

**Decision on the confidentiality of documentation submitted by MEO in the scope
of the implementation of the decision on the evolution of the DTT network
(Mux A)**

I. Framework and description of facts

- A. *Confidentiality invoked by MEO***
- B. *ANACOM's position forwarded to MEO***
- C. *MEO's response***

II. CADA's opinion

III. ANACOM's understanding

IV. Prior hearing

V. Determination

I. Framework and description of facts

By determination of 16 May 2013¹, ANACOM defined the model for the evolution of the digital terrestrial television network (DTT) - Mux A². In this context, this Authority deemed that there were grounds for imposing on PT Comunicações, S.A., now MEO Serviços de Comunicações e Multimédia, S.A. (hereinafter MEO) new terrestrial coverage obligations, having ordered this company to provide a set of information on radio coverage (point 3.2. of the referred determination of 16 May 2013, which refers to information detailed in points 3.A. and B. of the same determination). Minimum values resulting from information provided, further to an evaluation by ANACOM, with any amendments subsequently determined, would become an integral part of RUF ICP-ANACOM No 6/2008 (point 3.3. of determination of 16 May 2013).

In compliance with the referred determination, MEO submitted to ANACOM a wide range of information, two letters of which, dated 01.07.2013 and 11.11.2013, must be stressed in this scope.

A. Confidentiality invoked by MEO

In its letter of 01.07.2013, MEO referred that all information contained therein was deemed to be *«information of a specific and specialized technical nature, protected by PTC's intellectual property rights, and furthermore it [concerned]»*, in its opinion, *«the network operation's procedures, strategies, methodologies and data, involving PT Comunicações' legally protected business interests, and for this reason they should remain exclusively under its control.»* The company supported also that elements concerned, in annex to the letter, involved MEO's commercial and industrial secrets, being, as such, confidential in nature.

In its letter submitted on 11.11.2013, MEO reiterated that all information provided in that communication had a *«confidential nature³, as it contained commercial and*

¹ Available at <http://www.anacom.pt/render.jsp?contentId=1161743>.

² Model that consists in the phased implementation of an MFN network (MFN of SFNs), on the mainland, by using spectrum according to the allocation/assignment of frequencies already planned and coordinated at international level by Portugal, in which the 3 transmitters that integrate the DTT network and that were temporarily licensed to MEO, remain (cfr. Determination of 18 May 2012 on the temporary network licensing, available at <http://www.anacom.pt/render.jsp?contentId=1128275>, and Determination of 16 November 2012, on the renewal of temporary network license granted to MEO, available at <http://www.anacom.pt/render.jsp?contentId=1144679>).

³ Including: (i) information on the detailed identification of DTT and DTH geographic coverage currently provided, including coverage provided by current overlay network transmitters (Point 1.1 of letter dated

business secrets, as well as information on the company's internal life and procedures, and as such it should not be disclosed/published, in full or in part, without [MEO's] prior and written authorization».

B. ANACOM's position forwarded to MEO

Whereas:

- ANACOM was preparing the draft decision (DD) on the integration of new coverage obligations, arising from its decision of 16 May 2013 (point 3.3.) in RUF ICP-ANACOM No 06/2008 granted to MEO, being responsible for ensuring the transparency of that procedure⁴;
- A request for access to procedural information had already been received, from Rádio e Televisão de Portugal, S.A. (RTP)⁵, in the scope of the implementation of the referred decision on the evolution of the DTT network;
- It was found that in both letters MEO substantiated the invoked confidentiality in a general fashion, failing to justify the classification conferred in detail and by reference to specific aspects or elements of the submitted information, and to send a non-confidential version of the documentation;

11.11.2013), (ii) detailed information of population effectively covered by DTT (Point 1.2 of letter dated 11.11.2013), (iii) information on the quantification of error associated to DTT coverage (Point 1.3 of letter dated 11.11.2013), (iv) information on network optimization actions (Point 2 of letter dated 11.11.2013), as well as (v) comparison of results presented by MEO and ANACOM (Annex 1 to letter dated 11.11.2013), (vi) population distribution in MEO's tool on parishes listed in point 1.2.III of ANACOM's letter of 25.10.2013 (Annex 2 of letter dated 11.11.2013) and (vii) a CD with licensing information concerning the 3 MFN transmitters and up-to-date coverage information.

