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

HEREBY CERTIFIES

That Board Meeting No. 38/09 of the Comisión del Mercado de las Telecomunicaciones held on 19.11.09, did adopt the following

AGREEMENT

which approves the

Decision regarding the analysis of the offer for access to ducts and junction boxes of Telefónica de España, S.A. and their adequacy to the requisites of the **Comisión del Mercado de las Telecomunicaciones** (MTZ 2009/1223).

FACTUAL BACKGROUND

FIRST .- By the Decision of the Board of this Commission dated 22 January 2009 the following was approved: the definition and analysis of the wholesale access (physical) market of network infrastructure (including shared or fully unbundled access) at a fixed location and the market for wholesale broadband access, the designation of Telefónica de España, S.A.U. (hereinafter, Telefónica) as an operator with significant market power and the imposition of specific obligations (hereinafter the Decision on markets 4-5 or the Decision dated 22 January 2009). It was also agreed to notify the measure to the European Commission.

Among the obligations imposed on Telefónica was to publish a Reference Offer for rendering the wholesale access services to its civil works infrastructures. In particular, it was required to incorporate the elements included in the decision into the wholesale offering that was in effect at the time of approval of that measure.

SECOND.-_By a document filed in the Commission on 23 March 2009, completed with another sent on 20 April, Telefónica submitted its Reference Offer for the wholesale access service to the civil works infrastructures (hereinafter, Reference Offer and MARCo service, respectively) under the conditions contained in the mentioned decision.

THIRD.- By a letter from the President of this Commission dated 5 May 2009, Telefónica requested certain information concerning prices and billing conditions of the MARCo service, requirements served by Telefónica on 29 May 2009.

FOURTH.- This Commission requested information from Gestión de Infraestructuras Públicas de Telecomunicaciones del Principado de Asturias, S.A. (GITPA), 22 Arroba BCN, S.A. (22@), Iberdrola, S.A. (Iberdrola) and Unión Fenosa Redes de Telecomunicación, S.A. (Unión Fenosa) regarding their costs for optical deployment. All three have completed the requirements.

FIFTH.- On 12 June 2009 a letter was received from Vodafone Spain, S.A.U. (hereinafter, Vodafone) declaring certain allegations regarding the updating of the wholesale offering Telefónica had forwarded to this Commission and made available to the operators.

SIXTH.- On 24 July 2009, the incumbent parties were notified regarding the opening of this administrative proceeding.

SEVENTH.- On 30 July 2009, it was agreed to initiate the process of public information related to the referenced procedure, as well as its notification to the European Commission and the Ministry of Industry, Tourism and Commerce. The mentioned act was published in Official Gazette No. 189 dated 6 August 2009.

EIGHTH.- Between 3 and 25 September 2009 the following agents filed allegations to the mentioned public consultation: Asociación de Empresas Operadoras y de Servicios de Telecomunicaciones (hereinafter, ASTEL), Cableuropa, S.A.U. y Tenaria S.A. (hereinafter, ONO), Euskaltel, S.A. (hereinafter, Euskaltel), R Cable y Telecomunicaciones Galicia, S.A. (hereinafter, R-Cable), France Télécom España, S.A. (hereinafter, Orange), Telefónica de España, S.A.U. (hereinafter, Telefónica), Vodafone España, S.A.U. (hereinafter, Vodafone), Ibérica de Sonorización y Telecomunicaciones, S.L. (hereinafter, Ibersontel), la Fundació per a la Xarxa Oberta, Lliure i Neutral guifi.net (hereinafter, guifi.net), Grupo de Operadores independientes (hereinafter, GOI), World Wide Web Ibercom S.L. (hereinafter, Ibercom), Desarrollo de la Tecnología de las Comunicaciones, S.C.A. (hereinafter, DTI2) and Sarenet, S.A. (hereinafter, Sarenet).

Annexe 3 contains summaries of the allegations as well as the answer to the same.

NINTH.- On 17 September 2009 a letter was received from the European Commission regarding the measures notified by the Commission, stating that it had no comments on them.

TENTH.- By letter from the Comisión del Mercado de las Telecomunicaciones dated 22 October 2009, and as provided in Article 42.6 of Law 30/1992 dated 26 November, on the Legal Framework for Public Administration Authorities and the Common Administrative Procedure, due to the complexity of the procedure it was agreed to extend the maximum term for taking the decision and notification of the same by three additional months.

ELEVENTH.- On 28 October and 13 November 2009 letters from Orange and GOI respectively, bringing new allegations, were received.

LEGAL GROUNDS

FIRST.- Object of the procedure

This procedure is aimed at verifying that the reference offer Telefónica must make available to operators for access to the civil works infrastructures is in compliance with the obligations imposed by the Decision dated 22 January 2009 and, if necessary, to make the opportune changes.

SECOND.- Jurisdictional authorisation

The General Telecommunications Law 32/2003 dated 3 November (hereinafter LGTel) provides in its Article 48.2, that "*the Comisión del Mercado de las Telecomunicaciones shall pursue the establishment and monitoring of specific obligations to be met by operators in the telecommunications markets and the fostering of competition in the audiovisual services markets, as provided by its rules governing the resolution of disputes between operators and, where appropriate, to act as the arbitration body for disputes between them.*"

Among the functions to be exercised by the Commission in relation to the matters covered in the Law itself, letter g) of Article 48.3 confers jurisdiction upon it *"to define the relevant markets to establish specific obligations as provided in Chapter II of Title II and in Article 13 of this Law."*

By exercising this power, on 22 January 2009, the Board of the Comisión del Mercado de las Telecomunicaciones approved the definition and analysis of the wholesale access (physical) market of network infrastructure (including shared or fully unbundled access) at a fixed location and the market for wholesale broadband access, the designation of operator with Significant Market Power (hereinafter, SPM) and the imposition of specific obligations.

In the mentioned Decision, this Commission, after defining and analysing the market, has concluded that it is not really competitive and identifies Telefónica as operator with SMP in the same, imposing upon it, inter alia, (i) the obligation to provide access to the civil works infrastructure associated resources, at regulated prices based on the costs, (ii) the obligation of transparency in terms of access to civil works infrastructures and, (iii) the obligation of non-discrimination in the conditions for access to the civil works infrastructures. In particular, the obligation to publish a Reference offer for rendering the wholesale access services to its civil works infrastructures (in this Decision, the Reference offer) is imposed on Telefónica.

Article 7.3 of the Regulation on electronic communication markets, access to networks and numbering, approved by Royal Decree 2296/2004 dated 10 December (hereinafter, Market Regulations) provides that the Comisión del Mercado de las Telecomunicaciones may introduce changes to the reference offers to enforce the obligations.

In turn, Article 9.2 of Directive 2002/19/EC of the European Parliament and of the Board dated 7 March 2002, concerning access to the electronic communications networks and associated facilities (Access Directive), also provides that the national regulatory authorities may, among other things, introduce changes to reference offers to give effect to the obligations imposed by this Directive.

Accordingly, this Commission is responsible for making changes to the reference offer, in accordance with the provisions of Article 9.2 of the Access Directive and Article 7.3 of the Market Regulations.

THIRD.- Evaluation of Telefónica's reference offer

1 General considerations

To evaluate the effectiveness of the procedures and terms and the adequacy of the prices established by Telefónica in its Reference offer, external references have been used

(information from operators and public databases on infrastructure elements), internal references of the Commission itself (RUO services, cost studies) and international comparison (offers for infrastructure sharing of the operators France Telecom and Portugal Telecom, declared as having significant power in the relevant markets of their countries).

From an assessment of the above aspects it will be concluded in each section whether it is appropriate or not to amend Telefónica's proposal.

As a result, given the observed adequacy of the contents of the offer to the objectives pursued by this Commission, the need to change certain elements relating to both procedural, material and economic aspects has been detected.

2 Description of the information provided by Telefónica

The Reference Offer submitted by Telefónica is expressed through the Wholesale Service of Access to Junction boxes and ducts (Servicio Mayorista de Acceso a Registros y Conductos - MARCo service), which will provide to other operators (hereinafter, emerging or alternative operators) the possibility of using cable passages, chambers 0, ducts, junction box chambers, inspection chambers and poles of Telefónica (hereinafter, the incumbent operator)

The main parts of the offer, submitted by Telefónica on 23 March and 23 April are:

- General Aspects of the Offer.

- Annexe I. Technical norms for infrastructure sharing.

  The technical criteria are established for the use and access to the civil works infrastructure of the telephone plant (ducts, junction boxes and poles) and to the exchanges (RUO rooms, cable passages and chambers 0), for installation of cables by other electronic communications operators.

- Annexe II. Procedure for Service Management.

  It describes the operating procedures for responding to the Requests for Information on Vacancy (hereinafter SIV) into the raceways between junction boxes, as well as the Requests for Infrastructure Shared Usage (hereinafter SUC), which are part of the MARCo service.

- Annexe III. Procedures for after-sale communication and quality levels.

  It defines the communication channels with Telefónica related to the notification and authorisation of provisioning and maintenance works. This includes the service level agreements for wholesale service provision, specifying the time limits established for the various stages in the processing of requests for information services and shared usage, with the party responsible for their completion also being noted.

- Annexe IV. Model for Redefinition Act.

- Annexe V. Coverage of the service.

  Listings are presented for RUO exchanges, exchanges with FTTH head-end (exchanges where Telefónica plans to install network termination equipment for the FTTH/GPON structures, i.e., Optical Line Termination (OLT) equipment and FTTH exchanges (exchanges in whose coverage area Telefónica plans to deploy FTTH networks).

- Annexe VI. Billing and Pricing Conditions.

It contains the billing and pricing conditions for the MARCo service.

- Annexe VII. Documentation on Occupational Hazards Prevention (OHP):

  - Telefónica's OHP procedure for MARCo service.
  - Telefónica's OHP procedures: evaluation of risks in junction box chambers.
  - Telefónica's OHP procedures for work in poles and overhead lines.
  - Telefónica's OHP procedures for junction box chambers

- ANNEXE VIII. Standard contract

Furthermore, Telefónica issued a proposal for the "MARCo service Scorecard" with the list of parameters to be used as benchmarks to measure the efficiency in rendering the MARCo service is provided and the equivalent self-rendered services.

3 Analysis of the submitted Reference offer and modifications to be made to the same.

An analysis has been made focused on four distinct blocks, corresponding to (i) the technical and procedural aspects of the offer, (ii) the price for providing the various service components, (iii) the service level agreements, (iv) contractual matters relating to the establishment of guarantees and, (v) penalties. In each block, after the evaluation an assessment of the need to introduce or not modifications in the Offer submitted by Telefónica is included and the results are given in sections 3.1, 3.2, 3.3, 3.4 and 3.5, respectively.

3.1 Technical and procedural aspects of the offer

3.1.1 Scope for application of the offer

3.1.1.1 Covered operators and networks

Obligations established by the CMT

The Decision on markets 4-5, in Annexe 2, Section 1.a), imposes upon Telefónica the obligation to serve reasonable requests for access to civil works infrastructures and, particularly, and "*not to discriminate or to limit the provision of access due to technological reasons, of network architecture or of functionality thereof, or due to the operator's activity*" (Section e).

This issue was already discussed in the proceedings dealt with in connection with the appeal for reversal motioned by several operators against the Decision on markets 4-5 (file AJ 2009/296). In the Decision issued on 26 May 2009, it was reiterated to Telefónica that the access to infrastructures should not be limited in terms of the deployment technology (optic fibre against cable) or the intended usage of the civil works infrastructure by the alternative operator, provided that the deployment to be made results in the provision of broadband retail services.

Contents of Telefónica's Offer

Telefónica's' offer in its introductory section "Reference Offer for MARCo Service", goes straight to point 1 on "General Aspects" by stating that "*this offer is available for those operators who have the condition of electronic communications public network operators*."

Subsequently, in point 2 on the "Wholesale Service of Access to Junction boxes and ducts" it states that "(...) *operators may carry out their own access network deployments using next-generation optical fibre*."

Also the standard contract provided by Telefónica restricts the service of access to junction boxes and ducts to the context of deployment of new-generation networks. This is thus established in the First clause, 1.1, second dash, when it explains the content of Annexe I and in the Second clause (Contract objective), Section 3 ("*The Service is covered and limited in the context of deployment of the next generation networks*") .

Subsequently, the Ninth clause (Authorised Use) states that the licensed operator may use only the infrastructure whose shared use is granted to it for the installation of next-generation networks (i.e., excludes the copper pair or other) and also that they should be access networks to end customers, both natural and legal (i.e., it excludes the trunk networks).

Finally, in clause 20.1 of the standard contract it is stated that the alternative operator "*may only (...) request the service for sharing via MARCo in the coverage areas of the exchanges in the RUO list and those exchanges where there is some remote node in their coverage area*."

Allegations made by the operators

Telefónica claims that the ducts are a scarce and essential resource, and that efficient and well adapted usage of them should be sought. In particular it claims that they are not to be used for laying either copper (which is not NGA) or trunk networks (which are not NGA), ultimately sustaining that access should be imposed only to ensure the laying of fibre optic networks, as is done in other countries in our environment.

In turn, Orange says that the usage of the raceways cannot be restricted depending on the network layer (access or trunk) and sustains that the geographic scope must be total (access to all infrastructures).

Vodafone and ONO have the same opinion by declaring that no limitations may be accepted depending on the type of technology employed, network class and operator. They request that the MARCo offer excludes any hint that the wholesale service is exclusively aimed at operators whose deployment is based on optic fibre to the user, as well as any mention on the wholesale service being limited only to facilitating the deployment of access network.

Moreover, Vodafone sustains that any reference to restricting the geographical scope of the offer must be removed. It also remarks that the above is a real problem because in the contract it signed with Telefónica it was only allowed to use the MARCo service in urban environments.

Similarly ONO notes that access to facilities located both in urban and intercity environments must be provided.

Evaluation

In addition to the already mentioned in previous decisions regarding the inclusion of coaxial cable in the scope for application of the offer, the following considerations must be made:

1. First, and in relation to access technology, although the Decision on markets 4-5 clearly states that Telefónica should ensure access to operators regardless of the technology used, reference is made expressly to the NGA deployment technology. In fact, the same subsection dealing with the definition of the scope is entitled "*Limitations on access to civil works infrastructure according to NGA deployment technology*."

   Thus the reason for the introduction of the obligation to serve reasonable requests for access to Telefónica's civil works infrastructure is to remove the existing bottleneck to encourage operators to have an equal footing on which to carry out their new-generation

access network deployments, which are currently identified with wired networks based wholly or mainly in optic fibre, pursuing precisely an investment in these types of networks.

Consequently, although the NGA term may refer to various technologies, their common denominator is the main use of optic fibre and capacity for high speed data transmission, an approach that obviously cannot be attributed to the copper pair. This technology, therefore, cannot be regarded as falling within the scope of the Offer and the request to Telefónica for access to the civil works infrastructures for installation of cable pairs may not be accepted as an enforceable obligation; if the usage of Telefónica's' copper pair network is desired, the operators must go to the unbundling instruments in the RUO or directly deploy, depending on their resources.

The set of obligations stated in the Decision on markets 4-5 then must be interpreted consistently, since otherwise the imposed regulation makes no sense, in addition to the fact that at no time did the mentioned deciosions refer to the usage of Telefónica's civil works infrastructures to deploy copper pairs.

2. Regarding the typology or network layer (access vs. trunk network) which can make use of the civil works infrastructures, it is worth remembering that we are regulating a complementary service to the wholesale access market in order to remedy a lack of competition effective in the related retail market. Therefore, the Scope for application of the Reference Offer must include the resources associated to the access network. In this sense, the access obligation should obviously affect any infrastructure of the alternative operator which becomes necessary to deploy the access network of the operator and not the access network of the operator with SMP.

   In this regard, the Explanatory Note to the Recommendation on relevant markets, when referring to the concept of associated facilities, indicates that "*all relevant infrastructures needed to reach the final consumer"* must be considered as included in the market.

3. In relation to the access obligation, Telefónica has not adequately reflected in its wholesale offering the geographic scope established by this Commission, by stating in Section 3 "Services that make up the wholesale access service to junction boxes and ducts" in the section on procedures "Management Procedure for Operators" that the infrastructure-sharing service can be requested in the areas of deployment of FTTH network (Telefónica's) and in those exchanges where there is a remote node in their area of coverage.

   Also, clause 20.1 of the MARCo Service standard contract seems to be limiting the areas in which the service can be ordered, according to the information Telefónica must provide for the transparency obligation imposed.

   The decision referred to clearly states that the sharing may be accomplished for any elements included in Telefónica's' civil works infrastructure, and therefore not only in those areas mentioned in the transparency obligation.

   In fact, this decision states on page 24 that "*the obligation imposed on TESAU concerning access to the civil works infrastructures must necessarily be of a general content, including in principle all of the TESAU's infrastructures or those which may be used by TESAU", which can be used reasonably by the emergent operator to build its own network for next-generation access (NGA).*

Modification of the offer

Any statement that restricts the right of use only to the operators who deploy optical networking to the home must be removed from the MARCo offer (as well as from the standard contract), including explicitly that the scope of coverage of the wholesale service also covers the deployment of coaxial cable for new-generation access networks. This way, technologies such as copper are understood as not being included in the scope of the Offer.

In connection with the previously statement that the proper scope of the reference offer should be that of the access network, the Reference Offer will specify that the use of the infrastructures for the deployment of the access network of the applicant operator is authorised provided that it occurs in urban spans, with "urban span" meaning one that runs entirely through soil classified as urbanised by the Land Act, whose consolidated text has been approved by Royal Legislative Decree 2 / 2008, dated 20 June (hereinafter the Land Act) as well as for that for which the instruments of land zoning provide or allow for their passage to the status of urban soil (what was traditionally known as building land)[1].

In regard to what is indicated in paragraph 3 above, the reference restricting the MARCo service to certain areas should be deleted from the offer and from Clause 20.1 of the reference standard contract, unconditionally guaranteeing the access under the conditions outlined above.

3.1.1.2 Limitations of the access to infrastructures Telefónica is entitled to

Contents of the offer

Several references to the ownership of the civil works infrastructures by Telefónica are made in the standard contract it supplies. Thus, both in Recital IV as in the scope and purpose of the contract, Telefónica shows that the infrastructures to be shared are *"civil works infrastructures being owned by it."*

Specifically, the second clause states that the contractual object is:

> *"(...) to establish the conditions under which TELEFÓNICA DE ESPAÑA renders to the AUTHORISED OPERATOR the MARCO Wholesale service for Access to Junction boxes and Ducts (hereinafter, service) by which TELEFÓNICA DE ESPAÑA yields to the AUTHORISED OPERATOR, in return for price and upon specific request by the AUTHORISED OPERATOR and checking by TELEFÓNICA OF SPAIN on the technical availability for it, the right to shared usage of the civil works infrastructure it owns, thus making possible the provision of telecommunications services to which the AUTHORISED OPERATOR is lawfully entitled."*

Similarly, the Third clause refers to the scope of the contract as follows:

> "*The material scope of this Agreement consists of civil works infrastructure owned by TELEFÓNICA DE ESPAÑA, in the field of the networks designated as feeding network, distribution network and dispersion network, with the constraints defined in the NOTECo document included in Annexe I."*

Allegations by the operators

[1] It should be clear for this purpose that the new Land Act no longer classifies the soil as previous leglisation had done (urban land, developable and undeveloped) but now merely distinguishes between the two situations the soil may be found in: situation as rural land (which includes the one traditionally classified as not be developed and developable) and the status of urbanized land (which includes that one traditionally classified as urban).

Euskaltel argues that those compositions presume that Telefónica holds a legal title over the related infrastructure, which allows it to constitute the right to use them available to a third party. On this basis Euskaltel requests that prior to signing the contract, proof of ownership of that infrastructure must be requested from Telefónica.

Evaluation

It should be remembered that as pointed by this Commission in its Decision of 31 July 2008 on the appeals for reversal motioned against the Decision of 8 May 2008, adopting precautionary measures in connection with the procedure for defining and analysing the markets 4 and 5, where in relation to the imposition of an obligation to Telefónica to provide access, it was already indicated *that "the obligation imposed to TESAU of allowing access to the civil works infrastructures must necessarily be of general content, including in principle all the infrastructure TESAU owns or which may be used by TESAU."* Also, the Decision on markets 4-5 confirms what has been said so far.

Therefore, the imposed access obligation affects the entire infrastructure being used by Telefónica, even though it holds no title to them. Thus, contrary to what Euskaltel argues, Telefónica cannot be required to accredit any legal title prior to signing the contract.

However, this Commission deems it necessary to adapt the standard contract to what is actually set forth in the Decision on markets 4-5.

Modification of the offer

All references made in the standard contract for "civil works infrastructure owned by Telefónica" should be changed to "civil works infrastructure over which Telefónica holds a right of use".

3.1.1.3 Implementation of the access to the infrastructure

Allegations by the operators

Vodafone has said that in certain circumstances it was required (when it has requested access to private property when the relevant permission by the municipality has been required), that Telefónica submit a document stating that Vodafone is authorised to have access to its infrastructure. Vodafone asks that the obligation for Telefónica to extend a document confirming authorisation to the requesting operator for using the infrastructure in a particular location be included in the procedure.

Faced with the same problem, ASTEL and GOI request that after the redefinition Telefónica notifies the competent authority, by written notice, that the operator is authorised to use Telefónica's infrastructure.

Evaluation

This Commission considers that, in each case, depending on the magnitude of the activity to be undertaken (minor works or greatly complex works) and the location of infrastructure on which it will operate (public domain or private property) it will be necessary to obtain a permit or another.

Given the possibility for local corporations to require operators to demonstrate that their staff is authorised to perform the access to inspection chambers or ducts, this Commission considers that Telefónica should implement the necessary means for that occupation of the infrastructure to become effective.

Therefore, it is understood that Telefónica cannot refuse to provide, if so requested by the operator, a certificate attesting its right of access to the infrastructure in question, or, where appropriate, to facilitate the processing of permits required (in case of being the holder of the right of usage who should handle the processing).

3.1.1.4 Provision of information related to the civil works infrastructures.

Obligation imposed by the CMT

The obligation of transparency imposed by the Decision on markets 4-5, included in its Annexe 2 includes two obligations: (1) the publication of the Reference Offer and (2) the provision of certain information to the alternative operators. Regarding the latter obligation, Telefónica must provide to the alternative operators any information on their civil works infrastructures necessary for them to plan their requests for access. Consequently the Decision indicates that:

"- *TESAU must inform the CMT and the operators about its plans to deploy FTTH, keeping that information updated at least six months prior to the date of operation. Thus, TESAU should detail the head-end exchanges, their location, their coverage area (covered conventional exchanges) and the expected time when they will become operational.*

- *In all the exchanges included in the RUO list, as well as those who have sub-loops or loops leased to any operator, and also in areas where TESAU offers retail broadband services from remote nodes, TESAU must have available for access by third parties sufficient information concerning its civil works infrastructure, including inter alia information on the infrastructure technical and physical characteristics, as well as the space available in the raceways, chambers, inspection chambers, ducts or any other relevant facility.*

  The above mentioned information should be available within a term of six months from the adoption of this Decision. Until that information becomes available, the transparency obligations set out in the Decision of 8 May 2008, by which protective measures are taken in relation to market 4, remain in force.

- *For areas not covered by the previous section, TESAU shall make available to third parties, if they so request, information regarding the infrastructure of civil works available in the proximity of the exchanges or remote nodes being requested. The above information must be provided within 6 months.*"

Adequacy of the offer to the requirements set by the CMT

Clause 20.1 of the standard contract states that the alternative operator "*may only visualise the civil works infrastructures and request the service for sharing via MARCo in the coverage areas of the exchanges in the RUO list and those exchanges where there is some remote node in its coverage area.*"

The partially-transcribed clause should also include those exchanges that have sub-loops or loops leased to any operator, which Telefónica has stated verbally as being minimal or nonexistent. Furthermore, the alternative operators are entitled to request information on areas not covered by the above information, according to the transparency obligation imposed by the Markets Decision.

Modification of the offer

The provision of information on Telefónica's infrastructure must be extended to all the exchanges in the RUO list, to the exchanges having sub-loops or loops leased to any operator, and also to the areas where Telefónica offers retail broadband services from remote nodes. In addition, upon request from the stakeholders, information on areas not covered must be provided.

3.1.1.5 Access to associated resources

Obligation established by the CMT

The Decision on markets 4-5 imposes the following obligation:

> "*To facilitate access to the resources associated with the access to civil works infrastructure necessary for the full operation of the obligation, among which are the services of location in exchanges, cabling, links for equipment connection or signal delivery, power for equipment and relevant information systems, and facility sharing arrangements. These resources will be provided in the head-end exchanges.*" (Letter c) of Section 1.A of ANNEXE 2 to the Decision on markets. 4 and 5)

Contents of the offer

The Telefónica wholesale offering includes a service aimed at providing connectivity (optic fibre cable laying) between the exchange room where the operator co-locates its optical equipment and the first junction box chamber, which is after the junction box chamber 0 (CR0), where a junction box can be located. Telefónica states that that service is provisioned exclusively in FTTH head-end exchanges and not in the rest, which is justified by it being a resource that only has application in exchanges where the co-location service is also provided: since the obligation to provide co-location only applies, according to Telefónica, in FTTH head-end exchanges, the same should occur with the service for laying optical cable.

Allegations by the operators

Vodafone, Orange and Ibersontel claim for the ability to access associated resources from all Telefónica's RUO exchanges.

Evaluation

Certainly the imposed obligation provides that the resources associated with access "(...) *will be provided in the FTTH head-end exchanges*."

The text of the Decision (page 89) explains how this conclusion was reached to: "(*..,) it is necessary to take into account that certain exchanges may no longer be used by TESAU (within the conditions imposed by the Commission), and the co-location and therefore investment in asset in these plants would be meaningless, in addition to the fact that it would be meaningless to force TESAU to keep these plants (which were already known to be absorbed) in use. Therefore, it is considered that the obligation to co-locate (and other ancillary services) in relation to the access to civil works infrastructures should be rendered only in exchanges where TESAU install its user access equipment (such as OLT or other) and are not intended to be absorbed, i.e., in the FTTH head-end exchanges. This also implies the availability in them of other services such as power for equipment, signal delivery of wiring to the connection inspection chamber as agreed*." [the underlining is ours]

With this addition, it is intended to protect Telefónica when exerting its right to the gradual transformation of the network that was granted to it in the decision itself. Indeed, in the Decision on markets 4-5 it is specifically stated that Telefónica may close plants that it will

not need to provide services to its customers by meeting certain requirements and based on certain terms, irrespective of the fact that other operators might need the exchanges to provide services of their own.

Telefónica's right to transform its network should not be affected by the deployment of new networks other operators might execute; it has been concluded that the obligation to co-location service (and in general for the services or associated facilities) may not be the best solution (in relation to the objective of protecting Telefónica's right to transform the network) or the best- dimensioned (the one that least distorts the other objectives to be achieved, such as fostering investment).

The former statement, which was clear when thinking about an operator to be co-located for the provision of services based on loop unbundling (as long as said network is to be substituted), may raise doubts when dealing with operators to be co-located to provide services with new networks laid using Telefónica's ducts, while not needing the copper network they could argue that their situation would remain unchanged by the fact that Telefónica were no longer using for itself the copper pairs plant and could try to continue occupying the space and receiving the associated services.

However, as it was understood (and is understood) that Telefónica's right to convert its network should not be affected by the deployment of new networks other operators might achieve, the obligation to provide the co-location serves was established for Telefónica's FTTH head-end exchanges, meaning that just by being co-located in them these operators would not be entitled to remain in the exchanges for an unlimited time.

Thus, even when it was a priori (and wrongly) considered that it would in no case make economic sense, in no case was the possibility of the operators deciding independently (as appears to be the case) to be co-located in exchanges other than the FTTH head-ends.

In this sense, the philosophy existing in the current local loop offer is that the co-location (which is just renting space), and other associated services which fall under the obligation of access of the network infrastructure market, can be claimed for any related services (installation of DSLAMs, video servers ...). Given this, it would be contrary to the logic of the system to be now claim that what has traditionally been allowed (and is allowed) to use for different services now appears as geographically restricted (as long as it could not be used in all the exchanges) specifically in relation to the deployment of networks this Commission has the most interest in seeing deployed: the ultra fast networks.

