REVIEW OF RESPONSES TO ANACOM'S CONSULTATION DOCUMENT:

"Consulta Pública sobre o Processo de Definição de Mercados Relevantes, Avaliação de PMS e Imposição de Obrigações"

1. Introduction

Following the completion of a report on the methodology for undertaking the market reviews and analyses required by the 2003 EU Directives, ANACOM issued a public consultation document in May 2003, seeking the views of interested parties on the methodologies, priorities and processes ANACOM proposes to undertake.

The Consultation Document sought views and comments on three main areas:

- The process for implementing the new framework
- The principles for the definition of the relevant markets, PMS assessment and regulatory obligations
- The analysis of switched fixed narrowband services

This report contains an analysis of the responses to the public consultation received by ANACOM. Those responses came from:

- PT Group, which includes the views of the following subsidiaries: Portugal Telecom SGPS, PT Comunicações, PT Prime, Telepac, TMN, PT Corporate, PT Multimedia SGPS, TV Cabo and Lusomundo SGPS;
- OniTelecom;
- Group SonaeCom, which has send two different responses, one from its mobile arm, Optimus, and the second one representing its fixed telephony and Internet subsidiaries, Novis and Clix;
- RenTelecom;
- Apritel, the association of telecommunication operators.

Whilst several respondents were critical of the structure of the Consultation Document (particularly of the way in which it carried over issues from Chapter 3 (general methodology) to Chapter 4 (specific analysis of Fixed Narrowband services) the responses were relatively full and helpful.

These responses, in terms of content, can be divided into two groups:

- on one side PT Group, the incumbent, which as expected argues for less regulation, and
- on the other side all other responses, which argue in most cases for more regulation. The competitors do not appear to be

preparing the ground to argue for deregulation in areas where deregulation may be beneficial to competitors, for example retail price control.

In section 3 below is an overview of the main substantive issues raised.

In section 4 we present a detailed analysis of all the responses received.

2. Key issues identified in the responses

2.1. Procedure and Clustering

ANACOM's powers to define new markets

In its introduction to chapter 3 responses, PT criticizes the fact that the consultative document shows that ANACOM is willing to analyse the possibility of defining relevant markets different from the 18 markets established by the Commission in the Recommendation[1]. According to PT's interpretation of the framework, as the Commission has already done the job of identifying the relevant markets, what the NRAs should do at this stage is limited to the possibility of merging or segmenting further some of the already defined 18 markets.

However, article 15 along with articles 6 and 7 of the Framework Directive clearly set out the procedure for an NRA to define markets, including markets that differ from those included in the recommendation. Section 3.3 of the Explanatory Memorandum to the Recommendation discuss not only the definition of narrower (segmented) and broader (merged) markets based on the 18 markets set out in the Recommendation, but also the inclusion of additional markets separate from the 18 markets.

Thus it is clear that PT's interpretation is not correct. The way the process is set up in the Framework Directive makes the process of defining new markets very difficult and with substantial hurdles for clearance by the Commission. However this should not prevent NRAs from defining additional markets where there is strong justification under the Directives.

The freedom to segment existing markets is also clearly allowed, as showed in the case of Oftel, the UK regulator, which has defined each international destination as a separate market.

[1] See pages 11 and 12 of PT's response. PT repeats the same argument again in the introduction to Chapter 4 questions (page 57).

Carry-over of SMP obligations

In the introduction of chapter 3 responses, PT argues against ANACOM's point that the Commission would not expect NRAs to withdraw existing regulatory obligations on SMP operators, which have been designed to address legitimate regulatory need which remains relevant[2]. PT says that all obligations should be reviewed and justified even in the case that the operator is currently subject to the same obligation. PT argues that the new regulatory obligations may be similar, but do not necessarily have to be the same (paragraph 115 of the Guidelines).

Article 16 of the Framework Directive states that the NRA may impose new remedies or maintain or modify remedies applied to an operator with SMP. This is not contradictory with what ANACOM wrote in the consultation document. What ANACOM is referring to is paragraph 119 of the Guidelines, which stresses the particular case of the "early stages of implementation of the new framework". In those early stages - and the first market analysis is clearly included in the "early stages" - , the Guidelines suggest that the Commission would not expect NRAs to withdraw existing regulatory obligations on SMP operators, unless that is justified. Thus, ANACOM is just addressing the same position as expressed by the Commission in the Guidelines.

Inclusion of markets 11 and 12 in Cluster 1

Some of the new entrants, in particular OniTelecom, Novis, and Optimus, as well as Apritel, suggest very strongly that markets 11 and 12 of the recommendation (wholesale unbundled access, including shared access, to metallic loops and subloops for the purpose of providing broadband and voice services, and wholesale broadband access), should be included, or at least analysed together, in cluster 1 defined by ANACOM's consultation document[3].

The operators argue that there is both demand substitution between narrowband and broadband Internet access, in that some customers may make a purchasing decision between for example a flat rate ISDN-2 service and a low speed ADSL service; and supply substitution

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[2] See pages 16 and 17 of PT's response.
[3] See introductory comments to Chapter 2 and answers to questions 2.2 and 4.3 of OniTelecom, Novis and Optimus responses and page 6 of Apritel response.

at the retail level, in that Internet connectivity and the operation of servers is common to both narrowband and broadband ISPs.

In addition PT delivers ADSL services in an effective bundle with PSTN services, in that it is not possible to buy ADSL services without having a PSTN line. While this is rational in that the two services share common infrastructure, this does raise the necessity to ensure some elements of regulation, for example the allocation of common costs between the two services, have consistent treatment. In addition, the level of competition in each of the markets is likely to be similar due to shared infrastructure.

The operators are thus concerned that, if the two sets of markets are analysed separately and at different moments in time, there would be a time frame where the regulation of one would not be consistent with the other.

2.2. Additional Markets

The inclusion of additional markets is, as has been noted above, possible but requires overcoming substantial hurdles. It may be that in some cases the issues raised below can more easily be addressed, from a procedural point of view, by implementing remedies based on the existing markets rather than introducing new markets. This is the approach that has been adopted by OFTEL.

The decision whether to include new markets or to use the existing markets is made more complex by the inconsistencies in the new framework, with most markets implicitly linked with remedies, for example the "market" for unbundled local loops, while some others, such as "Access and call origination on public mobile telephone networks" not being clearly linked to any single remedy.

Wholesale narrowband access

OniTelecom, Novis and Apritel suggest the inclusion of this new market[4]. The corresponding retail market is included and other EU regulators have introduced ex-ante regulation in this market – wholesale line rental – in order to allow a single bill from new entrants.

[4] See answers to questions 2.1, 2.2 and 4.22 of OniTelecom and Novis, and page 5 of Apritel response.

An alternative approach to the introduction of a new market would be to implement wholesale line rental as a remedy to enable competition in the markets 3 to 6 for calls from fixed locations. This is the approach adopted by OFTEL.

Access to cable landing stations

OniTelecom, Novis and Apritel suggest the inclusion of the access to cable landing stations as a new market[5]. While competing operators are able to build competing infrastructure within Portugal and are able to buy capacity on sub-sea cables in the form of Indefeasible Rights of Use (IRUs), the landing stations, which enable the operators to connect their domestic networks to international capacity are controlled by PT. Thus cable-landing stations could be considered a bottleneck facility.

Segmentation of business customers

PT suggests that non-residential customers should be further segmented into SMEs and large corporate customers to take account of the different level of competition in these two sectors[6].

Segmentation by geography

PT argues that trunk markets should be geographically segmented, namely in order to reflect the competition that exists on the routes such as Lisbon-Oporto[7]. PT does not mention geographic segmentation on the basis of access markets, presumably because the level of competition in all access markets is so small as to make this unnecessary.

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[5] See answers to questions 2.1, 2.2 and 4.22 of OniTelecom and Novis, and page 5 of Apritel response.
[6] See introductory comments to Chapter 4, and answers to questions 3.10 and 4.9 of PT's response.
[7] See answers to questions 3.8 and 4.23 of PT's response.

Interconnection links

OniTelecom and Apritel propose the introduction of a new market for interconnection links[8].

We consider that this could be treated as an essential part of most wholesale remedies (in relevant markets, 8, 9, 10 and 12), as the links themselves are only necessary together with interconnection traffic services.

Wholesale high-speed leased lines

OniTelecom, Novis and Apritel suggest the introduction of wholesale high-speed leased lines[9].

This seems to be covered in markets 13 and 14 of the Recommendation on Relevant Markets, which cover the local ("terminating") and trunk elements of lines. There is discussion of the speeds on lines included in these markets so they presumably include both low speed and high-speed lines. The Recommendation does note that there may be arguments for segmenting these markets by speed.

Retail high-speed Internet

OniTelecom, Novis and Apritel suggest including as a new market the retail high-speed Internet access[10].

Retail leased lines ("non-minimum set")

OniTelecom, Novis and Apritel argue for the extension of the retail leased lines market to high-speed rates[11].

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[8] See answers to question 2.2 and 4.22 of OniTelecom response and page 5 of Apritel response.
[9] See answers to question 2.2 and 4.22 of OniTelecom and Novis responses and page 5 of Apritel response.
[10] See answers to question 2.2 and 4.8 of OniTelecom and Novis responses and page 5 of Apritel response
[11] See answers to question 2.2 and 4.8 of OniTelecom and Novis responses and page 5 of Apritel response.

3. Clarification of Market Definition

Inclusion of Broadband Cable in Market 12

OniTelecom, Novis and Apritel argue for the inclusion of cable broadband access services in relevant market 12, explaining that the Commission position on the issue is not clear[12].

Inclusion of Internet Access and NTS in Call Origination

OniTelecom, Novis and Apritel proposed the inclusion of the services of access to internet via dial-up and Number Transfer Services (707, 800, 808, …) in the market for call origination – relevant market 8 of the Recommendation[13].

4. Comments on Criteria and Their Application

Relevance of fixed/mobile substitution

In Chapter 4, PT argues very strongly that mobile services have a significant impact on fixed services, and suggests that this fact should be taken into account in the market analysis[14]. PT shows a number of indicators to justify this, including international comparisons with other incumbent operators in Europe.

We are not convinced that PT's assertion that mobile services form a significant constraint on its behaviour in the fixed market is true. Indeed, when given the opportunity PT does not argue that the two services – fixed and mobile – are in the same market. In fact, in the correspondent question, PT argues clearly in favour of being treated as two different relevant markets and analysed separately.

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[12] See answers to question 2.2 of OniTelecom and Novis responses, and page 5 of Apritel response.
[13] See answers to question 2.2 of OniTelecom and Novis responses, and page 5 of Apritel response.
[14] See introductory comments to Chapter 4 of PT's response.

Bundling of Services to Define Relevant Markets

PT argues that the "evidence on selling bundled services" should not be included as an indicator, because it does not contribute to defining markets[15].

Market Shares in Markets with Growing Demand

OniTelecom argues that market share is a relevant indicator in markets with growing demand, contesting the assertion made in the consultation document[16].

Profitability

PT argues that low profitability is an indicator of competition[17] while OniTelecom argues that high profitability is an indicator of SMP[18].

Bundling and Cross Selling as Indicator of Abuse

PT argues that cross selling and bundling exist in competitive markets[19]. The consultative document clarifies that this concern is related to foreclosure of markets.

Countervailing Buying Power

PT Argues that countervailing buying power is critical and that tendering is an indicator of the high countervailing buying power of big corporate customers[20].

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[15] See answers to questions 3.1 and 4.9 of PT's response.
[16] See answers to question 3.13 of OniTelecom's response.
[17] See answer to question 3.15 of PT's response.
[18] See comment to consultation document paragraph 3.1.2.7 on page 17 of OniTelecom's response.
[19] See answer to question 3.20 of PT's response.
[20] See answers to questions 3.23, 4.18 and 4.39 of PT's response.

Leverage

OniTelecom and Novis suggest that leverage should also be applied to emergent markets[21].

[21] See answers to question 3.24 of OniTelecom and Novis's responses.

5. Detailed Analysis of Responses Received

Below we set out our analysis of all responses received to the Consultation Document, discussing the questions in the order they occurred in the Consultation Document.

We translate to this document a summary of the main responses received for each question. Where we refer to Novis, it should be noted that the relevant comments were send both by Novis and Clixgest, two different companies belonging to the same economic group – SonaeCom – that have send two identical papers.

The response from Apritel, the association of telecommunications operators, is very generic and not detailed on a question-by-question basis. All the generic arguments that Apritel sends are repeated in the other responses – namely, Oni and Novis. Therefore, we decided that it was not necessary to specifically mention Apritel response in this report. Below is just a very brief summary.

Apritel is concerned with the delay in implementation of the new framework. Besides the transposition being late, this very preliminary consultation (with open questions) makes the process even more delayed.

