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Determination of 14.9.2006

DRAFT DECISION

I. THE FACTS

1. On 8.8.2006, VODAFONE PORTUGAL – Comunicações Pessoais, S.A. (VODAFONE) submitted to ICP-ANACOM, under article 21 of Law no.5/2004, of 10 February, a communication on the beginning of the offer of a new electronic communications service, called *Homephone*.

On the same day, VODAFONE requested of ICP-ANACOM, pursuant to paragraph 1 of article 21 of Law no.5/2004, of 10 February, the authorization to use the GSM and UMTS frequencies which are allocated thereto in the local access for the provision of services in a well-defined geographic location.

2. As declared at the time, the so-called *Homephone* service includes the following features:
 - It is a telephone service provided at a fixed location;
 - It is supported by the GSM, GPRS and UMTS technology and network, for access to the final customer, in the last mile;
 - The access to the service is carried out through mobile terminals;
 - It resorts to the range 2 of the National Numbering Plan (NNP);
 - The identification of the calling line corresponds to that of the geographic number allocated to the customer;
 - The mobile terminals receive and make calls in well-defined geographic areas that correspond to the customer's address:
 - (i) When the customer is at his residence, he/she receives all calls made to his/her geographic number and is able to make calls to any destination;

- (ii) When the customer is away from his/her residence, the calls made to his/her geographic number are forwarded to the voice mail, and he/she will not be able to make any calls, receiving the message, when attempting to make calls, that the service does not allow any calls outside the geographical scope of the address;
- The retail prices are close to those already practised by VODAFONE in the scope of the telephone service at a fixed location;
- The interconnection prices are those practised by VODAFONE (as fixed operator) with the operators with whom it is interconnected;
- Customers may enjoy the fixed number portability service;
- A record of all terminals and associated BTS is maintained, including namely: (i) the declared address for access to the service by the end-user, (ii) the end user's telephone number, (iii) the date of activation of the service and (iv) the identification, including the geographic coordinates, of the BTS(s) associated to the mobile terminal following the selection procedure.

II. ASSESSMENT

At a first analysis of the application presented by VODAFONE, the service that the company intends to provide shows very similar features to the service known as *Optimus Home*.

It must be stated that this Authority promoted a general consultation procedure in the context of the *Optimus Home* service offer, and in line with what was decided at the time, ICP-ANACOM takes the view that the service now declared by VODAFONE should be assessed in three strands, namely: (i) the use of frequencies, (ii) the use of numbers and (iii) transparency of information provided to users.

It is further noted that, pursuant to paragraph 2 of article 20 of Law no.5/2004, of 10 February, the amendments of conditions, rights and procedures concerning the pursue of the activity, including the rights of use, are subject to the general consultation procedure referred to in article 8 thereof, and interested parties, namely users and consumers, must be allowed a sufficient period of time to express their views on the proposed amendments, which shall be no less than 20 days, except in exceptional circumstances duly justified.

ICP-ANACOM is also of the opinion that, in view of the amendment of conditions applicable to the rights of use, which is the aspect to be reconfigured so that the effective service provision may occur, this procedure should take place in a swift way.

Moreover, as referred above, this Authority promoted in the past a general consultation procedure in the context of a service identical to the one now submitted by VODAFONE, all interested parties having been granted the opportunity to express their comments on the issues raised by that service.

In the light of the above, ICP-ANACOM deems that there are grounds to set a deadline below the standard time-limit laid down by law, which is set at 10 days.

1. Use of frequencies

The offer presents a service supported on the transmission network (core network) of VODAFONE and on its mobile network for access to the final customer.

As is widely acknowledged, the GSM and UMTS mobile networks of VODAFONE use frequencies which were allocated for the provision of the mobile telephone service and for the operation of international mobile telecommunications systems (IMT2000/UMTS), respectively, as stated in the respective allocation documents.

According to the instruments in force relatively to radio licensing of networks and stations, MTS/GSM are defined as “*2nd generation system networks constituted by base stations of a determined location and by mobile stations, operating in frequency bands allocated for that purpose*” and MTS/UMTS as “*3^d generation system networks constituted by base stations of a determined location and by mobile stations, operating in frequency bands allocated for that purpose*” (Notice of 23 July 2003, published under Decree-Law no. 151-A/2000, of 20 July).

At the level of use and usefulness to the end user, the product presents a low mobility, being very close (although not identical) to the wireless solution, as VODAFONE intends to ensure to consumers the access to the service at the address they declare.

The use of GSM and UMTS networks for local access represents, to a certain extent, and in this case only as regards the provision of voice services, an alternative to the “*classical telephone networks that use twisted metallic pairs. The current alternative means are the cable television networks that provide telephone services, mobile cellular networks which were adapted to the offer of services at fixed locations and other wireless networks*”, as defined in the explanatory note to the Commission Recommendation on Relevant Markets, quoted in the Determination of ICP-ANACOM of July 2004, on the definition of markets and SMP assessment in the narrowband markets access to the public telephone network at a fixed location.

