

DECISION

ON THE ESTABLISHMENT OF THE PROCEDURE FOR THE RESOLUTION OF DISPUTES WITHIN THE COMPETENCE OF THE NATIONAL AUTHORITY FOR MANAGEMENT AND REGULATION IN COMMUNICATIONS

On grounds of the provisions of Article 3 letter g), Article 10 paragraph (1) indent 12, Article 11 paragraph (1) and Article 12 paragraph (1) and (3) of the Government Emergency Ordinance no. 22/2009 on the establishment of the National Authority for Management and Regulation in Communications, approved by Law no. 113/2010, of Article 36 paragraph (5) 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, as well as of Article 35 of Law no. 304/2003 on the Universal Service and users' rights relating to the electronic communications networks and services, republished,

THE PRESIDENT OF THE NATIONAL AUTHORITY FOR MANAGEMENT AND REGULATION IN COMMUNICATIONS

issues the present decision:

CHAPTER I

General provisions

Art. 1. – (1) The present Decision regulates the jurisdiction-administrative procedure for the resolution of disputes arising between the providers of electronic communications networks or services, as well as the procedure for the resolution of disputes arising between end-users and providers of electronic communications services, which fall under the competence of the National Authority for Management and Regulation in Communications, hereinafter referred to as ANCOM.

(2) ANCOM is competent to resolve:

a) the disputes between the providers of electronic communications networks or services in relation to the obligations imposed on them by the provisions 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, by the special legislation or by the European regulations in the electronic communications sector, or imposed by ANCOM pursuant to the aforementioned provisions;

b) the disputes between end-users and providers of electronic communications services which were not solved amicably, occasioned by the enforcement of the provisions under Law no. 304/2003 on the Universal Service and users' rights relating to the electronic communications networks and services, republished.

(3) Disputes under paragraph (2) letter a) shall be resolved by means of the jurisdiction-administrative procedure provided in Chapter II, whereas the disputes under paragraph (2) letter b), by means of the procedure described in Chapter III.

Art. 2. – Within the scope of the present Decision, the following terms shall be defined as follows:

a) *plaintiff* – the person initiating one of the procedures set out in Chapter II or III;

b) *respondent* – the person against whom one of the procedures set out in Chapter II or III is initiated.

Art. 3. – Within the resolution of the disputes provided in this decision, the principles of the right to defence, equality, rapidity, contradictoriness and active role shall be observed.

CHAPTER II

Provisions on the resolution of disputes arising between the providers of electronic communications networks or services

SECTION 1

Procedure initiation

Art. 4. – (1) The interested party shall submit a written request to ANCOM, under the terms of Article 5, hereinafter referred to as the *complaint*.

(2) The complaint shall be sent to ANCOM in two originals, in accordance with the provisions of Article 24.

Art. 5. – (1) The complaint shall include mandatory information on the following:

a) the parties of the dispute and their identification data and, if the plaintiff is represented, the name of the mandated representative and the document ascertaining his/her capacity as such;

b) the object of the dispute – the plaintiff shall specify the obligations imposed by the provisions of Government Emergency Ordinance no. 79/2002, approved with amendments and completions by Law no. 591/2002, with the subsequent amendments and completions, by the special legislation or by the European regulations in the electronic communications sector, or imposed by ANCOM pursuant to the aforementioned provisions, in relation to which the dispute has arisen;

c) *de facto* motivation – the plaintiff shall provide as many details as possible, including relevant documents showing the parties' efforts in order to amicably solve the dispute (correspondence copies, reports of the meetings between the parties, draft contracts/addendums etc.);

d) *de jure* motivation – the legal provisions grounding the complaint;

e) the extent to which the plaintiff is affected by the dispute;

f) the solution or measures proposed by the plaintiff in order to resolve the dispute;

g) the specification as to whether a request with the same object, same cause and between the same parties was filed before a court of law;

h) the signature of the party or of the mandated representative, and seal, as the case may be.

(2) The complaint shall be drawn up based on the standard form provided in Annex no. 1, which is part of this decision.

Art. 6. – (1) If the complaint does not observe the provisions under Article 5, the plaintiff shall be requested to submit clarifications or completions to the complaint in a short time-limit.

(2) Failure to observe the obligation under paragraph (1) within the established time-limit shall have as effect the rejection of the complaint, by means of a reasonably motivated opinion, without undergoing the further phases of the procedure.

(3) If clarifications or completions to the complaint have been submitted within the

time-limit set out according to paragraph (1), the time frame stipulated in Article 19(1) begins on the day when the clarifications or completions have been submitted.

