

EXPLANATORY MEMORANDUM

on the draft Decision of the president of the National Authority for Management and Regulation in Communications on the harmonisation of the 880-915 MHz, 925-960 MHz, 1710-1747.5 MHz and 1805-1842.5 MHz frequency bands

3G electronic communications services are a catalyst in the development of electronic communications in EU member states, as the growing demand for mobile telephone services, higher-rate multimedia and data transmissions services are the next challenge faced by the regulatory authorities, to be approached throughout the European Union.

In Romania, on the date of this explanatory memorandum, 3G electronic communications services are made available by four providers of public electronic communications networks and of publicly available electronic communications services – S.C. ORANGE ROMANIA S.A., S.C. VODAFONE ROMANIA S.A., S.C. TELEMobil S.A. and S.C. RCS & RDS S.A. – authorised under the general authorisation regime. Therefore, at this moment, limiting the number of 3G electronic communications providers is chiefly due to the scarce resource of the radio spectrum used for the provision of public electronic communications networks and of publicly available electronic communications services. This reason was mentioned also in Article 2(1) of the Government Decision no.1113/2003 on granting licences for the use of radioelectric frequencies with a view to providing 3G electronic communications networks and services, with the subsequent amendments and completions, a text according to which "*There shall be granted four 3G mobile communications licences [...]*".

Once with the recognition and embracing of the principles provided in the new regulatory framework for communications - alongside the thorough understanding of the objectives envisaged by the legislative package adopted starting with 2002 – the end-users, in general, manifest the need for a new communication level, beside the need to cut distance. In order to satisfy this need, the radio spectrum – a state-owned scarce resource under the management and administration of the National Authority for Management and Regulation in Communications (ANCOM), on grounds of the Government Emergency Ordinance no.22/2009 on the establishment of the National Authority for Management and Regulation in Communications – is the resource to be most effectively managed and administered. The economic potential of this resource must be used, with the major purpose of taking the greatest possible advantage from it while incentivising the provision of electronic communications services (multimedia and data transmissions services) at higher and higher rates – which will foster economic development.

In accordance with Article 4(2) of the Radio Spectrum Decision (Decision 676/2002/CE), the Commission gave a mandate dated 5 July 2006 to the European Conference of Postal and Telecommunications Administrations (hereinafter the CEPT) to

elaborate less restrictive technical conditions relating to radio frequency bands approached under WAPECS (Wireless Access Policy for Electronic Communications Services), comprising the 900 MHz and 1800 MHz bands.

Based on technical investigations, especially on the Report of the Electronic Communications Committee (ECC) 82 on the compatibility study for UMTS operating within the GSM 900 and GSM 1800 frequency bands and on the Report of the Electronic Communications Committee (ECC) 96 on compatibility between UMTS 900/1800 and systems operating in adjacent bands and, following the mandate dated 5 July 2006, CEPT elaborated a report on the introduction, alongside GSM, of UMTS in the 900 MHz and 1800 MHz bands and adopted Decision ECC/DEC(06)13 on the designation of the bands 880-915 MHz, 925-960 MHz, 1710-1785 MHz and 1805-1880 MHz for terrestrial IMT-2000/UMTS systems.

The conclusions of the CEPT mandate resulted in a Commission Decision on the harmonisation of the 900 MHz and 1800 MHz frequency bands for terrestrial systems capable of providing pan-European electronic communications services in the Community, endorsed by the Radio Spectrum Committee (RSC), which will enter into force upon the adoption of the Directive of the European Parliament and of the Council amending Council Directive 87/372/CEE of 25 June 1987 on the frequency bands to be reserved for the coordinated introduction of public pan-European cellular digital land-based mobile communications in the Community.

