

Lessons and outstanding challenges in implementing the new regulatory framework



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11th CEPT Conference
Nice, 22nd October 2003

Transposition of the NRF into National Law



The Council of Ministers approved on the 18th September 2003, the proposal of law that transposes the directives of the NRF for electronic communication into national law.

Critical issues:

- Rights of way / municipal licensing
- Access to the ducts (Portugal Telecom will be mandated to give access – ANACOM might have to regulate)
- Cable will be regulated
- Courts to appeal – nature of ANACOM decisions: Administrative or commercial?
- Exclusion of content regulation
- Frequency will be assigned by ANACOM (before it was Government's responsibility)
- Universal Service financing – public funds or operators funds
- Fines: raise of the maximum value and introduction of periodic penalty payments (per day)

In parallel, ANACOM is working on the market definition and market analysis process.

Market Review – Methodology



Clustering the markets (objectives):

- To guarantee a complete analysis of all questions regarding relevant market definition, SMP assessment and imposition, maintenance, withdraw or change of obligations
- To facilitate and simplify the information collection
- To explore the current knowledge and work synergies



- ⇒ **Narrowband fixed services** (includes namely markets 1 – 6 and 8 – 10 of the Recommendation)
- ⇒ **Leased lines services** (includes namely markets 7, 13 and 14 of the Recommendation)
- ⇒ **Local loop unbundling and broadband services** (includes namely markets 11 and 12 of the Recommendation)
- ⇒ **Mobile services** (includes namely markets 15 – 17 of the Recommendation)
- ⇒ **Broadcast services** (includes namely market 18 of the Recommendation)

Market Review – Methodology



Available resources



“Prioritisation” of the analysis of the clusters

Criteria:

- It has been given priority to those markets where regulation effects might lead to relevant changes in terms of competition development, well-fare and consumer and user needs satisfaction, impact on the sector and economy as a whole;
- Dimension of the market in terms of customers, revenues, etc.;
- It has been given priority to those markets created by the regulation or where there are signs of absence of effective competition;
- If it is expected a future event that might restrict competition in a certain market therefore that market should not have the same priority of another market where competition conditions are not dependent of those kind of events.

Market Review – Methodology



Public consultation (operators)

- 1st Narrowband fixed services
- 2nd Leased lines services
- 3rd Local loop unbundling and broadband services
- 4th Mobile services
- 5th Broadcast services

Market Review – Methodology



Public consultation (operators):

- Generic questions regarding the market review process
- Detailed questions regarding the cluster on analysis

Data collection:

- Data regarding the cluster on analysis

- Definition of relevant markets
- SMP assessment
- Designation of SMP operators
- Imposition, maintenance, amendment or withdraw of obligations

Market Review – Methodology



Harmonization – ANACOM is waiting for the result of the joint ERG/EC approach that is being developed regarding remedies



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Market Review – Status Quo



Narrowband fixed services

Markets 1 and 2 of the Recommendation

- ✓ Public consultation
- ✓ Data collection
- ✓ Definition of the markets } Not published yet...
- ✓ SMP assessment } Not published yet...
- ? Definition of the remedies (postponed...)

Markets 3 – 6 of the Recommendation

- ✓ Public consultation
- ✓ Data collection
- ✓ Definition of the markets } Not published yet...
- ✓ SMP assessment } Not published yet...
- ? Definition of the remedies (postponed...)

Markets 8 – 10 of the Recommendation

- ✓ Public consultation
- ✓ Data collection
- Definition of the markets (on going...)
- SMP assessment (on going...)
- ? Definition of the remedies (postponed...)

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Market Review – Status Quo



Leased lines services

Markets 7, 13 and 14 of the Recommendation

- ✓ Public consultation (waiting for answers until 27th October...)
- ✓ Data collection (waiting for answers...)

Local loop unbundling and broadband services

Markets 11 and 12 of the Recommendation

- ✓ Public consultation (waiting for answers until 27th October...)
- ✓ Data collection (waiting for answers...)

Challenges on Market Analysis



Several questions arise when defining and analysing the relevant markets

- Are fixed and mobile calls part of separate relevant markets?
- How to define the borderline between residential and non-residential customers?
- Residential and non-residential markets treated as segments (and not as separate markets) – does this approach contradict the Commission Recommendation?
- Are public payphones included in markets 1 and 2 of the Commission Recommendation? If not, and if ANACOM wishes to regulate public payphones call prices, is it necessary to create a specific market or is it enough to rely in the Universal Service Directive provisions?
- Although tariffs are the same in Madeira and Azores, PT augmented the size of local and regional tariff areas in both archipelagos. In practice, prices are lower in those areas of the country. Does that oblige to create a geographic market?
- Does the existence of a mandated Low User Scheme justify the creation of a market segment?
- According with competition law, PT and its subsidiaries should be treated as one economic entity. Is this principle applicable in SMP analysis? (PT set-up a subsidiary to provide services to large customers in the fixed retail business).

Articulation between NRA and NCA



Legal opinion of an independent economist for ANACOM

Taking into account that ICP-ANACOM and the Competition Authority have potentially overlapped actuation domains, it is important to clarify the actuation limits of each entity.

Accordingly with the structural and behavioural aspects it is proposed that:

- It is upon the NRA the identification of relevant markets in the communications sector that present characteristics of effective competition and the ones that require the use of economic regulation
- in competitive markets, the absence of economic regulation transfers the guarantee of the good functioning of the market to an ex-post verification of the behaviour of the economic agents, being this is the sphere of actuation of the Competition Authority
- In markets requiring the use of economic regulation and where this regulation is created and applied by the NRA, the monitoring of the economic agents' behaviour is incumbent to the sectorial regulator

Articulation between NRA and NCA



General cooperation agreement between ANACOM and Autoridade da Concorrência (the NCA)

- It aims to facilitate the cooperation between both authorities within their functions and to avoid duplication of work and to assure coherence in their decisions or measures.
- It guarantees, namely, confidentiality of data (and even on data request).
- A NCA worker is participating in the ANACOM Market Review Working Group.