SECTION 2

Main proceedings

Art. 7. – (1) If the complaint meets the requirements provided in Article 5, as well as if the clarifications or completions to the complaint were submitted under the terms of Article 6(1), the president of ANCOM shall appoint a commission responsible for resolving the dispute, hereinafter referred to as the *Commission*. The commission shall consist of a president and one or several members, depending on the object and complexity of the dispute.

(2) The Commission is empowered to fulfil all the procedural acts required to solve the cause. The procedural acts shall be endorsed by the president of the Commission.

Art. 8. – (1) The Commission shall communicate to the respondent a copy of the complaint and of all other documents provided by the plaintiff and shall inform the respondent that the maximum time-limit for sending the response to the complaint is 15 days from the communication date, under the sanction of losing the right to submit evidence, except for those whose necessity would result from the debates and which the respondent could not have foreseen, and of the right to invoke exceptions, apart from those related to public order.

(2) The response to the complaint shall contain the respondent's point of view on each of the allegations under the plaintiff's complaint, the solution or measures proposed for resolving the dispute, the *de facto* and *de jure* motivations, as well as the due relevant documentation.

(3) Under exceptional circumstances, the respondent may be asked to answer in a shorter time-limit. Such circumstances may include, non-exhaustively, situations where the Commission deems that the plaintiff would suffer serious prejudices until the resolution of the main issue in the case.

(4) The response to the complaint shall be sent to ANCOM in accordance with the provisions of Article 24, in two originals, one of which shall be communicated, by the Commission, to the plaintiff.

Art. 9. – (1) After fulfilling the formalities under Article 8(4), or - if the respondent did not respond to the complaint - after the expiry of the time frame under Article 8(1) or established according to Article 8(3), the Commission shall invite the parties to a joint meeting, communicating the date of the meeting at least 5 days in advance.

(2) Depending on the complexity of the case, the Commission may invite the parties to further meetings.

(3) After each meeting, the Commission shall draw up and sign the minutes, to be communicated to the parties.

Art. 10. – (1) The Commission may ask the parties to submit written conclusions or written notes of their verbal allegations. The Commission may limit the object of the conclusions or notes to certain topics.

(2) The parties may submit written conclusions or notes upon their own initiative.

Art. 11. – (1) Each party may request only once to postpone the meeting on the grounds of impossibility to attend the meeting on the day or at the hour established by the Commission. The request shall be made in writing and shall be sent to the Commission, including by fax, at least 2 days before the established date.

(2) In such case, the Commission shall organise an emergency meeting and shall establish a new date for the meeting, to be communicated to both parties.

Art. 12. – (1) In case the parties deem that they are able to solve the dispute amicably, they may jointly require the Commission, only once, to suspend the dispute, in view of carrying negotiations.

(2) In all cases of dispute suspension, if, within 2 months from the suspension date, the parties do not request to resume the debates, the Commission shall establish the lapse of the proceedings.

Art. 13. – (1) On grounds of Article 51(1) and (2) letter h) of the Government Emergency Ordinance no. 79/2002, approved with amendments and completions by Law no. 591/2002, with the subsequent amendments and completions, the Commission may require additional information from the parties, if it deems this is necessary to solve the dispute.

(2) The parties shall make available the information within the time-limit and under

the conditions indicated by the Commission, under the sanction provided in Article 56(1) letter a) of the Government Emergency Ordinance no. 79/2002, approved with amendments and completions by Law no. 591/2002, with the subsequent amendments and completions.

Art. 14. – Should the dispute affect the legitimate rights or interests of other persons, the Commission shall identify these aspects and shall communicate a summary of the dispute to the respective persons, specifying the time frame within which they can express their views. The Commission shall analyse the respective points of view in solving the dispute and shall communicate them at once to the parties.

Art. 15. – After analysing all the information and after hearing all the views in the respective cause, if the main issue(s) of the dispute is (are) resolved, the Commission shall draw up a preliminary solution to be communicated to the parties.

Art. 16. – (1) Within 10 days after communicating the preliminary solution, any of the parties may submit a request to the Commission with a view to reconsidering the solution proposed.

(2) Where a reconsideration request was submitted within the time frame provided in paragraph (1), the Commission shall communicate the request to the other party, so the latter could send comments within 5 days from the communication date.

(3) If it deems necessary, the Commission shall invite the parties to a meeting in order to state their views on the aspects invoked.

Art. 17. – (1) When it deems it holds all the information required to resolve the dispute, the Commission shall begin deliberating on the solution of the dispute.

(2) Following deliberation, the Commission shall submit to the approval of the president of ANCOM a report including the proposals for the resolution of the dispute.

