

## DECISION

**DTT - Reimbursement of costs borne by end users with DTH coverage that have requested or request in the future the services of an installer, in the scope of the implementation of MEO's communication plan further to the installation of 4 new MFN stations**

### **1. Decision to grant a temporary network license and associated conditions**

By determination of ANACOM, of 11 September 2014<sup>1</sup>, the then PT Comunicações, S.A., now MEO – Serviços de Comunicações e Multimédia S.A. (hereinafter MEO) was granted a temporary network license<sup>2</sup>, for a period of 180 days, consisting of 4 stations, to be implemented as follows:

- a) Mendro transmitter: channel 40 (622-630 MHz);
- b) Palmela transmitter: channel 45 (662-670 MHz);
- c) São Mamede transmitter: channel 47 (678-686 MHz);
- d) Marofa transmitter: channel 48 (686-694 MHz).

In the identified determination, reference being hereby made to the respective contents, this Authority imposed on MEO the following conditions:

- *«The implementation (...) of appropriate procedures intended to reimburse the costs incurred by users due to the adjustment to the network now licensed (...), and the subsequent report to ICP - ANACOM of steps taken»;*
- *«The implementation (...) of the plan for communication to DTT users covered by new transmitters, disclosing the information required by the entry into operation of the network now licensed, including the responsibility for adjustment costs which may be incurred, which shall be notified to ICP - ANACOM».*

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<sup>1</sup> Available at <http://www.anacom.pt/render.jsp?contentId=1334269>.

<sup>2</sup> Under article 13 of Decree-Law No. 151-A/2000, of 20 July, as amended by Decree-Law No. 264/2009, of 28 September.

This temporary network license was issued, under the law, for a period of validity up to 14 March 2015, having been renewed, by determination of 13 March 2015<sup>3</sup>, for a period of 180 days, with effect from 15 March 2015.

## **2. Developments occurred**

Further to ANACOM's decision of 11 September 2014, MEO installed the four stations concerned, having observed the technical characteristics defined therein.

Moreover, in compliance with the same decision, MEO, by letter dated 22 September 2014, informed ANACOM of the communication plan and reimbursement procedure of costs incurred by users that had been adopted, which were adapted in accordance with ANACOM's instructions in the scope of various correspondence exchanged<sup>4</sup>, and subsequently concluded to be in line with this Authority's determination, except as regards the procedure concerning communications to final users.

In fact, on 4.11.2014<sup>5</sup>, ANACOM requested, among other documents, *"minutes of letters addressed (...) to residents covered by new transmitters, on the basis of the extraction of seven-digit postal codes, with details of persons and addresses to whom such minutes were sent"*.

In its reply<sup>6</sup>, specifically as regards the disclosure to residents covered by new transmitters, MEO informed that the disclosure would be carried out *"in a non-addressed manner, that is, it would not be addressed to each specific person/address, the distribution covering all residences on the basis of the CP7 list (...)"*.

Having this Authority found that letters would be sent to postal codes with no DTT coverage, it informed MEO<sup>7</sup> that it deemed (...) *imperative that letters (were) sent only to postal codes with terrestrial coverage"*.

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<sup>3</sup> Available at <http://www.anacom.pt/render.jsp?contentId=1350240>.

<sup>4</sup> Letters from MEO dated 22.09.2014 (reference 20444948), 11.11.2014 (reference 20453881) and 19.12.2014 (reference 20460909) and letters from ANACOM dated 15.09.2014 (reference S060562/2014), 4.11.2014 (reference S070023/2014) and 9.12.2014 (reference S088580/2014).

<sup>5</sup> Letter from ANACOM dated 4.11.2014 (reference ANACOM-S070023/2014).

<sup>6</sup> Letter from MEO of 11.11.2014 (reference 20453881).

<sup>7</sup> Letter from ANACOM of 9.12.2014 (reference ANACOM-S088580/2014).

MEO provided some clarifications in its reply, dated 19 December 2014<sup>8</sup>, having referred that it had “*opted for sending the communication to users of all CP7 registered in those parishes*”. It further informed that “*due account was taken of this entire situation in the text of communications that were sent, which explicitly refers: “Start be checking whether your residence is in a terrestrial DTT coverage area”, that is, users in a DHT-coverage area will understand that the communication will not bring about any changes in its DTT reception.*” Later, and further to ANACOM’s request, it was verified that communications were sent before MEO received ANACOM’s letter of 9 December 2014.

