

## **DETERMINATION**

I - In light of the fact that MUNDIO MOBILE (PORTUGAL) LIMITED (Mundio Mobile) is in a position whereby it is unable to guarantee portability to its customers - having failed to fulfil its contractual obligations to ORTABIL - Bases de Dados para a Portabilidade em Telecomunicações, S.A., the undertaking which performs the functions of the Portability Reference Entity (hereafter "Portabil" or "Reference Entity"), as a result of which failure the Reference Entity has sought to suspend provision of services to Mundio Mobile - on 19.12.2013, the Management Board of ICP -ANACOM approved the following:

*1. To order MUNDIO MOBILE to comply, forthwith, with the condition of guaranteeing portability as required under LCE - Lei das Comunicações Eletrónicas (Electronic Communications Law), Regulamento da Portabilidade (Portability Regulation) and its Contract with the Reference Entity, as holder of rights of use of numbering, in exercise of the activity of provider of the mobile telephone service in the form of virtual mobile network operator (MVNO);*

*2. In the event that MUNDIO MOBILE fails to comply with the stipulations of the above paragraph, ICP-ANACOM will determine:*

*a) Suspension of the activity of Mundio Mobile as provider of the mobile telephone service in the form of virtual mobile network operator (MVNO), including the short message service (SMS) and data service, until such time as the situation of non-compliance underlying application of the measure is resolved;*

*b) Revocation, effective from the date of the final decision and following a quarantine period, of the rights of use of numbering allocated to MUNDIO MOBILE, excluding rights of use of numbers which are currently ported;*

*c) That the date on which the suspension referred to in paragraph a) takes effect will be that which is strictly necessary in order that MUNDIO MOBILE may fulfil its obligation to inform users, as stipulated in Article 39, paragraph 1, point c) of the LCE;*

*3. For the purpose of the suspension and revocation detailed in the above paragraph:*

*a) MUNDIO MOBILE will be barred from originating or terminating calls and text and data messages on its network;*

*b) Undertakings which offer publicly available electronic communication networks and services will be unable to route communications to numbering ranges allocated on a primary basis to MUNDIO MOBILE (excluding numbers which have been ported to other operators), as well as to numbers ported to MUNDIO MOBILE based on the NRN (Network Routing Numbers) of the "019" range.*

*4. Upon notification of the decision of ICP-ANACOM implementing the measures referred to in paragraph 2, the Reference Entity will be required to apply the procedure laid down in paragraphs 4, 5 and 6 of article 11 of Regulamento da Portabilidade (Portability Regulation) to the portability processes and numbers of MUNDIO MOBILE.*

*5. To submit the present draft decision to a prior hearing of MUNDIO MOBILE, under the terms of article 110, paragraph 1 of the LCE, in order that the company may respond in writing, if it sees fit to do so, within 10 working days.*

*6. To submit the present determination to a prior hearing of Optimus - Comunicações, S.A. and of the Reference Entity, in accordance with articles 100 et seq. of the Código de Procedimento Administrativo*

*(Administrative Proceeding Code), in order that these companies may respond in writing, if they see fit to do so, within 10 working days.*

**II** - The prior hearing of Mundio Mobile was conducted, whereby, through communications (with identical content) received by ICP-ANACOM on 02.01.2014 (by fax) and 10.01.2014 (by post), the company affirmed only that it was arranging immediate payment to Portabil of the sums claimed and that its network would be reconnected to the Reference Entity as soon as possible, in order to comply with the obligations of portability.

However, according to information from the Reference Entity (in annex), Mundio Mobile has, to date, failed to settle the outstanding payments.

