



BY-LAW ON NUMBER PORTABILITY AND CONSUMER RIGHTS IN ELECTRONIC COMMUNICATION SECTOR

THE IMPLEMENTATION OF NUMBER portability in electronic communication networks has begun with the By-law on Number Portability, entered in force on the date of 1 February 2007. Therefore, since this date, the implementation of number portability has come into effect in our country. However, with the amendments in accordance with new Electronic

Communication Act which was made afterwards, new By-law on Number Portability entered into force by publication in the Official Gazette of 2 July 2009.

According to the by-law at issue, number portability means, a facility that enables the subscriber to change its operator, geographical position and/or service type with-

out changing subscriber number. With this implementation, subscriber shall get service from any operator without the change of subscriber number. Number portability is possible both for mobile numbers and geographic numbers.

By-law at issue is involved in numerous technical terms. There are some definitions in the by-law of the technical terms to clarify the meanings. These definitions include;

- **Subscriber** means, any natural person or legal entity who or which is party to a contract with a provider of electronic communications services for the supply of such services.
- **Operator** is any legal entity, which has the right to provide electronic communication services and/or to provide electronic communications network and to operate the infrastructure within the framework of authorization.
- **Recipient Operator** is the operator to whom the number is ported in or is in a porting stage.
- **Donor Operator** is the operator from whom the number is ported or in a porting stage.
- **Electronic Communication Network** means, any kind of transmission system network, in order to provide the electronic communications between one or more spots, independently from the type of the transmitting information, including satellite networks and internet, fixed and mobile terrestrial networks, switching equipment and lines.

The Process of Subscribers' Number Portability

Number porting process starts upon the application of a subscriber with the request of number porting to the recipient operator in writing or orally. Without any request of the subscriber to this effect, number portability process shall not be initiated for the said subscriber. The subscriber shall apply to the recipient operator and fill in a form stating the number to be ported, identity information of the subscriber, donor operator information, contact details and the preferred porting time. Subscription agreement is made after filling in this form. This agreement will come into force proactively by the actual porting of the number.

After this process, recipient operator shall deliver the number portability application form of the subscriber along with the copies of the identity information and other relevant information and documents to donor operator electronically. Thus, subscriber's request of number porting shall be transmitted to donor operator (current operator). Following the receipt of the request for porting, the donor operator (current operator) compares the identity

of the subscriber with its own records and sends his reply concerning the request to the recipient operator. This reply has the character of verification of number and information belonging to the subscriber.

As per the receipt of the request, the donor operator (current operator) shall reject or accept it. Provided that subscriber's identity information and the donor operator's records match with one other, acceptance reply shall be conveyed to the recipient operator. The conditions of why the donor operator (current operator) may reject the request for porting have been regulated limited in the Article 10 of the by-law. Therefore, in a number porting proceeding, disruption caused to create inconvenience of transmitting to a new operator, is a factor limiting the discretion of the donor operator (current operator).

The donor operator (current operator) in the scope of the subscriber's information shall reject the number porting request if one of the conditions stated below is present;

- a) If the number to be ported belongs to another subscriber,
- b) If the Subscriber who requests for porting, has a request to change his number within his existing operator,
- c) If the identity information of Subscriber requesting for porting is incorrect or missing this could not be considered for proof of the identity of the subscriber,
- d) Existence of already initiated or still continuing number porting process for the requested number,
- e) If the subscriber requesting for porting has a request in writing for cancellation or transfer of the subscription agreement in the existing operator,
- f) If the subscription agreement with number holder is less than 3 month old.

Provided that one of the reasons stated in Article 10 of the by-law relating to the rejection of the number porting request is existing, donor operator (current operator) shall reject the number porting request. Also, shall notify its rejection to the recipient operator together with the reasons. Following the receipt of the rejection together with its reasons, the recipient operator shall inform the subscriber requesting porting about this decision along with the respective reasons immediately. In cases where the removal of the deficiencies stated in the mentioned reason is required, right to have opportunity to renew the application is reserved.

Following the response concerning the request for port-

ing by the donor operator, to keep the service interruption of the subscriber at minimum, actual porting will be conducted at the determined time.

Legal Qualification of Number Porting Request

The subscription agreement between the recipient operator and the subscriber shall come into force by the actual porting, and shall begin to have effect as of this date. As of the same time, the subscription agreement of the said subscriber with the donor operator shall be deemed as terminated. In other words, request of subscriber for porting his number means request for termination of his subscription agreement with the donor operator (current operator) at the same time.

Personal Information Confidentiality of the Subscriber in Number Portability

The operators in question have to act pursuant to the related legislation in confidentiality of the personal information which belongs to subscribers and is obtained during number portability operations. As soon as the law on protection of personal data, which is still a draft law and has not come into effect yet, is put into force, there will be legislation showing the practices on this issue.

The use of the personal information given by the subscriber under the scope of the said number portability operation by the operator must be solely for the purpose of transferring the related number to another operator. Namely, in case the subscriber withdraws or postpones his/her number portability request, the operators may not use the obtained personal information of the subscriber for this purpose.

