

# DESI Report 2018

## Telecoms chapter

### PORTUGAL

#### Market developments

##### 1. Competitive environment

There are four major operators in the telecoms markets in Portugal: MEO (incumbent), Grupo NOS, Vodafone and Grupo Apax (ONI and Nowo). In total, there are 50 active operators in Portugal.

At the end of 2017, about nine out of ten households in Portugal subscribed to a bundle. "Five-play" offers (which include fixed broadband, fixed telephone service, Pay-TV, mobile telephone service and mobile broadband) became the most popular bundle, reaching 42% of subscribers followed by the "Triple-play" offers (fixed broadband, fixed telephone service, Pay TV), reaching 40.9% of subscribers. Convergent bundles (with fixed and mobile services) accounted for 47% of the total, reaching 1.76 million subscribers (10% more than the previous year). Bundles penetration reached 98.5% of fixed broadband subscribers, 93.7% of TV subscribers and 91.5% of fixed telephony. The penetration of bundles in mobile telephone service subscribers was 42.2%.

Regarding broadband roll-out, following *Autoridade Nacional de Comunicações'* (ANACOM) decision not to regulate access to MEO's fiber network, in September 2017, Vodafone and NOS signed a reciprocal agreement covering 2.6 million households in continental Portugal. Offers based on this agreement are expected to be launched in the beginning of 2018. Moreover, following the approval by the Competition Authority of the Optimus/ZON merger, on September 2013, Vodafone was granted the option to purchase the FTTH network that it shared with Optimus. The definitive purchase and sale agreement was signed on 31 January 2017.

##### a. Fixed Markets

Coverage	PT-2016	PT-2017	EU-2017
Fixed broadband coverage (total)	100%	100%	97%
Fixed broadband coverage (rural)	98%	98%	92%
Fixed NGA coverage (total)	95%	95%	80%
Fixed NGA coverage (rural)	74%	78%	47%
Ultrafast coverage (total)	no data	95%	58%
4G coverage (average of operators)	93%	94%	91%

Source: *Broadband Coverage Study (IHS and Point Topic)*. Data as of October 2016 and October 2017.

In Portugal, broadband is available to all homes. Moreover, 95% of households have access to networks capable of providing at least 30Mbps (well above the EU average of 80%) and since they are covered either by DOCSIS 3.0 or FTTH (ultrafast networks) those households have access to speeds beyond 100 Mbps.

Fixed broadband market shares	PT-2016	PT-2017	EU-2017
Incumbent market share in fixed broadband	42.3%	39.7%	40.3%
Technology market shares			
DSL	30.7%	23.9%	64.2%

Cable	33.2%	33.0%	19.4%
FTTH/B	29.0%	35.4%	12.9%
Other	7.2%	7.7%	3.6%

Source: Communications Committee. Data as of July 2016 and July 2017.

In fixed broadband, market shares of the incumbent (MEO) have decreased over time, falling below 40% in 2017 (slightly below the EU average). In 2017, MEO decreased its market share by more than 2 p.p. to the advantage of alternative operators, especially Vodafone (with an increase of 1.8 p.p. compared with the third quarter of 2016).

A similar trend is discernible in the fixed telephony market: MEO's market share is decreasing while alternative operators' market shares are increasing. At the end of 2017, MEO's market share was 44.8%, a decrease of 1.7 p.p. compared with the end of 2016. NOS was the second largest provider with a share of 35.2% (an increase of 0.5 p.p. compared with the end of 2016) and Vodafone reached a share of 15.9% (an increase of 1.4 p.p. compared with the end of 2016).

New entrants' DSL subscriptions by type of access (VDSL excluded)	PT-2016	PT-2017	EU-2017
Own network	0%	0%	0.5%
Full LLU	85.0%	85.0%	72.8%
Shared Access	-	-	4.1%
Bitstream	14.9%	14.9%	14.7%
Resale	0.0%	0.0%	7.8%

Source: Communications Committee. Data as of July 2016 and July 2017.

