

BACKGROUND

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According to the Statutes of ICP - Autoridade Nacional de Comunicações (ICP-ANACOM), as approved in annex to Decree-Law no. 309/2001 of 7 December, this Authority is required, on an annual basis, to publish an Activities Report (article 37) and a report on the activities of Regulation (article 51), which reports are subject to an opinion issued by ICP-ANACOM's Advisory Council.

This has been the practice followed by ICP - Autoridade Nacional de Comunicações (ICP-ANACOM), which, on statutory terms and on an annual basis, has sent the Government its Report on the activities of Regulation, which is also presented to the Assembleia da República (Assembly of the Republic).

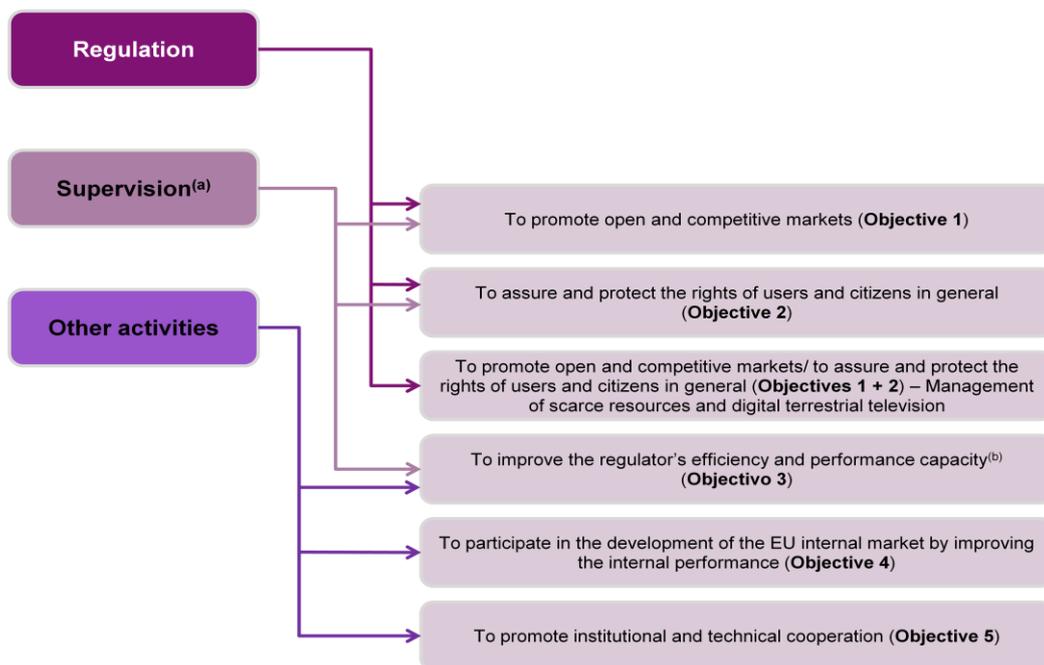
In 2010, to remedy the overlap and duplication of information under the previous model, the decision was made to produce a single publication called the "Annual Report of ICP-ANACOM - 2010 - Regulation, Supervision and Other Activities" (the Report), which includes all the information on the annual activity of this Authority.

In line with 2009, the structure adopted for the Report in 2010 follows the broad strategic objectives established for the year and reflected in ICP-ANACOM's 2010-2012 Management Plan, establishing a close link between these two documents.

The structure of this Report is outlined in this first chapter (section 1); section 2 gives a comprehensive review of the activities undertaken in 2010 with reference to the strategic objectives defined by ICP-ANACOM for the year; and section 3 reports on the degree to which the actions scheduled for 2010 in the management plan were accomplished.

1. Report Structure

The report is structured into five main chapters: framework, regulation, supervision, other activities and other matters. The chapters relating to regulation, supervision and other activities are developed in detail following the broad strategic objectives defined by ICP-ANACOM for 2010.



Notes:

(a) Incorporates activities in areas related to market oversight, studies, inspection, enforcement and monitoring, conflict resolution and breach proceedings, which are transversal to different objectives.

The chapter on "Other activities" includes the activities undertaken in the context of providing advice to the Government and work developed at the level of communication and institutional image.

2. Overview of the regulatory activity of ICP-ANACOM in 2010

2.1. To promote open and competitive markets (Objective 1)

Key actions undertaken in 2010, in pursuit of objective 1 - to promote open and competitive markets – in the area of next generation access networks (NGA), market analyses and regulated offers.

2.1.1. Next generation access networks (NGA)

In 2010, ICP-ANACOM remained engaged in ensuring and promoting NGA development, in particular: (i) assisting the Government in the process of public tenders launched for the deployment of NGA in the North, Centre and Alentejo and Algarve zones; (ii) participation and oversight of measures aimed at making better use of the majority of infrastructure which can support the development of NGA; and (iii) the definition of the aspects required to manage the Sistema de Informação Centralizado (SIC) (Centralized Information System).

