

On grounds of the Decision of the Prime Minister no.234/2006 regarding the appointment of the president of the National Regulatory Authority for Communications and Information Technology,

On grounds of the provisions of art.37 paragraphs (1), (3) and (5) of Government Emergency Ordinance no.134/2006 regarding the establishment of the National Regulatory Authority for Communications and Information Technology, of art.36 paragraphs (1) and (2) on the general regulatory framework for communications, approved, with amendments and completions, by Law no.591/2002, subsequently amended and completed, and of art.26 of ANRC President's Decision no.1331/2003 on the establishment of the procedure for the resolution of disputes within the competence of ANRC,

**THE PRESIDENT OF
THE NATIONAL REGULATORY AUTHORITY FOR COMMUNICATIONS
AND INFORMATION TECHNOLOGY**

issues the present:

DECISION

I. Introduction

A. Plaintiff's complaint

On February 23, 2007, the plaintiff, S.C. Cosmote Romanian Mobile Telecommunications S.A. (further referred to as *Cosmote*), registered in Bucharest, 4 – 8 Nicolae Titulescu street, America House building, submitted a complaint to the National Regulatory Authority for Communications and Information Technology (further referred to as *ANRCTI*), on grounds of art.36 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, subsequently amended and completed, and of art.1 paragraph (2) of the ANRC President's Decision no.1331/2003 on the establishment of the procedure for the resolution of disputes within the competence of ANRC, against the respondent S.C. Telemobil S.A. (further referred to as *Telemobil*), registered in Balotesti, 2B bis Calea Bucuresti street, Ilfov county, claiming for respondent's legal obligation to conclude the interconnection agreement negotiated by the two parties. The complaint was registered with *ANRCTI* under no.7/200784/23.02.2007.

In order for its complaint to be resolved, the plaintiff chose the mediation procedure.

Also, taking into account *Telemobil's* address no.290/31.01.2007 and *Telemobil's* address registered with *ANRCTI* under no.7/200782/23.02.2007, submitted to *Cosmote* and, respectively, to *ANRCTI*, by which the respondent notified the termination of the interconnection agreement negotiated by the two parties, starting with March 1, 2007, by

the address registered with *ANRCTI* under no.7/200801/27.02.2007, the plaintiff claimed as a provisional measure for the respondent's legal obligation of not interrupting or limiting the capacity of the interconnection link between the networks operated by *Telemobil* and *Cosmote*, until the settlement of the dispute by a decision of the president of *ANRCTI*.

B. The procedure carried on in front of ANRCTI

On grounds of the provisions of art.7 paragraph (1) of the ANRC President's Decision no.1331/2003, the president of *ANRCTI*, by Decision no.1792/2007, has appointed the commission responsible with the settlement of the dispute between *Cosmote* and *Telemobil* (further referred to as the *Commission*). The *Commission* shall be formed by:

- Mr. Sebastian Popovici, head of the Disputes Unit, Legal Division, as president of the Commission;
- Mrs. Ana-Maria Ciurlica, head of the Access and Interconnection Unit, Economic Regulation Division, as member of the Commission;
- Mr. Gheorghe Nastase, legal counsellor, Disputes Unit, Legal Division, as member of the Commission.

On grounds of the provisions of art.19 of the ANRC President's Decision no.1331/2003, the parties have been invited on March 1, 2007, at *ANRCTI* headquarters in 14 Libertatii Blvd., sector 5, Bucharest, for the settlement of *Cosmote*'s request regarding the provisional measures to be taken against *Telemobil*.

On March 1, 2007, 10 a.m., the meeting between the representatives of *Cosmote* and *Telemobil* took place at *ANRCTI* headquarters, in front of the Commission, in order to debate the plaintiff's request regarding the provisional measures to be taken.

