

Alteration of DTT Multiplexer A operating channel in Mainland Portugal

Prior Hearing and General Consultation Report

March 2011

1. Framework

By determination of the Management Board of ICP - Autoridade Nacional das Comunicações (ICP-ANACOM), taken at the meeting of 22 December 2010¹, it was decided:

1. *«To alter the Right of Use for Frequencies ICP-ANACOM No. 06/2008, so as replace radio channels 61 (790-798 MHz), 64 (814-822 MHz) and 67 (838-846 MHz), assigned to PTC, with channel 60 (782-790 MHz) in Mainland Portugal, channel 54 (734-742 MHz) in the Autonomous Region of Madeira and channels 48 (686-694 MHz), 49 (694-702 MHz) and 55 (742-750 MHz) in the Autonomous Region of the Azores;*
2. *To order PTC to conclude the replacement of radio channels mentioned in the preceding paragraph by 30 April 2011;*
3. *To submit determinations laid down in paragraphs above to the prior hearing of PTC, pursuant to articles 100 and 101 of the Administrative Procedure Code, for a period of 15 working days from the date of notification hereof, for a written assessment on the alteration to be carried out, as well as to the general consultation procedure, laid down in articles 8 and 20 of the ECL, for comments by interested parties, in writing and within the same period of time, in this case as from the date this information is made available at ICP-ANACOM's website ;*
4. *To notify the Entidade Reguladora para a Comunicação Social (Regulatory Authority for the Media) of this draft decision, so that it may assess the subject, if it so wishes, within the period of time set out in the preceding paragraph».*

Further to the prior hearing and general consultation procedures, the corresponding report was drawn up, the following conclusions, duly grounded, having been reached:

- Maintenance of the draft decision approved on 22 December 2010 to alter the Right of Use for Frequencies ICP-ANACOM No. 06/2008, so as replace radio channels 61 (790-798 MHz), 64 (814-822 MHz) and 67 (838-846 MHz), assigned to PTC for the Autonomous Regions of Madeira and the Azores, with channel 54 (734-742 MHz) in the Autonomous Region of Madeira and channels 48 (686-694 MHz), 49 (694-702 MHz) and 55 (742-750 MHz) in the Autonomous Region of the Azores;
- Relatively to channel 67 (838-846 MHz), assigned for Mainland Portugal, ICP-ANACOM will immediately promote the prior hearing and general consultation procedures so as to replace it with channel 56 (750-758 MHz).

As a result both of comments received and of the analysis carried out, which is presented in more detail in the report, ICP-ANACOM reached the conclusion that there were reasons which justified the replacement of channel 67, not with channel 60, as initially planned in the draft decision (DD) approved on 22 December 2010, but with channel 56.

In this context, ICP-ANACOM took the view that it should approve a new DD and promote new prior hearing and general consultation procedures, ensuring that interested

¹ Available at <http://www.anacom.pt/render.jsp?contentId=1063747>.

parties had the opportunity to assess the intended alteration of the DTT Mux A operating channel.

Therefore, on 9 March 2011, the Management Board of ICP-ANACOM determined as follows²:

1. *«To approve the report³ on the prior hearing and general consultation to which the draft decision approved by determination of the Management Board of 22 December 2010 was submitted, in the terms and on the grounds indicated therein;*
2. *To alter the Right of Use for Frequencies ICP-ANACOM No. 06/2008, so as replace radio channels 61 (790-798 MHz), 64 (814-822 MHz) and 67 (838-846 MHz) assigned to PTC for the Autonomous Regions of Madeira and the Azores with channel 54 (734-742 MHz) in the Autonomous Region of Madeira and channels 48 (686-694 MHz), 49 (694-702 MHz) and 55 (742-750 MHz) in the Autonomous Region of the Azores;*
3. *To approve a draft decision on the replacement of channel 67(838-846 MHz), assigned for Mainland Portugal, with channel 56 (750-758 MHz)».*

On the same date (9.3.2011), ICP-ANACOM approved the following DD⁴:

