



Unofficial Translation

ADMINISTRATIVE BOARD

DECISION

September 23, 2008

no. 15

REGISTERED

With the Ministry of Justice of RM

no. **617** of 23.10. 2008,

Minister

_____ **V. PÎRLOG**

On Approving the Regulations on Dispute resolution Procedure in Electronic communications

For the enforcement of Art. 8 (6) a) and Art. 9(1) q) and r) of the Law on Electronic Communications no.241-XVI of 15.11.2007 (Official Gazette of the Republic of Moldova, 2007, no.51-54, Art.155), based on section 15 b) of the Regulations of the national Regulatory Agency for Electronic Communications and Information Technology (ANRCETI), approved by Government Decree no. 905 of 28.07.2008 (Official Gazette of the Republic of Moldova, 2008, no.143-144, Art.917), the Administrative Board hereby

D E C I D E S:

1. To approve the Regulations on Dispute Resolution in Electronic Communications (attached).
2. To cancel the Regulations on Dispute Resolution between Operators or Operators and Users by the National Regulatory Agency for Telecommunications and Informatics, approved by ANRTI Administrative Board Decision no.17/3 of 7.08.2001 (Official Gazette of the Republic of Moldova, 2001, no.155-157, Art.370), Registered by the Ministry of Justice under no.241 of 03.12.2001.
3. This Decision shall enter in force on the date it is published in the Official Gazette of the Republic of Moldova.

Chairman of the Administrative Board

Sergiu SITNIC

Board Members

**Ion Pochin
Iurie Ursu**

**REGULATIONS ON DISPUTE RESOLUTION IN ELECTRONIC
COMMUNICATIONS AND INFORMATICS**

I. GENERAL PROVISIONS

1. These Regulations set forth the procedure to be applied by the National Regulatory Agency in Electronic Communications and Information Technology (hereinafter – the Agency) in solving disputes between electronic communications networks and/or service providers (hereinafter - providers), as well as disputes between providers and end-users which fall under ANRCETI competence.
2. Where a dispute, produced by the enforcement of the Law on Electronic Communications no. 241-XVI of 15.11.2007 (hereinafter Law no. 241/2007), is pending between the provider and the end-user, having failed to be amiably solved by the parties, according to the procedure set forth in the service provision contracts the parties signed, they both have the right to seek the Agency's mediation assistance.
3. Where a dispute is pending between providers according to their rights and obligations pursuant to Law no.241/2007, and where the dispute failed to be amiably solved by the parties, any of the parties may address to the Agency for a solution by means of a mediation or contentious procedure.
4. The Agency, having resolved the disputes provided for in section 3 of these Regulations by a contentious procedure, shall adopt a binding decision in this respect. Any obligations for dispute resolution the Agency imposes on a party shall be consistent with Law no.241/2007.
5. At any time of the dispute resolution procedure the parties may come to terms with respect to the dispute.
6. If the complainant renounces his claim or if, being subpoenaed, fails to attend the session with no justified reason, the Agency shall discontinue the dispute resolution procedure.
7. The dispute resolution procedure, established in these Regulations, shall be consistent with the principles of equity, contradictorality and right to proper defense.
8. The mediation and the contentious procedures, provided for by these Regulations, shall be optional and free of charge.

