

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(1), (3) and (5) and the provisions of art.36(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,

On grounds of the provisions of art.31(6) of Government Ordinance no.31/2002 on postal services, approved with amendments and completions by Law no.642/2002 and of art.36 of Law no.304/2003 on universal service and users' rights relating to electronic communications networks and services,

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

issues the present:

### **DECISION on the procedure regarding the 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 preliminary administrative-jurisdictional procedure for the settlement of disputes between the providers of electronic communications networks or services or between the providers of postal services, as well as the mediation procedure for the settlement of disputes between the users and the providers of postal services, respectively between the end users and the providers of electronic communications networks and services that fall within the competence of the National Regulatory Authority for Communications, hereinafter referred to as *ANRC*.

(2) Should a dispute between the providers of electronic communications networks or services or between the providers of postal services appear with respect to their obligations imposed on grounds of the legislation in the field of electronic communications and postal services, the interested party is obliged to notify *ANRC* in order to settle the dispute.

(3) Should a dispute between a user and a postal services provider or between an end user and an electronic communications networks and services provider appear, the parties have the right to appeal to *ANRC* in order to settle the dispute.

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

a) *Ordinance on postal services* – Government Ordinance no.31/2002 on postal services, approved with amendments and completions by Law no.642/2002;

b) *Framework Ordinance* – Government Emergency Ordinance no.79/2002 on the general regulatory framework for communications, approved with amendments and completions by Law no.591/2002;

c) *Law on Universal Service* – Law no.304/2003 on universal service and users' rights relating to electronic communications networks and services.

d) *plaintiff* – the person, or persons, who initiates the procedure hereby regulated;

e) *respondent* – the person against whom the procedure hereby regulated is initiated;

f) *complaint* – the request whereby the *plaintiff* initiates in front of *ANRC* the procedure for the mediation and settlement of disputes;

g) *user* – the final user as defined by art.2(1) letter c) from *Framework Ordinance* or the user as defined by art.2 letter u) from *Ordinance on postal services*;

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

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

(3) In case of a dispute between the electronic communications networks or services providers or between postal services providers, the aim of the contentious procedure is that *ANRC* settles the dispute should the parties not undergo the mediation procedure or should 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, speediness 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 *complaint* shall include the following mandatory information:

a) the parties to the dispute and their identification data;

b) the object of the dispute – shall be mentioned as the case may be:

i) the obligations imposed on grounds of the legislation in the field of electronic communications and postal services which the *respondent* is pretended not to comply with, in case of disputes between providers of electronic communications networks or services or providers of postal services;

ii) the rights of the user that the provider of postal services or the provider of electronic communications networks or services is pretended to breach during the contractual reports submitted to *Law on Universal Service*;

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 the *complaint* is based upon;

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

f) efforts made by the parties in order to amiably settle the dispute, if such efforts exist, respectively the procedures or mechanisms for the resolution of the complaints filed in by the users of electronic communications services or postal services;

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

h) the agreed procedure for the settlement of the dispute;

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

(2) The *complaint* shall be mandatory made using the 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 *complaint*, depending on the nature and complexity of the dispute, the president of *ANRC* shall appoint a commission responsible for the settlement of the dispute, hereinafter referred to as the *commission*. This commission shall consist of a president and one or more 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) Should additional information be 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. Together with this communications, *ANRC* shall provide the *respondent* the *complaint* of the *plaintiff*, for the *respondent* to be able to present his own standpoint.

**Art.9.** – Should the nature of the dispute affect the rights or interests of other persons, the *commission* shall identify them and communicate such persons a summary of the dispute, including the deadline to submit their opinion. The *commission* is bound to analyse all such opinions when settling the dispute.

**Art.10.** – (1) In case of disputes between providers of electronic communications networks or services or between postal services providers, should parties be present on the date established according to art.8(3), the *commission* shall inform them on the possibility to settle the dispute through the mediation procedure. Should parties agree to solve the dispute through mediation, the *commission* shall fill in a minute to be signed by the president of the *commission* and by the parties and to be the initial act of the mediation procedure.

(2) In case one of the parties is not present or in case the parties are present and at least one of them does not agree to settle the dispute through the mediation procedure, the contentious procedure shall be initiated. The minute therefore concluded shall constitute the initial act of the contentious procedure.

### CHAPTER IV The Mediation Procedure

**Art.11.** – (1) The present procedure applies to the situation provided under art.10(1), as well as in case of disputes between users and providers of electronic communications networks or services or postal services providers.

(2) The users of electronic communications or postal services have the obligation to previously cover the providers' procedures or mechanisms for solving complaints and to prove it, in order to have the right to appeal to *ANRC* with a view to settle the dispute.

**Art.12.** – (1) The parties shall make all necessary efforts in order to amiable settle the dispute. The role of the *commission* is to therefore support the parties.

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

(3) The *commission* may not impose or suggest a certain solution, the parties being the ones in charge to reach an agreement with a view to settle the dispute.

**Art.13.** – During the mediation procedure, the parties are separately or together invited to meetings, the number of such meetings depending on the complexity of the case. 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.14.** – The parties may request the *commission* to clarify the scope of certain legal provisions in the field of electronic communications or postal services applicable to the cause.

**Art.15.** – Should the mediation entail the amiable settlement of the dispute, the parties shall conclude an agreement. The agreement shall be made in writing, in several copies, one for each party and one for *ANRC*.

**Art.16.** – (1) The mediation procedure shall observe the principle of confidentiality and may not exceed 30 days following the date when *ANRC* was notified.

