

## FINAL DECISION

### on the transfer to PT Comunicações, S. A. of rights of use for numbers held by PT Prime, S. A.

#### I. Background

By order issued on 12 December 2012 by one of the members of the Management Board of ICP - ANACOM, João Confraria, approval was given to the draft decision on the transfer to PT Comunicações, S.A. (PTC) of rights of use for numbers held by PT PRIME - Soluções Empresariais de Telecomunicações e Sistemas, S. A. (PT PRIME).

The referred draft decision provided as follows:

1. *To declare, with effect as from 29 December 2011, that, further to the respective process of merger by acquisition, ICP - ANACOM does not to oppose to the transfer from PT PRIME - Soluções Empresariais de Telecomunicações e Sistemas, S. A. to PT Comunicações S. A. of rights of use for the following resources of the National Numbering Plan, without prejudice to determinations laid down in points 3 to 5:*

STANDARD OR RECOMMENDATION	DESCRIPTION	RESOURCES ALLOCATED TO PT PRIME
E.164 (UIT-T)	Short numbers	1024; 1624
	Geographic numbers (blocks of 10.000 numbers)	"21040"; "21041"; "21042"; "21043" "21044"; "21045"; "21046"; "21047"; "21048"; "21049"; "22040"; "22041"; "22042"; "22043"; "22044"; "23124"; "23224"; "23320"; "23424"; "23524"; "23614"; "23824"; "23924"; "24124"; "24224"; "24324"; "24424"; "24524"; "24924"; "25124"; "25214"; "25314"; "25424"; "25524"; "25624"; "25824"; "25924"; "26124"; "26224"; "26324"; "26524"; "26624"; "26824"; "26924"; "27114"; "27224"; "27324"; "27424"; "27524"; "27624"; "27724"; "27814"; "27914"; "28124"; "28224"; "28324"; "28424"; "28514"; "28624"; "28924"; "29114"; "29224"; "29524"; "29624"
	Nomadic VoIP Service	30000 XXXX; 30001 XXXX
	Data network access service	6741XY000
	Universal access service	70702XXXX
	Free-of-charge calls for the caller service	80002XXXX
	Shared-cost call service	80802XXXX
Portability Regulation	NRN - Network Routing Number	D-024-C1C2C3
X.121 (UIT-T)	DNIC- Data Network Identification Code	268-4; 268-0
E.118 (UIT-T)	IIN – Issuer Identification Number	89-351-98

2. *To submit the use of numbering resources identified in the preceding paragraph to compliance by PT COMUNICAÇÕES, S. A. with conditions laid down in article 37 of ECL.*
3. *To order PT COMUNICAÇÕES, S. A., not to assign to its clients available numbers of blocks of non-geographic numbers with a lower percentage of use, of the Universal Access Service, Free-of-Charge Calls for the Caller Service or Shared-Cost Call Service, as well as numbers that cease to be active in these blocks, and to report to this Authority every year, by the last day of January of the following year, the state of occupation of “frozen” blocks.*
4. *To establish a time-limit of one year from the date of approval of the final decision for the return to ICP - ANACOM of the following resources:*
  - a. *One Indirect Access Provider code: 1020 or 1024;*
  - b. *One Call Centre number: 1624 or 1620;*
5. *To establish a time-limit of two years from the date of approval of the final decision for the return to ICP - ANACOM of the following resources:*
  - a. *One issuer identification number (IIN) - “89-351-98” or “89-351-99”, after the migration process to be developed by PT Comunicações, S.A., according to commitments undertaken with users/cards that use such numbers.*
  - b. *Two of the three data network identification code (DNIC): 268-0, 268-4 and 268-2.*
  - c. *The Network Routing Number (NRN): “D024”.*
6. *To submit this draft decision to the prior hearing of PT Comunicações, S. A., for the purpose of articles 100 and 101 of the Administrative Procedure Code, a 10-working day time-limit being set for the company to comment on its contents in writing.*

Having been notified for the purpose, PTC submitted its comments in due time, within the scope of the prior hearing.

The report for this process was subsequently drafted, and is deemed to be an integral part of this decision, including a summary of the positions expressed by PTC, as well as ICP - ANACOM's views on issues raised in this scope.

