

FINAL DECISION

Whereas:

1 - In the context of the radio spectrum refarming in the 900 MHz and 1800 MHz frequency bands, ICP-ANACOM decided, by determination of 8 July 2010, to unify the conditions governing the exercise of the rights of use for frequencies assigned to OPTIMUS – Comunicações Pessoais, S.A. (Optimus), TMN - Telecomunicações Móveis Nacionais, S.A. (TMN) and VODAFONE PORTUGAL – Comunicações Pessoais, S.A. (Vodafone) for the provision of the land mobile service (GSM and UMTS).

2 - The new unified documents issued to these companies (Right of Use for Frequencies - RUF - ICP-ANACOM 01/2010, 02/2010 and 03/2010, respectively) laid down the obligation to send to ICP-ANACOM a wide range of information, namely:

(i) A set of elements to be sent regularly to this Authority, which was defined in article 4 of the three documents issued, including the following information:

(i1) Updated information on implemented services and facilities, as well as on charged prices (to be sent to ICP-ANACOM until the 20th consecutive day of the month following the end of each semester);

(i2) Information on coverage achieved by each operator in the provision of voice and data services up to 9600 bps, data services with transmission speeds of up to 144 kbps and data services with transmission speeds of up to 384 kbps. These elements are intended to verify compliance with the respective coverage obligations, as well as to monitor their evolution, and must be submitted by the 20th consecutive day of the month following the end of each calendar year;

(i3) Information on quality of service in the provision of voice and data services up to 9600 bps, data services with transmission speeds of up to 144 kbps and data services with transmission speeds of up to 384 kbps. These elements are intended to monitor compliance with quality of service obligations set out in these documents and must be sent to ICP-ANACOM by the 20th consecutive day of the month following the end of each calendar year;

(i4) Information on how to implement the site-sharing proposal adopted at the public tender for allocation of licenses for international mobile telecommunications systems (IMT2000/UMTS), to be sent to this Authority by the 20th consecutive day of the month following the end of each calendar year;

(ii) A second set of elements, specified in paragraph 2 of article 7 of the documents issued to Vodafone and TMN, to be sent to ICP-ANACOM within 60 working days from the date of issue of the unified documents.

This set concerns coverage information, within the scope of the provision of voice and data services up to 9600 bps, achieved by each company by the date of issue of the new documents, as well as the methodology and assumptions for the respective calculation. These elements will be the benchmark for future assessment of compliance by these companies of the coverage obligations relating to those services.

3 - In addition to obligations referred to in item 2, the documents also provide for:

- Companies' obligation to notify any amendments to the respective statutes within 30 days from the date on which such amendments take place; and

-The obligation to provide, within the time-limit and in the way laid down for this purpose by ICP-ANACOM, any additional information requested within the scope of article 108 of Law number 5/2004, of 10 February, as amended by Law number 51/2011, of 13 September, for the purposes specified in article 109 thereof.

4 - After documents in question were issued, ICP-ANACOM considered it relevant that the information referred to above in points (i2) to (i4) and (ii) of item 2 was structured by means of specific questionnaires. This Authority was also of the opinion that to effectively monitor compliance with all coverage and quality of service obligations set out in the RUF at issue, those questionnaires should include:

- Some elements, particularly concerning coverage, in addition to those already established in those documents (e.g. information about the total population coverage verified at the date of issue of those documents, more detailed and harmonized information on the technical parameters and assumptions used to calculate the coverage of voice and data services up to 9600 bps¹);

- A clarification of some of the information mentioned above in points (i2) to (i4) and (ii) of item 2, otherwise such information may not be established and reported by the providing companies with the desired degree of harmonization.

This was in fact evidenced through the analysis of the information sent in 2010 by TMN and Vodafone, under paragraphs 2 and 3 of article 7 of the respective RUF. This Authority anticipated also that it would be justified based on the information to be sent at the end of January 2011 by those two companies and also by Optimus in accordance with article 4 of the respective unified documents.

5 - In the light of the previous item, by determination ANACOM-D000018/2011, of 20 January 2011, ICP-ANACOM decided to submit to the prior hearing of interested parties, pursuant to article 100 and 101 of the Code of Administrative Procedure, a draft decision (DD) concerning, *inter alia*:

- a) The approval of an *ad-hoc* questionnaire, to be completed by TMN and Vodafone, intended to structure, clarify and supplement the information specified in paragraphs 2 and 3 of article 7 of documents ICP-ANACOM 02/2010 and 03/2010;
- b) The approval of an annual questionnaire to be completed by Optimus, TMN and Vodafone, intended to structure, clarify and supplement the annual information specified in article 4 of documents ICP-ANACOM 01/2010, 02/2010 and 03/2010;
- c) The imposition on TMN and Vodafone of the obligation to submit to ICP-ANACOM an annual statement confirming that, for the voice and data services up to 9600 bps, the total population coverage levels, per location with more than 10,000 inhabitants and per municipality, remained at least comparable to those verified on the date of issue of the new unified documents.

¹ Definition of elements, such as coverage target range maps and their methodology of calculation, as had been laid down specifically in the scope of information on UMTS coverage by determination of ICP-ANACOM of 19 March 2008.

6 - In late January 2011, TMN, Optimus and Vodafone, before becoming aware of the questionnaires included in this DD, sent to ICP - ANACOM the information provided for in points c) to d) of paragraph 1 and in paragraph 2 of article 4 of the respective RUF. The analysis of these elements led to the conclusion that, in fact, and as anticipated by this Authority, they were generally not sufficiently harmonized and complete to be used by ICP-ANACOM in the exercise of its powers.

