



## EUROPEAN COMMISSION

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Autoridade Nacional de  
Comunicações (ANACOM)  
Avenida José Malhoa No. 12  
1099-017 Lisboa  
Portugal

For the attention of  
Mr João Cadete de Matos  
Chairperson

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Dear Mr Cadete de Matos,

**Subject: Commission Decision concerning Case PT/2017/2023: Call origination on the public telephone network provided at a fixed location in Portugal**

**Opening of Phase II investigation pursuant to Article 7 of Directive 2002/21/EC as amended by Directive 2009/140/EC**

### 1. PROCEDURE

On 20 October 2017, the Commission registered a notification from the Portuguese national regulatory authority, Autoridade Nacional de Comunicações (ANACOM)<sup>1</sup>, concerning a full review of the market for call origination on the public telephone network provided at a fixed location<sup>2</sup>.

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<sup>1</sup> Under Article 7 of Directive 2002/21/EC of the European Parliament and of the Council of 7 March 2002 on a common regulatory framework for electronic communications networks and services (Framework Directive), OJ L 108, 24.4.2002, p. 33, as amended by Directive 2009/140/EC, OJ L 337, 18.12.2009, p. 37, and Regulation (EC) No 544/2009, OJ L 167, 29.6.2009, p. 12.

<sup>2</sup> Corresponding to market 2 in Commission Recommendation 2007/879/EC of 17 December 2007 on relevant product and service markets within the electronic communications sector susceptible to ex ante regulation in accordance with Directive 2002/21/EC of the European Parliament and of the Council on a common regulatory framework for electronic communications networks and services (2007 Recommendation on Relevant Markets), OJ L 344, 28.12.2007, p. 65.

On 27 October 2017, a request for information (RFI)<sup>3</sup> was sent to ANACOM, and a response was received on 2 November 2017.

## **2. DESCRIPTION OF THE DRAFT MEASURE**

### **2.1. Background**

The second full market review for call origination in Portugal was notified to and assessed by the Commission under case PT/2014/1639<sup>4</sup>.

ANACOM defined the market as including fixed call origination services in the public telephone network for geographic and non-geographic numbers<sup>5</sup>, for residential and non-residential customers, including self-supply, and call origination services for dial-up internet access. The geographical market was national in scope.

ANACOM designated the undertakings in the PT Group that operated in the wholesale fixed call origination market as having significant market power (SMP)<sup>6</sup>. ANACOM proposed to differentiate remedies across such undertakings. It intended to impose a set of remedies on the PT Group as a whole (including both undertakings, PTC and MEO) and another set solely on the undertaking PTC. The overall set of remedies proposed was the following: (i) meet reasonable access requests<sup>7</sup>; (ii) non-discrimination<sup>8</sup>; (iii) transparency<sup>9</sup>; (iv) price control and cost-accounting<sup>10</sup>; (v) accounting and cost-accounting separation<sup>11</sup>.

The Commission issued two comments. Firstly, the Commission commented on the fact that ANACOM analysed different groups of undertakings (notably the PT

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<sup>3</sup> In accordance with Article 5(2) of the Framework Directive.

<sup>4</sup> C(2014) 5698 final

<sup>5</sup> ANACOM considered that origination services to non-geographical and geographical numbers were part of the same relevant market, given the lack of technical differences on the supply side and the fact that the same network resources were used regardless of the call destination.

<sup>6</sup> In its reply to the request for information, ANACOM clarified that the companies that were part of the PT Group were PT Comunicações (PTC) and MEO. It also indicated that no company was added to the Group after the previous market review.

<sup>7</sup> Imposed on the PT Group, with the exception of WLR and CS/CPS implementation, which were imposed to PTC only. ANACOM indicated a continuous decrease of access to both CS/CPS and WLR services. Concerning the former, there was a reduction of 79% between 2006 and 2013. Regarding the latter, it registered 27,000 line accesses in 2013 (against about 140,000 in 2006).

<sup>8</sup> Only imposed on the PT Group.

