

Part I

1. REGULATION OF ELECTRONIC COMMUNICATIONS

The report on ICP-ANACOM's activity vis-à-vis the regulation of electronic communications markets in 2003 is hereby presented, along with relevant events since the end of the year, i.e., in 2004, among which must be stressed publication of the Electronic Communications Law or Regicom, Law no. 5/2004 of 10 February, which as of that date became this sector's legal framework of reference.

This legal instrument, which was drafted over the course of 2003, transposed into the national legal framework the directives of the European Parliament and of the Council that have since March 2002 covered the electronic communications sector.

The various measures taken by ANACOM which are presented below have been classified according to the various areas, markets and services subject to regulation.

Although most actions undertaken in 2003 were still covered by the legal framework that preceded Regicom, effort was made over the course of that year to ensure forthwith a transition to the legal framework then being prepared.

1.1 Promotion of new technologies and services

First are noted the measures associated to the promotion of new technologies and services, specifically measures concerning third generation mobile services, radio broadband access, powerline telecommunications (PLT), digital subscriber lines (xDSL), cable communications, digital terrestrial television (DTT) and terrestrial digital audio broadcasting (T-DAB).

1.1.1 Third generation mobile systems: UMTS system

Regarding UMTS (Universal Mobile Telecommunications System), ANACOM's decisions on the operational start-up of UMTS services and determinations concerning OniWay stand out.

Operational start-up of UMTS services

National licences for international mobile telecommunications systems (IMT-2000/UMTS) issued in January 2001 envisaged that the corresponding activity would begin by 31 December 2001.

In 2001 the then ICP received requests from the licensed operators, indicating the need to push back the start of activity, as they held it was not possible to provide commercial offers according to the calendars and conditions set in the licences. The opinion of the then ICP (determination of 31 July 2001) was approved by the Ministry of Social Infrastructure in Order no. 111/MES/2001, signed on 24 October 2001, which postponed the deadline until 31 December 2002.

The said liberalisation also envisaged that the market situation would be reassessed during the third quarter of 2002, vis-à-vis developments in the meanwhile. An ICP-ANACOM working group was thus set up in 2002, to focus on the status and forecasted implementation of UMTS systems (determination of 24 October 2001), with the following mandate: to study replies submitted by the licensed operators, in the wake of a request for information addressed to them by ICP-ANACOM, with the aim of gauging the status of UMTS; to verify the status of UMTS development with respect to the projects presented in the scope of the tender; to assess the situation in terms of implementation or realisation of the UMTS system in the other European Union member states; to draw up recommendations, proposing measures deemed appropriate.

The study led to conclusion that the development status of the UMTS networks pertaining to the licensed entities was quite long from what would be necessary to allow the commercial launch of UMTS services on the set date (31 December 2002) under the terms envisaged in the proposals submitted for the tender and in compliance with the obligations indicated in the respective licences.

The proposals presented by ICP-ANACOM were thus confirmed by Order no. 886/2003 of the Ministry of the Economy of 31 December 2002, which specifically postponed until 31 December 2003 the deadline for the UMTS operators to begin the licensed activity, maintaining all obligations indicated in the granted licences, including those concerning the development of projects in the information society context. Such projects should be undertaken, according to the set terms, on the GSM/GPRS system whenever and as long as technically possible. A decision was also made to apply in 2003 a zero value fee for the usage of radio spectrum assigned to UMTS services for those operators that began commercial operation during that year.

Taking into account the delayed activity associated to the IMT2000/UMTS licences, the process involving the entrance into operation of the fourth licensed operator – OniWay – required

constant intervention and accompaniment by the regulator, in order to ensure compliance with the applicable rules, specifically with regard to interconnection with the other mobile operators.

However, by determination of the shareholders and at the company's request, OniWay's licence was revoked by order of the Minister of the Economy no. 1758/2003 of 13 January 2003, grounded on an ICP-ANACOM opinion.

In mid-2003 the entities licensed to be UMTS operators submitted requests to modify the obligations indicated in the licences, particularly with regard to the start of UMTS operation, about which, and after due study, ICP-ANACOM considered among other aspects that:

- Minimum conditions did exist for the operational start-up of the UMTS system on 1 January 2004;
- It was proper, given the limited market availability of terminal equipment and network infrastructure, to allow in the scope of the operating the UMTS system a six-month pre-commercial phase during which the service would only be available to a limited and closed field of users;

In conformity, the date of 1 July 2004 was set as the date for starting commercial provision of the UMTS system.

Minimum coverage obligations were set and the operators bound to assure, by their own means, coverage of the national population at 144 kbps bandwidth, corresponding to 60% of the values set in the respective licenses, in any case always without jeopardising compliance with the minimum requirements of the Specifications. Considering that permission to share the UMTS networks' infrastructure had already been deliberated, a decision was also made to allow the difference between the general population and area coverage to which each operator is bound by the licence it holds and the minimum coverage by its own means, now required of the same operator, may be assured by means of national roaming, as per terms of an annual plan to be submitted by the operators and approved by ICP-ANACOM.

1.1.2 Third generation mobile services: Trunking Mobile Service (TMS¹) – CDMA System

In 2002 the trunking mobile service (TMS) operator Radiomóvel requested that its operator's licence be modified to include the authorisation to use the CDMA (code division multiple access) system in the provision of that service. Its licence was reconfigured to that end, though maintaining it as a provider of TMS. The company was to begin providing service via CDMA in May 2003 and finish the process of migrating from use of the previous MPT 1327 and TETRA technologies to CDMA technology by November of that same year. As part of the licence reconfiguration, Radiomóvel was also obliged to install a set of telecommunications infrastructures, and to guarantee minimum service quality values.

In May 2003 Radiomóvel requested a one year postponement of the commercial start-up of TMS operation based on CDMA technology. This request led to the launch of a public consultation that in March 2004 resulted in an ANACOM determination with effects from 23 October 2003, which set a one-year postponement of the deadlines contained in the licence held by Radiomóvel.

Lastly, note that a process is under way to integrate operation of the two current operators of the service, whose only direct shareholder, the Netherlands-based Valkia Invest B.V., is common to both.

¹ Mobile telecommunications via radio service characterised by the establishment of bi-directional communication of voice and data between a given users' group, in a closed manner, by means of mobile terminal equipment. In this service frequencies are dynamically shared by various customers to ensure profitable use of radio spectrum, and are managed by the operator in order to guarantee access to all customers. Each customer has access to a private virtual network and does not have to worry about licences for the use of radio spectrum, infrastructure or equipment maintenance. TMS is especially meant to serve companies that function with fleets.

1.1.3 Broadband Radio Access

Local Radio Networks (LRNs), also known as R-LANs (Radio Local Area Networks) can be a means to provide wireless access to the internet. Such networks may use the 2.4 GHz band (2400.0-2483.5 MHz) or the 5 GHz bands (5150-5350 MHz and 5740-5725 MHz) and can constitute private company networks, though also be used in public access networks.

Regarding R-LAN systems, standards of the European Telecommunications Standards Institute (ETSI) and the Institute of Electrical and Electronics Engineers (IEEE) have been developed, whose requirements, particularly vis-à-vis power control and dynamic frequency selection, are relevant for application of decisions by the Electronic Communications Committee (ECC) of the European Conference of Postal and Telecommunications Administrations (CEPT).

The use of such applications for private and public ends has merited special attention from the European Commission, which in March 2003 approved Recommendation 2003/203/EC, concerning harmonisation of the offer of public access via R-LAN to public electronic communications services and networks in the Community; it recommends that the Member States should allow the provision of public access via R-LAN to public electronic communications services and networks in the 2.4 GHz and 5 GHz frequency bands, as long as possible without any specific conditions and in any case subject only to general authorisation, given that these are bands exempt from radio licence and which operate on the basis of non-protection, non-interference.

At the time ANACOM had already made available not only the frequency bands for that purpose but also the public access to same.

Wi-Fi

A particularity of R-LANs are those designated as Wi-Fi, which consist of wireless networks with a limited action radius (about 300 metres) and whose designation derives from the fact that they use equipment certified by the Wi-Fi Alliance.

They are currently based on IEEE standard 802.11b, which allows speeds on the order of 11 Mbits/second; IEEE standard 802.11g was meanwhile approved in June 2003 and for the same frequency band permits speeds on the order of 54 Mbits/second.

By means of a public access point (hotspot) these networks enable users who possess hardware/software devices allowing their portable computer or PDA (Personal Digital Assistant) to work as a wireless station to connect to a provider of internet access services (ISP).

Four ISPs began provision of this service in 2003, three in the last quarter of the year and of them one in launch phase, with only one hotspot. At the end of the first quarter of 2004 there were nearly 330 hotspots in urban areas, mainly spread among hotels/conference centres, commercial/leisure zones and cafés/universities.

1.1.4 Cable transmission systems: Power Line Telecommunications (PLT), Digital Subscriber Lines (xDSL) and others

The increasing use of transmission technologies to provide broadband services to end customers has raised a number of questions, specifically concerning those technologies' possible interference with radiocommunications services in the same spectrum band.

The cable transmission systems in question are, among others:

- Power Line Telecommunications (PLT), which enables high speed transmission of information using the electric power distribution network;
- Digital Subscriber Line (DSL), which enables high speed transmission of information in copper-wire telecommunications networks; there are nevertheless varieties of DSL, as per the speed required – xDSL is the most generic term used to describe this technology;
- Cable communications that use dedicated coaxial cables to distribute television signal and interactive services, including internet.

Keeping in mind the study on this matter, a Report was drawn up in the Spectrum Engineering Group of the Electronic Communications Committee (ECC) of the European Conference of Postal and Telecommunications Administrations (CEPT), which analyses the compatibility of the systems in question. Besides exhaustively presenting a set of general features of the various systems and compatibility studies, and listing existing standards and recommendations currently in effect, this Report aims to safeguard the establishment of protection criteria as a commitment to defend the interests of two distinct communities which use different technologies.

