naked bit-stream solutions at no cost. Once the migration period comes to an end this will cease to be effective and operators will have to pay the costs for migration to naked bit-stream access.

II.VI NEW DELIVERY LEVEL IN THE ADSL-IP SERVICE

II.VI.1 Introduction of a provincial delivery level in the ADSL-IP service

The structure and regional demarcations of the new bit-stream access service proposed in the market analysis should be defined within the framework of the corresponding reference file DT 2009/497. However, it may be of interest for the operators that will use this service to already proceed with the regionalisation of the services currently available in the ADSL-IP national level service defined in the current RUO (April 2009).

In fact, in a document received on 14 April 2008, Telefónica proposed the setting up of a wholesale Regional ADSL-IP bit-stream access service, whose conclusion and proposal was originated, according to Telefónica, in the contacts maintained with the operators. The proposal consisted of a service (equivalent in the rest of the points to the national ADSL-IP) with 50 regional delivery points, equivalent to one per province, at the same exchanges (located in the provincial capitals) where the GigADSL BSA are located, with two qualities (*best-effort* and prioritised, that is, qualities appropriate for residential access to Internet and company services).

Similarly a document was received from Telefónica on 16 February 2009 with a proposal for bit-stream access services in order to meet the requirements included in market analysis 5 (wholesale broadband services), proposal analysed at the heart of the DT 2009/497. This proposal, which technically is an evolution of the current ADSL-IP, consists of two different services, one at a national level and another one at a regional level, with 50 regional sectors, one per province, coinciding with those indicated in the previously mentioned document. The availability indicated for the services currently available (that is to say, the ADSL-IP) is in the second quarter of 2009, in the so-called stage 0 of the service.

In the same sense, in its document of 30 June, Telefónica proposes the gradual opening of the new regional BSA as the demand of the operators develops.

Therefore, and taking into account the requirements indicated in the Resolution of the market analysis 5 for the new bit-stream access service (delivery points coinciding with the points of the current GigADSL service, but in a noticeable lower number) it seems reasonable to carry this out this improvement in the current ADSL-IP service in the temporary framework, which would consist of carrying out that indicated in stage 0 of the document dated 16 February 2009, which coincides with that proposed in the previous relevant document (14 April 2008) and in the document of 30 June 2009; that is making available 50 access points for the ADSL-IP service to the operators at the exchanges indicated in the document dated 14 April 2008. This would enable the operators to immediately carry out their investments and network planning for the new service, under the premise that their delivery points would be at least these 50 points,



aspects which seem reasonable to commit given all the information gathered at the core of the DT 2009/497. In the same way without waiting for the implementation of the new service, they can immediately benefit from improved prices in their bit-stream access, given the lower use of the Telefónica network involved by this regionalisation of the national service.

II.VI.2 Financial conditions

In this ADSL-IP service with regional delivery points there would be a need to establish the service prices. We should distinguish here the prices associated with concepts whose costs do not present differences between the provision at a national or a regional level where the different use of the Telefónica network resources justifies a different price. Amongst the first there are concepts such as the BSA-IP fees, the registered user connection service fees. The fees for the connections of the register user without telephone service as well as other concepts such as registrations or massive migrations or mnemonics of the service. Amongst the second we would have the monthly registration fees for each modality.

Therefore, a price should be set for the monthly fee of the new delivery level. In order to set this price, we should carry out similar considerations to those carried out in file DT 2008/250,⁸ in which the prices for the regional service (virtual) for VDSL2 accesses were established. In fact, given the lower delivery points with regards to GigADSL it was reasoned that the new regional service would have higher transport costs, but on the other hand we have the use of more efficient technology than ATM, which leads to a decrease in costs; thus, it was concluded that it is not evident that the cost of the new service has to be higher than the cost of the current GigADSL service. Based on this, monthly fees were imposed based on the GigADSL modalities, thus it is considered reasonable to carry out the same in the regional ADSL-IP service subject to short-term changes of this file.

It is true that Telefónica has sent a price proposal to this effect (included in the table by the current prices) which corresponds to a discount of 6% with regards to the national level of the ADSL-IP, but which does not have any justification, thus it cannot be checked that it complies with the obligation for cost orientation. Neither has Telefónica provided any data that demerit the previously mentioned criteria and that were already applied to the VDSL connections. This is why its price proposal cannot be accepted.

