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## TO PROMOTE OPEN AND COMPETITIVE MARKETS

(OBJECTIVE 1)

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## ●● 2 To promote open and competitive markets (Objective 1)

This section of the report sets out the actions undertaken with a view to ensuring conditions of effective competition, enabling users to derive maximum benefit in terms of choice, price and quality, while promoting efficient investment and creating conditions which are conducive to innovative solutions.

In addition to various aspects of electronic communications that are described below, ICP-ANACOM engaged, in the

context of postal services, in a range of preparatory work in 2009 with a view to the process of transposing Directive 2008/06/EC of 20 February, which establishes that full liberalization of the postal market shall occur no later than 31 December 2010.

## ●● 2.1 Next Generation Access Networks (NGA)

The increasing importance of NGA is evident, although it is undeniable that its development raises several questions in terms of the development of the electronic communications market, with emphasis on the promotion of sustained competition alongside the promotion of investment, ensuring conditions of non-discrimination and safeguarding conditions supporting info-inclusion.

In this context, ICP-ANACOM launched (in 2008) a public consultation on the regulatory approach to NGA, through which questions were put to the market and its various agents (including, operators, users and manufacturers) on a range of issues. In 2009, by determination of 18 February, ICP-ANACOM approved the public consultation report which combines the analysis of the various responses with a summary of the position of principle taken by this Authority, with the following key conclusions:

- the importance of vertical and horizontal barriers and the need to minimize or eliminate them;
- the importance of access to ducts according to conditions which are non-discriminatory and transparent, and the need to overcome problems that may arise in the context of such access (e.g. lack of available space and lack of economic viability in access to ducts);
- the continuity of business models based on LLU and their transition to NGA;
- the need to establish clear guidelines regarding regulation, subject in any case to the publication of the EC Recommendation on the regulatory approach to NGA.

As such, taking into account the principle of proportionality in the imposition of obligations, ICP-ANACOM deemed it appropriate to adopt a “phased” approach, possibly based on an analysis of broadband markets, in which, in addition to obligations of non-discrimination and transparency and obligations related to the transition of models based on LLU to NGA, the following conditions would apply:

- in competitive areas, only access to ducts is obligated, with improvements and equivalence of access, whereas other obligations are imposed (access to the own fibre

or dark fibre) only where there is a lack of space in ducts. As a last resort, where there is agreement between the parties, and as an alternative to access to own fibre or dark fibre, the option of virtual access to the network may be taken;

- in non-competitive areas, in addition to access to ducts, access to own fibre or dark fibre is also imposed, as well as virtual access to the network (advanced bitstream).

In the context of promoting NGA investment - a strategic priority stemming from the publication of Council of Ministers Resolution no. 120/2008 of 30 July - ICP-ANACOM continued with the work already begun in 2008 as part of its mission of advising the Government, preparing legislation and other acts necessary to ensure access by all operators, according to conditions which are non-discriminatory, to the duct network and other relevant facilities for the installation of electronic communications networks and the elimination of barriers to the installation, in buildings, of optical solutions associated with next generation networks. These works also included the introduction of appropriate amendments to current technical regulations, namely the ITED manual and the creation of new ITUR technical specifications.

This process culminated in the publication of Decree-Law no. 123/2009 of 21 May which approved the legal regime governing construction, access and installation of electronic communications networks and infrastructure and construction of telecommunications infrastructure in housing developments, urban settlements and concentrations of buildings, as well as in the approval of Law no. 32/2009 of 9 July and Decree-Law no. 258/2009 of 25 September.

This regime, governed by the general principles of competition, open access, non-discrimination, efficiency and transparency, is aimed at promoting the construction, installation and access to infrastructure suitable for the accommodation of electronic communications networks - with an approach based on technological neutrality - with respect to the property of public entities. This covers not only entities of the State, Autonomous Regions and local authorities, but also entities that are subject to the supervision or oversight thereof and which exercise administrative functions, regardless of their corporate

nature, as well as public companies, concessionaires or other entities owning infrastructure installed in the public domain of the State, Autonomous Regions and local authorities.

As such, a rule is established of open and non-discriminatory access to ducts, poles and other installations belonging to entities which, while operating in other sectors, are in possession of duct networks of significant importance. With the amendments introduced by Decree-Law no. 258/2009, this regime is extended to cover electronic communications undertakings as well as to the entities in possession of infrastructure which is suitable for housing electronic communications networks for use by said undertakings, without prejudice to the regime laid down in ECL, in particular with regard to the concessionaire of the public telecommunications service.

This regime sets out to remove or mitigate the barriers to the construction of infrastructure for the accommodation of electronic communications networks, with provision for rules which, likewise, facilitate the coordination of underground works, including with respect to the obligation to give prior notice of the execution of works which allow for the construction of infrastructure suitable for the accommodation of electronic communications networks and the obligation to allow other companies of this sector to associate themselves with this intervention.

Another important issue is the harmonization of procedures, especially in the relationship between operators and local authorities, which is an issue of unquestionable importance in removing uncertainties and barriers to the installation of infrastructure suitable for accommodating next generation networks. To this extent, it is established that the construction of infrastructure which is suited to accommodation of electronic communications networks is subject to the procedure of prior notification to the city council pursuant to the legal regime governing urban development and building construction.

With regard to access to infrastructure, this legislation contains a number of provisions designed to ensure open access to existing and planned infrastructure which, according to its characteristics, is suitable for the accommodation of electronic communications networks.

This right is limited only where the infrastructure is unsuited to the accommodation of communications networks, where the use of infrastructure impedes the primary purpose for which it was created, when there is implication of breach of public service obligations assumed by the entities concerned or when there is no available space in the ducts concerned due to their state of occupancy whereas it may be subject to compliance with the technical and safety standards established by the entities in possession of the infrastructure or of the domain in which the infrastructure is located. Access to applicable infrastructure shall be provided on terms of equality, transparency and non-discrimination, subject to remuneration conditions which are orientated to cost.

Finally, for the first time, the legal regime applicable to ITUR was defined and the regime applicable to ITED was established, which in this context constitutes a development of the framework set forth by the previous Decree-Law no. 59/2000 of 19 April, now repealed.

On 14 December 2009, through Notice no. 22358/2009, published in *Diário da República* (Official Journal) no. 240, 2<sup>nd</sup> series, of 14 December, the new ITED and ITUR were published, as approved by ICP-ANACOM on 25 November 2009 and as available on this Authority's website.

Also in the context of ITED / ITUR infrastructure, through various determinations in 2009, ICP-ANACOM approved new models of declarations of planning and execution responsibility, as well as the procedures for the evaluation of this infrastructure and the registration and renewal of training providers.

It is also noted that, by determination of 18 March 2009, ICP-ANACOM approved the conclusions of the public consultation on the development of a system for registering electronic communications infrastructure (which was launched in September 2007) and the respective report.

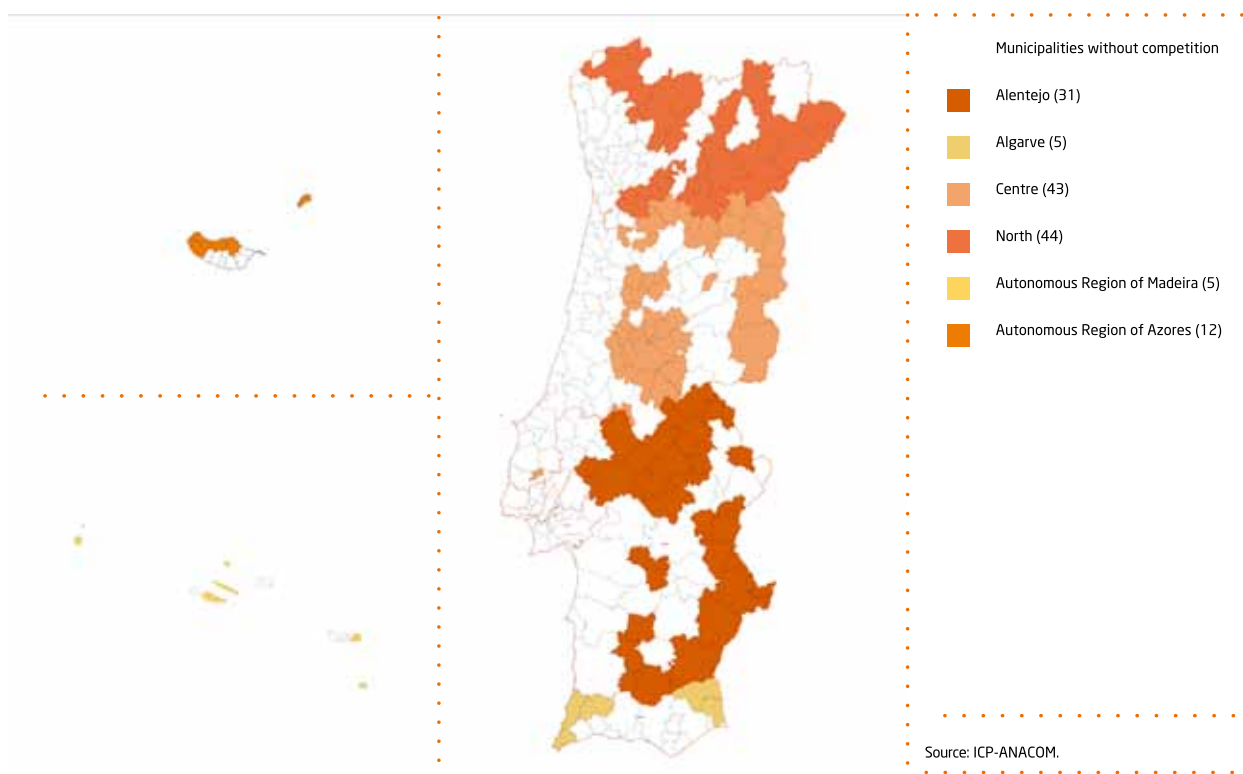
Meanwhile, pursuant to the new regime applicable to the construction of and access to and deployment of electronic communications infrastructure, this Authority is responsible for the conception, management and

maintenance of a Centralized Information System (CIS). The CIS is a key instrument to ensure open and efficient access by all electronic communications companies to infrastructure suitable for the accommodation of the respective networks, based on principles of information sharing and reciprocity. The system is accessible to entities to ensure compliance with the obligations related to the information included therein.