Apritel thinks that the consideration of additional new markets is justified by the need to promote proactively effective competition. This comment takes into account the very low level of competition in our country, where we keep, 3 years after liberalization, monopolies in most fixed markets.

The consideration of a wholesale access to public telephony network is essential to create the "wholesale line rental" in order to make possible the single invoice and to eliminate this important barrier to effective competition in the retail fixed telephony market.

Other additional markets proposed by Apritel include interconnection circuits, access to sub-sea cables and broadband access to cable TV networks (at the wholesale level), and access to broadband Internet and leased lines of high speed (at the retail level).

Finally Apritel considers very important that Cluster 1 includes markets 11 and 12 of the Recommendation.

General Introductory Comments

PT response

The present response is the common position of the PT Group regarding Anacom's consultation document, therefore corresponding to the position of the following companies:

- Portugal Telecom SGPS
- PT Comunicações
- PT Prime
- Telepac
- TMN
- PT Corporate
- PT Multimedia SGPS
- TV Cabo
- Lusomundo SGPS

We want first to stress the high effort that is required to answer in the given timetable, in a justified way, and with the required detail, to such a complex document. We hope that the Regulator takes the contributions into account. If this is not the case the participation in this consultation would be incompatible with the required effort.

This consultation is done without previous knowledge on the legal documents that will transpose the new Directives. Consultative Council of ANACOM was not consulted on the transposition of the Directives. PT Group does not find an explanation for this fact.

We have difficulties in understanding the framework of this Public Consultation. We don't see in which of the 3 phases of the process this consultation is included. It is essentially an abstract exercise – questions on Chapters 2 and 3 does not concern any particular market, and questions on Chapter 4 concern one "cluster of services" which we have difficulties in understanding. In this context, the usefulness of our answers is restricted.

Finally, before going to the specific question, some more concerns:

- The document does not make any reference to one essential principle of regulation under the new framework – the relevance of wholesale regulation over retail regulation. It is expectation of PT Group that the regulatory burden will be reduced, in accordance with the principles of minimum regulation, and we don’t see this aspect considered in the Consultation;

- Finally, concerning collecting information, we think ANACOM should not collect information that is already provided under current obligations, and it is important that the reliability of the information is verified.

ONI response

We are very worried with the delay in the transposition of the Directives and in the market analysis process. In future consultations we hope that the Regulator presents in advance its position (even if preliminary) on the operators with PMS, concrete definition of services in each market and appropriate remedies. This will make the process more efficient.

From the overall comments we make, we consider very important the timely identification of markets that are not in the Recommendation, and also the definition of the obligations for SMP operators, and we emphasize the importance of structural measures concerning the mandatory sale of Cable TV from incumbent operator.

Also important are the conditions of the development of effective competition, with relevance to anti-competitive practices.

It is important that ANACOM launches a consultation on the transposition of the new legal framework, and also the information about the calendar of the overall process. Without this we are in a regulatory uncertainty situation.

With this Consultation ANACOM presents for the first time the work that it has been doing on the new framework market analysis process. We are concerned with:

- Presentation of a (partial) analysis of only a restrict Cluster of markets compared with 18 markets in the Recommendation, without indication of the calendar for future analysis;

- Unavailability of the contents of the legal texts that will transpose the Directives;
- Consultation Document that does not contain the position of the Regulator on the main items, repeating what is written in the Guidelines and Recommendation, and asking too open questions, without making concrete proposals.

In this context, we don’t answer with very detail to all questions, and we reserve the right to send further contributions latter when we have more information.

REN

RENTelecom has decided, when launched in November 2002, to focus its attention mainly in the electric sector. Therefore we send the possible contribution, given our limited resources and weak experience of the market.

5.1. Comments on Chapter 2 Questions

Introductory comments to Chapter 2

PT response

We are "confused" with the methodology adopted by ANACOM of grouping the markets in Clusters. That methodology is the one that the Commission has adopted in order to define the 18 markets. But, now that the Commission already identified the markets, we don't understand why it is necessary to group again. We think it should be done an individual analysis of each of the 18 markets.

We are concerned about the character simply indicative of the markets that are included in each cluster. "This Cluster includes, namely, services included in markets 1 to 6 and 8 to 10 of the Recommendation".

ONI response

ONITELECOM highlights the importance of a coordinated analysis of Cluster 1 (fixed narrowband) with markets 11 and 12, because those tow have a direct connection with the first ones – market 11 refers to an alternative support to the offer of Fixed Telephony, and both provide new ways of access to Internet.

We consider very urgent to develop the analysis of all the markets in the Recommendation and additional markets that are considered relevant.

Q 2.1 – Please indicate the order in which the 3 remaining Clusters should be analysed.

PT response

We think that Anacom should adopt the following order:

a) Mobile services (it is the one that might have a big increase in regulation; the size of the market)

b) ULL and Broadband (being this markets emergent markets the analysis should be delayed, allowing for some better understanding of its development; market 12 was never regulated, so its regulation demands a careful approach, which recommends that its analysis is not immediate and benefits from experience with other markets);
c) Broadcasting

We don't understand what might be the "other services". We don't understand the expression "probable evaluation of users".

ONI response

We do not think there should be any prioritisation, because all markets are urgent; the analysis should be immediate to all of them. Local loop unbundling services, broadband services and mobile services are all of them of particular importance, having account the problems associated with the development of the former two services and the unsustainable discrimination between fixed and mobile services.

We contest the argument that "other services" should be analysed in the last place, as the analysis of the other markets that we propose to include below – related to wholesale access to fixed telephony networks and interconnection circuits – is urgent.

NOVIS response

Wholesale markets 11 and 12 cannot be dissociated of services included in the Cluster 1. We consider fundamental that Cluster 1 includes markets 11 and 12, or the analysis is made at the same time. Market 11 is a wholesale market that serves the same voice retail market. The split between them would have an effect of falsifying the analysis.

It is evident that Broadband Internet markets are the ones that most require regulatory intervention at the moment. We consider that the components of Cluster 1 are still an open issue that may be changed in accordance with the responses to this consultation process.

In relation to mobile services, Novis does not have a particular interest, thus adopting the position of its sister company Optimus.

However, we do consider that it is urgent to limit the externality effects of the practice of PT Group of on-net tariffs for calls between PT and TMN. Those tariffs reinforce the barriers to competition from other operators, and are not justified on the base of differences in wholesale prices.

Broadcasting services are not a priority for Novis.

In summary Novis considers that: a) the delay of markets 11 and 12 analysis corresponds to an infringement of the transposition timetable; b) those delays will create legal "holes"; c) there will be doubts about the applicability or not of Directive rules in Anacom's intervention.

In this context, the least prejudicial position would be the following:

1) Mandatory simultaneity of Cluster 1 with markets 11 and 12.
2) Mobile services
3) Broadcasting

OPTIMUS response

Optimus considers that the decision on what markets to analyse first should not have been decided yet. It should be a decision coming out from this consultation.

In relation to mobile services, it is urgent to limit the externality effects of the differences between on-net and off-net prices of TMN, as well as the practice of PT Group of on-net tariffs for calls between PT and TMN. Those tariffs reinforce the barriers to competition from the other mobile operators, once they are not based on differences in the wholesale prices.

In relation to fixed services, Optimus does not have a particular interest, thus adopting the position of its sisters companies Novis and Clix. Broadcasting services are not a priority for Optimus.

In summary Optimus considers that: a) the delay of markets 11 and 12 analysis corresponds to an infringement of the transposition timetable; b) those delays will create legal "holes"; c) there will be doubts about the applicability or not of Directive rules in Anacom's intervention.

The least prejudicial position would be the following:

1) Mandatory simultaneity of Cluster 1 with markets 11, 12.
2) Mobile services
3) Broadcasting

REN response

We do not oppose to the following prioritisation:
1) Markets 11 and 12;
2) Mobile markets;
3) Broadcasting

Q 2.2 - Which other services not included in the presented Clusters should be analysed?

PT response

Taking into account the fact that the new framework implies regulatory intervention only in market failures that could not be dealt by competition law, and the fact that there is no evidence of other markets whose characteristics would imply ex-ante intervention, we think that it is not relevant to consider other services besides the ones in the Recommendation.

ONI response

Taking into account that the new framework clearly states that new markets may be identified in accordance to national characteristics, we consider in advance that the following additional markets should be analysed (some of which are considered by Oftel):

1. At Retail Level:

   a) High Speed Internet access

   - Barriers to entry: market with one operator with 80% of the market, in both cable TV and ADSL access, which in the second case bundles this service with Fixed telephony, restricting the possibility of provision of similar offers by other operators;

- Inexistence of effective competition: prices practiced by incumbent restrict margins, and are inconsistent with ULL prices;
- Final usage: the price models, specific conditions of ADSL offers and functionality perceived from the users make this a separate market;
- Demand side substitutability: Low;
- Supply side substitutability: Inexistent, as the access belong (>95%) to a single operator.

b) High Speed Leased Lines

- Entry Barriers: High investment and legal difficulties;
- Inexistence of effective competition: dominance of one player, discount scheme discretionary and discriminatory against competitors;
- Insufficiency of competition legislation;
- Demand side substitutability;
- Supply side substitutability.

2. At Wholesale Level

At Wholesale level we consider that there are additional services that should be included into markets already defined in the Recommendation, as well as new markets

c) Services to include in Market 8

It is mandatory to include the following services in this market:

a. origination services of Internet dial-up;
b. Access to data network services in dial-up;
c. Access to special services (707, 800, 808, ..)

Currently these services are regulated and should continue to be.

d) Services to include in Market 12

It is justified to include in this market the wholesale provision of broadband from cable TV networks. This should be clarified, as the Commission is not clear on this issue.

e) Services to include in Markets 13 and 14

These markets should cover all speed-rates, in particular market 13, given the very low competition.

Regarding new markets, outside the Recommendation:

f) Wholesale Access to Public Telephony Network

It is justified to include this market, as for the retail level, including the provision of analogue lines and ISDN to residential and business customers, and should be analysed the eventual segmentation by type of line and customer.

- Entry barriers: High sunk costs in terms of access to public domain to build a new network;
- Inexistence of effective competition: 1 operator controls 95% of the access to final users;
- Insufficiency of competition legislation
- Demand side substitutability;
- Supply side substitutability.

g) Interconnection Leased Lines

This should be a separate market.

An alternative approach would be to include them in the markets 8 to 10 (as Oftel does).

- Entry Barriers: high investment, and policy of the incumbent in terms of circuit termination;
- Inexistence of effective competition: 1 operator dominant
- Insufficiency of competition legislation;
- Demand side substitutability;
- Supply side substitutability.

h) Access to Submarine Cables (backhaul)

- Entry Barriers: impossibility to access to the stations by imposition of the incumbent;
- Inexistence of effective competition: 1 operator totally dominant;
- Insufficiency of competition legislation;
- Demand side substitutability;
- Supply side substitutability.

NOVIS response

The delay of the "other services" to the last place is not logical, once other services (or markets) to be analysed will result of the analysis done to one of the markets already in question.

We consider that, in view of the conditions of monopoly or quasi-monopoly in the fixed telecommunications sector, all services or products that influence that competition should be exhaustively analysed. The following services should be considered (whether inside any defined market or in new markets):

a) *Wholesale access to fixed telephony for residential and business customers in analogue and ISDN lines*

This is an essential condition to allow the viability of a single bill offer. This approach was followed in other countries like the UK.

b) *Wholesale and retail access to broadband Internet on Cable and PSTN networks*

We consider it evident that the Commission includes the broadband access through cable TV networks in market 12. The conditions of the Portuguese market show clearly the substitutability of both markets – ADSL and Cable, and thus they should be included not only on the wholesale but also on the retail level.

The need to regulate this service at retail level should result at least from the fact that the only correspondent wholesale market being regulated on a cost based principle (the local loop unbundling), thus implying the impossibility of price reductions accompanying competition.

c) *Leased lines in general and termination in particular, for all types and speed rates, both at wholesale and retail level;*

There is a situation of quasi-monopoly in the Portuguese market, there is not effective competition and the structural barriers are not transitory in the leased lines markets. It is urgent to control the relationship between retail and wholesale prices.

d) *The market of call origination should include Internet access calls in dial-up, calls to data networks or services of other operators, and 800, 808, 707.*

e) *A new market should be created: access to submarine cables (backhaul).*

> This is related to the specificity of the national market, where access to submarine cable stations is closed to the infrastructure of alternative operators.

OPTIMUS response

The delay of the “other services” to the last place is not logical, since other services (or markets) to be analysed will result of the analysis done to one of the markets already in question.

The implementation of the new framework cannot, in any circumstance, imply a drawback in the competition conditions of the markets.

