

FINAL DECISION ON

**AMENDMENTS TO THE REFERENCE UNBUNDLING
OFFER (RUO)**

ANACOM

2017

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1. FRAMEWORK

ANACOM approved, by decision of 23.3.2017, the analysis on the market for wholesale local access provided at a fixed location (Market 3a),¹ having concluded that even with the developments that occurred at the level of new generation networks (NGN), it was essential to continue to impose the obligation to provide unbundled access to the copper loop, embodied in the wholesale reference unbundling offer (RUO²) of the operator with significant market power (SMP), MEO.

In this market analysis (see paragraph 5.39), ANACOM recognized the need for further changes to this offer,³ considering the experience gathered over these years, but also bearing in mind that the demand for access to the copper local loop is decreasing and that any changes to RUO will take account of the compromise between cost (for MEO) and the inherent benefits (for beneficiaries and end users).⁴ In this context ANACOM stressed it would only intervene on specific points, properly substantiated by the beneficiaries of the offer and which are essential to ensure the development of their retail offerings. It would also be able to accept modifications to RUO requested by MEO, as long as they are duly grounded and after beneficiaries are heard.

In the meantime, in 2014 ONITELECOM – Infocomunicações, S.A. (Oni)⁵ and Vodafone Portugal – Comunicações Pessoais, S. A. (Vodafone)⁶ had already sent ANACOM amendment proposals for RUO, among other offers. These proposals were reinforced in response to the public consultation and prior hearing on the draft decision (DD) regarding the analysis of Market 3a.

Without prejudice to these proposals, on 10.4.2017⁷ ANACOM asked all RUO beneficiaries for

¹ As well as the market for wholesale central access provided at a fixed location for mass-market products (Market 3b) – Markets from the European Commission Recommendation of 2014 on relevant product and service markets within the electronic communications sector susceptible to ex ante regulation. This decision is hereinafter referred to as 'market analysis'.

See <http://www.anacom.pt/render.jsp?contentId=1394170#.WAoXIOkzXq4>.

² See last version at MEO's portal *PTWholesale*:

<http://ptwholesale.pt/pt/servicos-nacionais/capacidade/Paginas/orall.aspx>.

³ In particular after ANACOM determinations of 17.2.2010 on amendments to RUO, and of 28.3.2012, on the procedures to be followed in measuring quality of service of regulated wholesale offers.

⁴ Additionally, in paragraph 5.188 of that analysis ANACOM stressed the possibility, in justified cases, to intervene in RUO in order to adapt it to market needs and to streamline certain processes.

⁵ By letter of 15.1.2014, with Reference 004/ GRL/2014.

⁶ By letter of 15.9.2014 with Reference 20140915_Alt_OR.

⁷ By communication of 26.4.2017, NOS Comunicações, S.A. (NOS) requested an extension of the deadline for replying to ANACOM's information request, and on 2.5.2017 this Authority granted an extension of 5 working days.

concrete proposals to improve this offer, duly substantiated in view of the decrease that the demand for unbundled loops is experiencing. On the same date, and in order to enrich the current analysis, MEO was asked to comment, if it so wished, on potential changes to be made to that offer, duly substantiated, and taking into account any proposals it has received from the beneficiary operators of RUO.

ANACOM received the responses briefly presented below, from:

- i) Oni⁸, which considers it essential not to deteriorate the conditions of loop supply in RUO, since these support access solutions for business customers. It therefore maintains most of the proposals for improvement set out in their letter of 2014 (in particular those set out in Annexes I and III).⁹ Additionally, it argues that the monthly value of the local loops and the installation value should be revised downwards.
- ii) Vodafone¹⁰ welcomes this long-awaited review of this offer, and reiterates its previous request (from 2014), asking for a number of changes to this offer.
- iii) NOS,¹¹ which also welcomes the launch of this procedure, which will hopefully contribute to a more efficient implementation of RUO and will enable the clarification of operational issues – at the level of supply and repair – which affect its optimization, even if it may not be the main component supporting retail offerings by alternative operators (but still relevant in NOS's business offerings).
- iv) MEO,¹² which welcomes the opportunity to consult operators about potential changes to the offer, but stresses that this is in a phase of decline and technological obsolescence, and therefore they hope that, contrary to the consultation on the amendments to LLRO and RELLO, this process does not result in a decision with multiple determinations, including at the level of the procedures in force. MEO proposes the simplification of RUO and reiterates proposals to change the offer presented to ANACOM in 2015 which it considers remain current and appropriate.

⁸ By e-mail, on behalf of NOWO and Oni, on 10.5.2017.

⁹ Verifying that a significant number of their common proposals for various offers (in Annex I of that letter) has already been included in the draft decision (DD) on the amendments to LLRO and RELLO, approved by ANACOM on a decision of 23.3.2017, Oni expects that at least these proposals be also adopted in the new version of RUO.

¹⁰ By e-mail, of 11.5.2017.

¹¹ By e-mail, of 11.5.2017.

¹² By letter, of 10.5.2017 with Reference S0183 (with copy by e-mail, of 11.5.2017).

Accordingly, following the market analysis and as provided for in the activities of ANACOM's multi-annual plan for 2017-2019, this Authority conducted an analysis of RUO, considering the reasoned proposals for amendments and the comments of the operators, which is presented in the following chapter, while the third chapter culminates with the definition of amendments to that reference offer from MEO.

By determination of 10.8.2017, ANACOM decided to conduct a prior hearing of the interested parties and the general consultation procedure regarding the draft decision on the amendments to RUO it intended to approve, which ran until 25.9.2017; the comments received, their analysis and the grounds of the decision are included in the "Report on the public consultation and prior hearing on changes to the Reference Unbundling Offer (RUO)", which is an integral part of the present decision.

The draft final decision was notified to the European Commission, to BEREC and to the NRAs of the remaining Member-States on 16.11.2017, pursuant to Article 57(1) of the Electronic Communications Law (ECL – Law 5/2004 of 10 February, in its current wording) and pursuant to Article 7 of the Framework Directive. On 1.12.2017 the Commission sent ANACOM an information request, with this Authority replying on 6.12.2017. Finally, pursuant to Article 7 of the Framework Directive, on 14.12.2017 the Commission announced to ANACOM that, having examined the notifications, it had no comments to make and that this Authority could approve that draft measure.

The present document analyses the most recent version of RUO, also considering the replies of the interested parties to the prior hearing.

2. ANALYSIS OF COMMENTS ON AND PROPOSALS FOR AMENDMENTS TO RUO

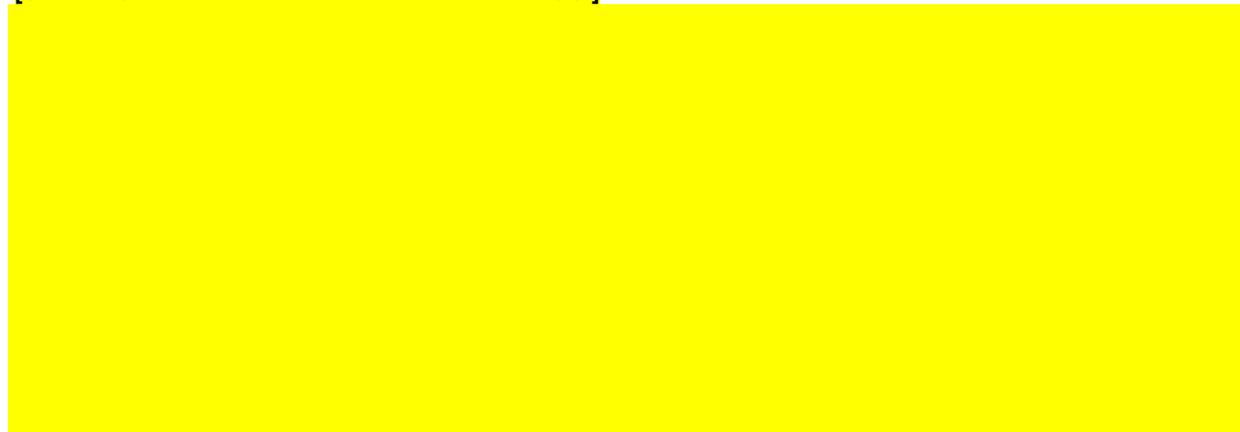
2.1 General comments – the need to review RUO

According to MEO, RUO is in a phase of decline and marked technological obsolescence, with a continuing decrease in net demand and in the number of unbundled loops, with only one beneficiary currently having any relevant activity in RUO. For this reason, MEO is of the opinion that any changes to this offer should be based on their simplification and be based on the expected evolution in the demand for copper loops and co-location.

MEO highlights the decision on the market analysis,¹³ hoping that, contrary to the consultation on changes to LLRO and RELLO, this process does not result in multiple determinations, including at the level of existing procedures, which do not aim to adapt the offer to the current context and demand.¹⁴ In fact, MEO claims that the current and prospective context of the market for access to LLU in Portugal is that of a marked decline in the number of loops, as seen in the data sent presented below in **Figure 1**.¹⁵

Figure 1 – Evolution in the amount of local loops (thousand of accesses)

[Start of Confidential Information – hereinafter SCI]



[End of Confidential Information – hereinafter ECI]

In terms of installation requests, the monthly value has been decreasing (see **Figure 2**, which shows the evolution in these requests since early 2016), making it possible to conclude that in fact RUO has only one active beneficiary– [SCI] [ECI].

Figure 2 – Evolution in the installation of local loops



¹³ Particularly the indication in the above-mentioned paragraph 5.39.

¹⁴ It is also stated in the mentioned decision that “ANACOM may also accept amendments to RUO proposed by MEO provided that they are duly grounded and that beneficiaries are heard”. In this regard MEO recalls its proposals presented in the communications of 23.6.2015 and 6.7.2015, which it considers are still current and timely, and therefore are reiterated, as detailed below.

¹⁵ RUO information also sent to ANACOM quarterly.

On the other hand, there have been a significant number of disassemblies, as shown in **Figure 3**.

Figure 3 – Evolution in dismantling local loops



[SCI]

[ECI]

Of the beneficiaries with local loops, [SCI] [ECI], the first one has [SCI] [ECI] of the number of loops existing on 31 March 2017, with MEO showing, based on the data sent, that [SCI]

[ECI]. It is undeniable for MEO that the use of the copper-based offer has been declining steeply due to technological obsolescence, with beneficiaries moving their (retail) customers to their own fibre optic infrastructure.

This trend of reducing the number of loops also impacts on co-location, with beneficiaries mostly requesting the dismantling of the related services, according to MEO's tables.¹⁶

MEO therefore reiterates that any amendments to RUO should be justified in light of the expected developments in the demand for copper loops and co-location, and should take into account an effective proportionality analysis that considers the projected benefits and the costs to be imposed on MEO.

NOS, meanwhile, welcomes ANACOM's launch of the procedure on amendments to RUO, which in its opinion will be a useful contribution to a more efficient operationalization of the offer and clarify operational issues that affect its optimization.

For NOS, this offer continues to be essential for safeguarding a healthy competition environment in accessing broadband infrastructure, even when considering the development of NGNs. Although it is no longer the main component supporting alternative operators' retail offerings –

¹⁶ Not reproduced here because they only contain confidential information, broken down by operator.

a role that has been mainly ensured by the NGNs themselves – NOS believes that RUO makes it possible to ensure a national presence, as a complement to the coverage of its own network. In the specific case of NOS, RUO is particularly relevant in business offerings – many of them with multisite characteristics – providing (support to) access solutions¹⁷ where it does not have its own network but is co-located in MEO exchanges.

The performance of RUO is therefore of particular relevance for NOS, since it serves (not only residential customers) but also small and large enterprises, with accesses being central to their activity, therefore any possible constraints on their availability or operation could have serious consequences which, NOS believes it is crucial to minimize. Thus, five years after the last major regulatory intervention in the offer, NOS agrees with the need to review it and adjust it to present reality, addressing the problems that in their view it suffers systematically.

VODAFONE also welcomes the current RUO revision procedure, long awaited, recalling that in September 2014 it asked for a number of changes to this offer, with its request being reiterated in subsequent years.¹⁸ However, it considers it to be worrying that ANACOM started by mentioning that any improvement proposals should “*be duly justified in light of the decline recorded in the demand for unbundled loops*”.

In fact, and contrary to its comment on a similar indication in the context of the LLRO and RELLO review procedures, Vodafone considers that in this case it is clear that the current low demand for RUO is not only due to the expansion of operators’ “alternative” networks, but also to their poor quality and inability to serve as an instrument for introducing more competition into the market. The suggestion that this offer may not be substantially improved due to the fact that it is no longer widely used, together with ANACOM’s decision (criticized by Vodafone) not to determine the obligation of access to the fibre network of the operator with SMP, leads Vodafone to question how the regulator would like to introduce greater competitiveness in this market (considered not to be competitive in its own market analysis). For Vodafone this is a serious reversal of the regulator’s obligations, claiming that it is precisely because of the combination of lack of competition in the market with the fact that the demand for RUO is presently low, that its changes should be even more profound, otherwise, according to Vodafone, it will enter into a vicious circle of logic.

¹⁷ From solutions with a quality equivalent to the mass-market offerings to high quality SHDSL solutions.

¹⁸ Deeming all its requests for the amendment of RUO indicated in that request to be reproduced in this procedure.

Also in this procedure Vodafone repeats that the several requests (over the years) for urgent reviews (as well) of this offer are a good indicator that it has not been fit for a long time and that the total absence of a satisfactory response from the regulator was as decisive for the decline in its use as the of use alternative networks and solutions, with more advanced technologies. This is in line with consumers' evolution and their preference for bundled service offers, with their main driver being television, In spite of this, according to Vodafone, RUO, the main instrument for alternative operators to secure a presence in certain areas,¹⁹ does not even allow a quality of service in the provision of IPTV services, because of its limitations.²⁰

In this context, Vodafone stresses that the recent decrease in the number of unbundled loops is not only the result of the expansion of its fibre network, but also (in all locations where Vodafone cannot be present with its FTTH technology thanks to the lack of economic conditions) the outcome of the lack of oversight and update conditions in RUO.

Therefore, in Vodafone's view, the imposition of amendments to this offer is naturally justified and imperative for pursuing the regulator's objectives and responsibilities, while the need for imposing access obligations on the operator with SMP arises from the finding that the market is not competitive and that the absence of improvements requested by the operators will hardly ensure a greater uptake of these offers or, therefore, the promotion of competition in the market.²¹

Notwithstanding, Vodafone asks ANACOM to carry out a detailed procedure, particularly given the number of amendments that have been requested over the course of several years, and considering that the guarantee of compliance with the non-discrimination principle can only be measured, firstly, through a specific analysis of the proposals that are to be presented by the regulator on this matter, and secondly, through the effective supervision of the behaviour of

¹⁹ In all regions where there are no economic conditions for building their own network and that are currently suffering a worrying lack of competition.

²⁰ Should its 2014 request have had practical repercussions, Vodafone claims it could have guaranteed its customers, over the last three years, a quality of service which it currently cannot provide through the provision of services based on this technology, given the limitations imposed on it; in particular, in cases of malfunctions where RUO does not ensure a minimum rate compatible with IPTV, thus preventing the provision of this service under the appropriate conditions, but also in terms of deadlines, procedures (installation, supply, and repair of faults) , service levels, penalties, etc.

²¹ Moreover, according to Vodafone, it is the regulator who states that "*In this regard, according to the so-called 'modified greenfield approach', it could not be concluded that, in the absence of obligations in Market 3a, notably of access to conduits and poles, but also of access to the local loop, this would be a competitive market since those obligations, as well as their regulation through the respective reference offers (RCAO, RPAO and RUO), are essential for alternative operators to MEO to be able to install and expand their networks*".

MEO.²² In this context, it is essential for Vodafone that the regulator gathers all the amendment proposals and submits them to public consultation to safeguard the correct application of the principle of due process, in which case it could be totally justified to hold a meeting, with the presence of ANACOM, the various beneficiaries and MEO,²³ guaranteeing the full transparency of this process, fostering the principle of due process regarding MEO's response and positions concerning this DD, and granting the beneficiaries the opportunity to analyse MEO's arguments that will later result in the amendments to RUO.

Finally, Oni states that the number of loops it uses can support access solutions for business customers, using xDSL and EFM (Ethernet in the First Mile) technologies, and it therefore considers it essential not to deteriorate the loop supply conditions in RUO.

Oni thus maintains most of the improvement proposals presented in its letter of January 2014 (in particular those in Annexes I and III). Noting that a significant number of proposals common to several offers (see Annex I of that letter) have already been partially or totally accepted by ANACOM in the DD on the amendments to LLRO and RELLO,²⁴ it is Oni's expectation that these proposals, at least, are also adopted in the new version of RUO.

ANACOM has already stated on several occasions – including in the aforementioned DD on the amendments to LLRO and RELLO, approved on 23.3.2017 – the present low demand for low-speed services and the (corresponding) trend of decline in the use of MEO's wholesale access offers supported on this operator's copper network, which is a natural movement.

However, in spite of this trend, RUO is still a fundamental wholesale offer for an operator with national offerings in the mass consumption market (in particular the residential broadband market), notably by attracting new customers in areas where it does not yet have an NGN. Other operators still rely heavily on RUO to support high-quality (albeit low-speed) services to business customers, especially in the areas where they (still) do not have a network and/or where it is not profitable to install fibre to support these lower speed services.

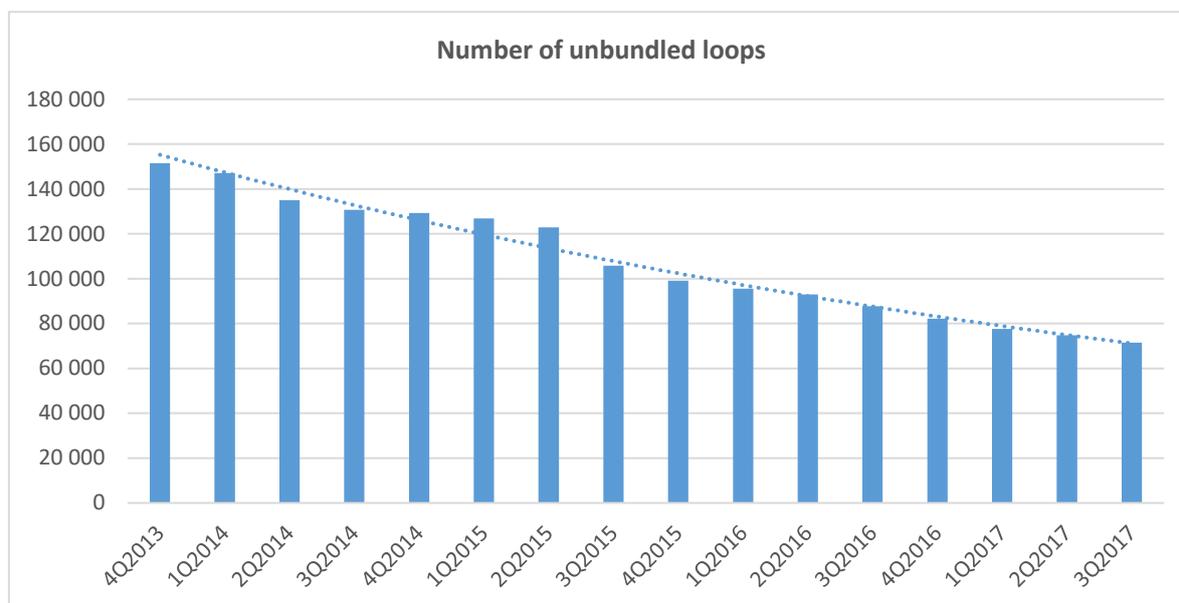
²² Even more pressing, is the considerable number of circumstances where there is in fact no equivalence between the conditions for the provision of services by MEO and by the alternative operators, which Vodafone validly invokes.

