

## DECISION

### **Transfer of the right of use for frequencies held by Rádio Mirasado - Cooperativa Cultural de Animação Radiofónica, CRL. to DiálogoHábil, Unipessoal Lda.**

#### **1. The application**

Further to the application for transfer of the local programme service known as “Rádio Mirasado”, broadcasting at 93.9 MHz, in the municipality of Alcácer do Sal and of the corresponding license for pursuit of the radio broadcasting activity, presented by Rádio Mirasado-Cooperativa Cultural de Animação Radiofónica, CRL. (hereinafter referred to as Mirasado), *Entidade Reguladora para a Comunicação Social* (the Regulatory Authority for the Media - ERC), by means of a letter received on 25 August 2016, submitted the respective file to the examination of ANACOM, so that this Authority, under the combined terms of paragraph 9 of article 4 and paragraph 7 of article 22 of Law No. 54/2010, of 24 December (the Radio Law), ruled on the transfer of the right of use for frequencies allocated to that body for the provision of a publicly available radio broadcasting service, of a local scope, in the municipality of Alcácer do Sal.

According to the corresponding investigation file, Mirasado requested ERC’s authorization to transfer its local programme service. Notwithstanding the fact that the initial application does not identify the transferee, as Mirasado merely applies for the transfer, failing to indicate both the transferee and the reasons supporting the request, it was found, following the analysis of the documentation attached to the application, that it is possible, through the reading of the Minutes of the Assembly of Members, to identify the company DiálogoHábil, Unipessoal Lda. (hereinafter DH) as the transferee, and that the application for transfer is supported on the «*technical bankruptcy*» of Mirasado.

The application for transfer of the programme service attaches also an application for the change of programme service name (from «Rádio Mirasado» to «TDS-Telefonia do Sul»), which is signed by DH and not by Mirasado, which still owns the name. Nevertheless, it is not for ANACOM to assess the perfection of the administrative process under way at ERC, or their consequences on the granting of the application,

and given that it possible to draw of the documents included in the file submitted by ERC what is necessary and sufficient for ANACOM to provide its opinion in the framework of its specific powers, it was deemed that nothing prevented the procedure concerning the transfer of rights of use for frequencies held by Mirasado to move forward.

## **2. Framework**

### **2.1. The Radio Law**

Pursuant to article 4, paragraph 9, of the Radio Law, the transfer of local programme services and respective licenses or authorizations is permitted, according to the procedures laid down for the alteration of operator control, where it can be proved that this promotes the safeguard of the licensed or authorized project and insofar as all the property, rights and obligations, including those which are labour-related, exclusively concerned with the programme service under consideration, are transferred.

In this case, and without prejudice to powers granted to ANACOM according to the regime applicable to electronic communications networks and services and to radiocommunications, the transfer is dependent on an authorization granted by ERC (cfr. article 4, paragraph 10 of the Radio Law).

Article 22, paragraph 7, of the Radio Law lays down that files on license transfers must be examined by ERC, which submits them to ANACOM for a decision on the transfer of the respective rights of use for frequencies, according to the regime applicable to electronic communications networks and services and to radiocommunications.

The Radio Law further specifies, in its article 4, the restrictions on the ownership of radio programme services, namely of a local scope:

- Natural or legal persons may not hold, either directly or indirectly, namely through a relationship of control, a number of licenses for radio programme services of a local scope exceeding 10% of all licenses granted on national territory;
- Natural or legal persons of private or cooperative sectors may not hold, either directly or indirectly, namely through a relationship of control, a number of frequency

modulated radio programme services of a national scope equal to or exceeding 50% of programme services qualified for the same coverage area and for the same frequency band;

- Natural or legal persons may not hold in the same district, metropolitan area, municipality, or, in the autonomous regions, in the same island, either directly or indirectly, namely through a relationship of control, a number of licenses for radio programme service of a local scope exceeding 50% of programme services of the same scope qualified for each of the referred territorial areas.

