

# DECISION

## 1. Application

By communication received on 14 March 2016, MEO - Serviços de Comunicações e Multimédia, S. A. (MEO) claimed and applied to this Authority as follows:

- On 18.2.2016 the company become aware of ANACOM's decision to renew rights of use for frequencies (RUF) allocated in the 2100 MHz band for terrestrial electronic communications services;
- The decisions taken include the removal of the obligation to report on a six-month basis up-to-date information on services and facilities provided, as well as on prices charged, which follows from the repeal, with effect as from 22.04.2018, of point a) of paragraph 8 of title ICP-ANACOM No. 02/2012 issued to the company;
- Given the stated reasons for removing this reporting obligation and the fact that maintaining it up to 2018 seems not to be in accordance with the principles of appropriateness, proportionality and substantiation provided for in paragraph 4 of article 108 of ECL, MEO «(...) *requests ANACOM to clarify whether operators to whom the referred RUF were issued are released, with immediate effect, from the referred obligation.*»

## 2. Framework

2.1. By determination of 17 November 2015<sup>1</sup>, ANACOM approved a draft decision (DD) on the renewal of rights of use of frequencies allocated in the 2100 MHz band to NOS Comunicações, MEO and Vodafone Portugal - Comunicações Pessoais for terrestrial electronic communications services.

Point 4.3. of the referred DD, on commitments of the UMTS public tender, provided as follows:

*NOS, MEO and VODAFONE are, in this scope, obliged to follow through the commitments made in bids within the public tender for allocation of licenses for international mobile telecommunication systems (IMT2000/UMTS), in particular the following:*

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<sup>1</sup> Available at <http://www.anacom.pt/render.jsp?contentId=1372749>.

- a) *To make available a set of special offers to low-income customers, customers with special needs, customers of rural and peripheral areas and institutions of proven social value, namely schools, libraries and hospitals;*
- b) *To make available services and to implement a price policy and packages according to principles set out in the bid.*

*(...)*

*As a result, ANACOM takes the view that there are no grounds for the reference to the above-mentioned point a).*

*ANACOM considers also that at this point in time there are also no grounds for the obligation specified earlier in point b). In fact, almost fifteen years on from the submission of bids in the scope of the allocation of UMTS licenses, and having also operators been allocated rights of use for new frequency bands in the scope of the Multiband Auction, significant developments have taken place, at technological and market levels, with a strong impact in services and tariffs provided by NOS, MEO and VODAFONE. As such, it became inappropriate to maintain operators subject to principles which had been provided for in the referred bids, in the scope of services to be provided and price policy and packages to be implemented.*

*In this context, the referred points a) and b) are removed from the corresponding paragraphs in titles ICP-ANACOM No. 01/2012, ICP-ANACOM No. 02/2012 and ICP-ANACOM No. 03/2012. (emphasis added).*

**2.2.** In the scope the prior hearing and as far as the issue under consideration is concerned, the following comments were received, as explained in the corresponding report<sup>2</sup>:

*“**MEO** endorses ANACOM’s intention to remove from titles the commitments related to the development of the information society undertaken by operators in bids submitted for IMT2000/UMTS systems. The company considers, consequently, that there are no grounds to maintain the obligation provided for in point a) of paragraph 8 of title No. 02/2012, “To submit, by the 20<sup>th</sup> consecutive day of the month following the end of each semester, up-to-date information on services and facilities provided, as well as on prices charged”, imposed in the scope of the allocation of licenses for IMT2000/UMTS systems, thus its removal is proposed.”*

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<sup>2</sup> Available at Report <http://www.anacom.pt/render.jsp?contentId=1372752>.

**NOS** endorses also the removal of obligations undertaken in proposals submitted to the public tender for allocation of licenses for IMT2000/UMTS systems and considers that it should imply also the removal of the reporting obligation laid down in point a) of paragraph 8 of its title, deeming that due consideration is required where the obligation is maintained, in particular in the light of the provision in paragraph 4 of article 108 of the Electronic Communications Law. The company thus proposes the removal of this obligation, or where ANACOM takes the view that it maintains its relevance, the company requests that the Authority clarifies and substantiates the reasons for which the referred reporting obligation is maintained, in accordance with the mentioned article 108.” (emphasis added).

2.3. In the corresponding report, approved on 18 February 2016, ANACOM stated the following opinion on this issue:

“ANACOM takes the view that the obligation on operators to report to this Authority on a six-month basis “up-to-date information on services and facilities provided, as well as on prices charged” may be effectively removed.

