

## DECISION

### **Transfer of the right of use of frequencies held by Cooperativa Cultural Voz do Marão, C.R.L. to Rádio Antena do Marão, Lda.**

#### **1. The request**

Further to the request for transfer of the local programme service known as “Rádio Voz do Marão”, broadcasting in the 96.3 MHz frequency band, in the municipality of Vila Real, and of the respective license for the pursuit of the radio broadcasting activity, presented by Cooperativa Cultural Voz do Marão, C.R.L., hereinafter referred to as Voz do Marão, the Entidade Reguladora para a Comunicação Social (ERC - the Regulatory Authority for the Media), by means of letter received on 30 January 2013, submitted the respective procedure file to the examination of ICP - ANACOM, so that, under the combined terms of article 4, paragraph 9, and article 22, paragraph 7, of Law No 54/2010, of 24 December (the Radio Law), this Authority takes a decision on the transfer of a right of use for frequencies allocated to that body for the provision of a publicly available radio programme service, of a local scope, in the municipality of Vila Real.

According to the corresponding investigation file, Voz do Marão requested ERC’s authorization to promote the transfer of its local programme service to Rádio Voz do Marão due to economic/financial unviability reasons.

#### **2. Framework**

##### **2.1. *Lei da Rádio* (Radio Law)**

Pursuant to paragraph 9 of article 4 of the *Lei da Rádio* (Radio Law), the transfer of programme services on a local level and respective licenses or authorizations shall be permitted, according to the procedures laid down for the alteration of operator control, where it can be proved that this will help safeguard the licensed or authorized project, 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 such powers as are granted to ICP-ANACOM according to the regime applicable to electronic communications networks and services and to radiocommunications, such transfer is subject to an authorization by ERC (see article 4, paragraph 10 of the *Lei da Rádio* (Radio Law)).

Furthermore, paragraph 7 of article 22 of the *Lei da Rádio* (Radio Law) stipulates that applications to transfer licenses shall be examined by ERC, which shall submit the applications to ICP-ANACOM for a decision on the transfer of the respective rights of use of frequencies, according to the regime applicable to electronic communications networks and services and to radiocommunications.

Article 4 of the *Lei da Rádio* (Radio Law) also details a set of restrictions on the ownership of radio programme services, and specifically of local services:

- Natural or legal persons shall not hold, either directly or indirectly, namely through a relationship of control, a number of licenses for radio programme services on a local level exceeding 10% of all licenses granted in the national territory.
- Natural or legal persons of private or cooperative sectors shall not hold, either directly or indirectly, namely through a relationship of control, a number of frequency modulated radio programme services on a national level equal to or exceeding 50% of programme services qualified for the same coverage area and for the same frequency band.
- Natural or legal persons shall 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 on a local level exceeding 50% of programme services of the same scope qualified for each of the referred territorial areas.

## **2.2. LCE - Lei das Comunicações Eletrónicas (Electronic Communications Law)<sup>1</sup>**

Article 34 of the LCE provides for the transfer or lease of rights of use of frequencies between undertakings in accordance with the conditions governing said rights of use and subject to procedures as established in the same article, where the transfer or lease of such rights has not been explicitly prohibited by the National Regulatory Authority (ICP-ANACOM in this case) and published in the National Table of Frequency Allocations.

In this respect, it is incumbent upon ICP-ANACOM to ensure that:

- a) the intention to transfer or to lease rights of use of 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 stipulated use of frequencies is observed where 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 this article, it is incumbent upon ICP-ANACOM to give its decision, within not more than 45 days, on the intention to transfer the rights of use in question, as well as the conditions governing said transfer, which decision is to be duly notified. In this regard, ICP-ANACOM is entitled to oppose the intended transfer of rights of use or impose such conditions as may be necessary to ensure compliance with the requirements listed in the preceding paragraph.

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

In this situation, ICP-ANACOM shall request the prior opinion of AdC - Autoridade da Concorrência (Competition Authority), which shall be issued within a ten-day period of time from the date of the request, save where the complexity of the matter warrants an extension.

It is further noted that the transfer of these rights of use does not suspend or interrupt the period for which the respective rights were granted, whereas the conditions attached to said rights of use shall continue to apply subsequent to the transfer, unless otherwise specified by the NRA (paragraphs 9 and 10 of article 34)

The silence of ICP-ANACOM, after the elapse of the 45-day period referred to in paragraph 6 of article 34, should be interpreted as non-opposition to the transfer; however the effective transfer must still be notified.

