

## 2. ELECTRONIC COMMUNICATIONS

### 1.3 Regulated markets

#### 1.3.1 Status of the market analyses

By the end of 2005, ICP-ANACOM had notified the EC in accordance with the terms of article 7 of the Framework-Directive (2002/21/EC) on the analysis, significant market power (SMP) evaluation and imposition or suppression of obligations regarding fifteen markets of the Recommendation<sup>2</sup> (markets 1 to 14 and 16), the analysis of the remaining three relevant markets mentioned in that Recommendation (markets 15, 17 and 18) not being concluded.

Regarding **market 15** (call access and origination in public mobile networks market), it should be acknowledged that it is one of the most complex of the ones identified in the Recommendation. The corresponding statement of reasons mentions that “the competition level observed in this market at the retail level indicates that an *ex-ante* regulatory intervention at the wholesale level may not be justifiable”. It concludes that this market might not be part of the list of relevant markets for the sake of *ex-ante* regulation in future revisions of the Recommendation.

That statement of reasons notwithstanding, the analysis of this market, namely of the conditions of competition in connection with it, exposed significant *deficits* of competition in some countries, regarding namely access of third parties to national mobile networks, even though in some countries the process led to the conclusion that there was effective competition.

Therefore, in these past three years, the notifications made by the several Member States point to existing different stages of competition, which led to different conclusion, from effective competition to single or joint dominance. There is effective competition in fifteen Member States, whereas in five there is SMP, of which two with single SMP and three with joint SMP. There were also situations of veto by the EC, or the withdrawal of notifications in three Member States.

It should be mentioned that the diversity of the identified competitive situations even influenced the text of the draft Recommendation that went to public consultation in connection with the 2006 Review process. That document acknowledges, on one hand,

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<sup>2</sup> Recommendation 2003/311/EC, of the Commission, regarding relevant product and service markets in the electronic communications sector eligible for *ex-ante* regulation.

the complexity of the matters under analysis on market 15: *“in view of the complexity of the issues that this market presents (...)”*. On the other hand, the diversity of the results of the analyses already carried out is registered: *“in most Member States the wholesale mobile access and call origination market is effectively competitive (...). In some Member States, however, there are no mobile virtual network operators (MVNOs) or service providers on the market (...). In other Member States, however, it has been observed that firms have an incentive to tacitly collude so as to dilute the normal competitive dynamic”*.

The above-mentioned complexity and diversity might even have led the EC to change its position, since, at the time when the 2003 Recommendation was published, the inclusion of this market in the next review was not expected, and the statement of reasons for the 2003 Recommendation even mentioned that “at this time, the Commission does not foresee the inclusion of this market in future revisions of this Recommendation”. The EC has however concluded, in this last consultation, that the maintenance of this market might be justified and questioned the several parties about this possibility.

In the Portuguese case, the complexity of the analysis to this market vis-à-vis other relevant markets also stems from the fact that there was no specific regulation in connection with the previous regulatory framework. Thus, and considering a situation in which the preliminary results of the corresponding analysis pointed to significant competitive *deficits*, ICP-ANACOM aimed at performing and concluding the competition analysis and definition as quickly as possible.

There were however significant developments in the mobile sector, namely the launch of *no frill* brands in June 2005 by the network operators, as if they were real mobile virtual network operators (MVNO), which forced a postponing of the end of market 15’s analysis process. In face of such developments, ICP-ANACOM released a note on its website and tried to give the market some time for the negotiation of network access agreements making way for the entry into the market of independent and efficient service providers. It asked the operators to send specific statistical data on these offers. The operators replied in March 2006.

The other extremely relevant event in connection with this market was the February 2006 launch of the above-mentioned Initial Public Offer (IPO) by Sonaecom – owner of Optimus – Telecomunicações (Optimus) – over Portugal Telecom (PT) – owner of TMN – Telecomunicações Móveis Nacionais (TMN) – which naturally determined changes to the schedule of many of the actions that were planned for 2006.

Regarding the wholesale national market for international roaming on public mobile networks (**market 17** of the Recommendation), the EC acknowledges that the fact that

its corresponding analysis was not concluded is a special case, stemming from the specific features of that market and of the adoption of the Regulation of the European Parliament and the Council on this issue, which came to be adopted in 2007<sup>3</sup>.

Regarding **market 18** (broadcasting services for the delivery of contents transmitted to final users), it was analysed by ICP-ANACOM in 2006, even though the deliberation approving a draft determination on the analysis of the said market, which decides to ask for an opinion by AdC on that issue, is from early 2007 (11 de January). The following section deals specifically with this market.

Mention should also be made, regarding the circumstances which influenced the schedule of this market's analysis, the announced merger of Sonaecom and PT and some facts that took place further to that announcement, such as Group Portugal Telecom's (Grupo PT) intent to spin-off PT Multimédia – Serviços de Telecomunicações e Multimédia (PTM) and the intended launch of offers of television over the IP protocol (IPTV). The compromises and declarations of the notifying entity added to this, regarding the fixed network business. They pointed to structural changes to the competitive environment impacting on the analysis of the dynamic items of the wholesale supply of television broadcasting services through cable distribution networks market, which also had to be taken into account.

### **1.3.2 Market 18 – Broadcasting services for the delivery of contents transmitted to final users**

When analysing the broadcasting services for the delivery of contents to final users market, considering the degree of development, penetration and substitutability of the several technologies and modes of broadcasting, ICP-ANACOM identified the following wholesale markets encompassing all of the national territory:

- Wholesale supply of television broadcasting services through terrestrial analogue networks;
- Wholesale supply of television broadcasting services through cable distribution networks;
- Wholesale supply of sound broadcasting services through terrestrial analogue networks in modulated frequency;
- Wholesale supply of sound broadcasting services through terrestrial analogue networks in AM (amplitude modulated).

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<sup>3</sup> Regulation (EC) no. 717/2007 of 27 July.

The identified wholesale markets in connection with sound broadcasting were considered competitive due to the several nation-wide networks<sup>4</sup> in place and to the fact that there were no breakers to market entry and expansion.

Regarding the wholesale supply of television broadcasting services through cable distribution networks, the understanding was that, given the available information, the frequency, detail and urgency of possible intervening actions in the market were no reason for the setting of *ex-ante* obligations, since, should such situations occur, mainly regarding the existing conditions in the content negotiation and aggregation markets, the Competition Law would suffice in handling them.

This conclusion also weighted ICP-ANACOM's analysis to the barriers to the existing entry and expansion and the competitive dynamics in the market, which all pointed to an increasing trading power of content producers and right holders and to a predictable development of alternative platforms (stranded metallic pair technologies (x-DSL), fixed wireless access (FWA), digital terrestrial television (DTT)). The expansion of the providers' network alternative to the cable distribution network also adds to this trading power.

However ICP-ANACOM mentioned that it would closely monitor the evolution of the identified market and that it would intervene when and if needed.

Therefore, further to the analysis it made, ICP-ANACOM identified as relevant for *ex-ante* regulation purposes, the wholesale supply of television broadcasting services through terrestrial analogue networks, encompassing all of the national territory.

Besides, and taking into account market shares, the size of the market leader and its degree of concentration, barriers to expansion, signs proving the existence or not of effective competition among companies (prices and other variables) and potential competition, ICP-ANACOM also concluded that Grupo PT's company on this market, PT Comunicações (PTC), holds SMP on this market, which leads to the need to impose the corresponding obligations.

Among these are obligations within the scope of access and specific network resources use, transparency when releasing information, non-discrimination in offering access and interconnection and the corresponding information provision, account separation regarding specific activities in connection with access or interconnection, price control and cost accounting and financial reporting.

The possible need for further detail, specification or clarification in their implementation was made clear, which, if need be, would be made in an autonomous document.

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<sup>4</sup> Each nation-wide radio operator has its own broadcasting network and hundreds of local sound-broadcasting networks were also identified.

It should be noted that, during the procedure leading to the adoption of a final determination<sup>5</sup> regarding the broadcasting services for the delivery of transmitted contents to final users market, ICP-ANACOM consulted interested parties, the EC and the national regulatory authorities (NRA) of the remaining Member States and took into account all of the comments that they sent.

### **1.3.3 Markets and offers subject to regulation**

- **Reference unbundling offer (RUO)**

ICP-ANACOM intervened in 2005 to foster the development of the Local Loop Unbundling (LLU) and a greater effective competition in the market, based on the continuous market monitoring. The RUO was thus reviewed, with a special focus on the improvement of proceedings and taking into account the then recent implementation of the information and request automatic processing systems regarding the offer's prices and its quality of service.

Market monitoring went on in 2006, for which ICP-ANACOM approved on 7 February 2006<sup>6</sup> a determination on the information that PTC and other operators must submit to the Regulator within the scope of the RUO, thereby giving this Authority updated and detailed information on the deadlines of the several services provided in connection with the local loop.

Considering that the LLU is vital for the promotion of competition in the local access market, and with a view to fostering business models that stake on investing in infrastructure, ICP-ANACOM decided on 13 April 2006 to reduce, as from 1 January 2006, prices (VAT excluded) that PTC charges to alternative operators for the local loop, which result was a monthly fee of:

- (a) 8.99 Euros for the full access mode, a decrease of 7.5 per cent on the figure in force in 2005, and
- (b) 2.51 Euros for the shared access mode, a decrease of 15 per cent.

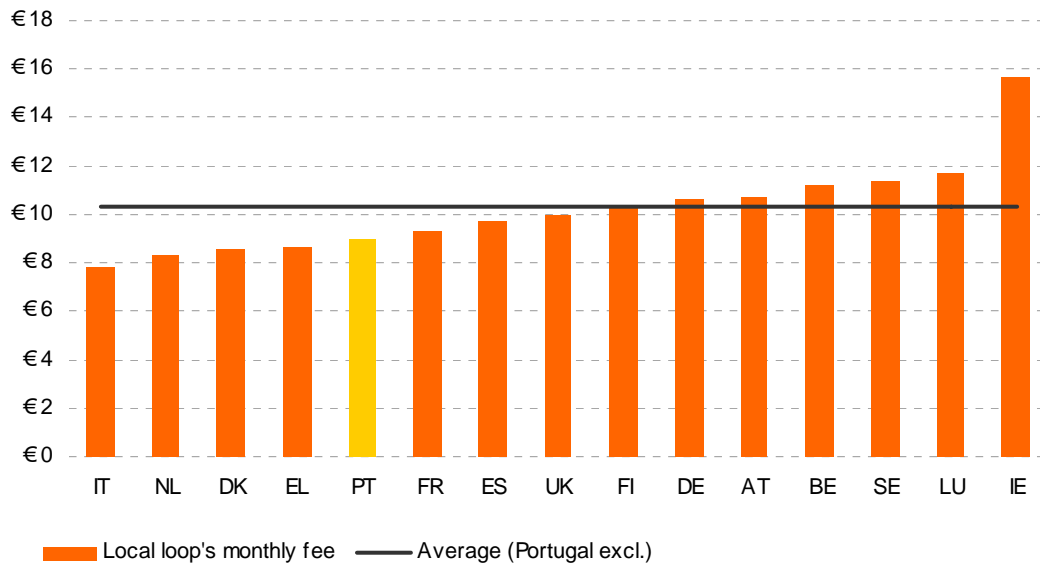
These ICP-ANACOM-defined prices are a decrease vis-à-vis PTC's proposal, who indented to maintain the 2005 prices, and puts prices in Portugal among the best practices in the European Union, as shown on the graphs below:

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<sup>5</sup> Approved by a decision of 2 August 2007.

<sup>6</sup> ICP-ANACOM's decisions and draft decisions (DD) mentioned in this Report are available at this Authority's website (in Portuguese), at "ANACOM – deliberações da ANACOM" (<http://www.anacom.pt/template2.jsp?categoryId=69000>).

**Graph 1. Local loop monthly fee (full access) – EU15 comparison<sup>7</sup>**

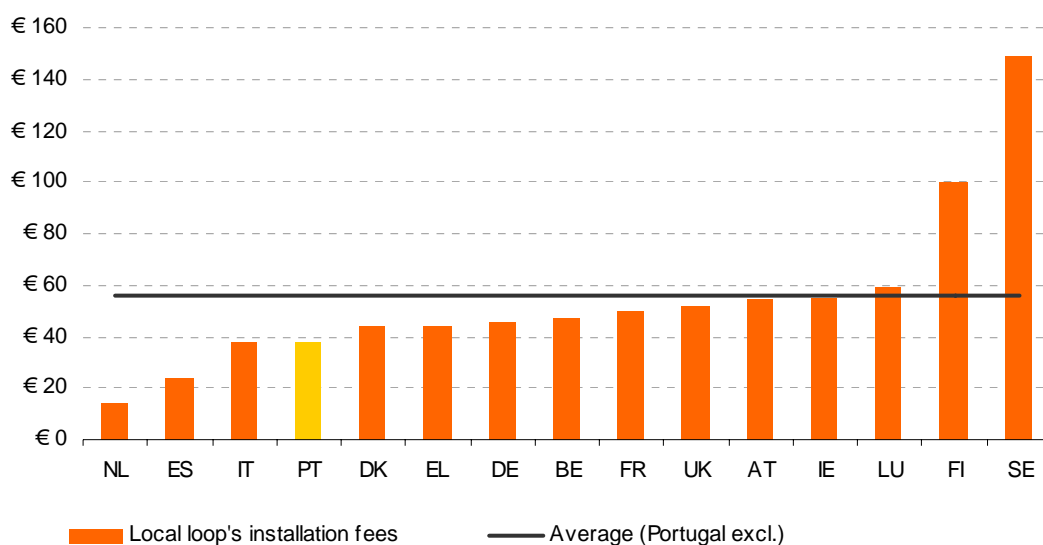


Source: Cullen International – 8 December 2006

<sup>7</sup> The following acronyms will be adopted along this document:

Germany	DE	France	FR	Malta	MT
Austria	AT	Greece	EL	Norway	NO
Belgium	BE	Netherlands	NL	Poland	PO
Bulgaria	BU	Hungary	HU	United Kingdom	UK
Cyprus	CY	Ireland	IE	Czech Republic	CZ
Denmark	DK	Iceland	IS	Slovakian Rep.	SK
Slovenia	SL	Italy	IT	Romania	RO
Spain	ES	Latvia	LV	Sweden	SE
Estonia	EE	Lithuania	LT	Switzerland	CH
Finland	FI	Luxembourg	LU	Turkey	TR
Portugal – PT					

**Graph 2. Local loop installation fee (full access) – EU15 comparison**



Source: Cullen International – 8 December 2006

PTC began to identify as from June 2005, in several switchboards, a set of alleged constraints that would be barriers to swiftly making available the conditions for the co-installation of equipment or for the upsizing of the modules hired by the operators and service providers (OSP), thereby hindering the development of alternative offers and, at the end of the day, final users themselves. These constraints would mainly stem from the lack of room at PTC's main distribution frame rooms, in the main distribution frames themselves and regarding the availability of direct current (DC energy) to feed the equipment.

This Authority has thus, since then, undertaken several monitoring actions to the mentioned switchboards in order to verify and contribute to solving those constraints.

Further to these monitoring actions, and with a view to promoting a more effective operation of the RUO, the need to define additional rules to that reference offer became clear, rules that would give the functioning of the LLU greater certainty. It was in this framework that ICP-ANACOM approved on 14 December 2006, its draft determination (DD) on co-installation procedures<sup>8</sup>.

This DD aimed at lessening the constraints that the operators felt when installing their equipment in PTC's Miffs (Main Distribution Frames) and it was mainly focused on the following actions:

- (i) implementing the *use it or loose it* rule, thereby preventing the reservation of room by Sops when there is lack of room;

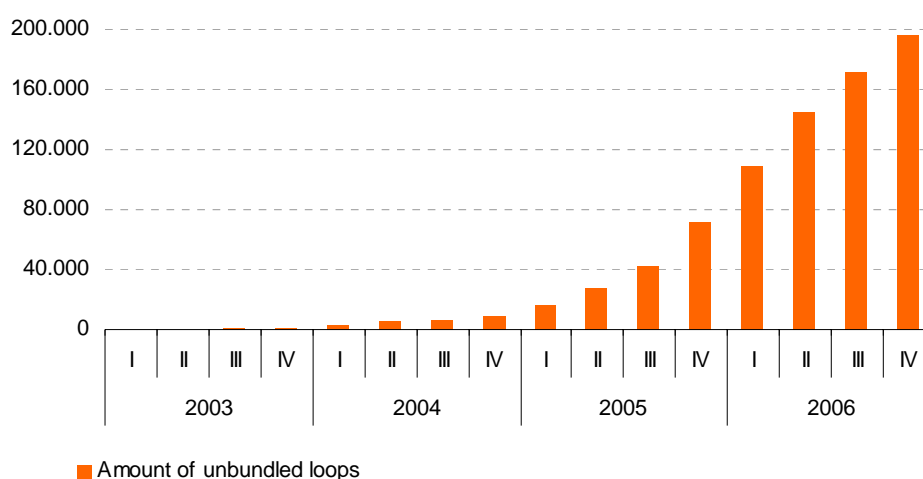
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<sup>8</sup> The final decision, further to consultation to the interested parties, was adopted on 12 April 2007.

