

Decision on the transfer of rights of use for numbers held by Ar Telecom – Acessos e Redes de Telecomunicações, S. A.

1. Application

By letter received on 15 February 2012, SGC Ar Telecom notified ICP - ANACOM that, on 8 February 2012, the merger between Ar Telecom – Acessos e Redes de Telecomunicações, S. A. (Ar Telecom), and WTS – Redes e Serviços de Telecomunicações, S. A. (WTS), into SGC Ar Telecom - SGPS, S. A. (SGC Ar Telecom), had been entered in the commercial register.

The merger operation consisted in the extinction of the merged companies (Ar Telecom Telecom and WTS), the global transfer of their contractual positions, as well as the alteration of the business purpose and the corporate name of the acquiring company (SGC Ar Telecom), which was renamed to become Ar Telecom – Acessos e Redes de Telecomunicações, S. A.

The company stresses that, as this is an intra-group corporate reorganization, the merger operation does not call into question the fulfilment of obligations which companies being acquired must meet.

The company thus requests ICP - ANACOM to update the respective data, as well as the transfer of all qualifying documents, authorizations and resources to the acquiring company.

2. Framework

According to information available at ICP - ANACOM, Ar Telecom is qualified to provide the following electronic communications networks and services: public communications network; virtual calling card service; fixed telephone service; Internet access service; data transfer service; television signal distribution service and nomadic VoIP service.

To ensure the provision of such services, the following numbering resources were allocated by ICP - ANACOM:

- 1 indirect access provider code - 1030
- 1 customer service number - 1630
- 63 blocks of 10.000 numbers for the publicly available fixed telephone service: 21030 XXXX a 21038 XXXX, 22030 XXX a 22032 XXXX, 22035 XXXX, 23130 XXXX, 23220 XXXX, 23330 XXXX, 23420 XXXX, 23530 XXXX, 23630 XXXX, 23820 XXXX, 23930 XXXX, 24120 XXXX, 24230 XXXX, 24320 XXXX, 24430 XXXX, 24580 XXXX, 24920 XXXX, 25130 XXXX, 25270 XXXX, 25323 XXXX, 25420 XXXX, 25520 XXXX, 25621 XXXX, 25820 XXXX, 25920 XXXX, 26120 XXXX, 26230 XXXX, 26330 XXXX, 26503 XXXX, 26530 XXXX, 26630 XXXX, 26820 XXXX, 26930 XXXX, 27124 XXXX, 27220 XXXX, 27320 XXXX, 27430 XXXX, 27520 XXXX, 27620 XXXX, 27780 XXXX, 27880 XXXX, 27930 XXXX, 28120 XXXX, 28220 XXXX, 28320 XXXX, 28420 XXXX, 28530 XXXX, 28620 XXXX, 28920 XXXX, 29130 XXXX, 29240 XXXX, 29530 XXXX, 29621 XXXX;
- 1 block of 10.000 numbers of the nomadic VoIP service - 30030 XXXX;

- 1 block of 100 numbers of the data network access service - 6730 XY 000;
- 2 blocks of 10.000 numbers of the universal access service - 70730 XXXX and 70731 XXXX;
- 3 blocks of 10.000 numbers of the single tariff per call service - 76030 XXXX, 76130 XXXX and 76230 XXXX;
- 1 block of 10.000 numbers of the service of free calls for the caller - 80030 XXXX;
- 1 block of 10.000 numbers of the shared cost call service - 80830 XXXX;
- 1 block of 10.000 numbers of the virtual calling card service - 88230 XXXX;
- 64 NSPC (National Signalling Point Code) - 10-3-0 to 63;
- 1 ISPC (International Signalling Point Code) -2-137-6;
- 1 DNIC (data network identification code) - 268-7; and
- 1 NRC (Network Routing Number) - D-030-C1C2C3.

2.1. Electronic Communications Law (ECL)

The Electronic Communications Law¹, which establishes the legal regime that governs electronic communications networks and services and associated facilities and services, and defines the assignments of the national regulatory authority in this field, lays down in its article 17 that ICP - ANACOM is charged with *“managing the National Numbering Plan according to the principles of transparency, efficiency, equality and non-discrimination, including the establishment of conditions for the allocation and use of national numbering resources”*.

According to article 38 of ECL, rights of use of numbers may be transferred under terms and conditions to be established by ICP - ANACOM, which terms and conditions must provide mechanisms intended to safeguard, in particular, the effective and efficient use of numbers and rights of users.

As far as this request is concerned, paragraph 7 of article 21 must also be highlighted, according to which undertakings that cease the provision of electronic communication networks or services are required to inform ICP - ANACOM about it at least 15 days in advance. Further to this communication e under article 21-A, this Authority must cancel the respective entry in the register of undertakings providing electronic communications networks and services (which ICP - ANACOM maintains and publishes in its website pursuant to paragraph 1 e) of article 120 of ECL).

2.2. Code of Commercial Companies

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

Pursuant to article 112 of the Code of Commercial Companies, having been entered the merger in the commercial register, the companies to be acquired or, where a new company is established, all merged companies, are extinguished and all rights and obligations are transferred to the acquiring company or to the new company. Members of extinct companies become members of the acquiring company or of the new company.

3. Analysis of the request

In the electronic communications sector, ECL ensures (by transposing the framework defined at Community level) the «*freedom to provide electronic communications networks and services*» (article 19, paragraph 1).

However, it does not follow from this regime that whoever does not wish to remain in the market (for the provision of electronic communications networks and services) must do so, without prejudice, of course, to the need for compliance with the obligations to safeguard specifically the interests of consumers or of other economic actors, that in this scope may be determined by law or by the Regulatory Authority.

