

DECISION REGARDING THE PROCEDURE OF SETTLING THE DISPUTES WITHIN THE COMPETENCE OF THE NATIONAL REGULATORY AUTHORITY FOR COMMUNICATIONS

On the grounds of the provisions of Article 38 paragraphs (1), (3) and (5), of Article 36 paragraph 5) and of Article 44 letter i) 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, as well as of the provisions of Article 31 paragraph (6) of the Government Ordinance no.31/2002 regarding postal services, approved with amendments and completions by Law no.642/2002, and of Article 36 of Law no.304/2003 for universal service and the users' rights regarding electronic communications networks and services,

THE PRESIDENT OF THE NATIONAL REGULATORY AUTHORITY FOR COMMUNICATIONS

issues the present decision:

CHAPTER I General provisions

Art.1. – (1) The present Decision regulates the preliminary jurisdiction-administrative procedure for settling the disputes between the providers of electronic communications or between the providers of postal services, as well as the mediation procedure for disputes between the users and the providers of postal services, respectively between the end users and the providers of electronic communications, within the competence of the National Regulatory Authority for Communications, herein after referred to as *ANRC*.

(2) If a dispute occurs between the providers of electronic communications networks or services or between the providers of postal services concerning the obligations imposed on them on grounds 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, or on the special legislation in the field of electronic communications or of postal services, the interested party may file a request with *ANRC*, with a view to settling the respective dispute.

(3) If a dispute occurs between a user and a provider of postal services or between an end user and a provider of postal services or between an end user and a provider of electronic communications services, upon the enforcement of Law no.304/2003 for universal service and the users' rights concerning electronic communications networks and services, the parties have the right to address *ANRC* for the mediation of the respective dispute.

Art.2. – Within the scope of the present Decision, the following terms shall be 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) *Frame-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 the users' rights regarding electronic communications networks and services;

d) *plaintiff* – a person initiating the procedure established by the present Decision;

e) *respondent* – a person against whom the procedure provided in the present Decision is initiated;

f) *petition* – an application by which the *plaintiff* initiates the procedure of settling a dispute in front of *ANRC*;

g) *user* – an end user, as defined under Article 2 paragraph 1) subparagraph c) in the *Frame-Ordinance*, or, as the case may be, a user, as defined under Article 2 paragraph u) of the *Ordinance on postal services*.

Art.3. – (1) The disputes within the ANRC competence may be settled, under the provisions of the present Decision, by means of the mediation procedure or by means of the contentious procedure.

(2) The mediation procedure is aimed at amiably settling the dispute, as the ANRC role is that of assisting the parties.

(3) The contentious procedure is aimed at ANRC settling the dispute between the parties where they do not resort to the mediation procedure or the respective procedure failed.

(4) At any moment of the mediation procedure or of the contentious procedure, the parties may conclude a transaction regarding the object of the dispute.

Art.4. – During the dispute settlement procedure provided in the present Decision, the principles of the right to defence, equality, rapidity and cross-examination shall be observed.

Chapter II

Dispositions regarding the settlement of the disputes between the providers of electronic communications networks or services or between the providers of postal services

Section 1 – Initiating the procedure

Art.5. – The interested party shall address ANRC a written petition, registering it with the ANRC Registry or sending it by the postal service for registered items with confirmation receipt.

Art.6. – (1) The petition shall comprise information on:

a) the parties in dispute and their identification data;

b) the object of the dispute – the plaintiff shall mention the obligations imposed based on the *Frame-Ordinance* or on the special legislation, which he claims to have been infringed by the respondent;

c) *de facto* motivation – the plaintiff shall provide as many details as possible, including relevant documents (correspondence copies, reports of the meetings between the parties 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 parties' efforts for amiably settling of the dispute, if such efforts were made;

g) solution or measures proposed by the plaintiff for dispute settlement;

h) the procedure agreed for dispute settlement;

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

(2) *The petition* shall be drawn up based on the standard form provided in the annex enclosed in the present decision.

(3) The standard form may be obtained from the ANRC headquarters, from the territorial offices or from the Internet page of ANRC.

(4) Should any procedural impairment occur, the petition shall be rejected and the procedure shall be suspended.

Section 2 – Preliminary Measures

Art.7. – (1) Upon the registration of the petition, if it fulfils the formal conditions provided in Article 6, the ANRC President, shall consider the nature and the complexity of the dispute and shall appoint a commission responsible for settling the dispute, herein after referred to as *the Commission*. This commission shall consist of a president and one or several members.

(2) During the activity of dispute settlement, the Commission shall have an active role, keeping in touch with the two parties.