Finally, regarding what Telefónica states regarding that allowing this access entails higher costs for it, it should be noted that in any case, these costs will be borne by operators seeking to provide related services in exchanges other than FTTH nodes. Furthermore, they are to be treated as essential facilities similar to those already existing within the RUO framework.

Modification of the offer

Telefónica shall provide, to the operators so requesting with the services of access to related facilities, in particular services of co-location and optical cable laying up to junction box chambers located outside, in all the RUO exchanges, being understood that the possible discontinuity in the provision of such services in exchanges other than FTTH head-ends is assumed. That is, the fact that the investments of the applicant operators in the RUO

exchanges not being FTTH head-end should not condition the plans for modernisation of Telefónica's access network provided in the Decision on markets 4 and 5.

3.1.1.6 Side outputs and dispersion network

Obligation established by the CMT

In the Decision approving the imposition of symmetric obligations of access to the operators who deploy in the inside of buildings (MTZ 2008/965 file, hereinafter symmetric measures), it was indicated that the obligation of Telefónica's infrastructure sharing "*covers all their infrastructures to the point for sharing or the base of the buildings, what includes the side outputs towards the same*", and that "*Telefónica would contract the obligation to provide space in the drop side outputs to the buildings to the point inside them where the terminal boxes are installed.*"

It was pointed out in that Decision that "*the Wholesale Service of Access to Junction boxes and ducts Telefónica must make available to operators in accordance with their obligations under the Decision on 4-5, cannot ignore any of the elements confined between the optical node and the buildings, since these elements fall within the scope of such obligations. Therefore, Telefónica's wholesale service must conveniently specify, in addition to the main, secondary and side raceways, the side outputs giving access to the facade or the inside of the buildings, so that operators can properly identify them and refer to them in their requests for access*."

Contents of Telefónica's Offer

Telefónica's information service on ducts (SICO) is provided through two main components:

- The information service on infrastructure (SII), which provides a graphic perspective of the location and layout of the infrastructure, via access through the NEON system (CARPE).
- The vacancy information service (SIV), offering "information that is as accurate as possible" about the availability of vacant capacity in the infrastructure.

Telefónica's wholesale offering by stating in its paragraph 4 "Request for information on Vacancy (SIV)" in the part on procedures "Management Procedure for Operators" that " *the side outputs (last mile of a lateral raceway of the distribution network that connects the last junction box with a facade, a pole, the inside of a dwelling or an ICT inspection chamber) will not be included in the information service."*

Telefónica adds that the availability of space in these raceways requires a specific in-situ study, since that is determined by the dimensions of the cable the operator intends to install and the situation in each case (dimensions of the outlet tube). Telefónica concludes that it should be understood that in principle it is assumed that vacant capacity exists in such spans.

Also it indicates in clause 4.2 of the standard contract that the SII and SIV services are offered only on the feeder and distribution networks, which excludes the dispersion network in those cases where the terminal boxes are located outside the buildings (public domain).

Evaluation

The imposed obligations are very clear regarding the provision of information on the last leg of the network formed by the side outputs up to the buildings. Therefore Telefónica must facilitate in its information service on infrastructure (SII) sufficient information to allow

operators to identify the spans corresponding to side outputs, as well as those corresponding to the dispersion network when placed in the public domain, in order for the operators to properly design their applications for access.

Another subject is the provision to the operators of information on vacant space (SIV) in such spans. Assuming that the information on space availability is not a real guarantee (as indicated by Telefónica), but should be viewed as a non-binding estimate on the actual situation that in fact is checked during the redefinition, it would be permissible to indicate that in the spans corresponding to the side outputs or the dispersion network (spans where the direct installation of cables in ducts not being subducted makes difficult a preliminary and theoretical estimate of the actual availability), as noted by Telefónica, "in principle there is space available, but must be confirmed by redefinition."

Modification of the offer

Telefónica must facilitate in its information service on infrastructure (SII) sufficient information to allow operators to identify the spans corresponding to side outputs, as well as those corresponding to the dispersion network when placed in the public domain, in order that the operators can properly design their applications for access.

Regarding the information service on vacancy, the current approach of the Reference offer which assumes that in principle there is space in such spans may be maintained.

3.1.2 Procedures previous to occupation by the operator

This includes the procedures executed after the request for infrastructure sharing by the operator, and ends with the commencement of works for occupation by it. Said procedures are:

- Application from the operator.
- Validation of the application by Telefónica.
- Agreement on the date for redefinition.
- Joint execution of redefinition.
- Design and provision, if applicable, of alternative solutions.
- Preparation of documents describing the technical solution by the operator.
- Infrastructure occupation works by the operator, which it performs independently.

3.1.2.1 Redefinition phase

Obligation established by the CMT

The CMT has not established in the Decision on markets 4-5 any specific obligation for this procedure. The relevant general obligations and in particular the obligation of non-discrimination are applicable.

International references

The offers of Telefónica and France Telecom are based on very similar methodologies, with the reference service being provisioned through a series of similar procedures. The implementation of redefinition is carried out jointly in the case of Telefónica, and in principle independently by the applicant operator in the case of France Telecom, but with certain exceptions (where junction box drilling is required or when secure chambers must be accessed).

In turn, the offer of Portugal Telecom shows significant procedural differences, since the validation stage of the application involves a physical visit to the infrastructure by Portugal Telecom. Therefore, it is a process for in-situ validation and verification of availability of vacant space, and makes unnecessary any subsequent joint redefinition. Portugal Telecom made all the necessary tests, and has sent a detailed project to the operator, who can proceed to carry out the work of occupation if viable. The characteristics of this process accelerate the provisioning process although the applicant operator has less visibility on the process (it must trust in the wisdom of the incumbent at the time to validate the availability of vacant space).

Finally, after the development of the procedures described for the three offers under analysis, the applicant operator is in a position to start the occupation works with the following deadlines (measured in working days) after the initial application for occupation:

- Application addressed to Telefónica: 35 days (+10 days when requesting information on availability of vacant space).
- Application addressed to France Telecom: 55 days.
- Application addressed to Portugal Telecom: 31 days.

Modification of the offer

It is not considered necessary to modify the procedures associated with the redefinition, and it is concluded that in principle they are suitable, as well as the associated deadlines.

3.1.2.2 Provision of alternative solutions

Obligation established by the CMT

The obligation of access in the Decision on markets 4-5 requires that, in the presence of obstacles to infrastructure sharing and additionally, alternatives will be offered that allow the link between the points requested by the operator, including the rental of dark fibre. Also, as noted above, in the obligation of transparency the requirement is established to publish a reference offer that includes, inter alia, the provision of alternatives in case of technical non-feasibility or lack of space.

A) Provision of alternative route

Contents of the offer

The wholesale supply does not contain clear provisions regarding the procedure or the maximum term for identifying an alternative route when the initially requested results and billing conditions for these assumptions are not viable.

Moreover, it is essential for the offer to contain conditions relating to the billing for the service provision through an alternative route

Received allegations

As for the term, ASTEL and GOI asked for a deadline to be specified for Telefónica to provide an alternative solution to the applicant operator.

As for billing, Telefónica states that the provision of alternative routes creates additional costs for it, regarding installation, equipment, and maintenance. It also notes that saturation situations happen quite often, because the raceways are often saturated by cables for the provision of regulated services (RUO, RLLO and RIO). According to Telefónica the above mentioned fact justifies that alternative routes are to be provided at a higher price than the one which would correspond to the originally planned route.

It also notes that if such routes are provided at no additional cost, there will be no incentive for the operators to undertake investment in their own infrastructure, since they always opt for the most affordable option. Finally Telefónica adds that also when a new redefinition is required to determine the feasibility of an alternative route, the operator will bear the associated charges.

Meanwhile, Orange and Vodafone sustain that providing an alternative route should not mean any additional costs, either recurrent or due to redefinition. Vodafone requires that even when construction of new infrastructure is required additional costs should not be imposed on the operators.

Evaluation

Regarding the term, this Commission understands that a priori there is no need for additional periods: if it becomes apparent that the initially requested route is not feasible or there is saturation an alternative solution should be provided in the term already foreseen for the requested route.

As for billing, the following criteria will be applicable if there is no need for new investment by Telefónica, i.e., the alternative route makes use of the existing plant.

The general principle is that provision of an alternative route entails the usage of resources (and, therefore, of costs) additional to the ones to be used in the initially foreseen route. The principle to be followed for the access to the incumbent operator network is payment for the use of network elements that will be used.

However, adequate incentives must be introduced for Telefónica to act diligently in the efficient management of the provision of alternative routes, both for minimising the number of times that they must be used and optimising the available space (rational occupation and efficient use of resources), and finding more available space (for example, removal of copper wires which are not in service).

The Commission considers that the provision of alternative routes should not in any case cost more than the double that the applicant operator has had to pay if Telefónica had provided the service to it with the requested route, and all of it both for recurrent costs as for the costs with redefinition.

On the contrary, the situation may occur that for the provision of an alternative route Telefónica has to proceed to extend the existing infrastructure, i.e., that faced with the saturation of Telefónica's infrastructure and lack of viable and reasonable alternatives, its expansion is decided for meeting the demand from the operators for space.

In this case, there will be an investment which benefits the operators, and which Telefónica would not have incurred in the absence of the application for occupation from those.

However, given that the new infrastructure can also be used by Telefónica and that the transparency of the regulation requires the establishment of default costs, the cost of those extensions will become part of Telefónica's costs and will be passed to the successive updates of prices of the MARCo offer.

Modification of the offer

Should an alternative route be offered, explicit reference will be made to the fact that Telefónica may pass on the costs to the operator, by providing an alternative route, (both recurring by the use of infrastructure and derived from successive redefinitions) corresponding to that route alternative up to a limit that corresponds to twice the costs that would have been accrued according to the route initially requested.

Also it must be explicitly mentioned that the deadline for the identification of an alternative route is included within the time limits established for the processing of an application for occupation, therefore there is no additional term allocated for this purpose. It is thus included in the 30 days term from the application from the operator until the moment such application passes to the "Performed Redefinition Viable" status.

B) Provision of dark fibre

Obligation established by the CMT

As already noted, in the access obligations set out in Annexe 2 of the Decision on markets 4-5 it was stated that, additionally, alternatives will be offered that allow the link between the points requested by the operator, including in particular the rental of dark fibre.

As exemplified by reading the mentioned Decision, the availability of dark fibre is dependent upon the inability to share infrastructure not even by reasonable alternative routes.

The rental of dark fibre is set by the Decision of markets 4-5 as a subsidiary obligation, so that it should be available to the emerging operator in the absence of reasonable alternatives (alternative routes).

Evaluation

In view of the allegations sent by Telefónica it has been noted that it is difficult to arbitrate a general procedure for the provision of dark fibre, and to set a pricing reference, so at this time it is not considered appropriate for Telefónica to detail in its reference offer the conditions for rendering that service.

However, given that the above stated does not mean that Telefónica is exempt from any obligations specified in the Markets Decision, it should agree case by case with the affected operators on the conditions for rendering the service when it becomes bound by the occurrence of the constraints established in that Decision.

Modification of the offer

At this moment, it is not considered appropriate to incorporate procedures and deadlines for the provision of dark fibre.

When the circumstances mentioned in the Decision on markets 4-5 are present, Telefónica, should offer the provision of dark fibre to the emerging operator case by case, depending on the terms, prices and conditions they agree upon. This Commission will decide in case of conflict.

3.1.3 Norms for occupation of the infrastructure

3.1.3.1 Methodology for occupation (separation of networks)

Adequacy of the offer to the requirements set by the CMT

In Telefónica's offer the subducts are set as the basic unit of occupation, and different subducts are always assigned to the different operators in order to maintain a physical separation between the different networks. Furthermore, at the side outputs and in dispersion network, for reasons of scarcity of available channels, direct cable installation, i.e. without previous ducting is allowed.

The CMT has set no specific obligations for these procedures, although in compliance with the obligations of access and non-discrimination it must be verified that the technical regulations that should underpin the deployment of Telefónica and the operators are stated in identical terms, as well as ensuring the occupying methodology is based on an efficient use of a scarce resource such as space in the raceways.

Received allegations

In general the operators agree to the concept of separation of networks. In particular, Orange welcomes the idea of the subduct being the basic unit for occupation. However, Euskaltel asks for some flexibility for the subducting or tubing system, in order to consider other options which allow for better optimising the space occupied, such as textiles flexible subducts or other. Similarly, R-cable indicates that the obligation to use materials (subducts) which necessarily must be approved by Telefónica must be excluded, given the existence in the market of more effective alternatives.

Evaluation

In line with what was advanced in the report to the operators, it is considered most appropriate to identify mechanisms resulting in optimising the processes for the occupation of available resources (space in ducts), not only in the light of what various operators argue, but as noted by Telefónica itself in relation to the remarkable frequency with which saturation situations may happen in its infrastructures.

In this sense, it has been noted that the scenario presented by Telefónica suffers from certain operational imperfections by stating a method for subducting that is not all that flexible, based on the installation of 3 rigid (tritube) of a fixed and predetermined size.

Indeed, the scenario presented involves a utilisation rate of the duct that is very small as compared to what would be achieved through other alternatives. By way of example a difference can be observed in the grade of occupancy resulting from the installation of cables directly into a duct and the location of cables in the same duct through previous subducting using a tritube. In the first case, and considering that according to the principle of useful section commonly used in the industry, and also applied by Telefónica in its reference offer, the sum of the sections of the deployed cables may not exceed 40% of the total internal section of the duct or subduct, the installation of 10 cables of 20 mm diameter (256 fibres) would be practicable. In turn, in the second case only one cable of the same type could be deployed in each subduct, resulting in a total of 3 cables of 20 mm entering the duct. Assuming 15mm diameter cables (64 fibres), the difference is 18 to 6. In short, the differential occupation of the duct, with the mentioned assumptions, is around 200%.

International references

France Telecom's offer includes more flexible tubing mechanisms by allowing the use of different types of tubes, on the basis that the sum of the installed tube sections is about 40% of the duct section. In turn, the offer of Portugal Telecom allows for the introduction of cables directly into the ducts. In both cases there is no billing per fully occupied subduct, but for the sum of areas occupied by the installed cables.

Modification of the offer

However, in view of the above, it is recommended for the MARCo offer to collect certain principles aimed to make the methodology for separation of networks through subducting proposed by Telefónica more flexible, in an attempt to optimise the occupation of the available resources:

- In the first place the principle of separation of networks is kept: the subducts are not shared and constitute the basic unit for occupation, except in side outputs and dispersion network, where what Telefónica states prevails with respect to the direct placing of cables.

- It also maintains the validity of the fundamental criterion of installing 3 40 mm subducts into 110mm ducts, but only in spans where shortages of space are not present, in the manner described below.

- In sections where space limitations are patent, the subducting will be performed via alternatives which offer better opportunities for space optimisation. In particular solutions involving non-rigid materials will be used, such as textile flexible subducts, allowing occupancy levels in ducts similar to the direct installation of cables. When the availability of space permits so, in such cases elements at least with three subducts or cells will be installed.

  It will be deemed that in a span occupancy levels exist which justify the use of such materials when the number of ducts completely empty, besides the duct reserved for maintenance or universal service is equal to or less than the following:

Number of ducts present in the raceway span	**Number of fully empty ducts**
1-5	1
6-10	2
11-20	3
>20	4

- Under the rules for occupation presented by Telefónica, the presence of a section of raceway where all existing ducts are partially or even minimally occupied by cables is interpreted as a situation of effective saturation (it is impossible to install tritubes) and therefore it motivates the rejection of the request for access.

  However, in such cases, provided that the occupancy level of a conduit is below the maximum permissible level (criterion of useful area), the cable installation will be admissible while implementing the criterion of separation of networks by installing textile flexible subducts, individual tubes or other solutions whose characteristics are in line with the principles outlined here.

- Regarding the 63 mm ducts in the distribution network, Telefónica foresaw the transfer of full ducts, given the physical impossibility of subconducting them with 40 mm pipes. However, this limitation disappears with the possibility of using the mentioned solutions so their sharing can be requested by the operators.

- In all cases, the principle of useful area for ducts and subducts will be respected; it states that the sum of the sections of all installed cables cannot exceed 40% of the duct surface. Similarly, the principles of optimisation of the available resources must be respected: The installation of subducts whose dimensions do not properly fit in the usable space available in the ducts is not acceptable.

3.1.3.2 Space reservation

Obligation established by the CMT

The Decision on markets 4-5 does not include in its Annexe 2, any specific obligation on the reservation of space but the general principles and obligations must be fulfiled, in particular, those of proportionality and non-discrimination.

Contents of the Reference Offer

In the wholesale offering the obligation to respect certain rules for reservation of space in the feeding and distribution networks is established:

- First one complete duct must be reserved as a common operational reserve (ROC), intended for maintenance actions by all the operators.
- Moreover, a second duct must be reserved in full for the extension of the universal service (USO) by Telefónica.

Also, when only subducts are free withd no ducts being free, two subducts should be reserved, one for ROC and one for USO. Finally, while the criteria for space reservation do not apply for the side outputs, in the dispersion network (in public domain) 50% of the useful section of a duct is reserved.

International references

France Telecom's offer provides that in all spans of the transportation part of its network (similar to the feeding span of Telefónica), one duct or subduct must be left free for maintenance, cable re-grouping, and laying of new cables in case of failure of any of those installed. It also states that any operator must have the same amount of space as the space it occupies left free.

In turn, Portugal Telecom sets the mandatory reserve, in each span between two junction boxes, of an area equal to that for the larger diameter installed cable in order to enable the service to be restored in the worst case. It also establishes a reserve for the exclusive use of the operators (other than the incumbent), corresponding to 20% of the useful area in each span.

Evaluation

The international references suggest that the reserve proposed by Telefónica is not commensurate with the needs to cover. The reserve destined to maintenance may not be so high that it outstrips the capacity of access to the raceways by alternative operators.

The reserve Telefónica intends to use for extending the universal service based on copper seems to have little justification, especially when it can be seen that currently there is no net

growth for in-service accesses based on copper pair. Therefore, even though in practice there are requests for activation with such accesses, the net gain is not positive, so to reuse the currently installed copper plant it should be sufficient to satisfy such demand. Furthermore, the fact that it is already feasible to provision the universal service based on optic fibre should not be ruled out, which in turn demonstrates how unnecessary it is to establish a reserve of this magnitude for a type of network whose use will be reportedly lower in any time.

Finally, the reference offer must be adjusted using a criterion for reserve better that is suited to the actual requirements and which states a difference depending on the volume of ducts present in each raceway section.

It is also necessary to adapt the criteria for reservation of space, which until now were defined in terms of the number of ducts or subducts. Since actions have been taken to increase the flexibility of the type of subducts whose installation is admissible, with it even being possible to implement solutions whose occupancy rate is not determined by the subduct itself but by the number and size of the installed cables (textile solutions), the criteria for which the percentage of useful section to be reserved is considered must be established.

Modification of the offer

In raceway spans where at least 8 ducts are located (typically feeding network), the reserve of one single duct should be established for maintenance actions and possible extensions of the universal service based on copper. However, given the small or null growth that can be expected for the latter, it is not proportionate to provide up to one third of the useful area of the reserved duct for use.

Meanwhile, in the raceway spans where the number of ducts is less than 8 (typically a distribution network), the space reservation must be set to two thirds of the useful area of a duct (which would correspond to two subducts when all ducts are considered as subducted). The reserved resources will be allocated equally to common maintenance actions and expansion of the universal service.

In the raceway spans where two ducts are placed, only one third of the useful area of a duct (which corresponds to an subduct when all ducts are found tubed) is allocated as a common operational reserve.

Also, restrictions on occupancy by operators for reasons of space reservation could not apply in the ducts present in the side outputs.

The following table shows the summary of the necessary reserves:

Number of ducts present in the raceway span	**Space reserve**
Side outputs	There is no reserve
2	⅓ of a duct
3-7	⅔ of a duct
≥8	One duct

3.1.3.3 Financing of the subducts

Contents of the Reference Offer

In clause 7.1 of the Standard contract principles the rights each operator has by virtue of the allowed sharing were set out:

> "*The ownership of the right to use the infrastructure (...) will remain in full with TELEFÓNICA DE ESPAÑA, the AUTHORISED OPERATOR having the right to shared use of the same."*
>
> *In turn, AUTHORISED OPERATOR will own the networks installed in the infrastructure it is authorised to use.*

Also, in clause 8 (Installation of SUC Service), Section 2, it is stated that "*if there are no available subducts in one or more raceway spans on which the AUTHORISED OPERATOR wants to use the infrastructures of TELEFÓNICA, [...] the AUTHORISED OPERATOR shall be responsible for installing the necessary subducts between junction boxes, occupying one of them and leaving the rest available.*"

In short, the offer provides that the subducts which, based on the principle of separation of networks, the operator making use of the infrastructure must mandatory install, will be owned by Telefónica; the operator needing them in the first place must install and bear the cost of their installation, if they were had not been installed before by Telefónica. As before, the principles to be respected are the general obligations imposed on Telefónica, including in particular those of proportionality and non-iscrimination.

Evaluation

Telefónica considers its position as reasonable from the perspective of statistical compensation: The operator requiring access to a duct span on some occasions should assume the role of first operator and therefore pay for the installation of subducts, and however in other occasions it will become the beneficiary of subducts already installed by third parties.

However, the reasonable nature of the compensation mechanism is subject to the fact that Telefónica itself recognises the obligation when making its own optical display, like the other operators, to install subducts when there are no other available, therefore not deploying its network without providing the subducting of the infrastructure.

Also, the allegations received from operators show some concern regarding the fact that in addition to paying for and assigning the resources (subducts) to Telefónica, transferring to it the right of exploitation, the operator has to once again and recurrently pay to use them. There are also several references to the establishment of a compensation mechanism, so that the operator can recover the cost of the facility that third party operators will use.

In this regard, as noted in the report sent to operators, it is not permissible that Telefónica bills the operators, as part of the recurring price for occupation of infrastructure, for the subducts material and installation cost; also that they will not pass on that cost at the moment of seling them to Telefónica or to third parties. However the cost for maintaining the subducts that Telefónica could pass onto the operators as part of the recurring price is quite a different matter, since the transfer of ownership is accompanied by the transfer of responsibility for their maintenance.

In short, the transfer at no cost to Telefónica, and to possible third party agents, of subducts installed by the operators is understood as appropriate and proportionate because of the

difficulty of articulating a different system on an infrastructure over which the right of use is originally Telefónica's, provided that the same is compensated with an obligation by Telefónica to also install additional subducts and transfer them (the resources Telefónica has installed or will install) to the operators with no depreciation recurring cost. In this sense the prices provided by Telefónica have been reviewed in later sections to suit the above criteria.

Modification of the offer

It should be explicitly stated that Telefónica acquires the obligation, when performing its optical deployment like the other operators, to install additional subducts when there are no others available. Also, in the prices for infrastructure occupation, Telefónica could not compute the cost corresponding to the installation and amortisation of subducts, as stated in the section relative to the prices for duct occupancy.

3.1.3.4 Placement of optical terminal boxes

Obligation established by the CMT

The Decision on markets 4-5 has not set any specific obligations in that respect, although the general obligation of non-discrimination is applicable.

In turn, in the decision on symmetrical measures it was found that there are conditions (cost optimisation and installation and operation processes in areas of low population density) which can lead to the operator heading the deployment to locate its terminal boxes at points located in the public domain, such as the inspection chambers located in the vicinity of the building.

So the decision states that "*Under certain circumstances it is justifiable that the location of the point where sharing is to be effective may be outside the building or house, either because is the case of networks that serve single-family homes, or because due to efficiency reasons, it is decided to serve several buildings from the last point of optical divide, in both cases where the terminal box is in the public domain. In short, it appears appropriate to establish as the point of sharing the one corresponding to the location of the optical distribution box of the first operator.*

Contents of the Reference Offer

In the wholesale offering it is provided that optical terminal boxes needing to be manipulated for managing user activation may be located in any junction box, noting that on the contrary they should be located within the operator's own junction boxes or on poles or outdoor boxes.

Evaluation

The above is reasonable given the manipulation that must often be done in the terminal boxes in order to control the activation of new customers, plus the fact that the junction boxes where it is intended to locate these boxes are not designed to be constantly open (potential presence of flood or gas, need to apply for permits to local authorities, traffic stops, etc.).

However, the existing obligations cannot be ignored, particularly as regards the principle of non-discrimination. Therefore, what is stated in the Decision on symmetrical measures in buildings must be reiterated, concluding that when Telefónica locates terminal boxes in junction boxes, the operator is entitled to the installation of similar resources in them, since

such junction boxes will constitute the point of sharing in the terms stated in the symmetrical measures.

Modification of the offer

Telefónica's offer should be amended by authorising the operator to place optic terminal boxes in junction boxes when Telefónica has done or will do the same in them, since in such cases they become points of sharing under the provisions of the Decision on symmetrical measures. In this sense, it cannot be possible that through the implementation of the MARCo offer, alternative operators are prevented from placing terminal boxes outside the building (within the context of the implementation of the Decision on symmetric measures), when Telefónica is doing it for efficiency reasons.

3.2 Pricing associated to the provision of the wholesale service

Obligations imposed by the CMT

Annexe 2 to the Decision on markets 4-5 states that Telefónica must offer the access to the civil works infrastructures at prices set in function of its production costs. It also provides that this Commission may request the amendment thereto, taking into account the evolution of similar prices and costs in European Union countries, the gains derived from the productivity of the operators and the efficiency of new investments completed or planned.

3.2.1 Information service on infrastructure (SII)

Telefónica has not proposed the payment of a fixed amount for the use of this service but that the costs of rendering it are covered with the recurring price the operators pay for the occupation of resources, for which a previous breakdown of these costs is made. Therefore the operators are not billed until there is an effective occupation of the ducts.

Modification of the offer

At present, the proposed procedure is appropriate and proportionate and therefore there is no need to change the offer.

3.2.2 Information service on vacant capacity (SIV)

Telefónica proposes a price of €31.57 for the service. The activities carried out during this phase in order to determine the capacity available in junction boxes are also billed by Telefónica in the next phase of analysis on applications for occupation, provided that the operator actually submits applications for occupation.

However, since the operators can generate applications for SIV which subsequently do not result in effective applications for occupancy, if the power to charge for this service is withdrawn from Telefónica, a situation may arise in which the tasks of identifying vacant space are not charged for in the first phase (SIV) or in the second (SUC) due to the operator never requiring its processing, for which reason this is neither fair nor proportionate.

Modification of the offer

Telephone could bill the operator for the amount prescribed for the SIV service (31.57 euros), although when the process of delivery continues through the phase of analysis of applications prior to the visit-redefinition, that amount must be deducted from the price established for this purpose. Also, when the operator dispenses with the SIV service and therefore directly processes applications for occupation, it must pay for the phase of analysis of applications the total amount established for it in the next section.

3.2.3 Analysis of applications previous to the visit-redefinition

3.2.3.1 Justification of Telefónica's price

The analysis of applications prior to the visit-redefinition is a mainly administrative activity aimed at validating the correctness of the data included in the application[2] from the operator. According to the information contained in Telefónica's offer of that provided in its allegation statement, this activity consists of:

- to verify the correctness of the references indicated by the alternative operator related to chambers, inspection chambers and poles,
- to verify that the field detailing the intended use for the junction boxes and that the one specifying the elements to be installed on them have been successfully completed,
- to verify that there is continuity between the indicated infrastructure elements,
- to verify the correction of the drawing provided by the operator,
- to detect inaccuracies and identify them in NEON, changing the status of the application,
- to set a date for the execution of the redefinition,
- to perform an analysis of vacant capacity to identify the junction boxes which are needed to open during the redefinition.

According to Telefónica, the analysis of an application prior to the visit-redefinition is billed as a one-time charge amounting to 78.82 euros which, according to the response to the request provided by Telefónica, responds to the commitment of 2.5 hours for analysis of each application.

3.2.3.2 Analysis of the proposed price

In its claims Telefónica does not submit any justification or breakdown which makes it possible to determine the reasonableness of the mentioned amount and the period, but it merely limits itself to sustaining that it responds to the resource (mainly human) planning devoted to the provision of the MARCo service, based on an estimate of theoretical demand that Telefónica itself admits as being oversized. Therefore, given that it cannot be regarded as an estimate adjusted to reality, it must be checked against the calculation this Commission makes on the terms for reasonably developing the reference tasks.