Broadband take up, both in fixed and mobile, improved in 2017 but still remains a challenge. Fixed broadband take-up has increased 4 p.p. (68% in 2016 to 72% in 2017), narrowing the gap with the EU average (75%). The improvement of Mobile broadband take-up was very substantial and reached 10 p.p. (55% in 2016 to 65% in 2017), but still remains far behind the EU average (90%).

Fixed broadband prices	PT-2016	PT-2017	EU-2017
Fixed broadband price index [values between 0-100]	70	67	87

Source: Commission Services based on Fixed Broadband Prices in Europe (Empirica). Digital Economy and Society Index 2018.

While Portugal's performance in the Broadband Price Index worsened during the reporting period, it should be noted that convergent bundling (i.e. including fixed and mobile internet and voice services) is the most representative method used by operators to sell electronic communications services in the country, which makes the assessment more complex<sup>1</sup>. As explained above, the context is a convergent market dominated by bundles and characterized by increasing internet access speeds. The fixed broadband price index takes also into account price purchase parity and income per capita.

## b. Mobile market

Mobile market	PT-2016	PT-2017	EU-2017
Market share of market leader	45%	46%	35%
Market share of second largest operator	29%	28%	28%

<sup>1</sup> Convergent bundles including fixed broadband, fixed telephone service, Pay-TV, mobile telephone service and mobile broadband (known as 5 play), became the most popular bundle in the Portuguese market in Q3-2017.

Number of MNOs	3	3	-
Number of MVNOs	5	5	-
Market share of MVNO (SIM cards)	2%	2%	-

Source: Communications Committee. Data as of October 2016 and October 2017

There are currently eight entities providing mobile services in Portugal. In addition to the three network operators –MEO, Vodafone and NOS- there are four MVNOs in operation (CTTT-Phone-ix, Lycamobile, Vectone and Grupo APAX) under agreement negotiated between the parties involved. The share of MVNO subscribers increased 0.3 p.p. in the third quarter of 2017 compare to the third quarter of 2016. The MVNO subscribers share had been reduced until March 2016 (to 0.2%) when Grupo APAX entered the market.

Mobile broadband prices [EUR/PPP]	PT-2016	PT-2017	EU-2017
Least expensive offer for handset (1 GB + 300 calls basket)	€2	€0	€4
Least expensive offer for tablet and laptop (5 GB basket)	€5	€9	€7

Source: Mobile Broadband Price Study (Van Dijk and Empirica). Prices expressed in EUR/PPP, VAT included. Data as of February 2016 and February (handset) 2017 - July (tablet-laptop) 2017.

Stand-alone mobile broadband prices, for handset offers have substantially decreased in the past year, however continue to be above the EU average. The price for tablets and laptops has also decreased in 2017 although it remains above the EU average.

## Regulatory developments

### 2. Supporting measures for deployment and investment in high-speed networks

#### a. Spectrum

In Portugal 68.72% of the spectrum harmonised at EU level for wireless broadband is assigned. This percentage is mainly due to the fact that the 700 MHz band, the 1.5 GHz band and some remaining spectrum in the 3.6-3.8 GHz bands have not been assigned yet. Currently, ANACOM is planning to submit a public consultation regarding the broadband use including, among others, in the band 700 MHz<sup>2</sup>. Concerning the latter ANACOM reports that the situation in Portugal will be rather complex, as the current single frequency network for digital terrestrial television in channel 56 (with more than 250 transmitters) needs to migrate into a multi frequency network with a minimal consumer impact. The Government, based on ANACOM's proposals, will define the model. Nevertheless, Portugal still envisages that the migration can be deployed until 2020 in accordance with Decision (EU) 2017/899<sup>3</sup>.

