

## DECISION

On the request for administrative settlement of disputes submitted by ONI over  
the «*alleged usurpation of MEO's CLI in transit traffic*»

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## 1. REQUEST FOR ADMINISTRATIVE SETTLEMENT OF DISPUTES

### 1.1. Initial request

By means of a communication submitted via email on 13.08.2020, ONITELECOM - Infocomunicações, S.A. (ONI) requested Autoridade Nacional de Comunicações (ANACOM), under article 10 of Law No 5/2004, of 10 February (Electronic Communications Law), as it stands, to intervene in order to settle a dispute opposing it to MEO - Serviços de Comunicações e Multimédia, S.A. (MEO), following the application by MEO of non-regulated termination rates to voice calls delivered by ONI, in transit of international routes, due to the alleged usurpation of the Calling Line Identification (CLI) of those calls.

ONI attaches (as document No 1) the communication sent to MEO, by email, on 13.05.2020, whereby the former company informed the latter that it had opened, in this context, a dispute against MEO regarding the surcharge values that MEO applied from January to April to calls classified as "USURPA".

According to ONI, MEO classified these voice calls as having a manipulated CLI, alleging that the respective originating CLI belonged to MEO customers for whom it had no records of such calls having been made on its network at the same date/time, whereby MEO applied to these calls non-regulated fixed or mobile termination rates, depending on the destination of each call. However, according to ONI, its operator customers did not accept MEO's allegations, having requested evidence of CLI manipulation. Moreover, they did also not accept that ONI reflected on them the price increase resulting from the application of non-regulated tariffs on MEO's part.

As explained in ONI's request, this was followed by an exchange of communications between ONI and MEO, via email, between 15.06.2020 and 10.07.2020, regarding the matter in question «*Dispute: Usurpa Jan20 to Jun2020 – MEO*», which are attached (as document No 1) to ONI's request, whereby MEO - according to the requesting party - continued to apply non-regulated termination rates to transit traffic delivered by ONI in May and June 2020, on the same grounds, without however providing any evidence of the alleged CLI manipulation.

ONI and MEO failed to settle the dispute, and in its communication of 10.07.2020 (the last one addressed to MEO, as set out in the attachment to the request - document No 1), ONI updated the billing value of traffic deemed to have been usurped, for the months from January to June,

which on that date amounted to [Start of Confidential Information - SCI] - [End of Confidential Information - ECI].

In this respect, ONI requests ANACOM's intervention to settle this dispute with MEO.

### 1.2. Clarifications from ONI

On 07.09.2020, ONI was sent a letter<sup>1</sup> notifying it of the beginning of the administrative dispute settlement procedure, and informing it that MEO had been notified to comment on allegations, having ONI been also requested to provide information so that facts could be ascertained and the procedure could be fully investigated.

Subsequently, having granted ONI's request for an extension of the deadline to provide the information, the company submitted, on 29.09.2020<sup>2</sup>, and on time, its answers to questions raised by ANACOM.

With regard to the question - «(a) *What information has ONI obtained from international operators, who delivered the concerned traffic to ONI, to the effect that the associated CLI has not been manipulated? Please submit all communications exchanged between ONI and these operators in this regard*», ONI states that it has contacted the following operators affected by this dispute: [SCI] [ECI] (according to communications attached<sup>3</sup>, for all due purposes).

Thus, in summary, according to ONI:

- With regard to [SCI] [ECI], «they conducted a comparative analysis between ONI's CDRs and their own and stated that they found no evidence of CLI manipulation and therefore did not accept the overbilled amounts. The amount in dispute is [SCI] [ECI]»;
- With regard to [SCI] [ECI], «they clarified that this traffic originated in support numbers of non-geographic numbers (of Call Centres), whereby support numbers were used in calls originated in those Call Centres, given that non-geographic numbers

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<sup>1</sup> Reference ANACOM-2020297154.

<sup>2</sup> Reference 006/REG/2020 (sent by e-mail).

<sup>3</sup> Attachments submitted comprise Excel files that include the affected traffic for [SCI] [ECI].

