

# *Spectru*

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## ICP-ANACOM Twenty years of Regulation





# ICP-ANACOM TWENTY YEARS OF REGULATION

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## ○ THE CHALLENGES AND DIFFICULTIES OF REGULATION

On the occasion of the 20<sup>th</sup> anniversary of ICP-ANACOM (*Autoridade Nacional de Comunicações*), its current president José Amado da Silva speaks to Spectru about the challenges facing the regulator and the main difficulties now affecting regulation.

To find a balance between compliance with national policies and community laws, to undertake more activity together with the European Commission and to proceed with internal reorganisation so that ANACOM can improve its response capacity are some of the regulator's challenges. Regulation itself may evolve towards a model with fewer or different regulatory rules and more supervision, with an emphasis guaranteeing competition and goals such as universal service, service to citizens and ensuring consumer protection. Because that's what competition is, says the ANACOM president.

### **From your viewpoint, what is the role of regulation?**

That may be the most central question we are dealing with today. When I look at telecommunications regulation, which is national though also community regulation, and sometimes with links to other countries, I feel some concern that we shouldn't think a bit more about things. The speed of technological transformation and even of business models is very fast and we have to respond to this, and I'm afraid that sometimes too little consideration is given to this issue. Bearing in mind what's happening nowadays and the crisis facing regulation in other areas, I don't know if we ought to wonder whether our area is also be affected by such a crisis, in particular, since we say we uphold the principles. They must always be maintained, as a reference from the start. Yet I don't know whether some of the practices we are so used to, some of the concepts, will not at least have to be rethought. It remains to be seen whether some factors, such as the introduction of next generation networks, convergence, will oblige us to rework some of those concepts.

### **Some time may be needed to see how things are working and evolving...**

Right. Some people understand, as I do, that regulation is good when it eventually stops existing. But this pretext, which I have always defended, has now been shaken, leading me to wonder whether or not it's actually true. We can say that regulation would disappear while supervision remains. But in reality what might happen is that regulation, by freeing up the forces of competition, ends competition, yet the prevailing idea has been that regulation's only concern is competition. And it's not. If competition is a means and not an end, then the establishment of competition cannot mean the end of regulation. That concerns the competition authorities. So there's some inconsistency here. Even from the strict standpoint of competition, history has shown us that once freed, competition very often leads to concentration. In this specific case, with all the concentration operations being spoken about, I don't know where things will go. I'm not sure whether or not regulation is a continual activity, with diverse rules and manifestations.

I always defended that the regulation of a given market or sector would tend to disappear and nowadays I have my doubts.

### **Can the very evolution of the market determine the need for regulation?**

The market may lead to concentration and we have some indicators in that regard... consolidation is mentioned once again. Will it be a balanced or monopoly concentration? I don't know. The very definition of product market has become more diffuse with convergence. The operation of multinationals has also made the geographic market very diffuse. However, in electronic communications the markets can't be moved because the infrastructures also can't, so there is always some local characteristic and some specificity of markets, which are not so easy to globalise as others. It's a very interesting area, which requires in-depth consideration.

### **What are the biggest problems currently affecting regulation?**

Besides that one, which is to know what my regulatory model is, the main difficulties involve reconciling the challenges of convergence with technological developments, which do not move at the same pace on all platforms, maintaining a regulation based on very typified market analyses. Here there may happen to be a market which is competitive, or might become so, and that leads to my non-intervention. But if I don't intervene now, the normal development of market forces may perhaps lead to a non-competitive situation. In other words, even though I understand at that specific time that existing competition does not justify my tying down any of the competitors, by freeing them all, and especially the stronger ones, I am very afraid that the competition which justified my non-intervention may eventually justify a future intervention. This balancing between short and long term is what worries me most and I still don't know how to resolve it.

The solution for such problems may involve differentiation of markets from the product side: the product for companies is not the same as that for homes, as they have different requirements. If we cross-reference regions with products we may end up with various interesting niches where there can be competition and even market contestability. There should always be a market appealing enough to cause someone to enter. As long as that happens I can relax.

These are the difficulties in theoretical terms. Yet we also have real difficulties, which have to do with the economic players' behaviour. Everyone agrees with the rules and then tries to get around them. Interoperability exists... but then a paper is missing. Portability exists, but then takes a long time. Those are the issues that make us so worried, or more, about enforcement, than about the rules we will try to establish. This worries me a lot. Exemplary behaviour by the operators would reduce this problem, yet it is real.

**Does the fact that ANACOM organically depends on MOPTC [Ministry of Public Works, Transport and Communications] cause any problems in day-to-day performance?**

From the strict standpoint of regulation it causes none, theoretically. The ministries are in charge of policy-making. Communications policy is not set by the regulator, which can provide its opinion, can be heard, but it is not political. The regulator may understand, and sometimes does understand, that the ministry has made a bad decision, which will disturb regulation, but that's life... The regulator doesn't make the Republic's laws. People will say: but it should. But that's not for me to say, because then I'd be making policy. On that point we'd have to have another idea of regulation, other than the existing one... will that happen?

On the contrary, the fact that we must advise the government... there, things become more complicated. The regulator ends up seen by others as being in line with positions it sometimes doesn't have, but which it is obliged to respect in order to follow with the rules. On the other hand, the political agenda often interferes with the freedom to assign ANACOM internal resources and that's problematic.

I believe a regulatory body should not be subject to tutelage. It should be controlled. We have to see the control mechanisms, who it depends on. And it should be made responsible. It's worth speaking about this, but this isn't called tutelage. Tutelage of the regulator is somewhat strange... in that regard it's not independent, it's dependent on the tutelary entity.

**And independence and autonomy are decisive for the regulator to perform well...**

Right – which doesn't mean there's no responsibility before society. And there you have to see just who represents society when accounts are rendered. It may be judicial power, the president of the Republic, Parliament... There are many solutions. To me, tutelage seems a string that's too tight, because one of the fundamental conditions, though not sufficient, for the regulator to be independent is its impartiality. The regulator should seek to gather all the parties involved, all the stakeholders, and if it has a tutelary entity there's a party. I think impartiality is at stake when there's tutelage, but in the end...

**In some cases, and the NGNs come to mind, in public terms there was slight feeling that the government was seeking to condition the regulator's actions...**

That's right. Those problems exist. And even when it's not true that's what it seems; often it's not true, it only appears to be. If this weren't the model then it wouldn't happen.

**Another problem for the regulator is that it sometimes has to act 'squeezed' between internal orientations and decisions from Brussels. Isn't that so?**

The biggest problem here is the concern about achieving the single market. So I ask whether there can be a perfectly integrated single market for electronic

communications. I can understand intervention in roaming. We may like it or not. Sometimes we think it's too much, it could have been done otherwise, but roaming involves transnational transactions – the national regulator can do little about roaming by itself. Beyond this there are national markets, with characteristics of their own and infrastructures which can't be moved. Will there ever be a single integrated market? Will I be able to buy a call in Croatia or Slovenia? This pressure to make a single market exaggerates in centralism. We may get there, but from a bottom-up and not top-down approach. Such imposition sometimes goes against reality and doesn't respect the physical limits of things.



José Amado da Silva holds that a regulatory body should not be subject to tutelage. It should be controlled and made responsible.

In this regard there is the very idea of a European regulator like the one they tried to impose, which will not now be a regulator. But in any case it's one more body that will remain in Brussels which implies new problems. That's the real situation. If all the national regulators' decisions based on remedies require the European Union's agreement with respect to market analysis, and the Commission can't impose remedies but can oppose them, then there's a strong dependence on Brussels and a lot of good sense is needed in these things. And now the creation of the BEREC will mean there has to be more meshing of gears. We'll have to pay close attention to this – it will be a permanent activity. It already is today.

**Does international activity increasingly affect the regulator's life?**

More and more. It's not a parochial activity. It requires many resources; the way they are assigned will have to be reworked. But participation is important because even though there are no fully integrated electronic communications markets there is increasingly more integration.

**Is the legal framework in which the regulator moves the most suitable for its operations or can it cause some constraints? In that case, what would have to be changed?**

The legal framework has a lot to do with the transposition of rules from Brussels and the way the statutes function.

Here there's a conditioner which is the balance between the centralism of Brussels and subsidiarity through the common positions and respect for specificities.