9. For the purpose of these Regulations, the definitions provided in Art. 2 of Law no.241/2007 shall be applied.

II. Resolving Disputes between Providers

Section 1. Commencement of Procedure

10. The interested party shall address to the Agency in one of the following ways:
- by submitting a written application, personally or by a representative to the Agency office;
 - by sending the application via registered mail, with advice of delivery;
 - by faxing it;
 - by an electronic entry under an authentic digital signature, based on a public key certificate, unsuspending or un-revoked at that particular point of time.
11. The complaint shall comprise the following information:
- a) The parties to the dispute and their identification data;
 - b) Dispute subject – shall contain the obligations imposed under Law no.241/2007, other laws, normative acts, regulations governing the activity in presumably being violated by the respondent;
 - c) Motivation by fact – the complainant shall provide details, including relevant documents (copies of mail, minutes of the parties' joint sessions, etc.);
 - d) Motivation by right – legal provisions, serving as grounds for appeal;
 - e) How and to what extent the complainant is affected by the dispute;
 - f) Measures undertaken by the parties to solve the dispute amiably, where applicable, copy of the respondent's reply (decision) to the complainant's petition, copy of the service provision contract, bills and other documents;
 - g) Solutions and measures proposed by the complainant to the respondent in order to resolve the dispute;
 - h) The agreed-upon procedure of dispute resolution in the case of a dispute between providers;
 - i) Signature and stamp, if applicable.
12. The complaint shall be filled into the standard form, developed by the Agency.
13. The standard form shall be available at the Agency office or downloadable on the official Web page of the Agency – www.anrceti.md.
14. The complaints shall be registered in the Complaints Register and kept as a separate file.
15. The complaint shall be signed by the author or by a duly authorized representative and shall contain the name, surname and the place of residence or office address.

16. Complaints inconsistent with the conditions provided for in sections 10, 11 and 15 of these Regulations shall not be examined by the Agency.

17. Before submitting the complaint to the Agency, the complainant shall submit it to the provider who is directly competent to solve the dispute. The respondent shall consider the complaint within 30 days. Complaints, not requiring additional examination and study shall be considered without delay or within 15 days from the date it was registered and shall notify the complainant about the decision.

18. If the complainant disagrees with the provider's decision or no reply has been given within the timeframes set by the legislation, he shall have the right to submit the dispute resolution complaint to the Agency or to a competent court.

19. If the dispute resolution complaint is submitted to the Agency directly, without priorly being addressed to the provider, it shall be sent to the provider. He shall consider it and express his view on the legitimacy of the complainant's claim. The respondent shall inform both the complainant and the Agency about his decision, within one month from the date the complaint was received.

20. Complaints from end-users or providers that are beyond the competence of the Agency, shall not be considered, which fact shall be notified to the complainant. If the complaint falls under the competence of another authority, it shall be referred there within 3 days from the date it was registered, which fact shall be notified to the complainant.

Section 2. Preliminary Measures

21. After the complaint was registered, provided that it is consistent with the standard form conditions, set in sections 10, 11 and 15 of these Regulations, the Director of the Agency, depending on the nature and complexity of the disputed issue, by a written resolution, shall refer the complaint or dispute to the corresponding Service in charge of dispute resolution inside the Agency or to a commission composed of the Agency representatives, if necessary, of Administrative Board members (hereinafter – person in charge of dispute resolution).

22. The person in charge of dispute resolution shall make preliminary analysis of the material supplied with reference to the dispute, shall establish the Agency's competence to solve the dispute, the cause and nature of the dispute, the validity of the complainant's claims, the actions undertaken by the parties to solve the discord and the solutions proposed by the complainant. The person in charge of dispute resolution can require that the parties involved provide additional information, if that is necessary for dispute resolution.

23. The person in charge of dispute resolution shall invite the parties, notifying them about the meeting at least 5 days in advance. He shall also submit the complaint to the respondent, so that the respondent could present his opinion.

24. Where the nature of the dispute may affect the legal rights and interests of other persons, the person in charge of dispute resolution shall identify them and notify them on the dispute, specifying the timeframe for providing opinions on the matter and considering them, once such opinions have been provided.

25. Once the parties attend the meeting on the date announced, as provided in section 23 of these Regulations, the person in charge of dispute resolution shall notify them on the possibility of solving the dispute through mediation procedure.

26. If the parties give their consent to dispute resolution through mediation procedure, the person in charge of dispute resolution shall draw up minutes as the basic document for launching the mediation procedure.