⁴ Note, however, that by determination of 4 July 2014 (available at <http://www.anacom.pt/render.jsp?contentId=1282553>), ANACOM approved a draft decision on the definition of terrestrial coverage obligations to be included in the right of use of frequencies (DUF ICP-ANACOM No 06/2008) allocated to MEO, in the context of DTT.

⁵ By letter sent to ANACOM (RTP letter dated 05.03.2014), RTP requested "under the law" the following information:

"1 - Information as to whether PTC submitted to ANACOM, within the required time limit (30 days) the detailed information referred to in point 3.A and B of determination of 16 May 2013 (...).

2 - In such case, copy of the documentation referred to in the preceding point delivered by PTC to ANACOM."

In reply to RTP's request, ANACOM, by letter dated 19.03.2014, informed the applicant on the progress of the administrative procedure and also on the steps taken by this Authority further to the reception of the information, pursuant to article 61, paragraph 1, of the Code of Administrative Procedure. On the other hand, and as regards the copy of documentation applied for by RTP, ANACOM informed this company that, taking into account that the procedure was still going through a stage of internal examination and analysis, under the law, in the scope of the right to procedural information, access to requested documents would be granted further to the approval of a draft decision on the ongoing procedure.

This Authority, by letter dated 02.04.2014⁶, transmitted to MEO its view on the classification of confidentiality invoked by the company.

In fact, invoking the applicable legal framework, ANACOM communicated to MEO that it found difficult to justify why the information presented in both letters was fully and generally classified as confidential, having identified issues which were not acknowledged to be commercial or industrial secrets of the company.

As such, ANACOM informed MEO that, among others, the following items were not acknowledged to be confidential:

(i) In MEO's letter of 01.07.2013:

- a) **Annex 2 (“Shapefile”)**, given that, at the time it was submitted, its contents were freely available to any individual who wished to know the type of coverage available in any location of the national territory. This situation would remain, as new coverage obligations to be integrated in the RUF, which would be public in any event, would be clearly associated and matched with the information included in the shapefile provided by MEO. As such, this Authority took the view that the core of essential obligations in the RUF could only be fully integrated in the light of contents of that document, which includes, as such, a commitment to attain a specific result which may not be deemed to be a business secret nor a matter of the company's internal life, the reservation invoked by MEO being incompatible with its nature;
- b) **Annex 3 (“List of parishes in the Mainland, with estimates of rates of population with DTT or DTH coverage”)** which was not found to include any data of a technical, financial or commercial nature related to business secrets of MEO's internal life, as mentioned by the company.

(ii) In MEO's letter of 11.11.2013:

- c) **Point 1.2 (“Detailed information on population effectively covered by DTT”)**, for the same reasons as those pointed out as regards the letter of 01.07.2013 (in the part concerning Annex 3 - List of parishes in the Mainland, with estimates of rates of population with DTT or DTH coverage - and not the identification of any data of a technical, financial or commercial nature), plus the fact that this point contained information that was public⁷;

⁶ Letter ANACOM-S025061/2014, dated 02.04.2014.

⁷ As it included a quote from MEO's letter of 09.04.2013, which constitutes its assessment to the draft decision that preceded determination of 16.05.2013, available at ANACOM's website.

- d) The **Shapefile** attached to the letter, for the reasons put forward as regards annex 2 to the letter of 01.07.2013.

