Public consultation on the draft decision amending determination of 21 April 2006 on the object and form of public disclosure of conditions of provision and use of electronic communication services

Comment analysis report

Introduction

By determination of 13 January 2011, ANACOM approved the draft decision amending its determination of 21 April 2006 on the object and form of public disclosure of the conditions of provision and use of electronic communication services.

This draft decision was submitted to the general consultation procedure pursuant to article 8 of Law number 5/2004, of 10 February (ECL).

Up to the expiry of the deadline for reception of comments (16.02.2011) in the scope of the general consultation procedure, positions were received from the following bodies:

- **Associação dos Consumidores de Portugal - ACOP** - the Portuguese Consumer Association;

- **Associação Portuguesa para a Defesa do Consumidor - DECO** - the Portuguese Consumer Protection Association;

- **Associação dos Operadores de Telecomunicações - APRITEL** - Association of Telecommunications Operators;

- **Correios de Portugal, S.A. - CTT**;

- **Federação Nacional das Cooperativas de Consumidores - FENACOOP** - National Consumer's Cooperative Federation;

- **Portugal Telecom, SGPS, S.A. (PT)** that addressed the matter on behalf of PT Comunicações, S.A., PT Prime – Soluções Empresariais de Telecomunicações e Sistemas de Informação, S.A. and TMN – Telecomunicações Móveis Nacionais, S.A., in which it has shareholdings;

- **União Geral de Consumidores - UGC** - General Consumer Union;

- **Vodafone Portugal – Comunicações Pessoais, S.A. - Vodafone;**

- **ZON TV Cabo Portugal, S.A. (Zon)**, on behalf of companies in which it has shareholdings**.**

This report includes a summary of positions expressed in the matter of the draft decision submitted to consultation, as well as this Authority's views thereon.

Given the synthetic nature of this document, its analysis is without prejudice to the consultation of the referred responses, which will be made available at ICP - ANACOM's website together with this report, as far as confidentiality has not been requested.

This report is deemed to be an integral part of the final decision amending determination of 21 April 2006 on the object and form of public disclosure of conditions of provision and use of electronic communication services.

General observations

DECO, **FENACOOP** and **UGC** considered the proposed amendments to be positive, as they reinforce consumer rights to information. **FENACOOP** adds that information duties provided for in this determination should be common to all electronic communications services and that, bearing in mind that this issue deals with offers that are very diversified and in constant development, and that there is a material inequality between consumers and service providers, it is important that information provided is clear, comprehensive and appropriate.

While acknowledging the importance of some of the measures proposed to clarify consumers, **APRITEL** and **service providers/operators** who addressed the matter consider that the draft decision entails an excessive regulatory intervention on the part of ANACOM.

In **Vodafone**'s view, ANACOM's action must be guided by reasonable and proportional principles, and rules restricting the freedom of action of companies should not be laid down nor should regulatory intervention be promoted where the normal operation of market forces is able to pursue the regulatory objectives identified in article 5 of ECL. **Zon** also takes the view that the constant changes to the draft submitted to consultation severely obstruct business freedom, without there being any reasons for such an intervention.

Vodafone further believes that the set of information to be provided by operators should be limited to provisions of the Law and to what it strictly requires to clarify consumers of a given operator. **PT** also shares this opinion and adds that the information requirements provided for in this determination must be consistent with the information covered in contract conditions approved by ANACOM.

APRITEL, **PT**, **Vodafone** and **Zon** stress also that an excess of information conveyed by companies has the potential to cause consumer disinterest and jeopardises the making of a free and informed choice. **Zon** adds that the excess of information may contribute to deepen any doubts there may be on conditions of service provision. **Vodafone** declares that it is fundamental to focus on the internet, through the operators' institutional website, so that the public is provided with more in-depth information on conditions of access and use of services.

Vodafone and **APRITEL** refer also that almost all information provided for in the draft decision submitted to consultation is already disclosed in the draft contract publicly available pursuant to article 47 of the ECL, thus it is already available for public consultation prior to the conclusion of the contract.

PT declares further that it is not evident from the draft decision submitted to consultation if measures were taken to find among consumers whether they deem the volume of information already available in a pre-contract stage to be useful and which information is considered essential for a free and informed choice when contracting electronic communications services, that is, which information corresponds to the consumer's actual needs.

ANACOM's position

Contrary to what APRITEL and service providers/operators who addressed the matter have said, there is no excessive regulatory intervention on the part of ANACOM in the notified draft decision.

ANACOM is exercising a power, in the pursue of regulatory objectives provided for in points a) and c) of paragraph 1, point a) of paragraph 2 and points b) and d) of paragraph 4 of article 5 of the ECL, and fulfilling a requirement provided for in the same law - point b) of paragraph 1 of article 39 and paragraph 2 of article 47 of the ECL - , in order to guarantee a right granted to users expressly laid down in the law, that is, that users are provided in a timely manner and

prior to the conclusion of any contract with written information on the conditions of access to and use of the service.

It should be highlighted that information covered in the draft decision submitted to consultation does not differ from that which, under Directive 2002/22/EC (as amended by Directive 2009/136/EC) must be provided by undertakings on standard terms and conditions with regard to access to and use of services. The solution established in the Portuguese law does not differ from the one which must be in force in other countries of the European Union. Taking this aspect into account, it is easy to understand that, contrary to what was pointed out, there is no excessive regulatory intervention in the draft decision submitted to consultation.

As regards the alleged disincentive effect of the also alleged excess of information on conditions of offer, it must be stressed that it is the complexity of information and the way how it is presented that may lead to the disincentive of its addressees or raise doubts thereon. The requirement for comprehensive information is laid down in paragraph 1 of article 21 of Directive 2002/22/EC (as amended by Directive 2009/136/EC), which provides that information must be published in a clear, comprehensive and easily accessible manner. This obligation results from European Union law, and providers must make sure that, as required by the Directive, the information is not only comprehensive, but also easy to understand.

The provision of information in a simple, clear and transparent manner will allow it to be readily understandable, enabling the making of free and informed choices on services.

With regard to the use of institutional websites of operators as the privileged channel for providing information on offer conditions, this means for conveying information was already provided for in the initial version of this determination, being in line with the current wording of paragraph 2 of article 47 of ECL. However, information must also be provided by other means for those who are unable to access websites of providers.

It must also be referred that replacing the obligation of provision of information with the disclosure of the contract model or models used by companies is neither appropriate nor sufficient to guarantee that end-users are informed about all conditions of access to and use of services in the terms required by ECL and the Directive it transposes (vd. articles 39 and 47 of ECL and article 21 and annex II of Directive 2002/22/EC). Moreover, the wording of contracts used by service providers is frequently extensive and complex, and does not enable an easy and immediate understanding, in a pre-contract stage, of conditions of provision and use of services.

With reference to PTC's statement relatively to whether measures were taken to find among consumers if they deemed the volume of information already available to be useful, it is highlighted that the purpose of the public consultation carried out was exactly to be aware of positions of interested parties, and as such, also of consumers. Comments and proposals presented by all bodies that addressed the matter, especially consumer associations, will be analysed in this report and, where appropriate, they will be reflected in the final decision. Notwithstanding, as referred above, is must be stressed that consumer associations deemed this measure to strengthen consumer rights to information.

Preliminary matters

Given the reference included in the introduction to the draft decision submitted to consultation, according to which the information obligation concerns "standard offers", **PT** and **APRITEL** declare this concept to be ambiguous.

Specifically on this concept, **PT** questions whether its inclusion refers to the definition of "standard offers" included in the Quality of Service Regulation (QSR)[1] and if it includes advertising campaigns and sales promotions of the mentioned offers.

PT adds that even if the "standard offer" concept used here and the one used in the QSR are identical, its meaning must be clarified given that the QSR is closely related to the provision of fixed telephone services.

DECO also addresses this change, and while not opposing the limitation of the scope of the determination, it believes that due account must be taken of the fact that the decision may be applied to situations of unfair commercial practices intended to prevent the application of rules established in the text of the decision.

ANACOM's position

Where the document submitted to consultation refers that the determination applies only to "standard offers", this Authority sought to limit information requirements only to standard provisions defined *a priori* which, as a rule, are covered in a standard contract that follows a uniform criterion for all subscribing customers. This view is consistent, in fact, with paragraph 1 of article 47 of ECL that lays down the obligation to publish the "standard terms and conditions".

In order to avoid any doubts, text will be added clarifying that *«"standard offers" shall mean those offers which include common terms and conditions of service provision, corresponding to a pattern determined a priori in a contract or standard contract, as well as those in which the service user may only enter into a contract in predefined terms*», the last part of the text aiming to address any unfair commercial practises intended to prevent the application of rules now established.

Information on promotional conditions, insofar as they comply with a standard, must also be provided in an appropriate manner. The identification of other standard conditions, even if by reference, must be ensured, being clarified how these conditions are different from standard offers.

PT refers further that it is not clear from the draft decision if the final decision applies to the provision of public pay-phones, which in **PT**'s opinion is impossible as some of the information requirements concerning telephone services do not apply to that offer.

ANACOM's position

Not all information covered in the draft decision submitted to consultation will apply to the provision of public pay-phones. In this case, as in similar situations for which it is not possible to ensure the provision of all information as determined, the provider must ensure the disclosure of all possible information and point out as "n.a." (not applicable) any items for which information is not to be provided.

[1] The QSR defines standard offers as «...those in which the condition of service provision, namely those related to service start-up time, the type of maintenance service offered and the respective applicable tariff are not contracted on a customer-by-customer basis; on the contrary, they are defined *a priori* in a standard contract and comply with a uniform criterion for all customers that conclude that contract.»

Non-disclosure of information for a given item of the determination submitted to consultation depends not only of the technical characteristics of the service in question, but also of the characteristics of the offer itself (namely as regards the legitimate commercial options of the respective provider). As such, it is possible that offers of the same service (e.g. FTS or IAS) are provided by the same or by different providers, and that different information items apply thereto.

APRITEL and **PT** want ANACOM to define clearly the beneficiaries of the draft decision. According to the draft decision submitted to consultation, the main beneficiaries of measures to be adopted are consumers, the draft decision referring that ANACOM is acting in the scope of powers relating to consumer protection, bearing in mind regulatory objectives related to citizen/consumer protection.

PT believes that according to the Constitution of the Portuguese Republic (CPR) only natural persons/individuals may be considered citizens, not legal persons. Moreover, declares **PT**, the ECL defines consumer as a "natural person".

Admitting that the adopted decision may apply to subscribers/users, **APRITEL** and **PT** consider that it should not apply to relations with clients that are legal persons. In addition, on account of their negotiating power, business clients have available a variety of offers which hardly may integrate the concept of "standard offers".