Current prices	GigADSL	Telefónica proposal for the new provincial level of the ADSL-IP	ADSL-IP
128Kb/s	11.96	14.52	15.43
512Kb/s	13.36	16.21	17.24
1Mb/s	15.14	18.35	19.53
1Mb/s SCR = 10%	15.55	18.84	20.06
2Mb/s	15.99	19.38	20.63
3Mb/s	16.42	19.89	21.18
4Mb/s	16.65	20.16	21.47
7.3Mb/s	18.04	21.84	23.27
10Mb/s	19.60	23.72	25.28
20Mb/s	24.46	29.57	31.55

⁸ Resolution dated 18 December 2008, on the proposal from Telefónica de España S.A.U. to modify the RUO in order to include new modalities of bit-stream access in broad band based on VDSL2.



2Mb/s SCR=50%	44.63	54.20	57.57
4Mb/s SCR=50%	77.67	94.33	100.20
7.3Mb/s SCR=50%	132.14	160.46	170.46
Sim 1Mb/s SCR=50%	52.88	64.22	68.21
Sim 1.5Mb/s SCR=50%	66.21	80.41	85.42
VDSL2 1Mb/s	15.14	20.39	21.58
VDSL2 3Mb/s	16.42	21.93	23.21
VDSL2 10Mb/s	19.60	25.71	27.23
VDSL2 25Mb/s (25/1)	26.91	34.57	36.64
VDSL2 25Mb/s (25/3)	28.68	36.71	38.91

Specific prices could be determined only with the information of the relevant costs for this new level of ADSL-IP service. Nevertheless, in reply to the requirement for information carried out Telefónica has limited itself to indicate that *“being a concentration service in a lower number of points than the GigADSL [...] the cost would be higher to that of said network at least in the initial stages”* and to formulate a new price proposal that is not backed by any other cost information than a percentage *“derived from internal analysis”* of the ADSL-IP costs that would correspond to the new level. This information is not considered as being sufficient to determine a specific price for the new provincial level of the ADSL-IP service.

In conclusion, given the lack of cost information, the monthly fees of the modalities of the new provincial level of the ADSL-IP service would be those corresponding to the GigADSL service in their corresponding modality.

II.VI.3 Availability period

In its document of 30 June, Telefónica refers to the availability terms of the new level of the ADSL-IP service:

“In the estimated period of time of 6 months, Telefónica would proceed to open 7 Regional BSA's (Madrid, Barcelona, Valencia, Seville, Malaga, Leon and Bilbao) to which the current national BSA's connections could be immediately migrated, free of charge and in a planned way, once the regional BSA has been set up.

These BSA's would collect the connections from the provinces in which they are located. For the rest of provinces without an initial regional BSA, new BSA's would be opened in compliance with the operator demand, although, under a definite request for a BSA in any other province once the 7 initial regional BSAs have been set up, Telefónica would proceed to apply the regional service prices to the connections of the province for which the BSA has been requested from the moment of the request until the new BSA is available and the migration of the connections is carried out, free of charge and in a planned way.”

Afterwards, in the audience process Telefónica indicates that the most suitable reference is January 2010. Therefore, in compliance with the information available at the CMT, the implementation of the new delivery level of the ADSL-IP service is being prepared and will be put into practise in December 2009 or January 2010, thus it is possible to impose compliance of the corresponding obligation with limit of 15 January 2010 on Telefónica.

For any eventual delays in the establishment of the BSAs a delivery of a virtual BSA should also be applicable, by virtue of which by means of a “virtual mnemonic” the



traffic corresponding to a BSA being implemented could be delivered to an operational BSA (for example of the national level) the economic conditions of the BSA being implemented being applicable. This is a mechanism whose implementation does not present difficulties and was already considered by Telefónica in its proposal of April 2008.

II.VI.4 Applicable procedures and migration processes

In the deadline indicated the procedures applicable to the processing of any type of requests and to the migration in connection blocks between the current servers and the new delivery level should be equally available.

II.VI.5 Allegations formulated in the audience procedure

Vodafone considers the proposal of establishing 50 delivery points for the Regional ADSL-IP as being appropriate, providing that the proposed price is maintained, as the evaluation of the network structure and its delivery points should be carried out jointly with the costs associated with the same. According to Vodafone, Telefónica's proposal to establish a difference of 6% would not justify the configuration of the service with the number of delivery points proposed, so it considers that Telefónica's proposal proves its intention to achieve an unjustified and hidden increase in the price of the wholesale services.