Still on that occasion, and bearing in mind:

1. *That in the exercise of the right to submit preliminary comments, stakeholders must be aware of all aspects that are relevant to the decision, including facts, and for this reason it [was] incumbent on ANACOM to ensure that the content of the draft decision to be issued and that [was] being drawn up, [was] substantiated in the most transparent way possible; and*
2. *The legal framework applicable to the right of information, namely the right to procedural information - article 268, paragraph 1, of the Constitution of the Portuguese Republic and articles 61 to 64 of the Code of Administrative Procedure;*

ANACOM requested that “*PTC within 5 working days:*

- (i) Deliver[ed] an opinion, on a solid basis, on ICP-ANACOM’s conclusions, put forward (...), on elements/documents specifically identified; and*
- (ii) Review[ed], bearing in mind the regime provided for in the law, namely in the above-mentioned articles 61 to 64 of the CAP, as well as article 108, paragraph 3, of ECL, the classification conferred in reference letters, detailing in a justified fashion any confidentiality that is identified, and attaching, where appropriate, a non-confidential copy thereof, without prejudice to this Authority’s final decision on these matters.”*

C. MEO’s response

In reply to the request, MEO, by letter dated 10.04.2014, and partly accepting the arguments put forward by ANACOM, “declassified” a set of information and submitted non-confidential versions of letters dated 01.07.2013 and 11.11.2013, in which a set of elements (which were removed) remained as confidential, substantiating, in its opinion, the maintenance of that classification with detail and by reference to specific elements of the information.

As regards the information which remained classified as confidential, MEO generally supported that “*the respective disclosure [could] represent the violation of PTC’s rights*

and interests protected by the Constitution and by the law, without there being any evidence or demonstration of the existence of other more serious interests that could take precedence over the legal position” of the company.

As regards the legal framework invoked by ANACOM - namely the exercise of the right to submit preliminary comments, as well as the right to obtain a copy of documents included in proceedings and to consult the file that does not contain classified documents or that reveal commercial or industrial secrets on literary, artistic or scientific property - MEO declared that *“the specific public interests aimed to be safeguarded with the disclosure of some of the technical information under consideration have not yet been demonstrated, and, more importantly, it remains to be proven how the disclosure of this specific technical information meets any possible right of stakeholders with alleged interests in the said information”.*

Invoking the existence of frequently negative information on DTT, MEO supported that it was legitimate to expect that the disclosure of the full information at stake caused some disruption as to the way how DTT is regarded, without any benefits arising necessarily from such disclosure.

In brief, MEO maintained **confidentiality** as regards:

(i) In the letter dated 01.07.2013:

- a) Certain elements concerning **Point A (“Coverage”) and Part A of Annex 1 (“Assumptions of theoretical coverage calculations”)**;
- b) **Annex 2 (“Shapefile”)**; and
- c) **Annex 3 (“List of parishes in the Mainland, with estimates of rates of population with DTT or DTH coverage”)**.

(ii) In MEO’s letter of 11.11.2013:

- d) Certain elements of **point 1.2 (“Detailed information on population effectively covered by DTT”)**;
- e) **Annex 1 (“Comparison of results presented by MEO and ANACOM”)**;
- f) **Annex 2 (“Population distribution in MEO’s tool on parishes listed in point 1.2.III of ANACOM’s letter of 25.10.2013”)**; and
- g) The **Shapefile** attached to the letter.

Resuming, MEO, in particular, as regards the **Shapefile** (points b) and g) above), supported that as it corresponded to the map coverage image disclosed in the website (that is, the DTT website - <http://tdt.telecom.pt>), any user of the website would be able to consult the image, but not to save it; it added that the *“the reproduction of the shapefile by a body other than PTC or ICP-ANACOM, would collide with intellectual property rights that deserve legal protection; for this reason, the company does not allow the respective reproduction”*.