ANACOM's position

The wording of the draft decision submitted to consultation makes it clear that it applies to "standard offers" made available to all end-users. Such users are defined in the ECL as legal or natural persons using or requesting a publicly available electronic communications service, and which do not provide public communications networks or public communications services - vd. points mm) and nn) of article 3 of ECL). This scope is also defined in point b) of paragraph 1 of article 39 and in article 47 of ECL, which acknowledge the right of users to be provided with information on the conditions of the offer prior to the conclusion of any contract. In this regard, it is important to refer that although this point of paragraph 1 of article 39 only refers to "users", it should be understood that only "end-users" are under consideration here, as they are the main addressees of publicly available standard offers, as expressed in the obligation established in paragraph 1 of article 47, which clearly lays down the obligation to provide information on access to and use of all electronic communications services to end-users and consumers.

Moreover, notwithstanding the fact that this determination pursues the regulatory objective provided for in point c) of paragraph 1 and points b) and d) of paragraph 4 of article 5 of ECL - protection of consumer interests - the disclosure of offer conditions determined by this decision will make available to service users the information required so that they are able to make the most appropriate choice to meet their needs, and thus, it will also contribute to pursue the regulatory objective provided for in point a) of paragraph 1 of article 5 of ECL - to promote competition in the provision of electronic communications networks and services.

Those information and offers must be publicly available and accessible to all users. Lastly, contrary to what **PT** and **APRITEL** refer, not all legal persons possess a negotiating power that allows them to benefit from specific conditions, which, on account of being specific, are not submitted to standard offers nor are covered by obligations provided for in the draft decision submitted to consultation.

Still in this context, it must be stressed that there are standard offers of electronic communications services aimed for SMEs, as well as standard electronic communications services that are both intended for natural and legal persons.

In the light of the above, views presented fail to present arguments or reasons that justify changing this provision of the draft decision.

SPECIFIC COMMENTS

Relatively to point a) of section A

> *«Article 171 of the Code of Commercial Companies shall be complied with, pursuant to which all 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 are registered, the number of the company in that register, and where appropriate, the fact that the company is being wound up.*
>
> *Contact details shall also be published and disclosed, namely telephone numbers and email of the customer service (including costs related to calls made from the various fixed and mobile networks) and website address, if any.»*

DECO agrees with the proposed amendment, as it deems the detailed and transparent disclosure of the provider to be important, allowing a comprehensive identification both at a geographical and digital level.

PT considers that the requirement to indicate costs related to calls made to telephone numbers of customer services already integrates the minimum content of subscription contracts, adding that this information is relevant in the scope of a contract implementation but not for making a free and informed choice by the consumer.

With these arguments, **PT** believes that the obligation to provide this information prior to concluding any contracts is excessive, and that it should be left to the commercial discretion of each company to do so.

Zon suggests the amendment of the final part of this point, so that information on costs of calls to contact numbers is only required in case such costs exist, as there is customer support services that are free-of-charge to the user.

ANACOM's position

Arguments put forward by **PT** are well-founded in part.

The indication of costs for making calls is justified specially in those cases where there is no link between the company and the user, a situation which will likely correspond to a significant number of cases to which this determination will apply. Nor can this Authority understand how the indication of the price of calls to numbers where this information may be obtained can be deemed to be an excessive requirement, as in fact it is legitimate, corresponding to the tariff to be paid for obtaining information.

However, as **PT** refers, the indication of the contact numbers of customer services is relevant in the scope of the contract implementation. In a pre-contract stage, the information that must be ensured is that of contact numbers of services that may clarify doubts on the disclosed conditions of provision. It is important that together with the disclosure of conditions of provision and use of services, the indication of contact numbers of commercial customer services are also provided. In this context, there are grounds to amend this part of the draft decision submitted to consultation.

In ANACOM's opinion, the proposal made by **Zon** should not be accepted. The requirement enables appropriate information to be provided to users, who will be aware of the precise costs of communications to the indicated contact details, as well as, where appropriate, of the fact that such communications do not entail any costs.

In the light of the above, this point of the determination is amended as follows:

«*Contact details shall also be published and disclosed, namely telephone numbers and email of the commercial customer service (including costs related to calls made from the various fixed and mobile networks) and website address, if any*.»

Amendment of item i), iii), iv) and v) of point b) of section A

«i) Description of services offered (ability to make and receive national and international calls and to access emergency services; other related services, namely, facilities concerning the identification of caller and called lines, pursuant to article 9 of Law number 41/2004, of 18 August, operator services, directories, directory enquiry services, selective call barring, roaming, among others; where the roaming service is not automatically available, providers must provide information on how this feature may be activated, as well as where additional information thereon may be obtained, namely including applicable tariffs);»

«iii) In the case of nomadic and home-zone services, users shall be provided information on how these services may be used, as well as on any associated restrictions, namely with regard to making calls to emergency services and to caller location;

iv) Information on coverage of services, even if only by reference to where the user may obtain up-to-date information on service coverage and provision, making it clear, in this scope, that connectivity tests may be required to verify whether the service is available at the customer's area, where appropriate; in the case of nomadic and home-zone services, information shall be provided on restrictions related to location and area of use of the service; and

v) 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 and those set out by law or regulation, which must be provided to each customer (namely, the deadline for implementing portability provided for in the respective Regulation), non-compliance with which determines the payment of compensation or refund; the annex hereto suggests some parameters which companies may use.»

PT refers that the amendment to item i) merely refers to basic voice and roaming services, and that it is not clear whether telephones services provided through public pay-phones are covered. In the view of companies of Grupo **PT**, it should be made clear that this requirement does not apply to the provision of public pay-phones.

ANACOM's position

As regards **PT**'s comments on the applicability of this part of the determination to the provision of public pay-phones, see the abovementioned response to an identical observation.

Section A comprises, as indicated in the determination submitted to consultation, publicly available telephone networks and services, which includes telephone services made available through public pay-phones.

As such, by reading the determination in a sequential, logical and reasonable manner, it is deemed that in the case of public pay-phone services, the information to be published for the purpose of item i) of point b) of section A should clarify the scope of the publicly available telephone service, including the description of services provided, covering, where appropriate, the following aspects, among others: ability to make and receive national and international calls and to access emergency services; other related services, namely, facilities concerning the identification of caller and called lines, pursuant to article 9 of Law number 41/2004, of 18 August, operator services, directories, directory enquiry services.

In the light of the above, this point of the determination will be completed to read as follows:

«... *Description of services offered, covering, where appropriate, the following aspects, among others: ability to make and receive national and international calls and to access emergency services; other related services, namely, facilities concerning the identification of caller and called lines, pursuant to article 9 of Law number 41/2004, of 18 August, operator services, directories, directory enquiry services*...».

PT and **APRITEL** want ANACOM to clarify what «*information on how these services may be used*» (nomadic and home-zone services), as referred in item iii) above, should be deemed to mean.

Zon proposes that item iii) of point b) of section A is amended to read «In the case of nomadic and home-zone services, users shall be provided information on how these services may be used, as well as on any associated restrictions, if they exist, namely with regard to making calls to emergency services and to caller location» (emphasis added), as in its view, operators providing homezoning-based FTS, on equal conditions, should not be discriminated.

ANACOM's position

Nomadic and home-zone services, on account of their characteristics, will be subject to specific conditions of use that justify the disclosure requirements on the terms provided for in the draft decision submitted to consultation - v.g. home-zone services are necessarily associated to a physical address and communications made from nomadic services will make it impossible to establish where authors of communications are located.

Information on the specific conditions to which the use of this type of services is subject must be provided.

As regards specifically the alteration suggested by **Zon**, it is clarified that there is no discrimination relatively to operators that provide a homezoning-based fixed telephone service. It is considered also that this alteration is redundant, as the wording of item iii) of point b) of section A already refers to "any associated restrictions».

PT and **APRITEL** want ANACOM to clarify what "*connectivity tests*" (point iv) should be deemed to mean, adding that they consider it impracticable for operators to make a case-by-case connectivity analysis in the client's area.

ANACOM's position

The determination does not require connectivity tests to be carried out for all connections nor a case-by-case connectivity analysis in the client's area. This requirement concerns the need to warn the service user, in justified cases - «where appropriate» - that connectivity tests may be required so that it may be verified if the service is available in the client's area. In case there are no doubts as far as connectivity is concerned, it will not be necessary to ensure a case-by-case connectivity analysis in the client's area.

As regards information provided for in item v), **APRITEL** and **PT** stress that in several services, levels of quality of service are likely to vary depending on various factors - geographic location of access to the network over which the service is supported, type of equipment used, exceptional ad uncontrollable overloading situations.

In the case of roaming services, in which the quality is established on a "best effort" basis, **TMN** cannot commit itself to specific values, so it takes the view that the obligation to disclose levels as regards these services should be removed.

Specifically as regards quality levels in the scope of portability, **PT** refers that the companies of the group already disclose this information in the respective websites, and that ANACOM should harmonise the contents of this obligation, namely as regards the possible levels of quality of service of porting mobile telephone numbers.

Vodafone points out that the information on this item is not required by article 47 of ECL, thus this is a field in which ANACOM's action exceeds the bounds of reason and proportionality. As such, this information, even that whose disclosure is merely suggested, should be removed from the final determination.

Vodafone adds that it will only make sense to publish levels of quality for which the operator is solely responsible, and insofar as such levels are measured equally by all operators, thus ensuring that information available to consumers is directly comparable.

CTT is also of the opinion that only information on levels of quality that are negotiable should be required. The obligation to publish levels of quality that result from the law or regulation is excessive and compromises effective consumer enlightenment. As far as this information is concerned, only the reference to where the consumer may obtain information should be required.

ANACOM's position

As **APRITEL** and **PT** stress, levels of quality of service may vary, in several services, depending on various factors that are outside the provider's control; however, this fact cannot and should not be an obstacle to the disclosure of information on quality of service required by point a) of paragraph 2 of article 39, by article 40 and by point b ii) of paragraph 2 of article 47 of ECL.

In fact, where levels of quality of service vary according to external factors outside the provider's control, the latter must provide express information on the existence of these factors, referring that, in these cases and for these reasons, minimum levels cannot be guaranteed.

In any case and regardless of the fact that minimum levels are likely not be guaranteed in certain situations, as described above, it is agreed that in a pre-contract stage, companies should disclose information on an average quality "*measured on the basis of equipment that correspond to those that are generally used under normal conditions, being expressly referred the terms under which this measurement is carried out*". Factors that are able to determine these variations should be identified, even if non-exhaustively.