Vodafone considers it necessary to establish a deadline for the obligation of the opening of the 7 initial regional BSAs. Vodafone considers the application of the regional service prices appropriate as from the moment when the operators request the opening of the BSAs and until the migration of the connections is carried out, free of cost, and in a planned way, although it indicates that it should be clarified that said migration shall be carried out without any interruption in the service and be clear for the clients. Vodafone states that the moment and procedure when the operators should request the setting up of the 7 BSAs should be specified, and the request for the opening of the additional BSAs should be possible at that moment, simultaneously to the request for the 7 initial ones, and that the moment and deadlines for the request and setting up of the corresponding points should also be specified in such a way that the operators can efficiently plan their roll out. Vodafone highlights that the measures proposed for the delivery of a virtual BSA signal in the event of delays in the setting up of the BSAs requested is absolutely necessary in order to ensure the efficiency of the deadline regime approved.

Orange considers that the inclusion of a new regional delivery level in the ADSL-IP wholesale offer should be carried out in a coordinated and coherent way with the definition of the connection points that will be established in the future wholesale Ethernet offer, which are still unknown, as well as in a coherent and continuous way with what has been until now the regulated regional level of the GigADSL offer.

Orange has certain doubts regarding the 50 regional points proposed, considering that they meet an artificial architecture based on the provincial administrative borders that have little or nothing to do with the network hierarchy levels. Orange has been defending the point of view that the future offer should have a local delivery level located at the optic rollout exchanges, and with a regional level with delivery points coinciding with the interconnection node areas, where the "artificiality" consisting of having 50 provincial points has been overcome.

Orange thanks the requirement that the new delivery points have to coincide with those currently defined for the GigADSL regulated offer, however, this proposal is not



sufficient if the 50 points proposed are not balanced, in terms of coverage, with the 109 of the GigADSL; on the other hand, it would very negatively affect the operators that, have invested in this service using the approved regulation. According to Orange, both the ERG and the European Commission consider it essential that the new obligations to be adopted by the regulators are continuous with the previous framework in order to protect the investment carried out by all the operators.

Orange requests the reconsideration of the proposal in order to define the service with 21 points coinciding with the node areas regulating the distant BSAs in such a way that all the node area lines are accessed from any exchange in the area; or subsidiarily, that the current and regulated 109 BSAs of the GigADSL with the proposed 50 BSAs of the ADSL-IP are balanced in terms of geographic coverage, levelling that should consist in the aggregation in ATM of the 109 points in 50 thus providing national coverage, and if this were not possible, for a solution of the virtual BSA type to be taken, that is, that once the 50 GigADSL connection points are reached, Telefónica were obliged to deliver in National ADSL-IP the remaining coverage until completing the national coverage but at Regional ADSL-IP prices.

Telefónica states that during the contacts with the operators, the service has been offered with an objective date of availability of December 2009, as even though it had been proposed in 2006, there is a series of factors that undertake an in depth revision of the software available and of the configurations of the network elements and network systems that should be revised and adapted for their correct configuration, activation and provision. Telefónica informs that after the conclusion of the detail analysis of all the design and development activities involved, the implementations in the system and network would have to be carried out in November, there not being, however, guarantee to be carried out then, given the very tight deadlines for such an extended service. This is why Telefónica earnestly recommends the availability period of January 2010, being a deadline compatible with the deadline spirit and agreements held with the operators.

With regards to the costs of the regional ADSL-IP service, Telefónica indicates that as it is a concentration service in a lower number of points than the GigADSL service and as it partly uses the GigADSL network as the access network, the related cost would be higher than that of the mentioned network at least in the initial stages.

Jazztel indicates that considering the past history of this service for the 7 regional BSAs previously planned, the availability obligation should be brought forward to 15 October 2009 in such a way that for any request made within the 45 days established as the maximum deadline for opening a BSA, as from 15 October the regional delivery prices would be applied regardless of their set-up, that indicated in the CMT proposal would be applicable, although the invoicing differentiated in the virtual BSA solution should not be related to the existence of a "virtual mnemonic".

