

EXPLANATORY STATEMENT TO THE DRAFT DECISION OF THE PRESIDENT OF THE NATIONAL REGULATORY AUTHORITY FOR COMMUNICATIONS AND INFORMATION TECHNOLOGY REGARDING THE INTERCONNECTION WITH THE PUBLIC TELEPHONE NETWORK OPERATED BY S.C. RCS & RDS S.A., FOR THE PURPOSE OF CALL TERMINATION AT FIXED LOCATIONS

I. Foreword

During November 2005 – May 2007, the National Regulatory Authority for Communications (ANRC), respectively the National Regulatory Authority for Communications and Information Technology (ANRCTI)¹ received a number of seven complaints from certain providers of electronic communications networks and services² requesting the Authority to oblige S.C. RCS & RDS S.A. to negotiate and conclude interconnection agreements with its fixed public telephone network, as well as to establish the interconnection conditions: the terms for the negotiation and implementation of agreements, the technical interconnection solutions, the tariffs for the interconnection services for the purpose of call termination at fixed locations in the network operated by S.C. RCS & RDS S.A. Furthermore, two other providers³ requested ANRC to establish the tariffs for the interconnection services for the purpose of call termination at fixed locations in the network operated by S.C. RCS & RDS S.A., while signed interconnection agreements already existed between providers.

In supporting their requests, the providers showed that they faced significant difficulties as regards the negotiation of interconnection agreements with S.C. RCS & RDS S.A., invoking that the provider in question breached its obligation to negotiate set out in

¹ As of December 29, 2006, following the cessation of ANRC's existence, the functions, objectives and attributions of this public institution were taken over by ANRCTI, in its capacity as universal legal successor, on grounds of the provisions of the Government Emergency Ordinance no.134/2006 on the establishment of the National Regulatory Authority for Communications and Information Technology.

² - the complaint of S.C. Intersat S.R.L., registered with ANRC under no.29797/22.11.2005;
- the complaint of S.C. Netmaster Communications S.R.L., registered with ANRC under no.32479/23.12.2005;
- the complaint of S.C. Parlatel S.R.L., registered with ANRC under no.6/317763/14.08.2006;
- the complaint of S.C. Iristel Romania S.R.L., registered with ANRC under no.6/318667/30.08.2006;
- the complaint of S.C. Dial Telecom S.R.L., registered with ANRC under no.6/321277/20.10.2006;
- the complaint of S.C. Net-Connect Internet S.R.L., registered with ANRC under no.6/208000/27.10.2006;
- the complaint of S.C. World Telecom Network S.R.L., registered with ANRCTI under no.7/201933/11.05.2007.

³ - S.C. Atlas Telecom Network Romania S.R.L., by the complaint registered with ANRC under no.6/316557/19.07.2006;
- S.C. Romtelecom S.A., by the complaint registered with ANRC under no.6/208188/13.11.2006.

Art.4 paragraph (1) letter b) of the Government Ordinance no.34/2002 on the access to the public electronic communications networks and to the associated infrastructure, as well as their interconnection, approved with amendments and completions by Law no.527/2002, with the subsequent amendments and completions.

Besides the above-mentioned complaints, ANRCTI received several letters whereby it was informed about the difficulties encountered by other providers regarding the negotiation of interconnection agreements with S.C. RCS & RDS S.A. Following these letters, in order to verify compliance with the obligation to negotiate set out in Art.4 paragraph (1) letter b) of the Government Ordinance no.34/2002, in November 2006⁴ and, respectively, in February 2007, ANRCTI requested S.C. RCS & RDS S.A. to provide a summary of all requests for interconnection with its fixed public telephone network received since January 2005, as well as certain relevant information and documents. The information provided by S.C. RCS & RDS S.A. showed that a number of other 11 providers had requested the negotiation and conclusion of an interconnection agreement with its fixed public telephony network. Following these verifications, in respect of one provider's request to interconnect with S.C. RCS & RDS S.A. network, ANRCTI ascertained that S.C. RCS & RDS S.A. has breached its obligation to negotiate and, therefore, notified its intention to apply a sanction for this contravention.

The same problems related to the negotiation of interconnection agreements with S.C. RCS & RDS S.A have been signalled by the Romanian Association of Telecommunications Operators during a meeting with the ANRCTI representatives, held at the end of May 2007.