By determination of 16 December, 2009, ICP-ANACOM approved the public consultation document on the format to be used for the provision of elements in the CIS.

It is noted that, in order to ensure territorial cohesion and to uphold equality of opportunity, in 2009 the Government decided to launch five Public Tenders for the construction, installation, financing, operation and maintenance of NGA, with co-financing, with the aim of addressing possible market failures in 140 municipalities, divided into five regions (the Centre, Alentejo and Algarve, North, Madeira and the Azores). The municipalities covered in each of these areas are those not on the coaxial cable network and without co-located operators and when all the parishes comprising the municipality are classified as rural by the European Agricultural Fund for Rural Development (EAFRD)<sup>2</sup>.

### Municipalities in the tender | Figure 1



<sup>2</sup> This latter condition applies only to the mainland, since there is no classification for the autonomous regions.

In accordance with the Tender Specifications, each of the tenders will have to ensure achievement of minimum coverage of 50 % of the population and a minimum rate of 40 Mbps<sup>3</sup> *per* end-user, within a maximum period of twenty-four months, in the geographic area covered by each of the municipalities covered by the tender.

Each high-speed network shall be operated as an open network, whereby it must be ensured that, for a period of twenty years, there is a wholesale offer available which provides all operators and providers of electronic communications services interested in the use of such networks with access thereto for the provision of services to end-users.

The instruction of these tenders is incumbent on ICP-ANACOM, which shall also appoint the respective tender panel, to whom

the technical services of this Authority will provide assistance in the analysis and appraisal of the proposals presented.

Furthermore, pursuant to these tenders, during 2009, ICP-ANACOM provided assistance to the Government in many aspects, including in the assessment of measures designed to check compatibility with the guidelines published by the EC on the provision of State aid for the rapid deployment of broadband networks.

The decisions to award these tenders have been taken in 2010.

<sup>3</sup> Megabit *per* second (million bits *per* second).

## ●● 2.2 Market analyses

### 2.2.1 Broadband markets

By determination of 14 January 2009, and taking into consideration comments submitted by the EC, pursuant to paragraph 3 of article 7 of Directive 2002/21/EC, approval was given to the final decision on the definition of product and geographic markets, assessment of Significant Market Power (SMP) and the imposition, maintenance, amendment or withdrawal of regulatory obligations in the markets of wholesale (physical) network infrastructure access at a fixed location and of wholesale broadband access (corresponding to markets 4 and 5 of the EC Recommendation).

Having performed this analysis over the course of 2008, the detailed description of this decision is provided in that year's Regulation Report.

Nevertheless, this report highlights the main results of this analysis:

- in the market of wholesale (physical) network infrastructure access at a fixed location Grupo Portugal Telecom (Grupo PT) was designated as having SMP and various obligations were imposed on this undertaking, as well as the possibility of imposing access to dark fibre where access to ducts is not possible;
- in the market of wholesale broadband access, it is concluded that the competitive conditions were such as to determine the definition of two separate geographic markets. This resulted in the identification of Grupo PT as having SMP in the NC Areas (deemed uncompetitive) and the subsequent imposition of obligations; and the withdrawal of obligations applying to Grupo PT in the C Areas (deemed competitive), whereas a transition period of one year was determined during which certain obligations would remain in effect, which period expired in 2010.

It is also noted in this context that Portugal is among the top third of countries where alternative operators have a greater share of the broadband market in terms of access (56 %<sup>4</sup>), as presented in the EC's 15<sup>th</sup> Implementation Report of Electronic Communications.

### 2.2.2 Markets of voice call termination on individual mobile networks

Over the course of 2009, ICP-ANACOM continued to monitor the mobile communications markets, with particular focus on markets of wholesale call termination, and especially in view of the competitive distortions occurring both between fixed operators and mobile operators and also within the mobile retail market, particularly with regard to the practice of retail price differentiation between on-net and off-net calls, intensifying network effects.

In this context, in 2009, ICP-ANACOM sought statistical information from various operators on their activities and conducted different analyses of the evolution of the market and of the products developed in the market.

The publication of the EC Recommendation on the regulatory treatment of fixed and mobile termination rates in the EU, on 7 May 2009, and its implications in terms of significant reductions in termination rates, as well as information compiled from other European NRA on measures taken or due to be taken in relation to this issue, also warranted in depth analysis of the markets concerned.

Therefore, based on work undertaken during 2009, in early 2010, ICP-ANACOM approved two draft decisions on the definition of relevant markets of wholesale voice call termination on individual mobile networks, the assessment of SMP on these markets and the imposition, amendment or withdrawal of regulatory obligations - corresponding to market 7 of EC Recommendation 2007/879/EC of 17 December - and the implementation of the price control obligation in these markets. After the corresponding public consultation and compilation of opinions from AdC and the EC, these documents were approved, with a number of amendments, leading to the final determination in May 2010.

### 2.2.3 Leased lines markets

By determination of 16 December 2009, ICP-ANACOM approved the draft decision on the definition of product markets and geographic markets, assessment of SMP and

<sup>4</sup> Data referring to January 2010.

the imposition, maintenance, amendment or withdrawal of regulatory obligations in relation to the market for the retail provision of leased lines and markets of wholesale terminating and trunk segments of leased lines. It is noted that only the market of wholesale terminating segments is identified as being a market susceptible to *ex-ante* regulation in the EC Recommendation on relevant markets (market 6). The market of retail leased lines and the market of wholesale trunk segments of leased lines correspond to markets identified in the previous Recommendation (markets 7 and 14 of Recommendation 2003/11/EC of 11 February).

In this Draft decision ICP-ANACOM concluded that the leased lines retail market does not fulfil the criteria that justify the imposition of *ex-ante* regulation and that therefore the obligations imposed on Grupo PT in this market should be withdrawn.

With respect to the market of wholesale terminating segments, the main conclusions contained in the draft decision are:

- for the purposes of *ex-ante* regulation, and in accordance with the principles of competition law, the market of wholesale terminating segments of leased lines, irrespective of the technology used to provide leased or dedicated capacity, is identified as relevant, encompassing the entire national territory;
- Grupo PT was designated as having SMP on this market, whereby in this respect the following obligations were imposed: access to and use of specific network resources, non-discrimination in the provision of access and interconnection and in the respective provision of information, transparency in the publication of information, including the publication of reference offers, separation of accounts for specific activities related to access and/or interconnection, control of prices and cost accounting and financial reporting.

With respect to the market of wholesale trunk segments of leased lines, the main conclusions of the analysis embodied in this draft decision are as follows:

- the existence of heterogeneous competitive conditions in two different sets of routes identified justifies the definition of two geographic markets, also distinct:

- market of wholesale terminating segments of leased lines, irrespective of technology or capacity, consisting of C Routes - covering routes which connect the main urban centres (and within urban centres, especially the metropolitan areas of Lisboa and Porto), with greater population and corporate density and where there are various competing alternative network offers;

- market of wholesale trunking segments of leased lines, irrespective of capacity and technology, consisting of NC Routes - covering routes linking areas of lower population and corporate density and where, in most cases, only the incumbent operator is present (and, in these cases, obviously, with a market share of 100 %).

- for the purposes of *ex-ante* regulation and, in accordance with the principles of competition law, the market of wholesale trunking segments of leased lines, irrespective of technology or capacity, is identified as being a relevant market, covering the entire national territory;
- whereas Grupo PT is designated as possessing SMP on this market, the following obligations were imposed: access to and use of specific network resources, non-discrimination in access and interconnection, and in the disclosure of information, transparency in the disclosure of information, including reference offers, accounting separation for specific activities related to access and/or interconnection, price control and cost accounting and financial reporting.

For the purposes of *ex-ante* regulation, the market of wholesale trunking segments, irrespective of capability and technology, consisting of C Routes, was identified as not relevant, whereby provision was made for the removal of obligations previously imposed with respect to this market.



In practice and in conclusion, and in terms of the major changes proposed in the draft decision with respect to the current situation, note is made of the inclusion of circuits supported by Ethernet technology in the regulated area and the deregulation of the entire leased lines retail market and of a significant part of the wholesale market corresponding to a given set of routes (trunking segments).

The analysis of the responses received pursuant to the public consultation and the drafting of the respective report were conducted in 2010.

## 2.3 Regulated offers

Given the evident importance of wholesale offers in the promotion of competition with direct implications for end-users, on 11 March 2009, approval was given to the decision on the publication of performance levels regarding the quality of service of the regulated wholesale offers - RUO, Leased Lines Reference Offer (LLRO), RDAO, Rede ADSL PT offer and Wholesale Line Rental Offer (WLRO). In the same decision the information compiled is simplified, taking into account the principle of proportionality.

This measure was designed, among other objectives, to promote greater transparency for the market regarding the levels of quality of service provided by PTC - both to its own departments and companies of Grupo PT and to the other recipients of its wholesale offers - thereby enabling better assessment of the principle of non-discrimination.