²³ To make known the various cases and problems now indicated and so that they can be deemed demonstrated and/or sufficient to stimulate the requested amendments.

²⁴ Approved on 23 March 2017.

And if it is true that the number of loops is gradually decreasing,²⁵ as has been recognized, it is also true that RUO supports several tens of thousands of accesses, as can be seen in **Figure 4**, and that there are also new installations happening, as shown in **Figure 2**.

Figure 4 – Evolution in number of unbundled local loops



As for co-location, it should be noted that the space and equipment from operators co-located in MEO’s exchanges are still being used and will be used, at least in the medium term, for access to several wholesale services. These range from interconnection to high-quality accesses, besides the unbundled local access (and bundled access within the PT ADSL network, another offer supported in MEO’s copper network) – although it is recognized that further disassemblies will be needed in the short term at the level of internal cables and distribution frame blocks.

Given RUO’s relevance, ANACOM also acknowledges the need to review it, which has not been done for several years, adapting it to the present reality and addressing some problems that operators have been reporting, in particular at the level of repairing faults, procedures that remain relevant given the still significant amount of unbundled loops and the particular sensitivity of some services provided on it (notably in the business market).

In fact, as mentioned by RUO beneficiaries in their responses to the prior hearing, this offer still supports a wide range of services that they provide to their end customers, including business customers (particularly in the context of Market 4 and related markets). For this type of

²⁵ In fact, the rate of decline of the number of unbundled loops remained at around 5% (per quarter) over the last few years, as can be seen in the following graph (quarterly data on RUO).

customer, some with multiple sites, (service) quality is an important factor, and ANACOM recognizes that a wholesale offer with a higher quality enables operators that have to resort to it (because they do not have their own network in those areas and there is no alternative) to compete with the dominant operator in those markets. It should be noted that in its response to the prior hearing on the 2014 DD regarding that same Market 4,²⁶ MEO argued in particular that *“traditional low-speed wholesale circuits and circuits built based on SHDSL technology and copper loops [RUO] are equivalent and replaceable products (...) that there are other wholesale offers (such as RUO) that prove to be appropriate to address the needs of the OSP (...or that) in relation to the low-speed terminal segment market, and contrary to that envisaged in the DD, MEO considers it should also be geographically segmented, in a similar way, adding the use of RUO to the criteria of using RCAO (reference conduit access offer) and RPAO (reference poles access offer), considering the real possibility, demonstrated in practice, of providing low-speed leased lines based on this offer”*.

However, it must be kept in mind that the majority of the operators' proposals, most of which are now repeated, somehow seem to be designed for a more dynamic phase and context in the wholesale market of access to the copper loop and essentially when the investment in NGN was not on the scale it has achieved more recently.

Considering this framework, contrary to what Vodafone says the necessary review of RUO conditions by ANACOM does not mean recognizing that the lower demand for accesses supplied through RUO results from the inability of this offer to introduce greater competition in the market. It is now certain that there are alternative networks with a significantly relevant coverage and that any operator would prefer to connect customers through their own NGN to supporting those customers on RUO, except in certain very specific conditions, such as when these customers' requirements are not too demanding (for example at the level of service speed or of the services they want), or in areas still lacking NGN coverage.

In fact, in the past and under less demanding supply conditions,²⁷ there were operators with over ¼ of broadband market share in more competitive areas, essentially using RUO, with the total number of unbundled accesses exceeding 300 000, a figure much higher than the present one (already well below 100 000 accesses).

²⁶ See <https://www.anacom.pt/render.jsp?contentId=1342496>.

²⁷ For example, when the conditions resulting from the Decision of 28 March 2012 on the procedures to be followed in evaluating the quality of service of regulated wholesale offers were not yet applicable.

The changes to be imposed on RUO will therefore be duly considered in light of a new dynamic based on the development of NGN by several operators and, in particular, given the impact they could have on both the services to be provided ultimately to consumers (beneficiary customers) and on the cost of provision of the regulated service by MEO.

In any case, ANACOM always tries to intervene in a proportional way and always keeping in mind that it should not intervene in the regular operation of the markets, or direct them, neither influencing trends or even results, nor favouring one group of entities over the others.

Indeed, in this context, ANACOM recognizes that currently the investment in own (next generation) networks, particularly based on MEO's wholesale reference conduit access offers (RCAO) and reference poles access offers (RPAO), is the option favoured by alternative operators, while, given the technical limitations inherent to the copper support network itself, in many situations, RUO may not be a viable alternative to that instrument, even if it is an appropriate complement under certain circumstances (as mentioned above).

It would obviously make no sense under the current market conditions (with operators investing in optical fibre), to resume that investment (in copper network). Therefore, ANACOM recognizes that RUO continues to be relevant, but does not expect its coverage to increase. On the contrary, it would even be natural for operators to consider suppressing co-located access in certain (smaller) MEO exchanges in the future, as the amount of unbundled accesses decreases, thus it is anticipated that the decreasing trend of recent years will continue, there being no reasons to expect that this trend will change in the future.

In fact, operators (such as Vodafone) have not advertised "low speed" retail offerings based on copper for some years, although they may recruit customers (supported by unbundled access) in areas where they do not yet have their own network, and migrate them to NGN in the future. And if the loops of Vodafone (and other beneficiaries) are falling, this is not fundamentally due to the number of faults or, more particularly, to the lack of quality of RUO procedures, but because ADSL technology cannot in fact support a competitive retail bundled offering with IPTV and high-speed broadband simultaneously, compared to offerings supported on NGN, especially if the copper access is not close to the local exchange, in which case the speed provided is very low.

In fact, the (less competitive) areas mentioned by Vodafone are areas of lower population density and where the copper loops are also longer which means that speeds are (much) lower than the theoretical maximum of 24 Mbps (only achievable close to the local exchange, with

short and higher quality/calibre loops), which always have to be shared between services. Therefore, contrary to Vodafone's claim, the fall in demand does not result fundamentally from the alleged low quality of RUO, particularly in terms of SLAs or processes. Moreover, the offer could, in an extreme scenario, have the procedures totally optimized and efficient (albeit with high costs for MEO and corresponding higher wholesale prices, which would render the offer less attractive), but this would still never compensate for the shorter length (and/or poorer quality) of the loop and the technological limitations of ADSL. In fact, RUO cannot be used in (exchange) areas where alternative operators are not co-located (especially in less densely populated or remote areas).

MEO itself, in spite of owning the ubiquitous copper network, decided several years ago to invest in its own fibre optic network that is expected to achieve nationwide coverage at the same level as the copper network.

In this context, it is anticipated that MEO's copper network will be deactivated in the medium-long term, and this process, likely to be gradual, should be started in the more densely populated areas, precisely where operators are co-located and contract accesses in the context of RUO, but which are also areas where operators have greater coverage with their own NGN.

In conclusion, ANACOM understands it should review the still relevant – particularly in specific areas and for certain services to be provided downstream – wholesale reference unbundling offer, promoting greater effectiveness and efficiency in its use by the beneficiary operators, notably at the level of procedures related to repairing faults, but trying also, in a context of proportionality, to minimize the impact for the operator with SMP, given the context of the market in question and the low demand for access to the copper loop.

Finally, ANACOM understands that the current procedure, leading the imposition of amendments to RUO, is transparent and participatory in that it has allowed all operators to submit their proposals and opinions in advance. These have been taken into account in the present document, and the DD has been subject to a public consultation and prior hearing, where operators had yet another chance to address the issues dealt with here.

2.2 Proposals from MEO for the simplification of RUO and new version of the offer

Exclusion of unused services

MEO proposes a simplification of the offer, which would lead to the exclusion of services that have not so far attracted the interest of beneficiaries and for which there is no demand:

- i) local sub-loops and shared access modes (and all components related to this service, including the physical co-location in interior space) – according to MEO, there have never been any requests for the unbundling of sub-loops and there have been no unbundled shared loops since 2008.²⁸ MEO notes that in the market analysis ANACOM mentions (paragraph 5.41) that the possible elimination of these modes would be “*assessed by ANACOM in the context of revisions of RUO and after consulting beneficiaries*”; and
- ii) signal transport service for radio link by Hertzian beam (FH) and FH antenna co-location service (cables and modules) – according to MEO, no such installations have been implemented for over 10 years, and there has been no request from beneficiaries.

However, MEO considers that its effort to update the information related to the ‘Information Access Service’ is disproportionate and unjustified given the trend in the demand for services, and it should be reviewed only to provide the information relevant for the purpose of co-locations in new attendance points (AP) and upon request from the beneficiary.

Finally MEO reiterates the amendment proposal previously sent to ANACOM,²⁹ for the withdrawal of the procedure for requesting a reanalysis via the IVR of the fault repair procedure, since the beneficiaries do not use it, and it involves unjustified costs for MEO, leaving a MEO technician waiting 15 minutes for a call from the beneficiary which he knows from the outset will not happen.

Exclusion of the offer from the publication of the list with the identification and information on constraints

As established in RUO,³⁰ MEO publishes every month, in the restricted access area of the *Wholesale* portal, a list with detailed information on the constraints related to co-location,³¹ with the main purpose of informing the beneficiaries *a priori* about the constraints in the APs so that

²⁸ The maximum number of unbundled shared loops has never even reached [SCI] [FIC].

²⁹ In a letter sent on 23 June 2015, with reference S0457SG on the procedure for repairing faults in RUO, PT ADSL Network, SLRO, LLRO and RELLO offers.

³⁰ According to Annex 6: “MEO will identify and inform the OLOs [beneficiaries] about which exchanges have constraints resulting from distribution frame congestion, the capacity of the DC system, and the physical space for co-location which have no solution or imply the need for budgets and works, as well as the time involved in those activities and the costs to be borne by the beneficiaries. [...] Additionally, MEO will maintain a periodically updated list to inform beneficiaries about” detailed information related to constraints.

³¹ With the name ‘Constraints_OLO_ddmmyyyy.xlsx’, with high detail.

they can manage/adjust their expansion needs according to the budget associated with solving such constraints, a procedure adopted at a time when several of these situations occurred and there were many requests for co-location services. According to MEO, this does not happen any more - on the contrary (there are basically requests to dismantle the co-location modules and internal cables) – and therefore it proposes to withdraw this procedure (sending the list), and if there are orders for new services for APs where there are constraints, MEO proposes to present the respective budget and additional information (as currently provided) to the beneficiary.

Review of the indicators published quarterly

MEO proposes simplifications for the indicators produced and published quarterly, so that they reflect the updates made to the offer, notably the exclusion of the indicators relating to manual requests on the local loop unbundling procedure (with information “without RUO IS” in the reports), as well as the exclusion of indicators without any requests from the beneficiaries. Thus, MEO proposes to eliminate the following from the sheet:

- i) “Number of accesses”, the unbundling by type of access (‘Full access – broadband’, ‘Full access – narrowband’ and ‘Shared access’), keeping the unbundling by AP and by beneficiary;
- iii) “Active Loops”, several indicators (some with reference to “without RUO IS” and others without requests³²);
- iv) “Non-active loops”, several indicators (some with reference to “without RUO IS”³³);
- v) “Co-location”, several indicators, without requests;³⁴ and
- vi) On several sheets, the reference to Grupo PT Portugal.

³² Deadline for reply: eligibility of the local loop without RUO IS; Deadline for reply: eligibility of the local loop and provision of prior results of tests without RUO IS; Deadline for reply: eligibility of the local loop and provision of prior results of tests with RUO IS (without requests); Deadline for reply: information of conclusion of Loop Supply without RUO IS; Deadline for transfer of the AP loop to AC without portability (without requests); and Deadline for transfer of the PA loop to AC with portability (without requests).

³³ Deadline for reply: verification of client data, eligibility of the loop and scheduling without RUO IS (with no need for budget); Deadline for reply: verification of client data, eligibility of the loop, budget and scheduling without RUO IS (with need for budget); Deadline for reply: information of conclusion of Loop Supply without RUO IS.

³⁴ Deadline for reply: information for budget for construction of Operators Room; Deadline for reply: information on the specific cost and common costs when operators room is concluded; Deadline for supply: Operators room; Deadline for supply: modules, with metal pairs on network in existing operators room; Deadline for supply: co-location for radio link by Hertzian beams (included signal transport for radio link by Hertzian beams); Deadline for supply: signal transport for radio link by Hertzian beams.

Update of RUO on MEO's initiative

At the end of May 2017, MEO published a new version of RUO,³⁵ incorporating a set of updates to the operational procedures, namely:

- i) Standardization of the installation/supply and resetting schedule.³⁶
- ii) Inclusion of information in RUO in accordance with what MEO says is being implemented with the beneficiaries:
 - a. templates of the e-mails used in communications between the beneficiaries and MEO, on requests for AP access, reports of faults and requests for joint interventions (JI)³⁷ (appendix to Annex 3); and
 - b. procedure for relocation of unbundled loops and equipment co-located in a MEO AP (described in Annex 6 of RUO).

The relocation of unbundled loops and equipment installed in a MEO AP may require the beneficiary to co-locate physically or remotely in the destination AP(s), if it has not yet done so. After this phase, it is up to MEO, together with the beneficiary, to transfer the loops to be relocated from the AP of origin to the destination AP(s).³⁸

The reasons that may give rise to the need to relocate unbundled loops from equipment co-located in a MEO AP, which have different impacts on procedures, are:

1. relocation of loops for reasons attributable to MEO,³⁹
2. relocation of loops for reasons not attributable to MEO.⁴⁰

³⁵ In its letter of 10.5.2017, MEO informed ANACOM that, given the ongoing consultation, it would publish a new version of this offer by the end of May.

³⁶ Working hours: from 9.00 to 17.00 on working days. Technical working hours: from 9.00 to 13.00 and from 14.00 to 18.00 on working days.

³⁷ MEO cancels the scheduling of a joint intervention when the JI is related to a common fault, and notifies the beneficiary of the cancelation via e-mail, according to template L. The JI request is thereafter treated as a fault notification without scheduling.

³⁸ RUO considers that a relocation of unbundled loops is related to the transfer of loops from a source AP to one or more destination AP(s).

³⁹ RUO provides that the main activities in the loops relocation procedure are: a) MEO notifies the beneficiary of the relocation of unbundled loops and equipment 12, 36, 12 or 60 months in advance with respect to the start of the relocation of loops (this deadline depends on the percentage of loops to be relocated); b) 2 months prior to the start of the relocation of loops MEO sends the beneficiary the necessary information on the relocation of the unbundled loops; c) the beneficiary asks MEO for the co-location service in the destination AP; d) the beneficiary asks MEO for the signal transport service in the destination AP; e) the beneficiary installs equipment in the destination AP and informs MEO of its conclusion; f) MEO and the beneficiary schedule the loops to be transferred from the origin AP to the destination AP.

⁴⁰ In this case MEO gives advance notice to the beneficiary co-located in the source AP, whenever possible 4 months before the date scheduled for the relocation of loops, about the details of the solution it will implement.

New co-location requests will no longer be accepted for APs that are going to be deactivated once MEO informs the beneficiary of this fact.

- iii) Inclusion of the 'procedure for notifying energy, air-conditioning or lighting faults, while the means of attendance will be changed to e-mail (currently it is by phone) as will the respective templates to be used in the communications between the beneficiaries and MEO.
- iv) Change of the means of attendance of 'requests for monitoring access to a cable tunnel' to e-mail (currently by phone) with the respective templates to be used in the communications between the beneficiaries and MEO.
- v) Update of certain procedures according to what, according to MEO, is implemented with the beneficiaries:
 - a. principles to apply in cost recovery in Joint Interventions (JI)⁴¹;
 - b. procedure for current situation of common faults,⁴² and
 - c. procedure for reporting on current situations of reports of faults that exceed the quality of service levels.⁴³

ANACOM welcomes several of MEO's proposals to make RUO simpler and more efficient.

In fact, ANACOM recognizes from the outset that there is no need to keep a product for which there has been no demand for years (if ever) on a regulated offer, therefore it does not oppose MEO's proposal to eliminate from RUO the 'modalities of local sub-loop and shared access' (and all components related to this service, including the physical co-location indoors), the 'signal transport service for radio link via Hertzian beam (FH)', and the FH 'radio-relay antenna co-location service' (cables and modules).

⁴¹ Additionally the beneficiary can only invoice MEO with the above-mentioned price under a JI if there has been a notification of a fault/JI request, closed no more than 4 working hours before the date/time of receipt of the JI request, and if: i) the JI has been closed by MEO, or ii) the JI has been rescheduled due the failure of a MEO technician to attend. The previous analysis excludes the following JIs:

- i) Notification of fault/JI request before the JI, closed for one of the following reasons: AVOL03-Accessnot possible; AVOL10 – Notation error; AVOL07 – Incorrect notification; AVOL37 – Operator's technician not present; AVOL09 – Fault cancellation after over 8 working hours; AVOL33 - Fault cancellation within 8 working hours;
- ii) If MEO informed the beneficiary at least 2 working hours before the scheduled start date/hour of the JI window, of the cancellation of the JI scheduling because it was associated with a common fault.

⁴² Twice a day (morning and afternoon), MEO publishes in the restricted access area of the *Wholesale* portal the common faults detected in cables.

⁴³ Every day (in the morning), MEO publishes in the restricted access area of the *Wholesale* portal, the current situation regarding the faults whose repair times have exceed the time limit.

ANACOM also welcomes that MEO, on its own initiative, intends to modify and update its RUO wholesale offer, adapting it to certain procedures that have been established in the meantime between MEO and the beneficiaries, or adjusting it in light of the non-use of certain services.

In this regard, the elimination of the ‘request for reanalysis via IVR’ from the fault repair procedure is accepted, a procedure which, according to MEO, has never been used.

On the other hand, regarding the ‘Information Access Service’,⁴⁴ it is recognized that the costs of keeping all the information up-to-date are high, given past experience and the limited demand, particularly for active loops, and there is no intention to compel MEO to “keep information currently unnecessary”. However, it is still necessary to guarantee that beneficiaries continue to have access to a (minimum) amount of information to enable them to make informed decisions about the use (or not) of RUO, in particular about the coverage of (and numbering associated with) exchange areas. In this respect, it should be noted that MEO has already provided, within the scope of the decision on amendments to LLRO and RELLO, the KMZ (GIS format) file with geographic coverage information of its exchange areas in terms of geographical boundaries, and therefore those files should also be provided to the RUO beneficiaries.

Furthermore, it is recognized that number of potential constraints on co-location will be very low, also because of the reduction in the installed capacity (which cuts the demand for blocks in the MDF and for space in the exchange) and in the demand for co-location in new APs. So, it will not, in fact, make much sense to keep a complex and time-consuming process for listing detailed information about something that actually does not exist or is irrelevant to the beneficiaries (because they are not looking for new co-location or distribution frame spaces). MEO’s proposal to eliminate the sending of this list is therefore accepted, while in the case of orders for new services for APs where there are any constraints, MEO (as proposed) should continue to present to the beneficiary the corresponding budget, the expected date for solving the constraint, and additional information, as already provided for in point 5 of Annex 6 to the offer.

Also at the level of indicators it is possible and even desirable, to simplify the tables currently provided by MEO, and the proposal is accepted, but noting that all data/indicators/objectives related to the offer’s services that are actually provided are always reported to the regulator.

⁴⁴ Service provided on MEO’s *Wholesale* portal, through which the beneficiary has access to the list of all APs in MEO’s network (and their data), the general technical characteristics of MEO local networks, the capacity for physical co-location, information about the loops, information on the calibre and length of the cables of the access network by AP, and the number of broadband accesses per technology per AP.