Moreover, ANRCTI received numerous letters from end-users who complained that they cannot initiate calls towards the users of S.C. RCS & RDS S.A. network nor receive calls from them.

II. The General Regulatory Framework for the Interconnection Relations between the Providers of Public Electronic Communications Networks

II.A. The Right and Correlative Obligation of Negotiating an Interconnection Agreement

In the electronic communications sector, the commercial relations between the providers of electronic communications networks and services are governed by the principle of contractual freedom. Thus, as a rule, the providers are not obliged to negotiate and conclude contracts to the extent that these would not suit their commercial interest. As regards the content of the contractual clauses, this principle is materialized in

⁴ As regards the request for information sent by ANRCTI in November 2006, S.C. RCS & RDS S.A. did not provide the requested information within the term established by the Authority, an administrative fine being therefore inflicted upon this company.

the possibility of the parties to establish the relevant rights and obligations, the contract being concluded in compliance with the applicable legal provisions.

The above-mentioned principle was asserted in the special legislation in the electronic communications field by the provisions of Art.3 of the Government Ordinance no.34/2002, according to which, *“The access and interconnection agreements shall be concluded in accordance with the principles of contractual freedom and negotiation in good faith of the technical and commercial terms of such agreements, in compliance with the provisions of this ordinance.”* These legal provisions establish the general framework for negotiation with a view to conclude access or interconnection agreements between the providers of electronic communications networks and services, while the technical and commercial conditions necessary for the provision of the access or interconnection services are set out within the agreements concluded.

Nevertheless, in order to promote competition and ensure the protection of end-users' rights and interests with regard to the electronic communications services and networks, the legislator envisaged the need to impose certain specific obligations on the providers of public electronic communications networks.

According to the provisions of Art.4 paragraph (1) of the Government Ordinance no.34/2002, *“Art. 4 – (1) In order to ensure provision and interoperability of publicly available electronic communications services, any operator of a public communications network has:*

a) the right to negotiate an interconnection agreement with any other operator of a public communications network for the purpose of providing publicly available electronic communications services, including electronic communications services available to users via another public communications network interconnected with the network of any of the two operators;

b) the obligation, when requested by a third party legally authorized, to negotiate an interconnection agreement with the requesting party for the purpose of providing publicly available electronic communications services, including electronic communications services available to users via another public communications network interconnected with the network of any of the parties.”

Therefore, for the purpose of ensuring the provision and interoperability of public electronic communications services, at the request of any authorised operator, the provider receiving the request has the obligation to negotiate an interconnection agreement and, within the agreement, the parties shall establish the concrete conditions under which the interconnection of networks shall be achieved, namely those mainly related to the interconnection services subject to the agreement, the technical aspects, the applicable tariffs, the quality of services and the term for achieving the interconnection. As regards the content of the negotiation obligation imposed by these legal provisions, the conduct of the providers that have this obligation must be such as to show their unequivocal will to initiate and carry negotiations in order to conclude an interconnection agreement. In other words, these negotiations must be materialized in actions which show that the provider who has the negotiation obligation is doing a

thorough analysis of whether the conclusion of an interconnection agreement with the requesting provider would be opportune, based on the examination of certain objective arguments, as well as on making these arguments known to the other party. Delaying negotiations or unjustified refusal to conclude the agreement cannot be considered to represent the execution of the negotiation obligation, the negotiation of the agreement clauses in good faith and within a reasonable term being necessary.

Furthermore, from the above-mentioned legal provisions it results that, on the one hand, the purpose of interconnection is to ensure the provision of public electronic communications services, as well as their interoperability, and, on the other hand, the scope of the interconnection agreement negotiated by the parties includes the electronic communications services made available to users by means of another public electronic communications network interconnected with the network of any of the two providers. One must notice that, beyond the task of negotiating an agreement, the providers have the obligation, following the conclusion of the interconnection agreement, to effectively ensure the provision and interoperability of public electronic communications services, including of services provided by other persons. Certainly, the way in which interconnection is ensured depends on the results of the negotiations between the parties.

