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Determination of 21.4.2006

OBJECT AND FORM OF PUBLIC DISCLOSURE OF THE CONDITIONS OF PROVISION AND USE OF ELECTRONIC COMMUNICATION SERVICES

FRAMEWORK

Under points b) and d) of paragraph 4 of article 5 of Law no. 5/2004, of 10 February, - Electronic Communications Law - it is incumbent upon ICP-National Communications Authority (ICP-ANACOM) to ensure a high level of protection for consumers in their dealings with companies that provide electronic communications networks and services and to promote the provision of clear information, in particular requiring transparency of tariffs and conditions for the use of publicly available electronic communications services.

Pursuant also to paragraph h) of paragraph 1 of article 6 of the Statutes in annex to Decree-Law no. 309/2001, of 7 December, it is incumbent upon ICP-ANACOM to protect the interests of consumers, particularly users of the universal service, via co-ordination with the appropriate entities, namely by encouraging consumer clarification and by ensuring the dissemination of information inherent to the public use of communications.

Thus, first of all, ICP-ANACOM approved, in the scope of a general consultation procedure, the guidelines for minimum content to be included in electronic communications contracts, aiming, on the one hand, to create the conditions to enable operators to overcome the difficulties as regards contract approval procedures and to comply swiftly and effectively with the law, and on the other hand, to ensure consumer protection in the scope of contracts concluded as well as a better quality of available information.

Other measures that strengthen and safeguard the rights and interests of subscribers and users of the several electronic communications services must now be adopted.

Thus, Chapter IV of Title III of the referred Law no. 5/2004, of 10 February establishes a set of standards that apply to the operation of electronic communications services, Section I concerning companies that provide publicly available networks and services and Section II concerning companies that provide publicly available telephone networks and services.

In this scope, a set of obligations is established herein, aiming to ensure the right to information of users and subscribers of the different electronic communications services, namely as regards the disclosure of the respective conditions of provision and use, including transparent and up-to-date information of applicable prices (point b) of paragraph 1 of article 39 and article 47, both of Law no. 5/2004, of 10 February).

Pursuant to paragraph 1 of article 47 of the Electronic Communications Law, companies providing publicly available telephone networks and services are bound to render available to the public, especially to all consumers, transparent and up-to-date information on applicable prices, and on standard terms and conditions, in respect of access to and use of publicly available telephone services.

The list of information to be published and made available by entities providing publicly available telephone networks and services is comprised in points a) to g) of paragraph 2 of the mentioned article 47 of Law no. 5/2004, of 10 February, being incumbent upon ICP-ANACOM to define the respective form of publication and disclosure.

In this context, companies providing publicly available telephone networks and services are bound to render available and to publish relevant information that integrates and gives substance to each point of paragraph 2 of article 47 of the referred Law no. 5/2004, of 10 February.

As regards the provision of other publicly available electronic communications services, point b) of paragraph 1 of article 39 of the referred Law no. 5/2004 provides that users are entitled to be provided with written information on the conditions of access to and use of the service, in a timely manner and previously to the conclusion of contracts.

However, Law no. 5/2004 does not state which information should be published and disclosed by providers to the respective users as far as these services are concerned.

In any case, according to paragraph 1, point j), of article 27 of the referred Law no. 5/2004, companies providing electronic communications networks and services may be subject in their activity to consumer protection rules which are specific to the electronic communications sector, being incumbent upon ICP-ANACOM to define such rules, taking into consideration public access to the services, and according to the principles of non-discrimination, proportionality and transparency.

Therefore, in view of the need to promote an effective and complete implementation of the regulatory framework resulting from Law no. 5/2004, of 10 February, ensuring to all users of electronic communications services a fair and appropriate level of information, it is justified for ICP-ANACOM:

- To define the form to which the publication and disclosure of information referred to in article 47 and article 39, paragraph 1, point b) of Law no. 5/2004, of 10 February, must correspond;

- To specify the minimum information to be published and disclosed by entities providing services other than telephone services;
- To state the substance of information deemed useful to consumers, aiming to develop the several points of paragraph 2 of article 47 of Law no. 5/2004, of 10 February.

A. Publicly available telephone networks and services (mobile and fixed) – Information to be publicized and disclosed

Companies providing publicly available telephone networks and services are bound to publish and disclose the following information, listed exhaustively in paragraph 2 of article 47 of Law no. 5/2004, of 10 February:

- a) Identification of the provider;
- b) Scope of the publicly available telephone service, comprising the description of the services offered, the indication of what is included in the subscription charge, where it exists, and the periodic rental charge, namely operator services, directories, directory enquiry services, selective call barring, itemised billing and maintenance;
- c) Standard prices covering access, all types of usage charges, maintenance, including details of standard discounts applied and special or specific tariff schemes;
- d) Compensation or refund policies, including specific details on the respective schemes, where offered;
- e) Types of maintenance service offered;
- f) Standard contract conditions, including any minimum contractual period;
- g) Dispute settlement mechanisms, including those developed by the company providing the service.

