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TITLE: BEST PRACTICES FOR ENABLING OPEN NETWORKS

The development of next generation high-speed broadband services (e.g. fibre deployment) and the need to avoid the monopolization of this market require the identification of best practices enabling open networks, establishing a favourable framework for investment on Next Generation Access (NGA) networks and ensuring that operators will be more efficient in their network rollout, promoting competition at the infrastructure level as well.

These best practices include the adoption of policies/frameworks to ensure access by all operators, under non-discriminatory terms, to passive infrastructure, both at the horizontal and vertical levels. The purpose should be for all operators on the market to be able to develop their own investment strategies with autonomy, and therefore the so-called horizontal and vertical barriers to the investment on NGA should be reduced or even removed. In this context, access by operators to existing civil infrastructure has a growing importance, considering that the costs for building ducts and associated infrastructure are a considerable part of investment on NGA.

In Portugal, the historical operator (PT Comunicações – PTC), as the concessionary of the telecommunications public service and dominant operator in the wholesale (physical) network infrastructure access at a fixed location, is subject to the rules established in the Electronic Communications Law (Law 5/2004¹) and to decisions adopted by ICP-ANACOM. As a result, PTC after ICP-ANACOM decision of 17.07.2004 was obliged to publish a reference offer for access to ducts, which entered in force in July 2006.

The reference offer specifies the key operational aspects and processes for enabling duct sharing, namely, request for information on ducts, feasibility analysis on duct occupation, accreditation, physical access, co-ordination procedures, pricing, service level agreements and penalties and is important in fostering the use of the incumbent's duct by other operators. The physical access to PTC ducts and chambers with the purpose of installation of electronic communication networks can be allowed to the operator or associated sub-contractors, provided that they are accredited to perform the works.

Another key issue associated with duct access was the imposition made by ICP-ANACOM establishing that PTC should make available in a database accessible through an *Extranet* page, information regarding ducts (paths and space available), with the respective price oriented to costs. A key principle is that only incremental costs arising as a result of the obligation imposed on the incumbent to develop a database for access by the beneficiaries of the reference offer shall be considered relevant.

¹ <http://www.anacom.pt/render.jsp?contentId=930940&languageId=1>.

Following a Resolution of the Council of Ministers of July 2008, the Portuguese Government adopted legislative measures regarding the framework applied to the development of NGAs (Decree-Laws nr.123/2009² and 258/2009³) in order to ensure that operators have an open and effective access to the duct networks and associated relevant facilities of other entities owning or managing this type of infrastructure, for the installation of NGA and eliminating or attenuating horizontal barriers to the roll out of fibre optical networks, as well as adopting solutions for sharing/lending infrastructure on buildings in order to prevent the first operator to monopolize the access (thus also eliminating or attenuating vertical barriers).

This legislation sets out the general principles of open access, non-discrimination, effectiveness and transparency, concerning the promotion of the construction and access to infrastructures suitable for the accommodation of electronic communications networks – in a technological neutral and symmetric approach – in property owned by any operator, private entities and public bodies, even if they are operating in other sectors. Provision is thus made for an open and non-discriminatory access to passive civil infrastructure, including ducts, masts and other facilities, owned by any private or public bodies.

This regime also aims for the reduction of barriers to the construction of new infrastructures suitable for the accommodation of electronic communications networks, laying down rules directed towards an easier coordination of underground intervention, namely the requirement to communicate any works undertaken to enable the construction of infrastructures suitable for the accommodation of electronic communications networks.

Additionally, new rules have been defined to promote the installation of fibre optics in new buildings and avoid monopolization by the first operator of vertical infrastructures in buildings. In this case, the first operator accessing to building has to install at least two fibres per apartment and the associated infrastructure has to be shared by other operators (e.g. vertical infrastructure and ODF).

Also, a centralised information system was established, containing the data records of infrastructures held by the above-mentioned public bodies and by electronic communications operators. Hence, the centralised information system is of fundamental importance for an open and effective access, by all electronic communications companies, to civil infrastructures, whose usefulness goes beyond the electronic communications sector, as it may be a useful tool for the planning of other networks and in the scope of territorial planning as well.

The use of harmonised procedures (e.g. for requesting and granting access) is another relevant aspect, particularly as regards the relationship between operators and local authorities. Thus, this legislation constitutes an attempt to rationalise the intervention in public spaces, reducing situations involving street works and enabling a reduction of expenses with the construction of suitable infrastructures, without placing an undue burden on bodies promoting the construction.

In conclusion, this legislation provides some best practices regarding open access to the civil infrastructure suitable for the accommodation of NGA networks and also respects the principles of equality, non-discrimination, effectiveness, transparency, technological neutrality and absence of cross-subsidisation between sectors.

² <http://www.anacom.pt/render.jsp?contentId=953021&languageId=1>.

³ <http://www.anacom.pt/render.jsp?contentId=985459&languageId=1>.