

FINAL DECISION RELATIVE TO THE

**PRICE CHARGED BY MEO FOR PROVIDING THE SERVICE OF
ENCODING, MULTIPLEXING, TRANSMISSION AND
BROADCASTING OF FREE UNRESTRICTED ACCESS TELEVISION
CHANNELS BY THE DTT NETWORK (MUX A)**

ANACOM

2020

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1. Introduction

1.1. Background

Law 33/2016 of 24 August, amended by Law 2/2017 of 16 January (hereinafter Law 33/2016), which sought to boost the offer of services of programmes on digital terrestrial television (DTT), ensuring the appropriate technical conditions and price control, established, among other aspects, a series (i) of principles applicable to the price of the service of encoding, multiplexing, transmission and broadcasting of the DTT signal (hereinafter DTT signal transmission and broadcasting service or DTT service) and (ii) of duties and powers to be exercised by ANACOM.

Concerning the price of the DTT service, it should be recalled that the aforesaid Law, pursuant to Article 4(3)(4), establishes that:

- “3 - The price charged by the electronic communications operator holding the right of use of frequencies of national scope for the basic and supplementary DTT service associated to the operation of MUX A must respect the principles of transparency, non-discrimination and cost-orientation, based on the space actually occupied by each television programme and limited to the price presented in the proposal that won the respective public tender.*

- 4 - The price for the signal transmission and broadcasting of the regional programme services in the autonomous regions is decreased in proportion to the size of the geographic space to which it refers and cannot exceed the values charged on the date of entry into force of the present law.”*

The determinations of Council of Ministers Resolution 37-C/2016¹ (hereinafter RCM 37-C/2016) and Law 33/2016, relative to the reservation of capacity in the Multiplexer A (MUX A) and the prices applicable to the DTT signal transmission and broadcasting service, established the amendment of the legal system and of the conditions associated to the right of use of frequencies (DUF) of national scope, attributed to the company (now named) MEO – Serviços de Comunicações e Multimédia, S.A. (MEO), for the DTT service, associated to MUX A – DUF ICP-ANACOM 06/2008 (hereinafter DTT Right of Use of Frequencies or DUF TDT). Consequently, by determination of 22 June 2017², in compliance with Law 33/2016³

¹ Published in *Diário da República*, 1st Series, Number 130, 8 July 2016.

² Accessible at: <https://www.anacom.pt/render.jsp?contentId=1413969>.

³ See Article 57(1) of Law 33/ 2016.

and in view of the provisions in RCM 37-C/2016, ANACOM approved the decision to change the DUF TDT and re-issue⁴ this entitlement.

Thus, and specifically concerning the prices applicable to the DTT signal transmission and broadcasting service, the DTT Right of Use of Frequencies incorporated, in points 18.1 to 18.7, the aforesaid changes established in RCM 37-C/2016 and in Law 33/2016.

Concerning the duties and powers to be exercised by ANACOM, Law 33/2016 states, under the terms of the provisions in Article 4(5)(6), that:

“5 – ANACOM is responsible, pursuant to the assumptions referred to in Article 2^[5] and numbers 3 and 4 of this Article, and contingent to compliance with the criteria required by the Community legal framework, for the imposition of ex ante regulatory measures, for determining, after hearing the Competition Authority and the Regulatory Authority for the Media (ERC), the maximum price chargeable by the holder of the Right of Use of Frequencies associated to the operation of MUX A for providing the service of multiplexing, transmission and broadcasting of the signal of each programme service.

6 – ANACOM shall, of its own motion and annually, assess, in a rigorous, transparent and public manner, taking into account the provisions in number 3 of this Article and based on the eligible investment plan, the reduction of the value of the fixed assets and the amortisations, the need to review the prices charged by the television broadcasting service providers to the television operators.”

1.2. History

By determination of 22 November 2018, ANACOM approved the decision relative to the price charged by MEO for providing the DTT service⁶, having determined that this operator should charge the annual price of 885.1 thousand euros per Mbps, in compliance with the principles and requirements established in Article 4(3),(4) and (6) of Law 33/2016 and in the

⁴ This change also sought to implement the determination arising from the determination of 1 October 2015 (on DTT terrestrial coverage obligations and change of the DTT Right of Use of Frequencies, accessible at: <https://www.anacom.pt/render.jsp?contentId=1368580>), to incorporate the aspects determined at that time, as well as the amendments to entry number 1 of the aforesaid Right of Use of Frequencies, and those arising from the determinations to change the operating channels of MUX A, and from the determination of 16 May 2013. The re-issuance of the DTT Right of Use of Frequencies included various updates (to the entitlement), of no substantial impact.

⁵ Which stipulates that “*The broadcasting of audiovisual media services under an arrangement of free unconditional access through DTT and supplementary service, especially the broadcasting of the legally and contractually established public radio and television programme services, insofar as they constitute a factor of promotion of pluralism, diversity, social inclusion, national cohesion, culture and education of relevant public interest to society*”.

