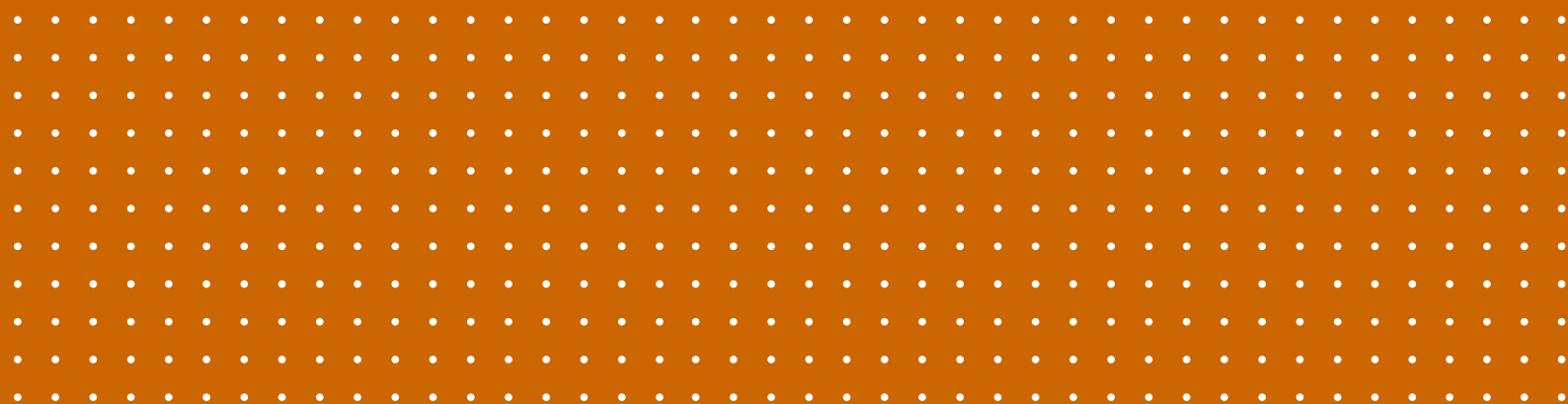


01.

Regulation Activities



## ● Offer prices and conditions

### Electronic Communications

#### RIO 2008

On 16 May 2008, ICP-ANACOM approved the conditions of the Reference Interconnection Offer (*Proposta de Referência para Interligação*) to apply in 2008 (RIO 2008), including amendments made to the maximum prices of PT Comunicações, SA (PTC), to apply from 12 March 2008, with respect to the following services:

- i) call origination and termination;**
- ii) capacity-based interconnection;**
- iii) billing, collection and non-collection risk;**
- iv) activation of portability;**
- v) activation of pre-selection.**

RIO 2008 also established the maximum interconnection price applicable to calls originating from the public payphones of PTC and determined that the penalty established in the flat interconnection tariff, corresponding to twice the price of time-based interconnection, to apply to the transfer of traffic, will apply only to overflow traffic.

This determination also gave rise to the obligation of PTC to identify in advance, in terms of indication and for billing purposes, the CLI category associated with calls originating from payphones (*calling party's category = payphone*).

#### Decree-Law no. 57/2008 of 26 March

With the publication of Decree-Law no. 57/2008 of 26 March, which establishes the legal regime applicable to the unfair commercial practices of companies in their dealings with consumers, its application to electronic communications was questioned, specifically in respect of the rule set out in the point q) of art. 8, according to which the practice of *"rounding up price, duration or other factors, directly or indirectly, connected to the supply of goods or to the provision of services where this does not have exact and direct correspondence in the effective expenditure or use by the consumer and which leads to an increase in the price paid by the consumer"* is prohibited as an unfair commercial practice, being considered *"a misleading action under any circumstance"*.

In this context, on 2 May 2008, ICP-ANACOM made its view on the matter public, stating on this occasion that the provision is not contained within Directive no. 2005/29/EC of the European Parliament and of the Council, which Decree-law no. 57/2008 was designed to transpose, not having relation to any of the actions set forth in the exhaustive list set out in this Directive.

In its stated position, ICP-ANACOM affirmed that it does not make sense to consider that there are calls, i.e., communications, which last 1 second. This Authority considered that there is a minimum period - which does not correspond to obligatory minimum consumption and much less an activation fee -, which constitutes what can be called a "voice product". Accordingly, it makes sense, in order to comply with the rule in question, that billing should be per second, that is to say without rounding up of the call duration being imposed obligatorily on the consumer. This shall be the meaning of the rule - that is, that operators have available, for the choice of consumers, and as such, in alternative to other models, a tariff of this nature - with a single initial period followed by billing per second, constituting a logic of *"opt-in"*.

#### Wholesale naked digital subscriber line offer (*Naked DSL*)

Naked DSL is a form of wholesale offer that enables the provision of an ADSL service to the end-user, without the operator holding the local loop requiring the end-user to engage (or maintain) a fixed telephone service.

In February 2008, ICP-ANACOM adopted a set of recommendations on this wholesale offer, regarding, among other issues, the activation of the service, the need for synchronization between this offer and the portability of the number and the reduction of installation time.

Despite a shift from the period initially recommended by ICP-ANACOM, the provision of this modality by PTC was made possible, with the specifications required by this Authority. As a result, this offer was completely available during the first fortnight of March 2008.

**Law no. 12/2008 of 26 February**

On 21 May 2008, ICP-ANACOM approved a document which examines and evaluates the impact on electronic communications of the amendments made by Law no. 12/2008 of 26 February to the Essential Public Services Law (Law no. 23/96 of 26 July). This assessment is justified because the scope of the Act was expanded to cover all electronic services, now considered essential public services.

**Public consultation on the regulatory approach to Next Generation Access Networks (NGA)**

On 18 June 2008, ICP-ANACOM approved a public consultation document on the regulatory approach to NGA. The goal of the consultation was to launch discussion and gather contributions from interested parties, in order to identify possible adaptations in the regulation of wholesale products in the light of the expected developments in access networks, and to develop a suitable regulatory approach which is transparent and consistent. It was further intended to collect updated information on possible plans for evolution to NGA, allowing ANACOM to better quantify the impact on the market and enabling informed and timely action.