Art. 18. – (1) With a view to resolving the dispute, the president of ANCOM shall issue a decision mentioning the following obligatory information:

a) the name and address, respectively company name and headquarters of the parties;

b) the object of the dispute;

- c) the members of the Commission and the steps of the proceedings;
- d) the parties' allegations;
- e) *de facto* and *de jure* motivation of the parties;
- f) the measures taken and the methods of implementation;
- g) the means of appeal.

(2) The Decision is compulsory upon both parties, shall be communicated to them and shall be published on the ANCOM webpage, observing the legal provisions regarding the confidentiality invoked by the parties, if such is the case.

(3) Should the proceedings lapse or should the plaintiff withdraw his/her complaint, the president of ANCOM shall issue a decision whereby it acknowledges the lapse of proceedings or the renouncement to the dispute resolution procedure.

(4) The decisions issued according to this article are jurisdiction-administrative acts and may be appealed to the Bucharest Court of Appeal, within 30 days from the communication date, without going through the preliminary procedures provided under Article 7 of the Law on Administrative Contentious no. 554/2004, with the subsequent amendments and completions.

Art. 19. – (1) The decision resolving the dispute shall be issued by the president of ANCOM within 4 months from the registration date of the complaint with ANCOM or from the date provided in Articles 6(3) or 21(2), as the case may be.

(2) Under exceptional situations, depending on the complexity of the dispute or its impact on the electronic communications market, this time frame may be extended by decision of the ANCOM president.

(3) Should the dispute be suspended, the time frame provided in paragraph (1) shall be suspended *de jure*.

SECTION 3

Provisional measures

Art. 20. – (1) Under exceptional circumstances, when a party may suffer serious prejudice which, in the absence of certain provisional measures, could not be properly repaired in the hypothesis of resolving the main issue in favour of the party requesting the establishment of such measures, the president of ANCOM may establish, by decision, provisional measures, in view of preventing the occurrence of prejudices or of limiting

their extension.

(2) The Commission shall immediately communicate to the other party the request for the establishment of provisional measures submitted by one of the parties.

(3) The provisions of Articles 7-14, 17 and 18 shall correspondingly apply.

Art. 21. – (1) The decision on solving the request for the establishment of provisional measures shall be issued within 30 days from the submission date.

(2) If the submitted complaint included the request of establishment of provisional measures, the Commission shall first resolve this request, issuing a decision within the time-limit provided in paragraph (1). In such case, the time frame provided at Article 19(1) begins on the day the decision solving the request for provisional measures has been communicated to the parties.

SECTION 4

Special provisions

Art. 22. – (1) The parties may exercise their rights personally, they may be assisted or represented.

(2) The parties' representatives shall present the documents ascertaining their quality as a representative.

Art. 23. – (1) Within the dispute resolution procedure, the parties may request the Commission to treat certain information or documents, which have been marked as such, as confidential.

(2) In such case, the party shall also send a non-confidential version of the respective information, to be communicated to the other party.

(3) Having regard to the principle of the right to defence, as well as to the relevance of the information or documents marked as confidential for the proper resolution of the dispute, the Commission may request the party to justify the confidential character invoked. Upon analysing the respective justifications, the Commission shall decide on the confidentiality of the transmitted documents and shall inform the party concerned before communicating the documents to the other party.

Art. 24. – (1) Documents within the dispute resolution procedure are considered

communicated if they are sent by means of a postal service with confirmation receipt, by submission to the registry office, or by fax accompanied by the original document.

(2) The procedural acts performed by the parties are deemed communicated on the date of their transmission, if these are sent during ANCOM's working hours with the public, available on the ANCOM website.

(3) The date of transmission is considered to be:

- a) the date of the confirmation receipt, for the transmission by means of a postal service with confirmation receipt;
- b) the date of registration in the general registry of incoming-outgoing correspondence of ANCOM, in case of submission directly to the registry office;
- c) the date of receiving the documents, in case of transmission by fax.

CHAPTER III

Provisions for resolving the disputes between end-users and providers of electronic communications services

Art. 25. – (1) End-users may address ANCOM in view of solving the disputes with the providers of electronic communications services, occasioned by the enforcement of Law no.304/2003, republished, and unsolved amicably.

(2) The complaint shall mandatorily include information on the following:

- a) the parties of the dispute and their identification data, and, if the plaintiff is represented, the name of the mandated representative and the document ascertaining his/her capacity as such;
- b) the object of the dispute;
- c) *de facto* motivation – the plaintiff shall provide as many details as possible, a copy of the contract concluded with the provider, as well as any other relevant documents;
- d) diligences made in order to amicably solve the dispute with the respective provider (correspondence with the provider, other relevant documents or information);
- e) the solution or measures proposed by the plaintiff in order to resolve the dispute;
- f) the signature of the party or of the mandated representative, and seal, as the case may be.

