

MARKET SUPERVISION AND MONITORING

MARKET SUPERVISION AND MONITORING

7. To improve the regulator's efficiency and performance capacity (Objective 3), to promote open and competitive markets and assure and protect the interests of users and citizens in general

This section of the report provides detailed information on the various activities undertaken by ICP-ANACOM in the pursuit of its function of supervising and monitoring the market; it also looks at the measures taken to rectify detected irregularities, with the aim of improving the market's functioning, in terms of relationships between operators, ensuring the existence of open and competitive markets, and also with a view to assuring the interests of consumers and citizens in general.

With its supervisory activity and its monitoring of the market, the regulator also creates conditions to improve its capacity to act and, consequently, its levels of efficiency.

This section outlines the various measures undertaken in the area of supervision, including matters related to: (i) complaints; (ii) the inspection of operators and service providers, of infrastructure and of equipment; (iii) monitoring and control of the spectrum, as well as monitoring of information given by providers on their websites and on the levels of quality they offer; (iv) breach proceedings; (v) the resolution of conflicts between operators/providers; (vi) monitoring the market, including through studies, such as on quality of service (universal service is covered under objective 2), studies on the factors that influence operator switching, or on retail offers, and others.

Statistics on the use of complaint books³⁸ show that, among the different sectors at national level, the electronic communications sector has one of the highest levels of conflict. This conflict stems from a market characterised by (a) a significant number of service provider outlets among the population; (b) a proliferation of electronic communications products and services at retail level; (c) a multiplicity of technologies supporting the different services, as well as the rapid evolution of these technologies; and

³⁸ Information available at http://www.portugal.gov.pt/pt/GC17/Governo/Ministerios/MEI/Documentos/Pages/20090312_MEI_Doc_Livro_Reclamacoes.aspx and at http://www.anacom-consumidor.com/assets_live/1582/relatorio_anual_2010.pdf

(d) a growing awareness among users as to their rights and as to available means of reaction.

In many cases, users complain to ICP-ANACOM believing that the regulator can resolve their conflict with the service provider when, by law, this Authority is not able to intervene directly in such conflicts and may not impose any obligation on a service provider in respect of specific users. ICP-ANACOM's role is in most cases informative - providing users with information as to the scope of its powers and responsibilities, information on acquiring and using services and on the avenues available to users to resolve conflicts. However, whenever evidence of irregularities is found in the analysis of a complaint, ICP-ANACOM may investigate and sanction the behaviour in question and, where there is good reason, adopt regulatory measures to prevent its occurrence.

In this context, complaints which arrive at ICP-ANACOM provide a way of detecting market information requirements and evidence that irregularities may be occurring. If this is the case, investigations are launched to verify whether the situations described in the complaints constitute situations of non-compliance, and where appropriate infringement proceedings are instigated.

But the Regulator's actions in this area do not end here; nor is litigation the only way for resolving such situations. Often, instead of conducting investigations, the Regulator chooses to monitor the issue from a distance, for example, by checking the information provided by the operators on their websites or by sending out surveys or information requests to the operators, which are then analyzed.

These actions are carried out directly where on-the-spot inspections are performed or where mystery shoppers are used, and indirectly when analysis is made of information received from operators or contained on their websites.

Investigations carried out by ICP-ANACOM cover a wide range of issues, ranging from the electronic communications sector to the information society, and encompassing the postal sector, spectrum, equipment, and installation of telecommunications infrastructure in buildings and in urban settlements.

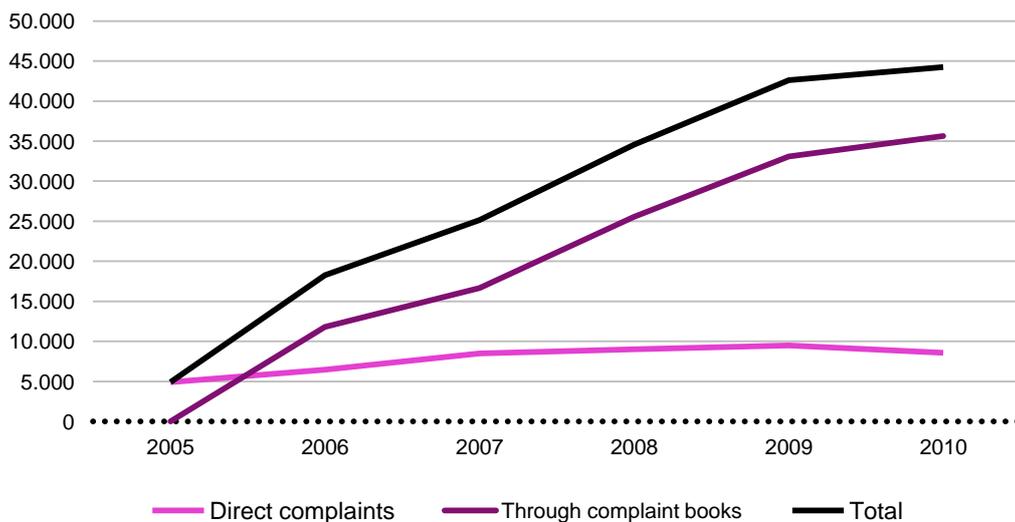
In all these areas, ICP-ANACOM carried out more than one thousand inspections in 2010.

7.1. Trends in complaints

In 2010, ICP-ANACOM received 44,108 complaints, 5 percent more than it received in the previous year. As such, the average monthly number of complaints rose from 3,500 in 2009 to 3,675 in 2010.

This increase continues to be due largely to the widespread use of the complaint books, the rules³⁹ for which entered into force on 1 January 2006, with an increase of 9.7 per cent reported in the volume of complaint sheets received. It should be noted, however, that the growth in the volume of complaints submitted in this fashion slowed significantly in 2010, with an increase reported of 31 percent in 2009.

Graph 41 - Evolution in the annual volume of complaints by type of entry (2005-2010)



Source: ICP-ANACOM.

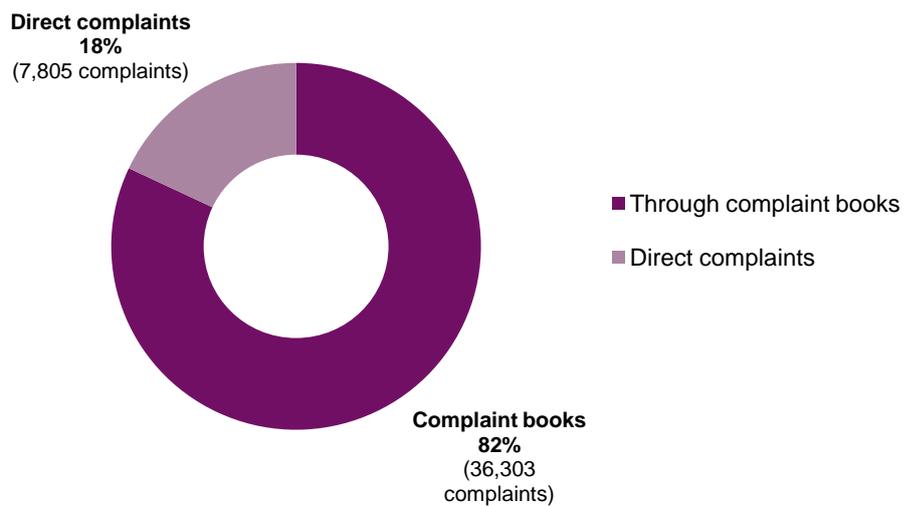
³⁹ Decree-Law no. 156/2005 of 15 September, as amended by Decree-Law no. 371/2007 of 6 November, by Decree-Law no. 118/2009 of 19 May

Graph 42 - Evolution in the monthly volume of complaints by type of entry (2009-2010)



In 2010, complaints entered in complaint books represented around 82 percent of all complaints received by this Authority, with the proportion of such complaints growing by 3.5 percent over the previous year.

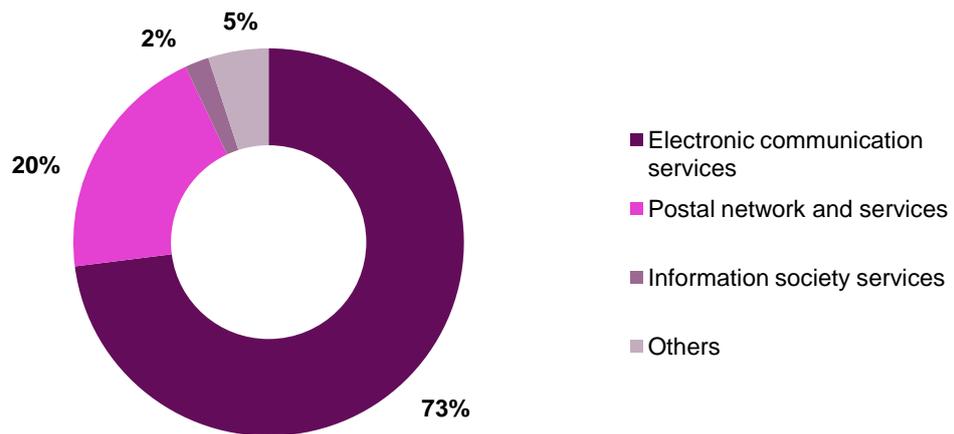
Graph 43 - Complaints by type of entry



Source: ICP-ANACOM.

In terms of sector, as in previous years, most of the complaints referred to the electronic communications sector.

Graph 44 - Complaints by sector



Source: ICP-ANACOM.

7.1.1. Electronic Communications

In 2010, ICP-ANACOM received 32,224 complaints about electronic communications services, representing an increase of 0.2 percent over the previous year. The Internet access service gave rise to the largest number of complaints per 1,000 customers (2.40), though 0.87 fewer compared to 2009. This is followed by the fixed telephone service (2.21), which also decreased by about 0.31, and the subscription television service (2.14), which registered a slight increase of 0.4.