7 - In the meantime, in the scope of the prior hearing granted to interested parties, referred to in item 5, the comments of the three companies holding the aforementioned RUF were received, within the time limit for assessment of the matter.

8 - ICP-ANACOM subsequently drew up the corresponding prior hearing report, concluding that the proposed contents of the previously approved DD should be generally maintained; however, there were ground to make some adjustments to the questionnaires provided for therein and to clarify some issues on the DD which were raised in the comments received.

Pursuant to point n) of paragraph 1 of article 6 and to point b) of article 9 of the Statutes of ICP-ANACOM, attached to Decree-Law number 309/2001 of 7 December, to point s) of paragraph 1 of article 27 and to article 108, and for the purposes of point c) of paragraph 1 of article 109, all of Law number 5/2004, of 10 February, as amended by Law number 51/2011, of 13 September, the Management Board of ICP-ANACOM hereby determines as follows:

1. To approve the *ad-hoc* questionnaire included in **Annex 1**, which structures, clarifies and supplements the information requested under paragraphs 2 and 3 of article 7 of RUF ICP-ANACOM 02/2010 and 03/2010;

2. TMN and Vodafone shall recast and supplement the information already submitted to this Authority under paragraphs 2 and 3 of article 7 of the respective RUF, by replying to the questionnaire referred to in the preceding paragraph, and these responses must be sent to ICP-ANACOM within at the most 20 consecutive days from the date of receipt by companies of the notification of approval of that questionnaire;

3. To approve the questionnaire in **Annex 2**, which structures, clarifies and supplements the information to be sent annually to this Authority under points c) and d) of paragraph 1 and paragraphs 2 and 3 of article 4 of RUF ICP-ANACOM 01/2010, 02/2010 and 03/2010;

4. In 2011, Optimus, TMN and Vodafone shall recast and supplement the information on the end of 2010 already submitted to this Authority under points c) and d) of paragraph 1 and in paragraphs 2 and 3 of article 4 of the respective RUF, by replying to the annual questionnaire referred to in the preceding paragraph, and these answers must be sent to ICP-ANACOM within at the most 20 consecutive days from the date of receipt by companies of the notification of approval of that questionnaire;

5. Except for the provision in the preceding paragraph, as regards the response concerning the end of 2010, the reply of each company to this annual questionnaire must be sent to ICP-ANACOM by the 20th consecutive day of the month following the end of each calendar year and must be reported by the end of that calendar year;

6. The elements identified in Part B of the questionnaires included in **Annexes 1 and 2** of this final decision apply not only to the provision of MLS according to GSM and UMTS, but also according to other systems to be authorized in the future by this Authority in accordance with Decision 2009/766/EC, replacing the set of technical elements previously approved as part of ICP-ANACOM determination of 19 March 2008, which only applied to the results on UMTS coverage and which were communicated to Vodafone, TMN and

Optimus by letters ANACOM-S05666/2008, ANACOM-S05116/2008 and ANACOM-S05600/2008 of 4 April 2008;

7. Without prejudice to the reply to the annual questionnaire included in **Annex 2**, Optimus, TMN and Vodafone must continue to send to this Authority the biannual information specified in point b) of paragraph 1 of article 4 of the respective RUF;

8. Together with the information of the questionnaire included in **Annex 2**, TMN and Vodafone must submit to ICP-ANACOM each year a statement confirming that, on 31 December of the previous year, for the voice and data services up to 9600 bps, the total population coverage levels, per location with more than 10,000 inhabitants and per municipality, remained at least comparable to those verified on the date of issue of the respective RUF (8 July 2010) and reported in the respective responses to the *ad-hoc* questionnaire in **Annex 1**. This statement must be signed by a person who has authority to bind the companies concerned and its submission shall be without prejudice to any additional supervising, inspecting and monitoring action to be undertaken by this Authority, within the scope of its powers;

9. By submitting to ICP-ANACOM, within the time-limit set out above in paragraph 2, the elements requested in the *ad-hoc* questionnaire included **Annex 1**, TMN and Vodafone comply with their obligation to send to this Authority the information required, under article 7 of the respective unified documents, for the purpose of determining levels of coverage that at the date of issue of those documents were guaranteed in the provision of voice and data services up to 9600 bps;

10. By submitting to ICP-ANACOM, within the time-limit set out for the purpose, the elements requested in the annual questionnaire included in **Annex 2** and the biannual information specified in point b) of paragraph 1 of article 4 of RUF ICP-ANACOM 01/2010, Optimus complies with its obligation to send to this Authority the regular information currently required for exercising its powers to enforce the conditions laid down in that RUF and to monitor the evolution of the coverage achieved by providing companies. In the case of TMN and Vodafone, this information must include, in addition to the response to the same annual questionnaire and biannual information specified in point b) of paragraph 1 of article 4 of the respective RUF, the annual statement referred to in paragraph 8 hereof;

11. Without prejudice to the two preceding paragraphs, the ICP-ANACOM is entitled to request companies to send additional information, namely under article 108 of Law number 5/2004 of 10 February, as amended by Law number 51/2011 of 13 September, and point e) of paragraph 1 of article 4 of RUF ICP-ANACOM 01/2010, 02/2010 and 03/2010;

12. ICP-ANACOM will establish contacts with operators in order to develop a common methodology to be adopted by companies for an effective assessment of network performance parameters. Until this common methodology is defined and adopted, each company must determine and report information on quality of service to ICP-ANACOM based on criteria used so far, completing for this purpose the annual questionnaire included in **Annex 2**.