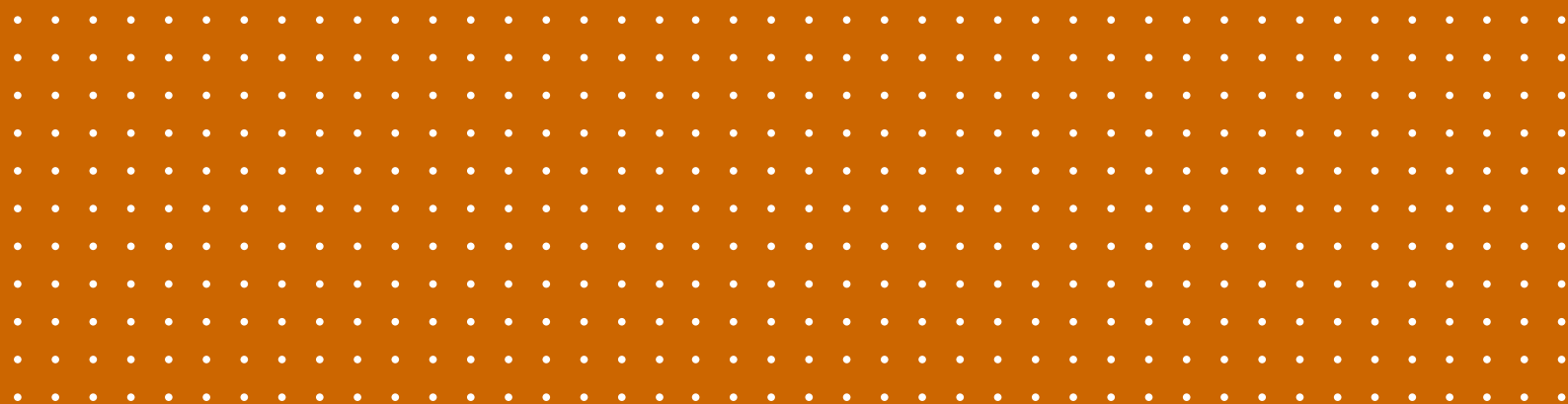


# 02.

## Supervision Activities



## ● Monitoring

### Monitoring and Control of the Spectrum (MCE)

The monitoring and control of the spectrum (MCE) encompasses the management of frequencies and has the following main objectives:

- Verification of the operating conditions of radio networks and stations, according to current legislation, in particular Decree-Law no. 151-A/2000 of 20 July;
- Compilation of information on the ground to assist the activities of spectrum planning and the licencing of radio stations and networks.

In 2008, ICP-ANACOM invested in the technological upgrade and equipping of infrastructure supporting its MCE activities, specifically two communications receivers with measuring capability, two selective radiation measurement systems, one portable spectrum analyser, in the upgrade and maintenance of its systems for analysing the quality of service of the mobile networks and a number of other radio frequency devices.

In addition, three switching antenna systems were acquired, together with two telegraph and digital communications analysers, two communications receivers with measuring capability and various other devices for the Oporto Centre as part of the Integrated Monitoring Project (PMI), which has almost been concluded in this centre, with only some adjustments to the applied software still required.

With respect to the technical management of MCE equipment and systems, the following activities, which took place over 2008, should be noted:

#### Equipment calibration

- Definition of the calibration profiles for the new equipment;
- Internal calibration of 94 appliances;
- External calibration of 33 appliances.

#### Corrective conservation

286 operations were carried out in several appliances of all the MCE centres, of which just 17 made use of resources external to ICP-ANACOM. Of particular note is the extensive conservation work carried out internally on MCE equipment of the Automatic Inspection Position of Barcarena.

#### Preventive conservation

Intervention was undertaken in respect of the hardware and software of SINCRER and in the sets of antenna in the Barcarena and Madeira centres.

In operational terms, periodic monitoring campaigns were conducted over the course of 2008, to verify if the operation of stations and networks is in accordance with current legislation and in particular with the conditions imposed in the licences of radio stations and networks.

As part of these inspection and enforcement activities, legal proceedings were begun in 84 processes with respect to verified infringements.

There were 1,846 requests for intervention, with the resolution of most requests needing the local intervention of a technical team. Of the total, 48 per cent resulted from complaints about interference, with more than half of these referring to complaints resulting from interference in terrestrial television reception systems. Note should be made of the high level, with respect to complaints of occurrence/interference in communications of the Aeronautical Mobile Service (13 per cent), of the Amateur Service and Amateur Satellite (9 per cent) and the networks and stations of the terrestrial mobile service with CDMA technology, operating in the 450 MHz band (7 per cent).

Finally, it should be noted that, of the remaining 52 per cent of requests received, 14 per cent related to requests for verification of compliance with reference levels for the protection of the general population.

Furthermore, operational actions were undertaken which arose from requests from the Media Regulator (ERC), under the current protocol with ICP-ANACOM.

Cooperation with other public entities, including the PSP, GNR, PJ and with our international counterparts made up a large part of the activity undertaken in this area over the year, accounting for about 12 per cent of the overall activity.

Particular note should be made, as regards MCE, of those activities which are designed to address harmful interference affecting frequencies, channels and stations, which are detailed as follows:

- The frequencies of the aeronautical mobile service for runway approach, distress and safety, and national airport control towers;
- Calling, distress and safety channels of the maritime mobile service;
- Aeronautic and maritime radionavigation service stations;
- Responses to requests from the authorities responsible for search and rescue (search and rescue at sea coordination centre and/or portuguese air force), with respect to false or deceptive alarms whether intentional or caused through negligence, have been given top priority by the operational services of spectrum management.

In all cases, activity is based on the principle that it is vital to eliminate harmful interference as quickly as possible, with recourse, if necessary, to exceptional measures that can include the closure of the station causing the disturbance. When interference is caused by a foreign station and/or a station outside the jurisdiction of this Authority, it may take a substantial length of time to resolve the problem. In such cases, the notification procedures of the Radiocommunications Regulations are of particular relevance.

Regarding international cooperation, in 2008 Portugal registered 178 requests for cooperation, with a view to resolving problems of interference or eliminating illegal emissions. Cooperation was closest with european countries (United Kingdom, Austria, Germany, Spain and France), whereas in certain cases there was a need for participation by the United States of America.

During 2008 and in an international context, five automatic HF monitoring campaigns were conducted, as part of the continued monitoring of the HF bands for the CEPT (January, September, October, November and December 2008).

### **Non-ionising radiation**

By the end of 2008, ICP-ANACOM had received 1,254 requests related to non-ionising radiation. 1,220 cases were concluded (159 involving educational institutions), many of which were in response to on-site measurements.

The results point to values of at least 50 times lower than the reference levels of power density set in Administrative Rule no. 1421/2004 of 23 November. There were 35 cases which failed to ensure levels of 50 times lower than the reference levels from the outset. However, all of them guaranteed the fulfilment of reference levels. All conclusions of the actions undertaken were brought to the attention of persons or entities who requested the evaluations.

## **Quality of service**

### **Regulation on the Quality of Service (RQS) applicable to the public telephone service**

In 2008, ICP-ANACOM conducted verification of compliance with the following obligations arising from the Regulation on Quality, applicable to the service of access to the public telephone network at a fixed location and to the publicly available telephone service at a fixed location, published in *Diário da República*, series II, on 14/06/05, as Regulation no. 46/05:

- provision of information on levels of performance for the year, for each defined parameter;
- provision of information on levels of performance for the year, which providers propose to offer over the course of the year, for each of the defined parameters;
- it was determined that this information should be provided to users in writing, at all points of sale and shall be disclosed on the websites of the companies, where a website is provided, which information shall be provided in a visible and easily identifiable form.

Regulation no. 46/05, which objective is the publication and availability to end-users of clear, complete and comparable, updated information on the quality of service achieved by providers, includes a list of quality parameters in its annex for which methods of calculation have been established, which are to be followed by providers in their measurement and which take as a reference the document of the ETSI Guide - EG 201 769-1 V1.1.1 (2000/2004).

As part of its monitoring activities, ICP-ANACOM noted the need to make the information established in this Regulation available in a manner that is clearer, consistent and easier for end-users to find. Accordingly, in September 2008, ANACOM gave approval, by means of a recommendation, to the "Disclosure model" to be adopted by companies providing the telephone service at a fixed location (STF) for the disclosure of information on quality of service to end-users pursuant to the RQS.

