

# SPECTRU

MONTHLY NEWSLETTER

SPECIAL  
EDITION

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25 YEARS OF COMMITMENT  
TO THE FUTURE

# THE WORD THAT BEST DESCRIBES ANACOM IS EXCELLENCE

**Fátima Barros**

Chair of the ANACOM Management Board

**You became the president of ANACOM two years ago. What led you to accept that position?**

After a 20-year university career, the invitation to head ANACOM appeared to be an opportunity for a radically different professional experience. Although it was quite challenging to move from the private sector academic world to a public sector regulatory body, I was very curious about getting to know one of the most dynamic and sophisticated areas of our economy. Since some of my research had focused on topics concerning regulation and competition, taking on the position of communications sector regulator would be an excellent occasion to better understand how the markets work. On the other hand, as director of the CATOLICA LISBON School of Business and Economics I had more than eight years' experience managing an organisation, which was very useful for carrying out these duties. But the decisive factor behind my acceptance was doubtless the exceptional circumstance that I was allowed to choose my team on the management board.

**Did what you find meet your expectations? What surprised you the most?**

Without a doubt my biggest surprise was the dynamic nature of this market, which especially in Portugal has undergone tremendous changes in the last two years. On the other hand, regarding ANACOM's internal organisation, I was very surprised by the exceptional quality, professionalism and dedication of its personnel.

**Two years later, how do you evaluate your mandate?**

As I said before, Portugal's communications sector has changed a great deal since I and three of my colleagues took up our positions on the management board: we have witnessed termination of the concession contract of Portugal Telecom (PT) as universal electronic communications service provider and the privatisation of the CTT; we have witnessed the merger between ZON and Optimus and between Cabovisão and ONI, along with the merger process between PT and OI, and more recently the unexpected announcement of fibre sharing between PT and Vodafone.

From Brussels we've had new recommendations with major impact on regulation, such as the one concerning relevant markets. And we mustn't forget the discussion generated by the controversial regulation known as Connected Continent. So we've had two years with a lot of upheaval and much effort to adjust our decisions to market dynamics. The decision on markets 4 and 5, for instance, had to be successively postponed, to adjust it first to the European Commission's recommendation on non-discrimination after the changed market structure resulting from the ZON/Optimus merger, and then to the fibre sharing agreement between PT and Vodafone.

Several measures were taken at regulation level, but because they are very technical they are less visible for the general public.

Other examples of the broad scope of ANACOM's intervention include the programme involving probes recently installed to continuously monitor PTC's transmission signal, with a view to resolving remaining problems associated to DTT, and the launch of NET.mede, an application that enables users to measure internet speed and the existence of traffic shaping.

Consumer protection has always been a core element of our action and here I highlight as an example the ban on publicising offerings for products and services as 'unlimited' when they actually have limits, as well as the concern about transparency in contracts.

From the internal standpoint we began our mandate with a reorganisation at the level of costs. Various processes were reviewed and contracts renegotiated, allowing very significant cost savings, nearly 20 percent. We have also been very concerned about training people and to that end began an important leadership programme for directors and managers and promoted a structured personnel development programme now in the implementation phase. Looking back, I believe these two years have been very productive, though we are also aware that there's still a lot to do.

**Do you consider that ANACOM is an efficient, motivated organisation able to respond to all demands addressed**

**to it, or should something be changed to make it more dynamic, to reinvigorate it after a quarter century of existence?**

The word that best describes ANACOM is 'excellence'. There's a huge concern and motivation to do excellent work and that's across-the-board, in all departments. There's also a feeling of pride for work done in the institution and what it represents, which is broadly shared by the employees. But ANACOM is an institution with a very rigid hierarchical structure often not adjusted to the streamlined processes that market dynamics demand, and

which does not easily fit modern management models. On the other hand it is an institution where the average age is nearly 49 years old. While age may indeed be synonymous with experience and knowledge, it also doesn't facilitate change processes.

**You arrived at ANACOM during a difficult period during which the government imposed salary cuts and ended subsidies - hiring was no longer possible. Did this cause any problems for ANACOM's operations? For mobilising employees?**

The impact of salary cuts and eliminating the possibility of promotions and career progress naturally created an environment of uncertainty, concern and anxiety within the organisation. But at no time did we feel that it interfered in employees' dedication and performance. During these two years there have been periods with a great deal of work and many employees made huge efforts to tackle the many solicitations, even though they knew the ANACOM management board had no way to compensate them. The biggest problem ANACOM has faced is the problem of retaining younger personnel, because salary cuts or the lack of career prospects and salary progression have led them to opt for other professional alternatives. That situation is especially worrisome due to the high average age of our human resources, meaning a new generation should be prepared. The exit of younger personnel and recruiting difficulties will exacerbate this problem. We cannot forget that the quality of the work produced by ANACOM depends solely on the quality of its human capital.

**As vice-chair of BEREC you have had frequent contact with other European regulators. What is ANACOM's image among its counterparts?**

It's an image of great professionalism and quality in everything in which it has actively participated over the years. I can say that we should all be very proud because ANACOM enjoys an excellent reputation among BEREC members and among the other regulatory bodies where we participate.





**What is the relevance for ANACOM and Portugal of the fact that we hold the BEREC chair in 2015 and are a vice-chair in 2014 and 2016?**

By assuming responsibility for the BEREC chair we were aware of the importance this position can have for Portugal, despite the extra effort it implies for the whole organisation. Being able to direct ongoing work, especially during a year when the European Commission will begin debating a new European regulatory framework for electronic communications, makes us very significant, especially because we are able to notify the Commission about more sensitive issues for the sector in general, though also for smaller and more peripheral countries.

For ANACOM I also think it is very important because unanimous election to this position reflects the BEREC members' trust in our team. Also, the prestige associated to this position is a manner of rewarding our employees.

**Market operations have led to recent consolidation movements. Won't this process eventually reduce competition and have harmful effects for consumers?**

**How can sector regulation position itself to prevent this?**

Oddly enough, the consolidation movements we're witnessing in the sector in Portugal have led to more intense competition, which has been reflected by lower package prices.

But obviously increased consolidation is always a warning factor for the regulator, above all because over time it can lead to diminished competition. And we mustn't forget that competition is the driving force behind innovation and investment, enabling better accesses and more choice for consumers.

**The telecoms sector has evolved very quickly, with successive technologies enabling the development of new businesses. Voice and interconnection are less relevant and emphasis must be placed on more valuable products and services. The public's appetite for new applications has increased, which has led to the appearance of OTT operators, some of them very successful.**

**In this context, what should the regulator's role be? How can regulators deal with the matter of the OTTs?**

This very complex and controversial issue is part of the BEREC working programme we proposed for 2015. Given that the OTTs and electronic communications operators are now part of the same ecosystem, they cannot continue to be ignored in fundamental questions such as market analyses, for example. It is therefore necessary to consider in depth which regulation model fits this new context.

**Will the new framework-law reinforce ANACOM's role? What impact is it having on ANACOM's life? Has it strengthened independence?**

Up to now the new framework-law has not had major impact on ANACOM's activity. We also cannot say that it strengthened independence because we are still subject to restrictions imposed by the budget law and the consequent salary cuts and hiring limits. These factors are certainly the most restrictive regarding ANACOM's ability attract and retain talent and we cannot forget that human resources, as I said previously, are a crucial element for our activity to be successful.

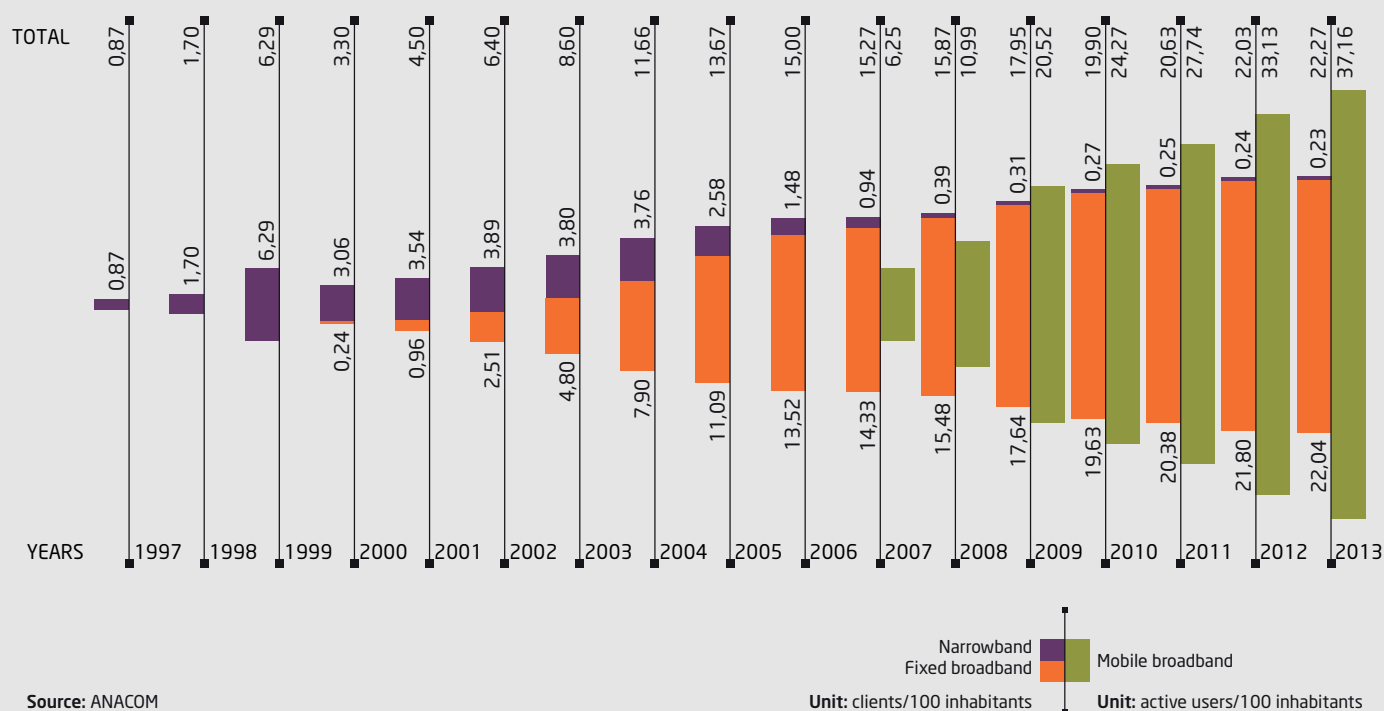
## What are the main challenges you envisage for the regulator?

The regulation model as we know it is no longer adjusted to the reality of a sector that is nowadays characterised by fixed/mobile convergence and the appearance of new players such as OTTs, in which the world will be increasingly connected and have to deal with the challenges of M2M and the internet of things, and where cyber-security and data protection will

play an increasingly important role. Regulators will have to find a new paradigm for regulation and be more flexible in decision-making in order to accompany the development of markets. But the principle I defend is that regulators must be more forward looking, they should try to anticipate the future in order to make decisions that guarantee the principle of dynamic efficiency. In a sector marked by very turbulent change this will perhaps be an impossible mission.