With the aim of implementing methodologies that enable co-existence between radiocommunications services and services that use cable transmission, ICP-ANACOM has since 2002 developed, and maintains under way, the following actions: study of the technical work undertaken by the European Telecommunications Standards Institute (ETSI) and the other regulators, preparation of field tests to observe xDSL interference in systems that use radio spectrum, and monitoring of development of a recommendation to introduce these technologies in the market, within the European Union.

1.1.5 Offer of Short Messaging Service (SMS) in the fixed network: Mobile Network Codes

In 2003 an entity with fixed network launched the offer of SMS service in fixed networks, to be interoperable with the entities that offer the same service in the mobile networks. To make this offer feasible, ICP-ANACOM granted the entity in question authorisation to use a Mobile Network Code (MNC).

To that end, and as per its international participation in both ITU-T and WG NNA (Working Group on Numbering, Names and Addresses) of the ECC (Electronic Communications Committee), ICP-ANACOM took the necessary steps that in 2003 allowed it to propose modification of ITU-T recommendation E.212 , envisaging that same should be approved in 2004.

Its approval will allow extension of application of the principles and criteria used to assign the said code so that it may be assigned to entities that offer services with mobility in the fixed networks interoperable with mobile networks that offer the same services, such as SMS.

1.1.6 Voice over Internet Protocol (VoIP)

In the context of convergence between networks associated to the provision of services such as voice over IP (VoIP), worthy of note is ICP-ANACOM's participation in the Project Team (PT on VoIP) of the ECC's NNA Working Group. This team means to study the different existing ranges in the E.164 (ITU-T) numbering plans so as to indicate the most appropriate alternatives for the provision of VoIP vis-à-vis numbering and compliance with the requirements and associated conditions inherent to the service itself. As a consequence the drafting and publication of a report in 2004 is considered, which will later result in the launch of a public consultation.

1.1.7 Digital Terrestrial Television (DTT)

Digital Terrestrial Television (DTT) is an alternative to current forms of television distribution and in the future is meant to replace the current analogue platform. According to the Commission working document on the transition from analogue to digital broadcasting (From Digital Switchover to Analogue Switch-off), with ref. COM(2003) 541- final, the European Commission adopted a communication on the transition to digital broadcasting that considers two strategic issues vital for the Member States:

- The strategy to be adopted on a subject vital for development of the Information Society in the Member States;
- How radio spectrum that becomes available after the end of analogue transmissions should be allocated.

The Communication in question does not aim to be a set of standards for compulsory imposition on the Member States, but rather a guide meant to help the Member States in that transition. Indeed, the penetration of Digital Television in the Member States varies to such a degree that any attempt to impose single political solutions on all the Member States – such as a single switch-off date or the compulsory acquisition of digital televisions – would be inappropriate.

Regarding this platform's introduction in Portugal, not the following:

- In the wake of a public tender to assign a national licence for the establishment and operation of a Digital Terrestrial Television Platform, a licence was on 17 August 2001 granted to the company Plataforma de Televisão Digital Portuguesa, S.A. (PDTP) for the operation of 4 MUX of national coverage;
- The start of commercial operation was planned for August 2002, a deadline postponed at PTDP's request until 1 March 2003. PTDP's postponement request was grounded on the duly verified delays in product certification (based on self-certification), hindering the manufacturers' possibility of inserting the MHP logo in terminals (STB). This consolidated and credible certification would be advantageous for adhesion to and expansion of DTT and for a lower product end price;

- Having assessed the status of development of PTDP's operational project (Technical Report of 18 February 2003, drafted by ANACOM's Spectrum Management and Engineering Directorate), recognised the objective difficulties involved in the mass provision of the terminal equipment needed to begin commercial operation of the said platform and studied the business model upon which the launch of the public tender that led to the licence being granted was based, and having considered that the licensed operator (PTDP) admitted the solution of ending the rights and obligations inherent to the licence it was granted, and keeping in mind defence of the public interest, ANACOM decided on 13 March 2003 to propose to the Minister of the Economy that PTDP's operational licence should be revoked; this was accepted, as per Order of the Minister of the Economy no. 6973/2003 of 9 April;

- In the first quarter of 2003 a Working Group was set up in ANACOM to study alternative business models for digital television in Portugal. The meetings led to the drafting of a framework document that deals with a number of issues underlying this problem. Over the course of the work external presentations were likewise organised, providing different views, specifically from the television operators RTP, SIC and TVI and the company that had been assigned the previous licence – PTDP. As part of the process of studying the model for implementing DTT in Portugal ANACOM organised various discussion-meetings in 2003 and on into 2004, which were attended by the main economic players directly and indirectly involved in DTT.

- As a result of the WG's work, a consultation firm was commissioned to undertake two studies on this subject:
 - "Study and analysis of the offer of services for Digital Terrestrial Television", to characterise the international DTT models, analyse the national offers for television service, internet, voice and interactive services, critical factors for the success of the worthy DTT proposals, and select worthy proposals to be tested in the second study;
 - "Study and analysis of the Digital Terrestrial Television market", including a market study based on interviews as per the value proposals defined in the first study.

Plans call for results of these studies to be released in 2004, as well as an activity proposal for the transition to this platform.

1.1.8 Terrestrial Digital Audio Broadcasting (T- DAB)

A multilateral meeting organised by CEPT was held in Wiesbaden in 1995 to plan two T-DAB coverages per country. This digital terrestrial radio standard was conceived to replace the current analogue audio broadcasting system in FM. Later, the need to plan an additional coverage per country was noted and for this reason a decision was made to hold a new planning meeting, which was held in Maastricht on 10-18 June 2002.

This planning meeting was meant, in a concerted manner at international level, to assign frequency blocs in the L band (1.5 GHz) to geographic areas previously set by each CEPT member country, to enable each country to operate T-DAB without interference in the future, within its borders and with neighbouring countries.

In the course of preparing for this meeting, Portugal formulated its requirements in advance, to ensure that most local radios have access to this new digital audio broadcasting service.

The meeting resulted in the allocation of frequency blocs to all the previously established geographic regions; the national objectives were met entirely.

As per the terms of the issued licence, RDP – Radiodifusão Portuguesa S.A. has developed a national network.

1.2 Consolidation of sector liberalisation measures and protection of consumers/users

Following are described some of the main measures taken over the course of 2003 with the goal of consolidating liberalisation of the electronic communications markets. These measures are specifically meant to lower entrance barriers and encourage competition in these markets.

1.2.1 Portability

Operator portability was implemented in the fixed network on 30 June 2001 and in the mobile network on 1 January 2002 and has grown substantially, for a total of 72,276 numbers ported during the year 2003, of which 54,590 were in fixed telephone service, 17,617 in mobile telephone service and 69 pertained to non-geographic numbers.

Thus, at the end of December 2003, and also considering the movements from 2001 and 2002, the situation in terms of existing ported numbers was as follows: 118,017 fixed telephone service numbers and 214 non-geographic numbers, as well as the 23,643 numbers from land mobile service.

However, by the end of 2004 in most European countries that had implemented portability in the mobile network, recourse to this function registered levels a great deal higher than in Portugal². In the fixed network the degree of adhesion to portability was at the time above that of countries such as Ireland, the Netherlands, Italy and France.

Development of this function is immediately associated to various aspects whose evolution has been accompanied by ANACOM, such as the existing level of competition in the market, the efficacy of the portability processes, the prices eventually charged to end users for number portability and development of unbundled local loop (relevant only for the fixed network).

To promote development of this function, ICP-ANACOM recognised in a determination dated 13 March 2003 that there was no legal grounds to refuse portability requests because the contract between the customer and the telephone service provider was suspended, and set a 30-day deadline for PT Comunicações to implement the conditions for admission of portability requests for numbers whose contract was suspended. These conditions were implemented by the company and were subsequently included in the draft Portability Regulation approved, for submission to public consultation, by an ICP-ANACOM determination dated 11 March 2004.

On the other hand, given the persistent refusals by donor/holder providers of portability requests due to alleged non-inclusion of essential information in the contract notification transmitted by the receiving providers and/or the failure to send the remaining documentation required for that purpose, some providers asked the Regulatory Authority to intervene to resolve the situation.

ANACOM thus considered as a rule, and without jeopardising the specific regime for contracting prepaid services, that the receiving providers acting on behalf of the customers requesting portability could not be required to submit, for notification effects, more information and documents than had been solicited when the contract to be terminated was signed.

² Source: Replies received to the questionnaire that ICP-ANACOM sent in March 2004 to the national regulatory authorities belonging to the IRG (Independent Regulators Group – encompassing the European National Regulatory Authorities, representing the European Union Member States as well as Iceland, Liechtenstein, Norway and Switzerland) to gather information on portability. The following countries, besides Portugal, replied to the questionnaire: Denmark, France, Germany, Greece, Ireland, Italy, the Netherlands, Poland, Slovakia, Slovenia, Spain, Switzerland and the United Kingdom. Of these respondents, at the end of 2003 ported numbers had yet to be registered in Poland, Slovenia, Slovakia and Greece, while Switzerland, Germany and the United Kingdom did not provide figures on total ported numbers in the fixed network.

To accomplish this rule, the providers with portability obligations were asked to report the information and documentation each required in order to sign the respective contracts to provide telephone service.

The information received to date from the providers with portability obligations is now made available so that all the companies have access to the information, bearing in mind compliance with the aforementioned rule and the smooth functioning of portability processes.

These principles were also included in the draft Portability Regulation submitted to public consultation in March 2004.

Given the existence of tariff strategies that sharply distinguish call prices according to the destination network of same, portability, despite its vital role in encouraging competition in the sector by lowering the costs associated to change of operator, raises some problems for consumers, in so far as it eliminates price information traditionally associated to the mobile network dialling code included in the numbers dialled. Thus, to respond to the legitimate consumer interests occasioned by use of this function, ICP-ANACOM decided (determination of 27 February 2003) to take a number of steps regarding the information to be provided to consumers on the destination network of calls to ported numbers.

According to this determination, LMS operators are obliged from 30 June 2003 to provide a free online announcement in national voice calls between LMS operator networks and to ported numbers.

Complementary to this, the LMS operators and FTS providers whose price tables may imply that a call to a ported number is more expensive than before portability to same must maintain a telephone information service on call prices (voice calls, data and short messages) to ported numbers, as per the ANACOM determination dated 18 April 2002.

