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FRAMEWORK

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●● 1 Framework

This first section of the 2009 Regulation Report seeks to present, in a clear and simple manner, the structure which will be followed throughout this report (section 1.1), while in section 1.2, a comprehensive analysis is conducted of the activity pursued in 2009 in light of the strategic objectives defined by ICP - Autoridade Nacional de Comunicações (ICP-ANACOM) for that year.

●● 1.1 Nature and structure of Report

The 2009 Regulation Report is prepared in accordance with the provisions of paragraph 1 of article 51 of the Statutes of ICP-ANACOM, as laid down in annex to Decree-Law no. 309/2001 of 7 December. These provisions determine that this report be submitted on an annual basis to the Government, and also presented to the Assembly of the Republic (Parliament).

In line with previous years, this report is published separately from the Activities Report and from the document on the State of Communications, and it is important to note that these three publications are complementary tools which, from distinct points of view, contribute to an analysis of the developments seen in the electronic communications and postal services sector.

The present report continues to focus on the aspects usually considered in the context of market regulation, including measures to promote competition and protect users, as well as the management of radio spectrum and numbering resources, which are essential tools for the accomplishment of such regulation.

This report therefore sets out to provide a more comprehensive description of regulatory activities, describing the motivations and the results which are forecast or already achieved from adopted measures.

Special note should be made of the activities linked to strengthening the efficiency and effectiveness of sectorial regulation and the contribution made to the development of the internal market of the European Union (EU) and to the promotion of technical and institutional cooperation with other entities.

To improve the organisation of the Regulation Report, it was decided to structure the report according to the key strategic objectives set out by ICP-ANACOM for 2009, as enshrined in this Authority's 2009-2011 Strategic Plan.

As such, the organization of the report was reviewed and it is now divided into six main areas which also reflect the objectives outlined in the EU regulatory framework, revised in 2009 and to which the National Regulatory Authorities (NRA) are bound:

- To promote open and competitive markets (Objective 1).
- To assure and protect the rights of users and citizens in general (Objective 2).
- To promote open and competitive markets / to assure and protect the rights of users and citizens in general (Objectives 1+2) - Management of scarce resources.
- To improve the regulator's efficiency and performance capacity (Objective 3).
- To participate in the development of the EU internal market by improving the internal performance (Objective 4).
- To promote institutional and technical cooperation (Objective 5).

With the Report's new organization, the markets for electronic communications and postal services are addressed in a more integrated manner and, depending on the nature of the measures concerned, in the sections corresponding to the transverse strategic objectives outlined above.

1.2 Overview of ICP-ANACOM regulatory activity in 2009

For a better understanding of the key regulatory measures taken during 2009, in the exercise of its powers and responsibilities, as set out in Decree-Law no. 309/2001 of 7 December, approving the statutes of this Authority, ICP-ANACOM deemed it important to organise these in accordance with the objectives outlined in the Strategic Plan for the 2009-2011 period as outlined above.

1.2.1 To promote open and competitive markets (Objective 1)

In terms of promoting open and competitive markets, note is made of the following actions undertaken in 2009, regarding Next Generation Access Networks (NGA), market analyses and regulated offers.

Next Generation Access Networks (NGA)

The work begun in 2008 on NGA was concluded, culminating with the adoption in 2009 of the report of the public consultation on the regulatory approach to NGA and the publication of legislation aimed at removing the cited horizontal and vertical barriers to the development of these networks.

Through its participation in these activities, ICP-ANACOM intended specifically to ensure that the regulatory approach to NGA was consistent and coherent, aiming to promote competition while at the same time encouraging the development of innovative, diversified and quality services. As such the interests of users would be upheld and a smooth transition provided from business models based on the Local Loop Unbundling offer (LLU) to NGA.

In practical terms, the role played by ICP-ANACOM in the legislative framework, and in the adoption of specific measures according to its remit, drove the removal or mitigation of barriers to the construction of infrastructure for the accommodation of electronic communications networks, the harmonization of procedures (especially in the

relationship between operators and local authorities), the definition of the legal regime governing ITUR (Infrastructures for telecommunications in housing developments, urban settlements and concentrations of buildings) and ITED (Telecommunications infrastructure in buildings) and the launch by the Government of five Public Tenders for the installation, management, operation and maintenance of NGA in rural areas, contributing to info-inclusion in these areas.

In this context, it is noted that there were quite significant investments in NGA during 2009¹, whereas it is estimated that by the end of the year there were already about 1.2 million homes cabled with optical fibre.