Table 30 - Services giving rise to most complaints (electronic communications)

Service	2010	Customers (average of period)	Complaints per 1000 customers
1. Internet Access Service	10 593	4 409 356	2.40
2. Telephone service at a fixed location	7 649	3 465 907	2.21
3. Subscription Television Service	5 673	2 652 899	2.14
4. Virtual Calling Card Service	15	9 221	1.63
5. Public payphone service	48	32 413	1.48
6. Mobile Telephone Service	8 393	11 919 143	0.70
7. Voice over Internet Service (VoIP)	42	106 778	0.39

Source: ICP-ANACOM.

Among the subjects giving rise to most complaints in the electronic communications sector, issues related to equipment, billing, customer service, contracts and faults continue to predominate, even while decreases have been reported in all these matters, compared to 2009, except for complaints concerning faults which increased by 4 percent.

Among complaints about equipment, issues related to the unlocking of equipment used to access electronic communications services had a strong presence in the second half of 2010; this matter is governed by Decree-Law no. 56/2010 of 1 June.

Table 31 - Total complaints by subject (electronic communications)

Subject	2009	2010	Variation %
Equipment	7,434	7,351	-1%
Billing	7,507	7,234	-4%
Customer service	6,321	5,850	-7%
Contract	5,391	4,960	-8%
Faults	4,471	4,646	4%
Cancellation of service	3,113	3,845	24%
Supply of initial connection	4,019	3,523	-12%
Technical Support	6,221	3,137	-50%
Tariffs	2,245	2,893	29%
Suspension of service	2,134	2,075	-3%
Portability	1,487	1,154	-22%
Speed	1,004	931	-7%
Complaint Books	195	259	33%
Infrastructure	249	250	0%
Privacy and personal data	196	243	24%
<i>Roaming</i>	177	169	-5%
Selection and pre-selection	110	80	-27%
Directories and information services	30	40	33%
Numbering	41	28	-32%
Local loop unbundling	50	26	-48%
Municipal Fee for Rights of Way (MFRW)	7	16	129%
Geographic portability	141	14	-90%

Source: ICP-ANACOM.

Meanwhile, the relative position⁴⁰ of each electronic communications provider in terms of volume of complaints compared to total complaints received at ICP-ANACOM is detailed in the following tables. ICP-ANACOM's concern for consumers led it to decide to disclose, for the first time in 2010, data on complaints from providers of electronic communications. This is information that is relevant to the market, since it can help consumers make more informed choices.

Table 32 - Relative position of the FTS providers in terms of total complaints received by ICP-ANACOM

Band	Providers of telephone service at a fixed location	Change on 2009
A	ZON – TV Cabo Madeirense, S.A.	↔
B	CABOVISÃO – Televisão por Cabo, S.A.	↔
	OPTIMUS – Comunicações, S.A.	↑
C	AR Telecom – Acessos e Redes de Telecomunicações, S.A.	↓
	PT Comunicações, S.A.	↔
	ZON – TV Cabo Açoreana, S.A.	↓
	VODAFONE PORTUGAL – Comunicações Pessoais, S.A.	↔
	ZON – TV Cabo Portugal, S.A.	↑
	UNITELDATA – Telecomunicações, S.A.	↑
D	PT PRIME – Soluções Empresariais de Telecomunicações e Sistemas, S.A.	↔
	G9SA – Telecomunicações, S.A.	↓
	TMN – Telecomunicações Móveis Nacionais, S.A.	↔
	REFER TELECOM – Serviços de Telecomunicações, S.A.	↓

Source: ICP-ANACOM.

⁴⁰ The bands were defined with reference to the quartiles for 2010 based on the indicator of number of complaints per thousand customers, with each operator classified based on its ratio.

Table 33 - Relative position of fixed Internet access service providers compared to total complaints received by ICP-ANACOM

Band	Providers of fixed Internet access service	Change on 2009
A	ZON – TV Cabo Madeirense, S.A.	↔
	NORTENET – Sistemas de Comunicação, S.A.	↑
	PT PRIME – Soluções Empresariais de Telecomunicações e Sistemas, S.A.	↔
B	UNITELDATA – Telecomunicações, S.A.	↓
	CLARA.NET PORTUGAL – Telecomunicações, S.A.	↓
	CABOVISÃO – Televisão por Cabo, S.A.	↑
	AR Telecom – Acessos e Redes de Telecomunicações, S.A.	↔
C	ZON – TV Cabo Portugal, S.A.	↔
	ZON – TV Cabo Açoreana, S.A.	↓
	OPTIMUS – Comunicações, S.A.	↔
D	PT Comunicações, S.A.	↔
	VODAFONE PORTUGAL – Comunicações Pessoais, S.A.	↔
	TMN – Telecomunicações Móveis Nacionais, S.A.	↔

Source: ICP-ANACOM.

Table 34 - Relative position of the mobile communications service providers compared to total complaints received by ICP-ANACOM

Band	Providers of mobile communication services	Change on 2009
A	VODAFONE PORTUGAL – Comunicações Pessoais, S.A.	↔
	CTT – Correios de Portugal, S.A.	↔
	TMN – Telecomunicações Móveis Nacionais, S.A.	↑
	OPTIMUS – Comunicações, S.A.	↑
D	ZON – TV Cabo Portugal, S.A.	↔

Source: ICP-ANACOM.

Table 35 - Relative position of the subscription television service providers compared to total complaints received by ICP-ANACOM

Band	Subscription television service providers	Change on 2009
A	ZON – TV Cabo Madeirense, S.A.	↔
	ZON – TV Cabo Açoreana, S.A.	↔
B	UNITELDATA – Telecomunicações, S.A.	↑
	CABOVISÃO – Televisão por Cabo, S.A.	↔
	AR Telecom – Acessos e Redes de Telecomunicações, S.A.	↔
	ZON – TV Cabo Portugal, S.A.	↔
C	PT Comunicações, S.A.	↔
D	OPTIMUS – Comunicações, S.A.	↔
	VODAFONE PORTUGAL – Comunicações Pessoais, S.A.	↔

Source: ICP-ANACOM.

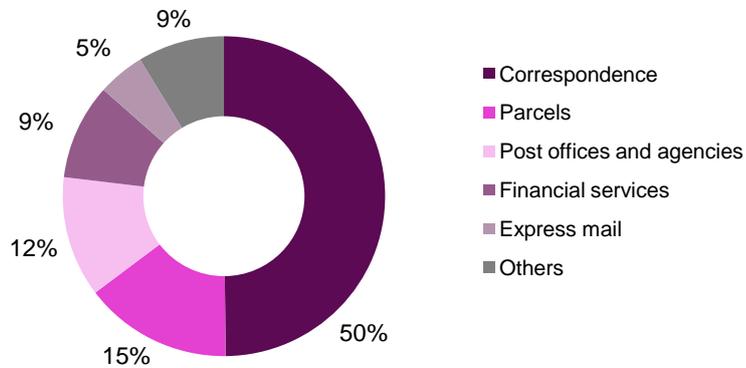
KEY: graphs 32, 33, 34 and 35

Category	Complaints per 1000 customers	Position compared to 2009
A	0 > and < 0.99	Maintained 2009 category ↔
B	0.99 ≥ and < 1.95	Improvement over 2009 category ↑
C	1.95 ≥ and < 3.54	Decline over 2009 category ↓
D	≥ 3.54	(the colours indicate the 2009 category)

7.1.2. Postal Network and Services

In 2010, a total of 8,753 complaints were registered with respect to the postal sector, representing an increase of about 20 percent over 2009; these complaints were driven mainly by the correspondence service which gave rise to 4,270 complaints, about 54 percent more than in the previous year.

Graph 45 - Complaints about the postal sector, by service



Source: ICP-ANACOM.

The subject giving rise to the most complaints was customer service, with 2,911 complaints reported; these complaints are typically associated with users visiting service provider outlets, reflecting the weight of complaints submitted using complaints books in the total volume of complaints presented to this Authority (about 98 percent). Other matters giving rise to most complaints in this period were lack of attempted delivery at home (1,455 complaints), loss (1,002 complaints), delivery at the wrong address (865 complaints) and delayed delivery (863 complaints).

7.1.3. Information Society Services

Among information society services, the largest number of complaints referred to message-based valued added services, with 894 complaints recorded in 2010, representing about 92 percent of all complaints sent to this Authority on those services. The main issues raised in these complaints were the alleged lack of subscriber consent as to provision of the service and failure to bar services by the support provider or delay in the implementation of barring.

7.2. Results of the analysis of complaints

Of the 44,108 complaints received by ANACOM in 2010, about 4 percent were illegible, had no content or were cancelled by the complainant.

Furthermore, around 22% were related to matters outside ICP-ANACOM's policy area, including complaints on issues which are not encompassed by the sectors which ICP-ANACOM regulates, as well as complaints that, although included in the areas regulated by this Authority, relate to issues beyond the scope of ICP-ANACOM's intervention. Such complaints include issues related to faults and technical assistance for electronic communications terminal equipment, as well as general issues related to errors in billing for the services. In both cases, and whenever possible, ICP-ANACOM referred these complainants to the competent authorities.