It must also be taken into account that the possibility of VODAFONE using its network to provide a service with these features, implies that ICP-ANACOM authorizes the use of GSM and UMTS frequencies for that purpose. In fact, these frequencies were allocated to VODAFONE for the provision to the general public of mobile telephone services, throughout the national territory – diversely, VODAFONE now wishes these frequencies to be used for the provision of services on a well-defined geographic location.

It must be considered, however, that at the level of radiocommunications, frequencies are still used exclusively for GSM and UMTS systems, pursuant to settled harmonization at European level (Council Directive 87/372/EEC, of 25 June and Decision No. 128/1999/EC of the European Parliament and of the Council of 14 December 1998 on the co-ordinated introduction of a third-generation mobile and wireless communications system (UMTS) in the Community).

The engaging of frequencies, shall not, in any case, unbind VODAFONE from its obligations as provider of a mobile service (GSM and UMTS), such obligations maintaining their full effect.

In fact, as the effective and efficient use of frequencies is a fundamental principle in matters of management of radio spectrum (article 15, paragraph 2, point c) of Law no. 5/2004), ICP-ANACOM feels that the engaging of GSM and UMTS frequencies to this additional usage shall mean a more intense use of frequencies, a resource which is scarce by nature, that principle being thereby fulfilled.

The engaging of GSM and UMTS frequencies, allocated to VODAFONE, to a purpose not comprised in the respective allocation document is thus at stake, that is, for the supply of the capacity of its GSM and UMTS access network for the provision of a different electronic communications service – telephone service at a fixed location.

It is at the level of the amendment of rights of use of frequencies allocated to VODAFONE that the request presented by the company should be assessed and replied to.

Being the entity responsible for the management of the spectrum, pursuant to paragraph 1 of article 15 of Law no.5/2004, of 10 February, it is incumbent upon ICP-ANACOM to plan out frequencies (article 15, paragraph 2), to specify the cases where the rights to use frequencies are required (article 16, paragraph 1), to allocate the referred rights (article 19, paragraph 3) as well as to specify the applicable conditions (article 32, paragraph 2), and, *a fortiori*, to amend the granted rights of use (article 20).

Lastly, it must be referred that the use of terminals in a scope of a service with the features presented to ICP-ANACOM is subject to a fee with the code 22107, included in Administrative Rule no. 386/2006, of 19 April.

2. Use of numbers

As referred above, the service is presented with a defined geographic base that coincides with the address declared by the customer, which *a priori* does not prevent geographic numbers from being associated thereto.

It should be referred in this context that VODAFONE, as regards the definition of the geographic area of the service called *Homephone*, intends to promote, before implementing the service, «(...) an accurate procedure of geographic definition, through which three sectors that are best suited to ensure the quality of service to the customer shall be chosen. The identification of these three sectors (which are equivalent to the radiation of a BTS) shall be based on the geographic location of the address of the customer of the “Homephone” service (NW, NE, SW, SE). When two BTS are located in the same point, they shall be treated as only one BTS, as this means that they relate to different technologies (2G, 2.5G, 3G).

The NNP, being an important regulation instrument, should also facilitate new offers that contribute towards the regulation objectives incumbent upon ICP-ANACOM. Under the law, it is incumbent upon the regulatory authority to *define the guidelines and general principles of the NNP, as well as to manage this plan according to the*

principles of transparency, effectiveness, equality and non-discrimination. The management of the NNP expressly includes *the establishment of the conditions for allocation and assignment of national numbering resources* – article 17, paragraph 2, points a) and b) of Law no.5/2004.

Given the geographical basis for the service, as presented by VODAFONE, one should not exclude that the service may be comprised in the numbering “2” range of the NNP, provided that a fundamental condition is fulfilled, namely, that the mobility associated to the mobile terminal is restricted to the inevitable limit that ensures the access at a fixed location.

The solution presented by the company, as in other fixed network solutions, provides the customer with wireless telephone terminal equipment, the access being supplied through the VODAFONE GSM and UMTS network.

Thus, the service provided shall present the features of the services offered within the numbering “2” range of the NPP where it is designed with similar mobility features. This seems to occur in the service presented by VODAFONE.

In short, ICP-ANACOM takes the view that in terms of mobility, the service presented by VODAFONE should be designed where possible in the light of the typical mobility provided by the available technologies in the fixed network systems, so that the usage of the numbering “2” range is not rendered void, the measures put forward by VODAFONE seeming appropriate to ensure the compliance with there requirements.

