

Decision on the DTT Promotion and Information Campaign

I. Framework

Further to the public tender opened by Regulation No.95-A/2008, of 25 February (hereinafter referred to as Tender Regulation), PT Comunicações, S.A. (PTC) was allocated a right of use for frequencies of a national scope, for operation of the digital terrestrial television (DTT) broadcasting service, to which Multiplexer A (MUX A)¹ is associated, by determination of the Management Board of ICP - Autoridade Nacional das Comunicações (ICP - ANACOM), of 20 October 2008.

Having regard to provisions in the Tender Regulation and respective Specifications, PTC undertook in its tender to *«implement a DTT promotion and information campaign, of national and regional scope, using several national and regional media, namely television, radio, press, outdoors and the internet, including information and clarification campaigns, marketing campaigns, according to DTT awareness raising and implementation stages in Portugal, under the terms of the tender put forward, notwithstanding, in this context, among others, its integration in the follow-up group for the switch-off transition process, to be created for the purpose»*².

This obligation forms an integral part of the Right of Use for Frequencies ICP - ANACOM No. 06/2008, issued on 9 December 2008, for the purposes both of article 12, paragraph 1, point h) of the issued certifying document and article 32, paragraph 1, point g) of Law number 5/2004, of 10 February.

This solution builds also on article number 21, paragraph 1, of the Tender Regulation, and on article 17 of the certifying document, both of which refer that obligations arising from the tender provisions and commitments undertaken in the winning tender form an integral part of the document certifying the allocation of the right of use.

It should be recalled, in this context, that the Specifications³ specifically imposed on tenderers, as far as the promotion and information plan was concerned, the *“clarification of the means to be used and ways to promote and disclose DTT, as well as to raise awareness and to inform users on the switch-over process, including, where appropriate, sums involved and respective time-table»*.

The Tender Regulation⁴ determined that tenders would be assessed on the basis of the following criterion, among others, and of the respective densification and assessment:

Criterion a) (38%) - Contribution to a rapid digital terrestrial television expansion and development of the Information Society; and

Sub-criterion a2 (50%) - Contribution to a rapid DTT expansion, at the level of its promotion.

Additionally, the evaluation grid provided to the tenderer by the date tenders submitted were opened, provided for Sub-criterion a2 of the Tender Regulation, among others, the following indicator - *mechanisms for monitoring and promoting DTT adhesion, associated to the switch-over process»*, whose reference levels were as follows:

¹ Available at <http://www.anacom.pt/render.jsp?categoryId=303315>.

² Vide point h) of paragraph 1 of article 12 of the issued certifying document.

³ Specifications, pg. 9, Chapter III, Economic and Financial Plan, A. Business Plan, 1.2 Promotion and Information Plan.

⁴ Article 13, paragraph 1, of Regulation No.95-A/2008, of 25 February.

- «NEUTRAL», where the tenderer *«proposes and is financially involved in putting in place DTT promotion campaigns and awareness campaigns on the switch-over process, based on analogue terrestrial television»*; and
- «GOOD», where the tenderer *«proposes and is financially involved in putting in place DTT promotion campaigns and awareness campaigns on the switch-over process, based on analogue terrestrial television and on two other media»*.

To comply with the mentioned provision, PTC gave detailed information on measures to be taken and on the time table of promotion and information campaigns, at national and regional level, to be developed through multiple media (TV, radio, press, outdoors, internet, etc.) including examples of outdoors to the distributed according to the established plan.

In financial terms, PTC proposed a sum of EUR 4 billion for marketing and advertising purposes.

Having assessed the whole of Sub-criterion a2 indicators, the Tender Assessment Commission⁵ took the view that PTC's tender was attractive enough to be graded the reference level «GOOD».

The commitment undertaken by PTC in its tender thus integrates the right of use for frequencies of a national scope, to which Multiplexer A is associated, issued by determination of the Management Board of ICP - ANACOM on 9 December 2008.

On 17 March 2009, Resolution of the Council of Ministers number 26/2009⁶ was published, setting the 26th of April 2012 as the date for the analogue switch-off in all national territory. This RCM charged also ICP - ANACOM, within the scope of its spectrum management powers, with the publication of a detailed plan for switching off each transmitter or relay station.