Market analyses

With respect to the market analyses completed or performed in 2009, particularly on the markets for broadband and leased lines (markets 4, 5 and 6 of Recommendation 2007/879/EC of 17 December 2007), the goal was to withdraw obligations existing in areas / routes considered competitive, enabling the adjustment of regulation to the development of the market, applying *ex-ante* regulation only where and when effective competition does not exist.

Regarding the analysis of the markets for voice call termination on individual mobile networks, for which preparation took place during 2009, note is made of a further reduction in wholesale termination rates, as determined in 2010.

There have been some delays in the development of the analysis of the retail market of access to the public telephone network at a fixed location for residential and non-residential customers and the wholesale markets of call origination and termination on individual public telephone networks provided at a fixed location (markets 1, 2, and 3 of the referenced Recommendation), due, in particular, to the prioritisation of other markets, especially the market

¹ For example note is made of the information reported by some operators in their Report and Accounts: (i) according to the Report and Accounts of Grupo Portugal Telecom (Grupo PT) for 2009 "Wireline capex increased from 403 million euros in 2008 to 565 million euros in 2009, primarily as a result of the FTTH rollout"; (ii) according to data from the Report and Accounts of Sonaecom - Serviços de Comunicações, S. A. (Sonaecom) for 2009 the increase of about 37 million euros "that occurred in the amounts for the "Development of fixed network" concern, essentially, to investments related to the development of the fibre network (FTTH)"; (iii) Vodafone Portugal - Comunicações Pessoais, S. A. (Vodafone) states in its Annual Report 2008 (for fiscal year ended 31 March 2009) that during the year, it made an investment amounting to 156.4 million euros in fixed assets, with around 75% applying to the development of its (GSM/GPRS, UMTS/HSDPA and DSL) networks, with investment in its third generation networks and ADSL network comprising around three quarters of this value; (iv) in the 2008/2009 Report and Accounts of Onitelem - Infocomunicações, S. A. (Onitelem) it is reported that that "investment costs amounted to about 11.8 million euros of which 8.6 million euros corresponded to investments in Next Generation Networks, particularly in the expansion and modernization of multi-service data and optical transport networks." (v) in the 2009 Consolidated Reports and Accounts of ZON Multimédia - Serviços de Telecomunicações e Multimédia, SGPS, S. A. (ZON Multimédia), it is reported that there was an increase in Total CAPEX of 32.8 % over the previous year, amounting to 213.6 million euros of which 88.5 million euros relate to investment in infrastructure supporting Subscription TV, Broadband and Voice "mainly explained by upgrade of the network through the implementation of EuroDOCSIS 3.0 and cell division".

of voice call termination on individual mobile networks, the market of retail leased lines and the markets of wholesale terminating and trunk segments of leased lines. With respect to the market of broadcasting transmission services, to deliver broadcast content to end users (market 18 of the previous Recommendation of the European Commission (EC)), this analysis is pending the conclusion of the process of Digital Terrestrial Television (DTT).

Taking into account the delay in the publication of the EC Recommendation on the regulation of NGA, the formalization of the specific regulatory framework applicable to these networks, following the analysis of broadband markets and the public consultation launched in 2008, was left unaccomplished in 2009, although the report of the public consultation already contained some guidelines.

Regulated offers

Within a framework of partial deregulation at retail level and in respect of certain wholesale markets, as indicated above, the regulated offers associated with access to network elements which cannot be easily replicated assume a key role in ensuring effective competition.

The measures proposed or adopted by ICP-ANACOM in 2009 regarding the various regulated wholesale offers, with particular focus on the Reference Unbundling Offer (RUO) and on the Reference Duct Access Offer (RDAO), allow the adjustment of their conditions to new costing data and to the needs of the market and its evolution, likewise taking into account the evaluation of the contribution presented by various operators with a view to their improvement. Note is made, in particular, of the work done with respect to the RUO which involved an extensive review of the offer, particularly in terms of quality of service and compensation for non-compliance, providing for a significant improvement in 2010 in the conditions of retail products based on LLU.

Special note should also be made of the decision on the publication of performance levels regarding the quality of service of the various regulated wholesale offers, providing the market and consumers with greater transparency when it comes to the levels of quality of service provided by PT Comunicações, S. A. (PTC) contributing, also and thereby, to better evaluation of the application of the principle of non-discrimination.

1.2.2 To assure and protect the rights of users and citizens in general (Objective 2)

In pursuit of this objective, note is made of the work of ICP-ANACOM with respect to a number of specific measures designed to protect users and ensure the provision of the Universal Service (US) of electronic communications and of postal services under the established conditions.