⁶ Available at <https://www.anacom.pt/render.jsp?contentId=1464596>.

DTT Right of Use of Frequencies (18.2), (18.3) and (18.7), effective on the date of notification of this decision (i.e. on 26 November 2018).

By letter, of 10 December 2018, MEO sent ANACOM a copy of the letters sent on the same date to the television operators informing them of the change of prices, under the terms of the decision referred to above.

In order to comply with Article 4(6) of Law 33/2016 – this means, of its own motion and annually, assess the need to review the prices charged by the service providers to the television operators –, ANACOM requested MEO, by letter of 30 July 2019⁷, detailed information on the costs effectively incurred and the income effectively received relative to the DTT service, considering the allocation of the capacity of MUX A established in ANACOM decision of 22 November 2018, with MEO having answered by email message on 10 September 2019⁸.

It is important to note that the information relative to the year of 2018, sent by MEO on the date referred to above, only became available on 31 August 2019, having implied that ANACOM had to wait for its sending before being able to start the procedure of annual analysis and review of the prices of the DTT service which, in ANACOM's opinion, should be based, whenever possible, on final data and not on estimates. In fact, before this date, the additional costing data were not available in relation to those used by ANACOM in its decision of 22 November 2018.

In this context, ANACOM conducted an assessment of the prices of the DTT service charged by MEO, taking into account the principles and criteria established in Article 4 (3) to (6) of Law 33/2016, in the DTT Right of Use of Frequencies (18.2), (18.3) and (18.7), and as stipulated in the planning of the activities of this Authority⁹.

At this point, it is important to highlight that in the following analysis, ANACOM largely upheld the approach and understandings already presented in its decision of 22 November 2018.

⁷ With reference ANACOM-S012290/2019.

⁸ This information was supplemented with data sent by email message of 20 September 2019.

⁹ This activity had been foreseen in ANACOM's Multi-Annual Activities Plan for the three-year period 2020-2022, in the context of the 2nd strategic objective, action number 6.

1.3. Consultation procedures

The Board of Directors' decision, of 2 April 2020, approved the draft decision (SPD) relative to the price charged by MEO for the service of providing the encoding, multiplexing, transmission and broadcasting of free unrestricted access television channels by the digital terrestrial television (DTT) network (MUX A)¹⁰.

This draft decision was submitted to the prior hearing of stakeholders, under the terms and for the purposes of the provisions in Articles 121 and following of the Code of Administrative Procedure, and to the general consultation procedure established in Article 8 of Law 5/2004 of 10 February, in its current wording (Electronic Communications Law¹¹), with the time limit of 40 business days being established, in both cases, for the stakeholders to comment.

Based on the comments received, the corresponding report on the prior hearing and general consultation procedure for this draft decision was drawn up, which is an integral part of the present decision, as it includes the positions expressed by the stakeholders, as well as ANACOM's understanding of them.

2. Analysis

2.1. Prices charged by MEO from 26 November 2018 onwards

As noted above, following ANACOM decision of 22 November 2018, MEO informed the television operators of the change of prices of the DTT service, which entered into force on 26 November 2018 (see Table 1).

¹⁰ See

https://www.anacom.pt/streaming/spdPrecosTDTdec02042020.pdf?contentId=1521728&field=ATTACHED_FILE.

¹¹ Accessible at: <https://www.anacom.pt/render.jsp?categoryId=333114>.

Table 1 – Current price per channel paid by the television operators and by ARTV¹² to MEO [BCI]¹³

Channels	Price per channel (euros)
RTP1	[BCI]
RTP2	[BCI]
RTP A	[BCI]
RTP M	[BCI]
TVI	[BCI]
SIC	[BCI]
RTP3	[BCI]
RTP Memória	[BCI]
ARTV	420,000.00

[ECI]¹⁴

According to the data recorded in 2018¹⁵, MEO received a total income from the DTT service of [BCI] [ECI] million euros, compared to the [BCI] [ECI] million euros recorded in 2017, corresponding to a 14% decline, due to the reduction of the annual price per Mbps, following ANACOM decision of 22 November 2018. Nevertheless, it should be highlighted that there is still available capacity in MUX A (for 2 new channels) for future allocation after the holding of a public tender, under the terms established in number 5 of RCM 37-C/2016 and in the first part of Article 6(5) of Law 33/2016¹⁶.

2.2. Principles applicable to the prices of the TDT service

Particularly relevant for the purposes of this analysis are the aforesaid numbers 3 and 4 of Article 4 of Law 33/2016, under the terms of which the price charged by the holder of the Right of Use of Frequencies of national scope for the DTT service associated to the operation of MUX A “*should respect the principles of transparency, non-discrimination* [which shall both be analysed in section 2.2.1] *and cost-orientation, based on the space*

¹² This contract was concluded between MEO and the Assembleia da República [Portuguese Parliament] on 9 November 2012, having been amended on 27 November 2012, which did not include price changes.

