

# **DECISION ON THE ACCUMULATION OF NUMBERS FOR DATA NETWORK ACCESS SERVICES IN CODE “67” OF THE NATIONAL NUMBERING PLAN, AS A RESULT OF MERGERS AND/OR ACQUISITIONS**

## **1. Introduction**

Code “67” of the National Numbering Plan (NPP) is intended for the provision of data network access services, especially the narrowband Internet access service (dial-up), which requires a telephone call using for the purpose a number in the “67PPxy000” format, where PP identifies the provider/ISP (Internet service provider), xy the field managed by the provider and “000” the mandatory field setting the number to 9 digits, the right of use of which was allocated by ICP-ANACOM to the respective provider.

Due to several mergers and/or acquisitions of companies under article 112 of the Code of Commercial Companies, all rights and obligations are transferred to the new company or to the acquiring company. In the context of the acquisition/concentration of the business of the data network access services in dial-up mode and consequent transmission of rights of use for numbers, ICP-ANACOM has been requested to maintain “PP” provider identification codes that were accumulated as a result of the referred merger. So far, however, this Authority has not accepted the desired accumulation, merely granting an extension for the return of accumulated codes.

Providers claim that it is essential to maintain these resources to guarantee that clients are provided a service without disruption, and that no additional costs arise from the need to change settings of equipment installed at clients’ premises.

In the light of the requests submitted, ICP-ANACOM deems that it is appropriate to analyse and decide on this matter, in the scope of numbering principles and rules.

## **2. Analysis**

### **2.1 - Framework of the situation**

Law No 5/2004, of 10 February, as amended by Law No 51/2011, of 13 September (hereinafter referred to as ECL) provides in its article 38 that rights of use of numbers may be transferred under terms and conditions to be established by this Authority, which terms and conditions must provide for mechanisms intended to safeguard, in particular, the effective and efficient use of numbers and rights of users.

On the other hand, the allocation of rights of use for numbers, provided for in article 36 and in the principles and criteria for the management and allocation of numbering resources, of June 1999, has taken place in blocks of 100 numbers per provider/ISP.

Merger/concentration operations where the customer base changes provider leads to an accumulation of numbers in a single company, exceeding the amount allowed for a data network access provider in dial-up mode - a single block of 100 numbers of the NNP “67” range.

Given that due to these merger and/or acquisition operations, some companies have obtained the right of use for more than one block of “67” numbers, ICP-ANACOM has imposed, in the scope of the process of authorization of transmissions of rights of use for numbers, and taking into account the requirement to safeguard an effective and efficient use of resources, the return of surplus blocks, for which a two-year time-limit was given.

However, in the light of operational difficulties and disproportional costs which providers have claimed that arise from the migration process, aimed at concentrating all services in a single code/block, ICP-ANACOM deems it appropriate to review this situation.

## **2.2 - NNP management**

ECL lays down in paragraph 2 of article 17 that the regulatory authority is charged with *“managing the National Numbering Plan according to the principles of transparency, efficiency, equality and non-discrimination”*. Consequently, the accumulation of several codes in the same provider may only be accepted insofar as it does not undermine any of those principles.

An additional amount of numbers has the potential to yield competitive benefits to providers in that situation, thus this introduces some discrimination by favouring companies that in the scope of a transmission accumulate numbering resources that they would not obtain otherwise. The benefit may simply consist in the simplification by the provider of internal rules on planning and numbering management or in the increase of numbers that are commercially more appealing or easy to memorize, as with call centre numbers.

However, data network access service numbers do not provide this benefit opportunity as 100 numbers are more than enough to allow the provider to distinguish the different services (or tariffs) it is able to provide, and numbers are inactive for the most part. On the other hand, these numbers are not likely to have a commercial value (e.g. association to a brand, easier memorization for dialling purposes) as they are “invisible” to the user. These numbers are usually dialled automatically by equipment on the client’s side, based on the settings of that equipment.

The accumulation of “PP” codes of the “67” range, due to a merger and/or acquisition of companies, thus granting to a single provider an additional capacity of 100 different numbers per code, does not provide, in fact, actual possibilities of identification of an increased number of services.

Given that the capacity of 100 numbers for each code/block allocated to each company providing data services is more than enough for the various services/offers that companies need to identify, the need for an efficient and effective NNP management must now be weighted, as this option leads to a waste of resources.