The legal framework will soon be updated, a transposition will be done. We hope it's done with respect for the basic existing ideas and in accordance



Competition exists when consumers, citizens, are well served.

with our characteristics. But there's a problem here: legal frameworks always have two perspectives, what emanates from the community directives and regulations, and the legal frameworks of the local laws set by Parliament and the government, which we have to respect. Will they be compatible? Don't they sometimes play each other off, leaving the regulator entangled by situations? Such are the existing constraints.

**Should any changes be made regarding ANACOM's powers?  
Public opinion sometimes expects ANACOM to do things it has  
no powers to do...**

I can give the example of what recently happened with certification. Per its democratic legitimacy, the government changed the way certification was carried out and this caused major problems for the certifying companies, because they lost their market.

The certifiers assign responsibilities to ANACOM, which was not at all responsible for what happened, though it was confronted with a problem it will have to resolve. These situations of vague definition between the democratic legitimacy of governments regarding what they can subject to tutelage and the specific obligation of an oversight body on the one hand, and that of regulation on the other, should be clearly explained. I'd like to see such a clarification.

**That could imply more dialogue between regulator and government in order to eliminate grey areas, or is it something which will have to be managed on a day-to-day basis?**

Conflict areas may arise. From the formal standpoint I don't know whether steps can be taken in that direction. We can think about it. From the standpoint of dialogue it is important for it to happen and as a rule it has happened – with respect for the duties of each one.

**But could the duties of regulation be redefined to encompass more areas? With risks of creating a mega-structure?**

The regulator should be an impartial, operational body and be of appropriate size. It can't go for everything; it can't be an executor of policies. I have a narrower view of the regulator, but not so much as those who hold that the regulator should not be in charge of managing spectrum, for example. It seems to me that it would be a fundamental mistake for the regulator not to have anything to say regarding spectrum.

I don't think the electronic communications regulation is compatible with that. Supervisory control of spectrum is different. Another more executive body could do it. This has to be rethought.

**You speak about an appropriate structure. But regarding this the size of ANACOM is criticised: it has too many people, excessive costs...**

There's a problem. Things are compared which can't be compared. The Spanish regulator, for example, has neither spectrum, nor supervisory control or management. It only has regulation. It doesn't have to advise the government – there is a Directorate General of Telecommunications which has countless employees. How can we compare the CMT with ANACOM? It makes no sense.

Now if we had to do all the supervisory control they want us to do, then we wouldn't have enough people, far from it. Everything depends on what you want from a regulator. And we are always called a 'regulator', even when the duties we carry out are not typical regulatory duties, or when we do something we didn't have to do but which we do because no-one else does. We are the communications 'do-it-all', so we're not just a regulator. I therefore don't think the 400 people we have are a lot. For a regulator with narrower duties they would be too many.

**But are all those 400 people necessary? Are the resources at ANACOM's disposal appropriate for dealing with the challenges the regulator faces?**

Like all institutions we have too many of some people, too few of others. The evolution of the demands put on us keeps changing. Even though there is flexibility, learning and recycling of personnel, there's a lot of inertia and we could gain a lot by undergoing a little renewal. There are people who are not adequately placed, others are underused... We are thinking this over, examining things calmly. It will always be on a small scale. There may also be some admissions, and some exits.

**In a constantly changing sector what should the regulator's position be? Can and should it influence the change? In what direction should regulation evolve?**

They say there should be regulatory certainty, but I don't know what that is in a world undergoing transformation. Then they switch to predictability. And yes, I think the regulator should be predictable. Above all there must be coherence over time which must be maintained. The regulator should not have to delineate markets. If the regulator designs a policy then it's being partial, because it is putting forward its opinion. On the contrary, if it is a viewpoint, which should be transmitted not as imposition but as a process of discussion with civil society, of the public consultation kind – there I think a step could be taken. It should not hesitate about indicating to society its opinion, not its decision. We should provide an increasing amount of information and create a sort of think tank. And this we shouldn't refrain from.

**ANACOM has been facing a problem: increased litigation around its decisions. How do you view this problem?**

I see it in two different ways. One is the increase in litigation, the other the reasons for that litigation. The differentiation exists because in one case the operator doesn't apply the rules, and that worries me. It doesn't make sense. The rules are there and they're not being obeyed, and if those who are not complying are perhaps taking advantage of this then we're not being effective.

Enforcement of rules and laws is something I'm concerned about, but this requires a lot of means, much presence. It's something we have to improve. If the litigation results from that then I think it's fruitful and legitimate. Because there some operators comply and others don't, harming the former, so it's reasonable, it's a defence of democracy, reasonable behaviour which puts us under pressure. And it's a problem we'll have to deal with.

The other litigation, which is to dispute all the regulator's decisions, aims to paralyse us. Some contest us for one thing, others for another. This happens because we're impartial. What's at stake is the regulatory function. Much of this litigation doesn't make the least sense. I understand that there are controversial decisions and I'm not surprised they land in the courts. But the systematic litigation regarding our decisions bothers me a bit because basically they're putting the regulator's existence at stake.

**Could that litigation be overcome somehow by strengthening the supervisory control activity?**

We have increased supervisory control. It is possible to improve it, to make it more focused, but for that we have to increase personnel. If we don't increase personnel then we have to retrain them. In my opinion, this is a duty which as a rule cannot be delegated. The more companies don't behave so well and oblige a higher degree of supervisory control, the more our activity increases, the more we need personnel. And then they complain that ANACOM has too many people. It's a fish biting its tail...

**With 20 years of history, what challenges will ANACOM confront in the future?**

The balance between obeying national policies and community laws, and contributing to the formation of a community approach

which we feel part of and with which we feel comfortable. To be very active in the European context, and also in the other regulatory spaces we're in contact with.

Some internal reorganisation, to improve our response capacity. It is important for us to create a changeable, flexible internal organisation, with an open mind, able to respond to constant changes, and to have a mentality for continually accompanying things, so as to intervene as little as possible, although when we do so it should be secure – risky... always... but with a high degree of confidence in the assumed risk. Otherwise we'll continue to have a lot of litigation. And that's the main challenge.

The challenge may also be the disappearance of regulation, to increasingly intervene less, and it would be good for this to happen, but personally I have my doubts. It may mean increasingly more oversight and less regulatory rules. It may mean more the guarantee of competition and goals such as universal service, service to citizens, ensuring consumer protection. That's what competition is. Competition is not just the companies not cheating each other. It means the consumers, the citizens, are being well served. That always requires a great deal of vigilance and the competition authorities are very often not ready for this, in certain sectors. That role could be played by the independent sectorial authorities. It's a challenge.

**Regarding the NRAs and given the current regulatory framework and the regulator's decisions in this area, how do you view the statements by some people who say there may be a return to the monopoly? Is that another challenge?**

When I say I'm worried about the short term and the long term I'm thinking about that situation. No-one can say that a market with loose competition rules cannot be subject to lower competition and that some entities might disappear. But others may also arise. If that happens it would be good.

My fear is that others might not appear and that concentration will occur. I always say that concentration is not the same as market power... but it helps. I have that fear. That's why I defend contestability. As long as there are market niches where someone always appears then I'm a bit more at ease.

I don't think a total repeat of monopoly will happen... but increasing concentration may well occur. As long as there are markets where new operators can enter and leave, then the competitive effect is alive and I'm not very worried. But to imagine we'll build a competitive model which is the same as the footwear market is not possible. Whoever thinks so is way out of line.

**ANACOM already has a public consultation with an understanding about the regulatory approach to the NRAs. When will the final decision be made?**

We'll make it after the corresponding draft decision. The recommendation from the European Commission, which we are examining, says that markets 4 and 5 should be revised in light of the recommendation. Revision of the markets is the answer.

## ○ REGULATION — PAST, PRESENT AND FUTURE

Fernando Mendes, ex-president of ICP (1989-1998)



First of all, a word of utmost appreciation for this initiative of the current ICP-ANACOM Administration, which commemorates this young institution's 20 healthy years of existence.

“The future is built with the past, hence a reflection on the evolution of communications over the past 20 years, from the standpoint of regulation, is essential so that we can face the looming challenges of the future” is the phrase heading the kind letter I received, urging me to take part in this special edition of Spectru.