Cosmote was represented by Mrs. Mihaela Ionita, Mrs. Ruxandra Oana Cristea, Mr. Spyridon Spyropoulos, Mr. Nikolaos Tsolas and Mr. Cristian Costea, and *Telemobil* was represented by Mrs. Cristina Octavia Brezeanu, Mr. Vasile Ene and Mr. Laurentiu Anghel, the documents certifying their quality of representatives being added to the case file.

Ascertaining that the citation procedure has been legally carried out, the Commission offered the two parties the opportunity to support their requests, respectively to defend themselves. During the meeting, *Telemobil* handed in the address registered with *ANRCTI* under no.7/200849/01.03.2007. A copy of this address was communicated to the plaintiff.

II. The claims of the parties

A. Plaintiff's claims

In supporting its request regarding the provisional measures to be taken in order to legally oblige the respondent not to interrupt or limit the capacity of the interconnection link between the networks operated by *Telemobil* and *Cosmote*, the plaintiff showed that, on January 31, 2007 and, respectively, on February 23, 2007, *Telemobil* notified to *Cosmote* the termination of the interconnection agreement concluded by the two parties, starting with March 1, 2007 and the interruption of the the interconnection link after this date.

The plaintiff claimed that *Telemobil* unjustifiably refused to sign the new interconnection agreement negotiated on grounds of the contractual freedom principle, the respondent claiming that, at present, there is no agreement between the two parties. Taking into account this situation, by its address registered with *ANRCTI* under no.7/200784/23.02.2007, the plaintiff filed a request to *ANRCTI* in order to settle the dispute and, on grounds of art.26 of the ANRC President's Decision no.1331/2003, the plaintiff solicited *ANRCTI* to urgently order *Telemobil*, as a provisional measure, until the resolution of the dispute through a decision issued by the president of *ANRCTI*, to fulfill its legal obligation of not interrupting or limiting the capacity of the interconnection link between the networks of the two parties.

In its request regarding the provisional measures to be taken, *Cosmote* appreciated that, on the one hand, the solicited measure is not only seriously justified, but also necessary in order to protect the interests of the end-users of *Telemobil* and *Cosmote*, and, on the other hand, the interruption of the interconnection link would cause serious financial and image damage.

During the debates, *Cosmote* showed that, starting with March 1, 2007, 00.00 hours, *Telemobil* interrupted the interconnection link between the networks operated by the two parties, the end-users of the two providers being currently unable to communicate. Consequently, *Cosmote* requested *ANRCTI*, on grounds of art.26 of ANRC President's Decision no.1331/2003, to dispose the legal obligation of *Telemobil* to ensure the provision of interconnection services under the same technical and commercial conditions as those existing until the interruption of the interconnection link, as a provisional measure, until the resolution of the dispute through a decision issued by the president of *ANRCTI*. Thus, regarding the tariffs for the interconnection services for the purpose of terminating at mobile points the calls originated by the users of the two providers, *Cosmote* requested that such tariffs be established on grounds of the reciprocity principle, at the level of 12 USDcents/minute for calls and 3 USDcents/SMS.

Further, the plaintiff showed that, according to the provisions of art.4 of ANRC President's Decision no.126/2003 regarding the interconnection with the public mobile telephony network operated by S.C. "Telemobil" – S.A. in view of terminating the calls, the respondent is obliged to provide the interconnection service in order to terminate the calls at mobile points, the interconnection of the public telephony network for terminating calls being provided as long as the claims are reasonable.

As for the admissibility of its request for provisional measures, the plaintiff stated that the conditions established under art.26 of ANRC President's Decision no.1331/2003 are fulfilled. Thus, the plaintiff showed that, on the one hand, *Cosmote* suffered serious image damage and, on the other hand, both the users of its services and of *Telemobil's* services are harmed because they are unable to communicate between them. *Cosmote* also claimed that the damage suffered by its users is irreparable and that, prior to the debate, its Customer Relations Service had registered complaints from its users regarding the impossibility to communicate with users of services provided by *Telemobil*.