Therefore, the obligation to negotiate an interconnection agreement represents a means (an *obligation-means*) by which the legislator, asserting the principle of contractual freedom, understood to ensure the fulfilment of the obligation which constitutes the purpose (the *obligation-purpose*), namely the provision and interoperability of publicly available electronic communications services. Considering that the legal provisions do not limit the scope of the services which may be subject to the interconnection agreement, it obviously results that the providers of public electronic communications networks have the obligation – based on the interconnection agreement concluded – to ensure the provision and interoperability of the publicly available electronic communications services, including of the services offered by other providers.

As regards the *de facto* situation, although according to the provisions of Art.4 paragraph (1) of the Government Ordinance no.34/2002, the providers had the right to negotiate an interconnection agreement with S.C. RCS & RDS S.A. and, respectively, S.C. RCS & RDS S.A., in its capacity as a provider of electronic communications networks and services⁵, had the obligation, at their request, to negotiate such an agreement, the problems were mainly generated either by this operator's constant refusal to negotiate or by the repeated and unjustified delay of negotiations (for instance, S.C. RCS & RDS S.A. answered nine months after the date of receiving the request from a provider). Thus, even in the case of the negotiations which took place during the mediation procedures carried out in front of ANRCTI, S.C. RCS & RDS S.A. showed a fictive, strictly formal availability, which was not followed by any action that could materialize this availability. To this end, it should be mentioned that, on a regular basis, S.C. RCS & RDS S.A. answered

⁵ S.C. RCS & RDS S.A. got the right to provide public electronic communications networks as of December 31, 2002 and the right to provide publicly available electronic communications services (telephone services) as of January 1, 2003.

the providers' requests only following the complaints filed with ANRCTI or following ANRCTI's requests for information. Moreover, the answers of S.C. RCS & RDS S.A., pure declarations for declaration's sake and evasive, did not indicate any concrete intention to negotiate and settle the conditions of the interconnection agreements.

Therefore, S.C. RCS & RDS S.A. was unable to prove the execution in good faith of the negotiation obligation set out by the provisions of Art.4 paragraph (1) letter b) of the Government Ordinance no.34/2002 and, consequently, in the case of this provider, the purpose of the provisions of Art.4 – i.e. ensuring the provision and interoperability of publicly available electronic communications services – could not be achieved. Thus, ANRCTI ascertained the necessity to identify and adopt certain measures in this respect.

II.B. ANRCTI's Role and Competence as regards Access and Interconnection

At the European level, the need for a regulatory framework which would provide for adequate mechanisms with a view to ensure a normal competitive environment as regards the provision of electronic communications services, as well as their interoperability, including in situations where there are differences among providers in respect of their negotiation power, is acknowledged. Where the commercial negotiations between providers fail to result in the conclusion of interconnection agreements, the regulatory authority must have the power to ensure, in the end-users' interest, the access and interconnection under adequate conditions, as well as the interoperability of services, by imposing specific obligations on the providers which control access to end-users.

These principles were transposed in the Romanian legislation in the field of electronic communications by the provisions of Art.5 of the Government Ordinance no.34/2002, according to which: *"Art. 5 – (1) The regulatory authority shall take all the necessary measures in order to encourage and, where appropriate, ensure, in accordance with the provisions of this Ordinance, access and interconnection under adequate conditions, as well as interoperability of services, in keeping with the principles of economic efficiency, promoting competition, and maximizing end-users' benefit.*

(2) Without prejudice to measures that may be taken with regard to the undertakings with significant market power in accordance with the provisions of Art. 8, the measures taken in accordance with the provisions of paragraph (1) may in particular consist in the imposition of the following obligations:

a) obligations on the operators that control access to end-users, including, if such is the case, the obligation to interconnect their networks, if the imposition of these obligations is necessary to ensure end-to-end connectivity;

b) obligation on operators to provide access to certain elements of the associated infrastructure, as set out by the legal provisions adopted pursuant to Art.6, under fair, reasonable, and non-discriminatory conditions, if the imposition of this obligation is necessary to ensure the access of end-users to digital radio and television broadcasting services.

(3) When imposing obligations on an operator to provide access in accordance with the provisions of Art.12, the regulatory authority may lay down the technical or operational conditions to be met by the provider or by the beneficiaries of such access, in case this measure is necessary to ensure normal functioning of the network.