As regards **estimates of rates of covered population by parish and information related thereto** (points c), d), e) and f) above), MEO considered that this information is confidential as it concerns *“extraction of information, by using techniques, methods and information processed by PTC, all of which is protected as far as intellectual property rights are concerned. Moreover, the respective calculation options are based on elements that concern the organization of activities and the company’s internal life, and for this reason they are deemed to be PTC’s commercial and business secrets.”*

In conclusion, as regards these two situations, MEO declares that *“the company finds no legally protected right or interest prevailing over the classification of confidentiality that was made”*.

II. CADA’s opinion

By letter of 30.06.2014⁸, ANACOM requested a detailed opinion from CADA (*Comissão de Acesso aos Documentos Administrativos* - the Commission for Access to Administrative Documents), under article 27, paragraph 1 c) of Law No 46/2007, of 24 August (LADA), on access to administrative documents, concerning the information provided by MEO to ANACOM, as determined in the scope of this Authority’s decision on the evolution of the DTT network, as it did not acknowledge the confidential nature of part of the provided information⁹.

⁸ Letter ANACOM-S041339/2013.

⁹ ANACOM informed MEO of this request for opinion submitted to CADA (letter ANACOM-S041660/2014, of 02.07.2014).

By letter received at ANACOM on 21.07.2014¹⁰, CADA sent the requested opinion, which is available at that Commission's website¹¹. By letter dated 01.08.2014¹², ANACOM notified MEO of the opinion received.

In brief, and by reference to issues specifically raised by ANACOM in its request for opinion, CADA expressed the following understanding:

«1. ICP-ANACOM's position that part of the above-mentioned information, contained in letters submitted by PTC on 01.07.2013 and 11.11.2013 to this Authority, does not include nor reveals confidential information - as substantiated in detail in point III - is in accordance with the legal framework and with CADA's doctrines on this issue?»

Invoking a prior opinion (No. 170/2013), CADA starts by *materialising* the concept of commercial and industrial secret, or secret concerning the internal life of the company, given that the restriction for access provided for in paragraph 6 of article 6 of LADA is based on the assumption that documents subject to it include secret information - this is because not all commercial and industrial information, or information concerning the internal life of companies, is deemed to be a secret.

In this context, CADA takes the view, by reference to prior doctrine, that where the requested party *«considers that desired documents include information containing "company secrets", it is entitled, stating its reasons, in order to "reveal in a clear and unambiguous manner, its arguments and, earlier on, assumptions on which its decision is based, thereby allowing the requesting party to be aware of the reasons for the adopted measure" (Opinion No 275/2008), to reject the request for access in the part that concerns such information (article 6, paragraph 6).»*

After invoking several examples of case law, CADA, in brief, reiterates its position expressed in Opinion No 3/2012, in the scope of which it considered that:

- a) *The granting of access must be the rule, as it corresponds to the exercise of a fundamental right with the same structure of rights, freedoms and guarantees, and which shares the same regime;*

¹⁰ CADA's letter with reference 1160 2014.07-17, Process 391/2014.

¹¹ Available at: <http://www.cada.pt/uploads/Pareceres/2014/259.pdf>.

¹² Letter ANACOM-S049405/2014.

- b) *Restrictions must be applied sparingly and only after a weighted analysis of the specific situation, and furthermore, they must be substantiated;*
- c) *For each situation, it must thus be specified what is not given access to (which would be an exception to the right for access), everything else being available for third parties.*

Concluding this issue, CADA considered «that ICP-ANACOM, whose knowledge on these matters must be recognised, was right to consider that part of the information in the identified letters is not reserved.

ANACOM' understanding is substantiated extensively and in detail, in compliance with jurisprudence and doctrine put forward.

It should be added that, given the matter under consideration (Digital Terrestrial Television - DTT), and that all difficulties verified with the switchover process became public knowledge, the process concerning the evolution of this network should be as transparent as possible.» (cfr. respective page 22, emphasis added).

«2. Taking into account the divergence of views taken by ICP-ANACOM and PTC as to the classification of part of the information submitted by the latter in the above-mentioned letters, is this Authority entitled to decide on this matter - so as to determine the absence of confidentiality - and, as such, to make the information deemed not to be confidential available to stakeholders (either procedural or not) that request access to that information?»