REN response

We consider that the 18 markets of Recommendation are enough.

5.2. Responses to Chapter 3 Questions

Introductory comments to Chapter 3

PT response

In the Framework Directive the interpretation of the possibility of the Regulator to define different markets to those in the Recommendation does not seem the same as ANACOM has in the consultation document. That possibility should be restricted to combine markets or segment markets from those 18, and not to define new ones.

From the three criteria demand substitutability, supply substitutability, and potential competition, the substitutability from the demand side is the most important one. The other effects are not so immediate and would require the analysis of other factors.

We do not agree with the interpretation of ANACOM that when an operator has currently some regulatory obligations, and continues to be considered as having SMP, then it follows that the same obligations should be kept. This is not true, under the new rules, and it is very probable that some of them do not respect the principles of proportionality and adequacy of the new framework. The obligations might be similar, but not necessarily the same.

ONI

Once this Chapter transposes the principles defined in the Guidelines and Recommendation, we don’t have substantial comments to it.

The proposed indicators, may provide a correct evaluation, however, ANACOM should restrict the information it requests, in particular to new operators when enough information is already available to conclude the existence of very high market shares, and consequently dominant positions. The extension of the information collection already requested by ANACOM is of great concern.

Q 3.1 – Do you believe that the indicators listed to aggregate services in the same market are sufficient?

PT response

The question is not correctly formulated (as many other questions in this Chapter). It should be whether the indicators are appropriate and not whether they are enough.

The bundling of services does not have anything to do with definition of relevant markets. The use of the indicator "Evidence on selling bundled services" has the risk of dispersing infinitely the analysis and making it useless.

NOVIS

In summary the methodology proposed by Novis and the remarks to Anacom's one are the following:

- The substitutability level is determined by intrinsic factors (physical characteristics, prices and final use) and by extrinsic factors (cost barriers, competition conditions or demand or supply structure).
- The demand cross-elasticity is a fundamental indicator of the level of substitutability between products or services.
- The exercise of the delimitation of the set of products that are in the same relevant market starts with the aggregation of all services that, a priori, might be substitutes, given its objective characteristics. This preliminary aggregation is then confirmed via cross-elasticity analysis. Not always there is enough information to calculate cross-elasticities. The analysis then will be much more dependent on less objective judgments.
- The indicators presented by Anacom are ways of determining the substitutability between products or services and they should be confirmed by the cross-elasticity analysis.
- Therefore the split of the indicators by each of the criteria done in questions 3.1, 3.2 and 3.3 is artificial and potentially reduces the usefulness of the indicators

The methodology should then follow the following steps:

1. Demand substitutability

1.1. Factors that affect it
1.1.1. Objective characteristics of the service
1.1.2. Barriers and substitution costs
1.1.3. Competition conditions and demand and supply structure

1.2. Calculus of the substitution level through the cross-elasticities and the hypothetical monopolist test

1.3. Techniques of analysis and demonstration of the substitutability
1.3.1. Evidence of substitution in the recent past
1.3.2. Quantitative tests (econometric and statistics tests)
1.3.3. Opinions (perceptions) of consumers and competitors
1.3.4. Analysis of the impact of barriers and associated costs in the movements of demand towards potential substitutes
1.3.5. Existence of different categories of customers and price discrimination
1.3.6. Structure of the supply and demand

2. Supply substitutability (see below in the answers to correspondent questions)

We also have some comments on the terminology used by Anacom. The term "technical characteristics" is not correct. It should be changed to "physical characteristics" of the product. The users can be indifferent to "technical characteristics" of a product. What is determinant is whether or not their needs will be satisfied with that product.

One example is Internet: Internet services provided over cable should be treated in the same market as internet services provided over PSTN. If we would separate

OPTIMUS response

Optimus' response to this question is identical to Novis response (see above).

REN response

We are concerned that, in the case of supply substitution, the list would constitute an excessive burden on operators to collect information.

Q 3.2 – Do you consider that the criteria for demand side substitutability are appropriate?

PT response

In general yes the criteria allow the evaluation of the demand side substitutability. However, the generic character of the question restricts the usefulness of the reply, once some criteria might be appropriate for some markets and not for others.

As known, the demand substitutability test may raise paradoxical results:

a) Mobile communications do have a strong competitive impact on fixed communications, as both allow voice transmission; however it is not possible to recognize the homogeneity of the services given the mobility characteristic, as expressed in the Recommendation;
b) The HMT confirms this view. It shows that there are asymmetrical interactions in mobile and fixed communications (when mobile prices increase it may happen that consumers quit fixed-line services, whereas when fixed prices decrease mobile services demand probably will not decrease).
c) Therefore one service substitutes the other, but the second does not substitute the first one. For competition law, it is not the same market. However, may competition authorities do apply the broader segmentation, as it is the one that best serves the application of the law.
d) The homogeneity of the services may be contested by the production commercialisation conditions. However, it is still valid the principle that demand substitutability is a decisive criteria in the delimitation of the relevant market.
e) For those that do not attribute value to the technical differences between cable broadband and xDLS, those services may represent a sufficient alternative in the perspective of the

customer and, in a precipitated analysis, be included in the same market.

f) We all know that cable broadband is sold together with home video, whereas xDSL is offered together with voice services. The technical characteristics of the two products give way to different functionalities.

NOVIS (and Optimus) response

The list is incomplete. It ignores other factors like:

- different models of pricing and offer conditions;
- structure of the supply and demand that influence the substitutability.

The Commission says that "the definition of a relevant market is conditioned by the existence of one or more companies with dominant position". Therefore, the definition of the relevant markets should be done in strict correlation with evidence on market power

Q 3.3. – Do you consider that the list of indicators for demand side substitutability is sufficient?

PT response

In general yes, the proposed indicators do allow the evaluation of the criteria. We suggest collecting information about the conditions of migration of customers during the last years.

In relation to the 2 first indicators it should be necessary to include historical information about consumption of substitute services, in order to make the relation between the price change and the migration of demand between services.

ONI response

Anacom should also consider:

- Evolution of sales in relation to price fluctuations

- Data on unavailability of the service in the migration
- Data on the bureaucratic procedures associated with switching provider

NOVIS (and OPTIMUS) response

See response to Q 3.1

REN response

We consider that the proposed indicators are appropriate. .

Q 3.4 – Do you consider that the criteria for supply side substitutability are appropriate?

PT response

In general yes, the criteria are in line with the Guidelines. However, the Commission has made clear that the competition constraints derived from supply substitutability should be taken into account more in the competition analysis and not much in for the definition of the relevant market.

NOVIS response

The criteria should be more precise.The criteria should consider the "probability" and not the "possibility" that other suppliers take the decision to supply that product.

OPTIMUS response

The criteria should be more precise.

REN response

We consider that the proposed criteria are in general appropriate.

Q 3.5 – Do you consider that the list of indicators for supply side substitutability is appropriate?

PT response

The list indicated would allow the analysis, although it can be argued that it is excessive.

On the other hand, the adequacy of the indicators will only be correctly evaluated in the context of each relevant market.

Two very important factors should be taken into account:

- Recognise that the existence of competitive conditions at wholesale level would allow high substitutability in the retail offer (this was used by Oftel)
- It should always be taken into account the connection of operators to economic groups

NOVIS response

It is necessary to determine the impact of:

- minimum efficient scale levels,
- network externalities effects,
- situations of dependence of operators vertically integrated and already installed or with higher capacity than others that will install,
- the capacity of retaliation by installed companies.

In the indicators of global costs, it should be added:

- sunk costs in the production or supply of products that were taken;
- the constraints to capacity transfer to the potential market should include the loyalty of customers to suppliers through volume discounts.

OPTIMUS response

It should be added:

- sunk costs in the production or supply of products that were taken;

- the constraints to capacity transfer to the potential market should include the fidelity of the company to suppliers through volume discounts.

REN response

We are concerned with excessive burden on operators to collect information.

Q 3.6 – In general, do you consider the 1-year period to supply substitutability as appropriate?

PT response

It depends a lot on the market. It’s a difficult question to answer in abstract. In the cases of FWA, local loop unbundling and broadcasting (digital TV licences are an important substitute) one year might be too short a period.

ONI response

We consider that 1 year seems enough generally.

NOVIS response

It depends on the market. The time horizon should increase to reflect both markets where scale economies are significant and where existing providers have “locked in” customers with long term contracts.

In view of data available for certain markets, we consider that one-year is excessive for the retail market of broadband Internet access. It should be no more than 6 months.

OPTIMUS response

We consider that it is only possible to answer this question for each concrete market.

REN response

Temporal horizon depends on a lot of items that we do not control.

Q 3.7 – In general, what is the appropriate temporal horizon to analyse potential competition?

PT response

It is difficult to answer in abstract, for the same reasons as in previous question. For each relevant market, temporal horizons should be higher than those that are applied to supply substitutability.

In general companies use a temporal horizon of 1 to 3 years to their activities forecasts. Therefore a period inferior to 3 years would seem inappropriate.

ONI response

The horizon for potential competition should be higher than the one for supply substitutability – therefore should be higher than 1 year (e.g.18 months).

NOVIS response

It is not possible at this stage to define that.
It should be noted that, in a market characterised by constant innovation, the potential competition might be very subjective.

OPTIMUS response

It is not possible at this stage to define that.
It should be noted that, in a market characterised by constant innovation, the potential competition might be very subjective.

REN response

The temporal horizon for a new operator to install depends on the service, but in any case should not be less than 2 years.

Q 3.8 – Do you consider the criteria for the geographical markets as appropriate?

PT response

From a competition law point-of-view it makes no sense to include in the same geographical markets territories covered by only one network and territories covered by more than one network.

Under this logic, the geographical market definition should include a careful analysis of competition conditions between different geographical areas, given attention to the following factors: network control, existence of another network with analogous development, potential competition between different operators that may be indicated by market shares or installed capacity.

It should also be considered that network topology and structure vary according to the technology and protocol used. It is not difficult to understand that fixed and mobile, IP solutions, different access types, different debit-rate solutions, power line platforms, do organize in very distinct ways, ones with local incidence, others regional or national.

On the other side, geographical market might be defined route-by-route. It might be necessary to segment, for instance, the leased line market in the route Lisbon-Oporto, where there are various operators with installed networks (Oni, Novis, Refer, Brisa, GDP), and also the territories where there is cable networks competition.

Those arguments do confirm that the methodology of consultation should have been different. The application of competition law analysis is very case specific, which makes it difficult to comment the sufficiency and adequacy of the criteria without a concrete application.

ONI response

We don’t understand the reference to interconnection agreements.

NOVIS(and OPTIMUS) response

Yes, we consider that the criteria are in general appropriate.

REN response

We agree that the criteria are satisfactory.

Q 3.9 – Do you believe that the list of indicators for geographical markets is appropriate?

PT response

We do not see the usefulness of the evidence on geographic consumer usage, density, etc. for the geographical market delimitation. The same for price discrimination. The discrimination is only possible either because the markets are distinct or because there is not effective competition in a given market.

We suggest the inclusion of the following indicators:

- Number of operators, market shares and installed capacities;
- Analysis of the prices and offers in different geographic areas.

NOVIS (and OPTIMUS) response

Yes, we consider that the indicators are in general appropriate.

REN response

The proposed indicators are satisfactory.

Q 3.10 – Do you believe that the criteria for market segmentation are appropriate?

PT response

Market segmentation is one of the most important parts of the overall process.

We think the principles of the Guidelines were not completely transposed for the Anacom consultation document and they should be. The new formulation of Anacom should include:

- High bargain power of the consumers;
- High level of competition between operators in each group of customers.

These criteria are essential to analyse the reality on the business market, showing the high difference in competitiveness between SME and big accounts. Traffic auctions show the high countervailing buying power of the big accounts.

It is more appropriate to speak on “price differences” than “discrimination”.

NOVIS response

Yes, we consider that the criteria are in general appropriate.

OPTIMUS response

Yes, the suggested criteria are appropriate.Excessive market fragmentation should be avoided, if the intention is to apply more ex-ante regulation – principle of minimum regulation should be applied.

REN response

We consider that the proposed criteria are in general appropriate.

Q 3.11 – Do you consider the set of indicators for market segmentation as appropriate?

PT response

We would complement the list with the following:

- Percentage of customers with more than one provider;
- Negotiating methods for prices used (without negotiation, individual negotiation, auctions between operators);
- Market shares in each group of customers.

The terminology used by Anacom in its indicators should also be changed.

NOVIS (and OPTIMUS) response

The indicators are in general appropriate.

REN response

We consider that the proposed indicators are in general appropriate.

Q 3.12 – If you consider the proposed approach for the identification of markets for "ex-ante" regulation as not appropriate, please justify and suggest an alternative approach.

