

## DECISION

### Amendment to the title of rights of use for frequencies for terrestrial electronic communications services allocated to Vodafone

#### 1. Communication submitted by Vodafone

By communication received on 24 December 2015, Vodafone Portugal, Comunicações Pessoais, S.A. (hereinafter Vodafone) informed ANACOM, under paragraph 3 a) of article 8 of Regulation No. 560-A/2011, of 19 October, and paragraph 4 of the title of rights of use for frequencies for terrestrial electronic communications services No. 03/2012, that “...it stopped using frequencies in channels 895.1-898.1MHz; 940.1-943.1 MHz, which are thus returned to ANACOM”.

#### 2. Framework

2.1. Regulation No. 560-A/2011, of 19 October 2011, (Auction Regulation for the allocation of rights of use for frequencies in the 450 MHz, 800 MHz, 900 MHz, 1800 MHz, 2.1 GHz and 2.6 GHz bands, hereinafter Multiband Auction Regulation) lays down in article 8 spectrum caps and limits on holdings of spectrum, which, in the case at issue, relate to the following matters:

- Categories B and C (corresponding to the 800 and 900 MHz bands), taken in conjunction, were subject, cumulatively, to a deferred limit on holdings of spectrum of 2 x 20 MHz, including the rights of use for frequencies already held in the 900 MHz band prior to the Multiband Auction (paragraph 2).
- Holders of rights of use for frequencies covered by this limitation are required to transfer, pursuant to article 34 of the Electronic Communications Law, or to return to ANACOM, as from 30 June 2015, frequencies assigned to them that exceed the applicable limit (paragraph 3 a));
- The transfer or return of frequencies must take place within at the most 6 months from that date (paragraph 3 b)).

2.2. By determination of 6 January 2012, ANACOM allocated to Vodafone the rights of use for frequencies in respect of the eleven lots awarded to this company in the scope of the Multiband Auction, as follows:

- a) 2 x 10 MHz in the 800 MHz frequency band (790-862 MHz), the 801-811 MHz / 842-852 MHz frequencies being assigned for this purpose;
- b) 2 x 5 MHz in the 900 MHz frequency band (880-890 MHz / 925-935 MHz), the 885-890 MHz / 930-935 MHz frequencies being assigned for this purpose;
- c) 2 x 14 MHz in the 1800 MHz frequency band (1710-1785 MHz / 1805-1880 MHz), in the frequencies to be assigned under article 31 of the Auction Regulation;
- d) 2 x 20 MHz in the 2.6 GHz frequency band (2500-2690 MHz), the 2510-2530 MHz / 2630-2650 MHz frequencies being assigned for this purpose;
- e) 25 MHz in the 2.6 GHz frequency band (2500-2690 MHz), in the 2570-2595 MHz frequencies.

**2.3.** Conditions that apply to the referred rights were specified in the title of rights of use for frequencies for terrestrial electronic communications services ICP-ANACOM No. 03/2012 (hereinafter RUF), issued on 9 March 2012, paragraph 4.1. thereof establishing, by virtue of the mentioned article 8 of the Multiband Auction Regulation, that *Vodafone is required to transfer, pursuant to article 34 of the Electronic Communications Law, or to return to ICP-ANACOM, among frequencies held by the company in the 800 MHz and 90 MHz, the amount that exceeds the limit provided for in paragraph 2 of the same article, as from 30 June 2015* (paragraph 4.1.).

Under paragraph 4.2., the referred *transfer or return of frequencies must take place within at the most 6 months from 30 June 2015*, that is, by 30 December 2015.

### **3. Analysis**

**3.1.** Given that, further to the Multiband Auction, in the whole of 800 and 900 MHz frequency bands, Vodafone became the holder of rights of use for frequencies over a total of 2 x 23 MHz, exceeding the referred limit of 2 x 20 MHz, it was required to transfer or to return 3 MHz of spectrum as described above.

In this context, the return by Vodafone to ANACOM, on 24.12.2015, of frequencies in channels 895.1-898.1MHz; 940.1-943.1 MHz is in compliance with the condition established in the RUF, which results from the Multiband Auction Regulation, as regards the form (return), the amount (3 MHz) and the deadline (by 30 December 2015).