In the context of the said determination, it was also decided that ANACOM would undertake an information campaign focusing specifically on the LMS operators' introduction of the online announcement identifying the calls' destination network and also aiming to spread awareness of portability and provide information on the associated procedures, specifically the calculation by users of the charges for calls to ported numbers.

It was also decided that ANACOM should continue to gather and study information on the development of portability and its consequences, from the standpoint of creating a competitive market and safeguarding consumer interests.

Together with other aspects held to be necessary for portability to work better, these rules were also included in the aforesaid draft Regulation, whose replies to the respective public consultation are currently being studied by ANACOM.

1.2.2 Pre-selection and call-to-call selection

After the prior hearing process for interested parties, ANACOM approved the determination dated 17 July 2003 concerning introduction into the pre-selection specification of a compulsory six-month waiting period after the activation of pre-selection, during which companies of the Portugal Telecom group that provide direct access fixed telephone service would be prohibited from carrying out any customer win-back actions.

This determination was grounded on complaints by the pre-selected operators regarding behaviour labelled a “commercial siege” of their customers by PT Comunicações (PTC), which consisted of attempts to win back those same customers, contacting them and proposing alternative service provision conditions.

Such practices hinder a free and clear choice by customers, very often before they have fully used the service of the pre-selected provider.

It was also verified that the possibility of maintaining customer loyalty by setting minimum time durations for the respective contracts, allowed in the Pre-selection Specification, was not a sufficiently effective mechanism for the pre-selected providers to prevent, in such cases, termination of the said customers' contracts.

Under these circumstances the establishment of the said six-month waiting period after the activation of pre-selection was held to be an appropriate means to give the customer the time needed to fully use the pre-selected provider's service, trying it and maintaining the freedom to remain a customer or end the contract, without any outside pressure.

Naturally, this would not at any time prevent customers on their own initiative to seek other service provision conditions and other providers.

Complementary to this, PT COMUNICAÇÕES was also obliged, under the same ANACOM determination of 17 July 2003, to respect the confidentiality of information it retains in the context of pre-selection, and is not to transmit it to subsidiary or associated companies, nor to its own services, specifically the commercial ones.

In August 2003 and in the exercise of its inspection and investigation powers ICP-ANACOM proceeded to assess compliance with the 17 July 2003 determination, vis-à-vis the imposition of a waiting period after the activation of pre-selection (“win-back”).

On 16 October 2003 ANACOM determined, also in the context of pre-selection, and following a request to intervene from Novis related to the 10XY barring service provided by PTC³, to order the latter company to comply with the Pre-selection Specification and its customers’ will as expressed in the pre-selection forms to the effect that the pre-selection activation request should prevail over a customer’s previous request for 10XY barring.

The same determination also specifically ruled for the immediate cessation of PTC’s procedure of verifying the authenticity of pre-selection requests submitted by its customers who have active 10xy barring. That provider is also obliged to stop eventual rejections of pre-selection requests based on the existence of certain price tables contracted with the customer.

These rules as well as other aspects considered relevant for pre-selection to function more correctly, especially increased traffic eligible for pre-selection effects, were incorporated in the public consultation on operator selection and pre-selection in Portugal approved by ANACOM determination and dated 22 January 2004, the replies to which are currently being studied.

1.2.3 Subscriber line resale offer (SLRO)

On 25 July 2003 a public consultation was launched on the subscriber line resale offer (SLRO)⁴, included in the scope of measures that aim to promote competition in the telecommunications market, particularly in the fixed communications market. This consultation’s report⁵ was approved on 22 January 2004 and published on the ANACOM website.

The imposition of an obligation with the SLRO’s features effectively represents a change in market conditions, implying modified relationships between the various operators and service providers and between them and end customers, as well as the generation of new and complex contract relations and financial flows. It also has profound implications on other areas of the market.

ICP-ANACOM thus holds that the time to introduce the SLRO should be considered vis-à-vis ongoing market studies under the new regulatory framework. In this regard, and by considering

³ The 10xy dialling code precedes the destination number in calls by indirect access (pre-selection or call-to-call selection).

⁴ <http://www.anacom.pt/template15.jsp?categoryId=79131>

⁵ <http://www.anacom.pt/template12.jsp?categoryId=95920>.

the SLRO to be a potential proportional obligation to impose on eventual operators with SMP, ICP-ANACOM will take into account the positions expressed by the various entities that responded to the public consultation.

1.2.4 FWA – Fixed Wireless Access

Fixed wireless access (FWA) systems are a potential alternative to the traditional copper-wire network for the provision of telecommunications services, specifically for the provision of fixed telephone service. Based on this pretext, 11 licences were granted in 1999 for the corresponding frequency bands: 3600-3800 MHz (three licences), 24.5-26.5 GHz (six licences) and 27.5-29.5 GHz (two licences).

The high market expectations at the time for the development of FWA networks were not met for various reasons, due to evolution since 1999 of the economic situation, where negative performance led operators to change their action plan, particularly regarding investment, and also due to evolution of the equipment market, where costs did not drop as forecast and technological developments by manufacturers were not as expected.

This situation was verified by ICP-ANACOM over the course of 2002, in the scope of its market oversight powers, by means of regular actions to monitor the various operators' activity.

It must also be borne in mind that the specific nature of the FWA licensing process, particularly the tender, led the regulation itself to explicitly mention that the frequency usage conditions should be evaluated within a time period of not less than two years.

ICP-ANACOM thus launched on 2 June 2003 a public consultation on FWA systems addressed to the various market players. The aim was to prepare the decision-making process and to help characterise the appropriate measures for sustained implementation of FWA, namely regarding the licences granted in the 1999 tender.

In May 2004, and following study of all aspects of the FWA process and the consideration of contributions from the consultation, the public consultation report was approved along with a draft action framework, which were submitted to the general consultation procedure envisaged in article 8 of Law no. 5/2004 of 10 February.

The deadline for this last procedure was 1 June 2004. Once finished, ANACOM will submit to the Government the draft regulation needed to achieve the action proposal, which is based on the following principles:

- Reformulate the previous FWA licensing model;
- Ensure that all operators, should they so desire, are able to continue using the allocated frequency bands as long as they are being effectively used;
- Consider the possibility of allocating new usage rights to companies that request same, on a set geographic basis;
- Apply the principle of equal treatment between PTC and the other operators;
- Allow these frequency bands to be used in the transmission network;
- Reformulate the radio fees system.

Should the regulatory project be approved in this regard, ANACOM will consult the operators so that they can express their interest in the areas where they wish to continue providing the service, in the frequency bands for which they are qualified.

The operators will be granted not more than one month to present a network implementation proposal and the respective calendar, as per conditions to be defined by ICP-ANACOM and which will be communicated to them when they request the manifestation of interest.

1.2.5 Rules applicable to the “707”, “708” and “809” numbering ranges

During the year 2003 ANACOM received various claims from users and also from providers of fixed telephone service concerning call charges for the “707”, “708” and “809” ranges and also the conditions for using those numbering resources.

The claims called attention to the emergence of services in these ranges that allegedly approached the audiotext concept; users were faced with unexpectedly high telephone invoices deriving from calls to these numbers.

Another sort of claim had to do with company attendance services using “707” numbers, which forced users seeking information by telephone to pay a price for the respective call that was higher than what should be expected given the nature of the information.

As a consequence, the draft decision on the definition of the maximum retail prices for calls to numbers in the “707” and “708” (universal access services) and “809” (shared cost call services) ranges was approved by determination dated 28 November 2003.

This draft decision was submitted to prior hearing of the interested parties, as per articles 100 and 101 of the Code of Administrative Procedure, and was likewise reported to the Consumer Institute, DECO, FENACOOOP and UGC, and approved in 2004 by a determination dated 16 January.

Complementary to this and by determination of 28 January 2004 an access dialling code in the National Numbering Plan (NNP) – 760 – was approved. It entails a single retail price of €0.60 per call to numbers beginning with that dialling code. The existence of an access dialling code for such services with a given price regardless of call time or length in which users can intuitively associate price with the dialled number was considered advantageous, given the lack of business margin in the provision of some services alleged by some providers.

1.3 Universal service and fixed telephone service

The provision of universal service is governed by the principles of universality, equality, continuity and affordability as determined until February 2004 by Law no. 91/97 of 1 August (Telecommunications Basic Law) and guarantees a basic level of telecommunications services with quality and accessible to all users, and includes provision of the following⁶: connection to the fixed telephone network and access to fixed telephone service (FTS); supply of public payphones; and availability of telephone directories and an information service that includes the numbers of FTS and mobile telephone service subscribers.

⁶ The scope of universal telecommunications service and the regimes for price setting and financing applicable to same are set out in Decree-Law no. 458/99 of 5 November, which transposed into the internal legal order the standards of Directive 98/10/EC of the European Parliament and of the Council of 26 February, concerning application of open network provision (ONP) to voice telephony and to universal telecommunications service in a competitive environment, and of Directive 97/33/EC, also of the European Parliament and of the Council of 30 June, concerning interconnection in the telecommunications sector with the aim of assuring universal service and interoperability by application of the ONP principles.

1.3.1 Affordability: the FTS price table

As stipulated in the Basic Law in force at the time, Decree-Law no. 458/99 of 5 November envisaged that the prices for universal telecommunications service would be regulated by means of a price convention to be signed by the Directorate General of Commerce and Competition (DGCC) and the then ICP and PTC.

The price convention for universal telecommunications service signed on 30 December 2002 by ICP-ANACOM, the DGCC and PTC thus established the price framework applicable to provision of the following aspects of universal telecommunications service: fixed telephone service in subscriber mode (installation of analogue network line, subscription to analogue network line and telephone communications in the country); FTS in the public payphone mode (telephone communications in the country); telephone directories and information service. The convention also determined PTC's obligations with regard to low-income pensioners and retired customers, low-consumption residential customers and customers with special needs.

The gradual adjustment of prices to costs led in 2003, and regarding FTS subscribers, to the obligation that the nominal average weighted price variation should not be above the value of the Consumer Price Index (CPI) minus 2.75 p.p. for calls in the country. PTC was also enjoined to provide an optional price plan ("Low Consumption Plan" – LCP) aiming to benefit residential customers with lower telephone consumption.

