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# Regulation Report

## 2003



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## FOREWORD

**It is incumbent upon ICP-ANACOM, in its area of intervention, “to ensure that users, including disabled users, derive maximum benefit in terms of choice, price, and quality”. [par. a), section 2, article 5 of Law no. 5/2004 of 10 February]**

### I

**ICP-ANACOM** was established in 1981 and its first organic statutes only approved nine years later. Over time its functions and institutional context have been decisively influenced by the sector’s evolution and by community law vis-à-vis liberalisation and the promotion of competition. It is today the regulator of electronic and postal communications in Portugal, with a broad range of responsibilities: (i) technical standardisation, electromagnetic compatibility, certification; (ii) management of radio spectrum and allocation of spectrum resources; (iii) management of the numbering plan; (iv) fulfilment of obligations inherent to universal postal and telecommunications service; (v) issuance of permits to exercise postal activity and electronic communications (general authorisation); (vi) promotion of competition in the offer of electronic communications service and networks; (vii) central oversight body for electronic commerce; (viii) production of sector statistics; (ix) inspection and investigation of compliance with applicable legislation, of service quality and networks; (xi) dispute resolution and application of sanctions. This entire range, which is still not all, is covered by terms of its Statutes, approved by Decree-Law no. 309/2001 of 7 December, in the definitions and provisions of Law no. 5/2004 of 10 February, and in the pertinent injunction of Decree-Law no. 7/2004 of 7 January and in the determinations of other legislation on its powers regarding technical regulation.

**Competences**

### II

In the constitutionally accepted model of an independent administrative body, **ICP-ANACOM** is a regulatory authority organically, financially and functionally separate from the Government as well as from regulated enterprises, endowed with the necessary means to perform its duties. *But it is not a "State" within another State.* That is, its necessary autonomy does not imply a situation of independence in absolute terms: its acts of authority are subject to jurisdictional control, from the common and administrative courts, with accompaniment of its financial activity subject to rulings of the accounts court; the members of its board of directors are civilly and criminally answerable for their actions. Although observance of the rules of public accounting is not required, the respective budget, plan and activities report are subject to approval by the Government, which may extinguish or merge this authority with another one; the practice of serious irregularities and unjustified budget deviations are grounds to dissolve the board of directors. Finally, **ICP-ANACOM** must annually draft a report on its regulatory activities and submit it to the Government so that it may also be presented to Parliament. This is yet further evidence of the regulator's accountability. That regulation report is precisely what is now presented to the Government and made public. With regard to the past year of 2003, it describes the activity and demonstrates the regulatory measures developed and undertaken by ICP-ANACOM; mentions indicators that enable characterisation of the state of electronic and postal communications during that same year and, to a certain degree, provides of a view of its evolution in the near future.

**Control**

### III

The year 2003 was the last period of application of the previous and not very old though rapidly obsolete regulatory framework for the telecommunications sector, and also the year to finalise preparatory work on the new legal framework for telecommunications, or rather, electronic communications, according to the current designation. A rigid framework was thus left behind, under which a limited and not always coherent number of stereotypical obligations could be applied to the operators; these were of very difficult modulation, which made specific regulation impossible. Henceforward the sector can count on a stable regulatory framework, built on the principles of the right to competition and using its methods, and respecting the unstoppable convergence of telecommunications networks and services. Regulation is now predictable for the operators, flexible and responsible, and is felt where it ought to be and is more efficient: compulsorily and preferably in the previously identified wholesale markets, where companies with declared significant market power operate, which are subject to the proportional obligations of concession of access and cost control, and non-discrimination and transparency. In markets where there is effective competition or where it has become effective only the competition law is applied. The old system of individual authorisations, casuistic and limited, is replaced by the general authorisation regime, which guarantees greater freedom and favours competition in the consumers' interest. This is a profound transformation of electronic communications law in Portugal, approved by Law no. 5/2004 of 10 February, from which relevant effects are expected on the electronic communications sector's development in Europe and in Portugal.

**Transition**

## IV

Despite an atmosphere marked by the general cooling of economic activity and with a significant slowdown in pace, the year 2003 was still a period of positive growth for the communications sector – 1.7% for electronic communications and 5.4% for the postal sector, once postal services operated in competition are accounted for. The sector's productivity also grew. However, and worrisome due to the consequences it may have on the quality of provided services, during the year under review there was a significant drop in investment, which fell to less than half the figure registered the year before. There was an accentuated tendency to replace fixed telephone service, which declined, with mobile, which again grew in minutes, calls and subscribers, while the average monthly revenue per customer dropped. The evolution of internet access service was very positive, with the penetration rate now above the European average. Also, the evolution of broadband (cable and ADSL) saw a substantial increase of more than 90% over the previous year. Broadband's penetration rate should now be approaching the European average. Its evolution is notable for its fast pace, and also due to its importance for various services and for innovation, and may be interpreted as a positive sign of receptivity with respect to new technological developments, in whose vanguard UMTS, TV D, FWA, WI-FI and VoIP are already evident. Such are the new challenges of regulation achievable for the benefit of end consumers and economic players.

The sector regulator's essential aim to promote competition in its ex ante activity means only to sustain the market model, which is understood to provide end consumers with better quality and better prices, the ultimate reason for regulation.



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