

**Decision on the transfer of rights of use for numbers held by Nortenet – Sistema de Telecomunicações, S. A., to G9SA – Telecomunicações, S. A.**

**1. Request**

By letter submitted to ICP - ANACOM received on 4 October 2011, G9SA – Telecomunicações, S. A. (G9SA) and Nortenet – Sistema de Telecomunicações, S. A. (Nortenet) notified this Authority that, further to a merger process, Nortenet had been acquired by G9SA.

The merger operation consisted in the global transfer of Nortenet's assets (company being acquired), which ceased to exist, to G9SA (acquiring company) which maintained its legal existence and the same corporate name.

The companies stress that, as technically services were provided by the same infrastructure, there was no interruption of user supply, nor any alteration, not notified, of prices of services provided. Consequently, they take the view that there is not loss of rights on the part of users or subscribers.

In support of their request, companies also submit as follows:

- a) They do not hold any rights of use for frequencies;
- b) Numbering resources associated to Nortenet, that holds only resources of the 67xxxx range, complement numbering resources allocated to G9SA, thus being guaranteed the effective and efficient use of numbers and user rights;
- c) The merger, for the size and complementarity of operations, has no impact on relevant product markets, nor any implications at competition level, namely in terms of creation of dominant position power;
- d) No termination of provision of services to Nortenet's users is planned, nor their unavailability for a period of time, the access to services being ensured continuously and without any interruptions;
- e) There are no numbering resources (NNP) assigned to Nortenet's subscribers, thus there is no need to ensure any portability requirement;
- f) Nortenet's operations are deemed to be carried out by G9SA, for accounting purposes, as from 30 September 2011;
- g) Data, name, address, contacts and management elements concerning G9SA are maintained.

On the basis of the above, G9SA requests as follows:

1. The update of information on G9SA at ICP - ANACOM, as far as the acquisition of Nortenet's activity is concerned, and the corresponding termination of this company's entry in the register;
2. Update of the information on its own register, licenses and respective annual fees;

3. Authorization for and register of the transfer of rights of use for numbers held by Nortenet to G9SA.

## 2. Framework

According to information available at ICP - ANACOM, G9SA is an electronic communications service provider qualified by this Authority for the provision of the following services:

- fixed telephone service (as from 13.11.2003);
- public communications network (as from 13.11.2003);
- public pay-phone service (as from 29.08.2005);
- nomadic VoIP service (as from 16.11.2006).

The company operates in the residential and non-residential segments and started providing fixed telephone services on 12 July 2004 and nomadic VoIP services on 25 September 2006.

To ensure the provision of such services, the following numbering resources were allocated by ICP - ANACOM: 1045; 1645, 1845, 30450xxxx; 60045xxxx; 24949xxxx; 21145xxxx; 22145xxxx; 26545xxxx; 70745xxxx; [70]845xxxx; 76045xxxx; 76145xxxx; 76245xxxx; 80045xxxx; 80845xxxx; 80945xxxx; 88245xxxx; 88445xxxx; 2 ISPC (2-223-2 and 3), 32 NSPC (14-0-0 to 31) and 1 NRN (045).

Since 2009, G9SA' shareholders are as follows (updated on 31.12.2010):

- Alexandre Melo ..... 33,33%
- Alexandre Alves ..... 33,33%
- João Perdigoto ..... 33,33%

Nortenet, on the other hand, was qualified by ICP - ANACOM to provide the following services:

- Internet access service (as from 30.06.1998);
- data transfer service (as from 30.06.1998);
- nomadic VoIP service (as from 06.02.2008), the provision of which did not begin.

In this scope, ICP - ANACOM allocated the following numbering resources: 6744xy000 and 6780xy000.

The provision of the Internet access service and data transfer service, aimed for the residential and non-residential segments, terminated on 30 September 2011.

Since 2005, Nortenet was wholly owned by Interacesso, SGPS, S. A.,which was invested, since 2009, by **[SCI] [ECI]**.

The entry in the commercial register of the merger between Nortenet and G9SA is dated 30 September 2011, according to data published in the *Portal da Justiça*.

## **2.1. Electronic Communications Law (ECL)**

Law No 5/2004, of 10 February, as amended by Law No 51/2011, of 13 September (ECL - the Electronic Communications Law), which establishes the legal regime that governs electronic communications networks and services and 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*".

According to article 38 of ECL, rights of use of numbers may be transferred under terms and conditions to be established by ICP - ANACOM, which terms and conditions must provide mechanisms intended to safeguard, in particular, the effective and efficient use of numbers and rights of users.

As far as the G9SA' request is concerned, paragraph 7 of article 21 must also be highlighted, according to which undertakings that cease the provision of electronic communication networks or services are required to inform ICP - ANACOM about it at least 15 days in advance. Further to this communication e under article 21-A, this Authority must cancel the respective entry in the register of undertakings providing electronic communications networks and services, which ICP - ANACOM maintains and publishes in its website pursuant to paragraph 1 e) of article 120 of ECL.

