

REGULATORY ELEMENTS FOR TRADING AND/OR DELIVERY OF PUBLIC TELECOMMUNICATION SERVICES

The XIX Meeting of Permanent Consultative Committee I: Telecommunications/Information and Communication Technologies (PCC.I),

CONSIDERING:

- a) That the V Regular Meeting of the CITELE Assembly agreed to promote information dissemination so that the population learns about the service features, price and security offered by the market;
- b) That the PCC.I (Telecommunications/ICT) mandate is to promote debate and develop recommendations to encourage infrastructure, embrace innovation and new services in a legal certainty environment;
- c) That the Working Group on Policy and Regulations of PCC.I has been entrusted with the development of best practice guidelines regarding the relationship between users and service providers;
- d) That education and the disclosure of the proper use of products and services that guarantee the freedom of choice and procurement equity are part of the basic principles on consumer relationships;
- e) That it is necessary to strengthen policy frameworks to protect consumers against misleading and abusive advertising, coercive and unfair business methods and practices and unfair or imposed clauses on the supply of public telecommunication services,

RECOGNIZING:

That the Resolution 64 (Hyderabad, 2010) "Providing protection and support for users/consumers of telecommunications/information and communication" of the World Conference on Telecommunication Development of the International Telecommunication Union urges Member States to develop and promote standards that support end-user communication with respect to the information concerning the characteristics of the telecommunication services offered by different suppliers,

TAKING INTO ACCOUNT:

- a) That it is necessary that consumers have instruments with proportional and equitable terms and conditions offering security and legal certainty when hiring services;
- b) That it is convenient to count on instruments that establish the obligation of public telecommunication services providers to furnish consumers with adequate and clear information about the services rendered so that they have the necessary elements to make a decision best suited to their interests and meeting their needs,

¹ CCP.I-TIC/doc.2380 /11

RECOMMENDS:

1. That CITELE Member States consider the inclusion of the items encompassed in the Annex so as to establish national regulatory frameworks, designed to improve the relationship between telecommunication services users and providers.
2. That CITELE Administrations spread this Recommendation among its national agencies responsible for protecting users' rights.

INSTRUCTS THE EXECUTIVE SECRETARY OF CITELE:

To send this Recommendation to the Member States and associate members of CITELE.

ANNEX TO RECOMMENDATION PCC.I/REC. 9 (XIX-11)

REGULATORY ELEMENTS FOR TRADING AND/OR PROVISION OF PUBLIC TELECOMMUNICATION SERVICES

1. PURPOSE AND SCOPE

To establish the policies and trade information to be met by providers when trading and/or providing public telecommunication services, as well as the minimum requirements to be contained in the contract of adhesions entered into by providers and consumers in their business relationships for telecommunication services rendering.

2. DEFINITIONS

- 2.1. Consumer, User or Subscriber: The person or entity that, either temporarily or permanently, has access to telecommunication services and/or has entered into a contract of adhesion for the provision of telecommunication services with the provider.
- 2.2. Contract of Adhesion: A document unilaterally drawn up by the provider to establish standard formats of the terms and conditions applicable to the sale and/or provision of telecommunication services, even when such document does not contain all the regular provisions of a contract and irrespective of the celebration manner.
- 2.3. Business Premises: The place where the provider usually or regularly conducts trading and/or telecommunication services rendering acts in accordance with the provisions of the local legislation on the subject.
- 2.4. Telecommunication Terminal Devices: It includes all users' telecommunication devices that connect beyond the terminal connection point of a public network in order to access and/or receive one or more telecommunication services.
- 2.5. Telecommunication services plans or packages: Set of telecommunication services rendered by the provider either packaged or combined for a single price or rate.

- 2.6. **Forced Term:** Fixed or fixable term in which a mandatory minimum duration is established for both parties for service rendering.
- 2.7. **Provider or Supplier of Telecommunication Services:** The person or entity that usually or regularly furnishes telecommunication services and, to do so, has a license issued by the national authority.
- 2.8. **Telecommunication Network:** System integrated by transmission media, such as channels or circuits using frequency bands of the radio spectrum, satellite links, wiring, electric transmission networks or any other means of transmission and, where appropriate, centrals, switching devices or any other equipment.
- 2.9. **Public Telecommunication Network:** The telecommunication network through which telecommunication services are commercially exploited. The network does not include telecommunication terminal devices of users or telecommunication networks beyond the terminal connection point.
- 2.10. **Additional Services:** Set of telecommunication services authorized to the provider pursuant to the relevant legislation that may be provided to the user in addition to the services originally agreed upon, or different from those in the basic contract, provided the consumer has authorized or requested so.
- 2.11. **Originally Contracted Services:** Minimum or specific set of telecommunication services inherent to service provision that consumers should hire to be able to receive the telecommunication services continuously allocated by the provider.
- 2.12. **Telecommunication Services:** Any emission, transmission or reception of signs, signals, writings, images, voice, sounds or information of any kind whatsoever sold through public telecommunications networks.

