
Determination of 8.3.2007

DETERMINATION

Undue terminations by PTC of pre-selection services

I - Facts

1. ANACOM has received and been made aware of constant complaints from operators relatively to an alleged misconduct of PT Comunicações (PTC) as regards pre-selection (PS) procedures on the part of pre-selected customers.
- 1.1. On 18 August 2006 (E43747/2006), Vodafone notified ANACOM of a letter it had sent to PTC expressing its concern and dissatisfaction over the fact that PTC had conveyed to its customers unsolicited PS termination forms.

In support of its claims, Vodafone attached a letter sent by PTC to one of its customers, together with which this company submitted a “pre-selection termination application”, which, according to PTC, has been requested and filled out with data conveyed by the customer. In this letter, PTC requests of the customer that he verifies data filled out in the termination application, signs it and submits it to PTC, which in its turn undertakes to send it to the PSP.

Vodafone deems that there was no termination request on the part of the customer, and that PTC unduly used (for win-back purposes) confidential data made available by Vodafone to that company.

- 1.2. On 21 September 2006 (E50606/2006), OniTelecom notified ANACOM of similar practices carried out by PTC towards its customers, requesting the intervention of the regulatory authority for the purpose of preventing such practices. OniTelecom highlights the fact that the deactivation form filled out beforehand by PTC refers the pre-selected operator and the type of traffic concerned, data which, in the opinion of that company, should not be available in the scope of PTC's retail services.

As evidence, OniTelecom submitted a letter sent to one of its customers by PTC, attaching a PS termination application, allegedly following a contact on the part of that customer and at his request, referring that such a situation had been reported by other customers. As stated in point 1.1, in this letter also, PTC requests the customer to send back the data on PS termination so it can be submitted to the PSP.

OniTelecom declares also that the customer denied both having contacted PTC, and, a fortiori, having requested the pre-selection deactivation.

- 1.3. On 12 October 2006 (E55189/2006), Tele2 also notified ANACOM of several deactivations of PS customers, and more recently, single bill customers, which have been increasingly submitted by PTC. This practice is deemed by Tele2 as an unacceptable failure to comply with the Selection and Pre-Selection Regulation and with the interconnection agreement signed between the two operators, which integrates that regulation, as this statutory instrument is binding on PTC.

On 18 April and 11 September that year (E18911/2006 and E47801/2006, respectively), Tele2 had lodged complaints to ANACOM against PTC, for infringement of paragraph 1 of article 10 of the referred Regulation, stating that that company has directly deactivated Tele2 pre-selected customers, without a prior request to do so from Tele2.

Moreover, on 24/11/2006 (E66111/2006), in the scope of a request for resolution of disputes submitted to ANACOM, Tele2 refers that, as from May 2006, it started to receive a large number of documents dealing with PS deactivation submitted by PTC concerning customers PTC had already deactivated and removed from the pre-selected customers' database, without Tele2 having received from such customers any intention to terminate indirect access contracts.

Tele2 declares that this non-compliance has caused serious injury, which is made worse as the illegitimate PS deactivation led also to the early deactivation of SLRO accesses, which makes it impossible for this operator to recover the amounts paid for the activation. According to Tele2, losses go higher on account of the fact that the company was not directly aware of the termination, thus being prevented from applying on customers penalties to which it was entitled.

- 1.4. Judging by complaints received from operators, this type of procedure on the part of PTC is a common conduct as regards PSP in general, and has taken place quite frequently.

- 1.5. Following Tele2's complaint dated 11/09/2006, and to clarify these situations, the monitoring services of ANACOM undertook a monitoring exercise, which consisted of a set of demarches concerning that company and PTC.