No spectrum licences (rights of use of frequencies) were granted in 2017. The last spectrum award took place in 2012. Portugal foresees that the national priority for 5G spectrum will be in the 700 MHz, 3.4-3.8 GHz and 26 GHz bands. Notwithstanding the above, during 2017 an update of spectrum fees concerning mobile networks was enacted. This value reflects the opportunity cost taken per MHz (currently 90 800 €/MHz), according to Portuguese Regulation no. 144/2015, of 25 March.

<sup>2</sup> On March 2018, ANACOM has launched a public consultation regarding the band 700 MHz. <https://www.anacom.pt/render.jsp?contentId=1430582>

<sup>3</sup> Decision (EU) 2017/899 of the European Parliament and of the Council of 17 May 2017 on the use of the 470-790 MHz frequency band in the Union (OJ L 138, 25.5.2017, p. 131–137)

Licensed shared access (LSA) trials have been launched to study the possibility of its implementation in the band 2300-2400 MHz ("2.3 GHz band"), which at present accommodates Services Ancillary to Programme making / Services Ancillary to Broadcasting (SAP/SAB) applications in Portugal. Spectrum trading is occurring only in a few cases such as in the sound broadcasting as well as in Private Mobile Radio sectors.

Portugal has reported that the coordination process with Spain concerning the 700 MHz band has been already concluded, while with Morocco it is progressing.

### **b. National and EU investment in broadband**

Following the approval by the European Commission in 2011, the Portuguese Government launched five public tenders for the deployment and operation of Next Generation Broadband networks in five rural areas not served by NGA network. Three of them (Center, Madeira and Azores) were awarded to Viatel - Tecnologias de Comunicação, S.A (Fibroglobal–Comunicações Eletrónicas, S.A. was the company set up by Viatel for this purpose) and the remaining two (North and Alentejo/Algarve) to DS Telecom Alentejo & Algarve, S.A. and DS Telecom Norte, SA.

EC State Aid Decision N252/2010 approving the measure foresees that third party operators would have wholesale access to the subsidised broadband networks (including both passive and active infrastructure elements) in a non-discriminatory way during the entire duration of the contract, i.e. for minimum 20 years.

In October 2017, ANACOM proposed to the Portuguese Government a reduction (between 24% and 55% according to the type of access) of the wholesale prices applied by Fibroglobal and the Portuguese Government instructed ANACOM to conduct the process and consult the interested parties. ANACOM also communicated additional information collected regarding contractual relations between Fibroglobal – Comunicações Eletrónicas, S.A. and MEO to the National Competition Authority.

### **c. Implementation of the Broadband Cost Reduction Directive**

Portugal fully transposed the Directive 2014/61/EU<sup>4</sup> (Broadband Cost Reduction Directive or BB CRD) in July 2017 with the publication of Decree-Law no 92/2017, of 31 July, that amends and republishes Decree-Law no 123/2009, of 21 of May. It has to be noted that since 2009 Portugal has a legal framework ruling *inter alia* on the deployment, access and use of civil infrastructure suitable to the deployment of electronic communications networks. The transposition process allowed Portugal to clarify and complete some of the obligations arising from the regime already in force and to strengthen the associated sanctioning regime.

With the new framework, ANACOM's powers of intervention have been expanded. That is the case, among others, with the dispute resolution power or with the power to define the methodology for the remuneration payable by electronic communications companies for the access and use of suitable infrastructures.

Following the entering into force of the new framework, and in order to define the methodology to be used for the establishment of the value of the remuneration payable by

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<sup>4</sup> Directive 2014/61/EU, of the European Parliament of the Council of 15 May 2014, on measures to reduce the cost of deploying high-speed electronic communications networks (OJ L 155, 23.5.2014, p. 1–14)

electronic communications companies in exchange for access to and use of the suitable infrastructures, ANACOM started a round of contact/meetings with ERSE (the Portuguese Regulator for the Energy Sector) and also with DGEG (Portuguese Directorate General for Energy and Geology) in cases related to infrastructures of the sectors of electricity, natural gas and transport of crude oil and petroleum product. Thus, it is still in process and new developments are expected during 2018. In the case of infrastructures held or managed by local authorities, the methodology to be used for the establishment of the value or remuneration in exchange for the access to and use of suitable infrastructures is within the competence of the corresponding bodies. As for cooperation with local authorities, this is an ongoing process. ANACOM has been developing contacts with inter-municipal communities in order to make them aware of the new framework and involving municipalities on its implementation.