¹³ [BCI] – Beginning of Confidential Information.

¹⁴ [ECI] – End of Confidential Information.

¹⁵ Data of MEO's Analytical Accounting System relative to 2018 which consider the new prices agreed with all the channels (except for ARTV, whose price remained unchanged), as they entered into force on 26 November 2018.

¹⁶ On this issue, it should be recalled that, on 28 November 2018, *Diário da República* (number 229), 2nd Series, published the Draft regulations of public tenders for the licensing of a service of programmes of national scope, sports topics, and a service of informative thematic television programmes, both of free unconditional access (available at: <https://dre.pt/application/file/117131595>), which were subject to public consultation, and are currently awaiting a Government decision on this matter. More recently, Assembleia da República Resolution 174/2019 of 11 September 2019 was published (available at: <https://dre.pt/home/-/dre/124609258/details/maximized>), which recommends that the Government include RTP Madeira and RTP Açores in the DTT national grid.

actually occupied by each television programme service [addressed below, in section 2.2.2] and *cannot exceed the price presented in the proposal that won the respective public tender*¹⁷ [analysed in section 2.2.3], where the “*price for the signal transmission and broadcasting of the regional programme services in the autonomous regions is decreased in proportion to the size of the geographic space to which it refers and cannot exceed the values charged on the date of entry into force of the present law*” [which shall be analysed below, in section 2.2.4].

The assessment to be made should take into account the principles described above, and should also consider the specific criteria established in Article 4(6) of the same Law.

2.2.1. Transparency and non-discrimination

The **principle of transparency** is established in the aforesaid Article 4(3) of Law 33/2016, although the provisions in question do not further expand on the issue.

In this context, ANACOM, based on the regulatory significance of this principle in Law 5/2004 of 10 February, in its current wording (Electronic Communications Law¹⁸) – especially in Article 67 –, believes that the principle of transparency that should be observed in the price charged by the DTT service implies that this price, as well as all the other conditions agreed between MEO and the television operators for the provision of services of encoding, multiplexing, transmission and broadcasting of signal by digital network and supplementary coverage, should be provided to those having legitimate interest in such – in other words, to those with the right to the transmission and broadcasting of their television programmes, thus including potential competitive bidders in future public tenders for two new programme services, as established in number 5 of RCM 37-C/2016.

The information on the new prices was provided precisely at the same time to RTP, to SIC and to TVI, by letter of 10 December 2018, with all the other associated conditions having been maintained, which, it should be recalled, had been provided at the same time and in full¹⁹ to RTP, SIC and TVI – which were given complete copies of all the amendments to the contracts for provision of services of encoding, multiplexing, transmission and broadcasting of signal by digital network and supplementary coverage that MEO concluded

¹⁷ Our highlighting.

¹⁸ Accessible at: <https://www.anacom.pt/render.jsp?categoryId=333114>.

¹⁹ Following ANACOM decision of 21 September 2017. Accessible at: <https://www.anacom.pt/render.jsp?contentId=1418786>.

with each of the aforesaid television operators. From this we may conclude that there is currently no evidence of lack of transparency of prices, as they are known by the stakeholders that have shown interest in knowing them. Accordingly, in the case of future changes of the prices or conditions associated to the DTT service, MEO should always ensure their provision under these terms.

Furthermore, in a broader observance of this principle, the annual maximum price per Mbps payable for providing the DTT service, for purposes of the application of Law 33/2016, is public and known since ANACOM decision of 22 November 2018. Therefore, based on the information on the necessary capacity, any entity can easily calculate the annual maximum price per channel payable to MEO.

As to the **principle of non-discrimination**, the annual price per Mbps which is in force, following ANACOM decision of 22 November 2018 – 885.1 thousand euros –, is identical for all channels, irrespective of the television operator. Therefore, there is no evidence of breach of this principle.

However, it should be noted that while the price per national channel is, in some cases, different, this does not embody a breach of the principle of non-discrimination. Indeed, the price per national channel payable by RTP is different from the price per national channel payable by TVI and by SIC (see Table 1)²⁰, which is due to the different average capacity occupied by each channel in MUX A (see Table 2).

Table 2 – Average capacity occupied by each channel [BCI]

Channels	Occupied average capacity (Mbps)
RTP1	
RTP2	
RTP A	
RTP M	
TVI	
SIC	
RTP3	
RTP Memória	
ARTV	

[ECI]

²⁰ As shown in Table 1, the price of the RTP national channels is lower than the price of the SIC and TVI channels. The price of the regional channels in the Autonomous Regions (RTP Açores and RTP Madeira) is lower than that of the national channels, as it is reduced in proportion to the size of the network in the geographic space.

