

REPORT ON THE PUBLIC CONSULTATION

A. FRAMEWORK, CONTRIBUTIONS RECEIVED AND RESPECTIVE SUMMARY

1. FRAMEWORK

Following the adoption by the European Commission of Decision 2010/166/UE, of 19 March 2010 and of Recommendation 2010/167/UE, of 19 March 2010, respectively on the harmonisation of spectrum usage conditions for mobile communication services on vessels (MCV services) in the European Union and on the authorisation of systems for mobile communication services on board vessels (MCV services), ICP-ANACOM launched, in accordance with article 8 of Law no. 5/2004, of 10 February, a public consultation on the introduction of mobile communication services on board vessels (MCV services), in order to take into account the opinions of stakeholders, as well as make the necessary adjustments to the National Frequency Allocation Plan.

In that regard, on 01.07.2010, the Board of Directors of ICP- ANACOM decided to adopt the following draft decision:

1. To amend the provisions of the National Frequency Allocation Plan in order to include the usage of the 880-915/925-960 MHz and 1710-1785/1805-1880 MHz frequency bands for MCV services when in the territorial sea, between two and twelve nautical miles from the baseline;
2. To authorise the operation of MCV systems in the 880-915/925-960 MHz and 1710-1785/1805-1880 MHz frequency bands, subject to the general authorisation regime, in conformity with the provisions of the ECL;
3. To make providers of MCV services subject to compliance with the conditions provided for in no. 1 of article 27 of the ECL:
 - a) To guarantee equitable user access to the service offered;

- b) To ensure network security against unauthorised access, in accordance with Law no. 41/2004, of 18 August;
- c) To ensure personal data and privacy protection with specific respect to electronic communications, in conformity with Law no. 41/2004, of 18 August;
- d) To guarantee the provision of legal interception systems to the competent national authorities;
- e) To supply decryption or decoding means where these facilities are present to the competent national authorities, in accordance with legislation governing personal data and privacy protection within the scope of electronic communications;
- f) To comply with technical standards, laid down in the annex to Decision 2010/166/EU, of 19 March 2010;
- g) To provide the service in compliance with all maritime safety requirements, as demonstrated by the certification issued, or recognised, by the competent maritime authority;
- h) To supply ICP-ANACOM with relevant data with regard to vessels registered in Portugal and in which the MCV system is operational;
- i) To use equipment according to Decree-Law no. 192/2000, of 18 August;
- j) To pay applicable fees, namely an annual fee for the pursuit of the activity of electronic communication services provider, in compliance with article 105 of Law no. 5/2004, of 10 February and for the amount specified by order of the member of Government responsible for the communications area;

- k) To provide ICP-ANACOM with the information requested within the scope of no. 1 of article 108 of Law no. 5/2004, of 10 February and for the purpose of article 109 thereof.
4. To dispense from radioelectric licensing the radiocommunication networks, which consist of associated base stations and mobile stations that ensure MCV services on board vessels, under subsection a) of no. 1 of article 9 of Decree-Law no. 151-A/2000, of 20 July, under the terms of Decree-Law no. 264/2009, of 28 September, without prejudice to the licensing act of the competent maritime authority.
5. To exempt MCV service operators from spectrum usage fees for the usage of frequencies.
6. To provide a 20 working-day deadline for interested parties to provide their views in writing within the scope of the general consultation procedure to which the present draft decision is submitted, and the information considered confidential should be identified as such by said parties.

In accordance with the consultation procedures adopted by ICP-ANACOM on 12.2.2004, this Authority must analyse all the comments and provide a final document containing a reference to all the comments received and an overall assessment reflecting its understanding on said comments (subsection d) of point 3).

This is, therefore, the purpose of the present document.

2. CONTRIBUTIONS RECEIVED

Within the scope of the general consultation procedure, comments were received, within the defined deadline, from the following entities:

- PT GROUP

- VODAFONE PORTUGAL – Comunicações Pessoais, S.A. (VODAFONE).

