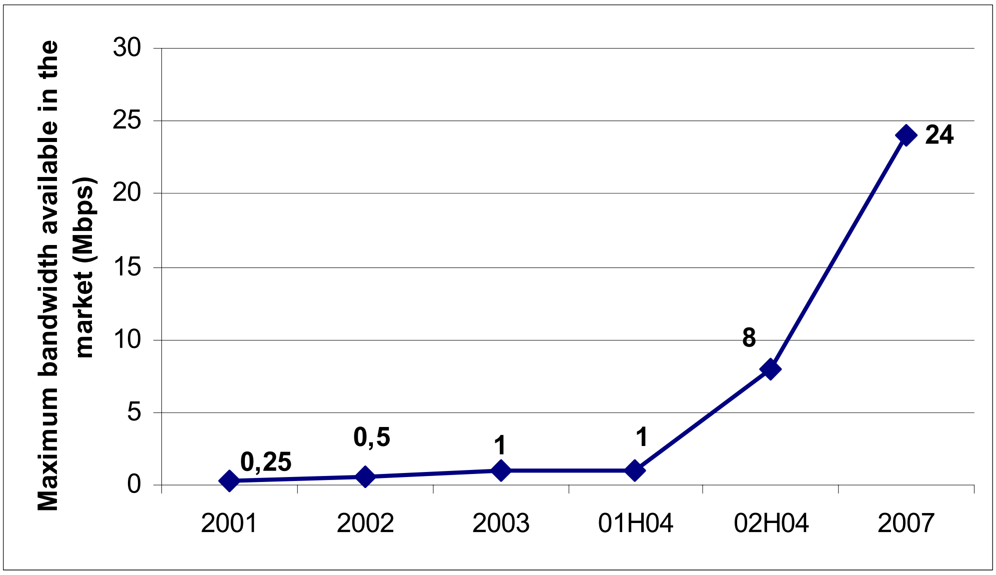
SONAECOM SGPS S.A. position regarding ERG's consultation document on Regulatory Principles of Next Generation Network Access

SONAECOM SGPS S.A. is a Portuguese company which controls both Optimus Telecomunicações S.A. (the 3rd mobile operator, which is currently the leader in wireless broadband Internet access) and Novis Telecom S.A., the main alternative operator to the national incumbent in the fixed line business.

The Portuguese market has suffered, since mid-2004, a revolution in terms of the broadband market's competitive dynamic. This has happened due to a more positive regulatory environment in what regards local loop unbundling and a strong investment made by the alternative operators.

Since then, the Portuguese broadband market leaped both in therms of bandwidth available, as well as in terms of broadband penetration, while retail prices plummeted[1] (see figures 1 to 3).

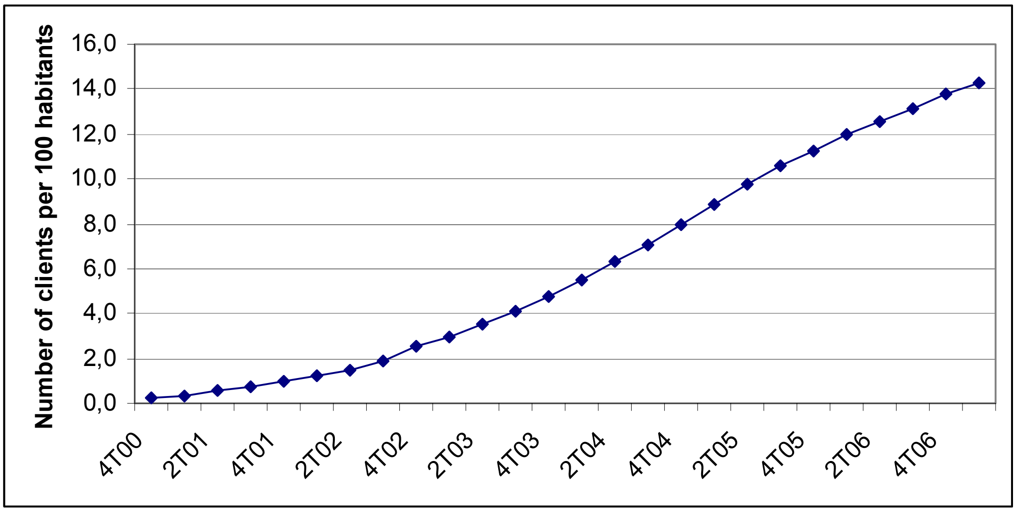
Figure 1 – Bandwidth evolution of available retail offers between 2001 and 2007