In this specific case, the Grupo SGC cannot but be considered to be free to opt for the concentration of its companies, in the scope of a restructuring and reorganizing process of the group's activities, aiming for the rationalization and adoption of a uniform management discipline.

Having analysed the request, it is found that the acquisition merger process, that involved the global transfer of assets of acquired companies and in the scope of which obligations falling on them were fully transferred, involves also the transfer of rights of use for numbers allocated to Ar Telecom.

Being incumbent on ICP - ANACOM to safeguard, under the above mentioned applicable legal provisions, the effective and efficient use of numbers, it is verified that the transfer of rights of use for numbers allocated to Ar Telecom does not entail any overlap of numbering resources to the ownership of the acquiring company, given that the latter does not hold any right of use for numbers.

Considering also that the transfer of rights of use for numbers is not likely, on its own, to undermine the effective and efficient use of numbers, ICP - ANACOM is of the opinion that, in a numbering management perspective, nothing prevents the full transfer of Ar Telecom's numbering rights.

The acquisition merger process here under consideration will be taken into account as far as the settlement of the fee due for use of numbers is concerned, under articles 18 to 22 and annex III of Administrative Rule No 1473-B/2008, of 17 December, as amended and republished by Administrative Rule No 291-A/2011, of 4 November.

Lastly, bearing in mind that the merger primarily impacts upon Grupo SGC at internal level, being essentially formal due to the fact that SGC Ar Telecom - acquiring company held by SGC Telecom, S. A. - absorbs two companies - Ar Telecom and WTS - which were owned by that company, and recalling that rights of use for numbers held by Ar Telecom are not altered in their substance, ICP - ANACOM considers that this transfer of rights of use for numbers does not have a relevant impact on the market such as to require the launching of a general consultation procedure, established as such in article 8 of ECL.

Taking also into account that elements of this procedure lead to a decision that is favourable to the interested party and that meets its request, is also deemed that the prior hearing may be waived, under paragraph 2 b) of article 103 of the Code of Administrative Procedure.

4. Determination

In the light of the above, the **Management Board of ICP - ANACOM**, in the scope of assignments provided for in paragraph 1 f) of article 6 of its Statutes, published in annex to Decree-Law No 309/2001, of 7 December, in the pursue of regulatory objectives set out in paragraph 1 a) and paragraph 2 d) of article 5 of ECL, under articles 17, 21-A and 38 of ECL and in the exercise of powers bestowed on it by article 26, point I) of the referred Statutes, hereby determines:

1. To authorize, without prejudice to the guarantee of compliance with the condition of effective and efficient use of numbers, under paragraph 1 b) of article 37 of ECL, the transfer from Ar Telecom – Acessos e Redes de Telecomunicações, S. A. to Ar Telecom – Acessos e Redes de Telecomunicações, S. A., corporate name adopted by SGC Ar Telecom- SGPS, S. A., in the scope of a process of acquisition merger, of rights of use of the following resources of the National Numbering Plan:

- 1 indirect access provider code - 1030
- 1 customer service number - 1630
- 63 blocks of 10.000 numbers for the publicly available fixed telephone service: 21030 XXXX a 21038 XXXX, 22030 XXX a 22032 XXXX, 22035 XXXX, 23130 XXXX, 23220 XXXX, 23330 XXXX, 23420 XXXX, 23530 XXXX, 23630 XXXX, 23820 XXXX, 23930 XXXX, 24120 XXXX, 24230 XXXX, 24320 XXXX, 24430 XXXX, 24580 XXXX, 24920 XXXX, 25130 XXXX, 25270 XXXX, 25323 XXXX, 25420 XXXX, 25520 XXXX, 25621 XXXX, 25820 XXXX, 25920 XXXX, 26120 XXXX, 26230 XXXX, 26330 XXXX, 26503 XXXX, 26530 XXXX, 26630 XXXX, 26820 XXXX, 26930 XXXX, 27124 XXXX, 27220 XXXX, 27320 XXXX, 27430 XXXX, 27520 XXXX, 27620 XXXX, 27780 XXXX, 27880 XXXX, 27930 XXXX, 28120 XXXX, 28220 XXXX, 28320 XXXX, 28420 XXXX, 28530 XXXX, 28620 XXXX, 28920 XXXX, 29130 XXXX, 29240 XXXX, 29530 XXXX, 29621 XXXX;
- 1 block of 10.000 numbers of the nomadic VoIP service - 30030 XXXX;
- 1 block of 100 numbers of the data network access service - 6730 XY 000;
- 2 blocks of 10.000 numbers of the universal access service - 70730 XXXX and 70731 XXXX;
- 3 blocks of 10.000 numbers of the single tariff per call service - 76030 XXXX, 76130 XXXX and 76230 XXXX;
- 1 block of 10.000 numbers of the service of free calls for the caller - 80030 XXXX;
- 1 block of 10.000 numbers of the shared cost call service - 80830 XXXX;
- 1 block of 10.000 numbers of the virtual calling card service - 88230 XXXX;

- 64 NSPC (National Signalling Point Code) - 10-3-0 to 63;
- 1 ISPC (International Signalling Point Code) -2-137-6;
- 1 DNIC (data network identification code) - 268-7; and
- 1 NRC (Network Routing Number) - D-030-C1C2C3.

2. To cancel Ar Telecom and WTS's entry and to provide for SGC Ar Telecom's entry (under the new corporate name of Ar Telecom – Acessos e Redes de Telecomunicações, S. A.) in the register of companies providing electronic communications networks and services.

3. To waive the prior hearing of the interested party, under paragraph 2 b) of article 103 of the Administrative Procedure Code.

Lisbon, ... May 2012.