

DECISION

Transfer of the right of use of frequencies held by Interior Norte Rádio, Lda. to RCChaves - Rádio Clube de Chaves Unipessoal, Lda.

1. The request

Further to the request for transfer of the local programme service called “Rádio Comercial de Valpaços” (of the municipality of Valpaços, 100.2 MHz frequency) and of the respective license, made by Interior Norte Rádio, Lda., the Entidade Reguladora para a Comunicação Social (ERC - the Regulatory Authority for the Media), by means of letter received on 24 September 2012, submitted the respective procedure file to the examination of ICP - ANACOM, so that, under the combined terms of paragraph 9 of article 4 and paragraph 7 of article 22 of the Radio Law (Law No 54/2010, of 24 December), a decision is taken on the transfer of the right of use for frequencies allocated to that radio broadcasting operator.

According to the respective investigation file, Interior Norte Rádio requested the transfer of its programme service to RCChaves - Rádio Clube de Chaves Unipessoal, Lda., as the company considered this to be *the only and the best way of safeguarding its programme services*.

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 ICP - 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 ICP - 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 authorises, in its article 34, the transfer or lease of rights of use for frequencies between undertakings 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, in this case, ICP - 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 frequency use 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 ICP - 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. ICP - 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.

In this scope, ICP - ANACOM must 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.

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

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 granted, and that after the transfer, conditions attached to rights to use frequencies continue to apply, unless otherwise specified by the NRA (paragraphs 9 and 10 of article 34).

ICP - 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 of the rights of use, however the effective transfer must still be notified.

2.3. Regime applicable to the licensing of radio networks and stations

According to paragraph 1 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 September², network or station licences are transferable.

The body to which a license is transferred undertakes all associated 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, ICP-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. Legal qualification of the transferring and receiving parties

3.1 Interior Norte Rádio, Lda.

By determination of 7 October 2010, ERC decided to renew, for a 10-year period, the license for the pursuit of the radio broadcasting activity held by Interior Norte Rádio, Lda., for the municipality of Valpaços, in the 100.2 MHz frequency, called "Rádio Comercial de Valpaços".

Interior Norte Rádio, Lda. is also the holder of a right of use for frequencies (ICP - ANACOM No 276/2009) in the 87,5 – 108 MHz band, for the provision of a publicly available radio broadcasting service, of a local scope, for the municipality of Valpaços, valid until 23 December 2024.

The company is further the holder of radio station license No 505210, for the FM radio broadcast service station, for coverage of the municipality of Valpaços, as well as of an authorization to operate the RDS system with the channel name "REGIONAL".

² Regime applicable to the licensing of radiocommunications networks and stations and to the supervision of the installation of such stations and the use of the radio spectrum.

3.2. RCChaves - Rádio Clube de Chaves Unipessoal, Lda.

By determination of 15 June 2011, ERC authorized the transfer of the programme services called “Rádio Regional Vimioso” and “Rádio Regional Sabrosa”, as well as the respective licenses, to RCChaves - Rádio Clube de Chaves, Unipessoal, Lda. (RCChaves).

On 20 July 2011, ERC decided also to renew, for a fifteen-year period, the corresponding licenses for the pursue of the radio broadcasting activity held by RCChaves, that is, one for the municipality of Sabrosa, in the 94.5 MHz frequency, called “Rádio Regional Sabrosa” and another for the municipality of Vimioso, 91.5 MHz frequency, called “Rádio Regional Vimioso”.

However, the documents where the corresponding rights of use for frequencies must be drawn up have not been yet issued by ICP - ANACOM, given that ERC has not confirmed and communicated to this Authority the issue to RCChaves of licenses for the pursue of the radio broadcasting activity.

RCChaves also holds radio station licenses No 506095, for the municipality of Sabrosa, and No 506362, for the municipality of Vimioso, as well as the corresponding authorization to operate the RDS system.

4. Assessment

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

As such, by letter of 7 November 2012, AdC was requested to issue an opinion for the purpose of paragraph 7 of article 34 of ECL.

Furthermore, in compliance with paragraph 5 a) of article 34 of ECL, ICP - ANACOM announced on its website (www.anacom.pt), on 31 October 2012, that it had received a request from the Entidade Reguladora para a Comunicação Social to rule on the intention expressed by Interior Norte Rádio, Lda., to transfer to RCChaves - Rádio Clube de Chaves, Unipessoal, Lda., the right of use of frequencies it had been allocated for the pursuit of the radio broadcasting activity.

Subsequently, on 21 December 2012, ICP - ANACOM received AdC's opinion, which concludes in brief that *the planned transfer is not likely to give rise to distortions of competition, specially as regards the creation of significant barriers to effective competition in the national market or in a substantial part thereof*.

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, 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.

5. Decision

Therefore, in the scope of powers provided for in paragraph 1 c) and f) of article 6 of its Statutes, approved by Decree-Law No 309/2001, of 7 December, and under and for the purpose of 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, the **Management Board of ICP - ANACOM** hereby determines:

- 1.** Not to oppose the transfer to RCChaves - Rádio Clube de Chaves Unipessoal, Lda., of the right of use of frequencies held by Interior Norte Rádio, Lda. in the 87,5-108 MHz frequency band, for the provision of a local radio programme service, for the municipality of Valpaços, under paragraph 6 of article 34 of ECL.
- 2.** Not to oppose the transfer to RCChaves - Rádio Clube de Chaves Unipessoal, Lda., of radio station licence No 505210, for the FM radio broadcast service station, for coverage of the municipality of Valpaços, as well as of the authorization to operate the RDS system with the programme channel name "REGIONAL", held by Interior Norte Rádio, Lda.
- 3.** To make this decision subject to the condition that the Entidade Reguladora para a Comunicação Social (ERC) grants the request for transfer of the "Rádio Comercial de Valpaços" programme service and of the respective license.
- 4.** 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 RCChaves - Rádio Clube de Chaves Unipessoal, Lda. the qualifying document drawing up the respective right of use for frequencies.

Lisbon, 18 January 2013.