Further to this guideline, ICP - ANACOM approved, on 24 June 2010, its detailed plan for switching off each transmitter or relay station (Switch-Off Plan - SOP)⁷, establishing three switch off stages during 2012, as follows:

1st stage - 12 January 2012, for transmitters and relays which substantially provide coverage of the coastal area of the mainland territory;

2nd stage - 22 March 2012, for transmitters and relays ensuring the coverage of the Autonomous Regions of the Azores and of Madeira;

3rd stage - 26 April 2012 - for the remaining transmitters and relays.

Also in the scope of the SOP, given the social sensitivity of an analogue switch-off process and the complexity of this operation, ICP-ANACOM deemed it convenient, prior to the three stages detailed above, to switch off specific relays in pilot zones to be determined (at the time, this was supposed to take place in the first and second quarters of 2011). This kind of approach in limited zones, where it is easier to control any adverse conditions, would help to refine the procedures preparing for analogue switch off throughout the territory, thereby minimizing the risks associated with such an operation. This approach would also help to raise awareness

⁵ Information included in the analysis and assessment report of applications for the public tender for allocation of a right of use for frequencies of a national scope, for operation of the digital terrestrial television broadcasting service, to which Multiplexer A (MUX A) is associated.

⁶ Available at <http://www.anacom.pt/render.jsp?contentId=979705>.

⁷ Available at <http://www.anacom.pt/render.jsp?contentId=1033345>.

among the entire population as to the fact that the full switch off, to culminate on 26 April 2012, was a natural and irreversible process.

The conditions for eligibility for the pilot stage were thus identified in the SOP and, in 30 July 2010, ICP - ANACOM approved a draft decision⁸, which identified pilot stage relays and respective switch off dates: Alenquer on 3 February 2011, Cacem on 7 April 2011; and Nazare on 5 May 2011.

At the same time, ICP - ANACOM acknowledged that two basic pillars encouraging voluntary migration to DTT had not been put into action - the 5th channel and the HD shared channel⁹.

In this context, it was deemed that the process of communication on the transition to DTT should be reviewed, so as to adjust it to the current reality (non-existence of HD broadcasts and of the 5th TV channel) and to communication needs arising from developments since the launch of the public tender - this concerns and particularly impacts the timetable established in June 2010 for the analogue switch-off and the perspective of pilot stages, weighted in July of the same year.

In fact, in order to pursue the public interest underlying a timely migration from the analogue to the digital platform, and acknowledging that the success of a process such as this one depends on the capacity to raise awareness in a timely manner among all citizens involved to the countless constraints associated to its implementation, ICP - ANACOM, at the beginning of the second half of 2010, deemed it appropriate and justified to develop a set of demarches to PTC, television operators and the "Confederação Portuguesa dos Meios de Comunicação Social (CPMCS)", so as to raise awareness about, and involve them in, the launch of a singled information campaign, based on a coherent set of measures, avoiding the scattering of messages and means.

It was decided that this campaign should be coordinated by ICP - ANACOM, being the best placed body to pursue this mission. This also builds on Resolution of the Council of Ministers number 26/2009 (RCM)¹⁰, which determined that it was incumbent on this Authority to promote the necessary conditions for ensuring the transition process and, consequently, the analogue switch-off, being entitled for the purpose to make any recommendations to parties in the analogue-digital transition process.

During the subsequent months, ICP - ANACOM endeavoured to maximize resources, by holding several meetings, establishing several contacts and negotiations with parties to set up a protocol to be signed by all, in which the commitment and degree of involvement of each one was to be determined. In the specific case of television operators, ICP - ANACOM sought to ensure they would provide the necessary time slot to disclose the campaign, if not for free, at least for a low cost, given its commercial value, given the public interest underlying the ongoing process and the message to be conveyed.

Notwithstanding, and in spite of all the efforts and commitment on ICP - ANACOM's side, and acknowledging PTC's willingness, throughout the whole process, to collaborate towards the

⁸ Available at <http://www.anacom.pt/render.jsp?contentId=1040985>. The final decision on the pilot stage was taken on 22.12.2010, having been designated the following relays and dates: Alenquer on 12 May 2011, Cacem on 16 June 2011; and Nazare on 13 October 2011. Final decision available at <http://www.anacom.pt/render.jsp?contentId=1064615>.