3. SUMMARY OF COMMENTS RECEIVED

The comments received refer essentially to the following aspects:

- 2) Overall assessment;
- 2) General conditions associated to the offer of MCV services;
- 3) Spectrum usage rates;
- 4) Technical conditions and operational requirements.

1) Overall assessment

VODAFONE asserts its support for the draft decision in question since it considers that it will allow the offer of electronic communication services to be extended to respective clients.

2) General conditions associated to the offer of MCV services

The PT GROUP has expressed its agreement with the general conditions for the establishment of mobile communication services on board vessels.

2.1. Legal interception of communications

VODAFONE agrees that it should be the MCV services operator to guarantee the provision of legal interception systems to the competent national authorities, since the mobile telephone service operator does not always have

the information on the traffic generated by the respective client. For example, in the case of a call from a VODAFONE client initiated on board a vessel and destined for a foreign network.

2.2. Access to emergency calls

With regard to access to emergency calls, VODAFONE mentions that it shares "...the position of ICP-ANACOM regarding the non-imposition of any obligation to provide access to emergency services for passengers that make calls while on board a vessel, via roaming through the MCV system."

2.3. Billing of the service

With regards to itemised billing, VODAFONE considers that, since the MCV service operators do not have a direct relationship with the final customers of the service that it provides, it is not their task to impose the obligation of issuing itemised invoices.

Nonetheless, VODAFONE mentions that the "... the land mobile service providers with whom users contract their service can only guarantee the provision of their itemised retail billing if the MCV operator guarantees that those items are reflected in the TAP files (*Transfer Accounting Procedures*) exchanged with the land mobile network of the user."

3) Spectrum usage fees

With regards to this matter, VODAFONE understands that not subjecting the MCA service operators to spectrum usage fees does not contribute to the efficient usage of the same, even if that usage applies on a non-interference and non-protected basis.

VODAFONE mentions that the LCE provides for payment of spectrum usage fees, even though the usage of the same is not the object of allocation of usage rights and that ICP-ANACOM should "... define a fee for this service that is objectively justified, transparent, non-discriminatory and proportional to its intended purpose."

4) Technical conditions and operational requirements

With regards to the technical conditions and the operational requirements of the systems and offer of MCV services, the PT Group mentions that it is necessary to guarantee the compatibility between the different systems, in particular "... with the systems of the LMS GSM."

The PT GROUP states that, based on the fact that the MCV services use the 900 MHz and/or 1800 MHz frequency bands on a non-interference and non-protected basis, it is necessary to monitor these usages in national territorial seas, so as to prevent the possibility of constraints to the usage rights of mobile operators that operate in the national territory on 900 and 1800 MHz frequency bands.

The PT Group also mentions that it still uses "*extended GSM/UMTS cells*" technology in the national territory and, in particular, in the Azores and Madeira, for coverage between islands, and considers that, to minimise the interferences of the MCV systems, it would be relevant to know how and through what means ICP-ANACOM intends to guarantee the absence of harmful interference between MCV systems and the terrestrial mobile networks already in existence and licensed.

For the company it would also be desirable "... to assess the possibility of adopting a system that prevents the power emission of the MCV systems from not respecting the distance of 2 miles relative to the territorial coastal area or, at least, that a regulatory instrument be defined that would regulate a procedure enabling compliance with the restriction laid down in the Decision

...". Moreover, the company considers that the issue is of particular importance in the national territory, given the extension of the coastal area and the existence of archipelagos, which may condition the effective application of the rules defined for the operation of the MCV services.

The PT GROUP adds that for the purposes of co-existence between MCV services and the land mobile service it is necessary to guarantee that the support systems for the MCV services do not "pick up" the users of the land mobile service.

