

1. FRAMEWORK

1.1. This Report's Structure

ICP – Autoridade Nacional de Comunicações (ICP-ANACOM), under the terms of its Statutes¹, is bound to send every year the Regulation Report to the Government, also to be submitted to the Parliament.

As with the Regulation Report 2006, this is a specific document that will not include the section on the State of Communications, nor the Activities Report, for as the three publications' goals, rationale and even issuance dates are different.

We remind that the Regulation Report offers an outlook of ICP-ANACOM's regulatory activities, which also has other duties, assigned to it by its Statutes or by other legislation, as commonly known, with boundaries between them not always obvious. However, we do believe that, as in previous years, the main facts of ICP-ANACOM's activities in the field of market regulation are well portrayed in this document.

This Report's structure is similar to that of 2006, showing ICP-ANACOM's main regulatory tools and its means of intervention. Thus, regarding electronic communications, it presents the Regulator's three fundamental action areas, namely:

- (i) market analyses and the consequent imposition of duties on the companies with significant market power (SMP), particularly regarding regulated reference offers;
- (ii) frequency and numbering management;
- (iii) monitoring of the universal service (US), mainly regarding prices and quality of service, and also covering the postal services sector.

This report also covers other ICP-ANACOM's more specific activities, namely in connection with user protection, communications' safety and with supervision, monitoring and sanctioning. It also contains references to cooperation with other entities, particularly the Competition Authority (AdC), and participation at numerous international bodies as the National Regulatory Authority or in representation of the Portuguese State.

¹ Article 51, no. 1 of the Statutes annexed to Decree-Law no. 309/2001 of 7 December.

The Report ends with a set of final considerations highlighting the main challenges faced by regulation.

1.2. ICP-ANACOM's strategic goals for 2007 and their accomplishment

The Regulation Report concerning 2007 takes as its mandatory referential ICP-ANACOM's performance goals and general guidelines for that year, which were previously stated by the Regulator on its corresponding Activity Plan.

The strategic vision of ICP-ANACOM's Board of Directors for the 2006-2008 triennium, under this Authority's duties, was basically maintained for the following triennium, with some updates resulting from the experience gained, and led to the adoption of the following strategic goals for the 2007-2009 period:

- To promote open and competitive markets;
- To improve usage conditions for citizens;
- To foster innovation and investment on infrastructure;
- To actively follow-up the development of the European Union's (EU) internal market;
- To increase ICP-ANACOM's action ability and its efficiency
- To foster international cooperation.

Below are presented with greater detail the first previously mentioned four goals for the 2006-2008 triennium, which are those more directly connected to the regulatory activity that is the object of this Report. General highlight is given to how the main activities carried out in 2007 contributed to the accomplishment of these goals.

To promote open and competitive markets

The existence of open and competitive markets is essential for the communications sector to fulfil its role in the process of growth, development and increase competitiveness of the Portuguese economy, both fostering consumer and end user benefits, and obtaining investment levels that enable the sector's sustainable growth, under strict conditions regarding a high level of network reliability and the use of safety criteria.

This strategic goal intends to minimize distortions or barriers to competition, such as discrimination when handling with companies or dominant position abuse, and to encourage markets to operate in a context of transparency, stability and predictability regarding the corresponding tariff and regulatory systems.

In order to implement this goal, the strategy adopted for 2007-2009 was based on five items:

- To apply proportionate, transparent and predictable regulatory principles;
- To review the analyses of electronic communications markets (defining relevant markets, evaluating significant market power and imposing obligations), with particular emphasis on the changes proposed within the EU;
- To prevent situations of dominant position abuse;
- To take measures favouring competition among different technologies;
- To deepen the study concerning the postal services market.

Within his scope, as detailed along this report's relevant sections, several items stand out:

- The conclusion of the first round of analysis of relevant markets stated on the Recommendation of the European Commission (CE) 2003/11/EC, of 11 February;
- The adoption of measures preventing dominant position abuse, namely by acting on several retail offers and by granting conditional authorization to the incumbent operator for integrated retail offers aggregating network access lines and telephone traffic. This was only possible further to the watchdog making sure that the alternative operators would have the conditions to replicate that offer;
- The consolidation of technology- and service-neutral policies within the scope of radio spectrum management, which is increasingly regulated towards the effective availability of radio spectrum to the market, and the promotion of competition;
- The public disclosure of a study on the development prospects of postal services in Portugal in connection with its coming liberalization.

It should be pointed out that, in 2007, within the scope of the wholesale offer regulation and within a framework of application of the proportionality principle, some soft law regulatory measures were developed, through the issuance of recommendations (e.g. within the scope of the naked DSL wholesale offer). Also, further transparency and predictability mechanisms were implemented that year, namely with the detailed publication of the methodology used in some compliance tests regarding the application of regulatory rules (such as the application of the “retail-minus” rule within the scope of the “Rede ADSL PT” offer).

To improve usage conditions for citizens

In situations where the free market operation does not lead to an efficient social distribution of resources, as happens with a considerable part of the electronic communications and the postal services sectors, it is essential that the regulator makes sure that citizens and companies get the best satisfaction possible in terms of quality of service, prices, diversity and universality. This strategic goal is the end goal of the regulatory activity and is clearly stated on the regulator’s mission statement.

In order to accomplish this goal, it should be actively assured that companies and families have the information enabling them to make the best options regarding their purchasing and investment solutions, thus fostering more demanding and efficient behaviours.