In CADA's opinion, the «*answer to this question is in the affirmative; as referred in CADA's opinion No 18/2012 "[i]t is incumbent on public bodies in possession of information conveyed by economic operators to decide in a substantiated manner on the right of access to that information or whether such information is subject to company secrecy*».

If any doubts arise with regard to the reserved nature of documents, the requested party is entitled to ask stakeholders to give reasoned comments on the nature of information conveyed.

Nevertheless, it is incumbent on the requested party to take a reasoned decision as to whether documents are subject to reserved access.» (cfr. respective page 22, emphasis added).

In conclusion, CADA considers that «*ICP-ANACOM's reasoning is correct that part of the information contained in letters sent by PTC do not include nor reveal reserved information*» being incumbent on «*ANACOM to decide, in a substantiated manner, as to the nature of the information that is transmitted to it.*» (cfr. respective page 22).

III. ANACOM's understanding

General considerations

ANACOM is an independent regulatory authority that in the scope of its activity - in clear compliance with the general principle of open Administration - is bound to notification and transparency of the respective decision-making procedures, as well as to listen to and interact with companies acting in sectors it is involved with, and with other relevant bodies therein, as well as with citizens, final addressees of the supervision and inspection activities pursued, in the framework of the respective Statutes, substantive laws that rule regulated sectors of activity and general legislation that applies to administrative activity.

In this context, ANACOM provides all information which the Authority is obliged to supply, as well as that which is deemed to be justified, so as to clarify the public opinion and to allow an informed participation of citizens in the administrative activity and in the exercise of their rights.

As such, whereas:

- (i) The responsibility for assessing and deciding upon the maintenance of confidentiality invoked by MEO lies primarily with ANACOM, which is required to do so in a substantiated manner, and
- (ii) In this particular case., this decision will be relevant to respond to any request for access submitted by a third party¹³,

this Authority analysed the matter in the light of the legal framework in force as well of CADA's doctrine concerning access to administrative documents involving commercial

¹³ Note, however, that meanwhile ANACOM, by letter with reference ANACOM-S045824/2014, had already sent to RTP, on 18.07.2014, a copy of the requested documentation, from which elements deemed to be confidential by MEO had been removed.

secrecy, reaching conclusions that in some cases diverge from the confidentiality invoked by MEO, along the following lines.

Specific considerations

As a preliminary matter, and reiterating the view expressed in due time to MEO, it should be stressed that this Authority considers that arguments related to image concerns invoked by MEO do not stand up, although they may be legitimate, given that the analysis of this matter must take place in the light of administration duties, namely compliance with the principles of publicity and transparency (which are only to be restricted in situations provided for under law in force). Moreover, ANACOM considers that the provision of information, instead of contributing towards a negative perception of DTT, contributes to clarify this reality.

A. As regards Part A of annex 1 to letter 01.07.2013

- (i) MEO considers the identification of the **planning software in use** and the **identity of the company** marketing it to be confidential. ANACOM takes the view that only the identification of the software is confidential.

In fact, the “*Final report on the analysis of the proposal presented to the MUX A tender*”¹⁴, which is publicly available and which, as MEO explicitly communicated to this Authority, did not include any confidential information, refers the name of the company marketing the planning software in use, although it is not explicitly referred which is the software concerned. In this context, as this Report does not identify the product but only the company, it is deemed that the former should remain confidential and considered to be a commercial secret. As far as the identification of the company is concerned, as this information has already been made publicly available, there is nothing to prevent its revelation.

- (ii) MEO considers that the identification of the propagation model in use is confidential. However, as this information is already publicly available as it was included explicitly in the above-mentioned Final report on the analysis of the proposal, ANACOM considers that it should not be regarded as confidential information.

