

The information is also available in Anacom's Internet website in:

<http://www.anacom.pt/template31.jsp?categoryId=194022>

Determination of 25.5.2006

DETERMINATION

Prohibition against charging an additional €2/month on account of portability in the Clix/ADSL service provision contracts

On 6/4/2006, the Board of Directors of ANACOM issued the following draft decision, having Novis been notified thereof, under articles 100 and 101 of the Code of Administrative Procedure, on 18/4/2006:

“I. Background

By means of information provided, namely at the “Clix” website, as well as through requests for clarification and complaints from users submitted to this Authority, ANACOM was made aware of the fact that users who engaged the Clix ADSL service, and wished to maintain their telephone number, were subject to an additional €2/month.

ANACOM requested clarification on the above-mentioned matter from Novis, aiming to assess the possibility of a discriminatory practise as far as subscribers with ported numbers were concerned.

On 17/11/2005, Novis replied to ANACOM, presenting the following arguments to justify the €2 charge:

- costs involved in the portability service;
- the fact that portability is a *differentiating factor in an offer*;
- the fact that there is a *legal and regulatory basis for charging such an amount*.

II. Assessment

ANACOM considers that the arguments put forward by Novis cannot be accepted, for the reasons stated below.

The recipient provider (RP) cannot be denied the right to charge subscribers a price for porting the respective numbers.

In fact, the law provides only that *the pricing for interconnection related to the provision of number portability shall comply with the principle of cost orientation and direct charges to subscribers, if any, shall not act as a disincentive for the use of those facilities* (paragraph 2 of article 54 of Law no. 5/2004, of 10/2).

According to the Portability Regulation, only the donor provider (DP) is prevented from requesting from its subscriber any payment for porting the number (paragraph 3 of article 6). This restriction does not fall on the RP, having regard to the fact, namely, that the RP may pass on the administrative costs per ported number (cfr. paragraph 2 of article 19). It would be a commercial option of the RP to bear such costs, as well as any other costs on account of portability, or to pass them on to subscribers.

ANACOM deems it reasonable that Novis or any other RP wish to be compensated for the “wholesale” costs incurred in porting a number, by charging an additional amount at retail level.

Likewise, nothing prevents this amount from being divided in several monthly instalments, however the respective amount must be fixed in advance and the customer must be made aware of the number of monthly instalments to be paid, before the contract is concluded.

Novis alleges also that portability is a *differentiating factor in an offer*, which is reflected by the charge of the additional amount.

Thus, as the company refers, *a customer that opts for portability enjoys a number of advantages related to the reduction of administrative costs (no changes at the level of paper, cards, etc.) and operational costs (no need to ensure that its usual contact network updates the contacts associated to the company).*

It can hardly be argued that this type of *advantages* represents a differentiating factor in an electronic communications offer. In fact, these are advantages associated to portability, which justify the existence of this facility and the interest it may have on the eyes of subscribers.

Moreover, it is important to take into account that, under the law (cfr. Article 54 of Law no. 5/2004, of 10/2, portability is a right enjoyed by all subscribers of publicly available telephone services, and thus any advantages resulting therefrom for subscribers, merely correspond to the exercise of such right.

It follows from the above-stated that the €2 additional charge, as justified by Novis, does not even correspond to the payment of a price for the porting of a number, but to the charging of an additional amount for the “ported” nature, which represents a discriminatory practise between subscribers with and without ported numbers, which is prohibited under the Portability Regulation (paragraph 6 of article 3).

This standard aims precisely to ensure that, safeguarding specificities inherent to portability, companies do not handle differently subscribers holding their numbers and subscribers holding ported numbers.

Consequently, Novis’s interpretation is misleading, as this company alleges not to infringe the principle of non-discrimination, stating it handles similar situations in an identical fashion, that is, it treats equally, and between them, subscribers with Novis numbers, and it treats equally, and between them, all subscribers with ported numbers.

ANACOM thus takes the view that Novis must cease the billing and charging of the additional €2/month for making available the provision of portability in the Clix/ADSL service provision contracts.

III. Decision

In the light of the above, in the scope of the assignments provided in points b), h) and n) of article 6 of the Statutes, approved by Decree-Law no. 309/2001, of 7 December, the Board of Directors of ICP-ANACOM, under points c) and g) of article 9 of the referred Statutes, as well as point d) of paragraph 4 of article 5 of Law no. 5/2004, of 10 February, and to implement paragraph 6 of article 3 of the Regulation no 58/2005 – Portability Regulation, hereby determines:

1. **To consider** that the “Clix” tariff, under the terms of which the “maintenance of the PT telephone number” (portability) is charged €2 (2 euros) per month, is incompatible with the Portability Regulation;
2. **To determine** upon Novis that it immediately stops advertising the additional charge of €2 (2 euro) per month for the provision of portability in the Clix/ADSL service provision contracts, in its website or in any other location whereat the respective provision conditions have been made available;
3. **To determine** upon Novis that:
 - a) Within **15 working days** at the most, **it ceases** the billing and charging of the €2 (2 euro) per month for the provision of portability in the Clix/ADSL service provision contracts;
 - b) Within **30 working days**, at the most, **it informs** ANACOM of the new conditions which apply to subscribers with ported numbers and who are currently subject to the two euros monthly charge.
4. **To submit** to the prior hearing of interested parties points 2 and 3 of this draft decision, under articles 100 and 101 of the Code of Administrative Procedure, setting a time limit of at the most 10 working days, so that Novis assesses the matter in writing.”

Novis submitted its opinion on 8/5/2006, after the time limit established for the prior hearing had expired.

As no new facts have emerged to change the understanding of ANACOM in this matter, **the determination shall be maintained precisely in the terms adopted and for the reasons referred therein.**

Therefore,

In the light of the above, in the scope of the assignments provided in points b), h) and n) of article 6 of the Statutes, approved by Decree-Law no. 309/2001, of 7 December, the Board of Directors of ICP-ANACOM, under points c) and g) of article 9 of the referred Statutes, as well as point d) of paragraph 4 of article 5 of Law no. 5/2004, of 10 February, and to implement paragraph 6 of article 3 of the Regulation no 58/2005 – Portability Regulation, hereby determines:

1. **To consider** that the “Clix” tariff, under the terms of which the “maintenance of the PT telephone number” (portability) is charged €2 (2 euros) per month, is incompatible with the Portability Regulation;
2. **To determine** upon Novis that it immediately stops advertising the additional charge of €2 (2 euro) per month for the provision of portability in the Clix/ADSL service provision contracts, in its website or in any other location whereat the respective provision conditions have been made available;
3. **To determine** upon Novis that:
 - a) Within **15 working days** at the most, **it ceases** the billing and charging of the €2 (2 euro) per month for the provision of portability in the Clix/ADSL service provision contracts;
 - b) Within **30 working days**, at the most, **it informs** ANACOM of the new conditions which apply to subscribers with ported numbers and who are currently subject to the two euros monthly charge.