<sup>9</sup> Most remedies imposed on PTC, with the exception of the obligation to publish information about network configuration, PGI and tariff structure, which was imposed on the PT Group only.

<sup>10</sup> The obligation to set cost-oriented prices was applied to the PT Group, whereas the obligations to set retail minus WLR monthly prices and to do cost accounting were imposed on PTC only.

<sup>11</sup> The development of an accounting and accounting separation system was only applied to PTC.

Group and the ZON Group) in their entirety only, and not by way of individual undertaking. Under the EU Regulatory Framework, however, individual undertakings are required to be identified for the purposes of ex ante regulatory intervention. Therefore, the Commission invited ANACOM to fully clarify in its final adopted measure the specific undertakings within the PT Group that had SMP.

Secondly, the Commission acknowledged ANACOM's conclusion that regulation of the market for wholesale fixed call origination was still necessary to safeguard effective competition in the retail market. However, the Commission noted that the SMP operators had been losing share of retail revenues, and that the requests of access seekers for both CS/CPS and WLR<sup>12</sup> services had been decreasing. Therefore, the Commission invited ANACOM to closely monitor the market, and possibly review it before the end of the standard three-year review period.

## **2.2. Market definition**

Different from the last market review in which call origination was considered as one single market, ANACOM now defined two separate markets for call origination on the public telephone network at a fixed location: (i) for geographical numbers and (ii) for non-geographical numbers relating to the provision of specific services<sup>13</sup>. Both markets include voice call origination services to residential and non-residential customers, provided to local networks or those of simple transit, regardless of the transport technology and the interconnection interface used (TDM, IP interfaces, both for PSTN and VoIP calls with fixed or nomadic numbers). Both markets include calls made by mobile network operators at fixed locations (homezone) as well as self-supply. Differently from the measure adopted in the last market review, ANACOM does not include double transit in the relevant market<sup>14</sup>. Therefore, regulation is lifted in the double transit segment.

The relevant geographic market is national.

## **2.3. Three criteria test**

The Recommendation on Relevant Markets<sup>15</sup> no longer includes the wholesale market for call origination in the list of markets susceptible to ex ante regulation.

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<sup>12</sup> Carrier selection, carrier pre-selection and wholesale line rental.

<sup>13</sup> ANACOM highlights that while there is only one operator (MEO) which provides call origination to geographical numbers, most operators providing access to their customers provide origination to non-geographical numbers, as a way to ensure that such customers can access services provided by third parties using non-geographical numbers.

<sup>14</sup> ANACOM considered a situation in which, on a forward looking basis, different network layers will lose importance, and where the percentage of traffic originating in double transit is currently negligible, being clearly less than 10% of the traffic originated in MEO's network and much less than the total origination traffic. ANACOM also considered that the transit offers available that can replace the double transit level.

<sup>15</sup> Commission Recommendation 2014/710/EU of 9 October 2014 on relevant product and service markets within the electronic communications sector susceptible to ex ante regulation in accordance with Directive 2002/21/EC of the European Parliament and of the Council on a common regulatory framework for electronic communications networks and services (Recommendation on Relevant Markets), OJ L 295, 11.10.2014, p. 79.

Therefore ANACOM carried out a three criteria test in order to ascertain whether to continue imposing regulation on the markets for call origination for geographical and non-geographical numbers.

### *2.3.1. Call origination for geographical numbers*

#### *First criterion*

ANACOM acknowledges the development of alternative networks, such as cable, mobile and fibre networks, which have significantly reduced the alternative operators' dependence from the incumbent's copper network, thereby increasing the ability of alternative operators to self-supply call origination services. However, ANACOM notes that such networks have a limited national coverage when compared with MEO's network<sup>16</sup>. The latter is the only network with ubiquitous presence for residential and non-residential customers who wish to purchase standalone fixed telephone services, with particular concern for non-residential customers with multi-site locations which need to offer fixed telephone services anywhere in the national territory. In particular, there are still 1,400 parishes encompassing approximately 875,000 households, where alternative operators do not have any new generation network, and therefore there are no alternatives to MEO's copper network<sup>17</sup>. ANACOM explains that the use of mobile networks with a wide presence in the national territory for the provision of fixed calls could help bridge the barriers to entry into the market for call origination at fixed location. However, only the largest providers have such networks, and the other providers would have to negotiate access with mobile operators, which according to ANACOM is not worthwhile for smaller operators wishing to supply retail services at fixed locations<sup>18</sup>.