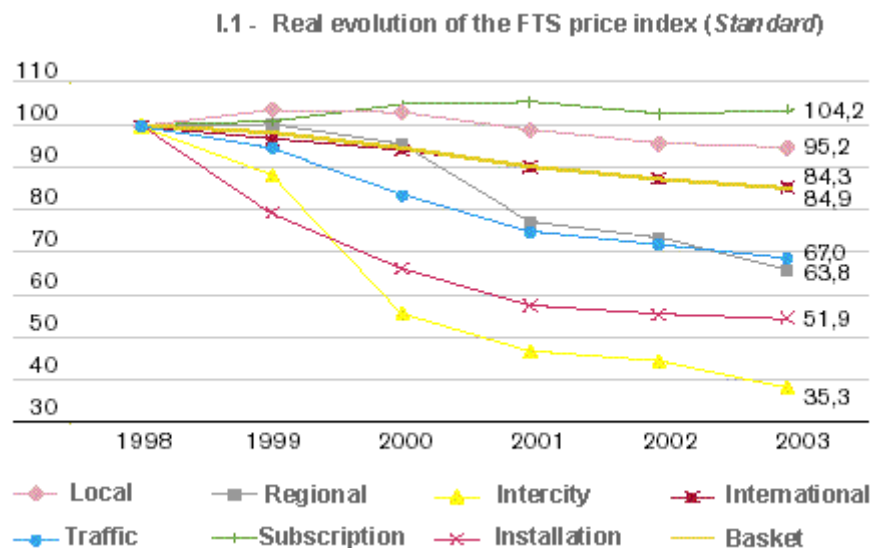
By determination of 6 February 2003⁷, ICP-ANACOM decided not to oppose the entrance into force on 15 February 2003 of the proposed FTS price table for 2003 presented by PTC. The real annual price variations of the FTS price table, -2.7% in the FTS subscriber mode (corresponding to a nominal variation of -0.25%), in the public payphone mode (ratio of 1.97 vis-à-vis prices in the subscriber mode) and 14.5% for the 118 information service (corresponding to nominal variation of 17.4%), are compatible with what was agreed in the universal service convention. The framework for the LCP and the discounts applicable to retirees and pensioners was also in line with the terms of the universal service convention.

Based on a study of FTS price trends between 1998 and 2003,⁸ and as shown in the graph below, it was noted that in real terms most prices for the various components of the FTS invoice dropped significantly; this is all the more evident in international traffic and in long distance traffic.

⁷ <http://www.anacom.pt/template12.jsp?categoryId=57989>.

⁸ <http://www.anacom.pt/template15.jsp?categoryId=82530>.

Regarding the accumulated real variation of prices in the standard table for the period in question, it was noted that the price of local, regional, national long distance and international calls dropped by 4.8%, 36.2%, 64.7% and 48.1%, respectively. Also worthy of note is the 15.1% drop in the installation price; the monthly subscription was the only provision where a real price increase was noted (4.2%)⁹.



Source: ANACOM calculation based on information from PTC

1.3.2 Subscriber Directories and Information Service

As stated above, Decree-Law no. 458/99 of 5 November included in universal service provision the service of making available telephone directories and an information service that includes the numbers of subscribers to fixed telephone service and mobile telephone service.

In this regard, and after consultation of the interested parties, a decision on the inclusion of subscribers' personal data in telephone directories and information service under universal telecommunications service was approved on 18 December 2003. To that end, ICP-ANACOM specifically determined that the mobile telephone service providers should within a maximum of thirty days ask their customers to explicitly manifest their interest in having their data included in

⁹ In national terms, the price for local calls and for subscription tended to increase (although less sharply for local calls), with nominal average annual rises corresponding to 2.1% and 4.0%, respectively. There was a drop with respect to the base year in the annual average prices of regional and long distance calls, of 5.7% and 16.2%, respectively. Note also that there was an annual average nominal reduction of 9.5% in the price for international traffic. The nominal price of the FTS basket has been practically constant since 2000, due to the distinct evolution of the price table's various components.

information services and directories, particularly in the context of universal telecommunications service. It was made clear that the absence of any manifest interest by the subscriber would be understood as meaning that same did not wish to be listed.

1.3.3 Net costs of universal service

The mechanism for compensating the providers of universal telecommunications service for the negative margins inherent to the provision of same, when such occur, and applicable through 31 December 2003, was envisaged in Decree-Law no. 458/99 of 5 November. For this purpose universal telecommunications service providers were required to demonstrate their negative margins and submit them to ICP-ANACOM for approval.

In the scope of cost analysis for universal telecommunications service undertaken by ICP-ANACOM, a decision was made¹⁰ on 21 August 2003, after prior hearing of the interested parties, to not accept the application of any compensation mechanisms for the period before full liberalisation of the telecommunications market. In this decision PTC was also asked to submit a grounded statement of the eventual net costs associated to the provision of universal telecommunications service during the period of full and effective liberalisation of the telecommunications market.

1.3.4 New FTS offers

Over the course of 2003 and until the publication of REGICOM, new fixed telephone service offers were subject to provisions of the Regulation for the Operation of Fixed Telephone Service, approved by Decree-Law no. 474/99 of 8 November, and of Decree-Law no. 415/98 of 31 December, when applicable. It was stipulated that the prices of these new offers should not discriminate and be oriented to costs, and that the historic operator, PT Comunicações, S.A. (PTC), should provide its competitors with the same wholesale conditions that benefit its internal services and offer similar access conditions to all companies that provide the services in question.

In the scope of analysis of PTC's new offers, and by order of 17 January 2003¹¹, a decision was made to provisionally suspend two new PTC optional price plans called "PT Network Line without Subscription", whose market introduction had been communicated to ICP-ANACOM on 5

¹⁰ <http://www.anacom.pt/template12.jsp?categoryId=80071>.

¹¹ <http://www.anacom.pt/template12.jsp?categoryId=53241>.

December 2002. These modes of FTS provision were held to not respect the principle of non-discrimination in the provision of interconnection.

By determination of 10 April 2003, the draft decision to make the previous provisional suspension definitive was approved. Finally, in an ordinary meeting on 29 May 2003 the ICP-ANACOM Board of Directors decided¹² to uphold suspension of the “PT Network Line without Subscription” for as long as the grounds for said suspension remained valid, i.e., until PTC should offer the other operators the possibility of presenting offers of the same kind.

Another set of new PTC commercial offers called “PT Destinations”, “PT Timeslots” and “PT Groups” was also reviewed. These offers were verified to include packages whose prices per minute were less than the costs estimated for service provision, specifically the packages labelled “Friends 1 to 1” and “Friends 1 to 3” included in the “PT Groups” offer. As these two offers were seen not to comply with the principle of orientation to costs, ICP-ANACOM decided¹³ on 3 July 2003 that the said offers should be withdrawn from the market.

Note also that, following a campaign called “Gold Customer” undertaken by PTC and TV Cabo, ICP-ANACOM concluded after review of same that the said campaign did not respect the principles of non-discrimination and orientation of prices to costs. PTC was on 13 January 2004 ordered to end the campaign immediately. The “Gold Customer” campaign included the offer of packages of services provided by the two companies belonging to the Grupo PT, specifically the offer of a PTC fixed network line and various services provided by TV Cabo.

Last is mentioned the offer of SMS in the fixed network mentioned in point 1.1.5, which PTC introduced in 2003, enabling the reception and transmission of written messages to and from fixed networks by using appropriate mobile terminal equipment.

1.4 Leased lines markets

Leased lines are a fundamental service upon which most telecommunications services are supported, as they are used by operators as vital infrastructures for the development of their own networks, and thus of retail services. To that end, and to encourage price reductions for operators in this area, ICP-ANACOM is not only encouraging competition in the provision of these services but also for most services they provide in retail.

¹² <http://www.anacom.pt/template12.jsp?categoryId=74830>

¹³ <http://www.anacom.pt/template12.jsp?categoryId=72130>.

The fundamental regulatory instrument for the leased lines market is the Regulation for the Operation of Public Telecommunications Networks. Chapter IV of the said Regulation particularly concerns the operators of public telecommunications networks with significant market power in the leased lines market, also designated as significant market position or, to use current terminology, dominant position.

The said Chapter IV of the Regulation for the Operation of Public Telecommunications Networks assigns ICP-ANACOM the obligation to determine the list of operators with significant market power in the leased lines market, to define the minimum set of leased lines to be offered by the Public Telecommunications Service Concessionaire – PT Comunicações, to define the service quality levels provided by the operators with SMP, to oversee compliance with the price rules and principles and the cost accounting system implemented to that end.

This instrument also imposed upon the SMP operators a set of obligations, specifically obligations vis-à-vis open network provision, and also the conditions under which the SMP operators can end that provision.

The following were ICP-ANACOM's main interventions in the leased lines markets in 2003:

- In the wake of the ICP-ANACOM decision dated September 2002¹⁴ and concerning reformulation of PTC's leased lines offer, a new reorganised price table took effect, with prices cut across the board. Following that determination, ANACOM closely monitored throughout 2003 the market impact of the new pricing structure, particularly the discounts. This process culminated in early 2004 (10 February 2004) in a determination by the ICP-ANACOM Board of Directors on the restructuring of conditions associated to the leased lines service provided by PT Comunicações, specifically the discounts applied by the operator;
- To remove the need for new operators to lease the specific components for extending lines within PTC exchanges at the same price as the price of a local extension, and to stimulate competition in light of the applicable regulatory principles, ICP-ANACOM clarified and defined the conditions for the provision of leased lines interconnection, specifically the price¹⁵.

¹⁴ See determination of 19 September 2002 at <http://www.anacom.pt/template12.jsp?categoryId=44310>.

¹⁵ See determination of 19 June 2004 at <http://www.anacom.pt/template12.jsp?categoryId=75650>.

In terms of international comparisons, the price of the overall national lines basket (analogue, digital at 64 kbps, 2 Mbps and 34 Mbps) was in early 2003 about 29% lower than the average values verified in the other European Union countries¹⁶.

