

**DECISION ON WITHDRAWAL OF DRAFT DECISION ON THE WHOLESALE  
MARKET FOR CALL TERMINATION ON PUBLIC TELEPHONE NETWORKS  
PROVIDED AT A FIXED LOCATION NOTIFIED TO THE EUROPEAN  
COMMISSION**

**- PROCEDURE PT/2017/2023 -**

1. By determination of 19 October 2017, the Board of Directors of ANACOM approved a draft decision, for notification to the European Commission (EC), the Body of European Regulators for Electronic Communications (BEREC) and the national regulatory authorities (NRA) of the other Member States of the European Union, on the wholesale market for call origination on public telephone networks provided at a fixed location - definition of product markets and geographic markets, assessment of significant market power and imposition, maintenance, amendment or withdrawal of regulatory obligations.
2. On 20 October 2017, the draft decision was notified to the European Commission under the terms of paragraph 1 of article 57 of Law no. 5/2004, of February 10, in its current wording (LCE), and registered under number PT/2017/2023.
3. By communication of 20 November 2017, the European Commission expressed serious doubts as to the compatibility of the proposal for designation of significant market power (SMP) with Community law and, more specifically, with the requirements set out in paragraph 3 of article 15 and paragraph 4 of article 16 of Directive 2002/21/EC, as amended by Directive 2009/140/EC (Framework Directive), in light of the objectives set out in article 8 of this Directive. In the same communication, the European Commission notes that, under paragraph 4 of article 7 of the same Directive (as transposed by paragraph 5 of article 57 of the LCE), the draft decision may not be adopted for a further period of 2 (two) months and makes it clear that "ANACOM may undertake the proposed deregulation of call origination for non-geographic numbers related to the provision of specific services".
4. Whereas:
  - a. The serious doubts expressed by the European Commission In its Communication of 20 November 2017 are difficult to resolve given the measure's context, and these doubts stem from a number of issues related to

the assessment of effective competition in the wholesale market for call origination on public telephone networks provided at a fixed location for the provision of retail telephone services, supported by indirect access (under the terms of paragraph 4 of article 7 of the Framework Directive);

- b. The European Commission's serious doubts are limited to the wholesale market for call origination on public telephone networks provided at a fixed location for the provision of retail telephone services, supported by indirect access (designated by the European Commission as the "market of call origination for geographical numbers");
- c. The European Commission states that "ANACOM may undertake the proposed deregulation of call origination for non-geographic numbers related to the provision of specific services", the draft decision on which is included in the same document as also includes the wholesale market for call origination on public telephone networks provided at a fixed location for the provision of retail telephone services, supported by indirect access, where the Commission's serious doubts arise;
- d. It is considered appropriate to carry out an internal reflection on the specific points raised by the Commission, in particular with a view to considering a possible reformulation of the notified draft decision as regards the wholesale market for call origination on public telephone networks provided at a fixed location for the provision of retail telephone services, supported by indirect access;
- e. Any reformulation of the notified draft decision on the wholesale market for call origination on public telephone networks provided at a fixed location for the provision of retail telephone services, supported by indirect access entails re-submission of the envisaged measure to the general and specific consultation procedures set out in the LCE (articles 8 and 57);
- f. In accordance with Article 57 of the LCE (which transposes Article 7 of the Framework Directive into national legislation), there is nothing which prohibits ANACOM from withdrawing the draft decision in this phase as regards the wholesale market for call origination on public telephone networks provided at a fixed location for the provision of retail telephone services, supported by

indirect access, communicating this decision to the European Commission and BEREC;

- g. The procedure associated with the phase which follows the communication from the European Commission expressing serious doubts about the draft's compatibility with Community law, as set out in Article 57 of the LCE, entails the intervention of BEREC and the immediate establishment of an expert working group upon commencing this phase;
- h. In accordance with the procedures for the formulation of opinions by BEREC in phase II, as under article 7 of the Framework Directive, the expert working group is to be established within 4 working days of the commencement of phase II by the European Commission and its first meeting is to take place no later than 5 working days following establishment of the group;
- i. On these terms, it is considered appropriate that, for reasons of procedural economy and resources, and given the intention to withdraw the draft decision as regards the wholesale market for call origination on public telephone networks provided at a fixed location for the provision of retail telephone services, supported by indirect access, this intention be decided and communicated to the EC prior to the establishment of this expert working group;

the Board of Directors of ANACOM, in accordance with the provisions of article 57 of the LCE, and in accordance with the provisions of article 7 of the Framework Directive, determines:

1. To withdraw, pursuant to the Community notification procedure, the draft decision on the wholesale market for call termination on public telephone networks provided at a fixed location - definition of product and geographic markets, assessment of significant market power (SMP) and imposition, maintenance, amendment or withdrawal of regulatory obligations, as regards the wholesale market for call origination on public telephone networks provided at a fixed location for the provision of retail telephone services, supported by indirect access, as approved by Determination of 19 October 2017, under the terms of article 57 of the LCE;
2. To notify the European Commission, BEREC and interested parties as to the point above.

Lisbon, 23 November 2017