¹⁴ Available at http://www.anacom.pt/streaming/TDTrelatorio_final_Mux_A.pdf?contentId=1156003&field=ATTACHED_FILE.

B. As regards the Shapefile¹⁵

In summary, ANACOM believes that the justification presented by MEO, as explained earlier, on the confidentiality of the shapefile, does not correspond to reality, given that, for example by using the “print screen” feature, it is possible nowadays to save the image provided on the DTT site¹⁶. As such, although this could be a time-consuming process (all the more time-consuming the greater the desired resolution), it is possible for anyone to reproduce the content of the referred shapefile.

In this regard, it is recalled that ANACOM, in its determination of 16 May 2013, ordered MEO to submit “*detailed information on DTT and DTH (satellite) geographic coverage - the said photograph of the information that was already available on the DTT website - and this information should be “provided in an electronic format (for example shapefile in vector format) with coverage areas duly identified at geographical level”.*

ANACOM’s preliminary analysis delivered to MEO on 02.04.2014 is thus based on the assumption that the information included in the DTT website (displayed graphically) and information of the shapefile (in vector format) are the same and match one another - they are only presented in a different fashion. It is for this reason that this Authority transmitted to MEO that, to the extent that it is on the basis of the shapefile that MEO provides information on its website on the type of available coverage (DTT/DTH), then its contents are already freely available to any user.

It registered, firstly, that MEO agrees with this assumption by declaring that the shapefile corresponds “*in fact, and as ICP-ANACOM refers, to the map coverage image disclosed in the website.*”

However, MEO declares that “*nowadays, any user of the website is only able to consult the image, available in a small window, but not to save it*”, thus concluding that the reproduction of the shapefile by a body other than PTC or ANACOM would collide with intellectual property rights that deserve legal protection, not allowing the respective reproduction, for this reason.

As referred above, it is possible today for any interested party, by using information available at the DTT website, to reproduce the referred shapefile (indirectly and graphically). ANACOM thus concludes that there is at the moment information available

¹⁵ Annex 2 to the letter of 01.07.2013 and file included in the CD-ROM attached to the letter of 11.11.2013.

¹⁶ Available at: <http://tdt.telecom.pt/>.

to the general public that allows anyone interested in the matter to reproduce/replicate the information in the shapefile.

In addition, MEO's information does not include any data or element that shows that this company put in place any action to avoid or report any reproduction of information currently available, nor, in any case, could such actions be allowed. This reproduction (print screen) could in fact be evidence, for example, for any application for reimbursement made by an user who migrated from analogue TV to DTT, to adjust to terrestrial coverage, as this was the information available in the DTT site, and later realises that the area concerned is covered by DTH, or where MEO and an interested party dispute over the provided information.

In fact, when reproducing the image of the DTT website, there is no information forbidding this practise. In this context, although in theory this information could be considered confidential, which is not accepted, its provision as has been the case would no longer justify such classification. This conclusion in fact reflects CADA's doctrine¹⁷.

In addition, ANACOM invoked to MEO that, *«as provided for in the decision of 16 May 2013, the information sent by PTC would be assessed by ICP-ANACOM, and thereafter, with possible amendments, would be integrated in the RUF. As this Authority is preparing a draft decision on the integration of new coverage obligations, which would be public in any event, they would be clearly associated and matched with the information included in the shapefile provided by MEO. As such, the core of essential obligations in the RUF could only be fully integrated in the light of contents of that document, which includes, as such, a commitment to attain a specific result which may not be deemed to be a business secret nor a matter of the company's internal life, the reservation invoked by MEO being incompatible with its nature»*.

MEO does not present any argument that contradicts this conclusion and in the meanwhile the referred DD has already been approved, by determination of 4 July 2014.