The Decree-Law no 92/2017 foresees the possibility of a "broadband-ready" label.

Regarding the mapping of infrastructure, there are a number of changes related with the transposition of the Cost Reduction Directive due mainly to the inclusion of the antennas installations and the building entrances, the towers will also now be included. These changes have an impact on the decision of ANACOM related with the format and specification of the data structures used in SIIA (Information system of suitable infrastructures, prior SIC – Centralized Information System) that determine its review.

The legal framework for access to passive infrastructure is defined by two sets of laws. In the context of market analysis procedures, ANACOM has imposed on the SMP operator the obligation of publishing a Reference Duct Access Offer and a Reference Posts Access Offer (asymmetric regulation). Decree-Law no 123/2009, includes a set of provisions aimed to ensure an open access to present and future infrastructures that, on account of their particular features, are suitable for the accommodation of electronic communications networks. Note that these sets of rules are also applicable to public bodies which are submitted to a framework of symmetrical regulation.

Following the transposition of the BB CRD in 2017, Portugal has pursued the operation of the single contact point. As stated above, the main issues are related to the characterization of the mapping objects related to antenna installations and to building entrances.

### **3. Regulatory function**

Seven markets in Portugal are currently regulated: the five markets susceptible to *ex ante* regulation according to the Commission Recommendation on relevant markets of 2014<sup>5</sup>, the market for call origination on fixed network for the provision of retail telephony services (market 2 of the Recommendation on relevant markets of 2007<sup>6</sup>) as market for call origination on the public telephone network at a fixed location for the provision of special services

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<sup>5</sup> Commission Recommendation of 9 October 2014, on relevant product and service markets within the electronic communications sector susceptible to *ex ante* regulation in accordance with Directive 2002/21/EC of the European Parliament and of the Council on a common regulatory framework for electronic communications networks and services (*OJ L 295, 11.10.2014, p. 79–84*).

<sup>6</sup> Commission Recommendation of 17 December 2007, on relevant product and service markets within the electronic communications sector susceptible to *ex ante* regulation in accordance with Directive 2002/21/EC of the European Parliament and of the Council on a common regulatory framework for electronic communications networks and services (*OJ L 344, 28.12.2007, p. 65–69*).

supported in non-geographic numbers (market 2 of the Recommendation on relevant markets for 2007) was deregulated in 2017 and the market for trunk segments of leased lines (market 14 of the Recommendation on relevant markets of 2003<sup>7</sup>).

Regarding the market for wholesale call termination on individual public telephone networks provided at a fixed location (market 1/2014), ANACOM imposed specifications to IP interconnection = that impact all operators, including changes to the reference interconnection offer of MEO, based on a proposal submitted by MEO<sup>8</sup>. The Commission did not comment.

Regarding the wholesale voice call termination on individual mobile networks (market 2/2014), in July 2017, the maximum mobile termination rate (MTR) was set at 0.75 EUR/cents per minute<sup>9</sup>. Since 2015, MTRs in Portugal have decreased more than 40%<sup>10</sup>.

In 2016<sup>11</sup>, ANACOM reviewed the fixed termination markets and set a new maximum fixed termination rate (FTR) based on an updated version of the pure BU-LRIC cost model. Maximum FTRs were set at 0.0644 EUR/cents per minute from early 2017<sup>12</sup>. It was also decided to set new maximum rates from October 2017 corresponding to the values given by the cost model for those years, adjusted by the inflation value. Currently the new maximum rate that is in place is 0.0635 EUR/cents per minute.