## **2.2. The Electronic Communications Law (ECL)<sup>1</sup>**

ECL lays down in its article 34 that the transfer or lease of rights of use for frequencies between undertakings is authorized, in accordance with conditions attached to those rights of use and with procedures established in that article, where the transfer or lease of such rights has not been explicitly prohibited by the National Regulatory Authority (NRA - ANACOM) and published in the National Frequency Allocation Plan (NFAP).

In this scope, it is incumbent on ICP - ANACOM to ensure that:

- a) The intention to transfer or to lease rights to use frequencies, as well as the effective transfer or lease thereof, is made public;
- b) The transfer or lease does not distort competition, namely due to the accumulation of rights of use;
- c) Frequencies are efficiently and effectively used;
- d) The use for which frequencies are intended is complied with where it has been harmonised through the application of Decision No. 676/2002/EC of the European Parliament and of the Council of 7 March (Radio Spectrum Decision) or other Community measures;
- e) The restrictions set forth in the law in respect of radio and television broadcasting are safeguarded.

For this purpose, and according to paragraph 6 of the mentioned provision, it is incumbent on ANACOM to address, within 45 days at the most, the intention to transfer the rights, as well as the conditions to do so, which must be duly communicated to this

---

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

Authority. ANACOM is entitled to oppose the intended transfer of rights of use, as well as to impose the necessary conditions for compliance with requirements listed in the preceding paragraph.

In this scope, ANACOM must also request the prior opinion of Autoridade da Concorrência (AdC - the Competition Authority), which must be issued within a 10-day period of time from the date of the request, save where the complexity of the matter requires an extension.

It must also be borne in mind that the transfer of these rights of use does not suspend nor interrupt the period for which the respective rights were allocated, and that after the transfer, conditions attached to rights to use frequencies continue to apply, unless otherwise specified by ANACOM (paragraphs 9 and 10 of article 34).

ANACOM's silence, after the elapse of the 45-day period referred to in article 34, paragraph 6, is to be interpreted as a non-opposition to the transfer or lease of the rights of use, however the effective transfer or lease must still be notified.

### **2.3. Regime applicable to the licensing of radio networks and stations**

According to article 14, paragraph 1, of Decree-Law No. 151-A/2000 of 20 July, as amended and republished by Decree-Law No. 264/2009, of 28 September (legal regime applicable to the licensing of radiocommunications networks and stations, the supervision of the installation of such stations and the use of the radio spectrum), network or station licences are transferable.

The body to which a license is transferred undertakes all inherent rights and obligations and, where appropriate, the transfer of a network licence implies the transfer of all licences of stations integrating it.

In this scope also, ANACOM must rule within 45 days on the content of the notification, being entitled to oppose the transfer of licenses or to impose any conditions required for the optimal management of the spectrum, specifically the effective and efficient use of frequencies and non-existence of competition distortions.

The transfer of network and station licenses does not suspend nor interrupt the term for which licenses were granted.

### 3. Assessment

Mirasado is the holder of the right of use for frequencies ICP - ANACOM No. 80/2009, issued on 26 March 2009 and valid up to 06 March 2024, intended for the provision of a publicly available radio broadcasting programme service, of a local scope, for the municipality of Alcácer do Sal, in the 87.5 -108 MHz band.

Mirasado also holds radio station license No. 20295 of the radio broadcasting service, valid up to 06 March 2019, according to which the station broadcasts at 93.9 MHz.

Mirasado holds also an Authorization for operation of the Radio Data System (RDS) with the programme channel name “MIRASADO”.

As regards the transferee, it was found that DH does not hold any license for the pursue of the FM radio broadcasting activity.

The application under consideration was analysed bearing in mind the requirements which, according to article 34, paragraph 5, of ECL, must be fulfilled so that ANACOM may assess the planned transfer.

As such, and by letter of 9 September 2016, AdC was requested to issue an opinion for the purpose of article 34, paragraph 7, of ECL.

