



TECHNOLOGY, MEDIA AND TELECOMMUNICATIONS

Public consultation on digital connectivity

1. Introduction

Electronic communications networks, particularly very high-capacity networks (Gigabit Networks), are crucial to meeting the basic needs of citizens and to fostering more dynamic and competitive economic activity. Gigabit Networks are therefore critical to the country’s economic transformation process.

However, parts of Portugal are still not covered by these networks. This circumstance highlights a digital divide between these areas and those covered by very high-capacity fixed networks, as the latter benefit from an enriched, accessible and safe digital environment, with access to a wide range of services. The Government thus intends to develop a national strategy for connectivity to remedy by 2030 the regional disparities that still exist and generate inequalities in economic and technological development between different areas of the country. This strategy is in line with the European Commission’s 2030 Digital Compass: the European way for the Digital Decade of 9 March 2021. According to this document, it is crucial to make significant investments in secure, efficient and sustainable digital infrastructures to ensure that all European households are covered by Gigabit connectivity by 2030¹.

Many civil parishes around the country are still not covered by very high-capacity electronic communications networks. To eliminate this digital divide, the Government intends to finance the installation of very high-capacity networks in these areas.

2. Background and the new public consultation process

At the end of 2021, at the request of the Government, ANACOM (i) collected updated information on the coverage of public electronic communications networks capable of providing broadband in Portugal, and (ii) prepared proposals for the tender specifications for the tender procedures to be carried out to install, operate and maintain very high-capacity networks in geographical areas where these networks are not currently available (“white areas”).

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¹ See EC Communication available in ec.europa.eu.

The consultation focused, among others, on the extent of the coverage obligation for industrial, commercial and agricultural facilities.

Based on the information it collected, ANACOM identified the “white areas” where the introduction of Gigabit network coverage would be a priority. These are areas in the interior of the country with low population density and challenges in terms of economic viability.

Subsequently, to launch the public tender to install Gigabit networks in these areas, the Government decided that the tender must comply with the following requirements:

- Guarantee of a coverage target of 100% of households.
- A single nationwide public tender with the aggregation of the identified geographical areas into lots. Seven lots were defined, with each one corresponding to a NUTII², with no restrictions on the number of lots each bidder could bid for.
- The network must be put in place within a maximum of three years after the contract comes into force and cover 100% of households in the geographic areas in question.

In January 2022, supported by the information gathered and the government’s guidelines for preparing the tender documents, ANACOM launched an initial public consultation³. The consultation’s main focus was on (i) the methodology used to identify white areas, (ii) the extent of the coverage obligation for industrial, commercial and agricultural facilities and (iii) possible adjustments to be included in the identification of “white areas” taking into account the impact on the overall cost, the percentage of financing and the value of the investment⁴.

The following issues, among others, were raised in the first consultation:

- Public funding should act as a positive discrimination measure by prioritising the installation of Gigabit Networks in areas of low population density in the interior of the country.
- The introduction of Gigabit Networks in white areas should obey the principle of technological neutrality, and FTTH and FWA networks in particular should be considered.
- The need to improve mobile coverage in certain areas, with mobile broadband networks complementing fixed networks, to maximise synergies, reduce public investment costs and avoid redundancy of access infrastructures.
- Percentage of dwellings covered should include any type of home passed⁵, to ensure 100% coverage.

² NUTS (*Nomenclatura das Unidades Territoriais para Fins Estatísticos* - Nomenclature of Territorial Units for Statistics) level II, constituted by the units defined in Decree-Law 244/2002 of 5 November.

³ [See here](#).

⁴ Interested parties could also present (i) estimates of the values of the investments considered necessary in overall terms and, if possible, with average, maximum and minimum unit values (per dwelling/access); (ii) the percentage of public funding considered appropriate.

⁵ Regardless of whether it is a “habitual dwelling”.

- White areas should include areas where the percentage of FTTH network coverage is less than 10% and where there is only one installed network at most, including coaxial cable networks. Several parties argued that the exclusion of areas with FTTH network coverage of less than 10% and/or with an installed coaxial cable network constituted restrictive criteria and could exclude a significant number of households in white/grey areas.
- The need to confirm the information of the statistical sub-sections classified as white areas, as discrepancies were detected in the information disclosed by ANACOM, which could lead to the exclusion of areas without very high capacity fixed networks.
- The need to ensure a wholesale model of open and non-discriminatory access to the network to be implemented and cost-orientation of prices for the price to be charged for access.

