

# PORTUGAL

## INTRODUCTION

Several operators are investing in fibre and upgrading cable networks, and by the end of 2009 almost three million households could have access to high-speed broadband services. Usage of mobile broadband in Portugal is the second highest in the EU and just a slightly below fixed broadband penetration. The number of subscribers using an alternative operator for direct access in the fixed market continues to be the highest in the EU, and fixed subscribers are increasingly changing provider while keeping their numbers. The regulator amended the rules for number portability, establishing a maximum time of three working days for porting mobile numbers.

Important measures have been taken in Portugal during the last year as regards the legal framework for deployment of Next Generation Access (NGA) networks, including in-building infrastructure, access obligation to public utilities' infrastructure, reinforced rights of way and promotion of public and private investment. At the same time, the formal decision by the national regulatory authority, ICP-ANACOM, on the incumbent's concrete fibre obligations is still pending, although preliminary guidelines were issued in February 2009. Moreover, some key decisions on universal service, which have been pending for several years, are now under analysis by the new Government. Alternative operators are requesting more timely regulatory intervention and deterrent actions by the regulator, in particular as regards the installation of remote nodes in the incumbent's fixed network and the lack of an equal access to ducts compared to the incumbent's subsidiary.

## REGULATORY ENVIRONMENT

### Main regulatory developments

In January 2009, the regulator adopted final measures on markets for physical network infrastructure access and wholesale broadband access, introducing for the first time geographic market segmentation and deregulating some areas, which account approximately for 61% of all retail broadband accesses. Moreover, new national legislation was adopted during 2009 in order to promote NGA investments, regarding in-building infrastructure, access to public utilities' infrastructure, tax aid measures and public tenders in underserved areas. As a result, most operators have been investing on NGA networks during 2009.

The regulator has not concluded any other market reviews during the last year, although the process for some markets is advance. A review of the remaining relevant markets is increasingly urgent, as most markets were analysed more than five years ago and remedies might have become outdated due to evolving market developments. The regulator has started revising and adapting some reference offers, such as the one for LLU and the one for access to ducts. Some decisions by the Government are also needed as regards several topics related to universal service designation and the incumbent's concession contract, which seem to be currently under analysis.

Two infringement proceedings are currently pending in relation to the Universal Service Directive: one on the designation of universal service providers (C-154/09) and one on the availability of a comprehensive directory and directory enquiry service (C-458/07). On 12

March 2009, the Court of Justice of the European Communities ruled that Portugal failed to fulfil its obligations under the Universal Service Directive.

It should be noted that the Portuguese Government still holds a ‘golden share’ in the incumbent, and a separate infringement proceeding is pending in this regard (C-171/08). In December 2009, the Advocate General issued his opinion on the case stating that Portugal seems to have failed to fulfil its obligations by restricting the freedom of capital movement between member States.

### **Organisation of the NRA**

According to ICP-ANACOM, the alleged increase of its regulatory costs compared to a previous forecast is due to the increased amounts reserved for pending legal actions and to the application of the new system for administrative charges and fees, which will be gradually applied during a transition period of two years. In December 2008, Portugal adopted legislation<sup>178</sup> approving a new system for the fees to be paid by postal and electronic communications operators, such as the administrative charges and rights of use for spectrum and numbering resources, which was complemented in July 2009 with the Regulation on the adoption, settlement and collection of fees<sup>179</sup>. In particular, spectrum fees are now paid based on the spectrum assigned instead of on the number of subscribers, in order to promote a more efficient use of spectrum.

### **Decision-making**

In January 2009, the regulator adopted final measures on markets for physical network infrastructure access and wholesale broadband access, where the regulator considered the comments made by the Commission, though only some of them resulted in modifications of the previously proposed draft measures. In particular, the regulator has included the possibility of imposition of obligations on fibre in the market for wholesale broadband access, although no concrete measure has yet been notified in accordance with Article 7 of the Framework Directive while waiting for the final adoption of the Commission Recommendation on the regulated access to NGAs. The regulator launched a public consultation on the draft measures for markets for wholesale terminating segments of leased lines, wholesale trunk segments of leased lines and retail leased lines in December 2009 and for mobile call termination in January 2010.

