

PLAN AND BUDGET OF ICP-ANACOM

2009/11 - 2009

Opinion

“It is incumbent upon the advisory council to provide opinions on:

- 1. The general orientations of the ICP-ANACOM plan of activities and budget”*
 - 2. The comprehensive development strategy of communications and its relationship with national participation in the global information society;
[points a) and c) of article 37 of the Statutse of ICP-ANACOM]*
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INTRODUCTION

On 18 November 2008, in a session of the Advisory Council convened for the purpose, an appraisal was made of the "2009 -2011 Activities Plan" and the general orientations of the "2009 Budget". These documents, which are attached to this opinion, were submitted by the Board of Directors of ICP-ANACOM on 3 September 2008 with the request for the opinion provided for in the above mentioned article 37 of the Statutes of Autoridade Nacional de Comunicações.

A Specialist Committee, previously established by determination of this Council, mandated for this purpose and composed of the following members of the Advisory Council:

It met three times: a first time to conduct an initial reading of the documents and to define the working methodology; the second time to discuss and bring together the contributions of each of its members; the third time to discuss the final draft of the Opinion to be submitted to the Advisory Council, the meeting of which was convened for today, which follows:

B

Strategic Plan and Budget

Strategic Plan Guidelines

1. The plan under consideration is characterized by greater objectivity, timing and quantification, as a result, moreover, of the progressive improvement noted with regard to previous plans.
2. The Advisory Council is pleased to underline the concern that ICP-ANACOM has shown in relation to the consumer, which is reflected in some concrete actions in the Strategic Plan 2009-2011, as well as by the inclusion in this plan of relevant and, in some way, innovative projects which are likely to add qualitative aspects of the regulator's performance to its activity, such as the strengthening of its supervisory activities, the adoption of best practices of regulation and express concern that the challenges identified for the next three years are taken into account.

In view of the guidelines of the Strategic Plan in respect of the challenges of the next three years, the present opinion includes a chapter dedicated to this specific analysis.

3. Additionally, a very positive view is taken of the clear assumption that the actions of ICP-ANACOM should be guided by criteria of proportionality, seeking to minimise them as far as possible and limit them to the effective correction of identified market failures.
4. Note should be made of the recognition of the need for the regulator to anticipate the market's evolution. In this regard, it is recommended that the Regulator share with operators and service providers the framework for regulatory intervention whose implementation, given the envisaged evolution, is intended in the medium term, in order that that all of these players can make their investment decisions in an environment of visibility and certainty.
5. Likewise, it is considered positive that ICP-ANACOM assume that its intervention will take into account the particularities of the sector such as the

network externalities and the weighty component of fixed costs, that is to say, economies of scale.

6. Recognition is given to the goal of harmonisation of the regulatory framework at community level and the principal is accepted. However it is not yet clear how the purpose is translated into affirmations of the regulator: "the common positions lead the actions of national regulators". It is understood that the national regulator should not fail to consider the specific situation of the country and, where appropriate, assert a different position, or at least an exception to the common position.

II

Strategic Plan

Major Themes

NGN AND BROADBAND

7. Confirmation is given to the intention, for Portugal, to proceed with the development of the Information and Knowledge Society supported in an open, competitive, transparent and self-sustaining market for broadband services, and the identification of the path likely to lead to this market.

The regulatory framework applicable to Next Generation Access Networks (NGA) is one of the most relevant in terms of the future of the electronic communications sector.

In this respect, it is imperative to have a stable and well defined regulatory framework, within the shortest space of time, whereby it is recommended that a date is set which is closer to the end of 2009.

The definition of the regulatory framework should consider the sustainability, the existence of economies of scale and of scope necessary for the capacity for NGA implementation and be aimed at promoting investment and competition, which is a fundamental condition for ensuring the protection of the interests of citizens. Account should also be taken of the guarantee of continuity, for a period to be defined, of networks based on the current unbundling of the copper pair (local loop) and the existence of conditions which allow the expectation of a return on the investments which have been made under a

reasonably predictable regulatory framework. Regulation should respect the principle of technological neutrality, and remain independent of the state of its development.

Additionally, it is important to ensure conditions which promote investment and the development of these networks, and, in order to create public incentives (which are transparent and non-discriminatory) with the aim of achieving coverage of areas which, based purely on commercial logic, might be left out of the more immediate development plans of the infrastructure operators.

DTT

8. The promotion of innovation and development of the information society are common central goals: of the authorities, operators and service providers, at the national and community level. For this reason and to ensure efficiency in the use of frequencies reserved for DTT, the delimitation of the number of rights to use frequencies reserved for these services is especially relevant. The digital transition should take place as soon as possible.

The migration of television broadcasting in analogue format to digital should not rely exclusively on the initiative of the end user. It should, however, be driven by the market itself, through the offer of innovative and attractive services, with better picture/sound quality compared to the current analogue offer and the promotion and provision of equipment for digital-analogue conversion.

It is also recommended that in respect of the execution of actions 2.20 and 2.21 in the Plan dealing with the publicity and awareness campaigns, potential overlaps should be avoided and compliance with the principle of non-discrimination ensured.

Spectrum

9. The current national spectrum fees are considered disproportionate and high when compared to those at European level.

The proposed new methodology of spectrum fees per MHz of spectrum allocated to the operator, and in respect of which the Advisory Council has

already made a statement, promotes its efficient use and distributes its weight more evenly by user, a result which is not possible with the current methodology.

