

## DETERMINATION

### INCLUSION OF ADVERTISING AND INFORMATION OF UTILITARIAN NATURE IN THE DIRECTORIES TO BE PROVIDED IN THE SCOPE OF THE UNIVERSAL COMMUNICATIONS SERVICE

#### I – FACTS

On 11.08.2004, ONITELECOM – Infocomunicações, S.A. (ONI) requested the intervention of ANACOM to the extent that:

1. The elements to be comprised in the initial pages of the “White Pages” were clearly defined;
2. An order was imposed upon PTC:
  - a) Restraining it from using the directories provided in the scope of the universal service as a support of advertising of third entities;
  - b) Constraining it to cease using directories provided in the scope of the universal service as a means to advertise its products and/or services and to refrain from using without any justification their logos or from mentioning information services which are not comprised within the universal service;
  - c) Urging it to notify operators so that the latter provide information on offered services to be included in the directories;
  - d) Compelling it to cease using the directories elaborated in compliance with the universal service obligations to promote the distribution of directories edited by other entities, namely by Páginas Amarelas, S.A.

ONI takes the view that the decision of ANACOM of 19.05.2004, which determined the interdiction of advertising in the directory enquiry service provided through number 118, should also be applied to the case of printed directories, to be provided in compliance with article 87 of Law no. 5/2004, pointing in its defence that the issued determination should be interpreted in the light of the whole body of article 89 of Law no. 5/2004, and

thus it is not reasonable to forbid the inclusion of advertising in the telephone directory enquiry service and to exclude from that prohibition the printed directory which includes the information on which it is based.

## **II – ASSESSMENT OF THE REQUEST:**

Notwithstanding the fact that there is no legal provision forbidding the inclusion of advertising in directories or in directory enquiry services provided within the universal service, ANACOM must take a stand as regards the extension of the prohibition of inclusion of advertising within the terms ordered by determination of 19.05.2004 to printed or electronic subscriber directories as well as the list of information to be included in the initial pages of telephone directories.

### **A. As regards the inclusion of advertising:**

In view of the absence of a legal provision preventing the inclusion of advertising in directories published in compliance with universal service obligations, the question arises whether the arguments raised in the scope the determination of ANACOM of 19.05.2004, interdicting the provision of advertising in the directory enquiry service provided through number 118, may also be relied on as regards printed or electronic telephone directories.

The differences between the two provisions should be pointed out:

In fact, while the subscriber directory provided for in articles 87 and 89 of Law no. 5/2004 is currently made available free of charges to the users thereof, the directory enquiry service made available through number 118 implies the payment of an amount on the part of users (0,385 no VAT included from any fixed network and 0,550 no VAT included from any mobile network).

Moreover, consulting and receiving information on subscribers of telephone services through the directory published in the scope of the universal service does not imply nor is it previously subject to any type of advertisement, whereas before 19.05.2004, the attainment of information through the directory enquiry service through number 118 was subject to the prior conveyance of advertisements.

The different nature of the supports of these two provisions does not justify, thus, a single regime.

Therefore, having regard to the fact that the white pages service is likely to be financed in the scope of the universal service, it may be concluded that the limited advertising of commercial services in white pages may produce beneficial affects, provided that the following are complied with: (i) non-distortion of the white pages service, (ii) cost-orientation principle, (iii) non-discrimination and (iv) effective reduction of any universal service net costs.

The inclusion of advertising in the directories of the universal service is thus a solution likely to enable, in an appropriate and efficient way, the financing of the directory service, preventing any excessive operation costs of the services, without prejudice to the affordability of prices, as provided for in paragraph 3 of article 86 of Law no. 5/2004.

In the light of the above, and as is the case for several countries of the European Union<sup>1</sup>, the conclusion must be that there is no justification for any intervention aimed at preventing the inclusion of advertising in printed directories to be provided within the universal service and, as such, PTC, the entity responsible for the provision of telephone directories in compliance with universal service obligations, may, if it so desires, include advertising in the printed and electronic directory it is bound to produce.

Nevertheless, the inclusion of advertising in the directory may not imply a distortion of the provision nor may it prevent directory users from obtaining swift and effective information on subscribers of telephone services searched for, nor may it enable PTC to get from advertising included in directories an undue competitive advantage, which may be regarded as a competition distortion factor.

The need to prevent distortions or obstacles in the sector of electronic communications thus requires that:

- The advertising to be included in the directory to be provided in compliance with the obligations of the universal service shall be restricted to a limited space, with an explicit mention that it is an advertisement, pursuant to legislation applicable to advertising activities ( see article 8 of the advertising Code);
- The different electronic communications service providers benefit, under the same conditions, from identical spaces to disclose and advertise the provision and use conditions of the service they provide, and for this purpose PTC shall publicly disclose the conditions on which depend the inclusion of advertising in directories, such conditions having to be complied with when including advertising in the directory of the universal service;
- Information in submitted to ANACOM on the conditions on which depends the inclusion of advertising in directories.