Jazztel considers the balancing of the prices in accordance with the points indicated in the Report as appropriate, making the following indications: in terms of coverage, the geographical coverage in accessible lines if we consider the 50 regional BSAs of GigADSL coinciding with the 50 IP BSAs is almost 80%, and in provinces with little population density both coverages coincide at 100%; the IP networks when compared to the ATM networks particularly outstand due to their greater efficiency in switching/routing and transport costs that are at around 60% improvement. Jazztel concludes that in spite of the above, there is not sufficient information on the costs accountability and information on the architecture of the IP delivery service (partially



supported on DSLAMs ATM) as to make any distinction between the GigADSL and the Regional ADSL-1P services.

ASTEL supports the proposal for the establishment of 50 delivery points for the ADSL IP service although it considers that the levelling in price with the GigADSL service can cause certain distortion, thus a 50 point GigADSL should be equally set up, this process being beneficial for both Telefónica and for the alternative operators, there not being any obstacle to concentrate the current 109 access points in 50 given that Telefónica has an ATM network at a national level called Gigacom.

According to BT, it is not very appropriate in the price analysis to leave aside, aspects such as the largest investments carried out by the operators that use the ATM service, the impact in the competition in the retail services or to set a precedent for the future regulation of the final service. As a temporary solution to the migration to the new service, it proposes the establishment of the same delivery points for ADSL-IP and GigADSL at the same price, that is, that the delivery in ATM is in 50 points, indicating that said concentration should not involve any technical problem for Telefónica.

We should indicate that in truth, the delivery points should not respond to artificial criteria, but to a network structure, as already mentioned by this Commission on other occasions. This should be the case for the delivery points of the new service, which, although they are still to be determined, they should be adapted to Telefónica's Ethernet aggregation network, which has its provincial structure, and is independent from the switched telephone network, and consequently the reference to the node areas is not applicable. Meanwhile, the required balancing (ATM access in 50 points) would imply certain changes in the ATM network as well as in the associated contracting systems, which is not logical in a wholesale service with an expiry date, and would leave those operators that have invested to reach to more than 50 points in an unfavourable situation, which would also occur with the virtual BSA option proposed by Orange. In addition, Jazztel indicates that the coverage of the 50 regional GigADSL BSAs coinciding with those of ADSL-IP is about 80%, even 100% in the provinces with little density, thus the balancing required is already a fact.

In any event, the new provincial level may be used by all the operators that so desire, and the requirement that the delivery points coincide with the locations of the BSAs of the GigADSL service places the operators already present at these locations in an optimum condition to make use of the new service if it is in their interest.

With regards to the monthly price of the modalities, it has already been argued (in file DT 2008/250) that the cost of the new regional service does not have to be higher than that of the GigADSL, and could be lower as it is based on more modern equipment of the more modern technologies with a greater capacity. Simply mentioned, in the ATM network supporting the GigADSL service the ports with the largest capacity are the STM-1 with 155Mb/s, while in the IP network the reference is at least the Gigabit Ethernet ports. Meanwhile, the new prices proposed by Telefónica, which according to its indications, correspond to the network costs and include a *mark-up* of 13.5%, they are even higher than those proposed in the audience report for the National ADSL-IP with the same *mark-up*, which is not coherent, as the latter are derived from the accountability, and Telefónica has proposed a cost-efficiency strategy in the regional ADSL-IP as it uses shared routers with other services in 43 points.

To sum up, as already mentioned, given the lack of information derived from the accountability on the real cost of the regional ADSL-IP cost, it is considered to be the most appropriate solution placing its price at the same level as that of GigADSL.



II.VII OTHER ASPECTS INDICATED BY THE INTERESTED PARTIES

II.VII.1 Technical improvements to be applied to the ADSL-IP service

Vodafone requests the enforcement of the obligation of Telefónica to guarantee in the National and Regional ADSL-IP service an average time lag of 30ms and a maximum of 40ms, as it is currently 60ms. Vodafone indicates that these figures are considered to be real as the time lag due to the ADSL line and the DSLAM is between 10 and 20ms, the transport time lag in the worst case is of 3ms, and the time lag induced by the equipment is less than 5ms. Vodafone asserts that the introduction of these improvements is necessary for the provision of certain applications and does not involve the carrying out of disproportionate efforts by Telefónica.