1.5 Interconnection Market

The interconnection of public telecommunications networks in a context of open and competitive markets emerges as the physical and logical supporte needed for end-to-end communication between users of public telecommunications services.

Interconnection conditions, and particularly the respective prices, are vital for the development of an effectively competitive market, and also ensure that users obtain maximum benefits in terms of choice, price and quality.

Interconnection was in 2003 governed by Decree-Law no. 415/98 of 31 December. The regime envisaged in this instrument, based on enshrinement of the principle of freedom to negotiate interconnection agreements between operators of public telecommunications networks and public telecommunications service providers, is complemented by the imposition of an interconnection offer guaranteed in first line by the basic telecommunications network, and in second line by the set of operators and/or providers with significant market power.

Under terms of that instrument, the National Regulatory Authority must determine, declare and annually publish a list of the entities with significant market power (SMP) and impose the obligations envisaged by law on those operators and on operators without SMP. Among the obligations to impose on the SMP operators the following stand out: to meet all reasonable requests for interconnection; to draft reference interconnection offers; and to have separate accounting for interconnection activity.

ICP-ANACOM could also intervene in the negotiation of interconnection agreements and become involved in the resolution of disputes between operators.

¹⁶ See study on “International Comparison of Leased Lines Service Prices – January 2003” at <http://www.anacom.pt/template15.jsp?categoryId=53131>.

Bearing in mind that PTC, as the operator with significant market power in the interconnection market, must draft reference interconnection offers (RIOs), ICP-ANACOM undertook the following actions with regard to the 2003 RIO:

- Pursued the goal of gradual alignment of the prices for interconnection services with the costs incurred in the provision of same, intervening to set maximum interconnection prices to be in effect from 1 March 2003, which represent an average reduction of about 10 percent compared to the same prices practiced in 2002¹⁷;

With this determination of 21 March 2003, the interconnection prices practiced by PTC approached the European Union (EU) average, as attested by the following table:

Comparison of the 2003 RIO prices and the EU average (prices in euro-cents per minute for a three-minute call):

Comparison of 2003 RIO prices and the EU average

	Call Origination						Call Termination					
	Local		Single Tandem		Double Tandem		Local		Single Tandem		Double Tandem	
	P.	O.P.	P.	O.P.	P.	O.P.	P.	O.P.	P.	O.P.	P.	O.P.
PT deviation from average.	0.9%	-4.4%	3.1%	-1.5%	4.0%	1.8%	2.1%	-3.8%	5.3%	0.7%	11.8%	10.1%

P. = Peak / O.P. = Off-Peak

- Set conditions that would allow a reduction of costs for operators alternative to PTC in the provision of their retail services. Worthy of note is the simplification of the new operators' access to the historic operators' telephone exchanges as per the imposed obligation that PTC must provide collocation on an open space basis (co-mingling)¹⁸, thus enabling operators to install their equipment in the same room where PTC equipment is installed, which means that PTC does not have to build a room for that purpose. This decision, dated 9 June 2003, impacts not only interconnection services, but also unbundled local loop access services and leased lines interconnection service. By adopting it, Portugal in 2003 became one of three community countries to include this obligation in the interconnection offer, along with Belgium and Denmark;

¹⁷ See determination of 21 March 2003 at <http://www.anacom.pt/template12.jsp?categoryId=60470>.

¹⁸ See determination of 19 June 2003 at <http://www.anacom.pt/template12.jsp?categoryId=75650>.

- Regarding the RIO, it also intervened to assure that the maximum prices for invoicing, collection and risk of non-collection applicable in PTC customers' access to special services provided by the other operators¹⁷, and the maximum prices for the services of call pre-selection and activation and of number porting, approximate the effective costs of their provision;
- Given that PTC's price table for access to data transmission services by operators and providers of services used, for example, to support means of electronic payment did not clearly reflect the factor of price differences between free and non-free calls, PTC was asked to revise the respective price table. ICP-ANACOM subsequently intervened to reduce the maximum applicable prices for the service and to clarify the respective interconnection model¹⁹. By establishing the call origination model for this service, ICP-ANACOM held that the entity that adds value to the service (in this case, the provider of data transmission service) should set the retail price. By promoting efficient use of resources, ICP-ANACOM envisaged the possibility that the same interconnection line could be used for voice transmission and data;
- At the end of 2003, considering that the practice of low interconnection prices was relevant for the development of competition in the sector, PTC was asked to proceed with revision of the RIO with effects from 1 January 2004, in particular to again lower interconnection prices²⁰.
- On 16 March 2004 ICP-ANACOM again decided on reduction of the maximum prices for the services of call origination and termination, invoicing, collection and risk of non-collection. Note also that ICP-ANACOM determined an end to the exclusion of internet access traffic as envisaged in the RIO²¹.

Regarding interconnection provided by the mobile operators, and in the wake of decisions made in previous years, in which price cuts were assured for fixed-mobile call termination service, TMN and Vodafone committed themselves to reducing the price of that service by about 7 percent per quarter. Yet in spite of those price cuts advocated by ANACOM, the prices for fixed-mobile termination practiced in Portugal are still substantially higher than the European Union average.

¹⁹ See determination of 9 January 2003 at <http://www.anacom.pt/template12.jsp?categoryId=52389> and determination of 23 September 2003 at <http://www.anacom.pt/template12.jsp?categoryId=80750>

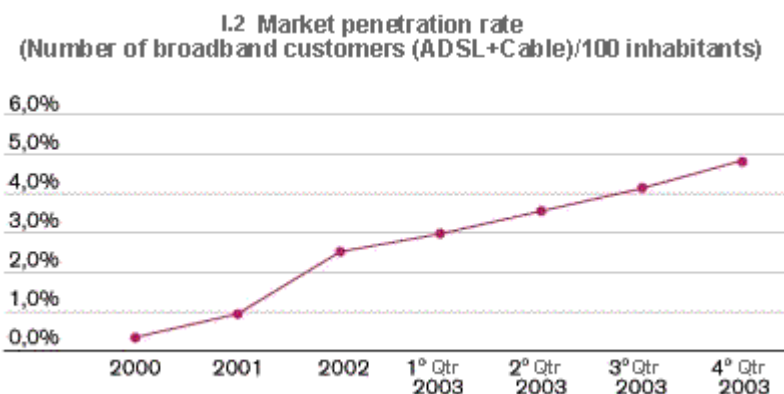
²⁰ See determination of 18 December 2003 at <http://www.anacom.pt/template12.jsp?categoryId=89921>

²¹ <http://www.anacom.pt/template20.jsp?categoryId=103619&contentId=177663>

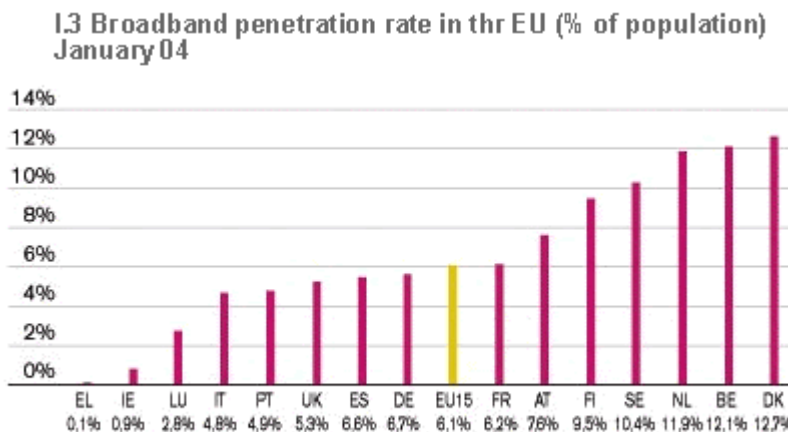
1.6. Wholesale broadband internet access services

The promotion of information society services and especially broadband internet access is a fundamental pillar of ICP-ANACOM’s activity. To that end it is vital to ensure competition in the provision of this service. ICP-ANACOM has thus particularly focused its action on the unbundled local loop (LLU) provision and “PT ADSL Network” wholesale offers.

Broadband’s penetration rate in Portugal rose significantly in 2003²² (see Graph 1), placing Portugal slightly below the EU average (according to the document COCOM04-20 FINAL²³)



Source: ICP-ANACOM



Source: European Commission

²² See statistics at <http://www.anacom.pt/template12.jsp?categoryId=103699>

²³

<http://forum.europa.eu.int/irc/Download/kYetAAJ2mjGFFVXmUpoo2yLiBbk2pUmA6FOUv7yhK2DUD6BYRxrHli0UmGIXhV-uGV9SD/COCOM04-20%20Final%20Broadband%20data.pdf>

1.6.1 “PT ADSL Network” offer

Regarding the “PT ADSL Network” offer, ANACOM sought to ensure conditions of fair competition and non-discrimination between Grupo PT companies and other market competitors.

A first intervention by ICP-ANACOM on 29 May 2003 concerned a joint offer by PTC and Telepac labelled “PT First Time ADSL”, addressed to customers who wanted to subscribe to Telepac’s ADSL service but did not have an analogue line. In order to allow the other providers, if they so desired, to develop analogue offers under equal conditions vis-à-vis the Grupo PT companies, and not opposing continuation of that campaign, ICP-ANACOM ordered PTC to make available to the service providers that so request conditions equal to those offered to its subsidiary PTM.com in the “PT First Time ADSL” offer, namely exemption of the end user’s payment of the network line installation price and the prices and discounts it practiced, and to end limits on indirect access²⁴.

Having verified that Telepac benefited significantly from the wholesale offer, particularly the application of volume discounts and, probably, maximum loyalty discounts, and fearing the effects this discount practice might have on development of a competitive market, ICP-ANACOM intervened in the “PT ADSL Network” wholesale offer in June 2003. This intervention consisted of imposing a 20 percent drop in prices of the wholesale offer by ending the discounts and of introducing a “retail minus” rule in the monthly fee for the class with most market implementation (the 512/128 kbps class) that should prevent subsequent squeezing of the margins²⁵.

In November 2003, following announcement of the launch of a new Grupo PT retail offer for 256/128 kbps, ICP-ANACOM again intervened in PTC’s wholesale offer, in the new class 4 (256/128 kbps), to clarify the respective conditions and ensure an appropriate margin for the other operators.