Among the remaining complaints, which were within the scope of ICP-ANACOM's remit, about 74 percent led to the respective handling processes, and evidence of non-compliance of applicable sectoral legislation was detected in 1,400 complaints. These complaints were forwarded to ICP-ANACOM's inspection services, referring to the following key issues:

- non-compliance with the rules set forth by Decree-Law no. 63/2009 of 10 March governing provision of SMS and MMS-based valued added services;
- non-compliance with the rules governing the operation of call centres, as set forth by Decree-Law no. 134/2009 of 2 June;
- non-compliance with the rules governing number portability, set forth by Regulation no. 87/2009 of 18 February, amending Regulation no 58/2005 of 18 August;
- non-compliance with the rules governing complaint books, set forth by Decree-Law no. 371/2007 of 6 November, amending Decree-Law no. 156/2005 of 15 September;
- non-compliance with the rules governing the unlocking of equipment, set forth by Decree-Law no. 56/2010 of 1 June; and
- non-compliance with the rules governing pre-selection, set forth by Regulation no. 268/2007 of 15 October, amending Regulation 1/2006 of 9 January.

In the remaining complaints, given the absence of such evidence and with the vast majority referring to strictly contractual situations (related to aspects of quality of service, tariffs, cancellation, service installation, among others), ICP- ANACOM assumes an

informative role, giving consumers and other users clear information on the issues raised, in particular, about applicable legislation and the bodies which can help them resolve the conflict with their provider.

In the processing of all complaints received and wherever deemed necessary, ICP-ANACOM cooperates closely with the service providers and with organisations with expertise in consumer protection.

Since August 2009, this Authority has also taken part in the RTIC - Rede Telemática de Informação Comum (Telematic Network of Common Information), which is the responsibility of the Direcção-Geral do Consumidor (Directorate General for the Consumer). This system lets the complainant check the status of complaints they have submitted using complaint books.

By processing the complaints which it receives, ICP-ANACOM is not only able to detect evidence of non-compliance with applicable sector rules (legislation and regulatory measures), it also able to access a growing collection of useful information on sectorial regulation and on user knowledge. Recognizing how important it is to deal with complaints quickly and effectively, in order to accomplish these goals, ICP-ANACOM has focused on increasing its capacity to respond to user requests. In 2010, this commitment resulted in an increase in the number of requests handled, while simultaneously improving the time taken to respond to them.

7.3. Consumer Information

Alongside the processing of complaints and associated statistical data, ICP-ANACOM has strengthened its role in providing general information to users and preventing the occurrence of problems, seeking to contribute to a well-informed consumer.

In this context, a process was started in 2010 (and completed in 2011) of reviewing the responses which ICP-ANACOM gives to the complaints it receives, in order to make them more accessible, informative and useful to users.

In 2010, ICP-ANACOM launched a Consumer Support area on its website with general information about the different aspects of using electronic communications services. In

2011, this area evolved into the Consumers' Website, with information which is more up-to-date and more suited to identified needs. The Consumers' Website also covers postal and information society services.

ICP-ANACOM also added a Virtual Assistant to its website in 2010; this is an intelligent system which helps users find information, providing immediate and specific answers about the available content in response to a user question entered in natural language. This tool provided ICP-ANACOM with a new way of identifying users' information needs.

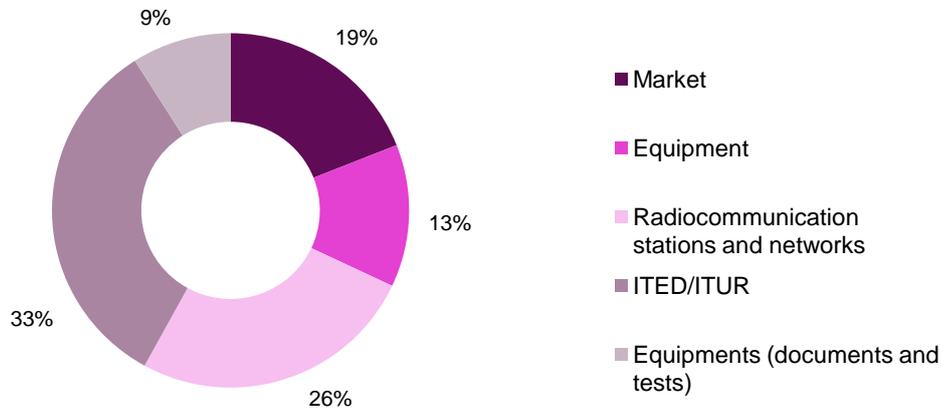
ICP-ANACOM publishes clarifications as considered necessary to promote understanding of a specific subject which has given rise to queries among providers or among consumers and users of services. In April 2010, a clarification was published on ICP-ANACOM's website on the compensation scheme provided under the Regulamento da Portabilidade (Portability Regulation).

ICP-ANACOM also uses information campaigns to disseminate information on issues that are identified as particularly sensitive, and in 2010 it ran an information campaign on message-based valued added services and reran the campaign on roaming.

7.4. Inspection and laboratory activities

ICP-ANACOM regularly conducts investigations in the market - either because complaints received by this Authority reveal evidence of non-compliance which warrants confirmation, or upon its own initiative. In 2010, investigations were conducted in various areas: electronic communications, postal sector, message-based valued added services, spectrum management, equipment and other areas. In total over one thousand inspections were carried out over the year.

Graph 46 - Inspections undertaken in 2010



Source: ICP-ANACOM.

7.4.1. Electronic Communications

Actions focusing on the electronic communications sector were launched in order to verify compliance by authorized entities with the obligations set forth pursuant to the titles authorising exercise of activity and pursuant to applicable legislation; such actions were taken with a view to preventing situations which might potentially distort the normal functioning of markets, and also with a view to finding solutions for the possible settlement of disputes between operators and/or between operators and/or consumers.

Alongside these actions, ICP-ANACOM continued to control the exercise of activity and provision of services by entities that do possess any authorising title duly issued by ICP-ANACOM for this purpose.

In the communications market, ICP-ANACOM's inspection activities involved 319 interventions covering a relatively mass services market.

The set of measures implemented, include:

- Inspections focusing on the provision of SMS and MMS-based valued added services. In total, ICP-ANACOM carried out 26 inspections related to Decree-Law no. 177/99 of 21 May (amended by Decree-Law no. 63/2009 of 10 March). These inspections were conducted to verify compliance by providers of SMS and MMS-based valued added services covering both subscription procedures and the fulfilment of requests by the support operators to bar access to such services (aspects that most frequently give rise to complaints sent to this Authority). Various occurrences of non-compliance were found, determining the instigation of various breach proceedings;
- 4 investigations involving 200 irregular number portability situations. Given such a high number of irregular portability situations, ICP-ANACOM made this area a priority in 2010. In addition to monitoring number portability, analyzing the causes of a large number of unfulfilled portability requests, ICP-ANACOM also conducted 4 investigations involving mobile and fixed telephone service providers. These investigations sought to detect irregularities in the respective portability processes, in particular, in practices followed by the operators in providing information to consumers, verify compliance with the deadlines set out in the Regulamento da Portabilidade (Portability Regulation - Regulation no. 58/2005 of 18 August), and examine the reasons given for refusing to carry out number portability. Processes in this area were also forwarded to litigation, culminating in the instigation of infringement proceedings ;
- 23 inspections performed in exchanges of PT Comunicações while giving oversight to the local loop Reference Unbundling offer (RUO), aimed at improving the conditions for sharing these exchanges with other operators and the conditions which facilitate effective access to exchanges by other operators;
- 20 inspections with a view to the offer of Public payphones in commercial establishments open to the public, as a result of which no breaches of the provisions of Law no. 5/2004 of 10 February were found;
- 10 inspections with respect to the offer of VoIP services by unauthorized entities, possibly constituting a violation of the provisions of article 21 of Law no. 5/2004 of 10 February, culminating in the service of a citation;

- 1 inspection focusing on the fulfilment of obligations under Regulation (EC) no. 717/2007 on [roaming](#) on public mobile telephone networks;
- 10 inspections focusing on the fulfilment of obligations under Decree-Law no. 134/2009 of 2 June on the operation of call centres, particularly with regard to time taken to answer calls, on provision of menus and provision of information to users. In light of the irregularities found, eight cases were referred to litigation;
- 12 investigations related to Decree-Law no. 56/2010 of 1 June on the unlocking of terminal equipment, which resulted in litigation citations. The unlocking of terminal equipment was the most common subject of complaints about equipment that came to ANACOM in 2010 - in particular, failure to apply the law to equipment acquired by companies and equipment not intended to support the mobile telephone service. Other complaints in this respect relate to the incorrect calculation of the amount payable for unlocking during contract lock-in periods and, after this period has elapsed, the requirement to provide proof of purchase and delivery of incorrect unlocking codes;
- 17 investigations regarding compliance with the rules set out in Decree-Law no. 156/2005 of 15 September, as amended by Decree-Law no. 371/2007 of 6 November (Complaint Books), in which detected irregular situations have been referred to litigation.

7.4.2. Postal services

Aiming to ensure compliance with the activity licences of service providers and, at an operational level, respond to requests for intervention that may arise as a result of consumer complaints, 18 investigations were carried out in the postal services market. These investigations sought to check the activities of postal service providers according to the permitted scope of their activities under the terms set out in the various authorisation titles, whereby it was concluded that there were no situations of non-compliance and no citations were served.

7.4.3. ITED - Infra-estruturas de Telecomunicações em Edifícios (Telecommunications Infrastructure in Buildings) and ITUR - Infra-estruturas de Telecomunicações em Urbanizações (Telecommunications Infrastructure in Housing Developments, Urban Settlements and Concentrations of Buildings)

With regard to telecommunications infrastructure in building and in housing developments, urban settlements and concentrations of buildings, 568 inspections were carried out in 2010, including 457 infrastructure inspections, which led to detection of 114 cases of non-compliance (in relation to the respective project and applicable technical standards, or in the project in respect of applicable technical standards). These actions resulted in 73 cases being referred to litigation. 111 investigations were also undertaken with respect to ITED/ITUR training entities.

In addition, ICP-ANACOM answered queries and responded to 366 requests for information, involving a range of technical and legal analyses.