PT response

The second criteria is not properly phrased by Anacom. It should be "inexistence of effective competition in the relevant temporal horizon" instead of "inexistence of potential competition".

We agree that some entry barriers (e.g. absolute cost advantages or image/reputation) do not justify ex-ante obligations.

On the other hand, we would add to those entry barriers that do not imply ex-ante regulation the "structural economies". Certain type of economies create asymmetric conditions between operators. However, in some cases those scale economies do not represent a heritage of historical operators (cable case) and in other cases, even if that happens, they might not be "substantial" in the Recommendation terms.

ONI response

Anacom considers three cases of barriers to entry that should not be relevant for imposition of obligations. The last one – advantages resulting from network externalities – we don't agree. Normally they are advantages that objectively difficult the entry of competitors. It should be considered

NOVIS response

We strongly disagree with what is said in point 2.3.4.

First the definition of the identification of candidate markets is far stricter than the correspondent formulation in the Commission doc. (Whereas 27 of FD and Page 9 of Recommendation).
Should be "effective competition" and not "potential competition".

The third condition is also incorrect. It should be that competition law is not enough, and not that it is not possible to solve through competition law.

The condition regarding the existence of almost insurmountableand non-transitory obstacles should also be reformulated, because this is more strict than the Commission.

Anacom makes confusion between the consideration of existence of entry barriers as an assumption for considering that market as relevant with the consideration of those entry barriers for the effects of designating SMP.

Novis strongly disagrees with the sentence that network externalities do not justify ex-ante obligations. On the contrary, Novis believes that the existence of those externalities is one of the characteristics that should justify ex-ante interventions in the fixed sector.

The barriers considered to be excluded from the analysis are not only contrary the structural obstacles identified in the Recommendation, but also they seem chosen on purpose to exclude the PT Group!

OPTIMUS response

The criteria should be reformulated in accordance with the correspondent formulation of the Commission documents (Whereas 27 of FD and Page 9 of Recommendation).

Optimus strongly disagrees with the sentence that network externalities do not justify ex-ante obligations. On the contrary, Optimus believes that the existence of those externalities is one of the characteristics that should justify ex-ante interventions in the mobile sector.

During its existence Optimus has been trying measures to change the effect of externalities on competition, but the prices of on-net calls by dominant operator, probably below cost, and the discrimination between on-net and off-net calls, make any strategy to combat it financially impossible.

The barriers considered to be excluded from the analysis are not only contrary the structural obstacles identified in the Recommendation, but also they seem chosen on purpose to exclude the PT Group !

REN response

We consider that the three cumulative criteria allow the identification of relevant markets that need ex-ante regulation. We do not think that the proposed approach would be in contradiction with article 8 of the Framework Directive.

Q 3.13 – Do you consider that the proposed criteria for market share analysis are appropriate?

PT response

The criteria are in accordance with the Guidelines, and the jurisprudence.

However, national reality should be taken into account:

- Evolution of MS should have a higher importance than conclusions about the actual MS;
- The MS criteria might not be appropriate when we are in markets nor asymmetrically substitutable, meaning that one substitutes the other, but the opposite is not true (case of fixed and mobile);
- High MS in emergent markets is not necessarily an indicator of PMS (this is specially true in the broadband market, where we consider that its regulation would make strong barriers to the high investments necessary to its development).

ONI response

We don't agree with not considering high market shares in markets with a growing demand. In emergent markets (as it is referred to in the Guidelines) we agree, but in markets with a growing demand, we do not agree. Note that in non-emergent markets where the demand is high and market shares are high, that situation would naturally lead to the existence of SMP.

NOVIS response

Novis agrees generally with all the indicators presented in questions 3.13 to 3.20.

It should be stressed that in all retail markets that depend on the network of an operator with SMP in the correspondent wholesale markets, that dependency contributes highly to discipline and restrict the liberty of the competing operators. The tendency to difficult the access to the network by the dominant operator or to use discriminatory pricing is one fundamental factor of evaluating the single dominance.

REN

The proposed criteria are satisfactory to analyse market shares.

Q 3.14 – Do you consider that the proposed set of indicators for Market share is enough?

PT response

It depends on each relevant market in question.Installed capacity does not give indication on MS but information on potential competition.

REN response

The proposed indicators are satisfactory to analyse market shares.

Q 3.15 – Do you consider the proposed criteria for competition between installed companies as enough?

PT response

It is not correct to assume that only when a majority of indicators are in the opposite indication, the high MS presumption of domination will be questioned. Only one indicator, like in the example of page 44 of consultation document, is enough to question that.

On the other hand, the criteria might also be used to consider dominant a company that only in terms of MS does not seem dominant.

Specific comments to criteria:

- have in consideration that the majority of competitors to PT belong to strong economic groups (national or international).
- the existence of potential competition might, alone, reduce drastically the independence of the dominant company.
- the price rivalry may represent the existence of effective competition. The broadband access market is a good example. Portugal has the lowest prices of all Europe (34,99 € against 53,91 € European average – ADSL 512 kbps downstream).

Return on investment is very important. We believe that markets where return on investments is lower than average cost of capital, then they have effective competition and should not be regulated.

We do not agree with the criteria “anti-competitive practices”. It is not in the Guidelines

Additional criteria:
Competitive pressure from adjacent markets (ex: pressure from mobile into fixed).

REN response

The proposed criteria are satisfactory.

Q 3.16 – Do you consider the proposed set of indicators for concentration sufficient for the analysis?

PT response

The number of operators is not useful to measure concentration level. It would be eventually useful for the level of potential competition.

REN response

The proposed indicators are satisfactory.

Q 3.17 – Do you consider the proposed set of indicators for market leader dimension criteria is sufficient for the analysis?

PT response

We should never forget that the concept of company that should be considered is the economic concept, meaning that one company includes all the societies in the same economic group.
We cannot forget that the two biggest competitors of PT Group belong to strong economic groups listed in the Stock Exchange – EDP and Sonae, with strong sales channels.In the case of EDP it is also an historical monopolist of one of the most important sectors of the economy.

Additionally it should be taken into account that PT Group, in particular PT Comunicações, supports a group of costs that limit its efficiency – public company tradition, human resources structure inappropriate, and Universal Service obligations.

Having all this into account, the dimension of the market leader is a very relative criteria, and its importance shouldn't be exaggerated.

REN response

The proposed indicators are satisfactory.

Q 3.18 – Do you consider the proposed set of criteria as enough to evaluate the barriers to expansion?

PT response

We may be facing indicators that may indicate SMP, but that does not necessarily mean that they should imply ex-ante obligations.

It should be considered that the existence of a wholesale market for a certain service eliminates the barriers to expansion of its competitors in the retail, guarantying an effective competition, if not actual, at least potential. In that context, the barriers resulting form scale economies, infrastructure easily duplicated, vertical integration at wholesale and retail level, or technological superiority are not very important.

ONI response

Under the criteria "infrastructure not easily duplicated" we regard as important to consider the network coverage of different operators.

The issue of sunk costs should also be considered here, once the incumbent benefits from an enormous advantage given the historical development of its network. It can now support prices that only cover incremental costs. All the problems with the restrictions and discriminations in the access to the public domain should be considered.

REN response

The proposed criteria and indicators are satisfactory.

Point 3.1.2.7 - Profitability

ONI response

Anacom should also analyse the accounts of the operators, in particular the incumbent, in order to examine in particular the profitability of the capital employed and compare with international benchmarks and its own evolution.

Q 3.19 – Do you consider the proposed set of indicators as enough to evaluate price rivalry?

PT response

The indicators are relevant. Reference to Hoffman-LaRoche vs Commission case as an example.

This item is very important in the evaluation of competition in the broadband and big business customers markets.

REN response

The proposed indicators are satisfactory.

Q 3.20 – Do you consider the proposed set of criteria as enough to analyse rivalry (other than price)?

PT response

The list is not the same as in the Guidelines. We do not understand the inclusion of "investments in geographic expansion/ network coverage" and "global level of investments".

The practices of bundling and cross-selling, if they can be an indicator of dominant position in certain markets, they can also be indicators of effective competition in other markets.

The indicator "investments of expansion volume" should be complemented with a measure of the "service coverage", as a way to relate the results with the investments. In this context it is important to not that Cabovisão and Oni are having an increase in its direct access service coverage without having to invest on it.

REN response

The proposed criteria and indicators are satisfactory.

Q 3.21 – In general, what the temporal horizon for evaluation potential competition be?

PT response

It is not correct to determine this in abstract.Depends on the market.3 years could be generally an acceptable period.

NOVIS (and Optimus) response

The temporal horizon should be higher than 1 year, as it is proposed for the definition of the product market.

REN response

The temporal horizon for a new operator to install depends on the service. 2 years might be an adequate period for potential competition.

Q 3.22 – do you consider the proposed set of criteria and indicators enough to evaluate entry barriers?

PT response

- The entry barriers criteria is more important in some markets than in others.

- "Strategic barriers" (not mentioned by the Commission) are not real entry barriers

- The fact that the growth in the market is slow and the number of operators is low should not have the importance that Anacom seems to attribute to it. The entry in a market is done, fundamentally, through gaining market from existent clients and not from potential clients.

ONI response

Barriers referred to are essential. It should be considered the regulatory mechanisms that facilitate, but also the ones that obstruct competition (e.g.: access to public domain).

NOVIS (and OPTIMUS)
We express our agreement in general to the positions presented and object to this question.

REN response

Given the data we have available we consider the proposed criteria and indicators as satisfactory.

Q 3.23 – Do you consider the proposed set of criteria and indicators sufficient to evaluate countervailing buying power?

PT response

The countervailing buying power is one of the fundamental parts of all the market analysis process.

ONI response

In this item, it should be explicitly included the different questions associated with barriers to change by the users (number portability issue, transfer delays, administrative requirements, inexistence of bundled offers “access+calls”, two invoices, discounts, etc).

NOVIS (and OPTIMUS)

The whole analysis is not relevant for wholesale markets, as it is developed considering buyers as consumers. However, the countervailing buying power in the wholesale markets is a reality, and under some conditions a high market-share company has its behaviour limited by the power of the wholesale buyer. This situation results from the bilateral nature of the wholesale relationships.

There is a typical case - the termination markets. Notwithstanding the rules that it is the terminating operator that defines the termination price, there are cases where we are not able to get the correspondent payment from PT Group companies. In the termination markets this should be a decisive factor to exclude some operators form the SMP designation.

REN response

Given the data we have available, we consider the proposed criteria and indicators as satisfactory.

Q 3.24 – If you do not agree with the criteria for leverage of market power, please suggest alternatives.

PT response

The determination of Leverage SMP should be done very carefully. One should resist to the temptation of determining one operator as SMP in all "associated markets".

- Anacom does not clarify what is an "associated market"; the Commission always use more restrictive concepts, like "strictly associated" (eg. Tetra Pak case).
- Because an operator has SMP in the wholesale market that does not mean that it has in the retail market. We should not forget that the whole approach of the new framework is to regulate essentially wholesale markets, and only in very extreme cases regulate retail.
- We recall what is on paragraph 84 of Guidelines.
- The restrictive practices that make use of being present in different markets, are better dealt by the competition authority.

ONI response

It should be reinforced that incumbent operators are in a natural leverage situation (particularly evident in the ADSL). Anacom should certify itself that has all necessary elements to the analysis.

NOVIS (and Optimus) response

Emergent markets are not and can not be necessarily excluded from regulatory intervention only by the fact that they are emergent markets.

It is most probable that the dominant operator in a market has the capacity (technological, financial, commercial and even the monopoly in infrastructure) to lead and manipulate the creation of emergent markets and to be systematically the first mover.

That has been the history in Portugal of the Internet services through the cable TV network, the ADSL, and even the case of voice over cable – it is because the owner of the two networks is the same that the cable TV network was not developed and improved to allow the offer of telephony services.

REN response

We consider that the proposed criteria are enough.

Q 3.25 - If you do not agree with the criteria and indicators for joint dominance, please suggest alternatives.

PT response

If the objective was to recall the method used by the TPI and TJCE and explained in the Guidelines, the Anacom description was very weak and should be improved.

We call attention to all the indicators that the Commission suggests in the Guidelines.

ONI response

This situation is particularly relevant in the mobile market. All the criteria listed in the paragraph 97 of the Guidelines should be analysed.

NOVIS response

We express our general agreement with the position of Anacom on this item.

OPTIMUS

We express our general agreement with the position of ANACOM on this item.

We consider that joint dominance analysis should not be biased with the purpose of finding evidence that indicate its existence. The analysis of joint dominance should not take into account the market structure and its characteristics, which could be a result of the functioning of the market. For instance, the existence of an oligopoly in the mobile services market should not be considered as showing joint dominance.