Regarding the market for wholesale market for origination at a fixed location (market 2/2007), part of this market is still subject to *ex-ante* regulation in Portugal. In October 2017, ANACOM notified to the European Commission a draft measure defining two product markets: (i) wholesale call origination market on the public telephone network provided at a fixed location to allow the provision of telephony services (calls to geographical numbers) and (ii) wholesale call origination market on the public telephone network provided at a fixed location to allow the provision of special services (calls to non-geographical numbers). ANACOM proposed to continue regulating the first market, maintaining MEO as the SMP operator (with the obligations to provide a WLRO and CS/CPS) whilst deregulating the second one. Following the European Commission's serious doubts as to the compatibility of the proposed SMP designation with EU law, in November 2017, ANACOM decided to withdraw the notified draft measure regarding the first product market. As per the second product market, the Commission agreed with the deregulation of this market which took place in December 2017.

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<sup>7</sup> Commission Recommendation of 11 February 2003 on relevant product and service markets within the electronic communications sector susceptible to ex ante regulation in accordance with Directive 2002/21/EC of the European Parliament and of the Council on a common regulatory framework for electronic communication networks and services (*OJ L 114, 8.5.2003, p. 45–49*).

<sup>8</sup> MEO's proposal was submitted following a specific request by the regulator to submit a proposal for an IP interconnection architecture within 4 months following the publication of the final measure. Such obligation was imposed in the context of the full market review in 2016 as part of the access obligation.

<sup>9</sup> Please note that the last market review for mobile termination markets was completed in August 2015.

<sup>10</sup> By decision of 18 January 2018, ANACOM has approved draft decision on the wholesale market for voice call termination on individual mobile networks (market 2 of Commission Recommendation of 9 October 2014 on relevant product and service markets within the electronic communications sector susceptible to ex ante regulation in accordance with Directive 2002/21/EC of the European Parliament and of the Council on a common regulatory framework for electronic communications networks and services, *OJ L 295, 11.10.2014, p. 79–84*) in which the new proposed maximum rate further decreases.

<sup>11</sup> Case PT/2016/1932, C(2016) 7887.

<sup>12</sup> Such rate applies for termination at the local and the single transit (regional) levels. As to the rate applicable at the double transit (national) level, ANACOM proposes to leave it to commercial negotiations..

In March 2017, ANACOM approved the final decision on the market for wholesale local access provided at a fixed location (market 3a/2014) and the market for wholesale central access at a fixed location for mass-market products (market 3b). ANACOM did not follow the European Commission's Recommendation of November 2016<sup>13</sup> to impose access obligations in relation to the optical fibre network of MEO, either in the non-competitive areas in general or in the predominantly rural parishes of those non-competitive areas. In the market 3a review, ANACOM concluded that, notwithstanding the market developments in terms of NGA, it remains essential to maintain the obligation of unbundled access to the copper loop, comprised in the Reference Unbundling Offer (ORALL) of MEO, the SMP operator. On 16 November 2017, ANACOM approved the draft final decision notified to the European Commission, concerning changes to the Reference Unbundling Offer.

The take-up of copper local-loop unbundling (LLU) is steadily decreasing. In the third quarter of 2017 the volume of unbundled loops comprised around 1.9% of total broadband accesses. Take-up of copper bitstream is also steadily decreasing. In the third quarter of 2017 those accesses were around 0.32% of total broadband accesses.

Regarding the market for wholesale high-quality access provided at a fixed location (market 4/2014)<sup>14</sup>, ANACOM approved amendments to the Leased Lines Reference Offer (ORCA) and the Reference Ethernet Leased Lines Offer (ORCE)<sup>15</sup>.