# 25 YEARS IN NUMBERS

## INTERNET ACCESS SERVICE



# THE COMMUNICATIONS SECTOR: CONQUESTS AND NEW DIRECTIONS

**Sérgio Monteiro**

State Secretary for Infrastructure, Transport and Communications

Throughout its mandate this government has overseen efforts to create the necessary conditions for development of the communications sector, specifically by reframing the state's role in the sector and deepening the bases for more competition, in favour of consumers. To that end, in electronic communications it ended the state's remaining special rights regarding the historic operator; it also promoted the spectrum auction that opened doors to the introduction of 4G offerings in Portugal and completed the tenders to designate new universal service providers, with the result that service provision was allocated among different operators, ending a noncompliant process that had lasted for years. In the postal area, efforts focused on full liberalisation of the sector and privatisation of CTT, while at the same time reviewing the rules grounding the universal postal service concession.

Now that conditions are in place to boost competitiveness and ensure healthy growth of the sector, we should focus on considering the trends that mark the present time, in order to better prepare the future.

We have recently witnessed major transformations in the sector: market consolidation, more convergence of networks and services and commercial activity on a scale that increasingly asserts itself as 'global'.

In electronic communications, technological progress and the search for innovative and faster services has led to major investment in next generation networks, calling for a convergent and diversified offering by operators. This situation explains to some degree the consolidation trend occurring little by little around the world and also in Portugal. Indeed, at national level the last two years were

marked by merger or acquisition operations that changed the shape of the market and may have impact from the sector regulation standpoint.

Market consolidation and technological progress imply new challenges which the regulator and decision-makers must meet appropriately. In some situations the market itself has provided the answer, as illustrated by the fibre-optic sharing agreement signed this year by two operators present in the domestic market. That agreement is a positive sign regarding the approach to issues raised by next generation networks and shows that it is possible to cooperate to ensure healthy competition.

Also significant in the approach to questions involving market evolution is discussion of the proposal submitted by the European Commission in 2013 to rework the regulatory framework for electronic communications, which specifically aims to create conditions for consolidation of a European digital single market closer in size to its American and Chinese counterparts. The goals of the Commission's proposal (single market consolidation, enhanced European competitiveness, promotion of investment and innovation, and job creation) are obviously to be welcomed. However, the technical solutions advocated by the Commission raised some concern in some European Union member states. They wonder whether those solutions adequately fit the intended objectives, fearing that they may increase complexity and administrative burden on operators and regulators, besides jeopardising regulatory stability, investment and the supply of quality services to citizens.



In this area, stronger user rights, elimination of unnecessary burdens and maintenance of an open internet must be taken into account, as fundamental principles to be promoted. But it should also be kept in mind that a stable and balanced regulatory framework is a crucial condition for investment and innovation and that overly abrupt solutions may have a disruptive effect. The balance of powers between the Commission, member states and regulators should also merit attention during discussion of the new proposal. The respective specificities of the different countries should not be unduly ignored, nor should the autonomy needed to manage natural resources be compromised.

In the postal sector the challenges are perhaps even greater, mainly due to increasing replacement of traditional mail by new forms of communication. This government undertook to create a legal framework able to foster competition and eliminate the state's presence in the historic operator's share capital, believing that was the

way to strengthen competitiveness and increase efficiency. With market liberalisation complete on the one hand and CTT's privatisation on the other, it is now important for operators to learn how to tread new paths that create value for the sector and for the economy, taking advantage of the singular characteristics of postal networks and services and making use of opportunities brought by technological progress, especially those linked to electronic commerce. Other challenges arise in this area, such as those associated to financing the net cost of universal service or eventual access to postal networks; they will require attention from decision-makers, regulator and market. We must bear in mind that the sector's sustainability and growth largely depends on the ability to suitably respond to those questions.

I cannot conclude without a word addressed especially to the regulator, which is now celebrating 25 years of existence, having accompanied the sector's radical change in Portugal from 1989 until the present. In a fully liberalised sector like ours, though subject to major transformations, a strong and independent regulator (like ANACOM, without a doubt) is a keystone for ensuring healthy competition and respect for citizens' rights. With its ample technical competence and vast experience, along with a very able leadership, I am convinced that the regulator will know how to face the new challenges with determination, in favour of a more robust economy and a sector in the vanguard of competitiveness.



# INDEPENDENT REGULATION?

**J. M. Amado da Silva**

ANACOM President 2006-2012

When the issue of the evolution of telecommunications regulation over the last 25 years is considered, I believe the first and most objective image that immediately occurs is the matter of regulation, itself naturally shaped by the incredible technological revolution whose focal point, in my understanding, is the convergence and exchangeability of 'systems' that seemed quite separate from one another.

That evolution apparently suggests that regulatory decisions made 15 or 20 years ago, based on prospects for immediately consistent concurrent evolution, were soon shown not to fit dynamic needs, thereby placing in doubt the 'old' requirement that regulation should be predictable. I recall with some irony certain 'requirements' put forward at one meeting as being characteristic of a regulator, among them two that were incompatible: predictable action and innovation.

Innovation only occurs when something new or unforeseen is done or created, which rules out predictability. In my view, it is important to guarantee dynamic or intertemporal consistency. That almost allows predictability and innovation to be reconciled by applying gradual implementation of decisions, accomplished in the glide path eventually forgotten by policymakers in the scope of the current crisis.

The concern for predictability is understandable, all the more so because it is certain that the crisis indicated the need (why forgotten?) for risk analyses, wherein a component in regulated areas is the one called 'regulatory risk', which I shall consider below.

Keeping to the subject of regulation, it will be worthwhile to reflect about changing definitions of relevant markets, separation of diverse markets, the forgotten role of vertical separation, and the investment ladder, a panacea meant to guarantee a more fragmented market that counters the nature of the usual monopolies, or at least oligopolies, as in the current consolidation stage or as indicated by the 'ghost' assailing the European Commission vis-à-vis the number of operators.

I nevertheless believe that the visibility of the subject matter and its constant change has overshadowed another, which in my opinion is no less relevant, concerning good performance of regulation: the regulator's structure and governance.

As regulation is a process of state intervention, in its broadest sense it necessarily has a political component and consequently an unalienable requirement for democratic legitimacy which should oversee both its organisation and above all its action. The latter raises the major and subtle problem of reconciling regulatory activity and policy determination.

It is certainly not up to the regulator to determine political goals; pursuant to democratic legitimacy it should carry out its activity by respecting legitimately outlined policy principles.

What then is its role and where will it find the basis to carry it out?

That concern has been a constant concern of mine and should be developed in the realm of political science; unfortunately, it has not been subject to what I consider a desirable degree of deeper consideration.

I nevertheless identify with the approach of Pierre Rosanvallon<sup>1</sup>, who deals with problems involving the democratic legitimacy of independent administrative authorities and particularly regulators. He pinpointed their historical basis in the decision to correct mistakes of what he called "the drift of the party systems" in the USA, particularly evident in the need to regulate US railways in the late 19th century, referring to "the absolute need to 'remove political influences' from regulation of a sector deemed vital for defence of the public interest."





But that 'political' argument was not the only one. Three elements weighed equally and significantly:

- The need to form an institution endowed with a high degree of 'expertise';
- The need to establish forms of evolving, flexible and reactive regulation, moving away from mechanical notions of traditional bureaucratic management;
- To set up a framework for arbitration.

He then developed a concept, leading him to assume that the 'new legitimacy' should be based on three essential features for the organisation and conduct of such institutions: impartiality, reflection and closeness.

Wary readers may wonder (for good reason!) why independence is not listed among the features identified as necessary for the regulator. And indeed, it's not! Is that a mistake? It's not! Because there's another characteristic that overrides it: 'impartiality'. Only those who pay attention to all parties and favour none are impartial. For that to occur they have to be independent of

all of them. The independence condition is therefore necessary, though not sufficient (and the regulator must also be judged on that basis) to be impartial.

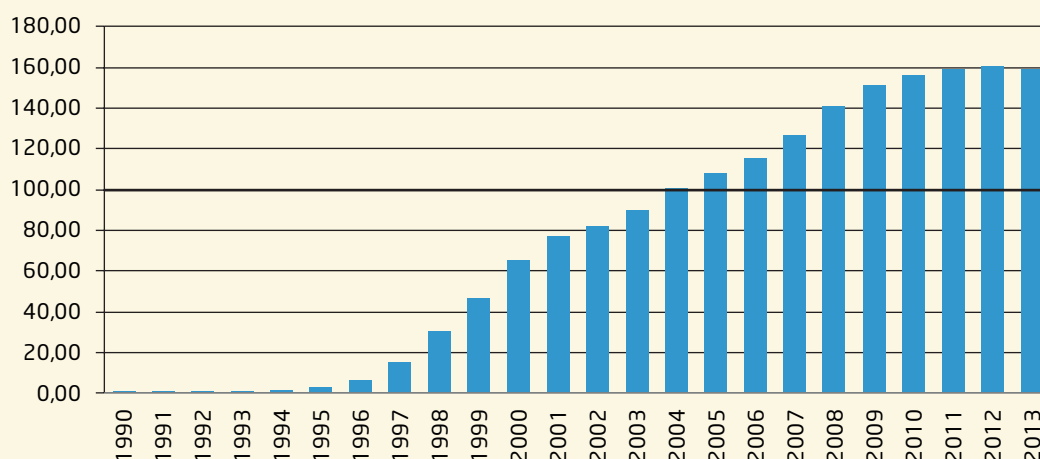
The EC's recent proposal is a very serious threat to the regulator's independence, just as recent decisions and instruments of Portuguese legislation and reports from state bodies otherwise are, the latter because they also jeopardise the capacity for expertise and reflection.

Much is still to be said in these fields, but space is limited. Let me just consider the problem of so-called 'regulatory risk'. That designation is totally wrong. It literally means the risk of unexpected decisions by the regulator. Yet a close look at the motives reveals that 'political risk' is subjacent, i.e. unexpected and discretionary decisions by political power which the regulator must enforce. How can that be reconciled with the responsibility for impartial regulation?

<sup>1</sup> "La légitimité démocratique - Impartialité, réflexivité, proximité", Paris: Ed. du Seuil, 2008.

## 25 YEARS IN NUMBERS

### MOBILE TELEPHONE SERVICE



Unit:  
Subscribers  
per 100 inhabitants

Source:  
ANACOM

# REGULATING FOR A QUARTER-CENTURY

**Álvaro Dâmaso**

ANACOM President 2002-2004

*Telecommunications is the most critical area for influencing the 'nervous system' of modern society  
- in COM(87) 290 final*

According to one memorable example from everyday consumption, the economist and philosopher Adam Smith tried to demonstrate the exceptional value of pursuing individual interest (the essence of competition) to achieve general progress. Seeking the best for themselves, individuals are rationally and efficiently promoting the overall economic interest.

