

## **5. INTERNATIONAL PARTICIPATION**

### **5.1. European Union**

In 2007, ICP-ANACOM worked closely with the relevant Ministry in the organization of the Portuguese Presidency, leading the national representations in the postal and telecommunications group, and assuring assistance to the Government in the negotiations at the Council and at European Parliament. All the goals of the Presidency were achieved or exceeded, namely:

- Postal services: Adoption of a common position on a Draft Directive of the European Parliament and the Council that changes Directive 97/67/EC regarding the full accomplishment of the Community's postal services internal market, already agreed with the European Parliament. This directive's main proposal is the opening of the postal market to competition by the end of 2010, simultaneously guaranteeing the provision of the universal postal service to all users, regardless of their location within the EU.
- Mobile satellite services (MSS): Presentation of a follow-up report with a general agreement on its text. The proposal intends to create, at European level, a common procedure for the selection of mobile satellite service operators, as well as to set the terms for a coordinated authorization, by Member states, of the MSS operators selected to operate in the 2 GHz band.
- Mobile TV: Adoption of the Conclusions of the Council in order to support a coordinated approach in the introduction of Mobile TV in Europe.
- GSM Directive: Adoption of a general approach on the directive, which aims to allow the use of frequencies used by that technology for other mobile services.
- World Radiocommunication Conference 2007 (WRC-07): Approval of the Conclusions of the Council for coordinating the Community position at the International Telecommunication Union's (ITU) WRC-07.
- Review of the regulatory framework: beginning of the proposal's analysis, on a technical level, and presentation of the impact report. The EC presented its legislative proposal for the review of the regulatory framework for electronic communications at the Council of Ministers of Transport, Telecommunications and Energy, on 29 November 2007.

Within its powers, ICP-ANACOM participated actively in the committee activities foreseen in the community framework, specially in the following bodies, more focused on the regulation of markets and of radio spectrum: Communications Committee (COCOM); Radio Spectrum Committee (RSC) and Radio Spectrum Policy Group (RSPG); Postal Directive Committee.

During the first quarter, still under the German Presidency, ICP-ANACOM assisted the Government on issues that were under analysis at the Council (in the scope of the Telecommunications Group), the international roaming Regulation standing out.

#### **5.1.1. Communications Committee**

COCOM was created by the Framework-Directive. ICP-ANACOM was present at all six COCOM meetings held in 2007, assuring the national representation and actively participating in all the debates that occurred. Four subgroups operate within COCOM – the Expert Group on Emergency Access (EGA), the working group on authorizations, the Inclusive Communication (INCOM) group, the group on standardization, and the group on Digital TV (CBISS - Communications Broadcast Issues) – which study and prepare documents that are presented to the COCOM.

During this period, a Decision was adopted that changes Decision 2007/116/EC in order to introduce new reserved numbers starting with “116” for harmonized social value services, and a Decision was adopted changing Decision 2003/548/EC concerning the elimination of specific types of leased lines from the minimum set of leased lines.

Other issues were also discussed, such as the European emergency number “112”, the Recommendation of the EC on rights of frequency use in the context of the wireless access policy for electronic communications (WAPECS), the notifications process in compliance with article 7 of the Framework-Directive, the list of reviewed standards, the European Telephony Numbering Space (ETNS), the harmonized usage conditions regarding the use of spectrum for mobile communications on board aircrafts, and the assessment of broadband's situation in the EU.

#### **5.1.2. Radio Spectrum Committee**

RSC, created by the Decision no. 676/2002/EC, continued its activity in 2007 with the development of several draft decisions, namely the EC draft Decision on the harmonization of technical conditions required by mobile communications systems on

board aircrafts (MCA), the draft review of the Decision that changes Decision 2006/771/EC on short range devices (SRD), and a draft review of the Decision of the EC concerning the 3.4-3.8 GHz band for BWA.