1. *To alter the Right of Use for Frequencies ICP-ANACOM No. 06/2008, so as replace radio channel 67 (838-846 MHz), assigned to PTC for Mainland Portugal, with channel 56 (750-758 MHz)*
2. *To order PTC to conclude the replacement of channel 67 with channel 56 by 15 July 2011, starting with relays concerned with the analogue switch-off pilot stages in zones specified by ICP-ANACOM;*
3. *To submit determinations laid down in paragraphs above to the prior hearing of PTC Comunicações, S.A., RTP – Rádio e Televisão de Portugal, S.A., SIC – Sociedade Independente de Comunicação, S.A. and TVI – Televisão Independente, S.A., pursuant to articles 100 and 101 of the Administrative Procedure Code, for a period of 10 working days from the date of notification hereof, for a written assessment on the alteration to be carried out, as well as to the general consultation procedure, laid down in articles 8 and 20 of Law number 5/2004, of 10 February, for comments by interested parties, in writing and within the same period of time, in this case as from the date this information is made available at ICP-ANACOM's website;*
4. *To notify the Entidade Reguladora para a Comunicação Social (Regulatory Authority for the Media) of this draft decision, so that it may assess the subject, if it so wishes, within the period of time set out in the preceding paragraph.*

By the deadline for reception of comments (29.03.2011), responses were received from the following bodies and persons:

² Available at <http://www.anacom.pt/render.jsp?contentId=1076911>.

³ Available at <http://www.anacom.pt/render.jsp?categoryId=340656>.

⁴ Available at <http://www.anacom.pt/render.jsp?categoryId=340655>.

- OPTIMUS – Comunicações, S.A. (**OPTIMUS**);
- PT Comunicações, S.A. (**PTC**);
- SIC – Sociedade Independente de Comunicação, S.A. (**SIC**)
- Vodafone Portugal – Comunicações Pessoais, S.A. (**VODAFONE**);
- José Ilídio Morais;
- José Oliveira Cangeiro.

The response of the Entidade Reguladora para a Comunicação Social (ERC) was received on 29 March 2011.

An unidentified person also submitted a response.

Given the succinct nature of this document, its analysis also requires the consultation of the referred responses, which shall be made available at ICP-ANACOM's website together with this report, as far as non-confidential parts are concerned.

2. Summary of comments received and ICP-ANACOM's position thereon

In short, comments received may be divided into three large sets of issues:

- a) Use of channel 56 in the Mainland;
- b) Time limit to replace the radio channel;
- c) Other issues.

2.1. Use of channel 56 in the Mainland

ERC takes the view that, although the line now at stake introduces a slight change in the position taken previously by ICP-ANACOM in the DD of 22.12.2011, it does not, however, alter the core of the position and concerns previously submitted by this Regulatory Entity, which highlights that this draft decision "... *fails to ensure the removal* of the risk of interference between electronic communications services, although this possibility is now deemed to *be reduced*".

OPTIMUS generally agrees with the DD presented by ICP-ANACOM, declaring that this seems to be the solution which best safeguards the various interests.

OPTIMUS declares also that the impact of this alteration in the so-called digital dividend 2 should be taken into account. However, given the lack of actual information on frequencies to be included in the digital dividend 2 and the precise date on which it is to be made available on the market, which is not expected to occur in the coming years, as this type of decisions are taken worldwide in the medium/long term, **OPTIMUS** believes that assigning channel 56 to DTT shall be without prejudice to the adoption of the digital dividend 2 in Portugal in frequency bands adopted at European level. For this purpose, the current process must safeguard the fact that the assignment of frequencies to DTT may be subject to future alterations, where there is cause to do so, namely the harmonized use of frequencies for the provision of electronic communications services.

PTC starts by referring that it had the chance to present its position on the change of broadcasting channels associated to Mux A, particularly the replacement of channel 60 with channel 67 in the Mainland, in its response to the DD of 22.12.2010,

recalling that it supported a “future proof” solution, taking into account the possibility of interference in DTT by systems using the 800 MHz sub-band and of extension of the Digital Dividend to the 700 MHz sub-band.

In fact, **PTC** states that it drew attention to the RSPP⁵ Draft Decision, presented by the Commission to the Council and to the Parliament, which expressly refers the possibility of providing for an additional band below the 790 MHz (the so-called “digital dividend 2”) for electronic communications services, most likely the 700 MHz sub-band (specifically channels 49 to 60), adding that by the end of February, the European Parliament discussed the referred Program, and a large majority supported the possibility of opening the 700 MHz sub-band for broadband services.

In this context, **PTC** considered that the possibility of using a different channel for Mux A in the Mainland, below channel 49, should be considered.

