

**ONITELECOM's reply to the European Commission's  
2nd public consultation on a revised draft  
Recommendation on regulated access to Next  
Generation Access networks**

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ONITELECOM is a Portuguese alternative operator focusing on the corporate, business, public sector and carriers market segments. ONITELECOM is the main alternative to the incumbent operator in Portugal in these markets and operates an extensive network already based on next generation technologies.

ONITELECOM welcomes the opportunity to present their views on the European Commission's 2<sup>nd</sup> consultation on a revised draft Recommendation on regulated access to Next Generation Access (NGA) networks. NGAs will be fundamental for the technological and economic development in Europe and must be properly regulated in an as early as possible stage of their deployment in order to ensure proper competitive conditions and avoid a re-monopolisation of the access network by the historical operators. As such, the Commission's initiative is a fundamental step for the definition of a common regulatory approach in the European Union.

The draft Recommendation under consultation refers to a number of measures to be adopted at the regulatory level regarding duct access, building infrastructure sharing, unbundling of fibres and wavelengths. It should be noted that several of these areas have already been addressed in Portugal to different extents, either by the National Regulator (ANACOM) or by the Government:

- A duct access reference offer already exists, defining conditions for access to the incumbent operator's ducts by alternative operators. However, this offer is plagued by operational problems which largely impair its effectiveness.
- Specification of infrastructures in buildings and urbanisations: a technical manual normalising the communications infrastructures in buildings already exists. This manual has been recently under public consultation in order to be adapted to NGAs. An equivalent manual for urbanisations has also been under public consultation at the same time.
- ANACOM held a public consultation on the possible regulatory scenarios for NGAs. The report on the consultation gave hints on the possible approach to be adopted by ANACOM (published on February 2009), favouring infrastructure access whenever possible, and only adopting unbundling or bitstream solutions when infrastructure access is not possible.
- Construction of infrastructures and use of existing infrastructures: the Government published a law in May, defining harmonised rules and conditions on the construction of new infrastructures or use of existing infrastructures for

electronic communications networks. This law also focused on infrastructures in buildings and urbanisations, which triggered ANACOM's consultations on these subjects.

Even considering these specific national developments regarding the harmonisation of rules and conditions for development and use of communications infrastructures, it is still unclear how NGAs will effectively be regulated. The emphasis on duct access and construction of infrastructures must be balanced by measures ensuring the unbundling of fibres/wavelengths and the definition of advanced bitstream offers by the incumbent operator, since the incumbent already has a very significant competitive advantage in terms of basic infrastructures (ducts and similar). On the other hand, alternative operators have made significant investments based on existing reference offers (local loop unbundling and bitstream), which can be at risk unless adequate transitional periods and evolutionary solutions are ensured.

In face of the above, ONITELECOM urges the Commission to put a strong emphasis on the following matters in the final version of the Recommendation:

- Existing local loop unbundling reference offers, applying to copper loops, must be maintained for an adequate period of time, so that alternative operators are able to fulfil their business plans for the investments made on xDSL access networks
- The incumbent operator's plans for optical fibre access deployment and decommissioning of Main Distribution Frames (MDFs) must be made public in a timely manner and adequate transitional periods must be granted to alternative operators co-located in those MDFs
- National Regulators must define proper alternatives to duct access reference offers in order to take into account different scenarios and ensure a proper ladder of investment in NGAs. These alternatives should be defined as evolutions to the existing ULL and bitstream offers and should cover:
  - o Market 4 (ULL and its evolution)
    - Unbundling of copper sub-loops and collocation in street cabinets for FTTC architectures
    - Unbundling of fibre loops or sub-loops and collocation where appropriate for FTTH architectures
    - "Unbundling" of wavelengths when physical unbundling is unavailable
  - o Market 5 (bitstream access and its evolution)
    - Advanced bitstream offers allowing the implementation of NGA retail offers similar to those provided by the incumbent itself
  - o In any case, backhaul solutions adapted to NGA wholesale access solutions must be provided
- National Regulators must maintain a strict and effective control over the measures imposed on all entities with infrastructures capable of harbouring NGA networks, regarding the provision of

geo-located information on those infrastructures and their state of occupancy

- National Regulators must urgently address and resolve all operational problems already identified in the existing reference offers for duct access, markets 4 and 5
- National Regulators must perform a price analysis of wholesale NGA offers in order to ensure proper competitive conditions, even in case of infrastructure sharing agreements or partnerships. Also, in case of admission of premium prices due to the increased level of risk of investment, bounds must be defined for such prices in relation to cost levels.