The 2007-2009 financial crisis, which still persists in several countries, is the backdrop of the recent book "The Map and the Territory" by the economist and regulator Alan Greenspan. In it he confesses that he has always been, and remains, a forthright defender of free market capitalism. However, he warns that his support is not based on the belief that market players always act in their own rational self-interest. He next explains that aberrations or deviations from rationality and efficiency, an effect of the animal spirit, are relatively infrequent and random, signifying nothing more than economic noise.

Disregarding the empirical though also somewhat emotive distinction between 'animal spirit' and 'economic noise', the meeting point of Smith's axiom and Greenspan's observation

is where the *raison d'être* for regulation is found. For without individual freedom there is truly no progress, because creativity does not emerge, and individuals do not always act alone and rationally, even in their own interest.

Regulation depends on what is meant to be or should be regulated. The pathways of regulation to guarantee a sustainable, efficient, fair

and balanced market are many. And they are lengthy, with numerous pitfalls and deep chasms. Ambushes to capture regulators are frequent. That's why the regulator has to be a competent body, truly independent from the state and the targets of regulation.

ICP-ANACOM has the legal and constitutional nature of an independent administrative body. It intervenes in the market and conditions operators' freedom with a view to ensuring the quality and diversity of supply, the necessary investment and access to networks and services.

In the sector of electronic and postal communications, regulation takes on certain specificities which set it apart from other sectors in extent and depth. For example, it is not limited to preventing and punishing behaviour which harms the interest of the citizen consumer, the law and regulations, to guaranteeing the quality of information provided or enforcing prudential rules and standards.

Beyond the above, ICP-ANACOM's action extends to such different areas as:

- Conditions for entering and staying in the operators' market and eliminating obstacles;
- Guaranteeing communication operators' access to networks in transparent and equal conditions, and hence interconnection and interoperability of networks and services;
- Analysis and definition of relevant markets and inherent obligations;
- Effective defence of the public interest regarding universal electronic communications and postal service;
- Allocation, planning and management of radio spectrum and numbering resources, coordination between civil, military and paramilitary communications;
- Promotion of competition and development in communications markets;
- Equipment and material conformity assessment, and determination of respective merchandising requirements;
- Technical standards in the communications sector and associated areas.



ICP-ANACOM has travelled a long broad road of responsibilities since it was established, using the 'stones found in its path' to build a regulatory edifice which all employees and leaders can be proud of, based on three pillars: more diversity, better quality and more affordable service prices, in order to satisfy the inherent interests of citizen consumers.

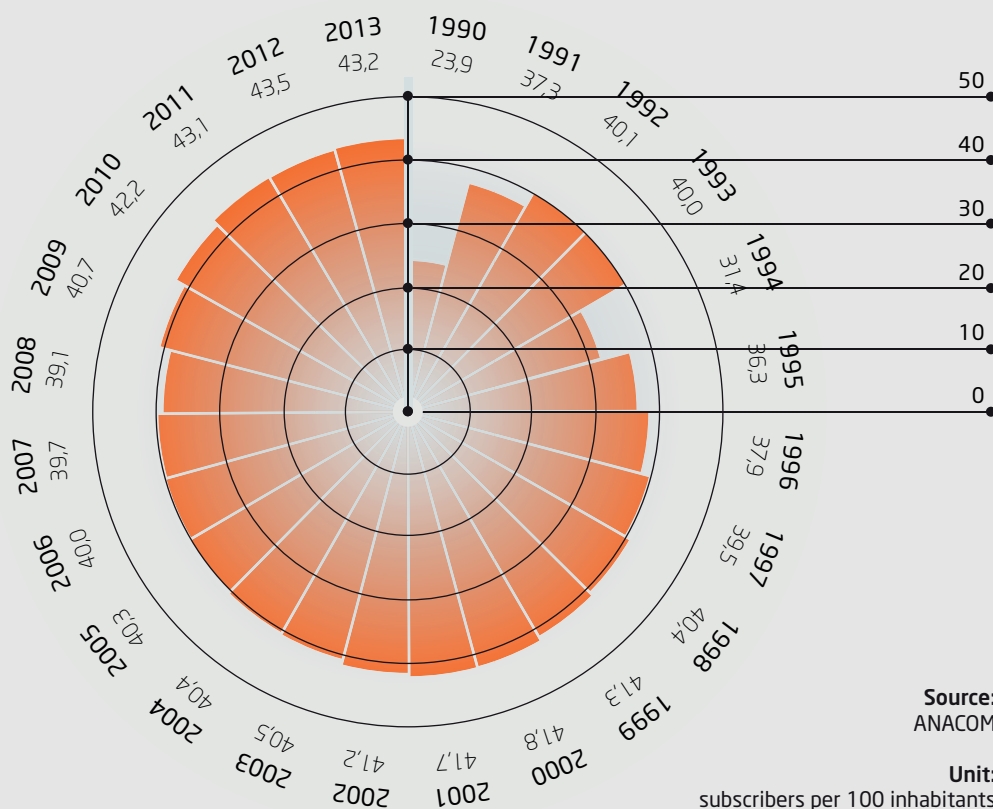
Three wishes should be made during the anniversary celebration, before the candles are blown out:

1. Fast decision making;
2. Prior hearing of stakeholders regarding regulatory measures;
3. Recommendations for good implementation.

**Congratulations ICP-ANACOM, for completing a quarter-century of regulation!**

## 25 YEARS IN NUMBERS

### FIXED TELEPHONE SERVICE



# EUROPE ON THE WAY TO LIGHTER REGULATORY ACTION

**Luís Nazaré**

ANACOM President 1998-2002

Luís Nazaré headed ICP-ANACOM from June 1998 to July 2002. He considers that the hardest work in regulation has already been done and that we will now witness fewer regulatory decisions, because markets have matured and because in Europe the trend is toward lighter regulation. He also holds that regulatory authorities used to feel freer.

**You were the chairman of ICP-ANACOM from 1998 to 2002. What were the main challenges you faced? Sector liberalisation?**

It was a very important period, because it was when the market opened. Fixed service, then the most important service, was opened to competition in January 2000. That was indeed the most important challenge. The ICP-ANACOM advisory committee worked intensely, meeting every month, sometimes more than once, with different working groups encompassing the various interests at stake. Its mission was to submit plans for all regulation meant to frame the open telecoms market. All regulations were generated in the advisory council. It was a very active period, very interesting, with a lot of struggle.

The new operators tried to find as many loopholes as possible and to safeguard their space on a legislative and regulatory basis. At that time attention focused on the rules governing interconnection and local loop access conditions in both classic fixed telephone service and data. It was a very lively period, often quite difficult, because different interests at stake had to be countered, especially the historical position of PT, which had to be fought or opposed because it was solid and well installed in the market and politically. And the way had to be opened and new operators helped in the legal and regulatory field, so they could have their own space and so they could enjoy operational and business conditions that weren't strangled by unattainable access conditions.

Every day the pressure from different interests had to be countered and endured, and that pressure was very strong at times, especially from PT.

**Was one of those challenges the transition from ICP to ANACOM? Or was that simple?**

That shift was accomplished during my tenure but it was easy. There was an understanding with the government to the

effect that new statutes were needed, which would align the ICP with what were best practices in terms of independence. Independence already existed, but it was important to set it down in statutory terms. The work of producing the new bylaws was well directed by Vital Moreira and the government approved. In practice, nothing changed, the institution was not affected nor did it start functioning more independently than it had, the structures were still more or less the same. What changed was the name and the fact that some precepts were now formally included in the bylaws, though actually there were no major changes.

**The current government has adopted a framework-law for regulators. Do you have an opinion about it and about its impact regarding ICP-ANACOM's independence?**

What has occurred in the relationship between the state/government and regulatory bodies in the last few years is not very favourable. The government does not refer much to regulation questions because it is a subject that makes it somewhat uncomfortable. It limits itself to stating that regulatory bodies have their autonomy and independence, etc. But what I've seen happening in recent years is that regulatory authorities feel a bit more cramped than they did in the past. There were times when they felt more at ease, freer and less subject to the observation power, if not the legal power. Today I see more inhibition on the part of regulatory bodies in general and more concern about what's going on in the head of those in power. I don't think that's positive, though it's probably a sign of the times and the effect of changing the rules on remuneration systems and contracting frameworks which regulatory bodies are now subject to, etc. The regulatory bodies' freedom of action is less today than it was in the past; it is now subject to constraints from public service which impact management. That's cause for concern.

**Can those constraints lead to deterioration in the quality of regulation?**

We are witnessing regulation that's more constrained and less versatile than it once was.

**Why does it seem to you that things are moving in that direction?**

It's a result of the overall environment, which is control-minded and bureaucratic. I take into account the period of austerity and the rules we are now subject to. But here the government is totally dyslexic regarding how the state ought to function. Rigour does not mean heavy-handed control or centralism or red tape, but the authorities understand that it does and by that same logic have tried to keep a close rein on regulatory bodies. I want to believe, and hope, that that mentality will disappear as quickly as possible.

**Does that tendency only exist now? You said just now that the new operators and the incumbent one placed a lot of pressure on the regulator. Wasn't there pressure from the government?**

I never had any pressure from the government. I naturally spoke regularly with the oversight body and with other areas of regulation, but never felt any pressure, on me or on my colleagues. It never forced us to take any given path, never pushed us in a given direction. We exchanged impressions, spoke about what regulation should do; we kept the government informed, but there was never pressure. None! And the times were tough, breaking up the existing order and creating a new one. On the operators' part, above all from PT, yes, there was pressure.

**How do you view the sector's evolution?**

Major evolution in terms of supply and variety of services stands out, along with the extraordinary technological evolution. We have witnessed great changes regarding the structure of the market, which is now more concentrated. A number of small players who had niche approaches were swallowed up and disappeared. As previously envisaged there's now more concentration, around two large operators. This is a scenario that will prevail in years to come.

**And is that concentration beginning to be worrisome for consumers?**

It is always a concern for us to witness a reduction in the number of active players with widespread presence in all segments. When there's more concentration there's a certain amount of calm, situations of tacit collusion... That's how it is in most markets, though in telecommunications I don't believe it will

happen. The industry's very nature means rivalry is maintained and lasts, and that's good news.

**Is the existing consolidation movement a consequence of the regulation we've had? Could regulation have led to a different result?**

It would be hard for us to have a different situation. Regardless of whether the regulator plays an important role in configuring the sector, it's unlikely the result would be very different from what we have now. There has always been self-momentum. The regulator always played a key role and a good role in the sector; I think it's one of the vertical regulation systems the country can be proud of. But in general what we have results from the interaction of live market forces, galvanised by the imposed regulatory decisions, more in the past than at present. Now the regulator has to make altogether fewer decisions than in the past, because in the past everything was being opened. There was only one point where the regulator could have done more: in digital terrestrial television (DTT). There, ANACOM failed; it did not analyse the market well, the competitive context, and allowed the current situation to arrive, which is a situation of almost nothing at all.