*cannot be used to originate calls. They did not accept traffic to be fraudulent and requested that the excess amounts not be charged. The amount in dispute is [SCI] [ECI];*

- With regard to **[SCI] [ECI]**, «*they informed that traffic concerned is originated on their communications platform, where a customer can register with a Portuguese CLI, so the operator holding the CLI will have no origination records of these calls. The amount in dispute is [SCI] [ECI]*»;
- With regard to **[SCI] [ECI]**, «*they informed that the CLI concerned are legitimately used by a Call Center, but that this originated traffic was being forwarded to a [SCI] [ECI]'s SIP trunk due to a configuration error (note that [SCI] [ECI] is a transit client of ONI, so this traffic was eventually delivered to MEO via ONI). The amount in dispute is [SCI] [ECI]*»;
- With regard to **[SCI] [ECI]**, «*they informed that evidence of fraud should be presented and that, in this case, they would try to collect the overbilled values from their customers. In the absence of evidence, given that it was not provided to us by MEO, they informed that ONI should credit the overbilled values to [SCI] [ECI]. The amount in dispute is [SCI] [ECI]*»;
- With regard to **[SCI] [ECI]**, «*they did not accept the amounts invoiced, as MEO did not provide evidence that the CLI had been manipulated. They informed that they would keep the dispute open until they received further information proving the existence of fraud, including a complaint filed by MEO to the police. The amount in dispute is [SCI] [ECI]*»; and,
- With regard to **[SCI] [ECI]**, «*they have stated that this type of traffic is generated on [SCI] [ECI] VoIP platforms, so the operator holding the originating numbering has no record of calls. The amount in dispute is [SCI] [ECI]*».

ONI further informs that values indicated are the values in dispute on account of the application by MEO of the non-regulated termination tariff, for the period from January to July 2020, including one month more than the period indicated in its initial communication requesting an administrative settlement of disputes. In this context, ONI further points out that the total amount in dispute in this period amounted to **[SCI] [ECI]**.

As regards the **questions - «b) Are there any cases of other national operators to whom ONI delivers, on international routes, calls from and to customers of that operator? If so, please identify them and indicate whether there is any case in which these operators have alleged CLI manipulation; and c) Are there similar cases regarding calls from and to ONI's own customers that are delivered on international routes by other operators? If so, please identify them and describe how such cases are handled in terms of termination rate»;**

ONI declares that [SCI]

[REDACTED]  
[REDACTED]  
[REDACTED]  
[REDACTED]  
[REDACTED]  
[REDACTED].

As such, ONI claims that [SCI]

[REDACTED]  
[REDACTED]  
[REDACTED].

In turn, in order to give an idea of the extent to which this type of traffic occurs with other national operators, including ONI itself, the requesting party analysed the traffic to national operators that was received on international routes during the period from 3 to 10 August 2020, inclusive.

To answer **question b)**, ONI identified calls with a CLI from and to the same national operator and recorded the following totals:

[SCI]

Operator	Fixed origin	Mobile Origin
[REDACTED]	[REDACTED]	[REDACTED]
[REDACTED]	[REDACTED]	[REDACTED]

[REDACTED]	[REDACTED]	[REDACTED]
<b>TOTAL</b>	[REDACTED]	[REDACTED]

**[ECI].**

To answer **question (c)**, ONI states that it is necessary to take into account that traffic from and to ONI mobile customers is [SCI]

[REDACTED]  
[REDACTED]  
[REDACTED]

[ECI]. In this analysis, ONI states that [SCI] [ECI] calls were identified.

ONI further declares that it is usual to deliver to national operators incoming international traffic from the destination operator's CLI, the most likely explanation, according to ONI, being the increasingly frequent use of IP communications platforms by users (e.g. Skype, Viber and the like).

Finally, ONI reports that [SCI]

[REDACTED]  
[REDACTED]  
[REDACTED]  
[REDACTED]  
[REDACTED]  
[REDACTED]

[ECI].

## 2. MEO'S POSITION

On 07.09.2020, MEO was sent to a letter<sup>4</sup> notifying it of the beginning of the procedure of administrative settlement of the dispute presented by ONI, so that the company, if it so wished, submitted a reply thereto. MEO submitted a timely reply<sup>5</sup> on 22.09.2020, having also provided clarifications to the questions presented by ANACOM.