Operators demand a quicker response by the regulator on issues such as the review of the Reference Unbundling Offer (RUO) and spectrum refarming, and criticise the lack of deterrent measures against the incumbent on issues such as breaches of number portability rules and margin-squeeze. After more than one-year investigation, in January 2010 ICP-ANACOM imposed a significant fine on the incumbent for having breached portability rules. In addition, the installation of remote nodes is considered critical by LLU operators for their business plans. Moreover, dispute resolution procedures are taking on average much longer than four months.

In October 2009, new legislation<sup>180</sup> entered into force establishing the system of fines and sanctions to be imposed by ICP-ANACOM for breaches of the legal and regulatory provisions

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<sup>178</sup> Portaria n.º 1473-B/2008, de 17 de Dezembro and Regulamento n.º 300/2009, de 15 de Julho.

<sup>179</sup> Regulamento n.º 300/2009, de 15 de Julho

<sup>180</sup> Lei n.º 99/2009, de 4 de Setembro.

in the electronic communications sector. ICP-ANACOM has mandated the publication of "Key Performance Indicators" for the different reference offers, which should enable a better follow-up of the implementation of remedies and, in particular, non-discrimination obligations as both internal and external provision indicators are included. This decision was appealed by the incumbent to the national courts but has not been suspended.

It seems that there were some improvements in the effectiveness of the appeals mechanism at the national courts, which is one of the lengthiest in the EU. First decisions on appeals, which were introduced in 2003, are still pending. Moreover, the level of litigation has increased in the past years<sup>181</sup>.

## MARKET AND REGULATORY DEVELOPMENTS

Portugal continues to have one of the highest ratios in the EU for total revenue as a percentage of gross domestic product (4.6% in 2008), which highlights the importance of the electronic communications sector in this country and the estimated market turnover amounted to €7.71 billion in 2008. Investment in the electronic communications market in Portugal totalled €940 million in 2008, a 21.2% decrease compared to the previous year and representing an investment to revenue ratio of 12.2%.

Competition has intensified in the Portuguese market following the spin-off of the former incumbent's cable subsidiary in November 2007 and the incumbent is now gaining a significant number of IPTV subscribers. There is a trend towards the use of bundled services: 7.0% of the population had subscribed to a bundled offer at the end of 2008, and the importance of audiovisual content offered by the operators is key. There is a quadruple play offer in the market and several operators are offering mobile broadband as part of bundled offers. The percentage of voice traffic originating on mobile networks (65%) compared to fixed networks (35%) continues to be relatively high in Portugal.

NGA deployment is considered a priority to overcome the economic crisis in Portugal. In January 2009, the Portuguese Government signed a protocol with four of the main operators in order to boost investment in NGA networks. Operators agreed to invest €1 billion in NGA networks and reach 1.5 million users in 2009 and the Government agreed to adopt legislative measures to remove barriers to investment in infrastructure and to promote public investment (€800 million).

Five public tenders were launched for deployment of NGA networks based on the technological neutrality principle in rural areas, which are not served by private operators, including the outermost regions of Açores and Madeira. The networks should provide a minimum download speed of 40 Mbps, cover at least 50% of the population in each area and include a wholesale access offer. These state aid measures have not yet been notified to the Commission. The main operators have not bided directly in these tenders, but some are present as for the provision of the retail offer. In addition, some of the main market players have requested loans from the European Investment Bank for co-financing fibre deployment in Portugal.

Despite the economic crisis, several operators are investing in fibre network deployments.

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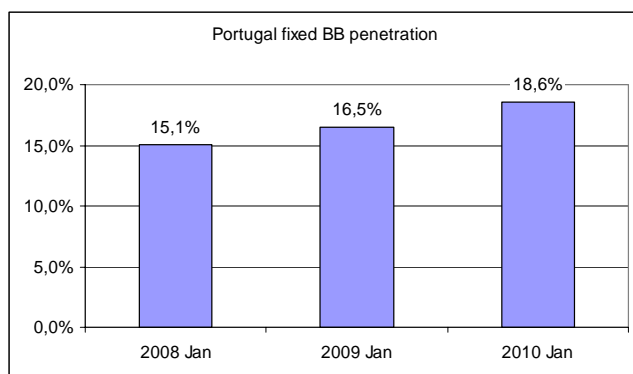
<sup>181</sup> Final decisions were taken on appeals introduced in 2001. However, most appeals are still pending: 2 from 2003, 1 from 2004, 6 from 2005, 4 from 2006, 7 from 2007, 12 from 2008 and 5 from 2009.