Also standing out from this Committee's activity in 2007 was the participation in the approval of the following EC draft decisions:

- Decision changing point 1 of article 4 of EC's Decision 2005/513/EC, on the harmonized used of spectrum in the 5 GHz frequency band for the implementation of wireless access systems, including wireless local access networks (WAS/RLAN);
- Decision on the harmonization of the radio spectrum for devices that use ultra-wideband (UWB) technology in the Community;
- Decision on the harmonized use of the radio spectrum in the 2 GHz frequency band for the implementation of systems that provide mobile satellite services (MSS);
- Decision on the harmonized disclosure of information concerning spectrum use;
- Decision of the EC on the harmonized use of the 900 MHz and 1800 MHz frequency bands for terrestrial systems that are able to provide pan-European electronic communications services in the Community in connection with the withdrawal of Directive 87/372/EEC, named "GSM Directive".

Also in 2007, a standardization mandate was adopted for the European Conference of Postal and Telecommunications Administrations (CEPT) on technical considerations aiming to harmonize the options for using the digital dividend (spectrum became free due to the implementation of DTT and to the switch-off of analogue television).

### **5.1.3. Radio Spectrum Policy Group**

RSPG, created by Decision no. 2002/622/EC, adopted two Opinions in 2007, one on the implications for spectrum policy resulting from the digital dividend, and another on WRC-07.

This world conference organized by the ITU took place from 22 October to 16 November 2007, trying to find harmonized solutions to ease the future development of wireless communications all over world. Over 2800 delegates from 164 Member states and 104 Observers were present, ICP-ANACOM being included in the national representation. The

WRC-07 agenda included about 20 issues, concerning practically all terrestrial and satellite radiocommunication services and applications. The agreements reached during this Conference, currently transposed to WRC-07's draft final acts, enter into force on 1 January 2009.

This Committee is currently pursuing its activity, developing several Opinions, namely the European approach on the collective use of spectrum (CUS), the use of spectrum by some public sectors and its implications in the EU, operational modernization and the improvement of coordination in the context of the EU concerning spectrum management, and lastly, another Opinion to assist Member States in the coordination of frequencies with non-EU countries.

#### **5.1.4. Postal Directive Committee**

The postal Directive Committee, created by Directive 97/67/EC, met twice in 2007, with highlight on the analysis of postal standardization issues, including the approval of the new mandate for CEN (European Committee for Standardisation) regarding postal services and equipment, the collection of statistical data for the implementation of the 3rd Postal Directive, quality of service, and US financing through State aids.

#### **5.1.5. European Regulators Group**

ERG, created by Commission's Decision no. 2002/627/EC, fulfilled in general the foreseen work agenda. Highlight goes to its contribution for the development, by the EC, of proposals on the review of the regulatory framework, including the recommendation on relevant markets, and the works developed concerning regulatory harmonization in the scope of the implementation of the international roaming regulation.

Regarding the review of the regulatory framework, ERG closely cooperated with the EC in the development of proposals (for example, through extensive Opinions on functional separation and on relevant markets), and in building a new institutional model. ERG proposed its own development to be a guarantee of the consistent implementation of the regulatory framework, particularly regarding article 7, and developed common positions on the regulation of the local access wholesale market and the broadband access wholesale market.

ERG had a leadership role in the follow-up of the implementation of the roaming regulation, having published orientation guidelines regarding its interpretation, and a report on the data collection process resulting from its implementation.

Also published in 2007 was the Common Position on VoIP, the Opinion on the regulatory principles applied to new generation networks, the Principles for the implementation of best practices on WACC<sup>44</sup>, a report on interconnection, and another on the regulatory accounting systems used by ERG members; There was an update to the report on competition in the broadband market, and also a follow-up of the cases of opening of phase II by the EC in the scope of article 7 of EU's Framework-Directive.

Also in December 2007, the draft common positions on the symmetry of mobile termination fees on the fixed and mobile services were approved for public consultation, after an intense work and a broad internal debate.

Also at the end of 2007, there was a public consultation on a report on best practices regarding regulatory regimes in the wholesale unbundled access and in the high throughput access, and the EC changed its Decision creating ERG in order to include Bulgaria and Romania on the list of relevant regulatory authorities.