### 2.1. Reply

As regards the presentation submitted by ONI, MEO states that there is a single interconnection with ONI, whereby no distinction is made between the delivery of traffic from ONI's customers or in transit. Furthermore, MEO holds ONI solely responsible for the traffic delivered by ONI to MEO as MEO has no commercial relationship with third parties in the scope of this specific traffic. MEO further states that the pricing charged by MEO has always been carried out in accordance with rules and tariffs communicated in advance to ONI.

MEO also refers that all the billing of this traffic has properly attached the respective detail, call by call, whereby the origin, destination, date, time and duration have been identified.

For its part, MEO restates that, notwithstanding ONI's allegations that, to date, it has not provided evidence of the alleged CLI manipulation, nor informed whether or not it had filed a complaint with the police, MEO did share the detail of calls in question, thus allowing ONI to identify the traffic and its classification as "usurpa", in accordance with the criterion that was recalled in the email sent by MEO to ONI on 15.06.2020, at 17:19. MEO also clarifies that it filed the criminal complaint with the competent authorities.

According to MEO, the non-regulated termination tariff of EUR 0.355/min for mobile destinations and EUR 0.015/min for fixed destinations, applied by MEO in the present situation, is applied by reference operators, including ONI itself.

MEO further informs that ONI has repeatedly engaged in the misconduct, that at the date of the decision the amount of the dispute was [SCI] [ECI], and that MEO's technical department had informed ONI of identified situations of misuse of CLI of MEO's customers. In this context, MEO refers that in the reported cases, ONI, following an internal analysis,

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<sup>4</sup> Letter with reference ANACOM-2020297152.

<sup>5</sup> Communication by e-mail.

replied that the traffic was blocked by its providers (according to document no 3, attached to its reply - an example that MEO says originated from a complaint made by one of MEO's customers, who was receiving return calls related to calls that he had not made).

## 2.2. Clarifications from MEO

As regards the clarifications requested by ANACOM, concerning the **questions - «a) On what grounds does MEO claim that there is CLI manipulation? Please provide relevant documents and other evidence; and b) By email sent by MEO to ONI on 15.06.2020, at 17:19, MEO refers that traffic is classified as “usurpa” «where the A-Number presented is a MEO customer, and we have no record of any call by this customer on that date and time, as such, the call was considered as “Manipulated CLI”». Please submit relevant documents and other evidence. In such situations, please indicate the reasons for applying a non-regulated termination rate»;**

MEO refers that it uses a computer app - called “*Sistema Integrado de Contadores Administrativos*” (SICA - Integrated Administrative Metering System) - to identify any CLI manipulation and to monitor/validate amounts to be billed. This app processes the Call Detail Records (CDRs) of all MEO exchanges/switchboards, in order to calculate the amounts to be billed for traffic delivered by operators and to validate traffic invoices presented by those operators. When any irregularity with a high probability of fraud is detected – according to MEO - all CDRs that exist in MEO’s network are collected, whereby a usurpation identification process is generated. According to MEO, this process aggregates all the respective A-number traffic registered in the MEO network with date/time, that is, all calls delivered or received from other operators.

MEO declares that this process allows it to verify how many calls were originated by a specific and duly identified MEO A-number (MEO customer), this number being compared with the number of calls delivered by operators to MEO in which this same MEO customer appears as A-number. According to MEO, when, in a given hour, an A-number does not have any call originated on the MEO network, the traffic delivered by other operators, with that same A-number, on that same date/time, does not correspond to reality, thus underlying a manipulation of the A-number. MEO further refers that, when this happens, SICA classifies the prefix as “usurped”.

The requested party further alleges that it sends operators a monthly report on the volume of usurped traffic and, upon request, details thereon, call by call. In the specific case of ONI, MEO states that this detail has been made available on a monthly basis, according to document no 1 of its reply. Moreover, MEO states that it has been receiving complaints from customers (who, according to MEO, are customers whose numbers have been usurped), regarding callbacks arising from calls in which their A-number has been manipulated/usurped (and attaches an example of an email exchange between MEO and ONI, in which MEO complains about such situation).

