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Determination of 10.8.2007

Approval of the prior hearing report and of the decision on the settlement of a dispute between TV Cabo and Bragatel, Cabovisão, Pluricanal Leiria, Pluricanal Santarém and TVTEL concerning prospecting practices of the latter towards customers of TV Cabo, as well as their action on infrastructure owned by TV Cabo to disconnect services provided by this company

By determination of the Board of Directors of ICP-ANACOM of 24 May 2007, approval was granted to a draft decision on the settlement of a dispute between CATVP – TV Cabo Portugal, S.A. (TV Cabo) and Bragatel – Companhia de Televisão por Cabo de Braga, S.A. (Bragatel), Cabovisão – Televisão por Cabo, S.A. (Cabovisão), Pluricanal Leiria – Televisão por Cabo, S.A. (Pluricanal Leiria), Pluricanal Santarém – Televisão por Cabo, S.A. (Pluricanal Santarém) and TVTEL Comunicações, S.A. (TVTEL) (hereinafter collectively referred to as competing operators) concerning prospecting practices of the latter towards customers of TV Cabo, as well as their action on infrastructure owned by TV Cabo to disconnect services provided by this company.

Pursuant to articles 100 and 101 of the Code of Administrative Procedure, the draft decision was notified to interested parties, who were granted a 10-day deadline to assess the matter in writing.

Within the scope of the prior hearing of the above-mentioned interested parties, responses were received from TVTEL and TV CABO, which have been attached to the prior hearing report.

Having analysed responses received, a report of the prior hearing was prepared, comprising comments on the draft decision received from interested parties, as well as ICP-ANACOM's views on these levels.

Whereas:

a) Facts described by TV Cabo concerning competing operators may not be deemed as a violation of users' right to information on the conditions for the access to and use of this service, acknowledged in point b) of paragraph 1 of article 39 of the ECL, as the conditions for termination of contracts previously concluded with other operators are not conditions of access to the services engaged subsequently; and

b) The dispute described by TV Cabo concerns procedures related to service disconnection and activation and dismantling of existing infrastructure, a matter which is not governed by the ECL;

ANACOM is not entitled to impose, through a binding decision adopted in the scope of a procedure for administrative dispute settlement, that operators establish agreements on appropriate procedures for service disconnection and activation and dismantling of existing infrastructure, in particular to order that operators who provide the service about to be disconnected perform this disconnection within 5 days at the most from date the service provision ceases, as TV Cabo suggests by.

In short, the present case lacks one of the conditions for intervention of ICP-ANACOM in the scope of the procedure provided for in article 10 of the ECL, as there appears to be no question of compliance with the obligations arising from that Law (see article 11, paragraph 1, point a) of ECL), and for this reason this Authority must reject the request submitted by TV Cabo.

Notwithstanding, as ICP-ANACOM is aware of the need to avoid circumstances such as those described by TV Cabo and TVTEL, in order to safeguard situations likely to harm, on the one hand, the integrity of cable distribution networks, and on the other, consumer interests, the recommendation that operators establish agreements on appropriate procedures for service disconnection and activation and dismantling of existing infrastructure is maintained.

For this purpose, it is appropriate to determine that TV Cabo, Bragatel, Cabovisão, Pluricanal Leiria, Pluricanal Santarém and TVTEL must inform ICP-ANACOM of steps taken to implement this recommendation and to render formal the agreement provided for, within 3 months from the notification of the decision on this procedure.

Therefore, the Board of Directors, in the scope of the assignments provided for in point q) of paragraph 1 of article 6 of its Statutes approved by Decree-Law n.º 309/2001 of 7 December, in light of the regulatory objectives established in points a) and c) of paragraph 1 of article 5 of Law n.º 5/2004 of 10 February (ECL), in the scope of the procedure of administrative dispute settlement, provided for in article 10 of this law, hereby determines as follows:

1. To approve, in the terms and on grounds stated therein, the prior hearing final report;
2. To reject TV Cabo's request for dispute settlement, pursuant to point a) of paragraph 1 of article 11 of ECL, as there appears to be no question of compliance with the obligations arising from that Law, as facts involving a genuine dispute on the compliance with these obligations have not been claimed nor demonstrated;
3. To recommend, pursuant to point g) of article 9 of the Statutes approved in annex to Decree-Law n.º 309/2001 of 7 December, that TV Cabo, Bragatel, Cabovisão, Pluricanal Leiria, Pluricanal Santarém and TVTEL:
 - a) Inform customers who wish to change operators of the need to comply with contractual clauses on contract termination, namely the form of and minimum advance allowed for the termination notice;
 - b) Establish agreements on appropriate procedures for service disconnection and activation and dismantling of existing infrastructure, in order to prevent situations likely to affect the integrity of cable distribution networks, as well as to protect consumer interests.
4. To determine, pursuant to point g) of article 9 of the Statutes approved in annex to Decree Law n.º 309/2001 of 7 December, that TV Cabo, Bragatel, Cabovisão, Pluricanal Leiria, Pluricanal Santarém and TVTEL must inform ICP-ANACOM of steps taken to implement this recommendation and to render formal the agreement provided for, within 3 months from the notification of the decision on this procedure.
5. In the absence of agreement within this time limit, ICP-ANACOM shall promote, under the law, the adoption of the appropriate regulatory measures to ensure the integrity of cable distribution networks, and the protection of consumer interests.