

On grounds of the Decree of the President of Romania no.509/2009 on the appointment of the president of the National Authority for Management and Regulation in Communications,

On grounds of the provision of Article 10(2) items 22 – 24, as well as of Articles 11(1) and of Article 12(1) and (3) of the Government Emergency Ordinance no.22/2009 on the establishment of the National Authority for Management in Communications, of Article 34(2) of the Government Emergency Ordinance no.79/2002 on the general regulatory framework for communications, approved, with amendments and completions, by Law no.591/2002, with the subsequent amendments and completions, as well as of Article 8(1), Article 9, Article 10, Article 12 and Article 13 of the Government Ordinance no.34/2002 on access to public electronic communications networks and to the associated facilities, as well as their interconnection, approved, with amendments and completions, by Law no.527/2002, with the subsequent amendments and completions,

Having regard to the Decision of the president of the National Authority for Communications no.167/2009 on the identification of relevant markets in the electronic communications sector for the services of call termination provided at mobile locations, which identified as a relevant market in the electronic communications sector the market for the services of call termination provided at mobile locations on the telephone network of "Cosmote Romanian Mobile Telecommunications" – S.A.,

THE PRESIDENT OF THE NATIONAL AUTHORITY FOR MANAGEMENT AND REGULATION IN COMMUNICATIONS

issues this:

DECISION

Art.1. – The Commercial Company "Cosmote Romanian Mobile Telecommunications" – S.A., with headquarters in 4-8 Nicolae Titulescu Street, 5th and 6th floor, America House building, sector 1, Bucharest, registered with the Trade Registry affiliated to the Bucharest Law Court, unique registration code 11952970, hereinafter referred to as the *Operator*, is designated as a provider with significant power in the market for the services of call termination provided at mobile locations on the provider's own public telephone network.

Art.2. – The Operator has, under the provisions of this decision, the obligation of transparency, the obligation of non-discrimination, the obligation of providing certain services and of granting access to certain facilities, as well as obligations relating to tariff control, including the tariff cost-orientation, as regards the interconnection of the public telephone

network this company operates with the public electronic communications networks installed, operated, controlled or made available by other providers, hereinafter referred to as *Beneficiaries*, in view of call termination at mobile locations.

Art.3. – Within this decision, the following definitions will apply:

- a) *call* – a call for the publicly available telephone services;
- b) *Operator's access point*, respectively *Beneficiary's access point* – physical interface (main distribution frame) on the Operator's, respectively the Beneficiary's network, where interconnection can be achieved;
- c) *interconnection link* – physical link between the Operator's access point and the Beneficiary's access point;
- d) *capacity of the interconnection link* – capacity defined for the interconnection link and for the corresponding access point where the Beneficiary wishes to connect, regularly expressed as a multiple of 2Mbit/s;
- e) *interconnection point* – physical point located on the interconnection link where the Operator's network interconnects with the Beneficiary's network;
- f) *Operator's space*, respectively *Beneficiary's space* – the building held by the Operator, respectively by the Beneficiary, where the Operator's switch, respectively the Beneficiary's switch is located and where interconnection can be achieved;
- g) *working day* – a weekday, Monday to Friday, except for the legal holidays.

Art.4. – (1) The Operator has the obligation to apply equivalent interconnection conditions, in equivalent circumstances, to all the entities who request or who benefit from interconnection with the public telephone network it operates, in view of call termination at mobile locations.

(2) The Operator has the obligation to make available for the requesters all the services and information necessary for achieving interconnection with the public telephone network it operates, in view of call termination at mobile locations, under the same conditions as those offered for its own services, including as quality is concerned, except for the conditions relating to the tariffs applied.

(3) If, by an agreement for interconnection in view of call termination at mobile locations, the Operator offers more advantageous terms to a Beneficiary, these terms will be ensured for all the Beneficiaries, on non-discriminatory grounds.

Art.5. – (1) Within 90 working days from the communication date of this decision, the Operator has the obligation to publish on its webpage, in a spot easily accessible from its homepage, and to make available to any requester a Reference Interconnection Offer for the public telephone network it operates, in view of call termination at mobile locations, hereinafter referred to as the *RIO*, which is to include at least the minimum set of interconnection services established herein, alongside the conditions, including tariff-related, in which these services are to be offered to the Beneficiaries.

