

ICP-ANACOM's Advisory Council Opinion on the 2013-2015 Multi-year Activities Plan and Budget

I

In general terms

The Advisory Council, from here on “AC”, understands that the opinion now presented focuses on two management documents of the Regulator whose relationship recommends a joint analysis.

Accordingly, given the content and general terms presented, this is the opinion of the AC, which starts by drawing attention to several novelties that present significant improvements in the analysis and monitoring of the management documents in question. Starting with the inclusion of an executive summary, which will allow a careful and succinct perception of the main lines of action and objectives proposed.

Likewise, the setting of the priorities in the 2013-2015 strategic plan, characterized by objectivity, scheduling and quantification, also deserve a positive emphasis.

The analysis of both management documents reveals great detail, particularly in relation to the 2013-2015 strategic plan.

Analysis of the previous and current plans indicates that there are three reasons why the AC should recommend a modification of the format of the multi-year plan. It has been found that (i) only the first year of the plan shows real correspondence with its implementation, (ii) the following years are a constant projection that invariably has to be changed, in no way contributing to regulatory predictability, and (iii) as with other European regulators and considering the present turbulent and volatile times, the current model may continue to contemplate the same rigour for the first year of the plan, but then only define the main strategic lines of action for the following two years.

Likewise, in general terms, the AC also recommends that the objectives proposed should be presented in greater detail, since the breakdown of the actions would often gain from some comparison in time (evolution of the situation) and/or in space (benchmark), which has not been done yet. This would be an

improvement in the Regulator's Governance model by improving the transparency with regard to its Stakeholders. It would accordingly be desirable to publish performance indicators every six months.

Finally, the management document under analysis indicates that ICP-ANACOM has an objective concern with the Regulated Markets defined both in European Commission Recommendation 2003/311/CE of 11 February 2003, and in European Commission Recommendation 2007/879/CE of 17 December 2007, underlining the importance of the envisaged analyses.

Nonetheless, there are several regulatory questions with a high impact on the activity of the regulated entities that deserve a greater monitoring, notably:

- Sustainability of the Internet business and new access networks;
- OTT (Over the Top) services that compete directly with the network operators without being bound by any rules;
- Network neutrality;
- Fixed-mobile convergence (Smartphones, Tablets);
- Social networks and their impact on the traditional framework of privacy, data retention;
- Security of networks and services.

II

In specific terms

The strategic priorities of the 2013-2015 Multi-year Plan rest on 5 pillars:

1. To promote open and competitive markets;
2. To guarantee the efficient management of public resources
3. To guarantee and protect the rights of users
4. To promote institutional and technical cooperation
5. To promote internal efficiency and efficacy

1. To promote open and competitive markets

Regarding this pillar it should be pointed out that the analysis of the Relevant Markets defined in EC Recommendations should be updated, since their scale requires a thorough analysis, which should not be delayed, indeed it should be given a particular focus. All these Recommendations however were made too long ago, the markets having evolved considerably, which makes the analysis essential and, depending on its outcome, the intervention in markets that were not identified *a priori* as being susceptible to *ex-ante* regulation.

The regulated offers continue to be an essential element in the development of electronic communications, and therefore the dynamism of their review must be assured in order to keep abreast of all the technological developments of the last few years.

Considering the previous years, given the complexity of the above-mentioned analyses and the legal requirements for the previous hearing of interested parties, which imply legal time limits, we recommend that particular attention is paid to all the planning presented, and that the course of each market analysis is monitored.

It is recommended that all procedures related to Numbering should be speeded up.

In addition, in 2013 ICP-ANACOM will carry out a series of actions directly related to the Electronic Communications Universal Service, with this matter being subject to a highly focused scrutiny.

Given the demands of the previously mentioned analyses and reviews, the proposed schedule indicates that there will be no margin for any delays, and so we recommend the setting of priorities within the framework of the Digital Agenda for Europe.

2. To guarantee the efficient management of public resources

With respect to public resources, and given the usage limitation normally subject to a licensing process, it is recommended that the use of the said resources be evaluated in due time, safeguarding its efficient usage, notably through the analysis of the mechanisms for access to the spectrum left over from the recent auctions (BWA and Multiband).

As for DTT, it should be pointed out that besides the need for its stabilization, as mentioned in the Plan, the appropriate measures should be developed to finally close its implementation procedure. The framework

for the future development of DTT also recommends a set of additional concerns that will enable the analyses to be undertaken that are essential to define the current and future needs of the audio-visual sector regarding the use of the multiplexers available, considering the technological evolution in the offer of programme services (HD, UltraHD, HbbTV, etc.) and DTT-2, as well as to define the plan for the provision of Digital Dividend II, considering the public interest.

3. To guarantee and protect the rights of users

For ICP-ANACOM the rights of users are a concern that must be combined with clarification of and information about rights and obligations. In this case, striving for the rigorous provision of relevant information and so preventing a massive and excessive request for information, opting to make it clear, concise, and comparable.

4. To promote institutional and technical cooperation

This institutional and technical cooperation is essential in a legal framework that is increasingly integrated by the decision process within the European Union, for which rigour and focus concerning the main issues under discussion are crucial. Thus, the demands that Portugal faces under the Financial Adjustment Programme should be met by opting to coordinate the use of resources, notably by joining forces with the Stakeholders, as has been happening more recently, thereby enabling the promotion of a national position, whenever possible.

5. To promote internal efficiency and efficacy

As the importance of rationalizing the information requests regularly sent to regulatory bodies is frequently mentioned by Stakeholders, the AC recommends a reassessment of the existing procedures and a concentration/reduction of the information requested.

III

Resources

Clear signs are shown in the 2013-2015 Multi-year Activities Plan and Budget, specifically of progress in the rationalization of the costs plan, in line with Portugal's financial and economic situation.

It is important to highlight the magnitude of the economic-financial indicators, pointing out that Net Income was around 23 million euros, as well as assets of around 100 million euros, which justifies the careful consideration of their reasonableness, in light of Portugal's macroeconomic context.

We suggest a review of how the relevant costs are worked out for the calculation of the annual fees charged for operator activity, considering particularly the importance ascribed to provisions.

IV

Recommendations

In light of the above, the AC recommends:

- 1 – The consideration of the Action plan of the Digital Agenda for Europe and of BEREC's Activities Plan in the making of the Multi-year Activities Plan;
- 2 – Given the current economic and financial context, particular concern with the rigorous management of resources and of the investments made;
- 3 – The analysis of new areas for possible regulation resulting, in particular, from technological development;
- 4 – To modify the current format of the resources plan and the financial plan, and indicate the first year in detail, with the two following years describing the main strategic lines, to be adapted according to the sector's dynamism;
- 5 – To show the degree of achievement of the indicators proposed in the plan, reinforcing the accountability model in the relationship with Stakeholders.

Advisory Council, 17 October 2012.