

● In general terms

Strategic Objectives

For the three year period of 2010-2012, ICP-ANACOM proposes to develop its regulatory activity within a general framework of action which is defined by five strategic objectives:

1. Promote open and competitive markets, with emphasis on the following structural measures:
 - a) Review of the obligations associated with the relevant markets, in the light of the current and future European Union regulatory framework;
 - b) Define the regulatory framework applicable to next generation access networks (NGA)
 - c) Review of the wholesale market of broadcasting transmission services, to deliver broadcast content to end users (market 18);
 - d) Switch off of the analogue television service;
 - e) Transposition of the future Directive on the frequency bands to be reserved for the coordinated introduction of digital land-based mobile communications (GSM);
 - f) New regulation on the operation of postal services.
2. To ensure and protect the rights of users and of citizens in general, with emphasis on the following measures:
 - a) *Implementation of the National Arbitration Centre*
 - b) *Creation of an applicational system (Extranet) for the notification of faults as an instrument of the security system of communications and information networks and electronic communications services, followed by the installation of a Computer Security Incident Response Team (CSIRT)*
 - c) *Conduct of new European benchmarking on the prices of postal services and the transposition of the regulatory framework for postal services*
 - d) *Phased introduction of spectrum trading*
 - e) *Reformulation of the structure of the National Frequency Allocation Plan (NFAP)*
 - f) *Approval of the Numbering Regulation (NNP)*
 - g) *Limitation of rights of use for the 2.5 GHz bands*
3. Improving the efficiency and capacity of regulatory activity - which comprises measures of particular significance:
 - a) *Integrated Monitoring Project (PMI), which is the national network that integrates all the technical infrastructure supporting the monitoring and control of the spectrum*
 - b) *Adaptation of the application module for integrated administrative and financial management to the new accounting system*
 - c) *Dematerialisation and delivery of documents by email in the context of infringement proceedings.*
4. Participate in the development of the internal market of the European Union - ensuring more consistent and innovative internal regulation and participating in the complex challenge of the necessary harmonization of positions within the European Union and the specifics which hold sway over the actions of each of the National Regulators, in areas of great regulatory sensitivity, such as:
 - a) *roaming*
 - b) *NGN/NGR, VOIP*
 - c) *Mobile television and the digital dividend*
 - d) *Termination rates and "bundling" offers*
5. Promoting institutional and technical cooperation - strengthening and deepening strategic and technical cooperation with countries of the Portuguese language community (CPLP).

The Advisory Board takes a very positive view of the commitment made by ICP-ANACOM to the mission to be accomplished, vision to be respected and the values it seeks to uphold; as can be read in Chapter I of the 2010-2012 Management Plan, it seeks to be a reference in the regulators' universe. A positive view is also taken of its purpose of seeking to reconcile competition and the promotion of investment, innovation, and respect for the principle of proportionality.

The highlight of the strategic principles and key actions planned in order to accomplish these objectives has complex meaning: on the one hand, it demonstrates the agreement of the Advisory Council with the Plan, but on the other, represents its interpretation of the priorities and the appropriateness of its execution.

With this same meaning and scope, the establishment of global activity indicators as contained in the Plan allows for the monitoring of the activity undertaken by ICP-ANACOM and is a factor of transparency, which is viewed as meriting emphasis.

The Advisory Board recommends that the Regulator shares the model which, in the light of the expected evolution it intends to achieve in the medium term, with the agents of the market so that they can make their investment decisions in a context of reasonable certainty.

The Advisory Council, in respect of major guiding principles of the regulatory activity - a restriction present in favour of a more efficient market - sees fit to highlight that there is no justification for the crystallisation of regulatory measures.

Resources Plan

To achieve the objectives it pursues, ICP-ANACOM has 384 employees, in view of the fact that 18 employees are providing service to other entities or services which are not part of the Regulator. During the three years of the implementation of the Management Plan, the Management Board intends to reduce the number of permanent staff, in net terms, by 6 in 2010, and by 5 in each of the remaining years, achieving a 26% reduction in overtime and noting that the staff at its service will receive 27 million euros on average annually. There are also plans to develop training programmes, based on a competency model, which are aligned with the strategic objectives and, as such, enhance the performance of staff.

To accomplish the Management Plan, ICP-ANACOM counts on overall income which on average amounts to 77 million euros annually and which to a large extent will be used to finance the costs of personnel at about 35%, supplies and external services at 21%; other operating costs, which includes the category "participations", 15%, depreciation and provisions 10%. The forecast net profits amount on average to 14 million euros annually.

