

DECISION

CONCERNING INFORMATION ON COVERAGE, QUALITY OF SERVICE AND SITE-SHARING POLICY, TO BE SUBMITTED TO ICP-ANACOM BY UNDERTAKINGS HOLDING RIGHTS OF USE OF FREQUENCIES FOR PROVISION OF TERRESTRIAL ELECTRONIC COMMUNICATIONS SERVICES (ICP-ANACOM TITLE No. 01/2012, ICP-ANACOM TITLE No. 02/2012 AND ICP-ANACOM TITLE No. 03/2012)

I. BACKGROUND

At present, the rights of use of frequencies for provision of publicly available terrestrial electronic communications services (ICP-ANACOM Title no. 01/2012, ICP-ANACOM Title no. 02/2012 and ICP-ANACOM Title no. 03/2012, hereinafter "DUF"), as Issued by ICP-ANACOM in the names of OPTIMUS - Comunicações, S.A. (currently NOS Comunicações, S.A., hereafter "NOS"), MEO - Serviços de Comunicações e Multimédia, S.A. (hereinafter "MEO") and Vodafone Portugal - Comunicações Pessoais, S.A. (hereinafter "Vodafone") set out:

- i) Coverage obligations associated with the rights of use of frequencies allocated prior to the multi-band auction (coverage in respect of voice services and data services up to 9600 bps, data services with transmission speeds of 144 Kbps and data services with transmission speeds of 384 kbps). The fulfilment of these obligations can be achieved using the rights of use of frequencies allocated subsequent to the multi-band auction, pursuant to the DUF referred to above;
- II) Coverage obligations associated with the rights of use of frequencies in the 800 MHz band, allocated subsequent to the multi-band auction, established in accordance with article 34 of the Auction Regulation¹. These obligations may only be fulfilled with use of frequencies in the 800 MHz and 900 MHz bands (in

¹ Regulation no. 560-A/2011 of 19 October, available at [Regulation of the auction to allocate rights of use of frequencies in the 450, 800, 900 and 1800 MHz and 2.1 and 2.6 GHz bands](#).

the latter case, pursuant to prior notice of intent communicated to ICP-ANACOM under the terms of the DUF);

- iii) Quality of service obligations for services provided using the GSM system and for services provided using the UMTS system.

For the purpose of monitoring the coverage referred to in I) and II), the quality of service obligations indicated in III) and for the purpose of monitoring the implementation of site-sharing:

- A) An obligation was established in point b) of paragraph 8 of ICP-ANACOM TITLE no. 01/2012, in point b) of paragraph 8 of ICP-ANACOM TITLE no. 02/2012 and in point b) of paragraph 9 of ICP-ANACOM TITLE no. 03/2012 (see "[Serviço de comunicações eletrônicas terrestres](#)") whereby providers are required to send ICP-ANACOM a given set of information; the content, form, frequency, reporting periods and time-limits for submission of such information is to be established by ICP-ANACOM by means of a separate decision;
- B) It was decided to maintain the obligation whereby providers are required to send the "annual questionnaire" included in Annex 2 to ICP-ANACOM Determination of 17 November 2011 ("[Information on coverage, quality of service, and on how to implement site-sharing, to be supplied by providers of the land mobile service \(GSM / UMTS\)](#)") and to send the "annual declaration"² indicated in point 8-8 of this same determination and in section 5.4.b) of ICP-ANACOM Determination of 17 May 2012 ("[Decision on the renewal of rights of use of frequencies allocated to Optimus in the 900 and 1800 MHz bands](#)")³ until such time as the

² Declaration confirming provision, as on 31 December of the previous year, of total population coverage by voice and data services up to 9600 bps, per location with over 10,000 inhabitants and per municipality, at levels which are at least identical to the coverage levels prevailing on the date on which the respective DUF was renewed (8 July 2010, in the case of Vodafone and MEO, and 17 May 2012, in the case of the NOS) and as reported in the respective responses to the ad-hoc questionnaire. Note: the ad-hoc questionnaire for MEO and Vodafone was approved by ICP-ANACOM Determination of 17 November 2011 ("[Information on coverage, quality of service, and on how to implement site-sharing, to be supplied by providers of the land mobile service \(GSM / UMTS\)](#)"), and the ad-hoc questionnaire applicable to NOS was approved by ICP-ANACOM Determination of 17 May 2012 ("[Decision on the renewal of rights of use of frequencies allocated to Optimus in the 900 and 1800 MHz bands](#)").