First, it must be assumed that much of the information to be verified is computerised in Telefónica's systems, which not only streamlines the tasks it must develop, but also allows for the empirical verification by the CMT of the periods required for their implementation. This way, it has been noted that verification of the correctness of the identifications, as well as the expected use of resources may require more than 15 minutes on the part of an efficient operator for applications for the occupancy of the maximum number of elements authorised per application (40).[3]

---

[2] Section 5.2.2 of Telefónica's management procedures

[3] In connection with the above estimate, for the performance of equivalent task, terms of 20 seconds per element (duct, chamber, inspection chamber or pole) have been empirically verified through access to the NEON/CARPE ducts information systems.

It can also be seen empirically, in connection with the verification of continuity, that the time invested in an application covering the maximum number of records is no longer than 20 additional minutes.[4]

Moreover, considering a period of 5 minutes for the introduction of the analytical result in NEON, the time devoted to the processing of an application with the maximum permissible complexity would not exceed 40 minutes, being about 25 minutes for an average application for occupation, quantitatively speaking, composed of 20 elements.

The costs relating to a second verification of applications that have proved wrong in their first processing should also be considered. Since in such cases it is only necessary to verify the elements in which an error has been detected, and assuming that the percentage of incorrect applications is reasonably small (especially once the operators have assimilated the operation of the new tools), it is not considered justifiable to apply for this purpose an increase over the total period exceeding 20%.

Also the period devoted to agreeing on a date for the implementation of the joint redefinition must be considered, which means establishing the proper communication with the applicant operator and may not involve a period exceeding 10 minutes.

Eventually it is necessary to add, as noted by Telefónica in its arguments, the time devoted to the analysis of vacant capacity, a task that the report of the Services had omitted and which is the consultation of Telefónica's databases and internal documentation to determine the junction boxes and inspection chambers, whose visit is essential for the redefinition. Its impact can be estimated at 3 minutes per element, representing a total of 60 minutes for an average deployment of 20 junction boxes(term/price that is identical to that provided in Telefónica's offer for an application for SIV).

In short, the terms and prices due to an average application (20 junction boxes) would be those listed in the table below:

Analysis of application prior to redefinition	**Term/Cost**
Total term dedicated to processing the application (without reiterations)	25 minutes
Term dedicated to dealing with reiterations (+20%)	5 minutes
Term dedicated to managing the date of redefinition	10 minutes
Term dedicated to studying for determining the junction boxes to visit	60 minutes
Total term	**1.66 hours**
Associated cost[5]	**€52.5**

International references

In France Telecom's offer, the processing of requests for access, the updating of documentation and the technical verification are invoiced based on the number of chambers covered by the application. The price is 20 euro per chamber/inspection chamber.

In the case of Portugal, there is a feasibility analysis prior to the redefinition which is invoiced based on a fixed component (€63.30 or €72.80 with an alternative route) and a variable one (€46.1 per junction box/inspection chamber which is object of the application).

Although in both cases, prices higher than the proposed ones can be seen, it is necessary to bear in mind that in these offers the additional revenue from other activities relating to the

4 Once again, terms of 30 seconds per item for similar tasks have been empirically verified.

5 Using for the calculation the hourly cost considered by Telefónica in its reply to the request.

redefinition is not foreseen[6]. Therefore, the price comparison should be done on aggregate, by grouping all the activities preceding the occupation of the infrastructure, as is done in the next section.

Modification of the offer

The price corresponding to the analysis of applications previous to the visit-redefinition must be amended, establishing a one-time charge totalling €52.5.

3.2.4 Execution of the redefinition

3.2..4.1 Justification of Telefónica's' prices

The redefinition is a joint visit by the operator interested in using ducts and by the representatives of Telefónica, in order to assess the feasibility of an application for occupation on the field. The redefinition involves the inspection of a certain number of infrastructures in which the shared access has been applied and thus it constitutes an activity whose cost is closely related to the human resources which are mobilised.

In concrete, the activities to be developed in the phase of redefinition are:

- Analysis of the junction boxes, chambers, inspection chambers and poles which need to be opened or visited (identified during the analysis of the application prior to the visit). This analysis is necessary to accurately determine the tasks to be carried out during the redefinition, identify the permits to be requested and see whether there is a need for previous intervention (deasphalting, etc.). In addition, according to Telefónica, a previous visit to certain junction boxes may also be required.
- Processing of permits with the pertinent authorities.
- Visit to the infrastructures by technicians from the operator and Telefónica.
- Opening of chambers and inspection chambers, whose number must be the minimum essential for obtaining the necessary information on occupation. The opening of junction boxes may be required to conduct in advance a certain number of additional works: cleaning, drainage, etc.
- Determination of the elements where the alternative operator will place passive elements.
- Visit to all the posts where access is requested, assessing their condition and if there is vacant space.
- Completion of the act of redefinition.
- Entering in NEON the information resulting from the visit-redefinition.

The pricing structure proposed by Telefónica is composed of two elements: First, a fixed cost per visit-redefinition (€363), and additional amounts for each junction box chamber, inspection chamber or pole visited (€81.40, €15.41 and €5.49 respectively). The additional work that may be required (emptying chambers, removal of vehicles, etc.) will be billed separately to the operator.

According to Telefónica the fixed cost is justified by the dedication of resources necessary to carry out part of the mentioned actions, such as an analysis of the junction boxes, the

[6] Except in the case of France Telecom, where the operator considers it necessary to be accompanied by a representative of the incumbent operator.

management of permits, the previous visits to the infrastructures or the movement of personnel and equipment during the redefinition. According to the justification provided, these activities involve a total of 16.5 hours, although no detailed breakdown is submitted for the same.

In relation to the amount variable per each element of civil works visited, Telefónica justifies the prices charged based on the dedication of the following resources:

- For the inspection chambers, a dedication of labour for a total of 0.7 hours in order to verify in-situ the feasibility and the sharing conditions.
- For the junction box chambers, a dedication of 3 hours for opening the chamber, its draining and cleaning, and 0.7 hours for the verification itself.
- For the poles, a dedication of 0.25 hours to execute those verification tasks.

3.2.4.2 Analysis of the proposed prices

It is convenient to implement a billing model that takes into account the variable complexity of the redefinition depending on the size of the planned deployment and its peculiarities.

For this purpose, the time spent on the redefinition could be treated as a criterion, with no surcharges pertinent to open chambers or inspection chambers that would be thus considered already included in the hourly cost. The advantage of this option is that it reflects very roughly the complexity of the project, but it has the disadvantage of not encouraging Telefónica to reduce the duration and the scope of the visits, and to thus be more efficient. It is an approach used in the context of the RUO and is the current model in the ducts offering of France Telecom.

Another alternative is to invoice each redefinition in function of the chambers, inspection chambers and poles visited. This approach has the advantage of considering the complexity of each project, whilst Telefónica is encouraged to reduce, as far as possible, the duration of visits, for which reason this is considered the most appropriate option.

In this sense the proportionality of the prices offered by Telefónica has been examined, with a comparative study being conducted for this purpose, based on the following references:

- Responses to the requests for information sent to third party operators (22@, GITPA, Iberdrola and Unión Fenosa), under which data were obtained for redefinition activities corresponding to layings of varying magnitudes.
- A cost study of the RUO. Information on previous visits to the co-location at the exchange and on the installation of radio links has been taken into consideration. The price is set as €104.49 + €41.8/H (involving one technician on behalf of Telefónica) in the first case and as €208.98 + €83.59/H in the second case (involving two technicians).

Also, because again a greater level of detail and breakdown in the price justification provided by Telefónica is lacking, the CMT has considered it necessary to perform the calculation of what is considered a reasonable and appropriate period for the execution of the referenced tasks.

Fixed cost per application

Among the activities for the preparation of the redefinition is the analysis of the junction boxes, chambers and inspection chambers whose visit was considered to be unavoidable in the previous phase. This is an administrative task, the impact of which can be estimated as

60 minutes for an average application for occupation (in terms of the volume of involved resources) of 20 junction boxes (chambers, inspection chambers or poles).

Also, according to the information provided by Telefónica, additional fixed costs must be considered as being justified by the need for previous visits to the involved infrastructure, aimed at gathering information about its exact location (when the information gathered in their systems is not sufficient) and to determine the possible need to apply for exceptional permissions (e.g. for the location of junction boxes in front of police stations or public buildings).

Given the above, this Commission understands that these are exceptional actions, like the examples given by Telefónica seem to reflect, and that in most cases the information gathered in their systems will be detailed enough to make such actions unnecessary. Even so, it is estimated as proportionate to admit for their implementation an increase in the term attributable to the junction boxes analysis, although as noted it does not seem justifiable for it to exceed 20%.

A 30-minute term was also estimated for the development of administrative actions required for the application and management of permits with the local administrations for the development of interventions in public thoroughfares.

Finally, in regard to the costs for travel of staff during the redefinition, it is estimated as pertinent to use identifiable references in the RUO, where travel within the province is considered for carrying out redefinition prior to the co-location and installation of radio links. For this purpose average terms of 120 minutes (round trip) are estimated, values which are properly oversized in order to include certain additional costs directly attributable to displacement (per diem, mileage, fuel, etc.).

It is appropriate to signal that the calculation made by the CMT includes travel by two persons. Also included is an additional period for preparation and transportation of equipment necessary for the work to be developed in the redefinition, which is estimated as 60 additional minutes.

In short, the timing and costs estimated in the above paragraphs are those listed in the table below:

Visit-redefinition (fixed costs)	**Term / Cost**
Preparation of the visit – analysis of junction boxes and eventual previous visit	1.5 hours
Preparation of the visit - Application of permissions	0.5 hours
Displacement of two persons	4 hours
Preparation of the materials	1 hour
Total term	7 hours
Total cost [7]	**€154**

In view of the identified discrepancy between the prices justified by Telefónica and the calculations made by the CMT, it is considered necessary to compare the information provided by Telefónica with the references provided by GIFPA, Union Fenosa and 22@ in the context of the requirements for information issued for that purpose. In this sense it is applicable to remark that in all the cases the existence of numerous visits-redefinition is

[7] An hourly rate of €22 is considered, in line with the one provided by Telefónica in its reply to the request for information.

appreciated, whose total cost is lower than the fixed component proposed by Telephone, as can be observed in the following figure:

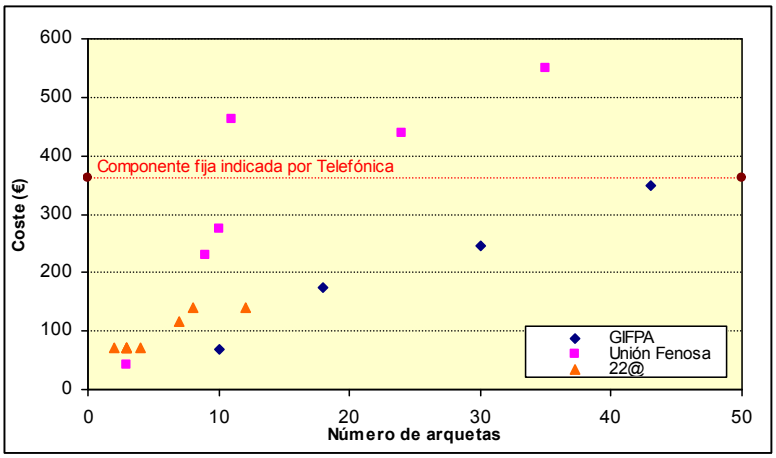


Figure 1. Cost of the activities for redefinition in function of the number of visited inspection chambers (source: response to the requirements for information to GIFPA, Unión Fenosa and 22@)

It is evident that if the variable component (for inspection chamber or chamber) is added to the fixed component proposed by Telefónica, the total price per redefinition rises until it doubles or triples most of the available references. Therefore the above evidence that the cost proposed by Telefónica is excessive and confirms that the one estimated by the CMT is more aligned with references corresponding to real cases of optic deployment.

Variable cost per visit to inspection chambers

The answers from third-party entities to the requirements for information have contributed numerous experiences on redefinitions where the inspection chambers have been visited. It may be determined that the cost per inspection chamber[8] oscillates between €7 and €42 , with the average being the following:

Operator	Average time per visited inspection chamber	Average cost of the redefinition per visited inspection chamber
GIFPA	14 minutes	€ 8.26
Unión Fenosa	26 minutes	€ 23.87
22@	27 minutes	€ 21.19
AVERAGE	**23 minutes**	**€17.77**

The resulting average cost is therefore in line with the amount of €15.41 proposed by Telefónica (derived from a review of the junction box for a period of 0.7 hours), so its modification is not considered necessary.

Variable cost per visit to junction box chambers

According to the justification provided by Telefónica, the time spent on the review being conducted in each junction box chamber in order to identify vacant space and determine the viability of the occupation by the operator, is identical to that used for the review of a inspection chamber, i.e., 0.7-hour, period which seems appropriate as mentioned above.

[8] Said price was obtained by dividing the total cost of the intervention by the number of visited inspection chambers.

However, according to Telefónica when it visits a junction box chamber, a further period of 3 hours is required for opening, cleaning and drainage. It should be pointed out that although the opening of chambers involves taking certain precautions because of their nature as underground facilities, such as their previous signalling, detection and evacuation of toxic gases, the placement of the necessary access measures or cleaning, the time (and cost) stated by Telefónica is considered as excessive. In fact it should be noted that, as stated in the MARCo offer, when the status of the junction box so requires, sewage, cleaning, asphalting and deasphalting, etc. works must be performed, which will be additionally invoiced, so such extremes cannot be foreseen as included within the 3 hours indicated term (in other words, it is not admissible to invoice twice for the same concept).

In any case, in order to establish whether the tasks performed during the redefinition consume a period as long as the one given by Telefónica, an examination of the redefinitions already performed in the context of the MARCo service has been made. For this purpose we logged in NEON where it has been noted, information on a sample of more than 100 redefinitions conducted jointly with the operators, in which the vast majority had been completed in one working day. Among such samples are many redefinitions in which the number of open junction box chambers exceeds 8, which openly contradicts the periods prescribed by Telefónica.

Indeed, considering the period of 3.7 man hours per open chamber indicated by Telefónica (1.85 hours considering the involvement of two operators), a working day would be sufficient only for opening of 4 chambers. In contrast, what was observed in the effected examination reflects operations per chamber that are less than 2 man-hours.

Accordingly, in view of the above it can be concluded that a period of 1.3 hours[9] spent on the opening, signalling, gas detection and evacuation and access, as well as a period for visit and review of the infrastructure of 0.7 hours, is sufficient for accessing and carrying out the redefinition work in each junction box chamber.

Redefinition in junction box chamber	**Term (hours)**	**Cost**
Opening, signallng and access to the chamber	1.3	€28.60
Inspection of the junction box chamber	0.7	€15.40
Total	**2.0**	**€44,00**

Variable cost per visit to poles

There are no external data on the duration of visits to poles, as the entities which have being requested for information (GIFPA, Unión Fenosa, Iberdrola or 22@) have not developed equivalent activities.

However, the price provided by Telefónica responds to a performance of 0.25 hours per visit to each pole, which is considered proportionate.

Additional cost for work at night and on weekends

In the current text of the reference offer the price increase is contemplated if the redefinition takes place during a holiday or at night as required by public entities.

In this regard it is noted that the costs incurred during the redefinitions correspond mainly to labour, and that in principle it is justifiable to increase the labour costs in such cases. Indeed, and consistently with the methodology, it is considered that if taking into account for the

9 One hour is considered as the term, which is oversized by 30% to take into account the expenses of the equipment needed to perform the outlined work.

remainder of the analysis the point/hour cost in Telefónica's general contract for the provision of the MARCo service, that reference should also be considered for work done at nights and on weekends. Therefore, the estimated increases of 20% and 40% proposed for interventions made during evening hours or during the weekend, respectively, are deemed as justified.

Pricing for other interventions

Finally, in relation to other exceptional activities aimed at providing access to Telefónica's junction boxes, such as sewage, deasphalting, removal of vehicles, etc.., which as indicated in the MARCo offer are excluded from the reference pricing, it should be noted that Telefónica proposal for passing on the impact of its cost to the operator is considered to be reasonable, provided that the invoiced prices match the market prices.

3.2.4.3 International references

The offers of France Telecom and Portugal Telecom are not a directly comparable reference, since the first one foresees the completion of the redefinition unilaterally by the operator (except when drilling a chamber is required), while in the second case the operator is not involved in the redefinition of the infrastructure.

Notwithstanding the differences noted, it is feasible to compare the cost to be met by an operator in Spain, France and Portugal to perform all the tasks prior to the occupation of the infrastructure which is the object of the application, i.e. requests for attention, feasibility analysis and, if applicable, redefinition. The result of the comparison is given in the table below, where as criteria for calculation have been considered:

- Telefónica's offer. It is considered that during the redefinition approx. 80% [10] of the junction boxes and inspection chambers in the application are visited.
- France Telecom's offer. While the French offer provides for the redefinition to take place without the participation of the incumbent operator, the option to request to be escorted by a representative of France Telecom is provided, in which case an hourly rate is charged whose price varies depending on the type of schedule (working / not working / urgent)

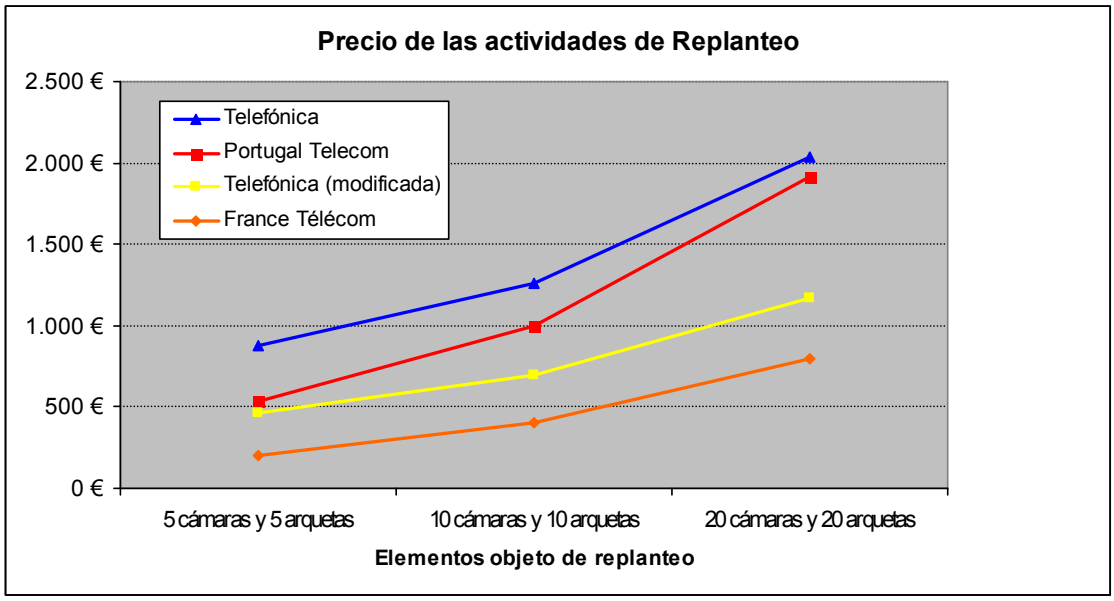
France Telecom's fee for accompanying and / or displacement	
During working hours	€79.4/h
During non-working hours	€158.8/h
Urgent interventions	50% increase in the price

  However the accompaniment is optional, so in the comparison it is assumed that the operator is not requesting it, and thus, as indicated in France Telecom's offer, the charging of a cost for each chamber or inspection chamber being applied for under the concept of a validation study, updating documentation and technical verification is only considered in the following comparative table.

- Portugal Telecom's offer. We have already noted that there is no provision for the option of joint redefinition, so its cost is nil. However, it is invoiced per box or inspection chamber requested for shared usage under the concept of feasibility analysis (including visit to the infrastructure, where necessary, by Portugal Telecom).

[10] Percentage of visits to junction box chambers as observed in the redefinitions performed until now (information checked by the CMT by accessing the NEON/CARPE systems which serve the provision of the MARCo service.

	Price per application	Price per chamber or inspection chamber being requested	Fixed price redefinition	Price per visited chamber	Price per visited inspection chamber	Cost of the application, analysis of viability and redefinition, based on the number of junction boxes and inspection chambers included in the application		
						5 junction boxes and 5 inspection	10 junction boxes and 10 inspection	20 junction boxes and 20 inspection
Telefónica	€78.92		€363.00	€81.40	€15.41	926	1,410	2,378
Telefónica modified[11]	€52.5		€154.00	€44.00	€15.41	**460**	**698**	**1,173**
France Telecom		€20.00				200	400	800
Portugal Telecom	€72.80	€46.10				534	995	1,917



3.2.4.4 Modification of the offer

Following the analysis accomplished by estimating the time during which the reference tasks can be reasonably completed and the comparison with external (operators) and international (wholesale offerings) references, the following price change for the activities related to visiting-redefining can be deducted:

		MARCo price as initially proposed	**MARCo price as revised**
Analysis of applications previous to the visit-redefinition		€78.92	**€52.5**
Activity of visits-redefinition	Fixed cost	€363.00	**€154.00**
	Visit to chamber	€81.40	**€44.00**
	Visit to inspection chamber	€15.41	**€15.41**

[11] According to considerations contained in the above sections.

	Visit to pole	5.49	**€5.49**
Costs for additional working hours	Night hours	+20%	**+20%**
	Hours worked during weekend	+40%	**+40%**
Others interventions (sewage, removal of vehicles, deasphalting, etc.)		Impact of the incurred cost, case by case	**Impact of the incurred cost, case by case**

3.2.5 Supplementary activities for the redefinition associated with the poles

Following the execution of the redesign it may be necessary to carry out certain tasks in order to facilitate the commencement of the work for the occupation of the requested infrastructure. In particular, the use of poles for laying new cables requires a verification of the affected span mechanical calculations; depending on the effected analysis, the need for bracing or replacing this pole with one having better mechanical performance may arise.

That is, the location of the network of a new operator may require specific interventions on the poles; the question arising is: who will bear the costs derived from them? In this regard, some operators sustain in their arguments that Telefónica is the main beneficiary of the improvement or replacement of a pole by another with better characteristics or capacity (for example, wooden pole by concrete pole) due the appreciation of the involved infrastructure. However, Telefónica sustains that this is an expense that it would not have incurred but for the obligation to provide MARCo services, since the previous pole perfectly fulfiled its function.

However, in line with what is said by Telefónica it can be concluded that the situation is basically an extension of the infrastructure whose cost must be borne by the operators making use of it (of the extension), i.e., by operators seeking access, and not by Telefónica, unless the latter is going to benefit from the expansion of capacity by installing additional network resources.

Nevertheless, it must be commented that the replacement of poles in poor condition is a special case, which must be Telefónica's sole responsibility because it is an infrastructure maintenance task whose associated costs are being imposed on the operators in the occupancy recurrent prices, and therefore it cannot involve any additional cost for the applicant operator.

Modification of the offer

The reference offer already includes the extremes described, so no amendment is considered necessary.

3.2.6 Activation in IT systems by an application for shared usage

3.2.6.1 Justification of the price by Telefónica

The price for activation is billed for the activities of registering the application for shared usage, once the correspondence of the descriptive report made by the operator with what is agreed upon in the redefinition is verified.

Specifically, according to the procedural description provided by Telefónica, the operations that are to be performed include:

- Checking, after the operator loads into NEON the descriptive report and the act of redefinition, that the information corresponds with what was agreed in the redefinition.

- Identifying in NEON all incorrect junction boxes or poles, specifying which would be the correct ones or the reason for the error, in order for the operator to have sufficient information for remedying them.
- Entering in NEON certain additional information necessary for billing the operator: metres of shared ducts, metres of used subducts, metres of installed subducts and cable type.

Telefónica indicated in its response to the request for information that the proposed price reflects the commitment of 1.5 hours in order to perform the outlined tasks.

3.2.6.2 Analysis of the proposed price

The dedication of resources proposed by Telefónica is not well based, and it is estimated as being unreasonably high for an administrative activity of the scope described.

On believing that the verification of the descriptive report provided by the operator can be completed in 30 minutes for an average deployment (composed, as already noted, of 20 junction boxes), and that the introduction in NEON of the necessary information for billing the operator can take place, assuming an efficient approach by Telefónica, in no more than 20 minutes it can be concluded that the activation process can be completed in no more than 50 minutes.

Also, when adding to this period an additional margin of 20% for erroneously repeated applications made by the operator, the total period for the process of activation in the IT systems must not exceed 60 minutes, with an associated cost of €31.5[12].

Activation in IT systems	**Term/Cost**
Time for verification of infrastructure elements	30 minutes
Calculation of distances and entry of data for invoicing the operator	20 minutes
Total term dedicated to processing the application, without reiterations	50 minutes
Total time spent processing the application, given an extra 20% due to dealing with repetitions	60 minutes
Cost of the process of activation in IT systems	**€31.5**

Modification of the offer

The price of €31.5 must be set for the activation in the IT systems.

3.2.7 Occupation of infrastructures

First, quotas are calculated for monthly occupancy of each of the elements of civil works infrastructure provided in the MARCo offer submitted by Telefónica using the different sources of information already mentioned, as it has been possible to identify references from elements similar or equivalent to those described in the Technical Regulations of the offer.

Also the justification for the calculation of the prices offered by Telefónica has been analysed, based on the requests for information sent to it. From the calculation above, as supplemented with the analysis of cost justification provided by Telefónica, it is possible to determine the adequacy and reasonableness of monthly prices in respect of occupation of

[12] Using for the calculation the hourly cost considered by Telefónica in its reply to the request.

civil infrastructure elements which appear in the text of the offer submitted by Telefónica (ducts, subducts, junction boxes and poles)

3.2.7.1 Occupation of ducts or subducts

3.2.7.1.1 Justification of Telefónica's prices

The information contained in the most recent documents sent by Telefónica, dated 2 and 15 October respectively, has finally allowed the CMT to proceed to a detailed analysis and verification of the methodology used by Telefónica to calculate the pricing published in its offer. Those documents include specific data on Telefónica's inventory of civil works (not directly extractable from the Cost Accounting), the breakdown of the considerate cost concepts and the justification of the unit costs charged per each element, data which are necessary to verify the performed calculations. Telefónica has also provided the calculation and the updated results as per the Cost Accounting for 2007 (approved by this Commission), as required of it.

Having examined the basic data and the calculation process, it can be concluded that the procedure used by Telefónica in the event of the price for transferring complete ducts is suitable. However, recurring costs are not acceptable for occupying subducts, obtained by Telefónica through the following formula:

Annual cost/km = annual investment/km + annual maintenance/km

Annual cost/km =

where:

- CAPEX (C): Depreciation and capital costs associated with the ducts.
- CAPEX (SB): Depreciation and capital costs associated with the subducts (tritubes installed in the Telefónica plant).
- KM (C): Total length of ducts in kilometres (coming from Telefónica's inventory of civil works).
- KM (SB): Total length of installed subducts in kilometres (coming from Telefónica's inventory of civil works).

That is, Telefónica expects to pass on to the operators the unit costs for depreciation and annual capital expenditure (CAPEX) associated with the installation of the subduct, which would be equivalent to charging the operator the installation costs for the tritube. That is, Telefónica assumes that the operator will use a subduct paid by Telefónica in all of the cases and, consequently, it passes to the operator the cost of installation through the monthly fee, not taking into account that it is the operator who undertakes the installation in many cases and, moreover, the number of ducts with installed subducts is a very small proportion as compared to the total of ducts whose ownership Telefónica currently holds. Consequently, and given the reasons stated above in the section concerning the ownership of subducts, there is no need to allocate said cost to the monthly recurring price, with the following formula being used to calculate the costs arising from using the subducts:

Annual cost/km =

The table below shows the results for the detailed costing calculation of subduct occupancy, according to the above formulae and including the investment in IT systems supplied by

Telefónica, whose reasonable nature has already been confirmed. Therefore, the calculated values are:

- According to Telefónica's' methodology: The costs of installation and maintenance of the tritube (CAPEX) and the costs of maintenance (OPEX) are transferred.
- According to the modification established by the CMT: by considering only the costs of maintenance of the tritube.