Finally, with respect to the amendments introduced in version 22 of RUO (published at the end of May 2017), ANACOM understands that the new procedure for relocating unbundled loops and equipment co-located in a MEO AP is in accordance with that determined in the market analysis with regard to the ‘relocation of loops for reasons attributable to MEO’. However, with regard to the ‘relocation of loops for reasons not attributable to MEO’, MEO proposes to issue “*a prior notice, to the beneficiary co-located in the source AP, whenever possible 4 months before the date scheduled for the relocation of the loops, about the details of the solution it will implement*” (emphasis added). This raises questions about the lack of a minimum period of notice (which, at the limit, “if it were not possible” for MEO to notify, could be nil), or with the lack of assessment of the number of loops in that/those AP(s)⁴⁵ which are affected by the relocation.

It is understood that the single (minimum) period of 4 months defined by MEO for these situations is not needed and is not related to their responsibility, i.e., it depends on the notification by third parties, and should be extended if the occurrence is known well in advance and is only a reference indicator, but to be accomplished “whenever possible”. It thus seems to add no value or to be appropriate to the situations in question.

Therefore, in the event of ‘relocation of loops due to reasons not attributable to MEO’, supposed to happen by reason of *force majeure* (from third parties), it is not for MEO to stipulate a period of notice different from that provided for “normal” situations (relocations for which they are responsible). When the prior notice given by a third party to MEO is not compatible with this time limit, MEO should immediately notify the beneficiaries affected by that relocation.

In any case, at the same time as it immediately notifies the beneficiaries, MEO should propose to them a scheduled solution according to the shorter deadlines related to that “extemporaneous”⁴⁶ notification, to enable them to continue to provide services to their customers.

⁴⁵ As well as the importance for the beneficiary(ies) of the co-location space and equipment they hold in that/those AP(s).

⁴⁶ It should be noted that MEO establishes that, in any case, “*2 months prior to the start of the relocation of the unbundled loops (activity 19) MEO sends the beneficiary the following information: - Exact number of loops to be relocated from the source AP to the destination AP(s) and respective numbering; - List with the identification of the OLO’s unbundled loops that need to be relocated from the source AP to the destination AP(s); - Confirmation of the information supplied in activity 1, about the space available for co-location of the OLO and the space available in RP in the destination AP(s); - Expected date for conclusion of the co-location works.*” (see section 9 of Annex 6 of RUO).

Finally, there are amendments proposed by MEO in this version of RUO that concern matters under analysis on the present DD (e.g. fault notifications and JI or cost recovery requests) and which are treated in a separate section.

In conclusion:

D 1. MEO may amend RUO, in order to simplify it and make it more efficient, by eliminating:

D 1.1 The ‘modalities of local Sub-loop and Shared Access’ (and all the components related to this service, including the physical co-location indoors), the ‘Signal Transport service for radio link by Hertzian beam’ (FH), and the ‘radio-relay FH antenna co-location service’ (cables and modules).

D 1.2 The procedure ‘request for reanalysis via IVR’ in the fault repair procedure.

D 1.3 The sending of a list with detailed information about the constraints on co-location, and in the event of orders for new services for an AP where there are constraints, MEO shall continue to present to the beneficiary the budget, the expected date for its resolution, and any additional information, in accordance with the current provision in point 5 of Annex 6 to RUO.

D 1.4 The indicators concerning manual requests in the local loop unbundling procedure (with information “without RUO IS” in the reports), as well as indicators with no requests from beneficiaries.⁴⁷

D 2. As for the ‘Information Access Service’, MEO should guarantee that the beneficiaries continue to have access to all the information required to be able to continue to make informed decisions on the use (or not) of RUO, notably on the coverage of (and numbering related to) exchange areas.

D 3. In the ‘relocation of loops’ procedure, MEO should apply the prior notice deadlines already provided for and defined by ANACOM. If the relocation occurs for reasons not attributable to MEO and the prior notice is not compatible with the defined

⁴⁷ Specifically: i) to delete, from the various sheets, the reference to Grupo PT Portugal; ii) to delete, from the sheet ‘Number of accesses’, the unbundling by type of access (Full access – broadband’, ‘Full access – narrowband’ and ‘Shared access’) keeping the unbundling by AP and by beneficiary operator; iii) to delete, from the sheet “Active loops”, several indicators (some with reference to “without RUO IS” and others with no requests); iv) to delete, from the sheet ‘Non-active loops”, several indicators (with reference to “without RUO IS”); and v) to delete, from the sheet “Co-location”, several indicators, without requests.

deadlines, MEO should immediately notify the beneficiaries affected by this relocation, and send them a solution scheduled in due time, in accordance with this shortest notification deadline

2.3 Local loop supply

2.3.1 Inaccuracies in customer addresses

Vodafone claims that MEO rejects requests for the supply of non-active loops because the address provided (in the request) does not coincide with the address on MEO's register – the indication of the customer's address is an obligation established in the offer.⁴⁸ Under these circumstances, Vodafone proposed that MEO provide access to a tool that enables the beneficiary to check the address of the potential customer.

In this regard, NOS proposes the sharing of the geographical information in MEO's systems by means of a specific tool or information channel to reduce rejections of eligibility/installation requests based on the absence of registration of the address in MEO's systems.

The issue of the addresses (related to access supply requests) has already been analysed in the context of the DD on the amendments to LLRO and RELLO, and ANACOM has proposed to determine that *“D.12 MEO may not reject an NTP address indicated by the beneficiary, when it appears in the CTT database and the geographical coordinates of that address actually correspond to that NPT's address”*.

Therefore, and considering the comments received under the public consultation procedure and prior hearing on that DD, ANACOM deems it should establish a similar rule to the local loop provision procedure, ensuring that the beneficiary can, should it wish to, indicate the geographical coordinates associated with the address of its potential customer (NTP).

It should be noted that, as mentioned by MEO, there are cases of rejection of supply requests that could be avoided with the correct completion of the specific structured fields for registering the address components, by the beneficiary (who has that responsibility, since MEO does not change the address information it puts in a request). Therefore, given the importance of the

⁴⁸ For the purpose of confirming the location of the loop in the event of an order of non-active loops (sections 3.1.3 and 3.2 of Annex 7 to RUO).

(procedures and) automatic systems associated with the processing of the wholesale access request(s), with great gains in efficiency as well as reductions in cost and deadlines, before sending the eligibility/unbundling request the beneficiaries should ensure a priori compliance with the rules for completion, in particular, the address field(s).

Therefore, beneficiaries should be able to associate – possibly via e-mail, if it is not possible to include this information in the current IS/API, for example in another field – with an information request, the geographical coordinates of their customer’s address (in addition to checking the correct completion of the specific address fields). If the address provided by the beneficiary does not match MEO’s database, MEO should use the geographical coordinates information supplied by the beneficiary for that purpose, if applicable,⁴⁹ to continue processing the request instead of rejecting it “automatically”.

RUO should thus clarify that:

D 4. MEO may not reject an address of a location/NTP indicated by the beneficiary, when the beneficiary associates with that request – notably via e-mail if it is not possible to include this information in the current IS/API – the corresponding geographical coordinates (excluding the cases of incorrect or non-identification of the apartment/floor in the request) and complies with the rules for completing the specific structured fields for recording the address components in the API.

2.3.2 Non-provision of the loop and coordinated supply between MEO and the beneficiary

Vodafone claims that between 15% and 20% of scheduled unbundlings are not successful for reasons attributable to MEO, while the latter sometimes claims that the customer was absent,⁵⁰ it has even refused the supply because “*the customer in question reside[s] in an unsafe area*”, a conduct that Vodafone considers to be unjustified since it prevents the provision of services to its customers, despite Vodafone having complied with all the procedures.

Oni, for its part, suggests that MEO should always indicate, via API, a description of the various actions carried out on the customer that show that the supply failure was indeed attributable to the end customer. Oni acknowledges that the supply API for RUO already provides information

⁴⁹ It is not applicable, for example, to locating an apartment/floor in a building.

⁵⁰ Vodafone found and recorded many situations when their technicians and customers were in fact at the address and it was MEO’s technician who failed to attend (and did not have the scheduled unbundling done).

on the reasons for ‘customer pending’, although it considers their typification to be “generic” (e.g. Oni states that MEO very often uses the reason ‘customer absent’, which in most cases is not the case, and is not enough to understand the real reasons for customer pending).

Furthermore, in order to minimize non-supply situations, Oni and NOS propose a review of the supply procedure (and to make it efficient), enabling the coordination between MEO and the beneficiary (including joint testing to ensure the correct operation of the installed resources), notably when technicians from both companies need to be there and to schedule a time window with the end customer.⁵¹

In this context, NOS proposes there be an immediate communication from MEO’s technician in situations:⁵² (i) of mismatch between technicians in the scheduling; (ii) of absent customer; and (iii) when MEO’s technician does not find the customer’s address. It is the opinion of NOS (and also Vodafone) that this procedure should also allow for a period for MEO’s technician to wait for the beneficiary’s technician and/or for the end customer after the time scheduled, in order to solve the constraint, as Vodafone claims that (as with the scheduling of JIs) there should be a time slot of at least 30 minutes⁵³ for such situations (mismatch, delay or non-attendance of technicians).

In this context, Vodafone considers that RUO should include provisions for the payment of compensation by MEO of no less than 99 euros⁵⁴ for the operational costs incurred by the beneficiary (team travel and rescheduling/follow up) in situations wrongly typified by MEO as ‘access not possible or customer absent’, whenever the beneficiary proves it was present and MEO was not. Vodafone also considers there should be a specific penalty in cases where MEO’s conduct is not justified under RUO (as in the case of refusal because the address is allegedly in an unsafe area), to compensate for the consequences in terms of Vodafone’s commercial relationship with its customers.

Finally, Vodafone claims that the right to recover the installation costs (in particular the sending of the technical team) should be established in cases when rescheduling was required for a reason attributable to the other party. In particular, Vodafone identifies the allegedly quite

⁵¹ It is currently established that, following an (access) request by the beneficiary, MEO will install the service, travelling, if required, to the premises of the beneficiary’s end customer.

⁵² In this context, according to NOS, ‘customer pending’ in the service supply process can only be triggered after a call from MEO’s technician, and when the beneficiary does not solve the constraint.

⁵³ Including any contact with the customer when MEO’s technician does not find the address.

⁵⁴ Without prejudice to the compensation amounts provided for in Annex 13 (“Compensation for failure to comply with Response Deadlines”).

frequent case where their “*customer is wrongly reported by MEO as being absent*”. In the opinion of Vodafone, the beneficiary should be compensated for the costs related to the team’s trip in the context of the scheduled installation, particularly because MEO can carry out the unbundling works without the presence of the beneficiary, since the beneficiary’s technical team can only do its work after MEO’s (technician’s) intervention.

Vodafone proposes, considering the need for security, legal certainty and speed – with the “means of proof” being solely the information from the API⁵⁵ – the establishment of a single amount, to compensate the party not at fault. This should equal the average value of the cost of an installation support team, 44 euros.

RUO already provides, in its Annex 7 (page 12), several reasons for ‘customer pending’ attributable to the beneficiary or to the end user (e.g. customer withdrawal, house closed/customer absent, HDF position occupied/non-existent, obstructed piping – customer’s responsibility), when loop installation/unbundling does not occur on the scheduled date for reasons attributable to the beneficiary or its (end) customer. Therefore it does not see how it is possible to intervene in this matter, because the ‘customer absent’ reason does not require, at the outset, further description or clarification.

On the other hand, the fact that MEO claims that “*the customer in question resides in an unsafe area*” is neither acceptable nor part of the reasons provided in RUO (see reference above). However, it is recognized that situations may occur where, in spite of its (repeated) efforts, it is not possible for MEO to successfully complete the unbundling process.

In any case, ANACOM recognizes that it is best if the trip by technicians from MEO and the beneficiary (if required) is coordinated and does not occur at different times, but this coordination can be guaranteed at the outset by the beneficiary, since according to RUO (in the said Annex 7), MEO schedules the date of intervention:

“Regarding the loops considered eligible, MEO will send, together with the results of the feasibility analysis, the following data, if the respective supply does not require budgeting:

- *scheduling of the date of intervention at the customer’s premises and the date of the tests – if requested by the beneficiary;*

⁵⁵ Notably under the terms “Beneficiary responsibility with pending message” or “MEO responsibility with indication of post-unbundling rescheduling”.

- scheduling of the date of intervention at the customer's premises/loop unbundling if the beneficiary does not request tests for which MEO is responsible."

However, even with the RUO provisions, there can be mismatches between MEO's and the beneficiary's technicians or the end customer. According to the beneficiaries these have resulted in cancellations, situations that should be minimized. In this respect, the proposal of NOS seems reasonable, that the MEO technician on the ground should immediately inform the beneficiary if they have no access to the intervention site (because the customer is indeed absent or because they cannot find the address). There is also agreement about the proposals of NOS and Vodafone for MEO's technician to wait for a reasonable period of time for the resolution of the situation (by the beneficiary, who has been contacted in the meantime). In this way many of the situations reported will be avoided, particularly the cancellation of loop supply by MEO.

On the other hand, according to MEO, in these situations, a phone call is made to the beneficiary and MEO's technician waits at the location, on the phone, while the beneficiary's team tries to unblock the situation with the end customer. Therefore, considering the existence of this informal procedure and that it is in operation, then it should be included in RUO.

As for ONI's intention to conduct joint tests also in the supply phase (as already happens in joint interventions for fault detection), to minimize disturbance for the end customer, notably by reducing the amount of scheduling, it should be noted that RUO provides that, following a request from the beneficiary, MEO should install the service, visiting the premises of the beneficiary's end customer when required,⁵⁶ being able to perform its own tests at that time, including the possible visit of its technicians to those premises, if needed. Therefore, in ANACOM's view, there is no need to specify a new procedure or change the one now set out in RUO.

Therefore, and given the (increasingly) small number of installations, procedure modifications in RUO should be proportional, it is understood that this offer should be amended from time to time in the following terms:

D 5. Should the MEO technician on the ground not have access to the premises to conclude the supply (due to customer absence, mismatch, or failing to find the address), they should contact and inform the beneficiary of that fact immediately,

⁵⁶ Provision with the visit of MEO's technician is always required in the case of non-active loops.

and wait for a maximum of 15 minutes, until the beneficiary reports whether or not the situation has been solved. This procedure should be provided for in Annex 7 to RUO.

In this context, minimizing the potential occurrences, notably of ‘customer absent’, ANACOM deems it is not necessary to include in RUO at this point any compensation to be paid by MEO in situations wrongly classified as “access not possible or customer absent”, when the beneficiary proves it was present and MEO was not.

2.3.3 Supply of loops with certain electrical parameters

Since Oni uses pairs of loops to supply certain services to their end customers, e.g. symmetrical speed services based on SHDSL or EFM technology, it understands it is essential that support loops have similar characteristics for the correct functioning of those services. Oni therefore proposes to indicate in the supply process that one pair is intended to support that service, and should therefore have comparable electrical characteristics for that purpose, which should be ensured by MEO.

Vodafone, however, claims that RUO does not include the obligation to provided a minimum speed (corresponding to the one in place at the time of the unbundling), which does not enable it to provide (namely) the service contracted with its customer, even if the electrical parameters of the loop are maintained, in accordance with RUO.

In this context, Vodafone argues that there should not be any reductions in the bandwidth (measured at the time of the unbundling and immediately reported to MEO) or changes/oscillations exceeding 2 Mbps for the duration of its service provision.

As mentioned in RUO, besides the analogue technology (POTS) that is allowed in any of the loops, the systems that can be installed in each loop (short, medium, or long) include, for example, SHDSL (see sections 2.2 and 3.11 of Annex 11 to the offer).

However, the supply by MEO, as requested by Oni, of local loops with “comparable” electrical characteristics would naturally result in higher costs for the beneficiary than those foreseen for the supply of loops under the current terms of RUO, since MEO would have undertake field tests to find pairs with identical characteristics.⁵⁷ Additionally, Oni did not explain precisely what

⁵⁷ Note that (see Section1 of Annex 1):

it means by “comparable electrical characteristics”, which is a subjective term, and so it can be asked whether that compatibility will be restricted, for example, to attenuation within certain levels (which it did not specify), or if there will be other additional characteristics. In these circumstances, conditions for the specific regulation of this matter seem to be lacking, without prejudice to it possibly being the subject of negotiation between the beneficiaries and MEO.

Regarding Vodafone’s proposal, it is not clear how it is possible to ensure that the oscillations it mentions do not occur, given the natural aging of the copper cables and the addition of systems installed on them, or even how to measure the loop’s characteristics (in terms of bandwidth) when it is in service. For that, there would have to be an “automated”, permanently certified and ubiquitous (intrusive) system for monitoring the loops being used, with an expected impact on costs, which does not seem to be justifiable in the current context of the offer. In fact, as noted by MEO, MEO has no control or possibility of direct intervention (for testing) on a loop that has been unbundled to another operator.

Therefore, and considering that, as stated in RUO, “*in spite of the [spectrum management] Plan being proactive in the reduction of interference between systems, there is no absolute assurance that these unwanted phenomena will not occur*”, it being impossible to give absolute assurance about the maintenance of the quality of service throughout MEO’s entire copper network, ANACOM understands it should not impose any changes on the offer on this matter.

2.3.4 Immediate information on the conclusion of the work done at the end customer

Oni and Vodafone state that when MEO interventions are carried out at the end customer’s premises during the loop supply, MEO does not always comply with the obligation to make a phone contact (to a specified Freephone/green number) to inform the beneficiary of the result of the intervention, e.g. works concluded or problems found. Vodafone adds that MEO often only reports the conclusion of the unbundling (up to 4) hours afterwards, such that both teams have to remain at the site for that period.

Therefore, those beneficiaries argue that MEO should always, immediately, confirm – within 15 minutes, according to Vodafone – the completion of the scheduled works or present a

“The methodology to be followed in the Spectrum Management on copper pairs of the same cable consists of the following procedures: a) *Definition of a set of rules for the installation of systems (multiple signals) that will coexist in the same cable in order to prevent (minimize) interference between services, allowing their long-term stability. (...) b) Definition of the characteristics of the transmission equipment to be installed in the access network to ensure that all operators only interconnect to MEO’s copper network equipment that complies with the technical established characteristics. (...) In specific areas of the access network where the occupation of the copper cable is already above that stipulated by the Plan for a given system, the systems already installed must be guaranteed*”.

justification of their non-completion, and that in the event of non-compliance with this obligation, a penalty equal to the value of the installation cost should be applied to MEO.

In the process of supplying services to the end customer (by the beneficiary), when it is necessary for MEO to visit the premises of the end customer (e.g. supply of non-active loop), RUO establishes that MEO will confirm by a telephone call to a free number from the beneficiary at the time of the loop unbundling (within 30 minutes in the case of active loops), and will later formally confirm the completion of the unbundling, with a response deadline of 1 working day for requests made via RUO IS.

Considering this is a critical phase in the unbundling process and that the intervention was scheduled, with both teams (from MEO and the beneficiary)⁵⁸ present at the site, it is essential that, for non-active loops, too, MEO must communicate the conclusion of the unbundling immediately so that the beneficiary can provide its services to the end customer without further delays, since certain deadlines for the provision of non-active loops are already quite long.

In this context, MEO's immediate communication makes the process more efficient and prevents the beneficiary from making journeys prematurely (in which case, the risk of mistiming the scheduling of its team's trip must be borne by the beneficiary).

Thus,

D 6. MEO must make telephone communication as soon as it concludes the unbundling of a non-active loop (within 1 hour). This procedure should be provided for in Annex 7 (section 4) to RUO.