27. The contentious procedure shall be applied, where one of the parties fails to attend the meeting or, both being present, at least one of them disagrees with dispute resolution through mediation procedure. The minutes shall be the basic document for launching the contentious procedure.

28. The debates during the dispute resolution procedure shall be noted down in the minutes of the meeting, indicating the following:

- a) a short description of the meeting;
- b) requirements and assertions of the parties;
- c) motivation as to the measures due;
- d) resolution;
- e) signature of the person in charge of dispute resolution.

29. Any instructions of the Agency shall be registered in the minutes and shall be motivated.

Section 3. Mediation Procedure

30. The mediation procedure is an alternative way to amiably solve a dispute by the parties assisted by the Agency. The mediation is based on cooperation between the parties and on specific methods and techniques involving communication and negotiation, used by the person in charge of dispute resolution.

31. The person in charge of dispute resolution is assigned with the task to help the parties solve the dispute through mediation procedure and shall do the utmost to have the parties mutually understand their opinions, the Agency's role being to assist them.

32. The person in charge of dispute resolution cannot impose a certain solution, it being the task of the parties to come to an understanding as regards the dispute.

33. The mediation shall take place at the office of the Agency or in another place chosen by the parties. During the mediation procedure, the parties shall be invited to the meetings separately or together, their number being determined by the complexity of the case. After every meeting the person in charge of dispute resolution shall draw up the minutes of the meeting.

34. The parties can require that the person in charge of dispute resolution clarify the scope of specific legal clauses applicable to the case.

35. Where the mediation results in amiable dispute resolution, the parties shall conclude a transaction. The transaction shall be signed if the parties accept the proposed conditions and shall include the obligations assumed by the parties that are held responsible for mediation results and contents of the transaction.

36. The Agency has no decision-making power as regards the contents of the accord reached by the parties.

37. The transaction shall be made in written form in several copies, one copy for each party and one copy for the Agency.

38. The mediation procedure shall be consistent with the principle of confidentiality and shall not exceed 30 days from the date the agency was notified on the issue.

39. Where the parties cannot come to an agreement within the specified timeframe, the dispute shall be resolved through the contentious procedure.

40. Throughout the entire mediation procedure any of the parties can require switching over to contentious procedure, all the documents, proofs and vindication so far provided being valid for examining the case through contentious procedure.

41. The parties shall be able to exercise their rights personally or by a representative. Representatives shall have proof attesting their status of representatives.

Section 4. Contentious Procedure

42. The contentious procedure is an alternative method of dispute resolution, by which the Agency takes a decision in a dispute between providers, with reference to the rights and obligations imposed to them pursuant to the legislation in force governing electronic communications. The Agency, upon the request by any of the parties and without prejudicing the parties' right to resolve the dispute by concluding a reconciliation transaction, shall take a binding decision as to the dispute resolution.

If the parties have concluded a transaction as to the dispute, it shall be in written form, signed by the parties involved, according to clauses 35 and 37 of these Regulations.

43. Where the dispute is to be solved by contentious procedure, the person in charge of dispute resolution shall inform the parties of the date they are invited to the Agency. If the contentious procedure is directly applied, the respondent shall be required to provide a reply to the complaint within 7 days from the notification date, under the sanction of ignoring the subsequently provided defense, except when the necessity of such defense occurs as a result of debates which the respondent could not foresee. The respondent will be provided, by registered mail with advice of delivery, copies of the complaint and of the documents submitted by the complainant.

44. Under exceptional circumstances, the complainant shall be required to provide a reply in a shorter timeframe. Such exceptional circumstances include, but are not limited to, the situations, where the person in charge of dispute resolution considers that the complainant may be imminently prejudiced while the dispute is being settled.