Methodology	Annual investment (depreciation and capital)	Annual maintenance	Allocation of the investment in IT systems	Total annual cost	Monthly recurring cost (including 7% as structure costs)
Subduct/ both CAPEX and OPEX are taken into consideration (Telefónica's methodology)	0.814	0.033	0.0001072	0.848	0.076
Subduct/ only OPEX is taken into consideration (CMT's methodology)	0.693	0.033	0.0001072	0.727	0.065

Invoicing per occupied useful area

Telefónica proposes that when the operator installs fibre cables directly in conduits, one third of the total cost of the duct must be invoiced, assuming that it consumes one third of the available space. As this is not true in general, the billing follows a criterion that is not adjusted to the costs. For instance, installing a 128-fibre cable (approximately 18mm in diameter) takes up 7% or 22% of the useful area of 110 and 63mm ducts respectively, and not 33% as Telefónica would allocate as cost.

The price for the use of ducts should be based on the portion of the useful area actually occupied. This can be done by dividing the cost of the complete duct supplied by Telefónica by its useful section (prone to locate cables or subducts) which, as we know, is 40% of the total duct section.

The prices for occupancy per surface will apply to the cases already mentioned in the section related to occupation standards, whose amendment responded to the need to introduce certain criteria for optimisation of the available resources:

- In feeding and distribution networks, when cables are installed using subducting techniques where the occupied surface is determined by the cables themselves and not by the subducts (textile flexible materials).

- In side outputs and dispersion network, when cables are installed directly in ducts due to the inexistence of obligation of subducting.

In both cases, the occupied useful area of the duct will be the sum of the sections of the installed cables. In the event that the cables installed by all operators occupy the entire cross-section of the duct (i.e., 40% of the total internal section), the amount to be invoiced by Telefónica will be equal to the cost of the complete duct, according to the data arising from the cost accounting.

Methodology	Monthly recurring cost (including 7% as structure costs)

	110mm duct or similar	63mm duct or similar
Occupation of useful area[2])	0.0055	0.017

3.2.7.1.2 Comparison of Telefónica's costs with external references

The following describes the calculation methodology used to obtain prices for occupancy of ducts and subducts from external references, other than Telefónica's Cost Accounting, with the aim of comparing the results with the prices offered by Telefónica:

1. Calculation of the costs of the infrastructures (Ci)

   The costs of the materials used have been calculated, as well as those for the labour required for civil works and installation of the involved infrastructure. From the aforementioned references the following useful information has been extracted:

   - Data bases of construction and civil works prices available to the public. In each price data base the prices available for raceways from 1-12 ducts of 110 mm and of 1-4 ducts of 63 mm [13] in diameter have been identified, calculating from these data the average cost per installed duct.
   - Requirements for information to third party entities (22@, GITPA, Iberdrola and Unión Fenosa). In their responses to the requirements, these entities have provided disaggregated information on the costs of the civil works elements that are most similar and comparable to those found in Telefónica's access network infrastructure. Most of the consulted entities have provided itemised costs for various raceway configurations composed of 110mm ducts. On the contrary, they could not provide information about configurations consisting of 63mm ducts.
   - Study of costs of the RUO. The calculation of the price for the service of signal delivery through multi-operator chamber has been used; the cost per metre of raceway is extracted from it. For the purposes of these calculations, a "typical" prismatic raceway pipe of 4 X 110mm ducts or 6 X 63mm ducts has been considered, according to the characteristics of the type D inspection chamber typically installed to provide that service.

   In all cases, the criteria for reservation of space as defined in the paragraph "Required modification" were taken into account, as referred to in Section 3.1.4.1 for each of the groups of ducts.

2. Determination of the initial cost (C1) per metre of duct the group of operators who use it would have to pay, amortised over the 30 years corresponding to the useful life of Telefónica's civil work elements[14]. The annual financial amortisation with a WACC of 10.94% has been used for the calculation[15].
3. 1.5% per annum of the total upfront costs has been considered for the recurrent costs attributable to maintenance (C2).
4. The C1 and C2 costs are increased by 11.05% in respect of the common costs[16]. Thus, the total monthly cost per use of the duct has been obtained.

[13] Number of ducts normally present in the raceways of the Telefónica access network.

[14] Resolution dated 20 November 2008 on the depreciation types applicable in the cost accounting of Telefónica de España S.A.U. (file DT 2008/450).

[15] Last value as approved in the Resolution AEM 2009/18.

5. Finally, in the case of the 110 mm duct, the total monthly cost per use of the element is divided by the number of subducts likely to occupy it (3), because complete 110mm ducts will never be transferred. Thus the weighted cost per operator (Cp) is obtained. The cost associated with the tritube inserted into the subduct has not been accounted for, since it will be the first operator to make use of a particular span (Telefónica or a licensed operator) who assumes the corresponding tritube installation.

The comparative table below shows the results obtained using the calculation methodology applied to the different available sources of information, with the possibility of comparing the prices resulting from those references to those proposed by Telefónica in its reference offer (see the details of the base data used in Annexe 2):

	Ci - Total cost of construction of infrastructures (materials and installation) **Euros/linear metre**			**Cp - Monthly recurring cost subduct/duct/shared duct (depreciation and maintenance)** **Euros/linear metre**			**MARCo offer price proposed by Telefónica** **Euros / linear metre**
	Reference to RUO costs	Data bases public prices	Req. for third parties entities	Reference to RUO costs	Data bases public prices	Req. for third parties entities	
110mm complete duct	27.74	16.96	26.05	0.33	0.20	0.31	0.19[17]
40mm subduct[18]	-	-	-	0.11	0.07	0.10	0.08
63mm complete duct	17.34	8.75	N.A.[19]	0.21	0.10	N.A.	0.19
Shared duct in side outputs or dispersion network.[20]	-	-	-	0.07	0.03	N.A.	0.08

As shown in the table, the prices for the usage of subducts sent by Telefónica are at an intermediate point with respect to the considered references: slightly higher than those resulting from the price data bases and lower than those obtained from the RUO costs and from the information provided by Iberdrola, GITPA, Unión Fenosa and 22@.

Concerning the price for complete transfer of 63mm conduit, as well as shared in side outputs and dispersion network, the latter being calculated as one third of the price of the complete duct, it can be seen that the price offered by Telefónica is aligned with the values extracted from the cost study of the RUO, although it is significantly higher than the average value of the various price data bases surveyed.

This difference confirms what was stated in the previous section regarding the need to change the billing procedure when the cabling is carried out directly in ducts, or subducts are

16 Percentage considered in the cost study of the RUO.

17 Not applicable, it represents a theoretical case since the transfer of a complete 110mm duct is not admissible, but is included in the table because of other costs resulting therefrom.

18 It is calculated as one third of the cost for the 110mm duct.

19 The questioned entities have not submitted information related to 63mm ducts.

20 These ducts are 110, 63 or 40mm. To calculate the proportion attributable to the operator in a similar way to the estimate by Telefónica, it is estimated that on average, the percentage of useful area occupied by the operator is around one third of the total (i.e., it is calculated as one third of the cost of the 63 mm duct).

used whose impact on space consumption is negligible, so that prices adjusted to the actually consumed space are applied, thereby reducing them.

3.2.7.1.3 International references

The costs comparison between the various international offers cannot be directly made due to it depending on different measurement units not covering the same concepts. However, certain calculations and assumptions have been performed that make it possible to compare prices based on the objective reference unit which is the price for occupied useful section and linear metre of duct.

In the comparison made it must be noted that the prices offered by France Telecom, although apparently much higher, include the junction boxes crossed by the requested duct span, unlike Telefónica's offer where this concept is subject to separate invoicing. The same applies to the Portugal Telecom's offer, where billing is not performed according to all junction boxes crossed, but only for those that meet certain conditions (for example, those that contain passive equipment of the operator). Therefore, for comparative purposes a correction factor which increases the share of Telefónica proportionally to the average number of crossed junction boxes is applied in the following table, according to the following formulae:

Total price for occupation of infra. = Price for occupation of ducts + Average price for occupation of junction boxes
(per sq cm and linear metre) (per sq cm and linear metre) (per linear metre)

where 'Average price for occupation of junction boxes' is calculated as the average price per junction box (€4) per linear metre considering 80 metres as the average distance between junction boxes, using the following formula:

Price for occupation or junction boxes = Average price per junction box × (1 + (distance in application / average distance))
(for a certain application) (€4) (in metres) (80 metres)

where, by considering applications for occupation for 500 spans of ducts, an average price for occupancy of ducts per linear metre of **€0.058** is obtained.

Given the above, the following comparisons can be made in relation to the price per metre of one subduct of 40mm as OD (12.56 sq cm of total area), located in a duct of Telefónica, France Telecom, and Portugal Telecom:

Monthly rates (per linear metre)	**Telefónica's proposal**	**France Telecom's offer**	**Portugal Telecom's offer**
Price per 40mm of subduct	0.08	1.256[21]	0.133[22]
Average price for occupation of junction boxes	0.058	0	0.0192[23]
Total price for occupation of subduct and pertinent junction boxes	**0.138**	**1.256**	**0.152**

It is also necessary to compare the price to be paid by such operators for the cable installation directly in the duct (for the purpose of calculating, one 64-fibre cable is assumed whose diameter would be approximately 15mm):

21 €0.1 per sq cm of occupied area.

22 €0.0106 per sq cm of occupied area (in Lisboa and Oporto).

23 By estimating for statistical purposes that at least two passive pieces of equipment (splice boxes) and one point of entry are located in applications for 500-metre spans.

Monthly rates (per linear metre)	Telefónica's proposal	France Telecom's offer	Portugal Telecom's offer
Price for installation of 15mm cable	0.08[24]	0.452	0.0479
Average price for occupation of junction boxes	0.058	0	0.0192[25]
Total price for cable installation	**0.138**	**0.452**	**0.0671**

The benchmarking made shows, in the first place, a significant deviation from the prices included in the French offer (apart from the performed calculations, an initial reading of the offer reveals prices per cm ^{2} per occupied section that are 10 times higher than those of Telefónica or Portugal Telecom). However, those amounts should be considered with caution, as they are currently subject to a review process as part of a public consultation made by the French regulator (ARCEP).

Apart from the above, it can be seen firstly, that the price offered by Telefónica with respect to the price per 40mm subduct is aligned with the value presented by Portugal Telecom, which is just as reasonable as shown in the comparison with external references.

Moreover, and also in line with the previously observed references , again the price resulting from the direct installation of optical cables in ducts is significantly higher than in the case for Portugal Telecom, due to the criterion for revenue stated by Telefónica for billing a fixed price irrespective of the area occupied.

3.2.7.1.4 Determination of the prices

In view of the foregoing, it is deemed appropriate to proceed to change Telefónica's proposed prices, in order to adapt them to the following criteria:

- In the case of subducts it is necessary to revise the methodology for calculating costs, in order to not to pass on to the recurring price the costs resulting from the installation of tritubes, as has been argued above.
- Moreover, the concept of billing for an occupied area is introduced, which applies in the cases that have already been mentioned. The price will be calculated based on the sum of the installed cable spans, in response to the following formula:

$$\text{Price} = (\text{diameter of the cable}/2)^2 \times \Pi \times \text{Price sq cm}$$

The following shows, by way of example, the referenced prices for certain types of cable:

Type of cable	Approximate diameter (mm)	Total surface (sq cm)	Monthly price per sq cm of useful area (in 110mm duct)	Monthy price per metre
64-fibre cable	15	1.76	0.0055	0.00968
128-fibre cable	18	2.54	0.0055	0.01397
256-fibre cable	20	3.14	0.0055	0.01727

[24] As proposed by Telefónica, it is not billed per unit of occupied area, but a fixed price is charged for installation in shared duct.

[25] By estimating for statistical purposes that at least two passive pieces of equipment (splice boxes) and one point of entry are located in applications for 500-metre spans.

Using the methodology described, the occupation of the entire duct section (40% of the internal section) will cover the full cost of €0.19 reported by Telefónica based on the cost accounting.

Modification of the offer

Finally, the monthly recurring prices for the occupation of ducts and subducts, obtained from data from the Telefónica's Cost Accounting for 2007, after applying the above criteria will be those included in the following table (in €/linear metre):

Infrastructure element transferred		MARCo price as proposed	MARCo price as revised
40mm subduct (per unit)		0.08	**0.07**
Complete 63mm duct (per unit)		0.19	**0.19**
Installation of fibre in ducts[26] (per sq cm of useful area)	110mm ducts or similar	0.08	**0.0055 / sq cm**
	63mm ducts or similar		**0.017 / sq cm**

3.2.7.2 Occupation of junction box chambers and inspection chambers

3.2.7.2.1 Justification of Telefónica's prices

Starting from the basic data provided by Telefónica, we have proceeded to check the price calculation made, being able to see that the total recurrent costs per junction box (depreciation and maintenance) have been calculated correctly based on the information contained in the cost accounting. Moreover, the additional information incorporated in recent letters sent by Telefónica has shown that the allocation as investment in IT systems assigned to each junction box type is also appropriate.

The methodology followed by Telefónica and verified by the CMT is to allocate costs in proportion to the current value of each type of chamber and inspection chamber, so that their sum is equal to the gross fixed asset of the class indicated. The unit cost is obtained by dividing the cost of each type by the number of units existing at the plant. Meanwhile, the investment in IT systems is related to the weight of the annual unit transferred investment of the civil works element in the global computation, assuming a number of assumptions regarding the proportion of chambers, inspection chambers and metres of duct per application. Once the details of the calculations have been are revised, it is concluded that the procedure adopted by Telefónica to determine the total recurrent costs associated with each type of junction box is correct.

However, it cannot go unnoticed that in some cases the estimate of a highly relevant factor in determining the final price is not justifiable; namely, the weighting applied by Telefónica to determine the proportional share of the cost to be paid by each application for shared usage. To this end a formula to keep proportion to the percentage of occupation of the resource by the operator seeking access to the same must be adopted, as in the case of the ducts. Therefore a cost must be determined as a function of the occupancy percentage of the total capacity of the junction box.

[26] It Applies to directly installation in duct (without subduct) or using flexible subducting techniques. It is calculated by dividing the cost of the duct (€0.19) by its useful section (40% of the internal section, which in turn is derived from the inside diameter; e.g. 105mm, 60mm).

For this purpose the determining factors are not only the maximum number of ducts that physically pass through the junction box, given the design characteristics of it (listed in the Technical Regulations), but also the number of ducts that normally pass through each type of junction box, given the criteria for sizing the network span where it is located (feeding, distribution or dispersion).

For example, although Telefónica's Technical Regulations include junction box chambers with a 30duct capacity, it should be noted that in the higher density span of Telefónica's network which constitutes the feeding network, the number of ducts per raceway is, according to Telefónica, around 10-12. Therefore, the factor that will effectively determine the actual percentage of use of the junction box, which in turn limits the number of technically feasible applications for access to it, can be calculated based on the number of ducts present in the raceway connected to the junction box.

The following listing is estimated as representative of the typical sizing of Telefónica's infrastructure network:

- Feeding network: 10-12 ducts.
- Distribution network (side raceways): 2-4 ducts.
- Side outputs: 2 ducts.

Consequently, given that it generally can be equivalent to the occupation of a subduct, each application for occupation may result in the following utilisation rate of the junction boxes crossed:

Network span	Number of ducts normally present in the raceway prism of the inspection chamber	Number of applications for occupation that are theoretically viable[27]	Percentage of junction boxes corresponding to each application of occupation
Feeding network	10	27	3.7 %
Distribution network (side raceways)	3	7	14.3 %
Side outputs	2	6	16.6 %

However, on applying the weighting factors corresponding to the percentage of junction box attributable to each application for occupancy (listed in the table above) to the monthly recurring costs per junction box presented by Telefónica (based on the Cost Accounting, 2007), the following prices for shared usage of the different types of junction box are obtained:

	Monthly recurring cost Total per junction box, not including	Weighting factors	Price for shared usage in Telefónica's	Number of applications for occupation theoretically viable (weighting factors	Price for shared usage resulting from applying the weighting factors considered by the CMT, and including	Percentage of deviation

[27] Three applications for occupation are considered per duct, excluding, in the case of the feeding networks and secondary raceways, the ducts and subducts corresponding to the reserve, as determined under the rules for occupation. That aspect is not accounted for in the side outputs as the criteria for space reservation are not considered.

				considered by the CMT)	(€/month)	
Large rectangular chamber gABP type	47.05	17.14	3.09	**27**	**2.02**	35%
Small rectangular chamber gBR type	37.60	6.56	6.38	**7**	**5.99**	6%
Small rectangular chamber gBRF type	32.01	6.55	5.43	**7**	**5.09**	6%
Large curve chamber gLP type	69.30	17.15	4.55	**27**	**2.97**	35%
Large curve chamber gTP type	76.81	17.16	5.04	**27**	**3.29**	35%
Large curve chamber gJP type	73.03	14.44	5.65	**27**	**3.13**	45%
Small curve chamber gJR type	49.29	6.56	8.36	**7**	**7.86**	6%
Small curve chamber gLR Type	49.27	6.56	8.36	7	7.85	6%
Small curve chamber gTR Type	49.38	6.56	8.38	7	7.87	6%
Large inspection chamber D type	7.15	5.98	1.34	7	1.15	14%
Large inspection chamber DFO type	6.52	5.97	1.22	7	1.05	14%
Large inspection chamber DFOC type	8.73	5.97	1.63	7	1.40	14%
Large inspection chamber H type	4.49	6.00	0.84	7	0.73	14%
Small inspection chamber M type	1.37	6.03	0.26	6	0.26	0%

A significant deviation in the case of junction box chambers of the "P" series (highlighted by shading) can be seen in the table. Based on the weighting factors applied by Telefónica (for which it has not provided adequate justification), the prices are between 35 and 45% higher than those resulting from applying to the same recurrent costs the weighting factors deemed reasonable under the criteria outlined above.

Meanwhile, all other types of junction boxes do not show such marked differences; this leads to the deduction that in principle the factors applied by Telefónica are not disproportionate and their modification a priori is not considered necessary.

For these reasons, we can conclude that it is necessary to change the prices of the junction box chambers gABP, gLP, gTP and gJP, as per the data in the table above.

3.2.7.2.2 Comparison of Telefónica's costs against external references

The following describes the calculation method used for obtaining the prices for occupancy of junction boxes from external references, similar to what is done for the case of the ducts and subducts:

1. Calculation of the costs of the infrastructures (Ci)

   The costs of the materials used have been calculated, as well as those for of labour required for civil works and installation of the involved infrastructure. The data sources used are those already mentioned above:

   - Data bases of construction and civil works prices available to the public. The prices available for types of junction box chambers and inspection chambers of features

and dimensions similar to those contained in the Technical Regulations of Telefónica have been extracted from each pricing datga base[28].

- Requirements for information from third party entities (22@, GITPA, Iberdrola and Unión Fenosa), for which the prices of junction box chambers and inspection chambers used in their network deployment are provided.
- Study of RUO costs. The data used for calculating the price of the service of signal delivery through multi-operator chamber has been used. Specifically, the prices for certain types of junction box chambers and inspection chambers used in this method for signal delivery can be identified (usually the chamber or inspection chamber is shared by several operators co-located at the exchange, so case is very similar to the present one).

2. Determination of the initial cost (C1) per junction box payable by the group of operators who use it, amortised over the 30 years corresponding to the useful life of Telefónica's' civil work elements. The annual financial amortisation with a WACC of 10.94% has been used for the calculation.
3. 1.5% per annum of the total upfront costs has been considered for the recurrent costs attributable to maintenance (C2).
4. The C1 and C2 costs are increased by 11.05% in respect of the common costs. Thus, the total monthly cost per use of the junction box has been obtained.
5. Finally, the total monthly cost per use of the element is divided by the number of applications for occupation theoretically viable (see section above), thus obtaining the weighted cost per application from the operator (Cp).

Again, as a result of the baseline methodology it has been possible to generate a table that allows for an objective comparison of the references consulted against the prices offered by Telefónica (Annexe 2 lists the basic data with a higher level of disaggregation):

JUNCTION BOX CHAMBERS	**Ci - Total cost of infrastructures (materials and installation)** **Euros/junction box**			**Capacity of the junction box** **(Number of theoretically viable applications)**	**Cp - Monthly recurring cost per shared usage (depreciation and maintenance)** **Euros/junction box**			**Price for Telefónica MARCo offer** **Euros/junction box**
	Reference to RUO costs	Data bases public prices	Req. to third parties entities		Reference to RUO costs	Data bases public prices	Req. to third parties entities	
Small rectangular chamber gBR type	4,701.69	4,554.44	5,503.15	7	8.00	7.75	9.37	6.38
Small rectangular chamber gBRF type (pref)	N.A.	5,602.08		7	N.A.	9.53	N.A.	5.43
Small curve chamber gLR Type	N.A.	6,000.44		7	N.A.	10.21	N.A.	8.36
Small curve chamber gJR type	N.A.	N.A.		7	N.A.	10.21*	N.A.	8.36
Small curve chamber	N.A.	N.A.		7	N.A.	10.21*	N.A.	8.38

[28] In this case, the references from the pricing public databases are an estimate, given as a guide, and must be considered with caution, since items with the same characteristics as those of the Telefónica network are often unavailable. Thus, in many cases the most similar has been chosen. A wide diversity in the prices published by the different pricing data bases for similar items has also been identified, as shown in the table in Annex 2.

gTR Type								
Large rectangular chamber gABP type	5,954.76[29]	5,477.00	8,052.50[30]	27	2.63	2.42	3.55	3.09
Large curve chamber gLP type	N.A.	N.A.		27	N.A.	N.A.	N.A.	4.55
Large curve chamber gJP type	N.A.	N.A.		27	N.A.	N.A.	N.A.	5.65
Large curve chamber gTP type	N.A.	8,365.70		27	N.A.	3.69	N.A.	5.04
Junction box chamber IPC	N.A.	N.A.		N.A.	N.A.	N.A.	N.A.	6.38
Junction box chamber NN	N.A.	N.A.		N.A.	N.A.	N.A.	N.A.	1.53
Other junction boxes	N.A.	N.A.		N.A.	N.A.	N.A.	N.A.	1.53

**NOTE: No references are available for all types of junction box chamber existing in the Telefónica network, although several assumptions can be made based on their size and characteristics (e.g., the cost of the gJR and gTR chambers can be considered similar to the one for the GLR type chamber).*

CABINETS	**Ci - Total cost of infrastructures (materials and installation)** **Euros/junction box**			**Capacity of the junction box** **(Number of theoretically viable applications)**	**Cp - Monthly recurring cost per shared usage (depreciation and maintenance)** **Euros/junction box**			**Price for Telefónica MARCo offer** **Euros/junction box**
	Reference to RUO costs	Data bases public prices	Req. to third parties entities		Reference to RUO costs	Data bases public prices	Req. to third parties entities	
Large inspection chamber D type	1,266.41	712.32	973.07	7	2.16	1.21	1.66	1.34
Large inspection chamber DFO type	N.A.	917.62	N.A.	7	N.A.	1.56	N.A.	1.22
Large inspection chamber DFOC type	N.A.	1,300.80	N.A.	7	N.A.	2.21	N.A.	1.63
Large inspection chamber H type	N.A.	462.25	649.92	7	N.A.	0.79	1.11	0.84
Small inspection chamber M type	N.A.	131.08	312.97	6	N.A.	0.26	0.62	0.26
Inspection chamber IPC	N.A.	N.A.	N.A.	N.A.	N.A.	N.A.	N.A.	6.38
Inspection chamber NN	N.A.	N.A.	N.A.	N.A.	N.A.	N.A.	N.A.	1.53
Inspection chamber F	N.A.	N.A.	N.A.	N.A.	N.A.	0.79*	N.A.	0.84
Inspection chamber S	N.A.	N.A.	N.A.	N.A.	N.A.	1.21*	N.A.	1.34

**NOTE: No references are available for all types of inspection chambers present in the Telefónica network, particularly for very old or non-standard chambers, although in the case of the inspection chambers F and S it can be estimated that their cost is similar to the H and D type respectively.*

The previous tables are intended to confirm that the prices resulting from the cost accounting of Telefónica are not disproportionate. They therefore constitute a reference that is considered valid for comparison, but the aim is not to systematically adjust all prices of the MARCo offer to the observed references.

[29] The GBRF-C chamber has been taken from the RUO cost study, since it is the one most similar in dimensions to the GABP.

[30] Costs have been taken for one 9 square-metre junction box chamber reported by one of the entities, although it should be noted that this area is considerably larger than that of the GABP chamber (4 sq m).

In this sense, the data in the table corresponding to the junction box chambers would confirm what was found in the previous section on the need to revise the prices of the chambers of the "P" series downward.

3.2.7.2.3 Determination of the prices

It can be concluded that the prices offered by Telefónica are reasonable in principle, except those for the junction box chambers of the "P" series which should be modified as detailed below. The other prices are revised based on the calculations made using data corresponding to the Cost Accounting 2007 sent by Telefónica.

Modification of the offer

	MARCo Offer price proposed by Telefónica, according to Accounting 2007 (€/month)	**New price to be included in the Offer (€/month)**
Large rectangular chamber gABP type	3.09	2.02
Small rectangular chamber gBR type	6.38	6.38
Small rectangular chamber gBRF type	5.43	5.43
Large curve chamber gLP type	4.55	2.97
Large curve chamber gTP type	5.04	3.29
Large curve chamber gJP type	5.65	3.13
Small curve chamber gJR type	8.36	8.36
Small curve chamber gLR Type	8.36	8.36
Small curve chamber gTR Type	8.38	8.38
Large inspection chamber D type	1.34	1.34
Large inspection chamber DFO type	1.22	1.22
Large inspection chamber DFOC type	1.63	1.63
Large inspection chamber H type	0.84	0.84
Small inspection chamber M type	0.26	0.26
Junction box chamber IPC	**6.38**	**6.38**
Junction box chamber NN	**1.53**	**1.53**
Other junction boxes	**1.53**	**1.53**
Inspection chamber IPC	**6.38**	**6.38**
Inspection chamber NN	**1.53**	**1.53**
Inspection chamber F	**0.84**	**0.84**
Inspection chamber S	1.34	1.34

3.2.7.3 Occupation of poles

3.2.7.3.1 Justification of Telefónica's prices

Hyaving examined the information provided by Telefónica, the methodology used is considered correct and in principle the level of detail provided is sufficient.

3.2.7.3.2 Comparison of Telefónica's costs with external references

Next comes the procedure for calculating prices from the external sources which have been used to contrast those provided by Telefónica:

1. Calculation of the costs of the infrastructures (Ci)

   The costs of the materials used have been calculated, as well as those of the labour required for installation of the two types of poles in Telefónica's offer (wooden and concrete). For this purpose only the references available in public databases on prices of civil works infrastructure have been used, since there is no study of the RUO costs regarding useful references about it.

   All the prices on the types of posts described in the Technical Regulations (lengths and nominal strength) have been extracted from each database, establishing the average for them and thus obtaining the estimate of the average price for wood and concrete poles.

2. Determination of the initial cost (C1) per pole payable by the group of operators who use it, amortised over 12.5 years corresponding to the useful life set in Decision DT 2008/450 for the poles in the Telefónica network. The annual financial amortisation with a WACC of 10.94% was used for the calculation.

3. 1.5% per annum of the total upfront costs has been considered for the recurrent costs attributable to maintenance (C2).

4. The C1 and C2 costs are increased by 11.05% in respect of the common costs. Thus, the total monthly cost per use of the pole has been obtained.

5. Finally, the total monthly cost per use of the element is divided by the number of operators likely to occupy it, thus obtaining the weighted cost per application of the operator (Cp). Based on information about technical characteristics of the posts available in the consulted databases, a usage factor of 6 has been estimated for concrete poles and 4 for the wooden ones.

As a result of the methodology the following comparison table has been produced (Annexe 2 contains the analysis performed in detail) between the external references and Telefónica's prices based on the Cost Accounting for 2007:

POLES	**Ci - Total cost of infrastructures (materials and installation)** **Euros/ pole** **Reference: Data bases public prices**	**Capacity of the pole (number of operators it can host)**	**Cp - Monthly recurring cost per shared usage (depreciation and maintenance)** **Euros/ pole** **Reference: Data bases of public prices**	**Monthly recurring price Telefónica's MARCo offer** **Euros/ pole**
Wooden pole	281.81	4	1.01	0.67
Concrete pole	574.32	6	1.38	1.41
Other	N.A.	N.A.	N.A.	0.67

3.2.7.3.3 Determination of the prices

The prices offered by Telefónica are sufficiently aligned with the references consulted, so it can be concluded that in principle they are reasonable. Therefore the prices of Telefónica are incorporated in the Offer updated with the data corresponding to the 2007 cost accounting.