#### **Evaluation of actions implemented by CTT in 2007, to comply with the decision of this Authority in respect of compensation of users for failure to meet quality of service indicators in 2006**

On 20 February 2008, ICP-ANACOM received CTT's report with the overall results of the actions implemented by CTT in 2007 to compensate users for non-compliance with the indicators of quality of service in 2006, subsequent to the decision of this Authority, taken in 2007, to apply a deduction of 1 per cent to the weighted average of variation in prices of services reserved to CTT, authorized for 2007 and to determine that CTT shall present a proposal on the measure's implementation.

ICP-ANACOM concluded that the set of actions accepted by ICP-ANACOM would result in benefits for users with a value corresponding to about 2.8 million euros, meeting the established objectives.

#### **Quality of service of Internet access**

Following the consultation launched on the extension of Regulation no. 46/2005, which sought to include quality of service parameters for access to the Internet within the RQS, ICP-ANACOM decided, by determination of 16 January 2008, not proceed with the amendment in question. As a result, the regulation continues to apply only to the service of access to the public telephone network at a fixed location and the publicly available telephone service at a fixed location.

It was considered, in particular, to ensure that users have maximum benefit in terms of choice, price and quality and to promote clarification for users on quality of service provided with respect to Internet access, that there were already faster and less onerous means available which were more easily adaptable to the changes of the market for the entities involved.

Furthermore, continuity was given to actions aimed at improving the quality of that service including, and in addition to the monitoring of complaints, the publication of a study on the Quality of Service of Internet Access/2007 and the preparation of the public tender for the study on the Quality of Service of Internet Access/2008.

In addition, the contracts of subscription to the service were checked, to assess the inclusion of the obligations and recommendations set out in the determination which gave approval, under articles 39 and 48 of Law no. 5/2004 of 10 February, to the guidelines on minimum content to be included in contracts governing the provision of electronic communications services.

#### **Studies on the Quality of Mobile Services**

Over 2008 several studies were conducted and published, of which the following are put in relief:

- Publication of Study on Quality of Mobile Services/2007 (voice, video telephony and coverage), in the Autonomous Regions of Azores and Madeira;
- Publication of Study on Quality of Mobile Services/2007 (voice, video telephony and coverage), on the mainland;
- Publication of the Study on Quality of Mobile Services/2007, on the *Alfa Pendular* Service of CP (Portuguese Railways);
- Publication of the Study on Quality of Mobile Services/2007, (SMS and MMS), on the mainland;
- Completion of the Study on the Quality of Mobile Services/2008 in terms of voice, in the light of the support technology used - GSM or UMTS;
- Completion of the Study on the Quality of Mobile Services/2008 (SMS and MMS), on the mainland;
- Completion of the Study on the Quality of Mobile Services/2008 (voice, video telephony and coverage), on the mainland.

#### **Audit of the quality of service indicators and complaints system of CTT with respect to financial years 2006 and 2007**

Following the audit conducted with regard to the quality of service indicators and complaints system of CTT, in respect of the years 2006 and 2007, in November 2008, after the prior hearing of CTT, approval was given to the publication of the reports on the performed audit, and a set of determinations and recommendations were made to CTT with the aim of achieving improvements in the systems for monitoring the quality of service indicators and the handling of complaints.

#### **Audit of the quality of service indicators with respect to the year 2005**

By determination of 17 December 2008, following the prior hearing of CTT, approval was given to the report to be published by this Authority concerning the results of the audit conducted on the levels of quality of service offered by CTT in 2005.

## **Other Monitoring Activities**

### **Regulation of international roaming**

Over the course of 2008, ICP-ANACOM took various measures with respect to monitoring the implementation of Regulation (EC) no. 717/2007 of 27 June, on roaming on public mobile telephone networks within the Community, allowing consumers to benefit from a "Eurotariff" from summer 2007. The maximum price cap of the "Eurotariff", which during the first year of the Regulation was 0.49 euros (excluding VAT) and 0.24 euros (excluding VAT) for voice calls made or received in roaming within the EU, respectively, was reduced to 0.46 euros (excluding VAT) and 0.22 euros (excluding VAT) since the end of August 2008.

The Regulation also imposes a price cap on the average wholesale tariff that the operator of a visited network may charge the operator of the roaming client's home network for a voice call in roaming, with origination in this visited network. This limit was set by the Regulation at 0.30 euros per minute, in the first year of its application, falling, under the same Regulation, to 0.28 euros on 30 August 2008.

The regulation also made it mandatory for operators to automatically provide to their roaming customers - when they enter a Member State that is not that of their home network - a free instant messaging service that reports on the charges for calls made and received in roaming.

ICP-ANACOM has carried out the following actions:

- monitoring and supervision of compliance in the national territory: in this context, note should be made of the compilation of information from providing companies, the performance of inspections to check the effective implementation of measures to increase tariff transparency and the monitoring of complaints received with respect to roaming;
- information to the public on the application of the Regulation, by updating the relevant information on ICP-ANACOM's website;
- monitoring of tariffs and of the use of traffic steering techniques to the detriment of customers;

- monitoring of situations of involuntary cross-border *roaming*;
- participation in the International Roaming Project Team (IRPT) of the European Regulators Group (ERG).  
It should be noted that in January and August 2008, the ERG published two reports on the implementation, in various european countries, of the measures established in the Regulation, recognizing that, for the time being, in most countries there was a reduction in the tariffs of the roaming service and a good level of compliance by operators with the measures established to improve the transparency of retail tariffs;
- six-monthly reporting to the Commission, as required by the Regulation, of information on the activity of international roaming of the operators active in Portugal.

In late September 2008, the European Commission presented its proposed revision of the Regulation on International Roaming to the European Parliament and the Council, seeking to extend it until 2012 and broaden its scope to services of text messages (SMS) and data (used in roaming) in the intra-community area.

**Monitoring of trends in wholesale and retail prices with respect to portability and the obligation to provide information to the consumer as set out in the Portability Regulation**

In this respect, in 2008 ICP-ANACOM conducted:

- the compilation of information from companies providing the mobile telephone service and companies providing the fixed telephone service on the prices charged to subscribers for operations of portability (retail prices) and on the prices charged to service recipients (wholesale prices);
- a survey sent to different european NRAs via the CN (Contact Network) of the IRG, to collect a range of information on portability, especially on retail and wholesale prices charged by operators and information relating to compensation for delays in the implementation of requests for portability;
- the monitoring of complaints received with respect to the free online message provided by companies offering the mobile telephone service;
- the monitoring of compliance with the obligations set out in art. 21 of the Portability Regulation, including the provision by providers of the mobile telephone service of a free online notice for national voice calls between mobile networks and services for ported numbers, the provision of information to subscribers on procedures for deactivation and reactivation of hearing the same notice and implementation of the service of information on the prices for calls to ported numbers.

In 2008, these measures also covered virtual mobile network operators (MVNO).

**Audit of 2005 and 2006 results of the costing system of CTT**

By determination of 19 November 2008, ICP-ANACOM approved the final reports of the audits performed by KPMG & Associados on the analytical accounting system used by CTT with respect to the years 2005 and 2006 and decided to also hear CTT on the statements of evidence of conformity issued by this Authority and the determinations and recommendations aimed at improving CTT's existing costing system.

## ● Dispute resolution

### **Dispute between Tele2 and PTC over consumption of power in respect of the RUO**

By determination of 16 April 2008, approval was given to the final decision regarding the process of administrative settlement of the dispute between PT Comunicações, S.A and Telemilénio - Telecomunicações, Sociedade unipessoal, Lda., related to the non-payment of invoices relating to the consumption of power in the context of access to the local loop (RUO). In this respect, ICP-ANACOM decided the following:

- To deny the request presented by PTC to settle this dispute, due to the fact that the maximum period allowed before seeking the intervention of the Regulator, as set out in paragraph 2 of article 10 of the same law, had elapsed;
- To clarify that point 4.2.3 b) of annex 14 of the RUO defines the prices payable by other licenced operators in exchange for the co-installation services provided by PTC, irrespective of the time of the installation and connection of equipment. By agreement, the parties may stipulate that the sums in respect of the consumption of energy, calculated according to the formula set forth in the RUO, shall be due from a time after the commencement of the provision of the co-installation service. In such case, the parties shall define the conditions necessary for the functioning of the agreement, specifically in so far as they allow PTC to know the effective date following which such sums may be legitimately charged.