3. Transparency of information provided to users

In the presented communication, VODAFONE refers that «the contract with the final consumer (...) shall provide information on some of the features of the service, clarifying namely the following aspects: (i) the mobility associated to the mobile terminal is restricted to the inevitable limit, in the light of used technology, to ensure the access with quality of service at a fixed location (the service is exclusively ensured at the address declared by the customer for that purpose), (ii) possible indoor access limitations, (iii) the identification of the presented calling line is that of the allocated geographic number and (iv) the access to emergency number (112) is ensured at all times, the caller locating method being the same as that applied for customers of the Telephone Mobile Service».

The similarity between the service now presented by VODAFONE and the *Optimus Home* service has already been highlighted above. Thus, taking into account the previous paragraph, ICP-ANACOM takes the view that the “measures” put forward by VODAFONE seem to fulfil the impositions made on this subject by the Authority in the scope of the *Optimus Home* service.

In fact, as declared at the time (and just like any other company which offers electronic communication services), VODAFONE is also subject to guarantee the information demanded by law on the service’s access and usage conditions, which ensure that users, in a well-informed and fully aware manner, can choose the electronic communication services which best satisfy their needs.

As the law guarantees the freedom of supply of electronic communications networks and services, ICP-ANACOM cannot prevent the commercialisation of an offer simply because the information available on it is insufficient, because the service is different from those which have been provided before or because no information has been provided to indicate that the service does not give the access the functions which were previously associated with the fixed telephone service, or because it does not advertise the fact that, as with any wireless telephone, the equipment is subject to battery and/or power failures.

Just as back then, ICP-ANACOM cannot enshrine in the decision to be given a discriminatory solution since mobile telephone service providers are not bound by any obligation to provide information identical to that referred to above, nor are fixed telephone service providers bound to advertise that the services they provide are subject to interruptions, that networks can be crowded or that the use of wireless telephones is conditioned by their power supply.

Thus, on the basis of the *Optimus Home* service, the users' rights recognised by the law justify that VODAFONE should guarantee that before the signing of any contract users should have written information on service access and usage conditions and, naturally, on the limitations inherent to them.

III. DECISION

Therefore, the Board of Directors of ICP-ANACOM, in the scope of assignments conferred by points b), c), f) and h) of paragraph 1 of article 6 of its Statutes, approved by Decree-Law no. 309/2001 of 7 December, in carrying out the regulatory objectives established in points a) and c) of paragraph 1, in point d) of paragraph 2 and in point d) of paragraph 4, all of article 5 of Law no. 5/2004, of 10 February, and under article 15, paragraph 1, article 17, paragraph 2, points a) and b), article 20, paragraph 1, article 32, paragraph 2 and article 34, paragraph 2, all of the same Law, has decided as follows:

1. To allow VODAFONE to use the GSM and UMTS frequencies of the terrestrial mobile network in the local access network for the provision of the telephone service at a fixed location, with the typical features of the service presented to ICP-ANACOM on 8.8.2006, provided that the following conditions are complied with:

- a) The service access must be secured through a terminal connected to a single pre-determined BTS when calls are made, received and maintained;**
- b) In exceptional cases, justified technically and acknowledged as such ICP-ANACOM, the terminal may be associated to two, or at the most, three, pre-determined BTSs;**
- c) The restrictions laid down in the previous points must be ensured within 10 days at the most after the service has been activated.**

2. To recognise the right of VODAFONE to use the PNN numbering range “2” in the context of the service, provided that the conditions set forth in this deliberation are fulfilled.

3. To determine that VODAFONE must maintain a record of all terminals and associated BTSs, including the following information:

- a) The address declared by the end user for access to the service;**
- b) The telephone number of the end user;**
- c) The date of activation of the service;**
- d) The identification, including the geographic coordinates¹, of the BTS or, exceptionally, of the BTSs associated to the mobile terminal, after the respective selection procedure.**

4. To determine that VODAFONE must present to ICP-ANACOM, within 15 working days from this determination, the description of the technical procedure used to select the BTSs, as well as a description of the typical kinds of situation which require a connection to more than one BTS.

5. To determine that VODAFONE must provide end users with clear and transparent information on the features of the service, in particular making the following quite clear:

- a) The guarantee that the access to the service is ensured only for the address declared by the end user for this purpose;**
- b) Any indoor access limitations which may exist;**
- c) Impact in terms of locating the caller in calls made to the single European emergency number (112).**

6. To submit the above determinations to the prior hearing of VODAFONE, pursuant to articles 100 and following of the Code of Administrative Procedure, the time limit for presentation of observations in writing by the company being set at 10 working days, as well as to the general consultation procedure, pursuant to paragraph 2 of article 20 of Law no. 5/2004 of 10 February, the time limit for presentation of observations by interested parties being set at 10 working days;

7. To make the effective provision by VODAFONE of the service under consideration subject to the decision taken following the procedures mentioned in the preceding paragraph.

¹ Geographic coordinates in latitude, longitude (degree [°], minute ['] and second ["]) and the georeferencing system.