(2) The RIO must be sufficiently detailed, including as tariffs are concerned, as to allow interconnection at all network points, where this is technically feasible, and to ensure that the Beneficiaries will not be obliged to pay for resources which are unnecessary for the services they have requested.

(3) Within 90 working days from the communication date of this decision, the Operator has the obligation to publish on its webpage, in a spot easily accessible from its homepage, and to make available to any requester a standard interconnection agreement elaborated pursuant to the RIO provisions, which should enable the Beneficiaries to easily choose the access and interconnection points, the capacity of the interconnection links, the interconnection options, as well as any other services offered based on the RIO. The standard interconnection agreement will explicitly include the tariffs for the interconnection services and for all the other services offered in view of interconnection.

(4) If the Operator intends to amend or complete the RIO, the draft amendment or completion must be sent to the National Authority for Management and Regulation in Communications, hereinafter referred to as *ANCOM*, at least 25 working days before the adoption date and must be published on the Operator's webpage at least 10 working days before the adoption date. In case of structural or extensive changes, the draft must be sent to ANCOM at least 7 months prior to the adoption date and must be published on the Operator's webpage at least 25 working days prior to the adoption date, except for the case when the amendment or completion is made upon ANCOM's request.

(5) The Operator has the obligation to update the RIO and the standard interconnection agreement whenever this is necessary, as well as to send ANCOM and publish on its webpage the RIO with amendments and completions on their adoption date, under a form that should allow to easily identify the updated elements, by using a different format for the added text and by distinctly highlighting the removed text, as well as to identify the updating date.

Art.6. – (1) The Operator will offer the Beneficiaries at least the interconnection services in view of call termination at mobile locations, under the terms provided in this decision.

(2) Through the interconnection service provided in view of call termination at mobile locations, the Operator will ensure call takeover from the point of interconnection with the Beneficiary's network or with another public electronic communications network interconnected both with the Operator's network and with the Beneficiary's network, and call termination towards any active national number allotted to the Operator for the publicly available telephone services provided at mobile locations, if call termination towards the respective numbers is technically feasible.

(3) For the service of interconnection in view of call termination at mobile locations, only the actual duration of successful calls which were answered will be billed. The actual duration starts from the answering signal and ends at the first line vacancy signal generated either by the caller, or by the called party.

(4) The Operator will ensure the interconnection of the public telephone network it operates, in view of call termination at mobile locations, at any of its access points, according to the Beneficiary's request, to the extent that the requests are reasonable and technically feasible. The Operator's refusal will be soundly grounded and will be communicated to the requester and to ANCOM, in written format, within 15 working days from the date of receiving the interconnection requests.

(5) The Operator will grant the Beneficiaries, for reasonable tariffs, access to all the services required so that they could benefit – under normal conditions – from interconnection with the Operator's public telephone network in view of call termination at mobile locations, for the purpose of providing their own publicly available electronic communications services.

(6) The Operator will not condition the provision of certain services to the Beneficiary, under the present decision, by the latter's agreement on certain activities with no relation to the service provided.

Art.7. – The Operator will include in the RIO comprehensive information on the set of relevant parameters for the quality of services offered to the Beneficiary.

Art.8. – (1) The Operator has the obligation to provide in the RIO the name and address of each switch where the interconnection with the public telephone network it operates, in view of call termination at mobile locations, can be achieved.

(2) The information under paragraph (1) will be updated whenever this is necessary, at least every quarter, mentioning the updating date.

Art.9. – (1) The Operator will include in the RIO a detailed description of the technical specifications of the access points, by referring, where applicable, to the relevant standards or recommendations, as regards:

- a) the electrical (optical) and physical interface;
- b) the transmission interface;
- c) the signalling interface;
- d) where necessary, information on the functional capacities offered through the interfaces.

(2) The relevant standards and recommendations under paragraph (1) will apply in the following order, depending on availability:

- a) standards and specifications adopted by the European Telecommunications Standards Institute (ETSI);

- b) standards and recommendations adopted by the International Telecommunications Union, by the International Organization for Standardization or by the International Electrotechnical Commission;

- c) other standards.

Art.10. – The Operator has the obligation to provide in the RIO the procedure and the situations when a letter of bank guarantee is required in case of concluding interconnection agreements for call termination at mobile locations, the manner of calculation of its quantum, the terms in which this must be provided, as well as the situations when the obligation to provide a letter of bank guarantee ceases.