1.6.2 Local loop unbundling (LLU) offer

In order to boost competition and stimulate technological innovation in the local access market by establishing harmonised conditions for LLU, the European Parliament and the Council approved on 18 December 2000 Regulation (EC) no. 2887/2000, which took effect in January 2001.

²⁴ See determination of 29 May 2003 at <http://www.anacom.pt/template12.jsp?categoryId=68270>

²⁵ See determination of 25 June 2003 at <http://www.anacom.pt/template12.jsp?categoryId=71800>

Providers may thus also offer broadband services in retail by leasing unbundled local loops/sub-loops (in the modes of full or shared access). The full access option enables the provider in question to enjoy greater flexibility in defining the retail offers it provides, and may specifically also offer voice services.

Until mid-2003 operators showed little interest in LLU. This is evident in the low number of unbundled accesses (303 at the end of the first quarter).

But from the date when ICP-ANACOM imposed collocation on an open space basis (also known as co-mingling) in the RUO (Reference Unbundling Offer), there was renewed interest by the other licensed operators (OLOs) in this offer, which grew by 516% in the second half of 2003 (1,867 unbundled accesses at the end of 2003, split between OniTelecom and Novis).

In 2003 ICP-ANACOM also intervened to reduce the price of various services associated to LLU:

- a) In full access service, the monthly fee was lowered by 13 percent from €3.78 to €1.96. This reduction enabled the service to be offered at a price 6 percent lower than the community average. The installation price for this access type became €84.07, which, added to the eligibility price (€8.05), is framed in current European Union practices;
- b) The monthly fee for shared access was likewise set at €2.95. The previous price was €7.82, for a reduction of about 55 percent%. The installation price for this access type was set at €88.21.

A set of procedures and deadlines was also defined, to be complied with during the process of requesting access and subsequent installation of the operators' equipment in PTC exchanges. The aim of these obligations is to streamline and simplify the process, removing barriers to good functioning of the market.

1.7 Terrestrial television signal distribution and transmission service

The price Convention signed on 1 July 1997 by the Instituto da Comunicação Social (ICS – Media Institute), the Autoridade Nacional de Comunicações (then designated the Instituto das Comunicações de Portugal), the Directorate General of Trade and Competition (DGCC) and PT Comunicações, S.A. (PTC), then Portugal Telecom, S.A., as per the provisions of sections 1 and 2 of article 17 of Decree-Law no. 122/94 of 14 May, defined the price regime for the service of

distribution and dissemination of terrestrial television signal provided by PTC. Under the terms of section 1 of clause 2 of the said Convention, the determination of prices for that service should take into account the principles of transparency, non-discrimination and orientation to costs. Clause 3 sets the maximum prices for the service of distribution and dissemination of terrestrial television signal to practice in 1997 and stipulated that in 1998 the prices would be updated to the maximum value of the average CPI variation rate envisaged in the State Budget for that year. By ANACOM determination of 25 January 2001 the said Convention remained in effect.

The prices for terrestrial television signal distribution and dissemination service were not updated after 1998, even though the Convention allowed this to occur; for this reason they suffered a real accumulated negative variation of –12.2 percent from 1998 to 2002.

Decree-Law no. 31/2003 (Agreement Modifying the Concession Contract for Public Telecommunications Service) was published on 17 February 2003. Its section 3, article 16 maintains the principles applicable to the price regime for access to the network that transports and disseminates television signal, with ANACOM, having heard the ICS on the subject, responsible for ensuring respect for same.

ANACOM received on 18 March 2003 a letter from Radiotelevisão Portuguesa, S.A. (RTP), concerning prices for the service of distributing and disseminating terrestrial television signal practiced by PTC. In the letter, RTP considers that PTC's prices for the said service are far above the costs, and asks ANACOM to intervene under the terms of section 3 of article 16 of Decree-Law no. 31/2003 of 17 February.

Aware of the social repercussion of the service of distributing and disseminating terrestrial television signal and of its overall significance for development of the Information Society, and taking into account the principle of price orientation to costs, ICP-ANACOM intervened (determination of 21 April 2003) to assure price reductions for each one of the individual provisions encompassed by the service of distributing and disseminating terrestrial television signal provided by PTC, for the period running from 1 June 2003 to 31 May 2006.

Thus, after modifying the price table of March 2003, with effects retroactive to January 2003, for an annual nominal variation of –14.06 percent over the price table in effect in 2002, ICP-ANACOM promoted an additional real reduction of the prices then in effect of not less than 1.2 percent, from 1 June 2003.

1.8 Numbering: Assignment of Numbers

The processes of assigning numbers or series of numbers obey the principles of transparency, fairness and effectiveness. It is up to the ICP to assign identification codes and series of numbers to entities duly qualified for that purpose in a non-discriminatory, objective and transparent manner; to guarantee that the processes of assigning individual numbers and/or series of numbers are transparent, fair and efficient, and also that their assignment be carried out in an objective, transparent and non-discriminatory manner, to ensure loyal and fair treatment of all duly qualified entities that provide public telecommunications services.

In this regard, the year 2003 saw the assignment of 80,000 numbers for fixed telephone service, 100,000 numbers for non-geographic services ("800", "808", etc.) and 300 numbers for other services, namely internet access.

The following tables and graphs depict the evolution of the national situation in this area, associated to the corresponding activity of ICP-ANACOM.

Geographic Numbers ²⁶						
	Before 2000	2000	2001	2002	2003	Total
Lisbon Geographic Area	3.890.000	130.000	180.000	140.000	30.000	4.230.000
Oporto Geographic Area	1.810.000	70.000	60.000	50.000	20.000	1.960.000
Remaining geographic areas	15.870.000	1.580.000	350.000	530.000	20.000	17.820.000

Source: ANACOM

Non-geographic numbers ²⁶						
	Before 2000	2000	2001	2002	2003	Total
Non-geographic services (600, 800, 808, 809)	580.000	300.000	1.320.000	110.000	100.000	2.410.000

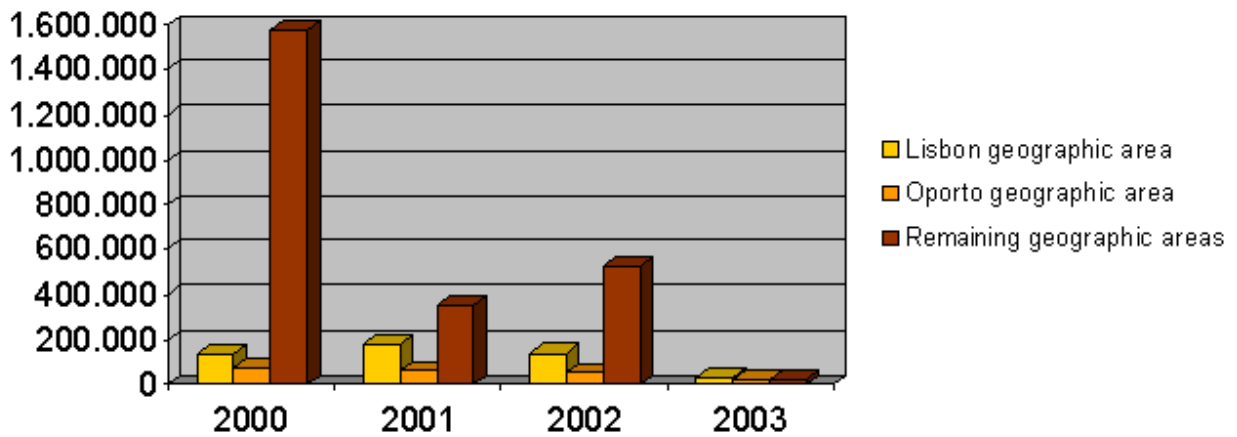
²⁶ Numbers are allocated in blocs of 10,000 for the ranges 2, 600, 707, 708, 800, 808 and 809 and in blocs of 100 for the 67 range (data services).

609, 669, 707, 708, 800, 808, 809)						
Data services (ISP)	3.300	600	200	100	300	4.500

Source: ANACOM

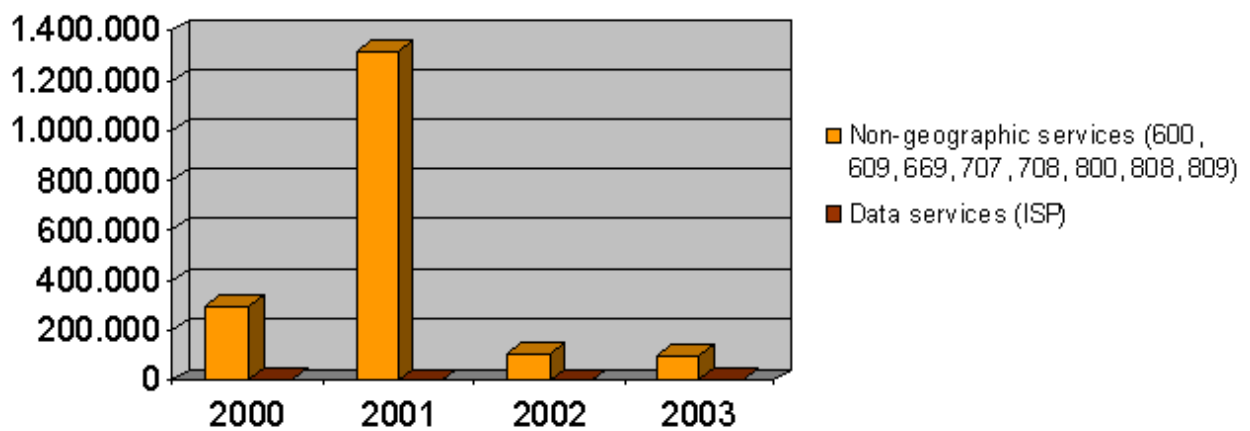
* Note: Numbers are allocated in blocs of 10,000 for the ranges 2, 600, 707, 708, 800, 808 and 809 and in blocs of 100 for the 67 range (data services).