It is acknowledged that providers of mobile telephone services are not able to ensure beforehand the quality of service provided while roaming, given that this provision depends on other operators, subject to other legal and regulatory obligations, and consequently, as **PT**/**TMN** mention, quality is established on a "best effort" basis. Consequently, if companies disclose this information, and it is deemed that there are advantages in the provision of this information, it should be referred that the disclosure of the quality of service is not an obligation, as it is not up to the national operator to guarantee it.

Vodafone's comments that ANACOM's requirements on this issue exceed the bounds of reason, proportionality, and the extent permitted by article 47, cannot be accepted.

Broadly speaking, the requirement in this issue was already provided for in the decision currently in force on the object and form of public disclosure of conditions of provision and use of electronic communication services. Obligations that in this field ANACOM intends to adopt are absolutely consistent with rules of ECL - articles 39, paragraph 2 a), 40 and 47 - enabling interested parties to obtain information on the average or usual quality of each provider, as well as other relevant information on minimum levels of quality of service which must be provided to customers, according to point b) of article 48 of ECL on the minimum content to be included in contracts. In conformity with the foregoing, this item will be clarified.

Amendments provided for in the draft decision submitted to consultation provide that where, by law or regulation, minimum levels of quality of service are laid down to be provided to each customer, such levels must be disclosed to end-users. As such, ANACOM fails to understand how its determination exceeds the extent permitted by article 47, or the bounds of reason and proportionality.

In fact, according to paragraph 4 of article 40, where appropriate in order to prevent the degradation of services and the hindering or slowing down of traffic over networks, ANACOM is entitled to set minimum quality of service requirements on undertakings providing electronic communications networks and services. Consequently, it follows from the above and from this provision, which transposes a requirement of Directive 2002/22/EC, as amended by Directive 2009/136/EC, that ANACOM is not exceeding with this measure of the determination submitted to consultation the extent permitted by law.

ANACOM cannot also accept **Vodafone's** opinion according to which only the obligation to publish levels of quality for which the operator is solely responsible should be established. If this view were accepted, ultimately this would lead to an extraordinary reduction of information on quality of service. There are few services in which the quality of provision is not conditioned by factors or bodies other that the operator or service provider, thus services for which the operator is not solely responsible. Even in cases where the way how the quality of service is measured is defined in a regulation, companies that must carry out this measurement are also subject to external factors that exceed the sole responsibility of the operator or provider. Generally, it is only safeguarded that any factors for which users themselves are responsible must be removed from levels of quality of service achieved.

Without prejudice to the above, ANACOM acknowledges that it would be beneficial to adopt more detailed rules (via regulation or self-regulation) that ensure that the quality of service is measured equally by all operators.

CTT's comment that only information on negotiable levels of quality should be required is not compatible with requirements set out in articles 40 and 47 of ECL. These provisions compel companies to publish and disclose comprehensive and up-to-date information on the quality of service provided.

The obligation established in ECL (article 40) is that undertakings providing public communications networks or publicly available electronic communications services must provide information on the quality of all services provided. Pursuant to article 47, paragraph 2 b) ii), the information on publicly available electronic communications services being provided must refer to (all) levels of quality of service provided and not only those that are binding or that may be negotiated, and also in this case, if the negotiation leads to standard offers, the information on the quality of service must also be ensured.

This is the only way of ensuring the achievement of the objective aimed for by this determination, that all users are provided with information so that their choices are better supported. The fact that there could be minimum levels of quality of service that are common

to all companies, such as, for example, the obligation of portability of a number within a 1-day deadline, does not mean that all users are aware of them, thus their disclosure is also justified.

In the light of the above, and in order to clarify requirements provided for in this scope, this obligation is recast to read as follows:

«*Levels of quality of service provided - information on the levels of quality of service which the customer may expect to be provided by the service provider, on average, and on the minimum levels of quality of service, set out by law or regulation, which must be provided to each customer (for example, for telephone services, the deadline for implementing portability provided for in the respective Regulation), non-compliance with which determines the payment of compensation or refund. The annex hereto suggests some parameters which companies may use.*

The provider must also indicate how information on minimum levels of quality of the service to be provided may be obtained».

Point c) of Section A

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

For this purpose, the following tariff information must be published and disclosed:

i) Type and levels of tariffs applicable to the service provision concerned, including roaming communications, geographic steps, intranet and internet tariffs and tariffs for different types of numbers, namely non-geographic numbers;

ii) Minimum service cost, where it does not correspond to the price set for the established charging unit;

iii) Tariff charged for installing, reinstalling and uninstalling services concerned (breaking down tariffs for restoring former conditions), where appropriate;

iv) Minimum consumption, where appropriate;

v) Maintenance fees, where appropriate;

vi) Equipment renting prices, where appropriate;

vii) Discount and credit conditions;

viii) Peak versus off-peak hours, where appropriate;

ix) Prices per period;

x) Information on whether tariffs are pre-paid or post-paid;

xi) Indication of the type of calls included in commercial unlimited traffic offers (namely, calls to geographic or non-geographic numbers), where appropriate;

xii) Inclusion of a link in the website of the service provider to ICP-ANACOM's Tariff Observatory (applicable to services covered by this observatory);

xiii) Any costs associated to operator portability;

vix) Tariffs of communications to enquiry services on tariffs of calls to ported numbers (where the obligation to implement this service applies);

xv) Disclosure of technical consumption-control means available to users, regardless of the criteria used to bill the service, if any, as well as of information on how to enable and disable this feature; and

xvi) Information on "Fair Use Policy"/ "Acceptable Use Policy", where appropriate, in particular on their content and means to access this information.

It is recommended that service providers make available simulators, at the respective websites and points of sale, allowing the different tariff plans they provide to be compared.»

PT has nothing against the amendment proposed for item i).

As regards point iii), **PT** points out that terms such as "uninstalling prices" and "restoring former conditions" are quite vague, that countless situations may be covered by these concepts, and that it is unfeasible to disclose this information in a systematic manner that is easily understood by consumers.

The company adds that these conditions depend on the contract conditions that apply specifically to the situation, and that this matter is safeguarded by the referred conditions.

It stresses also that with the requirement provided for in this item, ANACOM exceeds its scope of action, and as such that requirement should be removed, because the determination that operators must publish prices for restoring the service seems to imply that operators are bound to restore the conditions prior to the set up of the respective services. **PT** is of the opinion that operators are not under any obligation to restore the conditions prior to the set up of services. This obligation exists only in case of an obligation to repair damages in accordance with general terms of the law. Consequently, **PT** considers that the item under consideration should only be integrated in the final decision if it is recast so as to not include the obligation to publish prices for restoring the conditions prior to the set up of services.

DECO considers in this scope that information on the collection, per municipality, of the Municipal Fee for Rights of Way (MFRW) should also be made available.

ANACOM's position

First of all, it must be referred that item iii) did not undergo any amendment relatively to provisions in the determination on conditions of provision and use currently in force.

The purpose of this requirement is to ensure that users are informed of any burdens which they incur in when contracting services or when terminating such contracts. Where the uninstallation and restoring of conditions prior to the set up are subject to a price, that price must be disclosed. There may be countless situations that may be covered by these concepts, but if a price is due to the electronic communications provider for implementing these services, the value of those provisions must be appropriately disclosed and published. This requirement is in accordance with article 21 of Directive 2002/22/EC (as amended by Directive 2009/136/EC), already transposed to the national legal order with the amendment of ECL.

This Authority rejects the argument put forward by **PT**, according to which these conditions depend on the contract conditions that apply specifically to the situation, this matter being safeguarded by the referred conditions. This information requirement is intended to promote an informed decision to enter into a contract, and as such, it is entirely justified to establish this obligation in a pre-contract stage, as it is on the basis of this information that the user's will to enter into contract will be formed.

In the light of the above, and as according to point c) of paragraph 2 of article 47 of ECL, transposing article 21 of Directive 2002/22/EC, companies must publish information on applicable prices and tariffs indicating the services provided and the content of each tariff

element, as well as any charges due on termination of a contract, it is not considered that ANACOM exceeds its scope of action in the draft decision submitted to consultation.

As regards **DECO**'s proposal to add the obligation to provide information on the collection of MFRW per municipality, this fee varies according to the municipality, and in some municipalities the fee has not even been provided for. Requiring this information to be provided would increase the volume of information on the provision and use of services, without leading to a significant advantage. Consequently, it is not justified to impose the obligation to provide this information. However, so that end-users and any future subscribers are provided with comprehensive information, to this point c) shall be added the obligation to inform that «*the offer of publicly available electronic communications networks and services at a fixed location may give rise to the payment of a MFRW. Interested parties are requested to check, at their municipality of residence, if this fee applies and how much it amounts to*.»

Relatively to the obligation to disclose information on minimum consumption, referred to in item iv) of point c) of section A, **ACOP** and **DECO** stated that article 8 of the Essential Public Services Law - Law number 23/96 of 26 July, as amended by Law number 12/2008, of 26 February, prohibits the collection of minimum consumption. As such, they argue that this item of the draft decision submitted to consultation is contrary to that provision of the Law, which applies to electronic communications services.

ANACOM's position

The Essential Public Services Law prohibits the imposition of minimum consumption, provision which must be interpreted as a prohibition to collect compulsory minimum consumption. This does not prevent, however, the existence of flat rates of a voluntary subscription or other alternative tariff schemes. Consequently, contrary to the observations of **ACOP** and **DECO**, the provision of information as comprehensive as possible on the conditions of access and use of electronic communications services justifies the maintenance of the obligation to ensure the provision of information on the existence of minimum consumption - which obviously may not be compulsory/imposed/ - if any.

Although acknowledging that article 47 of ECL provides for the obligation to make publicly available information on standard discounts, **Vodafone** considers that it will be very difficult for operators to make its discount regime known, as it is based on a case-by-case assessment, and depends on several factors.

The company refers further that discounts usually applied, except for occasionally disclosed campaigns, are generally aimed for the business segment and result from various factors which determine that clients are presented with specific proposals.

Vodafone believes that, to fulfil point c) of paragraph 2 of article 47 of ECL, it should only be required that the information to be disclosed includes the warning that clients must consult the operator to obtain information on discount conditions.

ANACOM's position

As **Vodafone** acknowledges, according to point c) of paragraph 2 of article 47 of ECL, providers of publicly available telephone networks or services must provide the public (end-users in general, whether companies or not) with information on standard tariffs, as well as details of standard discounts applied and special and targeted tariff schemes.

As results from the current wording of point c) of paragraph 2 of article 47 of ECL (and as provided for in Directive 2002/22/EC, as amended by Directive 2009/136/EC) this requirement was extended to electronic communications services in general. **Vodafone**, as other companies providing public communications networks or publicly available electronic communications

services, cannot fail to fulfil that requirement provided for in the law, and accordingly, ensure the disclosure of discounts usually granted or conditions on which depend the granting of standard discounts.