MEO ends this part of its reply declaring that whenever it identifies that an A-number has been manipulated, or that any other illicit practice has been conducted aiming at the return on fixed tariffs, MEO applies to the referred traffic the call termination tariff in force for invalid CLI/void CLI.

As regards the **question - «c) What are the criteria used by MEO when reviewing the amounts in dispute and which resulted in the credit notes issued and transmitted by MEO by email sent to ONI on 15.06.2020, at 16:06?»** - MEO states that these credit notes concern specific situations. Thus, it states that, following the dispute submitted by one of the operators regarding the registration of the A-number in the mobile network, MEO found that there were very specific situations in which the A-number was not being correctly identified. It further states that the problem was corrected and all traffic was reprocessed, whereby MEO carried out the respective credits to all operators involved. MEO also states that particular features were also identified in the indirect access traffic routed on S12 switches, reason why MEO claims that it also credited the billed traffic for this switch.

In respect to the **question - «d) Are there similar cases in which other operators deliver to MEO calls on international routes from MEO customers (and to MEO customers) for which MEO has no record of such calls having been made? If so, please identify them and describe procedures adopted by MEO regarding such cases»** -, MEO points out that it only has the evidence (CDR) of the call delivered by the operator with which it is interconnected, and has no information as to whether it was delivered to that operator on an international route.

On the other hand, for calls received from other operators with MEO A-number, MEO states that the method described above is always applied, regardless of the operator. MEO states

that, however, the only operators that have so far disputed this traffic are ONI [SCI] [ECI], reason why MEO says that, on 03.07.2020, it filed a criminal complaint at the national unit of the Judiciary Police (which it attaches to its complaint, as document no 2), which, according to MEO, has already been communicated to the Lisbon DIAP and is under investigation at UNC3T/SICIT of the Judiciary Police, with NUIPC 580/20.4JGLSB.

### 3. PROCEDURE FOR THE ADMINISTRATIVE SETTLEMENT OF DISPUTES

The dispute at hand here concerns a disagreement related to legal and regulatory obligations governing access and interconnection, which are set out in Chapter III (*Access and Interconnection*) of Title IV (*Market Analysis and Regulatory Control*) of the Electronic Communications Law. Specifically, the price control obligation in wholesale markets for call termination, imposed under paragraph 1 e) of article 66, and article 74, both of the Electronic Communications Law, is at issue.

Moreover, the dispute opposes two companies, ONI and MEO, which are subject, within the national territory, to compliance with the Electronic Communications Law. Therefore, requirements provided for in paragraph 1 of article 10 of the Electronic Communications Law are fulfilled.

With regard to the timeliness of the request for intervention – paragraph 2 of the aforementioned article 10 lays down that the «*intervention of the NRA shall be requested within a period of one year from the date on which the dispute commenced*» - , it is noted that ONI's request for intervention was received by ANACOM on 13.08.2020, the first communication exchanged between ONI and MEO on the present matter – according to documents attached as annex 1 to ONI's request – dating 13.05.2020, in which ONI expressly informs MEO that it has opened in this regard «*dispute regarding the surcharge amounts that MEO applied in January to April as USURPA, amounting to [SCI] [ECI]*». As such, the request is deemed to be timely.

In view of the above, based on information submitted by parties, both in the requesting party's initial request and in clarifications provided by parties, we find that ANACOM is competent to settle the dispute under consideration, pursuant to paragraph 1 of article 10 of the Electronic Communications Law, and no reasons have been found to justify the refusal of this request under article 11 of the Electronic Communications Law.

#### **4. PRIOR HEARING OF INTERESTED PARTIES**

By determination of 04.02.2021, ANACOM's Board of Directors approved the draft decision concerning ONI's request for intervention, under article 10 of the Electronic Communications Law, for the administrative settlement of the dispute opposing ONI and MEO, following the application by MEO of non-regulated termination tariffs to voice calls delivered by ONI, in transit of international routes, due to an alleged usurpation of these calls' CLI.

