

DECISION

Transfer of the right of use of frequencies held by Cristina Maria da Silva Rede, Lda. ("Rádio Douro Sul") to Rádio João Bosco, Lda.

1. The request

Further to the request for termination of the local programme service known as "Rádio Douro Sul", broadcasting at 94 MHz, in the municipality of Lamego, and for cancellation of the respective license for pursuit of the radio broadcasting activity, presented by the company Cristina Maria da Silva Rede, Lda. (hereinafter Cristina Lda.), the Entidade Reguladora para a Comunicação Social (ERC - the Regulatory Authority for the Media), by means of letter received on 11 October 2012, submitted the respective procedure file to the examination of ICP-ANACOM, so that this Authority, under the combined terms of paragraph 9 of article 4 and paragraph 7 of article 22 of Law No 54/2010, of 24 December (the Radio Law), rules on the transfer of a right of use for frequencies allocated to that body for the provision of a publicly available radio broadcasting service, of a local scope, in the municipality of Lamego.

According to the corresponding investigation file, Cristina Lda. requested ERC's authorization to alter its general radio project to a thematic radio project, thus promoting the transfer of its local programme service to Rádio João Bosco Lda..

2. Framework

2.1. The Radio Law

Pursuant to paragraph 9 of article 4 of the Radio Law, the transfer of local programme services and respective licenses or authorizations is permitted, according to the procedures laid down for the alteration of operator control, where it can be proved that this promotes the safeguard of the licensed or authorized project and insofar as all the property, rights and obligations, including those which are labour-related, exclusively concerned with the programme service under consideration, are transferred.

In this case, and without prejudice to powers granted to ICP-ANACOM according to the regime applicable to electronic communications networks and services and to radiocommunications, the transfer is dependent on an authorization granted by ERC (cfr. article 4, paragraph 10 of the Radio Law).

Moreover, paragraph 7 of article 22 of the Radio Law lays down that files on license transfers must be examined by ERC, which submits them to ICP-ANACOM for a decision on the transfer of the respective rights of use for frequencies, according to the regime applicable to electronic communications networks and services and to radiocommunications.

The Radio Law further specifies, in its article 4, the restrictions on the ownership of radio programme services, namely of a local scope:

- Natural or legal persons may not hold, either directly or indirectly, namely through a relationship of control, a number of licenses for radio programme services of a local scope exceeding 10% of all licenses granted on national territory;

- Natural or legal persons of private or cooperative sectors may not hold, either directly or indirectly, namely through a relationship of control, a number of frequency modulated radio programme services of a national scope equal to or exceeding 50% of programme services qualified for the same coverage area and for the same frequency band;
- Natural or legal persons may not hold in the same district, metropolitan area, municipality, or, in the autonomous regions, in the same island, either directly or indirectly, namely through a relationship of control, a number of licenses for radio programme service of a local scope exceeding 50% of programme services of the same scope qualified for each of the referred territorial areas.

2.2. The Electronic communications Law (ECL)¹

Article 34 of ECL authorises the transfer or lease of rights of use for frequencies between undertakings in accordance with conditions attached to those rights of use and with procedures established in that article, where the transfer or lease of such rights has not been explicitly prohibited by the National Regulatory Authority (NRA, in this case, ICP-ANACOM) and published in the National Frequency Allocation Plan (NFAP).

In this scope, it is incumbent on ICP-ANACOM to ensure that:

- a) The intention to transfer or to lease rights to use frequencies, as well as the effective transfer or lease thereof, is made public;
- b) The transfer or lease does not distort competition, namely due to the accumulation of rights of use;
- c) Frequencies are efficiently and effectively used;
- d) The frequency use is complied with where it has been harmonised through the application of Decision No 676/2002/EC of the European Parliament and of the Council of 7 March (Radio Spectrum Decision) or other Community measures;
- e) The restrictions set forth in the law in respect of radio and television broadcasting are safeguarded.

For this purpose, and according to paragraph 6 of the mentioned provision, it is incumbent on ICP-ANACOM to address, within 45 days at the most, the intention to transfer the rights, as well as the conditions to do so, which must be duly communicated to this Authority. ICP-ANACOM is entitled to oppose the intended transfer of rights of use, as well as to impose the necessary conditions for compliance with requirements listed in the preceding paragraph.

In this scope, ICP-ANACOM must also request the prior opinion of Autoridade da Concorrência (AdC - the Competition Authority), which must be issued within a 10-day period of time from the date of the request, save where the complexity of the matter requires an extension.

It must also be borne in mind that the transfer of these rights of use does not suspend nor interrupt the period for which the respective rights were granted, and that after the transfer,

¹ Law No 5/2004, of 10 February, as amended by Law No 51/2011, of 13 September.

conditions attached to rights to use frequencies continue to apply, unless otherwise specified by the NRA (paragraphs 9 and 10 of article 34).

ICP-ANACOM's silence, after the elapse of the 45-day period referred to in paragraph 6 of article 34, is to be interpreted as a non-opposition to the transfer of the rights of use, however the effective transfer must still be notified.

2.3. Regime applicable to the licensing of radio networks and stations

According to article 14, paragraph 1, of Decree-Law No 151-A/2000 of 20 July, as amended and republished by Decree-Law No 264/2009, of 28 September², network or station licences are transferable.