It was therefore recognised that it was important to have information on the conditions under which wholesale

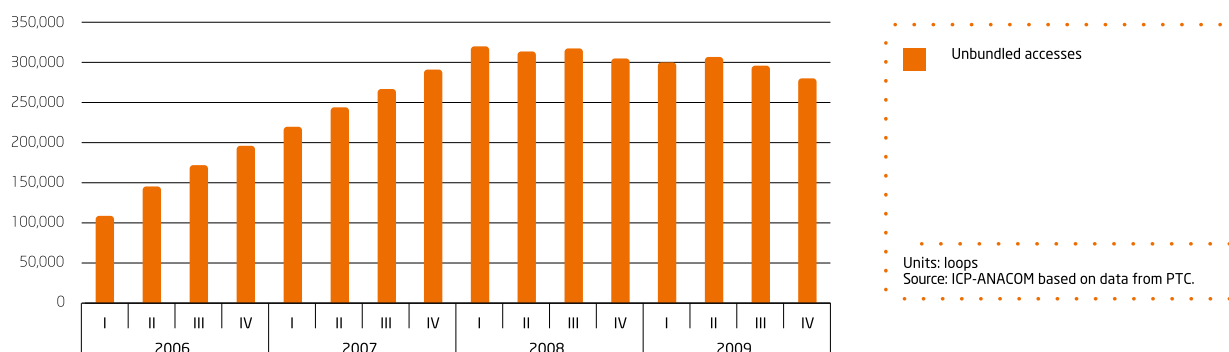
services are provided by PTC to other companies of Grupo PT and to its own internal departments and the conditions under which some retail services are provided, as well as to address the different information needs of end users, the beneficiaries of wholesale offers and ICP-ANACOM.

### 2.3.1 Reference Unbundling Offer (RUO)

LLU provides alternative operators with physical access over copper pairs to the premises of end-customers for the provision of narrowband and/or broadband services.

2009 was characterized by a decline, though not marked, in the number of loops unbundled, with an annual reduction reported of around 8 %: 280,518 unbundled loops at the end of 2009 compared to 305,244 unbundled loops reported at the end of the previous year (graph 1).

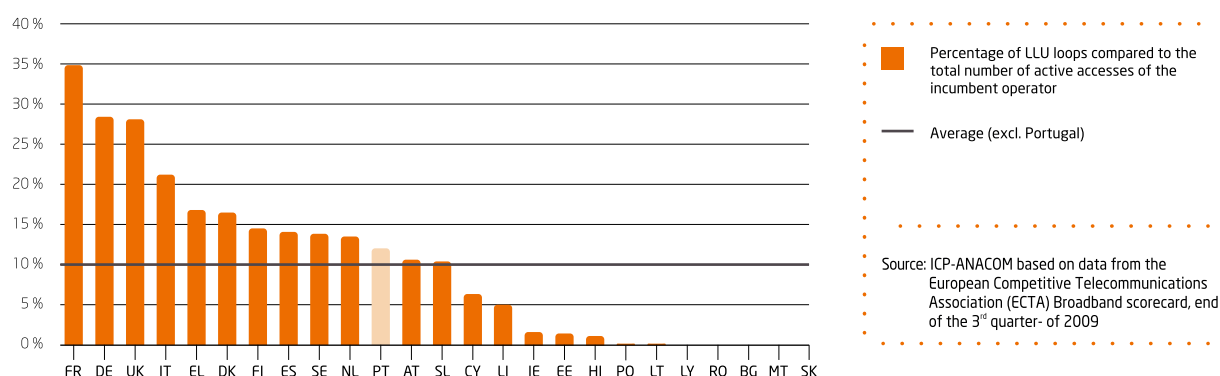
Evolution in the number of unbundled loops | Graph 1



Despite this decline, in the third quarter of 2009, the rate of penetration of unbundled loops as a proportion of the incumbent's total active accesses in Portugal was

higher than the average calculated for the Member States considered (excluding Portugal) - see graph 2.

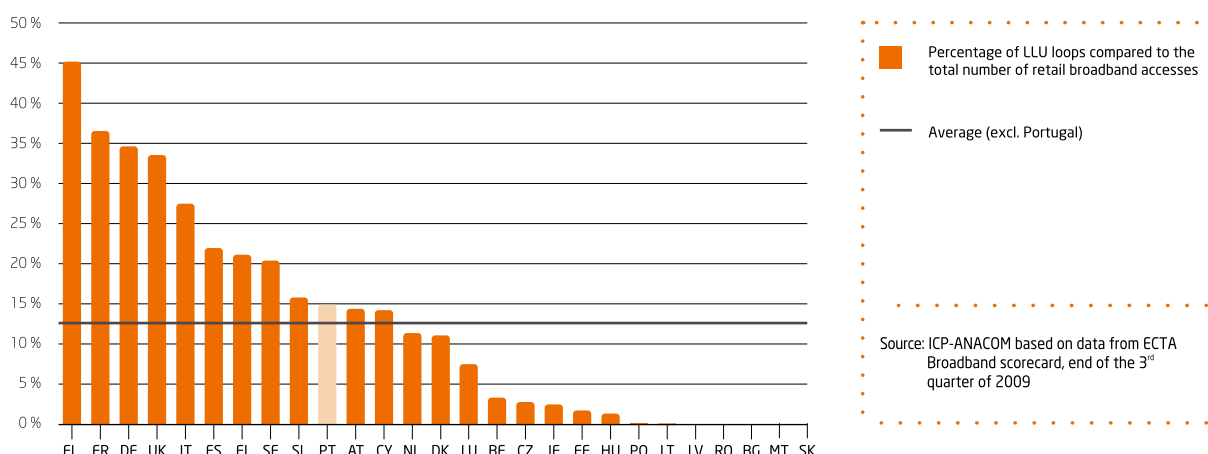
### Percentage of unbundled loops compared to the total number of active accesses of the incumbent operator | Graph 2



Considering the number of unbundled loops compared to total broadband access, in the third quarter of 2009, a

penetration rate is reported in Portugal which is above the average of countries considered (graph 3).

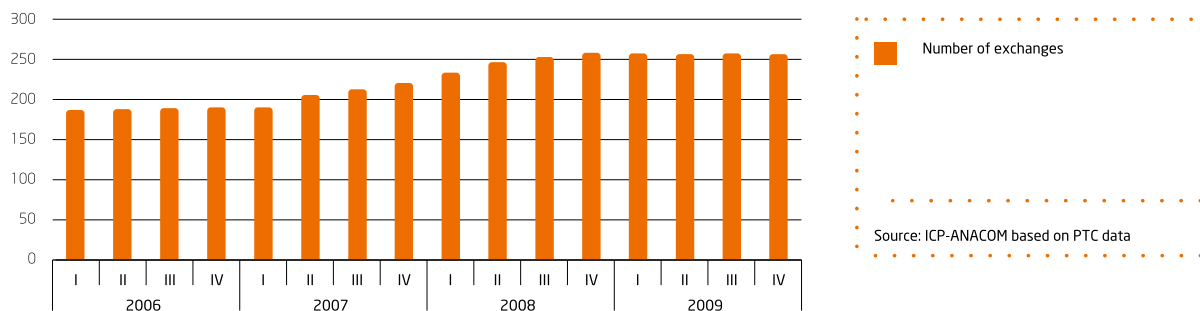
### Percentage of unbundled loops compared to the total number of retail broadband accesses | Graph 3



With respect to the presence of Other Service Providers (OSP) in PTC exchanges, it is clear that during 2009 the number of exchanges with co-located operators remained

unchanged, totalling 257 exchanges as at the end of 2009 (graph 4).

### Number of exchanges with co-located operators | Graph 4



There was a slight reduction reported in 2009 in the coverage of the retail offers of the OSP supported on LLU, whereas, at the end of the year, coverage was reported as reaching just over 60 % of the total number of subscribers to the Fixed Telephone Service (FTS) of PTC, as shown in graph 5.

It is noted that the distribution of accesses by the exchanges of PTC<sup>5</sup> results in a curve sloped as shown in graph 5, since the marginal contribution of each exchange to the increase in the LLU coverage will be increasingly less.

### LLU coverage in terms of FTS subscribers - main distribution frames considered in descending order in respect of the number of loops in use | Graph 5

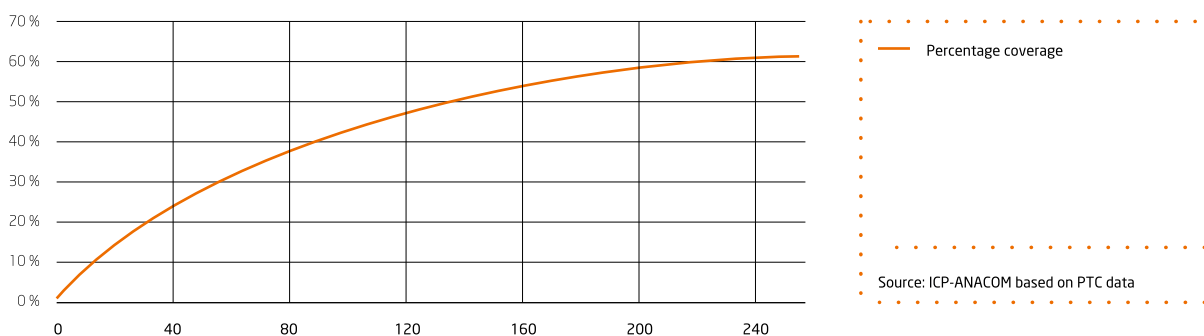


Figure 2 shows the location of the exchanges with co-located OSP at the end of 2009 from which retail services can be offered based on LLU.