(4) The obligations and conditions imposed in accordance with paragraphs (1)-(3) must be objective, transparent, proportionate and non-discriminatory and shall be imposed in accordance with the procedures referred to in Arts.34¹ and 50 of the Framework Ordinance.

(5) The regulatory authority shall have the right to intervene, at its own initiative, where justified, or, in case the negotiations may not be concluded with an agreement, at the request of either of the parties involved, and establish, if such is the case, the terms under which access or interconnection must be achieved, in order to secure the objectives under Art.45 of the Framework Ordinance, in accordance with the provisions of this Ordinance and the procedures referred to in Arts.34¹, 36 and 50 of the Framework Ordinance.

(6) When making a decision in accordance with the present Article, the regulatory authority shall consider ensuring equivalent access and interconnection conditions under equivalent circumstances, as well as preventing that the conclusion of the access or interconnection agreement is made conditional upon the acceptance of clauses that are not related to the agreement."

Therefore, on grounds of the provisions under Art.5 paragraph (1) of the Government Ordinance no.34/2002, ANRCTI is empowered to take all the necessary measures in order to encourage and ensure the provision of access and interconnection services under adequate conditions, as well as the interoperability of the publicly available electronic communications services, while observing the principles of economic efficiency, promoting competition and maximizing the end-user's benefit, the provisions of this Article establishing the competence of the regulatory authority to intervene in view of achieving its objectives even in the absence of a market analysis. These measures may in particular concern, according to Art.5 paragraph (2) letter a) of the Government Ordinance no.34/2002, the imposition of the obligation to interconnect on the providers controlling the access to end-users, without being necessary for these providers to have been designated as operators with significant market power in accordance with the provisions of Art.8 of the same ordinance and of Chapter V – *"Rules applicable for the providers of electronic communications networks and services with significant market power"* 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. The control over the access means may be achieved by a provider's holding or exerting control over a physical (fixed or mobile) link towards the end-user and/or by the provider's possibility to modify or withdraw the

numbering resources assigned in order to ensure the end-user's access to the public electronic communications network⁶.

The need to ensure end-to-end connectivity is required as a condition, and, at the same time, is the justification for imposing the obligation to interconnect⁷. On the one hand, connectivity is a benefit for end-users, assuming both the possibility of users of the same public electronic communications network to communicate between them and the possibility of users of a given network to communicate with the users of other network/networks. On the other hand, starting from the premise that a subscriber of a provider naturally wishes to have the possibility to call any other subscriber, regardless the network to which the latter is connected, connectivity also benefits to the providers, due to the increasing number of end-users able to make calls or be called and, consequently, to the growing volume of traffic between networks. A provider who fails to ensure connectivity between its users and the users of other providers incurs the risk of losing its clients and, thus, will be less competitive. Therefore, the interconnection of networks appears as a necessity for the providers as well, in order to ensure connectivity and provide complete services to their own subscribers.

In order to ensure the access and the interconnection, as well as the interoperability of services, should the regulatory authority deem necessary to take certain measures in accordance with the previously mentioned provisions of Art.5 paragraphs (1) – (3) of the Government Ordinance no.34/2002, the procedural routes that ANRCTI may pursue for taking these measures are set out by the provisions of Art.5 paragraph (5), as follows: at its own initiative or at the request of a provider, while complying with the procedures referred to in Arts.34¹ and 50 of the Government Emergency Ordinance no.79/2002 (national public consultation and notification to the European Commission and to the other regulatory authorities of the Member States), or, should the providers fail to reach an agreement, at the request of either of the parties involved, while complying with the procedure referred to in Art.36 of the same ordinance (the dispute resolution

⁶ According to the Licence for the use of numbering resources no.11.19/28.03.2007, ANRCTI assigned to S.C. RCS & RDS S.A. blocks of numbers within the 0Z=03 domain for the provision of publicly available telephone services, and, on its turn, the provider individually assigned to its users numbers from these blocks, as resulting, for instance, from the statistical data reported on December 31st, 2006, pursuant to Art.3 of the ANRC President's Decision no.151/2006 on reporting statistical data by the providers of electronic communications networks and services.