The mandatory information on each of these points is defined below, as well as information which is deemed to be useful to consumers, thus being recommended that it be published and disclosed, where applicable.

a) Identification of the provider

Article 171 of the Code of Commercial Companies must be complied with, under to which commercial companies must clearly state, in addition to the company name, the legal form of the company, the legal address and Trade Register Office where they have been registered, the number of the company in that register, and where appropriate, a statement that the company is being wound up.

In order to bring about greater transparency, it is recommended that the telephone numbers (customer service), e-mail and website, where appropriate, be publicized and disclosed.

b) Services provided

In this regard, the following information must be publicized and disclosed:

- i) Description of services provided (possibility of making and receiving national and international calls and accessing emergency services; other attached services, namely, the facility connected to the calling line and called line identification, pursuant to article 9 of Law no. 41/2004, of 18 August, operator services, directories, directory enquiry services, selective call barring, roaming, among others; where the roaming service is not automatically activated, it is recommended that providers make available information on how this activation may be carried out, as well as on the location where additional information on this facility may be provided, including applicable prices);
- ii) Possible restrictions in the access to services, resulting namely from the prior need to fulfil technical prerequisites for the service provision, the failure to access the Internet in case certain telephone service offers are engaged, inability to make pre-selection calls for certain types of numbers;
- iii) Information on coverage of services, even if only by reference to a location whereat the user may obtain up-to-date information on service coverage and provision; and
- iv) Levels of quality provided – information on the levels of quality which the service provider undertakes to uphold with its customers, that is, the minimum levels of quality of service to be engaged with the customer, non-compliance with which determines the payment of compensation or refund; the Annex hereto states some parameters which companies may use. This information is without prejudice to regulations issued in the scope of article 40 of Law no. 5/2004, of 10 February.

c) Standard tariffs covering access, all types of usage charges, maintenance, including details of standard discounts applied and special and targeted tariff schemes

This information aims to enable consumers to determine how the service is charged and billed.

For this purpose, it is considered that the following pricing information must be published and disclosed:

- i) Type and levels of prices applicable to the service in question; geographic grades, intranet and internet prices and prices for different types of numbers;
- ii) Minimum service cost, where it does not correspond to the price set for the established charging unit;
- iii) Installation, reinstallation and disconnection cost (breaking down costs for restoring pre-installation conditions) for the services under consideration, where appropriate;
- iv) Minimum monthly payment, where appropriate;
- v) Maintenance fees, where appropriate; the price of communications to customer services for reporting faults must be also specified;

- vi) Equipment rental fees, where appropriate;
- vii) Conditions for granting discounts and credit, where appropriate;
- viii) Peak versus off-peak hours, where appropriate;
- ix) Prices for these periods;
- x) Publication in the website of the service operator of the link to ICP-ANACOM's tariff observatory, in the scope of services undertaken by this observatory; and
- xi) Costs attached to operator portability.

It is recommended that service providers make available simulators that enable the comparison of the different tariffs in the respective websites and sales points.

d) Compensation or refund policies, including specific details on the respective schemes, where offered

This item concerns customer compensation or refund in case of non-compliance with each level of quality set in the contract.

e) Types of maintenance service offered

In this matter, information on maintenance services provided by the operator as well as obligations undertaken must be published and disclosed.

It is also recommended that the following information be published and disclosed:

- i) Customer service information for reporting faults, hours of operation and respective costs;
- ii) Minimum level of quality provided to customers in terms of fault repair time. In this regard, it is recommended that providers measure parameter c) in the Annex hereto.

f) Standard contract conditions

Draft accession contracts to be subscribed / accepted by customers in order to engage the service provision must be publicized and disclosed.

g) Dispute settlement mechanisms including those developed by the company providing the service

With regard to this matter, information on judicial and extrajudicial dispute settlement mechanisms must be publicized and disclosed, including internal procedures implemented by the company, in order to make clear to the public, and specifically to customers, that they exist and how they may be accessed.

It is recommended that the following information be also published:

- i) Available channels for lodging complaints, including the identification of the body responsible within the company's structure for handling complaints;
- ii) Time limit for lodging complaints;
- iii) Deadline for replying to complaints; in this scope, it is suggested that providers measure parameter e) in the Annex hereto;
- iv) Deadline following which, in the absence of a decision on the complaint, the provider undertakes to contact the customer to inform him/her on the progress achieved towards the situation complained; and
- v) Subscriber option to submit disputes arising from the interpretation or application of the contract to extrajudicial dispute settlement mechanisms, as well as the respective contact particulars.

B) Other publicly available electronic communications services – Information to be publicized and disclosed

Companies providing publicly available electronic communications services are bound to publish and disclose the following information to users, previously to the conclusion of any contract:

a) Identification of the provider

Article 171 of the Code of Commercial Companies must be complied with, under which commercial companies must clearly state, in addition to the company name, the legal form of the company, the legal address and Trade Register Office where they have been registered, number of the company in that register, and where appropriate, a statement that the company is being wound up.