Moreover, taking into account that the Multiband Auction Regulation and the RUF do not determine a specific red tape for the return of spectrum, it is deemed that Vodafone's communication, received on 24.12.2015, serves the purpose of the provision.

**3.2.** The return of the spectrum here under consideration, as imposed under the Multiband Auction Regulation, which were incorporated into Vodafone's RUF, implies, as such, the amendment of paragraphs 1.a) and 10.1 a) of Title ICP-ANACOM No.03/2012, as regards frequencies allocated prior to the Multiband Auction, to establish that Vodafone holds 2 x 5 MHz, not 2 x 8 MHz, in the 900 MHz frequency band (880-915MHz / 925-960 MHz).

Moreover, and bearing in mind that the obligation concerned has been exhausted over time, it is deemed that paragraph 4 of the referred title, where the obligation was laid down, should be removed.

**3.3.** Taking into account that the amendment of the referred title held by Vodafone does not change its substantial nature, particularly because it does not generate competitive advantages to the company (on the contrary, it involves the release of spectrum into the market), and as such, it may be deemed to be a minor change, ANACOM takes the view that such amendment does not require the launching of the general consultation procedure, under paragraph 4 of article 20 of the Electronic Communications Law.

Bearing in mind that this title amendment results from compliance with an obligation which was subject to scrutiny by the stakeholder, both in the scope of the adoption of the Multiband Auction Regulation and of the issue of the RUF title, in the course of which the stakeholder had the opportunity to comment on issues that led to this decision, it is deemed that the prior hearing of Vodafone may be waived under paragraph 1 e) of article 124 of APC.

#### **4. Decision**

**In the light of the above, the Management Board of ANACOM,** to address regulatory objectives concerning the efficient management of radio spectrum, laid down in point d) of paragraph 2 of article 5, and pursuant to articles 15 and 20, all of the Electronic Communications Law, as well as to pursue tasks assigned in the scope of

the efficient management of radio spectrum, under paragraph 1e) of article 8 and in the exercise of powers conferred under article 9, paragraph 1 b), all of its Statutes, approved by Decree-Law No. 39/2015, of 16 March, **hereby determines as follows:**

**5.1.** To amend, with effects as from 24 December 2015, the title of rights of use for frequencies for terrestrial electronic communications services No. 03/2012 allocated to Vodafone, as set out in endorsement No. 3 in annex hereto, which is deemed to be an integral part hereof.

**5.2.** To amend the National Frequency Allocation Plan (NFAP) as well as the Frequency Information System (EFIS) in accordance with the provision in the preceding paragraph.

Lisbon, 11 February 2016.

**TITLE**  
**OF RIGHTS OF USE FOR FREQUENCIES**  
**FOR TERRESTRIAL ELECTRONIC COMMUNICATIONS SERVICES**  
**ICP-ANACOM No. 03/2012**

**ENDORSEMENT No. 3**

1. Paragraph 1.a) of this title is hereby amended to read as follows:

*«a) Rights of use, on national territory, of 2 x 5 MHz in the 900 MHz frequency band (880-915 MHz / 925-960 MHz) and of 2 x 6 MHz in the 1800 MHz frequency band (1710-1785 MHz / 1805-1880 MHz) for systems identified in annex to Decision 2009/766/EC, as amended by Decision 2011/251/EU, and of 2 x 20 MHz in the 1920-1980 MHz / 2110-2170 MHz sub-band, in the 2100 MHz band, for the Universal Mobile Telecommunication System (UMTS).»*

2. Paragraph 4 of this title is hereby amended to read as follows:

*«4. (Removed).»*

3. Paragraph 10.1.a) of this title is hereby amended to read as follows:

*«a) 2 x 5 MHz in the 900 MHz frequency band (880-915 MHz / 925-960 MHz) and 2 x 6 MHz in the 1800 MHz frequency band (1710-1785 MHz / 1805-1880 MHz) for systems identified in annex to Decision 2009/766/EC, as amended by Decision 2011/251/EU, as well as for other systems to be included therein.»*

Lisbon, 11 February 2016.