**The sector is characterised by rapid evolution of new technologies, new services and products. Does ANACOM have the capacity to anticipate those developments, to take appropriate action in time?**

I think so. But in a sector with a strong dose of technology, it has to act with a slight delay for two reasons: the most active players, for whom technology is the soul of the business, are the economic actors and they're the first ones to have access to innovation, to introduce it and launch it on the market. It's normal that the regulator accompanies with a certain time differential, also just to see the effects. Besides that, if there is no evidence of disruption of normal market operating conditions, then



regulation should be as light as possible. That's why it's normal that when the regulator does have to act (and in most cases it doesn't), it limits itself to accompanying and monitoring, measuring the market effects of change in the technological and competitive context. It's normal that it acts ex post.

**How do you see the future of regulation, namely regarding the relationship with other sector regulators and with the cross-regulator?**

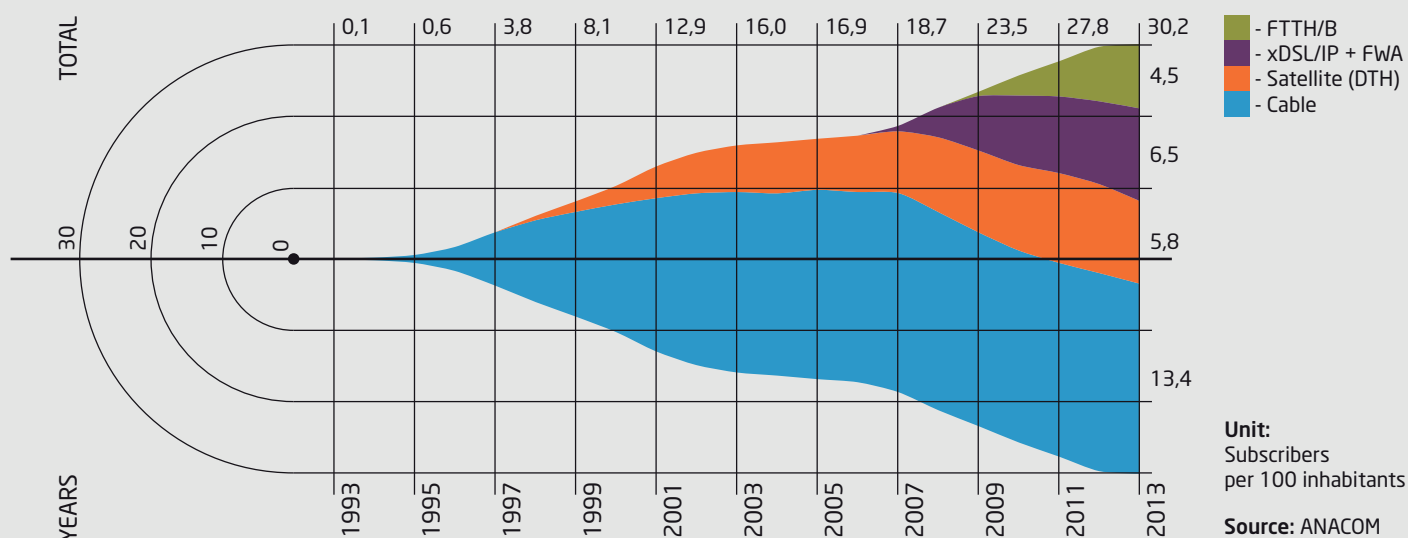
I always thought that in sectors with vertical regulation the application of competition rules should be done by the vertical regulator, because that's who best knows the issues affecting the area it regulates, because it can act faster. One of the problems of the Competition Authority [AdC - Autoridade da Concorrência] is the frustrating time it takes to make a decision. Look how long Sonae's failed takeover bid for PT lasted. To

take all that time is inconceivable. A regulatory decision is not a decision that has to follow scientific criteria from the academy or which should first please the investigative expectations of the people directly involved. Regulation is meant to be versatile, fast, rigorous, grounded and sustained, and that argues in favour of strengthening the powers of the vertical regulators. I know history hasn't rolled that way and probably won't again. The AdC exists; I doubt things will turn back.

In the future, the number of decisions by regulatory bodies will tend to be less, because markets are more mature, the rules have been set, because issues causing the most conflict have been resolved or stabilised. Because there's a learning process and many years of experience. Operators now know what they can and cannot do. Also, because the regulatory wave across Europe is moving toward lightness, toward lighter action, because the hard work has already been done.

## 25 YEARS IN NUMBERS

### SUBSCRIPTION TV SERVICE





# A QUARTER CENTURY OF INTERNATIONAL ACTIVITY

Over the last 25 years ANACOM has been an interested and active member of international organisations pertaining to the communications sector, ensuring not just technical representation of the Portuguese state but also seeking to promote and streamline the relationship with other regulatory bodies and international and community institutions.

## EUROPEAN UNION

At European level ANACOM has been fully involved in work carried out by major institutions, among them the Body of European Regulators for Electronic Communications (BEREC) and the Independent Regulators Group (IRG), actively taking part in all plenary meetings and in the contact network as well as most meeting of the expert working groups. In this regard, ANACOM also helped organise a number of meetings held in Portugal, including plenary sessions and their respective preparation.

ANACOM has furthered its involvement in drawing up documents produced by BEREC which have great impact on domestic operators and consumers. It has also generally taken on the role of editor during the preparation of BEREC opinions regarding proposed recommendations or legislation presented by the European Commission (EC), and during planning of BEREC's medium term strategy.

Given the importance of those bodies' efforts and to culminate growing recognition of the Portuguese regulator's respective role, ANACOM was elected to chair BEREC and the IRG in 2015. This

implied holding a vice-chair position in 2014, with added responsibilities in managing the European agency (BEREC Office) which provides support to BEREC. On the other hand, and in the scope of



Portugal's presidency of the European Council in 2000, ANACOM (then still the ICP), together with the Instituto da Comunicação Social [Media Institute], held a conference focusing on digital terrestrial television. Portugal again held the European Union presidency in the second half of 2007. During that period major issues included discussion of the Postal Directive and approval of its revision, with the agreement of most member states. That directive liberalised the sector in 2011, at the same time offering sufficient guarantees for financing of universal service. In the electronic communications area, the Commission's legislative proposals regarding revision of the regulatory framework for electronic communications were presented. Also in the scope of Portugal's 2007 EU presidency, an ANACOM conference on "Regulation of Convergence - Convergence of Regulation" was held in Lisbon. It provided a unique opportunity to encourage broad debate on challenges for regulation that result from diverse contemporary issues: anticipated implementation and access to next generation networks, competition in emerging markets, development of diversified business models, eventual application of new

institutional regulation models, and radio spectrum policies and impacts of new developments on the general public, especially with respect to the provision of universal electronic communication service.

## MEDITERRANEAN, LATIN AMERICA AND EASTERN EUROPE

ANACOM is a founding member of the Euro-Mediterranean Regulators Group (EMERG), officially established on 1 July 2008 in Malta, comprising representatives of the Mediterranean region's electronic communication sector regulators, namely members from the IRG, North Africa and the Middle East.

EMERG thus aims to respond to similar regulatory challenges and opportunities by taking a common approach based on encouraging competition and stability in electronic communications markets, developing new technologies and bridging the digital divide to ensure that information society benefits are available to all. ANACOM's involvement, which included holding technical workshops in Portugal, culminated when it assumed the EMERG chair in 2013, working to plan the organisation's future (consolidation of internal structure and promotion of external visibility), continue European Commission financing in the new multi-annual financial framework for 2014-2020 and determine the working programme for 2013. Under ANACOM's chairmanship EMERG plenary and Contact Network meetings were held in Lisbon. Also in 2013, the first meeting concerning southern

Mediterranean dialogue about electronic communications and information society, an EC-organised event, was held in Athens, Greece.

Regarding cooperation with counterpart entities in the Latin American region, ANACOM has participated since 2005 in the Latin American Forum of Telecommunications Regulatory Authorities (Regutel), whose main aims include the exchange of information about regulatory frameworks and harmonisation of regulatory authorities' rules and activities, to thereby help better identify and defend regional interests and adopt common positions at international level. In this context ANACOM helped organise the IRG/Regutel Summit held in Sintra in 2005.

Acknowledging the positive work carried out at that forum and using it as a pivot to narrow cooperation ties between Europe and Latin America, ANACOM and its Spanish counterpart have since 2012 undertaken intense contacts with the EC to debate future prospects of European support for a singular forum like Regutel, in its respective context. ANACOM also remains an observer member of the Electronic Communications Regulators Group, set up in the ambit of the Eastern Partnership (EaP), an informal EU partnership with countries from Eastern Europe and the South Caucasus formed in 2009.

## INTERNATIONAL ACTION

At international level, Portugal's participation in the International Telecommunication Union (ITU) stands out. In 1865 our country was one of the founding members of what is now a Geneva-based United Nations specialised agency for telecommunications and information society.

The Portuguese administration's participation in the ITU intensified from 1994 on, following Portugal's election to the ITU Council (it had previously been a member for one term from 1947 to 1952), which is responsible for the organisation's day-to-day management between each Plenipotentiary Conference (the ITU's top body). It has actively responded to change in the sector, especially in 2002/2003 during ANACOM's chairmanship of that important ITU component.

Also worth mentioning is that after its election in 1994 Portugal completed four terms as a Council member, being re-elected in 1998, 2002 and 2006 (mandate ended in 2010). In 2009 Portugal again stood out by holding in Lisbon the 5th ITU World Telecommunications Policy Forum (WTPF). The event counted unprecedented high-level participation and approved the Lisbon Consensus, a set of opinions on issues such as convergence, internet-related public policy matters, next generation networks

and revision of the International Telecommunications Regulations (ITR), an international treaty adopted in 1988 which sets down the general principles for providing and making operational international telecommunications.

As recommended in the Lisbon Consensus, the World Conference on International Telecommunications was held in 2012 (WCIT-12), with the aim of reviewing the ITR. Portugal played a key role at that conference, where ANACOM served as vice-chair, representing Europe. The vice-chair post was due to the fact that Portugal had assumed responsibility to coordinate European preparation for WCIT-12 within the European Conference of Postal and Telecommunications Administrations (CEPT).

Portugal's participation in the Universal Postal Union (originally the General Postal Union) also dates to the 19th century (1875), as a founding member of the second oldest international organisation after the ITU. The UPU is based in Berne and has 192 member countries. It is the main forum for cooperation among actors in the postal sector. ANACOM recently began playing a more active role, following Portugal's election at the 2012 Doha Congress to the Council of Administration (where it had already been a member from 2004 to 2008), the body which ensures continuity of the UPU's work between Congresses, besides analysing legal and regulatory questions, among others.

