

## **FINAL DECISION**

### **Lifting suspension of determination of 12.03.2020 which determined the recovery from AR Telecom of the right of use for the '1030' numbering resource**

#### **I. BACKGROUND**

1. By communication received at Autoridade Nacional de Comunicações (ANACOM) on 14.01.2020, AR Telecom - Acesso e Redes de Telecomunicações, S.A. (AR Telecom) informed of its intention to return the '1030' numbering resource, with effect from 05.04.2020, claiming that "*[f]ollowing the regulatory decision which enabled MEO to cease making available a wholesale Indirect Access offer, this company confirmed that would no longer provide the referred offer as from 4/4/2020*".
2. Having assessed and analysed the request, and taking into consideration that there was no impediment to the return of resources by companies holding the respective right of use, ANACOM's Board of Directors decided, on 12.03.2020, to recover the right of use of the '1030' numbering resource from AR Telecom, with effect from 05.04.2020, as requested by the interested party.
3. In this respect, ANACOM informed AR Telecom, by letter<sup>1</sup> dated 13.03.2020, of the above-mentioned determination of the Board of Directors and of its effects from 05.04.2020, and also made the company aware that the fee for the months from January to April (inclusive) 2020 was due for the right to use the numbering resource concerned, as established by Administrative Rule No. 1473-B/2008, of 17 December, as amended.
4. Subsequently, by communication of 23.03.2020, AR Telecom requested ANACOM to postpone the return of the '1030' numbering resource, «*to a date to be specified*», so that it could continue to use it after 05.04.2020 for some time, at that date still to be determined.
5. For this purpose, AR Telecom claimed that, despite having received confirmation of the determination to return the '1030' number as of 05.04.2020, it had recently received information from MEO - Serviços de Comunicações e Multimédia, S.A. (MEO) on

---

<sup>1</sup> Letter No. ANACOM-S001236/2020, of 13.02.2020 (sent by registered letter with acknowledgement of receipt).

[Beginning of Confidential Information - BCI]<sup>2</sup> [End of Confidential Information - ECI].

6. The new request was duly assessed and analysed, and on the basis of the assumption that AR Telecom's interest in the return of the number would be maintained, and in order to better address the fact that it was not possible for the company to determine at that moment a specific date, in the future, when the cancellation of the allocation of the concerned number should be made effective, [BCI] [ECI], ANACOM's Board of Directors determined, on 02.04.2020, to suspend the determination of 12.03.2020, which had established the recovery from AR Telecom of the right of use for the '1030' numbering resource (with effect from 05.04.2020).
7. The Board of Directors also determined, on that date, to maintain the suspension until it was lifted, which would be decided in view of the new date to be indicated by AR Telecom for the return of the number.
8. Accordingly, in a communication<sup>3</sup> dated 03.04.2020, ANACOM informed AR Telecom of the above-mentioned determination of the Board of Directors, expressly referring to the "requirement to report, as soon as possible, the new date of return of the '1030' number", as well as that "the obligation to pay the respective fees, inherent to the right of use for this numbering resource, is maintained on an ongoing basis, under the law, pursuant to Administrative Rule No. 1473-B/2008, of 17 December, as amended, until the suspension is lifted and the recovery under consideration takes effect." (emphasis added).
9. Later, further to ANACOM's communication of 25.09.2020, as regards the payment of the invoice<sup>4</sup> for the fee charged for the use of numbers in 2020, AR Telecom informed, by communication of the same date, that it had disconnected the '1030' numbering range in April, requesting, as such, that an adjustment be made to the invoice for that operation. In addition, the company also requested ANACOM's help in clarifying this situation.
10. Following clarification sent on the matter by ANACOM, on 28.09.2020, AR Telecom indicated, by communication of the same day, that "this migration became effective on 01.06.2020, date on which AR Telecom definitely ceased the use of the 1030 numbering range" (emphasis added), having also stated that "due to an oversight, the new request

---

<sup>2</sup> [BCI] [ECI].

<sup>3</sup> Communication sent via email ([gab.ca@anacom.pt](mailto:gab.ca@anacom.pt)) under Article 63 of the Administrative Procedure Code, received by AR Telecom on the same date.

<sup>4</sup> Invoice No. F220000035, amounting to €21 882.00.

failed to be submitted to ANACOM as this process had [BCI] [ECI]» (emphasis added).

11. In this context, AR Telecom requested, on 28 September 2020, in the scope of the demand for payment of fees due for rights for use of numbers in 2020, the recovery of the '1030' numbering resource with effect from 01.06.2020, and, in this regard, that the annual amount due for the fee for the respective use took only into account the months it was effectively used.

## **II. PRIOR HEARING OF THE INTERESTED PARTY**

12. By determination of 19.11.2020, ANACOM's Board of Directors approved a draft decision lifting the suspension of determination of 12.03.2020, which determined the recovery from AR Telecom of the right of use for the '1030' numbering resource.