***Source*:** SONAECOM historical market data

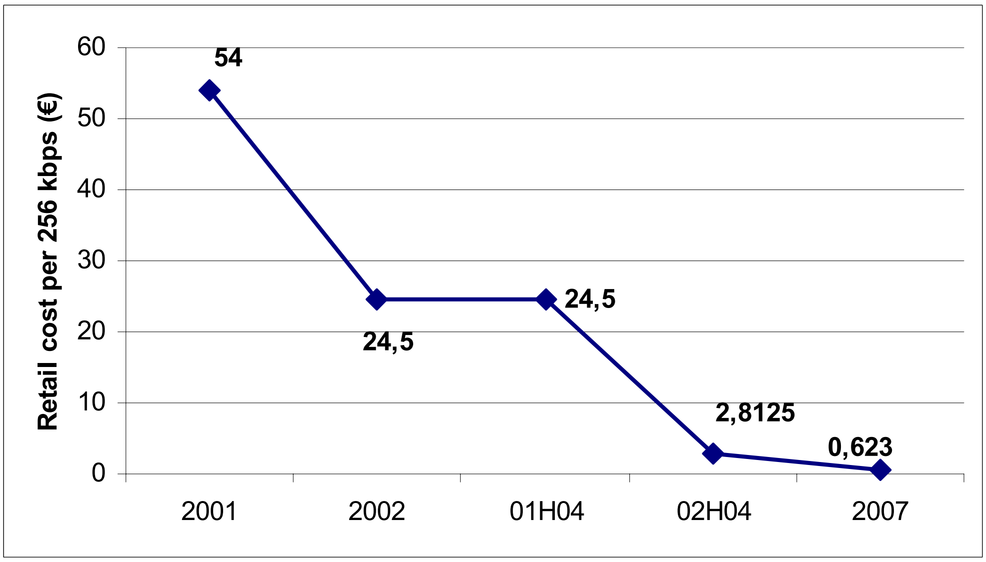
[1] Please note that for the period running from 2001 to the 1st half 2004, the offers were based on indirect access, thus the monthly fee of the fixed telephone service must be added to the broadband cost incurred at the time by customers.

Figure 2 – Broadband penetration in Portugal



Source: ANACOM statistics

Figure 3 – Retail price evolution based on 256 kbps units (taking into account the best retail offer available)



Source: SONAECOM historical market data

From the above description, it is clear that local loop unbundling has been a crucial tool for broadband competition as well as for these services' affordability.

Evidently, and as referred to earlier, this situation is consequence of an investment effort made by alternative operators, which is high both in value and risk. These investments were possible due to a regulatory framework that, in its core, supported investment in new infrastructures, namely through means of an open access approach combined with the investment ladder concept.

SONAECOM believes that the further development of European broadband markets heavily relies on the continuity of the policy followed so far. For this, it is essential to ensure that the upgrade of existing networks to a next generation paradigm is not distorted in a way that it recreates the monopolies which the open access regulatory framework aimed to eliminate.

Thus, the following principles must be upheld by the national regulatory authorities:

a) The regulatory conditions must be coherent with the current ones in what regards the promotion of investment by alternative operators. For this, the investment ladder concept must be upheld within the NGN context;

b) Additionaly, the investment already made by alternative operators must be taken into consideration. For this, a critical factor is the client base associated with each unbundled central office, which may be highly affected with client migration depending on the model used for NGN roll-out. To define a regulatory context with no regard for this aspect is to condemn existing offers to extinction and ensure a lasting monopoly for incumbents. This is not a fictional depiction of reality but a realistic, though dramatic, one: the investment made by alternative operators was made taking into consideration a reasonable period for investment recoupment and a specific market dimension. If no attention is taken regarding this situation, the business case of the undertakings which have heavily invested in their own network roll-out will be put in jeopardy and their own survival put at stake.

c) This entails that no benefits of a market "re-monopolisation" should be incorporated in the incumbent's NGN business plan. In practical terms, this means that the investment decisions within a NGN scenario must not take into consideration the strategic benefits of the incumbent's vertical integration. This integration may lead to a situation of "over-investment" by the incumbent, as to increase capilarity beyond the optimal level just for the sake of hindering competition. It must be ensured that the business plan reflects real markets needs, taking into consideration that the clients are, in this case, all operators with offers in the retail market and not only PT retail services.

d) Incumbents must not be allowed to use the NGN scenario to raise artificial barriers to competition, such as installing street cabinets where no other operators will be able to do so.

e) This approach also implies that the incumbents must ensure that all operators in the market are able to replicate its time to market. The fact that the notified operators control the inputs of their competitors must not be used with an anti-competitive intent: conditions must be ensured as to enable alternative operators to, simultaneously to the incumbent's retail business unit, launch services based in the new infrastructure.