⁹ Vide in this regard the Decision of ICP - ANACOM of 12.7.2010, on the revocation of the rights of use of frequencies associated with Muxes B to F, especially point B, 3.2. Decision available at <http://www.anacom.pt/render.jsp?contentId=1037454>.

¹⁰ Vide RCM paragraph 4, point b).

search for the best solutions for pursuing the public interest underlying the purposes of this DTT awareness campaign, it was not possible during the 2nd half of 2010 to reach an understanding which reflected an agreement between all parties involved, so as to conclude a protocol under the terms mentioned above, to be the basis of a single information campaign. In parallel, on 22 December 2010, ICP - ANACOM definitely determined the pilot zones¹¹, having been established at the time the full time-table for the transition to the digital platform.

It was thus necessary, without delay, to define the approach for promoting the DTT, which would also require PTC's involvement, namely at a financial level, under the terms of the commitment undertaken in the tender.

In this scope, ICP - ANACOM and PTC reached the conclusion that it would be necessary to make some adjustments to the DTT Information and Promotion Plan laid down in the tender submitted by PTC, so as to update it.

II. PTC's DTT Promotion and Information Plan

Preliminary Version

On 17 January 2011¹², PTC, wishing to specify and deliver on the commitment to which it was bound, submitted to ICP - ANACOM a preliminary updated version of the DTT Information and Promotion Plan, referring at the time that its implementation would be carried out in close co-operation with ICP - ANACOM.

On 24 January, this Authority informed that it was in the process of analysing in detail the documents received; it further requested some clarifications, showed some concerns and made certain remarks.

Later, on 16 February, ICP - ANACOM requested of PTC that within at the most 10 days, it presented the final updated version of the DTT Promotion and Information Plan, which should have the same impact and effect, as far as public information is concerned, as the plan submitted in the tender, which formed an integral part of the Right of Use for Frequencies ICP - ANACOM No. 06/2008, issued on 9 December 2008. ICP - ANACOM informed also that the referred update should cover all aspects which characterized the proposal submitted to tender, safeguarded the differences arising from the current framework.

Additionally, the Authority also made the following comments, resulting from the analysis of the preliminary documents submitted:

- The preliminary campaign strategy presented by PTC generally addresses the target of providing information to the population on the analogue-digital transition process. The campaign, in its preliminary version, was adapted to the alterations occurred in the meantime (non-existence of the 5th channel and HD shared channel), and covered the existence of pilot zones;
- In case the campaign put in place by PTC was based on a strategy calling for action on an emotional basis, rather than on an informative one, leaving the whole didactic element to support structures (call centre and website), it was stressed that such

¹¹ Vide footnote No.8.

¹² Letter with reference 20174905.

reference was at risk of not being sufficient and effective, and, on the other hand, that those channels would require a higher degree of detail and accurateness;

- To ensure an equivalent campaign impact, this Authority deemed it crucial to maintain the resource to a direct contact with the populations through PTC stores and door-to-door distribution of a practical DTT guide;
- References to ANACOM should be removed from all components of the campaign;
- The campaign, including all means of support and contents, must not include, either directly or indirectly, any reference to products or services traded by Grupo PT;
- As regards the media plan - television - ICP - ANACOM deemed it correct for the presented strategy to focus intensive efforts in one-month periods (in two phases). However, it would be beneficial for the time distribution of phases not to leave the switch-off year (2012) with no television campaign;
- It would be desirable for the duration of the 2nd phase to reach the end of November 2011, without prejudice to the intensity of defined measures, so as to cover the period before Christmas;
- The campaign should cover the disclosure of information on subsidises for disadvantaged groups of population and institutions of a social value, DTH coverage zones and respective contribution;
- It would be desirable to extend measures concerning retailers to pilot zones;
- It would be convenient to increase the number of days during which the road-show will occur in pilot zones (to include at least one week-end and two working days).

Moreover, ICP - ANACOM required information on how PTC intended to assess the impact of information measures to be carried out, as the Authority is interested in being given access to corresponding data.

Lastly, considering that it is not essential for the specification of contents, characters and components of the campaign to be an integral part of the certifying documents and that, additionally, they may be yet subject to revisions and fine-tuning, ICP - ANACOM declared it unnecessary for PTC to submit such information.