Aware that the current and foreseeable developments in NGA raise several issues related to the regulated offer and aware of the impact that these offers will have on the markets, it will be possible for ANACOM to implement a regulatory approach to NGA that is coherent and consistent with the objectives of regulation enshrined in law, including the promotion of competition and encouraging the development of diversified and quality innovative services, thereby ensuring that the interests of users are upheld.

**Assessing the forms of implementation of obligations maintained on Grupo PT in the scope of market 12 (supply of wholesale broadband access)**

Following the public consultation on the matter, ICP-ANACOM decided on 26 June 2008, given its position on the “spin-off” of TV CABO PORTUGAL, S.A. (ZON TV Cabo), published on 3 April 2008, as well as the results of conducted analysis, and without prejudice to the conclusions that will result from the market analyses, in particular, analyses of markets 4 and 5 of the European Commission Recommendation on relevant markets, to review ways of implementing the obligations maintained on Grupo PT in the scope of market 12.

In this decision, the prior notice (of 10 days before entry into force) was replaced by notice *ex-post* (5 days after the entry into force) of the conditions to be provided at retail level.

By the same decision, the costs for 2008 were updated in consideration of the “retail-minus” rule.

**Access of the beneficiaries of the RCAO - Reference Conduit Access Offer (*Oferta de Referência de Acesso a Condutas*) to PTC's database on conduits**

Under the obligation to provide access to the conduits, poles and facilities which is binding upon the concessionaire of the public telecommunications service (PTC), on 6 August 2008, ICP-ANACOM adopted the final decision on the maximum annual prices applicable to the service of access to the database on Conduits of PTC. These maximum annual prices were set, by district, according to 4 different scales.

Furthermore, PTC was ordered to maintain the two schemes providing information on conduits and associated infrastructure until 31 October 2008 (through access to the Extranet and using forms with plans available in *PDF* format by email under the current terms), after which period access will be provided exclusively through the RCAO Extranet.

### **Price of television signal distribution and broadcasting service practiced by PTC**

In implementing the measures determined following the analysis of the wholesale market for broadcasting services for the delivery of content transmitted to final users, on 10 September 2008, ICP-ANACOM ordered PTC to reduce the price of each service incorporated in the television signal distribution and broadcasting service, by a minimum of 23 per cent, to ensure that the price system service respects the principle of cost orientation. These new prices entered into force on 1 September 2008.

### **Publication of performance levels in the quality of service of the wholesale offers**

By determination of 15 October 2008, approval was given to the draft decision on the publication of performance levels with respect to the Quality of Service (QoS) of the wholesale offers - RUO (Reference Offer for Local Loop Unbundling), LLRO (Leased Lines Reference Offer), RAO (Reference Conduit Access Offer), Rede ADSL PT and SLRO (Subscriber Line Resale Offer). This draft decision was submitted to a prior hearing of interested parties lasting 30 working days.

### **Amendment of the guidelines on the minimum content of contracts governing the subscription to electronic communications services**

On 11 December 2008, ICP-ANACOM gave approval to the amendments to the guidelines on minimum content to be included in contracts governing the provision of electronic communications services, consequent to the legislation applicable to essential public services (Law no. 12 / 2008 of 26 February, which amended Law no. 23/96 of 26 July), and which requires all providers of electronic communications services to adapt the subscription contract models to the new system and to send subscribers notification in writing with information about the contractual changes resulting from said Law, as well as the amendments relating to so-called "loyalty periods".

### **Approval of ICP-ANACOM's position on the prices of call origination on national mobile networks**

By determination of 6 August 2008, ICP-ANACOM gave approval to its position on the prices of call origination on national mobile networks pursuant to which the operators holding rights to frequencies for the provision of the publicly available mobile telephone service lowered the wholesale prices for the origination of calls on the respective mobile networks to levels nearing, or preferably in line with the maximum levels established for the termination of voice calls on individual mobile networks. This reduction had to be implemented by 30 September 2008.

These operators were also invited to propose reductions in the prices for the service of billing and collection on behalf of other operators, preferably to levels no more than 20 per cent higher than those in RIO 2008.

It was also communicated to these operators that, if significant changes did not occur, it was the intention of this Authority to address this issue in the analysis of the relevant market and/or submit it for consideration by *Autoridade da Concorrência* (Competition Authority).

### **Capacity-based interconnection offer**

By determination of 16 May 2008, ICP-ANACOM approved the conditions to apply in the RIO 2008 regarding the capacity-based interconnection offer. Reductions were made to the prices in force and it was stated that the data provided by PTC in response to the draft decision on the RIO 2008, as well as the proposal it presented to effect a sharp increase in the prices associated with this type of interconnection, needed to be presented in more detail. As such, ICP-ANACOM did not consider it appropriate to depart, at that moment, from the established theoretical model.

Under the conditions described, in December 2008, a draft decision on the capacity-based interconnection offer was submitted to the prior hearing of interested parties, whereby the conclusion was reached that it was appropriate to maintain the application of the theoretical model, while amending certain parameters and increasing the "penalising" factor of traffic transfer.

## ● Analysis of markets

### Postal Services

#### **Law no. 12/2008 of 26 February**

On 21 May 2008, ICP-ANACOM adopted a document in which an analysis was made of the impact on postal services by the amendments made to the Essential Public Services Law (Law no. 23/96 of 26 July) by Law no.12/2008 of 26 February.

This assessment was justified because the scope of the Act was expanded to cover all postal services, which are now considered essential public services.

#### **Draft decision on the statistical indicators to be sent on a quarterly basis by providers of Postal Services**

On 4 December 2008, ICP-ANACOM adopted a draft decision on the statistical indicators to be sent on a quarterly basis by the providers of postal services and the submission of this draft decision to the prior hearing of interested parties in accordance with Articles 100 and 101 of the Code of Administrative Procedure, whereby a period of twenty-five working days was allowed for the submission of written comments.

#### **Specification of the obligation to control prices in respect of the wholesale markets of voice call termination on individual mobile networks (Market 16)**

By determination of 2 July 2008, approval was given to the final decision on the specification of the obligation to control prices in respect of the wholesale markets of voice call termination on individual mobile networks (market 16 of Commission Recommendation 2003/311/EC of 11 February 2003).

This decision established the maximum prices for the termination of voice calls on mobile networks to be applied from 15 July 2008 by the three mobile operators notified as having SMP (Significant Market Power), regardless of the origin of the call, with per second billing from the first second.