- (ii) not allowing that PTC refuses or delays co-installation on grounds of DC energy constraints, when the OSP has submitted predictions of demand;
- (iii) making the installation of lower-sized modules viable, thus maximizing the use of the available room;
- (iv) easing up and giving credit to the Sops' predictions of demand.

2005 and 2006 interventions gave OSPs increasing confidence and certainty. They have shown greater interest and have significantly invested in the offer, as shown by the evolution in the amount of unbundled loops, which amounted at the end of 2006 to 195,752, a 172 per cent growth from the 72,019 unbundled loops of a year before (Graph 3).

**Graph 3.** Evolution in the amount of local loops

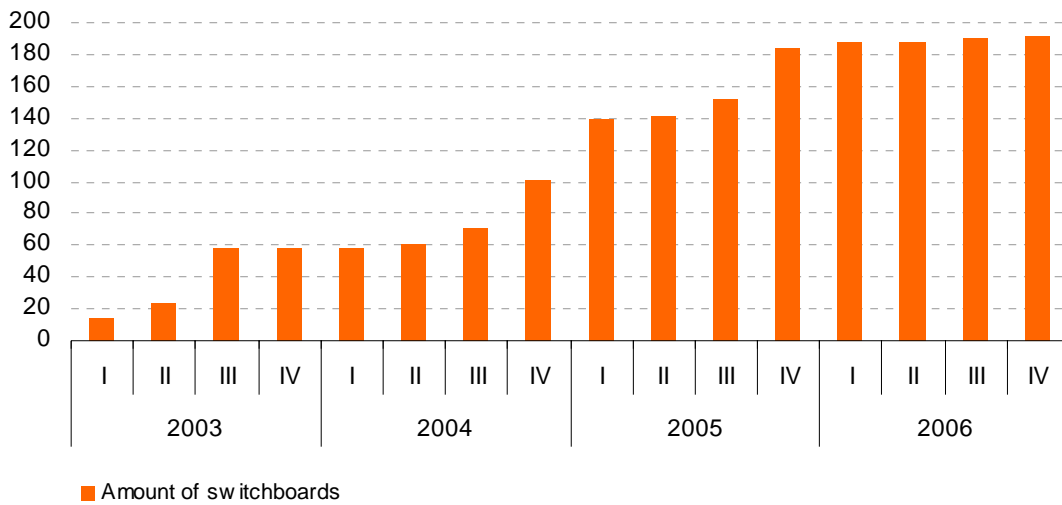


Source: ICP-ANACOM, based on data from PTC

With the increase in the number of unbundled local loops also came the increase in the amount of operators with unbundled loops, from three to five between the end of 2005 and the end of 2006. The amount of switchboards with co-installed operators increased from 184 in December 2005 to 191 by the end of 2006 (Graph 4), reaching a coverage of 50 per cent of PTC's fixed telephone service (FTS) subscribers (Figure 1).

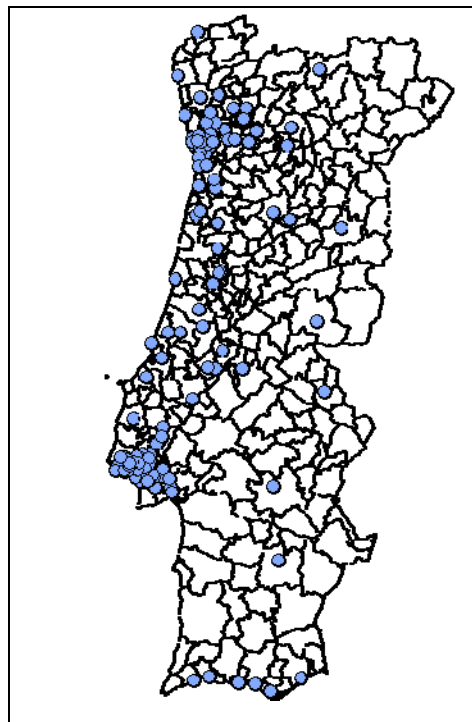


**Graph 4.** Evolution in the amount of switchboards with co-installed operators



Source: ICP-ANACOM, based on data from PTC

**Figure 1.** Location of switchboards where OSPs enjoy the LLU (end of 2006)



Source: ICP-ANACOM, based on data from PTC

Retail offers based on the LLU have undergone significant broadband changes. The maximum throughput of these offers increased from 16 Mbps to 24 Mbps, which was made possible by the inclusion in the RUO of ADSL2+ transmission systems.

2006 also saw the first RUO-based television offers, which made way for the so-called *triple-play offer* using the public switched telephone network (PSTN).

- **“Rede ADSL PT” wholesale offer**

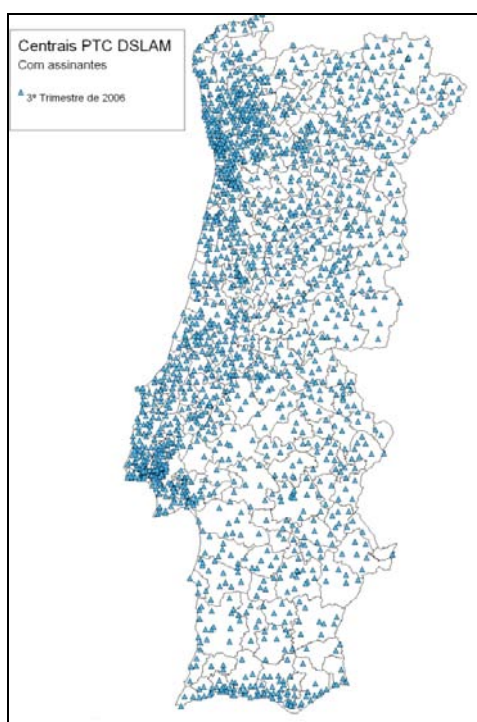
The fostering of the universal access to the broadband Internet and to wholesale conditions to ensure the sustained and competitive development of ADSL services to final users is still a priority to ICP-ANACOM.

Taking into account the growth in service offers, such as broadband Internet access, which is greatly important in the development of the information society, this Authority considers that ensuring competitive conditions also in the provision of this service is a paramount goal of its regulatory action.

Thus, as per a determination of 21 April 2006, ICP-ANACOM decided that the “Rede ADSL PT” wholesale offer should be changed. More specifically, it determined that PTC should inform all beneficiaries of that offer, within five working days, that, at least during the six months following the entry into force of the new terms of the offer, all migration requests and any throughput changes, regardless of the aggregation mode and if it is, or not, a switch in service provider (provider migration), will be rendered free-of-charge. Also the correct implementation of any migration of clients should be assured, in adequate and non-discriminating terms.

Changes defined by ICP-ANACOM within this scope, during 2005, such as reductions in the prices of the “Rede ADSL PT” wholesale offer, new throughput classes and the change to proceedings aiming at easing up migration of clients among operators, made it possible to reach a set of conditions making it easier for new operators to carry out their operations and for broadband to develop in Portugal, with impacts that became clear in 2006. This increase in penetration also came about as a result of the initiatives of the several operators and of other public entities and of the increasing coverage of the “Rede ADSL PT” wholesale offer, which, during the second half of 2006, covers all of the areas of PTC’s switchboards (Figure 2).

**Figure 2.** Location of switchboards with DSLAM (digital subscriber line access multiplexer) and subscribers (3<sup>rd</sup> quarter of 2006)



Source: ICP-ANACOM, based on data from PTC

In 2006, retail prices of the broadband access offers based on “Rede ADSL PT” offer significantly decreased in hand with the corresponding decreases in the wholesale offer (Table 1) as a result of the “retail-less” price control (imposed on Grupo PT in 2005, further to the analysis of the wholesale broadband access supply market) that this wholesale offer is subject to and competitive pressures at the retail level.

**Table 1.** Evolution in the prices of the “Rede ADSL PT” offer with IP aggregation

Service		Until May-05	May-05 – Nov-05	Nov-05 – Sep-06	After Sep-06
Local access (monthly fee per access)	Class 0 (512 Kbps / 128 Kbps)	16.00 €	14.25 €	10.35 €	8.92 €
	Class 11 (2048 Kbps / 128 Kbps) (*)	22.00 €	14.50 €	12.96 €	11.08 €
	Class 12 (4096 Kbps / 256 Kbps)	Non-existing	16.50 €	14.75 €	12.96 €
	Class 14 (8128 Kbps / 384 Kbps)	Non-existing	24.00 €	18.23 €	15.56 €
Aggregated access (monthly fee per Mbps)		[€251.39 to €359.14] depending on total throughput	160.00 €	120.00 €	96.00 €

(\*) The *upstream* throughput of this class was reduced from 512 Kbps to 128 Kbps

- **Leased lines reference offer (LLRO)**

Leased lines are still paramount due to their support to telecommunications services in general, since they are used by operators as vital infrastructure in developing their own networks and, consequently, the services they provide in the retail market.

PTC fulfilled its duty to publish a LLRO by submitting to ICP-ANACOM a first proposal of it. This Authority, further to analysing it, decided on 8 September 2005 that the proposed tariffs should be revised because they were not compatible with the obligations set in connection with the 2005 analysis to the leased line markets.

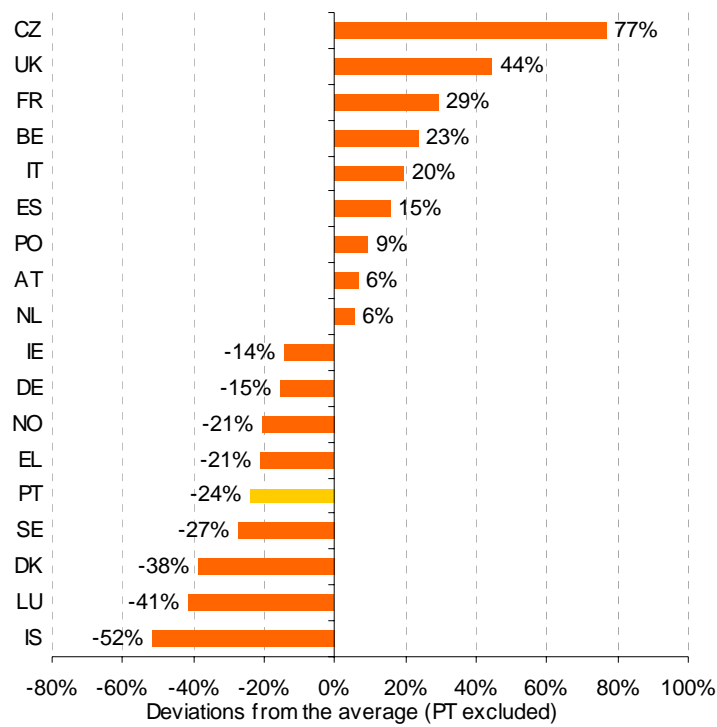
ICP-ANACOM approved on 26 May 2006 a determination on the LLRO, which led to an average decrease in prices of about 18 per cent.

Later on, on 7 September 2006, a new determination on changes to the LLRO was approved, in order for it to include, namely, the payment of compensatory fees due to PTC's incomppliance with the determined service objectives (namely, supply and malfunction repair deadlines) and of a set of maximum prices in connection with changes to the termination and throughput points, and other features or functions of the several types of leased lines.

In Europe, a price comparison by Teligén based on data from November 2006 concluded that prices in Portugal, for lines of lower throughputs (64 Kbps and 2 Mbps), were below the average of the analysed countries, unlike those of the higher throughput lines (particularly 34 Mbps lines).

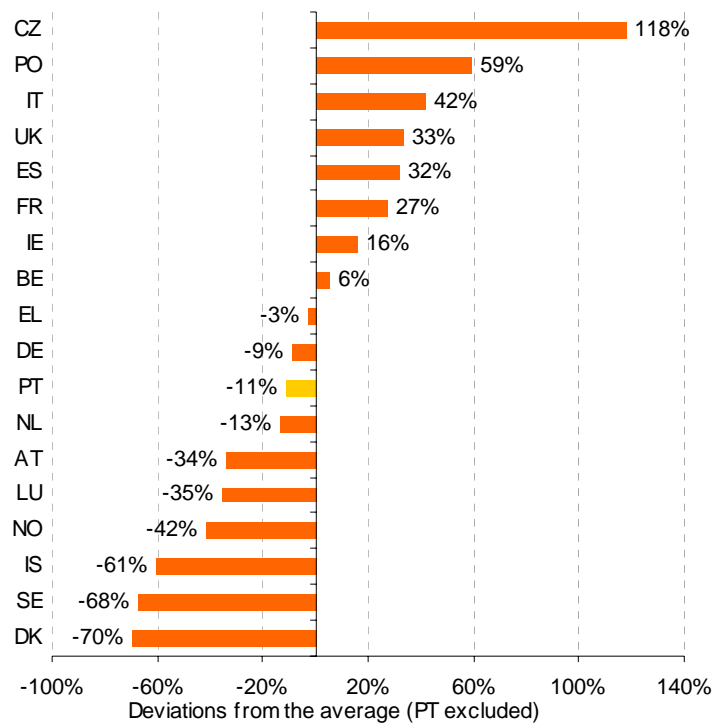
The graphs below show the prices of some types of lines, measured as deviations from the average (Portugal excluded).

**Graph 5. Annual price of 64 Kbits digital lines in Europe**



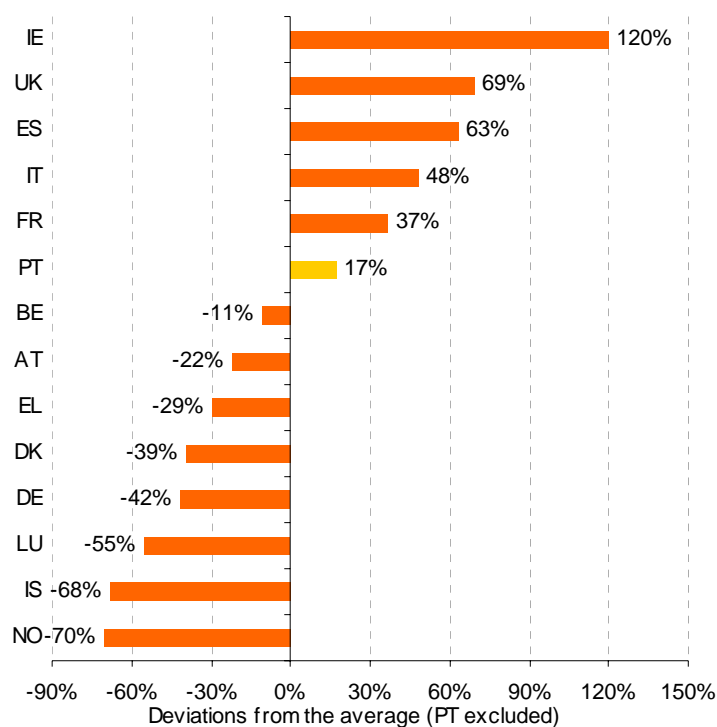
Source: Teligen, November 2006 (based on OECD's distance basket)

**Graph 6. Annual price of 2 Mbits digital lines in Europe**



Source: Teligen, November 2006 (based on OECD's distance basket)

**Graph 7. Annual price of 34 Mbits digital lines in Europe**



Source: Teligen, November 2006 (based on OECD's distance basket)

- **Reference interconnection offer (RIO)**

ICP-ANACOM approved on 21 April 2006 the determination on the changes to be made to the 2006 reference interconnection offer (RIO 2006) that included new interconnection (origination and termination) prices for that year, which stemmed from an average decrease of about 5.1 per cent.

The interconnection prices decided by the Regulator, which retroacted to 1 January 2006, were below those proposed by PTC, since the figures put forward by this company were not compatible with the price cost-orientation principle. Besides the decrease in the call origin and termination prices, the tariffs defined by ICP-ANACOM also included a decrease of four euro cents in the call set-up figure for each interconnection level (to 0.57 euro cents for local interconnection, 0.66 euro cents for simple transit interconnection and 0.76 euro cents for double transit interconnection), which applied to call origin and termination prices.

