

DECISION

Transfer of right of use frequencies held by Rádio Beira Interior C.R.L. to title of RACAB - Rádio Castelo Branco, Lda.

1. Application

Subsequent to an application presented by Radio Beira Interior, C.R.L. (hereinafter "RBI") to transfer the local programme service "Rádio Beira Interior", which is transmitted on the 92.00 MHz frequency in the municipality of Castelo Branco, and to transfer the respective license to exercise the activity of radio broadcasting, ERC - Entidade Reguladora para a Comunicação Social (Media Regulatory Authority), by notice received on 19 December 2012, submitted the respective process for examination by ICP-ANACOM. As such, this Authority, in accordance with the terms of article 4, paragraph 9, and article 22, paragraph 7 of the *Lei da Rádio* (Law no. 54/2010 of 24 December - Radio Law), is to issue a decision on the transfer of the right of use of frequencies granted to RBI for provision of a local, publicly available broadcast radio programme in the Municipality of Castelo Branco.

According to the corresponding process, RBI sought authorisation from ERC, on grounds of economic/financial viability, to undertake transfer of its local programme service to RACAB - Rádio Castelo Branco, Lda.

2. Framework

2.1. *Lei da Rádio* (Radio Law)

Pursuant to paragraph 9 of article 4 of the *Lei da Rádio* (Radio Law), the transfer of programme services on a local level and respective licenses or authorizations shall be permitted, according to the procedures laid down for the alteration of operator control, where it can be proved that this will help safeguard the licensed or authorized project, 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 such powers as are granted to ICP-ANACOM according to the regime applicable to electronic communications networks and services and to radiocommunications, such transfer is subject to an authorization by ERC (see article 4, paragraph 10 of the *Lei da Rádio* (Radio Law)).

Furthermore, paragraph 7 of article 22 of the *Lei da Rádio* (Radio Law) stipulates that applications to transfer licenses shall be examined by ERC, which shall submit the applications to ICP-ANACOM for a decision on the transfer of the respective rights of use of frequencies, according to the regime applicable to electronic communications networks and services and to radiocommunications.

Article 4 of the *Lei da Rádio* (Radio Law) also details a set of restrictions on the ownership of radio programme services, and specifically of local services:

- Natural or legal persons shall not hold, either directly or indirectly, namely through a relationship of control, a number of licenses for radio programme services on a local level exceeding 10% of all licenses granted in the national territory.
- Natural or legal persons of private or cooperative sectors shall not hold, either directly or indirectly, namely through a relationship of control, a number of frequency modulated radio programme services on a national level equal to or exceeding 50% of programme services qualified for the same coverage area and for the same frequency band.
- Natural or legal persons shall 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 on a local level exceeding 50% of programme services of the same scope qualified for each of the referred territorial areas.

2.2. LCE - Lei das Comunicações Eletrónicas (Electronic Communications Law)¹

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

Article 34 of the LCE provides for the transfer or lease of rights of use of frequencies between undertakings in accordance with the conditions governing said rights of use and subject to procedures as established in the same article, where the transfer or lease of such rights has not been explicitly prohibited by the National Regulatory Authority (ICP-ANACOM in this case) and published in the National Table of Frequency Allocations.

In this respect, it is incumbent upon ICP-ANACOM to ensure that:

- a) the intention to transfer or to lease rights of use of 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 stipulated use of frequencies is observed where 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 this article, it is incumbent upon ICP-ANACOM to give its decision, within not more than 45 days, on the intention to transfer the rights of use in question, as well as the conditions governing said transfer, which decision is to be duly notified. In this regard, ICP-ANACOM is entitled to oppose the intended transfer of rights of use or impose such conditions as may be necessary to ensure compliance with the requirements listed in the preceding paragraph.

In this situation, ICP-ANACOM shall request the prior opinion of AdC - *Autoridade da Concorrência* (Competition Authority), which shall be issued within a ten-day period of time from the date of the request, save where the complexity of the matter warrants an extension.

It is further noted that the transfer of these rights of use does not suspend or interrupt the period for which the respective rights were granted, whereas the conditions attached to

said rights of use shall continue to apply subsequent to the transfer, unless otherwise specified by the NRA (paragraphs 9 and 10 of article 34)

The silence of ICP-ANACOM, after the elapse of the 45-day period referred to in paragraph 6 of article 34, should be interpreted as non-opposition to the transfer; however the effective transfer must still be notified.

2.3. Regime governing the licensing of radiocommunications networks and stations

In accordance with article 14, paragraph 1 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 shall be transferable.

The entity to which a license is transferred shall assume all the associated rights and obligations, whereas, where applicable, the transfer of a network licence shall imply the transfer of all the licences of the stations which comprise the network.