As I have been away from regulation for 11 years, it should be understandable that my contribution is more solid in the past. I nevertheless comment as an ‘act of citizenship’ on the present and future, naturally from a less factual and specialised perspective, but rather based on external and generic observations.

A **first point** which I believe worthy of some reflection concerns what might be called the “**dynamics and effectiveness of regulation**”, i.e., the capacity whereby regulation has been able through the set of instruments at its disposal to provide the country, its economy and population with new services and technologies, earlier than or at least parallel to the developed economies.

If we go back to 1987 we note a significant circumstance: we were ‘ahead’ of European policies in terms of regulation and liberalisation. When the directives were issued we already had the laws enacted.

In June 1987 our Green Paper (CEDICT report) was published. It opened the doors in terms of public consensus regarding privatisations and the liberalisation of communications in Portugal; the similar European instrument (European Commission Green Paper) only came out in January 1988. Our parliament had already approved the first Basic Law leading to liberalisation of services in September 1989, while at European level the first directives on service liberalisation were only implemented in December 1989.

We were the second country in Europe to have a communications regulator, in 1989, soon after the United Kingdom. We were the second country in Europe to grant two GSM licenses, in 1991, three months after Germany, along with four for paging and two for trunking.

I believe that because of this capacity for anticipation and even ‘political risk’ we were able to reach mobile communications consumption levels which were always much higher than the European and world averages, to create globally innovative products and concepts such as prepaid, and to attract R&D investments in software and hardware from major foreign manufacturers to our country.

Naturally, it would be hard to keep this pace up in the following years, as the politico-economic circumstances of the mid-1980s were especially favourable if not unique in the European context.

To wit:

- a widespread feeling of concern about the technological backwardness of the contemporary operators (CTT, TLP and CPRM), particularly in network digitalisation, and about delays in the supply of new services to the market;
- the political parties’ study groups paid close attention to the development of deregulation policies in the USA and United Kingdom, which were taking their first steps;
- the wave of privatisations and liberalisation was then at its height, given the manifest failures of the post-1974 nationalisations. The two biggest parties agreed about these policies, including the area of communications (until then a state monopoly);
- perhaps most importantly, private capital was longing to enter this new business area.

So it is not hard to understand the speed with which laws were approved, new operators licensed, services introduced and operators merged and privatised. Society as a whole agreed, from the political parties to the economic players and the individual and business consumers.

This pace began to slow after 1993-94. Internally the situation began to hinder and not help. The State, with its indirect interest in enhancing the value of PT for the privatisations, delayed the liberalisation of voice telephony and occupied the space of cable television; the newly established mobile operators sought less and not more competition and began to create problems. I believe something similar happened at community level, deriving from the ever more efficient lobbies of the increasingly stronger private operators and the increasingly weaker incumbents, industries and consumers.

The feeling one gets from successive reviews of the European regulatory framework is that of a loss of effectiveness and well achieved ambitious strategic objectives, in favour of re-farming backed by elaborate economic-administrative procedures, **favouring use of what existed but discouraging creation of the new.**

Markets were analysed, the identified, local loops were unbundled, ducts were opened, networks and companies were split, but little was built anew. And everything was increasingly debated, transparent, justified and published, yet the results were perhaps far from what was desired and some were even disconcerting for an outside observer.



In the last ten years and as in Europe, Portugal has basically seen developments in the supply of internet and VoIP based on local loop unbundling (existing infrastructures) and on the separation of PT networks by means of spin-offs (existing infrastructures), with an undeniable increase in competition and lower prices. There have also been improvements in the TV supply, especially with the introduction of high definition, and the entrance of virtual mobile operators (existing infrastructures). It is nevertheless a pity that no major new operator has appeared in the sector with new infrastructures and that the existing ones have done too much re-farming rather than new plantations.

In this context, I believe for example that the UMTS process was not satisfactorily regulated. At European level, the consultancy studies raised maladjusted technological and market expectations, which together with the unfortunately widespread practice of auctions led to exorbitant licence and debt values, in my opinion a fundamental cause of many failures. Although this path was not directly followed in Portugal, it was followed indirectly. Even though competition was not increased through the establishment of a fourth mobile operator, the existing operators were allowed to cannibalise existing resources for that purpose, and to top it all those operators were also allowed to not invest what they had proposed for the construction of mobile Information Society highways when they obtained their licences. Instead of licence auctions, financial resources on the order of 400 million euros, I believe, were diverted from the sector for other purposes, per the same goal of promoting the Information Society – an original practice which unfortunately continues nowadays with the deviation of substantial amounts from the regulator's revenues (more than personnel costs) to the Communications Foundation by means of overtaxing use of the public domain asset which is radio spectrum.

I also think it strange that instead of correcting the causes for some failures of those structuring projects, a surge forward (at the same time a step back) occurred towards the principle of the market, with concepts that were easy though poisoned like 'technological neutrality' and speculative like 'secondary spectrum trading'. Let's see in this context what will result from this invasion of financial interests in the economic segment of communications, as can easily be seen by the term 'digital dividend'. Will we have structuring projects, as the Commission seems to defend, or domestic dividends to strengthen national budgets, as seemed to concern the June 2008 Council of Ministers?

What will most interest the European economy in its communications policies? The financial aspect, with commercial resale and/or auctions of public domain assets, without knowing how they will be used? Or structuring projects, perhaps even subsidised if necessary, which anticipate the development of technologies and the supply of useful and innovative services?

Was GSM's success due to the principle of technological neutrality and the resale of allocated spectrum?

I confess I sometimes suspect that there are interests hoping that Europe has no more successes like GSM, or that the existing operators are happy as

they are – with the lobbies and big consultancy firms taking care of the rest, undertaking to introduce concepts and policies that end up being softly taken up by governments and applied by the regulators.

It will be said that many of the aforementioned aspects have nothing to do with the regulator, but rather with policies established at European Union and government level. Yet it is certain that in political terms it would perhaps be useful for governments to formally have at their disposal a more active contribution from the regulators, given their accumulated specialised knowledge. And it is in this question of dynamics and effectiveness of regulation that I ask whether improvements can be introduced for the future. I leave here a few points of reflection, which I will not develop for reasons of space and occasion, but which I suggest should be further elaborated, if deemed pertinent:



- To what degree should regulators (not only of communications) not be more distanced from governments and provide a more formal contribution to policies and regulations of the regulated sectors? Are not their decisions, recommendations or opinions, very often subconsciously conditioned by 'respect' for those who appointed them or by the 'environments' in which they circulate? Would they not be more efficient if they were designated and

appointed not by the governments, but for example by the presidents of the republic or equivalents, with majority agreement from parliament, with some regulatory powers interlaced with those of the governments?

- To what degree should regulators not attempt to be think tanks that generate policy and regulation proposals based on their own knowledge accumulated during years of experience in the sector, so as to positively influence other national or community decision-making bodies, thus countering the web of lobbies and global consulting firms which in the hands of more all-encompassing interests end up determining European and national policies that may eventually be less than appropriate?
- To what degree can regulation not take the first steps towards a deliberative democracy, perhaps the first stage of evolution of the current merely representative Western democracy, implementing e-opinion surveys among sufficiently ample and representative panels of end users and which would allow the existence of a very important decision-making component, which I believe is rarely present nowadays, and which is that of the citizen user or consumer of the regulated products?



A second point I also believe worth reflecting concerns the “**public perception of regulation**”, which is either almost non-existent or when it arises is usually for the wrong reasons, such as the absence of financial sector oversight, exaggerated and apparently concerted prices in the energy sector or effective

reductions in competition which are witnessed daily and ‘compensated’ by remedies, and all this with the regulators claiming they’re right.

Although the regulation of communications has, I believe, a more positive perception in public opinion than those mentioned above, I think it is important to strengthen this perception in the future, so that citizens can feel that regulation is something useful and important and not just a group of institutions that consume public resources and generate new fees.

Recent interventions in network termination charges, for example, have been quite interesting, yet for public opinion they appear more as a war between operators with regulator involvement, and less as an act in favour of consumers and meant to correct operator abuses. The recent drops in intra-community roaming prices basically appear to be acts of the European Commission, seemingly outshining the national regulators. Regardless of who was responsible, was there any practical intervention by the national regulators in this process?