In fact, given that MEO is allowed to comply with its coverage obligations by resorting to complimentary means (DTH), this means that the full integration of such coverage

¹⁷ Vide in this scope CADA's opinion No 284/2008, of 12 November, under which: "...secrets cease to have that nature (and are no longer protected) where they are known outside the company which they concern, by bodies (such as the Administration) who, being aware of them, are bound to maintain secrecy as far as they are concerned, or where they lose their economic value."

obligations necessarily entails information included in the shapefile, as it contains information on geographic coverage per type of coverage (DTT and DTH). In this context, this information does not constitute a business secret or a secret on the internal life of the company, and no intellectual property rights that preclude the provision of a copy of such information have been identified.

As such - and in line with the position taken on this matter by ANACOM in the letter sent to MEO - **this Authority does not acknowledge the classification of confidential** invoked by MEO **to be legitimate**.

C. As regards estimates of rates of covered population by parish and information related thereto

In relation to estimates of rates of covered population by parish¹⁸, as well as to information related to parishes, specified in **point 1.2. of MEO's letter of 11.11.2013** ("Detailed information on population effectively covered by DTT"), ANACOM considers that any coverage estimate is always information processed in some way¹⁹, and it fails to understand the difference to the information now provided, apart from an increased resolution.

As described above, in brief, MEO reiterates the confidential nature of this information alleging that its confidential nature arises from the fact that it concerns "*(...) extraction of information, by using techniques, methods and information processed by PTC, all of which is protected as far as intellectual property rights are concerned. Moreover, the respective calculation options are based on elements that concern the organization of activities and the company's internal life, and for this reason they are deemed to be PTC's commercial and business secrets.*"

In this context, ANACOM believes that insofar as there is no indication of how information is processed, which techniques are applied and which calculation options are taken for estimating coverage, there are no reasons to classify information as

¹⁸ Annex 3 to letter of 01.07.2013 and file included in the CD-ROM attached to the letter of 11.11.2013.

¹⁹ In this regard, for example, the coverage information supplied in the tender proposal presented by MEO, which was later included in the respective RUF. Such information was also processed by MEO, resorting to its own techniques and methods.

confidential²⁰. In other words, this know how constitutes a business secret or secret of the company's internal life, but revealing estimates of rates of covered population by parish is not on its own confidential information.

On these grounds, an analysis of elements of information that according to MEO should remain reserved, classification with which ANACOM disagrees, is presented below. As such, in **Point 1.2. of letter dated 11.11.2013**:

- 1) MEO considers the overall coverage value of the Mainland, as well as the difference as regards information given in ANACOM's letter, to be confidential (page 2 of the letter).

For the reasons mentioned above, the coverage estimate at the level of the Mainland **is not acknowledged to be confidential**.

- 2) MEO considers that the indication of some of the parishes for which there is a substantial difference between the company's and ANACOM's coverage estimates, is confidential (page 6 of the letter).

No confidential information is acknowledged to exist, as it does not involve intellectual property rights, or elements that reveal the company's strategy or commercial secrets, given that MEO only indicates parishes where there are substantial differences between its own estimates and those of this Authority.

- 3) MEO considers that the identification of causes for differences between ANACOM's and MEO's coverage estimates is confidential (bullets in page 6 of the letter).

In the first two cases (two first bullets), **no confidential information is acknowledged to exist**, given that the error is merely due to the extraction/formatting of the result table, which does not constitute any intellectual property right, or a company strategy or a commercial secret.

- 4) MEO considers the percentage difference as regards the remaining 11 situations where differences in estimates exist, to be confidential (last § in page 6 of the letter).

²⁰ Otherwise, if the justification invoked by MEO was taken into consideration, the new coverage obligations could not be included in the RUF, as the latter also result from information now presented by MEO, deemed to be confidential by the company.

No grounds for confidentiality were found, given that the indicated percentage is the most important element of other differences between MEO's and ANACOM's estimates.

In short, this position means that the understanding already transmitted to MEO is maintained, taking into account that, as regards point 1.2 of the letter of 11.11.2013, ANACOM explicitly referred that it did not acknowledge the confidentiality of the matter in the part that it concerned Annex 3 (that is, percentage estimates for covered population) and not the part concerning the «*identification of any data of a technical, financial or commercial nature related to business secrets of the company's internal life*».