ANACOM is proposing that “white areas” be defined as those areas where no high-capacity network exists and no such network is planned within the relevant time period, or where there is only one network, and this network covers no more than 10% of the dwellings in that area.

Following the first consultation, ANACOM updated the information on white areas and has launched this consultation process. This consultation therefore serves to gather the contributions of all stakeholders and interested parties, including local authorities, network operators and providers of electronic communications services, private and public entities and users, regarding the preliminary designation of “white areas”.

ANACOM is proposing that “white areas” be defined as those areas where no high-capacity network exists and no such network is planned within the relevant time period, or where there is only one network, and this network covers no more than 10% of the dwellings in that area. As such, dwellings in statistical sub-sections whose proportion of buildings covered is greater than 10%⁶ will not be covered by the tender to be held by the Government, and it is expected that the market will meet this need without the need for public funding.

As such, ANACOM says that measures to implement very high-capacity networks in “white areas” will be adopted using public funding.

The tender documents set out the following requirements, among others:

- Ensure compliance with EU state aid rules for the roll-out of broadband networks.
- Ensure that the roll-out of very high-capacity networks includes, where necessary, the construction of infrastructure capable of hosting those networks.

⁶ Estimated at fewer than 300,000 dwellings.

The tender documents require funding from public funds when there are “market failures” that lead to families and businesses being excluded from access to quality services supported by these networks.

- Define phased coverage obligations by 2030 that allow a minimum speed of 1 Gbps to be made available to all households, as well as to all industrial, commercial and agricultural premises⁷.
- Ensure the funding of connectivity in very high-capacity electronic communications networks from private funding sources when faced with investments that can be made under market conditions, and from public funds when there are “market failures” that lead to families and businesses being excluded from access to quality services supported by these networks.
- Ensure that wholesale offers are made available by companies wishing to operate networks under publicly funded contracts, which should include, among others, transparency and non-discrimination obligations.
- Ensure that clawback clauses are included in the contracts to be signed, to ensure that the State is reimbursed in the event of any breach of the contractual obligations.
- Ensure that the tender procedure is divided into geographic zones, covering the whole country.
- Ensure technological neutrality by allowing contractors to design and manage their own networks.

Interested entities will have until 12 December 2022 to comment on the documents put out for public consultation.

3. Conclusion

For the Government, the roll-out of very high-capacity networks in white areas is a fundamental commitment to citizens. Moreover, it is essential to the economic and technological development of the country that the Government intends to begin in the very short term.

We now need to see whether the various stakeholders will agree on the preliminary definition of white areas. This is an issue because ANACOM does not seem to have accepted a significant part of the contributions expressed either by local authorities or by operators and providers of electronic communications at the time of the first market consultation.

⁷ Under the Tender Programme, the networks to be set up must guarantee, within 3 (three) years of the contract coming into force, coverage of all residential buildings, and of all industrial, commercial and agricultural facilities in the white areas. Furthermore, bidders must guarantee compliance with a cumulative coverage rate, measured in terms of the percentage of residential and non-residential buildings used as industrial, commercial and agricultural facilities covered in each lot, equal to or greater than: a) 50% at the end of the first year; b) 80% at the end of the second year; c) 100% at the end of the third year.

This is important as these areas will have to be expressly included in the tender programme to be launched by the Government. It is necessary to reach a broad consensus on this matter to achieve the goal of 100% coverage of homes passed with a Gigabit network in Portugal by 2030, in line with both the Digital Agenda for Portugal and the European Commission's Digital Compass.

It is also necessary to establish the extent to which electronic communications network operators plan to make and implement investments in white areas. This is because the extent to which they do so may condition the percentage of funding to be allocated by the Government to roll out Gigabit networks in Portugal. We will also have to understand the arrangements for ownership of the networks that will be rolled out, even if only partially, with recourse to public funds.

Finally, with the revision of Relevant Market I (wholesale Local Access at a fixed location)⁸ expected in the near future, it will be interesting to see how ANACOM intends to consider the installation of this new network in the analysis of this market. ■

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⁸ See Commission Recommendation (EU) 2020/2245 of 18 December 2020 on relevant product and service markets within the electronic communications sector susceptible to ex ante regulation in accordance with Directive (EU) 2018/1972 of the European Parliament and of the Council establishing the European Electronic Communications Code.