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Determination of 8.11.2005

Determination

Inclusion of publicity 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 publicity 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 publicity 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 publicity in the telephone directory enquiry service and to exclude from that prohibition the printed directory which includes the information on which it is based.

Considering the need to take a stand as regards the extension of the interdiction to include publicity on printed or electronic subscriber directories within the terms ordered by determination of 19.05.2004, as well as the list of information to be

included in the first pages of telephone directories, ANACOM approved on 04.05.2005 a draft decision that accepts the inclusion of publicity in the referred directories and establishes information of an utilitarian nature which should be included in the first pages thereof.

Pursuant to and for the purposes of articles 100 and 101 of the Code of Administrative Procedure (CAP), the draft decision was notified to all publicly available electronic communications service providers, and was likewise submitted to the Instituto do Consumidor (Consumer Institute), DECO, FENACCOOP, UGC and ACOP, given the impact of the proposed measure, so that the latter would provide their position on the matter, if they so wished.

Having analysed the views expressed by all entities that assessed the subject, ANACOM considers there are grounds to adopt some of the submitted proposals, and to carry out accordingly the necessary adjustments in order to clarify the scope and purpose of the decision, as evidenced in the report which is an integral part of the present determination. Nevertheless, the purport of the notified draft decision shall be maintained, as no reasons of fact or law that justified a due alteration have been presented.

II. ASSESSMENT:

A. As regards the inclusion of publicity:

The arguments raised in the scope the determination of ANACOM of 19.05.2004, interdicting the provision of publicity in the directory enquiry service provided through number 118, do not apply as far as printed or electronic telephone directories are concerned.

As the draft decision points out, two different provisions are at stake.

While the subscriber directory provided for in articles 87 and 89 of Law no. 5/2004 is currently made available free of charge to users thereof, the directory enquiry service made available through number 118 implies the payment of an amount on the part of users.

On the other hand, consulting and receiving information on subscribers of telephone services through the directory published in the scope of the US 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 US, 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 US net costs.

The inclusion of publicity in US directories 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, the conclusion must be that there is no justification for any intervention aimed at preventing the inclusion of publicity in printed directories to be provided within the US 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 publicity in the printed and electronic directory it is bound to produce.

Nevertheless, the inclusion of publicity 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 publicity included in directories an undue competitive advantage, which may be regarded as a competition distortion factor.

Thus, if on the one hand the lack of available information prevents ANACOM from defining publicity quotas to be admitted in directories, on the other hand ANACOM deems it necessary to intervene in order to reduce competition distortions which may result from this service provision. Therefore, ANACOM takes the view that the publicity to be included in directories should be restricted as follows:

- The publicity to be included in the directory provided in compliance with the US obligations should 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 Publicity Code);
- Electronic communications service providers should 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 should publicly disclose the conditions on which depend the inclusion of publicity in directories (including pricing, deadline for the submission of requests for publicity inclusion, as well as other time limits and procedures for the provision of all elements necessary to the inclusion of publicity in directories), conditions which PTC itself must comply with in case it includes publicity in the US directory;
- The universal service provider must notify ANACOM on the conditions on which depends the inclusion of publicity in directories.

On account of the above-mentioned reasons, ANACOM should restrain from intervening and placing obstacles as regards the preparation and joint distribution of the US directory and the "Páginas Amarelas" (Yellow Pages) publicity directory.

In fact, there are at present no grounds that justify an order for separated lists - determining that white pages and yellow pages are published autonomously. It must rather be ensured that the limits of both directories are perfectly identified, that the user may know where begins and ends the directory provided in compliance with the universal service obligations, and which are the limits of the advertising directory, so that, if the user so wishes, he/she is subject only to information of an advertising nature. For users, the joint publication of two clearly separated directories, unmistakably delimited and identified by the different paper colour used, may also be beneficial as information on two directories is aggregated in the same support. As a result, the consultation process may be simplified, avoiding that the user is compulsorily subject to information of an advertising nature.

Lastly, on a strictly economic point of view, the joint publication of the two directories may also be beneficial.

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 US 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, on the other hand ANACOM must ensure that the US 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 fact, the provision of utility information in directories to be distributed in the scope of the US contributes towards the transparency and unambiguity of the disclosure of information of general interest, and, as such, it is unquestionably useful. This justifies that its inclusion in those directories is carried out at no cost to entities that so request, without prejudice, naturally, to the possibility of PTC duly evidencing the cost of that inclusion, reflecting it in the net costs of the compliance with the US obligation.

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

III. DECISION:

Having heard the opinions of interested parties on the draft decision, 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 to 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 and paragraph 5 of article 89, all of Law no. 5/2004, of 10 February, and in compliance with the provision of point g) of article 9 of its Statutes, hereby determines the following:

1. Not to oppose to the inclusion of publicity in printed or electronic directories, on the part of PT Comunicações (PTC), as the entity responsible for directories supplied in the scope of the universal service, provided that the following conditions are complied with:

i. The inclusion of publicity 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 publicity 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 "PUBLICITY" at the top of the page wherein it is inserted;

iii. PT Comunicações, S.A. shall publicly disclose and make available, no less than three months ahead of the closing date of the selling campaign, information on the conditions on which depend the inclusion of publicity in directories, including pricing, as well as time limits and procedures to develop for this purpose, conditions which must also be submitted to ANACOM, on the date made available thereto;

iv. The conditions referred to in the preceding paragraph shall also apply to PT Comunicações, S.A. as well as to other companies that integrated the PT Group;

v. PT Comunicações, S.A. 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 provided.

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 publicity, the following information of an utilitarian nature, which should also be clearly identified as such:

i. Contact number of urgency services, comprising namely the national emergency phone number - 112, the SOS intoxication number, the numbers of hospital emergencies, Centro de Busca e Salvamento Marítimo (Maritime Search and Rescue Centre), fire services, emergencies of the Cruz Vermelha Portuguesa (Portuguese Red Cross), Police, Protection of Forests, National Social Emergency Line, regardless of the electronic communications service provider which supports them, as well as the respective communications costs;

ii. Contact number of public utility counselling and support services, comprising namely the contact numbers to the Associação de Apoio à Vítima (Association for Victim Support), Comissão para a Igualdade e para o Direito das Mulheres (Commission for Women Equality and Rights), Citizen/Elderly/Disabled/Life/Child/Aids/Cancer Lines, regardless of the electronic communications service provider which supports them, as well as the respective communications costs;

iii. Identification and telephone numbers of customer support services and of directory enquiry services of each provider of publicly available electronic communications services that so request, identifying the communications costs of such services, as well as websites of each of the referred providers;

iv. National and international country codes.

3. To ensure the inclusion of information provided for in point 2.iii in directories made available as from 2006, providers of publicly available electronic

communications services shall report to PTC the data they intend to include in the first pages of directories up to 25 November 2005.

4. Draft pages comprising the information provided for in point 2. shall be reported to ANACOM at the least 20 working days ahead of the date of the edition closing they concern, which shall mean the date as from which no additional changes may be included in the contents of the directory.

5. The information provided for in points 2. i) to iii) shall be included in directories in a non-discriminatory manner and at no cost to advertising entities.

6. Where the directory to be provided in compliance with obligations of the Communications Universal Service is edited jointly with directories of an advertising nature - yellow pages - PT Comunicações, S.A. shall ensure that both directories are clearly identified and delimited, both by the different paper colour that supports it, and by separators that unmistakably indicate the beginning and end of each edition.
