

Decision

Request for an extension to the deadlines for responding to draft decision on zero-rating offers and to the request for information issued pursuant to Regulation (EU) 2015/2120 of 25 November 2015

1. By means of a communication dated 21 March 2018, NOS Comunicações, S.A. has put a request to ANACOM seeking an extension to the deadlines for responding to the draft decision on zero-rating and similar offers in Portugal, as well as to the request for information issued by ANACOM pursuant to Regulation (EU) 2015/2120 of 25 November 2015 (Net Neutrality Regulation), seeking, in both cases, an additional period of 10 working days.
2. NOS states that there is a partial overlap between the two procedures and maintains that its request stems not only *“from the need to compile extensive information internally, including from NOS systems, on the actual use of different offers - information which is not readily available, but also from the necessary internal analysis of this information so that NOS can properly set out its concerns in a reasoned manner”*. In addition, NOS states that its request also stems from *“the fact that the consultation period covers the Easter period, which impacts the availability of human resources that can be allocated because of pre-approved holiday plans.”*
3. Having examined the arguments presented by NOS and taking into account the following:
 - a) that the complexity of the subject under consideration had been taken into account by ANACOM when approving the procedure of public consultation and prior hearing of interested parties to the draft decision on zero-rating and similar offers in Portugal by determination of 23 February 2018, setting a deadline of 25 working days in both cases;
 - b) that likewise, when ANACOM set a deadline of 30 working days for response to the request for information issued pursuant to the Net Neutrality Regulation, sent on 6 March 2018, note was made of the complexity of the request and of the need to compile extensive information in order to respond to it, as well as the fact that parallel procedures are in place, in particular with regard to the draft decision on zero-rating and similar offers in Portugal;

- c) that one of the objectives of the request for information pursuant to the Net Neutrality Regulation is to acquire data required for preparation of the annual net neutrality report, which is to be approved and published no later than 30 June, so that extending the deadline for responding to this request by 10 working days would jeopardize compliance with this obligation;
- d) that the period of the consultation and prior hearing procedures relating to the draft decision on zero-rating and similar offers in Portugal and the period for responding to the request for net neutrality information do indeed clash with the Easter holiday season, and it is accepted that this may be such as to limit the availability of company work teams;
- e) that the extension of the deadline for responding to the draft decision on zero-rating and similar offers in Portugal, considered as an extension to the prior hearing period, also justifies extension of the public consultation period, encouraging greater and more reasoned participation by civil society - a factor conducive to a better decision-making process;

it is considered that the request put by NOS should be partially granted, so that the deadline for responding to the prior hearing and the public consultation on the draft decision on zero-rating and similar offers in Portugal should be extended by a further 10 working days and the deadline for responding to the request for information pursuant to the Net neutrality Regulation should be extended for a further 3 working days (until 23 April 2018).

4. In view of the arguments put, and pursuant to point q) of paragraph 1 of article 26 of ANACOM's Statutes (approved by Decree-Law no. 39/2015 of 16 March), **ANACOM's Board of Directors determines** to approve:
- i. extension of the period of the prior hearing and public consultation being held on the draft decision on zero-rating and similar offers in Portugal (draft decision approved on 22 February 2018) for a further 10 working days; and
 - ii. extension of the deadline for responding to the request for information issued pursuant to the Net Neutrality Regulation, sent out on 6 March 2018, for a further 3 working days.

Lisbon, 23 March 2018.