Art.11. – (1) The Operator will specify in the RIO the conditions of providing the interconnection links, which must include at least the terms, tariffs and quality levels offered.

(2) The Operator is responsible for the installation and operation of the segment of the interconnection link comprised between its own access point and the interconnection point.

(3) The Operator will provide the interconnection link at the capacity and with the technical characteristics required by the Beneficiary, insofar the technical possibilities allow that.

(4) The term for delivering an additional capacity to the interconnection link is 25 working days, at most, from the date when the Operator receives a request in this respect.

(5) Upon the Beneficiary's request, the Operator will supplement the capacity of the interconnection link with a capacity sufficiently low as not to oblige the Beneficiary to pay for additional capacities which are unnecessary or have not been requested.

(6) As regards the interconnection links provided by the Operator, the Beneficiary will pay the corresponding monthly tariffs, depending on the level of traffic sent to the Operator's network.

Art.12. – (1) If the interconnection link segment installed and operated by the Operator fails, within one hour from the moment of the Beneficiary's notifying the failure or from the moment when Operator acknowledged the failure by any other means, the Operator will initiate the procedures with a view to identifying and remedying it, even temporarily, as well as with a view to removing or limiting the existing damages.

(2) The Operator will bear all the expenses incurred while remedying the failures, excepting where the Beneficiary is proved to be responsible for the respective failure.

(3) In the RIO, the Operator will include the repair term, as well as the minimum amounts to be granted as compensation for delayed repair and the manner of establishing these amounts.

Art.13. – (1) The Beneficiary will be notified in advance on all the Operator's network modifications that could affect the former's services, at least 65 working days prior to the respective modification. The notification term may be extended or reduced only upon ANCOM's agreement, depending on the actual circumstances, upon the Beneficiary's or the Operator's well grounded request. In case of extending the term, the Operator will not have the right to modify its network before the expiry of the new notification term. However, the notification term will not be shorter than 25 working days and will not exceed 6 months.

(2) The discarding of a switch will be notified to the Beneficiaries in advance, within a term that cannot be shorter than 12 months prior to discarding.

(3) Where network refurbishment or modernizing operations are conducted, including in the case provided in paragraph (2), the Operator has the obligation to take all the steps so that the Beneficiary should further benefit from interconnection, in conditions which are equivalent to the initial ones.

Art.14. – (1) If there is a physical link between the Operator's space and the Beneficiary's space, the Operator will provide interconnection, upon the Beneficiary's request, on the Beneficiary's space, using the respective physical link.

(2) If there is a physical link between the Operator's space and an intermediate point where the interconnection is technically feasible, the Operator will provide interconnection, upon the Beneficiary's request, at that very point.

Art.15. – The Operator has the obligation to charge, for the provision of the interconnection service in view of call termination at mobile locations, cost-oriented tariffs, calculated by means of a LRIC model elaborated by ANCOM.

Art.16. – (1) Until the date of establishing the tariffs for the service of interconnection in view of call termination at mobile locations based on the LRIC model provided in Article 15,

the average tariffs to be charged by the Operator for providing the interconnection service in view of call termination at mobile locations will not exceed:

- a) 6.4 eurocents/minute, from 1 May 2009;
- b) 5.67 eurocents/minute, from 1 January 2010;
- c) 5.03 eurocents/minute, from 1 July 2010.

(2) The tariffs provided in paragraph (1) do not include VAT.

(3) The tariffs established by the Operator in accordance with the provisions of paragraph (1), including in case of charging different tariffs for peak hours, as different from the ones charged during off-peak hours, will be offered to all the Beneficiaries, on non-discriminatory grounds.

(4) The Operator will publish, including in the RIO, the tariffs and hour intervals it established in accordance with the provisions of paragraphs (1) and (3) at least 10 working days before the entry into force of the new tariffs.

(5) ANCOM will control the compliance with the obligation provided in paragraph (1), based on the following formula:

$$P_{average} = \frac{\sum T_{ij} \times P_{ij}}{T_{annual}}$$

where:

$P_{average}$ – average interconnection tariff charged in view of call termination at mobile locations;

P_{ij} – interconnection tariff in view of call termination at mobile locations charged during the period "i" (period of the year when the tariff applies) for the interval "j" (period of the day/week when the tariff applies – peak hours, week-end etc.);

T_{ij} – the total volume of the traffic originated on other networks and terminated at mobile locations on the Operator's network during period "i" for the interval "j";

T_{annual} – the annual volume of traffic originated on other networks and terminated at mobile locations on the Operator's network.