In addition, ANACOM assesses the possibility for alternative operators to replace the purchase of call origination services with network access through leased lines or local loop unbundling. But ANACOM concludes that such options are not viable as leased lines have high costs and could only be justified for larger companies with high volume traffic requirements<sup>19</sup>. Similarly, the costs associated with collocation

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<sup>16</sup> In its reply to the Commission RFI, ANACOM clarified that according to data for the year 2017 NOS and Vodafone's next generation networks cover █ % and █ % █ households respectively. However, ANACOM highlighted that in 2016 the number of parishes with less than 1% coverage amounted to 1,400 for a total of approximately 1.5m people and 900,000 households.

<sup>17</sup> As results from data included in the Commission decision in case PT/2016/1888-1889, there are 3,092 parishes in Portugal.

<sup>18</sup> ANACOM shows that access for fixed telephone services through mobile networks (GSM/UMTS/LTE) has been increasing since 2014 and amounted to 10% in 2016.

<sup>19</sup> Regarding the regulation in markets 3a and 3b, in its reply to the RFI, ANACOM noted that the most important obligations that were imposed in these markets were access to ducts and poles which are not adequate for the purpose of providing telephone services at a fixed location. In addition, the regulation imposed on these markets, for example on bitstream, is not sufficient to enable the said retail offer, especially for the non-residential market. It also notes that the PT ADSL Network offer does not support pay TV services, it only supports broadband services or the broadband service added to the fixed voice telephone service, packages for which there is no demand. In addition, the Naked DSL accesses that could support the fixed telephone services provided by the alternative operators exist in very small numbers, i.e. █ less than █.

in MEO central offices are significant and would be justified only for integrated offers. In this sense, ANACOM highlights that approximately 10% of customers still subscribe to standalone fixed telephone services<sup>20</sup>. In addition, ANACOM considers that non-residential customers with multiple locations often conclude contracts with the same operator including standalone services in some locations and bundles in other locations. Therefore, should they be prevented from offering standalone services in some locations, given the tendency of customers to contract with only one supplier, they would risk losing such customers altogether, i.e. also with respect to self-supplied or bundled connections<sup>21</sup>. Similarly, alternative operators would be prevented from participating in public tenders requiring them to offer services in all areas of the country. Hence, according to ANACOM the impact of deregulation on such operators would be much more significant than what it may appear if one only considers the number of standalone connections.

Therefore, ANACOM considers that the first criterion is fulfilled as this market would still be characterized by strong and non-transitory barriers to entry during the forthcoming regulatory period.

### *Second criterion*

ANACOM notes that although MEO's retail market share has decreased since 2012, it still amounted to approximately 45% in terms of connections and 43% in terms of traffic in the second quarter of 2017<sup>22</sup> (NOS and VODAFONE's shares were respectively 35% and 15% both in terms of connections and traffic). However, ANACOM considers that in the absence of regulation, MEO's share would increase as customers would switch to MEO. Furthermore, ANACOM notes the absence of price dynamics as MEO is the only operator offering call origination services at regulated prices while alternative vertically integrated operators do not provide any commercial offer. Regarding potential competition, ANACOM observes that the use of wholesale services to enable third parties' retail offers declines considerably due to the increase in the number of connections by alternative operators and the decrease in fixed traffic. In this sense, commercial offers by such operators are unlikely to become available and exert competitive pressure on MEO's regulated offer, even in the event of deregulation. ANACOM adds that competitive pressure potentially exerted by mobile services and over-the-top (OTT) services is also limited.