45. If additional information is necessary from any of the parties, they can be required to provide it within 3 days.

46. The complainant has the right to:

- a) Provide the person in charge of dispute resolution, personally or by representative, arguments to support his claims;
- b) Provide the person in charge of dispute resolution with additional materials with reference to the complaint and dispute resolution;
- c) Acquaint with the materials related to the examination;
- d) Receive a written, verbal or e-mail reply about the results of the examination;
- e) Require that the provider or license holder repair damages, as provided by law.

47. For the purpose of fair dispute resolution, for identification of all relevant circumstances necessary for that purpose, the person in charge of dispute resolution shall have the following rights:

- a) Require that the parties involved in the dispute, provide information, excerpts from documents, including confidential ones;
- b) Require that the parties present written or verbal explanations with reference to actions taken by the respondent and the solutions proposed by him, with reference to the legal grounds that serve as basis for the parties' claims and decisions;
- c) Instruct the participants to the dispute resolution procedure concerning their obligation to maintain confidentiality of information, having the right, where appropriate, to require that the participants sign a confidentiality agreement;
- d) Upon express request from one of the parties involved in the dispute, ensure the confidentiality of the disclosed information in relation to the other party;
- e) Propose that the parties amiably solve the dispute.

48. Disregarding the principle of confidentiality, the person in charge of dispute resolution shall inform the Agency or competent authorities about an imminent administrative contravention or offence, which may be revealed during dispute resolution process.

49. Where the dispute resolution requires specific technical or scientific assessment, the parties involved shall have the right to arrange an independent expertise, at their own expenses.

50. Once the person in charge of dispute resolution find that he possesses all the necessary information to solve the dispute, he shall invite the parties to express their opinions on the dispute.

51. The parties shall be invited to meetings by the person in charge of dispute resolution, their number being determined by the complexity of the case.

52. The fact that the respondent party fails to attend the meeting shall not suspend the meeting, except where the missing party alleges sustainable reasons for adjournment, notifying the agency and the other Party. Only one adjournment shall be acceptable.

53. The dispute resolution process, as a rule, is a closed meeting. An open meeting shall be acceptable only provided that the parties give their consent.

54. After every meeting the person in charge of dispute resolution shall draw up minutes of the meeting.

55. The parties shall have access to the contents of the minutes and documents included in the case file.

56. The person in charge of dispute resolution shall make a schedule of the meetings and preside them.

57. The Agency may take the decision in respect to the dispute on basis of entries, documents and other written evidence provided by the parties involved, without going through verbal debates, if the parties have agreed to waive them.

58. Following the examination of all the information and after all hearing the parties' opinions, where the dispute is basically solved, the person in charge of dispute resolution shall draw up a preliminary solution, which shall be notified to the parties, along with the measures proposed for dispute resolution.

59. In a 5-day timeframe from the notification on a preliminary solution, any of the parties can lodge an application with the person in charge of dispute resolution that the

proposed solution be re-considered. Where within the established timeframe the person in charge of dispute resolution is provided with new information with reference to the dispute, he shall decide whether the information is relevant and the preliminary solution can be subject to re-consideration.

60. If an application requesting preliminary solution re-consideration has been lodged or the person in charge of dispute resolution has been notified about new relevant information, the latter, after the 5-day timeframe, shall expressly summon the parties to hear their opinions. Once the given term has expired or after the parties have been summoned, the person in charge of dispute resolution shall consider the procedure to be over.

61. Where it is found that the complainant's requirements are ungrounded, whereas the respondent's actions are consistent with legal and normative documents, general authorization conditions or license conditions and in no way infringe upon the legal rights and interests of the complainant, the Agency shall issue a reasoned reply which rejects the complainant's claims.

62. If it is found that the complainant's claims are well-grounded, the Agency shall duly act, within the scope of its competence, to restore his legal rights and interests. Where this is the case, the Agency, through its dispute resolution decision, shall require that the respondent:

- a) Remove the factors that caused infringement upon the complainant's rights and restore them;
- b) Take actions in order to fulfill the dispute resolution decision taken by the Agency;
- c) Modify the provider's decision that contravenes the legislation.