Notwithstanding, and as ICP-ANACOM considers it possible only to replace channel 67 with channel 56, and it seems to be impossible to change Mux A to a channel below channel 49, a situation which PTC clearly prefers, and given the need to comply with the analogue switch-off time-table, **PTC** does not oppose to the replacement of channel 67 with channel 56 for Mainland Portugal, which is now proposed.

SIC agrees with the analysis and conclusions put forward by ICP-ANACOM, and does not present any objections to the final decision, as regards the replacement of channel 67 with channel 56.

VODAFONE agrees with the replacement of channel 67 for DTT, however expresses some doubts on the choice of channel 56 as an alternative, basically on the same grounds presented in its DD of 22.12.2010.

In fact, given that the fears on a full use of the potential offered by the 800 MHz band (as a channel not adjacent to the 790-862 MHz is under consideration) have been partially suppressed, **VODAFONE** considers that, notwithstanding, the alternative now proposed does not meet best the public interest, as channel 56 is situated in the 694-790 MHz sub-band, which has been a matter of debate in some European countries, namely in France and in Germany, as a potential second band for harmonization at European level, and inclusively been known as “second digital dividend”.

VODAFONE is thus of the opinion that the alternative to channel 67 should avoid these international considerations, ensuring as much as possible the removal of obstacles to the adoption of these harmonization initiatives and minimizing any costs the DTT service provider and consumers and in general may have to incur if a new channel alteration is required.

José Morais deems that the alteration from channel 67 to channel 56 or channel 60 has no relevance, and what in fact is important is to provide timely and effective information to the population.

⁵ RSPP - Radio Spectrum Policy Programme.

2.1.1. ICP-ANACOM's position

As regards the fact that channel 56 may not be deemed as a “future proof” solution, ICP-ANACOM believes that no relevant facts occurred on this matter in the course of the 1st quarter of 2011, and it thus recalls its opinion laid down in the prior hearing and general consultation report⁶ on the alteration of some DTT Mux A operating channels, namely that given the uncertainty related to the possibility of implementing a hypothetical digital dividend 2, the fundamental target of minimizing costs, especially social ones, with the alteration of the DTT operational channel, which must be urgently implemented, should not be sacrificed.

As stated at the time, ICP-ANACOM maintains its view that a hypothetically “future proof” solution would imply a DTT change at higher costs for the State (which could turn out to be unnecessary in the absence of the so-called digital dividend 2), and that disruptions associated to that alteration would be significant, as it would only take place after the switch-off.

Relatively to possible interference between DTT and electronic communications services that will use the 800 MHz band, ICP-ANACOM clarifies that given radio spectrum contingencies, the potential for interference between both electronic communications services is always a possibility, although to a greater or a lesser extent. It is a fact that the use of channel 56 by DTT, in alternative to channel 60, reduces the possibility of interference with electronic communications services that will use the 800 MHz band.

Lastly, ICP-ANACOM also deems it important to provide effective information on the alteration of the current channel used by the DTT network on the Mainland.

2.2. Time limit to replace the radio channel

With regard to the time needed to conclude the replacement of the current DTT radio channel, **PTC** restates that it requires 16 weeks to carry out the operational aspects of the alteration, with an initial period for delivering equipment, thus the date of 15 July 2011, established for the conclusion of the replacement of channel 67 with channel 56, should be adjusted taking into account the period mentioned above and the dates associated for the switch-off pilots. **PTC** declares also that the alteration must obviously be performed gradually.

VODAFONE restates the urgent nature of the channel alteration, calling on ICP-ANACOM to bring forward the final date now at stake (15 July 2011), in line with the DD of 22.12.2010, which set 30 April 2011 as the deadline for the conclusion of this process.

⁶ Available at http://www.anacom.pt/streaming/RelatorioAudiencia_Consulta.pdf?contentId=1076245&field=ATTACHED_FILE

2.2.1. ICP-ANACOM's position

It is ICP-ANACOM's opinion that the 790-862 MHz sub-band should be released by DTT before the switch-off occurs, as early as possible. In fact, the sooner this release takes place, the lower will be DTT's penetration, which will reduce the impact of this alteration on the general public as well as associated user-support costs.

The 16-week period indicated by PTC is deemed to be reasonable and in line with requirements of the alteration, and also allows for a timely conclusion of the process, thus ICP-ANACOM takes the view that the date of 15 July 2011 should not be brought forward.