Consumer education and information is considered essential, through the dissemination of clear, updated and timely information, namely of perceivable and comparable indicators on the operation of markets and on the performance of entities operating in the sector.

It is also considered essential to make sure that consumer protection is in place, by fostering the establishment of mechanisms preventing the providers of communications services of not fulfilling their duties.

Within this scope, these were the guiding principles for 2007-2009:

- To make sure that information is in place enabling consumers and other end users to make the best choices;
- To promote the spreading of quality of service indicators;

- To reduce the situations where there is no alternative choice of communications services providers;
- To assure the universal access and provision of the US, and to foresee its scope considering citizens' new demands;
- To foster the development of mechanisms easing up the relationship between consumers and operators;
- To assure the decrease of payments for services that are not used or that are not properly provided, besides improving their quality.

In this context, some activities implemented in 2007 stand out within the scope of the US tariff scheme for the telephone service at a fixed location (FTS). They aimed at balancing the consumers' immediate interests with the long term sustainability of competition in this service's offer, in the framework of the maintenance of specific social schemes for retired people and pensioners, thus preventing its discontinuity in face of the suspension of funding foreseen in connection with that matter in the State's General Budget,

Quality control of postal services was also subject to particular care, with measures being adopted to compensate users for the non-fulfilment, in 2006, of the goals set by CTT – Correios de Portugal, S.A. (CTT), considering a framework of flexibility of those measures without reducing their financial impact and the coverage of these service's user universe.

The safeguard of consumers' rights and demands was also at the origin of several decisions by ICP-ANACOM, namely related to the pre-selection customers' activation and deactivation procedures, and the sanctioning of the non-fulfilment of the corresponding Regulation by the involved operators, with direct and immediate benefits to users.

Finally, regulatory measures were implemented at the wholesale level with an indirect but considerable impact for consumers and other end users, such as the one concerning the so-called naked DSL, which made it possible to provide the end consumer with offers that only include the service of their interest (in the case of naked DSL, broadband internet access), while at the same time several operators introduced package (double or triple-play) offers in the market.

To foster innovation and investment on infrastructure

Innovation and investment on infrastructure are paramount to the sustainability of any sector's development, in the medium and long run. This principle is based on the need to assure the availability of networks with increasing quality, on the several technological alternatives available, and which are a prerequisite for an effective non-discriminatory access and an efficient use.

Regulatory activity must foster these factors, for the communications sector to continue to achieve, in the medium and long term, a relevant role in the development of the Portuguese economy, namely through companies that develop sustainable business models, providing quality products and services to citizens.

Besides creating an environment assuring that innovation and investment on equipment and infrastructure are fostered, it is also the regulator's job to manage potentially conflicting short, medium and long-term consumer interests – lower prices versus incentives to investment in present days leading to lower prices in the medium run – establishing priorities and compromises.

These were the main guiding principles adopted for 2007-2009

- To adopt, when need be, measures fostering business models based on developing and favouring communications infrastructure;
- To actively participate in the process leading to the use of public infrastructure for electronic communications and postal services;
- To promote the development of new services and systems;
- To make sure that a regulatory framework fostering convergence and the development of systems, services and equipment is in place.
- To foster cooperation with higher education and research entities for the dissemination of high-edge technological knowledge and to create the environment for its correct adaptation to the development of communications.

On this domain, it is important to stress out ICP-ANACOM's performance in 2007 in preparing the entire legal framework for the implementation of digital terrestrial television

(DTT) in Portugal, in creating new numbering ranges for new services (116x, 76x), for harmonized social value services and flat-rate per call services, and also in clarifying the regulatory framework of the mobile virtual network operators' (MVNO) activity.

Within this scope, and besides launching several analyses and draft studies concerning the development of new generation networks (NGN) and their regulatory framework, it is also important to highlight some measures aiming to promote investment efficiency and resource optimization, namely within the scope of the shared use of co-installation areas on the exchanges of PT Comunicações, S.A. (PTC), and creating the environment for interconnection between operators colocated there.

The establishment of a more favourable environment for the development of studies and scientific analyses concerning ICP-ANACOM's regulatory activity should also be noted, from a standpoint of anticipating markets evolution, and towards a closer connection between the Authority and higher education and research entities, by means of creating and implementing, in 2007, the Office for Studies and Prospect.

To actively follow-up the development of the European Union's (EU) internal market

In accordance with ICP-ANACOM's duties, the need to contribute to the development of EU's internal market is always present, notwithstanding the safeguard of national market specificities, if relevant, and of the necessary conditions for its autonomous development, which enables its efficient integration in a common market under construction, without artificial barriers.

Thus, it was timely established that ICP-ANACOM would follow-up and discuss the project for EU's new electronic communications regulatory framework.

ICP-ANACOM had therefore quite an active participation, both in the electronic communications and in the postal sector, regarding the important developments occurred in 2007 at the EU (namely the development of the new electronic communications regulatory framework proposed by the EC and the new Postal Directive adopted by the Council and the European Parliament).

This Authority's intervention was carried out both in the fulfilment of its duties in terms of Government advisory and autonomously as a National Regulatory Authority, within the scope of the European Regulators Group (ERG), where it actively participated in the

preparation and adoption of several reports, opinions and common positions, thus contributing to the formation of harmonized understandings on several relevant matters for the EU's internal market.

Mention should be made to ICP-ANACOM's intervention in the implementation in Portugal of the EU's regulation regarding international roaming, ensuring its entry into force in the established deadlines and conditions, and supervising its application.