According to the Multi-Annual Activities Plan of ANACOM for the period 2018-2020, it is foreseen to begin a new analysis of markets 1, 2, 3a, 3b and 4 of the 2014 Recommendation in the beginning of 2018. Regarding the market for wholesale trunk segments (market 14/2003), in 2016 the Commission invited ANACOM to closely monitor the developments of competition in this market taking into account the relevance of new fibre networks and the take-up of passive infrastructure access products such as ducts. ANACOM will monitor the CAM circuits (connecting the mainland and the Atlantic islands of Azores and Madeira) and inter-island circuits' (circuits connecting the islands of Azores), both without distinction of speed, with the purpose of maintaining cost-oriented prices, following a yearly price analysis imposed in the context of the market analysis.

There is no data for take-up of high quality services (typically non-standard products), but the demand for traditional leased lines is steadily decreasing – in the third quarter of 2017 there were less than 2 000 leased lines – and the demand for high quality Ethernet services is slowly increasing – in the third quarter of 2017 there were around 1 000 Ethernet leased lines.

#### **4. Consumer matters**

In 2017, ANACOM received 58 000 consumer complaints related to electronic communications were filed in the Portuguese Complaints Book, physically available in all electronic communications service providers' stores and also electronically, through a government's website. The start of operation of the Electronic Claims Book, on 1 July 2017, has brought a significant increase in the number of complaints registered by ANACOM. The main subjects of these consumer complaints were service billing, mobile devices and the termination of contracts. Regarding the complaints directly submitted to ANACOM (14 000),

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<sup>13</sup> Case PT/2016/1888-1889, C(2016) 7674.

<sup>14</sup> And also the market for trunk segments of leased lines (market 14/2003)

<sup>15</sup> Case PT/2017/2006, C(2017) 6716.

the main issues complained about were the termination of contracts, lack of or misleading contractual information, service billing and service malfunction<sup>16</sup>.

During the second half of 2017, following an ANACOM recommendation, operators began to integrate in the free ANACOM tariff comparison and simulation tool (named COM.escolha) information on the intra-EEA roaming communications included in each domestic tariff plan<sup>17</sup>.

In 2017 two new tariff comparison tools (free of charge) were launched by private entities. The first tool allows the comparison of “TV Net Voice” bundled tariff plans made available by the four main operators in Portugal<sup>18</sup>. According to ANACOM this tool does not comply with several key principles for comparison tools of the European Commission. The second tool helps users to obtain “the best proposal”. In the Ministry’s view, this new tool may raise data protection and privacy issues.

In February 2017, ANACOM decided to initiate the regulatory procedure to amend the Regulation on pre-contractual and contractual information (Regulation no. 829/2016) which required its temporary suspension as well as a stakeholders’ consultation procedure. The final decision is currently under preparation. The new regulation namely seeks more flexibility regarding the media to be used in providing the Simplified Information Sheet (FIS) in pre-contractual and contractual situations to end-users as well as to adapt the FIS template to the existing offers.

Pursuant to ANACOM’s Decision of 13 July 2017, operators which made contractual changes (mainly price increases) subsequent to the entry into force of Law no. 15/2016 of 17 June and which did not previously and timely notify their customers as to these increases and as to the option of customers to terminate their contracts, were required to advise these customers that they have the right to terminate the contracts without any cost or alternatively obtain restoration of the same conditions as they had prior to the contractual changes taking effect.

#### **a. Roaming**

Following the introduction of Roam Like at Home<sup>19</sup> (RLAH) in June 2017, Portuguese subscribers consumed 1.7 times more voice (calls made) and 4.7 times more data roaming services when travelling in the EU in summer 2017 compared to summer 2016<sup>20</sup>.

Last year, Portuguese national operators reported data that indicate that intra-EU/EEA roaming communications increased substantially, in particular for data roaming communications. In fact, voice calls made, voice calls received, SMS and data roaming communications increased, respectively, 66%, 49%, 98% and 370%, from the third quarter 2016 (where the RLAH+ rules were already in force) until the third quarter 2017 (the first quarter since the RLAH rules applied).

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<sup>16</sup> The reported data are provisional and may be subject to changes.