In future, ICP-ANACOM will oversee the implementation of wholesale offers by the prevailing tenderers and also monitor their compliance with wholesale access obligations.

Meanwhile, by determinations of November 2010, ICP-ANACOM approved the definition of items to be registered in the Sistema de Informação Centralizado (SIC) and the terms and format of availability of SIC information, along with the launch of an international public tender for its implementation and management.

The SIC will bring together all information related to infrastructure that can accommodate the installation of networks, thereby ensuring open and efficient access to such infrastructure. Therefore, in defining the regulatory framework governing NGA, and by designing and deploying the SIC, ICP-ANACOM has taken on a key role in promoting conditions which are conducive to NGA development.

Tracking the evolution of NGA, at the end of 2010 there were 1.4 million homes passed with optical fibre, 17 percent more than in the previous year.

2.1.2. Market Analyses

In 2010, ICP-ANACOM completed market analyses regarding: (i) the relevant wholesale markets of voice call termination on individual mobile networks; (ii) the market for the retail provision of leased lines; and (iii) the markets for the wholesale provision of terminating and trunk segments of leased lines.

As well as identifying the relevant markets, the market analyses conducted by ICP-ANACOM evaluate whether operators exist with significant market power (SMP), subjecting such operators to ex-ante obligations which are proportionate and appropriate to address reported market failures.

In the analysis conducted on wholesale markets for voice call termination on individual mobile networks, a gradual reduction was reported in wholesale prices in respect of voice call termination on individual mobile networks; ICP-ANACOM has estimated an overall gain for consumers of about 54 million euros. In the leased lines markets, it was decided to fully deregulate the retail market and a set of routes (trunk segments) in the wholesale market: it was also decided to regulate circuits supported by Ethernet technology and to order PTC to provide a reference offer for Ethernet circuits (ECRO).

2.1.3. Regulated Offers

Regulated wholesale offers are of utmost importance to alternative operators, giving them access to conditions that allow them to develop innovative and competitive offers, particularly in geographical areas where they do not have their own infrastructure and where deployment of their own infrastructure is not viable; they also provide an investment plan with appropriate levels of return.

Given that these offers are made available following the market analyses carried out by ICP-ANACOM, this Authority seeks to ensure that wholesale offers promote conditions of fair competition in a context of gradual retail market deregulation.

2010 saw the release of two new reference offers: ECRO and the reference masts access offer (RMAO), promoting competition in the leased lines market based on different technologies, including Ethernet technology, as well as extending NGA coverage (through

the use of masts where there are no ducts). These two new offers reinforce measures which promote the information society and combat the digital divide.

ICP-ANACOM also took key decisions on the Reference Unbundling Offer (RUO) and on the Reference Duct Access Offer (RDAO), bringing substantial improvements to these offers and, adapting them to the needs of the market. The decisions in question focused in particular on aspects of quality of service, the provision of information and the definition/application of compensation to deter non-compliance.

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

ICP-ANACOM undertook a number of key actions to assure and protect the rights of users and citizens in general within the framework of specific measures to protect customers and ensure provision of the Universal Service (US) of electronic communications and postal services.

2.2.1. User protection

Measures were taken to enhance protection of users in the following areas: number portability, international roaming, retail offers, the handling of consumer requests and assistance and communications security.

The application of the Regulamento da Portabilidade (Portability Regulation) brought a significant reduction in the deadlines applying to portability processes. Meanwhile, several actions have been developed in terms of overseeing compliance with existing obligations in the context of portability, with special focus on the causes of failed implementation of portability, deadlines, price transparency and compensation for non-compliance.

In the case of international roaming, with the application of the respective regulation of the European Union (EU), a reduction has been reported in wholesale and retail prices, and ICP-ANACOM has promoted actions to monitor complaints and to enforce obligations of price transparency, making information on the regulation's implementation available to the public.

In terms of handling consumer requests and assistance, an information campaign was conducted on message-based valued added services (VAS), and ICP-ANACOM approved lines of action arising from the study on the internal procedures followed by providers of electronic communications service when handling complaints.

Important activities were also undertaken in the field of communications security, including assistance provided in the context of emergency services.

These actions were intended to assure a high level of user protection, ensuring that citizens continue to have relevant information on electronic communications and postal services, making them aware of their rights and helping them play an active part in the defence of a more transparent market which is non-discriminatory and socially more responsible. ICP-ANACOM is charged with enacting and promoting this policy of consumer inclusion.