At CEPT, the Portuguese administration (currently represented by ANACOM)



UNIVERSAL  
POSTAL  
UNION

was also one of the 19 administrations that originated its founding in 1959. CEPT currently comprises 48 European states and has expanded to Russia and Turkey. It prepares and coordinates European positions for key global events and discussions involving postal service and telecommunications in the scope of the UPU and ITU. In this organisation ANACOM has also assured active representation, namely by holding its annual chair in 2002/2003, besides serving on CEPT's three committees (the Electronic Communications Committee (ECC), European Committee for Postal Regulation (CERP) and Committee for ITU Policy (Com-ITU)), carrying out leadership duties (chair or vice-chair) in some of their bodies.

A highlight has been Portugal's dynamic role in CEPT's various reorganisation processes, especially the creation of its permanent secretariat in Copenhagen, now called the European Communications Office (ECO). Since 2013 Portugal has held via ANACOM the vice-chair of the ECO Council, which monitors the Office's management and strategy.

ANACOM has also been responsible for active representation in inter-governmental satellite organisations in which Portugal is a member (the Washington-based International Telecommunications Satellite Organisation (ITSO), London-based International Mobile Satellite Organisation (IMSO) and Paris-based European Telecommunications Satellite Organisation (EUTELSAT)), especially

during reorganisation processes they underwent at the turn of the century, which led to privatisation of their respective satellite operators. It has also held meetings in Portugal and taken on leadership duties in bodies pertaining to those organisations.



## COOPERATION

In the area of bilateral cooperation, ANACOM has maintained favoured relations with the Community of Portuguese Language Countries (CPLP) in accordance with various cooperation protocols, whereby seminars or training actions have been organised along with information sharing in areas under ANACOM's responsibility. It has also undertaken technical missions and organised high-level coordination meetings. A highlight has been relations with the Brazilian regulator (ANATEL - Agência Nacional de Telecomunicações), with which it annually holds high-level meetings that have effectively served to deepen knowledge about regulation activity.

Regarding relations with the Portuguese-speaking African Countries (PALOPs), the priority and destination of most cooperation initiatives, ANACOM has together with the receiving countries organised duly scheduled activities that ensure shared responsibilities and the setting of targets and goals that enable proper,

more efficient and more effective monitoring and evaluation of results, both qualitatively and quantitatively.

Parallel to this strategic axis, over the last 25 years various bilateral cooperation protocols were implemented, either to coordinate frequencies (as in the case of Spain and Morocco, the latter also extending to telecommunications) or to support sector development in Mediterranean Basin countries and states that recently joined the European Union. For formal reasons new working instruments were also established with regulatory authorities from the Macau Special Administrative Region of the People's Republic of China, where the framework for cooperation changed after 1999.

In the multilateral context, ANACOM has supported and participated in initiatives meant to promote a common culture and solidarity among Portuguese-speaking countries. Highlights include its participation in 2008 in creation of the Association of Communications and Telecommunications Regulators of the CPLP (ARCTEL-CPLP), where the Portuguese regulator is responsible for the secretariat. Also, in the last five years substantial ANACOM cooperation resources were dedicated to work carried out at ARCTEL level, enabling them to be more rationally used and ensuring more extensive results due to the broader range of beneficiaries and engaged bodies such as the African Development Bank, the World Bank and the International Telecommunication Union.

# 25 YEARS ANACOM

	1989	
	1990	Instituto das Comunicações de Portugal (ICP) begins activity on 6 November. Launch of land mobile service using analogue technology: consortium of CTT and TLP which originated TMN.
Appointment of the Audit Committee and Advisory Council of the ICP. ICP public attendance service created.		
ICP delegated duties to represent the state, manage spectrum and type-approve and authorise equipment and materials.	1991	
		Land mobile service is the first area opened to competition. The second GSM licence is awarded to Telecel (now Vodafone).
	1992	
Opening of ICP office in Madeira.		
Start of activity by second mobile operator: Telecel (now Vodafone).	1993	
The GSM network becomes operational.		Opening of ICP office in the Azores.
		ICP attendance service wins prize for quality in public service.
	1994	
Seven regional companies of TV Cabo Portugal along with Bragatel authorised to provide cable distribution networks.		
	1995	
		New ICP offices open in Funchal (Madeira office) and Porto (North office).
	1996	Start of publication of National Table of Frequency Allocations (NTFA).
Implementation of the shared-cost Blue Number, with dialling code 0808.		
	1997	
		ICP website comes online.
	1998	
Start of operations by third mobile operator: Optimus.		
European Union approves calendar for telecoms sector liberalisation.		
	1999	
		First phase of postal sector liberalisation.
	2000	Introduction of National Numbering Plan (NNP). First Postal Service Basic Law enacted.
Liberalisation of fixed telephone service. First ICP study on quality of mobile services.		
	2001	
Allocation of four licences for international mobile telecommunication systems (UMTS): Telecel, TMN, Oniway and Optimus.		ICP grants authorisation to provide non-reserved postal services not covered by universal service. Introduction of operator portability in the fixed network.
	2002	
ANACOM bylaws take force.		Access to audiotext numbers henceforth blocked by default.
Introduction of operator portability in the mobile network.		

**2003**

Information on mobile number portability henceforth mandatory.

**2004**

Electronic Communications Law enacted - determines powers of the national regulatory authority (ANACOM) in that area.

**2005**

With 15 processes complete, Portugal remained in the group of countries with the most electronic communication markets notified to the European Commission.

Extension of ANACOM's responsibilities to electronic commerce, as a central supervisory body. Election of Portugal, represented by ANACOM, to the council of administration of the Universal Postal Union (UPU).

**2006**

**2007**

ANACOM carries out first study to gauge the quality of internet access service.

Designation of the '92' numbering range for mobile telephone service.  
Launch of first mobile virtual network operator (MVNO) by CTT.

**2008**

**2009**

Public tenders for digital terrestrial television (DTT).

**2010**

ANACOM's 20th anniversary.  
Public tender for next generation networks.  
First frequency auction (broadband wireless - BWA).  
Information campaign on international roaming: Roaming Light.

Launch of new ANACOM image.  
Creation of consumer area on ANACOM website.  
Information campaign on value-added services.  
ANACOM sets schedule for ending analogue TV.

**2011**

**2012**

DTT begins emissions in three pilot areas: Alenquer, Cacém and Nazaré.  
Second frequency auction - multiband.  
ANACOM launches DTT information campaign.  
ANACOM launches Consumer Portal.

DTT reaches all Portuguese - completion of analogue TV switch-off.  
Multiband auction (4G) - licences awarded: Optimus, TMN and Vodafone.  
Approval of new Postal Law.  
ANACOM launches information campaign on new portability rules.

**2013**

**2014**

Privatisation of CTT - Correios de Portugal  
New universal service providers designated (electronic communications).  
ANACOM launches NET.mede tool for measuring internet access speed.  
Framework law for regulators.  
Portugal attains a total of 2.6 million fixed internet accesses and nearly 4.7 million effective mobile broadband users.

Public telex, data and telegraph services end.

**25th anniversary of ANACOM.**

# WHICH REGULATORY INDEPENDENCE IN TIMES OF AUSTERITY?

**Robert Madelin**

Director-General, DG CONNECT (European Commission)

The introduction and application of the telecoms regulatory framework since 2002 has enabled Europe to make markets of the sector more competitive with substantial benefits for consumers and businesses.

While competition in these markets has increased over the years and a number of markets could be deregulated, Europe is still composed of 28 separate national markets leading to substantial opportunity costs and limiting the competitiveness of the European digital ecosystem.

A genuine single market for telecommunications is the end goal towards which the European Commission has been working on for years. It ultimately implies the gradual removal of national barriers to cross-border competition, including different national sector regulations, different national consumer laws relating to telecommunications contracts, and different national conditions for allocating and assigning spectrum. It also implies a framework that is more consistent, stable, legally certain, competitive, with a greater degree of harmonisation, and more conducive to investment, thus ensuring more choice, faster broadband, and better cross border services.

Needless to say, the national regulatory authorities have an important role to play in ensuring the proper functioning of the markets at national level and contributing through BEREC to the development of truly European markets.

In order to achieve this objective we need a strong and independent European regulatory community. A seamless network of expertise and authority, endowed with adequate human and financial resources enable regulators to carry out their tasks.

Independence, together with adequate regulatory capacity, constitute core principles of the EU regulatory framework and key to ensure effective and impartial regulation, leading to competitive markets. We will not establish a strong European regulatory culture unless the Member States respect in spirit the letter of the applicable EU law in this respect. National governments must ensure that

national regulatory authorities can operate independently: a weak regulator becomes more geared by political and national preoccupations and as a result leads to a further fragmentation of the single market.

The 2009 review strengthened the principle of independence of national regulatory authorities to ensure a more effective application of the regulatory framework and to increase the regulators' authority and the predictability of their decisions.

More concretely, the requirement of independence consists in a prohibition of giving or taking instructions, protection against arbitrary dismissal, a requirement that only appeal bodies or courts can review decisions of the regulators. One of the prerequisites for the independence of regulators is to ensure that they dispose of all the necessary resources, in terms of staff, expertise and financial means for the performance of their tasks. Their financial autonomy, in particular, is crucial, in order to enable them to recruit and maintain a sufficient number of qualified staff, so that they can carry out properly the tasks assigned to them. This enhanced political independence goes hand in hand with enhanced accountability. Member States can therefore exercise supervision on regulators in accordance with their constitutional law. Not only Member States may appoint the Heads and Members of the Board of the regulators, and dismiss them, in line with EU law but also they may impose on them different reporting obligations. Other supervision powers, such as for instance the power to overrule or suspend decisions are however explicitly excluded by the regulatory framework.

In these times of austerity and fiscal consolidation, Member States try to overcome the effects of the economic downturn by appropriate measures such as streamlining public spending. The telecoms sector has not been spared: Member States have tried to reduce the cost of regulation, to the expense, in some cases for its quality. We have all witnessed a trend to restructure and regroup different sector agencies into a single cross-sector agency, often accompanied by a significant reduction of human and financial resources.



As a consequence, the competences assigned to the telecom regulators are “swelling”, while their budget and personnel are “shrinking”.

Clearly in times of austerity all public entities need to become more efficient. The regulatory community cannot be an exception. Nor do I question the principle of national procedural and organisational autonomy. There is currently a trend, generally dictated by budgetary constraints and fiscal consolidation, which consists of reducing the regulators’ budgets and curtailing human resources. Member States tend to overcome the effects of the economic downturn by appropriate measures such as actions aimed at streamlining public spending.

While all this is understandable, we should not forget that regulators are mostly financed by the sector and do not burden the State budget. The feedback we get from stakeholders is that providers need high quality service from their Regulators and are willing to pay the price for that. They want regulators who take quality decisions on time, who enforce their decisions, who exercise their powers. Consumer protection, which equally suffers the consequences of financial constraints, is also a necessary plank for trust in telecom markets.