In fact, specifically with respect to RTP, the difference of average capacity occupied by this operator arises from a sharing of functionalities between the various RTP channels broadcast through DTT, as explained in ANACOM decision of 22 November 2018.

In light of the above, it is also concluded that there is no evidence of breach of the principle of non-discrimination in the prices charged.

2.2.2. Cost-orientation of the prices, based on the capacity effectively occupied by each channel

The application of this principles takes into account the investment plan, the reduction of the value of the fixed assets and the amortisations, in line with the provisions stipulated in Article 4(6) of Law 33/2016.

As stated in ANACOM decision of 22 November 2018, for the price assessment, taking into account the principle of their cost-orientation, the ascertainment of MEO's total costs related to providing the DTT service should be based, by virtue of the entry into force of Law 33/2016, on “*the space actually occupied by each television programme (...)*” (see Article 4(3)).

In this context, and as in the decision of 22 November 2018, for the assessment of the principle of cost-orientation of the prices, ANACOM estimated the costs for the entire period of the project (i.e. from 2008 to 2023), based on the following imputation of costs arising from the allocation of unoccupied capacity in MUX A:

- a) up to the entry into force of Law 33/2016 – in the calculation made, the costs related to the unused capacity were “imputed” to the different television operators and to MEO, under the terms that are explained in the analytical exercise presented in ANACOM decision of 17 November 2015 concerning the conclusions of the thorough investigation of the costs and income of the DTT service provided by MEO and taking into account the evolution of the used and reserved capacity in MUX A²¹;

²¹ In brief, and as detailed on pages 13 to 15 of ANACOM decision of 22 November 2018, it should be recalled that (i) up to April 2012 (date of the analogue switch-off), the capacity for the shared HD channel and for the interactive services was mandatorily reserved for the television channels. In other words, the unused and unallocated capacity referred only to the capacity mandatorily reserved for the “5th channel”; (ii) from April 2012 onwards and up to the entry into force of Law 33/2016, only the capacity for the interactive services was mandatorily reserved for television channels; (iii) the broadcasting of ARTV programmes on the DTT network started in January 2013, with MEO henceforth using part of the unoccupied capacity of MUX A to this effect.

- b) after the entry into force of Law 33/2016²² – the costs of the unused capacity are fully imputed to MEO, by virtue of the arrangement laid down in the aforesaid Law²³, including those related to the capacity reserved for the interactive services²⁴.

It should be recalled that, when the broadcasting of RTP3 and RTP Memória via DTT started²⁵, on 1 December 2016, the unoccupied capacity (which began to be fully imputed to MEO since the entry into force of Law 33/2016) decreased. With the introduction of two new channels to be licensed in MUX A, as established in number 5 of RCM 37-C/2016 and in the first part of Article 6(5) of Law 33/2016 (which are estimated to jointly occupy a capacity of approximately **[BCI]** **[ECI]** Mbps), it is expected the unoccupied capacity should tend towards being inexistent.

In sum, and as done in the context of the decision of 22 November 2018, for the assessment of the prices of the DTT service, observing the principle of cost-orientation and based on the capacity effectively occupied by each channel, the costs shall be imputed according to the MUX A capacity allocated to MEO and to the television operators, in conformity with the information presented in Table 3.

For purposes of the merely analytical exercise of assessment of the prices agreed between MEO and the television operators, carried out by determination of 17 November 2015, ANACOM considers that it was justifiable to impute the costs related to this reservation to MEO and to the television operators in the proportion of 2/3 and 1/3, respectively, under the terms stipulated in this determination (and in the Report on the prior hearing and consultation to which the corresponding draft decision was subject).

²² Entered into force on 25 August 2016.

²³ See Article 4(3).

²⁴ As explained in ANACOM decision of 22 November 2018 (see page 15), although this capacity continued to be reserved for the television operators up to the determination of 22 June 2017 (which decided the change of the re-issuance of the DTT Right of Use of Frequencies), this capacity was not actually being occupied by them, hence the costs could not be imputed to them, pursuant to the aforesaid rule.

²⁵ Under the terms of number 3 of RCM 37-C/2016 and of Article 3(3) of Law 33/2016.

Table 3 – Allocation of MUX A capacity to MEO and to the television operators, for assessment of the prices of the DTT service

Items	Allocation				Rationale
	Up to 30.04.2012	30.04.12 – 31.12.2012	01.01.2013 – 31.08.2016	After 01.09.2016 ²⁶	
TV Channels	TV Operators	TV Operators	TV Operators	TV Operators	<ul style="list-style-type: none"> • Contracts for provision of the DTT service concluded
Interactive Services	TV Operators	TV Operators	TV Operators	MEO	<ul style="list-style-type: none"> • DUF TDT valid on the date²⁷; • DUF TDT valid now
ARTV Channel	-	-	MEO	MEO	<ul style="list-style-type: none"> • Capacity used commercially by MEO
5T Channel	2/3 for MEO 1/3 for TV Operators	2/3 for MEO 1/3 for TV Operators	2/3 for MEO 1/3 for TV Operators	MEO	<ul style="list-style-type: none"> • Determination of 17.11.2015; • Law 33/2016
Shared HD Channel	TV Operators	2/3 for MEO 1/3 for TV Operators	2/3 for MEO 1/3 for TV Operators	MEO	<ul style="list-style-type: none"> • DUF TDT valid on the date; • Determination of 17.11.2015; • Law 33/2016