3. GENERAL PROVISIONS

- 3.1. The supplier shall provide telecommunication services in accordance with the terms and conditions under which they were offered, convened or agreed upon with the consumer, or implicit in the advertising or information used and/or published by it.
- 3.2. Either the consumer and/or the provider may terminate the trading operation and/or provision of telecommunication services, according to the terms appearing in the contract of adhesion, which may be conducted by the same means in which the telecommunication services were traded and/or hired, subject to the contractual penalties prescribed therein, which should be reciprocal and equivalent for the parties and shall not exceed the unpaid amount of the principal obligation.
- 3.3. The provider shall have consumer service mechanisms, such as telephone number, fax, email or any other means available to raise doubts, clarifications, and claims. Such services shall be provided free of charge and available 24 hours a day all year round.
- 3.4. The provider shall place on its website, and in its business facilities, available to consumers, the service hours, prices, fees and payment terms for service provision.

- 3.5. The provider shall ensure the infrastructure, refurbishment and technical capacity of equipment and manpower so as to provide the services set forth in the guarantee to the business facilities when offered to terminal telecommunication devices.
- 3.6. Notwithstanding the provisions of the relevant legislation, the supplier shall afford the consumer free of charge and at its home, or else in its business facility, the invoice or receipt wherein trading data and telecommunication terminal devices ownership are specified, provided to the user for the provision of telecommunication services.
- 3.7. The provider should made available on its website, as well as within the business facility, the prices, rates, payment, description, characteristics and/or contents of the telecommunication services plans and/or packages.

4. INFORMATION ITEMS

- 4.1. The provider shall inform and explain consumers the content and scope of the contract of adhesion, prior to hiring telecommunications services.
- 4.2. The provider shall indicate whether specific terminal devices are required for the provision of telecommunication services. In case this is provided by the supplier, the modality under which the consumer purchases the devices shall be specified in conjunction with the technical and operational features, specifications, price, brand and model.

4.2.1. The terminal telecommunication devices provided by the supplier shall meet the standards and requirements established by the applicable legislation in order to be connected to a public telecommunication network or make use of the radio spectrum.

4.2.2. The supplier shall inform in writing if the telecommunication terminal devices offered are delivered blocked, so that they can only be used on its network, or if they can be unlocked for use on other networks.

4.2.3. The provider shall inform the consumer if the telecommunication terminal devices to be provided are guaranteed, in which case the provisions of the relevant regulations and the specifications in paragraph 6 of this Annex shall be observed.

4.2.3.1. If the contract for the provision of public telecommunication service shall be for a forced period, the guarantee granted by the supplier regarding the telecommunication terminal device shall not be less than that agreed upon.

4.2.4. In the event no guarantee is provided, it shall be reported in writing, as well as the consequences and implications for not granting it.

4.2.5. If the consumer owns a telecommunication terminal device and wants to use it to receive telecommunication services, the provider rendering the service shall inform it whether it meets the minimum requirements necessary to receive the service, as well as the possible consequences that may arise when using the devices. If such features are not present, this shall be informed in writing.

- 4.3. The information and advertisement on telecommunication services trading and/or provision spread by any means or form shall be truthful, verifiable and free from texts, dialogues, sounds,

images, trademarks, designations of origin and other descriptions that lead or may lead to misleading or confusing or untruthful terms.

4.3.1. The business information provided by the suppliers shall be in an official language, the text shall be indelible, and legible to the naked eye, without prejudice that it may also be in another language. In case of dispute between them, the official language version shall prevail.

4.4. If the supplier trades telecommunication services through plans and/or service packs, it shall at least inform the consumer the following:

4.4.1. Total amount, final price, rates and cost of every item that the plans and/or service packs include.

Such total amount, final price, rates and cost shall be expressed in national currency, no matter if the possibility to express it in foreign currency is an option pursuant to applicable legislation.