In this context, ANACOM's Board of Directors has decided:

- 1) to order MEO to apply the regulated termination rate to traffic identified as originating in the European Economic Area (EEA) through the calling party number (in the case of SS7) or other means, in compliance with ANACOM's decisions on the wholesale market for voice call termination on individual mobile networks and the wholesale market for call termination on public telephone networks at a fixed location;
- 2) the cases in which, during criminal proceedings, it is proven that the CLI was manipulated and which, as such, are subject to an unappealable court decision, shall be excluded from the previous point;
- 3) to submit the draft decision to a prior hearing of ONI and MEO, under articles 121 and 122 of the Administrative Procedure Code (APC), with companies being granted a 10 working day period to submit their written reply, if they so wish.

ONI and MEO respectively presented, on 17.02.2021<sup>6</sup> and 19.02.2021<sup>7</sup>, their timely replies to the draft decision, the right to a prior hearing being deemed to have been properly exercised by each of the interested parties within the scope of the present procedure, under the terms and for the purposes set forth in the APC.

The respective prior hearing report was drawn up - constituting an integral part of this decision – comprising replies received by ONI and MEO, as well as ANACOM's views thereon as regards issues relevant to the decision, as to matters of fact and law, substantiating the options taken, whereby reference is made to its full content.

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<sup>6</sup> With reference No 002/REG/2021 (sent by e-mail).

<sup>7</sup> Communication sent by e-mail.

It should be noted that MEO attached new elements of proof to the case-file (documents no 1 to 4 annexed to its reply), none of the parties having requested any additional steps to be taken, as admitted under the APC.

Having the content of statements submitted by interested parties to these proceedings been analysed, including the new evidence brought to the file by MEO, it is considered that no facts or elements have been provided that would result in a change to ANACOM's draft decision approved by determination of the Board of Directors on 04.02.2021.

Therefore, a final decision must be issued.

## **5. ANALYSIS OF THE DISPUTE**

This dispute is analysed, from a substantive point of view, on the basis of the legal and regulatory framework applicable to call termination rates, at issue here, in the context of price control obligations applicable to undertakings with significant market power (SMP) in the wholesale market for voice call termination on individual mobile networks<sup>8</sup> and in the wholesale market for call termination on public telephone networks at a fixed location<sup>9</sup> - *vide* article 66, paragraph 1 e) and article 74, both of the Electronic Communications Law and ANACOM's 2018 decisions in the scope of analyses of wholesale call termination markets.

### **5.1. Wholesale call termination markets**

In this context, it should be noted that ANACOM, in its market analyses – that is, the wholesale market for voice call termination on individual mobile networks and the wholesale market for call termination on public telephone networks at a fixed location -, in order to avoid competitive distortions in wholesale call termination markets, has determined maximum prices that SMP providers may charge in these markets<sup>10</sup>, based on the results of the “pure” LRIC costing model.

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<sup>8</sup> *Vide*, for all due purposes, ANACOM's decision, dated June 2018, available at [https://www.anacom.pt/streaming/DecisaoFinal21junho2018M2vPublica.pdf?contentId=1455116&field=ATTACHED\\_FILE](https://www.anacom.pt/streaming/DecisaoFinal21junho2018M2vPublica.pdf?contentId=1455116&field=ATTACHED_FILE).

<sup>9</sup> *Vide*, for all due purposes, ANACOM's decision, dated September 2018, available at [https://www.anacom.pt/streaming/Decisao\\_M1\\_VF.pdf?contentId=1460266&field=ATTACHED\\_FILE](https://www.anacom.pt/streaming/Decisao_M1_VF.pdf?contentId=1460266&field=ATTACHED_FILE).

<sup>10</sup> The request refers a dispute for the amounts billed from January to July 2020. During that period, the maximum price applied for fixed termination was EUR 0.047 cents. For the mobile termination the maximum price of EUR 0.40 cents was applied for the period between January and June 2020, from July the maximum price of these terminations was set at EUR 0.36 cents.

In fact, the price control obligation, based on the *principle of cost orientation*, is fundamental to ensure efficient pricing, eliminating competitive distortions and promoting efficiency, to the benefit of end consumers. In general terms, its primary objective is to avoid unfair prices, and, in this specific case, to ensure prices oriented to long-run incremental costs.

However, as further explained in chapter 6.4.4.3 of ANACOM's decision on the wholesale market for voice call termination on individual mobile networks and in chapter 7.3.4.1 of ANACOM's decision on the wholesale market for call termination on public telephone networks at a fixed location, the established price cap does not apply to calls originating from countries outside the EEA, without prejudice to these decisions' determinations as regards providers from outside the EEA who charge prices equal to or lower than the ones determined.