2.2.2. Universal Service (US) of electronic communications

Every year ICP-ANACOM oversees provision of the universal service, monitoring quality of service, the development strategy of public payphones and affordability (residential telephone service at a fixed location (FTS) and public payphones). The aim is to ensure that, in general, citizens have access to the FTS according to appropriate conditions of price, quality and availability.

In 2010, ICP-ANACOM was also engaged in extensive work in two areas related to the US: (i) net costs of universal service provision and (ii) the process of designating the universal service provider (USP).

In terms of the net costs of universal service provision, ICP-ANACOM's objective is to ensure that the US is provided in a framework of economic rationality and efficiency. In this respect, draft decisions were approved in 2011 on the methodology to be used for calculating the net costs of universal service provision and on the concept of unfair burden. These draft decisions sought to establish the process of calculating the net costs of universal service provision and the designation of provider(s) through a tender and clarify how they will be determined subsequent to the tender. They also aimed to achieve compliance with the Regulator's obligation to define the concept of "unfair burden".

With regard to the designation of the USP, ICP-ANACOM sent the Government formulated drafts for the rules to govern the tender to designate the provider(s) of the universal service and the respective tender specifications.

2.2.3. Universal Service (US) of postal services

Regulatory action developed in 2010 sought to ensure the USP's compliance with the obligations to which it was subject, ensuring that the consumer has access to postal services at prices that compare well with European practice.

Accordingly, ICP-ANACOM continued to monitor the prices and quality of service of the US of postal services and monitored the network of postal establishments.

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

2.3.1. Radio spectrum management

In the area of spectrum management, ICP-ANACOM' activities were targeted at the accomplishment of these two major strategic objectives: to promote open and competitive markets and to assure and protect the rights of users and citizens in general.

Taking into account the principles of neutrality of services and technology, ICP-ANACOM has always sought to make radio spectrum available in a timely manner and based on procedures which are transparent, efficient and market-oriented.

In 2010, the following major areas saw strategic intervention by ICP-ANACOM with respect to radio spectrum management:

- the revision of National Table of Frequency Allocations (NTFA) and the development of a frequency information website (e-NTFA);
- transposition of the new Directive no. 2009/114/EC of 16 September 2009, which amended Directive no. 87/372/EEC, allowing the 900 MHz band to be used for the

provision of mobile broadband services (3rd generation mobile communications system (UMTS)), known as refarming;

- the amendment of Global System for Mobile Communications (GSM) and UMTS licenses in order to unify the rights of use of frequencies, following transposition of Directive no. 2009/114/EC;
- designation and release of the 790-862 Megahertz (MHz) band (known as the “digital dividend”) for electronic communication services, in accordance Decision no. 2010/267/EU;
- execution of the first auction in Portugal for the allocation of rights of use in the 3.4-3.8 Gigahertz (GHz) band based on neutrality of technology and services.
- consideration of the potential models for allocating spectrum and of the obligations associated with the rights of use of frequencies, in the context of preparing the launch of the respective selection process, setting out the release of the 790-862 MHz band in conjunction with other bands.

2.3.2. Numbering

In the area of numbering, a public consultation was launched on the implementation of the common position of the European Regulators Group (ERG) on Voice over Internet Protocol (VoIP) and on the conditions governing the use of geographic, nomadic and mobile numbers.

Additionally, a new code (703) was created in the PNN - Plano Nacional de Numeração (National Numbering Plan) for the provision of electronic communications services on non-publicly available private networks.

2.3.3. Digital terrestrial television (DTT)

In this regard, the following three key measures were implemented:

- repeal of the act of granting rights of use of frequencies associated with Multiplexers B to F and of the titles that substantiated them;

- the final decision on the detailed plan to cease analogue terrestrial transmissions (switch-off plan) associated with the introduction of DTT in Portugal;
- public consultation on the amendment of certain Multiplexer A operating channels of the digital terrestrial television (DTT) broadcasting service, in order to help ensure that the "digital dividend" frequencies are made available in a timely manner.

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

To accomplish this objective, ICP-ANACOM engaged in a number of actions during 2010, particularly in the area of human resources supervision and management.

Supervision takes a leading role in the activities of ICP-ANACOM as a key element in the pursuit of various goals. Supervision ensures that the regulatory framework for electronic communications and postal services and the decisions of this Authority are complied with, ensuring conditions for fair competition and respect for the rights of consumers and citizens in general.

ICP-ANACOM's work in this area includes: (i) monitoring the market, accomplished through various studies and through the analysis of complaints; (ii) oversight procedures, involving the monitoring and control of the spectrum, electronic communications, postal services, the infrastructure of buildings, equipment and laboratory activities; (iii) the sanctioning of offenses that led to the instigation of 145 breach proceedings; and (iv) the settlement of conflicts between operators/providers.