### **2.3. Regime governing the licensing of radiocommunications networks and stations**

In accordance with 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<sup>2</sup>, network or station licences shall be transferable.

The entity to which a license is transferred shall assume all the associated rights and obligations, whereas, where applicable, the transfer of a network licence shall imply the transfer of all the licences of the stations which comprise the network.

In this case also, ICP-ANACOM shall rule, within 45 days, on the content of the notification, and may oppose the transfer of licences or impose any conditions as may be required to ensure optimal management of the spectrum and, specifically, for the effective and efficient use of frequencies and to prevent distortion of competition.

The transfer of network and station licenses does not suspend or interrupt the term for which the licences were granted.

## **3. Assessment**

Voz do Marão is the holder of the right of use for frequencies ICP - ANACOM No 156/2009, for the provision of a publicly available radio broadcasting service, of a local scope, for the municipality of Vila Real, in the 87.5 -108 MHz band.

Voz do Marão is also the holder of radio station license No 20245, for provision of the radio broadcasting service, valid until 9 May 2014, according to which the station broadcasts at 96.3 MHz, as well as of the fixed service radio network license (studio-to-transmitter links) No 504619, also valid until 9 May 2014.

Voz do Marão is further the holder of an authorization to operate the Radio Data System (RDS) with the programme channel name "VOZMARAO".

As far as the transferee is concerned, it has been found that Rádio Antena do Marão, Lda., does not hold any right of use for frequencies.

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<sup>2</sup> Regime governing the licensing of radiocommunications networks and stations, the supervision of the installation of said stations and use of the radio spectrum.

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

As such, and by letter of 19 February 2013, AdC was requested to issue an opinion for the purpose of paragraph 7 of article 34 of ECL.

In its reply, received on 1 March 2013, AdC concludes that *the planned transfer of the referred rights of use for frequencies concerning the radio broadcasting of a local programme service is not likely to give rise to distortions of effective competition in the national market or in a substantial part thereof.*

Furthermore, in compliance with article 34, paragraph 5 a) of ECL, ICP - ANACOM made it known on its website (<http://www.anacom.pt/render.jsp?contentId=1153330>), on 21 February 2013, that it had received from ERC a request to decide on the intention expressed by Cooperativa Cultural Voz do Marão, C.R.L., to transfer to Rádio Antena do Marão, Lda., the right of use of frequencies (RUF) it had been allocated for the pursuit of the radio broadcasting activity.

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 the ECL, as well as in article 14 of Decree-Law No 151-A/2000, ICP - 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 ICP - 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 powers provided for in points c) and f) of article 6 of its Statutes, approved by Decree-Law No 309/2001, of 7 December, and under and for the purposes of 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, paragraph 6 of article 14 of Decree-Law No 151-A/2000, of 20 July, as amended and republished by Decree-Law No 264/2009, of 28 September, and paragraph 7 of article 22 of Law No 54/2010, of 24 December, the Management Board of ICP - ANACOM hereby determines:

1. Not to oppose the transfer to Rádio Antena do Marão, Lda., of the right of use of frequencies in the 87.5-108 MHz band allocated to Cooperativa Cultural Voz do Marão, C.R.L., for the provision of a local radio programme service, for the municipality of Vila Real, under paragraph 6 of article 34 of ECL.
2. Not to oppose the transfer to Rádio Antena do Marão, Lda., of radio station licence No 20245, for provision of the radio broadcasting service, as well as a radio network license (fixed service - studio-to-transmitter links) No 504619, both of which are held by Cooperativa Cultural Voz do Marão, C.R.L..

3. Not to oppose the transfer to Rádio Antena do Marão, Lda. of the authorisation to operate the Radio Data System (RDS) with the channel name “VOZMARAO”.
4. To make this decision subject to the condition that the Entidade Reguladora para a Comunicação Social (ERC) grants the request for transfer of the programme service known as “Rádio Voz do Marão” and of the respective license for pursuit of the radio broadcasting activity held by Cooperativa Cultural Voz do Marão, C.R.L..
5. To notify ERC of decisions in the preceding paragraphs, requesting that Authority to inform ICP - ANACOM on the contents of the transfer decision, so that this Authority, where appropriate, may accordingly issue to Rádio Antena do Marão, Lda., the qualifying document drawing up the respective right of use for frequencies.

Lisbon, 4 April 2013