It was expected that this decision would be reviewed during the second half of 2009, taking into account developments in this area seen at the level of the European Regulators Group (ERG) and the European Commission, and in view of the evolution of the structural problems identified in these markets in terms of traffic imbalances and tariff differentiation between on-net and off-net calls.

#### **Position on spin-off of PT Multimédia**

Following the structural separation of PT Multimédia, now ZON TV Cabo, from Portugal Telecom (PT), by means of the process referred to as the spin-off of PTM, and the approval by the European Commission of Recommendation 2007/879/EC of 17 December on the relevant product and services markets in the electronic communications sector subject to *ex-ante* regulation, ICP-ANACOM considered that it was appropriate to adopt and make public, in April 2008, its position on the concluded operation and its impact with respect to the analyses of markets and the obligations arising therefrom.

## ● Universal service

In this context, ICP-ANACOM made it clear that, with the spin-off, ZON TV Cabo was no longer included in Grupo PT, whereby the obligations arising from the market analyses conducted pursuant to Title IV of Chapter II of the Law of Electronic Communications (LEC) and which are binding on this group do not apply to ZON TV Cabo.

It was further decided that the obligations in force remain applicable to the companies of Grupo PT, under the terms of the new European Commission recommendation referenced above, until a review is conducted of the analysis of markets, even while the intention has been expressed to conclude the evaluation of the ways in which the obligations maintained on the PT Group in the scope of market 12 are implemented. Aware of the impact of the spin-off on markets 11 and 12 defined by the previous recommendation, now known as 4 and 5, the Regulator also expressed its intention to give priority to the analysis of these markets.

### **Approval of the report of the consultation and the final decision on the definition of product markets and geographic markets, evaluations of significant market power (Markets 4 and 5)**

On 4 December 2008, ICP-ANACOM approved the report on the consultation of interested parties and the final decision on the definition of product markets and geographic markets, evaluations of SMP and imposition, maintenance, amendment or suppression of regulatory obligations in relation to the market for the supply of wholesale network infrastructure access (physical) at a fixed location (market 4) and the market for the supply of wholesale broadband access (market 5). The European Commission and the NRAs of the other Member States were notified.

### **Designation of the provider(s) of the universal service of electronic communications**

As part of its remit as advisor to the Government and in execution of the joint order of the Minister of State and of Finance and of the Minister of Public Works, Transport and Communications of 28 January 2008, in February 2008 ICP-ANACOM launched a public consultation to compile positions on a range of issues related to the process of designating a provider of the universal service and expressions of interest from the various market players in providing this service.

Upon the conclusion of this consultation process, ICP-ANACOM drafted a report with the summary of the positions conveyed in this area and prepared, in accordance with the order, a document with recommendations with a view to holding a tender for selecting the provider(s) of the universal service, which document was presented to the Government.

### **Evaluation of the net costs incurred through the provision of the universal service**

On 30 January 2008, ICP-ANACOM determined that it did not consider it possible to accept the estimated net costs of universal service in respect of 2003 and the revisions of the estimates in respect of 2001 and 2002. In this context, it further determined to carry out, with the support of a consultancy firm selected for this purpose, a process of detailed specification in respect of the methodology to be applied in calculation of said costs and of defining the conditions whereby it could be considered that provision might represent an excessive burden for the respective provider, thereby giving grounds for the establishment of a compensation mechanism.

### **Telephone directories and information services within the scope of the universal service**

As part of this process, on 4 December 2008, ICP-ANACOM adopted a draft decision, setting out the following:

- Sonaecom - Serviços de Comunicações, S.A. (Sonaecom) and Vodafone - Comunicações Pessoais, S.A. (Vodafone) shall, within 30 days, send ICP-ANACOM data from the end-users of their mobile telephone services who have declared their wish to be included in the telephone directories of the universal service;
- The format used for sending the data referred to in the previous paragraph shall be the format agreed in the scope of negotiations held with the universal service provider. Meanwhile, data which end-users did not wish to be used for such purposes shall be withheld and the respective addresses may not be sent until such time as the required authorization is obtained from *Comissão Nacional de Protecção de Dados* (National Data Protection Commission) for the processing of this personal data and until, where necessary, the addresses are corrected to ensure that they match the addresses which the respective users wish to associated with the respective numbers;
- For the purposes of the inclusion of this data in the directory enquiry services of the universal service, companies in possession of such data may store it in a database which should be remotely accessible for fast and secure consultation by the directory enquiry services of the universal service, in order that these services are able to respond to the requests it receives for information, without loss of quality;
- PT Comunicações, S.A. is bound to assist in the implementation of this solution, which must be concluded within 45 days and whose cost will be supported by any company wishing to opt for this model, instead of the model used so far ("data funnel").

It is recalled that the European Commission deemed that the Portuguese Republic failed to fulfil its obligations to ensure the availability of a complete directory and a full inquiry service, according to the requirements of articles 5 and 25 of the Universal Service Directive, and on these grounds, commenced proceedings against the Portuguese State for failure to fulfil obligations.

### **Residential tariff of the telephone service at a fixed location within the scope of the Universal Service**

On 29 October 2008, ICP-ANACOM decided not to oppose the entry into force of the proposal presented by PTC for the tariff, applicable by default, for the telephone service at a fixed location, within the scope of the universal service, to apply retroactively from 27 September 2008, in view of the fact that this tariff complied with the applicable price-cap of CPI-2.75 per cent (which, for the year 2008, corresponds to -0.65 per cent).

With respect to the tariff plan, available as an option at the request of users, which does not include free periods but includes a discount of 0.50 euros (excluding VAT) on the monthly subscription charge, it was concluded that simply maintaining the tariff was in accordance with the applicable price-cap derived from the impact of tariff changes made previously on 26 March 2008.

### **Price and Quality Conventions of the Universal Postal Service**

The rules for setting the prices of postal services included in universal service are fixed in a Convention agreed between ICP-ANACOM and CTT, in accordance with article 14 of Law no. 102/99 of 26 July (Basic Law for Postal Services), as amended by Decree-Law no. 116/2003 of 12 June and clause 24 of the Concession Contract of the Universal Postal Service, concluded on 1 September 2000 and as amended on 9 September 2003 and 26 July 2006.

By arrangement between ICP-ANACOM and CTT, in a negotiating process to accompany that deriving from the price regime, the parameters and minimum quality levels associated with the provision of universal service will be established and published, in accordance with article 8 of the Basic Law for Postal Services and clause 12 of the Concession.