Consequently, *Cosmote* solicited *ANRCTI* to admit the request regarding the provisional measures to be taken and to oblige *Telemobil* to ensure the provision of interconnection services under the same technical and commercial conditions as before the interruption of the interconnection link.

B. The respondent's claims

In its defence, the respondent solicited, mainly, that the request of *Cosmote* be rejected as unjustified and, subsidiary, that the request be admitted under the reserve of the plaintiff's acceptance to apply symmetrical interconnection tariffs, in quantum of 10 USDcents/minute for calls and of 2 USDcents/SMS. In *Telemobil*'s opinion, the plaintiff's request is unjustified because the conditions established under art. 26 of ANRC President's Decision no.1331/2003 are not fulfilled, since there is neither exceptional situation nor serious damage. Thus, the respondent sustained that the interruption of the traffic between the two networks was due to the termination of the interconnection agreement concluded by the two parties, starting with March 1, 2007, fact admitted also by the plaintiff in its address no.290/25/17.01.2007. *Telemobil* also affirmed that the parties carried out extended negotiations in view of signing a new interconnection agreement and *Cosmote* had been previously informed on its intention to interrupt the interconnection links starting with March 1, 2007, in case the tariffs proposed by *Telemobil* would not be accepted.

The absence of an exceptional situation results also from the fact that the plaintiff does not accept *Telemobil*'s offer, conveyed by an address dated February 28, 2007 to maintain the interconnection link until the conclusion of a new agreement, on the condition of charging, meanwhile, a tariff of 10 USDcents/minute for calls.

Telemobil stated that the provisional measures requested by the plaintiff cannot be admitted in absence of an interconnection agreement between the parties or of a provisional settlement which would establish the tariffs applicable to the interconnection services to be provided until the resolution of the dispute, asserting that, in the absence of such tariffs, the tax body would consider the interconnection costs as being fiscally uneducible.

During the debate, regarding the damage suffered by the end-users, *Telemobil* admitted that they are affected as a result of the interruption of the interconnection link but also claimed that it was obliged to take this measure in order to protect its own commercial interests, as the tariff of 12 USDcents/minute for calls, charged by *Cosmote*, causes great losses to its economic activity. Also, the respondent admitted that the damage suffered by the users as a result of the interruption of the interconnection link, by making communication impossible, is significantly more important than the damage suffered by its users as a result of the high tariffs charged by the plaintiff for calls terminated in its network.

Regarding the charged tariffs, *Telemobil* claimed that, until the interruption of the interconnection link, the parties charged tariffs established on grounds of the reciprocity principle, in quantum of 12 USDcents/minute for calls and of 3 USDcents/SMS, requesting the *Commission* that, until the resolution of the dispute, these tariffs be established at 10 USDcents/minute for calls and 2 USDcents/SMS. Moreover, in order to re-establish the interconnection link, *Telemobil* showed that it is willing to accept, until the resolution of the dispute, interconnection tariffs equal to zero.

With respect to the serious damage, in its address registered with *ANRCTI* under no.7/200849/01.03.2007, the respondent claimed that the absence of an agreement with *Cosmote* equals to the implicit admittance of the fact that the image damage *Cosmote*

claims is smaller than the counter value of the lack of use of the amount of 5800 USD¹ (resulted from the difference between the tariffs of 10 and 12USDcents/minute and the difference of traffic between the two providers, of 290,000 minutes/month for January 2007), because, on the contrary, the latter should have accepted - at least temporarily - the above mentioned proposal of *Telemobil*.

Also, considering that the traffic volume originated in *Telemobil's* network and terminated in *Cosmote's* network is twice larger than reverse, the respondent stated that *Telemobil* is more damaged than the plaintiff.

Finally, the respondent also affirmed that the admission of *Cosmote's* request, without the establishment of a provisional tariff or with the establishment of a tariff equal to 12 USDcents/minute for calls and to 3 USDcents/SMS, would only allow this company to postpone *sine die* the negotiation for signing a new agreement, illegally contributing to a more serious damage suffered by both *Telemobil* and its users.