4.4.2. Description, characteristics, contents and further information included in the plans and/or service packs.

4.4.3. If service plans or packs are altered by any reason beyond supplier's control, in comparison with the characteristics and/or contents of them, these shall be notified to the consumer at least 15 calendar days before such modification is applied. If such modification harms the consumer, termination could be asked without penalty, within 15 following days such modifications take effect.

4.5. The supplier shall show not only in its Internet portal but also in its establishment at sight of the consumer, at least the following information:

4.5.1. Service plans and/or packs available for the consumer, showing minimum characteristics of them:

4.5.2. Rates, prices and/or cost of basic services and additional services relative to service contract.

Such rates, prices and/or costs shall be expressed in national currency, regardless its equivalent in foreign currency pursuant to applicable legislation.

4.5.3. General public attention days and hours in the establishment.

4.5.4. Customer service telephone number or numbers and also e-mail for such purpose.

4.5.5. Documents where service terms, conditions, measures or procedures are established, approved by competent authority.

4.5.6. Procedures for customer enquiries, clarifications, complaints and claims.

4.6 The supplier shall inform the consumer about the characteristics, specifications, reach and geographical cover authorized by the telecommunication service it offers.

4.7 The supplier shall inform additional services available to the consumer, which shall have the required permit by competent authorities.

4.7.1. The supplier shall inform characteristics, specifications, coverage, costs of additional services.

4.8 If the supplier offers the telecommunication service with any promotion, sale or discount, it shall inform the consumer not only requirements, conditions and validity of it, but also the way in which it can be used.

4.9 The supplier shall block telecommunication services the consumer has not requested or agreed upon.

4.9.1 The supplier shall put at the consumer's disposal, procedure and means so that the consumer can request the block and/or termination of telecommunication services hired.

5. ON CONTRACT OF ADHESION:

1.1 Standard-form agreements relative to telecommunication services which are used by suppliers with consumers:

5.1.1. Shall be written in official language and be indelible, legible to the naked eye and the size and kind of letter shall be uniform of at least 9 points without perjury of being written on another language. Should this be the case, the version shall prevail in the official language.

5.1.2. Divide in chapters, sections, sub-sections or any other method which facilitate its comprehension and identification of telecommunication services established in the document and,

5.1.3. Shall not have clauses that:

- a. Allow to modify unilaterally the contract terms and conditions;
- b. Transfer the supplier's liability to other party outside the agreement;
- c. Release the supplier from its liabilities;
- d. Foresee limitation terms inferior to the legal ones;
- e. Prescribe the fulfilment of certain formalities for the applicability of actions filed against the supplier;
- f. Force the consumer to quit to the protection of the law or submit it to the jurisdiction of foreign courts;
- g. Condition the telecommunication service to the acquisition of any property, good or service;
- h. Practice unlawful, abusive or discriminatory acts on behalf of the supplier; and
- i. Force the consumer to renounce to its rights.

1.2 Likewise, the contracts of adhesion relative to the telecommunication service which are used by the suppliers with the consumers shall express, at least, the following:

1.2.1 To determine venue and date of the agreement.

1.2.2 To show the supplier's name or corporate name and also the address and location.

1.2.3 To establish the consumer's name or corporate name, address and location.

- 1.2.4 To establish the object of the service rendering agreement.
- 1.2.5 If the supplier provides telecommunication terminal equipment for the service, it shall be clearly established the way in which the consumer acquires such equipment.
- 1.2.6 To establish rates, sums, prices, date and venue of payment of the telecommunication services rendering.
- 1.2.7 To establish ways and means of consultation of telecommunication service plans and/or packs agreed upon.
- 1.2.8 To establish the way and means to consult geographical areas or regions which the supplier has authorized coverage to provide service.
- 1.2.9 To determine agreement enforcement, in case it is subject to a mandatory term, it shall establish assumptions which the consumer agrees to fulfil.

If the term of the contract is subject to a mandatory period, the supplier shall not modify the term and conditions offered and agreed upon, unless there is express consent on behalf of the consumer.

Once fulfilled the mandatory period, the consumer shall consider the agreement terminated at any time, with no penalty; unless living notice to the supplier.