(6) Compliance with the obligation provided in paragraph (1), in accordance with the provisions of paragraph (5), will be verified as follows:

a) in 2010, for compliance with this obligation between 1 May 2009 and 31 December 2009;

b) in 2010, for compliance with this obligation between 1 January 2010 and 30 June 2010;

c) in 2011, for compliance with this obligation between 1 July 2010 and 31 December 2010;

d) starting from 2012, on a yearly basis, for compliance with the obligation in the previous year.

(7) The Operator will take all the necessary steps, according to the contractual provisions, to amend the interconnection agreements in accordance with the provisions of this decision, so that the maximum tariffs under paragraph (1) could be effectively applied from the corresponding dates.

Art.17. – (1) The maximum negotiation term for concluding an interconnection agreement in view of call termination at mobile locations is 45 working days from the date of

the Operator's receiving a request therefor. In case of amending or completing an interconnection agreement, the negotiation term is at most 25 working days from the date of receiving the request. The provisions of paragraphs (2) and (3) will be enforced accordingly.

(2) The Operator has the obligation to send ANCOM a copy of each of the interconnection requests and, respectively, of each of the subsequent requests for amending, completing or withdrawing the initial request, within 2 working days from their reception date.

(3) The Operator will analyse the requests in the Beneficiary's interconnection request and will elaborate the technical solutions for implementing the interconnection, which must be relayed to the Beneficiary within 15 working days from the date of receiving the interconnection request.

(4) By way of exception from the provisions of paragraph (1), where – in the interconnection request – the Beneficiary accepts the conditions of the standard interconnection agreement, elaborated in accordance with the provisions of this decision, and indicates the access and interconnection points, the capacity of the interconnection links, the interconnection options, as well as the other services to be purchased, the negotiation term is of at most 25 working days from the date of receiving the request, but no longer than 7 working days from the date of communicating the technical solution for the implementation of interconnection, under the provisions of paragraph (3).

(5) The Operator will ensure the implementation of the provisions of the interconnection agreement so that the provision of the interconnection services could start within 65 working days from the date of concluding the agreement or from the date of amending its provisions, based on a request for interconnection at new access points, as the case may be.

(6) In case of amending or completing the interconnection agreement, when interconnection is not requested at new access points, the Operator will ensure implementation so that the provision of the new services could start within 25 working days from the date of amending or completing the agreement.

(7) The duration of the interconnection agreement will be established by negotiation between the parties. However, the agreement will not be concluded for a period shorter than 3 years, if the Beneficiary requests that the agreement should be valid for a period of at least 3 years.

(8) The Operator must send ANCOM a copy of each of the interconnection agreements concluded, within 5 working days from the date of their conclusion and communicate ANCOM all the data regarding the amendment or cessation of such agreements, accompanied by the justifying documents, as the case may be, within 5 working days from the date when the amendment or cessation occurred.

Art.18. – (1) Within 10 working days from the date of communicating this decision, the Operator must publish at least on its website, in a spot easily accessible from its homepage:

a) the tariffs of all the services required in view of performing the interconnection with the public telephone network it operates, for the purpose of call termination at mobile locations, as well as the tariffs for the interconnection-associated facilities;

b) the data provided in Article 8 of this decision.

(2) All the amendments and completions to the tariffs provided in paragraph (1) letter a) will be published, under the terms provided in paragraph (1), at least 10 working days prior to their entry into force.

(3) The obligations provided in paragraphs (1) and (2) will apply until the RIO publishing date, in accordance with the provisions of this decision.

Art.19. – (1) This decision will be communicated to the company “Cosmote Romanian Mobile Telecommunications” – S.A.

(2) The Decision of the President of the National Regulatory Authority for Communications no.125/2003 on interconnection with the mobile public network operated by the company “Cosmorom” – S.A., for the purpose of call termination, will no longer be valid from the date of communicating this decision.

PRESIDENT,

MARIUS CATALIN MARINESCU

Bucharest, 23 April 2009
No. 295