On 4 June 2008, holding a prior hearing, ICP-ANACOM sent the draft agreements to be concluded with CTT to consumer organizations. After examining the opinions of these consumers organizations, ICP-ANACOM took the position that it was fitting to amend the draft Conventions with regard to the following aspects:

Extension of deadline for the disclosure to users by CTT of the prices of the universal service (from 5 to 10 working days) - amendment to paragraph 6 of article 5 of the Price Convention;

Inclusion of the requirement that CTT publicise the levels of service quality on its website, in the *Diário da República* and at postal establishments - addition of a new article 11 to the Quality of Service Convention.

The final texts of the conventions were approved by ICP-ANACOM on 9 July 2008 and signed by the parties on 10 July 2008, taking effect from 1 January 2008. They are valid for a period of three years, renewable for successive periods of one year, unless terminated by either party with at least 60 calendar days notice prior to the date of their expiration.

#### **CTT tariff within scope of the Universal Service**

On 16 July 2008, ICP-ANACOM decided not to oppose the entry into force of the proposed prices of the universal service presented by CTT. The new prices came into effect from 1 August 2008, subject to the specific analysis to be carried out independently by ICP-ANACOM on the proposed discounts applicable to the international editorial mail service.

In addition, ICP-ANACOM did not oppose the reduction in the period of notice set forth in paragraph 1 of article 5 of the Price Convention, taking into account the date on which the Convention was signed and the date on which the new prices were due to enter into force. However, CTT was obliged to conduct a publicity campaign to ensure that users are clearly informed in advance in accordance with the period set forth in paragraph 6 of the cited article 5 of the Convention.

By resolution of 26 November 2008, ICP-ANACOM decided not to oppose the entry into force of the proposed prices of the universal postal service with application from 1 January 2009, as notified by CTT. Notwithstanding this decision, this Authority informed CTT that future tariff proposals should contribute significantly to the rebalancing of tariffs provided in the Price Convention.

Furthermore, with respect to the proposed prices of the universal service provided by CTT to apply from 1 January 2009, by determination of 17 December 2008, ICP-ANACOM decided not to oppose the entry into force of the discounts associated with use of franking machines.

#### **Deduction of records affected by the general strike of freight transporters, for the purposes of calculating the QSI established in the Quality Convention**

The Quality Convention establishes that *"should any force majeure or phenomenon situation take place, the burst and evolution of which are clearly outside the control of CTT, and have an impact on the quality of service provided by CTT, the latter may request, for the purpose of calculation of the Quality of Service Indicators (QSI) [...], the deduction of the inputs for the concerned periods of time and geographic flows."*

By determination of 1 October 2008, ICP-ANACOM granted the request made by CTT to deduct the records of *"correio azul"* (priority mail) and of parcels directly affected by the general strike of freight transporters which took place on 9 to 12 June 2008, with respect to all national flows, with the exception of mail which was internal to each of the Autonomous Regions of Azores and Madeira, for the purposes of calculating the Quality of Service Indicators (QSI) established in the Quality Convention of the Universal Postal Service.

This deduction is confined to items of *"correio azul"* (priority mail) and parcels actually delivered between 6 and 13 June 2008, and does not include mail items delivered on other days of the year, regardless of the initially planned date of delivery.

ICP-ANACOM further ordered CTT, when calculating QSI figures for 2008, pursuant to article 10 of the Quality Convention, to submit the annual figures of QSI achieved with and without the deduction of the referred records.



## ● Frequencies

### Use of Frequencies

#### NFAP 2008 - National Frequency Allocation Plan

The NFAP is considered a document with significant impact on the market and as such, on 15 October 2008, the draft of the new NFAP was submitted to the general consultation procedure.

Among the changes in the new version of the NFAP, the following are noted:

- the allocation table was updated to reflect the results of the World Radiocommunication Conference (WRC-07);
- the uses of the frequency bands were updated;
- the availability of spectrum to the market for MCA (mobile communications on board aircraft), GSM-R (GSM for railways), Fixed Service - FH (opening of new radio channels at 56 MHz in the 7 and 13 GHz bands), Point-to-point links in the 74-76 / 84-86 GHz bands (Fixed Service), specific UWB, GPR/WPR and BMA (ultra-wideband equipment);
- licence exempt equipment was updated;
- a set of bands was included for military command, agreed with the Armed Forces General Staff (EMGFA) for equipment operating on a "non-interference and non-protection" basis.

ICP-ANACOM reviewed the comments received through the consultation, and a revised version of the NFAP (NFAP 2008) was adopted on 17 December 2008.

#### National Agreement for Sharing of frequencies in Times of Peace (ANPF/1999)

Throughout 2008, a proposed revision of ANPF/1999 was drawn up which reflects the agreements reached in 1999 between ICP-ANACOM and EMGFA, with respect to the sharing of the radio spectrum.

ANPF/1999 became outdated in the light of the publication of NJFA (NATO Joint Frequency Agreement) (published in December 2002) and the Radio Regulations revised by the World Radiocommunication Conference in 2007 (WRC-07).

ANPF/1999 contains an indication of the frequency bands of military command - aimed at meeting the needs for the establishment of radio in the national territory for the defence sector and public security forces - and the frequency bands of civil management.

#### Digital Terrestrial Television (DTT)

By determination of 30 January 2008, ICP-ANACOM adopted a decision on the limitation of the number of rights to use frequencies reserved for digital terrestrial television broadcasting and the definition of the allocation procedure.

This decision limited the number of rights to use frequencies reserved for the digital terrestrial television broadcasting service, to support two operations, as follows:

- One frequency usage right corresponding to coverage on a national basis, associated with Multiplexer A, and for the transmission of television programme services of free, unrestricted access;
- Five frequency usage rights to be allocated to a single entity, corresponding to two with coverage on a national basis, associated with Multiplexers B and C, and three with partial coverage of mainland territory, associated with Multiplexers D, E and F, for the transmission of television programmes services with unrestricted access with subscription or restricted access.

The same decision further defined the procedure for the allocation of the right to use frequencies, associated with Multiplexer A, as being by public tender.

Subsequently, approval was given to the regulation of the public tender for the allocation of a right to use frequencies on a national basis for the digital terrestrial television broadcasting service (Multiplexer A) - Regulation no. 95-A/2008 of 25 February - and the respective tender was launched.