During the last year, Portugal adopted different pieces of legislation related to NGAs<sup>182</sup>, which establish the regime for in-building and housing developments' electronic communications infrastructure and reinforce operators' rights of way. One of the key developments was the imposition of a cost-oriented, open and non-discriminatory access obligation to ducts, poles and other installations of public utilities (such as highways, railways, ports, airports, water, transport, gas and electricity), which are suitable for electronic communications networks. ICP-ANACOM will design and manage a centralised information system, which will provide information as regards the different infrastructures and publicize construction works. In this regard, a public consultation was launched in December 2009.

The national competition authority has been active in the electronic communications sector. In September 2009, it has imposed its largest fine ever on the incumbent (€45 million) and the former incumbent's cable arm (€8 million) for the abuse of dominant position in the broadband market in the years 2002-2003, before the current framework was transposed.

## Broadband

### *Market situation*



Usage of mobile broadband is increasing with an estimated datacard penetration of 16.1% as of January 2010, which is the second highest in the EU and just slightly below fixed broadband penetration (18.6%). Consumers are benefitting from new offers for prepaid mobile broadband services and these services are offering theoretical download speeds of up to 21.6 Mbps.

The Portuguese fixed broadband market grew last year at the same pace as the EU (two percentage points approximately) and penetration reached 18.6%, which is below the EU average (24.8%). The market share of the incumbent operator continued to increase from 40.6% in January 2009 to 43.8% in January 2010, whilst new entrants' market share increased in the last year for non-DSL lines (from 39.7% to 41.4%) and decreased significantly for DSL lines (32.8% to 27.1%).

The percentage of cable lines (38.5%) remain more or less stable, whilst DSL lines slightly decreased to 58.6% and FTTH accounts already for 1.6% of fixed broadband lines. Several offers of 100 Mbps, 200 Mbps and even 1 Gbps have been launched in the market, following FTTH deployments in limited areas by some alternative operators and also by the incumbent and the upgrade of the main cable operator's network to DOCSIS 3.0. The incumbent is now offering commercial services based on fibre, including a successful triple-play offer. At the end of 2008, the main cable operator merged with three alternative operators. According to ICP-ANACOM data, at the end of September 2009, there were 0.73 million households in Portugal cabled with optical fibre and 1.7 million households cabled with DOCSIS 3.0

<sup>182</sup> In particular, Decreto-Lei 123/2009 de 21 de Maio, Lei n.º 32/2009, de 9 de Julho and Decreto-Lei 258/2009, de 25 de Setembro.

technology, mostly in the Lisbon and North regions of the country<sup>183</sup>.

LLU continues to be the preferred wholesale option for alternative operators, although the number of fully unbundled lines (shared access is not used) for the provision of broadband services have decreased from 296 337 in January 2009 to 269 066 in January 2010. The number of bitstream accesses provided to alternative operators has continued to decrease from 49 620 in January 2009 to 44 787 in October 2009.

### *Regulatory issues*

In January 2009, the regulator adopted final measures for the markets for physical network infrastructure access and wholesale broadband access, where it has proposed the introduction of geographic segmentation in the market for wholesale broadband access. The reference offer for access to ducts and associated infrastructure (known as ORAC), which was originally an obligation on the incumbent as holder of a concession contract, has now become an obligation following the finding of significant market power in the market for physical network infrastructure access. The obligation of providing access to dark fibre is considered as a last resort remedy and has not yet been detailed. This market analysis has been appealed at the national courts and is still pending.

The regulator has indicated that a decision on fibre remedies (one of the areas where the Commission made comments) would only come after the adoption of the Commission Recommendation on the regulated access to NGAs. However, the incumbent as well as some alternative operators have already launched commercial offers over fibre.

In February 2009, ICP-ANACOM published a report on the public consultation on NGA networks providing some preliminary guidelines. In this report, the regulator highlighted the importance of access to the incumbents' ducts for promoting investment by alternative operators and, in this regard, in November 2009 the regulator notified to the Commission some amendments to the ORAC.

As a result of the geographic segmentation on the wholesale broadband access market as adopted in January 2009, the market is divided into competitive and non-competitive areas<sup>184</sup>. Alternative operators fear the risk of the incumbent cross-subsidising its retail offers between the different areas and that, in case the incumbent does not offer a bitstream service in the competitive areas as from January 2010, it might make it difficult for alternative operators to provide services to the business segment.