Another highlight during last year was the organization of a seminar on the NGNs designated “NGN Regulation and Investment”, and of a meeting with the Broadcasting Regulators Group (EPRA) in order to analyze convergence issues.

ICP-ANACOM also participated proactively in ERG's activities, being represented in almost all its working groups, recognizing the importance of these activities in the development of the regulatory framework and establishing the best regulation practices at the EU level.

## **5.2. Independent Regulators Group (IRG)**

IRG (Independent Regulators Group) gathers the NRA of the electronic communications sector of the 27 EU Member States, of the European Economic Area (Switzerland, Iceland, Norway and Liechtenstein), and of the candidate countries to the EU (Turkey and Croatia), while Macedonia was admitted as an observer

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<sup>44</sup> Weighted average cost of capital.

In 2007, ICP-ANACOM attended all IRG plenary meetings and their preparatory meetings, having made part of an operational middle group with representatives of each NRA, named Contact Network.

Following the discussion started in 2006 on the ways to strengthen IRG's role and the need to make it more efficient, the Chairman's permanent Secretariat was created, in compliance with a decision of the Plenary meeting of December 2006, and a Group was formally created at the Rome Plenary meeting, with its own budget and with registered headquarters in Brussels.

ICP-ANACOM actively contributed to the collection and dissemination of information among several NRAs. In 2007, it launched twelve questionnaires and replied to 83, from other NRAs.

During 2007, ICP-ANACOM focused its presence and participation on the following working groups (WG): Fixed Networks, Significant Market Power, Mobile Market, End Users, Regulatory Costing and IRGIS (IRG information system), having chaired two of these (End Users and IRGIS WG). It also participated on project teams: Obligations (Remedies), International Roaming, IP-IC/NGN (Next Generation Networks), VoIP, Fixed and Mobile Termination, and the Review of the Regulatory Framework.

It should be mentioned that ERG's work is developed in close cooperation with IRG, with projects being developed by this organization's working groups.

Thus, following the activities of the different working groups, aiming to assure the fulfilment of the work agenda set for 2007, the documents already mentioned on the ERG section were approved at the Plenary meeting and made available to the general public (other, due to their more reserved content, were not publicized).

The publication by IRG of the benchmark on mobile termination prices in Europe should also be noted.

## **6. FINAL CONSIDERATIONS**

Regulation Report 2006 mentioned the atypical regulatory year it represented, both due to Sonaecom's initial public offer (IPO) on PT, and to the change of almost the entire Board of Administrators of ICP-ANACOM, which on top, fully coincided with the development of the IPO process.

The rejection of that offer on the first months of 2007, on one hand, reinstated the normality in the development of regulatory issues, but on the other hand, its secondary effects took no time to reach the electronic communications market in Portugal, namely by the end of 2007, when PT Multimédia's formal spin-off from Grupo PT took place, greatly as a consequence of the reaction to the IPO.

This event had a considerable impact on the regulatory challenges faced, adding to other challenges that the Administration had already identified as demanding, or continuing to demand, a swift answer, namely:

"The developments of the "2006 Review", without forgetting the institutional evolution of EU's regulation, the liberalization of posts, the evolution of the US in the electronic communications and the posts, the market analysis and their possible re-definition under the "2006 Review" and the enlargement of "convergence", weighting the re-evaluation of the criteria for the application of the regime of penalties so that it becomes an effective item in the discouragement of non-fulfilments and violations to the legislative and regulatory framework, the spreading of broadband, not forgetting the role of mobile telephony, the launch of digital terrestrial television and the development of mobile television and, lastly, but not less important, the review of the national frequency allocation plan, supported on a scenery of neutral technology and aiming at a more efficient spectrum use, also with the contribution of a new tariff proposal."

Reading the current report fully confirms these forecasts, and ICP-ANACOM's regulatory activity tried to reach the answers to these challenges, some of which are obviously recurring, notwithstanding the fact that they offer new qualities, that fortunately demand differentiating answers, to which sometimes the more or less necessary formalism and methodologies that have characterized the regulatory approach have some inertia to adapt.