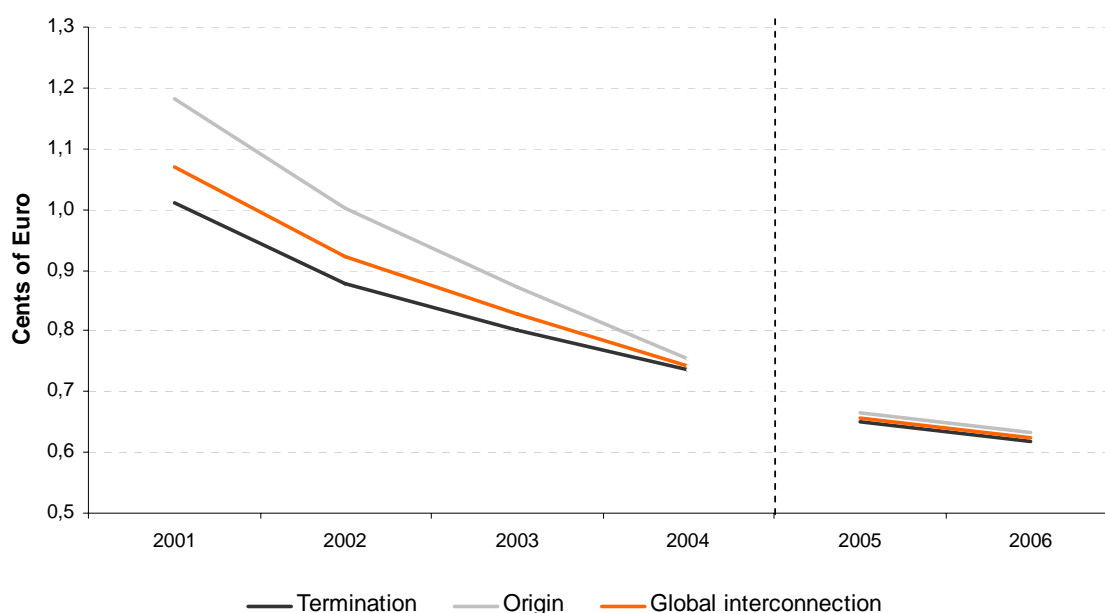
**Table 2.** Prices per minute in 2006, based on a three-minute call (figures in euro cents, VAT excluded) – tariff applied per second after the first second

Level	Termination		Origination	
	Normal TT.	Economic TT.	Normal TT.	Economic TT.
Local	0.64	0.41	0.64	0.41
Simple transit	0.93	0.58	0.93	0.58
Double transit	1.44	0.88	1.44	0.88

Source: RIO 2006

Interconnection prices decreased always between 2001 and 2006 and reached an accumulated decrease in this period of around 40 per cent.

**Graph 8.** Evolution in the average interconnection prices

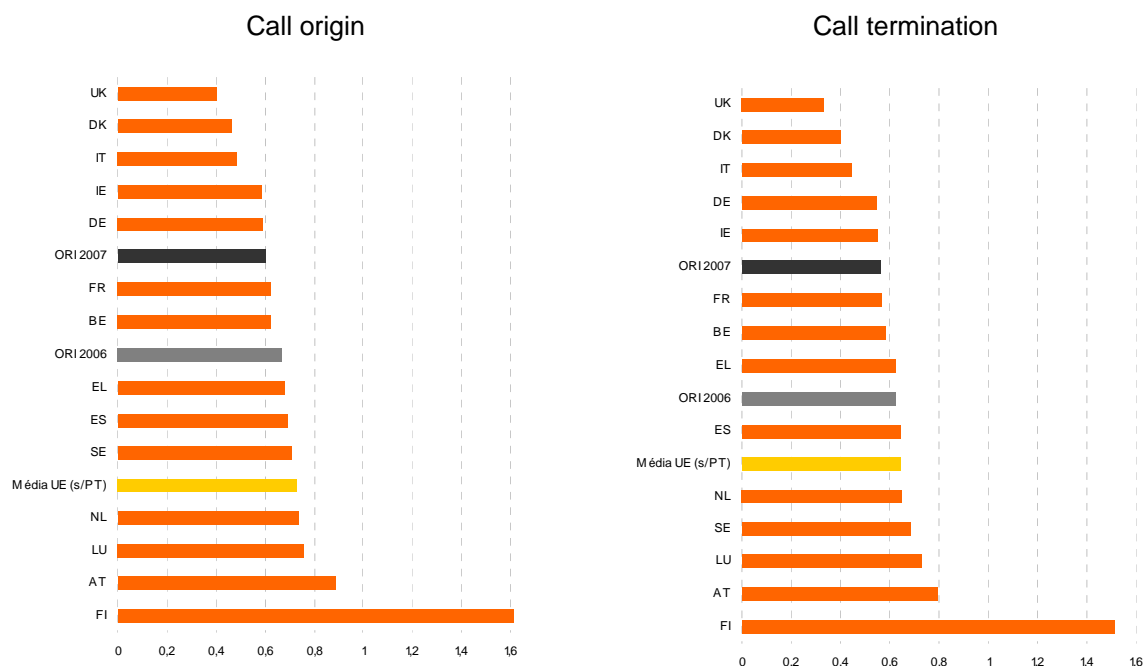


Source: ICP-ANACOM

Note: 2005 and 2006 figures cannot be directly compared with those before 2005, due to the widening of the economic timetable (ETT), of two hours, decided by ICP-ANACOM in 2005 (ETT then became from 7h pm to 9h am, from the previous 9h pm to 9h am). In order to take that change into account, traffic profiles for 2004 applied until that year and traffic profiles for 2006 were applied from then on.

The following graphs show Portugal's positioning vis-à-vis the EU average. An improvement occurred between 2006 and 2007 in Portugal's positioning vis-à-vis the European landscape, with an increase in deviations, favourable to Portugal, between the interconnection prices in the country and the average of prices in EU15 (without Portugal).

**Graph 9.** Comparison of the average price per minute for a three-minute call from the prices in force in RIO 2006 and in RIO 2007 with EU's current practices



Source: ICP-ANACOM

PTC's invoicing, collection and no-collection risk maximum prices, which are especially relevant within the scope of the access to other operators' services based on non-geographic numbers (e.g. ranges "707", "808" and "760"), were set as follows: 3.08 euro cents (VAT excluded) per call for shared cost calling services, in which the cost bared by the caller is lower or equal to "Local PT" (such as defined in PTC's tariff scheme); and 3.44 euro cents (VAT excluded), per call, for the remaining paid special services provided by the operators, namely client support services, information services, universal access service and shared cost calling in which the cost to the user is higher than that of a local call made within the scope of the SU.

Maximum pre-selection set-up price decreased from 5.6 5, 6 Euros to 5.1 Euros (a 9 per cent decrease) and the maximum porting per single number price decreased from 15 Euros to 13.6 Euros (a 9 per cent decrease).



This price decrease, in line with the price cost-orientation principle, made ways for an improved competitive framework in the sector, with a transfer of the benefits arising from it to consumers, since it made possible the coming about of offers more favourable to consumers.

#### Capacity interconnection (interconnection flat rate)

The capacity interconnection model is the transparent and non-discriminatory offer, by PTC to the OSPs, of a certain capacity of interconnection services, as an alternative to the traditional time-based interconnection model, in the geographical interconnection points (GIPs) included in the RIO, at a fixed price (i.e., an interconnection flat rate).

This innovative model implies that PTC makes available the network resources needed to satisfy the interconnection requests by operators hiring a certain capacity in order to route the eligible traffic, which has its origin or termination in that company's network, in accordance with the agreed-upon quality and availability objectives. Invoicing is resource-based, not based on the routed traffic minutes.

Its introduction in the market, determined by a determination of 17 December 2004, on the imposition of wholesale obligations to the narrow band markets, had as its main goal to contribute to the operators' more effective management of their interconnection resources, by adjusting them in accordance with their traffic needs and profiles, giving all the chance to offer innovative products and services and fostering the use of the fixed network, ultimately benefiting consumers and also contributing to the development of an accrued competitive environment.

A determination of 8 June 2006 approved the specification of changes to be made to RIO in order for it to include capacity interconnection (flat rate). It set vital items, namely eligible traffic, the basic capacity unit, implementation deadlines and the method for the reckoning of the corresponding prices.

As per a determination of 14 December 2006, ICP-ANACOM did not oppose to PTC's inclusion in the RIO of the capacity interconnection mode, under the terms of the proposal submitted by the company on 25 July 2006, and with the following changes decided by this Authority: a) the deadline for request validation must be reckoned in calendar days, not in working days; b) deadlines for the migration from time-based interconnection to capacity interconnection must not be different depending on the stage of development of the offer; c) capacity interconnection resale in 64 Kbps capacity units comes into force six months after the date of that determination by ICP-ANACOM; and d) the provision of RIO's services must not be conditioned by an interconnection agreement.

## Conditions for Grupo PT's companies to make offers with aggregation of network line and traffic

ICP-ANACOM approved since 2004 several determinations concerning PTC's initiatives regarding offers including free traffic, taking into account the serious reservations for the safeguard of competition that these offers brought about, whether it's US tariff changes proposals, campaigns, promotions or tariff schemes.

ICP-ANACOM's determinations in connection with this issue were as follows:

- Determination of 4 November 2004, approved further to the campaigns within the scope of the event "*Roadshow PT perto de si*", which mainly determined that whenever PTC has similar campaigns it should inform companies entitled to provide FTS of those campaigns three weeks in advance, at least, also being its duty to offer to the latter free interconnection in the local, simple transit and double transit levels during the length of the campaign;
- Determination of 14 December 2005, on the conditions for Grupo PT's companies to make offers with aggregation of network line and traffic, which determined that these companies could not have retail offers aggregating access and telephone traffic until the following requirements are met:
  - (i) Grupo PT's companies making available digital network with service integration (ISDN) access, besides analogue accesses, within the scope of the subscriber line resale offer (SLRO);
  - (ii) Grupo PT's companies asking to invoice and collect all services provided over the accesses that were activated for the SLRO, these being provided by Grupo PT's companies or others, when invoiced and collected to and from Grupo PT's companies' subscribers, as long as the invoicing and collection price established by the beneficiary is reasonable and the SLRO is on at the corresponding access and for the corresponding beneficiary;
  - (iii) Effective and efficient implementation of SLRO by Grupo PT's companies.

Taking into account that PTC submitted on 28 August 2006 a proposal for a change to the FTS's tariffs for residential users, to apply to private telephones, with the foreseen date for coming into force being 1 December 2006, which also raised the question of free traffic in

certain periods<sup>9</sup>, ICP-ANACOM approved on 28 September 2006 a DD that, among other conditions, took the sense of the said determination of 14 December 2005.

Notwithstanding the fact that specific and more detailed matters regarding the analysis of these tariffs are dealt with further below, in the section of this Report dealing with the US, mention should be made here that ICP-ANACOM conditioned straight away the coming into force, by companies of Grupo PT, of the conditions according to which these companies made available offers aggregating, in one single price, network line and traffic.

While the previous hearing of the interested parties of the DD of 28 September 2006 was ongoing, PTC launched on 4 October 2006 the tariff scheme "PT Free Noites".

Among other reasons, ICP-ANACOM considered that the coming about of that price package hindered the effectiveness of the measure that was part of the mentioned determination of 14 December 2005 and recalled by the DD at stake, which explicitly conditioned the existence of free-of-charge minutes in the "Noites" (night time) periods to the effective implementation of the SLRO.

Thus, as per a determination of 12 October 2006, PTC was ordered to immediately suspend the offer of the "PT Free Noites" tariff scheme, which offered "free calls forever", from Monday to Friday, in the "Noites" timetable (from 9 pm to 9 am) for "calls made by PT's clients to other PT's clients and by PT's clients to other fixed network operators", fixed-to-mobile calls being charged at thirty cents per minute (VAT included). In accordance with the available information, no subscription or monthly fee was required and subscription to the plan was quickly made (by dialling \*22).

Under the terms of this Authority's determination, holding the offer would terminate should the following conditions be both verified:

- a) Approval of a determination by ICP-ANACOM confirming that Grupo PT's companies fulfil the conditions of the offer by those companies aggregating in one single price network line and traffic, such as defined in the determination of 14 December 2005; and
- b) Approval of a determination by ICP-ANACOM on the residential FTS tariff proposal, further to the mentioned DD of 28 September 2006.

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<sup>9</sup> Indeed, PTC offered a zero-priced tariff of local and national communications in the "Noites" (night time) period.

- **Subscriber line resale offer (SLRO)**

SLRO is a wholesale offer of the right of invoicing of the operator with SMP's telephone line in the residential and non-residential access to the telephone network at a fixed location retail markets. The development of this offer gives the beneficiaries the chance to launch innovative offer, adding value to the final user by means of creating diversified services, and to compete with Grupo PT's offers aggregating, as optional, access and other services.

As per a determination of 14 December 2004, which defined the obligations applying to companies with SMP in the narrow band retail markets, it was decided that Grupo PT's companies which are operating in the residential and non-residential access to the telephone network at a fixed location retail markets must make an SLRO available and publish its corresponding reference offer.

ICP-ANACOM approved, per determination of 14 December 2005, changes to be made to the reference offer proposed by PTC, its first version being published on 9 January 2006. Since then, PTC changed its reference offer several times.

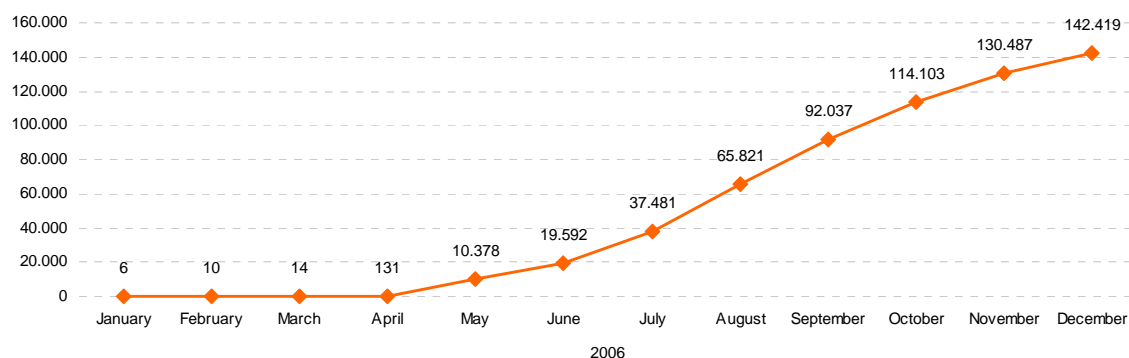
Changes to the SLRO reference proposal and evaluation of the conditions for implementation

ICP-ANACOM determined in 2006 several changes to be made to the SLRO reference proposal (determination of 17 March 2006 and clarifications of 4 October 2006 and 13 November 2006), in order to adjust it to the market needs and to answer practical issues in connection with its implementation, namely on: (a) application of the discounts that apply to pensioners; (b) restricting the use of confidential information; (c) exhaustingly defining rejection causes; (d) counting deadlines regarding quality of service parameters; (e) temporary suspension and suspension due to lack of payment.

Under the terms of the mentioned determination of 14 December 2005 on the conditions according to which Grupo PT's companies can make available offers aggregating network lines and traffic, the effective and efficient implementation of the SLRO by Grupo PT's companies would be met should there be at least 150,000 analogue loops with the activated SLRO, excluding activations by Grupo PT's companies, which took place in early 2007, leading ICP-ANACOM to the conclusion that the SLRO was being implemented in an effective and efficient manner, a gradual and progressive improvement of the offer notwithstanding considering, namely, the market evolution and dynamics, the acquired experience and the needs of the final users.

Highlight should be made to the fact that the amount of SLRO activation requests increased during 2006, as shown on the graph below, which reflects the interest of the market in this type of offer, despite its simultaneous feature of still not permitting a single invoice to the final user.

**Graph 10.** Information submitted by PTC on analogue access with the activated SLRO, excluding Grupo PT's companies' activations



Source: PTC

- **Reference conduit access offer (RCAO)**

The effective use of existing infrastructure is an important item to promoting a competitive environment within the electronic communications market, by creating externalities for the Portuguese economy, within the scope of the investments that were made by several economic agents. In order to reach it, it is mandatory to promote and monitor the terms of access to the public service concessionaire's conduits and, similarly, to other State entities' conduits.

PTC's obligation to give access, by agreement, to conduits, posts and other facilities and locations that it owns or mandatorily manages is defined by no. 1 of article 26 of the ECL. The latter's article 26, no. 4, also determines the concessionaire's obligation to release an offer for access to conduits, which must include the terms of access and use, as defined by ICP-ANACOM.

This obligation's main goal is to overcome certain issues that entities offering publicly available electronic communications networks and services were faced with, namely reproducing investment in conduits, on certain geographical areas, in an economic efficient way. There can even be physical limits to viably of reproducing those conduits in some areas, due to restrictions on the use of underground space, for it is simply packed or due to regulatory restraints decided by municipalities or other entities with jurisdiction over that area.

Thus, ICP-ANACOM believes that the effective and updated implementation of a reference conduit access offer (RCAO) is a vital tool in promoting a competitive and development-friendly environment within the communications market. It assures that investment on conduits and infrastructure is compatible with economic efficiency criteria, avoids inefficiently doubling resources, and minimizes inconveniences for both citizens and economic activities that come with frequent and extensive works above and below ground leading to traffic and town and country planning issues, besides all the environmental matters.