There are other small areas where regulation can and should express an attitude of more proactive anticipation in consumer protection, publicising it and disclosing efforts and results. I can recall some, where as a simple consumer I would be happy to see the regulator intervene: excessive prices in occasional uses of mobile data in roaming; absence of information on operator portability changes in the fixed networks; abusive VA SMS procedures; abusive use of special numbers; short disconnect times before voice mail charging, etc. These may even be subject to intervention or already resolved – but normal consumers are entirely unaware of this.

Finally, a **third point** which I believe is in all of our minds, which concerns the “**recent ‘downfall’ of financial regulation and its impact on the other regulation sectors**”.

With a view to shortening this contribution, which is already over the space limit so kindly requested of me, I can only say that it is a good challenge for increasing the effectiveness of regulation in general.

Indeed, the theses which were gaining strength with a view to ‘less regulation and more self-regulated market’ are today completely undone, and for evident reasons. With the exception of angels and neutrons almost everything else in this universe is bipolar, and as such there must be mechanisms to balance interests – sectorial and specialised regulation is fundamental in this regard. Therefore mistakes must be corrected and it must be strengthened.

The European Commission recently put forward two proposals to strengthen financial oversight: to set up a **European council for systemic risk** to detect risks that threaten financial stability and a **European financial oversight system** to exchange information on trans-national financial institutions, while keeping national bodies in charge of daily supervision.

In communications, energy, transport..., shouldn’t similar though more modest steps be taken? And what if national or transnational operators, incumbent and/or significant, start going bankrupt due to poor business or financial makeovers? Would taxpayers’ money be brought in again or would prices rise to restore the excessive profits and salaries previously paid? Really I don’t know what would be worse: money hidden under mattresses or a country with communications, energy or transport problems...

## ○ AT THE CENTRE OF LIBERALISATION

Luís Nazaré, ex-president of ICP-ANACOM (1998-2002)

When on 1 July 1998 I took office as Chairman of the Management Board of the Instituto das Comunicações de Portugal (ICP), my notion of the tasks to perform derived from the formal responsibilities and powers of the Institute, according to its legal statutes at the time. They were essentially duties of overseeing the communications sector (telecommunications and postal service) in a monopoly environment in the fixed networks and postal business. The word regulation only made only made a slight appearance in the framework of ICP powers.

The reality, however, turned out to be much different and even more exciting. All over Europe, telecommunications were undergoing a period of strong development, particularly with the rise of the cellular operators; Brussels had set out the regulatory roadmap and calendar for total liberalisation of the sector. But Portugal, along with other countries, obtained a derogation regarding the opening of fixed services to competition and 1 January 2002 was the target date for full liberalisation.

I realised early on that it was important to speed up the pace and prepare legal and regulatory mechanisms in order to anticipate the set deadline. Competition in the mobile segment – with the operators TMN, Telecel and Optimus – had demonstrated the merits of the open market, changing consumption habits and providing services with increasing attraction, quality and diversity. Consumers awoke to this new situation and began to demand more from the market as well as alternatives to the fixed network incumbent, Portugal Telecom.

Industry in turn gave off signs of growing vitality. The timid liberalisation of the so-called “closed user groups” was a sign that the market was prepared for more supply and that the sector’s emerging economic players were able to guarantee efficient market entries. By taking advantage of rapid technological developments in the field of ICTs and an appropriate regulatory environment, they were able to quickly offer a more dynamic and diverse competitive framework for both prices and service quality.

Once the conditions for a faster market opening process were met, among them the backing of political power, the relevant community directives then had to be fully transposed, the applicable regulatory framework for a liberalised environment determined and the regulatory apparatus prepared. This set of tasks could only move forward promptly through close collaboration between the ICP, new operators and the sector associations – a joining of forces in which the then Advisory Council played a vital role. It was in that forum that the essential legal aspects for liberalisation were worked out amid a willingness to conciliate, to which even Portugal Telecom was not entirely immune.

Today, ten years afterwards, I must also stress the decisive role played by some lead figures at the time. Besides my colleagues on the Management Board, João Confraria and Álvaro de Miranda, and the ICP legal team headed by Luís Filipe de Meneses, two names particularly stand out: the chairman of the Advisory Council, Raul Junheiro, and the mobile operators’ representative, Henrique Correia – both, prematurely, are no longer with us. Lastly, I highlight the fair play of the men then in charge of regulation at Portugal Telecom – Robalo de Almeida (director) and Francisco Padinha (managing director).

A result of this intense preparatory work, which led to introduction of the new National Numbering Plan on 31 October 1999, was that full market liberalisation was advanced to 1 January 2000. And that’s where the regulator’s life truly began. As expected, the legal matrix was not by itself sufficient to assure the sound functioning of the open market, given the power held by the incumbent and the competitive and technical constraints deriving from Portugal Telecom’s management of the basic network on a concessionary basis.

The path had to be cleared to allow new operators to efficiently enter the theatre of operations, by defining rules for access to the basic network and local loop, interconnection conditions and prices, mechanisms for portability and operator switching, reference offers for data services and standardised rules for access to building conduits, among others. Above all, the ICP’s operations had to be adjusted to the new needs for systematic intervention and monitoring to resolve conflict situations between operators or between operators and consumers.

In the last four-year period in which I had the honour to head the ICP, its new statutes were enacted. Renamed Anacom, the regulatory body was now endowed with a modern legal framework adjusted to the sector’s needs.

With undisguised pleasure I have since July 2002 seen Anacom’s role as the market supervisor and regulator consolidated. And as a consumer or operator I was able to witness its commitment, correctness and attitude towards seeking a balance between diverging interests. I therefore address to all Anacom collaborators my congratulations for the professionalism, dedication and sense of public interest which they have always shown.



## ○ ABOUT ICP-ANACOM AND MARKET REGULATION

Álvaro Dâmaso, ex-president of ICP-ANACOM (2002-2004)

It is a great pleasure to join the initiative marking the 20<sup>th</sup> anniversary of ICP-ANACOM and to have occasion to offer my congratulations to this regulator, which are certainly deserved due to its role in stabilising and developing electronic communications in Portugal during a period of change: liberalisation, globalisation and reorganisation of the national market.

I participate by means of this short written work in which I mean to say what I think about regulation of the electronic communications market and also about the way it is organised and how the regulatory mandate is fulfilled, with no aprioristic judgments and well aware that in one position or another I have been linked to this regulator, which I still serve, for several years now. Yet at a time of anniversary I cannot extend the customary sincere wishes for a long life, as usual in such events, as that would just encourage perpetuation of the reasons justifying the regulator's existence and corrective intervention – obviously an essential contradiction. Regulatory action may last for many years, but it is temporary by definition.



It is indeed good for markets to function flawlessly, players to behave correctly and the information to be symmetric, and for consumers to find the good or service they want, through the supplier they prefer, with quality, diversity and at the best price, with no *visible hand*, even when same belongs to a competent, diligent, independent and transparently acting regulator. At the beginning of the above phrase I did not write optimal but rather good, not because



I recalled the aphorism whereby “optimal is the enemy of good”, but because only the control of economic cycles, albeit unpredictable or not believable when downturns are anticipated, would enable us to achieve the marvellous capitalist world.

The current economic crisis, with its *end decreed* by Germany at the moment I write these lines (politically the crisis always comes the day after and the recovery in the evening), did not place private property or the free market in doubt as the solid principles they became after the Berlin wall fell. However it did have consequences for the appreciation of regulation in general. The latter is being analysed and scrutinised by civil society and political power as well as by the experts. Will the way it is organised, segmented by countries, meet the demands of market globalisation? Will it suitably cover all products placed on the market? Will it not actually be necessary to condition creative freedom in order to control risk? Shouldn't all relevant financial institutions, whether or not they receive deposits, be subject to the same kind of regulation, thus anticipating the problems associated to the so-called “shadow banks”? Haven't the offshore centres, with all their opacity, undermined the oversight of significant and vast portions of the market? Hasn't the consideration of systemic risk dampened supervision with respect to the behaviour of certain institutions? Shouldn't the regulation perimeter be expanded? Shouldn't regulation be universal, limiting, at the very least, the national room to manoeuvre? Banks may be geographically universal, yet they “die” national, with their assets assessed regardless of the international scale of their operations: should this continue to be so? Should regulators answer to the government, to parliament, or only to the courts? And I could go on making suggestions with such queries, fields of reflection for an admissible organic change in the regulation model now in use, naturally exposed by the global financial crisis in 2008.