Taking into consideration the above principles, SONAECOM believes that ERG's proposal is, in general terms, the right approach, describing the main scenarios that alternative operators and regulators may face.

Similarly, the conclusions regarding the economics and business case studies have adherence to reality, but may be minimized if the incumbent is obliged to assess the investments related to NGNs in a broader sense than the one imposed only by their own retail services. Independently of the fact that, in the majority of the European countries, no functional separation is in place, the best way to ensure that the network upgrade process is not used to raise additional barriers to entry is to promote the coordination between stakeholders in the definition of each incumbent NGN project.

As mentioned earlier, since the notified operators have an obligation to provide access, their wholesale clients are not only their own retail services but all operators present in the market. This coordination will prevent many problems that will inevitably arise if regulators follow an approach of mere imposition of access ***after*** the upgrade is completed. It is essential to ensure the involvement of all operators at the planning stage, as a means to prevent "matter of fact" situations such as:

- Undersized clusters of clients under each access point[2]: if the incumbent internalizes in its business plan the effect that smaller clusters will have in excluding alternative operators from that market (by, for example, dramatically reducing client's churn rates), it will be led to make a non-optimal decision in terms of network capilarity (in terms of overall social benefit), since the additional investment may be more than recouped through the higher prices it will be able to charge in the long run due to the elimination of its competitors. This issue may be tackled through means of imposing/promoting cooperation between all relevant stakeholders (alternative operators) in the analysis and definition of the new access network.
- Unavailability of co-location spaces: the street cabinets (or, more generically, access points) must be deployed with sufficient space as to accommodate alternative operators' own equipment. For this, the possibility of each operator to express their interest on the area covered by each street cabinet is essential (again, the aforementioned knowledge and discussion of the new client's clusters characteristics is needed).
- Availability of space in ducts: Portugal is the only country in the European Union where a regulated offer for duct access is already in place. National experience is clear: after pricing

[2] In this context, we refer to access point as the point where the alternative operator must be colocated as to have access to the subscriber loop (be it copper, as in FTTc or fiber, as in FTTh or FTTb with a point to multipoint architecture).

issues are solved, the impact of this offer strongly depends on the transparency and compliance regarding the defined access rules. SONAECOM experience clearly shows that the absence of public information (at least public to operators) regarding available space in existing ducts is a major obstacle since it creates incentives for a mismanagement of this resource, with clear prejudice to alternative operators. It is essential that, when upgrading their existing networks, and again in coordination with other operators, the incumbents remove obsolete cabling and ensure space for third party's fibre, within the same ducts their own fibre is deployed. In Portugal, the total opacity of this procedure leads to recurrent PT refusals of access to the most direct path, implying the use of alternative ones which, more than often, lead to the economical unfeasibility of the intended fibre deployment.

- Availability of fiber spares as to ensure a dark fiber offer: SONAECOM is a strong advocate of creating a dark fiber offer. This solution will facilitate the time to market of all operators and may help solve the problem of space within ducts. If the pricing is established as to take into consideration the best route between the two points to be connected, the incentive for an efficient use of spare space within the notified operator's ducts is ensured. Additionally, since the incumbent will be already deploying fiber for its own use, the additional cost associated with such an offer will be reduced and with strong economies of scale. Again, it will be critical for the economic feasibility of this offer that all operators are coordinated as to ensure that the investment made by the incumbent is matched by market demand.
- Technological compatibility: in countries where FTTc is the approach followed (as in Portugal) it is essential that, due to VDSL technology's more intrusive characteristics, there is a more close coordination regarding frequency usage. This can be achieved ensuring that the technologies used by all parties are within commonly accepted parameters and that use of in-house technological solutions does not imply a barrier to entry to other operators.

SONAECOM strongly believes that the proposals stated above are reasonable and will help to ensure that the positive impacts in each country's economy are maximised, while ensuring the coditions for a sustained competition in the market.