In August 2009, the regulator notified the Commission draft measures regarding technical aspects of the RUO, known as ORALL, which include a wide range of issues previously raised by operators (quality of service, compensation, the synchronisation of local loop unbundling and number portability, etc.). No change to the LLU prices was proposed. LLU prices are now just above the EU average: the monthly average total cost was €10.05 for full unbundling and €3.57 for shared access in October 2009.

Mainly only two undertakings continue to provide LLU services, and they claim that the incumbent is deploying remote nodes in its fixed network, thus reducing the number of lines

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<sup>183</sup> ICP-ANACOM

<sup>184</sup> Areas with at least an LLU and a cable operator present and where the cable coverage is above 60% of households have been defined as competitive by ICP-ANACOM (184 local exchanges).

subject to unbundling from local exchanges and putting in danger its businesses plans when they have been significantly investing in LLU during the last three years. The LLU operators are concerned about the lack of transparency of this process and have requested regulatory intervention, as they believe competition on LLU is important in the medium-term and still has growth potential as it is the cheapest means to provide broadband services to most residential users. It is important for the regulator to ensure a smooth transition from the current regulatory obligations towards the ones needed for fibre networks.

According to the regulator, only 4% of the incumbent's copper network is currently affected by the installation of remote nodes. The amendments of the ORALL proposed by the regulator in August 2009 include certain measures to monitor and make more transparent the process. The only alternative solution at the moment is access to the sub-loop, but some operators are requesting access to dark fibre for the affected loops.

## Mobile

### *Market situation*

During the last year, mobile penetration has continued to grow in Portugal (9 percentage points) amounting to 146.2%, which is well above the EU average (121.9%) and shows the intensive use of mobile services by Portuguese subscribers. The average price per minute for mobile voice services in Portugal is just below the EU average at €0.12, and the annual average revenue per user (€257) is below the EU average (€323).

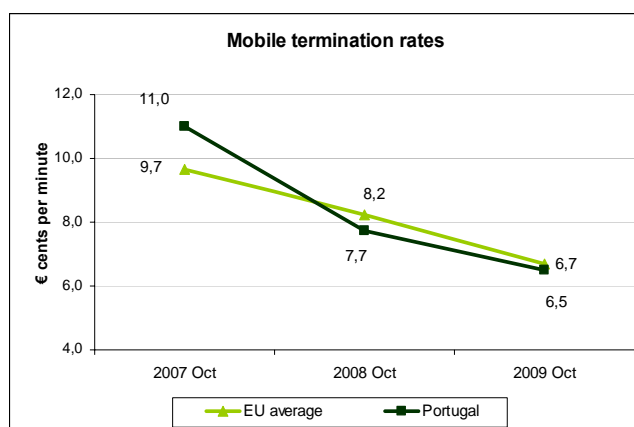
The proportion of prepaid customers (73%) continues to be one of the highest in the EU. The Portuguese mobile market is also characterised by low churn, and the figure for ported mobile numbers is still low at 395 732 as of October 2009. Two mobile virtual network operators (MVNOs) and a few mobile service providers are currently offering a full range of mobile services in Portugal, although their market share is very low.

### *Regulatory issues*

In July 2008, the regulator adopted final measures in the mobile call termination market including a glide path with prices that come back to symmetry as of October 2009. Following the latest price reductions, mobile termination rates (MTRs) in Portugal (6.50 €-cents) are now just below the EU average (6.70 €-cents).

The regulator is currently working on a new analysis of the mobile call termination market and, contrary to the last notification of 2007, the regulator plans this time to notify a complete market analysis including a glide-path still based on benchmarking. In January 2010, the national consultation on the draft decision was launched, which proposes a gradual reduction of MTRs from their current level to 3.50 €-cents as from April 2011.

Moreover, the regulator plans to develop a bottom-up LRIC model for cost accounting following the Commission Recommendation on termination rates, which would be taken into



account to set the MTRs as from 2011 onwards. Interconnection payments due to traffic unbalances are expected to be reduced in the future due to the overall decrease of the MTRs.

### *Roaming Regulation*

Mobile network operators and MVNOs in Portugal are offering voice and SMS retail prices at the price caps established in the Roaming Regulation, whilst wholesale prices are significantly under the roaming cap. However, retail data roaming tariffs in Portugal are amongst the highest in the EU<sup>185</sup>. A mobile operator has a permanent special roaming offer, whilst some other operators are launching some temporary offers during the summer period.