Art.8. – (1) The Commission shall make a preliminary analysis of the provided documents, of the cause and nature of the dispute, as well as of the efforts made by the parties for solving the problem.

(2) Commission may require additional information if they deem it necessary for a resolution in the respective case.

(3) The Commission shall invite the parties to a joint meeting, announcing the meeting date at least 7 days in advance. At the same time with the announcement date, the Commission shall send the petition to the respondent, so that the latter could take a stand.

Art.9. – Should the dispute affect the rights or legitimate interests of other persons, the Commission shall identify these aspects and shall communicate a summary of the dispute to the respective persons, specifying the term within which they may take a stand. The Commission shall analyse the respective stands during the dispute settlement procedure.

Art.10. – (1) If the parties meet on the date provided under Article 8, paragraph (3), the Commission shall present them the possibility of resorting to dispute settlement by means of the mediation procedure.

(2) If the parties agree to settle the dispute by mediation, the Commission shall draw up a report, signed by its members, based on which the mediation procedure shall be initiated.

(3) Should one of the parties fail to attend the meeting or, although the two parties attend the meeting, should at least one of the parties disagree with the dispute settlement by mediation, the dispute shall be settled by means of the contentious procedure. The report drawn up under such a circumstance shall be the document based on which the contentious procedure is initiated.

Section 3 – The Mediation Procedure

Art.11. – (1) The parties shall diligently proceed to amiably settling the dispute. The Commission shall help the parties to settle the dispute in this manner.

(2) The Commission shall make any diligence in order to induce the parties into understanding each other's points of view.

(3) The Commission shall not impose one solution or another; the parties have to reach an agreement with a view to settling the dispute.

Art.12. – During the mediation procedure, the parties are invited to separate or joint meetings, as often as the complexity of the case requires. Upon each meeting, the Commission

shall draw up a meeting report signed by the Commission members, which shall be transmitted to the parties.

Art.13. – The parties may require the Commission to specify the scope of some legal provisions in the field of electronic communications or of postal services, as enforced in the respective cause.

Art.14. – If the mediation results in amiably settling the dispute, the parties shall conclude a transaction. The transaction shall be multiplied, one for each party and one for ANRC.

Art.15. – (1) The mediation procedure shall comply with the confidentiality principle and shall be completed within 30 days from the date of registering the petition with ANRC.

(2) If the parties do not reach an agreement within the term provided under paragraph (1), the dispute shall be settled by means of the contentious procedure.

(3) During the mediation procedure any of the parties may require the Commission to settle the dispute by means of the contentious procedure, and all the documents and papers in the file at the respective date shall stay with the cause.

Section 4 – The Contentious Procedure

Art.16. – (1) Should the dispute be settled by means of the contentious procedure, the Commission shall announce the parties the date when the latter are invited for the joint meeting.

(2) Should the dispute be settled directly by means of the contentious procedure, the respondent shall be required to submit the petition answer within 15 days from the announcement date, under the sanction of waiving the ulterior defences, except for those deemed necessary by debates and which the respondent could not foresee. The respondent shall be sent copies of the petition and of the other documents submitted by the plaintiff, by means of the postal service for registered items, with confirmation receipt.

(3) Under exceptional circumstances the respondent may be required to answer in a shorter term. Such circumstances may include, among others, the situations where the Commission deems that the plaintiff would suffer serious damage until the dispute is settled.

Art.17. – Should further information be necessary from any of the parties, the respective party may be obliged to provide the respective information within 7 days, under the sanction provided in Article 56, paragraph (1) of the Frame-Ordinance or in Article 60 paragraph (1) of the Ordinance on postal services, as the case may be.

Art.18. – When the Commission consider they have all the necessary information for settling the cause, they shall invite the parties to present their stand on the dispute.

Art.19. – The Commission may invite the parties to as many meetings as the case complexity may require. Upon each meeting the Commission shall draw up a report of the meeting, signed by its members and shall transmit it to the parties.

Art.20. – Following the analysis of all the information and the hearing of all the stands in the respective cause, if the main issue of the dispute is settled, the Commission shall draw up a preliminary resolution to be communicated to the parties together with the measures proposed for settling the dispute.

Art.21. – (1) Within 15 days from the date of communicating the preliminary solution, any of the parties may submit a request to the Commission with a view to reconsidering the solution proposed.

(2) Should the Commission find new information within the term provided under paragraph (1), they shall decide whether the information is relevant for settling the cause and will be able to reconsider the preliminary solution.

Art.22. – (1) Where the Commission was addressed a reconsideration request or where they have found relevant information, after the completion of the term provided under Article 21, paragraph (1), the Commission shall organise an emergency meeting where the parties may present their opinions.