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<sup>1</sup> Germany, Switzerland, Hungary and Bulgaria do not impose any restrictions to the inclusion of advertising in telephone directories to be made available in compliance with obligations of the universal service. Estonia, France and Romania do not have a regulatory framework concerning the inclusion of advertisements in telephone directories to be made available in the scope of the universal service. Romania clarifies that the incumbent includes advertisements in its subscriber directory. Cyprus informs that it has not faced the issue so far. In Denmark, the responsible provider is not authorized to include any type of advertising in directories to be made available in the scope of the universal service and in Spain nor the provider of the universal service nor the remaining providers may include advertising on their products in directories made available in the scope of the universal service.

## **B. Elements to be comprised in the initial pages of directories:**

Whereas:

- The telephone directory provided in compliance with universal service obligations is a privileged means for the conveyance of information to end-users;
- It is incumbent upon ANACOM to protect the interests of consumers and users of the universal service, to promote their clarification and to ensure the disclosure of clear information concerning the public use of communications (see point h) of paragraph 1 of article 6 of Statutes in annex to Decree-Law no. 309/2001, of 7 December and point d) of paragraph 4 of article 5 of Law no. 5/2004);
- Market distortions produced while pursuing universal service targets should be reduced to a minimum.

ANACOM deems it necessary to restrict the list of information to be included in the first pages of the telephone directories provided in compliance with article 87 of Law no. 5/2004.

Thus, if on the one hand there is a need to ensure the disclosure of information of an obvious advantage for consumers and users of electronic communications services, ANACOM shall ensure that the universal service provider is prevented from using directories as a means to promote its products and services together with services of an obvious public advantage, as if the nature of both were similar.

In line with the above-mentioned conclusions, this restriction does not preclude information on each offer provided by PT Comunicações, S.A. and remaining services providers from being disclosed in the space reserved in directories for the inclusion of advertising, against the payment of a compensation which, as above provided for, shall be set out in a non-discriminatory manner.

## **III - DECISION:**

Therefore, the Board of Directors of ICP – ANACOM, in the pursue of assignments established pursuant to point d), f) and h) of paragraph 1 of article 6 of the Statutes in annex to Decree-Law no. 309/2001, of 7 December, and by point a) and c) of paragraph 1, point b) of paragraph 2, and points a) and d) of paragraph of 4 of article 5, paragraph 3 of article 86, paragraph 5 of article 89, paragraphs 1 and 2 of article 93 of Law no. 5/2004, of 10 February, and in compliance with the provision of point g) of article 9 of its Statutes, hereby approves the following draft decision:

1. The inclusion of advertising in printed or electronic directories provided in compliance with obligations of the universal communications service is permitted, provided that the entity responsible for the elaboration and publication thereof ensures the compliance with obligations listed below:
  - i) The inclusion of advertising in telephone directories may not lead to a distortion of the telephone directory nor may it prevent directory users from obtaining swift and effective information on subscribers of telephone services;
  - ii) The advertising shall be restricted to a limited area, clearly identified as being a space reserved for information of an advertising nature, by means of the inclusion of the word “ADVERTISING” at the top of the page wherein it is inserted;
  - iii) The entity responsible for the elaboration and publication of the directory provided for in article 89 of Law no. 5/2004 shall disclose and make available for interested parties the conditions on which depends the inclusion of advertising in directories, and being also an advertiser, it is likewise subject to such conditions;
  - iv) The entity responsible for the elaboration and publication of the directory provided for in article 89 of Law no. 5/2004 shall ensure that all electronic communications service providers benefit, under the same conditions, from identical spaces to disclose and advertise the provision and use conditions of the service they provide.
2. In the first pages of the directory provided for in article 89 of Law no. 5/2004 shall be included, in separate and autonomously as regards the space reserved for advertising, the following information of an utilitarian nature, which should also be clearly identified as such:
  - i) Contact number of urgency services and respective costs of such communications;
  - ii) Contact number of counselling and support services of an institutional nature and respective costs of such communications;
  - iii) Contact number of public utility services and respective cost of such communications;
  - iv) Identification and telephone numbers of customer support services and of directory enquiry services of each electronic communications service that so request, identifying the communications costs;
  - v) Location of main contact points of each of the above identified providers in the area comprised by the directory, as well as the respective websites;
  - vi) National and international country codes.

Moreover, the Board of Directors determines that the present draft decision be notified to all publicly available electronic communications service providers, so that the latter may assess the matter, within a 20-day time limit, pursuant to and for the purposes of articles 100 and 101 of the Code of Administrative Procedure, and also to the Consumer Institute and to the representative consumer organisations (DECO, FENACOOOP, UGC and ACOP), so that the latter may provide their position within the same established time limit.