III. Commission's opinion

A. ANRCTI'S competence

According to the provisions of art.4 paragraph (1) letter (i) of Government Emergency Ordinance no.134/2006 on the establishment of the National Regulatory Authority for Communications and Information Technology, one of *ANRCTI's* functions is to settle disputes between providers of electronic communications network and services, and, according to provisions of art.36 paragraphs (1) and (4) of the Government Emergency Ordinance no.79/2002 regarding the general regulatory framework for communications approved, with amendments and completions, by Law no.591/2002, subsequently amended and completed, "*Art.36 – (1) In the event of a dispute arising between the providers of electronic communications networks or services or between the providers of postal services in relation to the obligations imposed on them on grounds of this Emergency Ordinance, of the special legislation in the electronic communications field or by ANRC in accordance with the present provisions, the interested party shall notify ANRC in view of settling the dispute or may file a suit at the competent court. The dispute shall be settled by Decision of the ANRC president within 4 months from the date when an application has been made in this respect, apart from exceptional circumstances, when a longer term is necessary for the adequate settlement of the dispute.*"

[...]

"(4) *The Decision issued by the president of ANRC pursuant to this Article is a jurisdictional administrative act and may be appealed in front of the Administrative Division of the Court of Appeal, according to the provisions of art.38 paragraph (7).*" As per these legal provisions, *ANRCTI* has the quality of jurisdictional-administrative body specialised in settling disputes in the field of electronic communications, the interested persons being able to address *ANRCTI* in order to resolve such disputes.

¹ During the debate, the respondent estimated a monthly prejudice of 4,000 USD.

In the current case, *Cosmote* requested *ANRCTI* to oblige the respondent to sign the interconnection agreement negotiated by the parties. To motivate its request, the plaintiff claimed, essentially, that the respondent breached the negotiation obligation provided under art.4 paragraph (1) letter (b) of the Government Ordinance no. 34/2002 regarding the access to public electronic communications networks and the associated infrastructure, as well as their interconnection, approved, with amendments and completions, by Law no.527/2002, subsequently amended and completed. The request for provisional measures is based on the provisions of art.26 of the ANRC President's Decision no.1331/2003, according to which: "*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.*" Taking into account the reasons presented by the plaintiff to support its claims regarding the fact that the respondent breached certain obligations provided by the legislation in the field of electronic communications, it is *ANRCTI's* competence to decide on *Cosmote's* request.

B. The provisional measures

According to the wording of art.26 of the ANRC President's Decision no.1331/2003, *ANRCTI* may take measures of an exceptional character on grounds of these provisions ("*In exceptional situations [...]*"). In other words, the provisional measures *ANRCTI* may take until the resolution of the dispute are justified only in the case the plaintiff suffers serious prejudice, which, in absence of such measures, could not be compensated even if the dispute were favourably solved. This exceptional character of the provisional measures is also due to the fact that art.36 of the Government Emergency Ordinance no.79/2002 establishes a short term – of 4 months - for the settlement of the disputes under the competence of *ANRCTI*, apart from exceptional circumstances, when a longer term is necessary for the adequate settlement of the dispute.

To motivate its request, the plaintiff claimed that the measure taken by *Telemobil* to interrupt the interconnection link between the two providers caused both material and image prejudice, and users' interests are seriously and irreparably harmed.

The *Commission* ascertains that *Cosmote*, on the one hand - as provider and business partner of *Telemobil* - is directly harmed as a result of the absence of the provision of interconnection services and, on the other hand, is indirectly harmed in the relation with its users, as a result of the decrease in the quality of services, the users being unable to communicate with the users of *Telemobil's* services. Concurrently, besides the prejudice suffered by the plaintiff, the users of both networks are harmed as a result of the interruption of the interconnection services by the respondent, thus not being able to initiate or receive calls between the two networks.