Modification of the offer

The prices to add to the reference offer are the following:

POLES	Monthly recurring price Telefónica's MARCo offer Euros/ pole
Wooden pole	0.67
Concrete pole	1.41
Other	0.67

3.2.8 Laying of cable from the equipment co-location room

3.2.8.1 Justification of Telefónica's prices

The laying cable service consists of providing one optic fibre cable from the exchange to the first junction box chamber after chamber 0 where space is available. The cable may have 64, 128 or 256 optical fibres, at the choice of the alternative operator, and it is delivered without connectors, capped and labelled at both ends. Therefore, the works for performing the corresponding splices for the connection to the rest of the optical network are the responsibility of the operator.

First, Telefónica sets a nonrecurring price according to the metres and type of the requested cable, which consists of a fixed component of €371.40 and a variable of €8.56, €8.02 or €7.49 per linear metre for 256, 128 or 64-fibre cables respectively. It also establishes a recurrent cost of 1.5% of the activation fee, payable during the year on a monthly basis.

Telefónica has stated in its response to the request for information that the price for activation (non-recurring) includes the installation of the cable selected by the operator between the CR 1 junction box (first chamber after the chamber zero) and the RUO room of the exchange. Those prices, according to Telefónica, are calculated based on the projected prices of the optic fibre cables shown in the RUO.

It also indicates that the fixed part has been recalculated for covering the design work, the registration of the laying project and the fixed costs for execution of works (safety measures, ladders, signs, etc.) However, no clear justification has been given for the scope of this work, and no breakdown of the indicated price according to the same has been provided.

Furthermore, Telefónica says that it has considered an additional cost of 7% in respect of structure costs associated with the activity. Finally, it has noted, in relation to the recurrent prices, that the mentioned percentage of 1.5% of the activation fee is in line with the provisions of the RUO.

3.2.8.2 Analysis on the proposed prices

In order to validate the adequacy of the Telefónica's prices, a calculation of the costs which would be incurred for the deployment of optical cables with the features covered in the MARCo offer has been made, using the available references under the terms depicted as follows:

1. References provided by the operators 22@, GITPA, Iberdrola and Unión Fenosa have been used in the framework of the requirements referred to for obtaining information on costs for installing optical cables, including both the materials used and the labour required. GITPA and Unión Fenosa have provided prices for the three types of cable foreseen in the MARCo offer, while 22@ e Iberdrola have reported prices for other types, whose values have been linearly extrapolated to estimate the corresponding prices for cables with 64 and 128 fibres.

It should be noted that both the RUO and the consulted civil works databases have no information on cable installation for fibre volumes as high as those mentioned.

2. The costs have increased by 11.05% in respect of common costs in order to determine the total cost incurred in undertaking the laying of fibre.

The following table summarises the results from the previous methodology. It also shows a comparison with other references, such as the laying of fibre service defined in the RUO and the cost considered in the study by ISDEFE on the FTTH / GPON networks rollout in Spain.

It should be stressed that the costs for occupation of the ducts and junction boxes through which the fibre passes were not considered in the calculation-comparison, as they are billed in the MARCo offer, separately from the cable laying.

	RUO[31]	Average cost as per requirement to third party entities[32]	Price of study of FTTH deployment of ISDEFE	Price for Telefónica MARCo offer
256 fibre cable		€11.65/m	€12.54/m	€371.4 + €8.56 /m
128 fibre cable		€6.51 /m		€371,4 + €8.02 /m
64 fibre cable		€4.62 /m		€371.4 + €7.49 /M
32 fibre cable	€935.81+€6.59/m			
16 fibre cable	€478.62+€6.05/m			
8 fibre cable	€250.02+€5.84 /m			

Installation price

In connection with the variable component per linear metre, it should be noted that the price offered by Telefónica for the 256 optic fibre cable is lower than that obtained through the requests for information to third parties, while the opposite occurs for 128 and 64 fibres cables. This discrepancy is due to the fact that Telefónica has made a logarithmic extrapolation from the RUO prices, while the responses to the requirements show a trend that is more directly related to the number of fibres in the cable. However, on average there are no significant differences between the prices justified by Telefónica's and the available references, so it can be assumed that, as a whole, the variable components (per linear metre) proposed by Telefónica are acceptable.

In relation to the fixed price of €371.40, calculated according to Telefónica to cover the design work, the registration of the laying project and the fixed costs for executing works, it is appropriate to use the reference represented in the RUO for the signal delivery service through cable laying to the multi-operator chamber, although it is necessary to highlight certain nuances.

Indeed, the MARCo service for the laying of cable between RUO room and CR1 can be considered to some extent comparable to the mentioned ROU service, although there are significant differences related to the tasks of preparating the fibres. As part of the RUO, the stated fixed price includes several laying preparation operations, such as the preparation of different fibres of the cable for their subsequent splicing. The complexity of these actions

[31] RUO prices provide a range of activities (preparation of fibres for subsequent splicing) that justify the payment of a fixed component of €250.02 in the case of 8-fibre cable, €478.62 for 16-fibre cable and €935.81 for 32-fibre cable.

[32] These prices include labour and material used (multiple fibre cable).

increases with the number of fibres composing the optic cable, as shown by the increase in the fixed component based on this parameter (€250.02 for the 8-fibre cable, €478.62 for the 16-fibre cable, or €935.81 for the 32-fibre cable).

On the contrary, it should be noted that similar circumstances do not concur in the context of the service provided in the laying service of the MARCo offer, where the cable needs no specific treatment to be delivered unfinished and without connectors (only with caps and labels, which explains that the proposed cost is independent from the number of fibres), and therefore the aforementioned actions are not required. It can therefore be concluded that the amount suggested by Telefónica to be passed to the operator is not acceptable, but only the amount needed to finance the completion of the technical project for the lying in question. In this regard, what is stated by Telefónica about the average length to be taken into account for calculating the price for developing the technical design was considered as reasonable, which is consequently €120, taking as reference the 10% over the cost of laying 150 metres using one 128-fibre cable.

It is also justifiable, as noted by Telefónica, to take into account the additional costs arising from the various security measures and cleanup related to the installation of the cable. In that sense it can be considered that these costs stem primarily from the actions required to access the CR1 chamber, costs which have already been evaluated in the section on the redefinition and estimated at €44.00 per chamber.

In short, a €50 surcharge on the cost of the technical project is considered proportionate, due to access (security, cleaning and equipment required for installation) as well as for capping and labelling of cables. Accordingly, the fixed component for the laying of cable between RUO room and CR1 can be set at €170.

Recurring price

Finally, in relation to the noted recurring price, the approach suggested by Telefónica is considered acceptable, establishing in respect of maintenance an amount equivalent to the one provided in the RUO, an annual 1.5% on non-recurring costs. The reasonable nature of the proposal is confirmed by the information obtained through requests for information to other entities, from which stems a percentage between 3 and 5% of the cost of provision and installation of the fibre in ducts.

3.2.8.3 Modification of the offer

The prices for the laying of cable between the RUO room and the first chamber or inspection chamber straight from the chamber 0 have been analysed and compared with the costs provided by third party operators and the references existing in the RUO.

In this regard it is first considered that the fixed price proposed by Telefónica is not justifiable, and, moreover, that the mentioned price per linear metre is acceptable and is in line with the references on deployment of optical networks.

The following table lists the changes to be included in Telefónica's offer:

	Prices proposed by Telefónica	Revised prices
256 fibre cable	€371.4 + 8.56 €/m	€170 + 8.56 €/m
128 fibre cable	€371.4 € + 8.02 €/m	€170 + 8.02 €/m
64 fibre cable	€371.4 + 7.49 €/M	€170 + 7.49 €/m

3.2.9 Provision of alternative solutions

3.2.9.1 Provision of alternative route

Modification of the offer

The tender must show explicitly that the provision of an alternative route will be invoiced at the prices charged for regular routes up to a maximum of twice the total price the requested route would have cost, both for fixed costs and recurrent costs.

3.3 Service Level Agreements

On the one hand, to monitor compliance with the principle of non-discrimination, the average times for provision corresponding to the provision of wholesale service provision and self-rendering activities of Telefónica must be counted and recorded, imposing on it the obligation to provide the wholesale services within an average time that is no higher than those terms in which it performs the equivalent activities as self-rendering, being understood that this breach will be evidence of discriminatory behaviour on the part of Telefónica. For that purpose several quality indicators should be defined, which will make it possible to carry out an objective comparison of these terms.

In addition, achieving a target level of quality must be guaranteed, so certain levels of quality must be integrated, recorded in the form of maximum terms for provision of the wholesale service, which will exercise their usual ceiling function, breach of which could justify the imposition of penalties.

In order to respond to both conditions, Telefónica has notified to the Commission two annexes to the MARCo Offer; the MARCo Service Scorecard and Procedures for post-sale communication and quality levels. In the first one, the quality indicators of the MARCo service to be measured are defined, and it is established that Telefónica "*undertakes to comply with each of the terms that fall under its responsibility*." In the second one quality levels with respect to all the services are set.

3.3.1 Quality levels proposed by Telefónica.

The following table lists the SLAs provided by Telefónica.

Compared against the offers from the European counterparts, the levels proposed by Telefónica reflect periods of similar magnitude, with Telefónica's offer being a mid-point between France Telecom's and Portugal Telecom's, meaning that they are not disproportionate.

The adequacy of the proposed levels to the non-discrimination obligation is evaluated in Section 3. 3. 2.

SERVICIO MARCO	Funcionalidad	Estado inicial	Estado final	Tiempo máximo, días laborales	Responsable
SICO	SIV	Pendiente	Finalizada	10 días	Telefónica
SUC	SUC	T0, jueves a las 24 horas			
SUC	SUC	Pendiente No confirmada	Validada	10 días, con paradas de reloj	Telefónica
SUC	SUC	Validada	Cita de Replanteo propuesta	10 días, con paradas de reloj	Telefónica
SUC	SUC	Pendiente No confirmada	Replanteo Realizado Viable	30 días, con paradas de reloj	Telefónica
SUC	SUC	Replanteo Realizado Viable	AR y MD facilitadas	10 días	Operador
SUC	SUC	AR y MD facilitadas	SUC Confirmada	5 días	Telefónica
SUC	SUC	SUC Confirmada	Ocupación / Fin de obras	6 meses	Operador
SUC	Tendido de cable dfibra óptica en cabeceras FTTH	SUC Confirmada	Entrega tendido	30 días	Telefónica

List of SLAs applicable to the provision of the MARCo service

3.3.1.1 General considerations

Previously and in relation to the previous table it must be commented that:

- As already noted, the SLA set for achieving a viable redefinition, including from the To instant up to the "Performed Redefinition Viable" milestone, also applies to applications for which an alternative solution is provided.

- Also, the execution of "clock stops" for counting the terms for provision is considered acceptable, provided they meet reasonable grounds duly justified by Telefónica.

3. 3. 1. 2 Execution term corresponding to the development of technical projects

Adequacy of the offer to the requirements set by the CMT

If the application for access from the operator requires the installation of cabling on poles, the need for making mechanical calculations arises, requiring the elaboration of a technical project by Telefónica. However, the wholesale offering does not contain a deadline for their elaboration and delivery to the operator, which cannot be considered appropriate due to the uncertainness it may generate.

Evaluation

Telefónica claims that it is very complex to set a deadline for a task whose complexity is extremely variable depending on the magnitude of the project (number of poles, cable type, etc.).

It should be pointed that most of the actions stemming from the provision of wholesale services include tasks of variable complexity depending on each case, and the present is no exception. Therefore, although the point made by Telefónica is considered justifiable to

some extent, it does not seem to be sufficient reason for not setting a deadline that may be broad enough to accommodate the more complex actions.

In this sense, the 60-day term proposed by Telefónica seems excessive when compared with other references, as well as the deadlines set by the RUO for the elaboration of technical projects for signal delivery (15 days), co-location at RUO room (15 days), co-location at Sdt (10 days). Furthermore, the entire MARCo process is developed within a maximum period of 30 days between the application from the operator and the "Performed Redefinition Viable" phase, for which reason a longer term seems disproportionate for a sporadic action.

Modification of the offer

The offer will specify a maximum period of 30 days for the development and provision of the technical project for installation of cables on Telefónica's poles.

3.3.1.3 SLA for the solving of incidents

Evaluation

In general the arguments of the operators (Vodafone, ONO, ASTEL and GOI) have emphasised the importance of including deadlines for the solving of incidents, especially with regard to the resolution of urgent faults (obstruction, crushing or cutting of raceway prisms). In this respect they require response times and penalties.

Also there is a demand (Orange, ASTEL and GOI) regarding the inclusion of deadlines for the correcting of faults occurring during the process of provision (ducts plugged, cut or crushed which prevent the installation of cables). Orange claims that when incidents arise that prevent the implementation of the project, such as blockages in the ducts or other construction defects, there must be no costs or extra terms, and that Telefónica must, in addition to providing alternative solutions, repair any infrastructure to ensure its theoretical capacity becomes effective.

i. Regarding the terms

It is certainly estimated as being proportionate for any wholesale service to include a control on the deadlines for resolution of incidents, both for provision and maintenance, since otherwise the operators making use of the service in any way cannot transfer adequate guarantees on the service level to their customers. However, the point made by Telefónica about the lack of knowledge about the type and extent of the damage that may arise, which may involve cuts in large raceway prisms should also be considered.

According to what is stated, it is not considered as appropriate to introduce at this time specific terms for fault resolution in the reference offer, while Telefónica must set them at the level of private agreements between the concerned parties; the CMT may intervene if conflictive situations occur.

Also it is not considered justifiable that for the purpose of fault-repair activities that may take place during the provisioning process, as requested by Orange, there is no additional time involved, since in principle they will constitute exceptional interventions that may require somewhat complex tasks. They must thus be carried out as quickly as possible and within periods not longer than those within which Telefónica would render service to itself, without forgetting the right of the operators to request alternative solutions, in any case and particularly in the current one.

ii. Regarding the costs

Regarding potential problems to be identified during the service provision, certain clarifications with regard to how to proceed should be made. In such cases where circumstances prevent the installation of cables, the procedure must be different depending on the cause which gives rise to them.

In particular, when the cause of obstruction is a constructive fault or defect (crushing, cutting, etc.), the required repair is an activity for maintenance of Telefónica's infrastructure, and this concept is included in the recurring costs to be paid monthly by the operators. Therefore, Telefónica must perform such actions without passing on additional costs to the operators.

Modification of the offer

At present, it is unnecessary to enter amendments to include time limits for the resolution of faults (in either the provision or the maintenance) in the Reference Offer. These terms may be included in private agreements between the parties.

However, in the reference offer, explicit mention will be made of the fact that for the presence of impact on Telefónica's infrastructure, whether arising in the phase of provision or of maintenance, the operator may require the provision of alternative solutions from the instant it detects the inability to make the deployment as foreseen, which should culminate in the provision of a viable solution within 15 days as a maximum.

3.3.2 Analysis of the quality indicators

The indicators to be included in Telefónica's Reference Offer must enable a sufficiently reliable comparison to be made between its self-servicing actions and the wholesale services provided as part of its offer of ducts.

In the proposal, the milestones these indicators are intended to cover do not properly separate the tasks Telefónica is responsible for providing from tasks which are the operator's responsibility, thereby preventing the limiting of responsibilities for potential default of terms.

Nor is seen that there is an adequate match between the MARCo service and the self-provisioning services of Telefónica.

In short, the proposal of quality indicators submitted by Telefónica must be improved in the manner outlined as follows.

3.3.2.1 Definition of the equivalences

On the basis of the information provided by Telefónica and its subsequent review by this Committee, the following table shows the equivalences between the wholesale MARCo services and self-servicing activities.

The knowledge of Telefónica's internal processes does not allow us at this time to determine whether or not there is an equivalent in self-service for certain MARCo wholesale services. In these cases this is indicated in the table by "Not applicable". They are currently a few existing at this time.

MARCo Service	**Self-rendering service**
Request for information on vacant space (SIV)	
Provision of the information	Not applicable

Application for shared usage (SUC)	
Validation by Telefónica	Not applicable
Execution of redefinition	Execution of the redefinition in own FTTH deployment
Dispatch of descriptive report (operator)	Not applicable
Confirmation SUC	Not applicable
Effective occupation by the operator	Not applicable
Laying of cable from exchange	Not applicable
Provision of alternative route	Not applicable
Resolution of faults	Resolution of faults in own FTTH deployment

Regarding the self-servicing activities, the MARCo offer needs to specify what internal systems are used to keep track of the milestones marking its execution.

3.3.2.2 Average terms for provision

For applications completed in the current quarter, but not being started within that quarter, Telefónica will provide the following information for each wholesale service (MARCo) or self-servicing activity (own FTTH deployment).

No "clock stops" will be admitted for calculating the average time for provision.

For each operator including Telefónica (according to established equivalencies), average terms aggregated quarterly [33]:

Request for information on vacant space (SIV)	Initial Status	Final Status	Number of applications	Applications within term	Average term without stops	Average term with stops
Provision of the information	Entry of the application	Terminated				
Application for shared usage (SUC)	Initial Status	Final Status	Number of applications	Applications within term	Average term without stops	Average term with stops
Validation by Telefónica	T0	Validated				
Execution of redefinition	T0	Viable accomplished redefinition				
Provision of alternative route	Application from operator	Viable accomplished redefinition				
Dispatch of descriptive report (operator)	Viable accomplished redefinition	AR and MD provided				
Confirmation SUC	AR and MD provided	SUC confirmed				
Effective occupation by the operator	SUC confirmed	Occupation/end of works				
Laying of cable from exchange	SUC confirmed	Delivery of laying				
Resolution of provision incidents	High rate	Resolution of incidents				

[33] Telefónica will transmit such information on a quarterly basis to this Commission by e-mail to "datos-fibra@cmt.es", in the format of a processable spreadsheet, corresponding to the previous quarter. The transmittals will be effected within ten days after the expiry of the month the transmittal refers to.

Resolution of maintenance incidents	High rate	Resolution of incidents				

Modification of the offer

Telefónica will incorporate into the annexes related to SLA and quality indicators the obligation to keep track of the average terms for provision listed in the above table.

3.3.2.3 Quantitative indicators.

For applications completed in the current quarter, but not being started within the same, Telefónica will provide the following information for each wholesale service (MARCo) or self-servicing activity (own FTTH deployment).

[34] Telefónica will transmit such information on a quarterly basis to this Commission by e-mail to "datos-fibra@cmt.es", in the format of a processable spreadsheet, corresponding to the previous quarter. The transmittals will be effected within ten days after the expiry of the month the transmittal refers to.

For each operator including Telefónica (according to established equivalencies), values aggregated quarterly [34]:

Request for information on vacant space (SIV)	Indicator	Comments
Forwarded applications	Total number	
Answers provided by Telefónica	Viable answers	
	Non-viable answers	
	Non-conclusive answers	
Application for shared usage (SUC)	Indicator	
Applications validated by Telefónica	Total number	
	Junction boxes (chambers and inspection chambers) requested	Average value of all the applications
	Accepted applications	
	Rejected applications	
Redefinitions	Total number	
	Viable answers	
	Non-viable answers	
	Junction boxes (chambers and inspection chambers) open	Average value of all of the redefinitions
	Additional cost invoiced by concepts not included in the price of the redefinition (sewage, deasphalting, etc.)	Total cost per operator
Provision of alternative route	Total number of alternatives routes	
	Incremental percentage regarding requested spans (#junction boxes in final route related to #junction boxes in initial route)	
Installation by the operator	Number of finished installations	
	Number of occupied chambers, inspection chambers and poles (broken down)	Average value of all the installations
	Span length (metres)	Average value of all the installations
	Length (metres) of installed subducts per operator	Average value of all the installations

Modification of the offer

Telefónica shall incorporate into the annexes related to SLA and quality indicators the obligation to keep track of the quantitative indicators listed in the above table.

3.4 Bond system

The twenty-sixth clause of the standard contract provides for the possibility of Telefónica requiring endorsement as a means for securing payment. In this regard, two scenarios are contemplated, depending on the time of creation of such a guarantee:

- Prior to rendering the service. In this case Telefónica could require the provision of the bond by the operator when its credit risk is high or its solvency is negative, depending on the reports by independent companies (rating agencies or credit risk rating companies).
- After rendering the service. In this case, Telefónica may require the establishment of the bond (i) if the operator is in the credit situation described in the above scenario or (ii) whenever there is a delay in payment or non-payment of the invoice issued by Telefónica.

As for the requirement of a bond as a result of late payment or non-payment of invoices issued by Telefónica, it is noted that this Commission has always considered the requirement of a bond in the event of default or late payment of at least two invoices issued by Telefónica as being reasonable.

The Decision issued on 2 July 2009, in the MTZ 2008/120 file, amending the Wholesale Offerings in relation to the existing penalty system, has led to an amendment of various sections of the Wholesale Offerings in force; among them is precisely the system of guarantees that Telefónica may require. Therefore the analysed standard contract must be adapted to the criteria set out in that decision, particularly regarding the requirements for creation of the bond, which are consolidated in the mentioned Decision.

Also, in that Decision, the following is specifically stated: "*nor are claims from Telefónica deemed reasonable in order to make amendments regarding the duration and amount of the bond. Telefónica mentions that the bond should be indefinite and be for the amount of the monthly average billing for the last 6 months, multiplied by 6. However, in the opinion of this Commission this proposal is entirely disproportionate because it considers that both the expected duration, taking into consideration the possibility of extending the bond, and the amounts furnished, with their revisions provided for certain services, in each one of the Offers are sufficient measures to ensure payment*."

In consequence, the standard contract must be modified:

(i) Regarding the provisions regarding the indefinite nature of the deposit or bond, the bond cannot have a permanent character; in other wholesale offerings (RUO, RLLO and WLR) the bond is renewed annually and the total term foreseen is 18 months; if after such consecutive term there has been no delay in payment the existing bond will be cancelled. Prior to the MTZ 2008/129 file, Telefónica proposed a duration of 3 years or 24 months in the latest revision of the RIO and through the Decision dated 23 November 2005, this Commission noted that the proposed duration was excessive, and therefore it was decided not to change the 18 month term already established;

(ii) the amount of the bonds, which also appear to be excessive, consisting of six times the amounts of the monthly consumption of the requested services, in the case of new operators, and six times the average of the last six months monthly billing in the case of existing operators. This amount seems disproportionate if we take as reference the bonds currently set out in the RUO. In particular, for the "location service", which also implies high costs of civil works, the RUO provides a bond equivalent to the monthly amount resulting from the sum of the monthly recurring prices. For the remaining services regulated in the RUO, the bonds are calculated in various ways but in all cases the amounts are far below the required ones under this standard contract.

In the Decision dated 8 November 2007 (MTZ 2007/361) on the approval of the offer for the service of wholesale access to the telephone line (WLR) of Telefónica de España, S.A.U., upon evaluating the proposal by Telefónica of multiplying 4 times the monthly value of the revenues of the WLR service in order to calculate the amount of the bond, this Commission has already ruled in favour of a correction factor of 2 [page 51].

Accordingly, Telefónica must adjust the amount of the bond in accordance with the criteria set out in the other market offerings, and this Commission holds that the bond system planned for the location service in the RUO is reasonable.

As an innovative aspect on the subject of bonds it should be stressed that the bond set out in the currently analysed standard contract not only aims to secure payment of the "amounts due and unpaid" by the licensed operator as a result of providing services under contract, but it will also address any "*compensations as may be appropriate*" under that contract, "*once they are determined*."

The above cannot be considered acceptable. The bonds governed by the reference offers involve payment of amounts actually due and unpaid for the provision of wholesale services by Telefónica and not potential future liabilities that have yet to be quantified, without setting the maximum amount, in principle allowed by the Article 1825 of the Civil Code, which will probably have to be determined following judicial proceedings.

Furthermore, it is noteworthy that in the Pricing Annexe a type of bond other than the one fixed in the standard contract is set. In the abovementioned Annexe it is stated that in those applications for shared usage where it is necessary for a technical project to be executed by Telefónica, it may request from the applicant operator partial payments of up to 50% of the total amount after acceptance of the application and the bond on the remaining amounts until the delivery and the final invoicing.

This type of bond has already been authorised by this Commission for the location service of the RUO where, as in this case, Telefónica has to face high costs for civil works. However, it should be noted that currently the RUO states that the partial payments required by Telefónica cannot exceed 20% of the entire project, while the authorised operator has to guarantee the remaining 80%35. Consequently, this provision must be adapted to the criteria already set by the RUO.

3.5 System of penalties

Obligations established by the CMT

The inclusion in the reference offer of a penalty mechanism should be considered as an essential aspect, since only through a balanced system of penalties the compliance of the quality requirements can it be satisfactorily ensured, thereby guaranteeing the effectiveness of all the tasks foreseen in the offer.

The existence of such a resource is a common denominator of all reference offers in force (RIO, RUO, RLLO, and WLR).

As reasoned in the Decisions of this Commission dated 31 March 2004 and 2 July 2009, the purpose of the penalty clauses is to set out amounts to discourage missed deadlines by the operators. Also, it would not be balanced from the perspective of reciprocity to admit the introduction of a system of guarantees and yet none for penalties.

Contents of the Reference Offer

In the letter of response to the requirement for information dated 11 August 2009 Telefónica provided a proposal for a system of penalties for the MARCo service. The proposed system differentiates between those related to the provision of services and those related to maintenance incidents.

In the service provision phase, the penalty system is based on controlling a series of indicators (metrics) for which a certain percentage of compliance with respect to the objectives should be guaranteed. The measurement is performed regularly, in most cases twice a year. When an indicator does not obey the established percentage of compliance,

that will cause the imposition of penalties on any and all applications that have caused delays in the analysed period in relation to the maximum period set for the service.

The time for solving incidents is always considered as effective, i.e., "clock stops" are ruled out. The amount of the penalty will be calculated based on a percentage of the activation fee per day of delay, with the ceiling being the total of this fee. It also provides that prior to the payment of penalties the number of units measured per semester must exceed a minimum threshold[35]. Otherwise, the requests would be added to the ones for the subsequent semesters until reaching that threshold.

Regarding penalties for incidents, Telefónica differentiates between those occurring in the occupation phase (obstruction of ducts identified during the work of occupation by the operator) and those occurring during unsuccessful trips by Telefónica.

In short, the indicators proposed by Telefónica for being included in the reference offer are:

Category	Indicator	Liability
Indicators for provision of services	Average term for provision of the service of information on vacancy	Telefónica
	Average term from application for occupation until performed redefinition viable	Telefónica
	Average term between Performed Redefinition Viable until AR and MD provided	Operator
	Average term for provision of the optic fibre cable laying from the RUO room to the first junction box chamber at exit of the exchange	Telefónica
Indicators of incidents	Average term for resolution of incidents in the phase of occupation (obstruction of ducts)	Telefónica
	Penalty for unsuccessful trips	Operator

Finally, Telefónica's proposal provides certain requisites the authorised operator must meet for Telefónica to proceed to pay the appropriate penalties. These include, for example, that the operator must be aware of the payments for the MARCo service and is obliged to meet certain clauses and conditions specified in the MARCo service Contract and Annexes.

Evaluation

In view of the above, the evaluation of the submitted proposal has been carried out as stated in Annexe 4, and as a result the need to modify some of the proposed conditions has been determined. In this sense, the modification of Telefónica's reference offer has been requested in the terms set out below.

Modification of the reference offer

Telefónica must modify the system of penalties incorporating only the following commitments and parameters:

i. PROVISION OF SERVICES

SICO: Service of information on vacancy

	Telefónica's proposed parameter	Revised parameter
TMPO[36]	10 working days	10 working days
Percentage of compliance	95%	95%
Measurement	Semi-annual	Semi-annual

[35] This threshold is fixed as 100 samples in the case of laying optical fibre cable from RUO room to CR1 and 300 for the remaining services.