### **Dispute between Sonaecom and PTC on the payment of compensation for failure to meet the levels of quality of service established in the RUO**

On 4 June 2008, this Authority decided, with respect to the administrative settlement proceedings initiated by Sonaecom with the objective of obtaining the payment of compensation by PTC for failure to comply with the levels of quality of service established in the reference unbundling offer (RUO), to respond to the requests for verification of eligibility in 2006.

The final decision given in this case considered and rejected the arguments and grounds set out in the request for dispute settlement and dismissed the application for payment of compensation for failure to comply with the maximum response periods established as objectives of quality of service of the RUO, as well as the claimed interest.

### **Dispute between Sonaecom and PTC on the payment of compensation for failure to comply with the levels of quality of service established in the RUO and in the LLRO**

Following a request submitted by Sonaecom seeking the intervention of the regulator to settle the dispute with PT Comunicações, S.A, on the payment of compensation for failure, in 2006, to comply with the levels of quality of service and with respect to the time limits applicable to the restoration of service (repair of faults), established in the Reference Unbundling Offer (RUO) and in the leased lines reference offer (LLRO), on 30 April 2008, ICP-ANACOM adopted a draft decision which rejected the request in which declaration was made of the obligation of PTC to pay Sonaecom the amount claimed as compensation for non-compliance, as well as the claim for interest and due diligence required by the Sonaecom, considering that these were neither useful nor necessary for the clarification of the facts relevant to the decision.

### **“30” Numbering range - VoIP**

Between July and September 2008, ICP-ANACOM received several communications from Sonaecom, requesting the intervention of the regulator with respect to the request of this operator, directed at PTC and TMN - Telecomunicações Móveis Nacionais, S.A., (TMN) on opening the “30” numbering range - nomadic VoIP to route calls over their networks, for which there was a lack of consensus on the price of termination practiced by Sonaecom.

In order to verify compliance with the obligation to negotiate interconnection which is incumbent on the operators and provides for the possible intervention of this Authority, in December 2008, information was requested from PTC and Sonaecom on the state of negotiations on this agreement, including proposals exchanged between the parties regarding the price of termination proposed by Sonaecom and counter-proposed by PTC and TMN.

## ● Inspection

As part of its statutorily conferred powers, ICP-ANACOM is charged with the inspection and enforcement of compliance with the applicable laws and technical requirements, and with guaranteeing that communications operators comply with the provisions of the respective licences for the exercise of activity or concession contracts.

Accordingly, in this context, in 2008 ICP-ANACOM made it a priority to strengthen its investigative and enforcement activities in the detection, and subsequent redress, of cases where the exercise of activities by entities lacked appropriate authorization.

At the same time, and as far as available resources allow, ICP-ANACOM also sought to verify compliance, on the part of authorized entities, with the provisions of the respective activity licences, with the ongoing aim of preventing situations that might arise from distortions in the normal functioning of the markets, seeking solutions that might resolve disputes between operators or between operators and consumers.

### Electronic Communications

In terms of electronic communications the following enforcement actions should be noted:

#### Telephone Service at a fixed location

- Verification and analysis of relevant information on the offers of the operator PTC, searching for acts that may indicate practices or situations which may indicate lack of compliance with the applicable regulatory framework;
- Compilation and analysis of information on VoIP technology and its impact on the provision of services by operators;
- Analysis on the time taken by the Customer Services of the providers of this service to answer customer calls;
- Investigation to verify compliance with the determinations of this Authority concerning win-back practices by PTC;
- Investigation into the alleged existence of discrimination in offers by PTC to its customers;

- Analysis of the operating conditions of the local fixed telephone service, offered by Vodafone, TMN, Sonaecom and ZON TV Cabo;
- Investigation into the cost of calls to numbers in the "707" range, in the Vodafone Casa service;
- Investigation into compliance with the determination of January 2007 on the "761" and "762" numbering ranges;
- Investigation of ZON TV Cabo, following a complaint by PTC;
- Investigation into the publication and provision to users of information about quality of service at the points of sale of all providers;
- Investigation into the placement of publicity and telemarketing in calls to 1820 (information service) by PTC;
- Investigation into the detailed billing submitted by PTC;
- Investigation into compliance with the determination of May 2008 on per-second billing, after an initial period with fixed charge;
- Investigation into the provision of this service by Bragatel - Companhia de Televisão por Cabo de Braga, S.A. (Bragatel) of Pluricanal Leiria - Televisão por Cabo, S.A. (Pluricanal Leiria) and Pluricanal Santarém - Televisão por Cabo, S.A. (Pluricanal Santarém);
- Investigation in 13 PTC telephone exchanges, related to alleged constraints under the RUO;
- Analysis of 101 complaints about problems with Operator Selection and Pre-selection and three investigations in the same area, following complaints of providers of this service;
- Collection of subscription contracts at the points of sale of all providers of this service.

#### Cable distribution service

- Analysis of the conditions of supply of services provided by the cable operator TVTel Comunicações, S.A. (TVTel);
- Collection of information and comparative study of offers of service proposed by the operators Cabovisão - Televisão por Cabo (Cabovisão) and ZON TV Cabo;
- Characterization of the offers and comparative study between the operators ZON TV Cabo, TVTel, Pluricanal Leiria, Pluricanal Santarém and Bragatel;



- Compilation of information and assessing the situation regarding set top boxes (STB) with irregularities on sale in the national market;
- Characterization of offers and comparative study between the triple-play offers of the IPTV services, ClixSmartTV of Sonaecom and MEO of PTC;
- Compilation and analysis of information on the technical aspects of Digital TV, with particular focus on the DVB standards and its different versions, under the European standard;
- Compilation and analysis of information on technical aspects of digital television and the High Definition (HD) format, in the context of recent developments on digital terrestrial television and the opening of the tender for the 5th channel;
- Inspection of all providers of this service to verify compliance with the obligations arising from their respective authorizations;
- Inspection of all the providers of this service to verify compliance with the obligations related to Complaint Books;
- Investigation into the alleged alteration of network and contractual conditions by TVTel;
- Collection of subscription contracts at the points of sale of all providers of this service.

### Public payphones

- 65 inspection activities, with respect to entities providing this service, to detect situations where there is lack of authorization for the exercise of the activity, and to verify compliance, in cases of legally authorized entities, with the obligations arising under the respective authorizations.

### Mobile Services

- Brief analysis of the conditions of supply, affordability and coverage of the *Telemodem Zapp* service of the operator Radiomóvel: the historical development and verification of the conditions of use, radio coverage and accessibility of the mobile Internet access service proposed by this operator. Accessibility tests were performed during the year in the districts of Bragança, Castelo Branco, Portalegre, Évora, Beja, Faro and Setúbal;

- Compilation and analysis of information on virtual mobile operators (MVNO) and characterization of the current offer in Portugal;
- Compilation of information on High Speed Uplink Packet Access (HSUPA) technology and how this is integrated into the offers of existing mobile networks in the national market;
- Compilation of information on new proposals for networks and services based on WiMAX wireless technology, and its possible application to the reality of broadband Internet access networks in our country;
- Analysis of information on the evolution of the radio spectrum to GSM 450 mobile services;
- Analysis of the conditions of use and possible vulnerability of mobile terminal equipment to communication interception devices for sale over the Internet;

### Virtual Phone Cards

- Survey on the conditions governing the provision of this service, with 47 inspections performed of entities involved in its provision.

### Internet Access

- The unusual behaviour of certain users of Internet networks, commonly referred to as heavy user, has a negative and significant impact on the performance of networks, degrading the quality of service. As such, and within the scope of the working group which includes representatives of operators/providers (fixed networks) of access to the Internet and the Directorate General for the Consumer, four meetings were held during 2008 with a final document on the subject in preparation;
- Analysis of the conditions of supply of services proposed by a number of the "*Cidades e Regiões Digitais*" (Digital Cities and Regions) projects in the promotion of wireless broadband Internet access, provided in public spaces;
- Compilation of information and characterization of new solutions and respective architectures based on optic technology and its future application to the reality of access networks in our country;
- Compilation of information and comparison of broadband offers (fixed access) in the market.

