

On grounds of Decision no. 113/2002 of the Prime Minister on the appointment of the president of the National Regulatory Authority for Communications,

On grounds of the provisions of art. 38 paragraphs (1), (3) and (5) and the provisions of art. 36 paragraph (5) and of art. 44 letter i) of Government Emergency Ordinance no. 79/2002 on the general regulatory framework for communications, approved with amendments and completions by Law no. 591/2002,

**THE PRESIDENT OF THE  
NATIONAL REGULATORY AUTHORITY FOR COMMUNICATIONS**

issues the present:

**DECISION  
ON THE PROCEDURE REGARDING THE MEDIATION AND SETTLEMENT OF THE  
DISPUTES WITHIN THE COMPETENCE OF THE NATIONAL REGULATORY  
AUTHORITY FOR COMMUNICATIONS**

**CHAPTER I  
General provisions**

**Art.1.** - (1) This decision sets out the previous administrative-jurisdictional procedure for the settlement of disputes between the providers of electronic communications networks or services or postal services within the competence of the National Regulatory Authority for Communications, hereinafter referred to as *ANRC*.

(2) In case of a dispute between the providers of electronic communications networks or services or postal services with respect to their obligations imposed on grounds of Government Emergency Ordinance no. 79/2002 on the general regulatory framework for communications, approved with amendments and completions by Law no. 591/2002, or of special legislation, the interested party is obliged to notify *ANRC* in order to settle the dispute.

**Art.2.** – Within the meaning of this decision, the terms below are defined as follows:

- a) *plaintiff* – the person who initiates the procedure hereby regulated;
- b) *respondent* – the person against whom the procedure hereby regulated is initiated;
- c) *commission* – the persons appointed by decision of the president of *ANRC*, responsible for the settlement of a certain dispute;
- d) *notice* – the request whereby the *plaintiff* initiates in front of *ANRC* the procedure for the mediation and settlement of disputes;
- e) *answer* – the act by which the *respondent* replies to the *notice*.

**Art.3.** – (1) The disputes within the competence of *ANRC* may be settled, under the conditions herein, through a mediation procedure or through a contentious procedure.

(2) The aim of the mediation procedure is to amicably settle the dispute and the role of the *commission* is to assist the parties in concluding an agreement concerning the object of the dispute.

(3) The aim of the contentious procedure is that the *commission* settles the dispute in case the parties do not undergo the mediation procedure or such procedure fails.

(4) The parties may conclude an agreement concerning the object of the dispute at any time during the mediation or contentious procedure.

**Art.4.** – The right to defense, equal rights, celerity and contradictoriness principles shall be observed during the activities related to dispute mediation and settlement mentioned herein.

## **CHAPTER II**

### **Initiating the procedure**

**Art.5.** – The interested party is required to submit to *ANRC* a written letter registered with the *ANRC* registration office or sent by registered mail with confirmed receipt.

**Art.6.** – (1) The *notice* shall include the following mandatory information:

a) the parties to the dispute and their identification data;  
b) the object of the dispute – shall include the obligations imposed on ground of Government Emergency Ordinance no. 79/2002 on the general regulatory framework for communications, approved with amendments and completions by Law no. 591/2002, or of special legislation, which the *respondent* is pretended not to comply with;

c) the facts of the dispute – the *plaintiff* is required to provide as many details as possible, including relevant documents (e.g. copies of the correspondence, notes of meetings between parties etc.);

d) legal grounds – the legal provisions it is based upon;

e) the manner in which the *plaintiff* is affected by the dispute;

f) efforts made by the parties in order to amicably settle the dispute;

g) the solution or the measures suggested by the *plaintiff* for the settlement of the dispute;

h) signature and seal, as the case may be.

(2) The *notice* shall be made using a standard form set forth in the annex hereby attached.

(3) The standard form may be obtained from the head office, territorial offices, or website of *ANRC*.