However, it does not seem reasonable to invoke grounds of efficiency of use in order to recover in the short/medium term these codes/blocks, bearing in mind the decrease of activity of the data network access service, in dial-up mode.

In fact, evolution over time of the demand of this type of resources has decreased. Of the 100 available codes, more than fifty were allocated, especially in 1999 and 2000, but more than half have been recovered in the meantime.

In these last four years, ICP-ANACOM has not received any request for allocation of this type of resources, and today there are about 19 codes allocated to around 15 companies. It is thus not likely that the around 80 free numbers of the “67” range run out, all the more so because more powerful and reliable technological alternatives (such as ADSL and GSM/GPRS) exist, thus the decline in the use these numbers will continue.

In short, this lower efficiency in the use of numbers in the “67” range is not likely to seriously harm NNP.

Moreover, these numbers (“67PPxy000”), that identify network points where providers connect to the telephone network, with their various services, are not allocated to users, thus no right is held over the number, particularly portability. In fact, operator portability does not apply to the data network access service, so if the subscriber wishes to change provider, numbers for access to the service need to be changed to the new provider and set at the subscriber’s own equipment. This change, in case it cannot be made remotely, can cause inconvenience or even harm to the user, whose rights must be safeguarded, in the context of the transmission of rights of use for numbers under article 38 of ECL.

In addition, it hardly seems to make sense to create obstacles to the free organization of companies, especially burdens resulting from the migration of numbers, as regards declining services. The change *in loco* of all equipment<sup>1</sup> would imply complex logistics and disproportional operational costs relatively to the potential benefits that could derive from the release of resources in the “67” range of NNP.

Therefore, taking into account the exceptional nature of situations that lead to a duplication of resources in code “67” of NNP - merger and/or acquisition of companies - and that:

- The data network access service in dial-up mode is declining, and there is no demand for new codes since 2005;
- There is no lack of resources in NNP for this service;
- There are no competitive gains for providers that accumulate codes for this service relatively to those that have a single code, as the capacity of a code is more than enough for the different dial-up services/offers and access numbers are invisible to users;
- The migration process affects users negatively, as settings must be altered at equipment used;
- Providers must bear difficulties and costs when subscribers migrate from one data networks access number to another;

ICP-ANACOM takes the view that the transmission of rights of use for numbers that results in more than one “PP” code of range “67” in the same provider is acceptable and does not undermine the principle of non discrimination between companies, nor the effectiveness in the management of NNP resources.

On the contrary, there seem to be grounds under article 38 of ECL, on the safeguard of rights of users, that justify that more flexible conditions are applied to rights of use for transmitted “67PPxy000” numbers, so as to allow companies that result from merger and/or acquisition

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<sup>1</sup> According to information received, this reach some hundreds of thousands.

operations to provide data networks access services using more than one block of 100 numbers in code “67” of NNP.

This does not hinder nor invalidate the importance of the management of numbering resources according to rules and principles established in NNP, especially an effective use of numbers, which must be returned to the Regulator where they are no longer used. Consequently, companies must submit to ICP-ANACOM, under article 38 of ECL, all processes of transmission of rights of use for numbers resulting from merger and/or acquisition operations.

Taking into account that this decision is favourable to interested parties, meeting their requests, and is without prejudice to other providers of these services, ICP-ANACOM considers that the prior hearing of interested parties, under paragraph 2 b) of article 103 of the Administrative Procedure Code, as well as the general consultation procedure, under article 8 of ECL, may be waived.

### **3. Decision**

The Management Board of ICP-ANACOM, in the scope of powers provided for in article 6, paragraph 1 b), e) and h) of its Statutes, approved by Decree-Law No 309/2001, of 7 December, and pursuant to article 17 b) and articles 36 and 37, all of ECL, and to fulfil regulatory objectives provided for in article 5, paragraph 1 a) and c) and paragraph 2 b) and d) of that law, hereby approves the following decision:

1. To authorize the accumulation of resources in code “67” of the National Numbering Plan in the same company as a result of a merger and/or acquisition operation, involving data network access services accommodated in this range, covering companies that are currently in this situation;
2. To waive the prior hearing of interested parties, in accordance with article 103 of the Administrative Procedure Code.