**Presidência do Conselho de Ministros (Presidency of the Council of Ministers)**

**Resolution**

During the last years, the communications sector has registered a significant development in Portugal, such as in the OECD countries as a whole.

However, this sector is at an important turning point at the national and European level, both in the technologic scope and regarding the business paradigm, with inevitable consequences for regulation.

This turning point of the communications industry, given its potential and the opportunities it offers, should become another factor fostering growth in the Portuguese economy.

Such as foreseen on the programme of the XVII Constitutional Government, the Technological Plan is a priority changing plan for the Portuguese society that aims at mobilizing companies, families and institutions in a joint effort to overcome the modernization challenges faced by Portugal.

The Technological Plan also is also the pillar for growth and competitiveness of the National Action Programme for Growth and Employment, which translates the application in Portugal of the Lisbon Strategy’s priorities.

Currently, Portugal already has one of the best European indicators regarding the inclusion of information technologies within the public sector, though political measures that have been put into practice need to be continued and deepened. Within this scope, the State should act as a promoter of technological diversity, restructuring and dynamism, needed for the Portuguese economy’s growth capacity’s leap in quality.

Electronic communications are evolving into a model of converging multi-service networks, generally named next generation networks.

Next generation networks’ potential goes beyond how the communications market is currently perceived. These technologic converging platforms make it possible to reach a new stage in the provision of broadband services, both in what they provide (voice, Internet, television, interactive applications, etc.) and the features that can be offered to the end user.

Although current broadband networks already support high throughput services, thus contributing to an improvement of the citizens’ wellbeing, both at the social and economic level, with the constant evolution of high speed services and applications, such as high definition television or video services provided over broadband, telemedicine applications and other advanced solutions, current networks will become short in satisfying the needs of consumers, who demand more and better services.

Endowing the Country with more advanced communications, more innovative services and also with features that make access by families and companies possible is paramount in ensuring a strong industry, one that generates positive externalities, namely investment on adjacent industries (software, multimedia, system engineering), as well as to fight information exclusion.

As a consequence, economic and social benefits will increase, through the positive impact that will be felt on the increase in the GDP, the promotion of employment and the increase of professional qualification, also promoting the development of the information society, which is one the main objectives of the XVII Constitutional Government.

In this context it is essential to promote the investment on next generation networks, which are not only means to improve existing networks, but rather a new type of networks, crucial at this moment for the development and evolution of the communications sector.
Investing in next generation networks also contributes to attract foreign investment, for as existing technologically advanced infrastructure, open to new features and applications, acts as an incentive to foreign investment by the main world companies, in connection with information and communications technology.

The communications sector increasingly evolves through rapid technological changes, and demands high and irreversible investments, which makes it particularly sensitive to risk, since the launch of innovative solutions corresponds in principle to markets that are new and far from their maturity stage.

It is thus important to bring awareness into the market regarding the policies that the Government proposes for the electronic communications sector, namely those promoting efficient investment on next generation networks.

Therefore, policies must be adopted to promote the development of next generation networks, so that the Country may strengthen and support its social and economic development, attract more investment and prevent the transfer of wealth to other countries and the leak of scientific and technical skills.

In this sense, and given the technological turning point, the Government understands as convenient to point out some framework criteria and principles for sector policies establishing a favourable framework for investment on next generation networks that will be able to place Portugal among the most advanced countries regarding the investment and development of this type of networks.

Thus:

In compliance with paragraph g) of article 199 of the Constitution, the Council of Ministers decides:

1 - To determine the promotion of investment on next generation networks as a strategic priority for the Country.

2 - To establish the guidelines for the promotion of investment on next generation networks, which are listed on the annex to this resolution and of which they are part of.