The PT GROUP also considers that there should be made available a list of the MCV systems operating in Portugal and the frequencies used, as well as the establishment, in collaboration with the maritime authorities, of mechanisms of identification and/or registration that enable a more effective supervision of all the vessels equipped with MCV systems.

4. POSITION OF THE PORT AND MARITIME INSTITUTE (INSTITUTO PORTUÁRIO E DOS TRANSPORTES MARÍTIMOS - IPTM)

In view of the responsibilities of the IPTM, the views of this entity were also taken into consideration.

As such, the IPTM mentions that it has no objection to the licensing exemption regime applicable to the associated base and mobile stations that guarantee MCV services on board vessels (as well as to the regime for other radiocommunication stations regarding which the opinion of that entity was also requested), further informing that, in due time, it will prepare a circular regarding the conditions of usage and licensing, which it intends to previously submit to ICP-ANACOM for assessment.

5. NETWORK LICENSE EXEMPTION

By mistake, in no. 4 of the draft decision object of the present public consultation, subsection b) of no.1 of article 9 of Decree-Law no. 151-A/2000, of 20 July, amended by Decree-Law no. 264/2009, of 28 September, is referred as grounds for exempting from radioelectric licensing the radiocommunication networks, which consist of associated base stations and mobile stations that guarantee MCV services on board vessels, when it is clear that reference should have been made to subsection a) of no. 1 of the same article.

Subsection b) of no. 1 of article 9 of Decree-Law no. 151-A/2000, of 20 July, amended by Decree-Law no. 264/2009, of 28 September, concerns the station license exemption, whereas the network license exemption is laid down in subsection a) of no. 1 of the same article.

B. ANALYSIS AND UNDERSTANDING OF ICP- ANACOM

In line with the matters raised by the companies that replied to the consultation, the present analysis shall refer to the following aspects:

- 1) Spectrum usage fees;
- 2) Technical conditions and operational requirements.

1) Spectrum usage fees

As mentioned in the comments made regarding the draft decision in question, MCV services shall be offered on a non-interference and non-protected basis.

In addition, in accordance with the draft decision object of the present public consultation, the radiocommunication networks, which consist of associated base stations and mobile stations that guarantee MCV services on board

vessels, will be exempt from radioelectric license, since the licensing to be attributed by the competent maritime authority represents an instrument sufficiently capable of ensuring the final intended objectives regarding the dual responsibility laid out in Decree-Law no. 151-A/2000, of 20 July, amended by Decree-Law no. 264/2009, of 28 September and in Decree-Law no. 190/98, of 10 July, as amended by Decree-Law no. 73/2007, of 27 March.

All the other services that use the radioelectric spectrum on a non-interference and non-protected basis, as in, for example, the case of mobile communication services on board aircraft (MCA services), are exempt from spectrum usage fees. There are therefore no grounds to justify a different treatment for MCV services.

2) Technical conditions and operational requirements

With respect to the operational compatibility of MCV services, the European Commission established the technical and operational conditions to be met by the MCV systems in the territorial seas of the Member States of the European Union so as to avoid harmful interference with the terrestrial mobile communication networks, particularly the GSM and UMTS systems. In fact, in the studies conducted within the CEPT, various scenarios of potential interference in the networks currently implemented were developed and, through deterministic simulations and calculations, the constraints that avoid harmful interference - and which are laid down in Decision 2010/166/UE - were identified.

Accordingly, also taking into account the competences of the IPTM in this matter, ICP-ANACOM will supervise the usage of the radioelectric spectrum by the MCV systems in order to guarantee compliance with the conditions specified in the Annex to the Commission Decision 2010/166/UE, and implement the necessary measures to solve any possible harmful interference, allegedly caused by the operation of the MCV systems.

With regards to the protection of the stations that implement “*extended GSM/UMTS cells*” techniques and the guarantee of undesired *roaming* , ICP-ANACOM highlights the specific technical conditions in the annex to the Decision 2010/166/EU, of 19 March 2010, namely the limitation of power, which will limit radio interference, and on the other hand, the limitation of “*timing advance*”, which will limit the connections/roaming of the mobile terminals at vessel base stations.