## **CHAPTER III**

### **Preliminary measures**

**Art.7.** - (1) Following the registration of the *notice*, depending on the nature and complexity of the dispute, the president of *ANRC* shall appoint the *commission*, consisting of a president and one or two members.

(2) During the activity of dispute settlement, the *commission* shall play an active role and shall also maintain permanent contact with the parties.

**Art.8.** - (1) The *commission* shall conduct a preliminary analysis of the provided material, the nature and cause of the dispute, and the efforts made by the parties in order to settle the problem.

(2) In case additional information is deemed necessary for the settlement of the dispute, the *commission* may request the parties to provide such information.

(3) The *commission* shall invite the parties before it and shall communicate them the meeting date at least 7 days prior to this date, and shall also provide the *respondent* with a copy of the *notice*, for the *respondent* to be able to present his own standpoint.

**Art.9.** - (1) In case the nature of the dispute may affect other persons, the *commission* shall identify and communicate them a summary of the dispute, including the deadline to submit their opinion. The *commission* is bound to analyze all such opinions when settling the dispute.

(2) The *commission* may publish a summary of the dispute on *ANRC* website, and shall invite the interested persons to provide comments regarding the respective dispute. When settling the dispute, the *commission* may take into account the received opinions.

**Art.10.** - (1) In case both parties are present on the date established according to art. 8 paragraph (3), the *commission* shall inform them on the possibility to settle the dispute through the mediation procedure.

(2) In case parties agree, the *commission* shall fill in a statement of facts to be signed by the president of the *commission* and by the parties, as the initial act of the mediation procedure.

(3) In case one of the parties is not present or in case the parties do not agree to settle the dispute through the mediation procedure, the *commission* shall decide to initiate the contentious procedure.

## **CHAPTER IV**

### **The mediation procedure**

**Art.11.** - (1) The parties shall make all necessary efforts in order to amicably settle the dispute and the *commission* role is to therefore support the parties.

(2) The *commission* shall make all efforts in order to make parties understand each other's standpoint.

**Art.12.** - During the mediation procedure, the parties are separately or together invited to meetings, the number of such meetings depending on the complexity of the dispute. Following each meeting, the *commission* shall fill in a statement of facts to be signed by the participants to that meeting and to be communicated to the parties.

**Art.13.** - The parties may request the *commission* to clarify the construction or the extent of certain legal provisions in the field of electronic communications or postal services.

**Art.14.** - In case the mediation entails the amicable settlement of the dispute, the parties shall conclude a written agreement in three copies, one for each party and one for *ANRC*.

**Art.15.** - (1) The mediation procedure shall observe the principle of confidentiality and may not exceed a two months period.

(2) In case the parties do not reach an agreement within the term under paragraph (1), the dispute shall be settled through the contentious procedure.

(3) During the mediation procedure, any of the parties may request the *commission* to settle the dispute through the contentious procedure.

## **CHAPTER V**

### **The contentious procedure**

**Art.16.** - (1) In case the dispute is to be settled through the contentious procedure, the *commission* shall inform the parties on the date they are invited before it.

(2) The *respondent* shall be requested to answer the *notice* within 10 days after receiving it, under the sanction that further defense will not be taken into account.

(3) Under exceptional circumstances, the *respondent* may be requested to answer within a shorter term. Such circumstances may include, without limitation to, situations when the *commission* considers that the *plaintiff* would suffer from severe prejudice until the settlement of the dispute.

(4) In order to draw up the answer, the respondent shall be provided, using registered mail with confirmed receipt, with copies of the *notice* and of the other documents submitted by the *plaintiff*.

**Art.17.** – In case further information from any party is deemed necessary, such party may be obliged to provide the respective information within 7 days, under the sanction provided by art. 56 paragraph (1) of Government Emergency Ordinance no. 79/2002 on the general regulatory framework for communications, approved with amendments and completions by Law no. 591/2002.

**Art.18.** – When the *commission* deems to have all information necessary for the settlement of the dispute, it shall invite the parties to express their standpoints over the dispute.