If the moral and material prejudice the plaintiff may suffer can be estimated and determined (for instance, on grounds of previous reports regarding the interconnection traffic between the two providers, of the contracts signed with the end-users or of the applicable retail tariffs), the *Commission* shows that the prejudice suffered by the users of the two providers cannot be objectively estimated or determined and, moreover, cannot be adequately repaired. Nevertheless, it is more than obvious that the prejudice suffered by end-users is of an exceptional gravity, taking into account, mainly, the large number of

users of both mobile telephony networks (over 400,000, in the case of *Telemobil*, and over 1,200,000, in case of *Cosmote*), as resulting from the statistics reported as of December 31, 2006, in accordance with the provisions of art.3 of ANRC President's Decision no.1332/2003 on the reporting of statistical data by the electronic communications networks and services providers.

Moreover, not even *Telemobil* disputed the existence and seriousness of the prejudice caused to the end-users as a result of the restricted provision of interconnection services, and the respondent itself admitted that such prejudice is even more serious than the one suffered by its users as a result of the fact that they are obliged to pay a higher tariff for calls to *Cosmote* network. On the one hand, it is more than obvious that the prejudice suffered by users, who were not able to communicate, is incomparable to the prejudice of 5,800 USD/month invoked by the respondent, resulted from the difference between the 12 USDcents/minute tariff required by the plaintiff and the 10 USDcents/minute tariff required by the respondent, as well as from the difference between the traffic volume of the two providers, amounting to 290,000 minutes/month in January 2007. On the other hand, the value of 5,800 USD is insignificant reported to the turnover of *Telemobil*, this figure not being likely to create financial problems for the respondent until the the resolution of the dispute between *Cosmote* and *Telemobil*.

Further on, the *Commission* underlines that the prejudice suffered by the end-users is significant, irrespective of the number of hours or days when the interconnection traffic between the two providers has been interrupted and may not be limited unless interconnection between the networks operated by the two parties is ensured. This provisional measure shall be ensured by both providers until the resolution of the dispute through a decision issued by the president of *ANRCTI*.

Connectivity is one of the fundamental rights of the end-users, if not the most important one, and ensuring the connectivity between end-users represents itself a purpose within the regulatory framework for electronic communications, this task being incumbent on *ANRCTI*, as hereinafter shown. Connectivity means both the possibility to initiate and receive calls within the network as well as in other networks, by means of interconnection services offered by the providers of publicly available telephone services for the purpose of originating and, respectively, terminating calls.

Thus, the *Commission* decides that, in accordance with the provisions of art.8 paragraph (1) of the Government Emergency Ordinance no.34/2002, "(1) If, as a result of a market analysis carried out in compliance with the provisions of the Framework-Ordinance, an operator is designated as having significant market power on a relevant market, the regulatory authority shall impose upon that operator one or more of the obligations under arts.9-13, as appropriate." On grounds of these provisions, after the National Regulatory Authority for Communications (further referred to as *ANRC*) had identified, by an annex to the Regulation on identifying the relevant markets in the field of electronic communications, approved by the ANRC President's Decision no.136/2002, the markets of access to the own mobile telephony networks for the purpose of terminating calls as specific relevant markets in the field of electronic communications, *Cosmote* and *Telemobil* have been designated, by the ANRC President's Decisions no.145/2002 and no.146/2002, as operators with significant market power. Consequently, they were imposed the specific obligations under art.9 paragraph (1) and art.12 of the Government Ordinance no.34/2002 - namely the

transparency obligation and the obligation to provide access -, by the ANRC President's Decision no.125/2003 on the interconnection to the public mobile telephone network operated by S.C. „Cosmorom” – S.A.² for the purpose of terminating calls and, respectively, by the ANRC President's Decision no.126/2003.