In order to bring about greater transparency, it is recommended that the telephone numbers (customer service), e-mail and website, where appropriate, be publicized and disclosed.

b) Services provided

In this regard, the following information must be publicized and disclosed:

- i) Description of services provided, as well as attached services and facilities;
- ii) Possible restrictions in the access to services, resulting namely from the prior need to fulfil technical prerequisites for the service provision and the failure to access the Internet in case certain telephone service offers are engaged;

iii) Information on coverage of services, even if only by reference to a location whereat the user may obtain update information on service coverage and provision; and

iv) Levels of quality provided – information on the levels of quality which the service provider undertakes to uphold with its customers, that is, minimum levels of quality of service to be engaged with the customer, non-compliance with which determines the payment of compensation or refund; the Annex hereto states some parameters which companies may use. This information is without prejudice to regulations issued in the scope of article 40 of Law no. 5/2004, of 10 February.

As far as the Internet access service is concerned, the disclosure of levels of quality on access and surfing maximum and average speed must attach a warning stating that the speed provided for any connection, at any time, may not be ensured, as it depends on the level of use of the network and server to which the customer is connected.

c) Standard tariffs covering access, all types of usage charges, maintenance, and including details of standard discounts applied and special and targeted tariff schemes

This information aims to enable consumers to determine how the service is charged and billed.

For this purpose, it is considered that the following pricing information must be published and disclosed:

- i) Type and levels of prices applicable to the service in question;
- ii) Minimum service cost, where it does not correspond to the price set for the established charging unit;
- iii) Installation, reinstallation and disconnection cost (breaking down costs for restoring pre-installation conditions) for the services under consideration, where appropriate;
- iv) Minimum monthly payment, where appropriate;
- v) Maintenance fees, where appropriate; the price of communications to customer services for reporting faults must be also specified;
- vi) Equipment rental fees, where appropriate;
- vii) Conditions for granting discounts and credit, where appropriate;
- viii) Peak versus off-peak hours, where appropriate;
- ix) Prices for these periods; and
- x) Where the criteria for charging Internet access services is based in the distinction between national and international traffic, the company providing the service must inform consumers of the technical means available to the user so he/she can be made previously aware online of the type of traffic (national or international), attached to the addresses he/she desires to access at each moment.

It is recommended that service providers make available simulators that enable the comparison of the different tariffs in the respective websites and sales points.

d) Compensation or refund policies, including specific details on the respective schemes, where offered

This item concerns customer compensation or refund in case of non-compliance with each level of quality set in the contract.

e) Types of maintenance service offered

In this matter, information on maintenance services provided by the operator as well as obligations undertaken must be published and disclosed.

It is also recommended that the following information be published and disclosed:

- i) Customer service information for reporting faults, hours of operation and respective costs;
- ii) Minimum level of quality provided to customers in terms of fault repair time. In this regard, it is recommended that providers measure parameter c) in the Annex hereto.

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With regard to this matter, information on judicial and extrajudicial dispute settlement mechanisms must be publicized and disclosed, including internal procedures implemented by the company, in order to make clear to the public, and specifically to customers, that they exist and how they may be accessed.

It is recommended that the following information be also published:

- i) Available channels for lodging complaints, including the identification of the body responsible within the company's structure for handling complaints;
- ii) Time limit for lodging complaints;
- iii) Maximum time limit within which the company must acknowledge receipt of the complaint;
- iv) Deadline for replying to complaints; in this scope, it is suggested that providers measure parameter e) in the Annex hereto;

v) Deadline following which, in the absence of a decision on the complaint, the provider undertakes to contact the customer to inform him/her on the progress achieved towards the situation complained; and

vi) Subscriber option to submit disputes arising from the interpretation or application of the contract to extrajudicial dispute settlement mechanisms, as well as the respective contact particulars.

C. Form of publication and disclosure of information

Information provided in A) and B) must be publicized and disclosed clearly in writing, at a visible location, at the business premises of providers, their agents and distribution partners, and at the respective websites, where appropriate.

Information made available at websites of companies must be published clearly, visibly, and be easily accessed, namely, through the same page where the service to be engaged is publicized or through a link set for this purpose, in a size and graphic presentation enabling the easy identification thereof.

This information must be provided to consumers free of charge and in writing at all sales points of the service.

Should the engagement of the service involve the purchase of a package (kit) at business surfaces, the outside of the package must clearly provide the following information:

- Identification of the service provider;
- General description of the service, stating its main features;
- Prices as regards the service base tariff; and
- Locations whereat the information on other conditions of provision and use of the service may be consulted, as well as the identification of the respective website.

All remaining information referred to herein must be provided in writing next to sales points of packages.

The amendment of conditions provided involves at all times the update of the information made available to the public and users pursuant to this document.