In order to frame the evolution in this field in 2006, mention should be made to ICP-ANACOM's determination of 17 July 2004, further to consultation to interested parties, which set the general principles and terms that the concessionaire's conduits and associated infrastructure should comply with, and the minimum items to be made part of the RCAO, which the concessionaire should submit to ICP-ANACOM and which must comply with the transparency, non-discrimination and cost-orientation of prices principles.

As per a determination of 26 May 2006, changes to be made to the RCAO were approved, as well as those to be made to the setting, keeping and updating of a database describing conduits and associated infrastructure. This determination required further clarifications, which were made, and was later altered by a determination of 23 October 2006, which also analysed the compliance of the reference offer released by PTC and determined the changes that were suited to correct some incompliance that occurred.

The more relevant items that led to ICP-ANACOM's action, namely through the determination of 26 May 2006, are described below.

#### Manageability conditions

ICP-ANACOM decided that it was possible for workers of the offer's beneficiaries or their subcontractors to work on conduits (namely to lay down cables), should they be identified and accredited by PTC by means of a transparent and non-discriminatory procedure, even though this company can monitor their work whenever necessary.

Places for maintenance operations were also specified and given conditioned access, and the criteria for the impracticality of "dead" cable removal were limited. PTC will have to inform and justify to ICP-ANACOM of any places it deems necessary for the future development of the services of which it is a concessionaire.

#### RCAO's prices

Further to ICP-ANACOM's determination, PTC's prices within the scope of the RCAO were lowered vis-à-vis this company's proposal, between 6 and 42 per cent, and in some cases even further, due to changes made to the application criteria. This was the case with the prices for conduit and sub-conduit occupation, which were defined by effective space occupation (in Km and cm<sup>2</sup>), versus PTC's proposal, which considered the exclusive occupation of each sub-conduit by a beneficiary. For instance, the occupation of a sub-conduit with one 20mm-diameter cable (1 cable) and 10mm-diameter ones (2 cables), all with 1 Km long, in the Lisbon and Porto areas, are priced at 49.9 Euros (VAT excluded), a 76 per cent reduction on the 210 Euros price (VAT excluded) that stemmed from PTC's proposal (the exclusive use of a sub-conduit by beneficiary).

### Quality of service parameters

Quality indicators for PTC's provision of RCAO's services and for their corresponding deadlines and objectives were also defined, as were compensations of 50 Euros for each day of incompliance with the objectives of the indicators "Time limit to reply to a request for information on underground infrastructures" and "Time limit to reply to a request for occupation feasibility", in order to foster compliance with the objectives that were set.

Unilaterally imposed limitations, by PTC, on the amount of feasibility requests to process within a month-period and on the ability to install or remove cables on conduits within that time were also terminated.

**Table 3.** Time limits set by the RCAO

<b>Time limit</b>	<b>Objective</b>
Time limit to reply to a request for information on underground infrastructures	5 working days
Time limit to reply to a request for occupation feasibility	15 calendar days
Time limit to schedule the monitoring of non-urgent intervention operations	24 consecutive hours
Time limit to schedule the monitoring of urgent intervention operations	8 consecutive hours
Readiness level of the monitoring service	PTC must guarantee that 95% of the monitoring services take place on the dates requested.

Source: Determination of 26 May 2006

### Descriptive database of conduits

Taking into account the need to foster the optimization of the RCAO by means of releasing information on the record of conduits and associated infrastructure, ICP-ANACOM decided on the said determination of 26 May 2006 changes to be made to the setting-up, keeping and updating of a database describing conduits and associated

infrastructure. These were mainly within the scope of the need to define a detailed and phased schedule of both the procedure to make the database manageable and the setting-up of the record of conduits and associated infrastructure, taking into account the need to optimise that offer by means of making the database available. ICP-ANACOM deemed these actions paramount for alternative operators to gain knowledge of the existing conduits and their state, thereby giving them the ability to adequately plan their operations.

#### Development of the offer

Even though it was effective as from 14 July 2006, the RCAO immediately became of interest to several companies on the market. By the end of 2006, the amount of requests for information on conduits and the feasibility of their occupation grew continuously, with 140 and 423 requests, respectively.

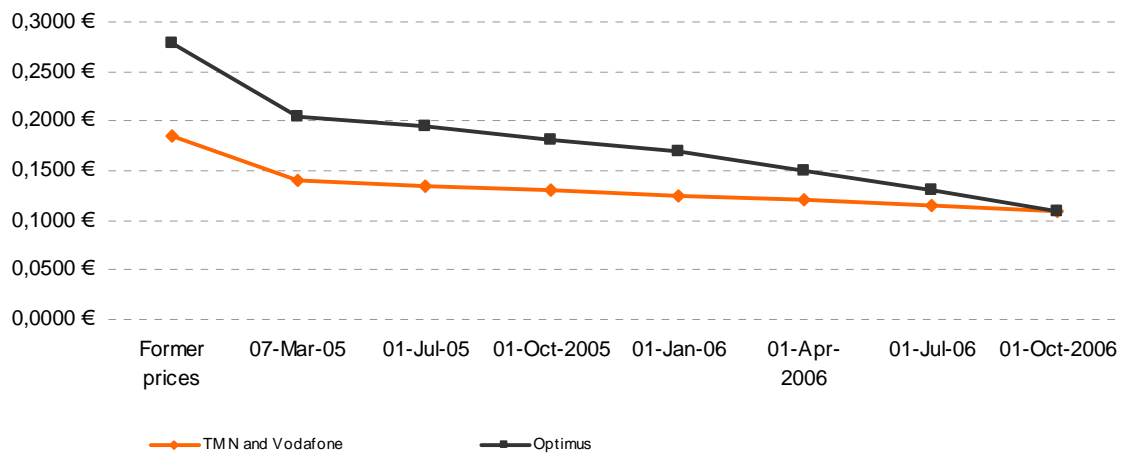
- **Wholesale markets for voice termination on individual public mobile networks services**

Within the scope of the wholesale markets for voice termination on individual public mobile networks services, voice calls termination prices kept their downward trend, as decided by ICP-ANACOM in February 2005. By the end of 2006, mobile operators' prices were 0.11 Euros (VAT excluded) for all types of calls.

Graph 11 and Graph 12 compare the average price on a date that was previous to ICP-ANACOM's latest action with the average prices as of July 2006 in several countries which NRAs are part of the Independent Regulators Group (IRG). In that time, the average prices of the Portuguese mobile operators decreased significantly more than the average prices in force in other countries.

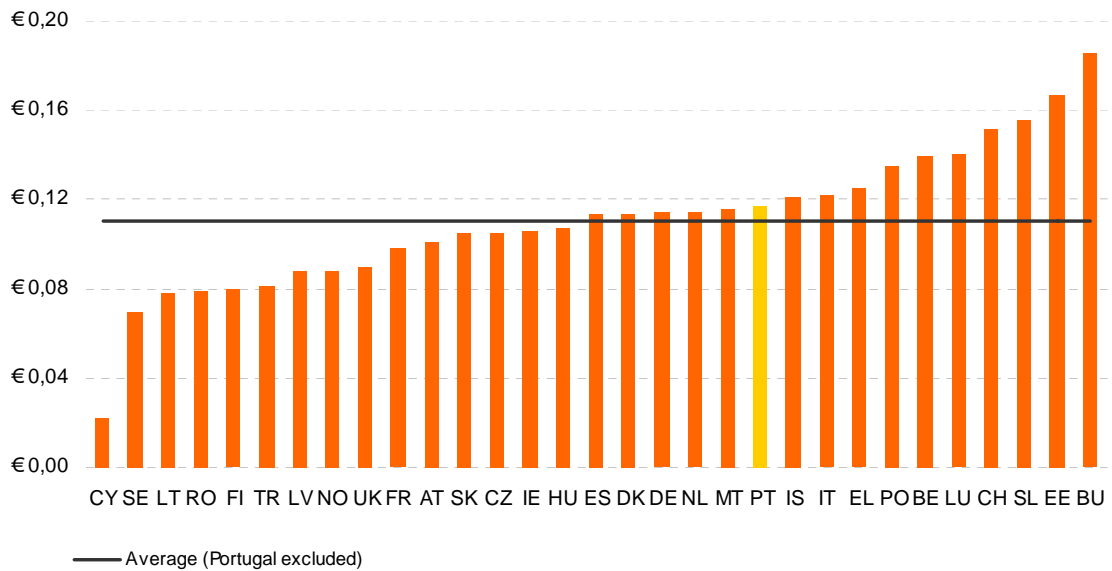


**Graph 11. Evolution in the fixed-to-mobile termination prices**



Source: Determination of 25 February 2005

**Graph 12. Average fixed-to-mobile termination prices – July 2006**



Source: IRG

Even so, and due to price decreases in other countries, Portugal's position within the EU does not seem to reflect the state of development that this market has in this country.

- **Audit to PTC's regulatory costing**

Since 2000, PTC is deemed as an entity with SMP in the fixed telephone networks market and or the fixed telephone service, and also in the leased lines market. It is subject, in these markets, namely to price control, account separation and cost accountancy.

It is thus up to PTC to have a cost-accountancy system, for regulatory purposes, which must include all data on costs and their handling, namely direct, joint and common costs

per service or per product and their form of allocation, in respect with the principles, determinations and recommendations of ICP-ANACOM.

ICP-ANACOM, or another entity assigned by it, has the duty to audit PTC's regulatory costing, to check its compliance with both the legislation in force and the national and international rules and good practices within this scope, in order to make sure that it leads to credible results. It is also up to ICP-ANACOM to issue and release the corresponding declaration of conformity.

Further to auditing PTC's 2002 and 2003 regulatory costing of both the fixed telephone and the leased lines service, awarded to an outside company (BDO Binder & Co), ICP-ANACOM approved in a determination of 4 May 2006 the auditing report to the results of PTC's regulatory costing service as the US concessionaire in the fiscal years 2002 and 2003.

## 2.2 FREQUENCIES

### 2.2.1 National Frequency Allocation Plan (NFAP)

Regarding Spectrum planning, NFAP's revision, made in application of the ECL, took great importance nationally. Within the scope of spectrum planning, the ECL gave ICP-ANACOM the tasks of frequency planning, in compliance with the spectrum availability criteria, of assuring effective competition in the relevant markets and of effective and efficient use of frequencies.

The 2005-2006 NFAP includes a frequency allocation table, the allocated frequencies, and the reserved frequencies to be made available in 2006, within the scope of the electronic communications networks and services, whether available or not to the general public, as well as the indication of the cases when it is necessary to be granted rights of frequency use and their related granting procedure. It also includes the use of frequencies that are exempt of radio licensing.

Because it is a tool with a significant impact on the market, the 2005-2006 NFAP was subject to the general consultation procedure, which ended in January 2006, in accordance with article 8 of the ECL, having all comments by the entities that took part in this procedure been taken into account. Furthermore, during 2006:

- The NFAP was updated, further to the publication of Directive 2005/82/EEC of the European Parliament and the Council, of 14 December, revoking Directive 90/544/EEC of the Council regarding frequency bands designated for the coordinated

introduction in the Community of a public pan-European land paging system (ERMES);

- 87.5-108 MHz frequency band was introduced in wireless audio systems for very small power micro broadcasters (non-licensed applications that should operate on a non-protection and non-interference basis), further to the agreement at the European Conference of Posts and Telecommunications Administrations (CEPT) in connection with the figures that should be authorised for this type of applications;
- The availability of 50 channels in the 410-430 MHz bands was foreseen for electronic communications networks and services not available to the public at large, due to then-recent requests to use the mobile trunking system (TETRA) and thereby preventing possible further requests of spectrum for that system;
- A fixed wireless access (FWA) license was revoked further to a request by an operator.

In compliance with article 9 of Decree-Law no. 151-A/2000 of 20 July, the 2005-2006 NFAP includes the list of licensing-exempted stations and networks. This list replaces that of nos. 2 and 3 of the Notification on radio licenses, of 10 July 2003.

### **2.2.2 Fixed wireless access (FWA)**

ICP-ANACOM recovered on 23 February 2006 the rights of use of frequencies granted to several operators in geographic areas where it was clear that they did not intend to maintain those rights. On 23 November 2006 it redesigned those rights based on the subjected projects.

At the end of that procedure, the following companies kept rights of use of frequencies due to claiming interests in maintaining their FWA operations:

- AR Telecom – right to use a 2 x 56 MHz block, in the frequencies 24.885-24.941 GHz and 25.893-25.949 GHz, in the geographical area 1;
- Broadnet Portugal – right to use a 2 x 56 MHz block, in the frequencies 25.109-25.165 GHz and 26.117-26.173 GHz, in the geographical areas 1 and 2;
- Novis – right to use a 2 x 56 MHz block, in the frequencies 24.773-24.829 GHz and 25.781-25.837 GHz, in the geographical areas 1 and 2, a 2 x 28 MHz block, in the frequencies 24.801-24.829 GHz and 25.809-25.837 GHz, in the geographical area 3, and a 2 x 28 MHz block, in the frequencies 3633-3661 MHz and 3733-3761 MHz, in the geographical areas 1, 2, 3, 4 and 7;

- OniTelecom – right to use a 2 x 56 MHz block, in the frequencies 24.549-24.605 GHz and 25.557-25.613 GHz, in the geographical areas 1, 2 and 9;
- PTC – right to use a 2 x 28 MHz block, in the frequencies 3410-3438 MHz and 3510-3538 MHz, in the geographical areas 1, 3, 5, 6 and 7;
- Vodafone Portugal – right to use a 2 x 56 MHz block, in the frequencies 24.997-25.053 GHz and 26.005-26.061 GHz, in the geographical areas 1, 2 and 3;
- WTS – right to use a 2 x 175 MHz block, in the frequencies 28.0945-28.2695 GHz and 29.1025-29.2775 GHz in the geographical areas 1, 2, 3, 4, 5, 6, 7, 8 e 9.

It is worth reminding that, further to the publication of Administrative Rule no. 1062/2004, of 25 August, altering the operation model of FWA systems, and to the consultation to FWA operators for expressions of interest on the use of the frequencies, a two-phased (Phase I and Phase II) action plan had been defined in 2005.

After the end of Phase I, in which no additional spectrum requests were considered, and given the recovered spectrum, available for new allocations, and the expressions of interest on the same spectrum, which, along Phase I, were brought to ICP-ANACOM's knowledge, Phase II began on 23 February 2006, with the submission to the full accessibility regime of the 24.5-26.5 GHz frequency band, given the following facts:

- In accordance with the expressions, interest in additional spectrum was generally focused on areas 1, 2 and 3, with a required amount per area of 2 x 56 MHz;
- Rights of frequency use were recovered as a result of Phase I;
- There was spectrum available, due to Teleweb's FWA license termination in this frequency band;
- A certain amount of spectrum was foreseen for the expansion of networks in connection with the awarding of the FWA licenses in 2000.

Thus, a change to the NFAP was decided on 23 February 2006 regarding the frequency bands reserved for FWA operation in the 24.5-26.5 GHz band, and its allocation procedure. Within this scope, the allocation of rights of frequency use in this band evolved to be made in accordance with the full accessibility regime, depending on the well-grounded submission of the several mandatory items.

In Phase II, Vodafone Portugal was allocated on 21 April 2006 the right to use additional frequencies in the 24.941-24.997GHz / 25.949-26.005 GHz, for the operation of the FWA system in the geographical areas 1 and 2.

### 2.2.3 Broadband wireless access (BWA)

The need to cover economically unattractive areas (rural and low-penetration areas and even developing countries with poorly developed communications infrastructure), the massive use of wireless equipment (Wi-Fi) and the user's need for mobility all led to the coming about of a new technology aiming at metropolitan areas – *Worldwide Interoperability for Microwave Access* (WiMAX). This new technology gives access to broadband Internet and is an alternative to the use of ADSL and cable. It offers fixed and mobile connections within an area of coverage of up to 100 Km in diameter.

On the other hand, 3.4-3.8 GHz and 5.8 GHz (5725-5875 MHz) frequency bands are currently identified for the introduction in Europe of BWA applications, namely systems based on WiMAX technology, with preference for the 3.4-3.6 GHz band due to a greater availability than that of the 3.6-3.8 GHz band.

The 5.8 GHz (5725-5875 MHz) frequency band was also initially identified for the introduction of that technology, even though limited to fixed and nomadic applications, given the requirements put forward by the industry and interference issues with applications already operating in that band.

Given the well-known interest of several market agents in introducing BWA applications in Portugal, in the above-mentioned frequency bands, ICP-ANACOM launched, per its determination of 23 November 2006, a public consultation on the introduction of BWA in Portugal, which took into account the positions that have been debated internationally, namely within the EC and the CEPT, and the results of the FWA procedure. ICP-ANACOM's approval of the public consultation's report on BWA, and the action-plan that was laid-out further to it, took place in 2007<sup>10</sup>.