(3) If the complaint does not meet the requirements under paragraph (2), the plaintiff shall be asked to complete it in a short time-limit with the relevant documents and

information necessary for the proper resolution of the dispute. Non-transmission of required information within the established time frame shall lead to the rejection of the complaint, by way of a reasonably motivated opinion, without undergoing the further phases of the procedure.

(4) Complaints drawn up according to paragraph (2) may be transmitted to ANCOM by submission to the registry office, by mail, fax or electronic mail.

(5) The standard form provided in Annex no. 2, which is part of this decision, is optional for the complaints submitted by end-users.

Art. 26. – (1) The resolution procedure for disputes arising between end-users and electronic communications providers is a written procedure.

(2) In order to accurately establish the actual situation and the applicable legal provisions, the ANCOM personnel in charge of resolving the complaints shall require the parties to provide, in writing, the information deemed necessary, as well as their views in relation to the aspects concerned.

(3) If such is the case, in view of the concerned provider's compliance with the obligations incumbent on it on grounds of the legislation in the electronic communications field, ANCOM may conduct control actions.

Art. 27. – (1) The ANCOM personnel in charge with resolving the dispute may invite the parties to separate or joint meetings, their number depending on the complexity of the case.

(2) The discussions shall be included in a meeting summary, to be communicated to the parties.

Art. 28. – (1) The parties may exercise their rights personally, they may be assisted or represented.

(2) The parties have the obligation to make all the necessary efforts with a view to amiably resolving the dispute and to collaborate therefore with the ANCOM personnel in charge.

(3) Where appropriate, ANCOM may require an opinion from the bodies representing end-users' interests, as well as from other relevant entities in the consumer protection field.

Art. 29. – (1) Where, within 60 days from the date of receiving a complaint, the dispute may not be solved amiably, ANCOM shall send the parties its reasonably motivated proposition for resolving the respective dispute.

(2) This proposition shall be based on the arguments and documents submitted by the parties and shall be regarded as a recommendation.

CHAPTER IV

Final provisions

Art. 30. – The dispute resolution procedures established in this decision are optional and free of charge.

Art. 31. – ANCOM shall keep the dispute file, which comprises all the documents received or communicated by ANCOM during the procedures established by the present Decision, having enclosed the confirmation receipts and communication proofs, as the case may be.

Art. 32. – (1) The time frames provided in the present Decision shall be calculated according to the provisions of Article 101 of the Civil Procedure Code.

(2) The present Decision shall be published in the Romanian Official Journal, Part I, and shall come into force within 3 days from its publication date.

(3) At the entry into force of this decision, the Decision of the president of the National Regulatory Authority for Communications no. 1331/2003/EN on the establishment of the procedure for the resolution of disputes within the competence of the National Regulatory Authority for Communications, published in the Romanian Official Journal, Part I, no. 789 of 10 November 2003, shall be repealed.

PRESIDENT,

Marius Catalin MARINESCU

Bucharest, 7 July 2010

No. 480

**STANDARD-FORM
COMPLAINT**

1. Plaintiff's identification data

a) Name and domicile/Company name and headquarters

b) Fiscal identification code/Unique registration code/Personal Numerical Code

c) Represented by

d) Telephone number; fax; e-mail address

2. Respondent's identification data

a) Name and domicile / Company name and headquarters

b) Telephone number; fax; e-mail address

3. Object of the dispute

4. *De facto* motivation of the plaintiff's claims

5. *De jure* motivation of the plaintiff's claims

6. How the plaintiff is affected by the dispute

7. Solution or measures proposed by the plaintiff in order to resolve the dispute

8. Other information deemed necessary for the proper resolution of the dispute

9. Specify whether a request with the same object, same cause and between the same parties was filed before a court of law:

a) yes;

b) no.

Signature and seal

**STANDARD-FORM
COMPLAINT**

1. Plaintiff's identification data

a) Name and domicile/Company name and headquarters

b) Personal Numerical Code/Fiscal identification code/Unique registration code

c) Represented by

d) Telephone number; fax; e-mail address

2. Respondent's identification data

a) Name and domicile/Company name and headquarters

b) Telephone number; fax; e-mail address

3. Object of the dispute

4. *De facto* motivation of the plaintiff's claims

5. Solution or measures proposed by the plaintiff in order to resolve the dispute

6. Other information deemed necessary for the proper resolution of the dispute

Signature and seal *

* Not applicable for natural persons