In the last year where information is known (2008), the accounts of the Regulator stated income of around 75 million euros including financial income and costs, which stood at about 52 million euros, distributed in equal proportions to those proposed in the Management Plan now being put forward. Net profits exceeded 23 million euros.

The structure of the resources plan forecast for the three year period does not differ essentially from the present plan or from that of previous years. ICP-ANACOM therefore maintains the financial policy which has been adopted year after year, as well as the personnel policy and investment policy, the substantial part of which (76% in 2010) is assigned to the upgrade and enhancement of its computer system. The maintenance of the structure of the Resources Plan and the forecast growth in costs hardly squares with the stated goals of rationalisation and efficiency gain.

It appears that ICP-ANACOM expects to continue to generate significant net profit, 85% of which in recent years has been delivered to the State, whereby the fees charged by the Regulator are liable to be viewed as having the nature of taxes. In this regard, it is recommended that the Management Board of ANACOM promote a thorough evaluation of the new fees model to ensure the efficient use of spectrum and payment of the cost of services provided by ICP-ANACOM, which, it is recognized, seeks to correct existing serious distortions. It is also recommended that this evaluation include the study of a framework for the application or allocation of annually generated surpluses which make it possible for the market to receive benefits in the prices paid and in the quality of electronic communications services.

● In specific terms

It is recommended, finally, with regard to the investment plan, in order to enhance its transparency that certain items are presented with a greater degree of detail, in light of their high value, in particular with respect to investments in the information system, which is warranted due to its high value and annual recurrence

With respect to the development of the Management Plan, it is suggested that in upcoming plans or in the annual review of the present plan, the systematisation and ordering of actions be reviewed, since some of the proposed actions are mere phases of more global measures from which they were formally diverted, whereby it is suggested that they be grouped into actions which are more robust and consistent. Likewise, a better ordering is suggested by issue, so as to avoid actions falling "outside" their natural sequence. And, further, while appreciating the effort to achieve objectivity in the 2010-2012 Plan, it is recommended that the explanation of the actions include, albeit briefly, the respective state of execution, since this would add much to the understanding of the document.

A number of observations follow regarding the actions set out in the Plan, which, in the view of the Advisory Council have been insufficiently or excessively considered:

- 1. DTT** - lack of reference to the need to analyze and prepare the Portuguese position on the release of, at least, the 790-862 MHz band from uses based thereon including DTT; it appears insufficient with respect to material on the "digital dividend" that the action of ICP-ANACOM during the three year period amounts to no more than a study of "the feasibility of options for the digital dividend".
- 2. NGN** - No reference is found to concrete measures to guarantee an open market in fibre networks.
- 3. GSM Directive** - It is suggested, on this subject, that a position is formulated as to whether the operators of the LMS may use the spectrum at 900MHz.
- 4. Universal Service of Telecommunications** - the reason for the absence of any action in this area is not understood.
- 5. Information campaign on the various television reception platforms (Cable, Satellite, XDSL,...)** - the usefulness of an advertising campaign with this content and undertaken by the regulator is not understood, whereas it seems certain that the market itself is responsible.

6. Creation of regulatory accounting system for mobile operators (with SMP)

- It is not specified if development will be carried out by the operators and/or by ICP-ANACOM, noting that: If this action relates to the development of regulatory accounting systems by mobile operators (with SMP), it is considered that one year for the creation/adaptation of this costing system is a short period of time, especially because the methodology involved will rely on guidelines to be handed down by the regulatory authorities and only subsequent to receipt of these guidelines may operators undertake the adoption/adaptation of their costing systems; if the action relates only to the development of this costing model by ICP-ANACOM, note is made of the absence of any reference to reconciliation with the costing models implemented by the mobile operators.

7. Analysis of behavioural patterns and user motivation with respect to electronic communications, particularly in terms of adopting packages

- One of the factors which should be included in the set of strategic actions and which has added relevance in the current framework for the development of next generation networks, is the examination of the compliance of service packages with the applicable regulatory principles, in particular, to know how the principles of cost orientation and transparency will be applied in the provision of packaged services, which matter was not included in the planned action.

8. Schedule of Analysis of Relevant Markets (RMs)

- this action is scheduled with much delay (with particular emphasis on RMs 1, 2 and 3), strongly limiting regulatory predictability.

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