

Framework concerning the designation of a new numbering range for the mobile telephone service

1. Introduction

On 31 October 1999, a uniform and closed format was incorporated in the National Numbering Plan (NNP), setting a 9 digit structure, which for mobile numbers altered the code assigned to each operator from 3 to 2 digits, excluding the middle digit. This change enabled, for each operator, an available numbering capacity of 10 million numbers.

This situation of resources covered in only three ranges of two digits, one for each mobile telephone service operator, conditioned the general market to the effect of a one-to-one link between the code – 91, 93, 96 – and mobile operator – Vodafone, Optimus, TMN. In fact, ICP-ANACOM, in the scope of the issue of the two first GSM licenses, operators themselves through their commercial action and even users as a result of such action and tariff gaps between on-net and off-net calls, reinforced the link between code and operator. Only later, on January 2002, the introduction of operator portability in mobile networks started to undermine this idea, although in a fairly crude way, given the low level of ported numbers registered in the mobile telephone service.

Within this framework, ICP-ANACOM, having recently received a request from a mobile telephone service operator for the allocation of additional rights for the use of mobile numbers, considered that it should report the assessment carried out in the scope of its responsibilities at the level of NNP management, which is the subject of this document.

2. The request

On 26 April 2007, TMN – Telecomunicações Móveis Nacionais, S.A. (TMN) submitted to ICP-ANACOM a request for the allocation of rights of use of new blocks of 10000 numbers for the mobile telephone service, claiming the company already had an occupation rate of numbers allocated to active customers exceeding 60% of all allocated resources. TMN identified in its request the state of available resources.

Based on the “Principles and criteria for the management and allocation of numbering resources”, “*A request for the allocation of numbers may be rejected where the requesting party has not reached 60% of capacity use in the scope of prior allocations*”. It is considered that a rate of use above 60% is a condition for accepting a request for allocation. This has become general practice of ICP-ANACOM, and thus TMN’s request

has fulfilled the conditions to be met, given the occupation of numbers which have been allocated. It is incumbent upon ICP-ANACOM to act in the scope of competencies laid down in the ECL, meeting requests that comply with these conditions, based on rational, proportionate and effective criteria, according namely to provisions of articles 17, 33, 34 and 35 of that Law.

Nevertheless, the framework of TMN's request should be introduced in an open and transparent way, although it merely requires an administrative act of NNP management from ICP-ANACOM, as this does not constitute a measure with significant impact on the relevant market, and thus does not demand the general consultation procedures provided for in article 8 of Law no. 5/2004, of 10 February (ECL). It is thus useful that the position of ICP-ANACOM on this matter and respective grounds, supported on the ECL and on principles which have guided ICP-ANACOM's action in the scope of rights of use of numbers, are made known to the general market, and specially, to companies that are able to enjoy rights of use of NNP numbers.

3. Assessment

The NNP (E.164) accommodates services, whose codes of 1, 2 or 3 digits point towards the service under consideration. Thus, digit "2" corresponds to the fixed telephone service, "30" to the nomadic VoIP service, "800" to free services for the caller, and "9" to the mobile service, including in this last case, all mobile services that require numbering resources as means to ensure interoperability between users. Except for the fixed telephone service, which still discriminates 51 geographical areas in Portugal, identified in an intermediate field in the structure of level "2" numbers, for the other services, the numbers that follow supply a numbering capacity which is directly and immediately able to be allocated by ICP-ANACOM to providers who are able to enjoy the respective rights of use.

In fact, as made public at the website of ICP-ANACOM as far as the NNP is concerned, two informative elements provide that:

- (i) Level "9" is dedicated to Mobile Communications Services¹, the "91", "93" and "96" specific codes being identified for the purpose of the Land Mobile Service.
- (ii) The primary allocation of numbers, both geographic and specific for services, is carried out in blocks of 10.000 numbers².

This means that codes "91", "93" and "96" are integrated in a level which is first dedicated to mobile services – "9"- and then designated to the so-called mobile telephone service. The 1000 blocks of 10.000 numbers each result from the respective licenses, prior to the NNP, and from the structure introduced in 1999 by the NNP. Conceptually, the mechanism applied for other services is also used in the scope – identification of the

¹ <http://www.anacom.pt/template12.jsp?categoryId=2388>

² Except for specific situations which have been listed. See <http://www.anacom.pt/template12.jsp?categoryId=2432>

code and correspondent service in the NNP, following the allocation of the available capacity in the framework of established criteria. For reasons which are mainly historic, connected in particular to the NNP restructure method, it has not been necessary to allocate rights of use of mobile numbers in the way followed for the rights of use of geographic or nomadic numbers. This, however, is a feature specific to Portugal. In other European countries, regulators have typically granted rights of use of mobile numbers in groups of 1, 10 or 100 blocks of 10.000 numbers, not all at once. This practise leads to a better management of resources, with the consequent gains in effectiveness of use, avoiding, in some cases³, the automatic relationship between the first number digits and the operator, in advance of what portability itself was meant to achieve, as mentioned above, with benefits to the market.

It would be thus meaningless at present to continue to allocate ranges of 10 million numbers to a single operator, which would constitute a clear excess given the present needs and would lead to an inefficient use of numbering resources – thus failing to comply with the ECL – with strong negative consequences for the sustainability of the current NNP in the medium and long term.