These actions were conducted to verify that the actions of market agents were compliant with the new legal framework which entered into force on 1 January 2010. The new regime includes new technical rules, ITED Manual - 2nd edition and ITUR Manual - 1st edition, giving rise to considerable technological change and a broadening of scope compared to the old regime. This has had a significant impact on the sector and brought clear benefits to consumers, particularly by facilitating optical fibre access to next generation network services.

Under new legal regime, all technical ITED training must be conducted by training bodies designated by ICP-ANACOM, ensuring that knowledge is kept updated. This designation process will be concluded on 15 May 2011. As such, ICP-ANACOM worked to ensure that conditions were in place to enable this training, working especially in conjunction with the ANQ - Agência Nacional para a Qualificação (National Qualifications Agency) and the DGERT - Direcção Geral do Emprego e Relações de Trabalho (General Directorate for Employment and Labour Relations), in order to determine the training requirements and

contents. In addition, approval was given to the harmonized procedures for appointing training providers, as well as the applicable technical and human requirements⁴¹.

Following this work, refresher training was undertaken and completed for all technicians registered with ICP-ANACOM. Under a protocol signed with the Ordem dos Engenheiros Técnicos (Association of Technical Engineers) on this matter, the training given to engineers continues to be updated; and training courses are being prepared to qualify technicians who want to become ITUR and ITED installers and designers.

During 2010, ICP-ANACOM conducted monitoring of operators of public telecommunications networks which, pursuant to Decree-Law no. 192/2000 of 18 August, are subject to the requirement to communicate their interface specifications. These interface specifications are available and can be consulted on ICP-ANACOM's website, in the R&TTE Regime area.

7.4.4. Equipment market

ICP-ANACOM has been granted powers to enforce compliance with Decree-Law no. 192/2000 of 18 August, which establishes the regime governing the free circulation, placing on the market, and putting into service in Portuguese territory of radio equipment and telecommunications terminal equipment. This legal regime resulted from the transposition of Directive 1999/5/EC of the European Parliament and of the Council of 9 March on R&TTE equipment and covers various types of equipment, namely: (i) radio equipment using radio spectrum frequencies, containing a transmitter and/or a receiver⁴²; and (ii) telecommunications terminal equipment which, through an interface, is connected to the public telecommunications network (public GSM networks, analogue or digital telephone networks and data networks).⁴³

⁴¹ 45 training entities were designated across the country of which 21 are IEFP centres. 14 of the designated entities are also qualified to administer courses for engineers and technical engineers.

⁴² This applies, for example, to mobile phones (GSM), satellite terminals, citizens band equipment, maritime band phones, cordless phones, short-range devices (Bluetooth applications, remote controls, wireless alarms, devices for opening garage doors, wireless networks and remote control toys).

⁴³ Examples include telephones, answering machines, modems and GSM equipment (simultaneously radio equipment).

Equipment market inspections involve three procedures to assess conformity of equipment placed on the market:

- Procedure 1 - direct inspection actions (on-the-spot, using catalogues and online) involving economic agents (distributors, importers, traders), to verify requirements and detect those responsible for placing equipment on the market;
- Procedure 2 - market monitoring, using laboratory tests (conducted in ICP-ANACOM's laboratories), and analysis of technical documentation to verify equipment conformity;
- Procedure 3 - market monitoring, through the analysis of technical documentation to verify equipment conformity.

Among the direct inspections conducted of economic agents (distributors, importers, retailers) - procedure 1, 225 inspections were performed in 2010, with 472 devices inspected, 216 devices seized and sent 67 cases referred to litigation.

Under procedures 2 and 3, 146 cases were opened, 114 completed and 91 devices tested.

As a result of these inspections and subsequent laboratory and technical documentation analysis, a total of 181 cases were referred to litigation as a result of detected non-conformities.

Finally, there is also the specific case of radio equipment using frequency bands whose use is not harmonized throughout the EU. The manufacturer, their importer or legal representative are now required to notify ICP-ANACOM four weeks before placing such equipment on the market, in accordance with article 9 of Decree-Law no. 192/2000 of 18 August. This notification is always reviewed by this Authority whereas failure to comply with ICP-ANACOM's directions with regard to these devices can lead to a restriction on their entry into service. In addition, the restrictions stipulated to those responsible for placing the equipment on the market must be reflected in the information provided to the equipment's users. In 2010, 1,146 notifications were made under article 9 and 6, paragraph 4 of Directive no. 99/5 (R&TTE), whereas 106 communications were found to be incorrect and responses/analyses were received to 27 notifications.

Also during 2010, and following several requests for information in the context of R&TTE from representatives of equipment manufacturers or other undertakings responsible for placing equipment on the market, 13 requests for information were concluded which, in most cases, resulted in technical and legal analysis of the situations described.

7.4.4.1. Laboratory activities

Related to the enforcement and investigation activities carried out by ICP-ANACOM, this authority has an important laboratory activity, supporting its oversight of the equipment market and actions to inspect the market and industry.

This laboratory activity has developed an increasing level of competence in recent years, some of which is unique in Portugal and must be preserved and which, since technology is changing fast, must be expanded, adapting to new technologies and new regulatory frameworks. This led, in December, to a reorganization of the three laboratories which existed at that time into a single testing and calibration laboratory (LEC), with different functions, but with sufficient flexibility of action so that it can give the best response to requests from different services.

The laboratory has a unique structure, based primarily on areas of an operational nature and mainly focused on the execution of "testing" and "calibration": (i) electromagnetic compatibility and radio tests; and (ii) calibration.

The main actions undertaken with regard to providing technical support with respect to the radio and telecommunications terminal equipment market and the work done in these three laboratories is outlined below.

- **Technical support with respect to radio and telecommunications terminal equipment**

During 2010, testing was carried out of radio and telecommunications terminal equipment covered by Decree-Law no. 192/2000 of 18 August for the purposes of market inspection and for the provision of technical opinions in the context of legal proceedings.

Market and industry inspections were also conducted, verifying the essential requirement for electromagnetic compatibility in electronic communications equipment covered by Decree-Law no. 325/2007 of 28 September, with technical opinions also issued in this area in the context of legal proceedings.

As a result of complaints related to the use of power line communication technology (PLC) technical verification of equipment involving that technology was performed in the laboratory and on-site.

Subsequent to an external request, expert opinion was given in respect of digital television equipment, in order to assess the attempted use of *cardsharing*.

- **Laboratório de Ensaios Radioelétricos (Radio Testing Laboratory)**

In providing oversight of the radio equipment market (R&TTE), 167 radio devices were tested with different applications, 126 taking place in the context of market investigations, 33 referring to investigations into the use of radio spectrum and in the context of 8 expert opinions on radiocommunications equipment provided upon the request of judicial/police authorities.

Studies and tests were continued throughout the year, with an expansion of the number of characteristics which can be subjected to laboratory verification.

All technical and auxiliary procedures governing laboratory activities have been revised/updated with a view to their improvement and in view of the framework of a single laboratory system with flexible accreditation.

- **LCEM - Laboratório de Compatibilidade Electromagnética (Electromagnetic Compatibility Laboratory)**

133 devices were tested during the year, including 97 for the purpose of market inspections in the context of R&TTE and 36 at the request of external agencies.

This operational area also participated in a global inter-laboratory comparison exercise organised by APLAC - Asia Pacific Laboratory Accreditation Cooperation, as part of the

T061 "Proficiency Testing Program on Electromagnetic Interference" programme, coordinated in Portugal by IPAC - Instituto Português de Acreditação (Portuguese Institute of Accreditation) and involving electrical field strength and frequency; results will be available in 2012.

The accreditation awarded by IPAC - Instituto Português de Acreditação (Portuguese Institute of Accreditation) according to standard NP EN ISO/IEC 17025 for the execution of tests was maintained.

- **LMR - Laboratório de Metrologia Radioelétrica (Radio Metrology Laboratory)**

To implement the plan to calibrate ICP-ANACOM's equipment calibration, which is the responsibility of this laboratory, 218 pieces of laboratory equipment were calibrated during 2010, corresponding to an increase of 32 percent over 2009.

Meanwhile, 56 calibrations were performed for external clients, with the number of units calibrated declining 17.6 percent compared to 2009.

The accreditation awarded by IPAC - Instituto Português de Acreditação (Portuguese Institute of Accreditation) according to standard NP EN ISO/IEC 17025 for the execution of electrical and frequency calibrations was maintained.

7.4.5. MCE - Monitorização e controlo do espectro (Monitoring and Control of the Spectrum)

ICP-ANACOM engaged in preventative and reactive enforcement actions with respect to its frequency management activity. The preventive component entails verification of compliance with the regulations associated with spectrum management, aiming:

- to verify the operating conditions of radiocommunications networks and stations, according to current legislation, specifically Decree-Law no. 151-A/2000 of 20 July;
- to compile information on the ground to assist the activities of spectrum planning and the licensing of radiocommunications networks and stations.

Investigations carried out in this area led to around three quarters of the 111 cases which were referred to litigation, leading to the instigation of infringement proceedings.

The remaining cases that were referred to litigation originate from ICP-ANACOM's reactive activities, which always stem from external requests. On mainland Portugal, 1650 requests were dealt with in this context.

Of these, 494 related to interference and culminated with ICP-ANACOM issuing determinations with a view to the implementation of technical amendments to restore normal conditions, whereas the remaining requests (about 40 percent) involved direct inspections of radio stations and networks; in many cases were irregularities detected and the processes were referred to litigation.

The following table shows details of ICP-ANACOM's reactive activity, as developed on the mainland in 2010.

