

Final Decision

DISTRIBUTION OF PARISHES AS TEND TO LACK MOBILE BROADBAND COVERAGE

1. BACKGROUND AND PRIOR HEARING

By determination of 2 March 2017¹, ANACOM decided as follows:

- 1. To approve the agreement concluded between MEO - Serviços de Comunicações e Multimédia, S.A., NOS Comunicações, S.A., and Vodafone Portugal - Comunicações Pessoais, S.A., on the distribution of the 196 parishes each company is required to cover, in order to meet additional coverage obligations imposed under determination of 18 February 2016, as laid down in Annex 2 to this determination, deemed to be an integral part hereof.*
- 2. To define the geographic scope of additional coverage obligations imposed on each operator, under the referred determination of 18 February 2016, in accordance with the list of distribution of parishes as tend to lack mobile broadband coverage, approved under the previous point, which thus becomes an integral part of titles laying down rights of use for frequencies ICP-ANACOM No. 01/2012, ICP-ANACOM No. 02/2012 and ICP-ANACOM No. 03/2012.*

ANACOM further decided, in the abovementioned determination, «*3. To order MEO - Serviços de Comunicações e Multimédia, S.A., NOS Comunicações, S.A., and Vodafone Portugal - Comunicações Pessoais, S.A., to notify ANACOM by 21 March 2018 of any amendment, bilateral and consensual, to this agreement, for the purpose of approval thereof*», having submitted this point to the prior hearing of the referred companies for 10 working days, pursuant to articles 121 et seq of the Administrative Procedure Code.

By the expiry of the prior hearing time limit, on 17.03.2017, only the opinions from NOS and MEO had been received, having the latter declared that it *has no comment to make on the referred prior hearing*.

On its turn, NOS referred that the draft decision under consideration *restricts the benefits that justified the operators' proposal to consider the possibility of additional bilateral exchanges, given that a true assessment of conditions of coverage implementation, as well as the consequent detection and/or confirmation of interest in additional exchanges, will only take place in the course of the period of time for implementation, which, as foreseen by ANACOM, may run up to 2019.*

The company restates that the definition of bilateral exchanges is without prejudice to interests intended to be safeguarded by coverage obligations and it allows greater efficiency of resources, thereby requesting that point 3 of the DD is given further consideration, so that the limit provided therein is extended, preferably by one more year.

Highlighting the fact that only NOS expressed its disagreement with the draft decision, ANACOM takes the view that no new arguments were provided to justify the amendment of point 3 of its decision.

¹ Available at <https://www.anacom.pt/render.jsp?contentId=1406721>.

In this regard it is recalled that determination of 18 February 2016 only provided for the possibility, in the absence of an agreement between operators or in case of a partial agreement, that ANACOM decided on the distribution of parishes. In this situation, it was admitted that operators could agree on an exchange of parishes that had been assigned to each of them within one month at the most – a situation which did not take place, as operators were able to reach an agreement on the distribution of parishes, agreement which has already been approved by ANACOM.

Notwithstanding, this Authority did weight the submitted request, by offering operators the possibility to make bilateral exchanges of parishes by mutual agreement. In weighing up the situation, ANACOM considered that the agreement for distribution of parishes as tend to lack mobile broadband coverage must stabilize, and any bilateral and consensual amendment thereto duly approved, by the date of entry into force of obligations for additional coverage of these parishes, being thereby appropriately ensured a predictable compliance with coverage obligations, both in the perspective of operators and of final users of services.

In this context, and while acknowledging that any subsequent bilateral exchange of parishes would not affect the ultimate target of additional coverage obligations, ANACOM provided for the postponement by an (additional) period of around one year (by 21 March 2018) of the deadline for the referred bilateral exchanges, by mutual agreement, granting operators a longer period of time to plan and assess the detection and confirmation of interest in additional exchanges.

In conclusion, ANACOM reiterates the grounds that justified its initial decision, namely the need to ensure, in a timely and final manner, the stability of the approved agreement, and the respective public disclosure, restating that this is the option that seems to be most appropriate, in the light of the various interests involved.

2. FRAMEWORK

In the scope of the process of renewal of rights of use for frequencies (RUF) in the 2100 MHz band (1920-1980 MHz/2110-2170 MHz sub-band) allocated to MEO – Serviços de Comunicações e Multimédia, S.A. (MEO), NOS Comunicações, S.A. (NOS) and Vodafone Portugal - Comunicações Pessoais, S.A. (VODAFONE), ANACOM took the view that some conditions different than those initially established in the respective titles should be imposed, having deemed it appropriate and proportional to determine the imposition of additional coverage obligations on these operators as provided for in its determination of 18 February 2016².

ANACOM thus approved a list of 588 parishes as tend to lack mobile broadband coverage (defined according to the methodology described in point 4.2.2 of the referred determination) and determined that MEO, NOS and VODAFONE were each required to cover 196 of such parishes, within at the most one year from the date of renewal of the relevant RUF (which shall take place by the middle of 2018).