## **II. Assessment**

### **1. Request**

By letter sent to ICP - ANACOM on 5 January 2012, PTC informs that on 29 December 2011, it applied for the registration of the merger by acquisition of PT PRIME into PTC, with the competent Commercial Registry, «*taking into account the tacit authorization granted by the Minister of Economy*».

The company points out that with the application for registration of the merger, the formal extinction of PT PRIME takes place, and by law its rights and obligations are transferred to it, «*in particular those resulting from qualifying documents for the pursue of activities in the*

sector of electronic communications, documents allocating rights of use for numbers and codes of the National Numbering Plan and documents allocating rights of use for frequencies».

PTC thus requests that ICP - ANACOM undertakes the update of relevant registers, taking into account that it has taken over all rights of use of numbering resources in ranges “1”, “2”, “30”, “67”, “70702”, “80002” and “80802”, as well as corresponding obligations.

Specifically as regards the right of use for numbers corresponding to the company code “024” allocated to PT PRIME, the company stresses that *“technical aspects and possible economic impacts related to the possible removal of situations where an overlap of numbering resources may exist are still ongoing an evaluation process. As such, PT Comunicações will maintain the coexistence of NRN codes it currently accumulates (020 and 024), until all aspects related to the integration into PTC of PT PRIME’s infrastructures and numbering resources are solved, in particular, until a solution is defined regarding NRN changes in migration procedures to be developed, so as to minimize the respective impacts on networks and subscribers. »*

Acknowledging that *“numbering resources are scarce and that there may be situations where an overlap could lead to a single company holding surplus resources»*, PTC declares it is willing, together with ICP - ANACOM, to analyse and define the best way to eliminate such overlap situations.

Lastly, PTC informs this Authority that it *“also informed subscribers that the merger operation had taken place and that obligations arising from contracts concluded with PT PRIME, namely as regards the provision of electronic communications services, now fall on PT Comunicações”*.

## 2. Framework

PT PRIME is registered with ICP - ANACOM as an operator of a public network and as a provider of electronic communications services, being qualified to provide the following services:

- Internet access service;
- Data transfer service;
- Speech transport service within closed user groups;
- Satellite communications services;
- Fixed telephone service;
- VoIP service.

For the provision of these services, PT Prime was allocated by ICP - ANACOM the following numbering resources:

STANDARD OR RECOMMENDATION	DESCRIPTION	RESOURCES ALLOCATED TO PT PRIME
E.164 (UIT-T)	Short numbers	1024; 1624

	Geographic numbers (blocks of 10.000 numbers)	"21040"; "21041"; "21042"; "21043" "21044"; "21045"; "21046"; "21047"; "21048"; "21049"; "22040"; "22041"; "22042"; "22043"; "22044"; "23124"; "23224"; "23320"; "23424"; "23524"; "23614"; "23824"; "23924"; "24124"; "24224"; "24324"; "24424"; "24524"; "24924"; "25124"; "25214"; "25314"; "25424"; "25524"; "25624"; "25824"; "25924"; "26124"; "26224"; "26324"; "26524"; "26624"; "26824"; "26924"; "27114"; "27224"; "27324"; "27424"; "27524"; "27624"; "27724"; "27814"; "27914"; "28124"; "28224"; "28324"; "28424"; "28514"; "28624"; "28924"; "29114"; "29224"; "29524"; "29624"
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<b>Portability Regulation</b>	NRN - Network Routing Number	D-024-C1C2C3
<b>X.121 (UIT-T)</b>	DNIC - Data Network Identification Code	268-4; 268-0
<b>E.118 (UIT-T)</b>	IIN – Issuer Identification Number	89-351-98

Contrary to what is stated in the request under consideration, PT PRIME does not hold any right of use for frequencies.

## 2.1. Electronic Communications Law (ECL)

Law No. 5/2004, of 10 February, as amended and republished by Law No. 51/2011, of 13 September (Electronic Communications Law - ECL), which establishes the legal regime applicable to electronic communications networks and services and to associated facilities and services, and defines the assignments of the national regulatory authority in this field, lays down in its article 17 that ICP - ANACOM is charged with *"managing the National Numbering Plan according to the principles of transparency, efficiency, equality and non-discrimination, including the establishment of conditions for the allocation and use of national numbering resources"*.