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<sup>20</sup> In its reply to the RFI, ANACOM highlighted that although only 400,000 customers subscribe to standalone services, each customer has several connections (especially non-residential customers), so that the total number of connections amounted to 1.4m in the second quarter of 2016.

<sup>21</sup> In its reply to the RFI, ANACOM noted that between the end of the second quarter of 2016 and the end of the second quarter of 2017 there was an increase of 8% in the number of subscribers of services packages, an amount equivalent to that registered between the second quarter of 2015 and the second quarter of 2016.

<sup>22</sup> ANACOM estimates that in the third quarter of 2016, MEO's share was approximately 43% in the residential segment and 55% in the non-residential segment. Market shares include direct access traffic originating from different providers towards geographic, mobile and nomadic numbers, including domestic and international outgoing traffic and wholesale call origination services provided to third party operators for indirect access. Traffic with access through calling cards is excluded.

In the light of the evaluations carried out, ANACOM considers that the call origination market does not tend towards effective competition within the period covered by this analysis. The Authority therefore concludes that the second criterion is also met.

#### *Third criterion*

ANACOM considers that the application of competition law would not be effective to adequately and promptly correct market failures and that, therefore, the ex-ante regulation is still thought as an appropriate complement to competition law.

##### *2.3.1. Call origination for non-geographical numbers*

#### *First criterion*

ANACOM considers that the first criterion is not fulfilled as there are no high and non-transitory barriers in the market for call origination for non-geographical numbers. In particular, ANACOM explains that all network operators provide the origination services for special services to support non-geographical numbers to each other. If the retail offer of special services through non-geographical numbers continues to depend upon the acquisition of third party origination services, there will be a strong incentive for negotiation and interconnection agreements for call origination between operators. Indeed, ANACOM explains that it is in the interest of any telephone service provider, in principle, that its customers are able to make calls to the majority of the number ranges, including non-geographical ranges whether they are owned by them or by third party providers.

#### *Second criterion*

ANACOM notes that overall traffic for wholesale origination for special services has been declining, with fixed origination displaying the greatest decrease. In the third quarter of 2016, at the retail level, MEO was only the second largest player with a 34% market share, while NOS had a market share of 38%. In the same period, at wholesale level, MEO's share amounted to 41% (progressively decreasing) followed by NOS with 37% and Vodafone with 13% market share. These three operators accounted for 94% of all traffic originating from fixed networks for special services in the third quarter of 2016. Moreover, ANACOM notes that MEO has been effectively limited in its ability to compete in this market with regulated origination rates which are significantly lower than those charged by alternative operators. In particular, in terms of rates, ANACOM considers that deregulation in this market could potentially contribute to an approximation of the rates charged by all providers, ideally towards MEO's regulated (and therefore lower) rates. Therefore, ANACOM considers that this market tends towards effective competition.

#### *Third criterion*

Finally, ANACOM considers that competition law is sufficient to address potential competition concerns that may appear in this market.

As a result all remedies currently imposed on this market are lifted as of the day of adoption of the final measure, with exception for the price control remedy which

will be lifted after six months from the adoption, in order to allow operators to adapt to the new prices.

#### **2.4. Finding of significant market power**

ANACOM proposes to designate MEO with SMP in the market for call origination for geographical numbers based on the following elements: (i) market shares, (ii) degree of concentration in the relevant market, (iii) dimension of the market leader, (iv) barriers to entry and expansion, (v) economies of scale and scope, (vi) vertical integration, and (vii) countervailing buyer power.

The call origination services in the public telephone network at a fixed location are offered to third parties primarily by MEO. Alternative operators use their networks mainly for the self-provision of telephone origination services, in order to offer telephone services to their end-customers. Therefore, ANACOM notes that MEO's share is still high. At wholesale level, MEO's market share amounted to 44.8% in 2016<sup>23</sup>. At retail level market shares (including self-supply) amount to approximately 45% in terms of number of connections and 43% in terms of traffic in the second quarter of 2017, although they are expected to continue declining. In addition, ANACOM associates the high degree of concentration<sup>24</sup> in this market with MEO's market power.