## **Fixed**

### *Market situation*

The incumbent continues to have a large share of the fixed voice market, both in terms of revenues (68.3%) and traffic (64.5%). The use of fixed number portability is relatively high and there were 327 457 portability transactions between January and September 2009.

As of July 2008, 41.3% of subscribers were using a provider other than the incumbent operator for direct access, which is the highest figure in the EU and continues to increase. This figure shows that the use of alternative operators for the provision of fixed voice services has significantly increased in recent years, due to the increased take-up of bundled offers from cable and LLU operators, and the provision of fixed telephone services using mobile frequencies.

The decrease of the use of carrier selection (-74.7%) and carrier pre-selection (-22.4%) has intensified during the last year<sup>186</sup>. VoIP originated calls represented only 5.4% of the traffic in the Portuguese fixed sector, and the number of nomadic VoIP customers has for the first time decreased.

### *Regulatory issues*

In March 2009, ICP-ANACOM modified the Reference Interconnection Offer where it has established the activation of the pre-selection service at €3.18 and maintained the fixed origination and termination tariffs. The interconnection charges for terminating calls in the incumbent's network are now for local level and double transit above EU average.

Since the beginning of 2007, the incumbent is offering capacity-based interconnection in addition to the metered interconnection model, and so far only one alternative operator is using it. The regulator is currently revising the prices of capacity-based interconnection.

The regulator has launched a call for tender in order to develop a bottom-up LRIC model for setting both fixed and mobile termination rates, in accordance with the Commission Recommendation on termination rates. The incumbent operator is obliged to pass on the reductions on fixed termination tariffs by alternative operators to its retail offers.

In June 2008, following the spin-off of the incumbent's cable subsidiary, ICP-ANACOM stated that the company was exempted from the obligations previously imposed on the

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<sup>185</sup> ERG Benchmark Data Report for October 2008 – March 2009

<sup>186</sup> ICP-ANACOM

incumbent's group but it was subject to the same regulatory obligations imposed on alternative operators as regards the market for fixed call termination. The Commission is expecting shortly the notification of the market for fixed call termination, as the regulator is currently working on its review, as well as on the review of the fixed call origination and the fixed retail access markets.

According to the regulator, the use of wholesale line rental offer (known as ORLA), which enables alternative operators to provide access together with telephone services, has significantly decreased in the last year (62 000 lines by October 2009) partly due to the decrease of subscribers using carrier pre-selection services.

The regulator launched a public consultation on the draft measures for markets for wholesale terminating segments of leased lines, wholesale trunk segments of leased lines and retail leased lines in December 2009 and it will revise accordingly the leased lines offer (known as ORCA).

## **Broadcasting**

### *Market situation*

The main platforms for the provision of broadcasting services are cable (37.3%) and analogue terrestrial TV (35.7%), followed by satellite (15.4%) and IPTV (8.3%), which has experienced a significant growth. In addition to two analogue terrestrial networks, Portugal has very high cable network coverage, covering almost three out of four households, with some regional cable operators and one main nationwide cable operator.

In February 2008, two public tenders were launched for the assignment of frequencies for digital terrestrial television (DTT) both for free-to-air (including certain must-carry obligations) and for pay TV channels. The incumbent was assigned the rights of use for the free-to-air channels in December 2008, and started broadcasting them in April 2009. Following an appeal by the alternative applicant, the decision to award the frequencies for the pay TV channels to the incumbent was confirmed by the national courts and the relevant rights of use were assigned in June 2009. However, the incumbent has recently requested to return those frequencies.

The Portuguese Government set out that the analogue signal should be switched off by 26 April 2012<sup>187</sup>. The incumbent is requesting more legal certainty as regards the pay TV channels, as spectrum was assigned in the 790-862 MHz band subject to future harmonisation decisions.

### *Regulatory issues*

There have not been changes as regards regulation on the market for broadcasting transmission services. In 2007, ICP-ANACOM considered only the analogue terrestrial television broadcasting to be a wholesale market susceptible to *ex ante* regulation, and it maintained the obligations under the concession granted to the incumbent and imposed further obligations to ensure transparency and accounting separation.

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<sup>187</sup> Resolução do Conselho de Ministros n.º 26/2009, de 17 de Março



The national competition authority is currently analysing the acquisition of the undertaking managing the analogue broadcasting terrestrial transmission network by the fixed arm of the incumbent.