[36] Targeted Total Average for Provision ("Tiempo Medio Total de Provisión Objetivo")

Penalty per day of delay	5% of the activation fee	5% on the price for SIV service
Maximum amount per application	Activation fee	No limit
Party Responsible	Telefónica	Telefónica

SUC: from application for occupation until performed redefinition viable

	Telefónica's proposed parameter	**Revised parameter**
TMPO	30 working days	30 working days
Percentage of compliance	85%	95%
Measurement	Semi-annual	Semi-annual
Penalty per day of delay	5% of the activation fee	5% on the non-recurring price of the SUC service
Maximum amount per application	Activation fee	No limit
Party Responsible	Telefónica	Telefónica

SUC: from Performed Redefinition Viable until AR and MD provided

	Telefónica's proposed parameter	**Revised parameter**
TMPO	5 working days	The payments of penalties per this concept is deleted
Percentage of compliance	95%	
Measurement	Semi-annual	
Penalty per day of delay	5% of the activation fee	
Maximum amount per application	Activation fee	
Party Responsible	Operator	

SUC: from AR and MD provided until SUC confirmed

	Telefónica's proposed parameter	**Revised parameter**
TMPO	Parameter not provided	5 working days
Percentage of compliance		95%
Measurement		Semi-annual
Penalty per day of delay		5% on the non-recurring price of the SUC service
Maximum amount per application		No limit
Party Responsible		Telefónica

SUC: Optic fibre cable laying from RUO room to the first junction box chamber at exit of the exchange

	Telefónica's proposed parameter	**Revised parameter**
TMPO	30 working days	30 working days
Percentage of compliance	85%	95%
Measurement	Semi-annual	Semi-annual
Penalty per day of delay	5% on the activation fee	5% of the non-recurring price for cable laying
Maximum amount per application	Activation fee	No limit
Party Responsible	Telefónica	Telefónica

ii. INCIDENTS

Resolution of incidents during the occupation phase (provision): obstruction of ducts

	Telefónica's proposed parameter	Revised parameter
TMPO	60 working days	30 working days
Percentage of compliance	Not specified	95%
Measurement	Not specified	Semi annual
Penalty per day of delay	5% on the monthly fee	5% on the monthly fee
Maximum amount per application	2 monthly instalment	No limit
Party Responsible	Telefónica	Telefónica

Unsuccessful trips due to false error (applies both to requesting operator and to Telefónica)

	Telefónica's proposed parameter	Revised parameter
Penalty from 8:00 to 22:00 hours	€111.46	€111.46
Penalty from 22:00 to 8:00 hours	€138.57	€138.57
Measurement	Not specified	Semi-annual
Responsible	Operator	Operator and Telefónica

Also, the MARCo offer must be reviewed based on the following terms:

- The commitment denominated as "SUC: FROM PERFORMED REDEFINITION VIABLE UNTIL AR AND MD PROVIDED" must be deleted from the list of commitments as causes for penalties.
- The limits proposed as the maximum amount to be paid by the operator requesting access for breaching the various individual commitments must be deleted.
- All the provisions related for the minimum number of units measured per semester as a condition required for payment of penalties must be deleted.
- It must be commented that the activation fee to which the amount of the penalty refers is the one corresponding to the non-recurring cost associated with providing the MARCo service, as detailed in Annexe 4.

Telefónica shall include in its offer clear and specific criteria for carrying out the settlement of the accrued penalties. As stated above, the Decision of 2 July 2009 forced Telefónica to amend all its existing wholesale offerings in order for the purpose of including the billable nature of penalties by the alternative operators and for the inclusion of a detailed procedure for settlement.

However, it must adapt the general procedure set forth in the Decision of 2 July 2009 to the characteristics of the MARCo Offer; in particular, it must determine the settlement period as twice a year (instead of monthly, as generally shown in the aforementioned decision) because, as has been discussed (page 76), the measurement of the penalties suitable for this service is executed twice a year.

It is necessary to adapt the general procedure to the characteristics of the service, and this was approved in the Decision dated 2 July 2009 in respect of penalties arising from the RLLO that, given its technical characteristics, are settled quarterly.

Therefore, in connection with the settlement of penalties Telefónica must include in the section "Billable non-periodic concepts" of the Pricing Annexe the procedure for settlement of

penalties that, for all wholesale offerings, was established in the Decision of this Commission (MTZ 2008/120 file) dated 2 July 2009, with the modifications outlined above.

Also, the following paragraph should be included in that section:

> "*According to the described procedure, the alternative operator will be the active subject of the process of settlement of penalties due to its status as issuer of the invoice for penalties, following the established procedure*."

Finally, Telefónica will eliminate the requirements established regarding being aware of the payments for MARCo service and compliance with the clauses and conditions included in the Contract and Annexes to the MARCo service for the payment of penalties.

Based on the above facts and legal grounds, this Commission

RESOLVES

First.- Telefónica de España, S.A.U should modify its reference offer for rendering the MARCo service, within 15 days from the day following the publication this Decision in the Spanish Official Gazette, under the following terms:

- Regarding the scope of application of the offer, as stated in "*Modification of the offer*" included in Section 3.1.1.
- Regarding the procedures made prior to the occupation of the infrastructures, as stated in "*Modification of the offer*" included in Section 3.1.2.
- Regarding the norms for occupation of the infrastructure, as stated in "*Modification of the offer*" included in Section 3.1.3.
- Regarding the prices for provision of the wholesale service, as stated in "*Modification of the offer*" included in Section 3.2.
- Regarding the service level agreements as stated in "*Modification of the offer*" included in ection 3.3.
- Regarding the bond system, according to Section 3.4.
- Regarding the mechanism for penalties, as stated in "*Modification of the offer*" included in Section 3.5.

The modified offer, as stated in this Decision, will be sent to this Commission for being revised. If the Commission detects inaccuracies in the text with regard to the provisions, it shall proceed to directly modify it and subsequently transferring it to Telefónica for publication in its web site (Such publication shall take place within ten days).

Second .- Telefónica must update its internal systems in order to permit the recording of quality parameters in the terms set out in this Decision. Telefónica shall quarterly send to this Committee, by e-mail to "datos-fibra@cmt.es", the information specified in the Section 3.3.2 of this Resolution, in a processable spreadsheet format, for the previous quarter. The

remittals of information will start with the data for the first quarter of 2010 and will be carried out within ten days after the ,month in question ends.

Third. To communicate to the European Commission this Decision concerning the analysis of the offer for access to ducts and junction of Telefónica de España, S.A. and the MARCo Offer.

Fourth. The present act will be published in the Spanish Official Gazette, according to the provisions of article 10.1 of the General Telecommunications Act 32/2003 of 3 November.

Fifth. This resolution will take effect from the day following its publication in the Spanish Official Gazette.

This certificate is issued under the provisions of article 27.5 of law 30/1992, dated 26 November and article 23.2 of the consolidated version of the internal system regulations approved by the commission board decision of 20 December 2007 (Spanish Official Gazete of 31 January 2008), prior to the approval of the act of the corresponding session.

It also states that in respect of the resolution referred to in this certificate, which ends all administrative remedies, an appeal for reversal may be lodged against it before this Commission within one month from the day after notification thereof, or directly, a contentious-administrative appeal may be filed with the Board of Administrative Litigation of the National Court, within two months from the day after its notification in accordance with Article 48.17 of the General Telecommunications Act 32/2003 of 3 November, Fourth Additional Provision of Section 5 of Act 29/1998, dated 13 July, regulating Contentious Administrative Jurisdiction and Article 116 of Act 30/1992 of 26 November on the Legal Framework for Public Administration Authorities and Common Administrative Procedure, and subject to what is provided in item 2 of Article 58 of that Act.

The present document bears the electronic signature of the Secretary, Ignacio Redondo Andreu, and is countersigned by the President, Reinaldo Rodríguez Illera.

ANNEXE 1. Summary of the procedural aspects of the MARCo offer submitted by Telefónica

Access to previous information		Term for provision
Contents	Online cartographic maps with graphic depictions of junction boxes and ducts. Includes junction box chambers, inspection chambers, ducts in main raceways, side raceways, side outputs up to pole, facade or inside of building (feeding and distribution networks). Without information regarding vacant capacity in ducts.	
Application	Access to on-line systems, direct perspective on the drawing.	
Delivery/availability	Immediate, on-line	

Access to information on space availability		Term for provision
Contents	Information on vacancies, on demand. It is an optional process: the operator can circumvent it and directly proceed to the application for occupation. It is performed without having physical access to infrastructure, so that reliability is not complete.	
Application	Access to on-line systems. The junction boxes for which information on vacant space is sought must be identified.	
Delivery/availability	10 days after application. Online form indicating viability or lack of it in each duct located between two junction boxes is provided.	10
Restrictions	Maximum number of elements per application: 40 consecutive junction boxes and raceways between them. Limit: 100 applications per week. It does not guarantee actual availability of space. It is non- binding and does not imply reserve capacity. Not applicable to side outputs, since it is estimated that there is space in principle, although this must be confirmed in the redefinition.	

Application for shared usage		Term for provision
Characteristics of the access		
Scope	Junction box chambers, inspection chambers, ducts in main raceways, side raceways, side outputs up to pole, facade or inside of buildings. In the FTTH head-end exchanges, laying of fibre can be requested between the co-location space and the first junction box chamber after the junction box chamber 0.	
Restrictions	Total of junction boxes per week no more than 500 (max. 120 in the same province). Maximum number of elements per application: 40 junction boxes with continuity and raceways between them, including the necessary branches. A single subduct or duct to be shared, per span between junction boxes or between junction box and building, provided the subducts are fully occupied due to previous applications.	
Procedures		
Application for access by the operator	Applications during Monday, Tuesday and Wednesday. The process starts Friday at 0h. Access to on-line systems, completion of form. The junction boxes for which access is sought must be identified. The capacity and the diameter of the cables to be installed must be identified. It passive elements (splice boxes, terminals) are to be installed their weight and dimensions must be identified. Schematic diagram (dgn, ppt, pdg) must be attached. It must be indicated whether fibre laying is required from SdT/SdO to first junction box chamber after chamber 0.	4 (worst case)
Validation by Telefónica	It is verified which junction boxes are correctly identified, and if they have continuity.	10
Proposal on date for redefinition by Telefónica	Telefónica tries to select the minimum number of junction boxes to be inspected and ensures that permits required are the minimum possible. The necessary permits are requested and obtained (if any problems, Telefónica can adopt "clock stop"). Telefónica proposes a date for the redefinition (minimum 5 working days in advance). The operator may accept or reject it, requesting a new one.	10
Redefinition	Carried out jointly. The act of redefinition is generated. The ducts to be occupied, the subducts to be installed, location of passive elements, and so on, are identified Everything must be done according to technical regulations. If there is any impact or additional costs, clock stop is allowed until it is accepted (viable application) or rejected (unfeasible application). If facing problems (saturation) all possible alternatives must be sought, and if it cannot be resolved at that time, it will assume the "Conditioned to alternative solution" status.	10

Technical design	When poles are used for laying cables, a project for the new mechanical calculation of line span to be used should be performed.	NA
Alternative solution	After redefinition Telefónica searches for an alternate route, and sends it to the operator to be reflected in the descriptive report	NA
Relevant milestone	The viability of the requested route is known, or in its absence, of any alternative	40 (30 without study[37])
The operator sends the descriptive report and the act of redefinition	The operator must generate a descriptive report, including a schematic map showing the duct to be occupied, the installation of subducts (if any), replacement of poles (if any). If the route has been changed, the operator must include the new junction boxes/poles.	10
Approval of the descriptive report. Telefónica confirms the application for access	Telefónica proves that the data are correct and that they match what was agreed in the redefinition. If there are any errors, it indicates them for the operator to correct them (clock stop). Telefónica must enter data in order to able to bill: metres of used ducts, metres of used subducts, metres of subducts installed by the operator.	5
Relevant milestone	The operator can start the works	45 (35 without study)
Cable run from SdO/SdT to junction box chamber (Telefónica)	30 working days, which do not prevent the start of work by the operator.	30
Occupation by the operator	The resources are reserved for the operator until it decides to undertake the work for occupying the required spaces. The operator will notify the start of works 72h in advance. The operator will manage the permissions, and will install subducts when required (according to the technical regulations).	6 calendar months
Unblocking works	If unusable or blocked ducts are detected during the work, the operator must notify this to Telefónica for repair. If there is another vacant subduct the operator may use it. Also an alternative route may be sought, returning to the redefinition initiation stage.	
Maintenance	Telefónica is responsible for maintenance of the civil works. The operator is responsible for maintenance and installation of its own networks. Any intervention for operation or maintenance must be communicated to Telefónica at least 72h in advance.	

[37] Information on availability of vacant space (SIV).

Rules for engineering	
General	
Useful section of the duct or subduct	40% of the total internal section. The sum of all sections of the cables cannot exceed the useful section.
Existent ducts (general)	125, 110, 90, 63mm diameter ducts. 40 or 32mm (not always) ducts.
Separation of networks	Only complete subducts are assigned to each operator. If there are ducts available, 3 x 40mm subducts must be installed inside. The installed subducts that are not used remain available for further assignments.
Space reserve	2 ducts must be booked in full for operation purposes (ROC, common to all operators) and expansion of universal service (USO). When there are only subducts free, and no ducts are free, Telefónica reserves for itself 2 subducts for ROC and USO. In the side outputs there is no reservation of space. In the dispersion network it only reserves for itself 50% of the useful section of a duct.
Conditions for usage	The operator must install 3 x 40mm subducts in 110 or 125mm ducts.
Norms for occupation	
Feeding and distribution network. Includes 110 or 125mm ducts, sometimes including 3 x 40 mm subducts (always outside diameter). It may also be 90mm ducts and 32mm subducts. The distribution network (side raceways) sometimes includes 63mm ducts.	The mentioned conditions for separation of networks (assignment of subducts) and reservation of space (2 complete ducts for ROC and USO). In the 90mm ducts only 2 x 40mm subducts may be installed. When the raceway is composed of 63mm ducts (as is the case for side raceways), the assignment will be made for complete ducts, not installing subducts.
Side output. It usually includes 2 x 110 or 63mm ducts.	The cables will be installed directly into ducts. If there is no empty conduit the one with the least occupation will be used. If there is an empty duct, that one will be used. The restriction on the mandatory use of subducts, or for assigning full subducts does not apply; there are no reserves for ROC or USO.
Dispersion Network in the public domain (in single family dwellings). Includes 63 and 40mm ducts.	The cables will be installed directly into ducts. (with a limitation of 40% occupation) One duct is reserved for ROC. If there is only one free duct, or all are partially occupied, 50% of the useful cross-section of at least one duct must be reserved for ROC.

Junction boxes	Passive equipment can be placed (splice boxes with dividers), but not active equipment. Passive elements (splice boxes, splitters) cannot be placed in H, M and F inspection chambers. Optical terminal boxes requiring intervention for activation management may not be located in any junction box; on the contrary they should be located within the operator's own junction boxes or outdoor boxes or on poles. The elements should be located on the longitudinal walls of the records and not on the cross walls or the ceiling. The cables should be located at the height of the ducts they occupy. Linking of the operator junction boxes with Telefónica is allowed. The entrance to junction boxes for introducing ducts will be made by rotary milling. In case of prefabricated elements, it is done through bushings embedded in the concrete walls. Poles at the start and at the end of line; when they are made of wood they must be replaced by concrete ones.
Chamber 0	Only in FTTH head-end exchanges, given that they are where the operator can co-locate. Upon request from the operator, Telefónica can install 64, 128 or 256-fibre cable, G652D type. The link with the operator's junction boxes cannot be done in chamber 0. Neither splice boxes nor filters can be placed. Telefónica installs cable from RUO room to the first chamber after chamber 0 where there is space to install a junction box. Ducts and subducts connecting the cable passage with the chamber 0 belong to the feeding network; therefore they are subject to the terms for use as already detailed.

ANNEXE 2. Basic data on installation costs (materials and labour) of civil works elements.

Infrastructure elements		RUO costs	Civil works prices public databases			Requirements for third party entities (average value)
			Minimum	Maximum	Average value	
RACEWAYS (€/m)						
110 mm ducts groups						
	1 x 110 mm duct	-	20.57	27.85	24.21	-
	2 x 110 mm ducts	-	21.24	36.49	27.70	70.58
	4 x 110 mm ducts	92.46	30.78	52.52	44.03	-
	6 x 110 mm ducts	-	64.74	68.62	66.68	122.94
	8 x 110 mm ducts	-	83.53	84.89	84.21	-
	9 x 110 mm ducts	-	-	-	-	168.6
	12 x 110 mm ducts	-	121.31	122.46	121.88	194.8
63 mm ducts groups						
	1 x 63 mm duct	-	12.37	12.37	12.37	-
	2 x 63 mm ducts	-	10.16	25.66	18.21	-
	3 x 63 mm ducts	-	20.32	20.32	20.32	-
	4 x 63 mm ducts	-	14.41	34.89	26.93	-
	6 x 63 mm ducts	92.46	21.78	52.60	40.81	-
JUNCTION BOXES (€/junction box)						
Junction box chambers	**gBR chamber**	4,701.69	3,538.19	5,570.69	4,554.44	5,503.15
	gBRF chamber	-	4,069.75	7,134.40	5,602.08	-
	gLR chamber	-	4,767.17	7,233.70	6,000.44	-
	gABP chamber	5,954.76	4,306.86	6,647.13	5,477.00	8,052.50
	gTP chamber	-	6,759.85	9,971.55	8,365.70	-
Cabinets						
	D inspection chamber	1,266.41	558.39	1,025.17	712.32	973.07
	H inspection chamber	-	306.65	754.56	462.25	649.92
	M inspection chamber	-	43.51	257.54	131.08	312.97
	DFO inspection chamber	-	779.60	1,055.64	917.62	-
	DFO-C inspection chamber	-	1,005.95	1,595.64	1,300.80	-
POLES (€/pole)						
	Wooden pole	-	252.46	330.29	281.81	-
	Concrete pole	-	350.57	684.02	574.32	-

ANNEXE 3. Response to the allegations

1 Scope for application of the offer

1.1 Access to associated resources

Summary of the allegations

According to Telefónica, rendering optical co-location service in exchanges other then the FTTH nodes is equivalent to investing in exchanges which be closed within a definite term. Telefónica says that the above also leads to saturation of the access stages to the exchanges. It also indicates that the Decision on markets 4-5 had made it clear that such services should only be provided in FTTH exchanges.

Orange, Vodafone and Ibersontel support the inclusion of all the exchanges in the RUO list. Vodafone in turn indicates that the restriction referred to is equivalent to limiting the fibre deployment of the alternative ones to the deployment Telefónica performs by itself. It remarks that the fact of investing or not in an exchange, although it deals with investments difficult to recover given the uncertain lifetime of the plant, is a decision that concerns the operators. Therefore it requests the fibre laying service to be provided at all RUO exchanges.

Response to the allegations

First, the investments that Telefónica mentions will be borne by operators seeking to use the associated services in exchanges other than FTTH nodes. Therefore it is evident that the operators are the ones who assume the investment risk resulting from access to the exchanges in question.

Moreover, it would be discriminatory not to provide to third party operators the resources that Telefónica has freely made available to provide their services, such as raceways and junction boxes that pass near the plants, and in particular the chamber 0.

Consequently, the initially envisaged focus must be maintained in the Services Report, and it is concluded that the access to the associated resources will be provided in all the exchanges in the RUO list.

Summary of the allegations

Ibersontel indicates that the cases where laying of fibre is requested through chamber 0 should be extended, so that it is feasible to have effective access to raceways near the Telefónica exchanges:

- First, Ibersontel maintains that passage through the chamber 0 is necessary to ensure the continuity of the laying through the main raceways in numerous exchanges. In particular it requires the inclusion in the offer of the possibility of requesting the laying of cable between junction boxes linked by raceways which must necessarily pass through chamber 0.

- Also it is against the limitation to laying one fibre per operator between the co-location space and the chamber after chamber 0, since it constitutes a restriction that prevents operators from having the due continuity to different raceways that run from the exchange in question. Accordingly it requires that several layings may be requested, provided that the destination junction box is different for each of the applications.

- It also requests that access to associated resources such as those mentioned should also be allowed at all exchanges in the RUO list, claiming that there is no such limitation for Telefónica.

ASTEL, GOI, Vodafone and Orange Ibersontel request the fibre-laying service from the first chamber after the junction box chamber following chamber 0 up to the multi-operator chamber, where chamber 0 is the pass-though junction box between these junction boxes, in order to have continuity between their networks and Telefónica ducts without the need to enter and exit the exchange.

Response to the allegations

The existence of certain restrictions that diminish the effectiveness of the access to the ducts close to Telefónica exchanges is certainly evident from the received allegations. It is a fact that some entities point out is related to the inability to leave the exchange through two different raceways. To deploy fibre in the raceways closer to the exchange is also difficult in view of the impossibility of installing fibre in chamber 0. And it also seems clear that there are no installations already available that make it possible to connect the operator network from the multi-operator chamber to the junction boxes after the Telefónica chamber 0, except by accessing the exchange and making the pertinent splices at the co-location room.

However, it should also be noted that, as observed by Telefónica, there is a risk of premature saturation of the resources near the exchanges, in case of an excess of applications for laying with the aforementioned characteristics.

On one hand the operators have the same right to occupy Telefónica's available resources in the vicinity of the exchanges, provided that the demand corresponds to projects for deployment of NGA, and it is not admissible on the other hand that such resources are used for purposes other than the mentioned one.

Given the above, in general it must be concluded that Telefónica should respond to requests for cable-laying in the vicinity of the exchange based on the different types (referred to above), provided they correspond to applications whose objective is to deploy NGA, and that it may reject applications that aim to implement other alternatives, as would be the signal delivery service for the provision of unbundled services, for which the RUO already offers effective remedies.

Also, given the various causes which can arise in relation to the different types of cable-laying services that individual operators may require in the vicinity of the exchange, it is not considered a priority that the MARCo offer includes detailed procedures, technical characteristics, terms or prices. On the contrary, to avoid the preparation of an offer which lacks flexibility and efficiency due to containing excess detail, it is considered acceptable for the provision of such services to be based on customised projects, provided within a reasonable timeframe, that are cost-oriented

Summary of the allegations

Orange indicates that the exchange list designated by Telefónica as optical head-ends is very important for planning deployments in view of the guarantees for permanency it mentions. In this sense it indicates that the changes Telefónica has been making in the list of optical head-ends creates an unacceptable uncertainty , so it asks for it to be agreed that

the designations Telefónica makes are understood as definitive, in order to ensure their continuity and security in investment.

Response to the allegations

What Orange has stated seems to have its primary cause in the significant reduction in the number of FTTH exchanges that has occurred since the initial definition in July 2008. However it should be noted that this reduction is attributable to the fact that the initial figure was merely an estimate by Telefónica extracted from its preliminary planning and, as can be seen by observing the stability of the lists submitted in the last occasions, it should be seen as exceptional.

The fact that there were constant changes in the definition of the FTTH exchanges would go against all logic, since at this stage there are significant investments in fibre optic deployment by Telefónica linked to different FTTH exchanges, so the decision to "demote" one of those exchanges is equivalent to squandering the investment made in network segments fitted expressly for that exchange.

In short, given the expected exceptional nature of situations like these, it seems inappropriate to make specific modifications in the reference offer and it seems more appropriate for this Commission to intervene on a case by case basis for potential conflicts that eventually may arise.

1.2 Side outputs and dispersion network

Summary of the allegations

Telefónica presents diagrams which show that the graphical information about the civil works for the side outputs and the dispersion network (in the public domain) are currently included in the information service for infrastructures.

In turn, ASTEL and GOI request that the network spans that run through the facades of buildings be included in the information service on infrastructure.

Response to the allegations

What Telefónica states is in line with the imposed obligations, but in order to avoid inconsistencies all reference to restrictions that are contrary to the mentioned facts should be removed from the MARCo offer, as noted in the text of the Decision.

Moreover, what ASTEL and GOI declare is not proportionate in the frame work of an offer addressed to the civil works infrastructure of Telefónica, as contained in the Decision on markets 4-5.

2 Information service on infrastructure (SII)

Summary of the allegations

Orange indicates that the current information system on infrastructure is not very suitable for a development environment, so it cannot be considered as a valid planning tool. It asks for features that provide greater flexibility for the system, with the option of being able to export map information to the operator's own planning tools (for example, using CAD format files).

Vodafone also highlights certain operational deficiencies of the system in question: the information is not segmented by exchange, improvements in element coding, usability of the interface, option for saving and retrieving applications under development and therefore not sent, and partial cancellation of SUC. It also indicates that Telefónica has not implemented its obligation of providing information on infrastructure associated with all the exchanges in the RUO list, and therefore it requests the demand to be continued.

ASTEL and GOI also remark on the lack of an option for saving applications in progress. Meanwhile Ibertontel calls for greater flexibility for dealing with SUCs: Partial deactivations or modifications to existing SUCs.

Orange indicates that the poles are not adequately represented in CARPE and it is impossible to track the layings on them. It requests that they are represented with the same level of detail as for other infrastructure elements.

Regarding the provision of information on areas not covered by RUO exchanges, Vodafone, ASTEL, and GOI request a reduction in the 6-month term provided for this purpose. In particular they request that where Telefónica is rendering retail services, it should deliver the information within one month.

Response to the allegations

It seems clear that the information system has certain characteristics that hinder the operation, which this Commission has been able to empirically observe after using it. However, it is not the subject of these proceedings to decide on the possible optimisations of the usability of the reference system. What should be closely monitored is that the facilities extended by Telefónica might be discriminating, and in this sense it has already been noted that special attention will be paid to Telefónica not using different resources for its own usage.

3 Service for providing information on vacant capacity (SIV)

Summary of the arguments

Telefónica indicates that the SIV service cannot be given without payment, since it involves the consumption of resources and therefore has costs associated to it. It adds that in any case the obligation to provide this service should be removed, as its use by the operators is becoming residual according to Telefónica.

In connection with the obligation to include a new parameter for quality which details the number of open junction boxes in the redefinitions made both during the provision of wholesale services and for rendering self-provisioning services, Telefónica says that currently the number of junction boxes open in any redefinition is already available in the IT systems. It also adds that opening junction boxes is not a business but, on the contrary, they select the minimum number of them due to the high costs involved. Ultimately it concludes that it is not appropriate to introduce this parameter as quality indicator.

Response to the allegations

The notes in the report regarding the provision of this service without payment do not respond solely to the apparent lack of precision of the extended facilities, i.e., the intention is not to oblige Telefónica to incur a number of costs without receiving financial compensation. It should be noted that the activities allegedly performed during this phase, consisting of

searching in systems, drawings, files, etc.. to determine the capacity available in the junction boxes, are being already invoiced by Telefónica for other concepts.

Indeed, Telefónica states in the MARCo offer, and confirms in its claims to the Services Report, that during the phase of analysis on applications for occupation by the operators the tasks of "*analysing vacant capacity in order to communicate to each province which junction boxes should be opened during the redefinition. This information is used by the staff of each province to investigate whether it is necessary to ask permission or to anticipate problems*" must be included.

Obviously Telefónica provisions for that purpose several resources (staff-hours) that directly affect the cost it invoices to the operators for the phase of analysis of applications. Therefore receiving additional economic tradeoffs for providing information on vacant space on the SIV service framework, as claimed by Telefónica, is EQUIVALENT to apply double billing for the operators.

In connection with what Telefónica declares about the inclusion of a new quality indicator, it is noted that the case-by-case consultation, as proposed by the operator, that could currently be made through its IT systems is not an effective tool, since that the statistics resulting from the comparative of many redefinitions can be used to establish differentiated procedures and discriminatory actions.

4 Procedures prior to occupation by the operator

4.1 Redefinition phase

Summary of the arguments

Telefónica proposes for the execution of the redefinition its understanding on the France Telecom procedure: the operator requesting access provides the material and the means for performing it, and a Telefónica technician collaborates in preparing the act of redefinition and deciding on the allocation of ducts and subducts, among other functions.

Similarly, Euskaltel requests that the procedure should provide an option for the redefinition being performed autonomously by the applicant, with exceptions such as the visit to junction boxes where drilling is required (the operator quotes the example of France Telecom).

Response to the allegations

It should be clarified that the redefinition planned by France Telecom as part of its reference offer for access to civil works[38] differs from the model set forth by Telefónica in its statement on allegation. According to the France Telecom's reference offer, operators seeking access to civil works must submit a statement of studies to France Telecom and then can access the infrastructure of civil work without being accompanied by France Telecom[39]. The information gathered during this phase is then forwarded by the operator to France Telecom in order to elaborate a request for access. Therefore, this procedure is different from the one described by Telefónica, where an employee of the operator is present throughout the entire process and, consequently, it leads to a much higher cost.

38 "*Offre d'accès aux installations de génie civil de France Télécom pour les reseaux FTTx. Offre destinée aux opérateurs exploitant des réseaux FTTx ouverts au public*" France Télécom 29/04/2009.

