Loyalty policies in telecommunication services

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The telecom sector covers virtually all Portuguese households. Given its relevance for a well-functioning economy, the analysis is amongst the priorities of the Portuguese Competition Authority (AdC). The ***AdC identified vulnerabilities in terms of competition in the telecom sector.***

Higher prices relative to the EU average

- → Higher prices relative to the EU average, with an increasing gap
- → +20% (communications); up to +31% (fixed *Internet*); up to +13% (fixed bundles)
- → +49% in mobile *Internet* services

Low consumer mobility (low switching rates)

- → >50% of consumers never switched provider
- → >50% of consumers that switched provider had difficulties in the process

High level of consumer complaints

- → In 2018: >34k complaints to the Portuguese Association for Consumer Protection and >81k to the sectoral regulator (ANACOM)
- → Sector perceived by consumers as the least competitive

- The sector is characterised by the prevalence of service contracts that include loyalty clauses in the form of **minimum contract periods and early termination charges for consumers.**
- Telecom providers claim that this allows them to offer discounts in the prices of equipment, the activation/installation and supply of services. However, **such loyalty clauses result in effective constraints to consumer switching**.
- **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 for providers to compete are weakened**, making consumers more vulnerable to market power.
- **The low mobility driven by loyalty clauses is strengthened by the generalised practice of renewing these clauses**, which account for more than 48% of loyalty contracts, **and other factors such as the complexity of terminating a contract and the lack of transparent information**, weakening the competitive dynamics of the sector.

Barriers to switching

>72% of consumers have renewed loyalty clauses

High % of consumers with renewed loyalty clauses reduces the degree of competition and strengthens providers' incentives to explore their customer bases.

Artificial increase of "benefits" and termination charges

Total "benefits" presented to consumers are apparent, and to some extent artificial, triggering an increase of early termination charges and thus making switching unfeasible.

Lack of alternatives to 24-months loyalty periods

Substantially higher prices of options with shorter loyalty periods question their role as real alternatives, thus frustrating the legislative intervention of 2016 : <1% of contracts with loyalty period <18M

Conflicting interests

At a first instance, providers are responsible for determining if a change in address entitles the consumer to terminate the contract without early termination charges, thereby raising conflicts of interest.

Recommendations

Consumer freedom of choice and switching are critical for effective competition. In order to mitigate the identified competition concerns, **the AdC recommends the implementation of the following measures:**

LEGISLATOR

1. Amend the law so that the **renewal of minimum contract duration clauses can only occur when changes entail new subsidised equipment or installing new services.**
2. Amend the law so as to **eliminate the exception by which operators do not need the consumer's written consent** to new contractual conditions if the first contact is made via phone call initiated by the consumer.
3. **Establish in the law the situations in which a change of address constitutes *"an extraordinary change of circumstances (…)"***, according to objective criteria to be defined by the sectoral regulator.
4. **Transpose the European Code to the national legal framework as early as possible**, in particular the rules on information requirements and switching.
5. Establish in the law that **all methods available for service subscription are also made available for contract termination, with similar conditions of ease** and simplicity.

ANACOM

6. **Assess the minimum contract duration needed to recoup investments** undertaken by the telecom operator (in service installation and headset subsidisation).
7. **Set rules to increase transparency of information on the exact value of early termination fees.**
8. **Perform a cost-benefit analysis on the implementation of *gaining provider led* switching procedures** (one interface only).