User protection

ICP-ANACOM focused on four specific areas in this context, namely, number portability, quality of service, international roaming and the handling of enquiries and user support.

A notable example, in 2009, is the determination which stipulated the amendment of the model recognized for the disclosure of information on quality of service, the activities undertaken in terms of disclosure and oversight of the matters related to the EU Roaming Regulation (e.g. the Roaming Light campaign), the revision of the Portability Regulation and the handling of complaints, requests for information, petitions and suggestions regarding the market, associated with the preparatory work of setting up a national arbitration centre for electronic communications.

In the case of portability, the aim was to overcome several barriers which have blocked the effective implementation of this functionality which is essential to improve the options of choice available to users, shortening the time periods involved and improving associated processes. The result of this measure led to a reduction of about one third in the average time taken for mobile number portability during 2009.

Note is also made of the activities undertaken, in a short period of time, in relation to the implementation of Decree-Law no. 63/2009, which was approved by the Government and which set out regulation governing the provision of valued added services based on message sending and the growing activity of ICP-ANACOM in matters related to communications security and privacy and to emergency communications.

The work developed in this important area of protecting users has centred on the promotion of information and clarification on the use of electronic communications and postal services, ensuring greater transparency and providing recipients of the services with a level of knowledge that will enable them, as they become increasingly informed, to demand full compliance with the contracted conditions. Furthermore, ICP-ANACOM also provided, along with the above measures, that its intervention in the market is more visible while ensuring, in particular, that the interests of consumers are upheld, while guaranteeing healthy competition.

Universal Service (US) of electronic communications

The regulatory intervention of this Authority in 2009, in terms of US, was conducted with focus on the following issues: (i) oversight of parameters and levels of quality of service of the US; (ii) analysis of the strategy of the Universal Service Provider (USP) for public payphones; (iii) ensuring the availability of telephone directories and information services containing information from all providers of electronic communications services; (iv) verification of compliance with conditions established with respect to affordability; (v) study of the process of calculating the net costs of US; and (vi) consideration and provision of assistance to the Government in the process of appointing the USP.

Specifically, the main effects of regulatory action developed in the areas outlined above are:

- overall improvement in compliance with the objectives of quality of service defined for the US with direct benefit for end-users;
- maintenance of affordability for the general public through the application of a price-cap, accompanied by a simplification of the tariff structure making it easier and more transparent;
- the search for solutions related to the appointment of the USP, where there is limited experience at international level, ensuring the fulfilment of objectives and compliance with the EU regulatory framework and enabling a selection process which is transparent, objective and non-discriminatory, while also taking into account the interests manifested by the various market

players in the context of the public consultation and the development and specific characteristics of the national electronic communications market.

Universal Service of postal services

In accordance with its powers and responsibilities, ICP-ANACOM proceeded, over the course of 2009, to monitor the development of the postal network, the prices and levels of quality of service of the US of postal services, thereby ensuring that the USP fulfils the obligations to which it is bound and which guarantee that the end-consumer has access to postal services according to stipulated conditions, with prices which compare favourably with European practice.

1.2.3 To promote open and competitive markets / to assure and protect the rights of users and citizens in general - Management of scarce resources (Objectives 1+2)

Radio spectrum management

During 2009, ICP-ANACOM continued its work of bringing its management of the radio spectrum closer into line with the activities of market regulation, whereby the management of this scarce resource is conducted for the accomplishment of the objectives related to promoting open and competitive markets and upholding and protecting the rights of users and citizens in general.

With this perspective, an approach was maintained based on the provision of spectrum to the market in a timely manner, alongside the progressive adoption of principles of service and technological neutrality, enabling the holders of rights of use of frequencies to take the decisions they deem most appropriate for their exploitation, respecting the need to avoid interference and comply with international agreements and Community stipulations.

In 2009, there were five key main areas which saw the intervention of ICP-ANACOM, namely:

- the revision of the National Table of Frequency Allocations (NTFA) involving also preparatory work to implement a frequency information portal (e-NTFA);

- the technical and regulatory preparation of the first auction of frequencies in Portugal for the allocation of rights of use in the 3.4 - 3.8 Gigahertz (GHz) band on the basis of service and technological neutrality;
- the provision of new frequency bands, with the conclusion of the tender for the 450 Megahertz (MHz) band and the completion of public consultations on the 2.6 GHz band and the digital dividend and the allocation of DTT licensing; and
- preparation of the transposition of the new Directive 2009/114/EC of 16 September 2009 which amended Directive 87/372/EEC (Directive on the frequency bands to be reserved for the coordinated introduction of public pan-European cellular digital land-based mobile communications in the Community) which was only concluded in 2010, in view also of its publication schedule.