2.3.5 Correct identification in the API of the DP and the terminal

Oni states that MEO currently provides, via API, provisional information about the identification of the Distribution Point (DP) and terminal at the beginning of the provision process which is not updated by MEO at the end of that process, so the definitive identification does not always coincide with that initially provided. According to Oni, this situation causes problems in completing the provision of the service to the end customer, leading to additional interactions with MEO and to consequent delays in the process.

⁵⁸ Even though MEO may carry out other works (e.g. on the exchange) and the need for the beneficiary's team to travel is not provided for in Annex 7 to RUO, regarding the unbundling of NAL.

Therefore, according to Oni, MEO should send the beneficiary via API the definite and correct identification of the DP and terminal in the “Notification of Completion”.⁵⁹

For NOS, it should be ensured that any possible installation errors related to the connection to the wrong DPs, or where connection is made to the DP when it should be ensured at the level of the building’s main distribution frame (MDF), should be duly sanctioned in the offer. In particular, it should be ensured that the installation deadline is counted until the correct activation of the unbundled access is ensured, which is especially relevant in a context in which it takes MEO more than 2 weeks to resolve these occurrences.

Under the provisions of RUO (Annex 7) in the eligibility response for Type A non-active loops, MEO sends via API the initial information on the identification of the DP and terminal in the primary of the MDF, or in its absence, in the subscriber private block.

If that initial information is not updated at the end of MEO’s supply process, when the definitive identification differs from that one, the beneficiary will have problems completing the supply of the service to its end customer, because in these cases the loops are not terminated on the previously named DPs and/or terminals and further interaction is needed with MEO leading to a consequent delay in the delivery of the service.

Therefore, to ensure that the information about possible changes is reported with the maximum speed and efficiency, it is assumed that it is formally performed by the MEO technician on the ground (see D6 above), without prejudice to the possible later confirmation via API, in the “Notification of Completion”, of the final and correct identification of the DP and terminal (NUMEROPD and PARPD, respectively). In the absence of this information, and when the final information differs from the original, thereby preventing the provision of the service to the end customer, the installation deadline continues to run until the correct information is transmitted by MEO, and the beneficiary should be diligent about informing MEO that the original information is incorrect.

Should there be recurring cases of incorrect information, or if there is a lack of updated information from MEO, compensation may be established for breach of this obligation.

In conclusion,

⁵⁹ NUMEROPD and PARPD, respectively, according to the nomenclature followed in the API.

- D 7. In the communication of completion of the process of installation of a non-active loop MEO should inform the beneficiary about the final and correct identification of the DP and terminal (if there was any change to the information initially provided).**
- D 8. The installation deadline continues to run until the correct information is transmitted by MEO to the beneficiary.**

2.4 Fault repair

2.4.1 Resolution of unsuccessful unbundling

NOS supports the introduction of a procedure to facilitate the resolution of problems with number portability associated with unsuccessful unbundling, usually the responsibility of MEO and which require reporting a fault, leading to service interruptions that may last several days.

According to NOS, the offer should allow the beneficiary to send a list, by portability window, with the situations where portability occurred without unbundling, and in such situations MEO should assure its fulfilment within 24 hours of the list being sent. This procedure should have an associated payment of compensation for non-compliance, which should not be less than one monthly fee for each day of delay, without prejudice to the service levels – and respective compensation – associated with the supply of the service (which should continue to run without interruption until its completion).

In fact, for NOS, delaying the unbundling process after portability is a serious matter, implying the disruption of service to the end customer, and therefore the compensation for non-compliance with this deadline should be particularly dissuasive.

Additionally, according to Oni, some unbundled loops presented problems, preventing their effective use for the provision of service to the end customer, and at the moment the problems can only be solved through the normal fault resolution process. However, since the problems result from supply errors (by MEO), Oni proposed the creation of the concept “supply failure” with the definition of the relevant resolution process and penalties for non-compliance.

According to Oni, a “supply failure” would be any malfunction of the loop within 5 working days after MEO’s communication that the supply was completed. Given that in these cases the loop was not even in a state to provide services, increasing the waiting period of the end customer, Oni claims that these faults should be repaired by MEO according to the deadline set for

Premium 2 level loops, and that the respective penalty should be imposed on MEO in the event of non-compliance.

ANACOM regards it as essential to guarantee that the loop unbundling procedures (with associated portability) occur without service disruption for the retail customer, and this Authority has already intervened in this matter, under RUO, by introducing demanding service levels and high amounts of compensation for non-compliance by MEO in the loop unbundling process (in particular with associated portability).

It should be noted that “*in the cases where, because of MEO or its contracted companies (...): i) the end customer is left without service for more than 30 minutes during or immediately after the loop unbundling process, or ii) the loop unbundling does not occur within the agreed portability window, MEO shall compensate the OLO in the amount of €38 plus 1/24 of that sum for each additional hour that passes (counting working and non-working hours) where the service was not available or until the loop unbundling occurs, if it did not occur within the agreed portability window*”, i.e. the equivalent of 38 euros initially and 38 euros for each day of unavailability (or until the unbundling occurs).⁶⁰

In a context of reduced (almost null) demand for active loops with associated portability (given that the current net demand is for non-active loops, therefore without associated portability), ANACOM understands that the current levels of service and compensation to be paid by MEO in case of non-compliance are a sufficient deterrent for this provider.

On the other hand, it is not clear if the problems reported by Oni (“*in a not insignificant number of cases*”) are all the result of problems in the supply, since this beneficiary does not specify them, while it is not expected that loops just installed and operating would present problems right away. Another situation would be if there were (several) cases of correctly unbundled loops (which had started supporting services downstream) presenting problems soon after the first days of operation. However, the beneficiaries presented no data to indicate this was the situation, particularly at the present time.

In any case, and because they usually result in service breakdown for (the end customer of) the beneficiary, with damage and consequences for both the end customer and the beneficiary, ANACOM understands that MEO should at once solve any problems related to the unbundling of the loop, i.e. problems that occur during the process or immediately after the loop unbundling

⁶⁰ See Annex 13 (section 2.3) to RUO.

(after it has been considered successfully concluded by MEO), in particular the non-active loops (those which still have quite a relevant monthly volume).

The beneficiary must therefore be able to inform MEO (within a reasonable deadline, understood to be 3 working days⁶¹), of any badly-executed unbundling of a non-active loop (which is not currently provided for in RUO), and MEO should act as soon as possible to effectively complete the loop unbundling, within the time limits established for the *Premium 1* level, while the respective penalty should be applied in the event of non-compliance, which also takes Oni's proposal into account.

In this context,

D 9. MEO should amend Annex 7 to RUO so that the beneficiary can inform MEO within no more than 3 working days of any incorrect unbundling of a non-active loop, and MEO must complete that unbundling within the maximum time limits defined for the Premium 1 level, while the respective penalty should be applied in the event of non-compliance.

The time elapsed between the beneficiary's reporting of the incorrect unbundling and MEO's notification of the resolution of that situation should be added to the time of installation of the relevant non-active loop.

2.4.2 Usage and update of the API

In its letter of 6.7.2015 on the procedures associated with the restoration of RUO services, MEO requested the introduction of a sum of 3.5 euros, applicable to each fault notification and each JI request which is not placed via API, for the resolution of RUO malfunctions and for 95%⁶² of the occurrences reported by the beneficiary, in order to encourage the use of this API by the beneficiaries who did not adopt it, namely, NOS.⁶³

MEO says that this last beneficiary continues to report a very significant number of fault notifications/JI requests on RUO [SCI]

⁶¹ To guard against any possible unbundling close to the weekend.

⁶² According to MEO's letter of 6.7.2015, MEO admits the need for about 5% of operators' faults to be reported by e-mail to OTEL, both for specific problems in the API, and because the notification of multiple local loops at the same address/customer is not yet automated.

⁶³ MEO refers that, on 6.8.2015, ANACOM requested further clarification and MEO informed it that it had requested information from NOS on the use of the fault resetting API.

[ECI], as shown in the following figure, indicating the number of fault notifications/JI requests reported by NOS, during the 1st quarter of 2017, in the various offers:



MEO considers that this proposal continues to be opportune and justified, allowing it to optimize its resources and to adjust the price to the costs incurred by MEO, without any significant impact on the provision of the service to the beneficiaries. MEO also notes that no developments are necessarily being imposed to NOS, which should have already occurred, as with other beneficiaries, but that it simply wishes to be compensated for the costs incurred with the manual handling of a high percentage of requests.

For Vodafone, meanwhile, the API is an extremely important tool for the regular supply of RUO services, by recording some relevant information in a safe and coherent way, and speeding up some of the steps involved in loop unbundling.

However, Vodafone mentions there is some instability in the operation of the API, with some interruptions, on which occasion any malfunction must be reported by phone, which makes it is hard to verify compliance with service levels and rules of the offer. Vodafone believes that these occurrences should be considered in the SLAs and that given the exceptional nature of the situations, MEO should send a file every month with the faults initiated (opened) manually and with the calculation of any applicable compensation (for non-compliance).

But Vodafone stresses there are no express rules regulating the procedures for updating the API, noting that MEO updates the API between its system and that of the beneficiary, without observing any minimum period of notice for notifying the beneficiary, and without considering any possible issues of compatibility between those updates and the systems used by the

beneficiary. This could cause disruption to the regular functioning of the interfaces, especially in terms of recording the steps taken and requested. According to Vodafone, this situation adds to the financial impact which these updates may have, particularly if they entail significant developments for the beneficiary.

Vodafone therefore proposes the following amendments:

- i) RUO should include a specific procedure for cases where MEO intends to update the API, including, in particular, the obligation to notify the beneficiary of that intention at least 30 working days in advance.
- ii) This notification should contain the fundamental elements that MEO intends to implement in order to enable the beneficiary to assess the impact on and compatibility with its systems (and thus prevent any disruption to the operation of the service provided under RUO).
- iii) API updates should be based on a principle of necessity and on an evolutionary logic, and should tend to be upgrades of previous versions without implying a disruption of the existing functionalities. Consequently, Vodafone considers that RUO should also make the express commitment that MEO will not implement a new version of the API that would substantially deviate from the existing version such that it might hinder the operation of the beneficiary's corresponding API.

ANACOM acknowledges, as do Oni and Vodafone, that the RUO API is an added value of the offer (notably regarding other MEO wholesale offers, which do not provide such a tool), by enabling a much more efficient operationalization of the services provided.

It is also acknowledged, moreover, that RUO does not establish any formal procedure for (the notification of) any API updates, mentioning in its Annex 5 that the “*access to the API's production environment is provided by MEO after the successful conclusion of tests between their testing environments*”. However, since the use of RUO is falling, as mentioned, usage of the API is not expected to grow, let alone be updated (with more functionalities) in the future.

Therefore, even if no significant changes are expected in the reduced market dynamics, or new functionalities/offers, MEO should amend RUO so that if it wishes to introduce modifications in the API's specification, it must inform the beneficiaries as early as possible (at least 1 month before) and give them all the details necessary to prevent disruption in the operation of the services under this offer.

Additionally, it is considered reasonable to determine a longer notification period – at least 3 months – when it concerns modifications that require beneficiaries to change their IS to maintain access to RUO, modifications that should be substantiated by MEO as regards the need for them and their intrinsic benefits, as well as, when applicable, in relation to alternative procedures until the implementation date of the changes.

Therefore,

D 10. MEO should amend RUO so that if it wants to introduce improvements or rectify an aspect of the API, it should notify the beneficiaries as soon as possible, at least 1 month in advance. In the case of substantial modifications, particularly regarding changes that require beneficiaries to change their IS in order to maintain access to RUO, that prior notice should be at least 3 months. The notification should contain the necessary details (including possible alternative procedures up to the date of implementation of the modifications) to prevent disturbance to the functioning of the services in the scope of the offer.

On the other hand, as MEO notes, NOS still does not use the API, and places its requests manually which, according to MEO, involves added operational costs.⁶⁴ In the past, ANACOM questioned NOS (then Optimus)⁶⁵ about not using the RUO fault API. The company confirmed⁶⁶ it did not use it, claiming it made no economic sense to develop an API for each MEO regulated offer, instead of an API that would support the post-sales processes of all that company's offerings.

Nonetheless, since there is a tool considered extremely important by two beneficiaries (and, in general, by any operator customer of wholesale offers, and even by NOS itself, one of the operators to initially propose the development of RUO IS), it is not reasonable for one of the beneficiaries to continue to employ manual procedures when using the offer, with added costs for MEO.

In this context, and in order to discourage use of the manual option, less efficient than the API, ANACOM understands it should accept MEO's proposal, so that:

⁶⁴ According to MEO information sent in a letter dated 6.7.2015, the annual costs resulting from the manual handling of fault notifications amounted to [SIC] [ECI], taking a monthly average (in the second quarter of 2014) of about [SCI] [ECI] notifications.

⁶⁵ By fax dated 15.1.2014.

⁶⁶ By fax dated 29.1.2014.

D 11. MEO may introduce a sum of 3.5 euros, applicable to each fault notification/JI request not placed through RUO’s fault resetting API and to 95% of the events reported by the beneficiary, excluding notifications launched manually for reasons attributable to MEO (e.g. occasional problems/instability on the API).

It should be noted that the payment of this amount is only applicable in cases where the beneficiary’s manual request is due to faults that are not their responsibility, but MEO’s (e.g. *“instability, which could even generate interruptions”* in the API, as claimed by Vodafone).

As Vodafone suggested, these manual requests from the beneficiary due to faults that are not their responsibility should be included by MEO in the SLAs and, if necessary for the beneficiaries’ assessment, MEO should send (on a monthly basis) a file listing the fault occurrences launched manually, with the necessary details, including about any compensation for non-compliance.

Concerning this,

D 12. MEO should send (every month) a file with the fault occurrences launched manually, with the necessary details, and should include these faults for the purpose of SLA and possible compensation for non-compliance.

2.4.3 Start of counting the fault reset time

Oni said that when it informs MEO of a malfunction, MEO normally performs an initial screening and if the fault is confirmed it requests the scheduling of joint tests or access to the end customer. However, MEO does not start counting the fault repair time from the time it is notified by the beneficiary, but only after the beneficiary “accepts” the fault repair, which only occurs after scheduling the tests. According to Oni, this procedure, too, is not in compliance with the provisions in the RO, according to which fault repair times start to run from the moment of the registration of the date/time of the fault notification by the beneficiary, while situations not attributable to MEO are already safeguarded in the Offers.

Oni also presented a slightly different situation: MEO supposedly replies immediately and automatically following a fault repair request sent by Oni, before having time to perform any initial screening. According to Oni, MEO sometimes sends, within only a couple of seconds after

the fault notification, an e-mail in reply with a reason for pendency AVOL12 (“Scheduling required to access customer premises”).⁶⁷

Also according to Oni, MEO’s reply to the proposed scheduling would show different behaviours (in the reply to the fault notifications made by Oni) depending on the amount of faults reported:

- i) the larger the number of faults reported, the greater the number of rescheduling requests issued by MEO; and
- ii) the smaller the number of faults reported, the more MEO proposes rescheduling for only some situations.

Oni therefore considers that MEO should start counting the fault repair time from the date/time of the valid fault notification by the beneficiary, regardless of any initial screenings it may perform and of the need to request the scheduling of tests, and that the fault repair time should include all initial screenings performed by MEO which enable it to deem the fault as valid.

According to section 7.3 of Annex 12 to RUO, MEO “*provides, via API/e-mail (template A), the reply with the MEO reference of the fault notification and the start date/time of the repair time*“, if the fault notification is valid, which MEO will verify initially⁶⁸ right after the fault notification by the beneficiary (the first step of the fault repair procedure).

Should the fault be considered valid (both in the above-mentioned step or after a possible request for reanalysis, if it was initially considered invalid), the start of counting the fault repair time should, of course, be from the moment of the fault notification, including all the time during which MEO performed (initial) screenings, and afterwards interventions.

ANACOM notes that under the current terms of Annex 12 to RUO, the counting of the repair time actually already starts with (at the time of) the beneficiary’s notification.

⁶⁷ Oni argues that the need claimed by MEO (of the indication by Oni of a window of intervention at the end customer) is not justified, because MEO would not even accept the fault notification at the outset unless it indicated the window of access to Oni’s end customer premises. According to Oni, it would have agreed (at MEO’s request) to send information about the window of access to the end customer’s premises right away, in the initial fault notification to MEO.

⁶⁸ “2. *Receive and validate fault notification*
MEO receives, via API/e-mail, the fault notification launched by the OLO and proceeds to validate it, that is, to check if:
a) the service in question exists, is active, and belongs to the OLO;
b) the OLO sent all the information required;
c) there is no ongoing fault notification or JI request for the same local loop.”

2.4.4 Classification of the reason for the fault and improper faults

Oni understands that the classification of the fault reason in the cases where MEO sent a technician to the location should be, for example, "Fault Detected and Disappeared - *Avaria Constatada e Desaparecida*" (ACD) or "Solved after Physical Tests - *Resolvida após Testes Físicos*" (RTF), reserving the classification "Correct When Tested - *Correto Quando Ensaiado*" (CQE) for remote verification, with the result reported to the beneficiary within 30 minutes of the fault notification to MEO.

According to ONI, as there is no deadline for the initial screening, in many situations MEO performs a remote screening to check whether the fault is its responsibility, but notifies the beneficiary of the result of that screening action several hours later, sometimes with the indication that, after all, the situation was CQE and that no fault existed, which involves unnecessary delays in the process of fault resolution and closure by the beneficiary.

Consequently, bearing in mind the cases of improper faults involving the dispatch of a MEO technician to the site, or verified remotely as non-existent, ONI proposes that:

- i) a fault classified by MEO to be improper which involves a trip of a technician should be classified as CQE and should not be charged (MEO should have checked whether the fault existed before sending the technician); and
- ii) faults confirmed remotely by MEO as non-existent should be classified as "CQE without trip", charged at a lower price for improper fault reporting and notified to the beneficiary 30 minutes after the fault process is initiated.

According to ONI, setting a 30-minute period after the reporting of a fault by the beneficiary should allow MEO sufficient time to perform a (remote) initial screening to check whether it is responsible for the fault or whether additional tests are required, possibly in conjunction with the beneficiary. MEO should also be required to report the result of the initial screening to the beneficiary at the end of these 30 minutes.

Moreover, in case of resolution of improper faults and whenever the resolution time is shorter than 30 minutes, ONI believes that MEO should charge the beneficiary a smaller amount than that currently established for improper faults.⁶⁹

⁶⁹ Agreeing to pay for improper faults such as CQE, as long as MEO shows that it sent a technician to the location.

ONI further contends that MEO should always be responsible for faults whose: (i) resolution begins after the end of the SLA; (ii) resolution occurs after expiry of the repair time defined for 100% of incidents; or (iii) reporting to the beneficiary takes place after repair time has passed.

Finally, Oni proposes that, for faults unduly closed by MEO, the latter should pay compensation according to the tariff for unwarranted launch of a fault process.

For NOS, the offer should provide that faults identified as nonexistent after testing should only be classified as improper if that test is performed within a set period of time after the fault notification, enough to conduct an initial screening of the fault, which preferably should not exceed 30 minutes. After this period, NOS proposes that any result classified as CQE should not be included in the category of improper faults. This proposal aims to discourage the abuse of this classification, preventing in particular the cases where there is a possibility of network intervention by MEO technicians followed by a CQE classification.

The reasons for closure linked to the resolution of faults classified by Oni as RTF and ACD are not included in RUO, and ANACOM considers these would be Oni proposals for new classifications, the need for which, however, (for a better functioning of the offer) does not seem to be essential. As for faults resolved by MEO, there is already the reason 'AVOL01 – *Reparado na rede MEO* – Repaired on MEO network' (Fault fixed on any point of the network under MEO's responsibility).