The solution desired by **Vodafone** - of nothing more than the indication of how information may be obtained - is absolutely contrary to the requirement laid down in point c) of paragraph 2 of article 47 of ECL, and would fully deprive that obligation from its substance, preventing its intended purpose from being achieved.

PT is of the opinion that in item xii) ANACOM exceeds its scope of action, as the disclosure or making available of comparable information on tariffs existing on the market integrates the sphere of commercial autonomy of operators. Operators should not be forced to disclose on their websites tariff information on their business competitors, and this obligation is in fact unreasonable, as the search for the most appropriate product and service is incumbent on each interested party. The consultation of the tariff observatory should be promoted by ANACOM and not by companies. Likewise, **APRITEL** hardly understands how operators could be legitimately forced to provide at their websites tariffs of their business competitors.

As far as this requirement is concerned, **Vodafone** starts by declaring that operators have created and provided their commercial staff and clients with interactive guides and support structures that help select the best tariff according to the needs and type of use, and that in 2006 alterations were introduced in tariff simulators to enable the comparison between tariffs of all mobile operators.

Vodafone considers that the rights which are intended to be protected with this part of the determination have already been duly ensured, and that there are no grounds to include the link provided for in this part of the determination, as the website of each operator aims to disclose its own services, and not those of its competitors. Consequently, and as this measure is not required by article 47 of ECL, it should be removed from the final determination of ANACOM.

Zon also proposes the removal of the obligation provided for in this item xii), referring that **[SCI] .... [ECI].**

ANACOM's position

Contrary to the arguments put forward by **PT**, the requirement that services providers must insert on their websites a link to ANACOM's tariff observatory does not imply that an operator must provide on its website information on prices practised by its competitors. ANACOM requires only the inclusion on a link to a tool for comparing conditions of offer available to all interested parties, so that they are able to compare the various offers available on the market for the services intended to be used, ensuring that offers are comparable under the terms provided for in paragraph 1 of article 47 of ECL.

The provision of comparable information is ensured by ANACOM and not by companies that insert the link on their websites. In fact, the various companies are not required to provide information of prices of their competitors, this information, provided according to consumption profiles, is provided by ANACOM to the benefit of users and of various service providers, as this tool for comparison allows the disclosure of the most attractive offers according to the identified consumption profiles.

This requirement is perfectly covered by the regulatory objectives which ANACOM must pursue to ensure that end-users obtain the maximum benefit in terms of choice, price and quality, and to promote the provision of clear information, requiring in particular that tariffs

and conditions for using electronic communications services are transparent (points a) of paragraph 2 and d) of paragraph 4 of article 5 of ECL). With this solution, ANACOM, pursuant to paragraph 5 o article 47 of ECL, meets the requirements established in paragraph 2 of article 21 of Directive 2002/22/EC.

Thus, as referred by PTC, the tariff observatory is provided by ANACOM, which also discloses it, being incumbent on electronic communications companies that provide services covered by the referred observatory to ensure its disclosure to the potential interested parties.

In the light of the above, the arguments presented by **Vodafone**, according to which the inclusion of the link is unjustified, cannot be accepted.

The arguments used by **Vodafone**, specifically as regards the fact that the institutional website of each company is aimed at the disclosure of its products and services, do not call into question the requirement provided for in the item of the determination. The disclosure of products and services of all companies is ensured by the "tariff observatory" that is accessible on a different website, other than the website of the company which under this determination is bound to insert the link of access.

Still on this item of the draft decision submitted to consultation, it must be also referred that the arguments used by **Zon** are outdated, in addition to not being appropriate or sufficient to support the removal of the requirement on the inclusion in the service provider's website of a link to ANACOM's Tariff Observatory. As such, the proposed removal is rejected.

PT questions the utility of the obligation of disclosing the technical consumption-control means [xv], as this information should integrate the scope of discretionary action of each company, and also as tools for consumption control may not be useful in the scope of all voice service offers. In **PT**'s view, the provision of technical consumption-control means should not result from an obligation, but merely from a recommendation.

Vodafone points to the relevance and sensibility of the subject, which in its opinion justifies that information on the existence of these means is provided in a clear way and with emphasis, so that it does not go unnoticed among service users.

CTT believes that this information is not relevant for the decision to enter into a contract, being relevant only a pre-contract stage, as it constitutes only a technical description of a functionality of the service. **CTT** takes the view that it is sufficient to inform the consumer that this functionality is available at the moment of the service provision.

ANACOM's position

Contrary to what was argued by **PT** and by **CTT**, this information may have a decisive influence on the decision to contract, contributing to the making of an informed decision relatively to the contracting of services, and to decrease the chances of disputes which are associated to poor information on the conditions of provision thereof.

ANACOM has received several complaints related to the fact that consumers are sometimes unaware that they have reached their consumption limits, and, having exceeded those limits, they face the suspension of the service or the billing of additional consumption. Therefore, the disclosure of the technical consumption-control means is an important measure to improve the information available to consumers, contributing to decrease the chances of disputes in the sector. This resort may also be very relevant to decrease situations of non-compliance and the amount of judicial and out-of-court disputes.

On the other hand, the disclosure of these technical means is particularly useful as it has a direct impact on the final price of services, bearing in mind, for example, tariffs limited to specific consumption or clauses of responsible use.

The arguments of **CTT** are not accepted as well, as the purpose of item xv) is not a technical description of service functionalities, but the disclosure of the technical means made available for consumption control, if any.

The relevance of this resource and of its disclosure among users justifies the inclusion of the obligation to promote its disclosure in a pre-contract stage.

Vodafone declares that the information on fair use policy should be transmitted to the customer in an objective and transparent manner and it must be appropriately highlighted and detailed in the various information media made available to the public.

As regards the recommendation that service providers make available simulators at the respective websites and points of sale, allowing the different tariff plans they provide to be compared, **PT** refers that it is likely to be unfeasible and, as such, it should be removed.

Zon considers that this recommendation should be recast, and for this purpose it puts forward the following wording: «*It is recommended that service providers make available simulators, at the respective websites ~~and points of sale~~, allowing the different tariff plans they provide to be compared*», as the company feels that the requirement to provide tariff simulators at points of sale is a redundant obligation, as such points are intended to provide commercial advice.

ANACOM's position

Contrary to **PT**'s arguments, there are already some simulators that allow the comparison of the various tariff plans, made available at the websites of some providers. Consequently, this recommendation is not unfeasible, as supported by **PT**, as this is already happening right now.

Still on this subject, it is not considered that this recommendation is redundant, as pointed out by **Zon**. This recommendation made for points of sale of services, not only allows the provision of a more comprehensive customer service, but will also contribute to the decrease of waiting lines/times, as the need to obtain information on tariffs may be fulfilled, at least in part, through the use of simulators.

Point d) of section A

> *«This item concerns compensation or refund due to the subscriber in case of non-compliance with the offered minimum levels of quality, including those which are set out in the contract, or established by law or regulation, namely compensation due to subscribers as provided for in the Portability Regulation in force.»*

PT restates its comments in the scope of item v) of point b) of section A, declaring that it is not possible to ensure minimum levels of quality for the roaming service.

CTT restate that compensation or refund established by law or regulation should not be described in detail in the conditions of service provision, as they do not depend on the offer of the operator, but of an imposition beyond the will of the latter. It is of the opinion, consequently, that a reference to where the consumer may obtain detailed information on the matter under consideration should suffice.

ANACOM's position

The argument invoked by **CTT** is rejected. What is at stake here is providing future users with access to information on conditions of access to and use of the service, as they are naturally unaware of all legal, regulatory and contractual provisions to which the service provision is subject.

On the other hand, as it is on service providers that falls the obligation to pay any due compensation or refunds, it is only right that they disclose obligations to which they are subject and on which they possess privileged information.

As to **PT**'s comments, mentioned above, this Authority refers to its response to this company's observations in the scope of item v) of point b) of section A - it is relevant to convey information on the quality of service measured for the average of cases, stressing that in the case of roaming those values may vary, and that the quality of service in this case is established on a "best effort" basis.

Point f) of section A

«The general and standard contract conditions which must be subscribed / accepted by the customer to contract the service provision must be made public and disclosed.

Information to be made public and disclosed, in the scope of standard contract conditions, must be supplemented, where appropriate, by a warning that the service provision depends on the acceptance of loyalty periods, which shall be given the same highlight as the service tariff, in terms of prominence and font size.

With regard to loyalty periods, clear information must also be made available on:

- *The duration of the loyalty period and conditions that apply in case of termination of the contract before that period is over; and*
- *Where the loyalty period is due to the sale of equipment under special conditions, the provider shall provide information on the characteristics of the equipment, namely whether it is locked, the respective price and unlocking conditions, as well as the price for a locked and unlocked equipment.*

The formalities and documents required to terminate the contract must be made publicly available.»

ANACOM's position

Without amending the sense of the draft decision submitted to consultation and taking into account the need to ensure the correspondence and coherence between this decision and ECL, it is justified to adjust the wording of the reference to "*loyalty periods*" mentioned in this item, which must be replaced, in line with point f) of paragraph 2 of article 47 of ECL, by "*minimum contractual periods*".

Still on this item, and taking into account the substance of obligations laid down in point f) of paragraph 2 of article 47, the requirement provided for in the final part of point f) of paragraph 2 of the mentioned article 47 must be added, disclosing in this scope that, under the Law, it must be ensured that information is published «...*on conditions for termination of the contract, and any formalities and documents to be submitted with the portability application to terminate the contract must be indicated, as well as any charges resulting from such termination*.»

Relatively to amendments to point a) of Section B (Other publicly available electronic communications services - Information to disclosed)

> *«Article 171 of the Code of Commercial Companies shall be complied with, pursuant to which all 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 are registered, the number of the company in that register, and where appropriate, the fact that the company is being wound up.*
>
> *Contact details shall also be published and disclosed, namely telephone numbers and email of the customer service (including costs related to calls made from the various fixed and mobile networks) and website address, if any.»*

PT restates for this item of the draft decision submitted to consultation the observations already pointed out for item a) of Section A on the obligation to disclose costs related to calls made to the customer service.

ANACOM's position

Arguments set out relatively to item a) of Section A apply to what **PT** now alleges, and, in accordance with those arguments, this obligation will be recast to provide for the provision of information on «*contact details of the commercial customer service*».