39 There are some exceptions to this case, including access to locked junction boxes and inspection chambers.

What Euskaltel suggests, although it is conceptually simple, has very significant implications at procedural level. Certainly a unilateral visit to the facilities is feasible, and indeed France Telecom often does so, as noted by Euskaltel. However, that procedure involves additional tasks which are not covered by the MARCo offer, and logically they are covered in the French offer.

These tasks, as contained in the France Telecom's offer, are intended to compensate the fact that the incumbent operator has not proven by itself the characteristics of available space on-site. The compensation is to provide to it all the necessary information on the basis that it can decide and confirm whether, in view of the status of the raceways in question, the application for occupation meets the technical regulations for occupation. Therefore, France Telecom has standardised the documentation the applicant operator must generate during and after the redefinition: a report detailing the facilities to occupy, ducts to be used in each span, pictures of the sections of the chambers and the list of free ducts, indications of piping to be created and details of the planned equipment installation. Following the referral of such information by the operator, France Telecom must carry out a new process for confirmation of the period for access, which is extremely lengthy, given the magnitude of the submitted information and the lack of knowledge on the infrastructures.

In turn, the procedure of joint redefinition proposed by Telefónica is a more flexible alternative, with the advantages derived from the joint assessment of the possible lack of space, such as the possibility of determining on-site the availability of alternative routes.

In short, during the initial phase of the infrastructure-sharing service, the inclusion of a modification of the type indicated is considered premature, since, as mentioned, it could not be performed without further ceremony. Indeed, the reference offers of France Telecom and Telefónica, though created with similar objectives, have provided for different procedures. Thus, in the opinion of this Commission it is not possible to change only the manner of performing the redefinition without consistently modifying the other procedures to ensure the success of the whole process.

However it should be noted that operators are free to agree with Telefónica on procedures such as the one proposed by Euskaltel; in this case it is advisable to reach agreement on the processes following redefinition, particularly in relation to the characteristics of the information to be exchanged, in order for Telefónica not to delay the approval of the application, and if it does, to ensure this is done based on information that is sufficiently detailed, and therefore easily visible.

Also, if Telefónica wishes to standardise an alternative procedure by which operators can have access to its civil works infrastructure, it must propose an amendment, duly made and documented, after being submitted to the analysis of this Commission in order to verify its operational and economic characteristics.

4.2 Redefinition of poles

Summary of the arguments

Guifi says that a technical design does not always have to be implemented and that the procedure could be speeded up by a simple generic description of the vacant capabilities. In short, it requests that deployment is automatically allowed without requiring any previous reports, these reports and redefinition visits being limited to cases in which they are necessary, for example when a bad pole must be replaced.

Response to the allegations

Precisely the actions for redefinition and technical design are aimed at determining the need to strengthen or replace poles, and they may be essential for preserving the integrity of the facilities, so their removal is not considered appropriate at this time.

4.3 Provision of alternative solutions

4.3.1 Provision of dark fibre

Summary of the arguments

Telefónica says that its optical network is not oversized so that it can at all times meet all unforeseen needs for dark fibre. It notes that it does not systematically install excess capacity (vacant fibre), but only that needed to achieve a given coverage within a given time, according to a reasonable network planning methodology. Therefore Telefónica is obliged to deploy new cables, and even build new raceways if the existing ones are saturated.

It also notes that there are technical difficulties associated with the assignment of already deployed cables, resulting in the existence of cut spans and unused fibres: the cable fibres assigned to the operator are useless in the raceway spans from the exchange and towards the customers, due to the loss of the end-to-end connectivity. As a result, all areas served by these fibres would not have FTTH coverage.

Additionally the location of new terminal boxes is required, with the consequent consumption of space, and Telefónica must have splice boxes in the span being considered. It adds that sometimes it must substitute them by others with a higher capacity, and this involves resplicing (cutting off the service). It also indicates that in general, management becomes complicated, which would require further developments for the internal management systems (which entails costs and development deadlines).

In short, it considers that the systematic obligation for provision of dark fibre is not justified. Telefónica proposes as being much more appropriate a procedure for enlarging the raceway, through a cost-sharing scheme with the concerned operators, based on the space each one occupies.

Finally Telefónica indicates that saturation situations will not be exceptional, as indicated in the context of the appeal for reversal of the Decision on Markets 4-5, since the underlying assumptions are different now, alluding to the fact included in the Services report that access to ducts must not be provided exclusively for FTTH deployment, but for any technology (including copper).

Orange considers it crucial to maintain the subsidiary obligation of provision of dark fibre, and believes it necessary to define the conditions for it to be provided. It considers the cooperation of Telefónica in obtaining viable alternatives is encouraging, and that it might be necessary for it to be applied in certain circumstances as a last resort. It also notes that it should not be based on a lease, but its rendering should be articulated via transfer of ownership.

Vodafone considers it essential for a detailed procedure regarding the subsidiary measure of provision of dark fibre to be incorporated, as otherwise this is a breach of the imposed obligation.

ASTEL and GOI consider that the provision of dark fibre as an alternative is necessary and request the inclusion of procedures and price.

Response to the allegations

It has been already noted that the introduction of procedures and prices in the reference offer does not seem appropriate at this time, but the measure remains fully valid in the terms outlined in the Markets Decision.

4.3.2 Saturated side outputs

Summary of the allegations

ASTEL and GOI request an extension of alternative infrastructure (enabling additional tubes) to be included as alternative solution. Vodafone also requests that Telefónica provide alternative solutions where there is no vacant space in the side outputs.

Response to the allegations

When an expansion of the existing infrastructure becomes necessary faced with the depletion of the alternative options aimed at resolving a situation of saturation, the operators must agree on how to size and address the work. In general, a cost-sharing scheme between the concerned operators would be applicable, proportionally distributed based on usage of the installed resources.

5 Norms for occupation of the infrastructure

5.1 Reservation of space

Summary of the allegations

According to Telefónica, the provision of universal service (USO) must be safeguarded, except in side parts, especially when it is expected for the relevant legislation to be reformed by introducing additional benefits associated with the concept of "broadband", which will require new deployments.

It also notes that the reduction proposed by the CMT in relation to the common operational reserve (ROC) is excessive. As an example it presents the case of France Telecom in France, which states that any operator must leave free the same amount of space it occupies. Also, according to Telefónica, France Telecom's offer states that more than 50% of a duct cannot be occupied.

Moreover Telefónica indicates that deployment to provision the universal service cannot be executed by subducts, as the cables of high-capacity in pairs require space that is equivalent to the entire duct (especially for feeding and distribution).

Finally, according to Telefónica, its proposal cannot be considered as negative, since operators are signing clauses accepting the reserve conditions as detailed by Telefónica.

Response to the allegations

First, the interpretation by Telefónica with respect to the France Telecom's offer is not completely accurate, since the real reserve is more lax than the operator's assumption. Certainly the French offer suggests not occupying more than 50% of the duct, but due to

operational reasons (ease of insertion and removal of cables), and not due to considerations about reservation. The same operational reasons have been considered in the context of this file, establishing that no more than 40% of the duct can be occupied, as Telefónica has requested, i.e., with more reservation of space than provided by France Telecom.

Also, in France there is the restriction to leave resources equivalent to those used unoccupied in a particular span. The above does not mean that 50% of a duct is left free. It merely implies that if an operator installs, for example, one 20mm cable, it must leave free an equivalent area (corresponding to a section of 20mm in diameter), which in terms of area is a fairly small reservation.

What is true in relation to the criteria for reserves of the French operator is that one complete duct in the transportation network must be reserved for maintenance actions (the equivalent in Telefónica's network to the part of feeding and important distribution spans). However, it should be noted that often the ducts present in said spans are smaller than those of Telefónica.

This criterion for reserve is comparable to the one indicated in this Decision, where one complete duct is reserved in the network sections having a significant number of ducts. And even in spans where the number of ducts is significantly reduced, in which case the French operator would not consider conditions for reservation of space, this Decision accepts certain percentages for reservation.

Finally, in relation to the alleged impossibility of deploying paired cables in subducts, it should be noted that Telefónica itself includes such a criterion in its draft for the reference offer, particularly in those spans where all the ducts are subducted. In any case, this decision provides for the reservation of a complete duct in the segments of greater importance, where is precisely where the need to install the larger size paired cables appears, and therefore they may be placed without subducts.

5.2 Financing of the subducts

Summary of the arguments

Orange agrees with the subduct being the basic unit for occupation,that the operator will handle the subducting at the time of rolling out its network and that the ownership of the right to use of the infrastructure corresponds to Telefónica.

However it disagrees with the fact of the operator that is subducting not receiving any financial compensation from Telefónica. It notes that, in addition to paying and assigning resources to Telefónica, transferring to it the right of exploitation, the operator must pay again, recurrently for their usage.

As stated, it claims that Telefónica should bear all the costs or, alternatively, that a cost-sharing system be imposed based on the proportions of use allocated to each operator, with all vacant capacity being assumed by Telefónica (for example, the operator bears one third and Telefónica two thirds)

Vodafone states that the provisions of the Services Report (Telefónica is also required to install subducts, and cannot transfer the costs of this installation in the prices for assignment of ducts) are not sufficient. It requests the establishing of a mechanism by which the operator can recover the cost of the facility to be used by third party operators. At least, if

the above is not accepted, it request that during the redefinition it should be possible to verify the effective occupation of the ducts already subducted, with it being proven that it is essential to install new subducts.

Euskalel presents similar claims by asking for the operator to maintain ownership of the subducts, and being able to recover costs from third parties. It also calls for clarification as to whether Telefónica has included the costs of subducts already installed in the cost calculation.

Response to the allegations

The Resolution is focused on preventing Telefónica from transferring the installation costs for subducts to the recurrent prices for renting infrastructure (in response to what Euskaltel points out, the finally determined prices do not include installation costs for subducts). Thus, contrary to the assumption by Orange, after the transfer of subducts to Telefónica, the operator should not pay for them a second time through the recurring price to be paid to Telefónica.

The above implies that when the operators install cable in subducts placed by Telefónica (who in fact is obliged to do it in this resolution), they will not be subject to any charge for such use. It is therefore reasonable to assume that when these operators perform the installation of subducts, other operators including Telefónica may use them under the same conditions. In statistical terms, therefore, there is a tradeoff between the various operators, who even benefit from the alternative ones, given that the deployment presumably made by Telefónica, and therefore the number of installed subducts, will be superior in quantitative terms.

Finally there is a transfer of the resources (subducts) installed by the operators, which is offset by the resources Telefónica has installed and will install, transferred to the operators with no recurring cost for depreciation.

5.3 Placement of optical terminal boxes

Summary of the arguments

Telefónica stares that the placement of terminal boxes only in junction boxes is carried out on an exceptional basis and due to operational reasons, it will not constitute a habitual practice. It also indicates that there are risks arising from occupational hazards prevention that discourage this practice.

Orange, ASTEL and GOI consider that the approach is discriminatory as it is left to Telefónica to decide whether the location of boxes in inspection chambers is efficient or not. They request that Telefónica defines in its offer the conditions under which it will allow the installation of terminal boxes in different types of areas and per type of chamber. In the same sense, Vodafone claims that if the alternative operator is the first to arrive at the building, and it considers it necessary to place the terminal box in a junction box, it must be allowed to do so. It also requires SLA to be defined for the opening of the chambers.

Response to the allegations

The reasons given by Telefónica appear to reasonably justify that the above mentioned will not constitute a customary practice for Telefónica. Nor does it seem reasonable at this time

to develop procedures for opening junction boxes and placing the terminal boxes of the operators, including the pertinent SLAs.

In any case, and in line with the provisions of the Resolution on symmetric measures in buildings, the initial approach is maintained, concluding that when Telefónica installs its terminals boxes in these junction boxes, the other operators can do the same and even request sharing network resources from that point of sharing until the end user.

6 Pricing associated to the provision of the wholesale service

6.1 General aspects

6.1.1 Inclusion of the complete cost for depreciation

Summary of the arguments

GOI indicates that in certain cases Telefónica does not incur any depreciation costs:

- Oldest infrastructures, which once their useful life has expired, are already amortised. GOI in particular highlights the case of the poles, whose origin in many cases is found in the telephone expansion stage of the 1960s and 1970s.

- Infrastructures funded by the developers of housing estates in new construction areas (in compliance with the urban planning regulations).

- Infrastructures whose deployment was executed in synchronisation with certain public works, with the government bearing the costs.

Due to all of the above, GOI requests that the prices proposed by Telefónica be adapted. It also sustains that the interests are being charged for twice by evaluating the plant as new and adding the interest for paying it off in the future.

Guifi expresses similar allegations regarding the oldest infrastructures such as the poles, requesting that the depreciation costs thereof not be transferred.

Vodafone, ASTEL and GOI request that the calculation of prices for shared infrastructure occupation be based on Telefónica's historical costs (although ASTEL and GOI say that the cable operators they represent indicate that costs are already very tight).

In turn, Euskaltel calls for applying different prices depending on whether the infrastructures has been built using contributions from others (for example, when the urbanisation works in an area have been used) or using own means.

Response to the allegations

In their written allegations, GOI and Guifi claim that there are some infrastructures in which Telefónica does not incur depreciation costs. At this point, it is convenient to make clear that the CMT annually reviews and approves the useful lives of the elements in Telefónica's plant. In such procedures, the CMT assigns an average useful life for each defined group of assets, which means it would be disproportionate to oblige Telefónica to apply separate depreciation element by element. The average useful life is a compact indicator reflecting the situations where within a group of assets, such as telephone poles, there are both assets whose real

economic life is below the average and very old assets. This is common practice in both financial accounting and analytical procedures.

As regards Telefónica's infrastructures paid for by third parties, such as the promoters of the urban projects, the CMT believes that the object of this file is not to assess the source of financing for Telefónica's investments. To obtain the prices for the services of the MARCo offer, the capital and operating costs of Telefónica's duct network included in the cost accounting are taken into account, that is, those which have had been already offset by Telefónica.

In turn, Vodafone, ASTEL and GOI request that historical costs be used. The CMT understands that from a regulatory standpoint it makes no sense to use historical costs as they do not reliably include the actual and present cost it would represent for an efficient operator to deploy the raceways being considered in the MARCo offer, which the running cost standard does consider.

In addition, GOI warns of the double charging of interest when appraising the plant, given that the plant is valued as new and interest for paying it off in the future is added. The CMT does not agree with this statement and says that the future redemption of the plant is limited to the years of useful life remaining for the asset. Put in another way, even if the value of assets is updated it does not mean that their seniority and the loss of value they have suffered since the date of inclusion in the inventory of Telefónica are not longer recognised.

Regarding the allegation by Euskaltel which proposes the establishment of different prices depending on the financing of the raceways, the CMT believes that it makes the offer disproportionately complex. Moreover, the difficulty for CMT or other auditing body in verifying the origins of the contributions made to fund the raceways would either make it impossible in technical terms or ,mean higher costs in managing the offer that would have a significant impact on prices.

6.1.2 Regarding the standard for costs

Summary of the arguments

GOI states that if the prices are set based on running costs, this should be done based on costs incurred by an efficient operator in the long run, using the latest technology and a resources and processing architecture that is consistent with the same, adapting the infrasatructure design to the current standards. It also asks that an audit be conducted to ensure the adequacy of the items included in Telefónica's cost accounting, thereby avoiding the inclusion of third-party costs.

Response to the allegations

The CMT's Resolution on Accounting Principles (15/07/1999), defines the incremental costs in Annexe 1 as follows: "*This standard is based in the assignment of the costs an efficient operator should incur in the long run, using the latest technology and a resources and processes architecture consistent with the same*." So, what GOI is really asking for is the application of the standard for incremental costs. Without needing to evaluate the reasonable nature of that request, it should be noted that in practice it is not applicable because the development of this standard has not been completed, so Telefónica's cost accounting is not available in the incremental standard.

On the other hand it cannot be considered necessary, as requested by GOI, to conduct a new audit to ensure that the items included in cost accounting are appropriate, since Telefónica's accounting system has been already submitted to three audits that ensure that the cost allocations for each item meet the guidelines from the CMT. The first one verifies that the source of Telefónica's cost accounting is the financial accounting. The second finds that the cost accounting system that Telefónica annually communicates to this CMT conforms to the established accounting principles. Finally, the third audit verifies precisely what GOI demands, i.e. the accounting Telefónica submits includes the appropriate items without including third-party costs. Ultimately it must be concluded that undertaking additional audits is not justifiable.

6.2 Analysis of applications previous to visit-redefinition

Summary of the arguments

Firstly, Telefónica states that prices cannot be considered as variables depending on the application, but are fixed and depend on staff that is dedicated exclusively to the MARCo service.

For this reason, according to Telefónica a fixed cost per application should not be considered, but a pool of resources to meet the demands of the operators that Telefónica has estimated as being 2,400 a year. Based on the estimate in labour hours for taking care of each application, Telefónica assigns to this activity 45% of the staff resources dedicated to the MARCo service.

Telefónica concludes that a minimum-sized group of people is needed to service the operators with full dedication to to them. It also notes that other activities should be added to those considered in the Services Report of the CMT, such as managing the redefinition date and analysing the vacant capacity, since they all are performed by the same group.

Subsequently, Telefónica said that the information used for the analysis of the applications is at the graphic level, which involves some difficulties in the identification and search for the junction boxes. It also notes that operators are often confused: junction boxes not attached to raceway, type error, junction boxes pertaining to another exchange, etc. This implies an important accumulation of applications. It indicates that the percentages of incorrect applications are very high and repetitive.

Telefónica expresses its disagreement with the times estimated for performing the tasks, since in its view they do not conform to reality and should be reviewed through a larger empirical study.

In relation to incorrect applications, Telefónica maintains that the CMT has underestimated their volume by considering 20% of the total, while Telefónica observations reveal up to 45% of incorrect applications, many of which must be analysed more than once.

Finally, Telefónica claims that the prices of the offers that other European operators provide in their offers for ducts are higher than Telefónica's.

In turn, Orange believes that some of the parameters in the offer from Telefónica are clearly overstated.

Response to the allegations

The Commission considers that the costs related to the application analysis service may in no circumstances be regarded as independent of the workload (number of applications) that is due to be processed and therefore cannot be regarded as a resource reservation, as Telefónica argues. Indeed, it should be noted that every efficient operator will dimension its staff in terms of the workload that it faces, dedicating more or less staff to that purpose, depending on the evolution of the number of applications. This consideration is perfectly applicable to the type of work to be performed by the operators of the application analysis service, as since it is an eminently administrative activity, it is reasonable to assume that the involved operators may engage in other similar activities when the workload of the MARCo offer is not sufficient to justify being busy during the entire workday.

Accepting the position of Telefónica would mean in practice enabling it to overstate the resources dedicated to the service, which would likely produce unjustified increases in costs that would be borne by the customers of the MARCo service. In fact, Telefónica itself recognises in its document that *"... the dedicated staff could be resized and reduced or increased in the future, depending on the demand, which is foreseen as growing, and therefore the service prices could be adjusted*." In short, it is considered that for the analysis of applications for the MARCo offer Telefónica should dedicate a number of resources that is consistent with the real workload. Therefore, the principle already stated in the Services Report is considered as appropriate, which consists of assigning to each application prior to the visit-redefinition a cost related to the number of hours required for its processing.

Moreover, this Commission has taken into account the arguments given by Telefónica on the tasks of "management of the redefinition date" and "analysis on the vacant capacity", which have been included in the activity of analysis of applications for the visit-redefinition. However, it is noted that the activity of "analysis on the vacant capacity" was already considered in the Services Report as belonging to the phase of completion of the redefinition, and therefore, in view of the allegations, for the sake of calculating terms, it has been moved to the phase indicated by Telefónica.

As regards the analysis of the period to be used for examining the applications, it is necessary to clarify that in its analysis the CMT Services took into account that some information is available at the graphic level, so it is not considered necessary to correct the estimated quantities. The same would apply to the case of unidentified junction boxes, whose situation is a consequence of Telefónica itself, without it being acceptable that the operators who use the MARCo service be charged higher costs because of a lack of available information.

Finally the CMT believes that while the prices estimated in the report should be reviewed in those cases that do not correspond with the real situation, Telefónica itself does not provide information in sufficient detail to endanger the assumptions made in these calculations, so there is no need to review beyond what is indicated in the preceding paragraphs.

On the cost attributable to the analysis of failed applications, Telefónica expresses its disagreement with the extra time considered by the CMT staff for the treatment of reiterations. According to Telefónica, the actual percentage of incorrect applications is 45.11%. In this regard it is noteworthy that both values are not directly comparable, since it is expected that the second and subsequent analysis of an application does not require the same period as the original application, and it is only necessary to review the points at which

errors are detected. Indeed, even considering that reviewing a reiterated application accounts for 40% of the time spent on the original one, the extra time required for its analysis, considered in relation to the total number of applications, would not exceed 45.11% x 40% = 18%, which is in line with the difference estimated by the CMT. Furthermore, it is reasonable to assume that the number of reiterated applications will decrease markedly as the usage of the MARCo service increases, as operators become more familiar with the tool. Ultimately, it is not considered appropriate to increase the extra time devoted to processing the repeated applications.

Finally, regarding the reference of Telefónica to the price proposed by other European operators, the CMT believes that the comparison should be considered relative to the set of prices associated with the visit-redefinition. A comparison of the price Telefónica proposes in its reference offer relative to other European operators is provided in Section 3.2.4.3, which shows that Telefónica's proposal has higher prices than its counterparts.

6.3 Execution of the redefinition

Summary of the arguments

Telefónica claims that the prices shown in the reference offer are based on the costs established by the Global Contract between Telefónica and the Collaborating Companies (CC). Telefónica notes that these concepts are billed based on points that are similar to time (hours), so that finally the CC charge Telefónica a fixed price regardless of the actual duration of the work. According to Telefónica, the activities carried out cannot be broken down because the situation is different in each case. Telefónica concludes that the real costs incurred by all the redefinitions must be taken into account. With respect to the variable costs associated with the visit-redefinition, Telefónica sustains that the prices shown in the reference offer reflect the conditions signed in the global contract between Telefónica and the Collaborating Companies.

Telefónica provides a comparative analysis between the costs of a visit-redefinition in the context of the MARCo offer (which is estimated at €751.3 for one intervention consisting of visiting 4 junction box chambers, 3 inspection chambers and 3 poles) and those corresponding to one visit for redefining one radio link for the 7 hours considered in the RUO (estimated as €794.11).

Telefónica then says that the time it must devote to obtaining permits from municipalities is significantly longer than the 30 minutes per intervention considered in the Services Report. It also emphasises the need to make previous visits to the infrastructures object of the visit-redefinition, in order to locate the caps and confirm the feasibility of the work.

Moreover Telefónica claims that the penalties for needless travel by Telefónica's personnel have not been taken into account, noting that under the RUO penalties provided for, such items do exist. Telefónica also highlights that in the Services Report neither the equipment costs nor those associated with material for operation have been considered.

With regard to personnel costs, Telefónica considers that an unreasonably low cost per hour (€22), as well as very tight deadlines have been used for the report. Telefónica also mentions the fact that in the comparison with other references, some contributions have not been taken into account (notably those provided by Iberdrola).

Telefónica argues the need to spend 3 hours opening, cleaning and drainage of the junction box chambers, and also the need to have recourse to other companies (sewage, asphalting and deasphalting, etc.) in some exceptional cases. In this context, it considers that the period of 1.7 hours for work in the chamber proposed by the Services does not cover the operating costs.

Finally, Telefónica says that the proposal by the CMT to reduce the extra price for weekend work to 10% is not justifiable. To this end, it states that the surcharge France Telecom applies for the same purpose is 100%.

Orange agrees with the criteria adopted by the CMT for the correction of some parameters, which are in its view, overestimated in Telefónica's offer in terms of the execution times of certain actions and the number of workers required. However, it states that the offer must establish that Telefónica is going to provide its own basic ventilation and water evacuation equipment. Similarly, it suggest the inclusion in the reference offer of the prices allocated to such services (asphalting, deasphalting, sewage, etc.) according to the contracts between Telefónica and its suppliers, and that in the event of deviations due to causes not attributable to the operator, the costs be assumed by Telefónica.

Response to the allegations

This Commission believes that the actual costs incurred by the redefinitions for Telefónica should be considered as being in line with the obligation to provide access to the infrastructures at prices based on the production costs. From the above it follows that some processes should not be automatically considered as valid due to the mere fact that there is an existing contract between Telefónica and its Collaborating Companies for providing certain services. In contrast, an analysis of these prices is crucial to determine whether they correspond to the production costs, and that the different tasks performed are not overvalued or if actions which are not necessary to achieve the sought goals are included. Regarding this last aspect, it is recalled that the Decision on markets 4 and 5 provides that the reference offer must be sufficiently unbundled to ensure that it is not necessary to pay for facilities which are not necessary for the service.

Regarding the duration of the different activities, Telefónica says that many of them have been undervalued by the CMT, but it provides no additional data to substantiate their actual duration. It must be stressed here that both in the responses to the different information requirements, as in the written statement, Telefónica provides only the duration of the tasks as an aggregated item.

Moreover, Telefónica calls for the establishment of penalties for needless travel when an operator accepts the appointment for redefinition and subsequently fails to appear at the same, in a similar manner as provided in some cases of the RUO. However, it must be commented that under the RUO the penalty is justified in order to compensate Telefónica when it has mobilised the resources, and the planned work could not be performed due to the fault of the operator who has requested them. That is, if there were no such penalty, Telefónica should bear the cost of travel of its staff and it could not invoice the operator for the work that motivated them, without that work being executed. It is therefore not comparable with a situation where the operator fails to attend an visit-redefinition agreed under the offer for access to infrastructures, in which case Telefónica may recover the cost of unsuccessful travel through billing the price of the application for visit, which covers the costs for the travel of staff and preparation of the visit as indicated in the Decision.

Moreover Telefónica argues that the Services Report did not consider the prices submitted by Iberdrola in response to the request for information sent by the CMT on 25 May 2009. In this regard it should be noted that this information was not used as a benchmark for costs related to the visit-redefinition because they corresponded to redefinition and installation operations, as seen in the light of the duration of the interventions described by Iberdrola (up to 2 weeks) and staff on attendance (7 people per intervention), which is much higher than other references. Logically, if this information were taken into account, its average would result in a distortion of the remaining available data.

Furthermore, Telefónica considers that the period devoted to the opening of junction boxes has been underestimated by the CMT, but it does not provide a detailed breakdown of the activities and the corresponding execution terms. Telefónica refers to certain additional costs (sewage, asphalting, deasphalting) that according to the reference offer, are billed separately, and therefore their inclusion cannot be justified as variable costs for the visit-redefinition. For other tasks referred to (opening of chambers, cleaning and drainage of the same, ventilation, etc.), this Commission finds that they have been already referred to in the performed assessments and it should be noted that some of them (e.g.. drainage) are not necessary for all the interventions. Therefore it is concluded that the period of 3 hours indicated by Telefónica for opening, cleaning and draining each junction box chamber is not adequately justified.

Regarding the hourly costs which Telefónica considers too low, it should be noted that were calculated based on data supplied by Telefónica itself, by dividing the price proposed for the different concepts between the hours indicated for each task[40]. Moreover, according to its response to the hearing procedure Telefónica itself recognises that the point price (hour) of the MARCo service contract is €16.95, which after applying TREI increases and the corresponding margin, results in €22 for the activities related to the visit-redefinition. Therefore, it is considered that using such costs is appropriate for assessing the costs incurred by Telefónica, as it reflects the conditions set between the operator and its collaborating companies.

Regarding the comparison given by Telefónica between the MARCo redefinition and the redefinition for radio link of the RUO, it should be noted that both reference offers are not directly comparable in this respect. Indeed, in the second case €41.80 as the hourly rate per Telefónica operator was considered, adapted therefore for an employee with a certain professional category (staff with higher education). However, in the first case the lower cost per hour (as derived from the information provided by Telefónica), corresponds to the recruitment of staff with basic educational levels, which implies that the total cost attributable to the activity of MARCo redefinition is lower.

Orange believes that the prices of some interventions should be included in the reference offer, although in its statement on allegations is not clearly defined in referring to exceptional interventions (companies for sewage, deasphalting, removal of vehicles, etc.), or to basic operations of ventilation and elimination of water for junction box chambers. In any case, it should be noted that in relation to the first ones, and precisely because of their exceptional nature and the considerable differences in costs that may result depending on the scale of intervention, this Commission considers as appropriate Telefónica's proposal to pass them

[40] These prices and durations for the different tasks are included in the document dated 20 April 2009, and in the statement on allegations.

on as a function of the costs incurred in each particular case, since setting average reference prices may not reflect the real magnitude of the interventions. Regarding the latter, it should be noted that these interventions can be made with the usual instruments of Telefónica or its subcontractors, with the associated costs already included in the amount paid for visiting junction box chambers.