Table 36 - Monitoring and control of the spectrum activity in 2010

<p>1650 Processes (100%)</p>	<p>494 Interferences (30%)</p>	256 cases of interference. Television broadcasting service- television reception (52%)
		64 cases of interference. Aeronautical mobile service (13%)
		46 cases of interference. Public land mobile and trunking - public operators (9%)
		32 cases of interference. Amateur service and amateur-satellite service (7%)
		29 cases of interference. Private network service and CB (6%)
		26 cases of interference. License exemptions (5%)
		25 cases of interference. Radio broadcasting service (5%)
		16 cases of interference. Other services (3%)
	<p>1156 Other Requests (70%)</p>	447 Direct inspections of radiocommunication stations and networks (39%)
		158 Requests for cooperation from other national and international bodies (14%)
		114 coop. requests international - counterpart authorities (72%)
		44 Requests for cooperation from national entities (PSP, GNR, ERC, ...) (28%)
		215 Requests for studies and analysis of levels of coverage of radiocommunication networks (18%)
		118 Complaints about non-ionizing radiation (10%)
		37 Inspections at special, short-duration events (sports, entertainment, national and international) (3%)
		181 Actions in response to other requests related to the activity (16%)

Source: ICP-ANACOM.

During 2010, ICP-ANACOM was called on to resolve 494 cases of interference, with 13 percent related to the aeronautical mobile service. ICP-ANACOM also resolved around fifty situations of interference affecting the networks of public MTS and mobile trunking operators. Such situations are particularly important due to their impact on the economic activity and life of ordinary citizens (given the high rate of penetration across Portuguese society).

Institutional representation and representation of Portugal internationally (all related to the use of radio spectrum) comprised: (i) 114 cases of cooperation with ICP-ANACOM's international counterparts; and (ii) 44 cases of cooperation with national agencies, e.g. PSP, GNR and ERC.

ICP-ANACOM also conducted monitoring, on a regular basis, at entertainment, sports and/or official short-duration events, which is an activity that has significant bearing on the regulator's international image. This year, included the State visit to Portugal of His Holiness Pope Benedict XVI, and later in the year, the 2010 NATO Summit held in Lisbon. In addition to the main objective of ensuring that the communications of licensed users do not suffer interference problems (which significantly decreases ICP-ANACOM's reactive activity in this regard), this type of activity has resulted in a very significant increase in "temporary" licensing granted by ICP-ANACOM.

The monitoring and control of the spectrum area also received 1,464 requests related to non-ionizing radiation, calling for analysis of specific situations. 1,452 cases were concluded (involving analyses at 235 educational establishments), many of which involved on-site measurements.

The results point to values which are at least 50 times lower than the reference levels of power density stipulated in Administrative Rule no. 1421/2004 of 23 November. 54 situations were found which did not, at the outset, guarantee levels 50 times lower than the reference levels. However, in all cases, compliance of the reference levels was guaranteed. All the persons or entities requesting evaluations were informed of the findings of the respective actions.

7.5. Monitoring activity

ICP-ANACOM also carried out monitoring in various areas. This does not involve direct or on-the-spot inspections but active market supervision carried out indirectly, verifying compliance with the rules in force or the obligations to which operators are subject. It is based on the analysis of information provided by operators on their websites or information contained in contracts, on surveys sent out to operators or on statistical information which they are required to provide. In 2010, this type of monitoring included the following activities.

7.5.1. Monitoring of compliance with portability obligations

In 2010, ICP-ANACOM engaged in four particular types of actions in monitoring of compliance with portability obligations:

- i) development of a portability monitoring and oversight plan, with the analysis of the causes underlying the large number of unsuccessful portability requests - between 17 percent and 30 percent from January to December, although with marked improvement from August;
- ii) analysis of time limit associated with number portability in the mobile telephone service, specified in the respective regulation as a maximum of three working days, and the payment of monetary compensation to the subscriber in case of non-compliance with this time limit without need for prior request;
- iii) clarification of the applicable compensation scheme;
- iv) monitoring obligations of tariff transparency.

As such, and with regard to (i), ICP-ANACOM analyzed two specific aspects in detail. The first relates to the existence of a very large number of electronic portability requests left unanswered by the provider holding the number (*timeouts*). An exhaustive and detailed analysis was made of these requests, comprising all the providers involved, and the number of non-responses was calculated for each company, along with the rate of non-responses as a proportion of requests received. Since such occurrences constitute breaches of the Regulamento da Portabilidade (Portability Regulation), which stipulates

that responses to electronic portability requests are to be given within 24 hours, infringement proceedings were instigated against 16 companies.

The second aspect that was investigated is related to the high number of refusals due to indication that a subscriber's SIM card number does not correspond to their mobile phone number. This is a means of validating mobile numbers when portability is requested and is necessary to avoid undue portability, particularly in the case of unidentified subscribers. Various ways were identified to overcome this difficulty, which is greater given the various means by which each mobile operator presents numbers on the SIM card.

As a result of investigations involving mobile operators, including those which remain ongoing, there are reasons to believe that requests for mobile number portability will be presented more accurately in terms of identifying the SIM card. This will contribute to an increase in the rate of successful portability operations and, consequently, reduce the time taken to deliver this feature to the subscriber. During 2011, information on this subject will be posted on ICP-ANACOM's website.

With regard to (ii) - the time limits associated with number portability in the mobile telephone service - it was found that, with respect to the electronic process, the average time taken for mobile number portability exceeded three working days; as a result ICP-ANACOM conducted an investigation with respect to compliance with this obligation, checking that payment of 2.50 euros for each day of delay was being made within 30 days, as stated in the Regulamento da Portabilidade (Portability Regulation).

ICP-ANACOM took the view that these cases of non-compliance stemmed in part from ignorance among users as to their rights regarding the portability of mobile numbers; as such, by notice of 1 September, ICP-ANACOM recommended that operators should make information available on their websites, in their retail outlets and at other points of sale, setting out the time limits applicable to the execution of mobile number portability and with details of users' rights to compensation whenever this time limit is exceeded.

In relation to (iii) - clarification of the applicable compensation scheme - and following several complaints from operators and following meetings held with these operators to discuss disagreements between donor and recipient providers over the implementation of the compensation scheme provided for in article 26 of the Regulamento da Portabilidade

(Portability Regulation), on 16 April 2010, ICP-ANACOM published a clarification on the issue on its website.

On its website, ICP-ANACOM has posted information provided by operators on the documents required to terminate contracts with portability.

Finally, with regard to (iv) - monitoring obligations of tariff transparency - in 2010, ICP-ANACOM compiled information reported at the end of 2009 and at the end of the first half of 2010, including information on numbers to access the service giving information on prices of calls to ported numbers and information concerning the procedures indicated by MTS providers to deactivate/reactivate the portability announcement. This was also used to update the information provided to the general public on ICP-ANACOM's website. This information is collected from responses given to the six-monthly portability questionnaire (approved by decision of 11 November 2009), which compiles and systemises the information which companies with portability obligations are required to submit to ICP-ANACOM. With this information ICP-ANACOM is able to monitor the performance of this feature and verify compliance with the portability obligations set out in the Regulamento da Portabilidade (Portability Regulation) and the LCE.

Based on the information collected in the portability questionnaire, a number of investigations were conducted in April 2010 to confirm/verify compliance, where applicable, with the consumer information obligations laid down in the Regulamento da Portabilidade (Portability Regulation) and to verify that the information provided to ICP-ANACOM under article 22 of the same Regulation is properly updated.

Following analysis of the investigations results, it was concluded that the majority of provider companies were compliant with the consumer information obligations under the regulation, but there were exceptions. These exceptions included, in the case of the mobile telephone service: (i) a situation in which the portability announcement could not be switched off using the numbers indicated by the company in its response to the six-monthly portability questionnaire; it was also found that the information provided about the procedures to be followed by the customer calling to activation or block the announcement was incorrect or did not correspond to the information that the company provided to ICP-ANACOM; (ii) in another situation, it was found that, in the case of calls

made specifically to numbers ported to a particular service provider, an announcement was heard which was not fully compliant with the stipulations of the regulation.

However, after sending notices giving an account of irregularities detected, the companies in question informed ICP-ANACOM that, in the meantime, the reported situations had been remedied - this was later confirmed with further investigation.

7.5.2. Monitoring quality of service

7.5.2.1. Monitoring information on quality of service laid down in the RQS - Regulamento sobre Qualidade de Serviço (Quality of Service Regulation)

ICP-ANACOM monitored the information on quality of service which, under the Regulamento de Qualidade de Serviço (Quality of Service Regulation) (Regulation no. 46/2005 of 14 June, as amended by Regulation no. 372/2009 of 28 August), it receives from companies providing the FTS on a quarterly basis.

As last year, in 2010, ICP-ANACOM released quarterly reports on its website containing key information on quality of service submitted by these companies and indication of the *links* which can be used to access information which each of the companies makes available on their websites.

7.5.2.2. Model of disclosure of information on quality of service to end-users

Pursuant to the RQS, in December 2010, ICP-ANACOM conducted a survey of the websites of FTS providers to ascertain how the operators were disclosing quality of service information defined in the Regulation on their websites and the degree to which there were following the model of disclosure of such information to end-users defined by ICP-ANACOM (model approved by this Authority, as a recommendation, by determination of 11 November 2009).

This verification was performed in relation to information disclosed on the performance targets proposed by companies for 2010, whereby it was concluded that there was a reasonable level of compliance among companies with the majority of the rules recommended in ICP- ANACOM's disclosure model. However, it was found that

information on quality of service included on the website of one of the providers was not disclosed in accordance with paragraph 6 of article 7 of the RQS; as a result the company was notified, in early 2011, in order to rectify the situation.