### Portability

- Conclusion of five investigations into the realization of portability requests, with respect to disputes involving providers of the telephone service at a fixed location;
- Analysis of 150 refused portability requests;
- Investigation into the information services regarding the prices of calls to ported numbers;
- Investigation into the existence and content of the online notice informing the caller that the call is being made to a ported number, where such notice is required.

### Postal Services

With respect to the postal services market, note should be made of the implementation of enforcement measures, covering the following areas:

- Compilation and analysis of information on the provision of services of operators of non-express mail services. The analysis focused on the companies (or brands, in the case of franchising);
- Systematic analysis of the conditions of provision of services offered by CTT Expresso and comparison of the services with others of similar characteristics and/or descriptions and the respective pricing;
- Analysis of the conditions of supply and the effective provision of services of regular mail and priority mail (*correio azul*) - delivery times, by the concessionaire company, particularly in post destined for the remotest islands in the Azores and Madeira archipelagos. This analysis was performed according to a cross-section of items sent from Lisbon and Oporto and carried out during working days in April and October (opposite seasons of the year);
- Inspections performed at points of sale of all providers of these services, related to verification of compliance with the rules on the Complaint Books;
- Investigation of irregularities in the home delivery of correspondence by CTT in the Municipality of Cascais;
- Inspection of the conditions of supply of the companies CTT Gest, Mailtec, Indy, TNT and Adicional.

All irregular situations detected were sent for analysis with a view to litigation.

### Equipment Market

Part of the remit of this Authority is the monitoring and enforcement of compliance with the system of free movement, placing on the market and putting into service in the national territory, of radio and telecommunications terminal equipment (R&TTE)<sup>1</sup> pursuant to Decree-Law no. 192/2000 of 18 August.

The supervision of this market involves three procedures for the assessment of conformity of equipment in the market, including:

- Procedure 1 - actions of direct investigation (in person and also by catalogue and Internet) of economic agents (distributors, importers, retailers);
- Procedure 2 - market follow-up actions, through laboratory testing and analysis of technical documentation to verify compliance of equipment;
- Procedure 3 - market follow-up actions, through analysis of technical documentation to verify compliance of equipment.

The scope of the activity conducted in 2008 was as follows:

- Procedure 1 - 667 pieces of equipment inspected. Under this procedure 527 units were seized, for failure to meet one or more requirements for its entry into market (in particular, lack of CE mark, lack of declaration of conformity and lack of manuals in Portuguese).
- Procedures 2 and 3 - 109 inspections of equipment were begun and 178 pieces of equipment were tested, with a recorded rate of technical non-compliance (tests) of 4 per cent.

<sup>1</sup> Radio and Telecommunications Terminal Equipment.

Procedures 2 and 3 involve laboratory testing and documentary analysis, allowing comprehensive assessment of the compliance of equipment with the requirements set out in Decree-Law no. 192/2000 of 18 August.

Regarding the types of non-compliance detected, in procedures 2 and 3, in 2008 there was a large diversity in the types of non-compliances as shown in Table 4:

**Table 4 - Technical and documentary non-compliance detected**

<b>Types of non-compliance</b>	<b>% of the total</b>
Indication on the packaging that the equipment is intended for use in Portugal	2,5
Indication in the manual that the equipment is intended for use in Portugal	2,4
Alert of any restrictions or requirements to which the equipment is subject	1,6
Statement of Compliance (must accompany the equipment) - in reduced format in Portuguese	2,9
Statement of Compliance (must accompany the equipment) - in full format	3,0
Statement of Compliance (must accompany the equipment) - with reference to the Internet	3,0
Documentation and manuals in Portuguese language	2,7
Existence of CE marking on the equipment (transmitter and receiver)	2,6
Existence of CE marking on the package	0,3
Existence of CE marking in the manual	2,7
Visible, legible and indelible marking	0,3
Designation of the contacted notified body (marking) on the equipment	0,6
Designation of the contacted notified body (marking) on the packaging	0,7
Designation of the contacted notified body (marking) on the manual	0,7
Identification of the class of equipment (marking) on the equipment	2,4
Identification of the class of equipment (marking) on the packaging	2,6
Identification of the class of equipment (marking) in the manual	2,5
Symbol informing that the equipment uses frequency bands whose use is not harmonized in the European Union on the equipment	2,3
Symbol informing that the equipment uses frequency bands whose use is not harmonized in the European Union on the packaging	2,4
Symbol informing that the equipment uses frequency bands whose use is not harmonized in the European Union in the manual	2,3
Identification of equipment - Manufacturer	0,4
Identification of equipment - Brand	0,1
Identification of equipment - Type	0,8
Identification of equipment - Model	0,0

**Table 4 - Technical and documentary non-compliance detected (cont.)**

<b>Types of non-compliance</b>	<b>% of the total</b>
Identification of equipment - Series no.	2,7
Notification in accordance with article 6.4 of the R&TTE Directive	3,0
General description of equipment	1,3
Drawings of the design and manufacture	4,1
Diagrams	4,1
Technical specifications	3,8
Block diagram	4,2
List of components	4,3
List of standards applied in full or in part	3,3
Harmonized radio standards	0,3
Harmonized EMC standards	0,3
Harmonized LVD standards	0,3
Harmonized Health Protection standards	0,5
Description and explanation of the solutions adopted where harmonized standards have not been applied	0,2
Results of design calculations and tests performed	2,3
Radio test reports	3,2
EMC tests reports	3,8
LVD test report	3,8
Statement issued by the manufacturer that the tests were conducted and that the essential requirements are met or statement issued by the notified body that the dossier proves compliance with the essential requirements	3,4
Full declaration of conformity - provided with the equipment	2,8
Full declaration of conformity - provided with the technical documentation	3,4
Full declaration of conformity - indication of the manufacturer	0,4
Full declaration of conformity - signature of issuer	0,1
Full declaration of conformity - indicates compliance with Directive 1999/5/EC	0,1
Full declaration of conformity - indication of technical standards	0,1
Full declaration of conformity - indication of the date	0,1
Radiated disturbing electromagnetic field	1,7
Tension can disturb supply terminals	0,1
Frequency drift	0,3
<b>Total</b>	<b>100,0</b>

As a result of the non-conformities detected, 66 processes were sent for analysis with a view to litigation.

In the case of radio equipment which uses frequency ranges whose use is not harmonized across the European Union, it is necessary, by imposition of article 9 of Decree-Law no. 192/2000 of 18 August, that the manufacturer, the legal representative thereof or the importer notify ICP-ANACOM of such. Said notification must be undertaken four weeks prior to any market placing.

In 2008, 857 notifications of radio equipment were received - Table 5 shows the distribution of these notifications by type of equipment:

**Table 5 - Types of equipment reported**

Types	Notifications	
	(in number)	%
Alarms	85	9,9
Land Mobile	31	3,6
Wireless Audio	44	5,1
Bluetooth	12	1,5
Motion Detection	2	0,2
Radio	24	2,8
PMR 446	36	4,2
Amateur	0	0,0
Immobilizer	8	0,9
GPS	1	0,1
Maritime mobile	0	0,0
CB	5	0,6
DECT	3	0,4
Radar	0	0,0
Broadcasting	0	0,0
RFID	33	3,9
RLAN	457	53,3
SRD non-specific	18	2,1
Telecomand	68	7,9
Tele-measurement	2	0,2
TETRA / GSM	0	0,0
Data transmission	28	3,3
<b>TOTAL</b>	<b>857</b>	<b>100,0</b>

Of the 857 notifications received, 14.4 per cent (123) had various errors, the distribution of which errors are given in Table 6.

**Table 6 - Most frequent errors**

Type of error	%
Indication of frequency bands allocated exclusively to other services (e.g. broadcasting - 175 kHz; model aircraft - 34.990-35.230 MHz, military management, medical implants, audio wireless, inductive applications; microphone transmitters for non-professional use)	5,0
Errors with respect to the antennae of equipment (e.g. antennae cannot be external, integrated antenna or dedicated required; insufficient information)	72,7
Indication of maximum power limit	22,3
<b>TOTAL</b>	<b>100,0</b>

Since September 2008, ICP-ANACOM has been conducting an european campaign of market surveillance of radio equipment for telecommunications, together with several similar bodies in other european countries.