## **2.2. Code of Commercial Companies**

In this context, attention must be drawn to article 112 of the Code of Commercial Companies, according to which, having been entered the merger 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**

In the electronic communications sector, ECL ensures (by transposing the framework defined at Community level) the «*freedom to provide electronic communications networks and services*» (article 19, paragraph 1).

However, it does not follow from this regime that whoever does not wish to remain in the market (for the provision of electronic communications networks and services) must do so, without prejudice, of course, to the need for compliance with the obligations to safeguard specifically the interests of consumers or of other economic actors, that in this scope may be determined by law or by the Regulatory Authority.

In this specific case, Nortenet cannot but be considered to be free to not wish to pursue its activity the way it did before, opting for a new strategic model intended to "*meet future challenges in a stronger manner (...) with an increased creation of value for shareholders, as well as promoting the provision of better services to users*". (sic)

Having analysed the request, it is found that the acquisition merger process, that involved the global transfer of Nortenet's assets to G9SA and in the scope of which obligations falling on Nortenet were fully transferred to the acquiring company - G9SA -, thus involves the transfer of rights of use for numbers allocated to Nortenet.

Being incumbent on ICP - ANACOM to safeguard, under the above mentioned applicable legal provisions, the effective and efficient use of numbers, it must be verified whether this transfer of rights of use for numbers does not entail any overlap of numbering resources to the ownership of the acquiring company - G9SA.

After examining allocated numbering resources, it must be concluded that there is no overlap, as numbering resources allocated to Nortenet, which only holds resources of the "67" range, must be distinguished from numbering resources allocated to G9SA. As so, provided the maintenance of an effective and efficient use of numbers, ICP - ANACOM is of the opinion that it has no reservations to impose relatively to the transfer to G9SA of Nortenet's rights of use for numbers.

Moreover, as this is a process of acquisition merger that does not entail the transfer of numbering resources assigned to Nortenet's subscribers, no issues concerning numbers likely to be ported or migrated to G9SA are raised.

On the other hand, as G9SA currently ensures services previously provided by Nortenet, ICP - ANACOM takes the view that interests of users of this company's services are safeguarded.

In this context, having analysed the request of interested parties, ICP - ANACOM concludes that, in a numbering management perspective, nothing prevents the full transfer of Nortenet's numbering rights to G9SA.

The merger process of Nortenet' acquisition by G9SA will be taken into account as far as the settlement of the fee due for use of numbers is concerned, under articles 18 to 22 and annex III of Administrative Rule No 1473-B/2008, of 17 December, as amended and republished by Administrative Rule No 291-A/2011, of 4 November.

Lastly, bearing in mind that, according to information available at ICP - ANACOM, both Nortenet and G9SA have very low shares in the (different) markets in which they operate, ICP - ANACOM considers that this transfer of rights of use for numbers does not have a relevant impact on the market such as to require the launching of a general consultation procedure, established as such in article 8 of ECL.

Taking also into account that elements of this procedure lead to a decision that is favourable to interested parties and that meets their request, is also deemed that the prior hearing of Nortenet and G9SA may be waived, under paragraph 2 b) of article 103 of the Code of Administrative Procedure.

#### **4. Determination**

In the light of the above, the **Management Board of ICP - ANACOM**, in the scope of assignments provided for in paragraph 1 f) 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 paragraph 1 a) and paragraph 2 d) of article 5 of ECL, under articles 17, 21-A and 38 of ECL and

in the exercise of powers bestowed on it by article 26, point I) of the referred Statutes, hereby determines:

- 1.** To authorize, without prejudice to the guarantee of compliance with the condition of effective and efficient use of numbers, under paragraph 1 b) of article 37 of ECL, the transfer from Nortenet – Sistema de Telecomunicações, S. A. to G9SA – Telecomunicações, S. A. of the right of use of the following resources of the National Numbering Plan: 6744xy000 and 6780xy000.
- 2.** To cancel the entry of Nortenet – Sistema de Telecomunicações, S. A. in the register of companies providing electronic communications networks and services.
- 3.** To alter the entry of G9SA – Telecomunicações, S. A., in the register of companies providing electronic communications networks and services, so as to include services that it started providing further to the merger process, as well as the set of numbering resources that have been allocated and that are as follows: 1045; 1645, 1845, 30450xxxx; 60045xxxx; 24949xxxx; 21145xxxx; 22145xxxx; 26545xxxx; 70745xxxx; 70845xxxx; 76045xxxx; 76145xxxx; 76245xxxx; 80045xxxx; 80845xxxx; 80945xxxx; 88245xxxx; 88445xxxx; 2 ISPC (2-223-2 and 3), 32 NSPC (14-0-0 to 31) and 1 NRN (045).
- 4.** To waive the prior hearing of Nortenet – Sistema de Telecomunicações, S. A. and of G9SA – Telecomunicações, S. A., under paragraph 2 b) of article 103 of the Administrative Procedure Code.