Amendments set out for point b) of section B

> *«In this regard, the following information must be publicized and disclosed:*
>
> *i) Description of services offered, as well as of additional services, related facilities and features, including mobile internet access on national territory or while roaming. Where the roaming service is not automatically activated, providers must provide information on how this feature may be activated, as well as where additional information thereon may be obtained, namely including applicable tariffs;*
>
> *ii) Any restrictions on access to services, resulting, namely, from the need to verify beforehand the technical conditions required to provide the service;*
>
> *iii) Any restrictions in the access to global applications (e.g. VoIP), IP protocols and ports (e.g. SIP, POP 3, FTP);*
>
> *iv) In the case of nomadic and home-zone services, users shall be provided information on how these services may be used, as well as on any associated restrictions;*
>
> *v) Information on coverage of services, even if only by reference to where the user may obtain up-to-date information on service coverage and provision, making it clear, in this scope, that connectivity tests may be required to verify whether the service is available at the customer's area, where appropriate; in the case of nomadic and home-zone services, information shall be provided on restrictions related to location and area of use of the service; and*
>
> *vi) Levels of quality of service 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 and those set out by law or regulation, which must be provided to each customer, non-compliance with which*

determines the payment of compensation or refund; the annex hereto suggests some parameters which companies may use.

vii) As regards the Internet access service, the disclosure of the maximum access and browsing speeds must be supplemented by a warning that the provided speed may not be ensured for each and every connection, at any given moment, as this depends on the level of use of the network and server which the customer connects to.

In the scope of Internet access services, and in order to ensure that users are provided with the clearest information on access speeds, it is also recommended:

- *That interested parties are provided with clear and accurate information on the maximum access speed provided for the various offers, and with information on the respective estimated average access speed, that is, the speed which on average is estimated by the provider to be made available under normal usage conditions, which may frequently differ from the disclosed maximum speed, distinguishing between upload and download speeds;*
- *That interested parties are provided with clear and accurate information on migration between offers, specifically to meet a customer request to change its maximum speed; and*
- *That providers make available and duly highlight at their websites a feature that allows interested parties to measure their access upstream/downstream speed for a given period, whether instant or average.»*

PT deems that item ii) of this point is not clear, and is likely to be interpreted in different ways. The need to verify beforehand the technical conditions required to provide the service is complex. In its view, general information could be provided on the technical feasibility of the service provision, without prejudice to carrying out a posterior a case-by-case analysis of the technical conditions of access to the service. The company adds that this information is currently covered in subscription contracts, which are the right place to provide such information.

On this aspect, it adds that **[SCI]** ... **[ECI]**.

APRITEL also objects to the requirement of verifying beforehand the technical conditions required to provide the service, deeming it to be unfeasible, as that verification of a given infrastructure may only be carried out by means of a case-by-case assessment of the situation, and there are no tools that allow the provision of an accurate information in other situations, although the client may be given prior information relatively to these conditions.

ANACOM's position

As regards the observations made by **PT** and **APRITEL**, it must be pointed out, in the first place, that this requirement (to verify beforehand the technical conditions required to provide the service) is already included in the determination currently in force.

As with most obligations set out in this scope, this concerns the objective of ensuring that consumers are provided with comprehensive information before contracting services. This is intended to prevent situations in which, *a posteriori*, it is found that service providers are unable to comply with their contractual obligations.

It is not required to identify all restrictions that will take place, but only those that may occur.

The argument that this information is covered in subscription contracts is unacceptable, as these prior verifications constrain the service provision, and therefore, it is absolutely justified and reasonable that this information is provided before the contract is concluded.

In fact, on this requirement it must be referred that ANACOM is frequently aware of situations where service subscribers verify, during performance the contract, that there are no technical conditions for the provision of the service or offer contracted with a given provider, which is deemed to affect users seriously.

Consequently, it is considered that information on the prior verification of the technical conditions required to provide the service is indispensable so that the user is able to make its decision to contract, thus the information must be made available prior to the conclusion of the contract.

As regards the obligation to disclose any restrictions on access to global applications, **PT** believes that it is frequently associated to the way how the consumer uses the service after it is subscribed. It refers further that this information already integrates the fair use policy or applicable contract conditions, thus it is opinion it is unnecessary to duplicate its provision in a pre-contract stage.

ANACOM's position

PT's argument is rejected. Again, this matter concerns the indication of any restrictions, and according to what **PT** refers, this company already has and provides this information elsewhere. The appropriate information of the user before the contract is concluded justifies that this information is provided in this scope also.

Zon proposes that the final part of item v) is recast to read «...*in the case of nomadic and home-zone services, information shall be provided on restrictions, if any, related to location and area of use of the service*» (emphasis added), justifying this alteration on the grounds that the discrimination of companies providing homezoning services, in equal conditions, must be avoided.

ANACOM's position

There is no discrimination in the item under consideration, as made clear in the response concerning item iii) of point b) of section A. As concluded therein, the alteration proposes by **Zon** is redundant as the wording of this item iii) already refers to "*any restrictions".*

Specifically on the requirement to provide levels of quality of service provided for in point vi), **APRITEL**, **Vodafone**, **PT** and **Zon** refer that the access speed of each customer depends on multiple factors, and that there is no technical solution that allows service providers to measure the average effective speed of a customer. As such, they conclude that it is not feasible to present the average connection speed for the invoiced period relatively to each customer, and so this requirement should be removed from the final determination.

Vodafone and **Zon** refer further that this impossibility to measure and guarantee the speed of each customer from resources in the operator's network results also from the fact that the access speed depends on various external factors, such as the equipment used by the customer, the number of applications used at the same time, server characteristics. These factors may not be measured or predicted, thus in **Vodafone's** opinion, this requirement should be removed from the final determination.

PT refers that the companies that integrate the Group do not provide information on average speeds or minimum levels of quality of service related to speeds provided on mobile broadband. This commitment is not undertaken in the scope of the respective commercial offer. This information is provided by the companies of the Group for the fixed broadband, with the indication of the factors that may condition its effective provision to the customer. However, it points out that an exhaustive and general disclosure of all factors that may impact the speed provided effectively is not possible.

As regards the roaming data service, **PT** stresses that it has a "best effort" basis, thus although information on maximum speeds provided in the network of each foreign operator may be made available, **TMN** may not provide information on the quality of service provided by foreign network operators.

Based on these arguments, and taking into account the absence of laws or regulations imposing on operators the disclosure of the minimum levels of quality provided, **PT** supports the removal of this item or its recast, so that it reads «...*levels of quality of service provided, where appropriate*...».

As regards the disclosure of minimum levels of quality, **APRITEL** declares that, except for the levels of quality of setup, maintenance and repair, this information should only apply to situations where the operator considers that these levels should be ensured.

ANACOM's position

Relatively to observations on the difficulty/inability to present the average speed value of connections provided on mobile broadband, it must be highlighted that the factors which influence the measurement of average speed on the fixed and mobile broadband are already known. As such, there seems to be no reason for failing to indicate, subject to the necessary reservations, the average speed of mobile broadband.

Service providers must thus inform users of average and maximum speeds which users may typically expect, and ISP shall also provide information in a transparent way on the situations in which the disclosed quality may not be ensured.

By disclosing an average speed in the terms described above, companies do not undertake to ensure in 100% of cases compliance with those values, but they provide information on an indicator which is measured on average, based on technical information to which companies have privileged access, and which, consequently, must be disclosed to users.

On the other hand, it must be referred that user claims on internet service speed are still very significant, especially as regards situations in which users complain that the speed achieved is frequently below the contracted speed level.

Specifically on the quality of services provided while roaming, this Authority refers to what was stated earlier: if companies disclose information on the quality of services provided while roaming, which is deemed to be beneficial and relevant, it should be referred that the disclosure of the quality of service is not an obligation, as it is not up to the national operator to guarantee it.

PT's proposal to recast this item, so that it reads «...*levels of quality of service provided, where appropriate*...» cannot be accepted. In any case, and as has been done for a similar obligation in section A, this obligation will be recast to read as follows:

«*Levels of quality of service provided - information on the levels of quality of service which the customer may expect to be provided by the service provider, on average, and on the minimum levels of quality of service, set out by law or regulation, which must be provided to each customer (for example, for telephone services, the deadline for implementing portability provided for in the respective Regulation), non-compliance with which determines the payment of compensation or refund. The annex hereto suggests some parameters which companies may use.*

The provider must also indicate how information on minimum levels of quality of the service to be provided may be obtained».

DECO agrees and welcomes the introduction of the obligation to provide a set of information on the characteristics and forms of the provision of the internet access service. However, it supports that only be establishing a quality regulation for this service it would be possible to effectively ensure the protection of the respective users.

ANACOM's position

ANACOM takes note of **DECO**'s observation but stresses that this is not the appropriate *fora* for assessing the need to approve a regulation on internet access service quality.

FENACOOP considers that as regards information on minimum levels of quality (item vi) of point b) of section B) it is not sufficient to make a recommendation, as stronger regulatory action is required. Companies should disclose minimum levels of quality and should also be bound to indicate the technical means required by consumers to measure the upstream/downstream speed.

FENACOOP justifies this position referring that many claims are based on a lack of quality of service, and a significant part of disputes between users and electronic communication companies concern termination of contract on the basis of non-compliance or defective compliance, the consumer being faced with a situation of inequality vis-a-vis the service provider, as it does not have a credible means of controlling the speed and proving any non-compliances.

As such, it supports that providers should be bound to disclose the technical means for measuring speed, and that the minimum guaranteed access speed should remain within the parameters of quality of service referred in the annex.

ANACOM's position

This determination aims for the effective information of users, and there seem to be no arguments preventing information on maximum speed allowed for internet access and on average speed which users may typically expect for that access from being ensured. In addition to this information, ISP must provide transparent information on the situations in which the disclosed quality may not be ensured. Furthermore, where appropriate, they must also state that provision of this information is not a contract commitment contrary to the information on minimum quality which the ISP proposes to ensure and which will be contracted.

As far as technical means for measuring speed are concerned, there are websites where these tools may be obtained, thus the recommendation to provide this facility remains.

Bearing in mind that it is incumbent on service providers to set out the conditions which must be complied with to enable migration between offers, it is concluded that to meet information obligations laid down in article 47, communication companies are bound to provide this information, thus **FENACOOP**'s proposal is accepted. As such, ANACOM, pursuant to paragraph 2 of article 47 of ECL amends the draft decision submitted to consultation so that the provision to interested parties of clear and accurate information on migration between offers is compulsory.

As regards the recommendation to provide information on migration between offers, **PT** and **APRITEL** declare that it is impossible to provide this information given the number of possible variants.

PT refers also that migrations will only occur after the consumer/user has already concluded a contract with the service provider, thus this matter should not be included in the list of pre-contract information.

ANACOM's position

The argument that migrations are a field which exceeds the pre-contract scope is not totally correct nor is it likely to lead to the result desired by **PT**. At issue is the awareness of aspects which are essential to enter into or to alter a contract. It is relevant that these conditions are known before the contract is concluded.

