

DECISION

Transfer of the right of use of frequencies held by Emissora Regional de Leiria- Radio Liz, CRL. to Record FM - Sociedade de Meios Audiovisuais de Sintra, Unipessoal Lda.

1. The application

Further to the application for transfer of the local programme service known as “Liz FM”, broadcasting at 101.3 MHz, in the municipality of Leiria, and of the corresponding license for pursuit of the radio broadcasting activity, presented by Emissora Regional de Leiria - Radio Liz, CRL. (hereinafter referred to as Radio Liz), the Regulatory Authority for the Media (ERC), by means of a letter received on 2 March 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), rules 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 Leiria.

According to the corresponding investigation file, Radio Liz requested ERC’s authorization to transfer its local programme service to Record FM - Sociedade de Meios Audiovisuais de Sintra, Unipessoal Lda. on the following grounds:

«...it no longer meets the minimum requirements for financial management of the Radio, with the limitations a cooperative shows, thus the transfer of the programme service to another company with experience in the field seems to be a viable solution to safeguard the licensed project, the municipality of Leiria maintaining its local radio service.»

The application for transfer of the programme service is part of a set of applications submitted to ERC (as the documentation sent by ERC best indicates) on authorization for transfer of shares and for change of programme service names, as well as on the approval of the implementation of new programming schedules, the aim of which is to establish a programme service partnership (under article 11 of the Radio Law).

Nevertheless, if, for whatever reason, the establishment of the referred partnership is not admitted, the applicant explicitly requests ERC to analyse and authorize the transfer of the “Liz FM” programme service.

2. Framework

2.1. The Radio Law

Pursuant to paragraph 9 of article 4 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).

Paragraph 7 of article 22 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)¹

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 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.

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

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 paragraph 6 of article 34, 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

Radio Liz is the holder of the right of use for frequencies ICP - ANACOM No. 167/2009, intended for the provision of a publicly available radio broadcasting programme service, of a local scope, in the municipality of Leiria, in the 87.5 -108 MHz band.

Radio Liz is also the holder of a radio station license of the radio broadcasting service No. 20411, valid up to 09 May 2019, according to which the station broadcasts at 101.3 MHz, as well as of a radio network license of the fixed service (studio-to-transmitter links) No. 505025, also valid up to 09 May 2019.

Radio Liz holds also an Authorization for operation of the Radio Data System (RDS) with the programme channel name (PS): "LIZ FM".

As regards the transferee, it was found that Record FM - Sociedade de Meios Audiovisuais de Sintra, Unipessoal Lda., holds to date a license for the pursue of the radio broadcasting service in FM, of a local scope, for the Sintra municipality, providing a general-interest programme service called "RECORD FM", operating at 107.7 MHz, holding also the right of use for frequencies ICP-ANACOM No. 57/2009, intended for the provision of a publicly available radio broadcasting programme service, of a local scope, in the municipality of Sintra, in the 87.5 -108 MHz band, as well as a radio station license of the radio broadcasting service No. 20387, valid up to 30 March 2019, and a radio network license of the fixed service (studio-to-transmitter links) No. 505765, also valid up to 30 March 2019. The company holds also an Authorization for operation of the Radio Data System (RDS) with the programme channel name (PS): "RECORD".

It is further noted that Record FM – Sociedade de Meios Audiovisuais de Sintra, Unipessoal, Lda., is 100% owned by Global Difusion, SGPS, S.A., which also holds 100% of:

- Horizontes Planos - Informação e Comunicação, Lda., which holds licenses for the pursue of the radio broadcasting service in the municipalities of Almodôvar and Viana do Alentejo;
- RTA – Sociedade de Radiodifusão e Telecomunicações de Albufeira, Lda., which holds licenses for the pursue of the radio broadcasting service in the municipalities of Albufeira and Silves;

- Radio Clube de Gaia – Serviço Local de Radiodifusão Sonora, S.A., which holds a license for the pursue of the radio broadcasting service in the municipality of Vila Nova de Gaia; and
- Radio Sem Fronteiras – Sociedade de Radiodifusão, S.A., which holds a license for the pursue of the radio broadcasting service in the municipality of Oeiras.

The four bodies mentioned above hold relevant radio station and network licenses issued by ANACOM.

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

As such, and by letter of 6 April 2016, AdC was requested to issue an opinion for the purpose of paragraph 7 of article 34 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=1383266#.VzMU2-n2a70>), on 12 April 2016, that it had received from ERC an application to decide on the intention expressed by Radio Liz., to transfer to Record FM, 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 April 2016, AdC concludes that *«Record FM is a company whose capital is exclusively owned by Global Difusion, SGPS, S.A., thus the transfer of the referred right of use for frequencies by the current holder, Radio Liz, to Record FM, consists in a merger operation for the purpose of article 36 of Law No. 19/2012 of 8 May (“Competition Law”). This merger operation, however, does not fulfil the requirement for prior notification of AdC, provided for in article 37 of the Competition Law.*

As such, the transfer to Record FM of the right of use for frequencies for the provision of radio broadcasting services, held by Radio Liz, is not likely to give rise to competition distortions, under the terms and for the purpose of the Competition Law».

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 paragraph 5 of article 34 of the 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, notwithstanding the fact that the period for non-opposition has expired.

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, 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 paragraph 6 of article 34 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, **ANACOM's Management Board hereby determines:**

- 1.** Not to oppose the transfer to Record FM - Sociedade de Meios Audiovisuais de Sintra, Unipessoal Lda., of the right of use of frequencies in the 87.5-108 MHz frequency band allocated to Emissora Regional de Leiria - Radio Liz, CRL., for the provision of a radio programme service, of a local scope, in the municipality of Leiria, under paragraph 6 of article 34 of ECL.
- 2.** Not to oppose the transfer to Record FM - Sociedade de Meios Audiovisuais de Sintra, Unipessoal Lda., of the radio station license for the radio broadcasting service No. 20411, valid up to 09 May 2019, according to which the station broadcasts at 101.3 MHz, as well as of the radio network license of the fixed service (studio-to-transmitter links) No. 505025, also valid up to 09 May 2019, which are held by Emissora Regional de Leiria - Radio Liz, CRL.
- 3.** Not to oppose the transfer to Record FM - Sociedade de Meios Audiovisuais de Sintra, Unipessoal Lda., of the Authorization for operation of the Radio Data System (RDS) with the programme channel name (PS): "LIZ FM".

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 “Liz FM” and of the respective license for pursuit of the radio broadcasting activity held by Emissora Regional de Leiria - Radio Liz, 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 Record FM - Sociedade de Meios Audiovisuais de Sintra, Unipessoal Lda. the certificate laying down the respective right of use for frequencies.

Lisbon, 19 May 2016.