Independence is not only a national matter. Regulators cannot do their work without effective co-operation. BEREC is the key to ensuring that the EU regulatory framework is consistently applied in all Member States. It is an exclusive and institutionalised forum for cooperation among regulators, and between regulators and the Commission, in the exercise of the full range of their responsibilities under the EU regulatory framework, so as to ensure the consistent application in all Member States of the EU regulatory framework, and thereby contributing to the development of the internal market.

An evaluation of BEREC conducted in 2012 concluded that the independence of BEREC could be improved. The report concluded that BEREC should more often assume an EU vision rather than a nationally driven one: BEREC outputs should

illustrate an EU perspective and provide an EU-wide approach towards the issues addressed. Therefore BEREC, as a single entity, should be more focused on missions that concern the development of the internal market and empowerment of EU consumers and that it has to be independent from any government or stakeholder. In order to achieve this, it is a prerequisite that, at the national level, each regulator composing BEREC carries out its functions independently.

The fact that regulators have now a legal duty to cooperate both with each other and with the Commission, within BEREC, in a transparent and impartial manner, make them accountable vis-à-vis of the EU institutions as well as other regulators and local politics.

The work of BEREC where all its members on equal footing collectively exchange views and respond to regulatory challenges enhances the performance of individual regulators. This implicitly reinforces also their independence.

For believers in regulatory independence, such as myself, it has been heartening to note that the need for strong regulatory competences is also stressed in the current debate on the Connected Continent regulation. The European Parliament’s first reading resolution proposes to enhance competences of independent regulators by setting out a unique set of competences each independent regulator should have. While the debate is still on-going I strongly believe that regulators’ independence and comprehensive competences are a necessity so that they individually and collectively in BEREC can effectively fulfil their tasks in ensuring that European consumers benefit from competitive, advanced and high quality digital services.



# 25 YEARS AS REGULATOR, 15 YEARS OF LIBERALISATION

**Daniela Antão**

Secretary-General of Associação dos Operadores de Telecomunicações (APRITEL)

Thinkers, philosophers, sociologists and historians have over the centuries all produced 'methods' to organise thought, to both understand and explain reality.

Per its genesis and etymology, dialectic may refer to a method of argument by means of counter-position and contradiction of ideas which by contrast will originate new ideas. From another standpoint, as a means to understand reality and organise thought, dialectic offers a vision of the socially organised world, explaining its evolution over time.

Observation of how the Telecommunications Liberalisation process has evolved seems to corroborate that our choice is suitable. The sequence of monopoly, liberalisation and the new vision of the Telecoms Single Market (TSM), which represents the forward march unleashed by tensions embedded in the two first periods, seems to fully correspond to the dialectical stages of development: Thesis, Antithesis and Synthesis. We shall therefore continue this reflection with that conceptual framework.

The monopoly corresponded to the state of Being, because it was what existed (albeit with some exceptions) fifteen years ago, at the beginning of our analysis period.

Because they were deemed so crucial for normal organised life, telecommunications had to be placed under the responsibility of the state, the only body viewed as reliable to ensure continuity of services. To meet the idea that no citizen should be left without access to those telecommunication services considered essential for a decent level of human existence, this universality had to be ensured by the state, given the private sector's inability to include on its own initiative services that do not make a profit.

But pursuit of those interests eventually clashed with the sector's desired development vis-à-vis technological innovation, price levels, quality of customer service...

That monopoly model had to be 'negated' to resolve that contradiction.

The Antithesis of monopoly, as intention and normative action, was Liberalisation. Liberalisation was carried out in the last fifteen years by the sum of two movements: a legislative invitation for private investment and the private sector's positive response to that call.

The legislative measures of Liberalisation acted in the first four (of five) phases I identify in the life cycle of this industry: entry, establishment, competition and growth. The fifth stage is exit from the market, because 'death' is necessary in order to have 'life'; because 'exit' is necessary in order to have 'entry'. But regulation of market withdrawal was not dealt with by Liberalisation. Because regulating the exit is not regulating Liberalisation; it is regulating Consolidation.

One may say, I believe, that when regulating wholesale products the regulatory authority is often called to take a stance on the degree of market concentration. These challenges make the task of regulating markets a volitional and intertwined activity.

Telecoms markets have always been shaped according to the will of political leaders: such was the case of the monopoly decision and likewise the decision to liberalise. Fifteen years after the Negation of the monopoly, a new regulatory goal emerges: the TSM - Telecoms Single Market.

If the dialectical method is pertinent, the TSM should correspond to overcoming what is contradictory between the monopoly and the atomised market.

The monopoly provided the arguments for liberalisation. That opposition should be resolved in a comprehensive synthesis that brings together in a new idea what is best in each of the two previous models. The Synthesis should then approach a Pareto optimum.

The present economic, financial and political crisis in Europe sparked a feeling that it was urgent to dismantle national regulatory and trade borders that interfere with the development of an overarching market deemed able to generate for the EU additional GDP of around 110 billion euros per year. It is believed that the Connected Continent will benefit the entire economy developed over infrastructures, services and applications of information and communication technologies (ICTs).

The wholesale access price regulation discourse is more moderate than the discourse of the old liberalisation: access regulation should represent a 'stimulus to investment', an expression used pleonastically in this industry to indicate the intention to allow keeping access prices above marginal cost. Price regulation is eased and cost orientation is directed towards 'efficient cost' rather than 'cost' per se. Interconnection of subscribers in the Connected Continent gains a new dimension: roaming agreements that expand coverage beyond national borders are promoted, as well as free roaming in Europe for European citizens.

To achieve this new goal, growth is critical. Price regulation emphasises the duality of atomicity/efficiency: when do the advantages of the first no longer surpass the gains of the second? Hence, what scale will be required as a threshold for viable operations to expand beyond national borders? And should market calibration, the choice and promotion of the optimal point between atomicity and efficiency, be assigned to public intervention?

A classic path to gaining in size is called consolidation. The TSM will promote 'exits' (fifth phase) in national markets and should foster growth opportunities.

Market exits can be good or bad business for investors, workers and consumers. They can generate wealth in the atom-icity/efficiency balance, in job mobility and advantages for customers. Or they can generate hard-to-

recover waste, talent losses and fewer quality and choice for consumers.

The Portuguese electronic communications industry can aim to grow in this new Connected Continent. Our entrepreneurs, managers, engineers, marketers and so many other actors in our industry in Portugal have shown in these fifteen years that they have very advanced know-how in state-of-the-art network deployment, service development and high quality product innovation.

It is of utmost importance to prevent centralist mistakes within the EU decision-making ecosystem, for those errors generate discriminations that undermine the ability to compete in a pan-European market.

TSM: progression or regression? Threat or opportunity? That will depend on how that Telecommunications Single Market is built.



# 25 YEARS OF COOPERATION TO DEFEND THE COMMUNICATIONS CONSUMER

**Teresa Moreira**

Director-General of Consumer Affairs

The 25 years since the approval of Decree-Law no. 283/89 of 23 August have witnessed profound changes in Portugal's electronic communications sector, with major impact on businesses, citizens' habits and social relations. The contribution of action undertaken by the Autoridade Nacional de Comunicações (ANACOM) to promote competition, innovation and modernisation of the sector during that period must therefore be acknowledged.

The current Consumer Law (Law no. 24/96 of 31 July) nearly coincided with the consolidation of protection for users of essential public services, for the first time, per Law no. 23/96 of 26 July, which included under its aegis "telephone service", besides guaranteeing the "right of participation" for organisations representing users and stipulating the "duty of information" incumbent upon providers of those services and imposing certain rules with respect to service suspension and invoicing.

Approval of that important system, along with the guarantees associated to public service (universality, equality, continuity and affordability) demanded more attention and response from the then Instituto do Consumidor and led to closer cooperation with the Instituto de Comunicações de Portugal (ICP).



The ICP's 2001 statutory framework explicitly envisaged protecting consumer interests, as it was given the mission to "protect the interests of consumers, particularly users of universal service, via coordination with the appropriate entities, namely by encouraging consumer clarification and ensuring the dissemination of information inherent to the public use of communications." This also encompassed the power to inspect records of consumer

claims and complaints and to recommend or determine actions the sector's economic operators should take to resolve just complaints by users as foreseen in the new statutes, pursuant to its broad powers and capacity to intervene in the sector.

Consumers (users of communication services) have been represented on the respective Advisory Committee from the time the ICP began operations. Since then a long road has been travelled defending the interests of electronic communication service consumers, in a market which is totally liberalised, very competitive and strongly influenced by technological change, making it very challenging indeed to identify consumer interests and respond to their concerns, questions and complaints.

Collaboration between the Instituto do Consumidor (which preceded the Direção-Geral do Consumidor) and ICP-ANACOM consequently developed and improved in line with market evolution and the constant need to safeguard consumer rights in light of legislation currently in force.

The Electronic Communications Law (Law no. 5/2004 of 10 February) institutionalised that cooperation by stipulating that standard contracts of companies supplying electronic communication networks and services must be submitted to ICP-ANACOM, which is responsible for approving them after the Instituto do Consumidor issues a respective opinion.

Use of the complaints book in most economic activity sectors also enabled the Direção-Geral do Consumidor, as the public body responsible for drawing up and enforcing consumer protection policy, along with various regulatory bodies, among them ANACOM, to identify and understand the nature of consumer-related disputes in Portugal.

It can nowadays be asserted that the electronic communications sector is one of the sectors subject to the most complaints, and that it is necessary to continue identifying aspects that entail coordinated action with a view to protecting consumers' legitimate rights and interests.

The attention this regulatory body gives to consumers is well illustrated by creation of the Consumer Portal on ANACOM's website, along with the provision of price comparison tools that help consumers choose from operators' multiple commercial offerings, the response to information requests and complaints, and the obligation for operators to provide consumer information and service instruments and policies as well as systems for receiving, processing and resolving consumer complaints.

Especially noteworthy are the information and training initiatives jointly developed with the Direção-Geral do Consumidor and addressed to public and private partners (municipalities, consumer associations, consumer dispute arbitration centres) and concerning topics such as digital terrestrial television or different electronic communication services.

Another field where it is necessary to intervene is extrajudicial settlement of consumer disputes, for which the creation of a special mechanism for electronic communications was studied, a clearly positive solution from the standpoint of consumer rights. The legally mandatory arbitration established for consumer disputes involving essential public services, as in this case,

represented an important step for consumers by guaranteeing recourse to extrajudicial litigation mechanisms, though it does not assure expert evaluation.