Immediately, meetings were held, contacts were established and mail¹³ was exchanged to ensure the compliance of the updated Plan with the defined criteria.

Final version

Following this process, by letter of 28.02.2011, PTC submitted to ICP - ANACOM a final updated version of the DTT Promotion and Information Plan (hereinafter the "Plan"), to integrate the Right of Use for Frequencies identified above.

¹³ Letter ANACOM-S009530/2011-20002510, of 24.01.2011, PTC letters with reference 20178353, of 31.01.2011, with reference 20181807, of 16.02.2011, with reference 20181808, of 16.02.2011, letter ANACOM-S019281/2011, of 16.02.2011, PTC letter with reference 20184427, of 28.02.2011.

PTC's letter and the attached Plan were analysed by ICP - ANACOM, as follows.

Analysis of the final version submitted by PTC

The proposal submitted concerns a strategy adapted to the alterations occurred in the meantime, as regards the non-existence of the 5th channel and the HD shared channel, covering the pilot zones (namely including a thematic road-show which will take place in those zones for four days), which will likely contribute to achieve the goal of informing the population on the analogue-digital transition process.

Just like the previous plan, the new plane involves several measures and media (namely TV, radio, OoH, Internet, etc.) which also meet the intended objectives - to ensure that the whole population is provided with relevant population.

As far as mass media is concerned, namely television, the strategy proposes an effort focus in one-month periods (in two phases), intensively during 2011, which is deemed to be appropriate for a process such as this one.

However, the Plan schedule does not cover the 2011 Christmas season nor the first four months of 2012, period during which the national switch-off will take place. The plan fails also to include a practical DTT guide for door-to-door distribution purposes. ICP - ANACOM will take into account these facts in the assessment of other measures to be developed in this field.

ICP - ANACOM takes this opportunity to recall the need to ensure that the support structures (call centre and website) guarantee in detail and accurately the didactic and informative element of the campaign, in case it is based on a strategy calling for action on an emotional basis.

As regards the removal of the reference to ICP - ANACOM in all components of the campaign, PTC shows surprise at this fact, referring that, taking into consideration the concerns stated by this Authority, the campaign is exclusively focused on matters of public interest. In fact, PTC accepted to adjust the campaign and respective media plan to the change of circumstances, namely non-existence of the 5th channel and HD shared channel. It also informs that the campaign was classified as "institutional advertising" by ICAP.

Further to a compromise solution reached with ICP - ANACOM, PTC requested authorization to use the following expression in the campaign: «*in compliance with the license issued by ICP - ANACOM*».

It must be clarified, on this subject, that the Authority took the view that it would not be coherent to have its name in the campaign, as the possibility of launching a single campaign, converging and mobilizing all parties, supported in a protocol to be signed by PTC, television operators, CPMCS and ICP - ANACOM, had exhausted by the end of the previous year. As such, the former model of a campaign promoted by PTC was brought back on track, although this was not one of PTC's typical commercial campaigns - given its purpose and the underlying public interest.

Without prejudice, ICP - ANACOM does not oppose to the inclusion, exclusively, of the following expression in campaign components: «Campaign within the scope of license ICP - ANACOM No. 6/2008».

As regards the prohibition to include in the campaign, either directly or indirectly, any reference to products or services traded by Grupo PT, PTC refers that this campaign does not include any mention to, nor will it include, its signature. Notwithstanding, PTC does not accept the principle that it may not make any direct or indirect association to its products or services, and that it fails to understand the fundament and legal basis for such interdiction. It declares that it will take into account the rules on advertising and information good practises, as well as the principles of healthy competition, but also that it will not allow its commercial and marketing freedom to be restricted without a reason.

ICP - ANACOM restates its position, acknowledging PTC's view in this regard as a statement at the level of principles, without a specific repercussion in the case under consideration. Otherwise, PTC would contradict itself as it classified its campaign as being "institutional" and not bearing the company's signature. To use a campaign which PTC classified as "institutional" to promote Grupo PT's products, directly or indirectly, would represent an unacceptable behaviour, as it would be contrary to a campaign, as PT itself explains, «(...) exclusively focused on matters of public interest». As such, ICP - ANACOM will only deem to be acceptable, in the scope of the implementation of the Plan, measures which are devoid of any type of commercial promotion of Grupo PT's products or services.