³ See section 5.4. of ICP-ANACOM Determination of 9 March 2012 ("[Decision to issue unified titles of rights of use of frequencies for terrestrial electronic communication services, subsequent to auction](#)") and section 5.3. of ICP-ANACOM Determination of 17 May 2012 ("[Decision on the renewal of the rights of use of frequencies allocated to Optimus, in the 900 MHz and 1800 MHz frequency bands](#)").

separate decision referred to above is approved. It is noted that the "annual questionnaire" in question was defined in the context of ICP-ANACOM's oversight of the coverage, quality of service and implementation of site-sharing as regards undertakings providing the Land Mobile Service, according to the GSM/UMTS systems. As such, this questionnaire includes information on the conditions associated with rights of use of frequencies allocated prior to the multi-band auction and permits only partial monitoring of compliance with the conditions laid down in the titles currently in force, since:

B.1. The questionnaire does not enable monitoring of compliance with coverage obligations associated with rights of use of frequencies in the 800 MHz band allocated subsequent to the multi-band auction. Accordingly, on 21 March 2014, ICP-ANACOM approved a questionnaire specifically for the purpose of monitoring these obligations (Annex 3 to ICP-ANACOM Determination of 21 March 2014, available at [Final decision on methodology for establishing and reviewing reference speeds associated with coverage obligations in the 800 MHz band](#));

B.2. Furthermore, even the coverage obligations currently associated with the rights of use of frequencies allocated prior to the multi-band auction (coverage by voice services and data services up to 9600 bps, data services with transmission speeds of 144 Kbps and data services with transmission speeds of 384 kbps), which, at present, can also be accomplished using rights of use of frequencies allocated subsequent to the multi-band auction, cannot be thoroughly monitored based on the annual questionnaire in force, since this questionnaire only encompasses coverage achieved using rights of use of frequencies for the provision of the Land Mobile Service according to GSM and UMTS systems.

As such, even while ICP-ANACOM approved a questionnaire on 21 March 2014 to monitor the specific obligations referred to in B.1. (Questionnaire in Annex 3 to the ICP-ANACOM determination , available at [Final decision on methodology for establishing and reviewing reference speeds associated with coverage obligations in the 800 MHz](#)

[band](#)), in order to enable proper oversight of compliance, especially, in terms of the current coverage obligations associated with the rights of use of frequencies allocated prior to the multi-band auction, it is also necessary to adapt the annual questionnaire set out in ICP-ANACOM Determination of 17 November 2011.

II. ALTERATION OF THE INFORMATION TO BE SENT TO ICP-ANACOM ON COVERAGE, QUALITY OF SERVICE AND IMPLEMENTATION OF SITE-SHARING POLICY

In light of the above, ICP-ANACOM considers that it is necessary to adapt the annual questionnaire indicated in B) of the previous section, i.e., the questionnaire included in Annex 2 to ICP-ANACOM Determination of 17 November 2011, regarding *"Questionnaires on information related to coverage, quality of service and implementation of site-sharing, to be sent to ICP-ANACOM by undertakings providing the land mobile service (GSM/UMTS) / Annual declaration to be presented by TMN - Telecomunicações Móveis Nacionais, S.A. and Vodafone - Comunicações Pessoais, S.A. on total coverage, per location with over 10,000 inhabitants and per municipality, provided in the provision of voice and data services up to 9600 bps"*.

Amendments to this questionnaire are mostly related to the need to incorporate information on coverage (in respect of voice services and data services up to 9600 bps, data with transmission speeds of 144 Kbps and the data service with transmission rates of 384 kbps) as achieved not solely based on rights of use of frequencies according to the GSM/UMTS systems but also, under the terms of paragraph 3 of the DUF, based on the rights of use of frequencies allocated subsequent to the multi-band auction.