7.5.2.3. Monitoring models of disclosure of information on quality of service in ISP subscription contracts

Between 1 October and 10 November 2010, a survey was carried out on how information on quality of service is provided in the contracts of Internet access service providers, with reference to ICP-ANACOM determination of 1 September 2005, as amended in December 2008, referring to the "Guidelines on minimum content to be included in contracts governing the provision of electronic communications services":

The analysis of compiled data covered items related to quality of service which, under these "Guidelines", is to be included on a mandatory basis in contracts governing provision of Internet access, as well as information whose inclusion in contracts is recommended.

The main conclusion of the survey was that, besides the mandatory elements, there was a generally low level of adherence among providers of Internet access services when it came to including aspects related to quality of service in contracts and their commitment to such aspects under these contracts.

As such, it was found that all providers consider at least one parameter for which they undertake to provide customers with determined levels of quality and in respect of which non-compliance, where attributable to the provider, may give rise to customer compensation or reimbursement. In many cases this parameter is the maximum time taken by the service provider to make initial connection of the service - inclusion of this parameter is mandatory under applicable legislation.

It was also found that contracts also contain parameters establishing minimum levels of quality which ISP undertake to provide customers without stating explicit consequences for non-compliance - the most common of these is the deadline for responding to complaints.

ICP-ANACOM will continue to monitor this issue in 2011.

7.5.3. Monitoring of various aspects associated with retail offers

Below, actions are presented which are aimed at monitoring various aspects associated with retail offers. At the end of each quarter, ICP-ANACOM compiles, processes, analyzes and publishes statistical information on the fixed telephone service, mobile telephone service, Internet access service, subscription TV service, postal services and next generation networks (from the third quarter).

At the same time, ICP-ANACOM conducted surveys and analyses of the offers and tariffs of these services, producing international comparisons and analysing results, in particular with respect to the points below.

7.5.3.1. Compliance with disclosure obligations in ISP subscription contracts and on the respective websites

At the end of 2010, checks were carried out of which Internet access service providers (ISP) published their subscription contracts on their websites.

It was found that some ISP did not make their contracts available on their *websites*, indicating a lack of compliance with the requirements set out in ICP-ANACOM determination of 21 April 2006, on the object and form of public disclosure of the conditions of provision and use of electronic communication services. As such, in early 2011, notices were sent requiring these companies to remedy the detected situations.

ICP-ANACOM will continue to monitor this situation in 2011.

7.5.3.2. Model of disclosing tariffs on the websites of multiple-play service providers and providers of nomadic VoIP services

As part of an inquiry carried out during 2010 as to the websites of providers offering multiple-play services and providers offering nomadic VoIP services, various irregularities were detected related to the disclosure of tariffs, deemed to be non-compliant with the stipulations of ICP-ANACOM determination of 21 April 2006 on the object and form of

public disclosure of the conditions of provision and use of electronic communication services. These situations have been reported to the companies concerned so that they might be remedied.

ICP-ANACOM will continue to monitor this issue in 2011.

7.5.3.3. Model of disclosure by providers of information about *Homezoning* offers

As part of its inquiries, carried out in 2010, as to the websites of companies providing *Homezoning* offers⁴⁴, it was concluded there were no cases of non-compliance with the specific consumer information obligations defined by ICP-ANACOM pursuant to determinations relating to such offers.

7.5.3.4. Provision by companies providing telephone services, of tariffs with per second billing and monitoring of the model for the disclosure of these tariffs

According to ICP-ANACOM's position of 7 May 2008 on the application to electronic communications of point q) of article 8 of Decree-Law no. 57/2008 of 26 March (on unfair commercial practices), all companies providing telephone services are required to provide a tariff with a single initial period followed by per-second billing - which may constitute an *opt-in* logic with respect to all existing tariffs.

On the other hand, ICP-ANACOM's determination of 21 April 2006 on the object and form of public disclosure of the conditions of provision and use of electronic communication services sets out, among other things, that providing companies shall make tariffs available on their websites, where existing, and that information is to be provided in a manner which is clear, visible and easily accessible.

In this context, inquiries were conducted between October and November 2010 on websites of companies with consumer offers (residential sector) in the context of the following services: FTS, MTS, nomadic VoIP service (with time-based billing) and the Internet access service dial-up (with time-based billing)

⁴⁴ *Homezoning* offers entail the provision of the FTS using the GSM/UMTS mobile networks, i.e., the offer enables the use of GSM and UMTS frequencies of the land mobile network on the local access network for the provision of the telephone service at a fixed location.

With respect to certain companies and in the context of certain services, ICP-ANACOM detected situations where no offer was available conforming to the regulator's position -, as outlined above. In some cases, non-compliant situations were found with respect to the disclosure of tariffs on the websites of provider companies. These irregularities were reported to the provider companies responsible by notices issued at the end of 2010, for the purpose of correction.

ICP-ANACOM will continue to monitor this issue in 2011.

7.5.4. Monitoring compliance with the rules on the inclusion of advertising and information of utilitarian nature in telephone directories to be provided within the scope of Universal Service

In 2010, ICP-ANACOM took action to verify compliance by PT Comunicações with ICP-ANACOM's determination on the inclusion of advertising and information of utilitarian nature in telephone directories to be provided within the scope of the universal service.

With this determination of 8 November 2005 (amended on 14 June 2007), ICP-ANACOM sought to ensure that PTC does not take advantage of the US obligation to provide directories by including advertising references which distort the objectives of information covered by the obligation and does not use these media to adopt behaviours that may harm competition.

As set out in this determination, the opening pages of telephone directories should be used to convey information of utilitarian nature to their users, listing numbers which can be used to reach the emergency services, public utility numbers and also the customer service and information numbers of each provider of publicly available electronic communications services that so requests, with information on the costs of contacting these services, as well as an indication of the respective "websites".

Accordingly, as part of its oversight activity, ICP-ANACOM performed checks on the following directories: "Algarve"; "Alentejo e Setúbal"; "Ribatejo e Estremadura" (67th edition); "Baixo Minho e Douro Litoral"; "Minho"; "Aveiro e Viseu"; "Trás-os-Montes e Alto Douro"; "Beira Interior"; "Lisboa Classificada (129th edition)", "Açores" (67th edition),

"Zona Norte de Lisboa"; "Margem Sul do Tejo"; "Sintra e Cascais"; "Porto"; "Coimbra e Leiria (68th edition)"; "Alentejo/Algarve (68th edition)"; and "Madeira (68th edition)".

7.6. Orders, recommendations and clarifications

In providing supervision and oversight of the sector, it is incumbent upon ICP-ANACOM to ensure compliance with the obligations of universal service, and also to ensure the application and enforcement of laws, regulations and technical requirements applicable within the scope of its powers and responsibilities. ICP-ANACOM is also responsible for making sure that communications operators are compliant with the provisions of the titles by which they are authorised to engage in activity or with the provisions of concession contracts, and for ensuring compliance with the general authorization scheme (in the case of electronic communications).

Under the law, ICP-ANACOM may conduct investigations and inspections with respect to any undertaking or site in the performance of its responsibilities.

According to article 9 of its Statutes and within the scope of its powers of regulation and supervision, ICP-ANACOM may adopt different procedures, whereby it may issue orders or determinations, which it does on a regular basis, formulate recommendations and disseminate information on the position which it adopts with regard to determined issues.

In the case of orders or determinations, ICP-ANACOM requires providers to change and correct their behaviour. As a rule, the services of this Authority, having detected irregularities, notify the parties concerned, giving them a deadline to remedy the situation. Once these deadlines have expired, new inspections are performed to check whether the situation has been corrected. For example, reference can be made to two determinations of ICP-ANACOM adopted in 2010. Under the first, issued in February, PTC was ordered to make improvements to the RUO in order to adapt it to market needs and developments. Specifically, this determination introduced Premium levels of service, increasing the value of compensation for non-compliance, providing OSP with more detailed information on access points and increasing the length of advance notice required on changes to the network.

The other determination, issued in October, required PTC to introduce changes in the RDAO, to increase efficiency and reduce non-compliance under this reference offer.

Recommendations are made in situations in which the regulator considers that there are grounds for giving providers guidance on their behaviour. For example, a recommendation issued on 1 September called on mobile operators to make information available on their websites, at their retail outlets and at other points of sales setting out the time limits applicable to the execution of mobile number portability and with details of users' rights to compensation whenever this time limit is exceeded.

Clarifications/positions are issued to the market by the regulator when it considers that it is important to clarify its position on certain issues, expressing its understanding and informing the market, thereby increasing visibility with respect to regulatory action. This occurred in April, when the regulator issued a statement to clarify its position on the portability compensation scheme.

7.7. Litigation and offences

ICP-ANACOM is able to apply different types of sanctions: contractual penalties (in accordance with the Contrato de Concessão (Concession Contract) of the public telecommunications service and the Contrato de Concessão (Concession Contract) of the universal postal service); apply sanctions in the context of breach proceedings; apply other administrative penalties (as exemplified by the suspension and cancellation of registrations); and impose mandatory monetary penalties.

Under the supervisory powers that are conferred upon ICP-ANACOM with respect to offences, provision is made under different pieces of sectorial legislation whereby ICP-ANACOM may instigate, instruct and rule on breach proceedings, whenever it is deemed that an administrative offense has been committed under such legislation.

Except as provided for in paragraph 4 of article 1 of Law no. 99/2009 of 4 September, breach proceeding are subject to the regulatory regime established in this Law and, in addition, to the provisions of the Regime Geral das Contra-Ordenações (General Regime Covering Punishable Offences) approved by Decree-Law no. 433/82 of 27 October and subsequently amended by Decree-Law nos. 356/89 of 17 October and 244/95 of 14

September and Law no. 109/2001 of 24 December (and therefore also, additionally, the provisions of the Código de Processo Penal Code (Code of Criminal Procedure), under the provisions of article 41 of this regime).

In the case of infringements excepted under the rules referred to in the paragraph above, the Regime Geral das Contra-Ordenações (General Regime Covering Punishable Offences) is directly applicable.