For the purpose of the distribution of the referred parishes, ANACOM set a one-year period of time from the notification of the final decision on the renewal of RUF under

² Available at <https://www.anacom.pt/render.jsp?contentId=1380120>.

consideration for operators to notify the Authority of the decision on the distribution that is reached by agreement.

The determination of 18 February 2016 further lays down that it is incumbent on ANACOM to approve the result of this agreement, in the absence thereof or in case of a partial agreement, to decide on the distribution of parishes not covered by the agreement, carrying out for this purpose a random selection of parishes, which shall determine the order in which operators will select parishes by turns, one by one, until all parishes have been assigned.

After the random selection, operators are given up to one month during which they may agree on the exchange of parishes that have been assigned to each of them.

Having the agreement and/or result of the random selection, as appropriate, been approved, the geographic scope of coverage obligations is deemed to be defined, such obligations thus becoming an integral part of titles laying down renewed rights of use for frequencies in the 2100 MHz band.

3. AGREEMENT FOR DISTRIBUTION OF THE 588 PARISHES

On **18 February 2016**, MEO, NOS and VODAFONE were notified of the referred determination that, on that same date, approved the renewal of rights of use for frequencies allocated in the 2100 MHz. As from this date, operators had one year to notify ANACOM of their decision on the distribution of the 588 parishes as tend to lack mobile broadband they are required to cover (196 parishes each).

By notification received on **6 February 2017**, MEO, NOS and VODAFONE informed ANACOM of an agreement for the distribution of all 588 parishes, having requested the approval thereof.

By determination of 2 March 2017, ANACOM approved the agreement for distribution of the 196 parishes each operator must cover for the purpose of compliance with additional coverage obligations imposed under determination of 18 February 2016, according to the list in annex to the referred determination, thus being defined the geographic scope of the referred obligations, which became an integral part of titles laying down rights of use for frequencies ICP-ANACOM No. 01/2012, ICP-ANACOM No. 02/2012 and ICP-ANACOM No. 03/2012.

4. AGREEMENTS FOR BILATERAL EXCHANGES OF PARISHES

In addition, companies requested, in the scope of the approval of the referred agreement, that the possibility to make bilateral exchanges of parishes, subsequently and by mutual agreement, was explicitly safeguarded, suggesting that this possibility was admitted up to the date of compliance with additional coverage obligations arising from the renewal of their RUF, ANACOM being informed (by parties involved in the bilateral exchange) within at the most 10 days from the date on which the bilateral agreement was reached, for the purpose of approval thereof.

To support their request, companies alleged that is the possibility *that best safeguards the public interest, as it guarantees greater efficiency in the application of general resources, without preventing the objective of mobile broadband coverage, for which 588 parishes were identified, from being reached.*

As far as this request is concerned, it must be stressed, first and foremost, that determination of 18 February 2016 establishes, that in the absence of an agreement or in case of a partial agreement, a random selection of parishes is to be carried out, to determine the order in which operators will select parishes by turns, one by one, until all parishes have been assigned. Only in this situation was it provided that operators would be able to agree, within one month at the most, on the exchange of parishes that had been allocated to them.

Without prejudice, and notwithstanding the fact that ANACOM considers, in fact, that any subsequent bilateral exchange of parishes would not affect the ultimate target of imposing additional coverage obligations, nor the public interest underlying such imposition, it must be safeguarded that the distribution of the referred parishes is stabilized, and duly approved by this Authority in good time.

It is noted that the approval of the agreement for distribution of parishes defines the geographic scope of additional coverage obligations imposed in this scope on the three operators, which is to be integrated in the corresponding titles laying down rights of use for frequencies, and which, as such, must be published and widely disclosed, in the light of the public interest underlying their imposition.

In this context, ANACOM considers that bilateral parish exchanges by mutual agreement may be allowed, however a deadline must be set for communication of any amendment to the agreement for distribution of the 588 parishes as tend to lack mobile broadband which is now approved, thereby ensuring its timely and final approval, as well as its public disclosure.

Taking into account that additional coverage obligations shall only enter into force as from the renewal of RUF, which will take place on 21 April, 4 June and 5 May 2018, respectively for MEO, NOS and VODAFONE, it is deemed appropriate to establish 21 March 2018 as the deadline for communication by operators to ANACOM of any amendment to the distribution of the referred parishes that results from bilateral exchanges that are agreed on subsequently to the approval of the agreement concerned by this determination.

5. DECISION

Therefore, pursuant to and for the purpose of its determination of 18 February 2016, and further to its determination of 2 March 2017, approving the agreement for distribution of parishes as tend to lack broadband, the **Management Board of ANACOM**, 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 orders MEO - Serviços de Comunicações e Multimédia, S.A., NOS Comunicações, S.A., and Vodafone Portugal - Comunicações Pessoais, S.A., to notify ANACOM, by 21 March 2018, of any amendment, bilateral and consensual, to this agreement, for the purpose of approval thereof.

Lisbon, 20 April 2017.