In this respect, it should be considered that the *best effort* traffic does not usually have any QoS guarantee as those requested, thus in any event it could be applicable to the "gold" traffic, mainly addressed to the companies market. For this traffic, the value proposed by Telefónica in their document dated 16 February 2009 is 60ms for the national service and 55ms for the regional, as average daily figures, which seems to be in line with the figures measured by Vodafone. Therefore, the proposed change is substantial, and it is not seem relevant to impose those limits without further in-depth study of the determining factors of the time lag in Telefónica's network; in order to be effective the imposition of limits would equally need the definition of measurements or regular QoS reports, as well as the procedures for incidents in the event of exceeding the thresholds, which may imply facing modifications in the service established as ADSL-IP; it is estimated that it is more appropriate not to include these mechanisms in the reference offer at this moment but to define said limits and associated procedures in the new regional service.

The above should be understood to be without prejudice to the obligation of Telefónica to respond to any reasonable access request. In addition, Vodafone is in a position to inform Telefónica of reasoned requests under the mentioned obligation, and Telefónica should justify the non-reasonability of the request in order to reject it.

Based on that above, our Commission

HAS DECIDED

First.- Modify the monthly fees for the connection to the bit-stream access of the price section in the RUO, which will now become those indicated in section **II.IV.5**. These prices shall be applicable as from the date of approval of the present Resolution.

Second.- Telefónica shall apply to the WLR access at the pairs with bit-stream access connection a monthly fee for the same as the fee for the bit-stream access connections without telephone service. Telefónica shall have to apply to the joint requests for WLR and bit-stream access connection a registration fee the same as that which is applicable to the registration fee for a bit-stream access connection without telephone service.

The economic conditions referred to in the second point shall be applicable as from the date of approval of the present Resolution and will remain in force until the verification by this Commission of the operational availability of the IP telephone packet traffic



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service, a time when the period for the operators to migrate their joint WLR solutions with bare bit-stream access without any cost will be defined.

Third.- Before 15 January 2010 Telefónica must provide the new ADSL-IP service provincial level, including the delivery at already established BSAs of the traffic corresponding to BSAs being set up and in the financial conditions applicable to the latter. At the same date the request and block migration procedures for the current services should also be available.

Fourth.- Unless by agreement of the parties to the contrary, the monthly fees per connection of the GigADSL service shall be applied in the new ADSL-IP provincial level.

The present document bears the electronic signature of Secretary Ignacio Redondo Andreu with the approval of the President, Reinaldo Rodríguez Illera



ANNEX I: Model for the determination of a mark-up that guarantees coherence in the access prices

Calculation model applied in file MTZ 2006/1019

The calculation model used to determine the value of the mark-up applied to the current prices starts from the premise that the alternative operators, when deciding to access to a new exchange, assess the incremental cost of extending their coverage and the price of the bit-stream access wholesale services as a potential alternative.

When using the bit-stream access the operator faces mainly variable costs, that is to say, those that directly depend on the number of clients obtained: we can highlight the registration fee per connection and the connection fee per registered user. However, the alternative of using an exchange by means of the unbundled service involves taking on board a series of predominantly fixed costs: laying of cables, co-location space, own equipment (DSLAM), delivery of signal and transport to the own presence point. To these the variable costs for renting the prolonged loops should be added.

Therefore, given the number of clients that the operator sees as likely to reach in an exchange (which may be estimated as proportional to the number of pairs in the exchange), the operator will choose the most profitable option: unbundled access if it considers that the fixed costs can be suitably recovered or bit-stream access if it does not believe that it will achieve a sufficient number of clients.

In fact, the number of exchanges attractive for the unbundled access is determined as follows:

1. It can be considered that the cost per bit-stream client (BSC) is constant and independent from the number of clients of the operator in the exchange.

$$BSC = \text{Cost per bit-stream client}$$

2. It can be assumed that the Cost per Unbundled Client (CUC) is the addition of a constant component, the Variable Cost per Unbundled Client (VUC), and the quotient between the Fixed Costs (FC) for enabling the exchange and the number (N) of unbundled clients of the operator in the exchange.

CUC = Cost per Unbundled Client

FC = Fixed Costs to enable the exchange

N = Number of unbundled clients of the operator in the exchange.

$$CUC = \frac{FC}{N} + VUC$$

3. The number (N) of unbundled clients of the operator in the exchange can be estimated proportionally to the number of L pairs in the exchange, depending on a penetration (P) in the broadband in the exchange and a market share (M) of the operator.

$$N = L \times P \times M$$



4. We consider as profitable for unbundled access all the exchanges that in which the cost per unbundled client is less than the cost per bit-stream client, that is to say all those in which $CUC \leq BSC$

$$CUC = \frac{FC}{L \times P \times M} + VUC \leq BSC$$

All the exchanges of an L size larger than their threshold value will meet the criteria:

$$L \geq \frac{FC}{(BSC - VUC) \times P \times M}$$

5. Easy access exchanges (as they are in province capitals or similar) and difficult access exchanges (rest of cities) are distinguished. Two levels of fixed costs correspond to both sets of exchanges (given the different cost of the signal delivery to the operator presence point).