This campaign will extend until June 2009 and is part of the activities of surveillance and administrative cooperation in the context of R&TTE<sup>2</sup>, to raise awareness, among consumers and entities responsible for placing equipment on the market, of the requirements of Directive 1999/5/EC with respect to radio and telecommunications terminal equipment placed in the european market.

The equipment covered in this market inspection campaign are PMR<sup>3</sup> (e.g.: PMR 446, Tetra<sup>4</sup>) and wireless applications in the 2.4 GHz band (RLAN<sup>5</sup>, wireless video transmitters, remote control). The final results will be reported this year to the European Commission and TCAM<sup>6</sup>.

In 2007, ICP-ANACOM received 63 safeguard clauses under article 9 of Directive 1999/5/EC (article 16 of Decree-Law no.192/2000 of 18 August).

## Telecommunications Infrastructure in Buildings - ITED

In 2008, registration was carried out of 25 new certifying entities and the registration of six entities was revoked, resulting in a total of 171 certifying entities in activity.

With respect to the inspection activity, 466 inspections took place, in respect of various processes, including registration, revaluation, revocation of registration, complaints, other inspections and the designation of training bodies.

Of the total of 446 inspections performed, 405 related to inspections of telecommunications infrastructure in buildings, with a detected irregularity rate of 26 per cent.

The requirements in force in the ITED Manual require that the certifying entities acquire a range of testing equipment in order to upgrade their levels of quality. In 2008, there were 19 cases with respect to the updating of itens of registration of certifying entities, of which nine related to procedures for updating technology.

Two training bodies were designated for the implementation of qualification courses in ITED, giving a total for the year of 16 active training bodies.

<sup>2</sup> Group of Administrative Co-operation under the R&TTE Directive.

<sup>3</sup> Private Mobile Radio;

<sup>4</sup> Terrestrial Trunked Radio;

<sup>5</sup> Radio Local Area Network;

<sup>6</sup> Telecommunication Conformity Assessment and Market Surveillance Committee.

## ● Litigation and offences

With respect to raising awareness about the ITED scheme, ICP-ANACOM organised five seminars for ITED technicians (in Faro, Oporto, Lisbon, Funchal and Ponta Delgada), which events merit the general participation of ITED technicians. ICP-ANACOM also participated in two seminars organized by other entities.

With the goal of reducing the number of municipalities which do not apply the ITED rules correctly, ICP-ANACOM held 35 meetings during 2008 to raise awareness among Municipal Councils in various parts of the country.

The results of these actions have been largely positive. The Municipal technicians responsible for urban areas are becoming increasingly aware of the importance of ITED certification, and in some cases Council procedures now require certification of ITED compliance for the purposes of issuing authorization of building use.

In addition to the disclosure activities, clarification was made of doubts and queries - 597 requests for information involving technical and legal analysis.

The Management System for telecommunications infrastructure in buildings (SGITED), a computer application that aims to automate and streamline all ITED related processes, entered into operation during 2008, providing important gains in efficiency for ICP-ANACOM and the various entities involved (including certifying entities, ITED training bodies, ITED technicians, project owners and/or consumers).

### Community Litigation

#### Universal Service Directories

By failing to guarantee the availability in practice in Portugal of at least one complete directory list and at least one complete telephone information service for all end-users, pursuant to articles 5, paragraphs 1 and 2, and article 25, paragraphs 1 and 3 of Directive 2002/22/EC of the European Parliament and of the Council of 7 May 2002, on the universal service and users' rights relating to electronic communications networks and services (Universal Service Directive), the European Commission, considering that the Portuguese Republic had not complied with the obligations set out in the cited Directive, initiated legal action against Portugal in the Court of Justice of the European Communities, which case is ongoing.

It should be noted that in addition to the cited provisions of Directive 2002/22/EC having been correctly transposed, since 2003 ICP-ANACOM has adopted a number of measures to ensure the availability of a directory list and a complete telephone information service, within the scope of the universal service. However, because Vodafone managed to obtain, by court order, a provisional suspension of the transmission of data of their subscribers to the provider of the universal service provider, it became necessary to seek agreement between PTC (current universal service provider) and Vodafone and Sonaecom on the conditions for sending the data of subscribers to the mobile telephone services of these two providers. This process began in 2007 and continued through most of 2008.

Due to a delay in completing these agreements, despite significant progress, ICP-ANACOM intervened in 2008, establishing the conditions and the deadlines for submission of data to the universal service provider, referring this decision to the prior hearing of interested parties.

It is expected that, during the first half of 2009, a complete list and a full telephone information service will be finally available, containing the data of all consenting end-users of fixed or mobile telephone services.

### Designation of the Universal Service Provider(s)

In 2005, the European Commission initiated a process of pre-litigation against the Portuguese State, essentially arguing that the designation of PTC as the provider of the universal service until 2025 was incompatible with the requirement laid down by Directive 2002/22/EC of European Parliament and of the Council of 7 March 2002 on the universal service and users' rights relating to electronic communications networks and services.

In February 2008, the Commission issued its reasoned opinion, in this case, maintaining its original position.

In response, the Government redefined the overall timetable of actions to ensure that the designation of the provider(s) of the universal service is in accordance with the terms of the cited Directive, transposed by Law no. 5/2004 of 10 February.

It is in this context that ICP-ANACOM, in its role as advisor to the Government and in the execution of the joint order of the Minister of State and of Finance and the Minister of Public Works, Transport and Communications of 28 January 2008,

launched a public consultation process in February 2008 in order to compile positions on a range of issues relating to the designation of universal service and expressions of interest from the various market players in providing this service. Upon the conclusion of this consultation, a report was drafted with the summary of views received (available on the website of ICP-ANACOM) and in accordance with the cited order, a document was prepared with recommendations to the Government for holding the tender for the selection of the provider(s) of the universal service.

Following this process, and at the request of the Government, ANACOM began preparing the regulatory documents needed to launch a tender for the designation of the provider(s) of the US.

### Infringement Proceedings

In Table 7 and in Table 8 detailed information is given on the infringement proceedings began in 2008 and carried over from previous years, respectively.

**Table 7 - Cases instituted in 2008**

Cases	N.º (value)
Cases Instituted	139
Cases Determined	28
With voluntary payment	1 (€99,76)
With acquittal	4
With reprimand	3
With application of fine	20 (€393.097,58)
Paid	3 (€6.098,79)
Executed	4 (€137.473,79)
Outstanding	7 (€107.400,00)
Appealed	6 (€142.125,00)



**Table 8 - Cases carried forward from previous years**

<b>Cases</b>	<b>N.º (value)</b>
Fines paid	5 (€3.649,75)
Sent for execution	8 (€81.248,80)
Challenged	1 (€5.000,00)
Cases determined	171
With voluntary payment	24
With acquittal	1 (€498,80)
With reprimand	38
With application of fine	34
With voluntary payment	74 (€721.425,74)
Paid	31 (€89.018,98)
Executed	13 (€125.492,78)
Outstanding	15 (€82.915,18)
Appealed	15 (€423.998,80)

The infringement cases that led to the institution of the 139 infringement proceedings in 2008 are presented in the following tables:

#### **Instituted due to breach of Law no. 5/2004 of 10 February**

<b>ELECTRONIC COMMUNICATIONS NETWORKS AND SERVICES</b>	<b>55 Cases</b>
• Non-Compliance of the obligation of supply information to NRA	43 Cases
• Breach of the rules associated with the rights to use geographic numbers	3 Cases
• Use of subscription contracts without prior approval of the NRA	2 Cases
• Non-Compliance with orders or legitimate notices of the NRA	2 Cases
• Breach of the terms defined by the NRA for the RCAO, with respect to the descriptive conduit database	1 Case
• Failure to respect the service designation associated with the allocation of rights to use frequencies and non-efficient frequency use	1 Case
• Violations of the right of subscribers to Portability	1 Case
• Failure to comply with the Quality of Service obligations of the Universal Service	1 Case
• Violations of the rules set out in the Selection and Pre-selection Regulation	1 Case