Furthermore, in compliance with article 34, paragraph 5 a) of ECL, ANACOM disclosed at its website (<http://www.anacom.pt/render.jsp?contentId=1394611>), on 14 September 2016, that it had received from ERC an application to decide on the intention expressed by Rádio Mirasado-Cooperativa Cultural de Animação Radiofónica, CRL., to transfer to DiálogoHábil, Unipessoal Lda., the right of use for frequencies (RUF) that it had been allocated for the pursue of the radio broadcasting activity.

In its response, received on 22 September 2016, AdC concludes that “*it follows, from the analysis of documents submitted by ANACOM, that the referred transfer to*

*DiálogoHábil of the right of use for frequencies represents a concentration of companies for the purpose of article 36 of Law No. 19/2012, of 8 May (Competition Law), although criteria that require the prior notification of the transaction to this Authority are not fulfilled.*

*Therefore, in the light of the referred elements, this Authority concludes that the intention of Rádio Mirasado is not likely to give rise to competition distortions, in particular as regards the creation of significant barriers to effective competition in the national market or in a substantial part thereof».*

With regard to other requirements, on whose fulfilment the granting of the authorization for the transfer of the right of use for frequencies depends, set out in article 34, paragraph 5, of ECL, as well as in article 14 of Decree-Law No. 151-A/2000, ANACOM takes the view that they have been duly safeguarded, in the light of available information.

Specifically on the safeguard of restrictions provided for in the Radio Law (requirement laid down in paragraph 5 e) of article 34 of ECL), in articulation with article 4 of that same Law), and given that ANACOM lacks information on capital shares between the several bodies qualified for the pursuit of the radio broadcasting activity, it is deemed that it is incumbent on ERC to assess, at all times, whether restrictions laid down on the ownership of radio programme service operators are not infringed.

#### **4. Decision**

Therefore, in the scope of the power provided for in paragraph 1 e) of article 8 of ANACOM's Statutes, approved by Decree-Law No. 39/2015, of 16 March, and under the combined terms of article 34, paragraph 6, of Law No. 5/2004, of 10 February, as amended by Law No. 51/2011, of 13 September, article 14, paragraph 6, of Decree-Law No. 151-A/2000, of 20 July, as amended and republished by Decree-Law No. 264/2009, of 28 September, and article 22, paragraph 7, of Law No. 54/2010, of 24 December, **ANACOM's Management Board hereby determines:**

1. Not to oppose the transfer to DiálogoHábil, Lda., of the right of use for frequencies in the 87.5-108 MHz frequency band allocated to Mirasado - Cooperativa Cultural

de Animação Radiofónica, CRL., for the provision of a radio programme service, of a local scope, for the municipality of Alcácer do Sal, under paragraph 6 of article 34 of ECL.

2. Not to oppose the transfer to DiálogoHábil, Lda., of the radio station license No. 20295 for the radio broadcasting service, valid up to 06 March 2019, according to which the station broadcasts at 93.9 MHz, which is held by Rádio Mirasado - Cooperativa Cultural de Animação Radiofónica, CRL.
3. Not to oppose the transfer to DiálogoHábil, Lda., of the authorization for operation of the Radio Data System (RDS) with the programme channel name (PS): «MIRASADO».
4. That the effective transfer to DiálogoHábil, Lda., of the right of use for frequencies in the 87.5-108 MHz frequency band, allocated to Mirasado - Cooperativa Cultural de Animação Radiofónica, CRL., for the provision of a radio programme service, of a local scope, for the municipality of Alcácer do Sal, is subject to the condition that *Entidade Reguladora para a Comunicação Social* (ERC) grants the request for transfer of the programme service known as “Rádio Mirasado” and of the respective license for pursuit of the radio broadcasting activity held by Rádio Mirasado - Cooperativa Cultural de Animação Radiofónica, CRL.
5. To notify ERC of decisions in the preceding paragraphs, requesting that Authority to inform ANACOM on the contents of the transfer decision, so that this Authority, where appropriate, may accordingly issue to DiálogoHábil, Lda the certificate laying down the respective right of use for frequencies.

Lisbon, 20 October 2016.