It is worth highlighting that ICP-ANACOM authorized technical experiments with WiMAX-type systems in the 3.4-3.6 GHz band (namely to entities PTC, Broadnet Portugal, Sonaecom, Instituto Superior de Engenharia de Lisboa and Universidade da Beira Interior). The experiments were made further to the submission, by the liable entities, of data on technical conditions and the area of those experiments, and the frequencies could not be used for commercial operation of any services and assuming that these experiments would not cause harmful interference to other communication services in operation.

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<sup>10</sup> Decision of 14 June 2007.

## **2.2.4 Mobile telephone service (GSM 900/1800) – renewal of rights of use of the frequencies**

Licenses for the provision of the mobile telephone service (MTS), which were granted in due time, remain in force for 15 years from their date of issuance. The validity period of Vodafone Portugal's license thus expired on 18 October 2006 and that of TMN on 16 March 2007. The validity of the license granted to Optimus expires on 20 November 2012 only.

Before the end of the validity deadline, Vodafone Portugal and TMN asked from ICP-ANACOM, in accordance with the ECL, the renewal of their rights of frequency use.

Thus, in compliance with the combined terms of articles 8 and 20 of the ECL, ICP-ANACOM decided on 8 June 2005 to open a general consultation procedure aimed at receiving from the network operators of the second generation mobile services (GSM 900/1800) and remaining interested parties the items that could objectively establish the set of conditions that should be complied with in their operation and further to the renewal of their corresponding rights of frequency use. Among the questions issued in connection with that consultation, the following were made in connection with (i) the progressive release of channels, as a possible migration of services and clients from the GSM 900/1800 to the third generation of mobile services (UMTS) takes place, (ii) the reinforcement of the operators' coverage obligations, (iii) the access to the GSM networks, namely involving the interest of other entities in gaining access to the said networks, the terms according to which that interest could be materialised and new services that could be made available by those entities in order to satisfy the final users' needs and (iv) the introduction of new quality parameters in the voice service, and its extension to data services (*Wireless Application Protocol (WAP)*, *General Package Radio System (GPRS)*, short messaging service (SMS) and multimedia messaging service (MMS)).

Further to taking into account all the statements received on these issues, ICP-ANACOM concluded:

- i) Regarding the progressive release of channels, should a possible migration of services and clients from the GSM 900/1800 networks to the UMTS networks occur, that the Spectrum allocated to the mobile operators should be re-allocated, using, for instance, the GSM 900/1800 spectrum for other technological suites, namely UMTS, depending on the degree to which the migration of services and clients from the GSM 900/1800 networks to the UMTS networks takes place;

- ii) Regarding the reinforcement of the operators' coverage obligations, namely to the new road axles, the main railways and the subway stations, that the operators should continue to assure, at least, the coverage at the time of the renewal of their rights, both from a geographical standpoint and from a demographic one, even though their coverage of certain spots and areas may be asked from them, namely in order to satisfy communication needs important to the population and to the economic and social development;
- iii) Regarding access to GSM networks, due to an important amount of expressions of interest on MVNO operation, that its coming into the mobile communications market, although desired as a catalyst to improved and more effective response in this market, would be approached further to the analysis of market 15, which was then ongoing;
- iv) Regarding the introduction of new quality parameters in the voice service, and its extension to data services (WAP, GPRS, SMS e MMS), that the parameters and levels of quality applying to the voice services which were part of the then-current license should remain in force and that no quality parameters should be set for data services based on GSM 900/1800 networks. The reason for that judgement was that the quality of service on GSM mobile networks benchmarking studies, periodically made and from a standpoint of the use of the service by the consumers. Concluded that they had a good coverage and performance level. On the other hand, the results of the tests to SMS also led to the conclusion that this service had a very good performance.

Further to a previous hearing of the companies, ICP-ANACOM decided on 23 February 2006 and on 21 December 2006, respectively, to grant the requests for the renewal of the rights of frequency use submitted by Vodafone Portugal and by TMN for the provision of MTS in accordance with the GSM 900/1800 system and to renew such rights, for 15 years. It set the corresponding endings on 19 October 2021 and 16 March 2022. Vodafone Portugal's title of renewal of its right of use of frequencies was issued, further to a previous hearing, on 20 July 2006. Concerning TMN, its title of renewal of the right of use of frequencies was issued in February 2007.

### **2.2.5 Television activity operation – renewal of rights of frequency use**

Founded on the Television Law of 1990 (Law no. 58/90, of 7 September), the Resolution of the Council of Ministers no. 49/90 of 27 December (published on 31 December 1990), approved the Regulation of the public contest for the licensing of the third and fourth television channels corresponding to the third and fourth general coverage networks

(forecasted on Map II annexed to Decree-Law no. 401/90 of 20 December). Licenses were granted with the unique purpose of operation of an activity of television for 15 years, renewable for the same time if required by the licensees.

With the Resolution of the Council of Ministers no. 6/92 (2<sup>nd</sup> series) of 6 February, the Government granted the third and fourth television channels to SIC – Sociedade Independente de Comunicação (SIC) and to TVI – Televisão Independente (TVI), respectively. Their licenses ended on 22 February 2007. Per a deliberation of 20 June 2006, the Media Regulator (ERC) renewed their licenses for the operation of the television activity entitled to SIC and to TVI.

With the publication of the ECL, the access regime to this activity went through major changes, namely due to a new regime of general authorisation and to the granting of rights of frequency use being within the scope of ICP-ANACOM's authority. The ECL allows the allocation of rights of frequency use not only to companies offering electronic communications networks or services but also to companies using those networks or services, namely television content broadcasting service providers. Regarding the matter now in focus, the NFAP that was then in force made explicit that the holders of rights of frequency use for the analogue television broadcasting service were, besides Rádio e Televisão de Portugal (RTP) – which special public television service concession contracts included RTP1, RTP Açores (for the Azorean Archipelago), RTP Madeira (for the Archipelago of Madeira) and “2.” – and operators SIC and TVI. Such as stated on the NFAP, the rights of frequency use were allocated to SIC (in the 174-216 MHz, 470-582 MHz and 582-822 MHz frequency bands) and TVI (in the 470-582 MHz and 582-822 MHz frequency bands), and there was an offer of a television programming service available to the general public based on analogue technology.

Given the fact that, in accordance with the ECL's general rule, the rights of frequency use are allocated for 15 years and renewable for the same time, further to a request by its holder to ICP-ANACOM at least one year before the end of the current license, SIC and TVI required in due time the renewal of their rights of frequency use.

This Authority thus launched on 17 February 2006 a general consultation procedure to receive comments from the interested parties regarding ICP-ANACOM's intent to recover the rights of frequency use allocated to SIC and TVI at the date of the switch-off of the analogue television broadcasting, according to the Law and the corresponding changes to the NFAP. This is a particularly important matter due to the fact that the anticipated switch-off would take place before the end of the renewal period, in 2022. Further to analysing all the received comments, taking into account the need to assure a stable regulatory framework and in anticipation of the measures that are due during the time in



force of the rights of frequency use, ICP-ANACOM considered that the termination of such rights of use of the frequencies should be foreseen, further to changes to be made to the NFAP, in particular those that stem from the setting of a legal deadline for the analogue switch-off. Thus, in the deadline for the analogue switch-off, and the corresponding change to NFAP made, ICP-ANACOM will recover, without any cost, the (renewed) rights of frequency use.

Having finished the above-mentioned general consultation procedure, ICP-ANACOM decided on 6 July 2006 to renew the rights of frequency use for the pursuance of the television activity, of which SIC and TVI are holders, for 15 years, and also to set the conditions for the renewal of the rights of frequency use included in the document to issue. ICP-ANACOM decided on 26 October 2006 to issue to SIC and TVI their corresponding documents for the renewal of the rights of frequency use, for 15 years.

## **2.2.6 Planning of the bands for digital television**

The 2<sup>nd</sup> session of the Regional Radiocommunication Conference (RRC-06) took place in Geneva, within the scope of the International Telecommunications Union, from 15 May to 16 June 2006, aimed at planning terrestrial digital broadcasting in the 174-230 MHz and 470-862 MHz frequency bands.

This Conference, in which about 120 administrations took part, had as its main goal setting a Regional Agreement (GE-06) including not only the frequency plan for terrestrial digital broadcasting – the basis upon which television will develop in the coming decades – in Europe, Africa and some Arab countries, but also its technical conditions and the corresponding regulatory procedures.

RRC-06's results were very satisfactory in general, and especially to Portugal, for as the requirements that were put forward were much more ambitious, regarding the amount of coverages, than those put forward by the remaining countries in general – and all requirements were coped with.

It is worth recalling that these requirements took into account Portugal's ambition for television as a whole in the short, mid- and long term, in its various parts, and the frequency plan to adopt would be decisive, in the future, to the Portuguese Administration.

The requirements that were put forward lead to six T-DAB (Television – Digital Audio Broadcasting) coverages, three of a national scope and three of a regional one, and ten DVB-T (Digital Video Broadcasting – Terrestrial) coverages, six of a national scope for fixed reception (three in SFN – Single Frequency Network – and three in MFN – Multi

Frequency Network), one of district scope for fixed reception and the remaining three coverages for mobile reception on terminals of the GSM/UMTS type. The submitted requirements also include the use of one nationally encompassing channel, in the way and for the services that come to be decided in the near future.

The Conference also defined 17 June 2015 as the end of the transition period, which is compatible with the calendar that was foreseen for Portugal. It should however be noted that the European goal of 2012 as the deadline for the analogue switch-off is already known at several levels.

One of the main European goals for this Conference, which stemmed from the fact that the new Agreement is foreseen to be in force for a long time (at least over forty years, just as its predecessor – o ST61 – Stockholm, 1961), was to assure that it was flexible enough to include different services, such as DVB-T and T-DAB. And, in fact, the Agreement fully complies with the Portuguese interests, for it makes it possible for alternative terrestrial systems to use the digital entries of the plan under certain conditions.

It should also be mentioned that the overwhelming majority of European Common Proposals (ECPs), which also included Portugal, that were submitted to the Conference were either entirely adopted or adopted with slight changes. That was namely the case with the technical, regulatory and procedural issues of the Agreement.

### **2.2.7 Digital terrestrial television (DTT)**

ICP-ANACOM, especially through the Mission Union set up for that matter (UM-TD), maintained in 2006 its monitoring of European and international developments in connection with DTT, in order to be aware of the several experiences of its practical roll-out in other countries and, whenever justifiable and adequate, to use them in designing the tools leading to the launch of the Portuguese DTT contest.

For that matter, and in coordination with other entities and bodies, the several models and solutions were tested and, whenever justifiable, recommendations and suggestions were produced, namely regarding the adjustment of the legal framework for the television activity, with the goal of creating the regulatory environment needed for the roll-out of competitive and alternative platforms for the transmission of cable or satellite television. Mention should be made, within this scope, that 2006 saw the allocation, for well-defined periods, of four radio channels for technical experiments with the DVB-T, DVB-H (Digital Video Broadcasting – Handheld) and the compression format MPEG-4 (a Moving Picture Experts Group standard) technological suites.

The industry showed signs of consolidation in 2006, namely with the enterprise of a Sonaecom/PT concentration operation – and the Grupo PT holds, amongst other, the broadcasting network that is mostly used by the television programming service operators.

This framework did not favour the launch of a public consultation nor of a contest for the allocation of rights of frequency use for the DTT, due to the changes to- and the lack of stability of the short-term trends needed for that operation. The market itself showed signs and pointed in that direction, expressing that that was not the adequate time-frame for the launch of the contest, even taking into account that the analogue switch-off tended to be harmonised by consensus all over Europe in 2012.

ICP-ANACOM thus deepened in 2006 the analysis of the several models that could foster the success of the operation, based on the international experiences with its roll-out, namely in the United Kingdom, Germany, Italy, France and Spain.

The process of analysing roll-out models of DTT in Portugal was made in communication with the ERC and with the former Instituto da Comunicação Social (ICS). Several meetings were held for the monitoring and analysis of advantages and disadvantages, market impact and pending critical items that were needed for its adequate roll-out.

ICP-ANACOM repeated its proposal to the Government do launch DTT in Portugal and the desirable schedule, with the required adjustments due to developments that took place meanwhile, viz. regarding technology (cf. developments in connection with compression techniques, such as MPEG-4, and with standards supporting mobile television, such as DVB-H) and market developments (the reinforcement of alternative platforms' competitive positioning and emerging new digital television platforms), with impacts on the licensing model of television programmes based on the terrestrial radio platform stemming from the Television Law.

Several documents were made, the following standing out: (i) the draft determination on the limits to the amount of rights of frequency use reserved to the terrestrial digital television broadcasting service and the setting of their allocation procedure, which is part of ICP-ANACOM's competence (under the terms of article 31 of the ECL); and (ii) the draft Regulation of the public contest for the granting of the mentioned rights of use, also part of ICP-ANACOM's competence (under the terms of article 35 of the ECL).

### **2.2.8 Vodafone Portugal's Homephone**

Vodafone Portugal submitted to ICP-ANACOM on 8 August 2006, in accordance with article 21 of the ECL, a statement regarding the launch of a new electronic

communications offer, called Homephone, and, in accordance with no. 1 of article 21 of the same act, also required permission to use its allocated GSM and UMTS frequencies in the local access to provide services within a well-defined geographical location.

It's an identical service to the electronic communications service notified by Novis on 7 December 2004, which offer was approved by a determination of 25 February 2005 (Optimus Home service). Thus, the analysis of Vodafone Portugal's Homephone focuses on the same issues that were analysed at the time of Optimus Home service's notification:

- Use of frequencies: the issue is the use of GSM and UMTS frequencies allocated to Vodafone Portugal for a purpose that is not comprised within its allocating document, i.e., the supply of capacity from its GSM and UMTS network for the provision of another electronic communications service, the FTS;
- Use of numbers: the need for the configuration of the service, due to the nature of the supporting network itself, to the typical mobility features of the available technological suites in the fixed network systems, at the risk that the righteous use of the "2" numbering range being compromised;
- Transparency of the information to users: given the nature of the offer, there is the need for the service users to have written information, prior to signing any contract, on the service's terms of access and use and, naturally, on its inherent limitations, namely that the service is only provided at the address provided for that purpose by the customer, possible indoor signal reception limitations and possible consequences regarding the caller's location tracking when calling the single European emergency number ("112").

Due to the fact that changes to the terms applying to the rights of frequency use were at stake, the draft determination on the offer of this service was subject to the general consultation procedure described in article 8 of the ECL, and to Vodafone Portugal's prior hearing, by a determination of 19 September 2006.

Further to this procedure, ICP-ANACOM decided on 23 October 2006 to authorise the use of Vodafone Portugal's land mobile network's GSM and UMTS frequencies in the local access network for the provision of the FTS by this company, with the typical features of the submitted service, under some conditions. Vodafone Portugal was also acknowledged the right to use the numbering range "2" of the national numbering plan (NNP), for this service, also under some conditions. That determination also made mandatory for Vodafone Portugal to submit clear and transparent information to final users on the features of the service, namely that the access to this service is only assured at the

address declared by the final user for that purpose, possible indoor signal reception limitations and possible consequences regarding the caller's location tracking when calling "112".

### **2.2.9 Study on the secondary trade of spectrum**

In order to define a future framing for the transmission of rights of frequency use that is adjusted to the Portuguese reality, some preliminary actions took place in 2006, namely a study on the secondary trade of spectrum.

### **2.2.10 Study on the review of spectrum taxes**

ECL's article 105 redefined the tax regime applying to electronic communications.

ECL's Article 105, No. 6, defines that the taxes focused on this section "must reflect the need to ensure the optimal use of frequencies (...) and shall be objectively justified, transparent, non-discriminatory and proportionate in relation to their intended purpose and shall take the regulatory objectives (...) into account". Thus, taxes do not necessarily need to be oriented to the costs of radio spectrum management, nor should they be set regardless of ICP-ANACOM's regulatory goals, in accordance with ECL's Article 5.

This Authority considered that it should propose changes to the then-current tariff model, compatible with the ECL-defined goals, and that it was necessary to gain information on the European radio spectrum framework, as well as an independent view on the tariff model to adopt. A benchmark on this matter took place in 2006, with a view to use a future method in applying spectrum use's taxes.

## **2.3 NUMBERING, PORTBILITY AND PRE-SELECTION**

### **2.3.1 Electronic numbering (ENUM)**

The public consultation on the ENUM<sup>11</sup> service launched by the determination of 23 February 2006 received several contributions from parties related to the electronic communications services<sup>12</sup>.