Under article 36 of ECL, the use of numbers depends on the granting of rights of use, which according to article 38 of ECL, may be transferred under terms and conditions to be established by ICP - ANACOM. Such terms and conditions must provide for mechanisms intended to safeguard, in particular, the effective and efficient use of numbers and rights of users.

## 2.2. Code of Commercial Companies

In this context, attention must also be drawn to article 112 of the Code of Commercial Companies, according to which, having the merger been entered in the commercial register, the companies to be acquired or, where a new company is established, all merged companies, are extinguished and all rights and obligations are transferred to the acquiring company or to

the new company. Members of extinct companies become members of the acquiring company or of the new company.

### **3. Analysis of the request**

As a preliminary matter, it must be stressed that PTC declares that, in compliance with article 26 of the Bases of Concession of the telecommunications public service<sup>1</sup>, it obtained from the Grantor, the Portuguese State, a prior authorization to promote the merger operation now under consideration.

It is also clarified that, as referred above, PT PRIME does not hold any right of use for frequencies. If it did, the respective transfer would be subject to the procedure laid down in article 34 of ECL, namely the requirement for holders of rights of use for frequencies to previously communicate their intention to this Authority. This means, in this specific case, that PT PRIME would be subject to comply with the obligation to communicate its intention to ICP - ANACOM before the merger operation took place, given that such operation would involve the transfer of its rights of use.

Analysing this specific request, it is concluded that the merger by acquisition that involved the overall transfer of PT PRIME's assets to PTC, and in the scope of which obligations that fell on PT PRIME were fully transferred to the acquiring company - PTC -, entails, as such, the transfer of rights of use for numbers, which must be assessed by this Authority under article 38 of ECL.

Being incumbent on ICP - ANACOM to safeguard, under the applicable and above-mentioned legal provisions, the effective and efficient use of numbers, it must be verified whether, in the scope of this transfer of rights of use for numbers, the acquiring company - PTC - acquires resources it would not be able to obtain through a primary assignment, in the light of current allocation criteria and, consequently, measures to be applied in case of an accumulation of resources as would be contrary to these criteria should be decided on. This particularly concerns criteria based on (i) the minimum 60% rate of the usage capacity of previous assignments of numbers which may be assigned to subscribers, and (ii) unit allocations, for numbers identifying the operator or the network.

It is well known that mergers by acquisition between two operators and the correspondent transfer of rights of use for numbers may generate situations of accumulation of resources in cases where companies involved have been allocated the same type of numbers, due to the provision of the same type of numbers.

Given that PTC and PT PRIME are providers of services of a similar nature, although with different target markets, this transfer led PTC to accumulate numbering resources where it already held resources<sup>2</sup>.

Different cases resulting from the accumulation of numbering resources according to their type are identified and analysed below:

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<sup>1</sup> Published in annex to Decree-Law No. 31/2003, of 17 February.

<sup>2</sup> It is recalled in this scope a similar situation already analysed in 2008 by ICP - ANACOM, in the scope of which, on 29 December 2008, a Decision was issued with specific measures for each type of resources ([Transfer to SONAECOM of rights of use for numbers](#)).

- A. In case **numbers are used to identify network termination points** where terminals are connected and which identify the respective subscribers - geographic and nomadic numbers ("2" and "30" ranges) and numbers of non-geographic services ("707", "800" and "808" ranges) - it is deemed that the accumulation of resources may be authorized without constraints that imply the return of telephone numbers being used, as this would affect user interests, which mainly concern the maintenance of its numbers.

However, given that the protection of user interests must be reconciled with the general principle of effective and efficient use of numbering resources, in particular with the objective of ensuring that the provider that accumulates resources holds no competitive advantage to relatively to others who are in the same market with lower conditions of access to numbering resources, it is relevant to provide for conditions that prevent a possible benefit of this nature.

Non-geographical numbers usually have a special commercial value of association to companies or brands, and the ease of memorization is an added value conferred in the way how digits are grouped.

From an initial set of available numbers it is of course possible to establish a larger set of easily memorized numbers - the so-called "golden numbers".