The delay seen in its approval is likely to introduce uncertainty and prolong a situation characterized by inefficient use of scarce resources and imbalance in the way it is distributed among users.

The spectrum management plan does not identify specific initiatives aimed at the digital dividend. It is appropriate and even urgent to initiate work on the planning/allocation of the Digital Dividend.

Universal service

10. The Universal service should reflect the evolution of social, economic and technological conditions regarding the identification of services whose provision and use is essential to ensure the participation of citizens in society, while respecting the principle of technological neutrality.

It is therefore considered that the necessary adjustments should be made, especially in terms of PQS in order that the access service may be provided by alternative technologies (such as GSM / UMTS, for example). The position is also taken that it is appropriate to conduct a review of the scope of the US. The Advisory Board considers that it is urgent to launch the announced public consultation on the methodology of calculating the CLSU and on the definition of the concept of excessive burden, given the proximity of the launch of the public tender.

Convergence

11. The convergence of networks and services is an inevitable trend in the telecommunications sector.

The development of Cable networks, the expansion of broadband Internet accesses, the integrative characteristics of IP protocol and its widespread adoption in the transport and service layers of the networks, has brought to the first *dual-play* and *triple-play* solutions to the market.

The advent of next generation networks offering bandwidth to the order of 100Mbps, will further drive this trend, and future offers will include an increasing range of features and services.

In Portugal, this phenomenon should develop rapidly due to the operation of the Cable in our country (in prime position to evolve to NGN), investments in fibre optics already announced by various operators and the traditional ease in which Portuguese consumers take up technological innovation (as evidenced by the success of IPTV).

The Voice service, the traditional business of the FTS operators and the one on which the main regulatory burden still falls, is increasingly seen as a commodity, whereby urgent revision is needed of the regulatory rules which restrict development of this service.

The 2009-2011 Strategic Plan of ICP-ANACOM does not reveal enough of this movement, since, among the many strategic actions proposed, it does not highlight measures to promote the analysis of this reality and consequent adaptation of the regulatory approach.

REGULATORY FRAMEWORK

13. The 2009-2011 Strategic Plan of ICP-ANACOM defines the promotion of open and competitive markets as a primary objective, putting forward 16 major strategic actions for its accomplishment.

From this strategy action list note is made of *1.10 - To review the relevant markets in light of the current and the new EU regulatory framework, with possible updating of the associated obligations*, which action is to be undertaken by the 2nd quarter of 2010. It is considered that the old retail markets which are excluded from the New Recommendation of Relevant Markets of the EU should be urgently reviewed.

It is further considered, for the sake of clarity, transparency and predictability, that this action should include a schedule for the launch of public consultations associated with the analysis of the market.

There are grounds in the competitive dynamics resulting from the liberalization of the sector, the development of new services and markets,

such as the mobile market, the expansion of existing markets into the FTS market, such as Cable, and the new paradigm of broadband, to which is added the two specific national situation which have structurally transformed the functioning of markets:

- The possibility of mobile operators providing the FTS using GSM / UMTS and
 - The spin-off of Zon Multimédia, which has brought about, as today is easily recognised, strong competition in terms of access to the final customer.
14. As part of actions associated with Strategic Objectives 1 and 2 (promote open and competitive markets / guarantee and protect the rights of users and the public in general), the 2009-11 Plan of ICP-ANACOM sets out, in respect of the postal sector, strategic action 1.2.6- To update the regulatory framework for postal services, to be undertaken by the 1st quarter of 2010.

Due to its scope and importance with respect to the development of the postal sector in a context of full liberalisation, it is considered that this action should include a greater level detail, especially in terms of the specific activities to be developed and their levels of priority.

III

2009 Budget

Guidelines

1. For the 2009 budget the absence is noted of an effective plan to reduce costs: income grew by around 11%, certainly resulting from the new regulatory fees model and total costs 11%, partly justified by provisions. Under the heading "participation" the budgeted level is 34% more than in the previous year. Furthermore, ICP-ANACOM projects that its net income will grow between 2009 and 2011, maintaining a significant surplus over the three years, which subsequent to comments made in previous opinions, warrants explanation.
2. A breakdown of ICP-ANACOM's by areas of action (function) of the regulator is not given. This separation becomes particularly pressing with the

expectation of the application of a new fee model which includes a component which reflects the administrative costs of regulation.

3. It is considered that ICP-ANACOM should prepare a comprehensive and timetabled plan to reduce costs, not only in reducing the staff, as is its expressed purpose, even while increases continue to be forecast with respect to personnel costs, but also covering other operational cost-saving and optimisation measures. Furthermore a programme should be established and implemented of institutional efficiency associated with an internal evaluation plan.
4. ICP-ANACOM considers as a relevant action of the Plan "improvement in the efficiency and capacity of the regulator's actions", considering, "organisational efficiency" as a critical factor for success. The Advisory Board takes the position that great importance is given, both in terms of improving the regulatory environment and in terms of efficiency, to the organisational restructuring and operational improvement of the Regulator, with respect to its internal processes and its relationship with other sector agents.
5. The Advisory Board, reiterating comments of previous opinions, recommends a more in depth consideration in relation to the economic surpluses forecast, particularly regarding their distribution, envisaging that they can in some way be considered in the subsequent years.

Advisory Council, 18 November 2008