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ADVISORY
COUNCIL

● ● 9 Advisory Council of ICP-ANACOM

It is incumbent upon the Advisory Council to issue an opinion on the Regulation Report

[point b) of article 37 of the Statutes of ICP-Anacom]

Introduction

On 28 July 2010, at a meeting of the Advisory Council convened for such purpose, an examination was made of the Regulation Report for the year 2009, in light of the request for the opinion stipulated in said article 37 of the Statutes of Autoridade Nacional de Comunicações.

The Specialized Committee, previously established by determination of this Council, mandated for this purpose and composed of the following members of the Advisory Council: CTT - Postal Portugal, DECO, Onitelem, PT Comunicações, Sonaecom and Vodafone Portugal, met three times: a first time to conduct an initial reading of the documents and to define the working methodology; a second time to discuss and integrate the contributions of each of its members; a third time to discuss the final draft Opinion to be submitted to the Advisory Council, which follows.

In general terms

1. The Regulation Report, from the viewpoint of the scope of subject matter, which by law it is required cover, is comprehensive and, in general terms, it is deemed that it sets out, in an accurate and detailed manner, the actions and regulatory measures undertaken by ICP-ANACOM in the calendar year 2009.
2. The Advisory Council notes and appreciates very positively the restructuring of the report's organization, which brings it into line with the major strategic objectives as defined by ICP-ANACOM and which are consistent with those established under the EU regulatory framework. The restructuring effected means that the report is more accessible to the general public, allowing a better understanding of the purpose and scope of ICP-ANACOM's activity.
3. The provision of both the Report on the State of Communications in 2009 and the 2009 Regulation Report, jointly with the 2009 Activities Report, provides

a fitting view of the activity undertaken by ICP-ANACOM and the effects thereof on the communications market. However, it seems advisable that ICP-ANACOM consider a formal, logical and temporal articulation between the three documents in order to prevent overlap and duplication, and to ensure accurate references that assist understanding of its regulatory activity as it deals with reality and gives it value.

4. The Board further considers, notwithstanding that the Regulation Report and the documents referred to in the preceding paragraph provide an integrated and comprehensive overall view of regulatory activity in the markets for electronic communications and postal services, that the Report would be enriched by the inclusion of an examination focusing on the application and consequent effects of the regulatory measures adopted by ICP-ANACOM.
5. The Advisory Council does not consider that it would be inappropriate were the Regulation Report to consider the outlook for the evolution of the relevant segments of the markets for electronic communications and postal services. The prospective component of these guidelines of ICP-ANACOM is likely to contribute to greater predictability of the market. In this regard and by way of example, we indicate the issues which make up the agenda of the European electronic communications sector:
 - i) Net Neutrality.
 - ii) Digital Single Market (Contents, Copyright).
 - iii) OTT (Over the Top).
 - iv) Social Networking.
 - v) E-education.
 - vi) E-health.
 - vii) Cloud Computing.

Such a forward looking view and analysis would allow stakeholders to acquaint themselves with the areas of ICP-ANACOM's concern and the focus of its action and enhance the general public's awareness of the impact of the regulator's activity.

6. ICP-ANACOM highlights the relevancy of the actions undertaken in the context of community committees and groups, as well as its participation in the European Regulators Group, setting out the decisions taken and the results achieved. In this respect, and reiterating earlier advice of this Council, ICP-ANACOM should involve market players in briefings and hearings, held in a systematic and regular manner, with a view to their greater participation and a better understanding of the issues, their treatment and expected outcomes. Such recommended cooperation may enable enhanced consideration of the present reality of the national industry, its capacities and constraints, as well as closer regulation.
7. The Advisory Board, given the length and technicality of the Regulation Report, considers and recommends that the chapter entitled "framework" be developed and expanded, written in language which is appropriately accessible to the general public, with the aim of converting it into a true "executive summary" suited for distribution among a broader range of recipients beyond those who are mandatorily and naturally addressed by the Regulation Report.

In specific terms

Among the matters which are at present of most concern to operators, in terms of competition, are those related to:

- a) Regulated offers.
- b) Transposition of the new regulatory framework.
- c) Universal Service.
- d) DT and Digital Dividend.

8. Regulated Offers. Despite the progress reported and quantified in the Regulation Report, it is the view of the operators that these are matters which continue to require careful oversight by the Regulator, in particular as regards the RUO, and especially with regard to the remote enabling of exchanges and quality of service.

9. New Regulatory Framework. The current level of information is considered insufficient. ICP-ANACOM should report on the status of said transposition and enable market players to participate in this respect.

10. Universal Service. There remains a lack of knowledge about the development of policies in respect of Calculating the Cost of the US, Definition of the Concept of excessive burden and rules governing the financing of the Cost of the US, despite the stipulations of Law 5/2004.

11. DT and Digital Dividend. The information provided on this issue is insufficient, particularly regarding the phasing of coverage. Given the importance of spectrum resources for the provision of electronic communications, operators have stressed the need for timely information on the policy governing the availability of said resources in the different frequency bands.

The Advisory Board recommends that in relation to conflict resolution, the Regulation Reports should include details of the actions taken by ICP-ANACOM and their respective deadlines. It is further considered fitting, with respect to enquiries and support to users, that in addition to outlining the statistics and types of complaint, that reference is made to the type of intervention which ensues and the results thereof.

The present opinion is not binding, and recommends the adoption of the Regulation Report with reference to the calendar year 2009.

Lisbon, 28 July 2010.