I.4 Geographic numbers



Source: ICP-ANACOM

I.5 Non-geographic numbers



Source: ICP-ANACOM

Bearing in mind reformulation of the principles and criteria for allocating and managing numbering resources, to adjust the characterisation of existing services, study how to provide access to emerging services and end practices that eventually distort the market, ICP-ANACOM carried out in 2003 a public consultation on the National Numbering Plan (NNP).

1.9 Drafting of a new regulatory framework

The process of transposing into the national legal framework the Directives of the European Parliament and of the Council that cover the electronic telecommunications sector took place over the course of 2003 and culminated, as stated above, in the publication of Law no. 5/2004 of 10 February 2004.

Specifically, it concerned the transposition of Directives 2002/21/EC of 7 March 2002 (Framework Directive, on a common regulatory framework for electronic communications networks and services), 2002/19/EC of 7 March 2002 (Access Directive – on access and interconnection of the electronic communications network and associated resources), 2002/20/EC of 7 March 2002 (Authorisation Directive – on the authorisation of electronic communications networks and services), 2002/22/EC of 7 March 2002 (Universal Service Directive – on universal service and users' rights vis-à-vis electronic communications networks and services) and 2002/77/EC of 16 September 2002 (on competition in the markets for electronic communications networks and services).

The publication of the said Law no. 5/2004, the Electronic Communications Law or Regicom, was followed by an immediate formal start of the process for regulating same.

This process, which is subject to procedures of public consultation and/or prior hearing of interested parties, implying lengthy time periods for same, is under way and should be completed at the end of 2004.

The new Competition Law, Law no. 18/2003, was published on 11 June 2003. Its article 15 stipulates that the "Competition Authority and the sector regulatory authorities work together on applying competition legislation (...)". To clarify terms of mutual collaboration as defined in the legislation, ICP-ANACOM and that authority signed in September 2003 a co-operation agreement whose aims are to facilitate collaboration between the parties "in compliance with the respective duties in accordance with the powers they have been legally granted, to avoid duplication of work (...) and ensure the coherence of adopted decisions or measures (...).

1.10 Definition and analysis of relevant markets and imposition of obligations

In the context of implementation of the new regulatory framework, and as per articles 58 and 59 of Law no. 5/2004 of 10 February the National Regulatory Authority, ICP-ANACOM, is responsible for defining and analysing the relevant markets for products and services in the electronic communications sector, for the purpose of imposition, maintenance, modification or suppression of obligations, in accordance with the Recommendation and with the Guidelines issued by the European Commission and in compliance with the principles of the right to competition.

Although REGICOM was only published in 2004, ANACOM had already begun the preliminary phase of the said process of defining and analysing markets and assessing SMP on 30 May 2003. The process is currently under way and is expected to finish at the end of 2004.

To ensure operational definition and analysis of markets as imposed by the new regulatory framework, ANACOM defined the following actions:

- It aggregated into four groups the markets defined in the European Commission Recommendation:
 1. Markets for fixed switched low-bandwidth services;
 2. Markets for mobile services;
 3. Markets for leased line, LLU and broadband services;
 4. Television broadcasting;
- Decided to proceed with definition of markets and SMP assessment in a sequential manner and in accordance with the above list;
- The following tasks were developed for each one of the market groups:
 - Preliminary public consultation on methodological questions;
 - Gathering of statistical, operational and financial information;
 - Elaboration of draft decisions on market definition and SMP assessment;
 - “General consultation procedure” [National public consultation] under the terms of article 8 of Law no. 5/2004 of 10 February, of section 1 of article 57 of the same

Law and of section 3 of the “ANACOM Consultation Procedures”, approved by determination of 12 February 2004;

- Hearing of interested parties as per the terms of articles 100 and 101 of the CAP;
- Solicitation of opinion from the Competition Authority as per the terms of article 61 of Law no. 5/2004;
- “Specific consultation procedure” [Consultation of the EC and the regulators from other Member States] as per the terms of article 57 of Law no. 5/2004 of 10 February;
- Draft decision of the ICP-ANACOM Board of Directors;
- Notification of the European Commission and the remaining regulators from the Member States.

ICP-ANACOM decided to first define and analyse the markets, leaving to a later phase the imposition, maintenance, modification or suppression of obligations.

1.10.1 Markets for fixed switched low-bandwidth services

The definition and analysis of the markets for fixed switched low-bandwidth services began in late 2002 with a preliminary market analysis based on existing information. This work enabled gaps to be identified in the available information and in the powers needed to carry out the said work. (Note, to that end, that the new regulatory framework requires the definition of relevant markets subject to ex ante regulation and the evaluation of competition in those markets to be effected by recourse to the principles and techniques of European Competition Law).

Internal training

It was then necessary to train personnel to take charge of this work. A limited international consultation was thus carried out with the aim of acquiring consultation and training services in the area of market definition and analysis and Competition Law. This job was commissioned to a consortium comprising an international consultancy firm, national university consultants and an international law firm specialising in Competition Law.

The training sessions took place during the month of February 2003, attended by about 40 ICP-ANACOM employees. The consultants likewise produced a report on “Methodologies for Market

Definition and Market Analysis”; the public version of the said study is available on the ICP-ANACOM website²⁷.

Preliminary public consultation

In the wake of the initial analyses and the aforementioned training, a decision was made to proceed with a preliminary public consultation on a number of methodological and market questions²⁸. The aim of said consultation was to gather opinions and additional information on certain of ICP-ANACOM’s preliminary options and on related matters, specifically the criteria and indicators used to define relevant markets, assessment of the degree of effective competition in each of the markets and the imposition, maintenance and suppression of obligations. Information was likewise sought for consideration during the subsequent market analysis process.

This preliminary public consultation ran from 30 May 2003 to 25 July 2003. Seven replies were received. ICP-ANACOM produced a report on this consultation which is available on the internet. The information gathered was considered in the context of the subsequent market definitions and analyses.

Request for information on fixed interconnection and retail services

Likewise requested was a set of statistical, operational and financial information needed to define relevant markets and to assess the degree of competition in the identified relevant markets. This information was gathered from 12 June 2003 to 15 July 2003.

The information gathering process faced some difficulties that delayed the whole process. To prevent the same delays and barriers from affecting future market analyses, the ICP-ANACOM Board of Directors decided in a determination dated 1 September 2003 that PT Comunicações and the other FTS providers should adapt their information systems so as to gather the indicators defined in the “request for information on fixed interconnection and retail services”. Deadlines and dates for the regular collection of this information were also set.

²⁷ See report on “Methodologies for Market Definition and Market Analysis” available at <http://www.anacom.pt/template12.jsp?categoryId=79632>

²⁸ The consultation document may be consulted at <http://www.anacom.pt/template15.jsp?categoryId=79630>.

Elaboration of the draft decision

Based on the information gathered in the preliminary consultation, in the “request for information on fixed interconnection and retail services”, in the Commission Recommendation on relevant markets for products and services in the electronic communications sector²⁹, in the Commission Guidelines for the analysis and evaluation of significant market power³⁰ and in the Report on “Methodologies for Market Definition and Market Analysis”, the ICP-ANACOM draft decision on the definition and analysis of the markets for fixed switched low-bandwidth services was then drawn up³¹.

The criteria for replacement on the supply and demand side were basically used to define relevant markets³². Regarding the markets so identified, it was necessary to verify that same were subject to ex ante regulation, using for that purpose the criteria imposed by the commission: existence of almost unsurpassable and non-transitory entrance barriers, lack of dynamic factors that promote competition between the companies present in the market and the impossibility of resolving market failures by applying competition law.

The following markets were thus defined:

- a. Market for narrowband access to the public telephone network at a fixed location by residential customers;
- b. Market for narrowband access to the public telephone network at a fixed location by non-residential customers;
- c. Market for publicly available local and national telephone services provided at a fixed location for residential customers;
- d. Market for publicly available international telephone services provided at a fixed location for residential customers;
- e. Market for publicly available local and national telephone services provided at a fixed location for non-residential customers;
- f. Market for publicly available international telephone services provided at a fixed location for non-residential customers;
- g. Market for telephone services destined for non-geographic numbers publicly available at a fixed location;
- h. Market for call origination in the public telephone network at a fixed location;

²⁹ See <http://www.anacom.pt/template20.jsp?categoryId=58713&contentId=93379>

³⁰ See <http://www.anacom.pt/template20.jsp?categoryId=58712&contentId=93378>

³¹ See <http://www.anacom.pt/template15.jsp?categoryId=79630>

³² See chapter 2 of the consultation document at <http://www.anacom.pt/template15.jsp?categoryId=79630>

- i. Market for call termination in individual public telephone networks at a fixed location.

Effective competition was evaluated in each of these markets. This analysis was based on the following criteria: market shares, level of competition between the installed companies (concentration, size of companies, barriers to expansion, price rivalry, profitability), potential competition (economies of range, scale and experience, strategic barriers) and users' counter-power³³.

Generally speaking:

- The Grupo PT has very high market shares, in some cases above 90%;
- The level of concentration is always very high and the size of the market leader and the difference between same and its closest competitors is quite significant;
- There are barriers to expansion (economies of scale and range, infrastructures that can be copied only with difficulty, etc...);
- In pricing terms, the Grupo PT's competitors act as followers and the pricing policy of the Grupo PT companies is determined by regulation;
- The profitability of the Grupo PT operators is not compatible with the existence of effective competition;
- There are high entrance barriers and low volatility in terms of market entrance and exit;
- Indications of consumer inertia were identified;
- Purchasers' counter-power is non-existent given that individual customers account for a small share of PT's revenues and that there are costs of change. It was likewise impossible to identify a large number of alternative service providers for the major business customers.

³³ See Chapter 3 of the preliminary public consultation document at <http://www.anacom.pt/template15.jsp?categoryId=79630> and the documents that ground the draft decision at <http://www.anacom.pt/template15.jsp?categoryId=102680>.

On the other hand, in markets for call termination in individual public telephone networks at a fixed location, it was verified that:

- All the operators monopolise;
- There is no evidence of users' counter-power.

In the wake of the above described analysis, the following companies with significant market power were identified:

- Companies of the Grupo PT that operate in the identified relevant markets [markets a) to i)];
- All the fixed network operators that act in the market for call termination in individual public telephone networks at a fixed location [market i)].