13. In this regard, it was decided to lift, with effect from 28.09.2020, the suspension of the determination of ANACOM's Board of Directors of 12.03.2020, which had determined the recovery of the right of use for the referred numbering resource.

14. Accordingly, it was also decided to recover the '1030' numbering resource on the same date the suspension lifting takes effect, i.e. on 28.09.2020, and to issue a credit claim for the remaining amount, from October to December 2020, relating to invoice No. [BCI] [ECI], issued on 01.09.2020 for the amount of [BCI] [ECI], and settled by AR Telecom, on 02.10.2020, in compliance with Administrative Rule No. 1473-B/2008, of 17 December, as amended.

15. It was also decided to submit the draft decision to the prior hearing of AR Telecom, under Articles 121 and 122 of the Administrative Procedure Code, approved by Decree-Law No. 4/2015, of 7 January (CPA), the company having been granted a period of 10 (ten) working to assess the matter in writing, as it saw fit.

16. AR Telecom was notified<sup>5</sup> on 20.11.2020 by electronic means of communication, under Article 63 and, where applicable, Articles 112 and 113 of the APC.

---

<sup>5</sup> Communication sent via email ([gab.ca@anacom.pt](mailto:gab.ca@anacom.pt)) under Article 63 of the Administrative Procedure Code, received by AR Telecom on the same date.

17. The notification included the draft decision as well as elements the interested party needed to be acquainted with all the relevant aspects of the decision, in fact and in law, access to the file having also been provided.
18. However, having expired on 09.12.2020 the 10 (ten) working day deadline for the company to state its comments, AR Telecom did not assess the draft decision, and failed to apply for additional proceedings or to attach evidence to the file, as admitted under the APC.
19. Nevertheless, the legal requirements for the interested party's participation having been duly observed in the scope of this administrative procedure, it is considered that neither facts nor elements have been submitted by AR Telecom, nor are elements identified that would lead to a change in the draft decision of 19.11.2020.

Accordingly, a final decision must now be delivered.

### **III. EXAMINATION OF THE REQUEST**

20. Under paragraph 2b) of article 17 of Law No. 5/2004, of 10 February, as amended (Electronic Communications Law), it is incumbent on ANACOM to manage the national numbering plan (also known as NNP) according to the principles of transparency, efficiency, equality and non-discrimination, including the establishment of conditions for the allocation and use of national numbering resources.
21. The use of numbers depends on the allocation of rights of use, which may be allocated both to providers of electronic communication networks or services and to bodies that use such networks or services, under the applicable rules (cfr. paragraphs 1 and 2 of article 36 of the Electronic Communications Law).
22. On the other hand, rights of use for numbers may only be subject to conditions set out in article 37 of the referred Law, of which, in this context, the following is relevant, the «*[e]ffective and efficient use of numbers, in conformity with point b) of paragraph 2 of article 17*» and the application of «*[f]ees, in accordance with article 105*».
23. According to points d) and e) of paragraph 1 of article 105 of the Electronic Communications Law, both the assignment of rights for use of numbers and the reservation thereof, and the use of numbers, respectively, are subject to fees. The rules and amounts applicable to the referred fees are set out in Administrative Rule No. 1473-B/2008 of 17 December (as amended).

*That said,*

24. AR Telecom is registered in the register of providers of electronic communications networks and services kept by ANACOM, and was allocated, among others, the «*indirect access provider code - 1030*» to ensure its provision.
25. In response to the request made by AR Telecom on 14.01.2020, ANACOM decided in favour of the interested party, allowing it to return the '1030' number and revoking the act granting the right of use for the respective numbering resource to that company, with effect from 05.04.2020.
26. In view of the content of communication of 23.03. 2020 from AR Telecom, in which «*[f]urther to recently received information [BCI] [ECI], despite having received confirmation from ANACOM to return the 1030 prefix as of 5 April*» the company «*requests the postponement of the referred return to a date to be specified*», ANACOM took the view that the prior request for the return of the numbering resource remained, and that the interested party did not give up the request in question, but instead changed the moment of its return to a new date, although it was not possible at the time for it to specify when.
27. In other words, AR Telecom's request only concerned the date on which the administrative act carried out by ANACOM on 12.03.2020 would take effect - it was therefore a matter of postponing its effects to some future date.
28. Thus, assuming that AR Telecom's interest in the return of the number would be maintained, and in order to better address the fact that it was not possible for the company to determine, on 23.03.2020, a specific date, in the future, when the revocation of the allocation of the number concerned should take effect, [BCI] [ECI], ANACOM carried out on 02.04.2020 a new constituent act, of a suspensive nature, which removed the effectiveness of the preceding act (that is, the determination of 12.03.2020).
29. The administrative act's effectiveness, in any case, would be recovered as soon as the suspension was lifted, which, as AR Telecom is well aware, had become dependent on a communication from it.
30. In fact, it is not only in the request for postponement of the return of the numbering resource concerned (dated 23.03.2020) that AR Telecom makes such a request for the return «*to a date to be specified*», undertaking to do so.