In view of the total annual average capacity²⁸ of MUX A and considering, for purposes of this analysis, the allocation of MUX A capacity detailed in Table 3, the evolution of the capacity allocated to the television operators and to MEO, from 2010 to 2018, is gained, as shown in Table 4.

²⁶ This column records the allocation of MUX A capacity, following the entry into force of Law 33/2016. Although this moment occurred on 25 August 2016, for the sake of simplification, it was considered that the entry into force of this law took place on 1 September 2016.

²⁷ Clause 15, number 6, subparagraph b): “PTC should also ensure, if and when required by the television operators whose television programme services are specified in number 1 [i.e. RTP1, RTP2, SIC, TVI, RTP Açores, RTP Madeira and 5th channel] and relative to them, supplementary capacity for [...] any other interactive services”.

²⁸ Average capacity per broadcaster of 20.121 Mbps, arising from the existing 237 broadcasters in Mainland Portugal, with 19.91 Mbps of maximum capacity, plus 25 broadcasters in the Islands Regions of the Azores and Madeira, with 22.12 Mbps of maximum capacity.

Table 4 – Allocation of the capacity of MUX A [BCI]

Operators	Capacity (Mbps)				
	2010 – Apr 2012 ^(a)	May 2012 – Dec 2012 ^(b)	2013 – Aug 2016 ^(c)	Sep 2016 – Nov 2016 ^(d)	Dec 2016 – 2018 ^(e)
TV Operators					
MEO					
TOTAL	20.121	20.121	20.121	20.121	20.121

Notes:

^(a) Up to April 2012 (when the switch-off occurred) the capacity for the shared HD channel and for the interactive services was mandatorily reserved for the television channels. The unoccupied capacity (relative to the '5th channel') was divided between MEO and the television operators in the proportion of 2/3 and 1/3, respectively.

^(b) From April 2012 onwards and up to the entry into force of Law 33/2016, only the capacity for the interactive services was mandatorily reserved for the television channels. The unoccupied capacity (relative to the '5th channel' and shared HD channel) was divided between MEO and the television operators in the proportion of 2/3 and 1/3, respectively.

^(c) The broadcasting of ARTV programmes on the DTT network started in January 2013, with MEO henceforth using part of the unoccupied capacity of MUX A to this effect. The remaining unoccupied capacity (relative to the part that had been allocated to the '5th channel' and shared HD channel) was divided between MEO and the television operators in the proportion of 2/3 and 1/3, respectively.

^(d) With the entry into force of Law 33/2016, all the unoccupied capacity (including the capacity reserved for the interactive services) was henceforth fully allocated to MEO.

^(e) RTP3 and RTP Memória started to be broadcast on the DTT network in December 2016.

[ECI]

It should be highlighted that in 2019 to 2023 (inclusively), as occurs since September 2016, the estimated costs associated to the DTT service take into account that the costs related to the unoccupied capacity are entirely imputed to MEO, by virtue of the new arrangement established in Article 4(3) of Law 33/2016.

The associated costs and income were calculated considering the evolution of the MUX A capacity allocated to the television operators and to MEO. As the costs related to the capacity occupied by ARTV are entirely imputed to MEO, and considering that ANACOM is assessing the principle of cost-orientation of the prices agreed between MEO and the television operators, the annual income gained by MEO from the television operators should be separated from that received from ARTV²⁹, so as to assess the income derived only from the television operators.

As was done in the decision of 22 November 2018, an analysis was made of the costs and income associated to the DTT service in an investment project perspective, taking into account the allocation of capacity, explained in detail in the paragraphs above.

²⁹ Which amount to approximately 420 thousand euros per year.

Comparing the data provided by MEO in 2018 relative to annual OPEX³⁰ and CAPEX³¹ incurred by MEO in providing the DTT service, as well as the corresponding amortisations, which were used to substantiate ANACOM decision of 22 November 2018, with the data reported by MEO in September 2019 (subsequent to ANACOM's request for information), the following was found:

a) Regarding CAPEX:

- the values related to specific DTT assets up to 2018 (inclusively) correspond to the values ascertained by MEO's Analytical Accounting System;
- the values related to specific DTT assets from 2019 (inclusively) onwards correspond to estimates based on the provision of the service up to the end of the license (2023). These estimates, indicate, in particular:
 - a lower CAPEX value in 2019, related to MEO's compensation for costs incurred in 2011 related to the switchover of frequencies occurred in that year. MEO assumes that it shall be refunded by the end of 2019 for the amounts spent, following the publication of Ordinance 587/2019 of 6 September³² (which was effectively the case);
 - the investment (CAPEX) to be made in 2020, and its full refunding in 2021 (with a lower CAPEX value), related to the change of frequencies of the 700 MHz band that shall take place in 2020 (the estimate currently presented by MEO is in line with what this company indicated during the review of the proposal on changes of the DTT network to release the 700 MHz band, following various technical meetings³³);

³⁰ Operational Expenditure – operating costs.