#### **2.5. Regulatory remedies**

ANACOM proposes to impose on MEO the following set of regulatory remedies: (i) the obligation to respond to reasonable requests for access, including CS, CPS and WLR (ii) non-discrimination, (iii) transparency, including the publication of an interconnection reference offer (RIO), (iv) price control and cost accounting, (v) accounting separation. With respect to the price control obligation, ANACOM requires MEO to submit to ANACOM within two months from the adoption of the measure a proposal for the revision of the prices in which prices for local interconnection and simple transit should be set at the same level. The proposal should cover also other prices in the RIO, including prices for CS, CPS and WLR. Prices for WLR would continue to be set according the retail-minus principle.

ANACOM's proposal to lift regulation on the double transit level would enter into effect after six months from the adoption of the final measure.

### **3. ASSESSMENT**

The Commission has examined the notification and the additional information provided by ANACOM. ANACOM's draft measure concerning the wholesale market for call origination on the public telephone network provided at a fixed location in Portugal falls within Article 7(4)(b) of the Framework Directive as the proposed measure aims at deciding whether or not to designate an undertaking as having, either individually or jointly with others, significant market power, under Article 16(4) of the Framework

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<sup>23</sup> According to ANACOM, data for 2017 are not yet available for the wholesale level.

<sup>24</sup> The Herfindahl-Hirschman index (HHI) was 3,527 in the third quarter of 2016. In general, highly concentrated markets register HHI indexes above 1,800.

Directive. The Commission also considers that the draft measure would affect trade between Member States because the conditions for the access to the relevant market determine the cost and the ability of other operators (including those established in other Member States) to provide electronic communications services.

At the current stage of the procedure and on the basis of the information available, the Commission has serious doubts that ANACOM's finding of SMP is compatible with EU law, as it is not supported by sufficient evidence. The Commission refers in particular to the obligation that NRAs shall, taking utmost account of the Recommendation and the SMP Guidelines, define and analyse relevant markets in accordance with the principles of competition law. According to Article 16(4) of the Framework Directive, where an NRA determines that a relevant market is not effectively competitive, it shall identify undertakings which individually or jointly have a significant market power on that market in accordance with Article 14 and the NRA shall impose on such undertakings appropriate specific regulatory obligations referred to in Article 16(2) or maintain or amend such obligations where they already exist. In the present case, ANACOM aims at designating MEO with SMP, without giving, *inter alia*, due consideration to the competitive pressure that alternative operators' offers may exert on MEO.

Therefore, on the basis of the information available, ANACOM's analysis does not seem to follow the principles of competition law, as further explained below.

Pursuant to Article 8(2) of the Framework Directive, NRAs shall promote competition in the provision of electronic communications networks, services and associated facilities by *inter alia* ensuring that there is no distortion or restriction of competition in the electronic communications sector, including the transmission of content. In addition, pursuant to Article 8(5) of the Framework Directive, NRAs shall, in pursuit of the policy objectives referred to in paragraphs 2, 3 and 4 of the same Article, apply objective, transparent, non-discriminatory and proportionate regulatory principles by, *inter alia*, safeguarding competition to the benefit of consumers and promoting, where appropriate, infrastructure-based competition. Furthermore, according to Article 8(5)(f) of the Framework Directive, NRAs shall impose *ex ante* regulatory obligations only where there is no effective and sustainable competition and relax or lift such obligations as soon as that conditions is fulfilled.

The Commission is concerned that the lack of evidence supporting ANACOM's SMP assessment, might result in the regulation of a competitive market. As a result, infrastructure-based competition would be distorted and/or restricted.