## **Horizontal regulation**

### *Spectrum management*

The Portuguese regulator continues to be very active regarding spectrum issues. Following the launch of a public consultation on the Broadband Wireless Access auction, in October 2009 ICP-ANACOM launched an auction for 36 frequency rights of use in the 3.4-3.8 GHz band following a two-phase auction, with the second phase open to all operators in order to foster new entrants. It is the first time the regulator is applying this system for spectrum assignment, where flexibility is enshrined due to the segmented approach in nine geographic areas and the technically and service neutral principle. This band can be used for fixed, nomadic and mobile services and a decision on the auction outcome is expected by mid-2010.

The assignment of frequencies in the 2.6 GHz band (considered as one of the frequency bands that can be used for LTE services) is expected before the end of 2010 also in accordance with technological and service neutrality principles. Moreover, decisions on refarming and digital dividend are also expected to be taken shortly. It seems that refarming is not a very contentious issue in Portugal, as spectrum is equally distributed amongst the mobile network operators and, according to the regulator, it seems there is no interest by other operators. The regulator will need to amend the individual rights of use in the 900 MHz and 1800 MHz bands and has recently proposed to modify the national allocation frequency plan (known as QNAF) in order to allow the use of the spectrum for technologies other than GSM.

During the public consultation on the digital dividend carried out in the first half of 2009, the issues about the allocation for broadband services in the 790-862 MHz band, which has recently been assigned for DTT services, the quantity of spectrum allocated for DTT as well as the co-ordination issues with neighbouring countries raised most interest by stakeholders. A tender for broadcasting mobile TV frequencies was also urgently requested by the sector. The tender for 450-470 MHz frequency band for mobile services was finally declared void, following the failure of the only applicant to provide a guarantee.

### *Implementation of spectrum decisions*

In December 2009, the regulator launched a public consultation on the QNAF, which should incorporate some of the last Commission Decisions<sup>188</sup>. The Commission services have requested Portugal further information as to the implementation of several Commission Decisions<sup>189</sup> adopted under the Radio Spectrum Decision<sup>190</sup>. The Commission services are currently analysing the information recently provided by Portugal.

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<sup>188</sup> Commission Decisions 2006/771/EC (as amended by Commission Decision 2009/381/EC) and 2009/343/EC.

<sup>189</sup> Commission Decisions 2005/513/EC (as amended by Commission Decision 2007/90/EC), 2008/411/EC and 2008/477/EC.

<sup>190</sup> Decision 676/2002/EC

### *Rights of way and facility sharing*

Under national law, the incumbent, as holder of a concession and now as well as operator with significant market power, is obliged to provide a reference offer for access to ducts and associated infrastructure (known as ORAC) at cost-oriented prices. The offer is used by most operators and, in particular, there have been a significant number of requests since 2007.

In November 2009, ICP-ANACOM launched a public consultation on amendments of the 2006 reference offer and it seems to be considering the possibility of extending its scope to poles, which are important for deploying networks in remote areas. Alternative operators are pointing to penalties, access to poles, simplification of the administrative procedures and, in particular, service level agreements, as the main areas where improvements are essential.

In order to foster NGA deployment, new legislation<sup>191</sup> was adopted which imposes an access obligation to all public infrastructure-based utilities and ICP-ANACOM is now working on implementing the centralised information system. In the past, some operators accessed the infrastructure of certain transport and energy undertakings based on voluntary and non-discriminatory agreements. This legislation also reinforces operators' rights of way, mainly establishing a harmonised procedure for local authorities and coordinating underground intervention.

### *Administrative charges*

In addition to an appeal to the national courts, some operators launched a complaint with the Commission in relation to the legislation<sup>192</sup> that approves the fees to be paid by postal and electronic communications operators regarding an alleged state aid, which could also constitute a breach of the Authorisation Directive provisions on administrative charges. In particular, the legislation establishes that some revenues derived from the provision of the universal service would not be considered for the calculation of the administrative charges, therefore reducing the amount paid by the universal service provider and increasing the amounts paid by other operators. The Commission services are examining this issue.