**III** - The prior hearing of OPTIMUS - Comunicações, S.A. was also conducted (hereinafter Optimus), pursuant to which the company reported the following:

- under applicable legislation and under the terms of the contract concluded with Mundio Mobile, Mundio Mobile has sole responsibility for ensuring full compliance with the legal and regulatory obligations to which it is bound as a provider of the mobile phone service in the form of virtual operator;
- under the contract, in the event that a decision is adopted of the type whose draft has been notified, Optimus may not undertake immediate termination of the services which it provides to Mundio Mobile; instead it is required to give Mundio Mobile 15 days notice, thereby allowing the company to rectify the situation of non-compliance described in the notification; Optimus may only terminate the contract once this notice period has elapsed and in the event that the situation of non-compliance has not been rectified. This ensures that Mundio Mobile has the opportunity to notify its customers as to the discontinuation of its offer;

- the contract does not make provision for the suspension of services provided by Optimus to Mundio Mobile, including where as a result of a failure by Mundio Mobile to comply with legal or regulatory obligations; as such, in the event that Mundio Mobile fails to rectify the non-compliant situation described in the notified Determination, Optimus is required to give notice, as stipulated in the contract, in order to enable fulfilment of the obligations imposed by ANACOM; where rectification is not achieved before the period of notice elapses, Optimus will terminate the contract - from which time it will discontinue provision of services;
- accordingly, during the quarantine period, Optimus is unable to suspend the services provided to Mundio Mobile, and may only terminate the contract, resulting in discontinuation of the service that Mundio Mobile offers its customers, under the terms described;
- Optimus therefore requests that any order entailing cessation of the services provided by Optimus to Mundio Mobile be notified with at least 15 days notice prior to the date of implementation, enabling compliance with the contractual notice period;
- finally, Optimus affirms that, as a company which offers publicly available electronic communication networks and services, it will comply forthwith, in the event that, *outside the scope of the application of obligations under the Contract*, it is ordered to refrain from routing communications from its customers to numbering ranges allocated on a primary basis to Mundio Mobile (numbers which have not been ported to other operators) as well as to numbers ported to Mundio Mobile.

**IV** - According to information from Portabil (dated 12.02.2014 and 13.02.2014), Mundio Mobile has not, to date, settled the outstanding sums due to the Reference Entity; as a result, since 12.18.2013, Mundio Mobile has not been in a position to present itself as a recipient provider of number portability, whereby it has put itself in a situation where it is unable to meet the portability obligations to which it is bound - i.e. as set out in paragraphs 2 and 3 of article 54 of the LCE - Lei das Comunicações Eletrónicas (Electronic Communications Law)<sup>1</sup>, in addition to having already failed to fulfil the obligations laid down in paragraphs 6 and 7 of article 8 of the Regulamento da Portabilidade (Portability of Regulation)<sup>2</sup>, as stated in the Determination of 19.12.2013. Mundio Mobile is therefore in serious breach of the condition set out in point c) of paragraph 1 of article 37 of the LCE, as associated with the allocation of rights of use of numbering (as described in section I - 2 of the same Determination).

Therefore, the grounds of fact and law giving basis to the adoption of the measures indicated in the Determination of 12.19.2013 remain applicable as set out therein, whereas Mundio Mobile has not presented any countering arguments.

As already stated in the referenced determination, the date on which the ordered suspension of activity takes effect will be that which is strictly necessary in order that Mundio Mobile may fulfil its obligation to inform users, as stipulated in Article 39, paragraph 1, point c) of the LCE (i.e. suspension of activity takes effect 17 consecutive days after the company receives notification of the present determination), enabling the company to engage the necessary procedures to inform users.

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<sup>1</sup> Law no. 5/2004 of 10 February, as republished by Law no. 51/2011 of 13 September and amended by Law no. 10/2013 of 28 January and Law no. 42/2013 of 3 July.

<sup>2</sup> Regulation no. 58/2005 of 18 August, as republished by Regulation no. 114/2012 of 13 March.

**V** - The issues raised by Optimus are not of great practical significance, insofar as the date on which the activity of Mundio Mobile is to be suspended (as established under the terms set out above) will allow Optimus to comply with the requirement to give the notice to which, it argues, it is bound by agreement with Mundio Mobile.