The principle which the current crisis seems to have jolted is doubtless this one: “the best regulator is competition”, whereby, and in such an environment, companies have consistent incentives to supply consumers with the goods or services they seek, in terms of price and quality, and are always compensated vis-à-vis results if they innovate, producing new goods or providing new services. If on the contrary the situation is one of monopoly or near monopoly and the regulator controls the price of the service or good, the companies will only have advantages if they cut back on the quality of what they produce, because the earnings they obtain will unleash price reductions determined by the regulator to protect consumer interests.

The principle's weakness was recognised before the United States Senate by the former chairman of the Federal Reserve's Board of Governors, Alan Greenspan, so oft "acclaimed as a monetary messiah", when he admitted he'd been wrong about the virtues of the market which is actually not able to forestall "irrational exuberance" such as "asset bubbles", which according to Robert Shiller are a sort of pyramid scheme in which people continue earning money as long as more suckers can be attracted (cited by P. Krugman in *The Return of the Depression Economics and the Crisis of 2008*).

### **ELECTRONIC COMMUNICATIONS – A MARKET WHICH NEEDS THE REGULATOR**

However, if we do not count the initial losses from exchange-quoted securities, the electronic communications sector has not to date been severely affected by the crisis when compared to the automobile or air transport sectors or others even more dependent on banking credit.

The electronic communications market in Portugal is not a market of consolidated competition, but perhaps only one of emerging competition, in which regulation's essential duty is to ensure that one single company cannot monopolise the distribution network by excluding some and benefiting others. It is regulation that defends the interest of citizen consumers, while it seeks to provide them with a variety of services and suppliers, quality and price. That phase also corresponds to the need to fully assure a universal communications service regardless of the citizen's location or of his or her income or state of need, and at prices that do not hinder access to the transmission of messages, at least by voice, with a tendency to expand to other kinds of messages or means of transmission.

The total opening to competition of the electronic communications market, taken as a whole, has been and shall continue to be the major challenge facing the ANACOM of this decade and for some time more, though it is hard to specify just how much.

The task of regulation was not and is not easy, nor without its pitfalls and trips to the courts, situations, yet has remained objective, continual and addressed towards satisfying the general interest.

There was a need to engender markets, guarantee that they functioned and to later correct their working problems: how to neutralise externalities, correct information asymmetries and prevent any market power from consolidating – permanent tasks required of the electronic communications regulator, which were fulfilled. The price set for access to the distribution networks in the provision of crossed services between operators, crucial for the development of competition in the market building phase and a constant concern of electronic communications regulation, enabled multiple operators and diverse services with guaranteed quality; if more service suppliers do not exist it is because

the national market's size is itself a barrier. The regulatory measures adopted by the regulator were decisive for the market to progress in an atmosphere of competition. Among them, it is worth stressing the influence it had on the construction and regular functioning of the desired competitive market, the entire process of market analysis and the determination of significant market power on down to the definition of suitable "remedies" for the identified problems.



The production of a synopsis on fulfilment of the regulatory mandate during these past years of market construction on a competitive basis in the Portuguese electronic communications sector is perhaps justified, one which would consider the Portuguese economy's characteristics, the regulatory measures taken, the influence of the directives, regulations and recommendations from EU bodies, as well as the behaviour of the players and satisfaction of the general interest. This I cannot provide here because I have none prepared, though I can suggest it should be done.

A number of major structural challenges remain for the future, such as: the new regulatory framework, which is one more step, a big one, towards construction of an integrated and competitive European market; the efficient management of spectrum, which has very broad implications, reaching areas such as regulation's cost for the market; and the national regulator's responsibility before a European "super-regulator".

Congratulations on the anniversary, but also for the work undertaken over two decades. These are especially addressed to the "permanent regulator", i.e., the collaborators, technical personnel and all those who daily work together to prepare regulations, measures and regulatory decisions.

## ○ TWO DECADES OF REGULATION

Pedro Duarte Neves, ex-president of ICP-ANACOM (2004-2006)



The activity of the Autoridade Nacional de Comunicações (ICP-ANACOM) is framed, as is well known, by Law no. 5/2004 (Electronic Communications Law), which transposed the directives comprising the regulatory framework for electronic communications.

With this regulatory corpus in mind, a set of regulatory solutions adjusted to Portugal's situation were established (in line with the Authority's previous activity), in which the development of market analyses played a central role. This process led to the definition of relevant markets, the evaluation of whether or not situations of effective competition or significant market power existed, and development of the process of imposing, maintaining, amending or withdrawing obligations. In other words, the regulator indicated the amount and form of intervention which in each market would create the best conditions to ensure benefits for consumers and stimulate investment and innovation by operators.

ICP-ANACOM's intervention in the various markets involved a broad range of measures, of which the following stand out:

- Creation of conditions for an effective use of local loop unbundling (LLU), in terms of prices, deadlines for the historic operator to ensure availability, compensation for delays, processes and, finally, statistical information to accompany the results of this offer;
- Interventions with respect to the leased lines service reference offer, in the reference interconnection prices, development of an interconnection flat rate and development of a reference conduits access offer;
- Various interventions in the "PT ADSL Network" wholesale offer, assuring consistency with other wholesale offers and suitable incentives for development of the new operators' activity. These were reflected in the market's evolution, in terms of penetration, prices and speed, and complemented by the development of a wholesale offer of line exclusively for broadband services;
- Interventions with the aim of ensuring affordability in the context of universal service, with the historic operator remaining obliged to maintain a price cap;
- Effective implementation of the subscriber line resale offer;
- Very substantial reduction in the mobile operators' termination charges;
- Approval of the portability, selection and pre-selection regulations.

The Regulatory Authority's intervention was naturally not limited to the aforementioned aspects, for it is important to stress other similarly important areas: radio spectrum management; guarantee and protection of user rights; implementation of new access networks; and creation of conditions

(with technological neutrality as reference basis) for the development of additional alternative technologies for access and use.

The regulatory framework is naturally not the only thing that determines the evolution of competitive conditions in the telecommunications sector. The operators' various initiatives (regarding new technological solutions and new conditions for availability to consumers) were evidently decisive for the evolution of conditions for consumers to access the sector's goods and services.

Implementation of the structural separation of PT Multimédia (now ZON Multimédia) and Portugal Telecom due to the spin-off of the then PT Multimédia in 2007 naturally deserves special attention, as it caused a very significant change to competition conditions in the narrowband and broadband markets.

### EVALUATION OF CURRENT CONDITIONS IN THE SECTOR

As a joint result of efforts by the Regulatory Authority and various operator initiatives, today the electronic communications sector unequivocally supplies services which in terms of prices, quality, diversity and penetration compare well with European averages.

In particular, the price levels practiced in Portugal for most electronic communications offers are close to, though generally lower, than the average price levels practiced in the EU countries. In particular, it is very rare to find prices that are in the top quartile for the group of those countries (that is, 25 percent of higher prices). Second quartile situations prevail (that is, 25 to 50 percent of the lower prices).

Likewise, the quality and diversity of electronic communications services offered to Portuguese consumers do not present overall any major deviations with respect to current practices in the other European Union countries.

Finally, the penetration of electronic communications services (despite relatively diverse situations) is generally closer to average European levels. Indeed, the penetration of mobile telephone service (voice and broadband) stands clearly above the EU average; an inverse situation occurs with the penetration of fixed telephone service (voice and broadband); and lastly the rate of cabled households is above the European average.

For these overall positive results, which have taken hold over the last 10 years, the measures adopted by the Regulatory Authority contributed decisively, with the following particularly standing out:

- a) Most of the wholesale offers available in Portugal have in recent years presented price conditions generally below those practiced on average in the EU (local loop unbundling offer, leased lines and fixed interconnection prices in particular) and broader in terms of existing offers (examples include the subscriber line resale offer, flat interconnection rate and conduits access);
- b) The existence of various wholesale offers that are complementary and consistent among themselves (IP, ATM and LLU), providing incentives for operators to invest in their own infrastructure and thus climb the investment ladder, enabling growing levels of differentiation among the offers available to end users.

