

Second Public Consultation

Revised draft Recommendation on regulated access to Next
Generation Access networks

Contribution from APRITEL

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1 Disclaimer

PT Comunicações, as an associated member of APRITEL, does not share the views expressed in this document, reason why it has not approved such document.

2 Introduction

1. APRITEL welcomes the opportunity to express its views on the Draft Recommendation on Regulated Access to Next Generation Access Networks which is the object of the present public consultation.
2. APRITEL believes that the main goal of the regulatory approach on NGA should be the creation of a framework that promotes, at the same time, investment and competition, bearing in mind that only these elements will guarantee innovation, service diversity and adequate pricing. Therefore, it is important to find the right balance between regulatory conditions to the access to basic infrastructures (ducts, poles, dark fiber, etc.), underlined by the concept of open networks and ensured by the principles of transparency and equivalence of access, and the conditions to have the necessary return from investing in NGA.
3. Thus, APRITEL considers that the objective of this Recommendation regarding the definition of clear principles on the regulation of NGA in an early phase of their development is a key to achieve the above mentioned goals.

3 General comments

4. Considering that this consultation was preceded by a consultation on a previous Recommendation regarding this subject, APRITEL believes that the present draft should be framed by the conclusions drawn from the previous consultation and clarify the motivations for the changes included in this new proposal.
5. Nevertheless, APRITEL welcomes a set of improvements that were introduced in the new recommendation, namely:
 - a. the enlargement of the scope of the obligations of the dominant operator, identifying obligations regarding FTTH networks, regarding access to terminal segments or unbundled access to fiber loops, and FTTN networks.

- b. the imposition of the obligation on the dominant operators of notification of new wholesale offers with 6 months prior to its release
 - c. the obligation on the dominant operator to inform, at least 5 years in advance, the de-commissioning of points of interconnection.
6. The recommendation should, however take into account that effective competition is still not a reality and any proposal that conduces to lowering non-discrimination obligations could prove to be a significant step back from reaching this goal.
7. In APRITEL's view, the recommendation could have gone further into identifying the mechanisms to ensure competition and non-discrimination in complement to the emphasis that was given to specific co-operative arrangements, namely by:
 - a. Giving more focus to the principle of technological neutrality and equivalence, broadening this principle to any access product where a dominant operator exists.
 - b. Ensuring there is monitoring of access conditions, which may eventually lead to the review of pricing obligations when effective competition is not guaranteed.
8. Regarding co-operative arrangements, the Recommendation should be clearer detailing that these are not limited to less densely populated areas, but are applied to the entire territory.
9. APRITEL also believes that bilateral or multi-operator arrangements should not deter NRAs from properly analyzing the markets and its competitive situation, and consequently from imposing adequate remedies to eliminate discriminatory behavior, since co-operation or a possible duopoly market (as a result of the condition defined by the Commission of having at least 2 operators co-investing) per se are not sufficient to guarantee effective competition, namely at the downstream market level.
10. APRITEL agrees with a regulatory approach that is based on the principles of proportionality and technological neutrality.

11. In order to promote the market players' objectives of moving to the next step of the ladder of investment, the existing obligations imposed on market 4, regarding copper networks, should be maintained and compliance monitoring should be reinforced. Only by enforcing non-discrimination and equivalence principles on the existing regulatory approaches, will conditions for the viability of investment plans towards NGA of players whose offers rely on the unbundling of the local loop be created. This does not invalidate that the existing obligations resulting from the analysis of Markets 4 and 5 may need to be adapted to the new realities that emerge from the network evolution. A simultaneous revision by NRA's should be performed.
12. APRITEL's position on Greenfield network deployment is that NRA's should use symmetric and proportionate regulatory approach.
13. APRITEL considers that more importance should be given to cost orientation as a regulatory tool to ensure access and effective competition. Thus, the guidelines concerning its application should be as clear and detailed as possible, especially in identifying the conditions under which cost orientation should be imposed or alleviated.
14. Margin squeeze tests should be used as a tool for monitoring equivalence of access and non-discrimination. Price squeeze tests must be adapted to the context of each national market and of each product/bundle, but the principles underlying those tests should be harmonized in the EU, as well as the information needed for them to be carried out (and the possible obligation for its disclosure). The adaptation of these tests to each country should fall into the NRAs responsibilities.
15. It should also be taken into account that margin squeeze should come as a complement for definition of pricing rules and not as a substitute to these rules.
16. The Recommendation has the merit of recognizing that the investment in NGA has several risks and that these risks should be reflected on the wholesale prices. However, the guiding conditions under which such risks apply need to be clarified.

The Recommendation should specify the premium risk applied to prices or the bounds between which this premium risk should be applied and the expected annual evolution of this risk to the point it reaches the same values as other investments, such as the copper infrastructure.

4 Specific Comments

Art 41 – APRITEL considers that both bitstream access and unbundled fiber loop should be included in the obligations imposed on the dominant operator(s) and can't identify any reason for the obligation of bitstream to be removed in case of effective competition in the fiber local loop.

Art 45 – NRA should not only use their powers to define the format and level of detail of the information of any network modification of the SMP operator, but also impose the timings by which such information should be disclosed.

Section 4 of Annex 2 – APRITEL considers that NRAs should also define an additional SLA for the payment of the respective compensations regarding non-compliance of the identified SLAs, and the NRAs should promote transparency by imposing the disclosure of SLA that the dominant operator(s) provide to their retail operations.