It thus follows that the regulated maximum termination prices do not apply only to calls originating in countries outside the EEA, such non-applicability having been determined, in 2015, for wholesale markets for voice call termination on individual mobile networks and later, in 2016, for wholesale markets for call termination on public telephone networks at a fixed location.

It should also be noted that this exclusion was maintained in ANACOM's 2018 decisions on both markets, at which time, however, it was decided that where termination prices charged by operators from non-EEA countries are equivalent to or lower than the regulated termination prices in Portugal, operators with SMP in Portugal are required not to charge higher than the regulated price.

As regards the fact that the price control obligation does not cover calls from countries outside the EEA, we refer to ANACOM's decision<sup>11</sup>, quoted here for clarity of reasoning:

*«(...) under the Framework Directive, transposed into national law (cf. paragraph 1b) of article 5 of the ECL), NRA are required to contribute to the development of the internal market, namely by removing remaining obstacles to the provision of electronic communications networks and services across Europe. Regulatory measures adopted by NRAs should therefore support the development of the internal market by avoiding unequal treatment of undertakings in similar circumstances.*

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<sup>11</sup> Cfr. pages 69 and 70 of ANACOM's decision.

*This is not at issue as regards calls originating outside the EEA, since in this case the limitations on the development of the internal market, or whether undertakings are in an equivalent position to European undertakings, are matters not in question. In the particular case of fixed terminations, the lack of harmonisation of pricing methodologies for providers outside the EEA, most of whom are not subject to ex-ante regulatory obligations, including price control obligations such as cost orientation, in particular as a result of the implementation of the EC Recommendation on termination rates, nor to any form of reciprocity, places providers concerned in very different circumstances from providers operating within the EEA.*

*(...) at EC level this is common practice in both fixed and mobile termination markets. Most European regulators have now notified the EC of the differentiated application of the price control obligation depending on whether or not the calls originate in the EEA, and there has been no opposition from the EC.*

*As such, and because it is considered that the regulatory objectives of the promotion of competition, consumer protection and reinforcement of the internal market are not undermined by the fact that the termination of traffic originating outside the EEA is not subject to the price control obligation, ANACOM believes that it is reasonable to give providers the possibility of setting prices which guarantee them greater tariff equivalence.» (emphasis added).*

On the other hand, for the purpose of determining the traffic origin, ANACOM's decisions indicate that nothing prevents the call termination service provider from requiring providers acquiring this service that voice calls delivered to them identify in some way the origin of the call or of the caller, for example by means of a calling party number (in the case of SS7) or by other means, for example among those identified in the International Telecommunications Union (ITU) Recommendation on International calling party number delivery<sup>12</sup>, whereby unidentified traffic may not benefit from the regulated price.

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<sup>12</sup> Available at <https://www.itu.int/rec/T-REC-E.157/recommendation.asp?lang=en&parent=T-REC-E.157-200911-1>.

However, while the application of the non-regulated tariff is clear when it comes to calls with a CLI outside the EEA area or whose origin is unidentified (that is, with no CLI), this does not seem to apply to cases reported by ONI.

Let us look at the evidence.

### 5.2. Origin of traffic identified

Upon analysis of the information contained in the clarifications of 29.09.2020, specifically in Excel files, with details of the affected traffic presented by ONI, relating to [SCI] [ECI], it is noted that geographic and mobile numbers, including ported numbers, are at issue, all of which belong to the national numbering plan (PNN) and to numbering blocks allocated by ANACOM. These calls were identified as having been originated in Portugal, with the possible exception of those that have been roamed, which does not mean, however, that they were not originated within the EEA.

Other documents provided by ONI in the clarifications provided on 29.09.2020, specifically regarding [SCI] [ECI], show evidence that calls are originated by customers of these companies through the use of communication platforms where the customer registers his number or which are used by call centre customers.