PTC must start the channel alteration process as soon as possible, first in the pilot zone of Alenquer, and then in Cacem, as it is in these zones that there is greater urgency to carry out the respective alteration.

2.3. Other issues

PTC declares that ICP-ANACOM should take also a formal decision on the alteration of channels concerning the Autonomous Regions of the Azores and Madeira, as the DD of 22 December provided for the adoption of channel 54 in the Autonomous Region of Madeira and channels 48, 49 and 55 in the Autonomous Region of the Azores.

PTC stresses that changing the channel currently used by DTT to channel 56 will naturally imply additional work, and therefore an increase of costs, and that PTC should be fully reimbursed for the costs arising from the alteration to be approved. **PTC** refers also that it would have been desirable for ICP-ANACOM to have already defined the conditions and criteria for compensating PTC for the alteration costs.

PTC considers that the DTT channel alteration process and measures to be taken on the analogue television broadcasting network should be discussed in detail with ICP-ANACOM, preferably as soon as it is notified of the final decision on this matter, and that the present decision and the respective report to be published further to the DD under consideration, for purposes of transparency, effectiveness and clarity of the process, should:

- Expressly include the identification of the new channels to be used by analogue television stations in the Mainland currently using channel 56;
- Indicate that PTC is not responsible raising awareness of the population about the above-mentioned channels;
- Indicate that PTC is not charged with communicating the alteration of channels associated with DTT, and that, as such, all communication measures should be carried out by ICP-ANACOM, which must also bear the respective costs.

2.3.1. ICP-ANACOM's position

ICP-ANACOM clarifies that the formal decision on the alteration of DTT network channels associated to Mux A in the Autonomous Regions of Madeira and the Azores was taken on 9 March by determination of its Management Board, paragraph 2 of the deliberation section laying down the following: *«To alter the Right of Use for Frequencies ICP-ANACOM No. 6/2008, replacing radio channels 61 (790-798 MHz), 64 (814-822 MHz) and 67 (838-846 MHz), assigned to PT Comunicações for the Autonomous Regions of Madeira and the Azores, with channel 54 (734-742 MHz) in the Autonomous Region of Madeira, and with channels 48 (686-694 MHz), 49 (694-702 MHz) and 55 (742-750 MHz) in the Autonomous Region of the Azores».*

ICP-ANACOM is aware that the replacing channel 67, used by the DTT network in the Mainland, with channel 56, will imply additional work and therefore additional costs, as it is necessary to release the use of channel 56 in the Mainland by analogue television. The Authority, nevertheless, expects that this increase of costs will not change its assessment of the scale of total costs involved in the alteration here at stake. As referred in the prior hearing and general consultation report on the alteration of some DTT Mux A operating channels, it is clearly apparent from Decree-Law number 151-A/2000, of 20 July, that PTC is entitled to a reimbursement for costs which it demonstrates to have incurred with the alteration hereby provided for, which must be based on actual measures and which will be duly audited.

ICP-ANACOM restates that the definition of conditions and criteria for allocating compensation to PTC may only take place after the final decision on the ongoing procedure is approved, and that it is incumbent upon the Authority, in the scope of its advisory functions before the Government, to propose the referred conditions and criteria according to the compensation regime set out in Decree-Law number 151-A/2000, of 20 July.

ICP-ANACOM agrees with the proposal to discuss in detail with PTC the DTT channel alteration process and measures to be taken on the analogue television broadcasting network. As regards the identification in the final decision and in the present report of the new channels to be used by analogue television stations in the Mainland currently using channel 56, as this is a matter that ends with the switch-off, ICP-ANACOM takes the view that it should be dealt with the scope of the current radio spectrum management.

As regards the communication associated with the alterations which are now required, ICP-ANACOM will request television operators to disclose the alteration of channel 56 to affected viewers. In the case of the alteration of the channel assigned to DTT, PTC must only update the information provided.

3. Conclusions

In the light of the above, ICP-ANACOM maintains its draft decision to alter the Right of Use for Frequencies ICP-ANACOM No. 06/2008, so as replace radio channel 67 (838-846 MHz), assigned to PTC for Mainland Portugal, with channel 56 (750-758

MHz), ordering PTC to conclude the procedure of replacement of channel 67 with channel 56 within 16 weeks at the most from the date of notification of the final decision, starting with relays concerned with the analogue switch-off pilot stages in zones specified by ICP-ANACOM.

Lisbon, 31 March 2011.

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