

Determination of 24.5.2007

DETERMINATION

Law no. 5/2004, of 10 February (ECL) acknowledges the right of subscribers of publicly available telephone services to have an entry in a printed and/or electronic comprehensive directory, which should comprise all subscribers of publicly available telephone services.

The universal service is bound to draw up, publish and make available this directory, as well as to update it every year and to provide an enquiry service involving the disclosure of data included in the directory.

In order to allow the universal service to comply with these obligations, the law lays down a set of duties on companies that provide publicly available telephone services, which thus have a key role to play as far as the achievement of subscribers' right is concerned.

It is thus incumbent upon these companies to question the respective subscribers as to whether they wish their personal data to be included in the referred directory and what data should be included therein, as provided for in Law no. 41/2004, of 18 August, which transposes to the national legal order Directive 2002/58/EC, of the European Parliament and of the Council, of 12 July, concerning the processing of personal data and the protection of privacy in the electronic communications sector. These companies are also responsible for conveying the relevant information to the universal service provider, in respect of subscribers' wishes.

The ECL establishes also that companies providing publicly available telephone services must agree with the universal service provider on the format and conditions for the provision of relevant information on the respective subscribers, on terms which are fair, objective, cost oriented and non-discriminatory. The Law provides also that, in the absence of an agreement and in the event of non-compliance with the terms agreed, ICP-ANACOM may demand from companies providing publicly available telephone services to submit the information on the respective subscribers, determining, where necessary, the format and conditions for the provision thereof, in order to render such information available to universal service providers.

On 18 December 2003, aiming to fully ensure the right of telephone service customers to have an entry in the publicly available directory and in the enquiry service to be provided in the scope of the universal service, as well as the respect for the processing of the respective personal data, in accordance with the legislation in force at the time, ICP-ANACOM determined that telephone service providers must question their customers as to whether they wished their personal data to be included in directories and information services, especially in the scope of the Telecommunications Universal Service, and that, aware of subscribers' wishes, these companies must submit to the Universal Service provider particulars on all customers who explicitly authorized the respective data to be passed on.

The decision adopted at the time was not enough to ensure the existence of a comprehensive directory and of an enquiry service of data comprised in the directory, pursuant to the law in force at the time and to the current one, in view of the fact that two companies to whom the decision was intended did not submit their customers' data to the Universal Service provider.

In fact, the above-mentioned determination was contested before the courts by Optimus – Telecomunicações, S.A. (Optimus) and by Vodafone Portugal – Comunicações Pessoais, S.A. (Vodafone), however from these proceedings has not yet resulted a decision with the authority of a final decision.

Nevertheless, Vodafone succeeded in obtaining, by means of an interim measure, a decision which required this company to submit data on customers who wished their data to be included in the directory and enquiry services to ICP-ANACOM, who was bound to preserve such data, and not to submit it to the universal service provider, until a final decision was reached in the scope of the principal action.

Meanwhile, Optimus claimed it was not able to submit any information to the universal service provider - PT Comunicações, S.A. – as no agreement had yet been reached with this company as regards the format and conditions for the provision thereof.

The universal service directory available in Portugal and the corresponding enquiry service do not comprise all subscribers of Optimus' and Vodafone's publicly available telephone services, and thus fails to ensure the rights that are legally conferred to subscribers as a whole.

In the light of the above, the European Commission has deemed that the Portuguese Republic failed to comply with the obligation to provide a comprehensive directory and a full telephone enquiry service, under articles 5 and 25 of the Universal Service Directory, and on these grounds it initiated infringement proceedings against the Portuguese State.

Bearing in mind the provisions of paragraphs 2 and 3 of article 89 of the ECL, it is necessary to lay down a deadline for the agreement between Optimus and Vodafone, on the one hand, and the universal service provider, on the other, as regards the format and conditions for the provision of relevant information on the respective subscribers, so that, based on this information, it is possible to complete, as soon as possible, the directory and enquiry service to be provided in the scope of the universal service, as set out at the level of applicable national and Community legislation.

Therefore, the Board of Directors of ICP-ANACOM, in the scope of assignments conferred thereupon by points b), f), h) and n) of paragraph 1 of article 6, pursuant to point g) of article 9 and to point l) of article 26, all of the Statutes approved by Decree-Law no. 309/2001, of 7 December, under paragraph 2 of article 89 of Law no. 5/2004, of 10 February, and to fulfil the regulation objectives provided for in point c) of paragraph 1 and in point a) of paragraph 4 of article 5 of that Law, hereby determines as follows:

1. **To determine** that Optimus – Telecomunicações, S.A. and PT Comunicações, S.A., and that Vodafone Portugal – Comunicações Pessoais, S.A. and PT Comunicações, S.A. must take steps, within 30 days, to reach an agreement, pursuant to and for the purposes of article 89 of Law no. 5/2004, of 10 February, as regards the format and conditions for the provision of relevant information on the respective subscribers who wish their data to be included in the universal service directory and enquiry service;
2. **To determine** that the referred companies must submit to ICP-ANACOM copies of the referred agreements at the end of the period laid down in the preceding paragraph;
3. **To determine** that, in case the companies do not reach the referred agreement, they must inform this Authority of the fact, describing in detail all steps taken, difficulties encountered and ways which may likely solve them, providing the respective evidence, so that ICP-ANACOM may determine the format and conditions for the provision of this information to the universal service provider;
4. **To recommend** that PT Comunicações, S.A. exercises particular care when ensuring that the information conveyed under article 89 of Law no. 5/2004, of 10 February is not used for any other purposes.