31. As clearly stated in the communication sent by ANACOM to this company on 03.04.2020, in response to the request for postponement referred to above, the suspension decision being supported by the understanding that AR Telecom maintained its interest in that return, the company was required to communicate, as soon as possible, the new date for the return of the '1030' number.
32. However, AR Telecom failed to make the communication of the new date of return of the numbering resource concerned to ANACOM - which it was required to do -, so the administrative act remained suspended and, as such, the respective right of use for the numbering resource concerned was retained by AR Telecom, at least until 28.09.2020.
33. The view taken by ANACOM with regard to the application of fees for the use of numbering resources has been that (i) where the fee is annual, the respective amount is proportional to the time of use of resources on a monthly basis and (ii) fees due for the use of numbers are payable, where:
- a) numbers are allocated or reserved (and therefore not available for other allocations);
  - b) their return is not expressly requested; and/or
  - c) the title to exercise an activity which allows the service provider to use specific numbering resources remains valid.
34. In the present case, and recalling, AR Telecom requested the return of the '1030' numbering resource, on 14.01.2020, with effect from 05.04.2020, but then requested the postponement of the referred return, which was authorised by ANACOM, on 02.04.2020, without ever communicating the new date on which this return would occur, due to an oversight, as it explicitly acknowledges in its communication of 28.09.2020.
35. Only after ANACOM's communication of 25.09.2020, concerning the payment of an invoice (No. [BCI] [ECI]), for the fee charged for the use of numbers in 2020, did AR Telecom mention that «April carr[ied] out the disconnection of the 1030 numbering range», raising the issue of the «adjustment regarding this operation».
36. On 28.09.2020, in a new communication, the company stated that the «migration became effective on 1/6/2020, date on which AR Telecom definitely ceased the use of the 1030 numbering range», explicitly acknowledging that the communication, which should have been submitted to ANACOM, had failed to be made due to an internal oversight within the company: « [d]ue to an oversight, the new request [i.e. for the purpose of the return] failed

to be submitted to ANACOM as this process had [BCI] [ECI]».

37. AR Telecom further requested, also only on the same date (28.09.2020), that «*the numbering ceases to be allocated to AR Telecom, with effect from 1/06/2020 and that the annual amount due takes only into account those months.*»
38. Therefore, as a result of the lack of communication from AR Telecom to ANACOM as regards the above-mentioned «*disconnection*» with effect from 01.06.2020, the numbering resource concerned remained fully available to the company.
39. Furthermore, as it was not possible for ANACOM - on account of (it is recalled) the lack of communication from AR Telecom - to release this numbering resource in the period between 01.06.2020 and 28.09.2020, [BCI] [ECI], it is understood that the responsibility for paying the fee for the use of the '1030' number in that period lies entirely with AR Telecom.
40. This position is strengthened by point b) of article 21 of Administrative Rule No. 1473-B/2008, of 17 December (as amended), which specifically lays down that the fee for the use of numbers is «*proportional to the amount of resources the rights of use of which are allocated or reserved, and [does not] depend on the amount of those being effectively used or activated*».
41. Moreover, this approach is in line with the *occupier pays principle*, which underlies the use of numbering resources.
42. Accordingly, it is understood that the review of the settlement and the consequent issuance of a credit claim should be considered from 28.09.2020, date on which AR Telecom communicated to ANACOM (and this Authority became aware of) the return of the '1030' numbering resource.
43. The view set out in the draft decision, approved by ANACOM's Board of Directors on 19.11.2020, is therefore fully maintained.

#### **IV. DECISION**

Therefore, ANACOM's Board of Directors, in the scope of powers provided for in paragraph 1 q) of article 26 of its Statutes, published in annex to Decree-Law No. 39/2015, of 16 March,

and under points b) and f) of paragraph 1 of article 37 and point e) of paragraph 1 of article 105, all of the Electronic Communications Law, hereby determines as follows:

1. To lift, with effect from 28.09.2020, the suspension of the determination of ANACOM's Board of Directors, of 12.03.2020, which determined the recovery from AR Telecom of the right of use for the '1030' numbering resource;
2. As a result of the previous deliberative point, to:
  - 2.1. recover the '1030' numbering resource on the same date the suspension lifting referred to in the previous paragraph takes effect, i.e. on 28.09.2020; and
  - 2.2. to issue a credit claim for the remaining amount, from October to December 2020, relating to invoice No. [BCI] [ECI], issued on 01.09.2020 for the amount of [BCI] [ECI], and settled by AR Telecom, on 02.10.2020, in compliance with Administrative Rule No. 1473-B/2008, of 17 December, as amended.

Lisbon, 30 December 2020.