**Art.19.** - The parties may be separately or together invited to meetings, the number of such meetings depending on the complexity of the dispute. Following each meeting, the *commission* shall fill in a statement of facts to be signed by the participants to that meeting and to be communicated to the parties.

**Art.20.** - (1) After analyzing all information and hearing the standpoints on the dispute, the *commission* shall draft a preliminary solution.

(2) The preliminary solution and the measures suggested to be taken in order to settle the dispute shall be communicated to the parties within 5 days after their drafting.

**Art.21.** - (1) Any party may address a request to the *commission*, within 10 days after the preliminary solution is communicated, in order for the suggested solution to be revised.

(2) In case new information are brought to the *commission's* attention within the term under paragraph (1), the *commission* shall decide whether such information is relevant for the respective dispute and may then extend this term.

**Art.22.** – In case the *commission* has been addressed with a revision request or in case new relevant information have been brought to its knowledge, the *commission*, after the term under art. 21 paragraph (1) or (2) expires, as the case may be, shall immediately convoke the parties to express their standpoints.

**Art.23.** - (1) After the procedure is finalized, the president of *ANRC* shall issue a decision in order to settle the dispute.

(2) This decision shall include the following mandatory elements:

a) the members of the *commission*;

- a) the name and domicile, or name and headquarters, respectively, of the parties;
- b) the object of the dispute and the standpoints of the parties;
- c) the facts of the dispute and its legal grounds/basis;
- d) the measures ordered and the way to comply with them;
- e) the way to appeal the decision.

(3) The decision is mandatory for the parties and shall be communicated to them and published on the website of *ANRC*.

(4) The decision may be appealed in front of the Administrative Division of the Bucharest Court of Appeal within 30 days after it is communicated, without the fulfillment of the preliminary procedure under art. 5 of the Law no. 29/1990, with the subsequent amendments.

**Art.24.** - (1) The decision whereby *ANRC* settles the dispute must be pronounced within 4 months after the date when *ANRC* received the *notice*.

(2) Under exceptional situations and for the appropriate settlement of the dispute, the president of *ANRC* may extend this term.

## **CHAPTER VI**

### **Transitory and final provisions**

**Art.25.** – The hereby set out procedure for the mediation and settlement of disputes is free of any charge.

**Art.26.** - (1) The parties may personally exert the rights stated herein or through a representative.

(2) The representatives of the parties must provide written proof of their capacity.

**Art.27.** – The disputes provided herein, that are pending before the Courts of Law by the date Law no. 591/2002 for the approval of Government Emergency Ordinance no. 79/2002 on the general regulatory framework for communications entered into force, shall be further settled by the respective Courts of Law.

**Art.28.** – The dispute file shall be kept with *ANRC*, having attached proof that the decision concerning the solving of that dispute has been communicated.

**Art.29.** – Terms provided herein are calculated in accordance with the provisions of art. 101 of Code of Civil Procedure.

**Art.30.** – This decision shall be published in the Official Romanian Journal, Part I.

**PRESIDENT,**

**ION SMEEIANU**

Bucharest, November 2002

No. YYY/ EN

Annex

## STANDARD NOTICE FORM

### 1. Identification data of the *plaintiff*

a. Name and domicile/ Name and headquarters

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b. Represented by

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c. Telephone/ Fax/ E-mail address

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d. Holder of the general authorization/license

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### 2. Identification data of the *respondent*

a. Name and domicile/ Name and headquarters

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b. Represented by

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c. Telephone/ Fax/ E-mail address

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**5. Legal grounds**

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**6. The way in which the *plaintiff* is affected by the respective dispute**  
(The way in which plaintiff's activity is affected by the respective dispute. Documentation.)

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**7. Efforts made by the parties in order to amicably settle the dispute**  
(If the parties have directly negotiated, if they agreed to the mediation procedure before *ANRC*)

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**8. Solution or measures suggested for the settlement of the dispute**

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**7. Any other information deemed necessary for the settlement of the dispute**

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**Signature/ Seal**

DRAFT