

Recommendation

to providers of electronic communications services on the charging of services that became unavailable as a result of fires

Autoridade Nacional de Comunicações (ANACOM) has been monitoring the impact on electronic communications networks and services of fires occurred in the last few months in Portugal and, in this scope, it has also examined potential measures that may provide electronic communications infrastructures with greater protection and resilience in the future.

In parallel with measures which ANACOM considers that providers operating public communication networks must implement to protect infrastructures on which the provision of electronic communications services is based, this Authority also considers it crucial to adopt measures addressed to users of electronic communications services that, as a result of fires occurred, were deprived of the possibility to meet their communication needs.

While there can be no doubt that in above-mentioned situations the suspension of electronic communications services was not the result of a voluntary act of its providers, nor of an act for which they may be held responsible, it is also unquestionable that the deprivation of services did not result from an act that may be attributed to subscribers, thus there is no justification why they should be penalised with the payment for a service they did not effectively use.

ANACOM became aware through the media of specific situations of compensation to subscribers affected by the unavailability of the service as a result of damages caused by fires.

Given that the Electronic Communications Law (Law No. 5/2004, of 10 February) does not impose any obligation to deduct from the price of electronic communications services the amount that corresponds to the period of time such services were not available for reasons such as those described above, such obligation must be assessed in the light of general provisions that govern the implementation of contracts. In fact, the unavailability of the service corresponds to the failure to fulfil an obligation that arises from the contract. Consequently, any rights that injured parties could claim following the registered service interruptions must be based on provisions of civil law (namely articles 790, 792 and 795 of the Civil Code) and in contracts that set out conditions (rights and obligations) by which the provision of those services must abide.

As such, in the absence of a spontaneous initiative on the part of the electronic communications services provider, the effectiveness of rights indicated above is dependant, as a first step, on the lodging by users of a complaint with the service provider and, as a second step, in case the complaint is not met, on the decision taken by the competent judicial or extra-judicial bodies.

However, ANACOM believes that, in the wide majority of cases, the priority of users that as a result of fires occurred were deprived of the possibility to use electronic communications services will not be to take the steps mentioned earlier, that could bring about the deduction in costs of electronic communications services of the amount corresponding to the period during which they were deprived of services. In these circumstances, ANACOM takes the view that service providers play a relevant role in promoting the adjustment of amounts charged, so as to meet what, most of all, is deemed to be an imperative of fairness.

In the light of the above, taking account of its powers in the scope of the protection of rights and interests of consumers and other end-users, laid down in point h) of paragraph 1 of article 8 of Statutes approved by Decree-Law No. 39/2015, of 16 March, and to exercise the competence provided for in point b) of paragraph 2 of article 9 of the same Statutes, **ANACOM recommends providers of public communication networks and publicly available electronic communications services that, on their own initiative, and without providing for or demanding, directly or otherwise, any future remuneration, they:**

- 1. Refrain from billing and charging services during, and by reference to, the period of time such services remain unavailable due to damages caused by fires occurred in the last few months, where contracts for the provision of electronic communications services remain in force;**
- 2. Provide for the necessary adjustments to bills already issued and submitted to subscribers so as to meet the provision in the preceding paragraph;**
- 3. Guarantee credit in bills or accounts of subscribers at the amount already paid by the latter for services which were in fact not provided as a result of the unavailability (of networks and services) resulting from damages caused by fires occurred in the last few months.**

Lisbon, 31 October 2017.