Although ONI has not presented the traffic affected in this dispute with the same level of detail for all providers who acquired the service, which would allow the origin and destination CLI involved to be verified, everything indicates from cases mentioned that this traffic is identified as having been originated in Portugal, namely from MEO customers. In this regard, it should be noted that this is, in any case, confirmed by MEO itself when it states that the caller ID (CLI) corresponds to its customers' numbers, that is, national numbers, thus within the EEA.

In turn, in the case of [SCI] [ECI], it is not possible to establish from documents provided by ONI in its clarifications that calls terminated in Portugal originated outside the EEA. In fact, these companies merely state that no evidence of fraud or CLI manipulation was presented.

[SCI] [ECI] declares that «*we are not able to confirm the statement about manipulation of the A-numbers in question*» (cf. e-mail dated 25.05.2020) while [SCI] [ECI] states that «*we cannot accept these adicional invoices as they have not prove that these clis are manipulated. To confirm what they say, we need more information that this traffic is really fraudulent*» (cf. e-mail dated 02.09.2020).

As regards the cases presented by ONI, the company suggests that MEO may not have a record of the calls, for example, because it is «*increasingly frequent [to] use IP communications platforms by users (e.g. Skype, Viber and similar)*» which is in line with the reality of the market, where there are solutions that enable the origination of calls through applications (e.g. VoIP) in which the end user is invited to register his own number(s) in those solutions/apps. The use of IP communication platforms by users will actually correspond to the cases indicated concerning [SCI] [ECI].

Furthermore, in the case of [SCI] [ECI], ONI refers that this company clarified «*that this traffic originated in support numbering of non-geographic numbers (of call centres), whereby the support numbering was used in calls originated in those call centres, since non-geographic numbering cannot be used to originate calls*». With regard to [SCI] [ECI], ONI mentioned that this company informed «*that the CLI concerned are legitimately used by a Call Center, but that this originated traffic was being forwarded to a [SCI] [ECI] SIP trunk due to a configuration error (note that [SCI] [ECI] is a transit client of ONI, so this traffic was eventually delivered to MEO via ONI)*». It follows that calls originated by call centre customers are originated through broadband accesses or IP solutions other than MEO's access, thus MEO will have no record of such calls.

In this context, it is relevant that nothing in the case-file suggests that ONI - and its providers, who acquire the service - have not observed the provisions of international recommendations in force on the matter, in this case, in the ITU Recommendation on International calling party number delivery, as referred to in ANACOM's decisions, and that they have not, with due transparency, implemented the parameter (CLI) that identifies the origin of calls - see point 7.1.3 of the Recommendation.

On the other hand, it does not seem to follow clearly from the fact that MEO does not keep a record of calls that the CLI may not identify the origin of the call. As a matter of fact, it should be noted that the [SCI] [ECI] clarifies, in this scope, that traffic is generated in VoIP platforms, adding that «*the operator holding the origin number does not have a record of calls*», and that [SCI] [ECI] clarifies «*that the traffic in question is originated in its communications platform, where a client may register with a Portuguese CLI, and therefore the operator holding the CLI will have no record of the origination of these calls*» - vide, for all due purposes, the clarifications provided by ONI on 29. 09.2020.

Furthermore, although MEO claims in its reply that «*when, in a specific time, a MEO A-number does not have any call originated on the MEO network, the traffic delivered by other operators, with that same A-number, at that same time, does not correspond to reality*», adding that this involves «*manipulation of the A-number*», upon analysis of the documentation attached to the file, it was found that alternative justifications have been presented by ONI for the absence of this correspondence, without CLI having necessarily been (illegitimately) manipulated, neither having it been proved that calls in question have been originated outside the EEA. Moreover, it is deemed that the fact that MEO does not have a call record does not provide the required proof that the alleged manipulation of the A-number took place.

As such, as regards document no 1 attached to MEO's reply, it merely consists of an email dated 08.09.2020, which refers to an attachment prepared by MEO (file 202008\_Usurpa ONI.XLSX, which is not attached), which is supposed to contain the traffic in relation to which MEO considered the respective origin number as “usurpa”.

As regards document no 3 attached to MEO's statement, which allegedly refers to the situation of a complaint from a MEO customer who is supposed to have received callbacks related to calls that he had not made - as alleged by MEO - «*resulting from calls in which his A-number is manipulated/usurped*», it could always be said that, although no information was presented as regards the alleged callback, it is also not possible to conclude from the information made available that there was CLI manipulation, as MEO alleges. It is noted that in the presented trace the call was answered.