³¹ Capital Expenditure – costs of capital or investment in capital assets.

³² Ordinance that defines the conditions for refunding the holders of licenses aimed at entirely or partially covering expenses that are demonstrated to have been incurred due to the change of consignment of frequencies, published in *Diário da República* number 171, 2nd Series – Part C, of 6 September 2019, available at <https://www.anacom.pt/render.jsp?contentId=1483022>.

³³ Notwithstanding the total amount of costs that MEO may be demonstrated to incur in order to proceed with this change of frequencies, and that may be documented by MEO to request their refunding, which shall take place at the due time, under the conditions and pursuant to the general criteria to be defined by ordinance of the Government member responsible for the area of communications (see Article 4(4) of Decree-Law 151-A/2000 of 20 July, in its current wording). Indeed, it should be noted that following the determination of 4 October 2019 (available at: <https://www.anacom.pt/render.jsp?contentId=1493731>), ANACOM ordered MEO to send this Authority, by 15 November 2019, the revised estimated costs associated to the migration process. Even so, any

- the investment in micro-coverage or gap fillers (alternative to Direct to Home (DTH) coverage), in transmitters, in transmission networks and in back-office/attendance and DTH contribution, of very minor significance in the total volume of investment;
- CAPEX included investments in assets not specific to DTT presented in MEO's Analytical Accounting System (in terms of amortisation and cost of capital), but which MEO inadvertently did not include in the CAPEX reported to ANACOM in 2018³⁴ and that should naturally be considered in a business plan exercise;

b) Regarding OPEX:

- for the estimated OPEX of 2019 to 2023, MEO assumed, for each one of the items, an annual value equal to that observed in 2018, except for:
 - radioelectric fees, whose cost was estimated to increase from 2020 onwards, inclusively, following the change of frequencies to be carried out in 2020; and
 - staff costs, whose value for 2019 is estimated to be the same as in 2018, but deducting ANACOM refunding related to the change of frequencies occurred in 2011.

It should be highlighted that, in its decision of 22 November 2018, ANACOM had considered in the net present value (NPV) calculation exercise that the operating costs (OPEX) in 2018 were identical to those recorded in 2017 and that they would remain constant up to the end of the project by MEO. In that exercise, ANACOM did not consider that the 30% increase of operating costs (OPEX) between 2017 and 2018 presented by MEO (with MEO having estimated the maintenance of the cost of 2018 for the following years) were justified, particularly taking into account the trend that operating costs have been showing in the last few years. However, in view of the subsequent arguments presented by MEO³⁵ to

revision of this value shall have a very low impact on the estimated net present value (NPV), as it refers to CAPEX in 2020 and to “less CAPEX” in the immediately following year.

³⁴ According to MEO, this situation occurred due to the fact that the calculation of the net income of the DTT service, by MEO's Analytical Accounting System, only took into account the amortisation and cost of capital associated to the CAPEX of the specific DTT assets and not those associated to total CAPEX (which also includes the investment in assets not specific to the DTT).

³⁵ In administrative proceedings instituted by MEO against ANACOM decision of 22 November 2018.

substantiate the increased operating costs in 2018³⁶, ANACOM considers the OPEX data provided by MEO in September 2019 in the present exercise.

However, concerning the division of the annual amortisations between MEO and the television operators, ANACOM consented to MEO's proposal to allocate them according to the investment perspective, i.e. allocating the amortisation according to the date of the respective investment, instead of the date on which the amortisation effectively occurred.

The data reported by MEO in September 2019 are compatible both with the Analytical Accounting System data that have already been audited (results of 2008 to 2016)³⁷, and with the Analytical Accounting System data that, while not yet having been audited, were reported to ANACOM, and, therefore, were used for purposes of the present exercise (results of 2017 and 2018).

Regarding the cost of capital rate to be used in the DTT service business plan, namely in the calculation of its net present value (NPV) and internal rate of return (IRR), it should be noted that the decision of 22 November 2018 used the pre-tax weighted average cost of capital (WACC) rate defined by ANACOM for 2017 for the entire timeframe of the project.