The Commission, therefore, expresses serious doubts as to the compatibility of the proposed SMP designation with EU law for the following principal reason:

**Lack of sufficient evidence supporting the SMP finding on the call origination market for geographical numbers by ANACOM**

The Commission notes that the market for fixed call origination has significantly shrunk over the past years. The revenues in the market fell by 48% between 2012 and 2016. Moreover, the connections based on WLR have decreased from 140,000 lines in 2006 to a mere 21,000 lines in the second quarter of 2017, of which 4,000 are used to supply the residential segment<sup>25</sup>. In fact, only less than 1% of the

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<sup>25</sup> In its reply to the RFI, ANACOM clarifies that connections based on WLR amount to 18,000 for non-residential customers and 4,000 for residential customers in the third quarter of 2016. Those



connections in the residential and non-residential segment are based on WLR. If this decrease will continue at the present pace, there will be a further significant decrease of lines for which WRL remedy is used and, consequently, the significance of the WLR remedy for the market dynamic will be even more negligible. In this respect, the Commission acknowledges the argument of ANACOM that the WLR is a remedy that is of particular relevance to the non-residential segment of the sector, where the operator should be able to supply standalone services in some locations and bundles in other locations. However, the above mentioned market trend testifies that these connections are subject to decreasing demand, among others, due to increased significance of bundles also including internet-based connections for non-residential customers. In this respect, Vodafone clarified in the public consultation that it does not use WLR for the supply of the fixed origination services for the non-residential segment.

The Commissions sets out that when considering the market power of an undertaking it is important to consider market shares of the undertaking, its competitors<sup>26</sup> as well as constraints exercised by potential competitors in a medium term.

In this respect, the Commission first points out that MEO's retail market share of 43% (in the second quarter of 2017) and of 44.8% at wholesale level (in 2016) at the end of the regulatory period cannot be considered as 'very large' in the meaning of the SMP guidelines, whereas the market shares of the competitors (NOS and VODAFONE whose shares were, respectively, 35% and 15% both in terms of connections and traffic) are considerable. Moreover, the SMP Guidelines set out that only a 'very large' market share - in excess of 50 % - is in itself, save exceptional circumstances, evidence of the existence of a dominant position. On the other hand, as the Commission has consistently held, when the market share is high but below the 50% threshold, NRAs should rely on other key structural market features when assessing SMP. In line with point 78 of the SMP Guidelines, NRAs should undertake a thorough and overall structural evaluation of the economic characteristics of the relevant market before concluding on the existence of an SMP.<sup>27</sup>

Second, in line with point 74 of the SMP Guidelines, the market power of an undertaking can be constrained by the existence of potential competitors. In this respect, the Commission notes that approximately 90% of customers had fixed telephone service provided as part of a bundle at the end of 2016, whereas this fixed element was provided free of charge. Thus, a significant entry has already occurred in the market. In fact, the Commission considers that in 90% of the market MEO's market power can already be constrained by the existence of actual competitors which entered the market based on their own infrastructure or on a basis of regulated input from the upstream markets (i.e. LLU or bitstream), the latter for the provision of bundled offers. This number is expected to increase over the

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connections amounted to 21,000 in the second quarter of 2017.

<sup>26</sup> If in addition to its large market share the leading operator is over twice the size of its next largest competitor, such a factor will be a material consideration in a determination that the leading operator enjoys a position of SMP, which is not the case here.

<sup>27</sup> See also case NL/2017/1960.

forthcoming regulatory period due to an increased bundling trend as ANACOM points out that this value increased by 37% since 2010. In this respect, the Commission also points to the fact that the availability of the wholesale remedies in the upstream markets, including access to ducts and dark fibre (where ducts are not available), could further encourage the NGA deployment in Portugal or reliance on the relevant wholesale inputs by potential entrants in a medium term, which can further constrain MEO's market power.

Third, the Commission notes that ANACOM itself considers that there are operators with similar scale as MEO, the fact that various operators are vertically integrated and are at present able to benefit from economies of scope. For the purposes of bundling of fixed voice with internet and/or TV connections, and its increased significance, ANACOM disregarded in its SMP analysis the fact that FTTH/B coverage was 70.1% of all households and DOCSIS 3.0 coverage amounted to 70.8% households in 2015.