### Instituted for violation of other legislation

<b>Postal Services</b> (Decree-Law no. 150/2001 of 7 May, as amended by Decree-Law no. 116/2003 of 12 June)	<b>10 Cases</b>
<ul style="list-style-type: none"> <li>• Failure to provide ICP-ANACOM with the information necessary for verification and enforcement of the requirements and conditions derived from the authorization or licence</li> </ul>	10 Cases
<b>Radio broadcasting activity</b> (Decree-Law no. 151-A/2000 of 20 July, applicable under Article 1 of Decree-Law no. 126/2002 of 10 May)	<b>7 Cases</b>
<ul style="list-style-type: none"> <li>• Use of radio stations in violation of the technical parameters set by ICP-ANACOM</li> </ul>	7 Cases
<b>Sound broadcasting activity - RDS</b> (Decree-Law no. 272/1998 of 2 September)	<b>1 Case</b>
<ul style="list-style-type: none"> <li>• Use of the RDS system without authorization (article 3/1 and 2)</li> </ul>	1 Case
<b>Amateur radio service</b> (Decree-Law no. 5/95 of 17 January)	<b>5 Cases</b>
<ul style="list-style-type: none"> <li>• Use of frequency bands and emission classes different from those authorized for amateur service articles 23/2, point I)</li> </ul>	4 Cases
<ul style="list-style-type: none"> <li>• Failure to transmit call sign at the beginning and end of each transmission; amateur use of unlicensed station; use of offensive words or expressions in communications; intentional interference in the communications of other amateur stations - articles 23, paragraph 1, al. a), paragraph 2, point a) and b) and paragraph 3 point g)</li> </ul>	1 Case
<b>Mobile maritime service</b> (Decree-Law no. 179/97 of 24 July)	<b>1 Case</b>
<ul style="list-style-type: none"> <li>• Use of a radio network without licence</li> </ul>	1 Case
<b>Personal radio service - C.B.</b> (Decree-Law no. 47/2000 of 24 March)	<b>1 Case</b>
<ul style="list-style-type: none"> <li>• Use of C.B. stations by non-registered entities</li> </ul>	1 Case
<b>Land mobile service for private use</b> (Decree-Law no. 151-A/2000 of 20 July)	<b>39 Cases</b>
<ul style="list-style-type: none"> <li>• Use of a radio network without licence</li> </ul>	32 Cases
<ul style="list-style-type: none"> <li>• Use of radio stations in unassigned frequencies</li> </ul>	4 Cases
<ul style="list-style-type: none"> <li>• Use of radio stations in violation of the technical parameters set by ICP-ANACOM</li> </ul>	2 Cases
<ul style="list-style-type: none"> <li>• Use of radio stations without licence</li> </ul>	1 Case
<b>Installation of telecommunications infrastructure in buildings (ITED)</b> (Decree-Law no. 59/2000 of 19 April)	<b>10 Cases</b>
<ul style="list-style-type: none"> <li>• Issuance of Certificate of Compliance with respect to non-compliant installation</li> </ul>	5 Cases
<ul style="list-style-type: none"> <li>• Preparation of technical projects not in compliance with the applicable technical requirements and specifications (article 7/1)</li> </ul>	4 Cases
<ul style="list-style-type: none"> <li>• Breach of the obligation of ITED installers to only use equipment and material on site that is compliant with the applicable requirements - article 19/point b)</li> </ul>	1 Case

**Terminal and radio equipment** (Decree-Law no. 192/2000 of 18 August)**10 Cases**

- Placing on the market of equipment that is non-compliant with the essential requirements and have not been the object of conformity assessment procedure and which are not duly marked (article 7/1)
- Failure to inform the user of the intended use of the equipment - article 8, point a)
- Failure to supply the user with a declaration of conformity to the essential requirements, together with the equipment - article 8, point b)
- Violation of the obligation to provide the user with information, by failure to indicate on the packaging and instructions as to whether the radio equipment is intended for use in Portuguese territory or part thereof - article 9/1, point a)
- Violations of the obligation to provide notification to ICP-ANACOM prior to the placing on the market of radio equipment using frequency bands whose use is not harmonized throughout the European Union (article 9 / 3)
- Violations of the obligation to affix the CE marking of conformity on appliances that meet the essential requirements (article 27/1)
- Violation of the obligation to supply documentation, information manuals and instructions in Portuguese and with express indication of the legal provisions of conformity (article 28/3)
- Failure to declare that the equipment complies with the applicable essential requirements (paragraph 5, point b) of Annex III)
- Violation of the obligation to maintain the technical construction dossier, making it available to the competent national authorities for inspection for a period of not less than 10 years (paragraph 7 of Annex IV)

10 Cases

**Administrative Actions**

In Table 9 and Table 10 detailed information is provided concerning the processes in administrative litigation began in 2008 and carried over from previous years.

**Cases of 2008 in administrative litigation**

<b>Types of Cases</b>	<b>Nº</b>
2008 Cases	21
Protective Measure	7 (suspension of validity)
Special Administrative Action	12
Joint Administrative Action	2

**Cases in administrative litigation**

<b>Types of Cases</b>	<b>Nº</b>
Cases brought forward	43
Protective Measure	4 (suspension of validity)
Special Administrative Action	24
Action for Annulment	9
Declaratory action with ordinary procedure	2
Action to Enforce a Right (tax)	2
Civil Liability Action of the State	1
Common Admin. Proc - Right of Work	1

Below, an essential summary is given with respect to the 11 processes begun in 2008, all relating to electronic communications networks and services:

### Electronic Communications

- Precautionary procedure of suspension of validity, presented by PTC and by PT.COM, to suspend the validity of the order set forth in paragraph 2 of point III of the Determination passed by the Board of Directors of this Authority on 03.10.2007, as the "Determination on the method to assess margin squeeze in broadband offers provided by the PT Group - 1:50 contention offers", whereby this Authority ordered that the companies of Grupo PT must inform ICP-ANACOM of conditions applied at retail level, including any available promotions, 10 days ahead of the day on which such conditions are to come into force, submitting grounds that evidence compliance with the Determination. ICP-ANACOM submitted its objection on 12.02.2008, seeking dismissal of the applied for measure. Subsequent to a Determination taken on 26.06.2008, under which ICP-ANACOM eliminated the requirement of prior notice imposed by paragraph 2 of section III of the Determination of 03.10.2007, an application was put, on 08.07.2008, to the Lisbon Administrative Circuit Court for the termination of proceedings without need to adjudicate. PTC did not oppose the application. Ruling on 31.07.2008, the Lisbon Administrative Circuit Court ordered the termination of proceedings without need to adjudicate. The process is closed.
- Precautionary procedure of suspension of validity, presented by TMN, with a view to the immediate suspension of the act undertaken, on 19.11.2007, by a Member of the Board of Directors of ICP-ANACOM, in the exercise of delegated powers, which determined the delivery to ICP-ANACOM of a copy of the contract agreed between TMN and CTT on access to the mobile network. ICP-ANACOM submitted its objection on 20.03.2008. Ruling on 25.04.2008, the Lisbon Administrative Circuit Court dismissed the application for suspension of validity as not proven. The process is closed.
- Precautionary procedure of suspension of validity, presented by TMN, seeking the immediate suspension of the Determination issued by the Board of Directors of ICP-ANACOM, on 02.07.2008 regarding the "Wholesale Market for Voice Call Termination on Individual Mobile Networks - Specification of the Price Control Obligation". On 04.07.2008, ICP-ANACOM notified TMN of the Reasoned Resolution adopted by this Authority. ICP-ANACOM submitted its objection on 21.08.2008. The case is pending.
- Precautionary procedure of suspension of validity, presented by Vodafone, seeking the suspension of Determination issued by the Board of Directors of ICP-ANACOM on 02.07.2008 with regard to the "Wholesale Market for Voice Call Termination on Individual Mobile Networks - Specification of the Price Control Obligation". On 22.08.2008, ICP-ANACOM notified Vodafone with respect to the Reasoned Resolution adopted by this Authority. On 27.08.2008, ICP-ANACOM submitted its objection. Ruling on 23.10.2008, the Lisbon Administrative Circuit Court rejected the requested precautionary procedure. Notified of the ruling of 23.10.2008, Vodafone did not concur and appealed to the Central Administrative Court South. ICP-ANACOM entered its counter-claims on 04.12.2008. The case is pending.
- Special Administrative Action, brought by PT Comunicações, S.A and PT.COM, seeking the annulment of the determination in paragraph 2 of section III of the Determination taken by the Board of Directors of ICP-ANACOM on 03.10.2007 as the "Determination on the method to assess margin squeeze in broadband offers provided by the PT Group - 1:50 contention offers" under which this Authority determined that the companies of Grupo PT must give notification of conditions applied at retail level, including any available promotions, 10 working days ahead of the day on which such conditions are to come into force, submitting grounds that evidence compliance with the Determination. ICP-ANACOM submitted its response on 04.03.2008.