However, after more careful consideration of the exercise that was carried out, ANACOM believes that:

- a) as the values of MEO's cost of capital rate for each of the years covered in the timeframe of the business plan (up to 2019 inclusively) have been defined and as these values are different for the years in question, in an analysis of the cost-orientation of the prices it would be more correct to use each of these already known and defined values to update the cash flows of each of these years;
- b) in a business plan exercise that considers the impact of the tax payable on the operating cash flow, the use of the value of the pre-tax cost of capital rate could be doubly reflecting this cost. Therefore, it would be more correct to use the value of

³⁶ According to that company, the increased value of OPEX in 2018 (and maintenance of the value of 2018 in the following years) aimed to correct a bias of that variable (of [BCI] [ECI] in relation to 2016), as it contains a (one-off movement) associated to the reduction of the "provision" for the supplementary DTT contribution programme of the value of [BCI] [ECI] euros (that took place in 2017). Thus, MEO believed that its estimated costs for 2018 and onwards would be the most reliable possible.

³⁷ The audit of the results of 2017 is at a final stage.

the post-tax cost of capital rate (considering the tax rate used to calculate the corresponding pre-tax WACC).

Thus, in the request for information made to MEO, ANACOM presented the arguments referred to above, having suggested the adoption of the post-tax WACC in the analysis of the DTT service project, with MEO having agreed to this approach.

Accordingly, ANACOM proceeded with the analysis of the costs and income associated to the DTT service in an investment project perspective, for this purpose using the value of the cost of capital rate defined by ANACOM for each of the years, up to 2019 *inclusively*, in its post-tax version, considering the tax rate used to calculate the corresponding pre-tax cost of capital rate.³⁸

In this context, based on the information sent by MEO in September 2019, taking into account that MEO, in compliance with the provisions in Ordinance 587/2019 of 6 September, received the value of [BCI] [ECI] million euros in December 2019 as compensation for the costs incurred with the change of the radioelectric channels consigned to the DTT network belonging to the 800 MHz sub-band, and considering the following assumptions:³⁹⁴⁰

- a) the annual price per Mbps, of the value of 885.1 thousand euros, remains constant up to 2023;
- b) new channels on MUX A are not broadcast by the end of the project, hence the currently unoccupied capacity which is imputed to MEO remains constant up to 2023;
- c) MEO shall receive a value of [BCI] [ECI]⁴¹ million euros in 2021 as compensation for the costs incurred by the migration of the digital terrestrial television (DTT) network with a view to the release of the 700 MHz band.⁴²

³⁸ For all the other years of the project (from 2020 to 2023) it was assumed that the post-tax cost of capital rate is kept constant, precisely the same as defined by ANACOM for 2019.

³⁹ Following ANACOM decision of 16 December 2010, to allocate the 790-862 MHz band (800 MHz sub-band) to electronic communication services.

⁴⁰ It should be noted that these assumptions are hypotheses that were considered for purposes of the present exercise. However, some of these hypotheses may not occur or occur on dates different from those considered herein.

⁴¹ Estimated costs indicated by MEO itself.

⁴² Determined in ANACOM decision of 4 October 2019, available at:

It is estimated that the net present value (NPV) of the project allocated to the television operators (considering the post-tax rate as the cost of capital rate, for each year of the project) is negative, amounting to the value of 43 [BCI] [ECI] thousand euros, with the internal rate of return (IRR) being [BCI] [ECI], as presented in detail in Table 5. Nevertheless, from the accounting point of view, the DTT project is profitable, bolstered by its having shown a net income and an EBITDA with positive values for various years, and it is expected that these indicators should continue in this manner up to the end of the project.

Table 5 – Part of the DTT service business plan allocated to the television operators – ANACOM estimate [BCI]

	2008	2009	2010	2011	2012	2013	2014	2015	2016	2017	2018	2019	2020	2021	2022	2023
Income																
OPEX																
EBITDA																
EBIT																
Corporate Income Tax																
Net Income																
Operating Cash Flow																
Total Cash Flow																
NPV																
IRR																

[ECI] Unit: thousand euros.

Notes: OPEX does not include curtailment costs.

It should be noted that the estimates indicated above should not be perceived as absolute and final, as they are calculated based on certain assumptions of provisional nature. Nonetheless, they are relevant for purposes of the present analysis and enable concluding that there is no evidence of breach of the principle of cost-orientation of the prices.

In sum, taking into account the imputation of the costs derived from the allocation of the unoccupied capacity detailed above, the project has an estimated negative NPV⁴⁴, thus implying that there is no indication that the prices currently in force are in breach of the principle of cost-orientation of the prices.

<https://www.anacom.pt/render.jsp?contentId=1488101>.

⁴³ Calculated based on the pre-tax cost of capital rate and the corresponding tax rate for each year, between 2008 and 2019 (inclusively). It was assumed that the post-tax cost of capital rate of 2020 to 2023 shall be identical to that of 2019.

⁴⁴ In any case, a negative NPV does not necessarily mean that the project is not profitable, especially when the IRR is high.