Law no. 99/2009 of 4 September establishes the framework scheme of administrative offences within the communications sector, with a view to the particularities and requirements of the sector and allows a more homogeneous and more rapid response from the sector's regulator.

In addition to providing a classification of offences and establishing that the type of offence varies depending both on this classification of offenses and on whether committed by a natural or legal person (and in the latter case, the size of the company), the law updates the amounts of the fines and creates new procedures (such as warnings and the summary proceedings).

It also provides for the possibility of making violators subject to injunctions (where the offence committed consists of the omission of a duty and where compliance remains possible), followed by the possibility of imposing a financial penalty.

The full implementation of the system described, which allows procedures to be simplified and streamlined, without infringing the guarantees of the accused - thereby enabling ICP-ANACOM to process and sanction offences more efficiently - depends, however, on the adaptation of different communications legislation, including the need to classify the severity of offenses set out therein. During the first half of 2010, a preliminary draft was sent to the Government with a view to this adaptation, so far without follow-up.

7.7.1. Breach proceedings

The breach proceedings instigated in respect of communications may be based on allegations made by operators or users of services, the results of oversight by

ICP-ANACOM or other entities, and may originate in notices addressed by other bodies or authorities.

In 2010, over 200 cases were referred to litigation following various investigations and as a result of the presentation of complaints. 145 proceedings were instigated in respect of breaches of the Lei das Comunicações Electrónicas (Electronic Communications Law) and other Laws. In each case there may be, and usually is, more than one offence, and there are sometimes thousands of offences (this is typical of processes, for example, relating to breaches of rules on portability).

Of the total number of cases under review in 2010, 92 were ruled upon, with 29 new cases initiated over the course of the year. Fines were applied in 27 cases, totalling about 1.3 million euros.

Cases concerning the infringement of portability rules were particularly relevant in 2010, relating to an area that received special attention, as was the case in 2009. Further to ICP-ANACOM's oversight in this area, either through monitoring, or through investigations, it was concluded that in some cases breaches had in fact been committed. This led to the instigation of breach proceedings and, in total, 26 new cases were instigated against various operators, two of which, despite their complexity, have already been concluded.

With respect to breaches of Law no. 5/2004 of 10 February, 14 proceedings have been instigated for failures to provide information to this Authority and for failures to comply with the legitimate instructions or rulings of ICP-ANACOM.

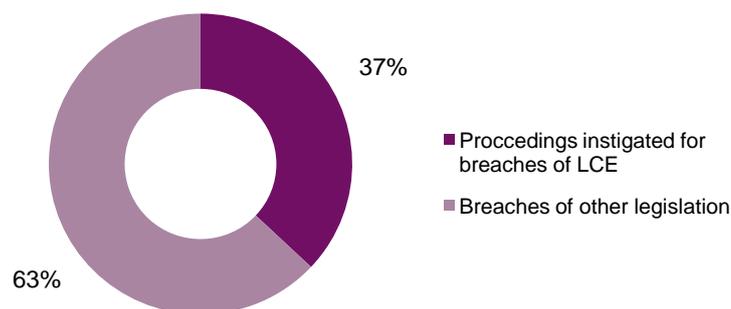
In 2010, proceedings brought for breaches of obligations stemming from operator licenses also had particular relevance. One of the cases in question, brought against Vodafone Portugal, concerns breach of coverage obligations contained in the license allocated to the company for third generation mobile operations - UMTS. The process culminated in the application of a fine of 750,000 euros.

Proceedings for the same type of offence were brought against Radiomóvel⁴⁵, after the company failed to comply with the terms of its license for mobile trunking services, using frequencies to provide a separate service. The process culminated with the application of a fine of 200,000 euros, with an appeal pending.

With respect to proceedings brought for violations of other laws and since they are framed in ICP-ANACOM's strategic objective to assure and protect the rights of users of communication services, note should be made from the outset of 10 actions brought for breach of the rules governing message-based valued added services, for breach of the obligations to provide barring to which supporting service providers are subject and for failure of providers of these services to give users proper information. Two of these processes were completed in 2010, culminating in the imposition of fines.

Due to their number, note is also made of the 56 actions related to radiocommunications - including 32 related to citizen band and 22 related to the private use land mobile service, brought either due to lack of licensing or owing to use of networks or stations outside the applicable technical parameters - and proceedings brought due to failures to provide the regulator with regular information, involving both providers of postal services (19) and providers of electronic communications services (12).

Graph 47 - Proceedings instigated in 2010



Source: ICP-ANACOM.

⁴⁵ Currently MobiZAPP - Comunicações Electrónicas, S.A..

7.8. Resolving conflicts between operators/providers

ICP-ANACOM is often called upon to mediate in disputes between operators, and in 2010, this Authority intervened on various occasions to resolve disputes between operators, including:

- **Administrative resolution requested by Radiomóvel (currently Mobizapp) as it sought to gain access and interconnection of its SMRP network with the fixed, mobile and nomadic networks of Optimus, PTC, TMN and Vodafone Portugal**

ICP-ANACOM received a request for intervention by Radiomóvel - Telecomunicações, S.A. (Radiomóvel), with the objective of "exercising their right to negotiate interconnection with and obtain access or interconnection to other undertakings providing publicly available electronic communications networks and services", which it claimed had been denied by PTC, Sonaecom, TMN and by Vodafone Portugal. By determination of 30 July 2010, ICP-ANACOM determined that, in compliance with the legal and regulatory obligations to which they were subject under article 64, paragraph 2 and paragraph 66 of the LCE, PTC, TMN, Sonaecom and Vodafone Portugal were required to meet reasonable requests for the interconnection of Radiomóvel's mobile network with their own fixed, mobile and nomadic networks, in full observance of the obligations imposed on them pursuant to market analysis procedures and in particular, in observance of the obligations to respond to reasonable requests for access and obligations of non-discrimination.

In this determination, ICP-ANACOM also set out that, within a maximum period of 90 consecutive days from the date of the final decision in this process, notice is to be given to this Authority of the conclusion of the interconnection agreements necessary to ensure Radiomóvel's right to obtain access or interconnection. Only Vodafone Portugal complied with the stipulations of the determination in a timely manner.

After the specified period of 90 days, contacts were made in order to oversee compliance with the obligations set forth in this decision, whereby it was found that all the companies involved had made efforts to reach an interconnection agreement under the established terms. The respective agreements were signed in 2011.

However, Vodafone Portugal brought a special administrative action challenging the determination of 30 July 2010, which was appropriately contested - the case is pending.

- **Administrative resolution of a dispute between Vodafone Portugal and PT Prime, TMN and Optimus over portability pricing**

On 28 December 2010 and under article 10 of the LCE, Vodafone requested ICP-ANACOM's intervention to resolve a dispute with PT Prime, Optimus and TMN on account of the retroactive application by these providers of the new portability activation pricing.

After verifying the requisites of intervention by the regulator, the counter-parties were notified to state their positions with regard to Vodafone Portugal's request.

This dispute remains under review.

- **Request for intervention presented by Nortenet - Sistemas de Comunicação S.A. due to improper billing of migration of ADSL loops by PT Comunicações**

During 2010 an analysis was conducted to consider the request for intervention submitted by Nortenet on 28 September 2009 in a dispute with PTC over alleged improper billing of migration of ADSL loops during specified periods. Nortenet was of the view that such a procedure constituted a violation of ICP-ANACOM determinations of 21 April 2006, 3 October 2007 and 26 June 2008, regarding the "Rede ADSL PT" offer. In this context, it requested intervention by this Authority to instruct PTC to issue credits in respect of the improperly charged amounts.

- **Dispute between PT /TMN and Sonaecom over termination prices of the nomadic VoIP service**

Analysis of this dispute was conducted during 2010, whereas, by letter in March 2011, PT informed ICP-ANACOM that, in the meantime, the parties had reached agreement. As such, there is currently no dispute between the parties.

- **Dispute between AR Telecom, Vodafone Portugal and Sonaecom over remuneration conditions of the 760 service**

Analysis of AR Telecom's dispute with Vodafone Portugal and Sonaecom was conducted during 2010.

- **Dispute between PTC and Sonaecom over unilateral alteration of the remuneration of this company in the access of its customers to PTC's 760 service**

On 27 September 2010, PTC withdrew its request which it had presented on 7 April 2009 for ICP-ANACOM to intervene regarding its dispute with Sonaecom.

- **Dispute between PTC and Sonaecom on tariffs and routing of traffic from former Telemilénio - Telecomunicações, Sociedade Unipessoal, Lda. (Tele2)**

Analysis of this dispute continued during 2010.

7.9. Market monitoring

7.9.1. Studies conducted

With the aim of acquiring improved and enhanced knowledge of the various issues comprising the electronic communications sector, ICP-ANACOM has carried out various studies, compiling information which is useful to regulation of the sector. The most important studies in 2010 were:

7.9.1.1. Studies on quality service

To provide consumers, as well as operators and service providers, with information, several studies were conducted in 2010 on quality of service (QoS) in the context of the land mobile service. These studies sought to evaluate levels of service actually provided by Optimus, Vodafone Portugal and TMN and focused on the QoS of message services (text and multimedia) and on the actual performance of these operators in providing voice calls and video telephony on mainland Portugal (the main urban centres and along main

roads). In addition, and in the context of complaints from local authorities, other studies were conducted on QoS examining voice, data and coverage in different locations⁴⁶. These evaluation studies were carried out through the analysis of technical parameters, constituting a very good approximation to the actual quality perceived by the consumer.

For the fourth consecutive year, ICP-ANACOM performed an assessment of the quality of fixed and mobile broadband Internet access services in Portugal from the user's perspective.