As for the CQE classification (code AVOL02 in RUO) and the initial screening after fault notification, which Oni and NOS propose should be done within 30 minutes, ANACOM understands that it could be unreasonable or disproportional to establish a time limit for the initial fault screening, since there may be fault situations that cannot be diagnosed within 30 minutes. In fact, there are even situations where there is no agreement as to responsibility for fault.

In any case, MEO is required, whenever possible, to promptly carry out tests to screen for any fault and identify responsibility. Should MEO finds that the fault does not fall under its responsibility, i.e. it is an improper fault, its closure must be reported to the beneficiary immediately, without any delay.

For now, ANACOM takes the view that it should not specify a deadline for that notification, or any compensation for non-compliance. However, in the event of significant and unjustified discrepancies between the information on when the screening was concluded and its reporting

to the operator or the excessive duration of tests, ANACOM may impose such deadlines and the respective compensation for non-compliance.

Furthermore, ANACOM acknowledges that the proposal to separate situations where the dispatch of a MEO technician is involved from those where it is not, has some merit for the purpose of the amount to be paid to MEO in the case of improper faults.

However, ANACOM understands that it might not (currently) be reasonable or proportional for MEO to change the fault closure reporting, in order to also include information about whether or not a MEO technician travels to the location.

According to MEO (see its comments on the DD regarding the amendments to LLRO and RELLO), this change “*would introduce a high degree of complexity in the operational procedures and would imply high-cost developments in terms of information systems. Besides the complexity, the implementation of this procedure would entail some risk, since the concept of travel can be applied to a technician’s trip to a MEO exchange, to the operator’s end customer facilities or to a trip to the operator’s premises. Even the possible approximation to a correspondence between the reason of resolution and the distribution in the field is not free of errors. (...) According to the information, in the vast majority of cases, the resolution of reports for reasons associated with the responsibility of the operator involves a MEO technician travelling to the location, except when the reason is ‘Incorrect reporting’ and ‘Scheduling required to access customer facilities’. Therefore, once again MEO considers that this imposition is not justifiable, with all the costs inherent to its implementation and roll-out, in light of some possible, small, benefits for operators*”.

In this context, in the event of a non-existent fault or a fault that is the responsibility of the beneficiary itself, there is no reason to change the amount to be paid to MEO for “incorrect fault reporting” because of the time elapsed until the reporting by MEO to the beneficiary, whether or not MEO’s technician has travelled to the facility.

In any case, it is understood that following notification of a fault by a beneficiary, if MEO initially finds this fault report to be undue (and so closes and/or rejects it) and it is later established that the fault exists and is in fact under its responsibility, MEO is required:

- i) to repair the fault concerned as soon as possible; and
- ii) to account the full period of time as fault repair time from the (initial) fault notification by the beneficiary up to the notification by MEO of the completion of the fault repair (counting, of

course, the period when the fault was improperly closed),⁷⁰ and compensate the beneficiary where this period exceeds the maximum periods laid down in the offer for any fault repair.

Thus, ONI's proposal that the beneficiary should be paid the "improper fault price" amount in the event of undue fault closure (as the beneficiary incurred costs in checking whether the fault was or was not actually its responsibility), is deemed to be appropriate, and, if applicable, MEO must refund any amount charged on grounds of intervention for 'incorrect fault reporting'.

In any case, prior screening by the beneficiary is always desirable as this will contribute to a reduction in the number of unwarranted fault situations.

In conclusion, it is held that:

D 13. MEO is required to pay the beneficiary the "improper fault price" and refund any amount charged on grounds of intervention for incorrect fault reporting, where the company informs that the fault is incorrect and it is later established that the fault exists and is in fact MEO's responsibility.

As for the situations described by ONI (where access was CQE and there was no fault), as there are no faults under MEO's responsibility none can be attributed to this company. However, without prejudice to MEO not being responsible for the repair of such faults, it is deemed that MEO is required, as mentioned above, to undertake a quick initial, preferably remote, screening and to promptly inform the beneficiary of the results thereof and the reason for closure.

Therefore, when MEO starts the initial screening, or reports its results, after expiry of the repair time set for all incidents, it is deemed that the screening was not done satisfactorily and in accordance with the principle of urgency, and so it should not be taken into account for purpose of recovery for 'improper fault'. In this regard:

D 14. MEO must not charge the amount for 'improper fault' where the fault repair is begun, or the result thereof is reported to the beneficiary, after expiry of the established repair deadline.

⁷⁰ Section 7.5 of Annex 12 to RUO establishes that "*Changing the reason for the closure of a fault notification or a JI does not change its duration or its start and end date/time*".

2.4.5 Customer pending situations due to lack of access

According to NOS, these customer pending situations stem from the fact that MEO does not give the beneficiary advance notice that it is travelling to the site for the fault repair. As with the supply process, NOS supports the existence of a prior notice procedure by MEO in situations where their technician travels to the customer's facilities, in order to speed up and optimize the process and to minimize situations where the parties fail to meet up (including the end customer).

NOS also claims that the current process does not enable a quick unblocking, via telephone/IVR due to the MEO technician being present at the site; this does not promote a quick resolution of the pending situation, resulting in long resolution times based on unnecessary pending situations. In this context, NOS reiterates its request to streamline this process by implementing the following procedures:

- i) MEO is required to inform the beneficiary by phone about 'Customer pending' situations, notably those related to the customer not being at the location.
- ii) The beneficiary should have 30 minutes to unblock the pending situation for MEO, by phone, while MEO's technician stays at the location (as happens in unbundling situations).
- iii) Alternatively, the beneficiary has 16 working hours to call MEO to indicate the customer's new windows of availability.
- iv) The time count for 'Customer pending' should start 30 minutes after the MEO notification referred to in step 1 and whenever the beneficiary is not able to unblock the pending situation within the 30 minutes referred to in step 2.
- v) In scheduling situations, the time count for 'Customer pending' ends at the date/time of the beginning of the scheduling window proposed by the beneficiary in step 3.⁷¹ Should MEO not be available for that window, the time that elapses from the date/time proposed by the beneficiary until the date proposed by MEO should be their responsibility.

As mentioned in the previous section, regarding the supply, ANACOM acknowledges it is useful to coordinate MEO's intervention with the dispatch of technicians to the end customer's location, in case it is necessary to repair the fault, which could prevent the occurrence of situations such

⁷¹ The counting of the 'Customer pending' time ends with the beneficiary's call to MEO to unblock the pending situation, in those cases where scheduling is not necessary.

as 'Customer absent'. It should be noted that, contrary to what happens with the supply (and in the case of JI), in the case of fault repairs no intervention window is agreed, i.e. the beneficiary is not informed in advance of the date/time when MEO's technician will be at the site.

There are situations where it is not possible to have permanent access to the beneficiary's end customer premises (e.g. human presence only during normal working hours, premises without human presence), therefore prior notice is essential and makes good sense, with a positive impact for all parties, including MEO since it ensures that MEO teams have immediate access to the facilities to repair the fault.

In this context, and to minimize the impact on existing procedures, with higher costs and the possible extension of deadlines which would happen if the NOS proposal were fully accepted, MEO should start informing the beneficiary with as much advance notice as possible that its technician will be going to the location to repair the fault. In ANACOM's view, there should be at least 1 hour to enable the beneficiary to ensure that MEO's technician has access.

If MEO's technician cannot access the facilities to repair the fault (essentially due to customer absence or scheduling mismatch), they should immediately contact the beneficiary to inform them of that fact, waiting (15 minutes being considered an appropriate time) until the beneficiary reports if the situation has been resolved.

ANACOM thus holds that Annex 12 (section 7.3.2)⁷² to RUO should provide as follows:

- D 15. MEO is required to inform the beneficiary, as far in advance as possible (at least 1 hour), about the dispatch of a technician to the location to repair a fault.**
- D 16. If MEO's technician on site has no access to the facilities to repair the fault (essentially due to the customer's absence), they should immediately contact and inform the beneficiary of this fact, and wait up to 15 minutes until the beneficiary**

⁷² Which provides, in point 8. Note that:

"MEO proceeds with all the actions leading to the screening and repair of the fault, with the purpose of restoring the service to the customer in the shortest time possible.

The OLO is required to provide the necessary cooperation with MEO, and the two should keep each other informed of such facts that may interfere with the provided service. If any temporary repairs have been carried out, the OLO should be duly informed about this and about the time interval for the service to be restored.

When the fault is located in the premises of the OLO's end customer, the OLO will be responsible for ensuring MEO's access to those premises to resolve the fault. In the case of faults in loops with Premium 2 quality level, it is up to the OLO to contact its end-customer to ensure access to those premises for a period of 6 hours. For this purpose, MEO will take all the necessary steps with the OLO, without prejudice to the OSP and MEO coming to an agreement.

In the event of customer pending situations, the procedure laid out in section 7.6 will apply'.

reports if the situation has been solved. This should be provided for in Annex 7 to RUO.

In this latter case, after 15 minutes without response/resolution, the current procedure remains in place.

2.4.6 Procedures associated with ‘common faults’ and reason of force majeure

Vodafone acknowledges that in the case of ‘common faults’ MEO is not required to pay compensation for non-compliance when those faults are by reason of force majeure, as long as it provides the respective evidence.⁷³ It therefore believes a more rigorous characterization is needed of the events to which this cause is liable to be ascribed (considering that the current framework is too broad and its characterization not exhaustive), as well as more stringency and speed in the demonstration of the causes claimed by MEO.

Furthermore, Vodafone notes that the API provides no field for identification of a common fault attributable to force majeure, which places additional operational difficulties in the assessment of the relationship between force majeure causes (mostly illustrated by media articles) and (files relating to) common faults. That is to say, according to Vodafone, MEO does not specify or substantiate the force majeure causes that justify the common faults it claims, which allows them to exempt themselves from paying the compensation provided for in RUO.

However, Vodafone notes that it cannot access the fault history of a loop that becomes affected, namely, by a common fault, and that the information provided on MEO’s *Wholesale* portal is not adequate for a proper characterization of common faults and to find out the connection between those faults and the fault reported by the beneficiary. This is largely because it does not include information on the affected loops, which Vodafone proposes it should start to include. As Vodafone sees it, this situation has operational consequences, as well as for the relationship with their end customers, ultimately implying the possibility of compensation being due for non-compliance. Vodafone also says that it considers it more appropriate and effective for information on common faults and the affected loops to be sent to the beneficiary through the API and not only made available on MEO’s *Wholesale* portal.

⁷³ Section 7.10.2 of Annex 12 to RUO.

Vodafone proposes a better specification of the force majeure facts/events in RUO and that the justification of the occurrence be more appropriate (e.g. IPMA [Portuguese meteorology institute] document in case of a storm, or a police report in cases of copper wire theft).

In the context of the faults classified as by reason of force majeure, NOS reiterates⁷⁴ that the classification and characterization of these faults are still carried out by MEO in a flawed and untimely manner, and that the absence of a more assertive regulation of this matter constitutes a route to the abuse of this construct. NOS recalls the following proposed procedure⁷⁵ which, in its view, would make it possible to simplify the analysis of the results presented by MEO and to minimize any disagreements and disputes on this matter:

- i) MEO should send the beneficiaries:
 - a. a brief description of each force majeure fault up to the date of its closure;
 - b. a detailed description and relevant evidence within at the most 30 days from the date of closure of the respective fault.
- ii) In the absence of evidence, faults would automatically become part of the range of service levels.

Regarding 'common faults', ANACOM notes that the information about the loops affected by those faults is already provided on MEO's *Wholesale* portal. and does not deem it necessary for that information also to be sent to the beneficiary via the API, as proposed by Vodafone, particularly because that could involve the development of systems with additional costs.

However, given that (according to Vodafone) the beneficiaries currently do not have enough information on the loops affected by 'common faults', and for a better subsequent characterization of those faults and their relationship with force majeure reasons, ANACOM therefore understands that:

D 17. MEO should better specify and detail the force majeure facts/events in RUO (notably through evidence to be sent to the beneficiaries) and to identify, wherever

⁷⁴ This has already been stated by NOS in other communications, most recently in December 2016, in the context of the start of the procedure for amendments to LLRO and RELLO.

⁷⁵ NOS also recalls the advantages in adopting this procedure for the classification of faults by reason of force majeure: it allows beneficiaries to check the effective existence of force majeure and to more easily accept that justification; it simplifies the analysis of results presented by MEO; it minimizes any disagreements in the process of monitoring the evolution of different ranges of PQS; it prevents the collection of data at the end of reference periods (the end of each quarter), which affects the presentation of real evidence and fosters the use of more generic and less reliable data (e.g. civil protection alerts reported in the media); and it significantly influences the prolonging of litigation over the disputed validity of evidence.

possible, the unbundled loops affected by ‘common faults’ arising from such force majeure cause(s).

Specifically regarding the faults classified as by reason of fault majeure, under the terms of RUO it is provided that in case of a force majeure incident that prevents an ad-hoc provision of the agreed services on the established dates and deadlines, the deadline to restore the service will be postponed for a period that corresponds to the delay caused by this event, without prejudice to the efforts made by MEO and the beneficiary to minimize the consequences of the event.⁷⁶

Vodafone and NOS propose changes to the classification and characterization of faults resulting from force majeure events, but failed to provide the specific elements that underpin the proposed amendments, seeming to assume a perhaps abusive (and repeated) claim of force majeure by MEO, of which ANACOM is unaware.

There have been situations in the past (for example, related to theft of copper cables) which are acknowledged to be force majeure incidents. Obtaining the respective evidence could take a long time and is not deemed to be a priority, unlike the resolution of the interruption. In this respect, NOS’s proposal to prioritize a detailed description of the force majeure cause, when at the same time there are reasonable time frames to consider, which may depend on the circumstances, for the presentation of evidence, evidence which ANACOM has already stated must be made available in a determination of 2012,⁷⁷ seems not to be reasonable.

In any case, MEO should send the evidence as soon as it receives it, before the date of evaluation of the quality of service indicators and any relevant compensation, i.e. beneficiaries

⁷⁶ A force majeure incident is deemed to be any unforeseen and unavoidable event, the effects of which are produced regardless of MEO’s or the beneficiary’s will or circumstances, and which prevents them, fully or partially, permanently or temporarily, from fulfilling their obligations. A list of events which may be covered by the scope of those situations is set out in the offer – see page 28 of RUO:

- i) extreme weather conditions (e.g. downpours, typhoons, lightning strikes, extreme flooding and strong winds);
- ii) acts of third parties (e.g. acts of third parties on MEO equipment, network resources or infrastructure resulting from works, accidents or other);
- iii) robbery/theft (e.g. of MEO equipment, network resources or infrastructure);
- iv) vandalism (e.g. acts of vandalism on or sabotage of equipment, network resources or infrastructure, including for example gunshots);
- v) fire (e.g. occurrence of fires which damage or degrade MEO equipment, network resources or infrastructure);
- vi) natural catastrophes (e.g. earthquakes, cyclones, tsunamis and other);
- vii) Acts of God (e.g. war, revolt, riot, terrorist attack, falling trees, falling buildings, rodent attacks, acts of subversion, civil uprising, government decision or public disorder, economic blockade, general nationwide strikes, epidemics and explosions).

⁷⁷ *“PTC shall send evidence to the beneficiaries showing that a particular fault warrants classification as by reason of force majeure, except in duly justified exceptional situations where this is not possible.”*

must have the evidence at the time of the analysis of the SLAs and possible compensation for any non-compliance.

In this context,

D 18. MEO should send the evidence for the faults classified as force majeure as soon as it obtains it, before the date of evaluation of the quality of service indicators and their compensation.

The evidence to be sent by MEO should include a sufficiently clear and objective detail, namely, the date of occurrence, the sites affected – preferably geo-referenced – and the actual causes that determine that the occurrences are not attributable to MEO.

2.4.7 Fault closure in MEO's systems

NOS holds that it is necessary to implement a deadline of 16 working hours for the redistribution of faults, instead of the current 4 working hours. NOS considers a longer deadline to be necessary in order to ensure the possibility of contact with the customers and to ensure coordination between the parties in situations which require scheduling in an intervention.

NOS also feels that the maximum limits should be removed for the number of reanalyses and redistributions that a beneficiary can undertake, claiming that there may be different closure classifications. Regarding this, NOS notes that the beneficiary has no incentive to prolong the malfunction and, in its view, the possibility of conducting at least 1 reanalysis and 2 redistributions should be secured whenever the situation requires.

Referring to the draft decision on the amendments to LLRO and RELLO, NOS claims RUO should also ensure that the reanalysis time limit count should start from the point of the closure notification and not from the actual fault closure. According to this operator, this concern is particularly relevant when, in practical terms, there is often a large gap between these two points.

ONI has found that, after a fault closure is reported to the beneficiary by MEO's technician on the ground, delays can occur with the formal and effective closure of the fault by MEO in its systems, which prevents the beneficiary from immediately requesting the scheduling of a new JI, where necessary. As such, ONI takes the view that MEO should be required to close faults in its systems at exactly the same time as the technician on the ground reports closure.

Meanwhile, Vodafone considers the maximum 15-minute deadline to confirm whether a fault reported by MEO has been resolved as such, in particular for the purpose of a possible reanalysis request, is too short, since to justify that request it must “*be accompanied by the reason for disagreement and the description of the anomaly/problem*”.⁷⁸ It even considers that the 4-working-hour deadline to apply for a redistribution of the fault after it has been closed via API/e-mail is also insufficient to make an appropriate and substantiated analysis in view of the measures it is required to take, namely, contacting its customer to ascertain the availability and quality of the service, possibly launching a JI or even carrying out new tests on site, and proposes extending this deadline to 16 working hours. In this context, bearing in mind that all actions and communications should be done via API, and that all related procedures must abide by the “principle of urgency”, VODAFONE proposes several amendments to this procedure (see page 11 of its 2014 letter).⁷⁹

Additionally, Vodafone notes that changing the reason for closing a fault does not change the duration (and deadlines) and that if either party considers that the other one is not complying with the procedures, it must be able to request, within 2 weeks, an analysis of the faults on the ground in order to determine a “rejected communications closure distribution factor”, with either party being able to request ANACOM’s intervention in this matter.

As for NOS’s proposal to remove the maximum limits for the number of reanalyses and redistributions that the beneficiary may carry out, it is understood that if the procedure currently provided in the offer for fault repairs – which permits 1 reanalysis and 2 redistributions of faults – is not enough to solve potential disagreements, keeping it open indefinitely would surely not help to resolve it.

RUO establishes that after receiving the information of fault repair closure via telephone (IVR) the beneficiary “*has a maximum time limit of 15 minutes to place a request for reanalysis of the fault repair reported by MEO*”. However, since, according to MEO, beneficiaries do not use this procedure and it involves unjustified costs for MEO (its technician “*waiting 15 minutes for a beneficiary call that they know from the outset will not happen*”), MEO proposed to withdraw the procedure for reanalysis request via IVR, which ANACOM intends to accept in the present DD (see section 2.2).

⁷⁸ Section 7.3 of Annex 12 to RUO.

⁷⁹ Regarding the repair of faults provided for in sections 7.3 and 7.5 of Annex 12 (“Operation, Maintenance and Management Procedures”).

In this context, it is not possible to accept Vodafone's proposal to increase this 15-minute deadline without specifying any value in its justification, because this would lead to greater inefficiency, notably to MEO's technician staying at the site longer, which has proved to be useless, not least because, according to MEO, the beneficiary does not take advantage of it.