<sup>5</sup> There are exchanges with tens of thousands of accesses and others with only a few dozen accesses.

## Location of exchanges where OSP make use of the LLU in Mainland Portugal (4<sup>th</sup> quarter of 2009) | Figure 2



Source: ICP-ANACOM based on PTC data

The regulatory intervention of ICP-ANACOM in the context of LLU during 2009 involved the adoption, on 15 July, of the decision on the synchronisation between number portability and local loop unbundling, subsequent to the publication, on 18 February 2009, of Regulation no. 87/2009 amending the Portability Regulation - Regulation no. 58/2005 of 18 August and the amendment to the Specifications for Portability. It was so determined that PTC amend the RUO to make provision that, in case of concurrency of the portability process and local loop unbundling process, the transfer of the loop occurs during the portability window agreed with the OSP, whereby the request for number portability must be made at least 8 working days in advance of the first proposed window option. This decision was designed to enable the full entry into force of Regulation no. 87/2009 on 20 July 2009.

The intervention of this Authority in the context of 2009 LLU also involved approval, on 5 August 2009, of a draft decision on the amendments to the RUO, subsequent to the analysis of market 4 of the EC Recommendation (market of wholesale (physical) network infrastructure access at a fixed location) and aiming to improve the offer in the light of experience gained in its implementation and market needs.

The amendments proposed in this draft decision involved various aspects, including:

- the introduction of services with Premium and Urgent levels of quality with tighter fault repair deadlines compared to those previously practiced;

- the increase in compensation for non-compliance to encourage fulfilment of the obligations and disassociating the prior submission of forecasts from the eligibility to receive such compensation;
- the establishment of the obligation of PTC to make detailed information available to OSP at the level attendance points, increasing the transparency and predictability of the conditions of this wholesale offer and driving its expansion;
- an increased period of advance notice required with respect to network modifications (including in the event of loop relocation), made dependent on the number of loops subject to relocation, aiming at providing increased protection of the investments made by the beneficiaries of the offer;
- a reduction in the maximum periods of order confirmation and scheduling of unbundling, in the case of unbundling of loops with portability;

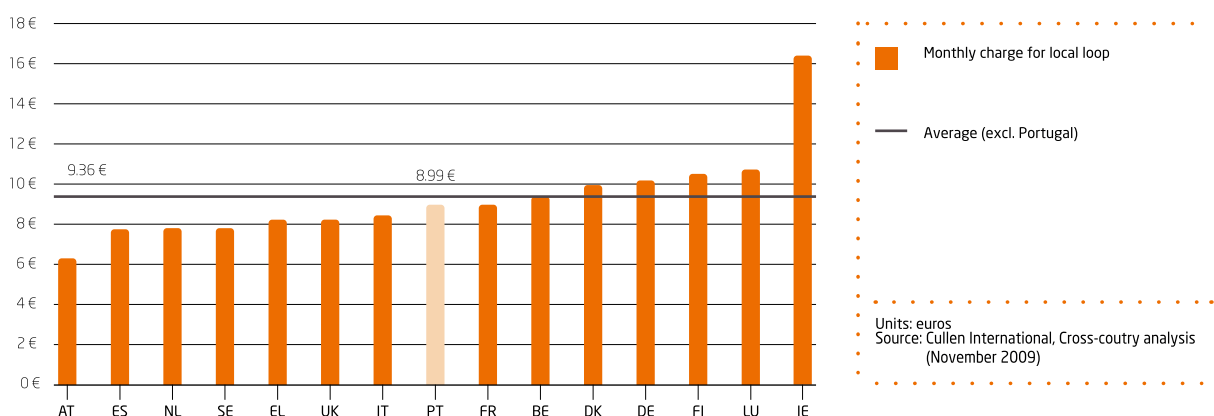
- simplification of the process of entering exchanges with own infrastructure;
- allowed use of new technologies on unbundled loops in accordance with international standards.

Pursuant to the prior hearing and public consultation on the draft decision, various comments were received, and the final decision was adopted in 2010.

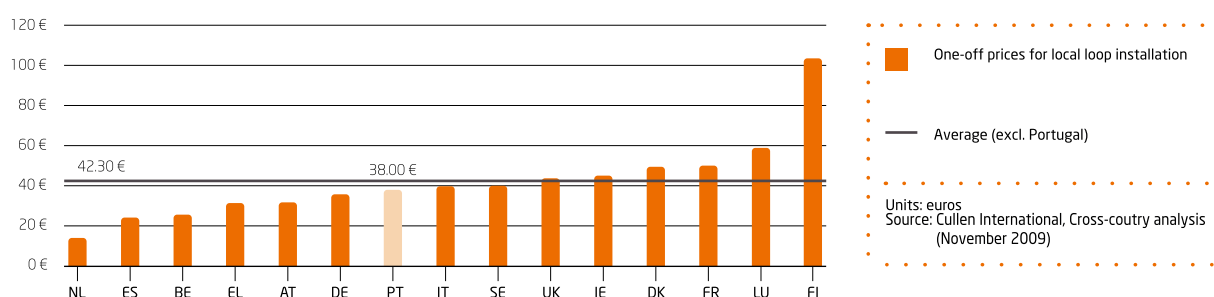
With regard to prices applicable to RUO, during 2009, no changes were determined. Nevertheless, the analysis and monitoring of existing prices was continued, especially through comparison with prices in other European countries.

International comparisons of prices indicate that prices in Portugal in 2009 remain in line with best practice at EU level (EU15) with values below average, as evidenced by the following graphs.

**Monthly charge for local loop (full access) - EU15 comparison | Graph 6**



### One-off prices for local loop installation (full access) - EU15 comparison | Graph 7

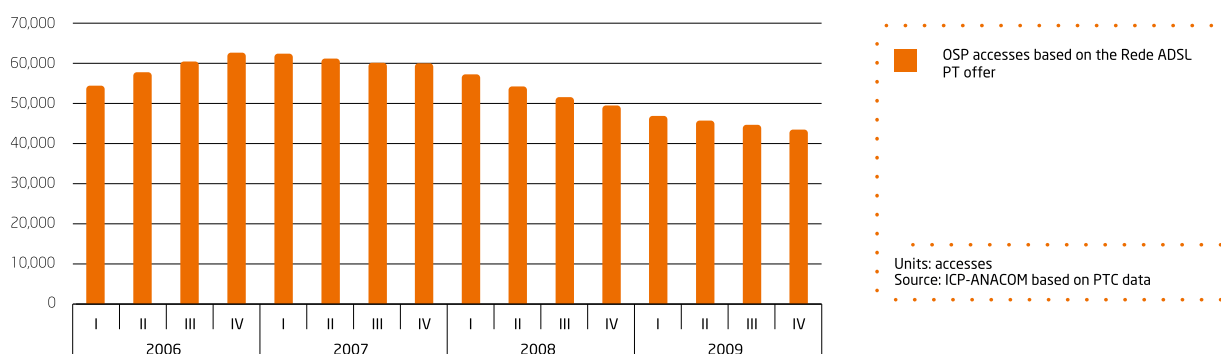


### 2.3.2 Rede ADSL PT wholesale offer (broadband access)

The wholesale Rede ADSL PT offer remains an important factor in promoting the universality of broadband Internet access and conditions which ensure the sustained and competitive development of Asymmetric Digital Subscriber Line (ADSL) services provided to end-users. In this respect, the suitability and proper functioning of the wholesale offer remains a priority for ICP-ANACOM.

The Rede ADSL PT wholesale offer continues to provide support to the broadband access retail offers of a number of OSP, despite the fact that, since late 2007 and as a result of natural trend towards offers with greater added value, supported on the unbundling of loops, a continued slowdown has been reported in these accesses, whereas at the end of 2009 the total number of OSP access base on this wholesale offer still amounted to more than 40 thousand accesses (graph 8).

### Evolution of OSP accesses based on the Rede ADSL PT offer | Graph 8



It is further noted that, pursuant to the consultation and public hearing on the draft decision on the analysis of broadband markets (market 4 and 5 of EC Recommendation 2007/879/EC of 17 December), certain entities expressed concern about a possible discontinuation of the Rede ADSL PT wholesale offer in the market of wholesale broadband access in C Areas as a result of ICP-ANACOM

having withdrawn the obligations in this same market after concluding that no company had SMP.

However, it is noted that in 2009, Grupo PT continued to provide this wholesale offer in C Areas of the market of wholesale broadband access under the same conditions, maintaining the coverage indicated in figure 3.

### Location of exchanges with Digital Subscriber Line Access Multiplexer (DSLAM) with subscribers (2009) | Figure 3



PTC central with DSLAM

Source: ICP-ANACOM based on PTC data

### 2.3.3 Leased Lines Reference Offer (LLRO)

The LLRO, available on the market since 2005, continued to be actively used by the majority of OSP, especially the operators acting in the leased lines retail market.