Numbering

With respect to numbering, note is made of the alteration of the National Numbering Plan (NNP) with a view to the implementation of the service codes resulting from the implementation of the regime governing message-based value-added services, whereas it is reported that the average time taken for the allocation of rights of use of numbers of all kinds is 5 working days.

It is noted that due to the priority given in 2009 to this latter subject and to the various actions undertaken in relation to portability, a number of actions of lesser relevance in terms of numbering were not concluded. However a public consultation was prepared on the implementation of the common position of the European Regulators Group (ERG) with respect to Voice over Internet Protocol (VoIP), in particular with regard to aspects related to numbering, portability and access to emergency services, which impacted the timing of the development of the Numbering Regulation.

1.2.4 To improve the regulator's efficiency and performance capacity (Objective 3)

Regarding this specific objective, in the context of regulatory activity, note is made of a number of actions aimed at the enforcement of regulatory action, particularly in terms of market supervision, monitoring, sanctioning and conflict resolution.

In terms of supervision, monitoring and sanctioning, it is important to note the role played by ICP-ANACOM with respect to: (i) audits of costing systems, in both the electronic communications sector and in the postal sector; (ii) the procedures associated with the supervision and surveillance of the communications equipment market, and ITED and ITUR; (iii) the establishment of the framework regime governing infringements in the communications sector, which involved the contribution of this Authority to the review of the applicable legal framework and the formulation of more appropriate means of legal redress; (iv) sanctioning, involving 80 infringement proceedings instigated following violations of the Electronic Communications Law (ECL) and other legislation; and (v) administrative litigation, including the preparation of the necessary responses to lawsuits, which in carried over cases do not jeopardise the determinations of ICP-ANACOM.

As part of its regulatory work in terms of cost audits, it is noted positively that there is demand for greater rigour in the accounts of providers, bringing them into line with European recommendations. This provides the regulator with more detailed information and information which is more appropriate to the pursuit of the activity of regulation, especially so that it can properly evaluate the extent of compliance with the principle of cost orientation of prices and the correct allocations of costs to the different services.

Also in this context, it is worth noting the launch of a study on the curtailment costs of PTC and the conclusion of work developed in terms of assessing the calculations of the cost of capital of PTC, with the presentation of a draft decision which was transformed into a final determination following the public consultation in early 2010. This ensures better measurement of the costs of this operator in terms of regulated products or services, in accordance with European guidelines, recommendations and best practice. These actions have a positive impact on the pricing conditions at the level of the wholesale market and a direct and predictable effect in improved pricing conditions offered to the end-consumer.

Following an international tender, held in 2009, to select a consultant to support the development of a mobile termination costing model, the respective work was undertaken.

ICP-ANACOM has an important role in ensuring compliance with the national legislation of the electronic communications and postal services sector, which is evident in terms of the instigation of infringement proceedings and response to litigation. On the one hand, the market has incentive to comply with existing rules and, second, market players are encouraged to interact with the regulator in upholding their rights.

During 2009, ICP-ANACOM also intervened in several disputes of various kinds (as detailed in section 5.4), under the mechanism for administrative dispute resolution provided for in article 10 of the ECL.

The intention behind these actions is to enable speedier and more satisfactory resolution of the disputes in question, benefitting not only the parties directly involved, but also

consumers in general. Moreover, such actions can provide the market with knowledge of expected regulatory action, thereby heading off potential new disputes of the same nature.

1.2.5 To participate in the development of the EU internal market by improving the internal performance (Objective 4)

Detailed in section 6.1 (on international participation), ICP-ANACOM engaged in intense activity as adviser to the government and intervening on its own behalf as an independent regulatory authority in various international *fora*, with particular note of the activities conducted in the context of European committees and groups, and in particular, intense and active participation in the European Regulators Group.

1.2.6 To promote institutional and technical cooperation (Objective 5)

ICP-ANACOM continued with its cooperative activities, both nationally and internationally, including in particular the provision of information and training on regulatory practices in Portugal and in the EU. In general terms, these measures have contributed to the professional enrichment of its technicians and greater visibility and recognition of the regulatory capacity of ICP-ANACOM.

Note is also made, in terms of institutional cooperation, of the work carried out with AdC - Autoridade da Concorrência (Competition Authority), with respect to the restrictive practices of competition, enabling coordination with AdC on the coherent application of competition law in the electronic communications sector.