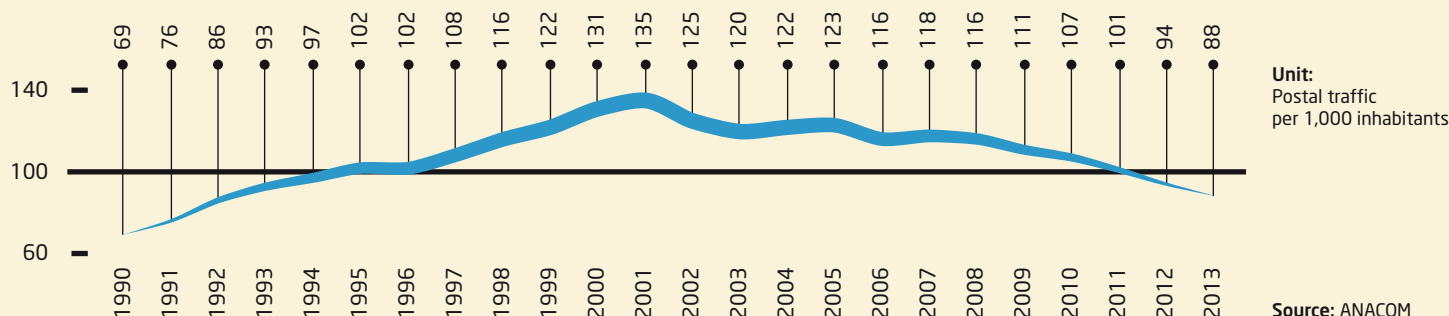
The Framework-Law for Regulatory Bodies (Law no. 67/2013 of 28 August) recently gave clear responsibilities to regulatory bodies in matters of consumer dispute settlement, among others. This is particularly manifest in the electronic communications sector, given that it accounts for the highest number of consumer complaints.

Ongoing technological progress in this area, along with the growth of electronic commerce and digital products and widespread use of mobile payments, require special consideration and growing cooperation between the sector's regulatory body, ANACOM, and the Direção-Geral do Consumidor, with a view to empowering and defending the rights and interests of consumers vis-à-vis economic operators and thereby resolving problems and issues affecting consumers.

To that end, and as in the last 25 years, the Direção-Geral do Consumidor is ready and available to fully cooperate with ANACOM in joint efforts in favour of technological progress, economic development and consumer protection.

## 25 YEARS IN NUMBERS

### POSTAL SERVICES





# IN THE ICT AND MEDIA MARKET: A QUARTER-CENTURY OF CHALLENGES

**Rogério Carapuça**

President of Associação Portuguesa para o Desenvolvimento das Comunicações

Anacom celebrates its 25th anniversary this year, something very unusual in the international context of communication sector regulators. The APDC has associated to that event and congratulates all those who have worked or still work for the regulator, extending best wishes for the future during a time of major challenges for the sector and for regulation.

The APDC aims to be a platform for development of the communications, information technologies and new media sector, a sector that is ever more integrated, with the bounds between players and businesses increasingly blurred. It is an association whose mission is to promote the sector, boost its members' value and encourage discussion, idea sharing and mutual networking with a view to enhancing the business environment.

In this regard, the APDC recognises and acknowledges the importance of the other sectors of economic activity, given that ICTs and new media are a modernisation instrument for all of them, without exception. And they are a very relevant factor for increasing productivity and efficiency and the creation of new opportunities for the Portuguese economy. ICTs and new media are likewise unavoidable for today's end consumers, regarding access to new products and services,

more and better information, higher civic participation and better qualification. With consumer participation on the rise, the traditional notion of consumer is nowadays being transformed into a new concept of 'consumer/producer'.

## **REGULATOR'S ROLE IS FUNDAMENTAL**

In the area of communications, the high level of competition on the domestic market drove the creation of new offerings and encouraged strong

investment in new generation infrastructures. This enabled high network coverage and quality, placing the country at the forefront of innovation and embodying the vision of Portugal as a true laboratory for the sector. There was a consequent increase in consumer options, along with lower prices. And operators continue to put forward new offerings exploitable in other parts of the world. Yet a major discrepancy persists between market demand and available supply in terms of networks. Lower buying power associated to an adverse economic and demographic situation, along with low digital literacy among the population's higher age brackets, explain this circumstance.

But the fundamental role of the sector regulator, with respect to the goals of promoting open and competitive markets and protecting consumers, is becoming more important. The fast-changing market in terms of supply, technology and consumer profiles means there are more and more challenges. Increasing mobility, reinforced network bandwidth, exponential data traffic growth, platform convergence, disruptive internet-based competition models (OTT) and the development of areas such as the cloud impose upon Anacom increasingly proactive regulation that is flexible and able to adjust, anticipating changes, reducing regulatory uncertainty and seeking to assure consumer protection and defence, besides guaranteeing a level playing field among the various kinds of operators.

## **CHALLENGES OF THE NEW EUROPEAN PACKAGE**

The regulator's challenges extend even further. The new regulatory package promoted by the European Commission, which is still wending its way through Union institutions, aims to create a harmonised single market in the sector. The proposed measures are multiple and their impact huge. The member states seem to agree with the Parliament on the need to thoroughly review the package. But the EC wants to have several of the measures take force in 2015. Everything now depends on decisions made at community level and by the new EC.

The operators naturally have different views about the package's impact. On the one hand, excess regulation and concentration of powers in the EC along with a lack of





attention to member state specificities is noted, and on the other the negative impact on operator profits. Various concerns stand out in a package which implies a major challenge for domestic companies and regulators. Because some measures are significant from the consumer standpoint, the value of the benefit versus potential negative impact on the operators' business must be borne in mind. All this takes place in a setting marked by low concentration in the European market and rising competitive pressure from players beyond the regulators' reach.

The postal market has also been subject to numerous changes. Privatisation of the historic operator CTT and deregulation will change the face of the sector. Competition is also rising in businesses ever more entwined with e-commerce and the internet is increasingly used to conduct transactions that generate physical deliveries.

Regarding the media market, noteworthy are the new regulatory challenges. They run from those deriving from

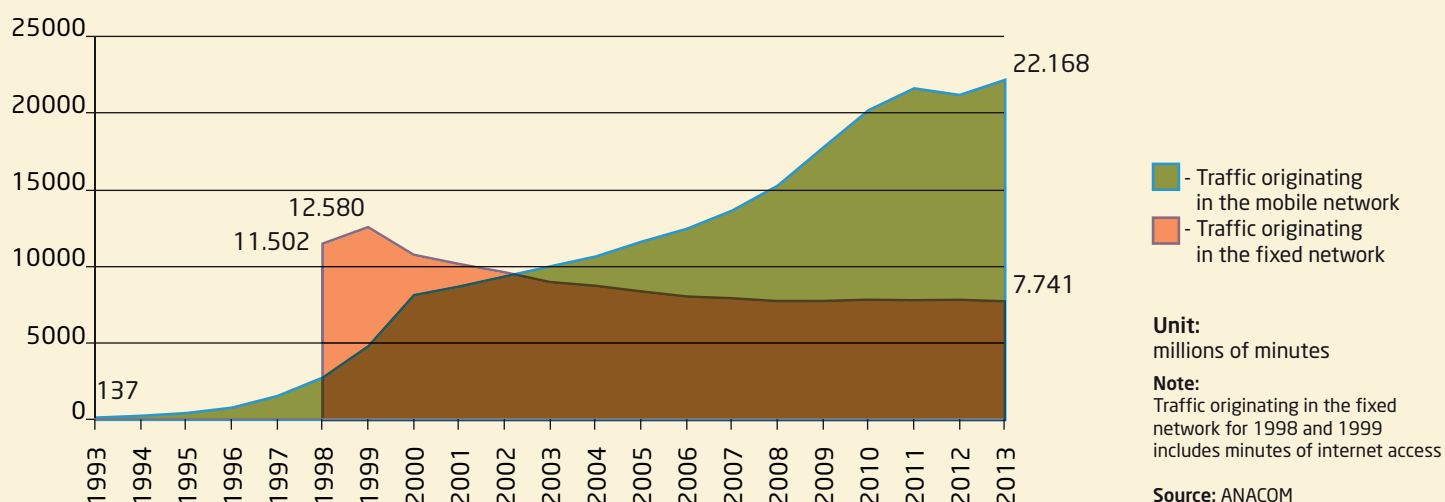
constant innovation in the areas of digital terrestrial television and internet-based TV to the decision on spectrum allocation in the 700 MHz band.

For national regulators the challenges are therefore huge. How can the creation of measures that favour consumers be reconciled without destroying the operators' ability to compete? How can dynamic efficiency of markets and their long term sustainability be promoted? How can more versatile regulation continue to be assured, adjusted to an increasingly sophisticated sector, with the means at the disposal of a body like Anacom? How can efficient management of public resources be guaranteed, from the perspective of development of the European single market? How can the specificities of a market like Portugal's be demonstrated to European authorities?

These are some of the very difficult missions of Anacom, one of the world's oldest regulators. The interests of consumers, sustainability of the operators' business and the sector's entire value chain depend on their successful accomplishment.

## 25 YEARS IN NUMBERS

### VOICE TELEPHONE TRAFFIC - MINUTES



# INTERESTING TIMES IN TELECOMMUNICATIONS

**Steffen Hoernig**

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It was with pleasure that I accepted the challenge to write a few words about the last 25 years and the future of the communications sector in Portugal. Then I realized that I had arrived in this country only 15 years ago, so I had missed the first 10 years of ICP-ANACOM's existence, which this special edition of Spectru commemorates (I will only comment on the telecommunications market since I do not follow the postal sector).

Looking back, these 15 years were nonetheless quite "exciting times" as the old Chinese saying goes: In loosely mixed chronological order, there was the liberalization of the fixed telephony market and entry plus exit of several new competitors; the entry and rise of the third mobile operator; the introduction of narrowband, cable-based, DSL-based and finally fibre-based internet; Sonaecom's failed take-over bid for Portugal Telecom and the spin-off of the latter's cable TV subsidiary (rebranded Zon); the subsequent development towards a duopoly based on first triple-play and then quadruple-play offers (fixed telephony, TV, internet, plus mobile telephony); and finally, the merger between Sonaecom and Zon.



Contrasted with so much upheaval on the market side, ICP-ANACOM provided a remarkably stable regulatory counterpart. This was helped on the one hand by the fact that ICP-ANACOM had already accumulated a decade of experience, and on the other by the European framework for regulation of the telecommunications sector that had been adopted at the start of the new millennium. This framework provided a clear roadmap to regulators, through a move

away from the tight regulation of previous state-owned monopolies towards the aim of using regulation to create space for the development of competition. In practice this implied that the sector was divided up in separate markets, at both retail and wholesale level; then each market would be subjected to a test determining whether "effective competition" could arise or not; if not then the market would be further analysed, firms with "significant market power" identified and regulatory remedies imposed. Helpfully, the European Commission also provided a list of Recommended Markets, which all national regulatory authorities had to deal with. This list first comprised 18 markets, a second list of 2007 had only seven, and the latest proposal for a new one only included four markets. ICP-ANACOM has toiled hard over the last decade to analyse and re-analyse these markets while providing a stable regulatory setting for companies and consumers alike.

At this moment in time, we are about to enter a new transition on both sides of the market, pushed on by several simultaneous developments. On the one hand, technological developments have led to ever more convergence of the services that different physical platforms (cable, fixed and mobile) can supply, which calls into question the traditional "market-silo" approach to regulation. Still on the technological side, the strongly perceived necessity to invest in high-speed next-generation networks, both fixed via fibre or upgrade cable, and mobile via the LTE standard, creates strong pressure on regulators both for protecting the returns to investors and safeguarding competitiveness of the market.