Fourth, the Commission also refers to the mobile penetration in Portugal<sup>28</sup>. In this respect, the Explanatory note to the 2014 Recommendation on relevant markets states that even if fixed and mobile calls would not be considered to be perfect substitutes at the retail level, mobile services would still exercise a constraint on wholesale call fixed origination services from outside the relevant market or underlying retail market. This constraint needs to be appropriately reflected in the market analysis, in particular in relation to the residential segment. In addition, the Explanatory note only mentions the fixed-to-mobile substitution as one of the elements leading to deregulation of ex-market 2 but does not require this substitution to be observed in the national circumstances in order to deregulate the market.

Fifth, based on the fact that ANACOM defines national retail and wholesale markets, the competitive conditions must be such that the incumbent operator would in any event, even if the regulation is lifted, continue applying national pricing, as it would be constrained in its pricing policy by the presence of the other alternative operators in the market. This applies for the residential as well as, to a certain extent, for the non-residential segment. The Commission considers that the competitive pressure from IP telephony, cable TV and fibre should be sufficient to constrain MEO's pricing of PSTN-based services.

Therefore, the Commission considers it unlikely that consumers could be negatively affected by the deregulation of the fixed telephony market as competitive pressure in other parts of the market is sufficient to constrain the national pricing of PSTN-based services. Furthermore, it is also unlikely that MEO would identify this group of customers and selectively raise prices. The Commission points to the fact that even if a majority of customers have switched to a higher performant infrastructure, there will always be a limited group of captive users that only have access to PSTN telephony. In this respect, the Commission considers that NRA's should ensure a regulatory approach that does not perpetuate the cycle of captivity, but rather serves

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<sup>28</sup> In addition, according to the EUROBAROMETER report of 2016 on E-Communications and the Digital Single Market, 86% of Portuguese consumers consider mobile calls the most important service (compared to the EU average of 74%). The report related to Portugal is accessible at: <https://ec.europa.eu/commfrontoffice/publicopinion/index.cfm/Survey/getSurveyDetail/yearFrom/1974/yearTo/2016/surveyKy/2062>.

to encourage migration on to modern networks and enables the ultimate switch-off of legacy networks.

### *Conclusion*

At the current stage of the procedure and on the basis of the information available the Commission has serious doubts that ANACOM's notification provides an appropriate justification for designing MEO with SMP, as ANACOM did not provide a sufficient justification that MEO enjoys a position of economic strength affording it the power to behave to an appreciable extent independently of its competitors, customers and ultimately consumers.

Therefore, the Commission raises serious doubts as to the compatibility of ANACOM's SMP assessment with EU law, and more precisely with the requirements laid down in Article 15(3) and Article 16(4) of the Framework Directive in light of the objectives laid down in Article 8 of the Framework Directive.

The above assessment reflects the Commission's preliminary position on this particular notification, and is without prejudice to any position it may take vis-à-vis other notified draft measures.

The Commission points out that, in accordance with Article 7(4) of the Framework Directive, the draft measures concerning the market for call origination on the public telephone network provided at a fixed location shall not be adopted for a further two months. As the Commission's serious doubts are limited to the market for call origination for calls to geographical numbers, ANACOM may proceed with the proposed deregulation of the call origination for calls for non-geographical numbers relating to the provision of specific services.

Pursuant to Recital 17 of Recommendation 2008/850/EC<sup>29</sup>, the Commission will publish this document on its website, together with a notice inviting third parties to submit observations on this serious doubts letter within ten working days. The Commission does not consider the information contained herein to be confidential. You are invited to inform the Commission<sup>30</sup> within three working days following receipt whether you consider that, in accordance with European Union and national rules on business confidentiality, this document contains additional confidential information which you wish to have deleted prior to such publication. You should give reasons for such request.

Yours sincerely,

For the Commission,  
Mariya Gabriel  
Member of the Commission

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<sup>29</sup> Commission Recommendation 2008/850/EC of 15 October 2008 on notifications, time limits and consultations provided for in Article 7 of Directive 2002/21/EC, OJ L 301, 12.11.2008, p. 23.

<sup>30</sup> Your request should be sent either by email: CNECT-ARTICLE7@ec.europa.eu or by fax: +32.2.298.87.82.