The replies to this consultation showed several trends, more enthusiastic or more indifferent, probably because the impact of this type of service on the current voice business is still not clear or because of the fear of lack of security on a service that is based on a technology that is supported on a public and open network such as the Internet. In any case, they stated the intention of collaborating in the activities to be developed regarding this matter. ENUM is a service that will be included in the functionalities to be supported by the new generation networks (NGN), which are being progressively implemented by traditional operators, together with or in replacement of the traditional network.

### **2.3.2 Opening of code “30” in the scope of the regulatory approach to voice over IP (VoIP) services**

The determination of 26 February 2006 approved the report of the public consultation, launched following the determination of 4 November 2005, on the regulatory approach to VoIP services, which have recorded a fast growth during the last years.

VoIP services are being developed in Portugal, namely by association with the new broadband and triple-play offers, thus contributing to greater service competition and diversity. The development and generalization of VoIP services are already putting pressure on the traditional voice operators – as a result of the downward pressure on prices and of the entry of new operators – and should be fostering a price reduction to the final consumer, namely with flat-rate type of offers.

As stated on the above-mentioned report, VoIP services that make it possible to received calls from number of the NNP, to place calls to these numbers, or both, are considered to

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<sup>11</sup> ENUM is a function that makes it possible to establish a correspondence between E.164 telephone numbers and electronic communications applications connected to those numbers. For that purpose, it uses a protocol that employs an architecture supported on DNS (Domain Name System). This is a service that makes the convergence between the telecommunications and Internet networks possible.

<sup>12</sup> The final determination, approving the consultation's report and a set of development actions, was adopted already at the beginning of 2007 (on 11 January).

be publicly available electronic communications services. If its characteristics are perceived by the user as being equivalent to those of the traditional FTS and if the respective provision is framed as a telephone service at a fixed location, that offer may be granted a geographical numbering. In this situation, the responsibility for fulfilling the requirement that limits the use of geographical numbers at a fixed location is always of the VoIP provider. Should the VoIP service have a nomadic use, i.e., if it can be used on several locations, then making and receiving calls will be made through numbers in another numbering range.

Therefore, on the same determination, it was decided to create the code "30" to host nomadic use VoIP services, and to allocate ranges of 10,000 numbers to the providers entitled to provide nomadic VoIP services, under the terms defined by ICP-ANACOM, as well as to include that range "30" in the scope of portability. Furthermore, this authority stated its understanding that the conditions applying regarding the interconnection to this non-geographic range should not be too different from the rules currently established for the origin and termination of calls at a fixed location, maintaining the values of termination on the PSTN, and that the same basic principle of the interconnection agreements should be maintained, specially with PTC, based on the RIO.

It was also determined that the VoIP services providers that hold NNP numbering, including those of nomadic use services, when on national territory, must assure the routing of the respective VoIP calls to "112" (with ICP-ANACOM stating that it is necessary for the provider to inform the user, on a separate document, before contracting the service, of the limitations regarding the access to "112", both concerning the correct routing of calls and the capability of locating the user). It also determined that they must assure the sending of the caller line identification (CLI), a functionality that identifies the number of the caller, thus making it possible for the emergency services to make a reply call.

It was also determined that the Quality of Service Regulation approved by ICP-ANACOM (Regulation no. 46/2005, of 14 June), is applicable to the companies providing VoIP service at a fixed location, and that these companies should provide the quarterly statistical information requested to the remaining FTS providers. ICP-ANACOM submitted a form for sending statistical information to consultation by the interested parties, for the statistical monitoring of the nomadic VoIP providers' activity, which was approved by determination of 27 July 2006.

### 2.3.3 Inhibition of the 2-euro additional charge for portability

The determination of 25 May 2006 forbid the additional charge of 2 Euros per month regarding portability in the scope of the Clix ADSL service provision contracts. Indeed, ICP-ANACOM considered “Clix” tariff rates, under which the “maintenance of a PT telephone number” (portability) had a 2 Euros monthly cost, to be incompatible with the Portability Regulation (Regulation no. 58/2005, of 18 August).

The main purpose of the determination was to end a practice discriminating between subscribers with or without ported numbers, forbidden by the Portability Regulation, since the 2 Euros monthly fee did not correspond to a price paid for portability, which would be a perfectly admissible commercial option of the company, but rather to charging an additional amount for the quality of “ported”.

### 2.3.4 Allocation of rights of use of numbers

Following is data concerning the evolution of the allocation of numbers until the end of 2006, showing the increase registered during this last year.

**Table 4.** Geographic<sup>13</sup> and non-geographical numbers<sup>14</sup> – evolution of the national situation

	Geographic numbers				Non-geographic numbers			
	Lisbon geographic area	Porto geographic area	Remaining geographic area	Total	Nomadic services <sup>15</sup>	(600, 707, 708, 760, 800, 808, 809)	Data services (67) (ISP)	Total
2000	130.000	70.000	1.580.000	<b>1.780.000</b>	-	300.000	600	<b>301.200</b>
2001	180,000	60,000	350,000	<b>590,000</b>	-	1,320,000	200	<b>1,320,400</b>
2002	140,000	50,000	530,000	<b>720,000</b>	-	110,000	100	<b>110,200</b>
2003	30,000	20,000	20,000	<b>70,000</b>	-	100,000	300	<b>100,600</b>
2004	30,000	30,000	190,000	<b>250,000</b>	-	100,020	100	<b>100,220</b>
2005	130,000	100,000	610,000	<b>840,000</b>	-	120,000	200	<b>120,400</b>
2006	180,000	100,000	1,940,000	<b>2,220,000</b>	110,000	100,000	0	<b>210,000</b>

<sup>13</sup> Note: numbers are allocated in blocs of 10,000 for range “2”.

<sup>14</sup> Note: numbers are allocated in blocs of 10.000 for ranges “600”, “707”, “708”, “760”, “800”, “808”, “809” and singly for the range “80080” (*País Directo*). Blocs of 100 are allocated for range “67” (data services), since the last three digits are predefined to zeros.

<sup>15</sup> Note: numbers are allocated in blocs of 10,000 for range “30”



**Table 5.** Audiotext numbers<sup>16</sup> evolution of the national situation

	<b>601 General</b>	<b>607 Televoting</b>	<b>608 Sells</b>	<b>646 Contests and Pastimes</b>	<b>648 Erotic</b>	<b>Total</b>
Numbers allocated before 2004	18,000	12,000	11,000	11,000	12,000	64,000
Numbers allocated in 2004	0	0	0	0	0	0
Numbers allocated in 2005	1,000	1,000	1,000	1,000	1,000	5,000
<b>Numbers allocated in 2006</b>	<b>1,000</b>	<b>2,000</b>	<b>1,000</b>	<b>1,000</b>	<b>1,000</b>	<b>6,000</b>
Numbers recovered in 2004	12,000	8,000	9,000	9,000	2,000	40,000
Numbers recovered in 2005	0	0	0	0	0	0
<b>Numbers recovered in 2006</b>	<b>0</b>	<b>0</b>	<b>0</b>	<b>0</b>	<b>0</b>	<b>0</b>
<b>Numbers currently allocated</b>	<b>8,000</b>	<b>7,000</b>	<b>4,000</b>	<b>4,000</b>	<b>12,000</b>	<b>35,000</b>

### 2.3.5 Ported numbers

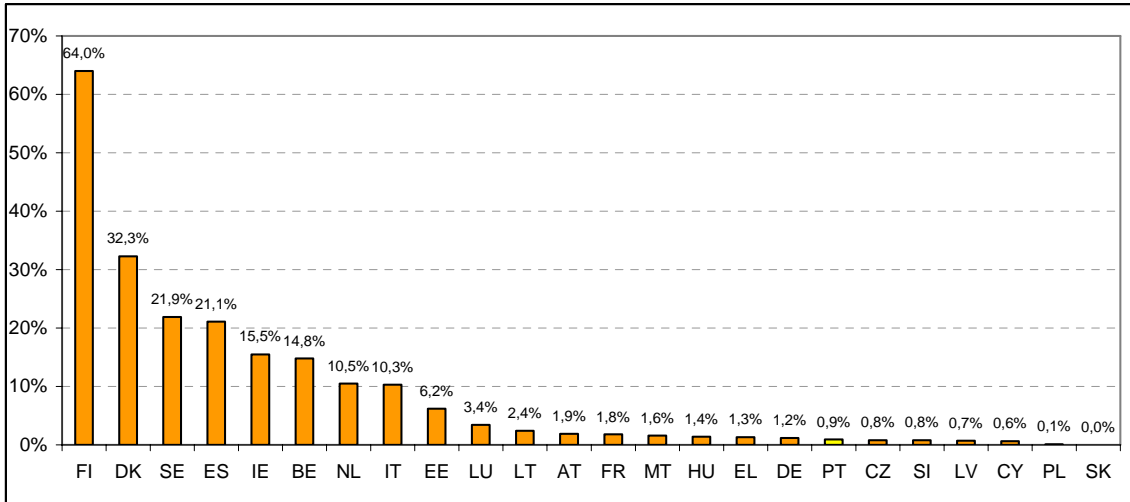
On 31 December 2006, there were a total of 564,539 ported numbers, regarding, respectively, 446,371 geographical numbers, 117,597 mobile numbers and 571 non-geographic numbers.

Regarding the amount of ported mobile numbers, the following graph shows that Portugal is quite far regarding the proportion of numbers ported in the MTS in several EU countries.

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<sup>16</sup> Note: Numbers are allocated in blocs of 1000.

**Graph 13.** Percentage of mobile numbers ported versus the overall MTS customers

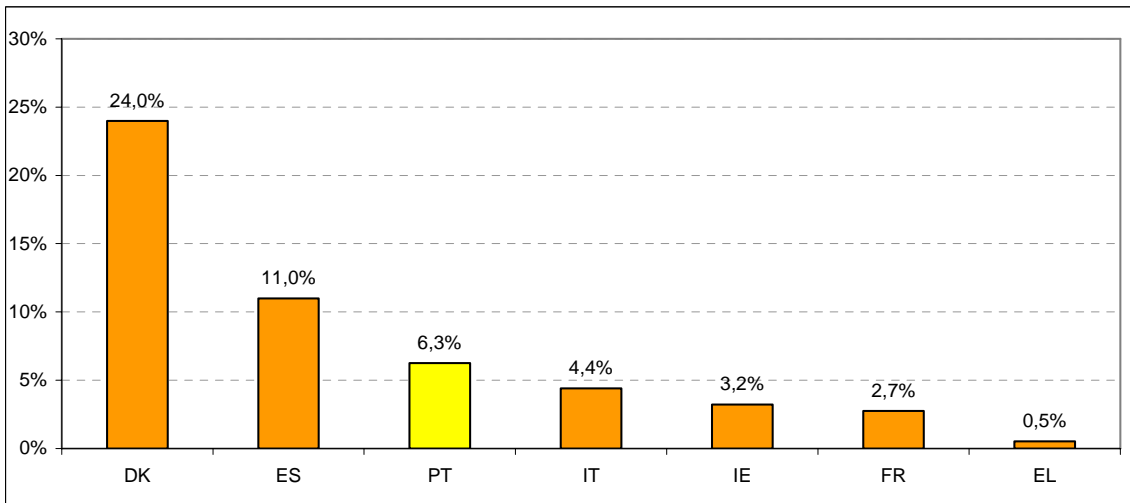


Source: 12<sup>th</sup> EC Implementation Report Realtor – data from October 2006

Under the conditions described, one registers that this is one of the areas that the Authority should analyse in greater depth.

Regarding the proportion of ported fixed numbers, the situation in Portugal is more favourable, as can be seen on the following graph.

**Graph 14.** Percentage of ported fixed numbers versus the total of main telephone accesses (cumulative values until the end of 2005)



Source: ECTA Regulatory Scorecard 2006 – data from December 2005

### 2.3.6 Selection and pre-selection regulation

The selection and pre-selection Regulation – Regulation no. 1/2006, which establishes the principles and rules applying to selection and pre-selection on public telephone networks was published in the Official Paper *Diário da República*, 2<sup>nd</sup> Series, of 9 January, and came into force five days after its publication.

The publication of the selection and pre-selection Regulation ended the process developed by ICP-ANACOM, and was approved by determination of 14 December 2005.

## **2.4 UNIVERSAL SERVICE**

### **2.4.1 Quality of service parameters and levels**

Determination of 30 March 2006 approved the quality of service parameters and performance objectives applying to the US, which the US provider (USP) is obliged to fulfil, notwithstanding the application of the Basis for the Telecommunications Public Service Concession stated in the annex to Decree-Law no. 31/2003 of 17 February,

Under the terms of this determination, the USP – PTC – is obliged, namely, to provide consumers, before celebrating any contract, clear, comparable and updated information on the quality of its service. For that purpose, every year, until the last working day of month of January, it should provide information on the performance levels reached the year before, information on the performance levels it intends to offer throughout the year. It should as well update the information provided to end users, whenever, during a given year, it decides to change the performance levels it proposed to offer during that year.

**Table 6. US quality of service parameters**

UNIVERSAL SERVICE QUALITY OF SERVICE PARAMETERS		TARGET	2006 VALUES
QSP1. Supply time for initial network connection (a) Average delay in the supply of a connection when the customer does not set a target date (days) (a1) corresponding to 95% of the swifter installations (a2) corresponding to 99% of the swifter installations (b) Rate of supply requests fulfilled up to the date agreed with the customer, when the customer does not set a target date (c) Rate between the number of initial connections provided with the customer setting the target date and the total number of initial connections supplied		21	20
		43	43
		85%	81%
		n.a.	47%
QSP2. Rate of faults per access line Number of reported faults per access		0,1	0,13
		n.a.	381.586
QSP3. Fault repair time (hours) (a) Fault repair time of the local access network (a1) corresponding to 80% of the swifter repairs (a2) corresponding to 95% of the swifter repairs (b) Other faults repair time of the local access network (b1) corresponding to 80% of the swifter repairs (b2) corresponding to 95% of the swifter repairs (c) Rate of repairs carried out within the repair time limit intended to be offered to customers by the universal service provider		72	70
		165	145
		47	45
		108	97
		80%	80%
QSP4. Average response time for operator services (a) Average response time for operator services (seconds) (b) Rate of calls taken by the operator within 20 seconds		11	5,3
		80%	95%
QSP5. Unsuccessful calls (a) Number of eligible calls for PQS5 calculation purposes broken down by national calls international calls (b) Proportion of unsuccessful calls in the case of national calls (c) Proportion of unsuccessful calls in the case of international calls		n.a.	1.841.366.263
		n.a.	0,19%
		n.a.	
QSP6. Time to set up calls (a) Total number of eligible calls for PQS6 reckoning purposes: national calls international calls (b) Time needed to set up national calls (seconds) (b1) corresponding to 100% of the swifter calls (b2) corresponding to 95% of the swifter calls (c) Time needed to set up international calls (seconds) (b1) corresponding to 100% of the swifter calls (b2) corresponding to 95% of the swifter calls		n.a.	n.d.
		n.a.	n.d.
		n.a.	n.d.
		n.a.	n.d.
		n.a.	n.d.
		n.a.	n.d.
QSP7. Response time for directory enquiry services (a) Directory enquiry services average response time (seconds) (b) Proportion of calls answered within 20 seconds by operators or equivalent response systems		5	3,3
		95%	94,8
QSP8. Proportion of coin and card operated public pay-telephones in working order Proportion of whole days during which the public pay-telephones are in full working order relatively to the potential number of operational days of the average public pay-telephones park		96%	97%
QSP9. Bill correctness complaints Proportion of bills claimed relatively to the total number of bills issued		0,04%	0,02

This information should be announced and provided to end users, in written form, in all of the service's points of sale, and should be publicized on the USP's Internet website. Every quarter it should also send ICP-ANACOM a report with monthly measurements of each different parameters set. Notwithstanding the report with monthly measurements of the quality levels, the reference period for applying penalties is one year. Possible penalties for the non-fulfilment of the performance objectives established by ICP-ANACOM could be applied from 2008 on, once the results regarding 2007 are evaluated.

Depending on the USP's report, the performance objectives applying to the US's quality of service parameters should have been met, except for QSP1.b) – "Percentage of requests for the provision of connection satisfied until the date agreed with the customer, when the customer defines a target date" (5 per cent deviation) – and QSP2. – "Rate of malfunctions by access line" (30 per cent deviation).

## **2.4.2 USP's strategy for public payphones**

The determination of 14 December 2004, concerning the obligation applying to the narrow band retail markets, maintained the proceedings to be fulfilled by PTC, as a USP, in the provision of public payphones, including the yearly publication of a strategy for the development of the public payphones asset.

According to this, on 6 April 2006 PTC presented a declaration of development strategy for 2006. The highlights of that document include:

- a) Forecasts presented by PTC, concerning coverage in terms of geographical dispersion and of population density, as seen on the following table;
- b) Coverage of locations with special social interest, with PTC foreseeing an increase of about 2 per cent concerning locations classified as "Hospitals and Health Centres", "Courts" and "Hotels and Pensions"; and
- c) Access of users with disabilities, with the historical operator foreseeing that it would have, in 2006, about three hundred booths allowing for wheelchair mobility, in the areas of Greater Lisbon, Greater Porto, Algarve and Coimbra.