Accordingly, and relying in this respect on the advice of ICP-ANACOM, the Government, by Administrative Rule no. 207-A/2008 of 25 February, opened the tender for the award of five rights to use frequencies for the digital terrestrial television broadcasting service (Multiplexers B to F) and for the licencing of a distribution operator, giving approval to the respective tender regulation and to other components of the tender.

On 24 April 2008, ICP-ANACOM, responsible for handling both tender processes, allowed the entry of the proposal of PTC to the tender regarding Multiplexer A and on 30 April 2008, following a favourable opinion of ERC - *Entidade Reguladora para a Comunicação Social* (Regulatory Authority for the Media), the entries of the proposals of PTC and Airplus Television Portugal, S.A. were allowed to the tender in respect of Multiplexers B to F.

On 9 December 2008, ICP-ANACOM determined to award PTC the title of allocation of the frequency usage right for the provision of the Digital Terrestrial Television service associated with Multiplexer A, whereby PTC will supply the digital transmission of the four current television programme services of free, unrestricted access on a national (RTP 1, RTP 2, SIC and TVI) and a regional (RTP Açores and RTP Madeira) basis, in addition to a fifth television programme service to be licenced over the course of 2009, and the further possible transmission of these services in high definition, in non-simultaneous mode until the switch-off of analogic television broadcasting.

According to this title, the beginning of the service provision shall take place no later than 31 August 2009 with the implementation of the network to be completed by the end of the 4th quarter of 2010. Following this date, the conditions for the transition to digital will have been met in terms of supply and as such for the cessation of transmission of the current terrestrial analogic system.

### **Process for monitoring the migration from the analogic television system to digital**

In order to create conditions for the full implementation of the transition to digital, it is important to encourage migration by consumers, who, wishing to access the DTT service, will need to have suitable reception equipment.

Accordingly, at the end of 2008, this Authority began preparing the monitoring of the transition process, specifically by drawing up a draft Resolution of the Council of Ministers to create a working group to monitor the migration from the analogic television system to digital.

As far as providing information to consumers is concerned, ICP-ANACOM embarked on a revamp of the area of its website devoted to Digital Television, introducing more detailed content, providing an explanation of how the transition will work and setting out the characteristics of the process to be undertaken in Portugal.

### **Mobile Television (DVB-H)**

Subsequent to the interest demonstrated by the market in developing a network for this technology in the near future, and since the networks planned for mobile reception can only be developed and implemented after the switch-off of the analogic TV transmissions, which is expected to occur in 2012, an assessment was conducted into the availability of spectrum for the implementation of a network of this kind in the mainland territory, before the switch-off.

### **FM Radio broadcasting**

To facilitate the response to any requests for frequencies for the holding of new public tenders, an electromagnetic compatibility study was carried out on a national basis to verify spectrum availability at municipal level.

**BWA - Broadband Wireless Access**

Following the adoption of the report of the public consultation on the introduction of BWA (Broadband Wireless Access) - descriptive term for new technologies using wireless broadband, including applications of a fixed, nomadic and mobile nature - in Portugal, and the respective action plan, on 24 January 2008, ICP-ANACOM adopted the final decision on the limitation of the number of new frequency usage rights allocated for BWA, taking account of the territorial division by zones, in the 3400-3800 MHz frequency bands, in addition to the respective allocation procedure - allocation by auction.

Following these discussions, studies were conducted to determine the auction model and work was begun to establish the governing rules and procedures, which will be subject to public consultation.

**Rights to use frequencies in the 450-470 MHz band**

By determination of 17 January 2008, ICP-ANACOM approved the decision on the limitation of the number of frequency usage rights to be allocated for the provision of the publicly available Land Mobile Service (LMS) and further approved the definition of the respective allocation procedure, as well as the possibility of provision of the LMS in the same band by providers of the Mobile Trunking Service (MTS).

By determination of 7 August 2008, approval was given to the regulation of the public tender for the allocation of a frequency usage right on a national basis in the 450-470 MHz frequency band for the provision of the publicly available Land Mobile Service, with approval likewise given to the respective tender specifications and the report on the respective consultation procedures.

The act of the public tender was held on 6 October 2008.

The Committee, appointed pursuant to ICP-ANACOM Regulation no. 474/2008 of 22 August, ruled unanimously, without prejudice to article 12 of the Tender Regulation, to propose to the Board of Directors of ICP-ANACOM that only one tenderer be formally allowed to enter the tender: RNT - Rede Nacional de Telecomunicações, S.A.

In compliance with paragraph 1 of article 18 of the Tender Regulation, on 21 November 2008, the Committee approved the final report containing the classification of tenders and the proposal for the allocation of the frequency usage right.

**Mobile communications onboard Aircraft (MCA)**

A Decision was adopted at the European Commission on the harmonized use of the 1710-1785 MHz and 1805-1880 MHz frequency bands and a recommendation regarding the harmonization of the authorization process, both for services of Mobile Communications onboard Aircraft (MCA).

In this context, by ICP-ANACOM determination of 8 May 2008, a draft decision on the introduction of MCA was approved for public consultation, in addition to the definition of the type of respective authorization.

On 13 August 2008, ICP-ANACOM adopted a final decision on the issue and, in general terms, decided the following:

- To alter the provisions of the National Frequency Allocation Plan (NFAP) in order to accommodate the use of the 1710-1785 MHz and 1805-1880 MHz frequency bands for MCA services over 3,000 meters of altitude;
- To authorize the operation of MCA systems - mobile communications onboard aircraft - in the cited frequency bands, on a non-interference and non-protection basis, subject to the general authorization scheme;
- To make MCA operators subject to compliance with the provisions of the Law of Electronic Communications (paragraph 1 of article 27);
- Not to make the operators of MCA services subject to the payment of spectrum usage fees for the use of frequencies.

### **Short-Range Radar applications (SRR)**

During the second half of 2008, the European Commission issued a mandate to CEPT to conduct a detailed review of the conditions / requirements for the operation of SRR (at 24 GHz and 79 GHz, with the possibility of identifying additional spectrum), with this Authority monitoring the work which will support the CEPT's response to this mandate. According to data which has been collected at a european level, no problems of harmful interference have been identified in the 24 GHz range. Indeed, the total number of vehicles registered, placed on the market or put into service, equipped with short-range radar in this band does not currently exceed 7 per cent of the total number of vehicles in circulation in each Member State and it is not expected that this limit will be reached before June 2013.