Within the scope of number portability, there is a mobile number portability system which is built and/or operated within the framework of the Authority's regulations by the Authority or the demanding operators. The use of number portability system is possible for the purposes of entering and checking transfer requests, announcing the information relating to the transferred number to the other operators, keeping the transferred numbers and their porting information with information exchange among operators and similar purposes. In other words, the operators may not use the number portability system for the purposes of querying the number called during call set-up.

Basic Principles of Number Portability Practice

Number portability, which provides great convenience for subscribers, offers legal protection to the subscriber within the consumer rights and competition rules whose

effectiveness is increasing every day with the Regulation. Number Portability Regulation has been prepared within the framework of this purpose and based on specific legal principles.

Unless required otherwise, it is necessary to maintain the qualitative and quantitative continuity of the operation, act fair and non-discriminative towards the subscribers, make the operation productive, maintain transparency and use the sources efficiently. Additionally, the practices aimed at number portability have to be suitable to the country conditions and be efficient.

One of the main purposes that lie in the core of the number portability system is maintaining the competition environment efficiently and sustainably. Among the basic principles of the implementation of the Regulation is the ability of consumers to easily benefit from these practices under reasonable conditions in this competition environment to be created.

Consumer Rights in Number Portability and Electronic Communication Sector

Number Portability Regulation offers consumers the opportunity to transfer their mobile numbers from their existing operator to another one. To perform the number portability operation, the only thing the consumer should do is to request that from the operator he wants to get service. In case any problem arises related to this issue, the consumers have a right to apply to the Information Technologies and Communications Authority.

The rights of the consumer and notification of consumers during the said operation are taken under protection by the related article of the Number Portability Regulation. Accordingly, the operator shall take any kind of measures to protect the consumer, to ensure that they can benefit from the said service under best conditions and can access the service information easily.

The operator should inform the consumer about how the subscribers will apply for number porting operation, the information and documents to be required from them for their application, realization period of number porting operation and whether they will pay any fee for their number transfer or not. Moreover, the operator is expected to post this information on its website at a minimum.

Within the scope of consumer rights, in the number portability, the prices which may be reflected to the consumer may not be in a nature preventing the consumers from receiving this service. Moreover, pursuant to the legislation, it is prohibited that the donor (current) operator demands

a fee under any name, for one time or periodically, from the subscriber who wants to transfer his number. In other words, the operation of the consumer who wants to be transferred from the donor operator to recipient operator may not be charged with any fee whatsoever by the donor operator.

Another consumer right in number portability operation is about the service quality. The service quality criteria to be applied to the subscriber of the number which is transferred to the recipient operator must be the same of the subscriber of the non-transferred number.

Moreover, the Regulation on Consumer Rights in Electronics and Communication Sector, which is adopted to determine the procedures and principles for protecting consumer rights and benefits, regulates the consumer rights with its Article 5. Accordingly, some of the rights of the consumers who benefit from electronic communication services are as below:

- The rights of consumers in similar position to access services under equal conditions and to benefit from the services with non-discriminating fair prices,
- The right to sign up a subscription agreement with the operators providing electronic communication,
- The rights of subscribers to have their personal data included in public telephone directories or not,
- The right to be informed about the scope of the electronic communication service to be provided by the operator,
- The right to access clear, detailed and current information about the tariffs to be applied for the provided service and to be informed about any tariff changes before they become effective,
- The rights of subscribers to withdraw from all the services, including the ones with a special content, under the scope of the campaign or tariff they joined in by short message, call center, internet, etc., by the same means as they applied or in a simple way,
- The right to benefit from a service in conformity with international standards and the ones to be determined by the Authority.

Tariff Transparency

With the number portability regulation, the problem that a subscriber, who starts a call towards the transferred number, does not know the operator of the number in

question has become a different one. To prevent the probable tariff and bill problems of the consumers, Article 18 of the by-law requires taking necessary measures to provide tariff transparency on operators. Accordingly, when a subscriber calls a transferred number, a distinctive warning tone, which is determined by the Authority, must be given.

The warning tone to be heard by calling subscribers related to the said tariff transparency is given for the non-network numbers by a number portability. The Authority which imposes this liability on the operators ensures consumer protection with this practice. Therefore, when the consumers who are the subscribers of the other operators make a call to a transferred number, which is receiving service from another operator, assuming that they are making a call within the network, they shall be warned against the high tariff pursuant to the tariff transparency principle.

Administrative Sanctions

The operators are required to act in compliance with the Number Portability By-law. The Number Portability By-law, which explains the rights and liabilities of the subscribers and operators in a clear and understandable way, stipulates an administrative sanction against the operators violating the abovementioned conditions and the legislation.

In case of such violation by the operator, it shall be subjected to an administrative fine and other sanctions pursuant to the Article 60 of the Electronic Communication Act Number 5809.

In conclusion, a freer phase in the mobile phone use in Turkey has started thanks to the Number Portability By-law. From now on, the consumers can change their operators without any limitations by keeping their numbers unchanged during this process. The important thing is that the operators do not infringe consumer rights, which are secured by legislation to be applied during the number portability process.

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