⁷ According to the provisions of Art.2 letter l) of the Government Emergency Ordinance no.34/2002, interconnection means *"the physical and logical linking realized between the public communications networks in order to allow communication between the networks users or access to services; services may be provided by the parties involved or by other parties who have access to that network; interconnection is a specific type of access realized by the public communications network operators"*. From the systematic interpretation of this definition results that, on the one hand, interconnection is a form of access realized by the providers of electronic communications networks and, on the other hand, through the interconnected networks (directly or indirectly) services may also be provided by other providers which have access to the networks concerned. The purpose of interconnection is to allow communication between the users of the interconnected networks, as well as to ensure their access to the services provided through the interconnected networks.

procedure). As previously shown, the legislator generally imposed on providers solely the negotiation obligation, leaving them the freedom to conclude an interconnection agreement which would suit their commercial interest, but, should these negotiations fail, in view of ensuring the protection of the end-users' rights and interests, ANRCTI is empowered to establish the interconnection conditions.

Therefore, in accordance with the provisions of Art.5 paragraph (2) letter a) of the Government Ordinance no.34/2002, in order to ensure end-to-end connectivity, ANRCTI is legally empowered to impose on S.C. RCS & RDS S.A., in its capacity as an operator who controls the access to end-users, the obligation to interconnect its own network, as well as to establish the conditions under which the interconnection shall be ensured. According to the previously mentioned provisions of Art.5 paragraph (4) of the Government Ordinance no.34/2002, the obligations and conditions which are to be imposed on the operator shall be objective, transparent, proportionate and non-discriminatory and they shall be imposed in accordance with the procedures referred to in Arts.34¹ and 50 of the Government Emergency Ordinance no.79/2002.

In this regard, it must be specified that the measures shall be imposed *ex ante* on S.C. RCS & RDS S.A., following the carrying on of the above-mentioned procedures, and shall be the object of a regulatory decision grounded on Art.5 of the Government Ordinance no.34/2002⁸, and not to individual dispute resolution decisions.

Nonetheless, the resolution of disputes on an individual basis would not have achieved the purpose of ensuring the interconnection with the fixed public telephone network operated by S.C. RCS & RDS S.A., the interoperability of services and the end-to-end connectivity, the most convincing example being the case of S.C. Intersat S.R.L., a provider who concluded an interconnection agreement with S.C. RCS & RDS S.A., following the resolution of the dispute brought to ANRCTI in July 2006, but this agreement has not been implemented so far, due to certain problems subsequently raised by S.C. RCS & RDS S.A., which did not make the object of the dispute resolution procedure. Moreover, taking into consideration the principle of availability which characterizes the civil procedure, the individual resolution of the disputes brought to ANRCTI would lead to the establishment of obligations and conditions which would be different from case to case and, therefore, on one hand, the principle of the legal certainty could be prejudiced and, on the other hand, a discrimination between providers requesting interconnection with the network of S.C. RCS & RDS S.A. would occur.

Having regard to the above-mentioned principles, as well as to the objectives set out in Art.5 of the Government Emergency Ordinance no.134/2006 on the establishment

⁸ The French regulatory authority (ARCEP) has recently had the same approach, imposing certain *ex ante* obligations on providers which control access to end-users, on grounds of the provisions of Art.5 of the Directive 2002/19/CE (transposed in the Romanian legislation by the provisions of Art.5 of the Government Ordinance no.34/2002), approach recognized also by the European Commission in its comments regarding the ARCEP decision (see *European Commission's comments pursuant to Article 7(3) of Directive 2002/21/EC regarding Case FR/2007/0608: Obligations imposed on operators that control access to end users for the delivery of value added services, to ensure end-to-end connectivity in France*).

of the National Regulatory Authority for Communications and Information Technology, ANRCTI aims to ensure effective competition in the electronic communications market, taking all the necessary measures in order to prevent the abusive behaviour of the operators that controls the access to end-users, in view of ensuring end-to-end connectivity. To this end, on grounds of the provisions of Art.5 of the Government Ordinance no.34/2002, ANRCTI intends to impose on the operator of fixed electronic communications networks S.C. RCS & RDS S.A. the obligation of transparency, the obligation to provide certain services and grant access to certain facilities, as well as the obligation regarding price control, with respect to the interconnection of its network with the public communications networks installed, operated, controlled or made available by other operators for the purpose of call termination at fixed locations.