In Romania, the radio frequencies in the 900 MHz and 1800 MHz bands, allocated for non-governmental use, according to the National Table of Frequency Allocation (NTFA) in force, are allotted, by licences for the use of radio frequencies – an administrative act, provided by Article 13 of the Government Emergency Ordinance no.79/2002, establishing, under the law, the specific conditions, as well as the technical and operational conditions for the effective use of the radio frequencies, as well as for preventing the emission of harmful interferences. These licences are currently granted to ORANGE ROMANIA S.A., VODAFONE ROMANIA S.A. and S.C. COSMOTE ROMANIAN MOBILE TELECOMMUNICATIONS S.A. The electronic communications services to be provided by means of the electronic communications networks developed by the above-mentioned operators are 2G, i.e. specific to GSM systems.

According to the NTFA, the whole 900 MHz band is allocated for non-governmental use, but the 1800 MHz has not uniformly a similar status, that is why the draft decision concerns only the 1710-1747.5 MHz / 1805-1842.5 MHz sub-bands. Thus, the 900 MHz band contains the radio frequency bands 880-915 MHz / 925-960 MHz. The 1800 MHz band contains the radio frequency bands 1710-1785 MHz / 1805-1880 MHz.

One of the essential points to be highlighted for the interested persons refers to preserving and maintaining the rights of use of the radio frequencies conferred to the holders of licences for the use of radio frequencies in the 900 MHz and 1800 MHz bands. This option is clearly stated by the regulatory authority, the holders' rights being fully respected. In this light, the introduction of 3G electronic communications services in the 900 MHz and 1800 MHz bands remains an important target for the holders of the licences for the use of radio frequencies in these bands. ANCOM, by the draft decision, aims to create the technical and administrative mechanisms for the harmonisation of the use of the frequency bands concerned, in accordance with the requirements regarding technological neutrality and service neutrality.

We must point out that this action does not envisage granting new rights for the use of radio frequencies (in addition to those already granted to the existing operators in the 900 MHz and 1800 MHz bands), but enforcing some principles, which are becoming part of the electronic communications field.

The opportunity arisen once with the creation of premises for the introduction of 3G electronic communications services in the 900 MHz band must be used as soon as possible, since the propagation characteristics of this frequency band, which allows covering long distances by higher frequencies, ensure the adequate coverage of sparsely populated and rural areas.

In the draft decision launched for public consultation, one must notice that 3G electronic communications services in the frequency bands mentioned in Article 1(1) shall be provided subject to conditions that ensure:

- appropriate radio protection for the radiocommunications systems in the adjacent bands;
- uninterrupted provision of 2G electronic communications services, specific to GSM systems;
- appropriate radio protection for the GSM systems that will continue functioning in the 880-915 MHz, 925-960 MHz, 1710-1747.5 MHz and 1805-1842.5 MHz.

As regards the continuity of providing 2G electronic communications services, specific to GSM systems, in the concerned frequency bands, the regulatory authority is clearly stating its opinion, i.e. protecting the end-users' rights. Therefore, 3G electronic communications services in the 900 MHz and 1800 MHz bands could be provided subject to the condition that the two types of electronic communications services coexist. This regulatory approach (maintaining the obligation to provide 2G electronic communications services), beyond the economic benefits that the interested operators surely consider, is the only solution which could enable the end-users to choose the service package adjusted to their communication needs.

The first step in laying down the technical and legislative framework for the provision of 3G electronic communications services, in the 900 MHz and 1800 MHz frequency bands, consists of adopting the Order of the Minister of Communications and Information Technology no.432/2008 on amending the National Table of Frequency Allocations approved by Order of the Minister of Communications and Information Technology no.232/2003.

Following this step, considering the partnership between the regulatory authority in the field of communications and information technology and the providers of electronic communications networks and services and pursuing the provisions of Article 14(3) letter c) and (4) of the Government Emergency Ordinance no.79/2002 on the general regulatory framework for communications, approved, with amendments and completions, by Law no. 591/2002, with the subsequent amendments and completions - in addition to the action taken during the public consultation, ANCOM will initiate consultations and analyses together with the holders of the rights in the 900 MHz and 1800 MHz bands. This measure is meant to drive the parties involved to consensus, the regulatory authority anticipating, under the law, amendments to the licences for the use of radio frequencies (administrative acts) with a view to introducing the conditions required by the provision of 3G electronic communications services in the 900 MHz and 1800 MHz frequency bands.