In fact, MEO simply provides a single example including the trace of a call made on 17.06.2020 (from 16:29:10 to 16:30:58) from [SCI] [ECI] mobile number to [SCI] [ECI] mobile number, a situation that was analysed by ONI and therefore addressed. This seems, therefore, to be an isolated case, which has already been settled between ONI and MEO, in which ONI acknowledged an irregular practice in the use of that number, which does not necessarily apply to the other situations in question. Nothing further is submitted by MEO in order to demonstrate the alleged existence of CLI manipulation by ONI in respect of the affected traffic.

However, as explicitly mentioned above in point 4.1, it is clear that the non-imposition of the price control obligation on calls terminating in Portugal, on fixed and mobile networks, only covers calls originating in countries outside the EEA and unidentified traffic. In the present case, as the traffic in question is identified as having national origin, therefore within the EEA,

the applicable termination tariff should be the regulated tariff - thus in line with what was established in the aforementioned ANACOM decisions. If there is traffic with a different origin, that is, outside the EEA, MEO is not required to charge a regulated termination price. It should also be noted that the price cap also applies when prices outside the EEA are lower than or equal to regulated prices in Portugal.

In any case, if CLI manipulation is found to exist during ongoing criminal proceedings, the identification of the origin of the traffic ceases to be possible and, consequently, the assumption underlying the application of the regulated tariff ceases to exist.

### **5.3. Potential criminal offence**

For the purposes of the present dispute, it is relevant that the assessment of CLI manipulation, which constitutes a criminal offence, provided for and subject to punishment under the terms of the Criminal Code, should be dealt with in the proper forum, before the competent criminal police bodies.

So much so that MEO decided, once the potential situations of manipulation or usurpation of CLI «*or any other illicit practice committed with a view to avoid the fixed tariffs*» - as MEO itself refers - were detected, to file, on 03.07.2020, a criminal complaint with the Judiciary Police (according to document no 2 attached to its reply), against ONI and NOS Comunicações, S.A.

It should be stressed that MEO mentions, in article 9 of its criminal complaint, that it «*triggered a set of internal actions carried out by the wholesale area which resulted in the detection of irregular situations that indicate the existence of strong suspicions of fraud*this fraudulent interconnection is achieved through the manipulation of the origin A-number and terminations» (emphasis added) - which supports its view that this is a criminal case.

This is also ONI's understanding, as results from the e-mail dated 18.06.2020 addressed to MEO (attached to the initial request), in which ONI inquired directly with MEO about the following: «*should you consider that you have been the target of fraud, we would appreciate if you could send evidence of it and the respective criminal complaint*» (emphasis added).

As the parties to this dispute are well aware, without prejudice to its duty to provide collaboration to other organisations and bodies, including the police, with a view to the full

performance of its tasks, it is incumbent on ANACOM, as the Electronic Communications Regulator and in compliance with the principles of legality and speciality, not to interfere in the investigation already underway at the Central Department of Criminal Investigation and Action, but rather to settle this dispute within the scope of the powers and duties conferred upon it by law in accordance with the regulatory framework applicable to the case.

## 6. DECISION

In the light of the above, in pursuit of duties provided for in point a), f) and g) of paragraph 1 of article 8 of the Statutes, approved by Decree-Law No 39/2015, of 16 March, in exercise of powers provided for in point b) of paragraph 2 of article 9 of the same Statutes, as well as powers provided for in article 10 of the Electronic Communications Law, the Board of Directors, under point q) of paragraph 1 of article 26 of the Statutes, hereby determines as follows:

- 1) to order MEO to apply the regulated termination rate to traffic identified as originating in the EEA through the calling party number (in the case of SS7) or other means, in compliance with ANACOM's decisions on the wholesale market for voice call termination on individual mobile networks and the wholesale market for call termination on public telephone networks at a fixed location;
- 2) the cases in which, during criminal proceedings, it is proven that the CLI was manipulated and which, as such, are subject to an unappealable court decision, shall be excluded from the previous point.

Lisbon, 25 March 2021.