The joint dominance analysis should focus in the behaviour of the players, and follow-up prices type of behaviour, justified as commercial reactions should not be considered as evidence of joint dominance. In the presence of the danger of precipitated conclusions on this item, we emphasize the need that joint dominance is largely and objectively justified.

REN response

We consider that the proposed criteria and indicators, notwithstanding the complexity of the task, allow for the evaluation of joint dominance.

Q (3).27 – Do you consider that it is necessary to impose other regulatory obligations?

PT response

We consider that it is not necessary to add any obligation to the ones that are already in the Directives.

The main objective of the ex-ante obligations – whereas 25 of FD – is to guarantee the development of a competitive market. In the Guidelines, that objective is explained – to guarantee that those companies do not use its power to restrict or distort competition in the relevant market, or to leverage that power into other markets. It is decisive to have this scope well present.

It is our concern when we see that Anacom wants to analyse and justify its decisions taking into account the impact in the market structure, and consequently, the changes in the competition and the market power.

The obligations in the directives do not allow regulators to incentive the change of the market structure, to change the nature of competition or to put an end on market power. Ex-ante obligations have the only purpose of prevent abuse of dominant position, not of simulate competition, or eliminate dominance, or making the markets effectively competitive.

ONI response

In addition to the obligations on the Directives, it is important that Anacom defines further obligations and measures that would allow it to obtain the objectives of the new framework.

OniTelecom has presented recently, to ERG, one contribution on this matter. We include it in Annex.

It is fundamental to keep all the obligations that the incumbent operator has today, given its behaviour on the market. Anacom should make a list of all of them in order to keep them.

Of particular importance are the imposition of a Reference Offer of wholesale access to the telephony network lines, analogue and ISDN and supplementary services (based on art.12 of Access directive), obligation of a wholesale offer that allows the replication of retail offers of incumbent operator, and flat-rate interconnection tariff.

In point 4 of Ch.3 we don't see references to prevention of abusive commercial contracts, and more importantly measures of structural nature to prevent the existence of one company controlling 95% of all user access, through telecoms and cable networks.

It is also of concern that only one single company controls wholesale and retails markets (PSTN, Interconnection, ULL and leased Lines) without effective guarantees of information transparency and independence of decisions.

It should be foreseen immediately structural measures like:

- Alienation of the Cable TV network from PT Group (as foreseen by communication 98/C71/03 of 9.3.98 of the European Commission);

- Total juridical separation of wholesale and retail activities of the incumbent.

It is important that the measures are applied to all companies of PT Group, avoiding the creation of separate companies to attack separate markets. Anacom should make this very clear.

NOVIS (and OPTMUS) response

We consider that the following regulatory obligations are necessary.
At the wholesale level:

- Determination of the wholesale line rental for fixed telephony
- Determination of the interconnection flat-rate
- Specification of the quality of service parameters and compensations for not complying with wholesale service obligations (in interconnection and ULL)
- Determination of a pre-notice of 90 days in relation to changes on the Reference offers
- Determination of obligation to offer at wholesale level the network functionalities necessary to the development of retail offers
- Determination of timetables for customer recovery actions, namely in the pre-selection and local loop unbundling services
- Application of retail minus price controls
- Determination of non-discriminatory access to sub-sea cables stations

At the retail level:

- Supervise the wholesale margins in order to prevent situations of margin squeeze or pricing below costs
- Forbid the practices of loyalty discounts and other artificial ways of “tying in” customers
- Guarantee of the non-discrimination principle through:
    - Obligation to offer conditions that would allow all players to replicate the offers of the SMP operator, technically and commercially
    - Obligation of non-discrimination in what regards bundled offers (e.g. “PT first time ADSL”) and discount plans
    - Forbid discounts specified only to exclusive customers

Finally, we consider that structural measures like the mandatory separation of wholesale and retail activities and the mandatory alienation of networks (sell off the Cable TV network), should be considered by Anacom.

REN response

We don’t think it is necessary to add any obligation at this point in time.

5.3. Comments on Chapter 4 questions

General Introductory Comments

<u>PT</u> reinforces that it thinks Anacom should not include any other retail services outside of the ones that are in the Recommendation – again the issue of wholesale regulation over retail regulation. PT doesn’t understand why Anacom starts with retail before and wholesale afterwards. It should be the opposite.

Before starting the responses question by question, PT raises some previous considerations and presents them in 8 pages full of data and comparisons with other European incumbents. The two points it wants to raise with all this background information are:

- That the non-residential segment needs to be further segmented (into SME and big corporate customers);
- That there is a high degree of competition between fixed and mobile services and the implications of that for the long term sustainability of the fixed business.

<u>Novis</u> reinforces, as a previous note that markets 11 and 12 should be included in this Cluster, and that new markets, not foreseen in the Recommendation, should be added.

A - Retail services

Q 4.1 – Do you believe that access and communications should be analysed together in the same Cluster?

PT response

The tendency of the competition authorities is more one of segmentation than one of aggregation of markets. This principle should be respected.

The analysis of the access services market should precede the analysis of the communications services markets and be developed in separate. The criteria analysis also confirm this approach:

- In terms of characteristics of products and its final usage, in the segment of corporate accounts, both services are normally negotiated together and many times the access is given for free. In the case of residential and SME, not only the functionalities are distinct, but also there is the possibility of dissociating the two through the use of pre-selection.
- The big size of the corporate customers allows them to adopt corporate solutions like VPNs IP, which replace both access and traffic. The residential and SME segment do not have enough dimension to justify such solutions.
- In terms of supply substitutability, this criteria is more important in the potential competition analysis.

ONI response

We agree that they should be analysed together, but they are distinct markets, as they are not substitutable products and the competition conditions are substantially distinct.

NOVIS response

We consider that these are distinct markets, but can and should be analysed together and in the same cluster of markets.

We note that these retail markets do not include data communications (contrary to the wholesale markets). Therefore, ex-ante regulation of narrowband data access services would imply the definition of a new market.

REN response

Access and communications are not substitutes, therefore not in the same market. However, we agree that they can be analysed together.

Question 4.2 – Do you believe that fixed services and mobile services should be analysed separately?

PT response

The recommendation clearly separates the markets of fixed networks and mobile networks. We do not see any reason to depart from that and from the jurisprudence of TPI and TJCE practices.

The aggregation of these two markets would constitute a change of the list of relevant markets presented by the Commission. The change would be even more dramatic given that the Recommendation specifically rejects the existence of any mobile services retail market, and its existence through the aggregation with fixed would be non-sense.

This said, it does not mean that, when Anacom is going to analyse the fixed services it should not take into account the decisive impact that mobile services have on the fixed market, notwithstanding the fact that the former are in a different relevant market. This aspect should be taken into account in the determination of SMP in the fixed retail markets and in the evaluation of the proportionality and justification of eventual ex-ante obligations.

Finally we want to refer that Anacom’s consideration related to the supply characteristics of both markets are not directly related to the criteria of the supply side substitutability and potential competition at this level.

ONI response

We do not see any reason to follow a different approach from the Commission. We emphasize that there are not a high level of substitutability from the demand side – the mobile services are more complementary to the fixed and not much substitutes – aspect that is reinforced by the fact that fixed services allow internet access. There are also significant differences in terms of structure and tariffs between the two networks.

NOVIS (and OPTIMUS) response

These two services are clearly different markets and the separation is justified. We should ask if they are in the same relevant market and the answer to that question is no.

This is the understanding of the Recommendation, and it is confirmed by the following factors:

- Different perception from users from what mobile and fixed services can offer, resulting in first instance from mobility characteristic;
- Price differences;
- Different social value that its attributed to them and consumer habits that are associated with mobile and do not have correspondent in the fixed service;
- Association of the fixed services to services that are supported on the fixed network. It is not foreseen that the UMTS services development would change this;
- The differences in maturity of the two markets;
- Different costs structures and technologic network configuration;
- The global costs are of such importance that it would be impossible for a fixed operator to move into the mobile market in response to an hypothetical price increase, and the same applies to a mobile operator entering the fixed market.

The decrease of fixed traffic should not be interpreted as an eventual supply side substitutability and much less as a demand side substitutability between the two services.

Furthermore, and as it was said before (see question 2.1) there are some offers that consider the traffic fixed-mobile (between PTComunicações and TMN) as on-net traffic, which justify the imposition of regulatory measures, given the network externality effect of the client base of those two operators considered together.

REN response

Fixed and mobile services have different technical characteristics and different perception from users. The price determination models are different. The switching costs make the supply side-substitutability impossible. Therefore they are distinct markets and should be treated separately.

Q 4.3 - Do you believe that narrowband services and broadband services should be analysed separately?

PT response

We do not see any reason to draw back the autonomy of broadband services and to depart from the recommendation. The hypothesis of aggregating these markets would have an effect of combining the dominant position on narrowband with the broadband market, without an economic justification, and with the negative resulting effect in a market where there exists effective competition. Besides that, the broadband services are excluded from any regulatory intervention at retail level, and this must not be changed.

In any case it is not possible to aggregate the services, neither in terms of the final usage nor in terms of demand-side substitutability:

- Aggregation of services in terms of final usage:
    - Technical characteristics: distinct connection speeds
    - Functionality: broadband is for "always-on" and narrowband more for dial-up access
    - Price determination models: narrowband defined normally on a per-minute basis and broadband as flat-rates.
- Demand-side substitutability:
    - Consumer's behaviour: there is a progressive migration from narrowband to broadband, but there would not be any migration in the opposite direction if a hypothetical monopolist would increase prices.
    - Substitution costs: significant, given that they would imply buying new equipment.

ONI response

Taking into account the differences in the infrastructure needs associated to the provision of the two types of services, and that they are not substituted, we consider that they should constitute distinct markets.

Broadband is used mainly for Internet access, and the substitutability from demand side between broadband and narrowband is not relevant given the differences in functionalities and the significant differences in the costs associated, which lead to a negative result on the hypothetical monopolist test.

NOVIS response

Novis agrees that broadband and narrowband are distinct markets. However (see question 2.1) it is very important that they are treated together and in the first Cluster.

The high levels of switching from narrowband to broadband show, at the most, one way substitutability; however, we should not conclude that broadband Internet is substitutable by narrowband and therefore they do not belong to the same relevant retail market. At the wholesale level, the separation is also evident.

REN response

We think that the broadband and narrowband services should be analysed separately.

Q 4.4 – Do you believe that voice services and data services should be analysed together in the same Cluster?

PT response

We do not see any reason to aggregate voice and data services. The fact that two or more services are bundled is not a justification for aggregating them. The Recommendation also explicitly excludes data services from regulation.

However, there exists a strong demand for corporate solutions based on IP VPNs to satisfy the needs of big corporate customers. These services constitute a constraint to the behaviour of the companies in the fixed services, limiting the autonomy of the dominant companies. Therefore, data services, although not included in this relevant market, should be taken into account in the evaluation of SMP in the segment of corporate customers.

ONI response

The consultation document is not clear about which data services are meant – Internet services or data in general, dial-up or other technologies, like IP, ATM, Frame Relay? We do not have an objection of analysing them together with the fixed services, although we consider that they are distinct markets.

NOVIS response

All these markets – retail and wholesale, voice and data, broadband and narrowband - should be analysed together and under the framework of the same cluster.

REN response

Voice and data services are distinct in the users perception and in the supply and demand side substitutability. However, it is justified the analysis of the markets together in the same cluster.

Question 4.5 – Do you believe that switched services and leased lines should be analysed together in the same Cluster?

PT response

The observations made on previous questions apply also to this one – the aggregation should not have another purpose besides to facilitate the organization of work. On the other hand, leased line markets are correctly defined as different relevant markets in the Recommendation.

We therefore consider that switched services and leased lines should be considered as distinct markets, although in the corporate segment the supply of those services has completely different characteristics.

Corporate IP VPN network solutions have an impact in the criteria of point 2.3.1 of the consultation document, considering that:
- Dedicated services may be used for substitution of intra-company communications

- In the demand-side substitutability the usage of corporate IP VPN solutions may be a substitute for both switched and dedicated services. In the other segments, the low usage levels would hardly justify the usage of dedicated services, even if the prices of switched serves increase substantially.
- In terms of supply substitutability, the criteria are more useful for the potential competition.

ONI response

Taking into account what is in the consultation document in this point and the criteria for the analysis we recommend separate analysis of the switched and dedicated services. They show differences in technical characteristics, quality of service, prices and supply conditions.

NOVIS response

The analysis should be done separately. From the demand side the products do not respond to the same needs – differences in functionality and quality of service.

The connections in the dedicated networks – which are point-to-point – present availability and reliability levels that are considerably higher compared with a point-to-point connection using the public switched network. In the case of a switched network, if one operator wants to provide the same level of service as one dedicated network, this would require high investments, which would make the comparison between the two impossible.