As far as **Annex 1 to letter of 11.11.2013** is concerned ("Comparison of results presented by MEO and by ICP-ANACOM") and bearing in mind what was stated in point 2) and 4) above, the table therein is not considered to be confidential, except for the column "Obs" which should be considered confidential, taking into account matters related to intellectual property, company strategy and commercial secrecy.

Once again, insofar as there is no indication of how information is processed, which techniques are applied and which calculation options are taken for estimating coverage, ANACOM does not acknowledge any reason to consider that results are also confidential.

Lastly, it must be referred that, as the confidential nature of the information concerned has not been acknowledged, ANACOM is not required to weight up the interests of anybody applying for access to that information, such as RTP, and MEO's interests.

Therefore, in the light of the above and whereas:

- (i) CADA's opinion constitutes the most important element of this decision-making process;
- (ii) The opinion clearly supports ANACOM's position;

elements specifically referred, included in MEO's letters dated 01.07.2013 and 11.11.2013, are not deemed to be confidential.

IV. Prior hearing

By determination of 13 November 2014²¹, ANACOM approved a draft decision (DD) on the confidentiality of documentation submitted by MEO in the scope of the implementation of the decision on the evolution of the DTT network (Mux A).

This DD was forwarded for written comments of MEO, under articles 100 et seq. of the previous Code of Administrative Procedure, for a 10-working-day time limit from the date of notification.

Having been notified for the purpose, MEO assessed the matter by letter dated 28.11.2014²².

The reasoning put forward in the prior hearing, as well as ANACOM's views thereon, are included in the prior hearing report which is deemed to be an integral part of this decision, reference being made to the contents thereof.

V. Determination

Therefore, in the light of arguments put forward above, ANACOM's Management Board, in the scope of powers provided for in article 8, paragraph 1 e) and h), of its Statutes, approved by Decree-Law No 39/2015, of 16 March, in the pursuit of regulatory objectives provided for in article 5, paragraph 1 c) and paragraph 2d) of the Electronic Communications Law (Law No 5/2004, of 10 February, as amended and republished by Law No 51/2011, of 13 September, and subsequently amended), in the exercise of its duties in overseeing and enforcing the fulfilment of commitments undertaken by holders of rights of use for frequencies, granted in the scope of tender procedures, and under article 26 q) of its Statutes, hereby decides:

1. To determine the non-confidentiality of the following elements included in:

(i) MEO's letter of 01.07.2013:

a) Part A of Annex 1 ("Assumptions of theoretical coverage calculations"):

²¹ Draft decision on the confidentiality of documentation submitted by MEO in the scope of the implementation of the decision on the evolution of the DTT network (Mux A) available at: <http://www.anacom.pt/render.jsp?contentId=1340083>.

²² With reference 20456957.

- identity of the company marketing the planning software in use;
and
 - identification of the propagation model in use;
- b) Annex 2 (“Shapefile”);
- c) Annex 3 (“List of parishes in the Mainland, with estimates of rates of population with DTT or DTH coverage”).
- (ii) MEO’s letter of 11.11.2013:
- a) Point 1.2 (“Detailed information on population effectively covered by DTT”), in the part concerning Annex 3 of the letter dated 01.07.2013:
- the coverage estimate at the level of the Mainland;
 - the indication of some of the parishes for which there is a substantial difference between the company’s and ANACOM’s coverage estimates;
 - the identification of causes for differences between ANACOM’s and MEO’s coverage estimates;
 - the percentage difference as regards the remaining 11 situations where differences in estimates exist;
- b) Annex 1 (“Comparison of results presented by MEO and by ICP-ANACOM”), except for the column “Obs” of the submitted table, which should be considered to be confidential; and
- c) The Shapefile in annex to the referred letter.

Lisbon, 1 October 2015.