

ANACOM CONFERENCE "UNIVERSAL SERVICE", LISBON, 18.9.2008

CONCLUSIONS

On 18 September 2008, ANACOM hosted an International Conference on "Universal Service" at Lisbon's Culturgest. The conference brought together around 300 participants, including policy makers, academics, representatives of operators and sector bodies, members of international organizations and other regulatory authorities to engage in a discussion of this issue.

The purpose of this event was to promote a constructive debate on the major issues raised by the universal service (US) in the communications sector, in view of the current challenges of a dynamic society marked by the rhythm of technological evolution and of the markets and the changing needs and guarantees of users of communication services.

Accordingly, the proceedings focused on the dual reality of the communications sector, covering the debate underway on the US in the context of the reform of the regulatory framework for electronic communications launched in November 2007, as well as the liberalisation of the postal market, due in 2011. Therefore attention was given to the scope, quality, price, form of provision and financing of the US, as well as its relationship with competition in the communication markets and user protection.

Furthermore, at the same time as the Conference was being held and subsequent to the joint order of the Minister of State and of Finance and of the Minister of Public Works, Transport and Communications of 15 September, the report on the public consultation promoted by ANACOM following the joint order of the same ministers of 28 January 2008 was published and distributed at the conference venue. The objective of this consultation was to compile positions on the process of designating the provider(s) of the US and expressions of interest in its provision¹.

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http://www.anacom.pt/streaming/relatcons_su_23092008.pdf?contentId=654958&field=ATTACHED_FILE.

- Given its nature and socio-economic importance, the scope of the US is not static and may evolve to keep pace with the progress of technology, development of markets and changes in user demand; it is therefore a recurring topic of discussion at both a national and community level².
- There is at present considerable growth in the use of broadband in the European Union, with the consequent importance of this access in the daily lives of the population. However, disparities in the use of broadband co-exist among Member States, and even within States with respect to rural areas, where high percentages of the population still do not have access to the Internet.
- In the analysis of the US account should be taken of the competition situation that characterises the communications sector, whereby it may be set out that its provision is assigned to one or more providers, following the logic of service segmentation (US components) and/or geographic segmentation.
- The necessary investment in equipment and infrastructure is cited as the impediment / difficulty most likely faced by operators considering the possibility of applying to provide the US.
- The US financing model needs discussion, particularly with regard to the possibilities that should exist and should be used taking into account, for example, the realities of other sectors.

² Directive 2002/22/EC of 7 March (Universal Service Directive) provides for the periodic review (every 3 years) of the scope of the US. The last review was conducted in 2005. On 25 September 2008, the EC published a communication on the second periodic review of the scope of the US of electronic communications, which addresses the future of the US and the possibility of extending it to the broadband and mobile service. As in the first review, no changes are proposed to the scope of the US, without prejudice to the wider debate that the EC aims to promote on this issue.

- The evolution that has been seen in the electronic communications sector, with the development of next generation networks (NGN) which enable the provision of high quality voice, data and multimedia services should build a framework that allows the removal of barriers to investment, the maintenance of effective competition and the strengthening of US.
- The principle of technological neutrality should govern the provision of the US.
- The NGNs and competition between platforms will affect the future of the US. Technological and market developments may render certain US obligations obsolete, such as those related to public payphones.
- The spread of fibre optic and the update of European broadband infrastructure represent major costs and investment.
- The current situation and the prospects for future development of the NGN make it difficult for it to be currently considered in respect of the obligations of the US, since there is a lack of widespread use and the rates of penetration do not meet the criteria established by the Universal Service Directive.

³ Following this Conference, the European Commission (EC) launched a public consultation, which will run until 14 November 2008, with the aim of establishing a harmonised regulatory framework for the next generation networks (NGN) to encourage operators to invest in such networks, particularly in new fibre optic networks. Following this consultation the Commission intends to submit a recommendation in 2009 which provides for the implementation by Member States of consistent legal frameworks which maximize benefits and minimize the costs of regulating NGNs at a European level.

THE UNIVERSAL POSTAL SERVICE IN A LIBERALIZED ENVIRONMENT

- Postal services are particularly sensitive to increasing competition from other forms of communication.
- The reform of the framework applicable to postal services is aimed at creating a single market for these services, gradually fostering competition in the sector by fully opening up the market. The obligation of providing the universal postal service is maintained, guaranteeing minimum standards of high quality, reliability and innovation at affordable prices.
- This reform has already produced some positive results, promoting improvement in the performance of the incumbents, in terms of infrastructure, of cost efficiency and of quality of service, with greater focus on the consumer, on increasing competition and on ensuring US provision.
- National regulators have a key role in the effective implementation of the new postal Directive⁴, in the definition of who should provide the US in an open market, in licensing procedures, complaint management, access to infrastructure by all market agents and in the gauging the existence of net costs of the universal postal service.
- At a national level, the debate about the universal postal service should address the most appropriate form of providing the US, through the designation of one or more providers of this service, using the market agents or through public tender.

⁴ Directive 97/67/EC of 15 December 1997 on common rules for the development of the internal market of Community postal services and the improvement of quality of service, as amended by Directive 2008/6/EC of 20 February 2008 .

- The current community regulatory framework, in terms of the rights and protection of users of communications services, includes Directives 2002/22/EC of 7 March (Universal Service Directive - electronic communications), 2002/58/EC of 12 July (Directive on privacy and electronic communications), and 2006/24/EC of 15 March (Directive on data retention) as well as Directive 97/67/EC of 15 December (postal services Directive).
- There are several ongoing EC proposals concerning the rights and protection of users, especially in terms of price transparency, reducing the term of portability, ease of access to 112 (single European emergency number), improving accessibility for users with special needs and strengthening the obligations related to the integrity and security of networks⁵.
- The concept of always on in electronic communication poses several problems for the sector, leading in particular to specific litigation in which the urgency / speed in the resolution of disputes is crucial, taking three key factors into account: availability and reliability of service and associated costs.
- The alternative settlement of disputes, in a sector which is a leading cause of complaints in Portugal, is a tool to be taken into consideration, whereby the important role of arbitration centres is to be highlighted, ensuring speed and high levels of efficiency and a lack of additional costs for the parties involved.
- The alternative settlement of disputes in Portugal is based on justices of the peace, on centres of arbitration and on mediation and conciliation, subject to the extension of the justices of the peace network and the creation of specialist courts and dispute settlement centres with specialist competence.

In summary, the ideas put forward, the debate stimulated, as well as the large number and level of participants, confirmed the great interest in the issue of the US, which poses great and immediate challenges, not only to regulators and operators, but also to civil society as a whole.

Reform of the scope of the US, the designation procedures and of the financing model is seen as inevitable to respond to technological development and market supply and user needs. However, expert opinion remains divided as to the scope of these reforms and the period over which they should be enacted.

⁵ Following this conference, on 24 September 2008 the European Parliament voted in favour of the EC's proposals to strengthen the rights of users guaranteed by the Universal Service Directive, in respect of the efficiency of the 112 number, especially for disabled users, and the right to change fixed or mobile operator within one day without changing phone number (portability).