We allow ourselves to select three major points from the previously mentioned challenges, for the reflexes they will have on years to come, namely on the understanding that regulation can and should be dynamic and agile.

Firstly, the so-called “2006 Review”, which complexity is confirmed by the dragging on of the works connected to it, namely resulting from the existence of different views on the way to build the electronic communications internal market (which still (?) doesn't exit). The main difficulties for reaching an agreement between NRAs and the EC lay on these different views. ICP-ANACOM understands that it must be a gradual process and that the principle of subsidiarity must prevail, whenever it is justified, which doesn't hinder, but actually fosters growing cooperation among NRAs and with the EC.

In this scope, it must be taken into account that electronic communications are the sole industry where the EC has powers to define national regulation guidelines, through the veto it holds regarding market analysis and which it has tried to extend to remedies, due to the alleged need for regulatory coherence lacking in the internal market, situations that are rejected by most NRAs.

This is not the least reason for the immediate opposition regarding the proposal for the launch of an institution that, without being a real European regulatory agency, would enable the EC to gain powers that now belong to the NRAs, with its informal organization, IRG, understanding that it is still not the time (if ever) to become centralized.

The Portuguese presence was particularly relevant on this matter, not only through ICP-ANACOM, on numerous reunions with the EC and with the active presence on working groups, contact networks and on the ITG/ERG plenary meetings, but also through the influence and the significant results obtained during the Portuguese Presidency on the second quarter of 2007, with highlight to the approval of the Postal Directive.

It is undeniable that the decisions at the European level will growingly condition national regulatory decisions. ICP-ANACOM's presence and role intensified during 2007, as could not happen otherwise, and will not slow down in 2008.

One of the examples of EC's influence at the national level is the delay in the non-withdrawal of the conditions of the implementation of the GSM Directive (which, it should be recognized, had its high point in good time), which prevents the implementation of ICP-ANACOM's decision allowing the refarming of the 900 MHz band, and the consequent more competitive development of mobile broadband.

In fact, this example leads us to the second point that we wish to highlight and which is, undeniably, the spreading of broadband, largely due to the development of mobile broadband, with a growth rate in Portugal clearly above fixed broadband's, intensifying the convergence problem and the regulatory solutions that its possible implementation will carry.

ICP-ANACOM's 1st International Conference, on convergence, carried out in 2007 in the scope of the EU's Portuguese Presidency, gave strong contributions to the definition of the paths that structure it, raising new issues concerning the regulatory framework, the least of which will surely be the definition of markets (or a market only, admitting a full convergence?).

The third point we would like to highlight relates to the search for efficiency in the regulatory activity and its connection with the clear increase of dispute cases.

Convergence and, mainly, the implementation of New Generation and Access Networks, which can be the greatest expression of that convergence, have shown that the search for competition in the electronic communications markets depends not only of an appropriate regulation, but even more from the guarantee that the established rules are fulfilled in good faith by all market agents, which has not always happened.

For this reason, behaviours that create artificial barriers to access, which seems easy to prevent on regulations, cannot be allowed, and the celerity in removing these obstacles will be the success measure for regulation, and particularly for the creation of a competitive and efficient environment. All delaying processes will thus be a clearly harmful element for the full development of electronic communications markets.

The Regulation Report could not end without a new and more supported reference to the spin-off that took place at the end of the year, less for the effects it had on regulation during 2007, but rather for the challenges that can already be pictured but that will only be fully visible in 2008. The truth is that if the separation becomes unquestionable, as the first strategies of both separate companies seem to show – with a growing and stiff competition between PT Group and PT Multimédia (now ZON Multimédia), the first one offering IPTV and the second providing fixed telephone – there is still some structural changes to be considered in some of the relevant markets studied by ICP-ANACOM that will impose new revaluations, which become very complex due to the need to untangle so many assets that were commonly shared and created throughout so many years.

This untangle is particularly urgent and relevant considering its framework in the development of New Generation and Access Networks, the greatest regulatory challenge for 2008, which has to be taken, with openness, innovation and humbleness.