The body to which a license is transferred undertakes all associated rights and obligations and, where appropriate, the transfer of a network licence implies the transfer of all licences of stations integrating it.

In this scope also, ICP-ANACOM must rule within 45 days on the content of the notification, being entitled to oppose the transfer of licenses or to impose any conditions required for the optimal management of the spectrum, specifically the effective and efficient use of frequencies and non-existence of competition distortions.

The transfer of network and station licenses does not suspend nor interrupt the term for which licenses were granted.

3. Assessment of the request

Cristina Lda. is the holder of the right of use for frequencies ICP-ANACOM No 169/2009, for the provision of a publicly available radio broadcasting service, of a local scope, for the municipality of Lamego, in the 87,5 -108 MHz band.

Cristina Lda. is also the holder of radio station license No 20182, for the radio broadcasting service, valid until 20 May 2014, according to which the station broadcasts at 94,000 MHz, as well as of radio network license No 504827 (fixed service - studio-to-transmitter links), also valid until 20 May 2014.

Cristina Lda. is further the holder of an authorization to operate the Radio Data System (RDS) with the channel name "RDS94,00".

As far as Rádio João Bosco Lda. is concerned, this body does not hold any right of use for frequencies, it is however the receiving party in another radio programme transfer procedure, specifically the transfer of the local programme service, in the municipality of Trancoso, known as "Rádio Bandarra", submitted by the cooperative Rádio Bandarra, C.R.L., ICP-ANACOM having decided, on 27.9.2012 not to oppose the transfer of the respective right of use for frequencies, in a procedure which is now pending before ERC.

² Regime applicable to the licensing of radiocommunications networks and stations and to the supervision of the installation of such stations and the use of the radio spectrum.

The request under consideration was analysed bearing in mind the requirements which, according to paragraph 5 of article 34 of ECL, must be fulfilled so that ICP-ANACOM may assess the planned transfer.

As such, and by letter of 12 November 2012, AdC was requested to issue an opinion for the purpose of paragraph 7 of article 34 of ECL.

Furthermore, in compliance with paragraph 5 a) of article 34 of ECL, ICP-ANACOM announced on its website (<http://www.anacom.pt/render.jsp?contentId=1143156>), on 14 November 2012, that it had received a request from ERC to decide on the intention expressed by Cristina Maria da Silva Rede to transfer to Rádio João Bosco, Lda. the right of use of frequencies it had been allocated for the pursuit of the radio broadcasting activity.

On 27 November 2012 the opinion of AdC was received, which concludes in brief that *the planned transfer of the referred rights of use for frequencies concerning the radio broadcasting of a local programme service is not likely to give rise to distortions of effective competition in the national market or in a substantial part thereof.*

With regard to other requirements, on whose fulfilment the granting of the authorization for the transfer of the right of use for frequencies depends, set out in paragraph 5 of article 34 of the ECL, as well as in article 14 of Decree-Law No 151-A/2000, ICP-ANACOM takes the view that they have been duly safeguarded, in the light of available information.

Specifically on the safeguard of restrictions provided for in the Radio Law (requirement laid down in paragraph 5 e) of article 34 of ECL), in articulation with article 4 of that same Law, and given that ICP-ANACOM lacks information on capital shares between the several bodies qualified for the pursuit of the radio broadcasting activity, it is deemed that it is incumbent on ERC to assess, at all times, whether restrictions laid down on the ownership of radio programme service operators are not infringed.

4. Decision

Therefore, in the scope of powers provided for in paragraph 1 c) and f) of article 6 of its Statutes, approved by Decree-Law No 309/2001, of 7 December, and under and for the purpose of the combined terms of paragraph 6 of article 34 of Law No 5/2004, of 10 February, as amended by Law No 51/2011, of 13 September, paragraph 6 of article 14 of Decree-Law No 151-A/2000, of 20 July, as amended and republished by Decree-Law No 264/2009, of 28 September, and paragraph 7 of article 22 of Law No 54/2010, of 24 December, the Management Board of ICP-ANACOM hereby determines:

1. Not to oppose the transfer to Rádio João Bosco, Lda. of the right of use of frequencies in the 87,5-108 MHz band allocated to Cristina Maria da Silva Rede, Lda. for the provision of a local radio programme service, for the municipality of Lamego, under paragraph 6 of article 34 of ECL.

2. Not to oppose the transfer to Rádio João Bosco, Lda. of radio station licence No 20182, for radio broadcasting service, according to which the station broadcasts at 94,000 MHz, as well as a radio network license No 504827 (fixed service - studio-to-transmitter links), both of which are held by Cristina Maria da Silva Rede, Lda..

- 3.** Not to oppose the transfer to Rádio João Bosco, Lda. of the authorisation to operate the Radio Data System (RDS) with the channel name “RDS94,00”.
- 4.** To make this decision subject to the condition that the Entidade Reguladora para a Comunicação Social (ERC) grants the request for transfer of the programme service known as “Rádio Douro Sul” and of the respective license for pursuit of the radio broadcasting activity held by Cristina Maria da Silva Rede, Lda..
- 5.** To notify ERC of decisions in the preceding paragraphs, requesting that Authority to inform ICP-ANACOM on the contents of the transfer decision, so that this Authority, where appropriate, may accordingly issue to Rádio João Bosco Lda. the qualifying document drawing up the respective right of use for frequencies.

Lisbon,13 December 2012.