The importance of this wholesale offer is reflected in the fact that operators have access throughout the national

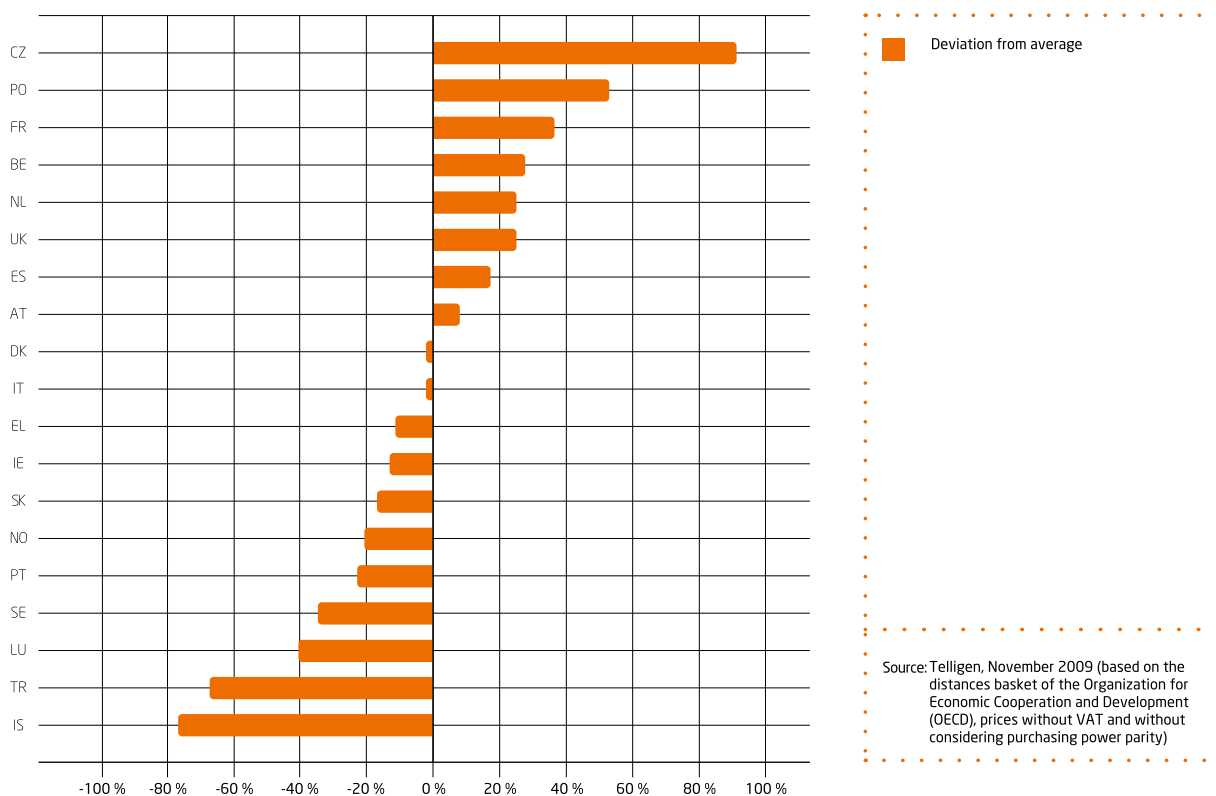
territory, and on a non-discriminatory basis, to inputs at a wholesale level, at cost-oriented prices, in clearly defined time frames and with a determined quality of service; this allows a significant reduction in the entry barriers and a contribution to improved competitive conditions.



According to a comparison of prices prepared by Teligen, with data from November 2009<sup>6</sup>, It is reported that in the case of lower speed circuits (64 Kbps<sup>7</sup> and 2 Mbps), prices in Portugal were below the average prices of the countries studied, unlike the situation found with respect to circuits with higher bandwidths (particularly for those of 34 Mbps), where there is already a generally greater degree of competition.

The following graphs present these price comparisons for the types of circuits referenced, measured in terms of deviation from the average of the countries considered - the average is calculated excluding prices for Portugal.

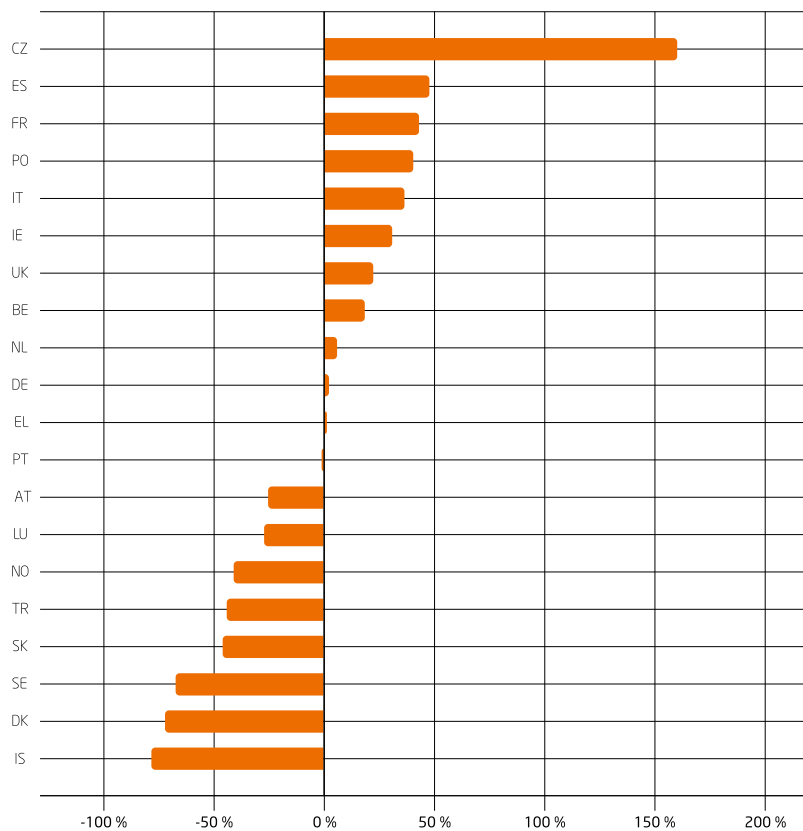
**Annual price of 64 Kbps digital circuits in Europe (November 2009) | Graph 9**



<sup>6</sup> To perform the comparison of prices for leased lines and calculate the average price of a circuit of a determined capacity, Teligen takes into account the prices of the incumbent operator in each country and uses the basket of OECD as a weighting, involving six distance segments:

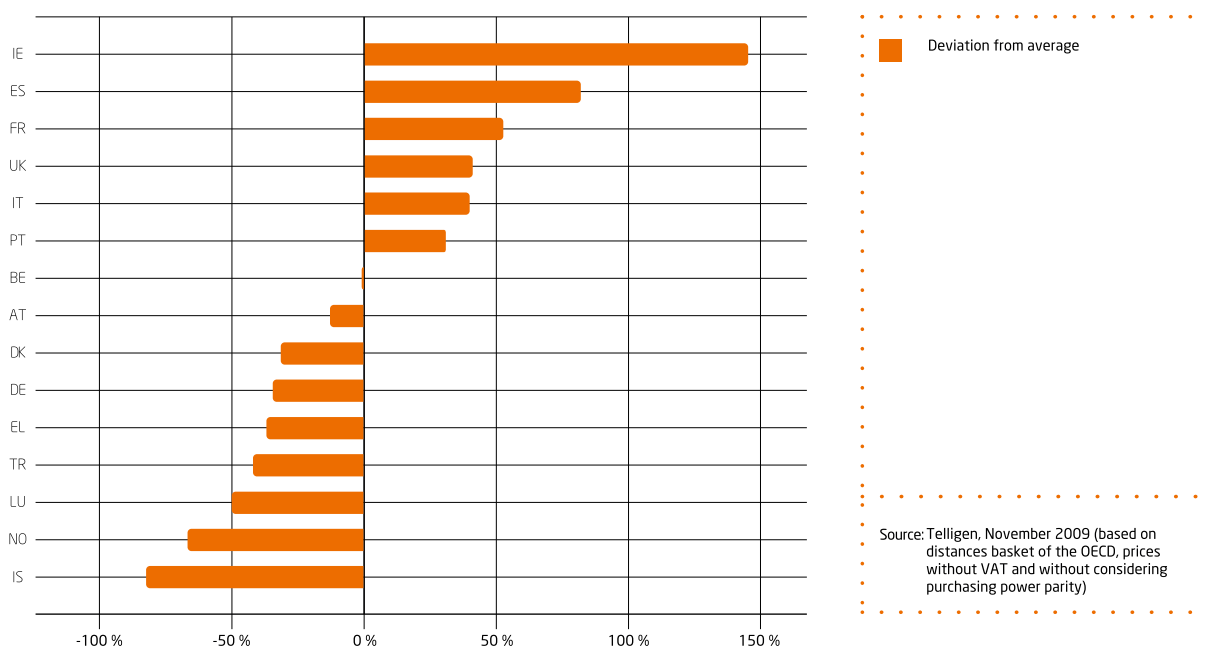
| Distances   | 2 km | 20 km | 50 km | 100 km | 200 km | 500 km |
|-------------|------|-------|-------|--------|--------|--------|
| OECD basket | 35 % | 20 %  | 15 %  | 20 %   | 5 %    | 5 %    |

<sup>7</sup> Kilobit *per* second (thousand bits *per* second).

**Annual price of 2 Mbps digital lines in Europe (November 2009) | Graph 10**

Source: Telligen, November 2009 (based on distances basket of the OECD, prices without VAT and without considering purchasing power parity)

Annual price of 34 Mbps digital lines in Europe (November 2009) | Graph 11



### 2.3.4 Reference Interconnection Offer (RIO)

On 11 March 2009, ICP-ANACOM approved the final decision on the conditions of the RIO to take effect in 2009, as well as the report of the prior hearing to which the respective draft decision, adopted on 4 December 2008, was subject.

#### a) Call origination and termination rates

In the determination on the 2009 RIO, ICP-ANACOM decided that the maintenance of current price caps, which derive in particular from the results of PTC's costing system and a lower level of fixed network use, makes it possible to ensure

the balance between the need to promote incentives to develop own infrastructure and the promotion of effective competition.

It is further seen that the average annual price variation for interconnection is not zero since, during 2008, two different interconnection tariffs were in force, so embodying the variation of approximately -0.5 % (assuming the traffic profiles estimated by PTC for 2009).