With respect to the adoption of a system or regulatory instrument that guarantees compliance with the obligation of cessation of emissions, when the vessel is at a distance of less than 2 nautical miles from the base line defined in the United Nations Convention on the Law of the Sea, consideration will have to be given to the competences of ICP-ANACOM and the IPTM. In this regard, it should be noted that the matter was extensively discussed within the European Commission and at the European Conference of Postal and Telecommunications Administrations (CEPT), where it was concluded that the implementation of the operational criteria/parameters of the system is the responsibility of the MCV service operators (operating based on a principle of non-interference and non-protection in relation to other systems).

On the other hand, it is important to mention that in the response report to the Commission Mandate, CEPT Report 28, the installation of a control system is assumed that, among other functions, will be responsible for the deactivation of the system when the vessel crosses the limits of the defined coastal area, which in this particular case is 2 nautical miles.

With regards to the provision of a list of MCV systems that will operate in national territory, it is noteworthy that, in accordance with subsection e) of article 120 of Law no. 5/2004, of 10 February, ICP-ANACOM is responsible for providing and maintaining updated information regarding the registration of companies that offer electronic communication networks and services in national territory. As such, and similarly to other electronic communication services, this information can, among other ways, be consulted at www.anacom.pt.

ICP-ANACOM shall not provide information regarding MCV service operators authorised by other Member States.

It is worth noting that no.8 of Recommendation 2010/167/UE establishes that Member States must stop requesting any additional authorisation, from March 2011 at the latest, for the usage of the spectrum provided for the offer of MCV services in its territorial seas if the usage of the spectrum by the MCV system in question has already been authorised by another Member State, in accordance with its authorisation regime and in conformity with the same Recommendation.

In addition, no. 9 of the same Recommendation indicates that Member States must consider the possibility of not requiring an additional authorisation for spectrum usage in its territorial seas for the offer of MCV services on board vessels that are of the nationality of a third country, provided the spectrum usage for the offer of MCV services on those vessels has already been authorised by those countries in question, under the same conditions as those established in Decision 2010/166/UE.

On the same subject, no. 11 of the same Recommendation establishes that Member States must cooperate actively, constructively and in a spirit of solidarity, using existing procedures when adequate, to address possible problems regarding harmful interference allegedly caused by the operation of MCV systems. In turn, Member States that exercise jurisdiction over MCV systems suspected of interfering in a harmful manner with services in the territory of another Member State, must respond and expeditiously settle the problem of possible interference.

With regards to the establishment of mechanisms of identification or registration that permit an effective supervision of all vessels equipped with MCV systems, namely in collaboration with the maritime authorities, it is important to mention that in accordance with the present draft decision, one of the conditions that MCV service operators will be subject to, without prejudice

to the responsibilities of the IPTM, is the obligation to supply to ICP-ANACOM the relevant data regarding the vessels registered in Portugal in which the MCV system is operational (see no. 3-h) of the draft decision under analysis).

On the other hand, as described in the draft decision in question, the installation of associated base stations and mobile stations that guarantee MCV services on board vessels will depend on the licensing act of the competent maritime authority (see no. 4 of the draft decision under analysis).

In these terms, ICP-ANACOM will defend the definition of procedures that promote the efficient usage of the spectrum, highlighting that such procedures shall also take into account the competences of the IPTM.

As such, it is important to note the understanding transmitted by the IPTM, which having no objection to the licensing exemption regime applicable to the associated base and mobile stations that guarantee MCV services on board vessels (as well as to the regime for other radiocomunication stations regarding which the opinion of that entity was also requested), has also informed that, in due time, it will prepare a circular regarding the conditions of usage and licensing, which it intends to previously submit to ICP-ANACOM for assessment.

Lisbon, 21 December 2010