Having the migration taken place, the provider is bound to a different provision, although the parties are the same. The migration entails an act of will which is formed on the basis of previous information. The information on conditions that apply to migrations thus take a nature of pre-contract information; only after the migration takes place will a different contract be at stake.

Moreover, this determination concerns the provision of information on conditions of offer, and the law does not impose that these conditions are pre-contract ones. In fact, this information integrates contract commitments and as such will be in force during the performance of the contract. In this context, the information provided on migration of offers is relevant for the consumer in a pre-contract stage, as it is an element to be considered when the will to contract is formed. It is important that the user is aware, before deciding to contract a service, of the commercial flexibility of the provider, that is, the real possibilities of changing offers and tariffs, in the scope of the commercial offer of that company, as well as related charges - v.g. prices charged for altering the tariff of a service or for altering its characteristics.

Still on the matter of this information, it must be highlighted that ANACOM registers a high number of claims by users that complain about charges imposed for changing tariffs and other contractual conditions associated to the change of offers made available by the same provider. Seeking to decrease these points of conflict, the draft decision submitted to consultation thus recommends the disclosure of conditions to which migrations are subject.

On the basis of reasons set out above, ANACOM, pursuant to paragraph 2 of article 47, amends the draft decision along the lines mentioned above.

PT believes that the provision of a speed measuring tool in the terms recommended in the draft decision submitted to consultation would imply high investments on the part of operators, whether financially or in terms of resources, without yielding any benefits for consumers. Consequently, it takes the view that the provision of this tool is neither reasonable nor justified.

ANACOM's position

On this matter, and as referred earlier, there are several speed measuring tools available online for free (such as FCCN or http://www.measurementlab.net/measurement-lab-tools), and service providers may consider referring their subscribers to these tools.

Amendment to point c) of Section B

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

For this purpose, the following tariff information must be published and disclosed:

ii) Type and levels of tariffs applicable to the service provision concerned, including the mobile Internet access service on national territory and while roaming;

ii) Minimum service cost, where it does not correspond to the price set for the established charging unit;

iii) Tariff charged for installing, reinstalling and uninstalling services concerned (breaking down tariffs for restoring former conditions), where appropriate;

iv) Minimum consumption, where appropriate;

v) Maintenance fees, where appropriate;

vi) Equipment renting prices, where appropriate;

vii) Discount and credit conditions;

viii) Peak versus off-peak hours, where appropriate;

ix) Prices per period;

x) Information on whether tariffs are pre-paid or post-paid and whether there are any associated traffic limits;

xi) Disclosure of technical consumption-control means available to users (including for offers concerning the use of Internet access service while roaming), regardless of the criteria used to bill the service, if any, as well as of information on how to enable and disable this feature;

xii) Information on "Fair Use Policy"/ "Acceptable Use Policy", where appropriate, in particular on their content and means to access this information; and

xiii) Specifically in the scope of the Internet access service:

- *Contracted amount of data sent and received, in case this is the criterion used to bill the service;*
- *Where the service is billed on the basis of the distinction between national and international traffic, information of the technical means available to the user, if any, to acknowledge beforehand and online the type of traffic (national or international) associated to the addresses intended at any given time to be accessed; and*
- *Disclosure of the respective traffic management policies, if any, restricting the use of the Internet access service, when subscribing an unlimited traffic tariff (including happy hours).*

It is recommended that service providers make available simulators, at the respective websites and points of sale, allowing the different tariff plans they provide to be compared.»

DECO restates relatively to this point of the draft decision submitted to consultation the comments made on point c) of section A, as regards the inclusion of information on the collection, per municipality, of the MFRW, as well as the obligation to provide information on the existence of minimum consumption.

On the requirement to disclose information on conditions for granting credit to clients [vii)] **PT** mentions that it is not possible to publish these criteria in an objective form in a pre-contract stage, as reality may not be reflected.

PT adds that the imposition of an obligation to disclose this information largely exceeds legal sector provisions, as from ECL (point d) of paragraph 2 of article 47) it derives only that companies are bound to publish information on compensation and refund schemes, and that this rule of the ECL applies only to the offer of publicly available telephone networks and services. Without excluding the possibility of an analogue application of article 47 of ECL to other electronic communications services, **PT** considers that ANACOM must not apply analogy to impose an obligation to a wider extent that that provided for relatively to analogous cases. On these grounds, **PT** considers that the obligation to provide information on credit conditions should be removed.

ANACOM's position

Arguments made above to respond to **DECO** as regards MFRW and minimum consumption apply here as well.

As far as **PT**'s observations are concerned, it is clarified that the requirement to disclose credit conditions is already covered by the version currently in force of the determination on the object and form of public disclosure of conditions of provision and use of electronic communication services.

These conditions concern the conditions established for standard offers, as that is the scope defined for this decision. In the scope of standard offers, there are some offers, mostly made available by mobile operators, that provide for the granting of credit, especially in the case of pre-paid services. These standard conditions, as well as analogous ones which may be provided for other services, must be disclosed under the terms already in force, integrating information on prices of services, as provided for in point c) of paragraph 2 of article 47.

In line with the amendment to point c) of section A, to this point also must be added the obligation to inform that «*the offer of publicly available electronic communications networks and services at a fixed location may give rise to the payment of a MFRW. Interested parties are requested to check, at their municipality of residence, if this fee applies and how much it amounts to*.»

As regards the disclosure of the information on fair use policy/acceptable use policy and on traffic management policies [xii)], **Vodafone** stresses that where the operator decides to apply speed-restricting measures, given their impact on the client, such measures should be included in a clear and transparent manner in the commercial conditions of the selected tariff. To ensure comprehensive, detailed and transparent information, commercial conditions should also refer the maximum contracted speeds and limits of use as from which those restrictions apply.

ANACOM's position

As **Vodafone** points out, ANACOM also deems it important to disclose, before the contract is concluded, information on fair use policy. That is why this requirement is now included in the list of information on provision and use of services.

FENACOOP welcomes the fact that the draft decision submitted to consultation expressly provides for the cases where the billing is based on the distinction between national and international traffic, and for the duty to provide the consumer with technical means to acknowledge beforehand and online the type of traffic being used, thus allowing a better control of its consumption.

As regards the obligation to make available information on the technical means available to the user to acknowledge beforehand and online if national or international traffic is being used [xiii)], **APRITEL** and **PT** refer that it is not possible to ensure this distinction as clients' traffic originates from various sources which the ISP cannot control. Relatively to this requirement, **Vodafone** adds that although in the past there was a different tariff according to the internet traffic, that distinction does not occur any more, thus the breakdown is not justified.

ANACOM's position

First of all, it must be referred that the requirement to provide information on the existence of technical means available to the user to acknowledge online the type of traffic associated to the addresses intended at any given time to be accessed applies only where the tariff of the internet access services is based on the distinction between the two types of traffic, as is still the case with some services.

Furthermore, there are some tools which very easily and with a considerable degree of reliability are able to identify the location of the resolved domain, vd. for example http://www.spambutcher.com/ipcountrylookup.html

These tools have databases that resort to RIPE to locate the origin of addresses http://www.ripe.net/data-tools/db/tools.

Amendment to point d) of Section B

> *«This item concerns compensation or refund due to the subscriber in case of non-compliance with the offered minimum levels of quality, including those which are set out in the contract, or established by law or regulation.»*

PT refers that it is not able to ensure minimum levels of quality of service for all situations, and thus the company cannot accept to communicate, beforehand, the compensation due for non-compliance, for which the electronic communications company may not be responsible.

ANACOM's position

This requirement is already covered by the current wording of this determination.

Furthermore, point b) of paragraph 1 of article 48 of ECL (in conformity with point f) of article 20 of Directive 2002/22/EC, as amended by Directive 2009/136/EC) lays down that this type of information must be made available in contracts and it is fully justified that it should also be disclosed in a pre-contract stage, as results from point f) of paragraph 2 of article 47 of ECL, that determines the publication and disclosure of information on standard contract conditions with the purpose of ensuring an appropriate information of future users/subscribers on conditions of access to and use of the service.

The framework given to this requirement confirms the relevance and importance of this information, and as such the wording of point d) of section B is justified.

Amendments to point e) of section B

«Information on maintenance services made available by the provider and obligations undertaken by the latter, as well as contact details, namely telephone numbers and email of customer services for reporting faults (including costs related to calls to indicated numbers made from the various fixed and mobile networks) and business hours, must be published and disclosed.

It is recommended that information on the minimum level of quality provided to customers in terms of fault repair time be published and disclosed. Providers may measure parameter c) in the annex hereto for this purpose.»

PT and **APRITEL** refer that this information is very variable and its provision on a service-by-service basis, given the volume of information to be processed and published, is deemed to be unfeasible. They add that the fault repair time may depend on factors that are external to the provider (v.g. rescheduling at the request of clients). **PT** thus believes that ANACOM's recommendation should be amended to establish that providers should indicate 80 and 95 percentile values provided for in the QSR for the US. **APRITEL**, sharing the view that an average time should be indicated instead of the time for 100% of clients, does not indicate which percentile should be weighted.

ANACOM's position

Taking into account that only a recommendation is at issue relatively to the fault repair time, companies are not bound to publish this information with a specific format.

The assessment of complaints received at ANACOM show that situations of delay in the provision of technical assistance for services are very significant, which points to the fact that this is an important indicator in shaping the will to contract.

Notwithstanding the factors that may constrain this level of quality, it is suggested that to calculate this information, the annex to this determination is followed.

Amendments to point f) of section B

«The general and standard contract conditions which must be subscribed / accepted by the customer to contract the service provision must be made public and disclosed.

Information to be made public and disclosed, in the scope of standard contract conditions, must be supplemented, where appropriate, by a warning that the service provision depends on the acceptance of loyalty periods, which shall be given the same highlight as the service tariff, in terms of prominence and font size.

With regard to loyalty periods, clear information must also be made available on:

- *The duration of the loyalty period and conditions that apply in case of termination of the contract before that period is over; and*
- *Where the loyalty period is due to the sale of equipment under special conditions, the provider shall provide information on the characteristics of the equipment, namely whether it is locked, the respective price and unlocking conditions, as well as the price for a locked and unlocked equipment.*

The formalities and documents required of the client to terminate the contract must be made publicly available.»

On this point f) of section B, **ACOP** refers that the disclosure and publication of general and standard contract conditions which must be subscribed / accepted by the customer is not sufficient. This association believes that the customer must be informed and clarified on the contents of those conditions, at the time of the subscription of the respective contract.

PT considers that the provision of this information on standard contract conditions is already required by ANACOM's determination issued in this scope, thus the company feels that it should not be necessary to publish the same information in various media, as this would duplicate information.