1.2.10 To fix date, venue and time for delivery and, if necessary, installation of telecommunication terminal equipment.

1.2.11 To establish starting date of the onset of the service rendering , which may be different from the delivery date of the telecommunication terminal equipment and/or contract of adhesion.

1.2.11.1 To establish with clarity assumptions by which the supplier shall charge the telecommunication service offered; even if it is by venue, time, capacity, any other type of contract or combined.

1.2.11.2 If the charge of telecommunication service is by time, the moment in which the payment starts and ends shall be clearly established.

1.2.11.3 If the charge of telecommunication service is by venue, the assumptions which give origin and validity shall be clearly established.

1.2.12 To establish suspension grounds, interruption or flaws in the service.

1.2.13 To establish that in case the service is not fulfilled in the way and terms agreed, the supplier shall give a premium to the consumer with the proportional quantity of the telecommunication service which was not provided, and also at least 20% of the service that was provided.

1.2.14 To establish the cancellation or termination causes, pointing out the parties liabilities.

1.2.14.1 If the consumer does not authorize the modification of the terms and conditions of the contract, if it is subject to a fixed term, it can end the contract in advance without liabilities.

1.2.14.2 To establish that the consumer shall terminate the contract at any time, which shall be made by the same means the telecommunication service was contracted.

1.2.15 To establish conventional penalties for breach of adhesion contract by any party, which shall be mutual and equivalent for the parties and shall not imply abusive services for the consumers.

1.2.16 To establish that the supplier shall offer additional services when the consumer asks in written or by e-mail.

1.2.16.1 To establish that the consumer shall terminate the rendering of additional services to the Basic telecommunication service when it is expressly stated to the supplier; without implying suspension or termination of the basic telecommunication service.

1.2.16.2 To establish that the supplier shall not force the consumer to contract additional services as requirement to the contract of adhesion of telecommunication Basic services.

1.2.17 To establish that, in case the supplier ensures the fulfilment of the consumer's obligations, the supplier shall ensure the guarantee given does not imply abnormal services or abusive obligations. In such case, the supplier shall mutually ensure the fulfilment of its obligations to the consumer. The guarantees shall be returned when the contract ends.

1.2.18 To establish that the provider is forced to deliver a state of account or bill corresponding to the telecommunication service monthly contracted in the consumer's address where specific facts of the provided service are stated. The consumers shall pact with the supplier that in substitution of the referred obligation, may access to the state of the account and/or bill by any means which purpose is agreed by both parties.

The state of the account and/or bill shall include a description of the charges, cost, concept and nature of the provided telecommunication service. The means of payment must be known at least 10 calendar days before the payment term of the telecommunication service contracted expires.

1.2.19 To establish the procedure, means and venues for the attention of questions, claims and/or complaints; as well as their customer service times.

1.2.20 To establish that the consumer shall demand those suppliers and companies which use information with marketing and advertising targets that the information that concerns him is not given or transmitted to others, or that advertising is sent about goods or services. This statement shall be signed in a clause at sight on the back of the contract of adhesion or in a document for such end.

1.2.21 To establish the levels of quality of the service with which the telecommunication service contracted shall be provided.

2. GUARANTEES

- 2.1 Notwithstanding what is stated by national law, guarantees offered by the supplier shall be clearly and precisely issued by written, with corresponding seal and signature, at the time of delivery of the telecommunication terminal equipment and shall comply with the following:
- 2.1.1 Be written in official easy to follow language and legible terms, notwithstanding that it also may be expressed in a different language. If controversy or difference exists, the version in the official language shall prevail.
 - 2.1.2 To establish the procedure and location of the venues for the consumer to ask for its fulfilment, and also the time and service telephones.
 - 2.1.3 They shall clearly specify, at least, its reach, validity (starting date and conclusion), duration and coverage (the parts of the telecommunication terminal equipment which have the same one).
 - 2.1.4 If the contract of the telecommunication service provided was achieved by means of a mandatory period, the guarantee given by the supplier over the telecommunication terminal equipment shall not be lower than the term agreed upon.
 - 2.1.5 It shall be expressed in writing whether the guarantee applies or not, setting the reasons of such situation. If the guarantee applies, a document shall be delivered by the supplier where repairs done under it are established.
- 2.2 The supplier shall be held responsible for any partial or total breakdowns, damages or losses the telecommunication terminal equipment suffers while it is under his responsibility to fulfill the given guarantee.