The provisions of this decision aim to ensure a transparent legal framework regarding the interconnection with the fixed public telephone network operated by S.C. RCS & RDS S.A. This decision is without prejudice to ANRCTI's power to establish other conditions or obligations or to withdraw or modify all or part of those imposed hereby, as a result of completing the analysis of the wholesale market for call termination on individual public telephone networks provided at a fixed location.

III. The Obligations of S.C. RCS & RDS S.A. Regarding the Interconnection with its Public Telephone Network for the Purpose of Call Termination at Fixed Locations

III.A. The Obligation of Transparency

The imposition of the obligation of transparency is absolutely necessary in order to ensure that the beneficiaries are properly informed a clear, precise and detailed manner, so that they can decide in a fully informed fashion, ANRCTI intending thus to counteract the problems raised during the dispute resolution procedures regarding the absence of and, respectively, the refusal to provide any information related to the tariffs for the interconnection services offered by S.C. RCS & RDS S.A., its access points, or the equipments or capacities used for interconnection. Moreover, it was noted that, regardless the solution proposed by the providers (direct interconnection – at the beneficiaries' headquarters or at an intermediate point – or indirect interconnection through the interconnection service for switched transit offered by S.C. Romtelecom S.A.), S.C. RCS & RDS S.A. has always proposed as a technical solution the direct interconnection at its headquarters located in Bucharest, 73-75 Dr. N. Staicovici Street, 2nd floor, sector 5, solution which could not be implemented because the beneficiaries needed to obtain the approval of a third party (the administrator of the building located at the above-mentioned

address⁹). Furthermore, the documents requested by ANRCTI and provided by S.C. RCS & RDS S.A. showed that, on the one hand, the provider has offered access to other points than the one located at its headquarters in Bucharest, 73-75 Dr. N. Staicovici Street, 2nd floor, namely at all the other switches located in Bucharest and in the country and, on the other hand, it is connected both within its space and at intermediary points (in spaces belonging to S.C. NXDATA S.R.L. and S.C. Metrorex S.A.) or in the beneficiary's space.

Moreover, ANRCTI deems that, by imposing the obligation of transparency, the term of negotiation of the interconnection agreements will be reduced, as the operators will have access to a minimum set of relevant information even prior to the initiation of a direct correspondence with S.C. RCS & RDS S.A.

Consequently, the operator shall be obligated to publish on its website (this solution implies minimum costs) information regarding its access points (the number and addresses of all switches available for interconnection), as well as the tariffs for all the services and facilities associated to the interconnection, within 3 days from the communication of the present decision and, respectively, at least 15 days before the entry into force of the new tariffs, should S.C. RCS & RDS S.A. decide to amend or complete its commercial offer.

III.B. The Obligation of Providing Certain Services and of Granting Access to Certain Facilities

At present, S.C. RCS & RDS S.A. is interconnected with S.C. Romtelecom S.A., with the operators of public mobile telephone networks and with a very small number of operators of fixed public telephone networks¹⁰, one noticing that the operator does not show any interest in the providers which cannot generate a significant interconnection traffic and, consequently, the most important measure consists of imposing on S.C. RCS & RDS S.A. the obligation to interconnect for the purpose of call termination at fixed locations and to provide certain services and grant access to certain facilities, as regards the interconnection of the public telephone network it operates with the public networks installed, operated, controlled or made available by other operators for the purpose of call termination at fixed locations.

Imposing on S.C. RCS & RDS S.A. the obligation to ensure the interconnection of the fixed public telephone network which it operates for the purpose of call termination, to the

⁹ In the case of two providers, the building's administrator, S.C. Italiana Edilizia Constructor S.R.L., showed that the access into the building is possible only with the agreement of all associates and the providers' requests are to be discussed in the general assembly, without mentioning the date when this is to be held.