The following table illustrates the variations compared to prices previously in force, in terms of average annual revenues.

### Variation of average annual interconnection revenues in 2009 compared to 2008, for origination and termination services, based on an average call duration | Table 1

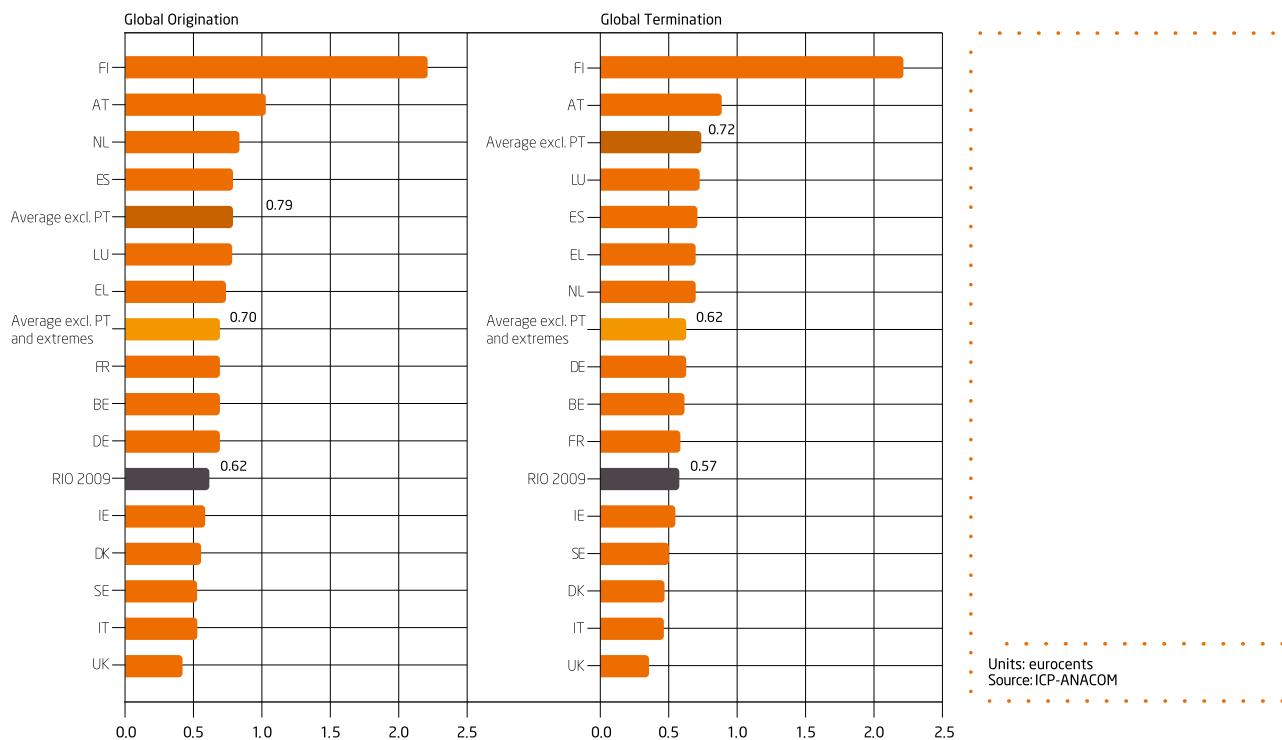
|               | Termination |               |         | Origination |               |         | Total interconnection considered |
|---------------|-------------|---------------|---------|-------------|---------------|---------|----------------------------------|
|               | Peak time   | Off-peak time | Average | Peak time   | Off-peak time | Average |                                  |
| Local         | 0.00 %      | 0.00 %        | 0.00 %  | 0.00 %      | 0.00 %        | 0.00 %  | 0.00 %                           |
| Single tandem | -0.66 %     | -1.65 %       | -0.89 % | -0.68 %     | -1.02 %       | -0.72 % | -0.81 %                          |
| Double tandem | -1.09 %     | -1.82 %       | -1.46 % | -1.13 %     | -1.74 %       | -1.26 % | -1.42 %                          |
| Average       | -0.35 %     | -0.97 %       | -0.52 % | -0.45 %     | -0.70 %       | -0.49 % | -0.51 %                          |

Source: ICP-ANACOM

The determined maximum prices enable a favourable position in relation to current European practice to be

maintained in this respect, as is shown in the following graphs.

### European comparisons - fixed interconnection prices (call origination and termination)<sup>8</sup> | Graph 12



<sup>8</sup> The figures presented above for each country were obtained by applying the estimated interconnection traffic weightings to interconnection tariffs in force for each Member State (average price per minute for a three minute call) in order to obtain, for both call origination and call termination, an indicator that can be used to assess the various elements of interconnection in an integrated manner.

Compared to the situation in 2008 (applying the traffic profile estimated by PTC for 2009 and maintaining the prices), it appears that Portugal has kept the same position with respect to origination, while moving from fourth to fifth place with regard to termination. It should also be noted that the EU average (excluding Portugal), rose in the 2008-2009

period, whereas variations were reported of 2.6 % and 2.9 % for origination and termination, respectively. The following table provides more detailed information concerning the position of Portugal compared to the European average, following the determination of 11 May 2009.

**Comparison of interconnection prices with the practices of the EU15 (price per minute of a three minute call) | Table 2**

|                                                             | Origination |          |               |          |               |          | Termination |          |               |          |               |          |
|-------------------------------------------------------------|-------------|----------|---------------|----------|---------------|----------|-------------|----------|---------------|----------|---------------|----------|
|                                                             | Local       |          | Single tandem |          | Double tandem |          | Local       |          | Single tandem |          | Double tandem |          |
|                                                             | Peak        | Off-peak | Peak          | Off-peak | Peak          | Off-peak | Peak        | Off-peak | Peak          | Off-peak | Peak          | Off-peak |
| ICP-ANACOM prices                                           | 0.54        | 0.35     | 0.75          | 0.46     | 1.20          | 0.74     | 0.54        | 0.35     | 0.75          | 0.46     | 1.20          | 0.74     |
| EU Average (excl. PT)                                       | 0.69        | 0.49     | 0.95          | 0.65     | 1.33          | 0.84     | 0.69        | 0.49     | 0.93          | 0.64     | 1.29          | 0.83     |
| Deviation ICP-ANACOM prices from average                    | -21.2 %     | -27.5 %  | -20.3 %       | -28.8 %  | -10.4 %       | -12.5 %  | -20.6 %     | -27.2 %  | -19.3 %       | -27.9 %  | -7.0 %        | -10.8 %  |
| Average excl. PT and extremes                               | 0.59        | 0.37     | 0.88          | 0.56     | 1.27          | 0.76     | 0.59        | 0.37     | 0.87          | 0.55     | 1.26          | 0.74     |
| Deviation ICP-ANACOM prices from average excluding extremes | -8.2 %      | -4.9 %   | -14.2 %       | -16.7 %  | -5.5 %        | -3.1 %   | -7.6 %      | -4.7 %   | -13.0 %       | -15.5 %  | -5.3 %        | -0.7 %   |

Source: Calculations of ICP-ANACOM, based on information from Cullen International, December 2007

**b) Prices of the service of billing, non-collection and collection risk**

ICP-ANACOM decided to maintain the prices set out in the 2008 RIO for the service of billing, collection and non-collection risk, considering it premature to define new values without further analysis of the subject. It should be noted that the applicable values are (i) 2.90 eurocents *per* call for call services where the cost incurred by the caller does not exceed Local PTC (as defined in the tariff for PTC

residential customers) and (ii) 3.17 eurocents, *per* call, for other special charged services.

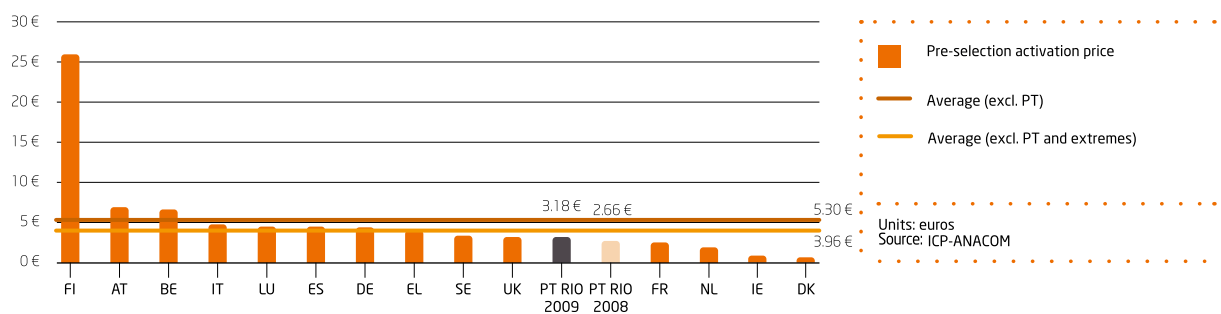
**c) Price of pre-selection activation**

ICP-ANACOM deemed it appropriate to proceed with an increase in the maximum pre-selection activation price effective from 1 January 2009, setting this at 3.18 euros, representing an increase of 20 % over the price in force at that time.

It is noted that, according to European comparisons, the new price is the fifth lowest in the EU, whereby Portugal remains

in the group of five best relative positions, as can be seen in the graph below.