The findings of this analysis are compatible with those of the analysis conducted in 2018⁴⁵, despite the adjustments referred to above in relation to this analysis. In fact, in the analysis conducted in 2018 it was noted that, considering the “*corresponding price reductions to ensure compliance with the price limit presented in the proposal that won the public tender, of 885.1 thousand euros per year and per Mbps, and maintaining this price up to the expiry of Right of Use of Frequencies and everything else contained therein*”, and “*considering that new channels do not enter in MUX A, but that MEO shall also receive the value of [BCI] [ECI] thousand euros in 2019 as compensation for the costs incurred to change channels 61, 64 and 67, it is concluded that the Project's NPV allocated to the television operators is slightly negative, by [BCI] [ECI] million euros*”.

2.2.3. Price limit presented in the proposal that won the public tender

As noted above, in compliance with ANACOM decision of 22 November 2018, MEO informed the television operators (RTP, TVI and SIC) of the new price for providing the DTT service, of the value of 885.1 thousand euros per year and per Mbps. It is clear from the arguments presented above that this price respects the principles of transparency and non-discrimination, and there is no evidence that it is not cost-oriented (based on the capacity effectively occupied by each channel).

Now, as follows from the detailed analysis in ANACOM decision of 22 November 2018, and for the purposes established in Article 4(3) of Law 33/2016, it is concluded that the price currently charged complies with the price limit presented in the proposal that won the public tender for MUX A (of the value of 885.1 thousand euros per year and per Mbps).

2.2.4. Specific principles for the price of the signal transmission and broadcasting of the regional programme services

As shown in Table 1, following ANACOM decision of 22 November 2018, the price of the signal transmission and broadcasting of the regional programme services broadcast in the Autonomous Regions was thereafter [BCI] [ECI] euros per year for the channel RTP Madeira and [BCI] [ECI] euros per year for the channel RTP Açores.

⁴⁵ In the final decision on the reduction of the price charged by MEO for providing the service of encoding, multiplexing, transmission and broadcasting of free unrestricted access television channels by the DTT network (MUX A).

The prices that are currently charged are lower than the prices that MEO was charging on the date of the entry into force of Law 33/2016, which reached [BCI] [ECI] euros per year for RTP Madeira and [BCI] [ECI] euros per year for RTP Açores (see Table 1). It is thus concluded that the prices of the regional programme services that are currently charged comply with the criterion of the price limit charged on the date of the entry into force of the aforesaid law, established in Article 4(4) and in the DTT Right of Use of Frequencies (DUF TDT) (18.3).

It should also be noted that the price that was agreed for the signal transmission and broadcasting of the regional programme services in the Autonomous Regions is reduced in proportion to the size of the network in the geographic space. Therefore, also for this reason, there is observance of the provisions in Article 4(4) of Law 33/2016, subsequently incorporated in the DTT Right of Use of Frequencies (DUF TDT), as it took into account that the number of transmitters in the Autonomous Regions of Azores and Madeira is lower than that in Mainland Portugal.

2.3. Conclusion

In light of the principles and requirements established in Article 4(3), (4) and (6) of Law 33/2016, subsequently incorporated in the DTT Right of Use of Frequencies (DUF TDT), and as it is clear from the analysis detailed in the points above, it is concluded that there is no evidence that the prices charged by MEO for providing the DTT signal transmission and broadcasting service are in breach of the principles of transparency, non-discrimination and cost-orientation of the prices, considering the capacity effectively occupied by each television service, the price limit presented in the proposal that won the public tender and the specific principles applicable to the case of the regional programme services (issued in the respective Autonomous Regions, namely that its price “[should be] *reduced in proportion to the size of the network in the geographic space to which it refers*” and “*cannot exceed the values charged on the date of the entry into force of this law*”.

3. Determination

Considering the conclusions drawn in the analysis above, in compliance with the provisions in Article 4(6) of Law 33/2016 of 24 August, and with the principles and requirements established in Article 4(3), (4) and (6) of the same Law, as laid out in the DTT Right of Use of Frequencies (DUF TDT) (8.2), (18.3) and (18.7), under its duties and in the exercise of

its powers stipulated, respectively, in Article 8 (1)(a), (b) and (e) and in Article 9(1)(f), (g), (i) and (n) of the Statutes of ANACOM, approved by Decree-Law 39/2015 of 16 March, and in the pursuit of the regulation objectives laid out in the Electronic Communications Law (1)(a) and (2)(d), in its current wording, the **Board of Directors**, under Article 26(1)(b) of the Statutes, **determines**:

Closing this assessment procedure, with it not being necessary to review the prices currently charged by MEO to the television operators for providing the DTT signal transmission and broadcasting service before the next annual assessment of these prices, in compliance with the principles and requirements established in Article 4(3) to (6) of Law 33/2016 and in the DTT Right of Use of Frequencies (DUF TDT) (18.2), (18.3) and (18.7).

Lisbon, 17 September 2020.