According to the report of the pursued monitoring exercise, dated 6/11/2006, from the 13327 numbers regarding which, according to Tele2, PTC had carried out the PS deactivation without a prior request from that provider, the monitoring services of ANACOM established a sample comprising 100 numbers. Demarches pursued on these samples led to the following conclusions:

- PTC accepts requests on the deactivation/termination of PS contracts submitted by Tele2 pre-selected customers;
- Later, PTC submits these requests to Tele2, and waits for this provider to render formal the request submitted by the customer through the conveyance of an electronic request for PS deactivation, as provided for in paragraph 1 of article 10 of the Regulation. For this purpose, PTC waits until at the least 5 working days have elapsed;
- After this time limit has elapsed, and no request is submitted by the PSP, PTC deactivates the PS, arguing it does so to comply with the explicit wishes of the customer;
- Tele2 does not deem that customer requests submitted to PTC are valid, alleging that the PS deactivation may only take place based on a termination of the respective contract submitted directly to the PSP, and thus it refuses to handle any requests submitted through PTC.

2. ANACOM's monitoring services assessed also PTC's customer support services at PTC's website, and noticed that this entity provides data which may infringe paragraph 1 of article 10 of Regulation no.1/2006.

Aiming for a better determination of facts described in point 1, a new consultation of PTC's website was carried out, in the scope of which, on 28/12/2006, the following information was provided on PS termination procedures and grounds [Customer Support (FAQs)/Services/"pre-selection"]:

"1. I have subscribed Pre-Selection services and I wish to cease them, what should I do?"

- *To cease pre-selection services and switch your calls back to PT, simply send us the pre-selection termination form, duly filled out and signed, please request it from Customer Support Services at 16200.*

- *Until you receive out letter confirming the pre-selection has been removed, you can make calls over the PT network by dialling 1020 before your destination number.*

2. Why should I cease Pre-selection services?

By ceasing pre-selection services, you may enjoy a set of benefits and services which may contribute towards better telecommunications services, namely you will:

- *Avoid dialling 1020 before each call;*
- *Receive a single telephone bill;*
- *Gain access to a new range of products and services;*
- *Benefit from a large coverage of shops and agents;*
- *Subscribe attractive price plans that are adapted to your profile.”*

In the light of the above, the Board of Directors of ANACOM approved on 18/1/2007 a draft decision determining on PTC:

- To immediately cease any PS deactivation which was not based on a request submitted by the PSP, following a request for contract alteration or termination made by the subscriber to this provider, so as to comply with the PS deactivation procedure provided for in article 10 of the SPS Regulation;
- To remove from its website, within at the most 5 working days, the information on PS termination procedure and grounds, as provided for therein, and to make it available in compliance with article 10 of the mentioned Regulation.

This draft decision was submitted to the prior hearing of interested parties, under articles 100 and 101 of the Code of Administrative Procedure, PTC, Vodafone, OniTelecom and Tele2 having been set a 10 working day time limit to assess the issue.

Contributions received, as well as ANACOM’s views thereon, and grounds for the regulatory authority’s options have been included in the **Prior Hearing Report, attached hereto and being deemed an integral part hereof.**

As no new de facto or de jure grounds have been established to alter ANACOM’s position on this matter, the issued determination is maintained in the same sense as it was notified.

II - Grounds

Pursuant to determination of ANACOM issued on 25/5/2006 on “Restrictive measures against action designed to win back pre-selected customers”, PTC must comply with a four-month withdrawal period, following the presentation of the pre-selection request by the PSP, in the course of which it is not allowed to pursue any action designed to win back customers (non-compliance with which was alleged by some operators, triggering monitoring exercises and intervention by the Regulatory Authority), but at the end of which the company is not prevented from pursuing this type of action.

Notwithstanding, although PTC is not prevented from trying to win back customers after the referred time limit has elapsed, this company, just as all the other, may only do so in compliance with the applicable regulation on PS deactivation procedures.