Following the Determination on 26.06.2008, under which this Authority removed the requirement of notice imposed by the cited paragraph 2 of section III of the Determination of 03.10.2007, an application was put, on 08.07.2008, to the Lisbon Administrative Circuit Court for the termination of proceedings without need to adjudicate. PTC did not oppose the application.

Ruling on 31.07.2008, the Lisbon Administrative Circuit Court determined the termination of proceedings without need to adjudicate. The case is closed.

- Special Administrative Action, brought by PT TELECOM, SGPS, S.A., seeking condemnation of ICP-ANACOM through administrative act or other legal act which declares the partiality of Member of the Board of Directors, Dr. José Manuel Bígares Ferrari Careto, removing him from the procedure for adopting a decision on the obligation to control prices in the wholesale markets of voice call termination on individual mobile networks, from responsibility of the Board of Directors of ICP-ANACOM. This means that ICP-ANACOM would be condemned to the practice of an act of granting a claim of bias, replacing the decision of rejection came by the Chairman of the Board of ICP-ANACOM of 16.01.2008. ICP-ANACOM challenged. The case is pending.
- Special Administrative Action, brought by the TMN, challenging the act practised on 19.11.2007 by a Member of the Board of Directors of ICP-ANACOM, in the exercise of delegated powers, which determined the delivery to ICP-ANACOM of a copy of the contract agreed between TMN and CTT on access to the mobile network. ICP-ANACOM challenged on 26.06.2008. The case is pending.
- Special Administrative Action, brought by Vodafone against the Determination issued by the Board of Directors of ICP-ANACOM on 02.07.2008, with regard to the "Wholesale Market for Voice Call Termination on Individual Mobile Networks - Specification of the Price Control Obligation". The case is pending.

- Special Administrative Action, brought by TMN, in respect of a Determination taken by the Board of Directors of ICP-ANACOM on 02.07.2008, with regard to the "Wholesale Market for Voice Call Termination on Individual Mobile Networks - Specification of the Price Control Obligation". The case is pending.

Joint Administrative Action, brought by BLUE CARD - Serviços de Telecomunicações Informáticas, LDA, seeking clarification of points of Law, including whether Regulatory Order no. 1230/99 is a Regulation and, if not, whether it is ineffective due to the fact that it was published in the 2nd Series of the *Diário da República* and not the 1st Series-B in accordance with article 3, paragraph 3, point d) of Law no. 74/98 of 11 November, and to further ascertain whether the repeal of the Decree-Law which gave grounds thereto and its replacement by Law no. 5/2004 of 10 February led to the termination of the validity of said regulation.

ICP-ANACOM challenged. The case is pending.

- Joint Administrative Action, brought by PT Comunicações, S.A, seeking to hold ICP-ANACOM liable for losses caused by its regulatory actions with respect to the prices for the termination of calls on the public telephone network at a fixed location charged by companies not belonging to Grupo PT. ICP-ANACOM challenged on 03.10.2008. The case is pending.

### **Digital Terrestrial Television service (DTT)**

- Precautionary procedure of suspension of validity, brought by AIRPLUS Television Portugal, S.A. and others, seeking that suspension be granted of the Public Tender for the allocation of frequency usage rights on a national and part-national basis for the digital terrestrial broadcasting service and for the licencing of a distribution operator - Muxes B to F". ICP-ANACOM presented its objection.

Reasoned resolutions were presented, under the terms and for the purposes of paragraph 1 of article 128 of the Code of Procedure of the Administrative Courts, both by ICP-ANACOM and the ERC, which were to be deemed illegal. This decision was appealed. The case is pending.

- Special Administrative Action, brought by the AIRPLUS Television Portugal, S.A. and others, seeking the annulment of the administrative acts performed by ICP-ANACOM and ERC and conviction of the defendants with a view to the execution of a new assessment of applications in respect of the Public Tender for the allocation of frequency usage rights on a national and part-national basis for the Digital Terrestrial Television Broadcasting Service.  
ICP-ANACOM challenged on 02.10.2008. The case is pending.

#### **Universal service**

- Special Administrative Action, brought by PTC, seeking the annulment of the Determination issued by the Board of Directors of ICP-ANACOM on 30.01.2008, on the “Decision on the Evaluation of net costs incurred through the provision of universal service”.  
ICP-ANACOM challenged on 24.06.2008. The case is pending.

#### **Publicly available Land Mobile Service**

- Precautionary procedure of suspension of validity brought by TMN, in respect of the act of opening the Public Tender for the Allocation of a right to use frequencies on a national basis, for the provision of the publicly available land mobile service, and any subsequent actions undertaken under this procedure, as well as prohibition of the practice and performance of any other subsequent acts in the same tender procedure.  
ICP-ANACOM presented its objection. The case is pending.

- Special Administrative Action, brought by TMN, to challenge paragraph 3 of the determination taken by the Board of Directors of ICP-ANACOM on 17.01.2008, to the extent that this Determination allows Trunking Mobile Service operators (SMRP) to provide the Land Mobile Service (LMS) without the organization of a competitive or comparative selection procedure.  
ICP-ANACOM challenged on 25.06.2008. The case is pending.

- Special Administrative Action, brought by Vodafone, challenging paragraph 3 of the Determination taken by the Board of Directors of this Authority on 17.01.2008, to the extent that this Determination allows Trunking Mobile Service operators (SMRP) to provide the Land Mobile Service (LMS) without the organization of a competitive or comparative selection procedure.  
ICP-ANACOM challenged on 01.07.2008. The case is pending.

- Special Administrative Action, brought by Vodafone, challenging the Regulation of the Public Tender for the Allocation of a Right to Use Frequencies, on a national basis, for the provision of the publicly available land mobile service.  
ICP-ANACOM challenged.

- Special Administrative Action, brought by Sonaecom, challenging the Regulation of the Public Tender for the Allocation of a Right to Use Frequencies, on a national basis, for the provision of the publicly available land mobile service, as well as the Tender Specifications.  
ICP-ANACOM responded. The case is pending.

#### **Radio Station Support Infrastructure**

- Precautionary procedure of suspension of validity, brought by Sonaecom (and others) seeking the suspension of validity of the act of the Councillor of the Municipal Council of Faro who ordered the removal, within 45 working days, of radio station support infrastructure located in the building at Lote A, Rua Alves Roçadas, in Faro.  
ICP-ANACOM, named as a third party, challenged on 03.12.2008.

Ruling on 08.01.2009, the Administrative and Fiscal Court of Loulé determined the termination of proceedings without need to adjudicate. The case is closed.

- Special Administrative Action, brought by Sonaecom (and others) seeking the impugnation of the act of the Councillor of the Municipal Council of Faro who ordered the removal, within 45 working days, of radio station support infrastructure located in the building at Lote A, Rua Alves Roçadas, in Faro.  
ICP-ANACOM challenged on 03.12.2008. The case is pending.

With respect to the 43 cases carried over the following were closed in 2008:

- An appeal of annulment, brought by TECNIEURO - Instalações Técnicas Especiais, LDA, on 18.01.2000 against the order of Member of the Board of Directors of ICP-ANACOM, dated 16.12.99, imposing a fine on said company, on the grounds of breach of the contractual terms referred to in the construction contract, concluded on 30.04.99, for the installation of heating, ventilation and air conditioning of the building occupied by ICP-ANACOM in Barcarena.  
ICP-ANACOM submitted its reply on 19.05.2000.  
Ruling on 07.10.2008, the Administrative and Fiscal Court of Sintra dismissed the appeal, maintaining the appealed act. The case is closed.

#### **Electronic Communications Networks and Services - Access to Conduits**

- Special Administrative Action, brought by Novis, on 19.10.2004, following the Determination of the Board of ICP-ANACOM of 17.07.2004 on the "Offer for access to the PTC concessionaire conduits".  
ICP-ANACOM submitted its response on 05.01.2005.  
Ruling on 20.10.2006, the Administrative and Fiscal Court of Oporto ordered the termination of proceedings without need to adjudicate. The case is closed.