As regards the provision on information on loyalty periods, **APRITEL** refers that the draft decision submitted to consultation proposes the publication of information with a level of detail that cannot be met in each and every information medium. For example, loyalty periods cannot be published in packages (kits) as they may vary according to the chosen products and services, or with the ongoing campaigns, which would imply a high risk of information provided being outdated or inaccurate.

ANACOM's position

The requirement that the consumer must be informed and clarified on the contents of standard contract conditions corresponds to an obligation on the part of the service provider that results directly from the law - articles 5 and 6 of the Regime of Standard Contract Clauses approved by Decree-Law number 446/85, of 25 October, as amended by Decree-Law number 323/2001, of 17 December - which fully apply to the contracting of electronic communications services. There is no reason, for a measure that aims to regulate the object and form of disclosure to the public of conditions of provision and use of electronic communications services, to make a specific reference to that obligation which, on the one hand, is in force for all situations in which standard contract conditions are used, and which, on the other, is specially relevant for the moment when services are contracted.

As regards **PT**'s observation that the provision of information on standard contract conditions already results from an obligation imposed by ANACOM, it is clarified that the determination on the object and form of disclosure to the public of conditions of provision and use of electronic communications services does not require the duplication of media to provide information. It suffices if the medium - which may be a single one - for providing information complies with the requirements of the (various) determinations issued by ANACOM.

APRITEL's line of argument is rejected. If for other products and services this information is able to be provided, what prevents this information from being ensured as far as electronic communications are concerned? Anyway, the requirement to provide the information on the existence of minimum contractual periods/loyalty periods arises directly from ECL (point f) of paragraph 2 of article 47, which transposes in this scope the requirements set out in Directive 2002/22/EC). Consequently, if **APRITEL**'s arguments were accepted, those requirements expressly provided for both on national and Community law would be infringed.

Sector companies will not fail to find the appropriate solution to ensure the disclosure in appropriate and evident terms of this type of information.

As far as this provision is concerned, the terminology adjustment of the reference to "loyalty periods" must be ensured, and it is replaced, in line with point f) of paragraph 2 of article 47 of ECL, by "minimum contractual periods".

Still on this matter, it is justified to make a reference to the obligation laid down in point f) of paragraph 2 of article 47 of ECL (which transposes the requirements set out in Directive 2002/22/EC), and in the specific terms provided for in that legal provision, to clarify, in the

final determination to be issued, that to this point f) of point B must be added information on conditions for termination of the contract.
Relatively to these aspects, it must be referred that ANACOM still registers many complaints on number portability processes, specially associated to defective information of users on existing procedures and charges.

Amendment to section C - Form of publication and disclosure of information

Information provided for in A) and b) shall be published and disclosed to interested parties, in writing and free of charge, at all providers' stores and points of sales of service providers and at their websites, if any.

Providers' stores shall mean fixed or permanent premises where service providers pursue their activity and where a direct contact with the public is established, namely through direct customer services intended for the offer of products and services or for development of customer relations.

With regard to the manner how information is disclosed to interested parties, service providers must:

- *Allow the online consultation of Service Provision Conditions, by accessing the provider's website at its own store, or*
- *Allow the consultation at its own store of a written medium with clear and comprehensive information on Service Provision Conditions, including elements which must be disclosed pursuant to this determination.*

Additionally, this information must be made available to interested parties in a physical medium, at their request, and it is accepted that such information may be printed at the location by accessing the provider's website or websites.

The provision of Service Provision Conditions must be indicated at providers' stores by means of a sign which must be placed in a visible manner and which shall bear easily legible print, the following text being recommended: «To consult information on conditions of provision and use of electronic communications services provided at this store please consult the website (...) or contact (...) [indicate place; ex: "information desk y", "customer service", etc.]»

Service providers must also make sure that at points of sale which are not their own stores, there is a clear indication on the contact details for obtaining information on the respective service provision conditions. In the case of door-to-door contract proposals or of the resort to remote use techniques, the provision of information provided for in points A and B, or of contact details for obtaining it, must also be guaranteed.

Information to be made available at providers' websites must be accessed through a hyperlink entitled: "Service Provision Conditions".

This hyperlink must appear on the home page or in the first page of each service commercial offer. The hyperlink position must be distinctly visible and identifiable, and it must be accessed without using the navigation bar of the page. In any case, full access to information by any interested party, regardless of its special needs or the equipment used, must be ensured.

The referred hyperlink must give access to a list of items on which, pursuant to this determination, the provider must make information available. Each of these items must be directly hyperlinked to the page where the corresponding information is available. In

the alternative, this information may be presented in the same page where items are listed.

Items in this determination which do not apply to the offer shall bear the indication "not applicable".

Both the hyperlink text and the information content to which it gives access, or even an intermediate index, must be made available in a text format. Basic accessibility rules must also be ensured, such as font size and text/background contrast. It is not allowed to make information exclusively available in formats and supports like image, flash or video.

The information content of each item must be supplemented with the corresponding date of publication and last update.

Providers of publicly available electronic communications services must notify ANACOM of the (URL) page from which the item index which must be disclosed may be reached (or accessed). Any subsequent change to the identification of that page must be communicated at least five days ahead.

By notifying ANACOM of the (URL) page which allows access to information made available to the public on conditions of provision and use of publicly available telephone networks and services, undertakings fulfil paragraph 3 of article 47 of ECL, being thus exempted from submitting to this Authority any further information for this purpose.

To ensure that information on conditions of provision and use of the service made available by service providers is within reach of all interested parties, including citizens with special needs, it is recommended that the respective websites are accessible, specifically by meeting the "Web Content Accessibility Guidelines", in their most recent version. These guidelines include several recommendations that aim to make Internet content accessible to everyone, regardless of specific needs or limitations, either physical or resulting from the equipment used. These guidelines are available at the official website of the World Wide Web Consortium, which may be accessed from the link http://www.w3.org/http://www.w3.org/.

Where contracting the service entails the purchase of a kit/package in shopping areas, the outer surface of the package must be clearly marked with the following information:

- *Identification of the service provider;*
- *General description of the service, indicating the main features;*
- *Indication of the loyalty period, if any;*
- *Indication of the contact details for obtaining information on coverage, tariffs and other conditions of provision and use of the service, including, the website of the provider, if any (in this case, the respective (URL) page of access to the "Service Provision Conditions" hyperlink must also be indicated).*

Information made available to the public and users pursuant to this determination must be updated whenever there is a change in the conditions provided.»

APRITEL disagrees with the set of measures proposed in this section, and refers that they jeopardise the commercial freedom of electronic communications companies. **APRITEL** feels that the draft decision submitted to consultation has excessive and redundant requirements, such as the placing of signs at providers' stores, as this is the location where the consumer may

obtain information on operators' provision conditions, and this seems to bring no advantage for the consumer who goes to a specific point of sales to get customer support.

PT restates that requirements imposed by ANACOM are not reasonable and stresses that imposing the placing of signs at providers' stores totally divests clients of the responsibility to search for information. **PT** further declares that it strongly disagrees with the obligation to provide customers with information in paper, as this obligation may entail significant burdens.

CTT consider that it should be up to each provider to decide the location where the information is made available, as it is the only entity who will be harmed if it fails to disclose properly the location where consumers may obtain further information. It also refers that in the case of **CTT**, compliance with this obligation will imply disproportionate additional costs, as this company has 900 premises throughout the country.

As regards the provision on a physical medium of information on the conditions of offer and user of services, **FENACOOP** considers that it should not depend on a request by the user, it should rather be provided regardless of any request. In line with this position, **ACOP** also takes the view that providing information in sections A and B in a physical medium should not depend on a previous request by the consumer, referring that such information should always be at the disposal of the consumer, who must not be prevented from accessing it.

ANACOM's position

Except for the example presented (placing of a sign at providers' stores) **APRITEL** fails to identify other requirements in the draft decision which are deemed to be excessive and redundant.

Specifically on the obligation to place a sign indicating the location where and the manner how information on offer conditions may be accessed, this Authority agrees that in fact it may be a redundant requirement taking into account that even if the user is not in the area where information at issue may be obtained, he shall be naturally sent to the right place. In the light of the arguments put forward, this obligation will be recast.

As regards the other measures provided for in this section, they are not deemed to jeopardise the commercial freedom of electronic communications companies.

Requirements provided for herein are aimed to ensure access to relevant contract information by users in general and consumers in particular, fulfilling legal provisions - of ECL, of Law number 23/96, of 26 July (Law of Essential Public Services) and of Law number 24/96, of 31 July (Consumer Protection Law). It is also under the law and in the exercise of a competence legally conferred (paragraph 2 of article 47) that ANACOM establishes requirements on the form of public disclosure of information, on terms deemed to be the most appropriate.

Contrary to arguments made by **PT**, the proposed measure does not encourage clients to divest of their responsibilities. Rules provided for here aim to guarantee that the right to access information is effectively ensured in a transparent manner. On the other hand, the setting of minimum standards will enable uniform action by providers as regards the provision of information, as the establishment of common procedures will contribute to facilitate access to information.

This Authority cannot accept suggestions put forward by **ACOP** and **FENACOOP** according to which the provision on a physical medium of information on the conditions of offer and use of services should not depend on any request. In fact, in ANACOM's opinion, the imposition on service providers of an obligation along these lines would imply an unfair, disproportionate and unjustified burden, as it would entail a significant investment in media to be provided to users, with no clear advantage, as users may not show interest in all the information.

The solution laid down on this matter in the draft decision submitted to consultation ensures the necessary balance and proportionality between the imposed requirement and the purpose it aims to achieve.

PT declares also that it disagrees with the requirement to disclose information at agency establishments, which frequently operate in limited spaces where it will be not easy to disclose massive amounts of information which can be easily obtained through other means.

APRITEL and **PT** share the view that shopping areas should not be considered the privileged channel for providing information.

All entities that addressed this matter were of the opinion that websites should be privileged as points of information. As regards the provision of information, **Vodafone** and **PT** take the view that customer services play a relevant role to fully inform clients. Consequently, they suggest that ANACOM, in its final decision, confers a central focus to the online provision of information on the conditions of provision and use of services, to the detriment of gathering extensive and complex documents. Interested parties may consult and print at their stores and at home the information deemed to be relevant for making their decision to contract.

ANACOM's position

Arguments presented by **PT** against the obligation to disclose information at agency establishments do not justify the amendment of this requirement. The draft decision submitted to consultation requires a visible indication at those establishments of contact details for obtaining the information, which, contrary to **PT**'s statements, is not massive**.** Relatively to the requirement provided for in this point of the draft decision submitted to consultation it should be referred that further to the transposition of amendments to Directive 2002/22/EC by Directive 2009/136/EC, the wording of paragraph 2 of article 47 of ECL provides that companies must publish and ensure the provision and easy access at their websites and points of sale of services of information, under the terms determined by ANACOM.