### European practices regarding pre-selection activation prices (September 2008) | Graph 13



In its decision to increase prices, ICP-ANACOM took note of: (i) the very significant variations in the quantities of pre-selection activations (for which highly significant decreases have been reported in recent years) and the evolution in unit costs, according to data from Analytical Accounting System (AAS) of the incumbent operator; (ii) the fact that there appears to be no stable relationship between the change seen at the level of costs and the variation in the quantities of pre-selection activations, which makes cost forecasts difficult; (iii) the significant removal from European best practices that will result from the simple consideration

of cost estimates based on costing data for the first half of 2008; (iv) the existence of a clear trend of significant decline in the number of pre-selection activations; and (v) the need to provide the market with predictability in terms of prevailing conditions.

#### d) Number portability activation prices

It was decided to maintain the activation prices applying to fixed number portability in 2008, which had the following values:

### Maximum prices for portability activation by number | Table 3

|                            | Maximum price RIO 2009 |
|----------------------------|------------------------|
| Individual porting         | 4.01€                  |
| Block of 1 to 9 numbers    | 4.01€                  |
| Blocks of 10 to 99 numbers | 1.47€                  |
| Blocks of numbers ≥ 100    | 0.73€                  |

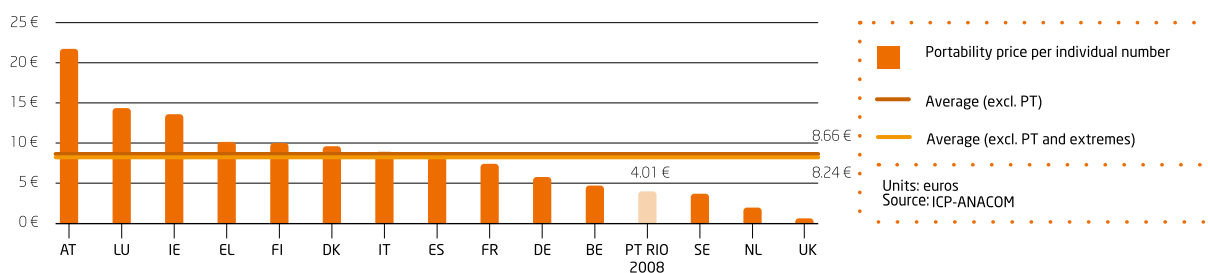
Source: ICP-ANACOM

The decision of ICP-ANACOM was based essentially on the fact that: (i) the current price compares favourably with the situation at European level, which fact is an indication that prices are not out of line with best market practices; (ii) the followed option is the one that represents less disruption to market conditions, including significant fluctuations in terms of portability volumes; and (iii) the lack of specific

costing data for the porting of numbering ranges.

Note that in terms of European comparisons, the price of portability for an individual number in 2009 compares favourably with the EU average (with and without extremes).

#### European practices relating to the portability price *per individual number* (September 2008) | Graph 14



Regarding the portability of number blocks, the position of Portugal remained in line with the EU average, as illustrated in the following graphs.

#### European comparisons - portability prices (September 2008) | Graph 15



### 2.3.5 Wholesale Line Rental Offer (WLRO)

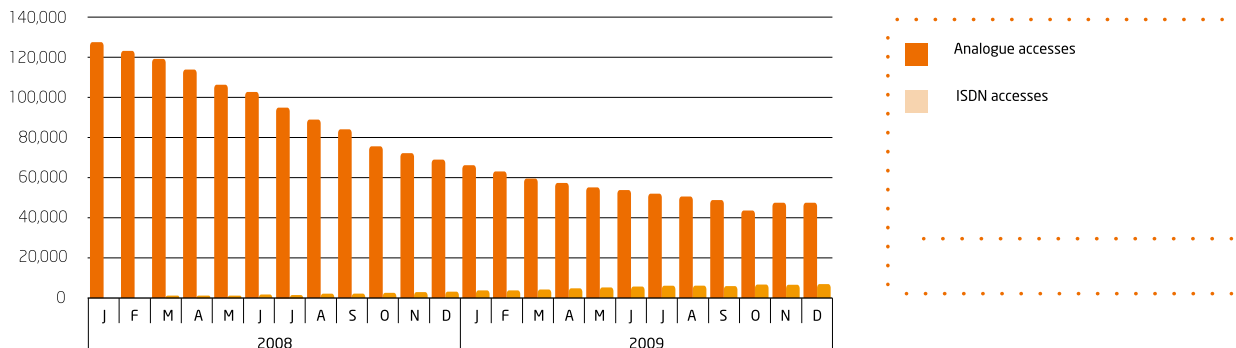
The number of analogue accesses with active WLRO continued to decline at a pace reflecting the sharp decline reported in the provision of the FTS in indirect access mode. As such, a reduction was reported of 27 % during the 2009 - in late December 2009 there were 48,430 analogue accesses with active WLRO (47,652, excluding the companies of Grupo PT).

However, the number of Integrated Services Digital Network (ISDN) accesses with active WLRO, closely associated with

the business market, has grown at a sharp rate, whereas, at the end of 2009, an increase was reported of 115 % compared to the end of 2008, with 7,213 accesses reported at the end of the year (7,085 excluding the companies of Grupo PT).

To better visualize the evolution of the number of accesses with active WLRO, for both analogue accesses and ISDN accesses (Basic ISDN and Basic Plus ISDN), the information transmitted by PTC with reference to 2008 and 2009 is presented in the following graph.

**Information presented by PTC on analogue and ISDN accesses with active WLRO, excluding the activations of the companies of Grupo PT | Graph 16**



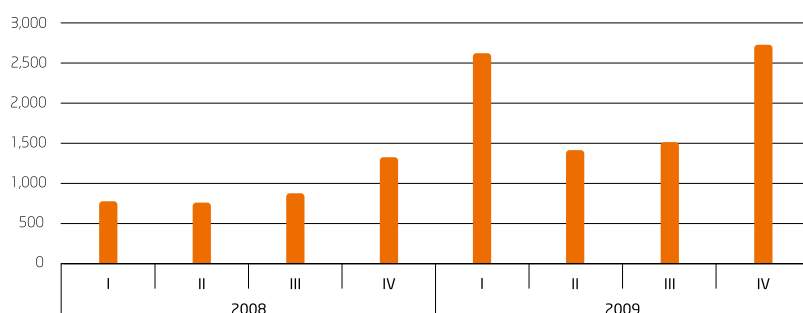
### 2.3.6 Reference Duct Access Offer (RDAO)

Since its entry into force (in mid-2006), the interest shown by RDAO beneficiaries in the offer has been growing, and 2009 was no exception, as reflected in particular in the

increasing number of responses to requests for information on ducts and associated infrastructure, and the number of interventions in PTC ducts, as evidenced by the following graphs.



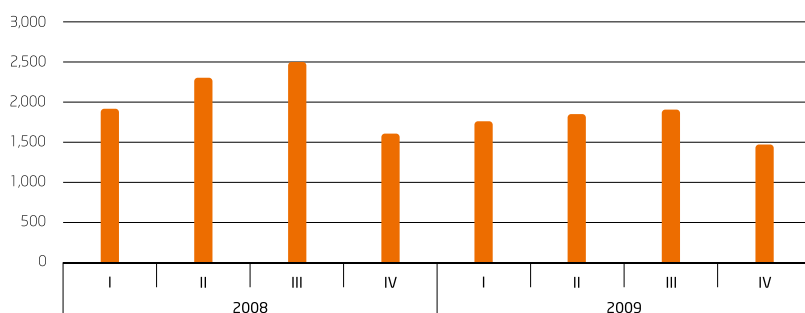
**Number of responses to requests for information | Graph 17**



Responses to requests for information about ducts and associated infrastructure

Units: responses  
Source: ICP-ANACOM based on data from PTC

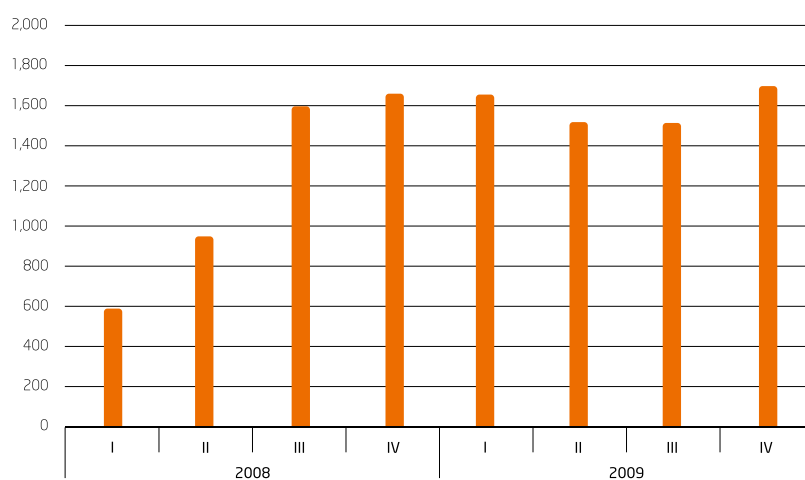
**Number of responses to requests for assessments of viability | Graph 18**