(2) After the completion of the term provided under Article 21, paragraph (1) or upon inviting the parties to the meeting provided under paragraph (1), the Commission shall declare the procedure completed.

Art.23. – (1) Upon the completion of the procedure, the Commission shall present the ANRC President a report including the proposals for the settlement of the dispute.

(2) With a view to settling the dispute, the ANRC President shall issue a Decision mentioning the following obligatory information:

- a) the members of the Commission;
- b) the name and address, respectively - company name and headquarters of the parties;
- c) the object of the dispute and the parties' stands;
- d) *de facto and de jure* motivation grounding the stands;
- e) the measures taken and the methods of implementation;
- f) the legal proceedings of appeal against it.

(3) The Decision is compulsory for both parties, shall be communicated to them and shall be published on the ANRC Internet page, observing the legal provisions regarding confidentiality.

(4) The Decision may be appealed to the Bucharest Court of Appeal – Administrative Contentious Section – within 30 days from the communication date, without going through the preliminary procedures provided under Article 5 of the Law on Administrative Contentious no.29/1990, with subsequent amendments.

Art.24. – (1) The ANRC Decision settling the dispute shall be issued within 4 months from the registration date of the petition with ANRC.

(2) In exceptional situations, for the proper settling of the case, this term may be extended by the ANRC President's Decision.

Section 5 – Special Provisions

Art.25. – (1) The parties may exercise their rights personally or by a representative.

(2) The parties' representatives shall bear a proxy ascertaining their quality as a representative.

Art.26. – In exceptional situations, where the Commission deems that a party may encounter serious damage until the dispute is settled, the ANRC President's Decision may stipulate provisional measures with a view to preventing or limiting the damage.

Chapter III

Dispositions for settling the disputes between the users and the providers of electronic communications or the providers of postal services

Art.27. – (1) The users considering the providers of electronic communications or the providers of postal services infringed their rights provided in the Ordinance on postal services or in the Law of universal service may appeal to ANRC with a view to settling the dispute.

(2) The users' petitions may be transmitted to ANRC directly by registration to the ANRC headquarters, by mail, fax or by electronic mail. Where the user comes personally to the ANRC headquarters, the petition may be presented orally and written down by the ANRC personnel.

(3) The standard form provided in the annex herewith enclosed is optional for the petitions submitted by the users.

Art.28. – (1) The ANRC personnel in charge with handling the users' petitions shall take all the required measures in order to accurately establish the actual situation and the corresponding legal provisions, including by calling the parties to meetings, separately or together.

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

Art.29. – (1) Where, within 60 days from the date of receiving a petition, the parties do not agree on a solution regarding the object of the dispute, ANRC shall send them its reasonably motivated opinion on the alternatives of dispute settlement.

(2) The ANRC opinion provided under paragraph (1) is a recommendation.

Chapter IV Final Provisions

Art.30. – The mediation procedure and the contentious procedure, as established by the present Decision, are optional and cost-free.

Art.31. – ANRC shall keep the dispute file, which comprises all the documents received or communicated by ANRC during the procedure established by the present Decision, enclosing the confirmation receipts, as the case may be.

Art.32. – (1) Should an obligation provided in authorisations or licenses, in the Frame-Ordinance or in the special legislation in the field of electronic communications or of postal services sanctioned as administrative infringement or contravention, related to the dispute object, be breached during the procedure established in the present Decision, the sanctioning regime provided in the respective legal provisions shall be enforced.

(2) In this situation, the ANRC decision or opinion on settling the dispute shall take into account the document assessing and sanctioning the deed provided in paragraph (1).

Art.33. – (1) The terms provided in the present decision shall be calculated according to the provisions of Article 101 of the Civil Law.

(2) In exceptional situations, these terms may be shortened or extended, as the case may be.

Art.34. – (1) The present Decision shall be published in the Romanian Official Journal, Part I.

(2) The ANRC President's Decision no.139/EN/2002 on the establishment of the procedure of settling the disputes within the competence of the National Regulatory Authority for Communications, published in the Official Journal of Romania, Part I, no.20 of January 15, 2003, shall be abrogated.

**PRESIDENT
ION SMEIANU**

Bucharest, October 30, 2003
Nr.1331/EN

7. The parties' efforts for amiably settling the dispute

8. Solution or measures proposed by the plaintiff in order to settle the dispute

9. The procedure agreed in order to settle the dispute

- a) mediation
- b) contentious procedure.

10. Other information considered necessary for the proper settlement of the dispute

Signature/ Seal