(2) In case of disputes between providers of electronic communications networks or services or between postal services providers, if the parties do not reach an agreement within the term under paragraph (1), the dispute shall be settled through the contentious procedure. During the entire mediation procedure, any of the parties may request the *commission* to settle the dispute through the contentious procedure, all acts and documents of the file managed until that moment remaining with the cause.

(3) In case of disputes between users and postal service providers or providers of electronic communications networks or services and in case the parties do not reach an agreement within the term under paragraph (1), they may appeal to the competent court with a view to settle the dispute.

## **CHAPTER V**

### **The Contentious Procedure**

**Art.17.** – The present contentious procedure applies only in case of disputes between providers of electronic communications networks or services or between postal services providers with regard to the obligations imposed to them based on the legislation in the field of electronic communications and postal services.

**Art.18.** – (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) In case the dispute is to be directly settled through the contentious procedure, the *respondent* shall be requested to answer the *complaint* within 15 days after receiving it, under the sanction that further defense will not be taken into account. The *respondent* shall be

provided, by means of registered mail with confirmed receipt, with copies of the complaint and other documents forwarded by the *plaintiff*.

(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.

**Art.19.** – Should further information from any party be deemed necessary, such party may be obliged to provide the respective information within 7 days, under the sanction provided by art.56(1) of *Framework Ordinance* or by art.60(1) of *Ordinance on postal services*, as the case may be.

**Art.20.** – 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.21.** – The parties may be separately or together invited by the *commission* to meetings, the number of such meetings depending on the complexity of the dispute. Following each meeting, the *commission* shall fill in a minute to be signed by the participants to that meeting and to be communicated to the parties.

**Art.22.** – After analysing all information and hearing the standpoints on the dispute, the *commission* shall draft a preliminary solution, to be communicated to the parties together with the measures suggested for the settlement of the dispute.

**Art.23.** – (1) Any party may address a request to the *commission*, within 15 days after the preliminary solution is communicated, in order for the suggested solution to be revised.

(2) In case new information is 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 analyse again the preliminary solution.

**Art.24.** – (1) 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(1) expires, shall immediately convoke the parties to express their standpoints.

(2) After the term under art.21(1) expires, or after the parties are convoked as under paragraph (1), the *commission* shall consider the procedure is finalised.

**Art.25.** – (1) After the procedure is finalised, the *commission* shall provide the president of *ANRC* with a report including the suggestions for the settlement of the dispute.

(2) In order to settle the dispute, the president of *ANRC* shall issue a decision that shall include the following mandatory elements:

- a) the members of the *commission*;
- b) the name and domicile, or name and headquarters, respectively, of the parties;
- c) the object of the dispute and the standpoints of the parties;
- d) the facts of the dispute and its legal grounds/basis;
- e) the measures ordered and the way to comply with them;
- f) 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*, under the observance of legal provisions on confidentiality.

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

**Art.26.** – (1) The decision whereby *ANRC* settles the dispute shall be pronounced within 4 months after the date when the minute initiating the mediation procedure stated by art.10 (2) is concluded or after the date when the minute initiating the contentious procedure stated by art.10 (2) is concluded.

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

## **CHAPTER VI**

### **Transitory and Final Provisions**

**Art.27.** – The hereby set out procedure for the mediation and settlement of disputes is free of any charge.

**Art.28.** – (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.29.** – The dispute file shall be kept with *ANRC*, within the Dispute Mediation and Resolution Section and shall include all documents received or communicated by *ANRC* during the procedure stated herein, having attached, as the case may be, the proof that the decision concerning the solving of that dispute has been communicated.

**Art.30.** – (1) Terms provided herein are calculated in accordance with the provisions of art.101 of Code of Civil Procedure.

(2) Under exceptional circumstances, these terms may be extended or reduced, as the case may be.

**Art.31.** – Under exceptional circumstances, when the *commission* considers one party may suffer severe prejudice until the settlement of the dispute, the president of *ANRC*, by means of a decision, may impose temporary measures in order to avoid the prejudice or to limit its extent.

**Art.32.** – (1) In case during the settlement procedure stated herein is noted the non-compliance of a certain obligation under the authorizations or licenses, under the *Framework Ordinance*, under the *Ordinance on postal services*, or under the specific legislation in the field of electronic communications or postal services, such non-compliance being sanctioned as administrative breach or contravention, the sanctioning regime provided by the respective legal provisions shall be applied.

(2) In such case, the decision issued by the president of *ANRC* in order to settle the dispute shall take into consideration the act through which the act under paragraph (1) is ascertained and sanctioned.

**Art.33.** – (1) The present decision shall be published in the Romanian Official Journal, Part I.

(2) When this decision is published, *ANRC*'s president Decision no.139/EN/2002 on the procedure regarding the settlement of the disputes within the competence of the National Regulatory Authority for Communications, published in the Romanian Official Journal, Part I, no.20 as of 15 January 2003 shall be repealed.

**PRESIDENT**  
**ION SMEEIANU**

Bucharest, 2003  
NO./EN

PROIECT

**STANDARD COMPLAINT FORM**

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

a. Name and domicile/ Company 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 authorisation/license

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

a. Name and domicile/ Company 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 authorisation/license

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**6. The way in which the *plaintiff* is affected by the respective dispute**

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**7. Efforts made by the parties in order to amiably settle the dispute**

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

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**9. The agreed procedure for the settlement of the dispute**

- a. mediation;
- b. contentious procedure.

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

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**Signature/ Seal**

PROJECT