

Telecoms: the AdC publishes the final version of its report on minimum contract duration clauses and insists on enhancing freedom of choice for consumers

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The Portuguese Competition Authority (Autoridade da Concorrência – AdC) has published the final version of its report on “Loyalty policies in telecommunication services” following the public consultation launched in December 2019.

The adoption of the AdC’s recommendations is particularly important in the context of social distancing. Telecommunication services are vital for consumers, as they are a privileged, or even the only option to remote work, to shop for goods and services and to communicate with friends and family.

It is thus crucial that consumers are not faced with unjustified barriers to switching providers, to adapting their consumption patterns to new needs and to optimising spending accordingly. Consumers should always be able to terminate a contract online or on the phone, just as easily as they can subscribe new services. This possibility, envisaged in one of the AdC’s recommendations, is particularly important in the current context, as citizens face reduced physical mobility.

The AdC welcomes the public discussion held during the consultation process. The AdC received responses from the sector regulator (ANACOM) and other seven entities, namely from the Portuguese Directorate-General for Consumers, DECO, APRITEL and service providers (MEO, NOS, NOWO and Vodafone).

Following careful consideration of the comments received, the AdC further specified some of its recommendations. In particular, the final version of the report identifies a set of relevant situations **that should not be allowed to entail a renewal of loyalty clauses**. Such situations include subscribing premium pay-TV channels or service-related apps, changing maximum consumption levels, adding or bundling a mobile (i.e., SIM card) to an existing service or using accumulated ‘customer points’ (e.g., to buy accessories or handsets).

In the interim report, the AdC identified vulnerabilities in terms of competition, such as higher prices relative to the EU average, low consumer mobility and a high level of consumer complaints. Since the interim report was issued, new data strengthened the conclusions of the AdC: according to data from the European Commission from December 2019, mobile broadband prices in Portugal are, on average, 50% higher than in the EU. The analysis of the AdC focused on minimum contract duration, early termination charges and other switching costs which, together with further aspects, contribute to Portuguese consumers perceiving this sector as the least competitive.

The telecom sector – which is amongst the priorities of the AdC for its relevance for a well-functioning economy – is characterised by services that include minimum contract periods and early termination charges for consumers.

Current loyalty policies reduce the share of consumers that are available to switch supplier, thereby reducing the disciplinary effect on market prices, innovation and quality of service. As a result, the incentives to compete are weakened, making consumers more vulnerable to market power.

The low mobility driven by minimum commitment period clauses is strengthened by the generalised practice of renewing these clauses, which account for more than 48% of loyalty contracts. This context, together with other factors such as the complexity of the procedure for contract termination and the lack of transparent information, weaken the competitive dynamics of the sector.

Furthermore, the AdC considers that the strategies adopted by telecom operators hindered the effectiveness of the 2016 legislative intervention, which was aimed at widening the effective choice set for consumers, in terms of loyalty contract duration. Telecom operators were obliged to offer contracts with minimum commitment periods of 6 and 12 months, as well as an option with no minimum duration clause. However, telecom operators reacted by increasing the prices charged to consumers for the services’ activation/installation, thus setting substantially higher prices for those options vis-à-vis contracts with 24 months commitment period.

The AdC took account of each of the responses received when preparing the final version of its report. The consultation has generally confirmed the conclusions set out in the interim report. As a result, the final version restates the AdC’s set of eight recommendations to the legislator and the sector regulator, aimed at mitigating competition concerns.

The AdC highlights that the current context of a public health emergency prompted by COVID-19 adds further relevance to measures promoting the mobility of consumers and the competitive dynamics of the market.

It is now more important than ever before to eliminate contract clauses and requirements for termination that prevent consumers from adjusting their consumption patterns to the new circumstances they currently face, including abrupt decreases in income levels.

AdC’s recommendations to the legislator:

- Amend the electronic communications law, establishing that new minimum contract duration clauses on pre-existing contracts can only be set when the new contract entails the operator providing subsidized new terminal equipment or installing new services.

- Amend the electronic communications law to eliminate the exception by which operators do not need to obtain the consumer’s written consent to the conditions established by a new contract when the first contact is made via phone call by the consumer.
- Amend the electronic communications law to identify the situations where a change of address by the consumer constitutes “an extraordinary change of the circumstances” in which the consumer based its subscription decision, according to objective criteria to be defined by the sectoral regulator (ANACOM). ANACOM should be provided with monitoring powers in this regard. This change aims at eliminating the conflict of interest that currently arises from the fact that operators are, at the first instance, responsible for determining if a change in address entitles the consumer to terminate the contract without early termination charges.
- Transpose the European Electronic Communications Code to the national legal framework as early as possible, in particular the information requirements regarding the most competitive tariffs available in the market and the creation of a mechanism to ease the process of switching providers.
- Establish, in the Electronic Communications Law, that all methods available for service subscription are also made available for contract termination, with similar conditions of ease and simplicity.

AdC’s recommendations to the Sectoral Regulator (ANACOM)

- Assess, for each offer, the minimum contract duration needed to recoup investments undertaken by the telecom operator in the installation of the services and subsidized terminal equipment.
- Define rules that enhance the transparency of information for consumers regarding the exact value of early termination fees.
- Undertake a cost-benefit analysis of the implementation of switching procedures by which the gaining provider is the only interface with the consumer.

In February 2010, the AdC had already issued a report on “Consumer Mobility in the Telecom Sector”. Since then, the market has experienced relevant developments.

Notwithstanding, the results regarding consumer mobility remain relevant given that in September 2019 the majority of contracts included clauses on minimum commitment periods and early termination charges.



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Associated Documents

	Title	Tipo Tamanho
	Loyalty clauses in the telecom market - Onepager(/vEN/News_Events/Comunicados/Documents/Loyalty%20clauses%20in%20the%20telecom%20market_Onepager.pdf)	.pdf 777 Kb

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