In this case also, ICP-ANACOM shall rule, within 45 days, on the content of the notification, and may oppose the transfer of licences or impose any conditions as may be required to ensure optimal management of the spectrum and, specifically, for the effective and efficient use of frequencies and to prevent distortion of competition.

The transfer of network and station licenses does not suspend or interrupt the term for which the licences were granted.

3. Assessment

The RBI holds title to Right of Use of Frequencies ANACOM no. 203/2009, granted for the purpose of providing a publicly available, local broadcast programme service, in the municipality of Castelo Branco, using the 87.5 - 108 MHz band.

RBI also holds title to Broadcast Radiocommunications Station Licence no. 20234, valid until 9 May 2014, according to which the station broadcasts at a frequency of 92.00 MHz,

² Regime governing the licensing of radiocommunications networks and stations, the supervision of the installation of said stations and use of the radio spectrum.

and also title to Fixed Service Radiocommunications Network License (studio-transmitter links) no. 503730, also valid until 9 May 2014.

RBI also still holds title to an authorization for the operation of the Radio Data System (RDS) with the programme channel name "RBINT."

As transfer recipient, RACAB - Rádio Castelo Branco, Lda., does not hold title to any rights of use of frequencies.

The application in question was examined in light of the requirements which, according to paragraph 5 of article 34 of the LCE, are to be fulfilled, so that ICP-ANACOM is able to rule on the proposed transfer.

Accordingly, and by notice dated 9 January 2013, AdC was requested to issue an opinion for the purposes of paragraph 7 of article 34 of LCE.

Furthermore, in compliance with paragraph 5, point a) of article 34 of the LCE, on 15 January 2013, ICP-ANACOM announced on its website (<http://www.anacom.pt/render.jsp?contentId=1149620&languageId=1>), that it had received a request from ERC to rule on the intention expressed by Rádio Beira Interior, C.R.L., to transfer the right of use of frequencies which it had been granted for the pursuit of the radio broadcasting activity to RACAB - Rádio Castelo Branco, Lda.

On 31 January 2013, the opinion of AdC was received, in which it was concluded, in summary, that *it is deemed that the planned transfer of the said rights of use of frequencies in respect of the activity of the local broadcast radio programme service is not likely to give rise to distortions of competition, in particular as regards the creation of significant barriers to effective competition in the national market or in a substantial part thereof.*

As regards the remaining requirements, upon whose fulfilment the granting of the authorization for the transfer of the right of use for frequencies is subject, as set out in paragraph 5 of article 34 of the LCE and in article 14 of Decree-Law no. 151-A/2000, ICP-ANACOM takes the view, in the light of available information, that these have been duly safeguarded.

In particular, as regards the safeguarding of restrictions provided for in the *Lei da Rádio* (Radio Law) (requirement laid down in paragraph 5, point e) of article 34 of the LCE), in articulation with article 4 of that same Law, and given that ICP-ANACOM lacks information on capital shares between the different bodies qualified for the pursuit of the radio broadcasting activity, it is deemed as incumbent upon ERC to ascertain, at all times, that the restrictions governing the ownership of radio programme service operators are not infringed.

4. Decision

Accordingly, pursuant to the powers provided for in points c) and f) of article 6 of its Statutes, as approved by Decree-Law no. 309/2001 of 7 December, and pursuant to 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 title of RACAB - Rádio Castelo Branco, Lda., of the right of use of frequencies in the 87.5-108 MHz frequency band, as granted to Rádio Beira Interior, C.R.L., to provide a local radio programme service in the municipality of Castelo Branco, under the terms of paragraph 6 of article 34 of the LCE.
2. Not to oppose the transfer to title of RACAB - Rádio Castelo Branco, Lda. of Broadcast Radiocommunications Station Licence no. 20234, and not to oppose transfer of Radio Network (fixed service - studio-transmitter links) Licence no. 503730, to which Rádio Beira Interior, C.R.L., holds title.
3. Not to oppose the transfer, to title of RACAB - Rádio Castelo Branco, Lda. of the authorisation granted for the operation of the Radio Data System (RDS) with the programme channel name "RBINT."
4. To make the present decision subject to the condition that ERC - Entidade Reguladora

para a Comunicação Social (Media Regulatory Authority) grants the request for assignment of the programme service called "Rádio Beira Interior" and of the respective licensing for exercise of the radio broadcasting activity of Rádio Beira Interior, C.R.L.

5. To notify ERC of the provisions laid down in the preceding paragraphs, requesting that ERC inform ICP-ANACOM as to the content of its decision on the application for assignment, so that this Authority may, if such is the case, undertake the corresponding issuance to RACAB - Rádio Castelo Branco, Lda., of the title that gives basis to the right of use of frequencies.

Lisbon, 22 February 2013.