*This does not mean that ANACOM, under articles 108 and 109 of the Electronic Communications Law, is not entitled to request companies to submit the necessary information to verify whether conditions established in article 32 thereof are complied with, in particular commitments undertaken in bids submitted to the public tender for allocation of licenses for international mobile telecommunication systems (IMT2000/UMTS).*” (emphasis added).

2.4. On 18 February 2016, ANACOM approved a final decision on the renewal of rights of use of frequencies allocated in 2100 MHz band for terrestrial electronic communications services<sup>3</sup>, which states as follows:

“(…) ANACOM takes the view that there are no grounds for the reference to the above-mentioned point a), and at this point in time there are also no grounds for the specification in point b), thus both points are removed from the corresponding paragraphs in titles ICP-ANACOM No. 01/2012, ICP-ANACOM No. 02/2012 and ICP-ANACOM No. 03/2012.

Moreover, point a) of paragraph 8 of titles ICP-ANACOM No. 01/2012 and ICP-ANACOM No. 02/2012, and of paragraph 9 of title ICP-ANACOM No. 03/2012, concerning the obligation to report on a six-month basis up-to-date information

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<sup>3</sup> Available at <http://www.anacom.pt/render.jsp?categoryId=385598> .

*on services and facilities provided, as well as on prices charged, is also removed.* (emphasis added).

However, point 6.8 (of the final and operative part of the decision) sets out as follows:

*“Endorsements to titles ICP-ANACOM No. 01/2012, ICP-ANACOM No. 02/2012 and ICP-ANACOM No. 03/2012, as set out in Annex I hereto, shall only take effect as from 5 June 2018, 22 April 2018 and 6 May 2018, respectively, titles with the current wording remaining in force until such dates”.*

### **3. Analysis**

It may be inferred, from the above-mentioned procedure background, how ANACOM's views evolved, in the sense that the reporting obligation became devoid of purpose, in the light of the fact that the decision on corresponding UMTS obligations had been exhausted.

Notwithstanding, and despite the conclusion that such reporting obligation could be removed, as its maintenance was no longer justified due to the fact that grounds for such removal already existed, ANACOM failed to clearly draft point 6.8. of its decision.

In fact, by not granting immediate effect to the removal of obligations on UMTS commitments and in particular to the removal of the reporting obligation here under consideration, having drafted the referred point by general reference to endorsements to approved RUF titles (which provide both for new obligations and for the removal of former obligations), ANACOM incurred in a material error which must now be remedied, given that - by default - the Authority drafted something quite different (or less) than what it intended, given that, in the case of these specific obligations, it would make and still makes sense, as indirectly results from the grounds set out in the DD and the final decision maintained, that ANACOM's decision took immediate effect.

### **4. Decision**

As such, concluding that it was not clear in its expression of will, or at least not as clear as it was in the course of the respective procedure, ANACOM, under articles 32 and 33 of the Electronic Communications Law, in the exercise of powers conferred under article 9, paragraph 1 b), and under point q) of paragraph 1 of article 26, both of its Statutes, approved by Decree-Law No. 39/2015, of 16 March, hereby determines that in point 6.8 of its decision of 18 February 2016, on the renewal of rights of use for

frequencies allocated in 2100 MHz band for terrestrial electronic communications services, for:

*“Endorsements to titles ICP-ANACOM No. 01/2012, ICP-ANACOM No. 02/2012 and ICP-ANACOM No. 03/2012, as set out in Annex I hereto, shall only take effect as from 5 June 2018, 22 April 2018 and 6 May 2018, respectively, titles with the current wording remaining in force until such dates.”*

read:

*“Endorsements to titles ICP-ANACOM No. 01/2012, ICP-ANACOM No. 02/2012 and ICP-ANACOM No. 03/2012, as set out in Annex I hereto, shall only take effect as from 5 June 2018, 22 April 2018 and 6 May 2018, respectively, titles with the current wording remaining in force until such dates, except as regards amendments introduced to point a) of paragraph 8 and paragraph 14 of titles ICP-ANACOM No. 01/2012 and ICP-ANACOM No. 02/2012, as well as to point a) of 9 and paragraph 15 of title ICP-ANACOM No. 03/2012, which shall enter into force immediately.”*

Lisbon, 7 July 2016