In its monitoring of the market, ICP-ANACOM acted proactively to ensure it had the instruments it needed so that decisions could be taken with high levels of information and specialist know-how, ensuring rigorous and reasoned regulatory action. For example, ICP-ANACOM conducted or arranged studies on the postal sector, on NGA and on electronic communications services offered in bundles.

ICP-ANACOM was also engaged in inspection and enforcement, instigating litigation and breach proceedings whenever infringements were found. In this context, ICP-ANACOM works to ensure adherence to the national legal and regulatory framework applicable to

the communications sector. Meanwhile, in the settlement of conflicts between operators/providers, ICP-ANACOM has sought faster resolution of disputes.

Finally, in relation to this strategic objective, the actions taken by ICP-ANACOM in the area of human resource management, and other measures to promote efficiency in processes, are presented in the section on other activities.

The measures taken in the specific area of human resources make ICP-ANACOM's staff a highly motivated and highly skilled cohesive working team which is, above all, focused on the regulator's role and mission at the various levels of its remit.

Meanwhile, ICP-ANACOM has taken a set of other measures to promote efficiency, giving it the technological tools/applications that will streamline both its internal procedures and procedures involving its relationship with sector participants. This supports free flowing communication, along with better organized information, providing positive outcomes for the regulator and all market participants.

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

This strategic objective is aimed at enhancing ICP-ANACOM's participation in the various European *fora* and at strengthening internal coordination within ICP-ANACOM in light of the increased responsibilities that were introduced with the new regulatory framework for electronic communications, particularly with the creation of the Body of European Regulators for Electronic Communications (BEREC). This body is taking on a role that is increasingly important in the harmonization of regulatory practices at EU level and that is, in many cases, decisive for the regulatory practices that should be followed internally.

By enhancing the effectiveness of its resources and methods, ICP-ANACOM can contribute better to the development of the internal market; this is seen as being the result of a common vision of the 27 national regulatory authorities (NRA) that make up Body of European Regulators for Electronic Communications (BEREC), and not a result of models which, alien to national regulation, may conflict with ICP-ANACOM's other objectives, such as promoting competition and protecting the rights of citizens.

At the same time, BEREC has established itself as a centre of excellence in the regulation of the sector, receiving an active contribution from ICP-ANACOM and providing benefits in terms of increasing the quality of internally produced regulation.

For the first time, this Authority was able to participate in all working groups of experts, and presided over one of these groups, providing drafters for the preparation of various documents.

In terms of internal coordination, a set of rules has been developed for information sharing and training and for supporting positions and participation in meetings, which is supported horizontally by coordination between the different units of ICP-ANACOM, and vertically, ensuring that positions are coherent and effectively defended, from workgroups to the meetings of BEREC's Board.

In addition to achieving the regulatory objective of developing the internal market to which ICP-ANACOM is committed, this participation is essential in several aspects, particularly: (i) to uphold national regulatory interests and options; (ii) to gain recognition of ICP-ANACOM's quality of work and its regulatory practices; (iii) to acquire and consolidate technical knowledge in various areas; (iv) to defend the principles of healthy competition and uphold consumer interests.

2.6. To promote institutional and technical cooperation (Objective 5)

This report outlines the different activities undertaken by this Authority in terms of cooperation, both nationally and internationally.

In the pursuit of cooperation activities, ICP-ANACOM promotes and provides information on the regulatory practices adopted in Portugal, while it accesses information and knowledge and it exchanges experiences with other organisations, acquiring greater know-how.

3. Degree of implementation of strategic actions

At this point, the intention is to present the level of implementation of actions outlined in ICP-ANACOM's 2010-2012 management plan for the defined strategic objectives.

Of the 74 actions set out in the management plan, ICP-ANACOM has fully executed the activities planned for objectives 4 and 5 (participate in the development of the EU internal market by improving the internal performance and promote institutional and technical cooperation, respectively), with plans for the other objectives largely accomplished - to promote open and competitive markets, to assure and protect the rights of users and citizens in general and to improve the regulator's efficiency and performance capacity.

In total, the execution rate of the strategic actions during 2010 was around 74%.

However, in many cases where it was not possible to execute planned actions, this fact was due to reasons beyond ICP-ANACOM's control.

There was also an important set of strategic actions which were not included in the year's plan, but which ICP-ANACOM concluded in 2010, including:

- development of studies and preparation of the draft decision on the net cost of universal service;
- development and delivery to the Government of the tender specifications for the designation of the USP(s);
- conclusion of the process to reformulate reference offers associated with market 4 (RUO and RDAO);
- launch of the public consultation on the numbering of nomadic VoIP services;
- definition of the cost of capital (*Weighted average cost of capital (WACC)*) of PT Comunicações, S. A. (PTC);
- preparation of the auction for broadband wireless access (BWA);
- assisting the Government in the tender procedures for NGA in rural areas and monitoring of the five tenders.