Nevertheless, it should be added that, once ICP-ANACOM determines to suspend the activity of a regulated company, it is unlawful for any other company to act in such a way as assists a situation of non-compliance, which act would constitute an offence. In a case such as the present case, such assistance would be decisive in order that a situation of non-compliance may occur, since it entails the provision, by Optimus to Mundio Mobile, of a support service which is indispensable to the exercise of Mundio Mobile's activity.

**VI** - In order to ensure compliance with the quarantine period (three months) established in the Regulamento da Portabilidade (Portability Regulation), ICP-ANACOM considers that this period should commence in coincidence with the suspension of activity, whereby the Final Decision is adjusted accordingly.

**VII** - To ensure the proper routing of communications to the ported numbers of Mundio Mobile (as Donor Provider) in use by other providers, operators which originate calls to such (ported) numbers are required to ensure, from the date of suspension of Mundio Mobile's activity, implementation of "all call query" (ACQ) routing techniques, in line with paragraph 2 of article 4 of the Regulamento da Portabilidade (Portability of Regulation).

**VIII** - **On the above terms and in pursuit of the objectives of regulation set out in point c) of paragraph 1 and in points a) and d) of paragraph 2 of article 5 of the Lei das Comunicações Eletrónicas (Electronic Communications Law), pursuant to the powers set out in points b), h) and**

n) of paragraph 1 of article 6, and pursuant to point g) of article 9, all of ICP-ANACOM's Statutes, as published in annex to Decree-Law no. 309/2001 of 7 December, and further, pursuant to point c) of paragraph 1 of article 37, pursuant to article 54 and pursuant to article 110 of the Lei das Comunicações Eletrónicas (Electronic Communications Law), the Management Board of ICP-ANACOM determines as follows:

1. To order the suspension of the activity of MUNDIO MOBILE (PORTUGAL) LIMITED as provider of the mobile telephone service, in the form of virtual mobile network operator (MVNO), including the short message service (SMS) and data service, pending resolution of the situation of non-compliance that gives basis to application of the measure;
2. To revoke, following the quarantine period, counted as from the date of the suspension of activity ordered in the above paragraph, the rights of use of numbering allocated to MUNDIO MOBILE (PORTUGAL) LIMITED, excluding the rights of use relating to numbers that have already been ported;
3. The suspension referred to in paragraph 1 shall take effect 17 consecutive days following receipt of the notification of the present Determination by MUNDIO MOBILE (PORTUGAL) LIMITED, whereas ICP-ANACOM will publicise the date on which the suspension will take effect on its website;
4. For the purposes of suspension and revocation provided for in the previous paragraphs:
  - a) MUNDIO MOBILE (PORTUGAL) LIMITED is barred from originating or terminating calls and text and data messages on its network;
  - b) Companies which offer publicly available electronic communication networks and services will be unable to route

**communications i) to and from numbering ranges allocated on a primary basis to MUNDIO MOBILE (PORTUGAL) LIMITED (excluding numbers which have been ported to other operators) and (ii) to numbers ported to MUNDIO MOBILE (PORTUGAL) LIMITED based on the NRN (Network Routing Numbers) of the "019" range.**

**5. Once the determination established in paragraph 1, above, takes effect:**

- a) The Reference Entity shall ensure application of the procedure laid down in paragraphs 4, 5 and 6 of article 11 of the Regulamento da Portabilidade (Portability Regulation) to the portability procedures and to the numbering of MUNDIO MOBILE (PORTUGAL) LIMITED.**
- b) Operators which originate calls to ported numbers of MUNDIO MOBILE (PORTUGAL) LIMITED (as Donor Provider), in use by other providers, shall implement "all call query" (ACQ) routing techniques, in line with paragraph 2 of article 4 of the Regulamento da Portabilidade (Portability of Regulation), in order to ensure the proper routing of such communications. For reasons of urgency, and in accordance with point a) of paragraph 1 of article 103 of the Código do Procedimento Administrativo (Administrative Proceeding Code), no prior hearing on this determination will be held.**