Regarding the granting of access to the own mobile telephony network operated by the respondent, *ANRC* imposed to *Telemobil*, on grounds of art.12 paragraph (1) and paragraph (2) letter (i) of the Government Ordinance no.34/2002, the obligation to interconnect its network, as a specific way of granting access. Moreover, *ANRC* imposed *Telemobil*, on grounds of art.9 paragraph (1) of the Government Ordinance no.34/2002, the transparency obligation as regards the interconnection of its network, materialized, according to the provisions of art.3 of the ANRC President's Decision no.126/2003, in the obligation to make public the tariffs for all the services necessary for the interconnection with the public mobile telephone network that it operates, for the purpose of terminating calls.

In compliance with art.4 paragraphs (1) and (5) of the ANRC President's Decision no.126/2003, *Telemobil* is obliged to offer to beneficiaries at least the interconnection service for the purpose of terminating calls at mobile points and to ensure interconnection with the public mobile telephone network it operates, for the purpose of terminating calls, to the extent that the requests are reasonable. The refusal of *Telemobil* shall be justified and shall be communicated in writing to the requesting provider as well as to *ANRCTI*.³ According to the provisions of art.4 paragraphs (1) and (5) of the ANRC President's Decision no.125/2003, *Cosmote* has the same above mentioned obligations.

On the other hand, regarding the interconnection service for the purpose of originating calls at mobile points, *Telemobil* and, respectively, *Cosmote* have no specific obligations and these services are offered on a contractual basis, preceded by free negotiations between the parties. Nevertheless, the *Commission* underlines that, at European level, it is admitted that a legislative framework is necessary in view of establishing adequate mechanisms in order to ensure a normal environment for competition as regards the provision of electronic communications services and the ensuring of interoperability of services, including the situations when negotiations fail. In such cases, the regulatory authority shall have the power to ensure access and interconnection under adequate conditions, as well as the interoperability of services, to the benefit of the end-users, for instance by imposing specific obligations on the providers controlling the access to end-users.

Within the Romanian legislation in the field of electronic communications, these principles are transposed 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 necessary measures in order to encourage and, where appropriate, ensure, in accordance with the provisions herein, adequate conditions for access and interconnection, as well as the interoperability of services, in observance of the principles of economic efficiency, promoting competition, and maximizing end-users' benefit.*

² Currently, the new name of S.C. Cosmorom S.A. is S.C. Cosmote Romanian Mobile Telecommunications S.A.

³ To this extent, the *Commission* noticed that the respondent, through its address registered with *ANRCTI* under no.7/200835/28.02.2007 by which it informed *ANRCTI* on the cease of the interconnection agreement signed by the parties, did not solidly justify the refusal to ensure interconnection of the public mobile telephone network it operates and resumed to simply inform the regulatory authority.

(2) The measures taken in accordance with the provisions under paragraph (1) may in particular consist, without prejudice to measures that may be taken in accordance with art.8 with regard to the undertakings with significant market power, of the imposing of the following obligations:

a) obligations on the legal persons controlling the access to end-users, including, as the case may be, the obligation to ensure interconnection of their networks, if the imposition of these obligations is necessary to ensure the connectivity between end-users;

b) obligation on the operators to provide access to certain elements of the associated infrastructure, established in compliance with art.6, under fair, reasonable, and non-discriminatory conditions, in case the imposing of this obligation is necessary in order to ensure the access of the end-users to digital radio and television broadcasting services.

(3) When imposing upon an operator obligations to provide access in accordance with 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 for ensuring the normal functioning of the network.

(4) The obligations and conditions imposed in accordance with paragraphs 1 - 3 shall be objective, transparent, proportionate, and non-discriminatory, and shall be imposed after the procedures established under arts.34¹, 35 and 36 of the Framework-Ordinance are fulfilled.

(5) The regulatory authority has the right to set out, in compliance with the provisions herein and by observing the adequate procedures established under arts.34¹, 36 and 50 of the Framework-Ordinance, the conditions for access and interconnection in view of fulfilling the objectives mentioned under art.45 of the Framework-Ordinance, upon its own initiative or, in case the negotiations for an agreement between the parties fail, upon the request of either of the parties involved.