It should be noted that the use of the 24 GHz frequency band to accommodate these applications has been provisionally adopted, given that the long-term solution at 79 GHz is not yet commercially available.

### **GSM Onboard Vessels**

The study on the impact of the introduction of mobile terminals on board vessels has been concluded. The aim is to provide the land mobile service to passengers based on GSM 900 and 1800 technology during the passage of vessels in territorial waters, whereas the preparations have likewise been included of the CEPT decision on the free movement and use of GSM terminals on board ships.

The European Commission mandated the CEPT to identify the technical and operational conditions necessary to ensure the absence of harmful interference in radio services operating in the 900 MHz and 1800 MHz frequency range, in the territorial waters of Member States. In order to comply with the mandate, the CEPT began preparing its response, with a view to conclusion by March 2009.

### **Ultra Wide Band (UWB)**

UWB technology enables the development of various systems with different applications, including communication, measuring, viewing, surveillance and localization systems. This technology, which is designed for wireless communications over short distances, with a very high rate of transmission which can reach 500 Mbps, uses low power and spectrum spreading, characteristics which mean that UWB devices could affect various radio services.

In 2008, ICP-ANACOM actively participated in the studies which were carried out at CEPT level with the objective of continuing the development of solutions for the harmonization of radio spectrum usage for UWB systems.

### **National interest in the 2.6 GHz band**

As part of its remit for the promotion competitiveness and the development of the telecommunications market and to undertake regulation and supervision of the communications sector, in addition to the management of the radio spectrum, during the second half of 2008, a document (public consultation) was prepared, receiving approval on 11 December 2008. This document had the objective of sounding out the market in Portugal in order to assess the level of interest in the release of the 2500-2690 MHz frequency band (also known as the 2.6 GHz band) for the operation of publically available electronic communications services. This frequency band has been discussed at european level and it is expected that there will also be interest among the various market participants at national level.

### **Formal amendment of the licence of Radiomóvel for the provision of the MTS**

By determination of 26 April 2008, this Authority approved the final decision on the formal amendment of the licence issued to Radiomóvel - Telecommunications, SA to provide the Mobile Trunking Service (MTS) under the terms of Law no. 5/2004 of 10 February. In particular, the following was determined:

- To approve the report on the prior hearing of interested parties on the respective draft decision;

- To state that the obligations binding upon Radiomóvel for the provision of the MTS under licence no. ICP-ANACOM - 012/MTS are compatible with the new regulatory framework transposed by Law no. 5 / 2004 of 10 February, subsumed in the general conditions established therein for the exercise of the activity and the specific conditions which may be associated with the allocation of rights to use frequencies and numbers, laid down, respectively in paragraph 1 of article 27, paragraph 1 of article 32 and in paragraph 1 of article 34, all of Law no. 5/2004 of 10 February;
- To set out the specification of the general conditions associated with the provision of the MTS, of the conditions associated with the use of frequencies and the conditions associated with the use of numbers of the National Numbering Plan, under the terms of the adapted title.

#### **Revocation of the right of BROADMEDIA to use frequencies**

By determination of 16 April 2008, the right to use frequencies assigned to the company BROADMEDIA - Global Communications, SA for the operation of the FWA (fixed access radio) was revoked and it was decided to proceed with the respective recovery of the 2x56 MHz block, corresponding to the 25.109 GHz-25.165 GHz and 26.117 GHz-26.173 GHz frequency, which had been assigned to the company.

#### **Registration of OnAir N.V. in the register of entities providing services of mobile communications onboard Aircraft (MCA)**

By determination of 16 April 2008, ICP-ANACOM issued a temporary declaration, for a period of six months, to OnAir N.V., subject to approval being given to the amendment of the NFAP to allow the use of frequencies in the 1710-1785 MHz and 1805-1880 MHz bands for the provision of the MCA service.

After subsequently studying the mode of access to frequencies (general authorization or allocation of individual frequency usage) and the type of obligations which should be included in the non-temporary authorization, in October 2008, ICP-ANACOM approved the issue to OnAir N.V. of a non-temporary declaration.

#### **Renewal of the usage rights of Radiomóvel for the provision of the MTS**

On 26 June 2008, ICP-ANACOM decided to grant the application presented by Radiomóvel for the renewal of the right to use frequencies for the provision of the Mobile Trunking Service, to renew the rights held by Radiomóvel to use frequencies for a period of 15 years, expiring on 14 October 2023 and to submit the draft of the renewal title to the prior hearing of the company.

Having examined the comments of operator, by order of 25 September 2008, the corresponding title of renewal of the frequency usage for the provision of the MTS was issued to Radiomóvel.

#### **Revocation of the right of AR Telecom to use frequencies**

On 27 August 2008, ICP-ANACOM revoked the right to use frequencies assigned to AR Telecom for the operation of FWA (Fixed Wireless Access) and proceeded to recover the corresponding the block of 2x56 MHz, corresponding to the 24.885-24.941 GHz and 25.893-25.949 GHz frequencies, which had been assigned to the company.

#### **Authorization for making two channels of 56 MHz available in the 7425-7725 MHz frequency range and two channels of 56 MHz available in the 12.75-13.25 GHz frequency range**

Sonaecom submitted a request to ICP-ANACOM that channels of 56 MHz bandwidth be made available in frequency bands below 15 GHz for the establishment of point-to-point high-capacity radio links, as an alternative to fibre optic.

According to the company this request not only aims to address situations where existing conduits do not allow the passage of more cables, a commonly occurring situation, but also to overcome difficulties encountered in obtaining local authority permission/licencing for the construction of new conduits, which is often a very protracted or even paralysed procedure.

On 23 July 2008, ICP-ANACOM authorized the provision of two channels of 56 MHz in the 7425-7725 MHz frequency band and two channels of 56 MHz in the 12.75-13.25 GHz frequency band for the provision of high-capacity radio links.