REN response

Notwithstanding the fact that there is the demand substitutability possibility above certain levels of usage, these services have different technical characteristics, price determination models and do not have supply side substitutability without investment. We think they should be analysed separately.

Q 4.6 – Do you believe that short-distance communications and long-distance communications should be analysed together in the same Cluster?

PT response

These two types of services - local/national communications and international communications - should be analysed separately. However, it should be taken into account that the behaviour is different according to the segments residential, SME and corporate.

Some corporate costumers may in some cases substitute both types of products. They may opt for using an internal network, replacing international calls by national calls in the destination country by using corporate networks. In the other segments it is not possible to substitute a national call by an international call.

ONI response

In terms of the proposed criteria, we conclude that the final usage of short-distance and long-distance communications is similar and that there is supply side substitutability. However, in terms of demand side substitutability the same is not true. On the other hand the competition conditions are different given the low margins to compete on indirect access for local communications under the current interconnection prices.

We agree with analysing them together, but that they should be treated as different relevant markets.

NOVIS response

Considering the short-distance versus long-distance, Novis agrees that the only split that should be made is between national communications and international communications, which should be considered as distinct relevant markets, but analysed together in the same cluster.

A further split under the national communications services would be impracticable because different operators have different tariff structures in terms of distance. In the international versus national calls, on the other hand, there is transparency for the customers and the products are not substitutes.

In terms of supply side substitution, it is not necessary to have any equipment in the national territory to provide international services. They can be provided on the basis of virtual cards. The same is not true for national calls.

REN response

We think that short-distance and long-distance communications should be analysed together and in the same cluster of services.

Question 4.7 – Do you consider the relevant geographical market as the national market?

PT response

This is a complex and critical issue. It may turn out that it is possible to subdivide and deregulate geographic areas where competition has reached the desired level.

We consider that Anacom should first present its justified proposal, based on concrete and objective data, for the geographical market for the services on this Cluster.

ONI response

Given the geographic status of the licences, we consider that the geographic market to analyse should be the national market.

NOVIS response

We agree that the market should be the national market, for three reasons:

- The national territory is of small dimension
- The transmission network coverage of most operators
- The national coverage of telecommunication services belonging to this Cluster

REN response

We consider that the relevant geographical market is the national market.

Question 4.8 – Please indicate other services that you consider it necessary to analyse in this Cluster?

PT response

The Recommendation is very clear on the narrowband fixed services that should be analysed. We do not see any reason to include other services in this cluster.

ONI response

We do not see, at this moment, any necessity to include any other services.

NOVIS response

Our response to question 2.1 is applicable to this question.

REN response

We suggest including two new services in this Cluster: "access to Internet" and "access to data networks".

Question 4.9 – Please indicate the most appropriate criteria and indicators for market definition for the analysis of this specific Cluster?

PT response

The criterion of demand side substitutability is decisive in the delimitation of the relevant product market. The supply side substitutability is essentially a problem of potential competition, which would be better analysed in the SMP assessment.

The aggregation of distinct service markets based on the "bundling issue" is an error, because it makes it impossible to address the competition law methodologies to judge on the legality of the bundled product itself.

Using the criteria established by Anacom in point 2.3.3 of its document, we think the relevant markets of access and communications should be segmented into three groups of users: residential, SMEs and corporate accounts. The justification for this segmentation is the following:

- It is possible to undertake a clear identification of each segment, according to the levels of usage, the weight of the data services, and the type of customer service offered;
- At the residential and SMEs segments the price differentiation is not so high; at the corporate accounts segment, the strong competition has reduced margins;
- There are no arbitrage opportunities between the 3 groups.

To the criteria presented in the consultation document, we would add the following:

- Price negotiation methods: the corporate accounts have a more and more sophisticated approach to the management of their communications expenditures, and prices are established on the basis of RFQs with different operators participating in the competition.
- Percentage of customers with more than one provider: in the corporate accounts segment 56% of customers use more than one provider. In the SMEs segment the percentage is only 27%.

ONI response

The various criteria and indicators proposed should be analysed. demand and supply substitutions are of particular relevance, measured respectively by the prices and switching costs and by the volume and time necessary to satisfy the investments needs.

NOVIS response

The appropriate indicators are all the ones that were referred to in questions 3.1 to 3.12. We consider that the Recommendation and its Explanatory Note, in particular pages 15 to 30, constitute a response to this question.

REN response

- Aggregation of services in accordance with the final users:
    - Criteria: technical characteristics, consumer perception, prices and supply conditions;
    - Indicators: information on offers, functionalities, prices and quality of service.
- Demand-side substitution
    - Criteria: former behaviour of consumers
    - Indicators: prices of potential substitute products; switching costs.
- Supply-side substitutability
    - Criteria: switching costs, legal conditions.
    - Indicators: profit margin in the potential business line, scheduling, timetable and investment capacity.

Question 4.10 – Please indicate what operators would provide supply substitution?

PT response

We think that all operators holding an SFT licence could directly compete in the short terms with the current active operators in the market, in any of the three segments.

In the corporate accounts, we verify that the big majority of operators that offers one of the services is ready to provide any of the others, either because it has own infra-structure, or through the use of wholesale offers. In the residential and SMEs segment there exist enough alternatives available for access (building of FWA networks or locals loops access) or communications (through the local loop unbundling offers or the carrier selection and pre-selection services).

ONI response

This question should be analysed in detail by Anacom and presented to the market. In the access market, we can say without a high margin of error that no operator is able to enter (geographic limitation of all alternatives – FWA, ULL, metropolitan networks; and very high investments).

NOVIS response

The answer to these questions (Novis replies to questions 4.10, 4.11 and 4.17 in once) is related to the data for each market, as well as commercial, financial and technological information sometimes sensible for each company.

In the table below we list the companies (only at an indicative level) that theoretical may be considered in relation to each of these questions:

		Substitution	Potential competition
Access to fixed telephony network	Residential	-	PT Group (TV Cabo and PT Prime), Jazztel, Colt
	Non-residential	-	Cabovisão, TV Cabo
Local or National telephony services at a fixed location	Residential	-	Indirect access providers currently focusing only on international
	Non-residential	-	Indirect access providers currently focusing only on international
International telephony services at a fixed location	Residential	-	Indirect and Direct access providers currently focusing only on national
	Non-residential	-	Indirect access providers focusing only on national and ISPs. Direct access providers referred above

REN response

When applying the HM test there would be no operator that would enter the market with national expression.

Q 4.11 – Please indicate which operators can offer potential competition.

PT response

Our experience shows that the communications industry is going through an intense technology transformation. New local access platforms are being tested, based in wireless technologies, like FWA and WiFi, with functionalities and capacity equivalent to the current copper infrastructure.

Additionally the Voice over IP (VoIP) is becoming the future standard.

ONI response

See our reply to question 4.10.

REN response

The current status of the national market does not favour the emergence of any potential operators into the market.

Question 4.12 – Please indicate the most appropriate criteria and indicators for single dominance.

PT response

The European jurisprudence and the national competition law legislations have been abandoning the dominance positions based on the market share.

There are, in our opinion, four big criteria to evaluate the individual dominance in the markets that constitute the cluster of narrowband fixed services:

- The absolute market share value should be weighted to take account of the late liberalization date of the national market;
- The evolution of market shares: in the international communications market the PTC share has reduced by 30% in volume in only two years. Having account of these, we think

there are reasons to consider the international market as competitive;

- Rivalry between installed companies, measured essentially through price evolution. Since liberalization we have been facing strong price competition at the corporate accounts segment;
- The countervailing buying power is fundamental to evaluate the competition of corporate accounts segment;
- The pressure from associated markets is also fundamental (pressure from mobile).

PT proposes that regulation in the retail residential fixed market should be reduced in order to allow fair competition between fixed and mobile. Corporate segment should not be regulated at all, given the extreme rivalry between the existent operators and the high countervailing buying power. In the SME segment retail regulation should be reduced, given the growing competition in the provision of fixed telephony services.

ONI response

We consider that strong importance should be given to market shares, and other criteria should be used only at a secondary level.

The European jurisprudence considers that market shares consistently above 50% for a long period represent a demonstration of the existence of dominant position.

As a second level criteria, the level of competition between installed companies should be analysed and the concentration rates used as the measurement (HHI higher than 1800 indicate a highly concentrated market), the leaders dimension and the barriers to expansion.

NOVIS response

The criteria and indicators we consider important are the ones referred to in questions 3.12 to 3.20, but we emphasize the market share in value (see justification in response to 3.14).

We reject totally the low importance attributed to the market share indicator by Anacom for emergent markets. The specificities of communications markets demand a different approach that takes into account the existence of operators with vertical and horizontally integrated offers, which favour leverage between markets, inequalities of entry conditions and network externalities.

Other important indicators for Novis are competition between installed companies, dependency to the wholesale provider with SMP, concentration level, dimension of market leaders, and the existence of network externalities.

REN response

From the listed indicators the most appropriate one is the market shares based on revenues.

Question 4.13 – Please indicate the main barriers to expansion in offering these services?

PT response

The two main criteria to evaluate barriers to expansion are: the existence of wholesale offers and, for the corporate segment, the existence of installed capacity.

ONI response

According to our experience the main barrier to expansion for these services is the issue of sunk costs and of scale and scope economies that the incumbent benefits from, given its network dimension and its offer containing all services.

The existence of vertical integration should be taken into account, as well as the low countervailing buying power and the level of potential competition. The difficulties for duplicating infrastructures and the high costs of alternatives to traditional systems (FWA, satellite, etc), and also the access to the public domain restrict new entrants' activities.

NOVIS response

We consider that sunk costs, scale and scope economies, vertical integration, difficulties in duplication networks, restrictions in access to public domain, access to financial resources (gives as an example the SMS in the fixed sector, offered by PT, and not easily replicated by competitors) are important criteria.

REN response

The main barriers are infrastructures not easily duplicated, technologic advantages of the incumbent and the existence of exclusivity agreements.

Q 4.14 – Please indicate which dimensions on the criteria "rivalry – other aspects" are appropriate for these services?

PT response

The price rivalry is one of the main criteria to show effective competition in these markets. The relevant indicators are: price evolution of the different operators and providers, and patterns of reaction to price changes. In the narrowband fixed services, criteria like "tariff competition", "differentiation/diversification at product/service levels" and "enlargement of service coverage" are also important criteria.

In the Portuguese case, we can see various concrete cases that show the importance of the criteria:

- The constant launch of new services for the residential and SME segments from Oni, Novis and Cabovisão; the substantial reduction in prices for corporate customers; and the high countervailing buying power, showing tariff competition;
- The aggressive offers from Oni, Novis and Cabovisão for the residential and SME segments in terms of diversification of products; and the total diversification in the corporate segment, with the current practice of individualised solutions;
- The majority of providers do offer selection and pre-selection competitive services, and Oni has a lot of local loops that will allow it to offer direct access; At the corporate segment we see a constant enlargement of offers from various operators.

The rivalry between installed operators shows that residential, SMEs and corporate segments are very competitive.

ONI response

From the dimensions proposed by Anacom, we consider bundling and cross-selling activities very relevant. The incumbent is using these strategies a lot, which makes the existence of effective and sustained competition difficult.

NOVIS response

Rivalry may be operated through the practice of discriminatory service levels – PT offering different service levels to its customers compared with customers of its competitors.

Bundling practices are important in the retail services of this cluster, and they could represent leverage of market power. Rivalry may be also practiced through the discriminatory service levels.

REN response

Anacom should analyse the practices of cannibalisation between products of the same company and bundling of services and cross-selling practices.

Question 4.15 – Please indicate what are the main potential anti-competitive practices for these services?

PT response

Anti-competitive practices might be an indicator of a competitive market, because many are done in response to competition. Besides, the competition authority should deal with it.

We emphasize that most offers are technically replicated by competitors, and that Portugal is one of the most advance countries in pre-selection services, as well as in number portability.

ONI response

The main anti-competitive practices are:

- the value of the monthly rental of fixed telephony service;
- offers involving predatory pricing;
- promotions directed to pre-selection customers, illegal use of personal data;
- various reclamations presented by new entrants (off-net calls pricing and non-geographic services and inclusion of customers in the directory lists)
- cancellation of social services to customers that change to new entrant.

NOVIS response

(in response to questions 4.15 and 4.19)
We identify the following examples:

- Cross-subsidisation of access from traffic services;
- retail prices below costs levels;
- discrimination between competitors and internal PT services;
- selective discounts;
- refusals to provide individual services (leverage of market power);
- exchange of commercial information relative to competitor operators.

REN response

Complex procedures that are required by the incumbent under the interconnection agreements and under the local loop unbundling process.