<sup>17</sup> This tariff comparison and simulation tools are available to the public on ANACOM’s portal consumer webpage, at <https://www.anacom.pt/tarifarios/>.

<sup>18</sup> This comparator named ComparaJá.pt is available at <https://www.comparaja.pt/tv-net-voz>.

<sup>19</sup> Regulation (EU) No 531/2012 of the European Parliament and of the Council of 13 June 2012 on roaming on public mobile communications networks within the Union (OJ L 172, 30.6.2012, p. 10), as amended by Regulation (EU) 2015/2120 and Regulation (EU) 2017/920.

<sup>20</sup> Figures compare Q3/2017 with Q3/2016 retail roaming volumes according to the BEREC International Roaming Benchmark Report, April 2017-September 2017, published on 14 March 2018.



Based on the number of subscribers of the Portuguese national operators that were roaming at least once in the concerned quarter in the EEA, the intra-EEA roaming communications traffic per user also increased substantially in 2017, in particular for data roaming communications.

ANACOM is still evaluating some possible RLAH non-compliance situations by one MVNO and has also concluded that two MVNOs and some MNOs need to improve transparency in their websites. Some of this lack of transparency issues has already been corrected by operators<sup>21</sup>.

The inclusion in the Portuguese regulatory framework of the sanctioning regime applicable to any failure to comply with the provisions of EU Regulation 2015/2120<sup>22</sup> still requires the amendment of the Portuguese Electronic Communications Law.

ANACOM reports that for most tariff plans, a benchmark made by the Body of European Regulators for Electronic Communications (BEREC) of the ratio "revenues/traffic" (average prices) is no longer possible for domestic mobile communications and for roaming intra-EEA communications. A harmonized methodology to be used by all EEA providers shall be defined.

Regarding roaming compliance, since 15 June 2017, ANACOM received 63 complaints mostly related to billing complaints (providers not applying automatically RLAH tariff or users unawareness of the new roaming rules) and less frequently related to the lack of or to wrong information of the fair use policy (FUR), roaming in planes/ships, roaming block.

#### **b. Net neutrality**

With the adoption of the Telecoms Single Market (TSM) Regulation, net neutrality is fully harmonised at EU level with directly applicable rules that do not need to be transposed. As with all Member States, the Commission has been monitoring whether Portugal, which has no law covering this area, adopted the TSM Regulation and complies with the guidelines issued by the Body of European Regulators for Electronic Communications BEREC, or whether it deviates from these guidelines. The authorities report that there is no indication of situations of non-compliance with the provisions of the TSM Regulation, in particular, as under the regime set out in Article 3. Nevertheless, a number of issues are still being examined in more detail, such as zero-rating or equivalent offers<sup>23</sup>. As regards the provisions of Article 4 of the TSM Regulation, some improvements are needed in terms of the transparency of information transmitted to end-users.

ANACOM has the necessary powers to monitor and enforce net neutrality rules. Nevertheless, as indicated above, the amendment of the Electronic Communications Law to

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<sup>21</sup> The application of RLAH rules in the scope of zero-rating and similar offers was subject of an ANACOM draft decision (February 2018) that is currently under public consultation. After approval of the final decision, operators will have 40 days to correct non-compliant ZR or similar offers.

<sup>22</sup> Regulation (EU) 2015/2120 of the European Parliament and of the Council of 25 November 2015 laying down measures concerning open internet access and amending Directive 2002/22/EC on universal service and users' rights relating to electronic communications networks and services and Regulation (EU) No 531/2012 on roaming on public mobile communications networks within the Union (OJ L 310, 26.11.2015, p. 1).

<sup>23</sup> The application of RLAH rules in the scope of zero-rating and similar offers was subject of an ANACOM draft decision (February 2018) that is currently under public consultation. After approval of the final decision, operators will have 40 days to correct non-compliant ZR or similar offers.

include the sanctioning regime applicable to any EU Regulation 2015/2120<sup>24</sup> infringement is still pending.