## **THE CONSUMER INTEREST**

### **Tariff transparency and quality of service**

In August 2009, ICP-ANACOM adopted amendments to the Quality of Service Regulation for fixed telephony services<sup>193</sup>, which redefined certain parameters and put emphasis on better disclosure of information to users. In March 2009, the regulator published a report on the quality of service of broadband access to Internet services in Portugal, which highlights that upload speeds and network latency are the main differences between fixed and mobile broadband connections.

In March 2009, new legislation entered into force as regards audiovisual service and value added services sent through SMS and MMS<sup>194</sup>, where subscribers can opt-out from receiving these services. In 2008, electronic communications services were considered to be essential

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<sup>191</sup> Decreto-Lei 123/2009, de 21 de Maio, Decreto-Lei n.º258/2009, de 25 de Setembro.

<sup>192</sup> Portaria n.º 1473-B/2008, de 17 de Dezembro and Regulamento n.º 300/2009, de 15 de Julho.

<sup>193</sup> Regulamento n.º 372/2009, 28 de Agosto.

<sup>194</sup> Decreto-Lei n.º 63/2009, de 10 de Maio.

public services, thus adding some additional rules on operators for tariff information, billing and suspension procedures<sup>195</sup>.

ICP-ANACOM published a website<sup>196</sup> where consumers can contact their operators in order to check information about roaming prices and conditions, and find out what is the cheapest host operator in a particular Member State.

### **Universal service**

In 2005, the Commission started infringement proceedings because of its concern that the current concession contract, whereby the incumbent operator will continue to provide universal service until 2025, unduly excludes any other operator from being designated as a universal service provider. Following the public consultation launched in February 2008 by ICP-ANACOM and the recommendations submitted to the Government in July 2008, the universal service designation tender seems to be currently under analysis. There is still an open question as to how the current concession contract can be adjusted to the new circumstances. In January 2009, the Commission referred Portugal to the European Court of Justice (C-154/09).

So far ICP-ANACOM has rejected the incumbent's claims for compensation for the cost of universal service (approximately €100 million a year on average): prior to 2001 on the basis that the market had not been fully liberalised, and subsequently on the basis that the data provided were incomplete. The regulator is now preparing a draft decision on the methodology to calculate the costs of universal service provision and on the concept of unfair burden, based on an external study. Both sector and public funds financing options are foreseen under national law for a possible compensation mechanism for the provision of universal service. A public consultation is expected to be launched shortly.

On 12 March 2009, the Court of Justice of the European Communities ruled that by failing to ensure the availability to all end-users of at least one comprehensive directory and at least one comprehensive directory enquiry service in accordance with the Universal Service Directive, the Portuguese Republic has failed to fulfil its obligations under the above mentioned directive (C-458/07). Although some developments took place in 2009 and the subscribers' data of two mobile operators are already available in the directory enquiry service provided under the universal service scope and will be gradually available in the directories, other operators have not yet supplied their subscribers' data to the universal service provider. Therefore, the case is still pending as a comprehensive directory and a directory enquiry service covering all subscribers of telephone services are still not available in Portugal. In October 2009, the regulator issued a decision trying to seek a solution between the relevant operators.

### **Number portability**

Fixed telephony users are increasingly porting their numbers (327 457 porting transactions between January and September 2009) whilst the use of mobile number portability remains low (89 144 porting transactions between January and September 2009). The low churn in the mobile market is a combination of factors such as the difference between on-net and off-net

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<sup>195</sup> Lei n°12/2008 amended by Lei n°24/2008.

<sup>196</sup> <http://www.roaminglight.net>

tariffs, preference for prepaid services (sometimes with more than one operator), handset subsidisation and relatively similar offers amongst operators. It seems that sometimes win-back practices occur during the process of porting the numbers.

The average periods for porting numbers have been significantly reduced and are now 5.1 days for porting fixed numbers and 3.7 days for porting mobile numbers in Portugal, measured as from the date when the recipient operator submits the request to the donor operator, which are now below the EU average. Since March 2008, the maximum wholesale price for a ported fixed or mobile number is €4.01 and further reductions are applied for blocks of numbers. The regulator has published in its website retail portability prices, which currently are up to €39.70 for fixed ported numbers and free in most cases for mobile ported numbers.

During 2009, following complaints by several operators, ICP-ANACOM has adopted amendments to the rules for number portability<sup>197</sup>. These new rules establish a reduction to three working days for the maximum period between the subscriber's request and the implementation of mobile portability by the recipient operator and compensations are foreseen both between operators and to users for unduly ported numbers. Other main changes are the time limits for some of the processes between operators, the elimination of a capacity limit for ported numbers per day and simplified conditions for subscriber's identification between operators. The regulator has also clarified the different deadlines in the portability process and the synchronisation of local loop unbundling and number portability.