3 - To decide that the following actions shall be taken:

   a) To promote the mass adoption of high speed Internet accesses and the development of advanced applications, in order to have 1 million users connected to next generation networks until 2010;

   b) To connect all primary and secondary education schools to next generation networks until 2010;

   c) To connect the whole network of hospitals and health centres to next generation networks until 2009;

   d) To connect all public justice services to next generation networks until 2010;

   e) To connect the public higher education and polytechnic institutions to next generation networks until 2009;

   f) To connect the public museum and library networks to next generation networks until 2009.

4 - To establish that the contract commitments regarding the connections to next generation networks of the public institutions mentioned previously are a responsibility of the corresponding relevant Ministries.
5 - Notwithstanding what was established previously, to consider as indispensable the need to create, until 2010, a scheduled programme promoting the conditions needed to considerably broaden the connections to next generation networks to as many people as possible, throughout the whole of the national territory,

6 - Also, that measures must be taken aiming at the following outcomes:

a) To foster investment on remote or low population density areas under the terms to be proposed to the Parliament within the scope of the approval of the National Budget for 2009;

b) To have ICP-ANACOM defining the regulatory framework applying to next generation networks, according to the guidelines defined for the sector’s policy in the current resolution, including the analysis of the impact of geographic segmentation on the relevant markets at stake;

c) To adopt the legislative acts or others needed to ensure access by all operators, under equal terms, to the network of ducts and remaining relevant facilities from all entities holding this type of underground infrastructure;

d) To eliminate barriers to the roll-out of optical solutions in connection with next generation networks in buildings, including the introduction of the appropriate changes to the technical regulations currently in force (namely ITED and ITUR).

7 - To determine that, according to the powers given to it by paragraph a) of no. 1 of article 6 of ICP-ANACOM’s statutes, and with the purpose of providing the Government with the tools needed to adopt the measures mentioned on paragraphs c) and d) of the previous number, ICP-ANACOM:

a) Will list, within 30 days, the barriers currently conditioning access to ducts and other infrastructure held by the entities mentioned on no. 5 of article 26 of Law no. 5/2004, of 10 of February, by the entities covered by Decree-Law no. 68/2005, of 15 of March, and by the electronic communications operators, including the incumbent operator;

b) Will list, within 30 days, the current barriers to the rolling-out of ducts, proposing measures aimed at their removal;

c) Will propose to the Government, within 45 days, actual measures, legislative or otherwise, to be adopted in order to ensure that all operators have open and effective access to the duct network and remaining relevant facilities of all entities with this type of underground infrastructure, for the installation of next generation networks - namely considering the results of the survey mentioned on the previous paragraph, as well as the results of the public consultation launched by ICP-ANACOM on September 2007 regarding the development of an infrastructure recording system;

d) Will evaluate solutions aimed at eliminating or attenuating vertical barriers to the roll out of fibre optics, as well as solutions for sharing/lending infrastructure on buildings, which prevent the first operator to monopolize the access to them, proposing to the Government, within 45 days, a set of concrete measures to be adopted on this matter.

Presidency of the Council of Ministers, 10 of July of 2008. - The Prime-Minister, José Sócrates Carvalho Pinto de Sousa.

ANNEX I

Government’s strategic guidelines for the development and investment on next generation networks

1 - To induce a confidence attitude regarding investment and national development.
In the current national and European scene, the offer of electronic communications products and services largely depends on the use of the so-called legacy networks, based on copper wire pairs and related infrastructure (ducts, poles, etc.). These networks were inherited from legal monopolies, characterized by high sunken costs and supporting traditional services, as well as broadband services, but with limited throughput. Additionally, since it is not possible to replicate copper access networks, the need to ensure open, transparent and non-discriminatory access to new operators is justified. However, next generation networks also place the issue on different grounds, since it is admissible that all operators might invest on new elements of those networks, namely fibre optics, at least on areas with higher population density.

In order to foster a technological innovation process carried out by the incumbent operators to progressively replace the so-called legacy networks by next generation networks, it is necessary to start by putting away the operators’ fear that the investment on innovative networks might become unsuccessful or too expensive regarding the costs/benefits that might result from their operation.