Q 4.16 – Please indicate what are the most appropriate dimensions of the criteria "satisfying consumer needs" for these services?

PT response

The satisfaction of customers needs is not a criterium in the Guidelines. The criterium presents natural problems of evaluation.

In relation to the criteria “service quality”, “offer diversity”, and “choice in terms of switching”, we note the following:

- The available studies show that quality of service offered by PT is very high;
- The offer is very diversified in the residential, SME and corporate segments, showing the high competitiveness;
- In terms of choice of switching there is carrier selection and pre-selection, and number portability.

ONI response

In particular, Anacom should analyse the following dimensions:

- Success in obtaining the levels of quality of service offered;
- Diversity in the operator’s choice to obtain the services, involving evaluation of switching alternatives, like single bill, portability, pre-selection, etc.

NOVIS response

The analysis of the satisfaction of consumer needs should relate mainly to the effective diversity of offers and real alternatives to switching provider. The collection of this information should be done through the collection of available offers in the residential and non-residential market, as well as the availability of portability, activation costs, etc.

REN response

Costs versus service generality and diversity of offerings.

Q 4.17 – Please indicate what new operators could enter the market (potential competition).

PT response

Comments made in our response to question 4.11 are also relevant for this question.

ONI response

This is a task for Anacom, but in the current phase of the industry we do not see any operator that would enter a market, taking into account the level of entry barriers.

REN response

It would be difficult to emerge new companies in the market.

Question 4.18 – What is the level of countervailing buying power for these services?

PT response

Our experience has shown that countervailing buying power is significant in the corporate segment. This conclusion results from the following criteria:

- Percentage of customers with more than one service provider;
- Negotiation methods used: big corporate customers use process of auctioning and RFQs between various operators. This methods lead to very low prices offered to those customers;
- Average reductions in prices after the contract negotiation
- Churn rates (our studies show that 73% of the fixed deactivations are from customers that go to mobile, fact, that together with the high competitiveness of the mobile market, has lead to a reduction in fixed accesses not seen at the European level).

ONI response

We would split the analysis for residential and non-residential markets. The residential market has very low countervailing buying power for the services in this Cluster.

In business segments there is evidence of some countervailing buying power, as showed by the existence of tariff differentiation in operators' offers. It is relevant here that a significant part of the Public

Administration does not follow a public context approach, which limits the countervailing buying power in favour of incumbent.

NOVIS response

Non-residential customers do typically have countervailing buying power. Regarding residential customers, that capacity is very limited. Novis considers, however, that the analysis should be done for residential customers as well (the criteria should be the capacity to make pressure on the provider, regardless of the dimension of the customer).

REN response

The relations supplier/customer that are already well established (mainly with big customers) contribute to the reduction of the countervailing buying power.

Question 4.19 – Please indicate the markets where leverage of market power might happen and what operators could benefit from this.

PT response

There is no leverage of market power in this cluster of services, for any of the three segments.

The existence of wholesale alternatives at access and traffic levels, and the competition legislation reduce the possibility for a dominant operator to leverage its power.

ONI response

See our reply to question 3.24. The existence of one main network, with more than 95% of access lines and market power in the interconnection tariffs and conditions, give the incumbent the entire framework to the leverage of market power.

REN response

The fact that Anacom has decided to include both access and telephony services in this cluster already shows the interdependence of the markets and the leverage effect.

Question 4.20 – Please indicate what markets could be subject to joint dominance and what operators could benefit from this.

PT response

Taking into account the Guidelines, we consider that there are no conditions for the existence of joint dominance in the services of this cluster.

ONI response

Given the market share of the incumbent, there is no joint dominance, and the single dominance is very strong in the services of this cluster.

NOVIS response

We consider that there is no danger that two or more companies have market power together in the medium or longer term.

REN response

The incumbent is the only one that might benefit from joint dominance.

Question 4.21 – Please indicate what regulatory obligations you consider appropriate to solve market failures in these services?

PT response

The question is premature, Anacom should make an "evaluation of regulatory obligations", practice followed by other NRAs. Retail regulation should only exist in extreme cases, because it inhibits innovation.

All proposals of imposition of ex-ante obligations should be accompanied by an "evaluation of regulatory options". That evaluation should include at least:

- Identification of market failures;
- Identification of the causes for that failure;
- Estimation or quantification of the economic losses and competitive distortions related to the failures;
- Identification and clear description of the regulatory obligations available to deal with it;
- Indication of advantages and disadvantages of each of the obligations;
- Estimation or quantification of the impact, efficacy, cost and benefit of each proposed obligation;
- Identification of regulatory obligations that, in the Regulators opinion, are the most appropriate to the solution of the problems.

It is important to take into account that ex-ante regulation at retail level should only exist in extreme cases, and this is particularly important for the 6 markets under this cluster, given that the services are subject to universal service obligations.

We defend a light regulation for fixed, in order to allow it to compete with mobile, and a tariff plan should be allowed (as happens in Italy, the other EU country where competition fixed – mobile is so strong).

Finally, the obligations of transparency, non-discrimination and cost orientation are not appropriate for this cluster.

ONI response

Recalling our response to question 3.27, and our contribution to ERG, we consider that Anacom should undertake an exhaustive analysis of measures currently imposed and the following obligations should be included for the regulation of services in this cluster:

- Price controls
- Absence of excessive aggregation of retail services
- Non-discrimination

- Transparency in the publication of all tariffs and conditions associated to the services
- Availability of carrier selection and pre-selection
- Availability of number portability

A time period, of about 6 months, should also be defined, during which activities of pre-selection customer recovery (win-back) would not be allowed for the incumbent operator.

A minimum margin between retail and wholesale prices should also be guaranteed.

NOVIS response

See our response to question 3.27.

REN response

The development of fixed-mobile convergent services could be the way to revitalize the fixed sector.

B – Wholesale Markets

Question 4.22 – Other services to include in this Cluster of services?

PT response

The Recommendation is very clear on which fixed narrowband services to include. We think that there are no other services that should be included, and the current markets should be analysed separately as the Recommendation and Guidelines suggest.

ONI response

We recall our answer to question 2.2 in what refers to wholesale markets, and in particular call the attention to consider the wholesale public telephony network market, as well as the interconnection circuits and the access to sea-cable stations. It should be made clear that market 8 includes dial-up calls, data networks and special non-geographic numbers.

NOVIS response

As we have presented in detail in responses to questions 2.1 and 2.2, we consider that the following markets should be added:

- Wholesale access to fixed telephony for residential and business customers in analogue and ISDN lines;
- Wholesale and retail access to broadband Internet on Cable and PSTN networks;
- Leased lines in general and termination in special, for all types and speed rates, both at wholesale and retail level;
- Access to submarine sea-cables stations (backhaul).

REN response

We do not identify any new markets to include, besides the markets 8 to 10 of the Recommendation.

Question 4.23 – Do you consider that the relevant geographical market should be the national market?

PT response

In relation to the call termination services, the geographic delimitation is not relevant considering the monopolist position of each provider.

The existence of regional networks may justify territorial segmentation. We verify that the significant infrastructure installed in the Lisbon-Oporto route represents a viable alternative to the use of PT's transit services in various situations.

ONI response

See our response to question 4.7.

NOVIS response

We have the same position as the one related to retail markets on this item.

REN response

We consider that the relevant market is the national market.

Question 4.24 – Do you consider that there is substitution in the call Origination service?

PT response

The Commission presents two alternatives to the purchase of origination services, namely the construction of an access network reaching the final user and the purchase or rent of another network already installed until the users premises.

The difference on the residential, SME and corporate segments should also be recognized, here. In the corporate market there is a reasonable level of substitution of origination networks. In relation to the residential and SMEs segment we believe that the local loop unbundling is a viable alternative to the traditional origination method.

ONI response

There is no substitution on the origination networks, taking into account that the wholesale markets follow naturally the previous analysis of the retail markets. We should recall that there should be a differentiation between geographic and non-geographic numbers.

NOVIS response

We consider that there exists substitutability. If an operator X increases its origination price, then its retail customers will have an increase in their costs and will make them switch to operator Y. By that way, the origination offer of operator Y became a substitute to the one of operator X.

However, at this moment the alternatives from new entrants' networks represent very limited alternatives, given the limited direct access infrastructure controlled by new entrants.

REN response

We consider that the historical operator has a dominant position in the national market.

Question 4.25 – Do you consider that call termination in each individual network is a relevant market?

PT response

The Commission says very clearly that each individual network is a relevant market. This has also been the practice of the application of articles 81 and 82 of the Treaty, therefore we do not see any reason to depart from that.

It is a fact that all individual networks, regardless of their dimensions, do have the same market power, given the mandatory obligation of network interconnection, foreseen in the Access Directive.

Therefore, all network operators should be treated in the same way, in terms of SMP designation and also in the required obligations, and the current discrimination should have an end. There are no reasons for the new entrants to charge termination rates significantly higher than the historical operator, namely considering that their networks are more efficient.

ONI response

We recognise that the Recommendation is clear on this item. But that that does not mean the same obligation for incumbent and others, as the recommendation also admits (see pages 20 and 21 of the explanatory notes), once we should take account of the countervailing buying power.

It is not expected that all operators (incumbent and others) would have the same obligations, as we explain in the answer to question 4.42.

NOVIS response

The termination market, as well as the origination, should be considered as the aggregate market and not the individual network. One cannot consider the impact of a price increase without the consideration of the competitive response of the other operators. When an operator X increases its termination prices, customers from operator Y calling to customer of X will have to pay a higher price for that call. A way to compensate that for operator Y is to increase also its own termination prices. Thus customers from X will also see their retail prices increased as a consequence of the initial termination price raise.

There is also a new factor that starts to be relevant in the national market, which is the sensibility that customers have to the costs that the people calling them are incurring.

The past practice from PTC of having on-net calls cheaper than off-net calls has had an important impact on the willingness of the market to change to direct access to new entrants.

In addition to all this, we should not forget the minimum regulation principle that underpins the new regulatory framework.

REN response

We consider that there are conditions to admit that the individual markets are relevant.

Question 4.26 – Do you interconnect directly with fixed or mobile operators, or do you use the transit services of PTC? If not, in which circumstances would you consider it beneficial to do so? How many operators provide transit services in Portugal?

PT response

We do not understand the usefulness of this question, nor in the point of view of PT Group neither in the point of view of the new entrants. As it is normal, PT uses its own termination, origination and transit services, except in situations where the high volume of traffic would compensate the use of resources dedicated to interconnection (for instance the traffic between TMN and Vodafone).

In relation to the number of operators providing that service, we think that this is a task for Anacom. At this level we would only add that this is an insipient market, once more and more resources dedicated to interconnection between networks are used.

ONI response

We interconnect directly with all operators, fixed and mobile, using PTC only as back-up for any requirement resulting from any congestion situation.

NOVIS response

Novis has direct interconnection with various operators. Given the current development status of Novis network, the use of transit services is restricted to PTC and only for backup situations.

REN response

We have not launched our fixed service provision yet.

Question 4.27 – Do you interconnect directly with foreign network operators? If not, in which circumstances would you consider beneficial to do so? Do you use other operators apart from PTS for international transit services?

PT response

As in the previous question, we do not identify the usefulness of this question. It is evident that operators of PT Group do interconnect directly to foreign network operators.

ONI response

We interconnect directly with various foreign operators and we also use other national operators' transit services, including PTC for the traffic originating from our customers, we also terminate international traffic that is delivered from other national operators.

NOVIS response

The answer is yes for both cases.

REN response

We have not launched our fixed service provision yet.

Question 4.28 – Please indicate which criteria and indicators are appropriate for the analysis of these wholesale services

PT response

We do not see any reason to suggest any additional criteria. The demand side substitution continues to be the main criteria.

ONI response

See our response to question 4.9.

NOVIS response

See our comments presented in response to question 4.9.

REN response

See response to question 4.9. The same indicators apply here.

Question 4.29 – Please indicate which operators have capacity for supply side substitution

PT response

As we have said, the supply side substitution is mainly a criteria for potential competition.

Taking into account the local loop unbundling and the development of alternative networks, the only market where potential competition may be excluded is the call termination in each network.

ONI response

As in question 4.10, we do not identify any operator willing to substitute the offer of the incumbent or of the other terminating operators.

NOVIS response

The answer to these questions (Novis replies to questions 4.29, 4.30 and 4.38 in once) is related to the data for each market, as well as commercial, financial and technological information sometimes sensible for each company.

In the table below we list the companies (only at an indicative level) that theoretical may be considered in relation to each of these questions:

	Substitution	Potential competition
Call origination	-	TV Cabo, Refer Telecom
Call termination	-	TV Cabo, Refer Telecom
Transit services	-	TV Cabo, Refer Telecom

Wholesale access to local loops	-	-
Wholesale access to the public telephony network	-	In the long term, Oni, Novis, Jazztel, Colt and Vodafone, via local loop unbundling
Access to sub-sea cables stations	-	Any network operator with an adequate licence.

