

5 FINAL CONSIDERATIONS

In the regulatory context of electronic communications and posts in Portugal, 2006 was an atypical year, with discontinuities that demanded new orientations and a new regulatory agenda to an activity that is, considering the continuous technological changes, subject to a permanent challenge of re-evaluation and change potential.

The two biggest discontinuities have different natures: one concerns change within the own institution – the change of the Board of Administrators in mid-year; the other, the potential change in the structure of the sector following the Sonaecom's IPO over PT.

The first one has natural impacts on the internal organization and on the rhythm of ICP-ANACOM's activity, albeit the ever present worry to preserve its assets of knowledge and good practices.

The second one, both for the unexpected situation and for the impacts, outside ICP-ANACOM's control, on its agenda, ended up by setting the year's regulatory image, even leading to the dimness of supporting regulatory matters under development or mutation, which a reach that the recently-nominated Board of Administrators could only radically face by the end of the year.

Additionally, the second discontinuity – the IPO – is not separable from the first one – the change of the Board of Administrators – because it took office at a crucial turning point of this operation's evaluation – the development of in-depth investigation, and at a moment when a schedule had been set for the final decision (before August 2006), which turned out not to be realistic, but which setting left decisive marks on the year's regulation agenda.

If we add the EU regulatory context to this picture, with its draft "2006 Review", regarding the electronic communications regulatory framework, which implied and even greater commitment from ICP-ANACOM in the activities of the European Countries' National Regulators (NRA) associations (IRG/ERG), as well as the proposals for the liberalization of posts, we will have a clearer image of this year's challenges.

These challenges, fostered even more by the non-stop technological changes that launched the concept of "convergence", will become the plasma in which the regulatory activity of 2007 will undoubtedly submerge.

Time is unstoppable and 2006's disruptions aren't so by now. They became normal and continuous activities, further on.

Therefore, we should go back to some of the words that ICP-ANACOM's Chairman, on behalf of the Board of Directors, used in his acceptance speech:

“Teilhard de Chardin said, in the early decades of the XX century, that the «great progress of thought in modern times is becoming aware of time...We can no longer scientifically understand an object besides it being a consequence of an unlimited series of preceding states.»

This is also what we feel when we take on ANACOM's Administration. Nothing begins! It is something that continues and lays on its history, already presenting an undeniable asset that we want to honour, without losing sight of the necessary evolution, shown in the words of Teilhard Chardin.

For that reason we want to honour and recognize all those who preceded us, for all they have built and for the prestige that they gained for this Institution.

A special word of recognition to the last Board of Administrators, for the work it developed under such difficult conditions.”

These last references are the clearest expression of the regulatory activity's continuity and, above all, the expression that in 2006 that activity was shared by two Board of Directors, well supported by the set of decisions that were made during that year, albeit the mentioned discontinuities.

It should be stressed that, for the Regulator and in connection with the regulatory activity, the need to systematically evaluate the risk of a significant amount of decisions is becoming ever more pressing, which was obvious in 2006. This stems mainly from the increase in legal disputes that comes with the possibility of appeal to the courts by the recipients of regulatory determinations from ICP-ANACOM, which have become generalized practice quite quickly and which may lead to a regulatory “void”. This should thus be properly handled, namely when dossiers with broad impact on the market are at stake. It should be underlined, in this scope, that the terms of ICP-ANACOM's determinations in connection with electronic communications, issued under the terms of the ECL, can be appreciated by the appealed courts. In these cases, the court must be aided by three experts. On one hand, this is a system that deepens the possibility of liability of the regulator's actions (since the terms of its determinations may be evaluated, and not only their “formal” legal status). On the other hand, it introduces in the system the technical knowledge that is needed for a position with good enough grounds, one that takes into account the weighting of the own and specific interests of regulation.

The current Board of Administrators should now address the challenges of 2007, the majority of which naturally proceed from 2006: the developments of the “2006 Review”, without forgetting the institutional evolution of EU’s regulation, the liberalization of posts, the evolution of the US in the electronic communications and the posts, the market analysis and their possible re-definition under the “2006 Review” and the enlargement of “convergence”, weighting the re-evaluation of the criteria for the application of the regime of penalties so that it becomes an effective item in the discouragement of non-fulfilments and violations to the legislative and regulatory framework, the spreading of broadband, not forgetting the role of mobile telephony, the launch of digital terrestrial television and the development of mobile television and, lastly, but not less important, the review of the national frequency allocation plan, supported on a scenery of neutral technology and aiming at a more efficient spectrum use, with the contribution of a new tariff proposal.