However, further changes were made to the questionnaire, in particular as regards:

- Adaptation of the framework governing the request for response to the questionnaire and adaptation of some previously used terminology;

- Discontinuation of the current requirement to use *"(...) the annual estimates of resident population in the entire Portuguese territory and in each NUTS II region as most recently published by INE (based on the latest Census) on the date to which the information relates"*. Whereas it is deemed desirable to ensure a degree of harmonisation and to update population data as frequently as possible, in practice providers have not always used the annual estimates as a reference. Furthermore, the population estimates published on an annual basis by INE are, as a rule, only reported by municipality, whereas, in ICP-ANACOM's view, calculation of achieved coverage may require information with further geographical detail. As such, the only obligation maintained will be the obligation to use the latest Census which, on the date to which the information relates, has been published by INE (note: the information from the 2011 Census is provided with detail up to parish level and statistical subsection).
- Inclusion, in the questionnaire's section on "Site-sharing policy", of information about "overall site-sharing policy" and not solely information, as provided for in the DUF on "implementation of the site-sharing policy assumed in the proposal presented to the public tender for the allocation of licences for the International mobile telecommunications systems (IMT2000/UMTS)". Even while providers will comply with the requirement of point b) (iv) of the section "Provision of information to ICP-ANACOM" of the respective DUF by sending this information on site-sharing, as is more specifically associated with this tender, ICP-ANACOM considers that in the current context, oversight of this matter must be based on comprehensive knowledge of information on implementation of the site-sharing policy, notwithstanding other obligations to provide information to which service providers are bound, in terms of sharing, including as under the provisions of Law no. 5/2004 of 10 February, Decree-Law no. 123/2009 of 21 May and the Auction Regulation.
- Explanation, in Part B of the questionnaire, of some additional items to give basis to the coverage results reported in Part A of the questionnaire.
- Adaptation of the questionnaire notes regarding segmentation in terms of NUTS (Nomenclature of Territorial Units for Statistics) and changing the name of the

current "Lisbon" NUTS II to "Área Metropolitana de Lisboa" (Lisbon Metropolitan Area). Indeed, as reported by INE:

- .. The latest regular process of modifying European NUTS was completed in 2013, establishing the NUTS reference boundaries effective from 1 January 2015;
- .. Meanwhile, following approval of Law no. 75/2013 of 12 September (which approved the status of inter-municipal entities), the Portuguese State requested that the European Commission conduct a special review of Portuguese NUTS. The number of new NUTS III will be reduced from 30 to 25 territorial units, with some boundary changes. In the case of NUTS II, no boundary changes have been made, except for the change in the name of the "Lisbon" NUTS II, as referred to above.

Furthermore, given the experience gained in analysing the annual declarations submitted to it by providers under the above determinations of 17 November 2011 and 17 May 2012, ICP-ANACOM considered it fitting to provide a better explanation of the signature requirements. In this respect, it is presently established that these declarations are to be signed by a person with powers to bind the undertakings concerned. However, ICP-ANACOM is of the view that it should be further specified that this declaration is to be signed by whosoever has powers to bind the undertaking, with the respective signature recognised in that quality or accompanied by the company's certificate of commercial registration or permanent certificate access code.

Finally, it is made clear that the provisions of the present determination are without prejudice to other applicable requirements to provide information, including in particular, but not limited to, the following:

- a. The obligation to submit information to ICP-ANACOM on services and implemented facilities as well as on pricing⁴, to be sent no later than the 20th consecutive day of the month following the end of each half-year period;

⁴ This concerns information established in point a) of paragraph 8 of ICP-ANACOM Title no. 01/2012, in point a) of paragraph 8 of ICP-ANACOM Title no. 02/2012 and point a) of paragraph 9 of ICP-ANACOM Title no. 03/2012 (see ["Serviço de comunicações eletrónicas terrestres"](#)).

- b. The future obligation to report the following information, as required to review reference speeds and to verify compliance with coverage obligations associated with the rights of use of frequencies in the 800 MHz band allocated subsequent to the multi-band auction⁵:
 - b.1. Information in the questionnaire contained in Annex 1 to ICP-ANACOM Determination of 21 March 2014 (see ["Final decision on methodology for establishing and reviewing reference speeds associated with coverage obligations in the 800 MHz band"](#)), to be presented to ICP-ANACOM under the terms of paragraph 2 of the same determination;
 - b.2. Coverage information as specified in the above questionnaire contained in Annex 3 to the same determination, to be presented to ICP-ANACOM under the terms of section 3 thereof.

