

## DECISION

### **Procedures required for the termination, on the initiative of subscribers, of contracts governing the offer of public networks or of publicly available electronic communication services**

In the scope of its monitoring action to the provision of public networks or of publicly available electronic communication services, ICP - ANACOM has noted that, notwithstanding the signs of dynamism showed by this sector - especially as regards fixed communications, where there is a significant percentage share in terms of subscribers using alternative providers for direct access in Portugal<sup>1</sup>, a relevant share of ported geographic numbers<sup>2</sup> and the increased use of alternative operators -, end users do not draw maximum benefits from choices available in the several offers they are presented with.

In fact, ICP - ANACOM has received a significant volume of complaints due to requirements imposed by companies to accept the termination of contracts concluded with their customers and to resulting obstacles to the switch of provider. There are countless situations in which such companies make the termination of contracts dependant both on complex, disproportionate and expensive procedures and on the submission of documents all of which are out of all proportion relatively to requirements for contract conclusion. On the other hand, such demands, which vary according to the company, are not always clearly communicated to subscribers, who are thus forced to remain bound to a contract they do not wish to maintain as the request for termination did not fully observe the established procedures.

Consumers and end users of electronic communications networks and services in Portugal are thus often prevented from benefiting from more attractive offers, not due to any obstacles to concluding contracts, but because the termination procedure for contracts they have concluded include unjustified barriers which obstruct and delay the mobility process.

As acknowledged in recital No 47 of Directive 2009/136/EC of the European Parliament and of the Council, of 25 November 2009, in order to take full advantage of a competitive environment in the provision of public communication networks and publicly available electronic communications services, consumers should be able to make informed choices and to switch providers when it is in their interest. It is essential to ensure that they can do so without being hindered by legal, technical or practical obstacles, including unjustified contractual conditions, procedures and charges.

This issue is also stressed in the study carried out by the *Autoridade da Concorrência* (AdC) - the Competition Authority - on February 2010 on the Mobility of Consumers in the Electronic Communications Sector, which points out that competition in the electronic communications networks and services market would increase in case operator switching processes were simplified and standardised, thus eliminating obstacles identified in this domain. This study identifies the reduction of bureaucracy, of steps and documents necessary to conclude or

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<sup>1</sup> As the report "Situação das Comunicações 2010" highlights, by the beginning of the second half of 2010, Portugal had the second highest share of subscribers using alternative providers for direct access among the countries considered (vd. [http://www.anacom.pt/streaming/situacao\\_comunicacoes2010.pdf?contentId=1088905&field=ATTACHED\\_FILE](http://www.anacom.pt/streaming/situacao_comunicacoes2010.pdf?contentId=1088905&field=ATTACHED_FILE)).

<sup>2</sup> As referred in the report "Situação das Comunicações 2010", ported geographic numbers maintained in 2010 an upward trend, having increased by 14.3%. In absolute terms, the volume of ported numbers reached around 1.31 million numbers, which represents around 30% of the total number of accesses. (vd. [http://www.anacom.pt/streaming/situacao\\_comunicacoes2010.pdf?contentId=1088905&field=ATTACHED\\_FILE](http://www.anacom.pt/streaming/situacao_comunicacoes2010.pdf?contentId=1088905&field=ATTACHED_FILE)).

terminate a contract as desirable measures to promote the mobility of consumers in the scope of the conclusion of electronic communications service contracts.

The Memorandum of Understanding (MoU) on specific economic policy conditionality, concluded between the Portuguese Government, the European Central Bank (ECB), the International Monetary Fund (IMF) and the European Commission (EC), points in the same direction, believing it necessary to alleviate restrictions on mobility of consumers to increase competition in the fixed communications market (point 5.21 of the MoU), indicating as a reference in this scope the conclusions and suggestions proposed by the Competition Authority in its February 2010 study.

As referred to above, it is at the level of contract termination, and not contract conclusion, that there is greater resistance to end user mobility on the part of service providers. It is thus in this scope that ICP - ANACOM deems it important and appropriate to intervene with a view to reduce barriers to mobility of end users of electronic communications networks and services, thus consolidating the obligation provided for in paragraph 5 of article 48 of Law number 5/2004, of 10 February, as amended by Law number 51/2011, of 13 September (ECL), which lays down, according to amendments provided for by Directive 2009/136/EC to Directive 2002/22/EC of the European Parliament and of the Council, of 7 March, that undertakings providing public communications networks or publicly available electronic communication services must not establish disproportionate contractual conditions or contract termination procedures that are excessively burdensome and that discourage subscribers from switching providers.

Being the National Regulatory Authority, ICP - ANACOM is entitled and bound to use a set of appropriate means to monitor and enforce requirements laid down in the law and to guarantee an adequate market regulation. To ensure compliance with requirements set out in paragraph 5 of article 48 of ECL, the Regulatory Authority has been empowered to define and impose on companies consumer protection rules specific to the electronic communications sector (vd. paragraph 1 l) and paragraphs 2 and 3 of article 27 of ECL) as well as to determine that providers of electronic communications networks and services cease or adapt immediately the use of standard contracts where it verifies the failure to comply with legal rules it must enforce or with any determination issued under its competencies (vd. paragraph 10 of article 48 of ECL).