63. Once the examination procedure is over, the person in charge of dispute resolution shall present to the Administrative Board a report comprising the proposals for dispute resolution and shall draw up a draft decision in that respect.

64. With the view to solve the dispute, ANRCETI Administrative Board shall issue a decision that will obligatorily comprise data with reference to:

- a) the person in charge of dispute resolution (a person from the Service responsible for dispute resolution or commission) – membership and position within the Agency;
- b) name and place of residence, position, name and office address of the parties;
- c) subject of the dispute and the parties' allegations;
- d) motivation *de facto and de jure*;
- e) measures ordered and ways to enforce them;
- f) ways to appeal against the decision.

65. The dispute resolution decision shall be obligatory for the parties. The respondent shall fulfill the decision issued by the Agency within the established time-limit.

66. The dispute resolution decision shall be issued by ANRCETI Administrative Board within one month from the date the Agency was notified on the issue and shall have legal power as an administrative act. In exceptional situations, for ensuring a fair solution of the case, this term can be extended through the Agency director's decision, which fact shall be notified to the parties involved in the dispute.

67. Where, in its decision, the Agency did not pronounce on one of the claims contained in the complaint, any of the parties or the Agency, from the office, may require that the decision be completed within 15 days from the date it is received, or if appropriate, from the date the decision was pronounced.

Where the Agency pronounces on a claim sustained in a contentious procedure, but left out from the obligatory decision, the Agency shall take an additional decision.

68. The reasoned decision shall be forwarded to the parties for execution within 3 days from the approval date.

69. The dispute resolution decision shall be placed on ANRCETI official web site – www.anrceti.md, having regard to legal provisions with reference to confidentiality.

70. The decision can be contested with the Court of Appeal Chisinau, on conditions and in the terms as provided by law.

III Dispute Resolution between End-Users and Electronic Communications Service Providers

71. Where end-users consider that their rights, provided by Law no.241/2007 or other laws, normative acts, regulations governing electronic communications, have been infringed upon by electronic communications service providers, they can apply to the Agency for dispute resolution.

72. End-users shall address to the Agency as required in s.10, undergoing the procedure set out in s. 17 and 18 of these Regulations.

73. Where the end-user personally presents himself to the office of the Agency, he shall be able to verbally express his complaint, being noted down by a person in charge. Complaints, submitted by end-users can also be lodged by filling in a standard form, developed by the Agency.

74. The person in charge of complaint examination and dispute resolution shall identify the exact dispute circumstances and the applicable legal norms, inclusively by summoning the parties, jointly or separately.

75. The parties shall provide all input to help solve the dispute amiably and to cooperate in this respect with the person in charge designated by the Agency.

76. The Director of the Agency may order unplanned control over the provider of electronic communications services, in order to verify the facts alleged in the petition.

77. Where the parties have failed to reach understanding within 30 days from the date the petition was received, the Agency shall notify to the parties its duly-motivated opinion, of a recommendation nature, on the how to solve the dispute.

Chapter IV Final Provisions

78. The dispute case file shall be kept with the Agency and shall comprise all documents received or notified to the Agency during the procedure set out by these Regulations, also, if necessary, the proofs that such documents have been provided.

79. Where the procedure set out by these Regulations reveals that an obligation has not been met, as required by the general authorization or license conditions, by Law no. 241/2007 or other normative acts, regulations on electronic communications, which is sanctioned as an administrative contravention, in relation to the dispute subject, the procedure provided by law shall be applied.

In this case the Agency's decision or opinion on dispute resolution shall take into account the act confirming detecting the breach and sanctioning it.

80. The Agency's decision shall be binding and can be suspended or cancelled only by another Agency's decision or an administrative court ruling.

81. Where the respondent fails to exactly and timely fulfill the requirements of the Agency, set out in its decision on complaint or dispute resolution and where such actions contradict the general authorization or license conditions, the Agency shall take due action as required by law.