In the light of the above, and taking into account the characteristics of points of sale of services and the means and technologies currently available, it is necessary to adjust the requirements provided for in the draft decision submitted to consultation for disclosure of information at providers' stores and points of sale of services, so that through them an adequate information of interested parties on their offer and use is ensured. Therefore, the determination is amended to read:

«Undertakings providing public communications networks or publicly available electronic communications services must ensure that information on conditions of provision and use of communications services provided for in this determination are published and disclosed to interested parties, in writing and free of charge, at all providers' stores and points of sales of their services and Internet websites, if any.

Providers' stores shall mean fixed or permanent premises where service providers pursue their activity and where a direct contact with the public is established, namely through direct customer services intended for the offer of products and services or for development of customer relations.

With regard to the manner how information is disclosed to interested parties, service providers must ensure that, at their stores and at any points of sale, information is made available for consultation concerning the provision and use of services provided for in this determination through one of the following means:

- Online consultation of Service Provision Conditions, by accessing the provider's website; or in the alternative,

- Consultation of the same information made available in written form, with clear and comprehensive information on Service Provision Conditions, including elements which must be disclosed pursuant to this determination.

Service providers must also make sure that at all their stores the information referred to above is made available to interested parties in a physical medium, at their request, and it is accepted that such information may be printed at the location by accessing the provider's website or websites.

Service providers must also make sure that at points of sale which are not their own stores, there is a clear indication on the contact details for obtaining information on the respective service provision conditions. In the case of door-to-door contract proposals or of the resort to remote use techniques, the provision of information provided for in points A and B hereof, or of contact details for obtaining it, must also be guaranteed...».

APRITEL stresses further that the provision of information in brochures is a question which should not be raised, given the difficulty to update those media. **PT** and **APRITEL** add that the draft decision submitted to consultation hinders the free ability of operators to define the look and image of websites and the layout of information is strongly constrained with ANACOM's action, which according to **PT** is disproportionate and inadmissible. Moreover some of the requirements depend on the terminal equipment used by the client - for example, it points out that it is impossible for companies to ensue the non-existence of navigation bars.

PT believes that any indication on the part of ANACOM should be presented as a recommendation, operators being able then to identify the most appropriate means to disclose that information.

PT adds that many contract conditions are specific to clients' private areas and do not need to be published in public areas of websites. In this company's view, this information is available for consultation by clients who show a real interest in obtaining that information.

ANACOM's position

Requirements imposed on this issue are minimum demands that do not jeopardise the free ability of operators to define the look and image of their websites. The standardisation established in the draft decision submitted to consultation does not hinder the identity of websites of each provider and facilitates the access and comparison of information on each provider's offers. All websites will show hyperlinks and all will have available information on provided services. Measures provided for herein do not imply any disproportionate and inadmissible intrusion, but the safeguard of the right to information which under the law must be adequate, transparent, comparable, up-to-date and easily accessible on websites (vd. paragraphs 1 and 2 of article 47 of ECL as amended by Law number 51/2011, of 13 September, which guarantees the transposition of Directive 2009/136/EC).

By establishing these requirements, ANACOM acts in the exercise of competences conferred by law, and in this case the objectives pursued justify the issue of a determination, which does not prevent providers from bringing their websites into compliance, with the established constrains.

Specifically as regards **PT**'s comments on non-existence of navigation bars, it is clarified that this aims to guarantee an immediate visibility of links to the pages where information on service offers is made available, thus the link must be immediately visible, avoiding the use of the page's navigation bars. This is not about guaranteeing the non-existence of those bars, which in fact depend on the type of terminal equipment used, but of guaranteeing the immediate visibility of the hyperlink.

This Authority rejects also **PT**'s view according to which many contract conditions that are specific to clients' private areas do not need to be published in public areas of websites. As this concerns standard conditions, this information must be easily accessible even if it applies only to customers with specific characteristics,. Otherwise, **PT** would infringe the obligation to ensure the disclosure of transparent, comparable and easily accessible information.

CTT consider that as regards "items" covered by the draft decision which must be disclosed at providers' websites, provision should be made for the possibility of providers inserting the indication "Not applicable" where items do not apply to their offers.

ANACOM's position

This possibility has already been provided for in the draft decision submitted to consultation.

PT refers further that it is impossible to ensure the communication to ANACOM, five days ahead, of the URL page where the information is provided, as this URL is only known after the information has been provided. **PT** intends this obligation to apply only to information updates.

ANACOM's position

The determination submitted to consultation provides for the obligation to notify ANACOM of the (URL) page from which the item index which must be disclosed may be reached or accessed, without imposing a prior notification.

The prior notification requirement concerns only the subsequent changes to the designation that identifies that page. In this case, companies must ensure the communication of the page's designation to ANACOM at least five days ahead. As far as this obligation is concerned, **PT** presents no reservations.

As regards the information to be provided in the offer of kit packages, **PT** considers it to be difficult to implement, as loyalty periods may depend on the service or promotional campaign and not only on the equipment sold.

This information may only be guaranteed by means of the website of providers.

CTT consider that it is excessive to require kits/packages with which its services are marketed to indicate that in the «website of the provider, if any (in this case, the respective (URL) page of access to the "Service Provision Conditions" hyperlink must also be indicated)», as in the scope of this draft decision it is already required that the home page or in the first page of each service commercial offer includes a hyperlink designated "Service Provision Conditions". **CTT** consider that it is not reasonable to include in a small package a very large amount of information.

ANACOM's position

The version approved in April 2006 of the determination on the object and form of public disclosure of conditions of provision and use of electronic communication services already provided for a set of requirements that applied to information to be made available where the contracting of a service entailed the purchase of a package.

The additional requirements set out in the draft decision submitted to consultation - indication of a loyalty period, if any, indication of the contact details for obtaining information on service coverage and requirement to update information made available to the public - are intended, first and foremost, to ensure that end-users have access to information that enables an informed decision to enter into a contract, reducing the degree of conflicts that is associated to the unawareness of contract conditions.

CTT's comments on the requirement that kits/packages with which its services are marketed must indicate the website of the provider, if any, are deemed not to be justified. Contrary to what this company declared, this information is not very large, and its inclusion is fully justified to ensure that interested parties are able to know the address where information on the service they wish to contract may be obtained without opening or damaging the packages.

Considering all the difficulties that may arise with the layout in the exterior of the package of all the information provided for in the draft decision submitted to consultation, and that, both as a result of article 47 of ECL and of article 5 of Decree-Law number 6/2010, of 1 June, communications operators must inform the user in written form, prior to the conclusion of the contract, about the equipment's characteristics, providing also information on the price and any unlocking conditions, that obligation is recast to read as follows:

«*Where contracting the service entails the purchase of a kit/package in shopping areas, the outer surface of the package must be clearly marked with the following information:*

- Identification of the service provider;

- General description of the service, indicating the main features;

- Indication of the contact details for obtaining information on the minimum contractual period, if any, coverage, tariffs and provider, if any (in this case, the respective (URL) page of access to the "Service Provision Conditions" hyperlink other conditions of provision and use of the service, including, the website of the must also be indicated».

Relatively to the implementation of amendments, **APRITEL**, **GRUPO PT** and **Vodafone** consider that they cannot be implemented within the 60 days provided for in the draft decision submitted to consultation. According to **PT**, at least 120 days are required.

ANACOM's position

Considering the amendments which must be ensured as a result of the determination, the final decision will provide for a 120-day deadline to allow undertakings concerned by this determination to ensure its full implementation.

Parameters of quality of electronic communication services suggested by ANACOM:

PT refers that it is impossible to establish values for 100% of clients. In the alternative, that company suggests the publication of the average and possibly of the maximum time for a specific percentile.

ANACOM's position

Given the difficulties mentioned concerning the measurement of levels of quality of service and the fact that some of the parameters provided for in the version of the annex submitted to consultation covered parameters for which there are obligations provided for in the law or regulation and which make their disclosure compulsory, it is deemed justified to recast the list of parameters which in this scope are merely recommended.

Considering the above, the annex to the determination on the object and form of public disclosure of conditions of provision and use of electronic communication services is recast to read as follows:

«Parameters of quality of electronic communication services suggested by ANACOM to assist operators in defining levels of quality to be provided on average to their customers:

a) Maximum service start-up time:

Time measured in consecutive calendar days/hours, from the moment the customer submits a valid service application up to the moment in which the service is actually made available, where such time is outside the customer's control.

Maximum service start-up times for changes to service modes/features, change of customer address and the set-up of additional services must also be taken into account.

b) Service interruption/suspension time:

Monthly time of service interruption/suspension, measured in hours per month from the moment the customer presents the complaint up to the moment the service is restored, where such time is outside the customer's control.

If the service has not been restored by the end of the month, the time calculation restarts on the first day of the following month.

c) Fault repair time:

Monthly time, measured in consecutive hours, from the instant the customer reports a valid fault to the services of the provider, which entails the creation and register of a claim number, to the instant where the service has been restored to full normal working order, that is, where the initial situation that existed before the fault occurred has been restored. The time for which the customer is responsible shall not be accounted for.

d) Time to disconnect/disable services:

Time measured in consecutive hours from the moment a valid application for service termination is received from the customer up to the moment the service is actually disconnected, where such time is outside the customer's control. Valid application means any request attaching the necessary documents.

e) Maximum response time for customer claims and information requests:

Time measured in calendar days from the date the provider is presented with the claim/information request, up to the date the claim decision is notified to the claimer/date the response to the information request is sent by the company. The time for which the customer is responsible shall not be accounted for.»

<u>Conclusion</u>:

In its current wording, the ECL does not provide for specific requirements as regards information on the provision and use of publicly available telephones services. In line with Directive 2002/22/EC, as amended by Directive 2009/136/EC, the ECL now provides for the same requirements for all providers of public communications networks or publicly available electronic communications services with regard to the provision of information on access to and use of services provided.

The initial version of this determination, in spite of making the distinction between different information requirements, according to whether the provision of publicly available telephone networks and services or the provision of other electronic communications services were concerned, already established a very similar level of information for all services covered, and several information requirements even coincided.

In the light of the new wording of article 47 of the ECL, ANACOM takes the view that the manner how information obligations are presented must be reordered, and a common set of requirements has been provided for, corresponding to obligations provided for in the draft decision submitted to consultation where obligations are identical, and separating information requirements on account of specific service characteristics which justify a special wording.

The contents of obligations provided for in this determination does not differ, with the exceptions stressed throughout this report, from those set out in the draft decision submitted to consultation.