For the time being ANACOM has not published information or guidelines for ISPs to support the implementation of the transparency measures included in Article 4 of the TSM Regulation. However, as indicated in the Consumer matters section above, ANACOM is preparing the final decision on the amendment of the Regulation on contractual and pre-contractual information (FIS). Nevertheless, following the monitoring in 2017 of the implementation by the internet service provider (ISP) of the transparency measures included in Article 4 and also considering that the operators, after the approval of the mentioned Regulation, will have to implement during 2018 several changes to the contracts and to the pre-contractual information included in their websites, ANACOM is evaluating the possibility of preparing also in 2018 some recommendations or communications to operators in order to support or improve the implementation of the transparency measures included in Article 4.

ANACOM provides a monitoring tool on speed and other quality of Service (QoS) parameters<sup>25</sup>, whose underlying infrastructure is now being upgraded, in view of the possible future announcement of the tool as certified for the purpose of Article 4(4) of the Regulation. ANACOM is currently assessing the compatibility with net neutrality rules of relevant offerings in the Portuguese market<sup>26</sup>.

### **c. 112**

According to the last Communications Committee (COCOM) 112 Implementation Report, calls to the emergency number 112 are answered within five seconds and users with disabilities can use SMS to a long number by the National Guard as an alternative means of access. No more alternative use is provided yet. In Portugal, 112 is the single emergency number, thus no alternative emergency numbers are available. There is a Government initiative in the "Simplex+2017" program regarding the implementation of Advance Mobile Location (AML) for Android handsets. ANACOM is working with the Internal Administration Ministry and operators to implement it next year.

### **d. Universal service**

On 29 April 2016 the Commission had sent a Reasoned Opinion to the Portuguese Authorities concerning the compensation mechanism for universal service. The Commission considered that the mechanism is in breach with the Universal Service Directive, as it obliges operators to compensate retroactively for net cost incurred.

A public consultation on the future of universal service<sup>27</sup> closed in the summer of 2017.

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<sup>24</sup> Regulation (EU) 2015/2120 of the European Parliament and of the Council of 25 November 2015 laying down measures concerning open internet access and amending Directive 2002/22/EC on universal service and users' rights relating to electronic communications networks and services and Regulation (EU) No 531/2012 on roaming on public mobile communications networks within the Union (OJ L 310, 26.11.2015, p. 1).

<sup>25</sup> Please see <https://netmede.pt>

<sup>26</sup> As per ANACOM's draft decision on February 2018 already mentioned in footnotes 23 and 26, ANACOM is currently analysing comments received within the public consultation on zero-rating and equivalent offers, in order to prepare a final decision.

<sup>27</sup> Directive 2002/22/EC of the European Parliament and of the Council of 7 March 2002 on universal service and users' rights relating to electronic communications networks and services (OJ L 108, 24.4.2002, p. 51).

The designation procedure(s) and the need for having a designated universal service provider for some components of the universal service were some of the topics covered in this public consultation. ANACOM is expected to make recommendations to the Government in the first half of 2018 which will decide upon it.

Very low levels of demand for fixed telephony access and very low levels of usage of directory services and payphones may suggest significant changes in the provision of those US. This issue is still under consideration and a final decision in this regard is foreseen to be taken by the Government.

## **5. Conclusion**

The extensive deployment of FTTH places Portugal in a good position to achieve the European broadband coverage objectives for 2020 and 2025. Still, an additional effort is required to reach the last 5% of households without NGA coverage and to increase take-up. Moreover, the number of consumer complaints is very significant. However, ANACOM is looking closely into this issue and there are some regulatory actions foreseen to aim for the reduction of consumer complaints. Broadband take up, both in fixed and mobile, improved in 2017 but still remains a challenge for the Portuguese market. The complex socioeconomic reasons for this situation can be tackled from different policy angles, including improving digital knowledge among citizens. However, competition and pricing issues must not be overlooked, especially in rural areas where fixed infrastructure competition is less feasible.