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Determination of 6.12.2002

## **DETERMINATION**

### **I**

By determination of the Board of Administration of 24 October 2002, a Working Group was set up and assigned the following mandate:

- To analyze the responses provided by licensed operators concerning the operation of UMTS systems following a request for information on the part of ANACOM in order to assess the UMTS current state;
- To verify the state of progress in view of the projects presented within the framework of the invitation to tender;
- To update the situation regarding the implementation or operation of the UMTS system in the remaining State Members of the European Union;
- To prepare recommendations, submitting for discussion measures deemed appropriate.

In carrying out its mandate, the Working Group noted the following:

- The current level of progress of the UMTS networks of the licensed entities is considerably behind that which would be necessary for the commercial launching of the UMTS services on the presently appointed date (31 December 2002), under the terms of the proposals presented to tender and fulfilling the obligations covered by the respective licenses;
- None of the operators has currently neither an operational network nor terminal equipment which would enable the commercial activity to start (being provided only with small pilot networks intended for testing procedures);
- In Europe, commercial 3G services are still not available, except for small-scale pilot services established on an experiment basis in the Isle of Man, Monaco and Austria (covering the main towns, though terminals for service usage are not available).
- The technological features, the absence of UMTS terminal equipment, the indebtedness of operators, the down-turn of the telecommunications market, as well as the fall in the demand of data mobile services, are factors which contribute to the delay in the roll-out of UMTS networks and in the commencement of the commercial offer of the 3G services.
- In Europe, UMTS networks and services shall be actually made available as from 2003, in the majority of cases;
- In the light of information gathered from equipment manufacturers and suppliers, it is likely that the UMTS terminal equipment shall be made available only in the course of the second half of 2003. However, having regard to the time required for the network integration tests (specially the MVS1), it is unlikely that the conditions that allow the commercial launching of the UMTS services are met before the end of 2003.

## II

Having analyzed the report presented by the mentioned Working Group and whereas:

a) The confirmed absence in the market of network and terminal infrastructure equipment, which would allow the commencement of the commercial activity of the UMTS services on the date appointed by the Ministerial Order n. ° 111/MES/2001 of 24 October 2001, that is, on 31 December 2002, is a case involving *force majeure*, pursuant to article 20 of Decree-Law n. ° 381-A/97 of 30 December, such as to determine the extension of the time limit for the beginning of the licensed activity;

b) The amendments to be made to the UMTS licenses should be restricted to matters concerning the extension of the time limit for the commercial offer of the UMTS systems, and should not affect the central core of the obligations assumed by the licensees in the proposals presented to tender;

c) The implementation on the part of operators of pilot networks suitable for testing should be encouraged;

d) The incentives to the infrastructure share among operators must be weighted, by means of a decrease in the amount of fees for spectrum usage, having regard to the number of sites actually shared;

e) Some flexibility should be provided for where the number of control centers and base stations (Nodes B), to be installed by operators, is concerned, without prejudice to strict compliance with the coverage obligations set out in the licenses;

f) The delay in the launching of the 3G/UMTS networks should not be an obstacle to the progress of current projects concerning the information society development, which should be carried on, namely, through a higher level of improvement of the platforms that operate the data transmission in the GSM/GPRS system;

g) It is important to articulate the measures provided for the implementation of the UMTS systems in Portugal with the courses of action proposed by the European Commission in its communication of 2002.06.11, aiming at a swifter introduction of the mentioned systems;

The Board of Administration hereby determines:

1. To approve the Working Group report, as well as the recommendations therein;

2. To submit the following proposals to the member of the Government responsible for the media (?) area:

a) to extend up to 31 December 2003 the time limit given to UMTS operators for the actual start of the licensed activity, amending the licenses granted accordingly;

b) to maintain all the obligations covered by the licenses granted to the operators of the UMTS systems;

c) To apply in 2003 a fee for the usage of the radio spectrum attached to void value UMTS services, regarding operators who start their activity in the course of that year.

## III

The Board of Administration determines furthermore:

a) To maintain the validity period of the licenses emitted for the operation of UMTS systems, established by law for 15 years;

- b) To request of licensed operators for the UMTS systems operation that they forward a report every four months on the forecast timetable for the compliance with the coverage obligations established in the corresponding licenses;
- c) To ensure that the extension of the time limit for the commencement of the commercial operation of the UMTS systems does not affect (?) the progress not only of current but also of forecast projects concerning the information society development;
- d) To consider as likely to be shared among UMTS operators, subject to certain provisions (?), the following elements of the respective networks:
  - Support structures, buildings and auxiliary systems (for example, energy systems and air conditioner);
  - Accessory equipment such as cables, combinator, filters and antennas;
  - Access network (base station, RNC).
- e) To authorize operators, who must present a request duly substantiated, to install fewer control centers and base stations (Nodes B ) than that provided for in the licenses, where justified by the evolution of technology and the market, having ensured that the geographical area and population to which they are bound is thoroughly covered with fewer infrastructures;
- f) To determine the preparation of the necessary instruments for the amendment of licenses granted to UMTS operators, in compliance with the determinations set out herein.

Lisbon, 6 December 2002.