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REGULATION REPORT 2006

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1. FRAMEWORK

1.1 This Report's structure

The 2006 edition of the Regulation Report – which, under the terms of its Statutes¹, ICP – Autoridade Nacional de Comunicações (ICP-ANACOM) is bound to send to the Government, also to be submitted to the Parliament – unlike previous editions, does not include the section on the State of Communications, nor the Activities Report, for as the three publications' goals, rationale and even issuance dates are different.

The Regulation Report is intended to contain an outlook of ICP-ANACOM's regulatory activities, which also has other duties, assigned to it by its Statutes or by other legislation, as is commonly known. This leads to the need of a differentiation effort between the regulatory activities, on one hand, and all the other activities, on the other, with results that are not always unquestionable, given the fact that the general criteria which define regulatory activities' boundaries aren't also obvious. However, we do believe that the main facts of ICP-ANACOM's activities in this field in 2006 are well portrayed here.

This Report's structure thus follows ICP-ANACOM's regulatory tools and its action modes.

Regarding **electronic communications**, ICP-ANACOM bases its action mainly on Law no. 5/2004 of 10 February (Electronic Communications Law – ECL), which gives the Regulator three fundamental tools – market analyses and the imposition of duties on the companies with significant market power, frequency management and numbering management.

Another field of intervention of ICP-ANACOM is the universal service (US), regarding mainly prices and quality of service. This is an area in which the protection of consumers' rights and interests is especially important, even though the Regulator's performance regarding user protection goes way beyond this field, as shown on this Report.

As part of its regulatory action, ICP-ANACOM is connected to other authorities and organisations, namely of consumer and competition protection. All are bound by the ECL by a duty of general cooperation on matters of common interest. Regarding the Competition Authority (AdC), the ECL even contains a specific duty of cooperation, also

¹ Article 51, no.1, of the Statutes annexed to Decree-Law no. 309/2001 of 7 December.

for both parties, on matters under the scope of the application of competition law to the electronic communications sector – which should mainly be underlined within the framework of a year such as the one analysed in this Report, which was marked by the notification of an exceptionally large and impacting merging operation (Sonaecom/PT).

ICP-ANACOM's regulatory activity in connection with **postal services** is mainly targeted at CTT – Correios de Portugal (CTT) – the concessionaire of the public postal service and US provider – even though the Regulator acts in this field in a different manner from that of its action within the scope of the electronic communications services. Indeed, the legislation from which stems all of ICP-ANACOM's regulatory activity regarding CTT's prices and quality of service is based on agreements between the Regulator and the concessionaire, which is in itself special regarding the typical action modes and tools of the Regulator.

Lastly – but only regarding how the issues are laid out in this Report, for this last activity is largely previous to the regulatory activity that it logically frames – ICP-ANACOM carries out an intense international activity. It should be stressed that, regarding electronic communications, the regulatory goal, stated as such on the ECL when it transposes the Union's specific legal framework, is to contribute to the development of the European Union's (EU) internal market. ICP-ANACOM thus has the duty to cooperate with the European Commission (EC) and the sector's regulatory authorities of the other Member States, which determines in itself a very specific *mode d'être* of the Regulator when it comes to its international relations.

The cycle of the regulatory activity closes with the activities of supervision, monitoring and sanctioning, all tools that guarantee the application of the regulatory framework and thus the protection of the public interests that is the Authority's job.

The last part of this Report is made up of a global evaluation of the actions that took place during the year, namely in connection with the previously set goals and also with mention to the main factors that conditioned the regulatory activity in 2006.

1.2 ICP-ANACOM's goals for 2006

The Regulation Report must also contain, as a previous framing, the goals and guidelines previously stated by the Regulator for the period under analysis.

The strategic vision of ICP-ANACOM's board for the 2006-2008 triennium led to the adoption of the following strategic goals:

- To promote open and competitive markets;
- To foster benefits to consumers;
- To foster innovation and investment in infrastructure;
- To reinforce ICP-ANACOM's role.

Below are summarily presented the above-mentioned goals, as stated in the 2006-2008 Plan.

To promote open and competitive markets

It is up to ICP-ANACOM to create an environment favouring the creation and development of competitive markets which also maximise benefits to consumers and lead to investment levels that make possible a sustained growth of the sector. This strategic goal is paramount to the fulfilling of the communications sector's role within the process of growth, development and increased competitiveness of the Portuguese economy.

The guidelines for action, in this scope, are as follows:

- To apply proportionate, transparent and predictable regulatory principles;
- To analyse electronic communications markets (defining relevant markets, evaluating significant market power and imposing, maintaining, altering or suppressing obligations);
- To prevent situations of dominant power abuse;
- To take measures favouring competition among different technologies.

To foster benefits to consumers

The main goal of regulation – when the free operation of markets does not lead to an effective allocation of resources, as is largely the case with the electronic communications and postal sectors – is to assure the maximum well-being of consumers regarding quality of service, prices, diversity and universal access.

In order to reach that goal, a strategy based on five items is assumed:

- To assure information giving consumers the chance to make the best choices;
- To promote the dissemination of quality of service indicators;
- To lessen situations of no choice of communications service providers;
- To assure universal access and US provision;
- To promote the development of mechanisms easing up dialogue between consumers and operators.

This strategic goal – to foster maximum benefits to all communications networks and services users regarding choice, price and quality – necessarily complements the first goal and gives it legitimacy and sense. The phrase “all users” should be stressed, for it encompasses citizens with special needs and those that are inhabitants of ultra-peripheral regions.

To foster innovation and investment in infrastructure

The Regulator must create an environment that assures that innovation and the investment in equipment and infrastructure are fostered, by means of companies developing sustainable business models and offering costumers quality products and services. It is also its job to manage potentially conflicting consumer short- and medium-term interests and long-term interests – lower prices or incentives to investment in present days leading to lower prices in the medium run – establishing priorities and compromises.

Regarding this goal, ICP-ANACOM's strategy is based on four guidelines for action:

- To adopt, if and when need be, measures fostering business models based on developing, or favouring, communications infrastructure;
- To actively be part in the process leading to the use of public infrastructure for electronic communications;
- To promote the development of new services and systems;
- To make sure that a regulatory framework fostering convergence and the development of systems, services and equipment is in place.

To reinforce ICP-ANACOM's role

ICP-ANACOM is an independent Regulatory Authority, under the terms of Decree-Law no. 309/2001 of 7 December, which approved its current Statutes. It carries on the legal person Instituto das Comunicações de Portugal (ICP). For the 2006-2008 tri-annual period, this organisation set demanding goals to its activities, which, in the end of the day, will lead to a greater contribution to the communications sector. These are the main guidelines:

- To promote the dissemination of information on the role and activities of the Regulator;
- To reinforce its monitoring performance;
- To reinforce the adoption of (national and international) best practices;
- To value its human resources;
- To make sure of a greater efficiency in the use of human and financial resources;
- To foster knowledge within the sector.