Responses to requests for assessments of viability

Units: responses  
Source: ICP-ANACOM based on data from PTC

**Number of interventions in the context of the RDAO | Graph 19**



Number of interventions

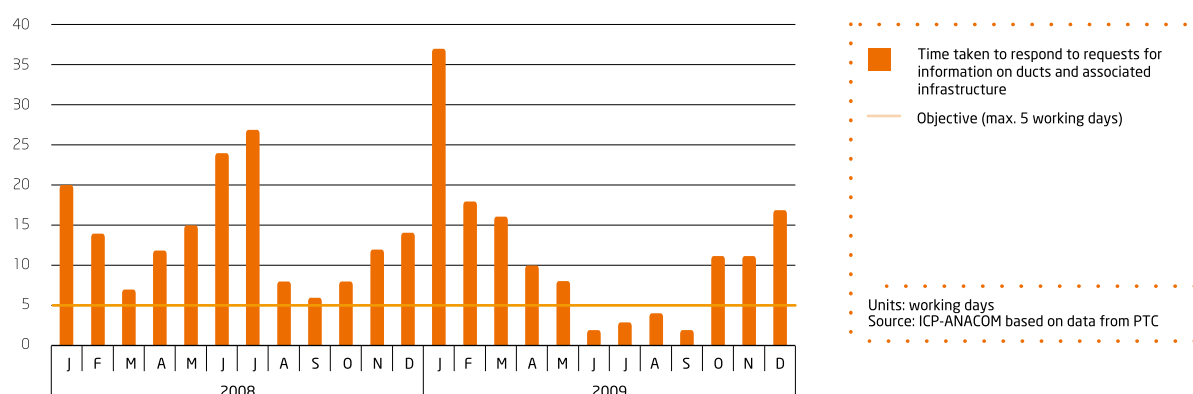
Units: interventions  
Source: ICP-ANACOM based on data from PTC

This growing use of the RDAO reflects the increased importance of this wholesale offer in the current market context, whereby it was necessary to make it more efficient, comprehensive and extensive, adapting it to market requirements, especially in a period of NGA development where access to ducts assumes vital importance. In this respect, by determination of 17 November 2009, a draft decision on the RDAO was approved, which involved, among other things, issues such as quality of service, availability of information, the information system and compensation for non-compliance. In particular, ICP-ANACOM proposed in this draft decision:

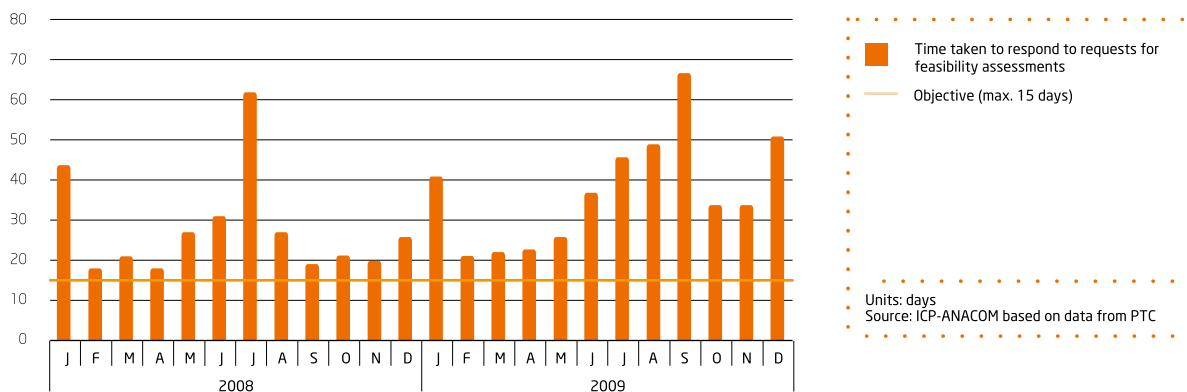
- to extend the obligations of access to poles and cable input tunnels in the exchanges;
- to extend compensation for non-compliance to all services, whereas payment thereof shall not be subject to the submission of forecasts or to prior request of the beneficiaries;
- to establish priorities on the inclusion of information on occupation of ducts according to geographic location;
- to promote the establishment of an information system (RDAO IS) which allows requests and responses to be processed automatically, speeding up the processes of this offer;
- to reduce certain response times, and to establish application for 100 % of cases.

From ICP-ANACOM's intervention in 2009, note is also made of the continued monitoring of the levels of quality of service provided by PTC, whereas it was noted that, while some improvement has been observed compared to previous years, there are certain indicators with values which are inconsistent with the opportunely established objectives (see graph 20 to graph 23). These findings are being analyzed separately.

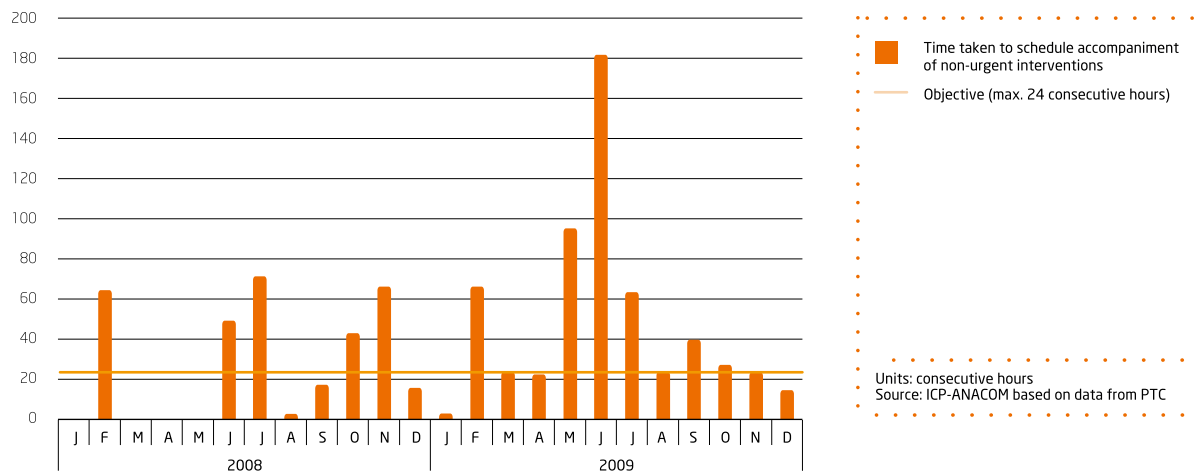
**Time taken to respond to requests for information on ducts and associated infrastructure | Graph 20**

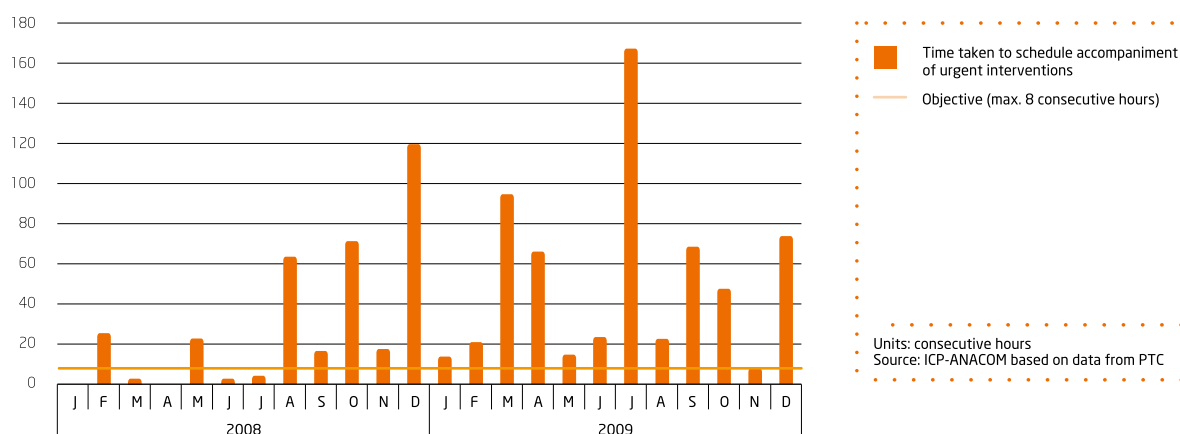
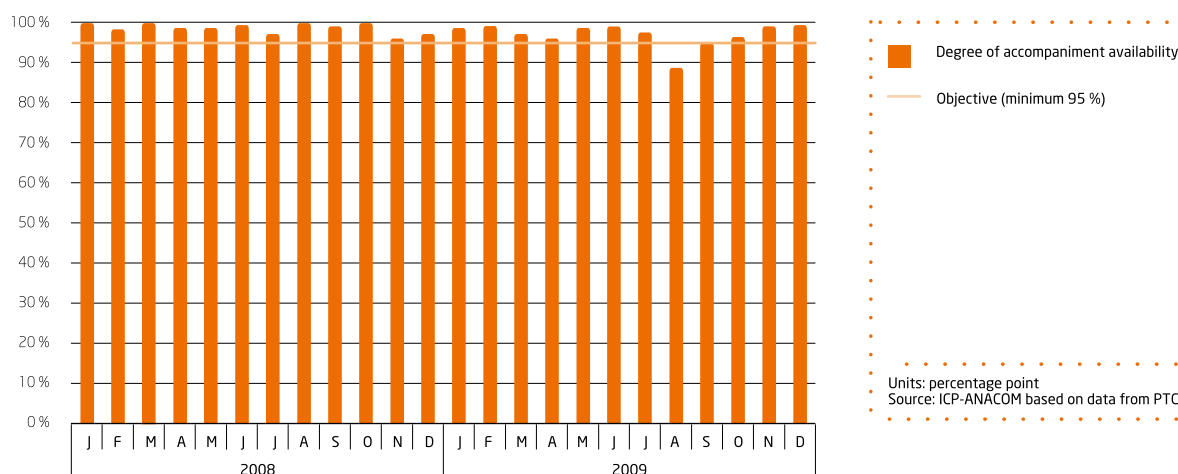


Time taken to respond to requests for feasibility assessments | Graph 21



Time taken to schedule accompaniment of non-urgent interventions | Graph 22



**Time taken to schedule accompaniment of urgent interventions | Graph 23****Degree of availability of accompaniment service<sup>9</sup> | Graph 24**

<sup>9</sup> This indicator is calculated based on the number of accompaniments made on the agreed date as a proportion of all accompaniments conducted.