7.9.1.2. Study on the deployment of NGA

Next Generation Access Networks (NGA) support the development of the information society and employment growth, and will also make it possible to fulfil the exponential increase in demand for bandwidth by citizens and companies stemming from the mass take-up and growing sophistication of services, applications and "phenomena" with social and economic interest at various levels. NGA will also contribute to a reduction in CO₂ emissions.

Taking into account the need to develop knowledge about these networks and keep that knowledge up-to-date, a new study on the evolution of the NGA was initiated in 2010 and published in February 2011. This study included a survey of the applicable regulatory framework and a social and economic impact analysis; it also looked at fourteen international case studies, technological solutions, the possibilities of wholesale access including unbundling of fibre and the different competitive strategies and offers in Portugal⁴⁷.

The study concluded that the key factors in the deployment of NGA were related to the role of the state, intervention by the NRA, the strategy of operators and conditions of demand.

In Portugal there is a strong operator dynamic, determined and consistent regulatory action and a range of state incentives for the development of NGA.

⁴⁶ Specifically locations belonging to the parishes of Escarigo, S.Pedro da Gafanhoeira, N^a Sr^a de Guadalupe, Piódão, Fajão, Pessegueiro and Pampilhosa da Serra.

⁴⁷ This study is available on ICP-ANACOM's web site.

In the cases studied, the role of the state can be seen: (i) in the guarantee of transparent legislation which is conducive to investment in NGA throughout the territory, while ensuring that operators obtain a return and ensuring conditions for sustainable competition; and (ii) in its active participation NGA deployment by supporting investment and through direct investment, particularly in rural and more remote regions.

Especially in the EU, and through a transparent, stable and predictable regulatory environment based on the implementation of the EU framework and the market analysis process, the intervention of the NRA guarantees a framework which supports investment throughout the national territory and the development of healthy competition.

Government and regulatory initiatives in Portugal have driven operator investments, with over four million dwellings cabled with high-speed accesses (70 percent of them with EuroDOCSIS 3.0 or equivalent and the remaining 30 percent with optical fibre).

Even while the majority of investment has been focused so far on the more densely populated coastal regions, it is expected that NGA concessions in rural areas will soon help strengthen national efforts towards digital inclusion.

It is expected that NGA will contribute to the creation of a significant number of skilled jobs in Portugal, in addition to temporary jobs as the infrastructure is deployed.

7.9.1.3. Study on provider switching

Given the importance of the issue in optimizing user benefits, the ability of residential consumers to switch electronic communications service provider, particularly with regard to the MTS, FTS, IAS, STVS and bundles of services, was also studied.

Generally, and notwithstanding the particularities associated with each of the analysed services, there is less of tendency among customers of a more advanced age group to switch providers compared to customers of younger age groups.

A trend was also identified among customers with higher levels of education to switch providers more often (except in the case of the MTS).

When it comes to switching provider, the behaviour of Portuguese consumers was not found to differ significantly from the behaviour of other European consumers. In fact, for all the analysed services, less than 50 percent of respondents in Portugal and the EU have made an attempt to change service provider.

7.9.1.4. Study on the evolution of the quality of the Internet in Portugal

The main objective of this study was to evaluate the evolution of speeds and of average latency in fixed residential and mobile broadband access in Portugal between 2007 and 2010. The study also provides a comparison of speeds and latency by Portuguese districts and in the autonomous regions of Madeira and the Azores, also contributing to an internal reflection on alternative ways of measuring quality of service.

The study quantifies average growth in speed and latency of broadband access in Portugal and in different regions⁴⁸ and municipalities of the country, with results broken down by residential fixed accesses and mobile accesses.

In general terms, between May 2007 and mid-July 2010, average fixed residential Internet access upstream and downstream speeds nearly quadrupled, while average latency more than halved.

Over the same period, average mobile access downstream speeds tripled while average upstream speeds increased by a factor of 5. Average latency decreased.

Between 2007 and 2010, although there was a general increase in speeds across all regions and municipalities in the country, territorial differences also increased. This may be explained partly by the fact that some municipalities and regions include areas with greater competition and therefore higher speeds.

In the future, in light of concluded and ongoing investments in NGA, it is expected that the growth reported in average speeds associated with fixed access lines will continue to be impactful. In terms of mobile access, there is also expected to be an increase in average

⁴⁸ The regions correspond to the districts of the Portuguese mainland and to the autonomous regions, Azores and Madeira.

speeds, due to the increased coverage of HSPA+ mobile networks and with the introduction of LTE.

7.9.1.5. Study on the offer of electronic communications services in bundles of services

Provision of services as a bundle is growing in importance; as such, ICP-ANACOM conducted a study on the subject with a view to ascertaining the factors driving take-up of these offers, the means of measuring the phenomenon and its impact on the market. In fact, the offer of bundles of services, together with increased competition and the convergence of services, have given impetus to electronic communications markets, enabling provision of a wide range of new options. Currently, this type of offer is at the forefront of consumer preferences, achieving significant penetration in Portuguese households - according to various sources, about one third of households had a bundle of services as at the end of 2009 -, driving expansion of the broadband market and helping to reverse the trend of fixed telephone access disconnection, which was evident in Portugal a few years ago. In 2009, triple-play bundles obtained the most sales.

Consumers can be divided into two groups according to their characteristics: (i) those who do not have a bundle of services or who have a bundle that does not include broadband; and (ii) consumers who have a bundle of services with broadband (double-play or triple-play bundles). Compared to the first group, the second group appears to be younger and more educated, comprising people of a higher social class and more likely to be employed.

Finally, in order to better illustrate the current reality, the study discusses the opportunity of revisiting the definition of bundle of services adopted by the European Commission and the indicators used in the analysis of bundles of services (new subscriptions and disconnection rates associated with each bundle of services and the inclusion of Mobile IAS statistics).

7.9.1.6. Studies on the postal sector

ICP-ANACOM conducted a study entitled "Comparison of prices of Universal Postal Service providers in the European Union in 2010". The study is available on

ICP-ANACOM's website. This study, which is conducted on an annual basis, provides a comparison of prices based on current exchange rates and also based on purchasing power parity (PPP). It also tracks developments over the past three years and includes a systematic comparison of the prices of the most commonly used postal services within the scope of the universal service, as provided by the USP in each of the Member States of the EU.

Finally, ICP-ANACOM took in part in two EC studies: "Main developments in the postal sector 2008-2010" (mentioned above), developed by Copenhagen Economics, and "External dimension of the EU postal acquis" conducted by WIK Consult and James I. Campbell.

7.9.1.7. 2009 Inquérito ao consumo dos serviços de comunicações electrónicas (Electronic Communications Services Consumer Survey)

ICP-ANACOM compiled, analysed and published the results of the 2009 Electronic Communications Services Consumer Survey. The issues examined included access and barriers to access of various electronic communications services, consumer profiles, choice of provider and provider switching and customer satisfaction.

Meanwhile, on its website, ICP-ANACOM published the 2009 ECSI Portugal Study - National Customer Satisfaction Index, covering the communications sector, and in particular, the fixed and mobile network services, the Internet access service (fixed and mobile), the subscription television distribution and the postal service. This part of the study was sponsored exclusively by ICP-ANACOM.

7.9.1.8. Identification and characterization of the principle nodes and routes of international traffic flow between the mainland and the Autonomous Regions

This study was completed at the end of the first half of 2010. The first part, relating to communications between Mainland Portugal and the Autonomous Regions, including intra-regional communications, was completed in the previous year. The study involved fieldwork visits to key sites in Mainland Portugal, the Azores and Madeira, preparation of questionnaires and direct contact with those responsible for the relevant infrastructure.

The study accomplished the proposed objective of identifying and characterizing the principle nodes and routes of international traffic flow between the mainland and the Autonomous Regions.

Together with the results of other ICP-ANACOM initiatives, its conclusions and recommendations provide a prospective view as to the strategic actions to be undertaken in the context of communications security.

In the context of this study, an assessment was made of the impact of a possible double fault in the submarine cable connection between these Regions and Mainland Portugal, with subsequent analysis due on the implementation and testing of an appropriate contingency plan.

In addition, ICP-ANACOM gave support to an initiative of the Government of the Azores, through the Secretaria Regional da Ciência Tecnologia e Equipamentos (Regional Secretariat for Science, Technology and Equipment) to develop a pilot project in the area of communications for data recovery in crisis or disaster situations.

7.9.1.9. Identification and characterization of interdependencies between the infrastructure of the State's private networks and the infrastructure of public electronic communications networks

ICP-ANACOM conducted a study on this subject seeking, as a follow up to MOPTC order no. 16025/2009 of 2 June, to analyze the factors which, being beyond the control of the entity that oversees the management of the network and respective services, could compromise the security objectives of the network and the services provided thereon, particularly in terms of availability, integrity and confidentiality. ICP-ANACOM also examined interdependencies and their impacts including of an organizational, physical and operational nature and in terms of interconnection.

The methodology defined and adopted considered three main stages, over which it was intended to ascertain the extent to which the guarantee of continuity of services provided by the State, in this case through its private networks, is dependent on public electronic communications networks and services. Relevant information was compiled through various means and was systematized according to the defined methodology.

In the final stage, an analysis was made of the key findings obtained in the previous stages of the study and a set of recommendations was formulated on how to increase the capacity of Portugal and its agencies in terms of security and resilience of private electronic communications networks, in the light of good practice, international standards and reference studies.

7.9.1.10. Evaluation and characterization of the security of communications on public electronic communications networks

ICP-ANACOM conducted a study to evaluate this issue and characterise SCEN - segurança nas comunicações electrónicas nacionais (security in national electronic communications).

The main objective was to evaluate the infrastructure and resources of a significant sample of operators and providers of electronic communications services, in terms of network and information security, as well as the policies, measures, practices, plans, means and resources allocated to this issue.