As numbering resources in the ranges “91”, “93” and “96” have run out in allocation of rights already carried out, ICP-ANACOM may only find the necessary numbering reserve in available adjoining ranges. As it has been defined that level “9” is the appropriate level for mobile communication services, the procedure for opening a new range does not differ from the current procedure for allocating additional rights of use of numbers in a new block to a company which has used already 60% of numbers, the rights of which had been conferred for that purpose. The act of assigning adjoining ranges, once at a time, for the mobile telephone service, thus represents a mere NNP management decision, which pursuant to article 17, paragraph 2, point b) of the ECL, is incumbent upon ICP-ANACOM.

On the other hand, the NNP’s technological neutrality (E.164) and its aim to provide access to services without highlighting specific networks or systems, or providers with specific features, was behind ICP-ANACOM’s position of 9 February 2007, on the regulatory framework for the activity of MVNOs⁴. In its position, ICP-ANACOM considered that the allocation of rights of use of “9” numbers depended only on the mobile telephone service offer, regardless of the business model chosen by the MVNO – whether full or light. This model may thus be restricted to a mere retail offer, without requiring the installation and operation of an operators’ own means – networks or systems – as far as the establishment of communications is concerned. Thus, the existence of an offer of a mobile telephone service as an autonomous commercial product is enough in order for the allocation of rights of use of “9” numbers to apply.

³ Spain, France, Switzerland, the United Kingdom, among others, have allocated resources in an intercalated fashion among mobile operators. See the case of this last country at: http://www.ofcom.org.uk/telecoms/ioi/numbers/numbers_administered/s7.xls

⁴ <http://www.anacom.pt/template31.jsp?categoryId=234406#16#16>.

Under these conditions, given the numbering need on the part of companies providing mobile telephone services, both those already operating in the market, and others who may enter the market, and as the capacity of “codes” for the “91”, “93” and “96” available services has already run out, it is necessary to make a choice between the remaining ranges (“92”, “95”, “97”, “98”, “99” and “90”), for the same purpose. It should be stressed that the “94” range already accommodates codes for the shared resources mobile service and the maritime mobile service.

ICP-ANACOM hereby opts for code “92”, as merely a question of sequence and uniformity. Range “92” has already been expressed by ICP-ANACOM in the referred framework for MVNO, to start allocating rights in that field⁵. And naturally, as this range is intended for mobile telephone services, it is of no consequence whether in its scope rights are granted to MVNOs or MNOs. Bearing in mind, once again, article 17 of ECL, paragraph 1 and points b) and c) of paragraph 2, ICP-ANACOM must ensure not only *“the availability of numbering resources adequate for all publicly available electronic communications services”* but also its allocation *“according to objective, transparent and non-discriminatory procedures”*.

Without prejudice, users may suffer from this option. Although operator portability launched on the side of users a learning process, in the sense that operators should not be unquestionably identified with the number, this process is still far from consolidated. In fact, the penetration of portability applied to mobile numbers shows a very low implementation rate, and for this reason the relationship operator-number is still very strong.

The allocation of numbers starting on “92” to operators installed in the market – as is the case with TMN – brings forward, with a sharper focus, a matter already identified when this range was identified for MVNOs: the share of the “92” range between several operators will pose additional problems to the identification by users of off-net calls, which, as is widely known, and in several situations, present much higher tariffs than on-net calls.

As is known, the price differential between on-net calls and off-net calls in the land mobile service, led to an intervention by ICP-ANACOM when portability was introduced in this market, demanding the provision of a message that identified calls which would be charged a higher rate, on account of being off-net (message provided for in article 21 of Regulation no.58/2005)⁶. This message, however, does not apply in this scope (as the number is not ported), and for this reason consumers are not provided with any information on whether the call they make is on-net or off-net, given that the number 92 they call may be a customer of their own network, or of other MNO or MVNO.

⁵ Point 23.b) *“In this case, the requiring entity may be allocated blocks of nx10.000 numbers within the “9” numbering level (starting at “92”), “n” standing for the expected and reasoned number demand, at the requiring entity’s choice among the available blocks of numbers”*.

⁶ For fixed networks, this differential does not exceed 20% in PTC’s network, and except for one case, the networks of other operators do not register any differential; thus, ICP-ANACOM chose not to impose any special alert mechanism at the time portability was introduced.

This matter is obviously linked to a more general problem of the huge differential between on-net and off-net prices which characterizes the Portuguese mobile communications market, placing an additional pressure towards their decline.

ICP-ANACOM will remain alert to this problem, and will take it into account, namely, in case it is necessary to extend the scope of the message currently provided for in the scope of portability, in case there is no significant alteration in the referred price differential between on-net and off-net calls. Nevertheless, this matter should be subject to an additional consideration, involving the consultation of the market, so as to decide the need and size of measures intended to increase transparency for the user of calls made within the two situations.

4. Conclusion

To conclude, ICP-ANACOM deems that the extension of the numbering capacity for the mobile telephone service to available adjoining ranges already provided for in the NNP for mobile services is a mere NNP management act.

The regime of neutrality and transparent and effective management to which the NNP is subject determines that from the “92” range, to be assigned for the mobile telephone number, are allocated blocks to all providers that are able to provide this service, according to the same criteria of equality, non-discrimination and proportionality.

These criteria of proportionality and of effective use of resources are also behind the application of fees for the use of numbers, as provided for in article 105 of the ECL, which shall be implemented in the near future. It is thus in the interest of operators themselves that the rights of use of numbers are granted according to the effective numbering needs.

Lastly, ICP-ANACOM deems that this update of the NNP, which shall be published at its website, as were all the others, should be explained in an open and transparent fashion to the general market, having prepared this framework document for this purpose.