¹⁰ Pursuant to the provisions of point 3.15.1 letter b) of the general authorisation for the provision of electronic communications networks and services, Annex no.1 to the ANRC President's Decision no.1333/2003 on the general authorisation regime for the provision of electronic communications networks and services, the providers of electronic communications networks or services have the obligation to transmit to ANRCTI a copy of each of the access and interconnection agreements they conclude, within 10 days from the date of conclusion.

extent that the requests are reasonable, is strictly necessary with a view to ensure the interoperability of services and the end-to-end connectivity. Thus, as shown before, approximately 20 providers face the same problem, namely the refusal of S.C. RCS & RDS S.A. to ensure the interconnection with its fixed public telephone network, refusal shown either by delaying the negotiations or by not implementing the concluded interconnection agreements. Consequently, ANRCTI shall impose on the operator a maximum term for the negotiation and, respectively, a maximum term for the implementation of the interconnection agreements. As regards the requests for the conclusion of an interconnection agreement transmitted to S.C. RCS & RDS S.A. not later than June 20th, 2007 (the day before the beginning of the public consultation procedure), the maximum negotiation term will be of 15 days after the date when the decision will be communicated, since the provider has had more than sufficient terms for the negotiation of all conditions of the interconnection agreements.

Moreover, S.C. RCS & RDS S.A. shall have the obligation to transmit to ANRCTI a copy of each interconnection request and, respectively, of each subsequent request of amending, completing or withdrawing the initial request, within 2 days after receiving them. In order to monitor compliance with this obligation by S.C. RCS & RDS S.A., the requesting providers will be encouraged to also transmit their interconnection requests, in copy, to the regulatory authority.

As regards the access points, the operator offered access at six switches (two in Bucharest and one in each of the following cities: Craiova, Brasov, Oradea and Timisoara), being interconnected both directly and indirectly, in the ways mentioned above and, consequently, S.C. RCS & RDS S.A. shall be obliged to allow interconnection at all the access points in the network where this is technically feasible. In order to ensure the objectivity and proportionality of this measure, the operator shall offer interconnection services at all access points where interconnection can be achieved, to the extent that the requests are reasonable, and any refusal shall be properly justified. S.C. RCS & RDS S.A. shall communicate in writing both to the requesting party and to ANRCTI the reasons of its refusal, in a clear and detailed manner.

III.C. The Obligation Regarding Price Control

As shown above, the interconnection strategy of S.C. RCS & RDS S.A.¹¹ envisages, firstly, the interconnection with the major operators of public mobile and fixed telephone networks, as well as the refusal to grant to other operators access to the network which it operates, one of the main reasons invoked being the disagreement upon the conditions related to the tariffs charged for the interconnection service for the purpose of call termination.

¹¹ The information available on the provider's website show that it currently has approximately 642,000 subscribers, being the second largest operator after S.C. Romtelecom S.A. (http://www.rcs-rds.ro/newsletter/comunicate/comunicat%20presa%20RDS.Tel_evaluare%202006_1.02.2007.doc)

Therefore, ANRCTI considers that the imposition of the obligation to provide access to the network operated by S.C. RCS & RDS S.A. for the purpose of call termination at fixed locations would not be sufficient to solve the problems faced by the other operators as regards the interconnection with the network of this provider.

To this end, in view of achieving its objectives – promote competition, protect end-users' interests and encourage efficient investment in infrastructure – ANRCTI analysed whether the imposition on S.C. RCS & RDS S.A. of the obligation to observe a price cap in respect of the tariffs charged for the interconnection service for the purpose of call termination at fixed locations in its network would be opportune, appreciating that the imposition of such a measure is justified and proportionate with respect to the identified problems.

First of all, as explained before, the negotiation process for the conclusion of an interconnection agreement with S.C. RCS & RDS S.A. is rendered more difficult by the absence of an agreement on the interconnection tariffs. Moreover, ANRCTI noted that, in fact, this is one of the main instruments that S.C. RCS & RDS S.A. uses to block the conclusion of an interconnection agreement with the requesting operators.

On the other hand, the interconnection agreements in force concluded between S.C. RCS & RDS S.A. and other operators show that, compared to the lowest tariff charged by S.C. RCS & RDS S.A. for the interconnection service for the purpose of call termination at fixed locations in its own network, the other operators interconnected with S.C. RCS & RDS S.A. pay much higher tariffs, their quantum exceeding the minimum tariff by a percentage which vary between 30% and 247%. This uneven level of the tariffs charged is determined by the lack of negotiation power of the other operators in their dealings with S.C. RCS & RDS S.A. and indicates the fact that this provider charges excessive tariffs from certain operators, with negative effects on them as well as on their subscribers. Thus, in the absence of an obligation regarding price control, S.C. RCS & RDS S.A. would not have any incentive to charge a reasonable tariff in a uniform manner.

