

## **Prior Hearing Report**

### **on the draft decision that establishes a compulsory withdrawal period following the pre-selection activation**

#### **I. Framework**

The Board of Directors of ANACOM approved, by determination of 29/5/2003, the draft decision on the introduction, as regards the Pre-Selection Specification, of the compulsory 4-month withdrawal period, following the pre-selection activation, during which the direct access providers are prevented from undertaking any action, namely through direct contact, designed to win back clients.

The draft decision was notified to interested parties, who, pursuant to articles 100 and 101 of the Code of Administrative Procedure, were entitled to assess the issue within 10 working days at the most.

An opinion on the draft decision was requested from DECO, FENACOOOP and UGC, having regard to the effects on the interests of consumers.

#### **II. Replies to the prior hearing**

Of the interested parties notified pursuant to articles 100 and 101 of the Code of Administrative Procedure, Onitelecom, Refer Telecom and Vodafone have replied within the established time limit.

Deco and UGC have also provided their opinion on the purport of the decision to be adopted.

Onitelecom, Refer Telecom and Vodafone have generally agreed with the purport of the determination to be adopted by the Board of Directors of ANACOM.

Regarding the minimum period to be taken into account for the restraint on win-back action, ONI is of the opinion that “the proposed 4-month time limit could be extended to a period from 6 to 9 months, with a view to ensure fully and more efficiently that the data provided for the pre-selection is not used abusively and to allow the client to assess its level of satisfaction with the service provided without being unlawfully ‘harassed’ by the former operator” and that “an analysis of the results of the measure within a period not exceeding 1 year, at the least, should be provided for, in order to assess the need for a potential extension of the time limit settled for the moment.”

Vodafone takes the view that “a 6-month withdrawal period is the minimum required, not only for the client to obtain a true and fair view of the relation between the quality/price of the service agreed with the pre-selected operator, but also so that the mentioned operator may regain part of the investment made for client acquisition, in case the client decides to renounce the pre-selection.”

Onitelecom further declares that this measure should be applied in an asymmetrical way, bounding only the charged provider and not all the direct access providers, “since the aim of the present measure is to promote competition, thus being justified an asymmetrical enforcement”.

Deco has agreed with the determination of the Board of Directors of ANACOM, considering “that the conduct of PT Comunicações, alleged by other communications operators competing directly with it, namely of commercially ‘harassing’ its clients with proposals of more favourable conditions for service provision, prevents a free and reasoned choice on the part of the consumer”.

UGC takes the view that “in an open market, where the principle of free competition is in force, any enterprise operating therein should be allowed the free contact with any costumers, as long as it is established in compliance with and within the limits imposed by the legislation in force and the principles of free competition”, and thus it does not oppose in the least to “enterprises that wish to win back and hold former and present clients”. From that association’s point of view, this possibility “is favourable to consumers in the sense that it stimulates efficiency, the quality of services provided, the rationalisation of costs and the reduction of prices on the part of the several enterprises operating in the market”.

UGC adds that a possible protection of new operators against the conduct of dominant operators, “which does not result from market power abuse, but from a higher level of efficiency or service quality provided”, “not only harms the dominant operator without any reason, but would ultimately damage also the interests and rights of the consumers/clients, as they would be prevented from acceding to a benefit to which they are legitimately entitled, as far as prices and quality are concerned.”

Therefore, UGC is of the opinion that the determination that ANACOM intends to adopt “is unjustified, illegitimate and clearly against consumer interest, and does nothing to contribute to the greater protection of their rights”.

### III. Position of ANACOM

#### a) Time limit to be considered for the restraint on win-back action.

ANACOM takes the view that a 4-month time limit may not be enough to achieve the purpose pretended with this determination, which is to enable the client a free and informed choice of the service intended.

In fact, the establishment of an extended minimum time limit – 6 months – is deemed to be more reasonable, as it grants the client the necessary amount of time to enjoy fully the service of the pre-selected provider, trying it out and remaining free to continue being a client or to release itself from the contract.

b) Possible asymmetrical enforcement of the measure, bounding only the charged provider and not all the direct access providers.

ANACOM deems relevant the following:

- At ANACOM, as referred in the draft decision of 29 May last, were only received complaints from pre-selected providers against the conduct, classified as “commercial harassment” towards their clients, on the part of PTC, the incumbent operator and an entity with significant market power in the market of fixed telephone networks and/or fixed telephone service;

- Therefore, there is no information indicating the need for an extension of the present regulatory measure to all service providers operating by means of direct access;

- With this fact in mind, and having regard to the present stage of competition development, it is doubtful whether the imposition of the measure on all direct access providers is proportionate;

- In fact, according to the statistics of the fixed telephone service, regarding the first quarter of the year 2003, the PT Group had a share of 93,77% of total access, including its own park, and a share of 89,77% regarding the traffic with origination in the fixed network (total number of minutes), as well as a share of 96,43% in the direct access traffic.

In the light of the above, ANACOM is of the opinion that the measure under consideration should be applied to the enterprises belonging to the PT Group, that provide FTS in direct access.

#### c) Consumer interests and rights

According to ANACOM, the adoption of the measure under consideration shall not harm consumers in any way, since from the outset they are not prevented from accessing any benefits, being free to try out the services of the pre-selected provider and, on their own initiative, require information on the equivalent services provided by the direct access operator.

At any time, and complying with the provisions regarding contract cancellation, established with the pre-selected provider, they may withdraw from the contract.

Having regard to the above, ANACOM takes the view that the measure is justified, legitimate and proportionate, not harming in any way consumer freedom of choice, rather contributing towards a more informed choice.