For this reason, while it is important to maintain non-geographic client numbers (e.g. call centres), it must be also ensured that the referred benefit does not exist relatively to non allocated numbers (vacant or becoming vacant) of surplus blocks, preventing them from being allocated/reallocated, and "freezing" the blocks to which they belong.

- B. In case of **numbers that are used to identify the network or specific points of the network to which final users are not connected**, or other **numbers or codes that identify the operator/provider**, it is deemed relevant that the alternative of migrating them to a single number or range is adopted, and that released resources are returned to ICP - ANACOM.

Depending on whether there are commercial effects related to these numbers, likely to entail an undue competitive advantage, different return deadlines may be justified. A similar approach was adopted by ICP - ANACOM in its Determination of 29 December 2008.

- i. **Call centre numbers** - 1624 and 1620 - and **numbers used as prefix for operator selection or pre-selection purposes** - 1020 and 1024

These numbers have a commercial value. Given that the provision of different services by PTC and PT PRIME is not at stake, it is deemed that one number of each service should be discontinued and returned to this Authority, within a reasonable period of time for companies to implement network changes and to publicize to the market or to allow it to get used to the change of numbers, thus minimizing impacts on the operator itself or on its subscribers. Moreover, as regards the call centre service, the use of a single number, of the 16xyz format, is compatible with a possible market segmentation, residential market versus business market. Like the 2008 Decision, a one-year period of time is deemed to be reasonable.

- ii. **Resources allocated to data networks (X.121) in UIT** - the International Telecommunications Union - (DNIC – Data Network Identification Code) and the issue

of **cards in the scope of UIT Recommendation E.118** - (IIN - Issuer Identification Number)

With this transfer, PTC accumulates resources of its own with others of the same type held by PT PRIME. There are no reasons, in the perspective of the safeguard of user rights, that justify such an accumulation for an unlimited period of time. There seems to be also no commercial interest in these numbers that entails an advantage. As such, and in order to prevent any upstream operational or logistic return constrains, it is deemed reasonable to set a period of two years for the return of these resources by PTC.

iii. **Network Routing Numbers (NRN)** - “D” and 024 (PT PRIME) and 020 (PTC) service code

The Portability Regulation as well as the contract for provision of services established between the Reference Entity (RE) and providers with portability obligations, lay down mechanisms that enable the change of NRN of all numbers ported from one operator involved in the merger to the other, ensuring the return of this type of resource to ICP - ANACOM with no significant impact for PTC or for other operators involved in portability operations.

The experience from decision of 23 December 2009 ([Return of numbering resources by Sonaecom - alteration of decision](#)), in which ICP - ANACOM reviewed the conditions associated to the return of this type of resource, and bearing in mind the volume of numbers ported-in by PT PRIME, even if this involves mostly DDI (Direct Dialling In) ranges from business/corporate clients, leads this Authority to believe that the migration process should not be rushed, due to the impact on the capacity of systems of all operators with portability obligations and on systems of the ER. For this reason, it is deemed that this resource may be returned within a two-year period.

iv. **Numbering resources of the data network access service, in dial up mode** - “67” numbering range

The return of this type of resources implies the implementation of a migration process that requires changes in the settings of installed equipment, with operational and logistic costs for operators which are disproportionate with the current decline of the service.

In this scope, ICP - ANACOM has already taken the view, by determination of 30 August 2012<sup>3</sup>, to authorize the accumulation of resources in code “67” of the National Numbering Plan by the same provider, as a result of mergers and/or acquisition of companies, involving the data network access service accommodated in this range.

Consequently, to safeguard principles set out, it is incumbent on ICP - ANACOM to determine, among numbers whose rights of use were transferred from PT PRIME to PTC, which resources should be returned and by which period of time, and which conditions should be complied with in the use of remaining resources. Without prejudice, it must be stressed that any single number allocated and not activated or block of numbers with no activated numbers or in quarantine must at any level be returned to ICP - ANACOM.

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<sup>3</sup> Available at '[Accumulation of numbers for data network access services, as identified by PNN code "67"](#)'.

In the light of the above, it is concluded that the use of numbers transferred to PTC must be made subject to rules that safeguard its efficient management and which at the same time appropriately ensure the rights of users and the minimisation of costs borne by operators.