PTC declares that its tender never included a campaign disclosing information on contribution of disadvantaged groups of population. It adds that it would always object to such a disclosure through the campaign, as the contribution amount is quite limited. Likewise, as regards DTH coverage zones - and associated issues such as contributions for users of those areas - the initial proposal was that the relevant information was made available in the DTT website, and that all related issues were dealt with and clarified through the call centre to be provided by PTC.

In this context, it takes the view that the inclusion of this information in the campaign, besides being late, is also inadequate.

ICP - ANACOM acknowledges that the reference to this information may not be justified, considering the whole of elements making up the campaign. However, it considers necessary that some of the campaign components provide information of subsidizes for disadvantaged populations and contributions for DTH zones, without prejudice to the public disclosure which this Authority also intends to carry out.

It should also be mentioned that PTC presents an overall budget of 3.438.850,00 € for the purpose of the implementation of the Plan, and the company takes stock of the promotional and informative actions already put in place since the beginning of 2009, attaching documentation for this purpose.

As referred above, in compliance with the commitment undertaken in the scope of the public tender which is an integral part of the right of use, PTC proposed a sum of EUR 4 billion for marketing and advertising purposes. As this is the maximum amount which PTC is bound to spend for measures to be taken as far as the Plan is concerned, ICP - ANACOM will accurately monitor and verify how sums are allocated to fulfil obligations undertaken, in the appropriate fora and time. Sums which according to ICP - ANACOM should not integrate the Plan, must be reinvested by PTC in new measures or in the reinforcement of measures already planned to be put in place.

III. Prior hearing

Having analysed the letter, by determination of 9 March 2011, ICP - ANACOM approved a draft decision on the DTT Promotion and Information Campaign, determining that the Media Plan, Communication Plan Time-Table and Budget attached to PTC's letter of 28 February 2011, would be part of the right of use for frequencies ICP - ANACOM No. 06/2008, issued on 9 December 2008, thus binding the company to compliance therewith. It was also determined that PTC should regularly submit to ICP - ANACOM quantitative and qualitative data on several measures (above and below the line), media audience studies and population impact studies.

The draft decision was submitted to the prior hearing of PTC¹⁴, which assessed the matter within the deadline set for the purpose, by letter received by ICP - ANACOM on 23 March¹⁵.

The reasoning put forward in the hearing, as well as ICP - ANACOM's view thereon, are included in the prior hearing report which is an integral part hereof and which is hereby referred to.

IV. Decision

Thus, taking into account the letters sent previously by PTC and the analysis made on the subject, as well as grounds presented in the prior hearing report, the Management Board of ICP - ANACOM, pursuant to article 32, paragraph 1, point g) of Law number 5/2004, of 10 February, to article 12, paragraph 1, point h) of the right of use for frequencies ICP - ANACOM No. 06/2008, and under point l) of article 26 of its Statutes, published in annex to Decree-Law No. 309/2001, of 7 December, hereby deliberates as follows:

1. To determine that the Media Plan presented in annex to PTC's letter of 23.3.2011, as well as the Communication Plan Timetable and Budget attached to PTC's letter of 28.2.2011, will be part of the right of use for frequencies ICP - ANACOM No. 06/2008, issued on 9 December 2008, thus binding the company to compliance therewith.
2. To determine that PTC submits regularly to ICP - ANACOM quantitative and qualitative data on several measures (above and below the line), media audience studies and population impact studies.
3. To authorize the introduction, exclusively, of the following expression in campaign components: «Campaign within the scope of license ICP - ANACOM No. 6/2008».
4. To only accept as eligible, in the scope of the implementation of the DTT Promotion and Information Plan, under the right of use for frequencies ICP - ANACOM No. 06/2008, measures which are devoid of any type of direct or indirect commercial promotion of Grupo PT's products or services.
5. To determine that PTC, in some components of the DTT campaign, provides information on subsidises for citizens with special needs, disadvantaged groups of population and institutions of a proven social value, as well as on contributions for DTT set up and equipment in DTH coverage zones.

Lisbon, 31 March 2011

¹⁴ Letter ANACOM-S024958/2011, of 09.03.2011, delivered by protocol n the same date.

¹⁵ PTC's letter with reference 20189370.