III. DRAFT DECISION and PRIOR HEARING PROCEDURE

Under the terms set out above and by determination of 21 August 2014, the Management Board of ICP-ANACOM approved a draft decision on the information on coverage, quality of service and site-sharing policy to be sent to ICP-ANACOM by undertakings holding rights of use of frequencies for provision of terrestrial electronic communications services (ICP-ANACOM TITLE no. 01/2012, ICP-ANACOM TITLE no. 02/2012 and ICP-ANACOM TITLE no. 03/2012).

This draft decision was submitted to the prior hearing of interested parties in accordance with article 100 et seq. of the Código do Procedimento Administrativo (Administrative Proceeding Code); under this procedure, timely responses were received from the three consulted companies (MEO, Vodafone and NOS).

In this context, the report of the prior hearing was prepared, which, as an integral part of the present decision, includes a summary of the positions expressed and the positions taken by ICP-ANACOM thereon, giving basis to the present decision and, in

⁵ Coverage obligations set out in article 34 of Regulation no. 560-A/2011 of 19 October and in Paragraph 18 of ICP-ANACOM Title no. 01/2012, in paragraph 18 of ICP-ANACOM Title no. 02/2012 and paragraph 19 of ICP-ANACOM Title no. 03/2012.

particular, giving basis to the amendments it was deemed fitting to make to the draft decision, including the deletion of point III.2.

IV. DECISION

Accordingly, in fulfilment of the assignments conferred upon ICP-ANACOM by points c) and n) of paragraph 1 of article 6 and under paragraph b) of article 9 of its Statutes, as approved in annex to Decree-Law no. 309/2001 of 7 December, in pursuit of the objectives of regulation laid down in point a) of paragraph 1, point d) of paragraph 2 of article 5 and under the terms of point t) of paragraph 1 of article 27 and article 108, in particular for the purposes specified in paragraphs c) and g) of paragraph 1 of article 109, all of Law no. 5/2004 of 10 February, as amended by Law no. 51/2011 of 13 September and with the amendments which stem from Law no. 10/2013 of 28 January, from Law no. 42/2013 of 3 July and from Decree-Law no. 35/2014 of 7 March (LCE), and seeking to ensure compliance with the provisions of point b) of paragraph 8 of ICP-ANACOM TITLE no. 01/2012, of point b) of paragraph 8 of ICP-ANACOM Title no. 02/2012 and of point b) of paragraph 9 of ICP-ANACOM Title no. 03/2012, the Management Board of ICP-ANACOM determines as follows:

1. To approve the questionnaire on coverage (as regards voice services and data services up to 9600 bps, data services with transmission speeds of 144 Kbps and data services with transmission speeds of 384 kbps), on quality of service and on implementation of site-sharing policy, as given in **Annex** hereto. This questionnaire (hereinafter "new questionnaire") amends and replaces the annual questionnaire given in Annex 2 to ICP-ANACOM Determination of 17 November 2011⁶. The responses of NOS, MEO and Vodafone to the "new questionnaire" are to be sent to ICP-ANACOM on an annual basis and in accordance with the time limits defined therein.

⁶ Determination concerning "*Questionnaires on information related to coverage, quality of service and implementation of site-sharing, to be sent to ICP-ANACOM by undertakings providing the land mobile service (GSM/UMTS) / Annual declaration to be presented by TMN - Telecomunicações Móveis Nacionais, S.A. and Vodafone - Comunicações Pessoais, S.A on total coverage, per location with over 10,000 inhabitants and per municipality, provided in the provision of voice and data services up to 9600 bps*" (available at ["Information on coverage, quality of service, and on how to implement site-sharing, to be supplied by providers of the land mobile service \(GSM / UMTS\)"](#)).

2. That the annual declaration provided for in section 8-8 of ICP-ANACOM Determination of 17 November 2011 ([Information on coverage, quality of service, and on how to implement site-sharing, to be supplied by providers of the land mobile service \(GSM / UMTS\)](#)) and in section 5.4.b) of ICP-ANACOM Determination of 17 May 2012 (["Decision on renewal of the rights of use of frequencies allocated to Optimus - Comunicações, S.A., in the 900 MHz and 1800 MHz frequency bands"](#)) is to be presented on an annual basis, simultaneously with the response to the "new questionnaire", and is to be signed by whosoever has powers to bind the company, with the signature recognised in that quality or accompanied by the respective certificate of business registration or permanent certificate access code.