It is thus deemed that, except for resources accumulated in code “67”, numbers or blocks of numbers that, for the above-mentioned reasons, may not be accumulated by a single provider, must be the subject of a migration plan aimed at the return to ICP - ANACOM of resources released in the meantime. PTC is entitled to decide which numbers are returned for each type of resource.

This is a matter which ICP - ANACOM will monitor in detail so as to ensure, on the one hand, the effective and efficient use of numbers by PTC and, on the other hand, non-discrimination in the conditions of access to resources of the National Numbering Plan between the company and other operators/providers of electronic communication services.

The referred merger by acquisition of PT PRIME into PTC will be considered in the scope of the settlement of the fee due for the use of numbers, under articles 18 to 22 and annex III to Administrative Rule No. 1473-B/2008, of 17 December, as amended and republished by Administrative Rule No 296-A/2013 of 2 October.

### III. Decision

In the light of the above and in accordance with powers granted to ICP - ANACOM under paragraph 1 b), f) and h) of article 6 of its Statutes, published in annex to Decree-Law No. 309/2001, of 7 December, in the pursue of regulatory objectives set out in paragraphs 1 a) and 2 d) of article 5 of ECL, pursuant to articles 17, 37 and 38 of ECL and in the exercise of competencies delegated under paragraphs 4 n) and 17 of Determination No. 810/2012, published in the Official Gazette, II Series, No. 117, of 19 June 2012, **it is hereby decided:**

1. To acknowledge, with effect as from 29 December 2011, that, further to the respective process of merger by acquisition, the rights of use of the following resources of the National Numbering Plan were transferred from PT PRIME - Soluções Empresariais de Telecomunicações e Sistemas, S. A. to PT Comunicações S. A., without prejudice to points 3 to 5:

STANDARD OR RECOMMENDATION	DESCRIPTION	RESOURCES ALLOCATED TO PT PRIME
E.164 (UIT-T)	Short numbers	1024; 1624
	Geographic numbers (blocks of 10.000 numbers)	“21040”; “21041”; “21042”; “21043” “21044”; “21045”; “21046”; “21047”; “21048”; “21049”; “22040”; “22041”; “22042”; “22043”; “22044”; “23124”; “23224”; “23320”; “23424”; “23524”; “23614”; “23824”; “23924”; “24124”; “24224”; “24324”; “24424”; “24524”; “24924”; “25124”; “25214”; “25314”; “25424”; “25524”; “25624”; “25824”; “25924”; “26124”; “26224”; “26324”; “26524”; “26624”; “26824”; “26924”; “27114”; “27224”; “27324”; “27424”; “27524”; “27624”; “27724”; “27814”; “27914”; “28124”; “28224”; “28324”; “28424”; “28514”; “28624”; “28924”; “29114”; “29224”; “29524”; “29624”



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	Data network access service	6741XY000
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Portability Regulation	NRN - Network Routing Number	D-024-C1C2C3
X.121 (UIT-T)	DNIC- Data Network Identification Code	268-4; 268-0
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2. To submit the use of numbering resources identified in the preceding paragraph to compliance by PT COMUNICAÇÕES, S. A. with conditions laid down in article 37 of ECL.
3. To order PT COMUNICAÇÕES, S. A., not to assign to its clients available numbers of blocks of non-geographic numbers with a lower percentage of use, of the Universal Access Service, Free-of-Charge Calls for the Caller Service or Shared-Cost Call Service, as well as numbers that cease to be active in these blocks, and to report to this Authority every year, by the last day of January of the following years, the state of occupation of “frozen” blocks.
4. To establish a time-limit of one year from the date of approval of this decision for the return to ICP - ANACOM of the following resources:
  - a. One Indirect Access Provider code: 1020 or 1024;
  - b. One Call Centre number: 1624 or 1620.
5. To establish a time-limit of two years from the date of approval of this decision for the return to ICP - ANACOM of the following resources:
  - a. One issuer identification number (IIN) - “89-351-98” or “89-351-99”, after the migration process to be developed by PT Comunicações, S.A., according to commitments undertaken with users/cards that use such numbers.
  - b. Two of the three data network identification codes (DNIC): 268-0, 268-4 and 268-2.
  - c. The Network Routing Number (NRN): “D024”.

Lisbon, 29 May 2014.