Model revision

In the model described the use of a shared access and of the bit-stream access with associated telephone service ("not *naked*") was assumed. In the model revision there is a desire to carry out the calculation indicated for three scenarios that are initially independent; in the first scenario there is a comparison as in the previous model the shared access and the bit-stream access with telephone service; in the second scenario the fully unbundled access is compared with the *naked* bit-stream access and in the third the shared access without PSTN with bit-stream access (*naked*). Thus, there are three costs references that should be weighted, and it is applicable to the fixed costs to enable the (FC), to the variable cost per unbundled client (VUC) and to the cost per bit-stream client (BSC). That is to say, the terms FC, VUC and BSC of the previous expression should be obtained with a weighted mean of the three scenarios considered. The weighting factors w_S , w_U and w_N respectively correspond to the percentage of pairs in shared access (w_S), pairs in fully unbundled access (w_U) and of pairs in shared access without PSTN (w_N). The expressions are the following:

$$CF = w_S FC_{SHARED} + w_U FC_{FULLY UNBUNDLED} + w_N FC_{SHARED_no_PSTN}$$

$$CDC = w_S CDC_{SHARED} + w_U CDC_{FULLY UNBUNDLED} + w_N CDC_{SHARED_no_PSTN}$$

$$BSC = w_S BSC_{NO_NAKED} + (w_U + w_N) BSC_{NAKED}$$

Once FC, VUC and BSC have been calculated according to the weighting, the expression from the previous section remains valid, that is, the criteria will be met and all the exchanges of an L size larger than the threshold value will be considered as being attractive:

$$L \geq \frac{FC}{(BSC - CDC) \times P \times M}$$



ANNEX II CONFIDENTIAL: Accountability results of the current costs of 2007 and off-balance study.



ANNEX III: Parametric expression applicable to eventual new modalities

The parametric expression applicable to eventual new modalities reaches the following figures after the price revision:

$$\text{Monthly fee} = \text{FC} + \text{CK}$$

FC: Fixed per connection

CK: Cost per K flow ($K = \frac{MDS + 2 \times MAS}{1.000}$)

MDS: Maximum descending speed expressed in Kbit/s

MAS: Maximum ascending speed expressed in Kbit/s

		GigADSL	ADSL-IP
Fixed cost per FC connection		8.50	11.42
Cost per CK flow	K < 1.664	1.62×K	2.18×K
	K between 1.664 and 3.640	0.479×K + 1.89	0.635×K + 2.57
	K > 3.640	0.331×K + 2.43	0.442×K + 3.27



ANNEX IV: Text to be included in the RUO (new section 1.4.5)

1.4.5 Provincial level of the ADSL-IP service

The operators are offered a provincial level of the ADSL-IP service accessible in 50 provincial BSAs located at the same exchanges as the GigADSL BSAs located in province capitals.

Telefónica guarantees the opening of the BSAs in the provinces of Madrid, Barcelona, Valencia, Seville, Malaga, Leon and Bilbao, to which the current national BSA's connections could be immediately migrated, free of charge and in a planned way, once the provincial BSA has been set up.

For the rest of provinces new BSA's will be established on demand from the operators as soon as connection requests are received. Telefónica will proceed to apply the provincial level prices to the connections of the province for which the BSA has been requested from the moment of the request until the new BSA is available and the migration of the connections is carried out, free of charge and in a planned way.

For eventual delays in the establishment of the BSAs a delivery of a virtual BSA will be applicable, by virtue of which by means of a "virtual mnemonic" the traffic corresponding to a BSA being implemented could be delivered to an operational BSA (for example of the national level), the economic conditions of the BSA being implemented being applicable.

The procedures applicable to the processing of any type of requests and to the block migration of connections between the GigADSL and national ADSL-IP and the new delivery level will be enabled.

Unless by agreement of the parties to the contrary, the monthly fees per connection of the GigADSL service shall be applied in the new ADSL-IP provincial level.