Pre-notification meeting

In accordance with the Commission Recommendation on notifications, deadlines and consultations envisaged in article 7 of Directive 2002/21/EC³⁴, the Commission must grant the national regulatory authorities the opportunity to informally debate any draft instrument before its formal notification.

Thus, after completing the market definition and analysis work, the methodology and main results that comprise the draft decision were debated with the European Union.

This pre-notification meeting was held in Brussels on 25 February 2004.

Approval of draft decision

Following the entrance into force of the new Basic Law for Electronic Communications – Law no. 5/2004 of 10 February 2004 (REGICOM), and after the 25 February 2005 pre-notification meeting, the draft decision on the definition of relevant markets for fixed switched low-bandwidth

³⁴ See <http://www.anacom.pt/template20.jsp?categoryId=72843&contentId=118251>.

services (retail and wholesale, excluding the transit market) and the evaluation of significant market power (SMP) in those markets³⁵ was approved in a determination dated 8 March 2004.

Submission of opinion to the Competition Authority

Under the terms of article 61 of Law no. 5/2004 of 10 February, ICP-ANACOM requested the opinion of the Competition Authority on the aforesaid draft decision.

The opinion of the Competition Authority on the market definitions and evaluations of SMP indicated in the documents submitted on 12 March 2004 was as follows³⁶:

“The Competition Authority agrees with the methodology used to define the relevant markets and, based on the premises presented by ICP-ANACOM, considers the conclusions to be correct...”

The Competition Authority explicitly stated its agreement on the non-creation of a segment for major business customers and on the company concept used in the said documents.

On the other hand, *“[the] Competition Authority considers to be fundamental the respective participation in the sector regulator’s decision-making process vis-à-vis the ex ante measures to impose on the operators with SMP”*.

Note that, in accordance with article 61 of REGICOM, ICP-ANACOM is not obliged to involve the Competition Authority in the process of imposing obligations.

³⁵ See <http://www.anacom.pt/template12.jsp?categoryId=109440>

³⁶ See http://forum.europa.eu.int/irc/DownLoad/kdeyAJJRmqGDugKODDPT7s2wPb2I01zu3GdZSszJ4AF222QEqBjGv3Nd2IDqs12dFFVroUpoo2yLiBbk0dUzH4_NH_2wYReCS/Autoridade%20da%20Concorr%Eancia.pdf

General process of consulting and hearing interested parties

The aforementioned draft decision was likewise subject to the general procedure for prior consultation envisaged in section 1 of article 57 of the same Law and in section 3 of the “ICP-ANACOM Consultation Procedures”, approved by determination of 12 February 2004, and to the hearing of interested parties, in compliance with the provisions of articles 100 and 101 of the Code of Administrative Procedure³⁷.

These consultation and hearing processes took place from 12 March 2004 to 26 April 2004; ICP-ANACOM received replies from four entities:

- GRUPO PT;
- ONITELECOM;
- NOVIS TELECOM;
- COLTEL.

Regarding the retail markets, the main objections presented by the respondents, specifically the Grupo PT, were as follows:

- ICP-ANACOM did not take into account the competitive pressure exercised by the mobile services;
- The existing level of competition in the major business customer segment was not considered;
- Dynamic factors specifically related to the introduction of new technologies and services were not considered.

Regarding the wholesale markets, specifically the termination market, the main criteria presented (by the new operators) were the following:

³⁷ See <http://www.anacom.pt/template15.jsp?categoryId=102680>

- The decision was solely based on the market shares criterion;
- Existing differences between prices practiced by the new operators and those offered by PTC are explained by economic factors;
- The historic operator has counter-power as a customer of termination services;
- The new operators are not able to act independently of their competitors.

Under the terms of paragraph d) of section 3 of the “ICP-ANACOM Consultation Procedures”, approved by determination of 12 February 2004, a Consultation report was drafted containing reference to all the replies received and an overall view that reflects this Authority’s understanding of same³⁸.

In the wake of those processes, and by determination of 20 May 2004, ICP-ANACOM approved the consultation report and the draft measures³⁹. These draft measures took into consideration the replies to the public consultation and the opinion of the National Competition Authority.

The previously presented conclusions on the definition of relevant markets and the evaluation of SMP were not changed.

Specific consultation process: notification of draft measure to the European Commission and to the National Regulatory Authorities

On 20 May 2004 the ICP-ANACOM Board of Administration likewise approved making available to the national regulatory authorities of the other Member States and to the European Commission the proposed measure, in accordance with article 57 of Law no. 5/2004 of 10 February. This procedure is associated to the harmonisation and construction of a single market.

The notification was effected on 26 March 2004⁴⁰.

³⁸ See <http://www.anacom.pt/template15.jsp?categoryId=102680>

³⁹ See <http://www.anacom.pt/template12.jsp?categoryId=124579>

⁴⁰ See <http://forum.europa.eu.int/Public/irc/info/ecctf/library?l=/portugal/registeredsnotifications&vm=detailed&sb=Title> [Cases PT/2004/0053 to PT/2004/0061].

The notification was drafted in accordance with the precepts contained in the Commission Recommendation on notifications, deadlines and prior consultations⁴¹. As stated in the said Recommendation, the draft measures and respective grounds are accompanied by summarised notification forms.

In the context of this consultation process, the Commission may ask the national regulatory authority to withdraw the proposed measure whenever it considers that same creates barriers to the internal market or when they are incompatible with community law and with the regulation's objectives.

Any other comments produced in this context by the Commission or by the other Member States' national regulatory authorities should be taken into account by the notifying Regulatory Authority.

In the cases of nine notifications presented by ICP-ANACOM, the European Commission did not make any objections or comments.

In a communication addressed to the ANACOM Board of Administration, dated 25 June 2004, the Commission states that^{42,43}:

"The Commission studied the notifications... and has no comment... ANACOM may approve the resulting proposed measure; whenever it proceeds in this manner it shall communicate this fact to the Commission".

This was the first time since the beginning of this process that a draft measure notified by a member country's national regulatory authority was not subject to any remark on the part of the European Commission. (Of the first 77 notifications, only the nine notifications by Portugal were not subject to comments).

The regulators from the other member States likewise did not express any objection to the measure taken.

Final approval of the measures and notification

⁴¹ See <http://www.anacom.pt/template20.jsp?categoryId=72843&contentId=118251>.

⁴² See http://forum.europa.eu.int/irc/DownLoad/kweyA6JAmoGUdfOO1r0B_GZ-pHre0Ee-db5DrlpgiftlpwltD4GRcD2r6RfY6Sctuh4IGr00GdUdHXkRfQc0wuQEpoYI/SG-Grefe%202004%20D202508.pdf

⁴³ See <http://forum.europa.eu.int/irc/DownLoad/kde-A-JHmqGHvj72tqrnbNFgUIKIUH3t3p1Lr0Z461HDUpIzHwDzLP0-gKfcKEfltxTT2OUQDqRf-V7foD4s3KhZPnFx/PT2004%200053-0059%20pt.pdf>

Final approval of the measures took place on 8 April 2004. The interested parties, EU National Regulatory Authorities and the European Commission were next notified of the measures.

Imposition of obligations

The draft decision on the imposition of obligations on entities with SMP that operate in this market was approved by the ICP-ANACOM Board of Directors on 15 July 2004 and will next be subject to the general and specific consultation processes.

1.10.2 Other markets

Regarding the other market groups identified above, the following tasks were pursued:

- Markets 7 and 11 through 14 (markets for leased lines, LLU, broadband)
 - Preliminary public consultation – 23.09.2003-25.07.2003⁴⁴
 - Information gathering – 06.11.2003⁴⁵
- Markets 15 and 16 (markets for mobile services)
 - Information gathering – 01.03.2004-15.03.2004⁴⁶
 - Preliminary public consultation – 23.09.2003-25.07.2003⁴⁷

The table below shows the planned calendar for the remaining actions associated to these markets.

The analysis of market 17 (roaming) and 18 (television broadcasting) will begin in September.

⁴⁴ See <http://www.anacom.pt/template15.jsp?categoryId=79670>

⁴⁵ See <http://www.anacom.pt/template12.jsp?categoryId=83870> and <http://www.anacom.pt/template12.jsp?categoryId=83871>

⁴⁶ See <http://www.anacom.pt/template12.jsp?categoryId=102259> .

⁴⁷ See <http://www.anacom.pt/template15.jsp?categoryId=79670>

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	Markets 1-6 and 8-9 Def. Mark. + SMP	Markets 1-6 and 8-9 Obligations	Markets 11 and 12 (LLU+BB)	Markets 15-16 (mobile)	Markets 7 and 13-14 (lines)
1. Preliminary consultation	30.05.2003-25.07.2002	30.05.2003-25.07.2003	01.03.2004-15.03.2004	06.04.2004-29.04.2004	23.09.2003-25.07.2003
2. Information gathering	12.06.2003-15.07.2003	-	01.03.2004-15.03.2004	01.03.2004-15.03.2004	06.11.2003-31.12.2003
3. Pre-notification	25.02.2004	07.07.2004	07.07.2004	07.07.2004	Sep-04
4. Approval of draft decision	08.03.2004	15.07.2004	Jul-04	Apr-04	Sep-04
. Definition of relevant market	08.03.2004	-	Jul-04	Apr-04	
. Evaluation of SMP	08.03.2004	-	Jul-04	Apr-04	
. Imposition of obligations	-	15.07.2004	Jul-04		
5. General consulting process (market), hearing of interested parties and opinion of the Competition Authority	12.03.2004-26.-2004	Jul-04	Jul-04/Aug-04	Jul-04	Sep-04
6. Approval of draft measure	20.05.2004	Aug-04	Sep-04	Jul-04/Aug-04	Nov-04
7. Specific consultation process (EC and other NRAs)	26.05.2004-26.06.2004	Aug-04/Sep-04	Sep-04	Aug-04/Sep-04	Nov-04
8. Approval and final notification of measure	08.07.2004	Sep-04/Oct-04	Oct-04/Nov-04	Sep-04/Oct-04	Dec-04