#### **Final decision on the introduction of the GSM-R system and the definition of the respective types of authorization**

On 6 August 2008, ICP-ANACOM approved the final decision on the introduction of the GSM-R system (Global System for Mobile Communications-Railway) and the definition of the respective types of authorization, in respect of which it was decided as follows:

- To authorize REFER Telecom, S.A. to operate the GSM-R in the 876-880 MHz and 921-925 MHz frequency bands, according to the general authorization system, in accordance with Law no. 5/2004 of 10 February (LEC);
- To make the operation of the system subject to the fulfilment of the applicable conditions as laid down in article 27 of the LEC, including the technical conditions of Decision ECC/DEC/(02)05;
- To amend the National Frequency Allocation Plan in respect of non-publicly available networks and electronic communications services, so as to designate and reserve the 876-880 MHz and 921-925 MHz frequency bands for the GSM-R system.

#### **Provision of new nomadic broadband service by Radiomóvel**

By determination of 29 October 2008, approval was given to the draft decision on the provision of a new nomadic broadband service by Radiomóvel, submitting it to the prior hearing of this company and to the general consultation procedure.

#### **Rights of RTP to use frequencies for the activity of analogic television broadcasting**

On 3 January 2008, approval was given to the draft decision which includes the conditions governing the rights to use frequencies and included in the titles to be issued to Rádio e Televisão de Portugal, S.A. (RTP) for the exercise of the activity of analogic television broadcasting, and the recovery by ICP-ANACOM, without charge, of the frequencies in question, subsequent to the alteration made to the NFAP, in particular, as a result of setting the date for the switch-off of television transmissions of the analogic system. This draft decision was submitted to the general consultation procedure.

On 12 March 2008, and subsequent to the general consultation procedure initiated in the meantime, ICP-ANACOM determined as follows:

- To include, among the conditions governing the frequency usage rights in accordance with article 32 of Law no. 5/2004 of 10 February and included in the titles to be issued to RTP for the exercise of the activity of analogic television broadcasting associated with programme services of RTP 1, RTP 2, RTP Azores and RTP Madeira, the recovery by ICP-ANACOM, without any charge, the frequencies in question subsequent to changes made to the NFAP, in particular, as a result of setting the date for the switch-off of television transmissions of the analogic system;
- To submit the drafts of the title to the prior hearing of RTP.

On 16 April 2008, approval was given to the issuance of titles which substantiate and realise the rights of RTP to use frequencies, with approval having been given to the report on the prior hearing to which the draft titles were submitted.

### Decree-Law of the amateur service and amateur satellite service

On 11 December 2008, ICP-ANACOM approved the draft Decree-Law of the amateur service and amateur satellite service, which will update and simplify the rules governing the use of the amateur radio service from a technical point of view and in terms of the administrative procedures to be followed in the exercise of the amateur activity.

This law was published in *Diário da República*, 1st series no. 42 of 2 March 2009 (Decree-Law no. 53/2009).

### Regulation setting out the rules on the identification and marking of radio stations

On 17 December 2008, ICP-ANACOM approved a draft Regulation laying down rules on the identification and marking of radio stations, which was submitted to the general consultation procedure provided in Article 11 of the Statutes of ICP-ANACOM.

### Radio Licencing

The objective of this activity is to conduct the licencing of networks and stations for the various radiocommunication services, particularly in the areas of mobile services and radiodetermination (private and public networks), the fixed and satellite service and the broadcasting service (radio and television).

ICP-ANACOM performed the analysis and handling of the respective licencing procedures, including the assignment of frequencies. The distribution of radio licencing activities by the various radio services during 2008 is presented in Table 1.

**Table 1 - Radio licencing activities by service in 2008**

Radiocommunication Service		New Licences		Amendment of Licences		Temporary Licences		Miscellaneous Requests
		Station	Network	Station	Network	Station	Network	
Amateur	Amateur	212		1 636				2 540
Mobile	Terrestrial - Networks Private	--	192	--	394	--	323	254
	Terrestrial - Networks Public (GSM)	--	--	--	50	--	--	21
	Terrestrial - Public Network (UMTS)	--	--	--	49	--	--	3
	Terrestrial - Trunking	--	--	--	0	--	--	--
	Maritime	38	--	49	--	--	--	53
	Aeronautical	8	--	5	--	5	--	10
Fixed	Links Point-to-Point	--	19	1	220	--	2	172
	Links Point-to-Multipoint	--	2	--	3	--	--	11
	Studio Links Issuer	--	2	--	36	--	10	53
	Transportable Connections	--	--	--	--	--	--	--
Broadcasting	Sound (Analogic)	10	--	63	--	25	--	313
	Sound (Digital)	--	--	--	1	--	--	--
	Television (Analogic)	8	--	13	--	--	--	15

### **Licencing and reorganization of networks/stations**

In comparison to the previous year and with respect to the land mobile service - UMTS, a slight increase in the number of stations occurred in 2008, with 1,435 new registrations in 2008, opposed to 1,111 in 2007.

With respect to the GSM networks, a decline occurred, with the registration of 520 new stations in 2008, compared to the 924 registered during 2007.

These registrations resulted from 49 applications for the amendment of UMTS network licences and 50 requests for the amendment of GSM network licences, which were processed over the course of 2008.

In the context of mobile services, licencing was granted to the HF - High Frequency aeronautical station for the provision of Operational Control. The station, located on the island of Santa Maria, in the Azores, is to cover the area which, under the terms of Appendix 27 of the Radio Regulation, is designated as NAT-MWARA (Major Area of North Atlantic).

Furthermore, the process was continued of licencing stations included in the maritime traffic control system (VTS - Vessel Traffic System) of IPTM - *Instituto Portuário e dos Transportes Marítimos* (Port and Maritime Transport Institute).

Regarding the fixed service, 19 licences were awarded and amendments were made to 218 licences, corresponding to the radio networks of operators, of which note should be made of those of Radiomóvel, Vodafone, Sonaecom, PTC, Onitelecom - Infocomunicações, S.A. (Onitelecom) and IPTM which, combined, represented the installation of 2,692 new fixed stations, providing 1,346 point-to-point connections. Note should also be made of the high number of stations that were established in 2008, which is not evident regarding the number of issued/amended licences.

With respect to the space operations service and the Earth exploration by satellite service, 3 earth stations of the European Space Agency (ESA) were licenced to be installed on the island of Santa Maria (Azores), with one station designed for following up on the launch of the Ariane 5 rockets and the other two designed to receive data sent by the ERS-1 and ENVISAT satellites.

Note should also be made of the licencing of the SINTRA 8 earth station, offering MEO DTH services (Direct to Home).