Over the course of its history the Regulatory Authority's activity has consistently followed a set of guiding principles, of which the following are noteworthy: proportionality; assurance of a level playing field; transparency in communication with other stakeholders; foreseeable action; promotion of technological neutrality; continual effort to assess its own activity.

#### FUTURE CHALLENGES FOR REGULATION

The legal and regulatory framework for electronic communications has thus shown itself particularly suited to obtaining tangible results in terms of services offered to citizens (regarding price, diversity, quality and accessibility) and, albeit to a lesser degree, ensuring competition between operators.



The Regulatory Authority nevertheless faces a number of important challenges, given predictable trends in the sector due to ongoing changes affecting technological conditions and demand. Note in this regard that in the current state of maturity of the Regulatory Authority's intervention the main priorities no longer involve setting wholesale prices able to ensure balanced access conditions for the various operators (already manifestly assured by ICP-ANACOM intervention) but rather other market areas. The following are thus personal reflections on the main challenges to the Regulatory Authority's future activity:

- (i) Fiscal control and oversight of the functional conditions of the wholesale offers, ensuring that the regulator's decisions are implemented per the set deadlines and conditions, in order to ensure best results for consumers and also the efficient use of existing infrastructures;
- (ii) To suitably monitor, evaluate and control the levels of quality and accessibility effectively provided to consumers, so as to permanently assure an appropriate level of trust when electronic communications services are acquired, reducing the amount of disputes and litigation that has existed in the sector;
- (iii) Establishment of regulatory frameworks adjusted to the new end charging systems, which require a rigorous assessment of (a) whether or not the widespread development of bundling offers affects the conditions for competition, as the operators' standing is not equal for development of those offers, and (b) whether the wholesale conditions are suitable, in terms of operators' equality, for the also widespread practice of flat rates;
- (iv) To ensure that conditions in the mobile market are balanced – in terms of (a) prices charged end users in this oligopolistic market, (b) incentives for investment and development of efficient technological platforms, and (c) balanced access and use conditions between fixed platforms and mobile platforms – in a context with an evident shortage of regulatory instruments;
- (v) Development of an appropriate regulatory framework for the establishment and development of New Access Networks, so as to foment innovation in the provision of services to citizens and the promotion of competition, under non-discriminatory conditions;
- (vi) The continual practice of self-evaluation by the Regulatory Authority, to (a) identify regulatory measures that work and those that don't, so as to discontinue the latter, and (b) contribute towards the amount of knowledge in the sector, which is naturally required as the Regulatory Authority uses important sector resources.

To positively meet these challenges we (this plural encompasses consumers, operators and major stakeholders) can count on the knowledge and dedication of the ICP-ANACOM employees who over these past 20 years have contributed so much towards making the electronic communications sector one of the most active and dynamic in the Portuguese economy.

## ○ ICP-ANACOM TWENTY YEARS AT THE SERVICE OF COMMUNICATIONS

“Communications – society’s real nervous system – are increasingly assuming vital importance in a direct proportion to the degree of civilisation attained and at the same time are a factor of development” – so began Decree-Law no. 188/81 of 2 July 1981, which created the Instituto das Comunicações de Portugal (ICP), embryo of Portugal’s future communications regulator. The idea, with that instrument, was not only to accompany the development of communications and its growing economic, technological and social importance, but also to give the government a

already represented in organisations such as the European Conference of Postal and Telecommunications Administrations (CEPT), the International Telecommunication Union (ITU) and the Universal Postal Union (UPU)).

Creation of the ICP was the **first step towards the existence of a communications regulatory body** in Portugal, though it would take eight years for it to become operational. The ICP’s first statutes were approved in 1983 through the publication of Regulatory Decree no. 70/83 of 20 July, which set a six-month deadline for implementation,

etc – from a public company, the Correios e Telecomunicações de Portugal (CTT), to a public institute, the ICP, instead of following the usual ‘route’ of a directorate-general from a ministry to a public institute. After consulting experts and directors from other public institutes and examining other statutes and correlated legislation, the proposal for the ICP’s new organic statutes was delivered to the government on 5 September 1988 and published the following year in Decree-Law no. 283/89 of 23 August. The institute was given responsibilities in the area of legislation and regulation, supervision of quality and price of services and the operators’ compliance with contract obligations, equipment type-approval and specification of technical standards, radio spectrum management, operator licensing, international representation of the sector, provider of advice to the government in tutelary duties and collaboration on policy measures.



Management Board: José Amado da Silva (chairman), Alberto Souto de Miranda (vice-chairman), Teresa Maury, José Ferrari Careto and Eduardo Cardadeiro (members).

more tangible role in co-ordinating and overseeing the organs responsible for public communications, which in many cases was more theoretical than real, precisely due to the absence of a technical infrastructure to support it.

The ICP was therefore created as an institute endowed with legal status and administrative and financial autonomy, and given three functions: to manage radio spectrum; to support the government in co-ordinating, overseeing and planning for the public communications sector (including supervisory function); and to represent that same sector both nationally and internationally (Portugal was in 1981

which for various reasons did not occur. In 1988, however, the process was definitively resumed with the creation of the ICP establishment committee (Regulatory Decree no. 25/88 of 17 June), whose mission was to study and propose eventual changes to the ICP statutes and to work out an activities plan and propose the measures required for the institute to begin activity.

Constituted by Fernando Mendes as chairman and José da Silva Gomes, Rogério Simões Carneiro and António Robalo de Almeida as members, the establishment committee faced a major challenge. It would be the first time that functions were transferred – and subsequently structures, personnel systems, careers, operating models,

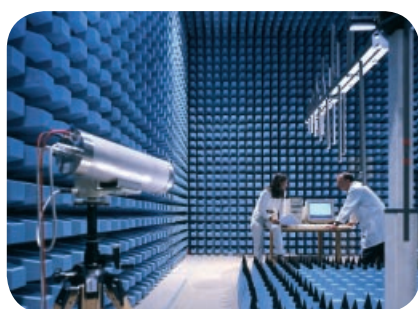
### SERVICE BEGINS

By Council of Ministers Resolution dated 26 October 1989 the first ICP Management Board was appointed, comprising Fernando Mendes (chairman), Rogério Simões Carneiro and António Robalo de Almeida (members). It took office on **6 November 1989**, thus marking the start of activities of the Instituto das Comunicações de Portugal, a body that would play a fundamental role in the next two decades, marked by transformations and developments in the electronic communications and postal sector which have changed the face of the country.

By the end of 1989 the ICP had basically implemented its human and material infrastructures, including the transfer of functions that had been carried out by the CTT and the Companhia Portuguesa de Rádio Marconi (CPRM) to the institute’s sphere of powers and the drawing up of an activities plan for the 1990-1992 three-year period. It also prepared legislation concerning implementation of the Telecommunications Basic Law.



At international level, the ICP undertook preparation for the November/December 1989 EEC Council of Telecommunications Ministers in Brussels, and represented Portugal at the UPU Congress in Washington. The establishment committee had previously been involved in the preparation and following of the first meetings of the EEC Council of Telecommunications Ministers, established in 1988: 28 April 1988 (informal) in Berlin, which considered from the public standpoint the Green Paper on Development of the Common Market for Telecommunication Equipment and Services, released by the Commission in June 1987, which was at the genesis of the sector's liberalisation; 30 June 1988 (the first formal Council) in Luxembourg, which specifically approved a resolution on community telecommunications policy and debated the position the member States should take at the World Administrative Telegraph and Telephone Conference (WATTC-88) of the ITU, held in Melbourne in late 1988, and approved the International Telecommunications Regulation, in which the establishment committee also took part; 5 November 1988 (informal) in Athens; 27 April 1989 (formal) in Luxembourg, which considered for the first time and for generic orientation the draft directives on open network provision (ONP) and on liberalisation of services; 12 September 1989 (informal) in Antibes, which besides fulfilment of the common market for telecommunications services, indicated for the first time in this area the need for a community policy in the postal sector.



ICP-ANACOM has always been in the vanguard of communications development in Portugal.

Also significant is that the ICP participated in the draft Decree-Law that aimed to transform the CTT, EP into a limited company with exclusively public capital, a first step towards the creation of new companies that would separately develop the telecommunications and postal activities. In market terms, note also the transformation of TLP – Telefones de Lisboa e Porto into a 100 per cent State-held limited company, and the launch of terrestrial mobile service using analogue technology (first generation) by the operator constituted by CTT and TLP in consortium, which would later give rise to TMN.

