



ROMANIA
NATIONAL REGULATORY AUTHORITY
FOR COMMUNICATIONS

Resolution of Disputes in the Light of the New Regulatory Framework

Geneva, August 31, 2004

Sebastian POPOVICI - Head of Disputes Section



The new Romanian regulatory framework in the field of electronic communications is currently one of the most advanced in Europe, as Romania has transposed and is already implementing the new *acquis* adopted by the European Union in 2002.

An essential issue for the implementation and development of this new framework has been the establishment of the **National Regulatory Authority for Communications (ANRC)**.

The main role of ANRC, public body within the structure of the Romanian Government, is to **implement** the national policy in the field of electronic communications and postal services by **issuing** the secondary legislation, which comprises economic as well as technical regulations, and to effectively **monitor** their observance.

The Role
of ANRC



Government Emergency Ordinance no.79/2002 on the general regulatory framework for communications, approved, with amendments and completions, by Law no.591/2002

- ✓ establishes the general framework for the regulation of the activities related to electronic communications networks and services
- ✓ sets up **ANRC** as the body of the central public administration specialised in the field of electronic communications and postal services, defines its objectives and attributions
- ✓ defines the specific rules governing competition in these markets

**Primary
Legislation**



Law no.304/2003 on the universal service and users' rights relating to electronic communications networks and services

establishes the regulatory framework for the relations between the providers of electronic communications networks and services, on one hand, and the end-users, on the other hand

establishes the rules for:

- ✓ universal service
- ✓ the rights of end users
- ✓ the obligations for the electronic communications networks and services providers with significant market power
- ✓ the obligations of providers of public communications networks and providers of publicly available electronic communications services

**Primary
Legislation**



Decision no.1331/2003 on the procedure regarding the settlement of the disputes within the competence of ANRC

✓ sets out the administrative-judicial procedure for the settlement of disputes within the competence of ANRC, arising between the providers of electronic communications networks or services, or between the providers of postal services, or between users and providers

✓ the disputes within the competence of ANRC may be settled through the **mediation procedure** or through the **contentious procedure**

Secondary
Legislation



ANRC settles two categories of disputes:

✓ **Disputes between providers**

(Government Emergency Ordinance no.79/2002 on the general regulatory framework for communications, approved, with amendments and completions, by Law no.591/2002 – **Framework Ordinance**)

✓ **Disputes between users and providers**

(The Law no.304/2003 on the universal service and users' rights relating to electronic communications networks and services – **The universal service law**)

Within ANRC, disputes are settled by a specialised section:

– **Disputes Section**

Resolution of
Disputes



Disputes
Between
Providers

Framework Ordinance:

Art.36 – (1) *In the event of a **dispute arising between the providers of electronic communications networks or services** [...] in relation to the obligations imposed on them on grounds of this Emergency Ordinance or of the special legislation, the interested party shall notify ANRC in view of resolving the dispute. The dispute shall be resolved by Decision of the president of ANRC within 4 months from the date when an application has been made in this respect, save for exceptional circumstances, when a longer term is necessary for the adequate resolution of the dispute. [...]*

(5) *The **procedure for the resolution of disputes** provided for in this Article shall be set out by Decision of the president of ANRC [...].*



Disputes
Between
Providers

In case a dispute occurs between the providers of electronic communications networks or services to the obligations imposed on them on grounds of the Framework Ordinance or of the special legislation, the interested party **may address ANRC in order to settle the dispute.**

The disputes under the competence of ANRC may be settled by **mediation procedure** or by **contentious procedure.**

- ✓ the **mediation** aims at amicably settling the dispute and the role of ANRC is to assist the parties

- ✓ the **contentious procedure** - ANRC settles the dispute between the parties if they choose not to go through the mediation procedure or if the mediation procedure has failed



Mediation Procedure

The aim of the mediation procedure is to amicably settle the dispute and the role of ANRC is to assist the parties in concluding an agreement concerning the object of the dispute.

ANRC's contribution consist in the clarifications it may provide concerning the construal of the legal provisions in the field of electronic communications or postal services applicable to the case.

In case the mediation results in the settlement of the dispute, the parties shall conclude a transaction.

ANRC mediation is facultative, confidential, free of charge and cannot exceed 30 days in duration.

Should the dispute not be settled during the mediation phase, the contentious procedure ensues.



Contentious Procedure

Providers in conflict may resort directly to the **contentious procedure**, without going through the mediation procedure first. Also, the contentious procedure is automatically started if the mediation procedure fails.

Analysis and solution

Following the analysis of all information and points of view expressed in the case, the ANRC Commission (appointed for the specific purpose of solving the dispute) drafts a **preliminary solution**, which is communicated to the parties together with the measures suggested for the settlement of the dispute.

Re-analysis

Within 15 days from the communication of the preliminary solution, any of the parties may address a request to the Commission in order to re-analyze the suggested solution.



Contentious Procedure

Duration

Within **4 months** from the date after the filing of the complaint - ANRC must issue a decision for dispute settlement.

In exceptional cases and where necessary for the appropriate settlement of the dispute, this term may be extended through decision of the President of ANRC.

Amicable solution

The parties may reach an agreement on the object of the dispute, at any time during the mediation or contentious procedure.

Appeal

The decision given by ANRC may be appealed in front of the Administrative Section of the Bucharest Court of Appeal within 30 days after it is communicated, without the fulfillment of the preliminary procedure under art.5 of Law no.29/1990 on the administrative contentious, with the subsequent amendments.



Disputes Between Users and Providers

The Universal Service Law :

Art.36. – *Within 90 days from the date of the entry into force of this Law, ANRC shall establish a transparent, simple and inexpensive mediation procedure, in order to amicably, fairly and promptly settle the disputes between end-users and providers of electronic communications networks and services, occasioned by the enforcement of this Law. [...]*



Users who consider that the providers of electronic communications services breached their rights provided under the universal service law **may address ANRC** for the settlement of the dispute.

Filing a complaint

Users' complaints may be filed:

- ✓ **directly to ANRC** – at the registration office
- ✓ by **mail**
- ✓ by **fax**
- ✓ by **electronic mail**
- ✓ **verbally** – the end-users who choose to come in person to the ANRC headquarters are able to make their complaint verbally and ANRC personnel puts it in writing

The standard-form is **facultative**.

The procedure for dealing with users' complaints against the providers of electronic communications services is available on the website of ANRC - www.anrc.ro



Analysis and Solution

ANRC personnel in charge with the resolution of users' complaints take all measures in order to accurately establish the facts and the applicable legal norms, and that includes meetings with the parties in conflict, together or separately.

The parties have the obligation to make all efforts for an amicable resolution of the dispute and to cooperate for this purpose with the ANRC personnel.

For a correct settlement and for taking an objective decision, ANRC sends users' complaints to the providers and requests their opinion or explanation, before taking any other measure.



**Disputes
Between
Users and
Providers**

ANRC can also convene at its headquarters the parties in conflict, separately or together, if the information provided is not sufficient for the resolution of the case.

If, within 60 days after the filing of the complaint, the parties do not reach an agreement, ANRC communicates its opinion as to the best way to solve the dispute. The ANRC opinion has the character of a **recommendation**.

The mediation procedure is **free of charge** and **facultative**.



Should any other information be necessary, please visit:

www.anrc.ro

Questions or remarks are welcome at :

sebastian.popovici@anrc.ro

Thank you for your time and attention.