Although some operators claim that the complexity of the administrative process has increased the new rules seem to have solved most controversial issues raised by alternative operators as regards fixed number portability. Following an investigation initiated by regulator in 2008, in January 2010 the regulator imposed a fine of €0.5 million on the incumbent for having breached portability rules.

### **Consumer complaints**

The regulator cannot issue binding decisions on conflicts between end-users and operators, but only impose sanctions on operators breaching regulatory obligations. An important development is that the regulator, the operators and consumer associations have been discussing the establishment a new national arbitration centre dedicated to electronic communications consumer issues, which should be operational by the beginning of 2010 and will issue binding decisions.

The electronic communication is perceived as problematic sector from the consumer point of view according to the main consumer association. The unit in the regulator dealing with complaints and requests for information received 15 853 complaints regarding electronic communications services in the first half of 2009, which represents a significant increase of 34% from the previous year. For the complaints directly addressed to ICP-ANACOM, the main issues relate to contractual issues and billing and access to Internet is the service that raised the biggest number of complaints per customer (1.87‰).

In June 2009, new horizontal legislation entered into force as regards the operation of call centres for customer service, establishing obligations regarding maximum response time

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<sup>197</sup> Regulamento n.º 87/2009, Regulamento n.º 302/2009, and ICP-ANACOM's decision of 15 April adopting the Portability Specifications.

(1 minute), follow-up of requests and processing of calls<sup>198</sup>. The regulator is also studying the need to review operators' procedures to deal with consumers' complaints.

### **European emergency number 112**

Whilst 81% of the Portuguese population know 112 as a number to call in case of emergency in Portugal, only 27% are aware that this emergency number can be called from other Member States<sup>199</sup>.

The Portuguese authorities are implementing an overall reorganisation of the 112 system, aimed at reducing the number of answering centres (from the existing 18 centres to 2 main centres, in addition to the centres in Madeira and Açores) and addressing other issues such as linguistic capabilities.

In February 2009, ICP-ANACOM adopted a Regulation<sup>200</sup> that specifies the technical solutions for the provision of caller location information to the authorities handling 112 calls, in particular in relation to the location information's accuracy for mobile 112 calls and the format for the database for fixed 112 calls. The regulator is studying a more advanced solution for locating 112 mobile callers.

### **Harmonised numbers for harmonised services of social value (116)**

As from the beginning of 2008, the numbers 116000 for hotline for missing children and 116111 for children helplines are operational and the service is provided by the Instituto de Apoio à Criança. The numbers 116123 for emotional support helplines, 116006 helpline for victims of crime and 116117 for non-emergency medical on-call services have been reserved, but has not yet been assigned.

### **Must Carry**

In addition to the existing must-carry obligations imposed on cable operators to provide two national and two regional public channels<sup>201</sup>, the incumbent was awarded DTT frequencies for free-to-air channels in 2008, which include certain must-carry obligations for six national and two regional public channels.

### **e-Privacy**

The national transposition of the Data Retention Directive (2006/24/EC) has entered into force in August 2009 following the adoption of the necessary legislation<sup>202</sup>. The retention period is one year and costs will be borne exclusively by market players. The national data protection authority, Comissão Nacional de Protecção de Dados, is responsible to sanction possible breaches of the obligations with fines up to €10 million, although it does not have competences to solve consumer complaints, who need to submit complaints on privacy issues directly to the police.

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<sup>198</sup> Decreto-Lei n.º 134/2009.

<sup>199</sup> Eurobarometer Flash survey on the European emergency number 112 (February 2010).

<sup>200</sup> Regulamento n.º 99/2009, 23 de Fevereiro.

<sup>201</sup> Must-carry obligations on cable operators were imposed under the previous regime. The audiovisual authority, ERG, has not yet taken any formal decision.

<sup>202</sup> Lei n.º 32/2008 de 17 de Julho and Portaria n.º 469/2009, de 6 de Maio.

In October 2009, ICP-ANACOM held an international workshop on fighting against spam where it was highlighted the importance of international cooperation, strengthening enforcing powers and educating citizens. Moreover, the regulator has commissioned a study on networks and service security, which results are expected by middle of 2010.