(6) When taking a decision in compliance with the present article, the regulatory authority shall take into account the ensuring of equivalent access and interconnection conditions under equivalent situations, as well as the impossibility to bind the conclusion of the access or the interconnection agreement to the acceptance of certain clauses that are not related to it".

Therefore, on grounds of the provisions under art.5 paragraph (1) of the Government Emergency Ordinance no.34/2002, *ANRCTI* has the power to take 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 services, by observing the principles of economic effectiveness, promoting competition and maximizing the benefit of the end-users. In accordance with the provisions under art.5 paragraph (2) letter a), these measures may consist of imposing the interconnection obligation to those providers that control the access to end-users, such control on the access means being achieved by a provider's ownership over or exertion of the control over a physical link (fixed or mobile) towards the end-user and/or by a provider's possibility to modify or withdraw the assigned numbering resources, in order to ensure the access of the end-users to the public electronic communications network.⁴

⁴ According to the License for the use of numbering resources no.2.3/11.11.2005, *ANRCTI* allotted to *Telemobil* blocks of numbers within the OZ=07 domain, for the provision of publicly available telephone services and, on its turn, the provider individually assigned to its users numbers within these blocks, as it

In the present case, imposing the interconnection obligation would be justified by the necessity of providing end-to-end connectivity. As previously mentioned, connectivity means the possibility of the users of the same public electronic communications network to communicate between them as well as the possibility of the users of a certain network to communicate with the users of one/several different networks.

The provisions of art.5 paragraphs (5) and (6) of the Government Emergency Ordinance no.34/2002 establish - in accordance with the general attribution of *ANRCTI* to take, in its capacity as a regulatory authority, all the necessary measures in order to ensure access and interconnection - the special competence of *ANRCTI* to establish, by decision, the conditions for achieving interconnection, including the cases when the parties, after previous negotiations, have failed to reach an agreement. As previously showed, the legislator generally imposed to providers solely the obligation to negotiate, leaving them the liberty to reach an interconnection agreement that would suit their commercial interests. Should such negotiations fail, *ANRCTI* has the right to establish the interconnection conditions, in order to protect the rights and interests of the end-users.

Considering that the parties did not reach an agreement regarding the conditions of their networks' interconnection, as it results from the submitted documents and from the statements of the parties, expressed during the debates, and considering that, by the submitted complaint the plaintiff requested that the respondent be obliged to conclude an interconnection agreement, the *Commission* acknowledges that the current situation matches the hypothesis mentioned under art.5 paragraph (5) of the Government Ordinance no. 34/2002. Therefore, in view of ensuring end-to-end connectivity, *ANRCTI* has the legal competence to impose on the two providers the obligation to interconnect their own networks and, at the same time, to establish the conditions under which this interconnection is ensured, including by taking provisional measures with respect to the interconnection of the networks.

Taking all the above into consideration, without pre-judging the merits of the case, on grounds of the provisions under art.5 paragraph (5) of Government Ordinance no.34/2002, as well as under art.4 of the ANRC President's Decision no.126/2003, with a view to protecting the end-users' interests, the *Commission* shall impose on *Cosmote* and *Telemobil* the obligation to provide the interconnection services for the purpose of originating and, respectively, terminating at mobile points the calls originated by the users of the networks operated by the two parties. Until the resolution of the dispute, these services shall be provided under the same technical and commercial conditions as those existing until the moment of interruption of the interconnection link. Thus, *Telemobil* shall have the obligation to immediately take, within 3 hours after the communication of the present decision, all necessary measures in view of resuming the provision of the interconnection services, including any necessary technical or administrative measures, so that the users of the two networks may communicate to one another.

results, for example, from the statistical data reported as of December 31, 2006, in accordance with art.3 of the ANRC President's Decision no. 1332/2003 on the reporting of statistical data by the providers of electronic communications networks and services.