Hence, the imposition of the obligation to charge tariffs which do not exceed a reasonable maximum tariff set out by ANRCTI aims to avoid the charging of excessive tariffs and unblock the process of concluding and implementing the interconnection agreements with S.C. RCS & RDS S.A. The proportionality of this measure is justified by the manner in which the maximum tariff is set out, as described below.

As concerns the manner of establishing the maximum interconnection tariff for the purpose of call termination at fixed locations in the network operated by S.C. RCS & RDS S.A., ANRCTI decided to use the interconnection tariffs currently charged by the provider on the basis of interconnection agreements concluded following commercial negotiations with other operators present in the market.

The need to establish this tariff in a justified and proportionate way, the absence of clear information on the network of S.C. RCS & RDS S.A. which could indicate a higher or a lower level of the costs for the provision of interconnection services, as well as the urgent need to adopt this decision, given the necessity of unblocking the situation existing in the market as regards the interconnection with S.C. RCS & RDS S.A. represented the

main reasons for establishing the maximum interconnection tariffs for the purpose of call termination at fixed locations in the network operated by S.C. RCS & RDS S.A. on the basis of the interconnection tariffs currently charged by the operator on grounds of agreements concluded following commercial negotiations.

By using this method, ANRCTI considers that the operator shall recover at least the costs with the provision of the interconnection service for the purpose of call termination at fixed locations in its network, even by imposing the lowest freely negotiated tariff charged for this service by S.C. RCS & RDS S.A.

In order to establish the maximum termination tariff by using the above-mentioned method, ANRCTI took into consideration the interconnection agreements concluded by S.C. RCS & RDS S.A. with similar operators with resembling negotiation power. To this end, ANRCTI noted that S.C. RCS & RDS S.A. charges from an operator which provides public telephone services using a technology similar to the one used by S.C. RCS & RDS S.A. a symmetric interconnection tariff which takes into account the interconnection traffic volume, respectively a tariff of 2.55 Eurocents/minute for a certain amount of traffic and 1.15 Eurocents/minute for a higher traffic amount, the latter representing the value of the lowest freely negotiated tariff currently charged by S.C. RCS & RDS S.A. for such a service.

ANRCTI deems that the differentiation of the termination tariff in the network of S.C. RCS & RDS S.A. depending on the traffic volume is unjustified, given the fact that S.C. RCS & RDS S.A. is the only operator which provides the interconnection service for the purpose of call termination at fixed locations in this network. This mechanism, which indicates a discount granted in the case of a higher traffic volume, is considered by ANRCTI, on the one hand, to be unfair for the operators which would terminate a smaller amount of minutes in the network of S.C. RCS & RDS S.A. and, on the other hand, accredits the idea that an operator would have different costs for the provision of the termination service depending on the traffic volume achieved by each operator interconnected with the S.C. RCS & RDS S.A. ANRCTI considers that such a situation is unjustified from an economic point of view, the cost of call termination in the network of an operator being the same, irrespective of the individual traffic volume terminated in that network.

As regards the tariff for the interconnection service for the purpose of call termination at fixed locations in the network operated by S.C. RCS & RDS S.A. in quantum of 1.15 Eurocents/minute, ANRCTI shows that, compared to the average tariffs charged by S.C. Romtelecom S.A., set out on the basis of the long run incremental cost calculation model, this tariff is by 37% higher than the average termination tariff of a call on local level, by 18.5% higher than the average termination tariff of a call on regional level and by 8.5% higher than the average termination tariff of a call on national level. Taking into consideration that, in the majority of the Member States, the interconnection tariffs for the purpose of call termination at fixed locations in the networks operated by the alternative providers and the tariffs charged by the incumbent are asymmetric, and the difference between them is regulated at levels comprised between 10% and 40%, ANRCTI finds

reasonable the establishment of a maximum tariff for the interconnection service for the purpose of call termination at fixed locations in the network operated by S.C. RCS & RDS S.A. at the value of 1.15 Eurocents/minute.

In conclusion, taking into consideration the above-mentioned reasons, ANRCTI shall establish the maximum tariff for the interconnection service for the purpose of call termination at fixed locations in the network operated by S.C. RCS & RDS S.A. at the level of 1.15 Eurocents/minute, excluding VAT.