### 3. Analysis

As regards the conditions associated to the temporary license, under determination of 11 September 2014, ANACOM ordered MEO that the communication plan should be addressed to DTT users covered by new transmitters, disclosing information required by the entry in operation of the licensed network, including information on responsibility for the adjustment costs users could incur, which should be communicated to ANACOM.

In specific, as far as information to users is concerned, ANACOM considered, in the referred determination that “*communication has a critical role where measures that affect populations and involve an adjustment effort are taken. The installation of these new transmitters determines that populations in an area with terrestrial coverage who may not receive the service appropriately, due to problems such as those occurred in the week from 14 to 20 July, are likely to undergo a new adjustment process, to ensure that they will continue to watch TV in a stable and free-of-charge way. As such, it is fundamental that populations concerned, who may be required to adjust their installations so that they are able to watch TV properly, are informed of the alternatives now made available as well as of procedures required for the purpose, as well as of conditions and means of reimbursement of adjustment costs that may be incurred in. For this reason, PTC must implement a communication plan targeted at the population living in areas concerned by the radio coverage of new transmitters, the use of means proposed by PTC in the communication plan presented further to determination of 18 May 2012, communicated to ICP - ANACOM by the referred letter of 25 May 2012, being deemed appropriate, that is (...) iii) letters to be sent to residents of those areas on the basis of the extraction of postal code 7 (CP7) (...).*”

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<sup>8</sup> Letter with the reference 20460909.

As such, by explicitly referring to “*DTT users covered by new transmitters*”, “*populations in an area with terrestrial coverage*” and that the plan was “*targeted at the population living in areas concerned by the radio coverage of new transmitters*”, ANACOM determined that the communication plan was addressed to the group of affected users, who would be required to undergo an “*adjustment effort*” on account of the installation of new transmitters, which would clearly not be the case with users with DTH coverage.

Notwithstanding, MEO opted for sending the communication to users of all CP7 registered for all parishes concerned, giving at the time no justification for this - despite the warning that addressees of such communications should begin by checking whether their *residence is in a terrestrial DTT coverage area* - thus leading some users with DTH coverage and experiencing reception problems to request services from installers, further to the letter sent by that company, and to bear the travel expense. End users should not lose out as a consequence of MEO’s option on how to implement ANACOM’s determination, and as such it makes sense that users under these conditions are compensated by the company for any costs incurred with the installer’s travel. The period for requesting the reimbursement must last until the end of October 2015, in order to cover the period within which changes in propagation conditions are most likely to occur.

#### **4. Prior hearing**

In the scope of the determination issued on 13 March 2015, by means of which ANACOM renewed MEO’s temporary license, this Authority approved a draft decision (DD) on the reimbursement of costs borne by end users with DTH coverage that requested or request in the future the services of an installer, further to the reception of the letter sent in the scope of MEO’s communication plan (point 2. of the determination).

This DD was submitted to the prior hearing of MEO, under articles 100 *et seq.* of the Administrative Procedure Code, so that the company assessed the matter in writing, within 10 working days from the date of notification thereof.

Having been notified for that purpose, MEO assessed the matter within the requested deadline, by letter received at ANACOM on 27 March 2015<sup>9</sup>.

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<sup>9</sup> Letter from MEO of 27.03.2015, with reference S0241SG.

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.

## **5. Decision**

Therefore, in the light of the above, ANACOM's Management Board, in the scope of powers provided for in article 8, paragraph 1 e) and h), and taking article 9, paragraph 1k), into account, both of its Statutes, approved by Decree-Law No. 39/2015, of 16 March, in pursuit of the regulatory objectives provided for in article 5, paragraph 1 c) and paragraph 4 d) of the Electronic Communications Law, under articles 15 and 16 of the same Law, and pursuant to article 13 of Decree-Law No. 151-A/2000, of 20 July, as amended and republished by Decree-Law No. 264/2009, of 28 September, and article 26 g) of the Statutes, hereby determines:

**To order MEO to provide for the reimbursement of travel costs of an installer borne by end users with DTH coverage that requested or request in the future such displacement, further to the reception of the letter sent in the scope of MEO's communication plan, insofar as such reimbursement is applied for until 31.10.2015.**