Considering the commercial conditions for the provision of the above-mentioned interconnection services, as it resulted from the statements of the parties during the debates, acknowledging that, for the interconnection services for the purpose of terminating at mobile points the calls originated by the users of the two providers, *Cosmote* as well as *Telemobil* have charged tariffs of 12 USDcents/minute for calls and of 3 USDcents/SMS, until the moment of interruption of the interconnection link, the *Commission* shall decide that these tariffs apply until the resolution of the dispute through a decision issued by *ANRCTI's* president. Any other analysis on the tariffs charged by or negotiated between the parties cannot be taken into consideration, since it would lead to a pre-judgement the merits of the case. As a matter of fact, the provisional measures have, essentially, a conservative character.

On the other hand, by means of the dispute resolution decision, the *Commission* may establish other tariffs than those above-mentioned and, for the time span between the date when the present decision is communicated and the date when the decision on the resolution of the dispute is communicated, the tariffs established under the decision on the resolution of the dispute shall be applied retroactively. In such case, the parties shall compensate the resulted differences, should they exist.

Also, the technical conditions for the provision of the interconnection services (including the quality parameters) to be applied until the resolution of the dispute shall be those established by the interconnection agreement concluded between the parties as of March 30, 2001 and the subsequent addenda and *Telemobil* shall have the obligation to provide to *Cosmote* access to all the services that are necessary for the latter to exploit under normal conditions the interconnection with the public mobile telephony network for the purpose of originating and terminating calls. The respondent shall ensure the maximum installed capacity of the interconnection links between the networks operated by the two providers at least under the existing conditions at the time the provision of the interconnection services has been interrupted.

As regards any other commercial conditions related to the services associated to interconnection, the conditions used by the parties until the interruption of the provision of the interconnection services shall apply until the resolution of the dispute.

WITH RESPECT TO THE ABOVE RECITALS, THE PRESIDENT OF THE NATIONAL REGULATORY AUTHORITY FOR COMMUNICATIONS AND INFORMATION TECHNOLOGY DECIDES AS FOLLOWS:

Admits the request of S.C. Cosmote Romanian Mobile Telecommunications S.A. related to taking provisional measures during the dispute between the plaintiff S.C. Cosmote Romanian Mobile Telecommunications S.A. and the respondent S.C. Telemobil S.A. and:

a) Obliges S.C. Telemobil S.A. to take, within maximum 3 hours since the moment (date and hour) when the present decision is communicated, all

measures deemed necessary in order to ensure the provision of interconnection services for the purpose of originating and, respectively, terminating at mobile points the calls originated by the users of the two providers, including any necessary technical or administrative measures, in view of ensuring communication between the users of such providers;

b) Until the resolution of the dispute, the tariffs charged for the interconnection services for the purpose of terminating at mobile points the calls originated by the users of the two providers shall be established based upon the reciprocity principle, at a level of 12 USDcents/minute for calls and of 3 USDcents/SMS and, with respect to any other commercial conditions related to the services associated to interconnection, the tariffs charged by the parties until the moment when the provision of the interconnection services has been interrupted shall apply.

c) The technical conditions for the provision of these services are those stated in the interconnection agreement concluded between the parties as of March 30, 2001, and in the subsequent addenda. The respondent shall ensure the maximum installed capacity of the interconnection links between the networks operated by the two providers at least under the existing conditions at the time the provision of the interconnection services has been interrupted.

The present decision is mandatory, shall be communicated to the parties and shall be published on the website of the National Regulatory Authority for Communications and Information Technology.

The present decision represents an administrative-jurisdictional act and may be appealed in front of the Administrative Division of the Bucharest Court of Appeal, within 30 days from its communication, with no need to follow the preliminary procedure set out under art.7 of Law no.554/2004 on the administrative contentious procedure.

**PRESIDENT,
DAN CRISTIAN GEORGESCU**

Bucharest, March 2, 2007
No.1803/EI