For 2006, PTC foresaw a global decrease of 1947 public payphones, regarding 2005, which in terms of percentage would correspond to a 4 per cent decrease.

**Table 7.** Amount of public payphones foreseen by PTC for 31 December 2006

Amount (31Dec2006)	Exterior			Interior		Total
	Card-only	Card and coins	Coin-only	Conventional telephone	Coin-only	
Aveiro	5	363	190	779	677	2,015
Beja	7	183	148	386	260	984
Braga	13	330	161	1,015	621	2,140
Bragança	7	52	22	494	110	685
Castelo Branco	21	114	80	606	340	1,161
Coimbra	23	296	114	829	474	1,736
Évora	11	131	130	142	241	654
Faro	17	734	221	1,194	648	2,815
Guarda	18	89	64	557	231	960
Leiria	24	246	88	853	435	1,645
Lisbon	209	3,770	1,560	2,177	2,867	10,584
Portalegre	5	76	89	149	172	491
Porto	68	1,767	575	839	3,689	6,939
Santarém	14	209	144	749	414	1,530
Setúbal	35	1,164	507	899	903	3,507
Viana do Castelo	5	131	78	500	244	957
Vila Real	7	84	37	705	288	1,121
Viseu	21	138	96	1,052	426	1,733
Madeira	30	178	129	180	474	991
Azores	11	145	70	137	244	606
Total	551	10,200	4,500	14,243	13,760	43,254

Source: PTC

Regarding the amount of outdoor booths in 2005, it stood -99 payphones below the forecast (-1 per cent), while the amount of indoor booths had a deviation of -2.094 payphones (-7 per cent). Overall (indoor + outdoor), the difference between the forecast and the achieved in 2005, by PTC, was of -2,193, which corresponds to a -4 per cent variation. According to PTC, these deviations were related with:

- a) The closing of postal stations where services were provided under the “conventional telephone” modality;
- b) The high amount of hooliganism that the equipments are subject to; and
- c) The disassembling of payphones in the “conventional telephone” modality, because they were only used for traffic with a residential character.

PTC referred that, nonetheless, the setting of agreements with Municipalities for the installation of payphones on their premises and the increase in the indoor coin booths contributed to the achievement of the objectives set.

### 2.4.3 Price accessibility

- **Residential tariffs of the FTS provided in the scope of the US**

On 28 August 2006, PTC sent ICP-ANACOM a proposal for the FTS residential tariffs in the scope of the US, with the entry into force foreseen of 1 December 2006. The most relevant points of that proposal included free telephone traffic on the “Nights” period (working days from 9 p.m. to 9 a.m.) and an increase of 3.8 per cent on the monthly fee.

On a determination of 28 September 2006, ICP-ANACOM decided, by DD, not to oppose this proposal, as long as a set of conditions would be fulfilled, in a cumulative and complete way. Those conditions resulted from concerns raised regarding the defence of consumers’ interests and the guarantee of fair competition in the electronic communications market, particularly regarding fixed telecommunications.

On the approved DD, it was understood that the proposal could be a linked sale, which justified establishing a condition regarding the implementation of an alternative tariff plan, without any traffic associated to the monthly fee. Furthermore, the proposal raised a set of concerns regarding competition, namely whether other operators could replicate it, which justified the introduction of measures concerning the entry into force of the tariff plan and identifying the need for changes to the interconnection prices.

Under the terms of the law, the DD was subject to public consultation and to the Opinion of the Advisory Board. During this process, on 20 December 2006, PTC put forward a change to its proposal, focusing specially on eliminating the increase to the monthly fee and on making an option available for the users who do not wish or cannot profit from free traffic. Those changes were in line with some of the concerns conveyed to ICP-ANACOM in the scope of the mentioned public consultation, with ICP-ANACOM having the power to decide about them, and the DD moving towards final decision, with possible changes. However, the need – identified by most of the replies to the public consultation – to specify the changes needed in terms of interconnection, implied the need for ICP-ANACOM not to decide on the overall proposal without hearing PTC and the remaining parties once again, which happened through a new DD, by 18 January 2007<sup>17</sup>.

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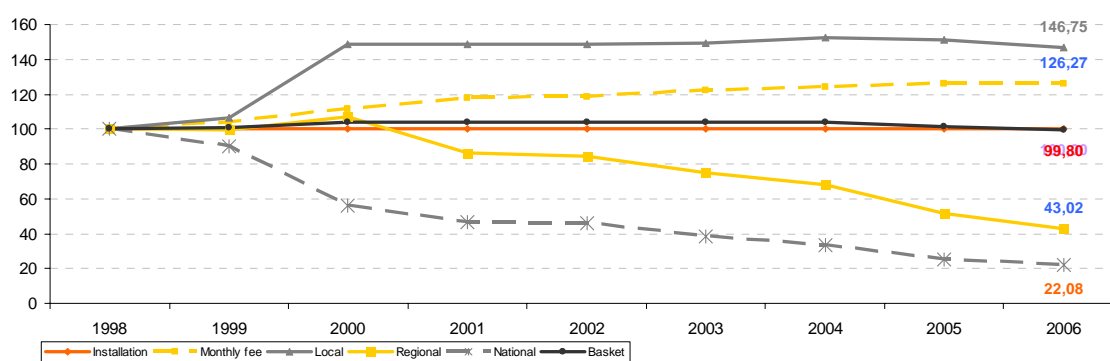
<sup>17</sup> After consultation to the interested parties, a final determination on this matter was approved on 28 February 2007, which made possible the application of the last tariff proposed by PTC as long as customers were given the alternative to choose a scheme without free calls and with a lower monthly fee, and that PTC applied a 10 per cent reduction on the interconnection tariffs, in order to make it possible for the tariff proposed to be replicated by their competitors, conditions which that company chose to accept. PTC implemented the proposed traffic (with the mentioned option) on 26



That enclosure should include: (i) a factual, relevant and properly detailed description of each available option; (ii) an indication of the tariff option that applies should the customer not oppose it and that that decision could not imply any cost for the customer; and (iii) the contact points available for the customer to change the tariff option.

Regarding the evolution of FTS's prices for residential customers, in 2006, one continued to register a decrease in the prices charged by the historical operator, with a reduction, in nominal terms, of the medium and long range traffic prices, and the maintenance of the monthly fee prices. In comparison to 1998, the historical operator's price basket decreased 0.2 per cent, in nominal terms, corresponding to a 18.4 per cent fall in real terms.

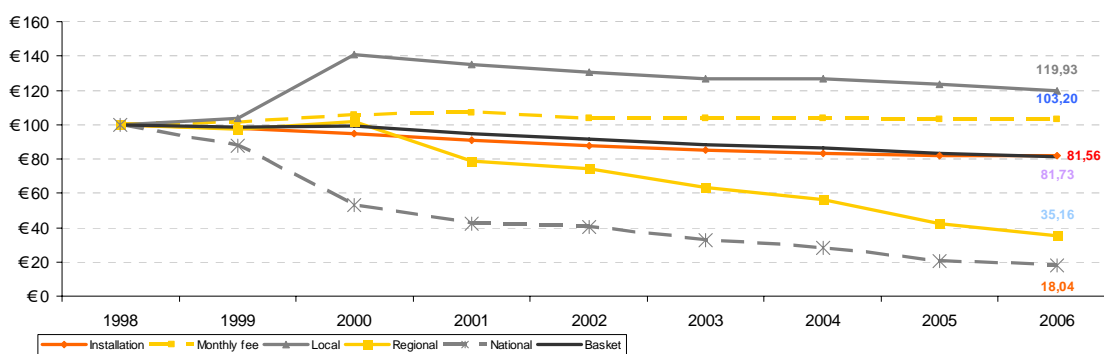
**Graph 15.** Evolution in nominal terms of FTS prices for residential customers (base year =1998)



Source: ICP-ANACOM estimate based on the tariffs in force on each period and on PTC's traffic and revenue information.

In real terms, it is possible to see a generalized decrease of call prices to the several traffic destinations since 2000. Regarding the service's monthly fee, it has followed the evolution of the Consumer Price Index (CPI), showing figures below those registered in 2000.

**Graph 16.** Evolution in real terms of SFT prices for residential customers (base year = 1998)



Source: ICP-ANACOM estimate based on the tariffs in force on each period and on PTC's traffic and revenue information.

- **USP's fixed-mobile tariffs**

Under ICP-ANACOM's determination of 14 December 2004, regarding the setting of obligations in the narrow band retail markets, PTC's fixed-mobile tariff, being a USP, is subject to ICP-ANACOM's validation, since that operator's retention value must be cost oriented and within reasonable limits, thus assuring the reasonability of the end prices charged to users, with PTC having to reflect the reduction set for the fixed-mobile termination prices on the retail prices practiced (determination of 25 February 2005).

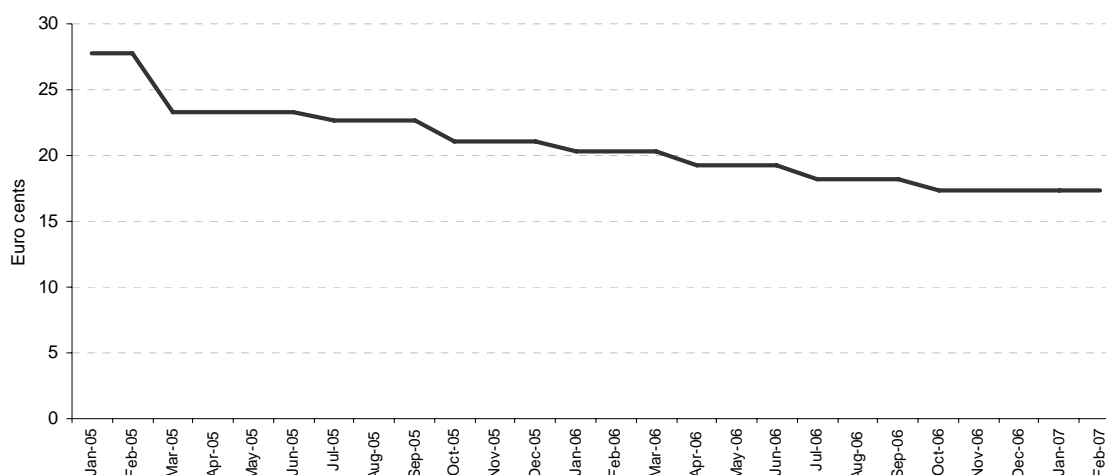
On 1 September 2005, ICP-ANACOM approved a determination concerning PTC's retention in the fixed-mobile traffic, where it established that PTC must gradually reduce that traffic's retention value, so that it becomes closer to the current European costs and practices, according to a pre-defined schedule, as in the following table.

**Table 8.** Maximum values established for retention (in Euro cents)

Maximum values established for retention	
Dates	Maximum values
1 October 2005	7.50
1 January 2006	7.20
1 April 2006	6.90
1 June 2006	6.60
1 October 2006	6.30

Following the measures adopted – the determinations of 23 March and 8 June 2006 standing out – PTC's retention value in the fixed-mobile traffic decreased about 17 per cent, between January 2005 and January 2007, while PTC's retail prices on that traffic dropped about 38 per cent during that period.

**Graph 17:** Evolution of PTC's retail prices in the fixed-mobile calls (in Euros cents, without VAT)



Source: ICP-ANACOM estimate based on PTC's traffic information

- **Option between detailed and non-detailed invoicing**

Under the terms of the ECL, the providers of publicly available electronic communications services must provide detailed bills, when asked for.

According with what is stated on no.1 of article 95 of the ECL, PTC, while being a USP, is obliged to provide detailed invoicing to subscribers, so that they may verify and control their expenses concerning the use of the public telephone network and of the publicly available telephone services associated to it. For that purpose, no. 2 of the mentioned article 94 specifies that the following minimum level of detail must be assured for free: (i) Initial price for connecting to the telephone service, when applicable, (ii) subscription price, when applicable, (iii) usage price, identifying the several traffic categories, showing each call and its respective cost, (iv) periodic price for equipment rental, when applicable, (v) price for the installation of material and accessory equipment after the beginning of the service provision, (vi) subscribers debits and (vii) compensation further to reimbursement.

Concerning invoicing detail, it is also important to contemplate what is stated in Law no. 41/2004 of 18 August, regarding the handling of personal data and the protection of privacy in the electronic communications sector, according to which subscribers are entitled to receive non-detailed invoices.

ICP-ANACOM had knowledge that PTC was not fulfilling the obligation to provide detailed invoicing, rather choosing to provide a simple or summarized invoice, which did not include the identification of each call and its respective cost, to anyone who had not requested detailed invoicing.

On 8 July 2005, a new PTC subscription contract for the provision of publicly available telephone service at a fixed location was approved, where it states that there are four types of invoicing and that the customer may choose, free of charge, anyone of those types:

- Level 1 – invoicing with communications totals and figures by communications categories;
- Level 2 – invoicing with the details of the several traffic categories, showing each call and its cost;
- Level 3 – invoicing containing the list of all communications made by chronological order;
- Level 4 – corresponds to the level 3 invoice, but suppressing the last four digits.

According to article 94 of the ECL, clause 11 of that contract establishes that that invoice will include elements corresponding to the minimum detail level foreseen in no. 2 of that article, with the exception of level 1 invoicing, which will be provided to the customer should he express that will. Field 3 of the subscription form informs that, should it not be filled out, level 2 invoicing will be provided.

This way, although assuring compliance with the law in the matter of detailed invoicing in the contracts that PTC would sign with new subscribers, the right of the subscribers that celebrated contracts with the company before the use of the contract model approved on 8 July 2005 were still not safeguarded.

Thus, joining article 94 of the ECL with no. 1 of article 8 of Law 41/2004, it was concluded that PTC should not provide detailed invoicing to its customers before they were given the chance to opt for the non-detailed invoicing.

In this context, on 15 December 2005 ICP-ANACOM approved a DD imposing the following to PTC:

- “To send, within 60 days, to old subscribers (who signed subscription contracts before the contract model approved on 08/07/2005), together with the invoice, a form where they have the possibility to choose one of the invoice types foreseen in the approved subscription contract. This form should explain which elements make part of each type of invoice and inform that, should the subscriber not state otherwise within a certain period to be set by PTC, he will continue to be provided with the same invoice type he has been receiving or which he has chosen previously;

- To inform ICP-ANACOM, within 60 days, of the fulfilment of the established in the previous paragraph, with a copy of the form sent to subscribers;
- The provision, after the deadline to answer the form, of invoices with the detail level imposed on no. 2 of article 94, to all subscribers that have not chosen this type of invoicing”.

After the previous hearing, the abovementioned draft determination was approved in its final form on 6 July 2006, with PTC fulfilling what was established by ICP-ANACOM, forwarding a copy of the form sent to subscribers.

#### **2.4.4 Net costs of the universal service obligations**

Under the terms of article 12 of Decree-Law no. 458/99 of 5 November, in the meanwhile revoked by the ECL, the providers of the telecommunications US should be compensated for the negative margins in connection with its provision, should they exist. These operators must demonstrate these margins and subject them to the approval of the NRA, which should be preceded by an audit from ICP-ANACOM or from an independent authority nominated by it.

In this context, on 12 October 2006 PTC sent ICP-ANACOM an estimate of the net cost resulting from the universal service provision obligations (CLOSU) for 2003, and a revision of those estimates regarding 2001 and 2002, requesting the activation of the procedure foreseen in the ECL for the purpose of its respective financing. The CLOSU estimated by PTC represent, for 2003, about 8 per cent of that provider’s FTS’s profits and are being evaluated by this Authority.

#### **2.4.5 Inventory of the concession of the public telecommunications service**

As per a determination of 23 October 2006, the inventory of assets associated to the concession of the public telecommunications, regarding 2004, was approved with the following reserves to be erased by the PTC’s concessionary in the following inventories:

- a) The standards used in the making of the inventory do not assure that it may offer the guarantee of a global and supported audit/revision by the selected company, and thus the adoption of the International Standard on Related Services 4400 (ISRS 4400) is not acceptable;
- b) The report of the audit company selected by PTC did not expressly refer that items belonging to the State’s private domain did not exist;

- c) The buildings that are partially occupied with infrastructure associated to the concession were not classified as being associated to the concession, as they should have, and the part occupied by infrastructures supporting the provision of the concessioned services was also not quantified;
- d) The hardware and software for the billing of the concessioned services in connection with the concession were put under PTC's private domain, while they should be associated to the concession;
- e) The amount after which an element is considered to be a "high value" one was not clearly identified.

Furthermore, it was recommended to PTC that, from 2007 on:

- a) The inventory should be sent until the month of August of the year following the year it reports;
- b) The communication to ICP-ANACOM of the audit company selected by the concessionary to perform the inventory should be accompanied by its corresponding budget.