On the other hand, out of the general failure to have mobile roaming rates regulated separately at a national level arose more involvement of the European Commission, which culminated in its recent "Connected Continent" proposal, which, if adopted as proposed, would lead to some significant structural changes in the regulatory landscape, apart from dealing with practical issues such as "home rates" for mobile roaming and net neutrality. In particular, the Commission's vision of moving from separate national markets with harmonized regulation to a single transnational market for

communications in Europe is bound to occupy a significant share of regulators' attention.

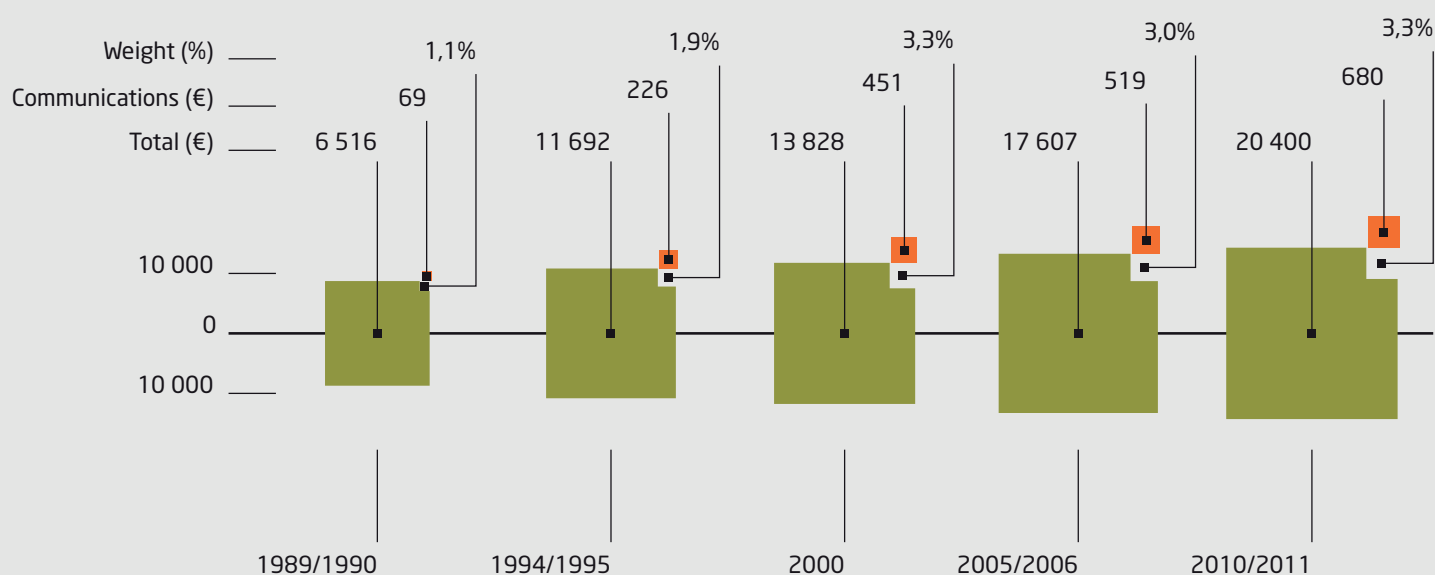
Simultaneously, though, different types of consolidation have started to take place. First, mergers between competitors in the same country, as in the mobile markets of Austria and Germany,

which tend to be to the detriment of consumers. Second, the European economic crisis has lowered firms' market capitalization, which facilitates take-overs by foreign (non-European) operators.

In short, more "exciting times" are to be expected in the next 25 years of ICP-ANACOM' life: history is far from over.

## 25 YEARS IN NUMBERS

### AVERAGE HOUSEHOLD SPENDING IN PORTUGAL



Source: Survey of Family Budgets (1989/90, 1994/95 and 2000) and Survey of Family Spending (2005/2006 and 2010/2011).

# CONSOLIDATION IN THE TELECOM SECTOR: TRENDS AND NEW CHALLENGES

The 7<sup>th</sup> ANACOM Conference was held on 22 September 2014 in Lisbon, where the theme of this event associated to the Authority's 25th anniversary was 'Consolidation in the Telecommunications Sector - trends and new challenges'.

At the opening session ANACOM president Fátima Barros paid tribute to previous administrations and the ANACOM teams that worked with them, whose dedication and commitment played a decisive role enabling ANACOM to become a reference at European level, specifically due to the pioneering nature of some adopted regulatory measures.

Barros indicated that consolidation may arise as a natural process resulting from market maturity but cannot diminish competition or consumer wellbeing. ANACOM's effort to protect consumers from aggressive and less transparent behaviour by service suppliers was also highlighted, through its preparation of measures to guarantee more transparent contracts and end practices making it hard to cancel them.

In the context of postal sector liberalisation, and with the CTT's

privatisation in mind, the chair of ANACOM stressed the growing importance of the regulator's role, given that universal postal service has been placed entirely in the hands of private bodies for the first time.

## KEYNOTE SPEAKER - RECENT MOBILE TELECOMMUNICATIONS MERGERS - A HELICOPTER TOUR

Massimo Motta, chief economist of the Directorate-General for Competition of the European Commission, covered the latest mergers in the European market, noting that since 2006 only one merger has been authorised by the EC without application of conditions. The Commission imposed remedies on all the others, including the two most recent (in 2014): H3G/Telefónica IE in Ireland, and Telefónica DE/E-Plus in Germany. For Motta, a consolidation trend among large companies seems evident, though what's more important from DG Competition's standpoint is to ascertain whether or not that consolidation is beneficial for society in general.

## PANEL "TELECOMS SECTOR MERGERS: DETERMINANTS, REGULATION AND NEW BUSINESS MODELS"

ANACOM board member Helder Vasconcelos was responsible for opening this session and put forward several questions for discussion: (1) Do companies really require scale to make their investments



or to merge to compete in the market with multiple play offers? (2) What are the impacts of those bundled offers on regulation and competition policy? and (3) What are the sector's future prospects and how will new technological developments impact competition?

Regarding investment in networks and consolidation, the head of the Competition Authority (AdC), António Ferreira Gomes, questioned whether the EC was doing the right thing and mentioned the existence of different views about competition. He also considered that with convergence, platform joining and the rise of multiple offers, some borders have blurred and we may be facing a change of paradigm. "Should regulation focus on content?" he asked, opining that consolidation means discussion is necessary between the EC and the national regulators, competition authorities and academics. The telecoms industry has radically changed and it is vital for the benefits to be guaranteed, he concluded.

The head of the Irish regulator (ComReg), Kevin O'Brien, expressed reservations



about the merger that took place in Ireland, saying he wasn't sure the effects of the EC-imposed remedies were sufficient to restore the competitive situation. He also defended the position that national consolidation and European consolidation are different, along with each market's dynamics, and referred to several questions concerning the benefits resulting from the merger and the adopted remedies.

The third speaker was Carlo Cambini, an associate professor of the Turin Polytechnic and of the Florence School of Regulation. He began by asking "What regulation will we have after the wave of mergers?" and then provided an overview of the telecoms sector, indicating that ongoing merger processes may create competition distortions. He also warned about aspects associated to fixed/mobile termination, bundled offers and the need for the existence of wholesale TV content offers, concluding that the mergers may determine the need for new and innovative regulatory rules.

## PANEL "TELECOMS REGULATION 25 YEARS AFTER THE BEGINNING OF THE LIBERALISATION PROCESS"

Speakers on this panel were former ANACOM presidents Luís Nazaré, Álvaro Dâmaso, Pedro Duarte Neves and José Amado da Silva. ANACOM board member João Confraria was responsible for moderation along with the deputy director of Expresso, Nicolau Santos.

Confraria recalled that ANACOM was one of the first regulatory bodies at European level and that it was founded in 1989, a time when major changes began to occur in the sector, with new networks and services, convergence with information technologies and liberalisation. He stressed that orientation to the future is, was and continues to be a vital aspect of the regulator's culture. He situated its genesis in the life and action of Fernando Mendes, who headed the ICP installation committee and later chaired its board of directors until

1998, playing a decisive role in the progressive assertion of regulatory powers in Portugal's telecoms sector.

Nicolau Santos next entered the discussion with a decisive question: "Why not consider the consolidation of sector regulatory bodies with the competition authority?"

Nazaré stated that where vertical regulation exists, the vertical regulators should be responsible for applying competition law. It is a more logical and efficient model which enables much faster decision-making. He defended the existence in Portugal of just one regulator for communications, which should include regulation of the news media, indicating the USA and United Kingdom as examples.

Álvaro Dâmaso held that the market has not been able to self-regulate, stressing the importance of ANACOM's market supervision role. He favours consolidation with content, while defending that in Portugal it is important to separate the Competition Authority from the sector regulators.

Pedro Duarte Neves defended segregation between ex ante and ex post regulation. The current framework with prior definition of markets, dominant operators and rules enabling the market to function seems correct to him.

For José Amado da Silva the question of ascertaining the best institutional structure for regulation in the various fields is a problem that has not been studied. He acknowledged that in the event of consolidations, if the regulator can wield ex ante and ex post instruments then it is possible







to regulate less aggressively, because the remedies and consequences of noncompliance can be presented without obligatory recourse to third parties. He expressed serious doubts about the regulatory framework under discussion in the EU, which is seemingly meant to destroy regulation.

The panel next considered the matter of the new framework law and whether it would result in any dissatisfaction by society and political power regarding regulation. Santos noted that the new law limits some of the regulators' capacities, namely by fixing salaries, equating careers.

Dâmaso opined that the framework-law is only an organic law concerning the division of powers, determination of financing and definition of non-compatibilities. It will implicitly not affect how ANACOM operates, though there is a risk of more government intervention.

For Amado da Silva, ANACOM's current by-laws prior to the framework-law already guarantee all the conditions for good performance of its duties. While he admitted that the new law may be beneficial for some regulators, he

stressed that for ANACOM it is not. He also questioned whether anyone wants independent regulators.

Asked about effects of the operators' price war on future investments, Amado da Silva underscored ANACOM's oversight role with respect to prices charged and recalled that the regulator does not have powers to intervene in retail prices. Dâmaso called attention to the new models for direct communication between emitter and receiver without going through distribution, emphasising that the

imposition of requirements on current operators without considering these new ways of communicating may lead to promotion of a future business that no-one regulates.

Pedro Duarte Neves considered that the regulator's mission is to verify whether the prices charged and product diversity are acceptable, how they compare with best international practices and whether the technological solutions presented are good. He concluded that the telecoms sector has never been a barrier to Portugal's economic development. Regarding the issue of over-the-top services, João Confraria called attention to the political, regulatory and economic challenges they originate, stressing that in regulatory terms not much can be done at national level, as it is a question that will be dealt with at European level.