Additionally, ANACOM fails to fully understand Vodafone's claim that the 4-working-hour deadline is for the beneficiary to apply for a redistribution of the fault after it has been closed via API/e-mail is also insufficient for a proper and sustained analysis, especially because this beneficiary contends that all actions and communications should be done via API, and that all related procedures must abide by the "principle of urgency". Likewise, NOS's claims to increase the fault redistribution deadline to 16 working hours seems to be in contradiction with this operator's claim that "*the beneficiary has no incentive to prolong the fault*".

Regarding Vodafone's proposal about the possibility that the beneficiary can request, within 2 weeks, an on-the-spot analysis of the faults in order to establish a "rejected communications closure distribution factor", this is considered to be premature, notably because Vodafone did not send any quantitative data that make it possible to critically assess its necessity and proportionality.

In any case the beneficiary may always request the reanalysis/redistribution of the fault repair/JI scheduling (according to the procedures provided for in Annex 12 to RUO),⁸⁰ while MEO cannot reject that request (solely) on the grounds that the formal fault closure was not performed in its systems.

In this context,

D 19. MEO cannot refuse a request for the reanalysis/redistribution of a fault repair/JI scheduling (solely) on the grounds that the formal fault closure was not performed in its systems.

⁸⁰ It should be noted that by decision of 28.3.2012 on 2012 on the procedures to be followed in evaluating the quality of service of regulated wholesale offers, ANACOM established that a beneficiary, after being informed by MEO of the fault resolution, should have a certain time limit (depending on the offer in question and considering the practice already followed by MEO), to report to MEO, via e-mail, that the fault is persisting, describing the anomaly/problem, keeping the fault open, and if the beneficiary does not reply within a given time limit, the fault can be considered closed as from the moment of MEO's communication.

2.4.8 Revision of joint intervention (JI) rules

Vodafone, NOS and Oni, while acknowledging the positive contribution of the process relative to JI (e.g. Annex 12 to RUO), believe that there are several aspects which could be improved.

Maximum time for scheduling JI

For those beneficiaries, the most important aspect to be reviewed is the absence of time limits for the definition of MEO's windows in the context of scheduling the intervention, when MEO is not available for the windows (initially) proposed by the beneficiary.⁸¹ In fact, current RUO provisions do not establish a maximum period for scheduling a JI, which, according to those beneficiaries, results in the possibility of the intervention being scheduled for several days – up to a week – after it has been requested.

In this context, the beneficiaries argue that MEO should propose, within a maximum period of 24 hours after the request from the beneficiary, the scheduling of the JI window, and in the event of non-compliance by MEO, NOS and Oni propose a penalty for each day of delay in relation to that 24-hour period,⁸² without prejudice to holding MEO responsible for the waiting times that result from these postponements in relation to the time frame initially proposed by the beneficiary.

Earlier scheduling by MEO

Additionally, Vodafone says that MEO is not complying with the provisions of section 7.4 of Annex 12 of RUO,⁸³ claiming that the (re)scheduling procedure has in fact become a prerogative of MEO entitling it to anticipate a JI date already scheduled and agreed with the beneficiary (and its end-customer), to which the beneficiary cannot object, unless it re-schedules the JI, thus losing any possibility of compensation for that change. For Vodafone, this does not reflect the spirit of cooperation that should guide the implementation of a JI, and has a significant impact at the operational level, because unilateral anticipations with very short deadlines (2 working hours) make them practically unviable.

⁸¹ Considering that the local loop access supports the provision of services such as the fixed telephone service and the internet access service, the long-term interruption of service has, according to NOS, particularly serious consequences for end customers. The situation is even more troubling given that many customers are business or institutional customers that depend on such access for the normal operation of their activity.

⁸² According to NOS, dissuasive compensation should be provided for non-compliance with this time limit, in order to ensure the closure of all faults by the defined deadline.

⁸³ Paragraphs 6 and 7 ("Scheduling JI"): "If the date scheduled by MEO is different from the window sought by the OLO, and in the meantime a date/time becomes available before that scheduled, MEO can anticipate the scheduling, via API/e-mail, at least 2 working hours in advance of this new date/time".

Vodafone therefore proposes that the postponement/anticipation requests be made via API (and not by e-mail) – thereby making it possible to apply the relevant SLA and impose any applicable penalties with greater legal certainty and security – and that they should be sent at least 4 working hours in advance, while the beneficiary should check its availability, but always maintaining the original date, should it not be available.

Cancellation of JI by MEO

RUO allows the rescheduling of a JI by the beneficiary at least 8 working hours in advance, but Vodafone says that MEO ends up by cancelling a duly scheduled JI without any consideration for this time limit, claiming for that purpose that it was a common fault that has been resolved in the meantime. According to Vodafone, in practice the JI was in fact launched and pending until MEO closed it at the same time as the common fault (which in the meantime has been launched and repaired). But this can only be confirmed by the beneficiary after the closure of the incidents, because it is the closure code assigned by MEO to those incidents that makes it possible to conclude that a particular JI was associated with a common fault.

Vodafone argues that the requirement of 8 working hours prior notice to cancel/reschedule should be reciprocal and mandatory, and if MEO does not comply with this deadline (because of the common fault resolution), it should bear the costs incurred by the beneficiary in respect of that JI (in particular those associated with technical support teams and other duly demonstrated costs).

Failure of technicians to meet and recovery of costs related to JI

According to Oni and Vodafone, one aspect that has a very negative impact on the efficiency of JIs is the failure of the MEO and the beneficiary technicians to meet each other or their non-appearance at the scheduled time and location, without prejudice to the confirmation procedure that has been established, and the application of penalties is a means to discourage these situations.

These beneficiaries thus propose the imposition of a penalty (on MEO or the beneficiary), for each day of non-compliance, if the technician does not show up to perform a JI, regardless of whether the fault has been repaired. It is also proposed that the rescheduling of the JI due to the MEO technician's non-appearance takes place within 24 linear hours from the initially scheduled time, with a different penalty being imposed for non-compliance.

In the opinion of NOS, it is also important to ensure that, in the context of the procedures in which the intervention of MEO's and the beneficiary's technicians is required, the contact of MEO's technician should be shared. In fact, currently, only the contact of the beneficiary's technician is envisaged, which, according to NOS, is a potential source of entropy, since it makes it impossible to resolve constraints that would, in their view, be overcome by contact between the parties.

In line with the principles described in section 7.4.4 of Annex 12 to RUO, for Vodafone, it is pertinent, appropriate and fair that in cases where it was required to reschedule an installation for reasons attributable to one of the operators, the other party has the right to be reimbursed for the costs incurred, in particular by having to send a support team to the site. It therefore proposes to include in Annex 7 to RUO the possibility of reimbursing these costs and, in view of the need for legal certainty as well as the speed that the operational reality imposes, Vodafone holds that it is appropriate to set a single sum of 44 euros (average cost of a support team for installation purposes). According to Vodafone, for the purposes of proof and allocation of responsibilities, only the information made available in the API is important, namely, in the following terms:

- i) responsibility of the beneficiary, with pending message;
- ii) responsibility of MEO, with indication of post-unbundling rescheduling.

For Vodafone, the condition that the costs of a JI can only be recovered in relation to faults that have been closed "*no more than 4 working hours before the date/time of receipt of the JI request*" (in the same section 7.4.4 of Annex 12 to RUO), is unjustified. Since the attribution of responsibility to MEO is unquestionable, and is often duly formalized through the specific form used for that purpose, Vodafone argues that the right of beneficiaries to reimbursement of JI costs (when the fault is closed and agreed as attributable to MEO) should be unconditional and should not depend on a mere issue of time.

This way, Vodafone proposes to that the "time condition" (4 working hours in advance) be removed or at least extended to 48 hours. In addition, Vodafone proposes that the amount related to the recovery of the JI costs be updated to 44 euros.

Firstly, it should be noted that the procedure for scheduling a JI - described in section 7.4.2 of Annex 12 to RUO - provides that the beneficiary should indicate the date/time (window) intended

for the intervention,⁸⁴ and the JI request to MEO be made at least 2 working hours prior to the beginning of this window.⁸⁵ If MEO does not have availability for the desired window, it schedules the JI to the next best available window, and if the beneficiary has no availability for it, it can also request the scheduling a new JI date/time for a later window, within 20 minutes of MEO's notification.

Thus, without prejudice to the absence of a time limit being defined between the beneficiary's request and the start of the scheduled window, it is established that the MEO should schedule the JI for the next, most suitable, available window, and the time elapsing between the date/time intended by the operator for the JI and the date/time scheduled by MEO is always counted as fault repair time (where the fault is its responsibility), which is why MEO has every incentive, in fact, to schedule it for the best window available, to minimize the fault repair time. In addition, the offer also provides for MEO paying compensation for non-compliance with the fault repair deadline.

In this context and in the absence of objective data indicating otherwise, it is understood that it is not necessary on this occasion to impose a maximum deadline for MEO to carry out the scheduling of the JI after the window initially requested by the beneficiary.

Regarding the anticipation of the scheduling of a JI by MEO, ANACOM does not subscribe to the arguments of Vodafone, because in this circumstance the resolution of the fault in question will certainly be anticipated, which is obviously beneficial for all, especially for the end customer. In principle, any anticipation in this type of procedure is positive, particularly for the end customer, the main party affected by the fault, therefore not following Vodafone's proposal to change the minimum notice period and anticipation to 4 hours. On the other hand, it does not seem reasonable to prevent MEO from being able to cancel a JI if the fault has been solved in the meantime, and the proceeding must be terminated "immediately", which Vodafone also requires, i.e. an immediate report of fault resolution by MEO.

In any case, RUO already establishes (this mechanism): *"If the date scheduled by MEO is different from the window sought by the OLO and in the meantime there is availability for a date/time prior to the scheduled date, MEO can anticipate the scheduling by API/e-mail (template K), at least 2 working hours before this new date/time. The time elapsing between the*

⁸⁴ Respecting certain windows, namely: 9.30; 10.00; 10.30; 11.00; 11.30; 12.00; 14.30; 15.00; 15.30; 16.00; 16.30 and 17.00, on business days.

⁸⁵ And if the request is valid and there is availability for the desired window, MEO reports to the operator, via API/e-mail, the JI reference, reception date/time, and the start date/time of the scheduled window, within 20 minutes.

date/time sought by the OLO and the date/time scheduled by MEO is counted as fault repair time". It should be noted that the prior notice deadline is 2 working hours, which should allow the beneficiary to arrange for the JI to occur in the new window. This deadline is the same as MEO's deadline for accepting the initial scheduling.

However, ANACOM recognizes that if there is an API this instrument should be used in preference to e-mail. But the beneficiaries must always be informed immediately by MEO of a the closure of a fault, including the reason, so that they can conclude the repair procedure as soon as possible on their side (and together with their customer).

Regarding misunderstandings between technicians in the JIs, RUO already establishes that "*In case of misunderstanding, delay or non-attendance, the technicians (from MEO and/or OLO) must comply with the following procedures: - Technicians (from MEO and/or the OLO) should immediately contact OTEL by telephone; (...) - If the JI is not carried out for reasons attributable to MEO, after the OLO technician has contacted the OTEL to say that they will leave the agreed location, MEO proposes a new date/time, at least 2 working hours in advance of this new date/time, via API/e-mail, to the OLO, this time being MEO's responsibility*", so there is already an established procedure to address the concerns of the beneficiaries and which ANACOM understands it should not change, as it could result in additional cost for MEO and there are already the incentives arising from the SLAs and their compensation in the event of non-compliance with the repair time limit.

It should also be noted, that ANACOM intends to determine (see **D10** above) that should MEO's technician on the ground not have access to the site to repair the fault (basically due to customer absence or misunderstanding), they must immediately inform the beneficiary of this, waiting (at least 15 minutes) until the situation is solved (with the current procedure being maintained for 15 minutes, without response/resolution).

With regard to the sharing of the contact of MEO's technician, and since that company outsources several services, it may not be possible to guarantee such information with sufficient advance notice. However, the beneficiary can (and should) contact the OTEL by telephone, if necessary (as already provided for in RUO).

Lastly, regarding the recovery of costs related to the JI, RUO already provides (in section 7.4.7 of Annex 12) that "*The prices applicable by MEO in the case of a closed JI that is the responsibility of the OLO correspond to those defined under the fault repair procedure, and duly reflect the additional journeys that MEO has to make. In the case of a JI closed that is MEO's*

responsibility, the OLO will not be able to apply prices higher than those charged by MEO in equivalent services." However, Vodafone is justified in eliminating the "time condition"⁸⁶ so that the beneficiary can be reimbursed for the costs incurred with the dispatch of a support team in a situation where, after all, the repair is attributable to MEO. In fact, there is no sufficient reason for such a condition, especially because the beneficiaries complain that MEO sometimes only reports the (formal) closure of a fault hours after the actual repair, so it should therefore be eliminated. Thus, ANACOM understands that:

D 20. MEO must eliminate the time condition (maximum time of 4 working hours set out in section 7.4.7 of Annex 12) for the recovery of the beneficiary's costs in cases where the JI has been closed by MEO or has been rescheduled due to the non-appearance of MEO's technician.

On the other hand, it is considered that the rule established in RUO that "*in the case of a JI closed that is the responsibility of MEO, the OLO will not be able to apply prices higher than those charged by MEO in equivalent services*", is reasonable and adequate, and no specific value, as proposed by Vodafone, will be defined at this stage.

Again it is emphasized that it is always preferable to use the API, in particular for "*purposes of evidence and allocation of responsibilities*", especially in these cases, where there are doubts from the outset about the responsibility of the fault.

2.4.9 Advance notice of planned interventions given by MEO

Oni says that MEO has no obligations as regards minimum notice for planned interventions on its networks that affect services provided to beneficiaries and that when such interventions are planned there is no reason why such advance notice should not be given. ONI proposes a minimum of one-week's notice.

Interventions by MEO are not usually a matter of urgency as they are scheduled some time in advance, thus it is acknowledged that MEO should inform beneficiaries of such interventions as soon as possible so that the latter can adjust their services accordingly.

However, MEO stressed (in its comment to the DD on the amendments to LLRO and RELLO) that in notifications of cuts programmed by third parties, the timing of the notification is very

⁸⁶ "*the OLO may only invoice the above-mentioned price under a JI if there has been a fault report/JI request, closed no more than 4 working hours before the date/time of receipt of the JI request*" (in the same section 7.4.7 of Annex 12 to RUO)

variable and unpredictable, even in cases where a disconnection scheduled for the night is notified during the preceding day, given the speed with which interventions have to be performed. According to MEO, this requirement is not compatible with a wait of several days since there is an imminent risk of disconnection, and there are also cases where deadlines are imposed for the removal of cables before intervention by third parties (usually works notified at the last minute).

In this context, and recognizing that these cases of notifications of disconnections implemented by third parties do not fit in the interventions programmed by MEO, ANACOM considers that there should be a guidance notification period of 5 working days, with planned/programmed interventions that affect the services provided being communicated by MEO as soon as it is operationally possible, essentially once they have been scheduled (i.e. programmed) by the latter, but obviously taking into account that in some cases there may be factors that prevent MEO from giving the prior notice within this deadline, specific cases that must be duly justified by MEO.

Thus:

D 21. MEO must notify the beneficiaries of RUO about the planned/programmed interventions that will affect the services provided, as soon as possible, namely as soon as they are scheduled by MEO, and advance notice of 5 working days before the date of the intervention is deemed reasonable.

ANACOM acknowledges that to a large extent this is already provided for in (section 7.12 of Annex 12 to) RUO. However, in order to comply with the principle underlying the measure - to ensure that there is always prior notice (5 days) of the work planned by MEO - then MEO must amend the provisions in the above-mentioned section to "whenever possible MEO will give 5 working days advance notice of any work planned. "

2.5 Parameters of Quality of Service (PQS)

2.5.1 Revision of eligibility and supply deadlines

Regarding the deadlines for verifying eligibility, Vodafone considers excessive the difference in response times for checking customer data and eligibility of an active loop (1 working hour) and cases of non-active loops, without material (4 working days) or requiring material (11 working days), which makes it difficult to inform its clients about the feasibility of providing the service

(and the corresponding response time) and explain the situation, and would be far from the times in Spain, Italy and the United Kingdom (1 business day).

On the other hand, Vodafone proposes to reduce the time limits for providing access to the loop, which it feels are too long (up to 18 working days, it says, in the case of non-active loops requiring material).

Therefore, Vodafone proposes the following deadlines:

- i) 1 working day to check the eligibility of loops;⁸⁷
- ii) 5 working days for 95%, and 8 working days for 100% of (active or non-active) loop supplies.⁸⁸

For its part, NOS proposes the following:

- i) within 5 working days for 95% of the supply of active and non-active loops that do not require a budget;
- ii) introduction of a service level for 100% of occurrences, in order to ensure greater predictability in the design of retail offers.

ANACOM acknowledges that, from the outset, there should not be such a substantial difference for the different types of supply (as regards the eligibility and installation deadlines), especially between loops with and without material, particularly because MEO would have no special difficulties in acquiring the material (in the case of supply) and there should be no special differences in the feasibility analysis at the level of its information systems.

But it should be noted that MEO itself has been divesting in its copper network (with impact in particular on the procurement process); in the case of non-active loops it will normally be necessary to transport the technicians to the site; and, finally, these are maximum deadlines, and it is necessary to analyze MEO's actual deadlines in the provision of these services.

It should be noted that the maximum time to check eligibility for non-active loops - currently involving the largest number of new installations (around one thousand per month) - is, in

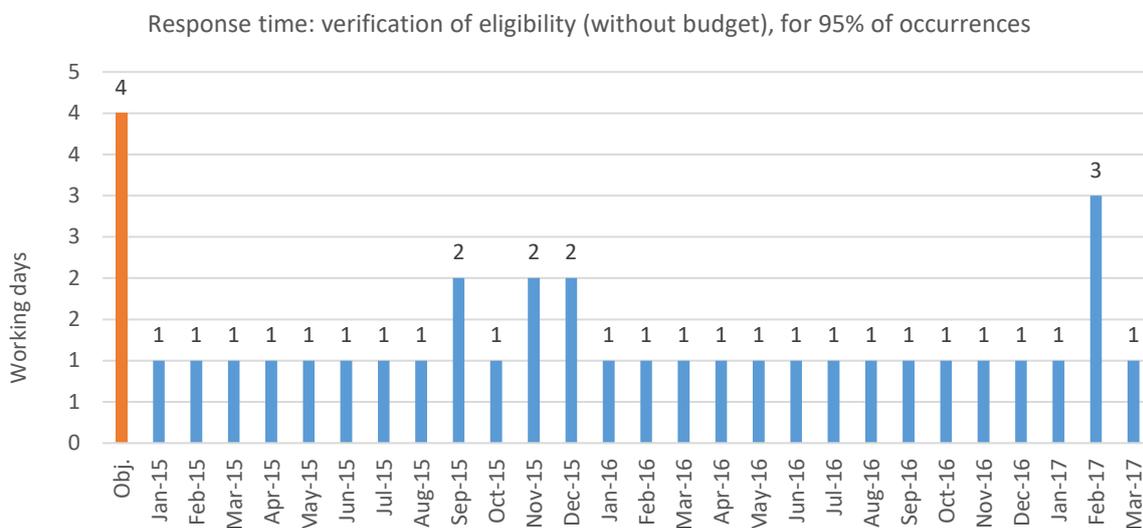
⁸⁷ ANACOM considers this to be Vodafone's proposal, stated in its 2014 letter, and reiterated in 2017.

⁸⁸ As is the case in Italy.

practice, four working days, whether material is needed or not,⁸⁹ since MEO always reports the outcome of the feasibility analysis within this period (or "if the supply of the loop requires budgeting") - see section 4 of Annex 7 to RUO.