On the basis of the findings during the monitoring action to the sector, and considering that pursuant to article 5 of ECL, it is incumbent on ICP - ANACOM, on the one hand, to promote competition in the provision of electronic communications networks and services, and in this context, to ensure that end users derive maximum benefit in terms of choice and quality, and on the other hand, to promote the protection of interests of citizens and to ensure a high level of consumer protection in their relationship with undertakings, this Authority considers it justified to define what it deems to be the formal procedures for contract termination in the light of paragraph 5 of article 48 of ECL, which should apply to all subscribers of electronic communications services, under the principle laid down in paragraph 1 a) of article 39 of that Law.

In order to comply with the requirement laid down in paragraph 1 g) of article 48 of ECL, providers of public communications networks or of publicly available electronic communications services must ensure that contracts concluded with their clients establish the conditions for termination in a clear, comprehensive and easily accessible form. The importance of this matter for the promotion of competition and for the protection of interests of citizens justifies the intervention of the regulatory authority to ensure that such conditions

are not disproportionate and that the respective procedures are not excessively burdensome and do not discourage subscribers from switching providers.

Thus it is ensured that limits with which procedures for contract termination must comply with are clearly indicated. Failure to observe such limits justifies an intervention pursuant to paragraph 10 of article 48, which this determination aims to prevent.

In the pursue of these objectives, ICP - ANACOM approved in October 2011 a draft decision on procedures required for the termination, on the initiative of subscribers, of contracts governing the offer of public networks or of publicly available electronic communication services, which was submitted to the general consultation procedure under article 8 of ECL. The analysis of positions expressed by several bodies in the scope of that consultation procedure, as well as ICP - ANACOM's views thereon, are included in the corresponding final report, which is annexed hereto and which integrates and substantiates this decision.

Therefore, bearing in mind the conclusions of the prior hearing report and under article 9 g) of the Statutes of ICP - ANACOM, in annex to Decree-Law number 309/2001, of 7 December, and in the scope of powers provided for in paragraph 1 b) and h) of article 6 of the same Statutes and regulatory objectives provided for in paragraphs 1 a) and c), 2 a) and b) and 4 b) and d) of article 5 of ECL, the Management Board of ICP - ANACOM, aiming to define the limits of admissible procedures in the framework provided for in paragraph 5 of article 48 of ECL, hereby approves the following decision on procedures required for the termination of contracts governing the offer of public networks or the provision of publicly available electronic communication services, on the initiative of subscribers:

## **1. Scope and general principle**

**1.1. This decision defines the rules that govern the procedures for termination of standard contracts for provision of public communication networks or of publicly available electronic communication services, on the initiative of subscribers.**

**1.2. Companies providing public communication networks or publicly available electronic communication services ("companies") shall not make the termination of a contract subject to compliance with procedural requirements other than those provided for herein.**

**1.3. This decision applies to all standard contract termination processes and shall be without prejudice to specific procedures provided for in the Portability regulation (Regulation No 58/2005, of 18 August), which shall prevail in case of conflict herewith.**

### **2.1. Legitimacy and requirements**

**2.1.1. The notice of termination may be presented by the subscriber or by its duly empowered representative.**

**2.1.2 Without prejudice to paragraph 2.2., a notice of termination that indicates the items that are strictly necessary to identify the subscriber and the contractual relation to be terminated, and that expressly shows the subscriber's desire to terminate the contract in whole or in part, shall be deemed to be validly made.**

**2.1.3. Where the subscriber fails to indicate the service(s) covered by its notice of termination, it shall be deemed to be validly made as regards the whole contract.**

### **2.2. Formalities**

**2.2.1. Contract termination shall not depend on any formalities other than the submission of documents strictly necessary to confirm the identity of the subscriber or, in case he/she is represented, the identification and powers of the representative, where, in both situations:**

- a) It does not result from authentication or recognition, under the law; or**
- b) It cannot be acknowledged by the company by means of documents already in its possession.**

**2.2.2. Companies shall not demand any documents where the notice of termination is submitted through a helpdesk using a user validation system.**

**2.2.3. For the purposes of the preceding paragraph, a “user validation system” shall mean any procedure used by the company to confirm the subscriber’s identity, namely passwords or the indication of identification data that, with the latter’s express or implied agreement, are used to conclude or modify the contract.**

### **2.3. Communication methods**

**2.3.1. Companies shall accept notices of termination which fulfil requirements set out in the preceding paragraphs and which are communicated:**

- a) by post or electronic means, namely fax or email, to any of the contacts set out in the contract or in any other information medium addressed to the general public; or**
- b) through a face-to-face customer service, if any.**