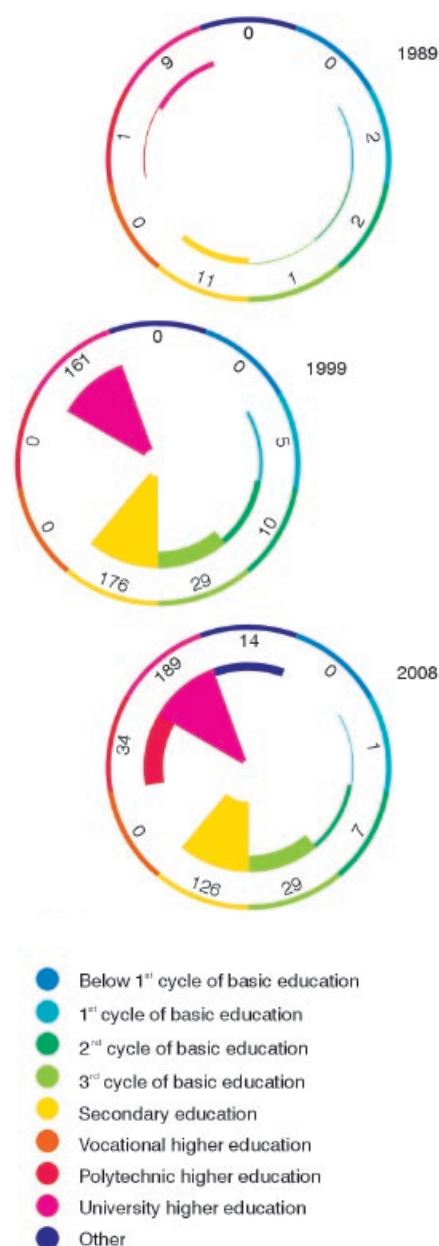
The following year, **1990, would be a period of consolidation and affirmation of the ICP**, which received the duties and powers until then assured by the public operators, specifically that of international representation of the Portuguese State, radio spectrum management, equipment and materials type-approval, the procedures for RITA (telephone subscriber installation regulation) and SISAT (system of incentives for the use of advanced telecommunications services). Human and material resources from the CTT associated to spectrum management, including asset separation, except with respect to the Azores and Madeira autonomous regions, were likewise transferred. The ICP also appointed its other bodies, the Fiscal Council and Advisory Council, and created the attendance function, with a view to achieving maximum effectiveness in relations with customers. In human resources terms, the institute grew from a staff of 27 in 1989 to 235 employees distributed in Lisbon (headquarters), Porto and Barcarena.

### LIBERALISATION OF THE MARKET

The 1990s were a time of thinking out and promoting liberalisation in the telecommunications sector, sustained in Portugal in the ICP through its activity and also following the formal community-wide adoption of two landmark directives for the sector: the Council directive on achievement of the internal market for telecommunications services through the offer of an open network (90/387/EEC of 28 June 1990); and the Commission directive

concerning competition in the telecommunications services markets (90/388/EC of the same date). The institute also consolidated during these years. In July 1991 a far majority (80 percent) of the workers requisitioned from the CTT accepted joining the ICP personnel roll. The remaining ones mostly did

### Educational qualifications of employees



## Logos from 1989 to 2009



not accept because they intended to retire in the near future. The year **1991** was marked by notable developments such as the allocation of a licence to operate **GSM cellular mobile telephony**, awarded to Telecel, the regulation of cable television on a full access basis, and progress in the process of allocating two new TV channels.

The following year the ICP acquired in Funchal a store location for public attendance and purchased a plot of land to build the institute's future installation in the Madeira autonomous region. In May **1992** the Supervisory Control Centre for that region began operations, with ICP co-ordination, and the institute's delegation in Madeira formally began activity. A property was likewise acquired in Porto to construct a building for the North Supervisory Control Centre and the respective architecture and construction process began. Also in 1992, a master plan began to be drawn up with a view to the physical, spatial and urban reorganisation of the facilities in Barcarena, where on 16 June the Radio Metrology and Electromagnetic Compatibility Laboratories were inaugurated. In **1993** the first Welcome Manual for new employees was published

and the ICP's public attendance service received the Public Service Quality Prize awarded by the Secretariat for Administrative Modernisation. At the end of 1993 the opening of the **ICP's office** in the **Azores Autonomous Region** completed the process of transferring functions to the institute. The first authorisations to operate **cable television** distribution networks were issued in 1994, while in 1995 the Portuguese Quality Institute (IPQ) accredited the ICP Electromagnetic Compatibility Laboratory. Also in 1995, respectively on 7 and 22 September, new ICP offices opened in Funchal (**Madeira office**) and Porto (**North office**). Note also that on 20 March **1995** the concession contract for public telecommunications service was signed, granted by the Portuguese State to Portugal Telecom. The new Management Board took office on 15 May **1996**, maintaining as chairman Fernando Mendes and welcoming two new members: Álvaro Marques de Miranda and João Confraria. This team's mandate would be served at the institute's new headquarters at Avenida José Malhoa no. 12, where the regulator remains today. The calendar for liberalising telecommunications in Portugal was also drawn up in 1996, based on negotiations with the European Commission which culminated with the adoption on 12 February 1997 of the Commission decision concerning the granting of additional application periods for Portugal vis-à-vis the introduction of full competition in telecommunications markets.

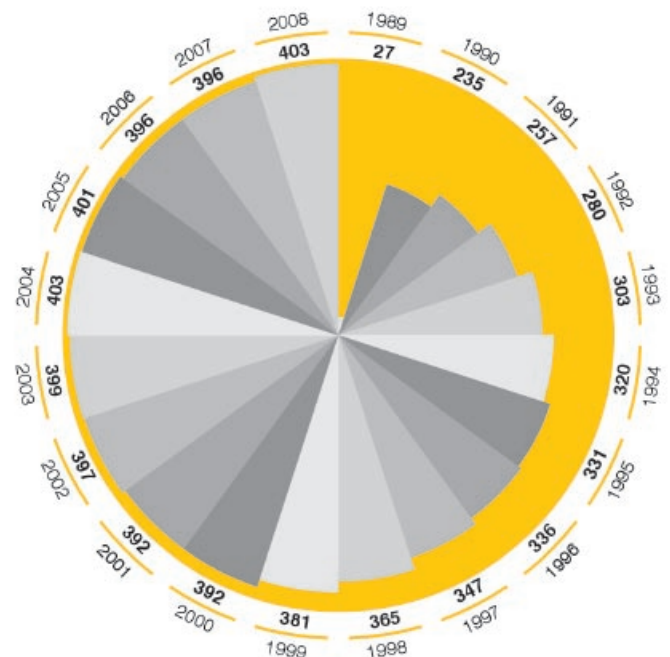
### NEW NUMBERING

With a view to providing increasingly better public service, the ICP inaugurated the institute's internet website on 16 May **1997**. Highlights of that year included the launch of the tender

for the third mobile licence, which was granted on 20 November to Main Road Telecomunicações, and the production of a study on reorganisation of the National Numbering Plan, as well as the respective public consultation document. On 1 July of the following year a new board of directors took office, maintaining the members (Álvaro Marques de Miranda and João Confraria) and welcoming in Luís Nazaré as the new ICP President. Noteworthy in **1998**, among others, were the actions aiming to implement in early **1999** the new regulatory framework for interconnection, the audits of CTT and Portugal Telecom, the publication of various sector-related studies and the pursuit of international co-operation activity.

In the ICP's activity, the last year of the 1990s was marked by the successful introduction on 31 October of the **new National Numbering Plan**, which introduced various and important changes still in force today. For example, telephone

## Number of Employees



numbers were henceforward composed of nine digits, and the mobile numbers' first digits changed from 0931, 0933 and 0936 to 91, 93 and 96. The institute also launched on 15 April **1999** a public consultation on the Universal Mobile Telecommunications System (UMTS). Standing out as well was the July 1999 publication of the Basic Law for Postal Services<sup>1</sup> and in November of that year the Bases for the Concession of Universal Postal Service.