Thus, article 10 of the Selection and Pre-Selection Regulation (Regulation no. 1/2006, published on 9 of January, approved pursuant to Law no. 5/2004, of 10 February) provides as follows, as far as PS deactivation is concerned:

*“1. The pre-selection deactivation shall take place **exclusively** following the alteration or termination of the respective contract **with the PSP**, which is bound to convey electronically to the DAP, to a single contact point, the respective deactivation request, within two working days at the most.*

*2. The replacement of a PSP for another, for the same traffic option or for different options with traffic overlapping, shall occur based on a pre-selection contract between the subscriber and a new PSP, together with the **termination addressed to the former PSP**, to be delivered by the new PSP within two working days at the most.*

(...)

*4. The DAP shall deactivate the pre-selection no later than five working days from the date of the **deactivation request made by the PSP or the pre-selection implementation request made by the new PSP**, as appropriate, complying at all times with the first request received, and rejecting all activation or deactivation requests received within the five subsequent working days. The DAP shall also notify the ceasing PSP of the actual date of deactivation of the respective pre-selection.*

(...)”

PTC's win-back action, described in complaints made by several operators, evidenced by data attached thereto, verified through monitoring exercised carried out by ANACOM's monitoring services and supported by information made available on PTC's website on PS termination procedures, includes sending PS termination forms filled out with some information to subscribers of the pre-selected provider (PSP), in some cases after contacts have been made with customers, which are sent back to PTC and represent PS contract termination, without any intervention of the PSP. Based on these documents, PTC deactivates the PS, without having received for this purpose a due request from the PSP.

Information provided on PS termination and the corresponding procedure is thus totally inappropriate and fails to comply with the provisions of the SPS Regulation, which, as mentioned above, provides that the contract termination must be addressed, in all situations, to the PSP, which must convey to the direct access provider (DAP) the subsequent PS deactivation request.

For this reason, and without prejudice to any due penalties that may apply to involved companies, the Regulatory Authority deems it must act so as to ensure that the Regulation is properly applied and complied with and that subscribers are provided with clear and correct information on PS procedures.

ANACOM intends likewise to avoid detrimental effects on competition which may take place if PTC's behaviour is maintained.

It should be stressed that, after the consultation procedure to which the draft SPS Regulation was subject, ANACOM decided to welcome in the final wording of article 10 OniTelecom's proposal to explicitly refer that where the PS is subject to a mere deactivation, that is, where the contract with the DAP remains in force, the PS subscriber may only address the PSP. This position was established in the consultation report. ANACOM referred also in this report that this option *"took into account the asymmetric market positions of the DAP and PSPs, paying a special attention to the contractual relationship between the PSP and the subscriber"*.

In fact, the inclusion of the word *"exclusively"* in paragraph 1 of article 10 of the SPS Regulation, which was not included in the draft submitted to consultation, aimed to remove the possibility of any interpretation that would erode the pursued objective, namely by ruling out any possibility of the DAP acting as an intermediary, in any form whatsoever of such an intermediate action.

ANACOM will not allow now what it wished to prevent by regulatory action means.

III - Decision

Therefore,

The Board of Directors of ICP-ANACOM, pursuant to assignments provided for in points b), f), h) and n) of paragraph 1 of article 6, to point g) of article 9 and to point l) of article 26, all of its Statutes, approved by Decree-Law no. 309/2001, of 7 December, and according to paragraph 4 of article 84 of Law no. 5/2004, of 10 February, and to article 0 of Regulation no. 1/2006, of 9 January, and in the pursue of regulation objectives provided for in points a) and c) of paragraph 1, in point b) of paragraph 2 and in point d) of paragraph 4 of article 5 of the mentioned Law, **hereby decides:**

1. **To determine on PTC** that it immediately ceases any PS deactivation which is not based on a request submitted by the PSP, following a request for contract alteration or termination made by the subscriber to this provider, so as to comply with the PS deactivation procedure provided for in article 10 of the referred Regulation;
2. **To determine on PTC** that it removes from its website [Customer Support (FAQs)/Services/ “pre-selection”], within at the most 5 working days, and in the terms stated in point I.2, the information on PS termination procedure and grounds, as provided for therein, and to make it available in compliance with article 10 of the Selection and Pre-Selection Regulation.