



EUROPEAN COMMISSION

Brussels, 28.9.2017
C(2017) 6716 final

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

For the attention of:
Mr. João Cadete de Matos
Chairperson

Fax: +351 21 721 10 04

Dear Mr Cadete de Matos,

Subject: Commission Decision concerning Case PT/2017/2006: Wholesale high-quality access provided at a fixed location in Portugal – changes to reference offers

Article 7(3) of Directive 2002/21/EC: No comments

1. PROCEDURE

On 1 September 2017, the Commission registered a short form notification from the Portuguese national regulatory authority, Autoridade Nacional de Comunicações (ANACOM)¹, concerning wholesale high-quality access provided at a fixed location² in Portugal.

The national consultation³ ran from 27 March 2017 to 4 May 2017.

¹ 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.

² Corresponding to market 4 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 (Recommendation on Relevant Markets), OJ L 344, 28.12.2007, p. 65.

³ In accordance with Article 6 of the Framework Directive.

On 12 September 2017, a request for information⁴ was sent to ANACOM and a response was received on 15 September 2017.

2. DESCRIPTION OF THE DRAFT MEASURE

2.1. Background

The market for wholesale high-quality access provided at a fixed location in Portugal was previously notified to and assessed by the Commission under cases PT/2016/1890-1891⁵.

Leased lines

ANACOM proposed to identify four markets for wholesale high-quality access provided at a fixed location in Portugal by first segmenting the market into competitive (C) and non-competitive (NC) areas, and by further dividing each sub-market into low-bandwidth (speeds up to 24 Mbps) and high-bandwidth (speeds exceeding 24 Mbps) product markets. In particular, in order to consider a district to be considered a C area the following criteria had to be fulfilled simultaneously: (i) there must be at least two networks of two different alternative operators (with at least 50% coverage of a relevant geographic unit) besides MEO's network; (ii) there must be at least two alternative operators with installed/provided access; and (iii) MEO's market share must be less than 50%.

ANACOM designated MEO as having SMP in the market for wholesale high-quality access in both segments, low-bandwidths and high-bandwidths, provided in NC areas.

With regard to the remedies imposed, ANACOM distinguished NC areas where the first two criteria were met or where MEO's market share was below 50% but there was only one alternative operator providing access (ANC areas) from areas where all the three criteria were not met (NC areas). Accordingly, ANACOM proposed to maintain the following set of remedies in both NC and ANC areas: (i) access; (ii) transparency; (iii) non-discrimination; and (iv) accounting separation. With respect to the price control, ANACOM proposed to impose in the NC areas a price control in the form of cost orientation and cost accounting, while in ANC areas, ANACOM proposed to impose a lighter price control obligation on MEO in the form of a margin squeeze test.

Trunk segments

ANACOM distinguished the market for wholesale trunk segments of leased lines in the mainland from the market for wholesale trunk segments of Continental-Azores-Madeira (CAM) and Inter-island and international submarine circuits.

With respect to the wholesale trunk segments of leased lines in the mainland, ANACOM identified a market for competitive routes and a market for non-competitive routes. In the latter, ANACOM proposed to designate MEO with SMP

⁴ In accordance with Article 5(2) of the Framework Directive.

⁵ C(2016) 5063 final.

and to impose a complete set of remedies on it: (i) access (ii) transparency, including reference offers; (iii) non-discrimination; (iv) accounting separation; and (v) price control in the form of cost orientation and cost accounting.

With respect to the wholesale trunk segments of CAM and Inter-island and access to international submarine cables, ANACOM identified the geographical market for circuits for access to international submarine cables at the ECS⁶ of MEO in Carcavelos and for circuits for access to international submarine cables at the ECS of MEO in Sesimbra⁷. ANACOM designated MEO with SMP on the following markets: (i) the wholesale market of CAM and Inter-island circuits; (ii) the market of circuits for access to international submarine cables at the ECS of MEO in Carcavelos; (iii) the market of circuits for access to international submarine cables at the ECS of MEO in Sesimbra. As a result, ANACOM proposed to impose on MEO a complete set of remedies: (i) access obligations and the use of specific network resources⁸; (ii) transparency, including reference offers; (iii) non-discrimination; (iv) accounting separation; and (v) price control in the form of cost orientation and cost accounting⁹.

2.2. The draft measure notified by way of a short form

In the present draft measure, ANACOM proposes to amend and define more details in MEO's reference offers on leased lines and Ethernet lines, with regards, in particular, to the service level agreement (SLA) and the service level guarantee (SLG). The amendments proposed concern contractual conditions on (i) geographical information related to the area covered by MEO's local exchange, (ii) installation and delivery, (iii) repair of faults, (iv) service quality parameters, (v) dispute resolution procedures for invoicing, and (vi) limitation of liability for direct damages. In addition, ANACOM proposes to require MEO to include in its cost accounting system a separate statement of income for the backhaul circuits for Ethernet lines.

3. NO COMMENTS

The Commission has examined the notifications and has no comments.¹⁰

⁶ Submarine Cable Stations.

⁷ The 'circuits for access to international submarine cables' allow (wholesale) access to the capacity of submarine cables at MEO's Submarine Cable Stations (ECS), which are located on shore. These circuits support traffic/capacity for various continents and are the property of international consortia or, in some cases, of a single private entity.

⁸ Apart from other obligations, MEO should ensure the expansion of capacity in CAM and Inter-island circuits, also including a capacity up to 10 Gbps. As regards the access to international sub-marine cables MEO should provide co-location in its ECS, as well as backhaul.

⁹ MEO should reduce its actual price of traditional CAM lines up to 2 Mbps by at least 66% within 30 calendar days after the approval of the final decision concerning this market analysis. This decision was the result of an interim decision adopted by ANACOM.

¹⁰ In accordance with Article 7(3) of the Framework Directive.

Pursuant to Article 7(7) of the Framework Directive, ANACOM may adopt the draft measure and, where it does so, shall communicate it to the Commission.

The Commission's position on this particular notification is without prejudice to any position it may take *vis-à-vis* other notified draft measures.

Pursuant to Point 15 of Recommendation 2008/850/EC¹¹ the Commission will publish this document on its website. The Commission does not consider the information contained herein to be confidential. You are invited to inform the Commission¹² within three working days following receipt whether you consider that, in accordance with EU and national rules on business confidentiality, this document contains confidential information which you wish to have deleted prior to such publication.¹³ You should give reasons for any such request.

Yours sincerely,

For the Commission,
Roberto Viola
Director-General

¹¹ 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 of the European Parliament and of the Council on a common regulatory framework for electronic communications networks and services, OJ L 301, 12.11.2008, p. 23.

¹² Your request should be sent either by email: CNECT-ARTICLE7@ec.europa.eu or by fax: +32 2 298 87 82.

¹³ The Commission may inform the public of the result of its assessment before the end of this three-day period.