#### **Electronic Communications Networks and Services**

- Precautionary procedure of suspension of validity, brought by Novis, AR Telecom - Acessos e Redes de Telecomunicações, S.A., Onitelecom, Cabovisão, COLT Telecom - Serviços de Telecomunicações, Unipessoal, LDA, G9SA - Telecomunicações, S.A., seeking the declaration of nullity or annulment of the decision on *"Price control of call termination on the public telephone network at a fixed location of operators with significant market power (SMP), except for operators of the PT Group"*, approved by determination of the Board of Directors of ICP-ANACOM of 26.10.2005.  
ICP-ANACOM's opposition was lodged on 09.03.2006.  
A reasoned resolution was presented recognizing that the deferment of implementation, for the period in which the precautionary procedure would be pending, would be seriously detrimental to the public interest.  
ICP-ANACOM opposed the request for suspension of validity on 28.03.2006.  
On 12.05.2006, the Claimants sought declaration from the Administrative and Fiscal Court of Lisbon of invalidity of the "act of undue execution" set out in the cited Resolution.  
ICP-ANACOM commented on this claim on 05.06.2006.  
The Court found against the application of the Claimants on 09.06.2006.  
Ruling on 25.01.2007, the Administrative and Fiscal Court of Lisbon rejected the request for suspension of validity. The case is closed.

- An appeal of annulment, brought by PTC, on 23.04.2001, in respect of the Determination of the Board of Directors of ICP-ANACOM of 21.02.2001, in which the Board, considering that PTC had presented an "Offer of Access to ISPs" on 13 February 2001, ordered PTC to introduce several changes to this alleged offer, through the issuance of a PRAI, to be published by 01.03.2001.  
ICP-ANACOM submitted its reply on 20.09.2001.  
Ruling on 07.07.2008, the Administrative and Fiscal Court of Sintra dismissed the appeal, giving merit to the question of impossibility of adjudication. The case is closed.

- An appeal of annulment, brought by PT Comunicações, S.A, on 12.09.2001, in respect of the Determination of the Board of Directors of ICP-ANACOM of 21.02.2001, in which the Board, considering that PTC had presented an "Offer of Access to ISPs" on 13 February 2001, ordered PTC to introduce several changes to this alleged offer, through the issuance of a PRAI, to be published by 01.03.2001.  
ICP-ANACOM submitted its response on 27.11.2001.  
Ruling on 07.07.2008, the Administrative and Fiscal Court of Sintra rejected the appeal, giving merit to the questions of non-appealability of the appealed Determination, dated 25.06.2001, and of inadmissibility due to the appeal date. The case is closed.
- Special Administrative Action, brought by Vodafone, on 30.05.2005, seeking the annulment or declaration of invalidity of the Determination of the Board of Directors of ICP-ANACOM of 09.02.2005 on the Audit of Statistical Items of LMS Operators during the final quarter of 2003, under the terms of which it was determined that, within one month, the necessary procedures be implemented to remove and correct the situations referred to therein, so that in the future the indicators be sent based on the definitions set out in the current statistical form.  
ICP-ANACOM challenged on 13.07.2005.  
Later ICP-ANACOM conducted a second audit on the use of spectrum by the providers of LMS during the years of 2002, 2003 and 2004, whose reports were approved by Determination of the Board of Directors of ICP-ANACOM of 28.02.2007, giving rise to the settlement of additional fees due during these years.  
Lisbon Administrative Circuit Court, considering that the Determination of 28.02.2007 provides tacit repeal of the determination of 09.02.2005, terminated the proceedings on the grounds of impossibility of adjudication. The case is closed.
- Special Administrative Action, brought by PTC, on 14.07.2005, which sought the declaration of partial nullity or partial annulment of the Determination issued on 2005.04.13 by the Board of Directors of ICP-ANACOM on price changes to be made to RUO (Reference Unbundling Offer).  
ICP-ANACOM submitted its challenge on 09.12.2005.  
By application filed on 16.07.2008 at the Lisbon Administrative Circuit Court, PTC waived the request.  
Ruling on 24.09.2008, the Court approved the waiver submitted by PTC, extinguishing the right which it was intended to enforce. The case is closed.
- Special Administrative Action, brought by PTC on 26.09.2006, seeking the annulment of the Determination of the Board of Directors of ICP-ANACOM of 26.05.2006 on the "*Leased Lines Reference Offer*".  
ICP-ANACOM challenged on 07.11.2006.  
In 2008, PTC withdrew the request.  
Ruling on 01.10.2008, the Lisbon Administrative Circuit Court approved PTC's withdrawal and absolved ICP-ANACOM from the application. The case is closed.
- Joint Administrative Action, brought by BLUE CARD - Serviços de Telecomunicações Informáticas, LDA, on 11.07.2007, seeking clarification of points of Law, including whether Regulatory Order no. 1230/99 is a Regulation and, if not, whether it is ineffective due to the fact that it was published in the 2nd Series of the *Diário da República* and not in the 1st Series-B in accordance with article 3, paragraph 3, point d) of Law no. 74/98 of 11 November, and to further ascertain whether the repeal of the Decree-Law which gave grounds thereto and its replacement by Law no. 5/2004 of 10 February led to the termination of the validity of said regulation.  
ICP-ANACOM lodged a challenge on 17.12.2007.  
Ruling on 20.10.2008, the Administrative and Fiscal Court of Almada upheld the plea of inadmissibility of the error in the process, refraining from knowing the application, acquitting the defendant of the proceedings. The case is closed.



### Universal Service of Telecommunications

- Judicial Appeal, brought by PTC on 24.02.2005, of the order of the Court handed down on 04.11.2002, which rejected the appeal for annulment brought by PTC against the Determination of the Board of Directors of ICP-ANACOM of 14.06.2002 on the conditions for the provision of the Telephone Directory Service and Information Service in respect of the Universal Service. ICP-ANACOM submitted its claims on 04.04.2005. By requisition presented on 16.07.2008 to the Lisbon Administrative Circuit Court, PTC withdrew the application. Ruling on 24.09.2008, the Court approved PTC's request of withdrawal. The case is closed.

### Leased Circuits Service

- Special Administrative Action, brought by PTC on 10.05.2004, following the Determination of ICP-ANACOM of 10.02.2004 on *"restructuring of the conditions governing the leased circuits service provided by PTC"*. ICP-ANACOM had challenged on 22.09.2004. Ruling on 07.07.2008, the Lisbon Administrative Circuit Court decided to reject the appeal, giving merit to questions of non-appealability of the appealed Determination, dated 25.06.2001, and of inadmissibility due to the appeal date. The case is closed.

In the Administrative Circuit Court of Lisbon, there were further two statements of condemnation brought against ICP-ANACOM, one of which closed as follows:

- The action brought by Casa Viola - Lotarias, Lda., on 20.06.2001, which sought the condemnation of ICP-ANACOM to the payment of compensation for loss suffered by the undue seizure of telecommunications terminal equipment. ICP-ANACOM had submitted its challenge on 18.09.2001. Ruling on 28.05.2008, the Lisbon Administrative Circuit Court upheld the plea that the right to compensation was time-barred, due to the fact that up to the date of commencement of the action, a period of 3 years had elapsed, and acquitted ICP-ANACOM of the application.

### Legal challenges to fees applied by ICP-ANACOM

In 2008, presentation was made of two judicial appeals of acts of fee settlement, one with reference to the additional settlement of fees for the use of the radio spectrum for all six-month periods of the years 2002 through 2004, inclusive, brought by Vodafone, and another regarding the annual fee in respect of the exercise of the activity of the provision of Electronic Communications networks and services in 2007, brought by WORLDBROKER Telecomunicações, LDA.

ICP-ANACOM prepared the challenges to be submitted by representatives of the tax authorities.

It also continued to monitor the 17 judicial appeals of fees initiated in previous years.

### Special Judicial Process for the Recovery of Companies and Bankruptcies

36 special judicial process for the recovery of companies and of bankruptcies were accompanied, in which ICP-ANACOM participated in the quality of creditor, in the most part due to claims resulting from the non-payment of fees. During 2008, two of the pending cases were concluded.

In 2008, there were a further three new insolvency proceedings (under the new regime established by the Insolvency and Corporate Recovery Code), in respect of debts due to ICP-ANACOM arising from the non-payment of fees.

### Tax Foreclosures

Accompaniment continued over the course of 2008 of six cases of tax foreclosure brought forward from preceding years.

In 2008, one new process was begun.