The quarterly data on the quality of service indicators reported by MEO show that the actual times (average for 100% of cases, and maximum for 95% of cases) for verification of eligibility of non-active loops have actually been below the maximum deadline established (see the figure below), with a large number of cases on a single working day.

Figure 5 – 'Response time: customer data verification, non-active loop eligibility and scheduling with RUO IS (without budget requirement)', for 95% of occurrences

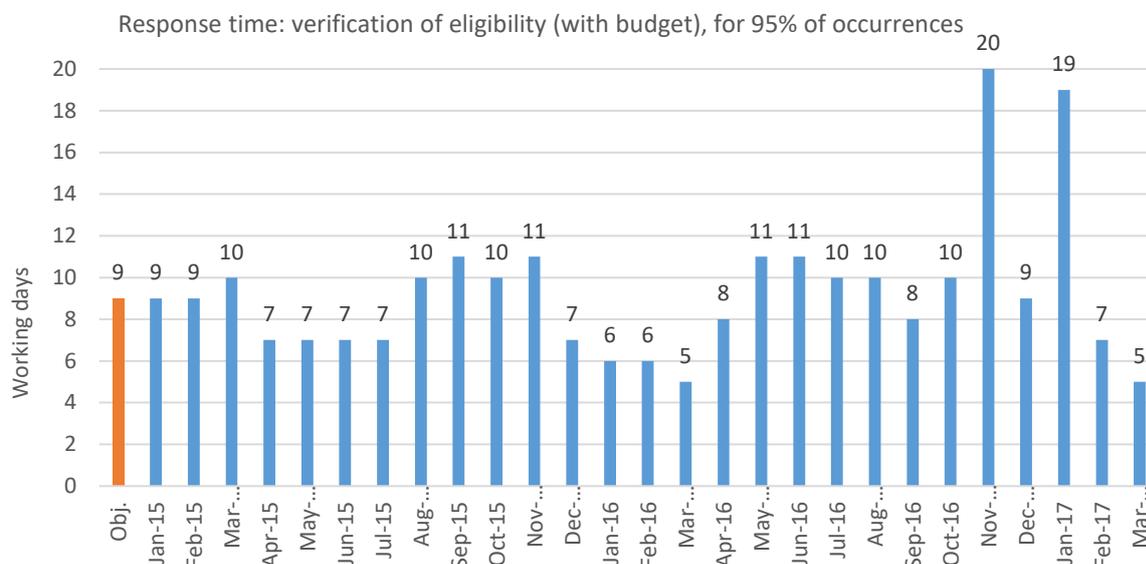


It follows that there may be scope for reducing it, given the significant experience of MEO in these matters and the stability of the response time of MEO in this case, usually only 1 working day.

On the other hand, a significant reduction in the maximum response time in case of budgeting will involve an additional effort on the part of MEO, since this RUO indicator shows that this time limit is still sometimes exceeded (at a monthly level), as can be seen in the following figure, besides the fact that, as mentioned above, some cases may involve the acquisition of material.

⁸⁹ If there is a need for a budget by MEO (and/or request for tests by the beneficiary), there is an extra period for this of 5 working days (and 7 additional working days in the installation if there are tests).

Figure 6 – 'Response time: customer data verification, non-active loop eligibility, budget and scheduling with RUO IS (with budget requirement)', for 95% of occurrences



As for a possible reduction in the supply time for active loops, without portability, data on RUO for the last quarters show that the maximum time limit set is systematically exceeded, normally exceeding (on a monthly basis) 10 working days, and in these cases incurring the payment of compensation to the beneficiaries by MEO. In this respect, it should be noted that the number of active unbundled loops has been consistently less than 2% of total unbundled loops in the latest quarters.⁹⁰ In this context, ANACOM considers that it should not alter the supply times specified in RUO for active loops.

Regarding the supply times for non-active loops, and in light of the reported data, there should be some scope for reducing them without any significant costs to MEO, specifically in cases where there is a need for (budgeting and) the installation of material, as can be concluded from the following figures.

⁹⁰ The monthly number of installations of active loops without portability has usually been nil except very occasionally, where it has been only 1.

Figure 7 – 'Supply time of non-active loop without installation of material (without tests)', for 95% of occurrences

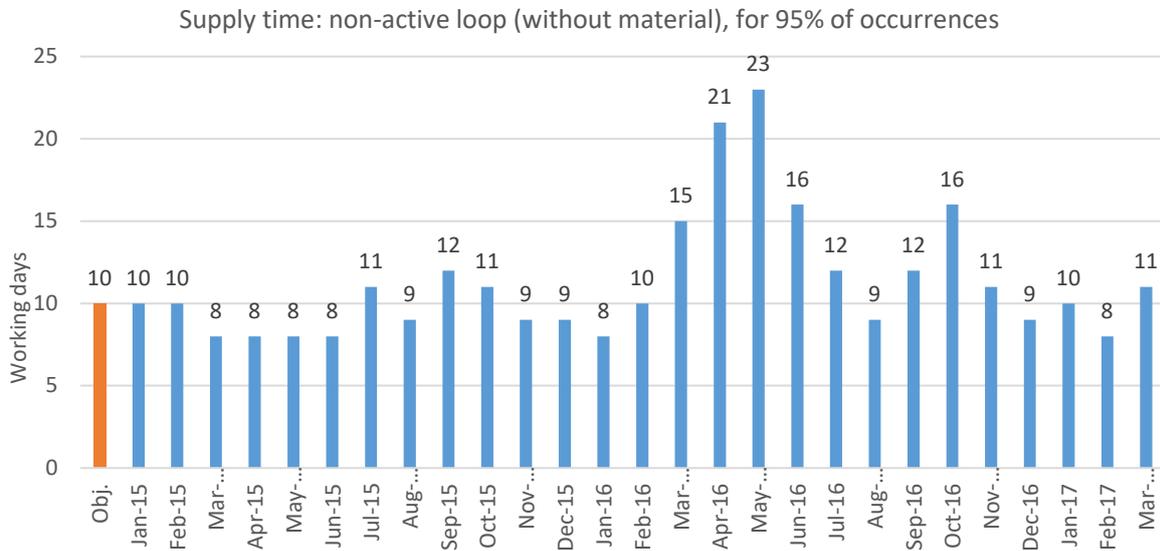
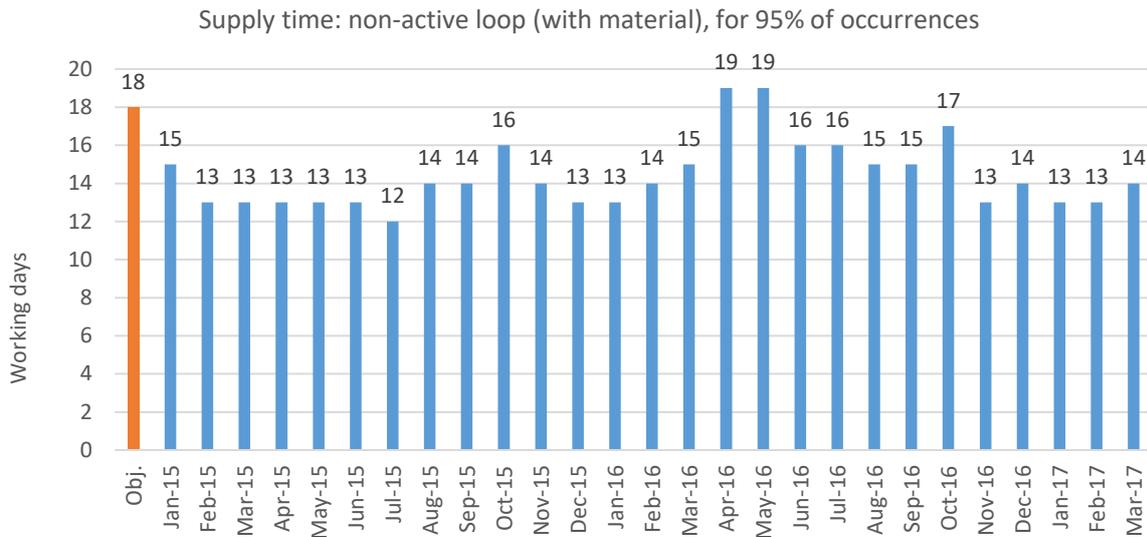


Figure 8 – 'Supply time of non-active loop with installation of material (without tests)', for 95% of occurrences



In fact, the actual supply times for non-active loops with (budget and) material installation have been systematically shorter than the defined ceiling (with the exception of two months in the period covered by the report), but close to that limit.

Accordingly, in view of the above, and acknowledging that, contrary to Vodafone’s proposal, there is justification for maintaining distinct deadlines for situations involving the installation of material, ANACOM understands that MEO should change RUO in relation to the following deadlines for the verification of eligibility and of the supply of non-active loops:

D 22. The ‘Response time: customer data verification, non-active loop eligibility, and scheduling with RUO IS (without need for budget)’ should be reduced to 2 working days.

D 23. The “Supply time of non-active loop with installation of material required (without tests) should be reduced to 15 working days.

This amendment does not impose immediate additional costs on MEO⁹¹ and is an incentive to meet the levels of service associated with the supply of non-active loops, which is still a relatively large volume.

It should be noted that although there are still a considerable number of requests for the installation of loops (in particular non-active ones), the monthly volume has been decreasing, so this reduction of time limits should also have even less impact in the future, given the lower need for resources from MEO to meet the smaller number of new requests.

2.5.2 Counting repair times outside working hours

Vodafone has found that faults it opened after working hours and that were repaired by MEO also during that period (e.g. faults opened on a Friday at 20.00 and repaired on Sunday) are considered to have been performed in 0 (working) hours, which has implications for the overall assessment of service levels (section 5 of Annex 12), thereby distorting average repair times.

This beneficiary proposes that, for the purposes of an overall assessment of the service levels set out in RUO, fault repairs outside working hours should not be counted (i.e. 0 hours of repair time should not be counted).

Given that the average repair times are defined in terms of working hours, in the case of any repairs carried out by MEO outside the working hours period, it is recognized that the counting of these faults for the purposes of quality of service indicators can "artificially" reduce these indicators.

However, the fact that MEO repairs certain malfunctions outside the normal working period (without charging extra) is actually positive, ultimately for the final customer, which, in the

⁹¹ It should be noted that, in the first case, i.e. analysis of the eligibility of non-active loops without the need for a budget and scheduling with the RUO IS, it can be done, and in practice it is, "automatically", with no need for the assignment of further human and material resources.

opinion of ANACOM, offsets any potential loss for the beneficiary in counting the average repair times.

Therefore, ANACOM understands that it should not alter RUO in this matter.

2.5.3 Revision of fault repair deadlines and of levels of occurrence

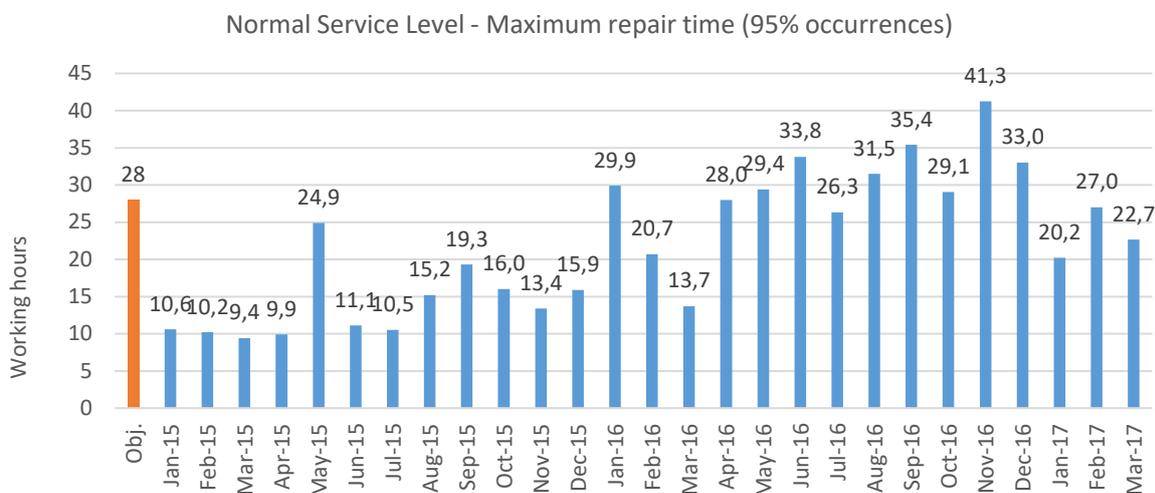
Oni contends that the maximum loop repair times for the three levels of service in RUO, should be set for 100% of the occurrences (instead of 95%), thus ending the application of Premium 1 and Premium 2 repair services (defined for 100% of the contracted amount).

Oni did not base its proposal on the reduction of (and of new) objectives for the fault repair time and the levels of occurrence that it submitted to RUO. In particular, Oni proposes a breakdown of the currently defined target deadlines with the creation of additional occurrence levels, which would bring greater complexity (to the assessment, reporting and analysis) and, in fact, would not lead to the elimination of Premium 1 and Premium 2 repair services, which have different objectives, the latter being counted in linear hours, reflecting the sensitivity associated with certain customers, contrary to the "normal" period, which is counted in working hours.

It should also be noted that a time limit has already been set for 100% of occurrences - IQSL1 – Normal average loop repair time, of 8 working hours - a time limit that ANACOM considers challenging (even though it is an average value), but which has been generally met by MEO, according to statistical data (having been less than 8 working hours in the first three months of 2017, although not in the previous quarter).

Regarding the maximum repair time for 95% of cases (ISQL2), the next figure shows that it would not be appropriate to reduce it without MEO probably incurring additional costs, remembering that the Premium services were created at the time for customers with special service availability requirements.

Figure 9 – Maximum fault repair time in RUO (28 working hours for 95% of occurrences) – Normal service level



In fact, it is an already challenging deadline, which MEO has not been able to meet in several of the last quarters, even in spite of the decrease in the number of loops (and the number of faults).

Therefore, it is not considered appropriate or proportional to impose, as proposed by Oni, a change ("reduction", by means of increasing occurrences to 100%) of the fault repair times.

2.5.4 Availability

Taking into account real data observed for levels of availability, Oni considers the following revision of these quality of service levels to be viable:

Loop availability (RUO)	Current objective	Oni proposal
Normal	99.50%	99.80%
Premium 1	99.90%	99.95%
Premium 2	99.90%	99.95%

The degree of loop availability⁹² measures the percentage of hours in which the loops are available (under operating conditions) relative to the potential number of hours of service of the average amount of loops of a given type, in the reference period, per operator.

Looking at the availability figures for local loops for the various service levels registered in recent quarters (see **Figure 10** and **Figure 11**), we see they have tended to be higher than the targets

⁹² A loop is deemed to be unavailable for the period of time from when MEO receives the report from the beneficiary of a fault attributable to MEO up to its resolution, 'customer pending' deducting periods of time.

- 99.50% for the normal service level and 99.90% for Premium levels, so that an improvement in the objectives defined for those service levels could be justified from the start.

Figure 10 – Service availability in RUO (normal service level)

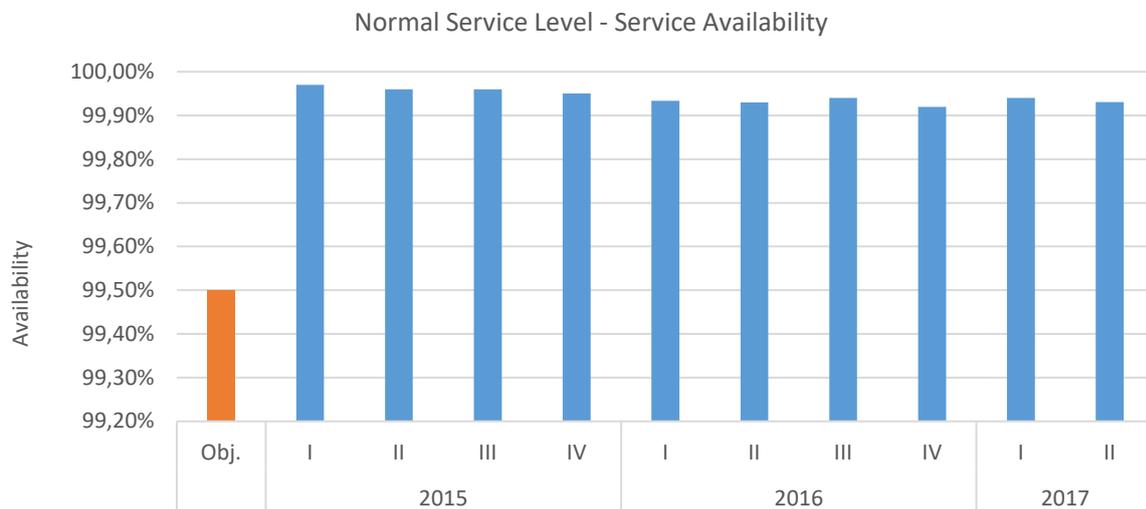
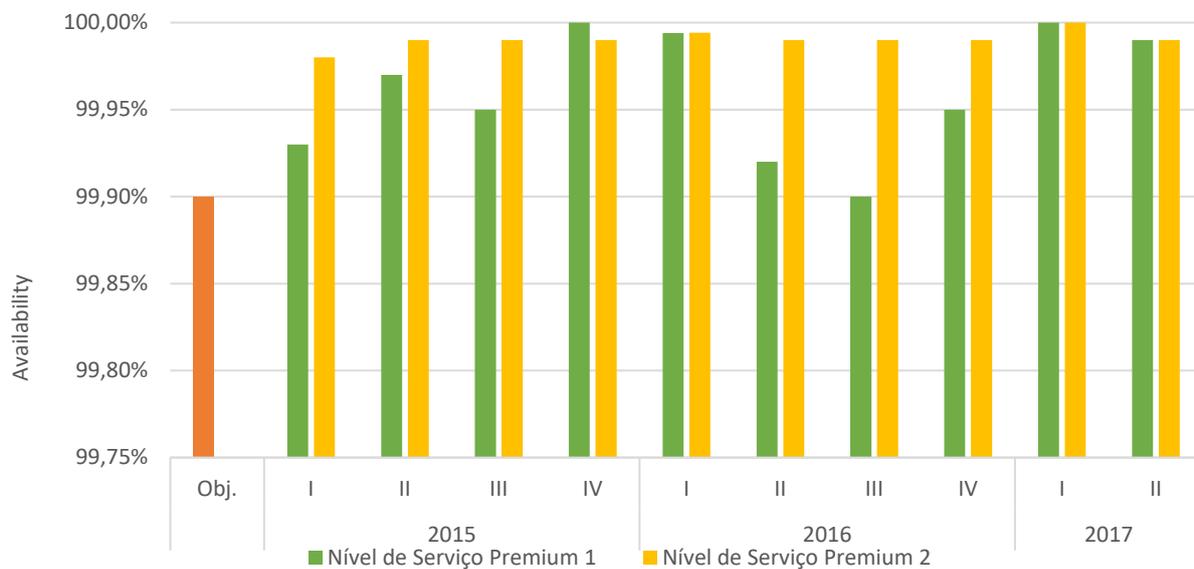


Figure 11 – Service availability in RUO (Premium 1 and Premium 2 service levels)



In fact, analysis of the trend in the levels of availability of loops shown above shows there is room to make them more demanding.

ANACOM thus intends to accept Oni’s proposal, in part,⁹³ hence:

⁹³ Oni’s proposal to revise the levels of availability is much more demanding, which would put the target levels very close to the current effective levels.