**2.3.2. Where companies provide a customer call centre using a user validation system, companies shall accept notices of termination that are communicated through that channel and which fulfil requirements set out in paragraph 2.1.**

**2.3.3. Where companies provide a customer service website using a user validation system, companies shall make available, in the scope of that service and in a readily accessible location, a form for online submission of the notice of termination.**

**2.3.4. For the purposes of paragraph 2.3.1., companies shall establish a draft termination form, in paper and in an electronic medium, which shall be made available to subscribers in a readily accessible location at the company’s website, through a face-to-face customer service or any other appropriate means.**

**2.3.5. Forms provided for in paragraphs 2.3.3. and 2.3.4. shall include the following information:**

- a) Documents to be attached to the notice of termination, under paragraph 2.2.;**
- b) Rules that apply to the establishment of the date of termination;**
- c) Specified indication, even if broadly, of subscriber rights and obligations arising from contract termination, including the obligation to pay charges arising therefrom under the contract terms, namely those associated to non-compliance with minimum contractual periods and failure to return equipment; and**
- d) Contacts of customer services, if any.**

**2.3.6. The form provided for in paragraph 2.3.4. shall also indicate all means and contacts available for submission.**

#### **2.4. Reception of notice of termination**

**2.4.1. Where a notice of termination is received in accordance with paragraphs 2.3. and where it fulfils requirements set out in paragraphs 2.1. and 2.2., companies shall confirm the termination of service(s) or contract within five days from the date of reception thereof.**

**2.4.2. Where a termination statement is received in accordance with paragraphs 2.3. and fails to fulfil requirements set out in paragraphs 2.1. and 2.2., companies shall request the subscriber to submit the missing information or documentation, within three days from the date of reception thereof.**

**2.4.3. Communications provided for in the preceding paragraphs shall be made in writing and sent to any of the contacts indicated by the subscriber for reception of communications with the company, as established by contract, or, in the alternative, delivered by hand to the subscriber.**

**2.4.4. The communication provided for in paragraph 2.4.1. must also include the indication of the actual date of termination of service(s) or contract and, where applicable, the indication of specific subscriber rights and obligations arising from contract termination, including the obligation to pay charges resulting therefrom under the contract terms, namely those associated to non-compliance with minimum contractual periods and failure to return equipment.**

**2.4.5. The communication provided for in paragraph 2.4.2. shall establish a thirty-day deadline for submission of the missing information or documentation, and shall inform the subscriber that upon expiry thereof, the notice of termination shall be deemed to be lapsed.**

**2.4.6. The notice of termination shall be deemed to have been made on the date of its reception, where it fulfils requirements set out in paragraphs 2.1. and 2.2., or in case of missing information or documentation, on the date of reception thereof within the time limit provided for in the preceding paragraph.**

**2.4.7. In case of non-compliance with the time-limit referred to in paragraph 2.4.2. and for the purposes of the determination of the date on which the determination is deemed to have been made, the delay attributable to the company shall be deducted on the date on which the missing information or documentation is received.**

**2.4.8. Provisions in point 2.4. hereof shall be without prejudice to legal obligations which must be fully complied with in the scope of call centre operation.**

#### **3. Rescission**

**3.1. Paragraphs 2.1., 2.2., 2.3.1. and 2.3.2. shall apply, duly adapted, to the rescission of contracts, without prejudice to the indication of grounds invoked by the subscriber, under the law and the contract.**

**3.2. Having been received the notice of rescission under paragraphs 2.3.1. and 2.3.2., companies shall confirm the reception thereof or request the submission of missing information or documentation.**

**3.3. The communication provided for in the preceding paragraph shall be made in writing and sent to any of the contacts indicated by the subscriber for reception of communications with the company, as established by contract, or, in the alternative, delivered by hand to the subscriber.**

#### **4. Provision of information to the subscriber**

**Where the subscriber expresses its intention to terminate or rescind a contract, the company shall provide him/her with all relevant information for the purpose, including:**

- a) Mandatory contents of the statement, according to paragraphs 2.1.2. and 3.;**
- b) Available media, means and contacts for submitting the statement, stressing the provision of forms referred to in paragraphs 2.3.3. and 2.3.4. and how they may be accessed;**
- c) Documentation to be submitted pursuant to paragraphs 2.2. and 3., where appropriate;**
- d) Rules that apply to the establishment of the date of termination; and**
- e) Indication of specific subscriber rights and obligations arising from contract termination, including the obligation to pay charges resulting therefrom under the contract terms, namely those associated to non-compliance with minimum contractual periods and failure to return equipment.**

#### **5. Entry into force**

**5.1. Companies providing public communication networks or publicly available electronic communication services must take the appropriate steps to comply with this decision within 120 days from notification of the final decision.**

**5.2. Within the same time-limit, companies shall:**

- a) Bring information on conditions for provision of public communication networks or publicly available electronic communication services and standard contracts to compliance with this decision; and**
- b) Communicate to subscribers the changes introduced to the procedure for contract termination that arise from this decision, informing where or how details on such changes may be consulted.**