## **2.5 USER PROTECTION**

Notwithstanding other relevant measures mentioned in other parts of this report, particularly concerning the universal service, below is ICP-ANACOM's specific action in connection with the protection of users in 2006.

### **2.5.1 Withdrawal period applying in the scope of pre-selection**

By a determination of 25 May 2006, ICP-ANACOM decided to keep in force the obligation, previously imposed to Grupo PT's companies (determinations of 17 July 2003 and of 14 December 2004), regarding a withdrawal period during which the entities are forbidden to engage on any activities aimed at recovering pre-selected customers (win-back).

However, considering the market evolution, that period was reduced from 6 to 4 months. At the same time, it was decided to strengthen the obligation's efficiency by introducing the following additional adjustments to the measure in force:

- The counting of the withdrawal period should start at the time of the communication of the pre-selection request from the pre-selected provider (PSP) to the direct Access provider (DAP);
- Notwithstanding the respect for the confidentiality of the information provided in the scope of pre-selection, Grupo PT companies may, during the withdrawal period, should they roll out commercial actions that are not specifically aimed at their subscribers which are other companies' pre-selection customers, transmit their services, namely commercial, as well as to other companies of Grupo PT, the information that the customer is under pre-selection or that he has an undergoing pre-selection activation request. This information, however, can only be used in order to avoid that those customers be contacted for commercial purposes during the withdrawal period. No additional information on those customers can be transmitted, namely regarding the pre-selection provider with which they have, or intend to have, a contract with, the type of traffic that they pre-selected or which they intend to pre-select, or the date of the pre-selection request;
- In order to facilitate the audits / monitoring actions made by ICP-ANACOM, or by a contracted third party, for monitoring the fulfilment of this determination, Grupo PT companies should constantly keep updated and available information that details the procedures defined in this scope.

This determination entered into force 30 working days after its respective notification to Grupo PT companies, applying to pre-selection request presented after these dates to

Grupo PT companies that provide access to the public telecommunications network at a fixed location.

This determination was preceded by the approval of a DD, approved by determination of 15 December 2005, which was subject to previous hearing and to the general consultation procedures legally foreseen.

### **2.5.2 Subscription contracts**

Under the terms of the ECL, it is up to ICP-ANACOM to approve the subscription contracts for the provision of electronic communications services, following the opinion of Instituto do Consumidor (Consumer's Institute) – which, in 2007, changed its name to Direção-Geral do Consumidor (Consumer's General-Directorate).

After ICP-ANACOM approved, on 1 September 2005, the guidelines regarding the minimum content to be included in the contracts for the provision of electronic communications services, all companies that provide services were obliged to adapt their previously approved subscription contracts to the applying regulations, in accordance with the mentioned guidelines, within 90 working days after their notification.

On registers that the mentioned obligation was and has been complied with by the different service providers in general. Thus, since the mentioned guidelines were approved, until the end of 2006, 16 subscription contracts for the provision of electronic communications services were approved.

### **2.5.3 Changes to the Quality of Service Regulation**

Determination of 4 October 2006 launched a public consultation on a draft Regulation aiming to change the Regulation on quality of service currently in force (Regulation no. 46/2005 of 14 June). The regulation in force sets the parameters to be measured and publicized by the companies that provide the service of access to the public telephone network at a fixed location, while the draft subject to consultation intends to also include in that regulation, parameters that apply to companies providing the Internet access service.

### **2.5.4 Information to the general public on the electronic communications services' usage and offer conditions**

According to the ECL, ICP-ANACOM is responsible for assuring a high level of consumer protection in their relationship with companies providing electronic communications networks and services and to promote the provision of clear information, specially



demanding transparency regarding the tariffs and conditions of usage of publicly available electronic communications services.

Also according to its statutes, approved by annex to Decree-Law no. 309/2001 of 7 December, it is ICP-ANACOM's obligation to protect the interests of consumers, specially those using the US, in coordination with the competent authorities, namely by promoting the clarification of consumers, assuring the publication of information associated to the public use of telecommunications.

Thus, on a first moment, ICP-ANACOM approved, on 2 September 2005, the "guidelines on the minimum content to be included in the contracts for the provision of electronic communications services", aiming, on one hand, to create conditions that allow the providers to overcome the difficulties felt in the process of approval of the contracts and to rapidly and effectively fulfil what the law states, and, on the other hand, to guarantee the protection of consumers concerning the contracts signed, as well as to improve the quality of the information provided.

In order to guarantee an effective and complete implementation of the regulatory framework resulting from the ECL, aiming to assure a similar and adequate level of information to all users, ICP-ANACOM approved, on 21 April 2006, a determination regarding the object and form of providing to the public the conditions of the offer and provision of electronic communications services.

Through this determination, ICP-ANACOM defined the form to which the publicity and availability of information associated to the offer both of publicly available (mobile and fixed) networks and services must obey, as well as that of other publicly available electronic communications services.

The information to publicize and provide – which is usually common to both offer categories, with the necessary adaptations resulting from the applying legal rules – focuses particularly on the identification of the provider, the provided services, prices (including all type of usage and maintenance charges, discounts and specific tariff systems, in order that consumers may determine how the services will be charged and billed), compensation and reimbursement systems, types of maintenance services offered (recommending the publication and provision of the contact numbers of the attendance service for the communications of malfunctions, attendance hours and respective costs, as well as the minimum quality level offered to customers regarding malfunctions' resolution times) and typical contract conditions.

The determination also obliges the draft subscription contracts for the provision of the service to be published and publicized, as well as the information regarding the judicial or extra-judicial mechanism for conflict resolution, including the internal proceedings created by the company, in order to clarify the public and consumers in particular of their existence and how to access them.

The approved determination also includes an annex with the quality parameters of the electronic communications sector, suggested by ICP-ANACOM so that providers define quality levels, including the following items: maximum time for admission to the service, maximum time for interruption/suspension of the service, maximum time for answering to the customer's complaints and information requests, maximum access speed guaranteed., maximum time for satisfying a request for a ported number, and maximum time for satisfying a pre-selection request.

### **2.5.5 Mobile telephone service Tariff Monitor**

Following its launch in 2005, ICP-ANACOM rolled out in 2006 an information campaign on the mobile telephone service tariff monitor, a simulator created and developed by ICP-ANACOM with the cooperation of the three mobile telephone service operators – TMN, Vodafone Portugal and Optimus. The TM makes it possible for consumers to refer to and compare, free of charge and in an interactive way, the tariffs in force, at national level, for voice calls, SMS and MMS.

The information campaign took place between 17 April and 30 July 2006, with the main purpose of promoting the TM among the users of mobile telephone communications, through several communication media: information leaflet and poster, banner on several Internet sites and ads on the press, sectoral magazines, consumer associations, and on the national ATM machines network. It also counted with the participation of several entities, from associations representing the communications sector, consumer defence associations and mobile equipment retailers, to public bodies, such as Instituto do Consumidor (Consumer Institute). On the other hand, we tried to increase the effect of this publicity by making it present on other locations, such as post office stations, *lojas do cidadão* (citizen's shops), higher and secondary education institutions, municipalities and cyber centres.

This information campaign had a positive impact on the use of the TM, with a daily average of accesses and simulation operations rising from 55 and 71, respectively, in the month before the campaign, to average daily values of 341 accesses and 438 operations performed in the month after the beginning of the campaign.

In terms of usage, TM registered about 43.2 thousand accesses and more than 57.1 thousand simulation operations performed, in 2006, which corresponds to a monthly average of about 3,600 accesses and 4,760 simulations.

## **2.6 COOPERATION WITH OTHER ENTITIES**

### **2.6.1 Competition Authority (AdC)**

- **Concentration processes**

According to the competition's juridical regime, whenever a company concentration operation takes place with impact on a market subject to sectoral regulation, AdC, before making its decision, asks for the opinion of the respective Regulatory Authority. With this framework, AdC asked ICP-ANACOM to pronounce itself regarding three concentration operations, namely Sonaecom/PT, OniTelecom/Winreason and Prisa/Media Capital.

Given its importance, the Sonaecom/PT concentration operation is treated separately on this Report

#### **- Sonaecom/PT**

Throughout this process, AdC asked for the Regulation Authority's opinion several times and in several contexts. On one occasion, ICP-ANACOM gave its opinion by its own initiative – on 18 September 2006, when it sent AdC its “Note on the writing of the commitments regarding the mobile market by Sonaecom”; and, on another occasion, it promoted a public consultation, sending an invitation, on 29 September 2006, for all interested parties to state their opinion, before issuing its final opinion on the operation.

We following present a simplified and non-exhaustive chronology of this Authority's interventions regarding this process:

- 4 April – ICP-ANACOM states its opinion on the operation notified to AdC;
- 2 June – ICP-ANACOM, on its own initiative, communicates to AdC after having knowledge that the process moved to in-depth investigation;
- 11 August – ICP-ANACOM issues opinion on a draft version of commitments presented by Sonaecom to AdC;
- 18 August – ICP-ANACOM sends AdC a memorandum on “(ICP-ANACOM's) MVNO definition for the purpose of remedies”, following one of the questions presented by that Authority;
- 28 August – ICP-ANACOM sends clarifications to questions presented by AdC following the opinion of 11 August;

- 18 September – ICP-ANACOM sends AdC a document defining the minimum set of commitments in the domain of mobile communications which, according to its understanding, Sonaecom should strictly respect;
- 28 September – ICP-ANACOM issues a statement clarifying that it has not yet presented a final stand on the operation;
- 29 September – ICP-ANACOM launches a public consultation, which went on until 11 October;
- 19 October – ICP-ANACOM issues opinion concerning AdC's draft decision;
- 7 November – ICP-ANACOM sends comments as a reply to an information request by AdC regarding commitments;
- 10 November – ICP-ANACOM sends AdC a set of considerations on the development of the process;
- 17 November – ICP-ANACOM replies to AdC following the sending by this Authority of a new draft proposal on the notifier's commitments;
- 23 November – ICP-ANACOM issues opinion on AdC's draft decision following the reconfiguration of the commitments offered by Sonaecom.

As it is known, confidentiality reasons associated to this whole process, set by AdC and which the sectoral Regulator must also, consequently, guarantee, conditioned the—profound, extensive and probably in good time – public release of ICP-ANACOM's stands. That fact notwithstanding, they became of public knowledge later on, and from different sources, we list some of the guide lines that supported this Authority's stands, both concerning the operation and the way of articulation between the transversal Regulator and the sectoral Regulator.

Regarding the operation:

ICP-ANACOM considered the commitments for the disintegration of PT fixed networks' activity (disaffection of one of the networks and vertical functional separation of the copper network) to be globally positive, having supported that one of the networks should be sold to a completely independent entity. The need to safeguard the US, currently supported on the telecommunications basic network, was also always stressed by this Authority. Also in the domain of the fixed networks, the Regulator supported that it should be given back the frequencies associated to one of the FWA operations that would become part of the economic group resulting from the concentration.

Regarding the mobile networks, the spectrum issue took on a central importance, with ICP-ANACOM considering that, should the concentration operation take place, it should be given back the rights of frequency use associated to one of the mobile operations involved in the operation, as well as the respective licences for the operation of the mobile service, within a given period – and notwithstanding that the sell of one of the mobile operations would be considered the best solution by this Authority, and by most of the parties that replied to the public consultation made. Also in this scope, ICP-ANACOM made it clear that, should the concentration operation be drawn in order to include the transmission of rights of frequency use, then the power to approve this transmission would belong to ICP-ANACOM, which would imply a change in the nature of this Authority's intervention from the advisory to the decision role.

In the scope of mobile communications, the lack or inappropriateness of the commitments presented were continuously pointed out by ICP-ANACOM, in areas such as the creation of conditions for the entry of MVNO, the conditions to attenuate the network effects, the rules regarding the retention of customers or the price-cap mechanism, proposing solutions to AdC.

ICP-ANACOM's opposition to a market configuration of administrative initiative, resulting from the acceptance of compromises presented by the notifier, was also conveyed to AdC.

Throughout the whole process, ICP-ANACOM's permanent worries with the degree of the commitments' effectiveness, demands and feasibility, connected to the setting of behavioural commitments and the following regulatory risk in connection with it, were transmitted to AdC, as well as the need to safeguard the sectoral regulation's intervention ability regarding a set of domains (in the approval of the separation models, in monitoring and verifying the fulfilment of commitments, in sharing resources when considering resources subject to sectoral regulation, in conflict resolution mechanisms, in numbering, among others). According to ICP-ANACOM's understanding, the overlap of regulatory responsibilities in the electronic communications market, contrary to the basic regulation principles, should be avoided.

Notwithstanding, this Authority early recognized that the concentration operation, with the commitments that were being taken, would potentiate considerable improvements in many markets, which it also stated on its final opinion, issued on 23 November 2006.

On this last stand, ICP-ANACOM considered that the changes introduced to the draft decision had put it closer to the minimum conditions established by the sectoral Regulator – which were associated to the maximum regulatory risk that this Authority was willing to

take. However, since the notifier did not propose such minimums, nor did AdC completely accept ICP-ANACOM's conditions for participating in the development, monitoring and verification of the operation, this Authority did not give a favourable opinion to the draft project that had been presented by AdC.

Regarding the way of articulation between the Authorities:

Throughout the process ICP-ANACOM took several stands on what it considers to be, according to the rules in force, the best way to articulate both authorities in the case of concentration operations. On another matter, once the whole process ended, ICP-ANACOM also considered that enough issues for future reflection had resulted from it.<sup>18</sup>

Regarding the first aspect, it is this Authority's understanding that there should be a practice of applying the Competition Law in sectors subject to sectoral regulation in a way that provides safety and "comfort" to all parties involved, i.e., AdC, the sectoral Regulator and companies.

As an example, one mentions obtaining the opinion from sectoral Regulators in the scope of concentration operators, foreseen in article 39 of the Competition Law, and the possibility of different interpretations regarding the fulfilment, or not, of this requirement of the law when the sectoral Regulator has issued an opinion on phase I and afterwards AdC decides to move to in-depth investigation (phase II). On this specific aspect, it is ICP-ANACOM's understanding that the sectoral Regulator should be asked for opinion in a phase of in-depth investigation of the processes of previous control of the concentration processes that have impact to the markets subject to specific sectoral regulation.

Besides that, a different interpretation intending to support that the rule set in no. 1 of article 39 of the Competition Law would dismiss the sectoral Regulators' opinion before a final decision at the end of the second phase, based on the fact that their opinion had been requested at the beginning of the first phase, would obviously hinder, in all cases, the mechanism foreseen on that legal text. This is, if such interpretation would be accepted, by chance, the duty to request the opinion of sectoral Regulators could be limited to the first phase, when the law surely formulates such duty under broader terms. Such an understanding would thus also seem to ICP-ANACOM to be contrary to the law and to the spirit of the law.

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<sup>18</sup> This understanding, expressed in the following paragraphs, was in fact supported by ICP-ANACOM when it was asked by the Court of Auditors (*Tribunal de Contas*) to give its opinion in the scope of the audit to Competition Regulation.

Also in the context of concentration operations, it should be mentioned that the rule contained in no. 2 of article 39 of the Competition Law is liable to have several interpretations. It is ICP-ANACOM's understanding that the sectoral Regulator's opinion issued under the terms of no. 1 of that article, where it regards to exclusive powers, cannot be harmed by AdC's decision.

Regarding the second issue – reflection on the possibility of introducing changes to the legislation (e.g., to the Competition Law) – ICP-ANACOM obviously considers that this level of intervention belongs to the legislative powers (Government and National Parliament). Therefore, that is where this issue should be analysed, namely by thinking about in which measure the different configurations of the markets subject to sectoral regulation in the several sectors are relevant, and about the own ways of intervention of the corresponding National Regulatory Authorities. Notwithstanding, it would be useful to question up to which degree it makes sense for a concentration operation focused on very specific and regulated areas to be evaluated by the transversal Regulator.

- **Inquiry processes due to anticompetitive conducts**

In the scope of the competition's juridical regime, whenever AdC knows of facts that occurred on a domain that is subject to sectoral regulation and that could be classified as anticompetitive conducts, that Authority should immediately communicate these facts to the sectoral Regulator with powers over that matter so that it can give its opinion. In this context, namely, a request from AdC was analysed following the opening of an inquiry process for possible anticompetitive conducts, for facts occurred in the domain subject to ICP-ANCOM regulation.

- **Administrative offence procedures**

Also in the scope of the competition's juridical regime, whenever a procedure is concluded regarding anticompetitive conducts with impact on a market subject to sectoral regulation, and AdC intends to adopt a final decision that is the application of penalties or other sanctions, this should be preceded of a previous opinion by the Regulatory Authority. In this context, opinions were sent to AdC concerning draft decisions regarding administrative offence procedures.