It is thus necessary to take into account the raise of the investment risk in connection with technological change, in order to create the conditions for operators to invest on next generation networks in an environment of confidence and regulatory certainty.

It is also important to rigorously identify the main factors conditioning the roll out of next generation networks, and to consider the positive effects that the convergence of services based on different platforms will have on the development and sustainability of competition in the sector.

Thus, an attitude of confidence on investment and on national development should be induced, thereby promoting a model based on competition of infrastructure rather than of services, which does not offer the same benefits to the economy and to consumers.

Within this scope, clear and transparent regulatory principles need to be defined, for operators to make informed investment decisions, while not hindering efficient and timely investment.

In this context, the impact of geographic segmentation namely on the relevant markets in question will have to be analysed, taking always into account the existence of alternative infrastructure, the stage of development of cable networks and the investment already made on the unbundling of the copper local loop.

It is thus essential to ensure a clear regulatory framework that will guide the development of next generation networks, as well as the policy to introduce optical solutions on the access network and protocols that ensure high throughput solutions.

2 - To promote a competitive electronic communications market and to ensure the removal of barriers to market access by the operators.

It is foreseeable that the development of next generation networks will considerably contribute to strengthen the competition scenario currently existing on the national territory.

Considering that the next generation networks will also foster more and better employment, it is important to assess the qualification factors that should be provided to workers regarding the skills needed to operate within this scope. The Government intends to invest on training of new professionals in order to increase the quality of the workforce in Portugal.

Given these factors, the Government takes the responsibility to evaluate the measures that can be adopted in order to foster the development of next generation networks, namely in geographical areas with low broadband penetration, as well as to modernize current network infrastructure.
Within the scope of the national Strategic Reference Framework (QREN), public investments made on high throughput broadband infrastructure in areas where market agents do not find the needed operating conditions to offer these services, namely concerning demographic density, might be eligible for support. In areas where next generation networks using fibre are rolled out, the challenge will be to encourage the development of alternative networks, without hindering the level of competition already reached in those areas, considering that local loop unbundling might not be possible depending on the used topology or technology, as well as the high level of investment which they imply.

The purpose should be for all operators on the market to be able to develop their own investment strategies with autonomy, and therefore the so-called horizontal and vertical barriers to investment on next generation networks should be dimmed or even removed.

In this context, access by all operators to underground infrastructure has a growing importance, considering that the costs for building ducts are a considerable part of investment on fibre optics. Listing the barriers that may condition that access, in order to remove them, and adopting measures that lead to an open and non-discriminatory access to ducts, poles and other facilities—belonging both to communications operators and to entities that, even though operating in other sectors, hold extensive duct networks—is thus essential.

A central concern within this scope is also to promote the elimination of vertical barriers that hinder the roll out in buildings of optical solutions in connection with the next generation networks. Thus, the Government will also promote the adoption of changes that seem adequate in the current legislation and technical regulations regarding the roll out of telecommunications infrastructure in buildings, in order to make it more able to promote the development of next generation networks.

3 - To ensure access to technologically advanced products and services.

As with all sectors, the market will only develop if there are consumers and service providers, and therefore it is important to ensure the existence of an effective demand regarding the offer of products and services over next generation networks.

The Government is sure that this will be the case in Portugal since, during the last decade, Portugal came closer to the European consumption standards and to the average consumption level of the remaining European countries, with an increase in the population’s income, including that of the information technology sector. The measures adopted under the Technological Plan should have contributed to this state of affairs, by fostering an increase in the use of new technological offerings by the whole population.

The Government is available to analyse and implement, together with all entities active on the sector, the measures that seem more adequate to promote the access by all consumers to technologically innovative products and services, under equal terms, always taking into account citizens with special needs.

In this context, the Government intends to promote the mass adoption of high speed Internet offerings and the development of advanced solutions enabling the connection to next generation networks, namely of all secondary education schools, hospitals and health centres in the Country.