In the 1990s the ICP's activity was also marked by intense participation in various international gatherings of organisations such as CEPT, the ITU, EEC, UPU and OECD, among others, closely following the major sector-related transformations worldwide and making them reflect in Portugal. On the other hand, it fostered the establishment of special relations with the Portuguese-speaking African countries, promoting bilateral and multi-lateral co-operation actions. Note also the intense laboratory activity carried out in the 1990s through the Electromagnetic Compatibility Laboratory and Radio Metrology Laboratory.

### ANACOM IS BORN

The year **2000** began with a historic event: full liberalisation of the telecommunications market in Portugal, with the opening to competition of the last reserved area, fixed telephone service<sup>2</sup>. The ICP's activity was also marked by the launch of a public consultation on number portability in the operator portability mode, whose report served as the basis, at government level, for determining the schedule for the introduction of this function in the fixed telephone network, integrated services digital network (ISDN) and mobile telephone network. Also standing out are the Regulation on Personal Radio Service – Citizen's Band and the legal systems applicable to the licensing and respective supervision of radio stations and networks, including radio spectrum usage, and to the installation of telecommunications infrastructures in buildings and respective connections to the public telecommunications networks.

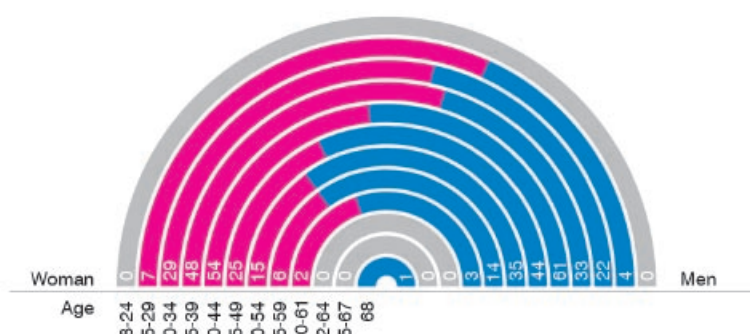
The following year saw approval of the **new ICP statutes (Decree-Law no. 309/2001 of 7 December)**, which introduced far-reaching changes,

creating a true independent regulatory authority called the *Autoridade Nacional de Comunicações (ANACOM)*. With the mission of regulating, overseeing and representing the communications sector (telecommunications and postal), ANACOM was no longer bound by its previous legal status

Also noteworthy were the steps taken towards liberalisation of the postal sector, especially reduction of the scope of the reserved services.

Vitaly important for ANACOM's activity in the following years was the 2003 transposition of the European Parliament and Council directives

## Employee Age Groups



December 2008

as a public institute, and its powers and authority procedures were strengthened. This change is closely linked to the process (99 Review) of revising the framework that at community level governed the telecommunications sector, which was formally adopted by the European Union Council in early 2002. The year 2001 was also a time when the process of **licensing and authorising the providers of non-reserved postal services** began, whether covered or not by the scope of universal service. And on 30 June **operator portability** was introduced in the fixed network, while in the mobile network this function would become operational on 1 January 2002.

The entrance into force of the new statutes on 6 January **2002** meant that the ICP was now officially called ICP-Autoridade Nacional de Comunicações (ICP-ANACOM). The year 2002 was also marked by the appointment of the Authority's new board of directors, which took office on 8 July: Álvaro Dâmaso (chairman) and Maria do Carmo Seabra and José Saraiva Mendes (members).

concerning the electronic communications sector into the national legal framework, a process which culminated with the publication on 10 February of the following year of Law no. 5/2004 (**Electronic Communications Law**, also known as Regicom). Highlights, among other activities, of the process of applying and regulating this instrument include: the development of market analyses, approval of the ANACOM consultation procedures, approval of the procedures to start the provision of electronic communications networks and services, and approval of the **new National**

<sup>1</sup> Which includes the principles set at community level, which the ICP was involved in defining – Directive 97/67/EC of the European Parliament and of the Council of 15 December 1997, concerning common rules for development of the internal market for community postal services and improvement of the quality of service.

<sup>2</sup> Per application of the waiver applied to Portugal – in most EU countries total liberalisation took place in 1998.

## ICP-ANACOM Management Boards

### July 1988

Appointment of members of the establishment committee for the Instituto das Comunicações de Portugal (ICP) – Fernando Mendes (chairman), José Silva Gomes, Rogério Simões Carneiro and António Robalo de Almeida (members) – by Order of the Minister of Public Works, Transport and Communications no. 39/88-XI of 7 July.

### October 1989

Appointment of Fernando Mendes (chairman), Rogério Simões Carneiro and António Robalo de Almeida (members) to comprise the first ICP Management Board, by Council of Ministers Resolution of 26 October.

### November 1989

First Management Board takes office and the ICP's formal activity begins on 6 November.

### November 1992

Board's mandate renewed, with the appointment of Fernando Mendes (chairman), Rogério Simões Carneiro and António Robalo de Almeida (members), by Council of Ministers Resolution no. 37/92 of 5 November.

### May 1996

Appointment of two new members, Álvaro Marques de Miranda and João Confraria, maintaining the previous chairman, Fernando Mendes, by Council of Ministers Resolution no. 29/96 of 2 May.

### June 1998

Appointment of Luís Nazaré as chairman (following resignation request submitted by the previous chairman), maintaining the previous members, Álvaro Marques de Miranda and João Confraria, by Council of Ministers Resolution no. 86/98 of 17 June.

### July 2002

Appointment of Álvaro Dâmaso (chairman), Maria do Carmo Seabra and José Saraiva Mendes (members), by Council of Ministers Resolution no. 61/2002 of 24 July.

### July 2004

Maria do Carmo Seabra ends duties as member upon appointment to another position.

### August 2004

Appointment of Pedro Duarte Neves (member) to replace Maria do Carmo Seabra, by Council of

Ministers Resolution no. 88/2004 of 18 August.

### September 2004

Appointment of Pedro Duarte Neves (chairman) and Teresa Maury (member), by Council of Ministers Resolution no. 96/2004 of 28 September.

### January 2006

José Saraiva Mendes resigns from position as member – Order of the Assistant State Secretary for Public Works and Communications of 5 January 2006.

### April 2006

Approval of request by Pedro Duarte Neves to resign from the chairmanship, by Council of Ministers Resolution no. 52/2006 of 11 May.

### June 2006

Appointment of José Amado da Silva (chairman), Alberto Souto de Miranda (vice-chairman), Eduardo Cardadeiro and José Ferrari Careto (members), by Council of Ministers Resolution no. 59/2006 of 21 June, maintaining the previous member Teresa Maury.

**Frequency Allocation Plan (NFAP)**, as well as the regulation with the procedures associated to the municipal rights of way fee. In July **2005** the analyses of 16 of the 19 markets defined by ANACOM were completed; implementation of the obligations set out in those analyses was quite visibly reflected by the competition in markets and the benefits for consumers and end users. The Tariff Monitor was also made available to the public in 2005 and enables consultation and comparison of the voice prices charged by the mobile telephone service operators. Also, the Regulation on the Quality of Fixed Service was approved, along with the Portability Regulation and the Selection and Pre-selection Regulation. Previously, in September 2004 Pedro Duarte Neves was appointed president of

ANACOM and Teresa Maury as member, maintaining only José Saraiva Mendes. Also in 2004 (the year the **Advisory Council** became operational as per the new statutes, with its first meeting held in December), ANACOM's responsibilities were extended to electronic commerce following the January publication of the instrument designating it as the central oversight body in the area of information society services.

In **2006** two events occurred which required new directions and a new regulatory agenda. On the one hand was the mid-year change in the ANACOM board of directors, which now counted José Amado da Silva as chairman and Alberto Souto de Miranda as vice-chairman, accompanied by the members Teresa Maury, José Ferrari Careto and

Eduardo Cardadeiro; on the other was the potential modification of the sector structure in the wake of Sonaecom's bid to take over PT. Regarding the latter, the bid's rejection in **2007** brought regulation matters back to normal. **The first ANACOM International Conference**, dedicated to the subject of convergence, was also held in 2007. The development of next generation access (NGA) networks then appeared as the major regulatory challenge for 2008. And indeed it was in that year that the regulator launched a public consultation on the regulatory approach to NGA, whose results were made public in February 2009. In the postal area, 2008 saw the signing by ANACOM and the CTT of the **conventions on prices and quality of universal postal service**.