REN response

We do not see any other operator with capacity to enter in the short term.

Question 4.30 – Please indicate which operators may constitute potential competition in the market

PT response
Given our position regarding supply substitutability, the answer to question 4.29 is enough.

ONI response
The same as in the previous question.

REN response

The investments in the duplication of infrastructure are such that no operator is able to entry as potential competitor.

Question 4.31 – Do you consider that intra-network traffic should be included in the market share calculations? In which market? And what should be the valuation criteria for the revenues?

PT response

We consider that the intra-network traffic should not be included for the calculation of the market shares. We justify our position on the following:

- In the origination market the consideration of intra-network traffic would mean that a dominance in the access market would immediately imply a dominance in the origination market;
- In the transit market, it should be considered only the traffic that is effectively using the interconnection services, and that is the extra-network traffic.
- In the termination market, the issue is not relevant because, by definition each operator has 100% of market share.

The methodology of not including the intra-network traffic is also the most coherent with the analysis based on the revenues value.

ONI response

The intra-network traffic should in principle be considered. Its distribution through the origination, termination and transit services would need a more careful analysis. The measurement on the basis of revenues seems logical.

NOVIS response

We consider relevant the inclusion of the intra-network traffic. For that, each intra-network call should be split into local origination, local termination and transit, and the price applied to it should be the average price of the correspondent network.

As in retail markets, shares in value should be considered, and as a control measure, they should be compared with volume shares.

REN response

We consider that the intra-network traffic should be included. We do not have available data to allow us to answer which measuring criteria to use.

Question 4.32 – Do you consider that revenues from outgoing and incoming international traffic should both be considered? Or only incoming? Or only outgoing? Should we consider the net revenues or total revenues?

PT response

We consider that it should be taken into account both incoming and outgoing interconnection international traffic. Those services would have to be considered to evaluate the total competitiveness of the different wholesale interconnection markets.

The net revenues are the best indicator of the activity of each operator in the markets under analysis, once the total revenues analysis would lead to market shares not representing the market reality.

ONI response

In principle the international traffic should not be included in the analysis of interconnection national markets, but the issue needs further reflection.

NOVIS response

In the termination markets, in the case where the call is delivered directly to the destination network then revenues of incoming international traffic should be considered. In other cases, only net revenues.

REN response

We consider that net revenues incoming and outgoing should both be included.

Question 4.33 – Criteria and indicators for single dominance

PT response

We do not see any reason to depart from our position regarding retail markets. It is important to include the criteria of profitability in the evaluation of installed companies.

That criteria is fundamental for the analysis of the competitiveness of the markets, and should be considered in order to allow the investors an appropriate return on capital. Our estimations indicate that interconnection revenues will not be enough to remunerate the invested capital already in 2003, a situation that would damage the sustainability of this business in the long-term.

ONI response

See our response to question 4.12.

NOVIS response

(Response to questions 4.33, 4.34 and 4.35)

The answer to this question should take into account our comments to questions 3.12 and 3.20.

The wholesale markets have a big impact on the retail competition, namely because of the existence of vertically integrated companies. Therefore the evaluation of dominance questions in the wholesale markets is of particular importance. In this context, we want to highlight:

- Market shares: they should be based on value, and the result should be confronted with volume shares. The evolution in time of the market shares should also be analysed. It is also worth mentioning that for market 11, the market share indicator should be the number of installed access lines.
- Competition between installed companies: we reinforce our preference for the Hirschman-Herfindal index.
- Barriers to expansion: we should reinforce the comments given to question 4.13.
- Leader dimension: The ease of access to financing resources is specially relevant and the fact of belonging to an economic group, as these factors will affect the capacity to react to demand fluctuations.

REN response

It should be market share based in revenues.

Question 4.34 – Please indicate which are the main barriers to expansion for this services

PT response

The barriers to expansion of installed operators have been reduced in the origination market through the introduction of the local loop unbundling and the building of own infrastructure.

In the transit market, the existence of different alternative infrastructures allows the operators to expand their offers to transit services.

The nature of the termination market does imply the existence of significant barriers to expansion to all operators.

ONI response

See our response to question 4.13.

REN response

The main barriers are costs and infrastructure not easily duplicated.

Question 4.35 – Please indicate which dimensions of the criteria "non-price rivalry" should be considered for these services.

PT response

The evaluation of rivalry should be prospective, taking into account the probable effects of supply substitution and the installation of new infrastructure. Namely in each of the markets, we consider:

- Origination market: the enlargement of the coverage of new services should be evaluated;
- Transit market: the criteria that evaluate the coverage of existent networks in number of customers and geographic area should be given particular importance;
- Termination market: there no space for rivalry in this market, given its monopoly nature.

ONI response

The most appropriated dimension is the investments in network coverage and geographic expansion.

REN response

The level of competition should be evaluated through:

- Level of expenses in marketing and publicity,
- Expansion investments volumes,
- Tariff diversity,
- Services coverage,
- Speed in introduction new services and
- RD investment volumes.

Question 4.36 – Which are the potential anti-competitive practices that exist in these services?

PT response

As we said in the response to question 4.15, we think that the eventual anti-competitive practices that have not been subject to an intervention of the Competition Authority should not be considered.

We believe that that Authority has the capacity to respond to the challenges that may come from the telecommunications market, and that there has not been anti-competitive practices that have obstructed competition from new entrants in a non-transitory way.

ONI response

We identify the following, according to our experience:

- Value of the termination and origination tariff by the incumbent,
- Delays in conclusion of interconnection agreements,
- Delays in the access to special services
- Discriminatory conditions in the Internet access making impossible any business in the dial-up regime,

- Refusal of implement regulator’s decisions on co-location,
- Non-existence of flat-rate interconnection tariffs

NOVIS response

(In response to questions 4.36, 4.40 and 4.41)
Given the specific nature of these markets, anti-competitive practices relate to discrimination issues in the treatment given to benefit PT Group subsidiaries.

This discrimination may exist in different ways:

- Non availability of wholesale offers that would allow retail competition in equal conditions;
- Imposition of higher costs compared with the own services or Group companies/subsidiaries;
- Discriminatory service levels;
- Launch of retail offers before given the opportunity with to the wholesale customers to prepare similar retail offers.

Those practices constitute situations of leveraging the market power in wholesale markets to benefit the position in the relevant retail markets. Clearly the only companies with conditions to do that are the companies of PT Group.

In relation to joint dominance situations (question 4.41) we repeat our answer to question 4.20: we do not see any possibility of that happening in the future.

REN response

- Predatory pricing,
- Delays in the conclusion of interconnection agreements,
- Local loop unbundling.

Question 4.37 – Please indicate which dimensions of the criteria “satisfying consumer needs” should be considered here?

PT response

In the guidelines the consumer needs are not considered as a criteria for the evaluation of the competitiveness of the markets.

Besides that, this is a criteria that is not relevant for these services, once these services are subject to a reference offer defined and approved by Anacom, and thus all the criteria are defined, monitored and controlled by the regulator.

ONI response

We consider that the dimensions to be analysed are related to the diversity of offers and quality of service evolution (namely in the interconnection leased lines provision). The existence of flat-rate interconnection should be analysed.

NOVIS response

Concerning satisfaction of consumer needs, it is possible to obtain information directly (small number of operators/consumers). As in any market the relevant variables are:

- Quality of service;
- Alternatives of provisioning;
- Price evolution through time;
- Level of customisation of offers.

REN response

- Quality of service;
- Transparency of information

Question 4.38 – Please indicate which companies would enter the market (potential competition) after a small increase in prices?

PT response

The answers to questions 4.29 and 4.30 are relevant in this case.

ONI response

See our response to question 4.17.

REN response

We do not have available data that allows us to answer this question.

Question 4.39 – Countervailing buying power

PT response

We consider that, in the origination and transit wholesale markets, the existence of own infrastructure by different companies, complemented by the offers of local loop unbundling, gives a reasonable countervailing buying power to the customers of these services.

In the termination wholesale market, any operator has countervailing buying power. The eventual power of the historical operator is neutralised by the obligation to interconnect and by the regulatory controls that exist.

ONI response

We note that in the wholesale markets in the relation with the incumbent the countervailing buying power either does not exist or is very little, given the fact that that operator being the owner of the major number of customers and the fact that the conditions are determined by the regulator. This aspect is evidenced by the number of operators exiting the market since liberalization and by the low level of activities of some new entrants.

NOVIS response

Taking into account what was said in response to question 3.23, we should add that capacity of countervailing buying power have a direct relationship with the existence of alternatives to PTC offer. Given the fact that PT customers on these services are its competitors on the retail markets, the behaviour of PT is to deal with the customers more in a way to control the competition in the retail level.

REN response

The competition is weak, therefore there is no countervailing power.

Question 4.40 – Which markets and operators would benefit from leverage of market power?

PT response

Taking into account the Guidelines, and the criteria referred to in the response to question3.24, we consider that there is not any operator that would benefit from leveraging the market power. These markets are horizontal wholesale markets, where consumers and providers are also competitors.

ONI response

See our response to question 4.19

REN response

The fact that Anacom has included the markets together in the same cluster shows the interdependence of markets and the leverage effect. It believes that the incumbent can benefit from leverage in the origination, termination and transit markets.

Question 4.41 – In which markets might joint dominance exist and which operators might benefit from it?

PT response

We consider that there are not conditions for the presence of joint dominance in the services in this Cluster.

ONI response

See our response to question 4.20.

REN response

In both the termination and origination markets the incumbent has market share that gives it a dominant position (without tacit coordination).

Question 4.42 – Please indicate which regulatory obligations would be adequate to solve the market failures associated with these services.

PT response

In general we repeat the arguments that are included in response to question 4.21, in what regards the difficulty in answering this question without an analysis being done in advance.

In terms of the call termination market, it is fundamental that there is no asymmetry in the regulatory controls to different operators. There is no countervailing buying power from PT if the other operators are not regulated in the same way. They will have incentives to apply termination rates well above the incumbent practices (as it happens currently).

We recall the attention to the fact that outgoing international traffic should not be included in the Reference Interconnection Offer, as the transit of calls to foreign countries is excluded from the list of relevant markets.

Regarding potential obligations of cost orientation at interconnection level, we think that the principles of proportionality and minimum regulation should be respected. The continuous pressure from Anacom in reducing interconnection prices, together with the high traffic migration to mobile, has lead to a substantial decrease in revenues.

To this situation add the high negative flows that PTC has in the interconnection with other operators. This disequilibrium supported by the historical operator in favour of mobile operators has contributed to the growing of the mobile industry in prejudice of fixed business.

We should then add the existence of the access deficit. The competitive pressures from mobile avoid the possibility of increasing the price of access. Portugal is the European country where accesses are decreasing at highest level. This situation may lead to a pressure over profitability that would lead to the only alternative of reducing personnel costs, with all the social implications that that situation would imply in terms of the economic recession in Portugal.

This situation leads to the conclusion that the obligations in terms of origination, transit and termination guarantee the recovery of all costs according to PTC costs model, approved and certified by Anacom, as well as the sustainability of the wholesale business as a whole. If the profitability of the interconnection traffic is not guaranteed the current situation of fixed business will be even worse, and the survival of the fixed network will be in risk, with the potential prejudices to customers and other fixed operators.

Other operators' responses

ONI response

Taking into account the obligations foreseen in the access directive and our response to question 3.27 above, we consider that it should be appropriate to have the following obligations for SMP operators:

- Inclusion of wholesale dial-up origination service to data network and services and non-geographic services in the Interconnection Reference Offer;
- Prices orientated to costs;
- Non-discrimination;
- Availability of wholesale offers appropriate to allow the introduction of the same innovative retail services;
- Access to the network in effective terms, offering namely technical functionalities;
- Transparency;
- Quality of service transparency;
- Previous notification of prices and technical information;
- Carrier selection and pre-selection;
- Periods of time where recovery of customers is forbidden the;
- Mandatory availability of the wholesale line rental and flat-rate interconnection;
- Co-location in open space for the termination of interconnection circuits;

- Implementation of an appropriate system of cost accounting, with structural separation of wholesale and retail activities, as a necessary condition for the control of non-discrimination obligations.

For the very special case of termination markets on new entrants' networks, and in the case these are considered as SMP operators, only a very generic obligation of "availability of interconnection in reasonable and non-discriminatory conditions" should be applied.

NOVIS response

See our response to question 3.27.

REN response

Ex-ante regulation should allow:
- Equal access to the infrastructure,
- Coverage in the geographic relevant area,
- Tariffs,
- Market information.