D 24. MEO is required to define, for service availability, the objective of 99.80% for the 'Normal Service Level', and the objective of 99.95% for the Premium 1 and Premium 2 service levels.

This amendment does not impose immediate additional costs on MEO at the outset and is an incentive to meet service levels, while the amount of unbundled loops is still significant and, as already mentioned, it is still a relevant service for the beneficiaries, particularly for the provision of (high quality) services to enterprises.

ANACOM stresses that the actual performance of MEO in the operationalization of its copper network and of RUO has been maintained at a very high level in relation to the availability objectives set several years ago, which is particularly welcome, making it possible to improve (align) the target levels in this offer and, it should be noted, at no further cost to MEO (namely by hiring additional resources). This is because, despite the greater challenge, the performance of MEO has nevertheless always been historically higher, i.e. the actual levels of availability of RUO have always far exceeded the (more demanding) target levels now defined.

2.5.5 Compensation for non-compliance with service levels and forecast plan

NOS reiterates its request for a total decoupling of the compensation for non-compliance with service restoration levels from the submission of demand forecasts.

In fact, RUO is the only offer that maintains an indexation (of 25% of the value of the compensation) between compensation for the resolution of faults and the sending of installation forecasts, which NOS does not understand, particularly since the forecasts do not refer to the installed stock, which is stabilized, without even slightly relevant fluctuations that might indicate a periodic review of the resources allocated to the resetting process.

In the opinion of NOS, this decoupling is also an incentive for MEO to meet the defined service levels, reversing a trend that is allegedly happening today and which is demonstrated in the following table.

Table 1 – RUO service levels: restoration of service (2nd quarter 2016)

Quarter 3	Normal SLA		Premium 1		Premium 2	
	Target	Real	Target	Real	Target	Real
Maximum (perc 95)	26 wh	Perc. 90	8 wh	Perc. 25	12 lh	Perc. 67
Average (100%)	8 wh	13.09	4 wh	23.47	6 lh	16

Quarter 4	Normal SLA		Premium 1		Premium 2	
	Target	Real	Target	Real	Target	Real
Maximum (95%)	26 wh	Perc. 92	8 wh	Perc. 80	12 lh	Perc. 59
Average (100%)	8 wh	11.43	4 wh	9.2	6 lh	14.3

Source: NOS.

In fact, according to NOS, in the second half of 2016 there was a non-compliance across the whole range of average service levels, in particular in the case of Premium service levels, which reached values above normal service levels, and systematically more than twice the defined average value. According to NOS, the maximum levels of service, too, (for 95% of occurrences) in those two quarters of 2016 and in all levels of service, also saw the recording of more than 5% of faults above the value set in the offer, with non-compliance being recorded in 75% of the faults in the case of Premium 1 SLAs in the 3rd quarter of 2016.

ANACOM acknowledges that there should be no indexation between the beneficiaries sending the demand plan for (new) installations⁹⁴ and the payment of compensation by MEO for non-compliance with the fault repair targets, which are related to the amount of unbundled loops, not future installations.

Therefore, ANACOM understands that

D 25. MEO is required to amend RUO (specifically Annex 13) to clarify that the beneficiary operator will receive 100% of the compensation amount relating to fault repairs, regardless of the sending of the demand forecast plan for new installations.

⁹⁴ Annex 12 of the offer stipulates that "Until the last day of the first quarter of semester N, the OLO shall provide MEO with a demand forecast plan for the N+1 and N+2 half-years, which will indicate, with priorities, the MEO AP(s) where it expects to request the supply of: - unbundled access to the local loop, identifying the number of local loops in the Full Access and Shared Access modes; (...)"

2.6 Other matters

2.6.1 Geographic information on local exchange coverage area

Oni and Vodafone propose that MEO should provide information on the geographic area covered by each exchange area⁹⁵ to ensure that the beneficiary will have the necessary information to correctly plan the establishment of leased lines, Oni remarking that this information can be provided on the same terms as the amendment provided for in the DD on LLRO and RELLO,⁹⁶ i.e. geo-referenced coverage information.

As for the provision of information by MEO regarding its copper network, ANACOM understands that this is already sufficiently detailed and responds to the real needs of the beneficiaries.

In fact, according to Annex 5 of RUO, "*An OLO with at least one confirmed co-location request can ask MEO, through prior signature of a confidentiality agreement, for access to the following detailed information:*

- i) a complete list of all the attendance points (APs) of MEO's network;*
- ii) information, main AP by main AP, related to the numbering associated with the secondary APs dependent on a particular main AP of MEO's network;*
- iii) number of local loops in use, number of pairs in the distribution frame, number of pairs in operation, number of reserve lines, minimum, maximum and average length of local loops and cable calibres of the most typical configurations of the access network, by attendance point (AP) (1);*
- iv) number of broadband accesses, broken down by technology and by attendance point (AP).*

An OLO with at least one confirmed co-location request can also ask MEO for:

- i) Information on the number of street cabinets, per attendance point (AP) of MEO's network (2);*
- ii) Geo-referenced information on the coverage areas of the attendance points (APs) of MEO's network".*

Thus, the geo-referenced information on the coverage areas of the local exchanges is provided by MEO under RUO, at the request of the beneficiary (with at least one confirmed collocation

⁹⁵ Based on (7 digit) postal codes.

⁹⁶ Approved on 23 March 2017.

request), and therefore it is not necessary to make any changes to the offer in relation to the information provided by MEO.

2.6.2 Loop registration information

Vodafone considers that it is clearly at a disadvantage relative to MEO because it is not given access to the information on the loops register, making it very difficult to solve problems since the information is essential to effectively apply the principle of equivalence and the principle of non-discrimination (intended by the regulator), which would determine the possibility of access to this information on an equal footing.

Likewise, Vodafone also considers it essential that RUO should start to provide timely and reliable information on the loops associated with 'common faults'.

Regarding the provision of information by MEO about its copper network, as mentioned in the preceding section, ANACOM considers that this is already sufficiently detailed and responds to the real needs of the beneficiaries, in a context which envisages the continued reduction in the number of unbundled loops. In addition, Vodafone does not specify what type of information on MEO's loops register would facilitate fault resolution.

Regarding 'common faults', ANACOM has already acknowledged (see section 2.4.6 above) that MEO should better specify the force majeure facts/events in RUO (possibly in the supporting documents) and clearly identify the 'common faults' resulting from this/those reason(s) of force majeure and the loops affected by them.

2.6.3 Allocation of responsibility

Vodafone also alleges that it is systematically confronted with malfunctions which are classified by MEO as being the responsibility of the beneficiary. However, Vodafone establishes later, that the situation has not arisen from the fact that it was actually its responsibility but from the fact that the assignment of responsibility has economic consequences for MEO, which tend to be avoided by means of the above-mentioned mechanism.

In order to prevent this situation, which is detrimental to Vodafone and its customers, this operator considers that the determination of this responsibility (by MEO) should be subject to more stringent criteria for its reasoning so that the currently established procedure does not serve as a means to avoid providing a higher quality service. According to Vodafone, this applies equally to the JI and fault procedures, where MEO allocates the responsibility to the

beneficiaries in an excessive number of situations, *"therefore, in these cases, it is urgent to recast the procedure to avoid misuse of these mechanisms by MEO, similarly to what is established in RUO for situations in which MEO considers that a beneficiary does not demonstrate "acceptable behaviour" at the level of the implementation of the disagreement procedure, by systematically and repeatedly refusing to accept the reasons for closing the fault and JI notification presented by MEO in a substantiated manner."*

As regards the allocation of responsibility for faults, Vodafone seems to claim it is being harmed by an *"abusive use of these mechanisms by MEO"*, resulting in a number of assignments of blame which it considers to be excessive, but does not substantiate these allegations, in particular with respect to the nature and (relative and/or absolute) number of allocations of responsibility that MEO initially attributed to it but where it subsequently turned out that the responsibility ultimately belonged to MEO itself.

However, Vodafone also fails to detail the *"more stringent criteria of reasoning"* for that MEO procedure that it considers was instituted *"as a means to avoid the provision of a better quality service"* in RUO. Therefore, and in the absence of objective elements on this matter, ANACOM's intervention is not justified on this occasion.

2.6.4 Assessment of indicators

Vodafone considers that any possible rounding of the number of occurrences to be considered when assessing compliance with the respective indicator should be carried out in accordance with the international mathematical rules and not in the terms of RUO.⁹⁷

In this respect, it should be taken into account that for indicators with occurrences of less than 100% the best occurrences (e.g. the best 95% occurrences) are considered and if the normal rounding rules were applied, in many cases - in the same example, around 95% - the target would be effectively higher than that determined. This proposal should therefore not be accepted as in many cases it could result in an implicit deterioration in the quality of service objectives imposed in RUO.

⁹⁷ According to RUO *"Where an indicator has an associated performance target for a set of occurrences that is less than 100%, the number of occurrences to be considered for assessing compliance with its objective is given by multiplying the percentage concerned by the volume of occurrences eligible for that purpose, rounded down to the nearest whole number, and the best occurrences are considered (i.e. with lower times). The remaining occurrences will be those considered for the purpose of evaluating the fulfilment of the target defined for 100%".*

2.6.5 Prices

For Oni, the price evolution in the ADSL PT Network offer meant that the price differential for RUO was reduced in such a way as to make the latter uninteresting. Thus, it is Oni's opinion that the monthly value of the loops and the installation value should be revised downwards, warning that there are (business) customers that are satisfied with relatively low speeds and technical characteristics less advanced than those from a business access over fibre, allowed by ADSL and EFM technology, but at a lower price.

Oni and NOS consider that the prices associated with Premium SLAs should be (significantly) reduced, given the experience accumulated in the operationalization of the offer.

When comparing the prices of the unbundling of the loop with the prices of the PT ADSL Network offer, Oni may be comparing only and strictly the access prices which in fact are comparable (in this strict sense): the same installation price (38 euros) and monthly payment of the loop (8.99 euros) vs. in particular the 'Monthly price of local access with ATM bundling, Ethernet' (4.75 euros).

However, at the price of the local access, (only) in the case of the PT ADSL Network, is it necessary to add the price of the bundled access, which in the case of Ethernet bundling for example implies an additional monthly cost of (at least) 39.80 euros per Mbps contracted for this (bundled) access.⁹⁸

Very occasionally there may be services supported in the PT ADSL Network at lower costs for operators (e.g. backup circuits and/or with reduced service levels), but this is certainly not the case for the accesses that Oni wants to use for the service support to (demanding) business customers.

As mentioned in the analysis of markets 3a and 3b, on the one hand, there is a need to ensure predictability and efficiency in wholesale prices, and on the other, appropriate incentives must be ensured so that the investment by the dominant operator and the alternative operators is not jeopardized. All this must be achieved and reconciled in a context of defence and promotion of competition in infrastructure, which has already been achieved.

At the same time, ANACOM also stated that it did not expect to make changes in the price in question during the time period relevant to the said market analysis, also considering the

⁹⁸ For a VLAN established up to the regional access point and for traffic with lower priority - this is the lowest value of the offer.

principle of regulatory transparency and predictability and the need to guarantee stability without significant fluctuations in wholesale prices, advocated in the Commission Recommendation on non-discrimination.

Regarding the Premium 1 and Premium 2 fault repair services, being optional and with the standard service levels already being demanding, ANACOM understands that the added service level, with the corresponding costs for MEO, should be (adequately) remunerated.

3. DETERMINATION

Taking into account the analysis conducted and whereas:

- (a) MEO is subject, with regard to the provision of access to the local loop, and resulting from the analysis of Market 3a, among others, to the obligations of:
 - access to and use of specific network resources;
 - transparency in the publication of information, including reference offers;
 - non-discrimination in the offer of access and interconnection;
 - price orientation for costs;
- (b) in the above-mentioned market analysis, ANACOM acknowledged that there were aspects in MEO's regulated wholesale offer (RUO) that should be revised or updated, so as to better adjust them to market interests, with particular focus on procedures relating to loop supply and repair,
- (c) a prior hearing of stakeholders and the general consultation procedure were carried out on a draft decision concerning amendments to RUO, which ran up to 25.9.2017, with the comments received, the respective analysis and grounds for the decision being set out in the "Report of the public consultation and prior hearing on amendments to the Reference Unbundling Offer (RUO)", which is deemed to be an integral part of this decision,

ANACOM's Management Board, under the powers laid down in Article 8(1)(a)(b)(h) of ANACOM's Statutes, approved by Decree-Law 39/2015 of 16 March, in the exercise of the powers laid down in Article 9(1)(a) of those Statutes and in the pursuit of regulatory objectives and principles, in particular the provisions of Article 5(1)(a)(6) of the ECL, under Article 68(3) of

ECL, and in order to implement measures determined further to analysis of the market of wholesale access at a fixed location, hereby determines as follows:

MEO is required to amend RUO within 30 days from notification of ANACOM's final decision, taking the following into account:

D 1. MEO may amend RUO, in order to simplify it and make it more efficient, by eliminating:

D 1.1 The 'modalities of local Sub-loop and Shared Access' (and all the components related to this service, including the physical co-location indoors), the 'Signal Transport service for radio link by Hertzian beam' (FH), and the 'radio-relay FH antenna co-location service' (cables and modules).

D 1.2 The procedure 'request for reanalysis via IVR' in the fault repair procedure.

D 1.3 The sending of a list with detailed information about the constraints on co-location, and in the event of orders for new services for an AP where there are constraints, MEO shall continue to present to the beneficiary the budget, the expected date for its resolution, and any additional information, in accordance with the current provision in point 5 of Annex 6 to RUO.

D 1.4 The indicators concerning manual requests in the local loop unbundling procedure (with information "without RUO IS" in the reports), as well as indicators with no requests from beneficiaries.⁹⁹

D 2. As for the 'Information Access Service', MEO should guarantee that the beneficiaries continue to have access to all the information required to be able to continue to make informed decisions on the use (or not) of RUO, notably on the coverage of (and numbering related to) exchanges areas.

D 3. In the 'relocation of loops' procedure, MEO should apply the prior notice deadlines already provided and defined by ANACOM. If the relocation occurs for reasons not attributable to MEO and the prior notice is not compatible with the defined deadlines, MEO should immediately notify the beneficiaries affected by this relocation, sending

⁹⁹ Specifically: i) to delete, from the various sheets, the reference to Grupo PT Portugal; ii) to delete, from the sheet 'Number of accesses', the unbundling by type of access (Full access – broadband', 'Full access – narrowband' and 'Shared access') keeping the unbundling by AP and by beneficiary operator; iii) to delete, from the sheet "Active Loops", several indicators (some with reference "without RUO IS" and others with no requests); iv) to delete, from the sheet 'Non-active Loops", several indicators (with reference "without RUO IS"); and v) to delete, from the sheet "Co-location", several indicators, without requests.

them a solution scheduled in due time, in accordance with this shortest notification deadline.

- D 4. MEO may not reject an address of a location/NTP indicated by the beneficiary, when the beneficiary associates with that request – notably via e-mail if it is not possible to include this information in the current IS/API – the corresponding geographical coordinates (excluding the cases of incorrect or non-identification of the apartment/floor in the request) and complies with the rules for completing the specific structured fields for recording the address components in the API.
- D 5. Should the MEO technician on the ground not have access to the premises to conclude the supply (due to customer absence, mismatch, or failing to find the address), they should contact and inform the beneficiary of that fact immediately, and wait for a maximum of 15 minutes, until the beneficiary reports whether or not the situation has been solved. This procedure should be provided for in Annex 7 to RUO.
- D 6. MEO must make telephone communication as soon as it concludes the unbundling of a non-active loop (within 1 hour). This procedure should be provided for in Annex 7 (section 4) to RUO.
- D 7. In the communication of completion of the process of installation of a non-active loop MEO should inform the beneficiary about the final and correct identification of the DP and terminal (if there was any change to the information initially provided).
- D 8. The installation deadline continues to run until the correct information is transmitted by MEO to the beneficiary.
- D 9. MEO should amend Annex 7 to RUO so that the beneficiary can inform MEO within no more than 3 working days of any incorrect unbundling of a non-active loop, and MEO must complete that unbundling within the maximum time limits defined for the Premium 1 level, while the respective penalty should be applied in the event of non-compliance.

The time elapsed between the beneficiary's reporting of the incorrect unbundling and MEO's notification of the resolution of that situation should be added to the time of installation of the relevant non-active loop.

- D 10. MEO should amend RUO so that if it wants to introduce improvements or rectify an aspect of the API, it should notify the beneficiaries as soon as possible, at least 1 month

in advance. In the case of substantial modifications, particularly regarding changes that require beneficiaries to change their IS in order to maintain access to RUO, that prior notice should be at least 3 months. The notification should contain the necessary details (including possible alternative procedures up to the date of implementation of the modifications) to prevent disturbance to the functioning of the services in the scope of the offer.

- D 11. MEO may introduce a sum of 3.5 euros, applicable to each fault notification/JI request not placed through RUO's fault resetting API and to 95% of the events reported by the beneficiary, excluding notifications launched manually for reasons attributable to MEO (e.g. occasional problems/instability on the API).
- D 12. MEO should send (every month) a file with the fault occurrences launched manually, with the necessary details, and should include these faults for the purpose of SLA and possible compensation for non-compliance.
- D 13. MEO is required to pay the beneficiary the "improper fault price" and refund any amount charged on grounds of intervention for incorrect fault reporting, where the company informs that the fault is incorrect and it is later established that the fault exists and is in fact MEO's responsibility.
- D 14. MEO must not charge the amount for 'improper fault' where the fault repair is begun, or the result thereof is reported to the beneficiary, after expiry of the established repair deadline.
- D 15. MEO is required to inform the beneficiary, as early as possible (at least 1 hour), about the dispatch of a technician to the location to repair a fault.
- D 16. If MEO's technician on site has no access to the facilities to repair the fault (notably due to the customer's absence), they should immediately contact and inform the beneficiary of this fact, and wait up to 15 minutes until the beneficiary reports if the situation has been solved. This should be provided for in Annex 7 to RUO.
- D 17. MEO should better specify and detail the force majeure facts/events in RUO (notably through evidence to be sent to the beneficiaries) and to identify, wherever possible, the unbundled loops affected by 'common faults' arising from such force majeure cause(s).

- D 18. MEO should send the evidence for the faults classified as force majeure as soon as it obtains it, before the date of evaluation of the quality of service indicators and their compensation.
- D 19. MEO cannot refuse a request for the reanalysis/redistribution of a fault repair/JI scheduling (solely) on the grounds that the formal fault closure was not performed in its systems.
- D 26. MEO must eliminate the time condition (maximum time of 4 working hours set out in section 7.4.7 of Annex 12) for the recovery of the beneficiary's costs in cases where the JI has been closed by MEO or has been rescheduled due to the non-appearance of MEO's technician.
- D 27. MEO must notify the beneficiaries of RUO about the planned/programmed interventions that will affect the services provided, as soon as possible, namely as soon as they are scheduled by MEO, and advance notice of 5 working days before the date of the intervention is deemed reasonable.
- D 28. The 'Response time: customer data verification, non-active loop eligibility, and scheduling with RUO IS (without need for budget)' should be reduced to 2 working days.
- D 29. The "Supply time of non-active loop with installation of material required (without tests) should be reduced to 15 working days.
- D 30. MEO is required to define, for service availability, the objective of 99.80% for the 'Normal Service Level', and the objective of 99.95% for the Premium 1 and Premium 2 service levels.
- D 31. MEO is required to amend RUO (specifically Annex 13) to clarify that the beneficiary operator will receive 100% of the compensation amount relating to fault repairs, regardless of the sending of the demand forecast plan for new installations.