### **Amateur and amateur satellite services**

A process was begun of decentralizing the conduct of amateur exams in the Autonomous Region of the Azores, making it possible for amateur candidates on the other islands to do the exam without having to travel to ICP-ANACOM's office on Ponta Delgada. In this respect, exams were conducted in Terceira at the end of 2008. This was one of the raft of measures adopted by ICP-ANACOM as part of the 2008 SIMPLEX programme.

### **Notification and registration of frequencies**

In respect of the inventory process and the process of frequency assignments to be notified to the BR/ITU, covering the 1.5 GHz-56 GHz frequency range, an analysis and updating of notifications of frequencies assigned to national radio stations in respect of the fixed satellite services was carried out over the course of 2008.

20 notification filings were sent in connection with earth stations and 12 notifications were registered in the Master International Frequency Register (MIFR).

With respect to the radio broadcasting service and, as usual, the frequencies used by short-wave operators, for the two currently defined periods, were reported. Notifications were also made with respect to FM radio broadcasting, resulting from changes in stations as well as from new stations entering operation.



### Coordination of satellites networks

During 2008, an analysis was made of 311 CR/C special sections (notifications for coordination of satellites networks) published in 18 ITU (International Telecommunication Union) Weekly Circulars, which resulted in 17 manifestations of disagreement with the corresponding applications for coordination from various foreign administrations.

### Protection of radio stations and networks

Under the powers conferred by Decree-Law no. 151-A/2000 of 20 July, ICP-ANACOM, as a result of licencing and authorizations granted for the operation and use of radio networks and stations and in view of safeguarding their operation, undertakes to assure them the protection that is necessary and possible so as to enable them to pursue their objectives.

According to Decree-Law no. 597/73 of 7 November, some of these radio stations enjoy special protection with administrative service, which places restrictions on the construction and placement of obstacles in areas defined in respect of this use.

ICP-ANACOM is asked to give an opinion on the feasibility of installing buildings and infrastructure in these areas. In particular, its assistance has been requested in the review of projects and issuance of opinions with regard to the feasibility of installing radio infrastructure, pursuant to Decree Law no. 11/2003 of 18 January.

ICP-ANACOM has also participated in several Joint Coordination Committees to review Municipal Director Plans (PDM), representing its Tutelage, attending the meetings of these Committees, contributing to the drafting of PDMs and issuing opinions on them.

Table 2 presents the distribution of the number of requests and opinions expressed by ICP-ANACOM in this respect.

**Table 2 - Requests and opinions issued in 2008**

Subject	Number of requests	Number of opinions
Items for the review of Municipal Director Plans	57	41
Installation of radio infrastructure	19	19
Installation of Wind Farms	69	63
Installation of High Voltage Overhead Lines	27	25
Plans for construction/urban development	136	124
Other cases	6	2
TOTAL	314	274

## ● Numbering, portability and pre-selection

### **Amendment to the Portability Regulation**

Regulation no. 58/2005 of 18 August (Portability Regulation) which establishes the principles and rules governing portability on the public telephone networks and which is binding upon all companies with portability obligations, was published on 18 August 2005. Until then, and since 28 June 2001, for fixed networks, and January 2002, for mobile networks, the Specifications for Portability were applied - which overall constitutes a total of seven years experience with the adopted portability solution.

Meanwhile, as a result of the development in the markets for electronic communications services and the corresponding growth in the number of users signing up to this type of service, there is a demand for efficiency and speed in the process of switching operator with subscriber number portability, and the European Commission has also called for a significant reduction in the time that users have to wait for portability.

Accordingly, almost three years after the Portability Regulation came into force, the practice of companies subject to it has demonstrated the need to make some changes to the original version, with respect to the principles and rules to be observed.

Therefore, on 15 October 2008, ICP-ANACOM adopted the draft amendment to the Portability Regulation, which was subsequently made subject to the regulatory procedure laid down in article 11 of the Statutes of ICP-ANACOM and to public consultation.

With the introduced amendments, emphasis is given to the responsibility of the receiving provider with regard to the entire process, rules are established providing for efficiency between providers and there is greater subscriber protection. In this regard, provision has been made for the payment of monetary compensation in cases of non-compliance or negligence, both between providers, and for the subscriber. In addition, deadlines were established for the activation of portability for the subscriber.

Furthermore, a solution was defined that will enable the portability of numbers of subscribers and former subscribers of companies which stop providing the service, for whom this functionality must also be ensured.

### **Conditions associated with the rights to use numbers transferred to Sonaecom**

By determination of 29 December 2008, ICP-ANACOM approved, following the respective prior hearing of Sonaecom, the report and final decision on the conditions of rights of use for numbers transferred from Optimus Telecomunicações, S.A. (Optimus) to Novis, S.A. (Novis), and on the transfer to Sonaecom of rights of use for numbers allocated to Telemilénio, Lda.

### **Allocation of rights to use numbers**

In 2008, an allocation was made of 1.3 million geographic numbers, of which 190 thousand were for the area of Lisbon and 70 thousand were for Oporto. Over the same period, 100 thousand numbers were recovered from other areas of the country.

With regard to non-geographic numbers, Table 3 presents the distribution of the numbers allocated and/or reserved (A) and recovered (R) by type of service:

**Table 3 - Non-geographic numbers**

Allocated and/or Reserved (A) or Recovered (R)	Non-geographic numbers				
	VoIP Services <sup>1</sup> Nomadic	Short Numbers <sup>2</sup>	Translation services and voice mail	Data Services (ISP)	Mobile Phone Service <sup>3</sup>
A	290 000	5	164 503	300	2 600 000
R	50 000	5	60 000	400	350 000

1 - Voice over Internet Protocol

2 - Corresponds to the 10xy, 116xyz, 14x(y), 15xy, 16xyz and 18xyz ranges.

3 - The numbers were allocated in blocks of 10,000 for the "92" range. Usage rights for the "609" and "669" numbering ranges are implicitly allocated for access to the voice mail service, respectively, for voice mail consultation and leaving messages and the "639" and "659" numbering ranges, respectively, for access to fax and data mobile services.

With respect to non-geographic Audiotext numbers, 1,000 numbers were allocated or reserved in the general range (601) and 12,000 numbers were recovered, half of which concerned the number "601" and "608" (sales), and the other half concerned the numbers for Televoto (607), competitions and hobbies (646) and erotic numbers (648).