Euskaltel considers that the asphalting, deasphalting, and sewage works should be assumed by Telefónica. In this regard it can be concluded that the above would breach the obligation stated in the Decision on markets 4 and 5 on the provision of access in terms of production costs. In effect, the interventions for sewage, asphalting and deasphalting are direct consequences from performing the visit-redefinition, and Telefónica would not carry them out if the applicant operator was not asking it so. Euskaltel argues that these interventions represent a profit for Telefónica to the extent that they improve the conditions of its network. However, this Commission believes that such interventions do not ensure in any case that for future access to the infrastructures it is not necessary to perform them again.

6.4 Activation in IT systems

Summary of the arguments

Telefónica claims that the 36-minute term considered in the Services Report for the activation activities in IT systems is incorrect, and that it would be more appropriate to assume a period of 1.5 hours.

Telefónica also argues that there is not really a fixed cost per application, but a pool of resources to meet such requests (25% of a total of 2,160 hours per year).

Response to the allegations

It is necessary to insist on that was already mentioned in Section 6.2 relative to the same question, namely that the resources Telefónica devotes to the MARCo service must be sized according to the real workload and not based on an estimate of demand which is considered oversized, since it would be forcing to the operators to pay an additional cost beyond what is strictly needed for the service.

Also, this Commission considers in relation to this activity that Telefónica does not justify the need for any other additional task with respect to those evaluated in the Services Report, so that no new evidence concurs to question the validity of the analysis already made.

6.5 Occupation of ducts

Summary of the arguments

Telefónica considers that the data from external sources used for the calculation of reference prices for raceways are not correct, since they are based on a price list that is not Telefónica's. In its view, Telefónica's methodology for calculation is more objective when it relies on its own cost accounting.

Telefónica provides additional data on the detail of the calculation through which it has obtained the occupancy prices for ducts and subducts. Telefónica states that the increased costs derived from the various modifications to the service imposed by the CMT are not taken into account in these prices.

Finally, in Telefónica's opinion, the price for the shared duct should be identical to the price for occupancy of the subduct since, on average, three operators will share a duct. ONO says that the estimate of one third of useful area occupied per operator is insufficient, being in its view more reasonable to consider 50%, given the technical difficulties for laying the cables of three operators and the necessary reservation of space for maintenance tasks.

Vodafone requests a reduction in the recurrent prices for occupation, considering that rental prices for infrastructures should be based on Telefónica's actual costs. Vodafone indicates that Telefónica's civil works infrastructures are not in any case newly implemented and are now largely depreciated.

ONO believes that the prices offered by Telefónica for the occupation of ducts, subducts and inspection chambers are already sufficiently low to allow for any operator to deploy its network based on that offer. In the view of ONO, operators with alternative infrastructures already built (i.e., those who have already made the investment effort) have been discouraged and harmed, and the network rollout by new competitors has been subsidised.

ONO indicates that the analysis made by the CMT staff does not consider the significant price differences when deploying raceways depending on the terrain where they are built (the prices for road or sidewalk construction are roughly twice those for land or gardens).

Response to the allegations

Telefónica does not seem to substantiate the alleged lack of objectivity of any source of data related to the costs of civil works other than its internal data. This assertion lacks grounds, taking into consideration that the external references used in the validation process contain widely proven information and come from reliable sources. Furthermore, Telefónica seems to rule out the need to submit the prices given to the relevant validation process to ensure effective orientation to production costs. To this end, external references are a very useful complementary tool, especially considering the difficulties that have arisen in this case to have access to the details of the calculations on which Telefónica has based its prices.

In relation to the price of shared ducts, as detailed in the section related to the occupation methodology, it is estimated that a fairer formula for billing the occupation of the shared ducts must be based on the actual useful area occupied in each case, instead of the average of operators who could theoretically make shared usage of the ducts.

The prices established are calculated on the basis of orientation towards production costs; this is not incompatible with the promotion of investment in alternative civil works infrastructures, contrary to the assertions by ONO. Additionally, the data and methodology of Telefónica's cost accounting must be noted as concerning to the calculation of investment and maintenance costs passed on to the ducts.

Regarding the point made by ONO about how the construction cost varies depending on the type of terrain, it should be noted that this factor is indeed taken into account in the studies conducted by the CMT. Indeed, the costs used to compare the prices provided by Telefónica correspond to deployment of ducts in roadway, with the most common case being the one pointed out by ONO. The prices provided by it for the installation of raceways would be at an intermediate point with respect to the various references available[41], as in the case of Telefónica prices.

Accordingly, the information provided by ONO does not in any way invalidate the data used for the comparative study performed. This study has proved to be correct for reliably delimiting the ranges within which rental prices for civil works infrastructures should be placed, thereby helping to determine the appropriateness of the prices proposed by Telefónica. In any case, it is not to be forgotten that the prices finally incorporated in the offer come from the disaggregated data derived from the accounting and the internal inventory of Telefónica that it has made available for the procedure.

6.6 Occupation of chambers and inspection chambers

Response to the allegations

Again Telefónica reiterates its arguments in respect to the fact that the only objective methodology is that one based on the Cost Accounting and provides a description of the process used to obtain the total cost associated with each type of junction box. It also includes a specific example for calculating the applicable recurring cost per application (type M inspection chamber). In the example, Telefónica states that the weighting factor used to determine the proportional share of the total cost of the inspection chamber to be allocated to each application for occupation is determined by the effective capacity of the element according to the Technical Regulations.

ONO considers it inappropriate to divide the cost by the number of applications for occupation because it is unrealistic to consider that such a number of operators will extensively share the space in these junction boxes. ONO indicates that the generalised presence of 27 operators in a chamber and 6-7 operators in a inspection chamber will rarely occur. ONO intends to apply a factor of 5 operators per chamber and 4 per inspection chamber, and to impose on Telefónica the obligation to expand at its expense the number of inspection chambers when they become saturated.

ASTEL and Orange differ in determining the number of applications per junction box in order to distribute costs, considering that the average number of ducts that are passed through has been underestimated. ASTEL and Orange say that a more representative analysis should be performed in order to reduces the prices. Orange provides sample data obtained from Telefónica's CARPE application, which includes all the junction box chambers in the area corresponding to Madrid/Esquerdo exchange, whose results yield an average of 20 ducts instead of the 10 considered in the hearing report. Finally, Orange believes that the results of the revised calculations should be used for all cases and not only when the difference exceeds a certain threshold (about 30%) as proposed in the hearing report.

ASTEL and Orange indicate that, after having determined the number of ducts passing through a chamber or inspection chamber, it would only be applicable to deduct the usage percentage reserved for maintenance, and not the one corresponding to the reserve for the universal service, whereby Telefónica already receives compensation from the remaining operators.

Euskaltel requests clarification regarding the 30-year value used for the life span. Also, Euskaltel notes that the table in the hearing report where the recurring costs for chambers

[41] If compared with the baseline data collected in Annex 2, it is observed that ONO prices for 110mm duct raceways are higher than the value of the prices of public data bases and lower than the references from the requirements for third party entities.

and inspection chambers are shown contains prices that are well above the 1.5% set by the methodology adopted for calculating the prices using external references.

Response to the allegations

Telefónica's assertion on its internal data as being the only valid source of information lacks any objective basis, as has been already argued in the case of the ducts and subducts. In any case, once the information provided by Telefónica has been reviewed, it is apparent from it that the basic data and methodology used to calculate recurrent costs derived from the investment and maintenance for each of the types of junction box are adequate.

However, Telefónica does not detail or properly justify the weighting factors applied to determining the proportional share of the total cost of the element assigned to each application for occupation. In the example provided for the specific case of the type M inspection chamber, Telefónica uses a weighting factor equal to 6, which would be given by the maximum number of subducts suitable in the type M inspection chamber according to the Technical Regulations. However, Telefónica has not used this approach for the other elements since if the factors were strictly based on the Technical Regulations, they would be much higher than those Telefónica has been using in practice and the resulting prices would be greatly reduced.

In this way the approach proposed in the hearing report is better adjusted to reality, as it is not based on the maximum capacity in terms of the ducts of a particular chamber or inspection chamber as requested by ASTEL and Orange, but on the average number of raceways that is expected to pass through each junction box type (depending on their location), which is a measure of the percentage of the total capacity of the junction box being used in any application for occupation.

Moreover, the reasoning given by ONO regarding the weighting factor to be used is not correct for two reasons:

- The number of applications for occupation that can be taken by an element has nothing to do with the total number of different operators expected to access the mentioned element (an operator could pursue multiple applications for occupation in a single inspection chamber or junction box chamber).

- It makes no sense for the cost to be borne by the operator to correspond to a percentage of the total junction box capacity that is much greater than the one actually being used by the same operator (e.g., as proposed by ONO the operator would take over 20% of the total cost of a chamber when the occupancy percentage per application is 3.7%, as detailed in the hearing report).

In short, the formula for calculating the recurring costs to be billed to each operator is proportional to the percentage of occupation of the resource by the operator, as in the case of the ducts. What ONO states would mean disproportionately increasing the costs proposed by Telefónica (in the case of the junction box chambers, for example, it would triple the price proposed by Telefónica).

The average number of 10 ducts considered for the feeding network (the number which determines the weighting factor applied to the P-series chambers) is an approximation based on the number of ducts usually running through Telefónica's civil works infrastructures in this

network span according to the information it provided. The data provided by Orange correspond to the Madrid/Esquerdo exchange, which belongs to the urban environment and which is well above average in terms of number of lines. Consequently, the data provided by Orange cannot be considered as representative of the entire set of Telefónica's exchanges; they are not reliable for calculating the average capacity of the raceways present in the entire Telefónica feeding network. It must be noticed that the recurring price applicable to the occupation of a junction box is an average price that varies depending on the environment and exchange the pertinent element corresponds to.

It is not considered appropriate to agree to the request of Orange and ASTEL in relation to cutting the prices in all the cases and not only for those where a certain difference margin is exceeded, as it is not necessary to undertake the review of Telefónica's calculations when the differences are not meaningful. As for the reserve associated with the universal service, although the observation made by Orange and ASTEL is correct regarding not considering it when calculating the weighting factor (in the P-series chambers it would increase from 27 to 27.9 as the proposal), it does not seem appropriate to revise this factor upward with such a degree of accuracy, since it is based on the average numbers of ducts, and also the new proposed prices for the P-series chambers are already well aligned with the rest of the references dealt with.

With regard to the issues raised by Euskaltel, it is convenient to further clarify that 30 years has been considered a value for the useful life of Telefónica's civil works elements because this is the value adopted for these elements in the decision on the types of depreciation to be applied to Telefónica's cost accounting, as detailed in the hearing report. With respect to the recurring costs shown in the table on page 47 of the report Euskaltel says that they are,in effect, greater than 1.5% of the maintenance costs, as indicated by this operator. The reason is that the cost reflected in this table considers not only the maintenance costs (C2), but also the depreciation and capital costs derived from the initial investment (C1), as explained in the description of the method used for the calculation.

6.7 Occupation of poles

No allegations concerning the recurring prices for shared occupation of poles have been received.

6.8 Laying of cable from the equipment co-location room

Summary of the arguments

In its statement on allegations, Telefónica disagrees with the analysis made by the Services on the fixed component for laying the cable from the equipment co-location room to the first chamber after chamber 0. Telefónica indicates that this fixed component is compared with the one provided as part of the RUO for fibre layings, and that in the Services Report it is mentioned that the price includes the installation activities for optical filters, connectors and optical wall socket, when actually these concepts have their own prices. In fact, Telefónica says, the fixed price under the RUO corresponds to the preparation of fibres for the subsequent splicing (removing the coating, fanning, removal of the protection for each fibre).

Telefónica considers that the average cable length to be used as a reference for calculating the cost for completing the technical design must be at least 150 metres. It also indicates that certain essential activities (capping and labelling of cables, safety measures, etc.) have

not been taken into account by the CMT. Accordingly, Telefónica says that the price of €371.40 set on the reference offer should be maintained.

Response to the allegations

The CMT has considered that the length Telefónica suggests in its allegations (150 metres) may be more realistic than the one estimated in the Services Report, not only for the run inside the exchange but also for the external run to the first chamber (at best) after chamber 0. Similarly, it was considered that the activities Telefónica has commented on may lead to additional costs not originally contemplated in the Services Report.

Accordingly, in view of the above, the price originally set for the cable laying service has been revised upward.

7 Analysis of the quality levels

7.1 Degree of compliance for the SLA

Summary of the arguments

Telefónica states that the degree of compliance for the SLA in the SUC cannot be as high as the one applicable to the SIV application (95%), and the originally proposed 85% must be maintained. The above is justified, according to Telefónica, by the fact that when the SIV service is provisioned, the degree of compliance depends exclusively on Telefónica, given that interaction with the operator is not required, contrary to what happens in the SUC service.

Response to the allegations

The extent of compliance with the SUC applications is carried out with the due clock stops, properly justified, in order to discount activities whose performance is not the responsibility of Telefónica (e.g. interactions with operators). Consequently, what Telefónica states does not seem to justify the different treatment for both types of applications concerning the assessment of the degree of compliance.

7.2 Quality indicators

Summary of the arguments

Telefónica sustains that it does not conduct a breakdown of activities in self-provisioning, equivalent to the breakdown existing in MARCo (i.e., it does not register in its systems an equivalent number of milestones or benchmarks).

It also indicates that the phase of work implementation is not comparable, since the operator has a period of several months available to do it, while Telefónica completes them in a much shorter period.

Vodafone requests the inclusion of a quality indicator to show the average terms for incident-resolution, and another one showing the percentage of incidents resolved later.

Response to the allegations

The CMT fully understands that the phase of work implementation is not comparable, and that is precisely why it understands that a certain level of disaggregation of indicators for terms is necessary, thereby differentiating this task from others that depend on Telefónica. It

should be noticed that the equivalent task proposed by Telefónica "FTTH execution feeding network" precisely masks actions whose responsibility is distributed (e.g.. redefinition and cable installation).

However, the CMT understands that Telefónica's systems do not include such a high level of detail in the terms as the one indicated in MARCo, for which reason a significant reduction in the number of tasks in self-provisioning has been accepted for the time being. However, the requirement for tracking the deadlines for certain tasks of special relevance has been maintained to allow a minimum follow-up of the processes.

ANNEX 4. Evaluation of Telefónica's proposal on penalties

1 General considerations

Firstly it is necessary to broadly assess the mechanism for penalties proposed by Telefónica for the MARCo offer, and then analyse the details of each one of the proposed parameters.

In connection with the provision phase, Telefónica proposes that the penalty system is activated only in case of defaulting the target term for a certain percentage of applications. If this threshold is exceeded it would be applicable to impose penalties on the total of applications which have exceeded the target provision term. This method differs from those covered under the RIO[42], the RUO, the RLLO and the WLR where in general the fact of breaching a term automatically gives rise to the payment of indemnity, irrespective of the degree of compliance of the commitment to quality.

It is appropriate to note that the MARCo service is at a preliminary stage, so it is still difficult to assess the real difficulties associated with its implementation, the causes of the problems and incidents that may occur, as well as other parameters related to the quality of service. It is therefore considered as appropriate that both Telefónica and the operators have a certain amount of flexibility at this time, in relation to meeting deadlines, so that exceptional situations that may occur do not lead to penalties accruing immediately. At the same time, a sufficiently high level of compliance must be guaranteed to ensure that penalties efficiently fulfil their role as an incentive to achieving compliance with the established SLAs. In short, the system provided by Telefónica is considered to be appropriate for ensuring compliance with the quality standards in the terms defined in the relevant section.

In relation to imposing penalties for incidents, Telefónica differentiates between those related to the phase of occupation by the operator and those caused by needless travel.

In the first case it should be noted that although there appears to exist a mechanism similar to the one discussed in previous paragraphs, some essential parameters such as the compliance percentage and measurement interval are lacking. For this reason, and consistent with the other points, it is considered advisable to fix in such cases 95% as the compliance percentage and define the measure interval as half-yearly.

Finally, the penalty mechanism due to needless travel is identical to that provided under the RUO, RIO and WLR offerings, except that in those offers there is also the imposition of penalties in the same terms to Telefónica when the operator has forced to make needless trips due to reasons attributable to Telefónica. Therefore, in order to establish conditions for reciprocal treatment, it is considered appropriate to conclude that unsuccessful or inappropriate trips made by the operator will also incur the payment of penalties by Telefónica.

It must be remembered that this kind of penalty does not stem from missed deadlines, but is intended to compensate Telefónica or the alternative operator for certain expenses incurred for no reason. Therefore it should be clear that this penalty cannot apply if the travel is already billed to the operator, as is the case with the non-attendance by the alternative operator at a visit-redefinition.

In relation to the amount proposed by Telefónica, it is considered adequate and in line with the one provided for similar causes in other reference offers.

[42] Regardless of the penalties for missed deadlines in the provision of wholesale circuits, which are currently reflected in the RLLO.

2 Number of indicators and terms

Provision phase

Generally it is considered that the number of indicators should be sufficient to cover all activities for providing services under the framework of the reference offer and any unexpected incidents that may occur. For this reason, you should compare the commitments acquired by Telefónica in relation to the flow of tasks required to apply for the shared usage of infrastructures, including in particular the information service on ducts and the service of application for shared usage.

First, the information service on infrastructures (SII) is the provision to the operators of a computer tool to be accessed independently by the operators, so it is not necessary to set any provision term-related indicator. In contrast, in accordance with the established SLA, the vacancy information service (SIV) must be provisioned within a maximum of 10 working days, so it is essential to include it in the list of commitments which may result in penalties.

Regarding the service for sharing (SUC), the established SLAs are the following:

Milestone	**SLA (Maximum term)**
Reception of the application for shared usage (T0)	
Validation of the SUC by Telefónica Operations	T0+10 days*
Term for proposal on redefinition	10 days after validation of the SUC*
Performed Redefinition Viable (T1)	T0+30 days*
The operator sends the signed act of redefinition and the descriptive report (T2)	T1+10 days
Confirmation of the SUC by Telefónica (T3)	T2+5 days
Occupation by the operator	T3+6 months

(*) These terms may be subject to clock stops

However, in the list of indicators which may cause payment of penalties Telefónica only considers the concepts "*SUC: From application for occupation until performed redefinition viable*" and "*SUC: From Performed Redefinition Viable until act of redefinition and descriptive report provided*", excepting those corresponding to "*Validation of the SUC by Telefónica Operations*", "*Term for proposal on redefinition*", "*The operator sends the signed act of redefinition and the descriptive report*", "*Confirmation of the SUC by Telefónica*" and "*Occupation by the operator*".

As regards the indicators "*Validation of the SUC by Telefónica Operations*" and "*Term for proposal on redefinition*", their inclusion in the list of indicators that lead to the application of penalties is not considered necessary since a delay in those tasks would be reflected in the indicator "*SUC: From application for occupation until performed redefinition viable*".

However, indeed it is deemed necessary to include other commitment related to the task "*Confirmation of the SUC by Telefónica*", since otherwise a delay in implementation would not be subject to any penalty, and the provisioning process would be subject to indefinite delay.

Moreover it is not acceptable to include penalties for the concept "*SUC: From Performed Redefinition Viable until AR and MD provided*", given that the demanding operator, being responsible for their implementation, is the main party harmed by the breach, and it is evident that a delay in the transfer of the act of redefinition and the descriptive report will automatically be reflected in delays in its deployment.

In relation to the current occupation of the infrastructures once the SUC has been confirmed by Telefónica, it does not appear to be appropriate to apply financial penalties to an operator demanding access for breaching the set deadline. Indeed, the default of that term means that the ducts in the SUC become automatically available to Telefónica or to any other operator requesting them, so that no party is damaged by the delay incurred.

Incidents in provisioning

Regarding penalties for incidents occuring during the phase of occupation by the operator, Telefónica foresees their imposition when the resolving period exceeds 60 days.

It should be pointed that the repair of civil works to solve obstruction problems may require the mobilisation of specialised machinery, the application for permits from the competent authority and moving operators trained for this purpose; the magnitude of these activities is difficult to estimate, especially when there are no similar references in other regulated offers.

On one hand it should be noted that incidents during the phase of occupancy involve a delay in the deployment of the alternative operator, but no interruption of the service offered to its customers. However, this delay does not prevent damage being caused to the operator experiencing it, since a delayed deployment involves postponing the return on investment. Accordingly, the prescribed 60 working days term, which in practice represents the assigning of the network deployment works for a period of approximately 3 months, seems excessive by any standards for completing the work of unclogging ducts. Therefore, given that the initial stage of the relevant regulated services calls for adopting a prudent approach, it is deemed appropriate to establish a maximum term of 30 days and default thereof will justify the imposition of penalties on Telefónica.

The foregoing must be understood without prejudice to, firstly, the parties privately negotiating other SLAs for resolving incidents in provision and maintenance, as noted in the body of the Decision and, secondly, this Commission redefining the term referred to in the presence of conflicts presented by the involved operators or in view of the evolution of the quality indicators defined to measure the resolution of incidents.

3 Compliance percentages and measurement interval

It has already been justified in the annexe in which responses are given to the allegations submitted, that Telefónica's proposal regarding the implementation of 85% of compliance commitment is not acceptable; a level of compliance of 95% must be applied in all cases.

Regarding the measurement of the indicators, it is considered that the semi-annual counting Telefónica proposes satisfies the needs of having a sufficient number of samples for the calculation and in addition, does not excessively delay the payment of penalties.

Moreover, the proposal by Telefónica sets a minimum number of units measured in the reference interval, which if not reached, will cause them to be accumulated in the next interval until the minimum quantity is reached, and then, if necessary, the appropriate compensation is paid.

Thus, it is considered that the mentioned method may introduce unnecessary delay in the payment of penalties, and be particularly harmful for operators carrying out a limited number of deployments. In such cases, the systematic delay in payment could be ineffective, by failing to achieve the intended objective of ensuring the operation of the reference offer within the established quality parameters. Therefore, the elimination of the reference offer of the forecasts for the minimum number of units semi-annually measured must be concluded.

4 Amount of the penalties

Provision phase

During the provision phase, the amount of the penalty is calculated in terms of the days of delay incurred in the delivery of the various services. In all cases, the amount corresponds to 5% of the activation fee, with a ceiling equal to it.

However, the reference offer does not clearly define the concept of "activation fee" which must be qualified to avoid ambiguities (in particular, it would be unacceptable for it to refer to the activation process defined in the Section 2.2 of Annex A6 of the reference offer, due to the low value associated with it.)

Consequently, the reference offer must clarify that the activation fee referred to is the one corresponding to the non-recurring costs associated with providing the various services. More specifically:

- For the service of information on vacancy (SIV) the price of that service as defined in Section 1 of Annex 6 of the MARCo offer should be considered.
- For the services related to the applications for shared usage (SUC), activation fee must be considered as the non-recurring costs associated with the SUC, i.e. all the services necessary to reach the effective occupation of the ducts. This includes the quotas regarding the analysis of the applications before the visit-redefinition, the visit-redefinition, and the price for activation in the IT systems. That is, the sum of all the components referred to in Section 2 of Annex 6 of the MARCo offer will in all cases be considered, once revised as provided in this Resolution.
- For the service of laying optic fibre cable between RUO room, activation price will be considered as the non-recurring cost for installing that cable as provided for in Section 4.1 of Annex 6 of the MARCo offer once revised as provided in this Resolution.

Using the activation price as a reference for the accrual is a common practice and has been used in other reference offers such as the RUO, the RIO or the RLLO, and therefore its usage is considered appropriate in the MARCo offer. The applied rate of 5% for every day of delay is also considered appropriate and in line with the provisions of other relevant offers, subject to future revision if deemed necessary once the effectiveness of the mechanisms established has been proven. Also, it can be observed that the monetary value resulting from the application of that percentage is, as shown in the following section, similar to that provided in the offer of Portugal Telecom[43].

For example, the following table shows the resulting amount of penalties for different deployment scenarios:

Scenario[44]	Cost for provision (SUC)	Daily amount of th epenalty (5% of activation fee)
5 junction boxes and 5 inspection chambers	€459.95	€23.00
10 junction boxes and 10 inspection chambers	€697.58	€34.88
20 junction boxes and 20 inspection chambers	€1,172.86	€58.64

[43] It is not possible, for that purpose, to compareagainst France Telecom's offer as the amount of the penalties is not available in the reference offer.

Moreover, Telefónica has announced the establishment as a ceiling of a maximum amount in the penalties to be paid per application, which is a practice that has not been provided for in the reference offers of RUO, RIO, RLLO[45] or WLR.

Thus, on the one hand one could reason that the above is justified in order to avoid incurring excessive amounts paid in exceptional circumstances. However, it must be remembered that the established mechanism for penalties already foresees exceptional situations, since a compliance percentage of 5 points less than 100% has been accepted compared to the total of applications; a second safeguard is therefore not estimated as necessary.

It is also reasonable to think that setting a limit on the amount of penalties would effectively mean that, once exceeded, Telefónica would have no additional incentive to provide the service required by the operator. In short, it is considered necessary to remove the criterion proposed by Telefónica.

Incidents in provisioning

For incidents during the phase of occupation, 5% of the monthly fee of the application per day of delay is forecasted. This amount is considered appropriate, and in line with what has already been discussed in previous paragraphs, although the establishing of ceilings on payment of penalties must again be eliminated from the offer.

Needless travel

In the case of needless travel by Telefónica's technicians, it proposes a sole payment of €111.46 (trips made between 8h and 22h) or €138.57 (trips made between 22h and 8h). It has been found that these amounts are identical to those provided in the remaining regulated offers for false alarms involving travel by Telefónica. Since the root cause for the penalty is the same in all cases, the amount proposed by Telefónica is considered appropriate.

5 International references

The reference offer of Portugal Telecom establishes penalties for breaches of the SLAs related to the "*Term for response to a request for information on ducts and associated infrastructure*" and "*Term for response to a request for feasibility of using ducts and junction boxes*."

Indicator	Term	Fulfilment level	Daily compensation	Limit
PQS1: Term for response to a request for information on ducts and associated infrastructure	5 working days	100%	€50	60 working days (€3,000)
PQS2: term for response to a request for viability of utilisation of ducts and junction boxes	15 calendar days	100%	€50	90 calendar days (€4,500)

44 It is considered that 80% of chambers and inspection chambers are visited in the visit-redefinition

45 In the case of the RLLO, as an exception it is necessary to mention the penalty for delays in the resolution of faults, where the amount of the penalty is limited to three monthly installments per incident. However, the high percentages to be applied in relation to the activation fee (between 10% and 16% per hour of delay) and the very nature of the problem mean that it is not possible to compare them with the MARCo offer.

6 Regarding the settlement of penalties and the requirements for billing penalties

First, it should be noted that the Commission already issued its opinion in its Resolution dated 2 July 2009, in relation to the penalty systems set out in the relevant wholesale offerings, as already stated in the Legal Grounds of this Decision. The purpose of this decision was to implement measures to ensure the full effectiveness of the penalty systems in their mission of discouraging the default of deadlines and other requirements. More specifically, the procedures for the settlement of penalties in the RUO, the RIO, the RLLO and WLR were modified by introducing a settlement procedure similar in all the reference offers. It is especially revealing in this regard the mention made in that Resolution, which states "*The amendments finally adopted should be taken into account by Telefónica with a view to developing future Reference offers in order to achieve greater consistency*."

Since for the case of the offer being considered the problems in relation to the settlement procedure are similar to those of the rest of the reference offers, and considering the objective of ensuring consistency between them, it is considered appropriate to include in the MARCo offer the mechanism described in that Decision.

Additionally, the system proposed by Telefónica provides a series of requirements which operators must meet in order for Telefónica to pay the appropriate penalties, including the fact that the operator must be up to date with payments for the MARCo service and compliance with the clauses and conditions contemplated in the MARCo service contract and annexes.

It must be concluded that what was required by Telefónica cannot be regarded as proportionate, firstly because there is already a system that guarantees the honouring of payments by the operators, and secondly due to the total lack of reciprocity which would result from this statement because of there being no similar provision regarding the payment of penalties by operators appealing against the MARCo service.