

Procedure No.: PS/00094/2019

## RESOLUTION OF PUNISHMENT PROCEDURE

Of the procedure instructed by the Spanish Agency for Data Protection and based on  
to the following

### BACKGROUND

FIRST: A.A.A. (hereinafter, the claimant) on May 31, 2018 filed  
claim before the Spanish Data Protection Agency. The claim is directed  
against XFERA MÓVILES, S.A. (YOIGO) with NIF A82528548 (hereinafter, the claimed).  
The reasons on which the claim is based are that it has been receiving calls from XFERA  
MOBILES, S.A. (YOIGO) claiming a debt and warning you that your data may  
be registered in the common solvency file.

SECOND: In view of the facts denounced in the claim and the documents  
provided by the claimant and documents known to this  
Agency, the Subdirector General for Data Inspection proceeded to carry out  
preliminary investigative actions to clarify the facts in question, in  
under the investigative powers granted to the supervisory authorities in article  
57.1 of Regulation (EU) 2016/679 (General Data Protection Regulation, in  
hereinafter RGPD), and in accordance with the provisions of Title VII, Chapter I, Section  
second, of Organic Law 3/2018, of December 5, on Data Protection  
Personal and guarantee of digital rights (hereinafter LOPDGDD).

As a result of the research actions carried out, it is found that  
the data controller is the claimed party.

In addition, the following extremes are noted:

1. On May 31, 2018, it is received at this Agency, with registration number  
174922/2018, written complaint from A.A.A. in which you attach the communication

maintained by email with YOIGO and in which the facts of the complaint. In this exchange of emails, YOIGO confirms that the claimant did not has a contractual relationship with them, and therefore argues that it cannot cancel its data. Informs that the reception of calls may be due to the fact that your telephone number telephone appears as a contact telephone number of another owner without them being able to nothing to cancel it.

2. Upon request for information on the facts claimed, dated March 18, October 2018, it is received at this Agency, with registration number 200462/2018, written from XFERA MÓVILES, S.A.U. alleging that it is lawful to carry out calls for legitimate interest (debt claim) while not ruling out that the data is inaccurate and is due to an error when writing down the telephone number, which is why could have erroneously informed the claimant of the situation of a foreign debt without the correct identification of the interlocutor. Informs that they will work to prevent it from returning to happen, but they do not report on the measures adopted or the actions in the claimant's case.

3. XFERA MÓVILES does not offer a solution to the claimant to stop the calls for an unpaid debt. The customer service department alleges that, by not having contractual relationship with them, they cannot do anything to stop the calls.

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4. It does not rule out that the phone is wrong, that it has not been correctly identified to the recipient of the call, and that it has been possible to inform about personal data and debt of another holder to the claimant.

5. Although a new request for information was submitted to clarify the origin of the

telephone of the claimant, with registration number 203984/2018 and date of acknowledgment of December 18, 2018, as of the date of this report, no response has been received.

Therefore, we could find ourselves in a situation where the principle of accuracy of data regulated in article 5.1 d) of the RGPD, for not properly identifying to the interlocutor and reveal personal data.

THIRD: On March 21, 2019, the Director of the Spanish Agency for Data Protection agreed to initiate a sanctioning procedure against the claimant, for the alleged infringement of article 5 of the RGPD, typified in Article 83.5 of the RGPD.

FOURTH: Having been notified of the aforementioned initiation agreement, the respondent submitted a written pleadings in which, in summary, it states that:

“In the case at hand we are faced with a situation in which, debts generated by the use of the provision of services, the number of telephone that was available to the service in charge of managing payments, being so, it was later revealed that there had been an error in the note that number.

Naturally, in response to the claim of the interested party, it was not possible to offer the cancellation of your data because it lacked a contractual relationship with this operator.

For this reason, it was considered that what was actually appropriate was to cancel the telephone number attributed to the owner of the contractual relationship in which they were generated the bills.

Consequently, it considers the absence of intentionality and if there was a minimal lack of diligence should be considered as coming from an error of notation of a telephone number, as well as not having communicated to the interested party the deletion of said incorrect data, which only arose by chance from an error and that she affected.

Therefore, in the event that the behavior that is the object of attention deserves a reproach, this must be included in article 74.e) of the LOPDGDD "non-compliance in the notification obligation regarding the rectification or deletion of data personal" and not in article 72.1, since the error in the annotation of a number of telephone cannot determine the imposition of a sanction of <<SIXTY-FIVE THOUSAND EUROS>>."

FIFTH: On June 13, 2019, the instructor of the procedure agreed to the opening of a period of practice tests, considering incorporated the previous investigative actions, E/08698/2018, as well as the documents provided by the claimant.

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SIXTH: On June 20, 2019, a resolution proposal was formulated, proposing that XFERA MÓVILES, S.A. be sanctioned. (YOIGO), for an alleged violation of article 5 of the RGPD, typified in article 83.5 of the RGPD.

In view of everything that has been done, by the Spanish Protection Agency of Data in this procedure the following are considered proven facts,

#### FACTS

FIRST: The claimant denounces the reception of calls by the managing entity of collections of the claimed entity, requiring the payment of a debt that it does not recognise.

This Agency, after requesting information on the claimed facts, received on October 18, 2018, letter from XFERA MÓVILES, S.A.U.

claiming that it is lawful to make calls for legitimate interest (debt claim) to

At the same time, it does not rule out that the telephone number is inaccurate and is due to an error when sign up, which is why the claimant could have been erroneously informed of the situation of a foreign debt without the correct identification of the interlocutor.

Next, he informs that they will work to prevent it from happening again, but

accredit this Agency on the measures adopted or the actions to be followed in the present case.

SECOND: In the period of allegations of this procedure, the entity claimed states again that the facts that are the object of this case must be to an error in the annotation of the telephone number, on the part of its managing entity of collections, therefore, in the face of the claim of the interested party, it was not possible to offer the cancellation of your data because it lacked a contractual relationship with this operator, although it was considered that what was actually appropriate was to cancel the data telephone number attributed to the holder of the contractual relationship in which generated the accounts.

## FOUNDATIONS OF LAW

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By virtue of the powers that article 58.2 of the RGPD recognizes to each control authority, and as established in arts. 47 and 48.1 of the LOPDPGDD, the Director of the Spanish Data Protection Agency is competent to resolve this procedure.

II

The defendant is imputed the commission of an infraction for violation of the article 5 of the RGPD, which states that:

“Personal data will be:

a)

processed in a lawful, loyal and transparent manner in relation to the interested party ("legality, loyalty and transparency");

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b) collected for specific, explicit and legitimate purposes, and will not be processed subsequently in a manner incompatible with those purposes; according to the article 89, paragraph 1, further processing of personal data for archiving purposes in the public interest, scientific and historical research purposes or statistical purposes will not be considered incompatible with the original purposes ("purpose limitation");

c) adequate, pertinent and limited to what is necessary in relation to the purposes for those that are processed ("data minimization");

d) accurate and, if necessary, updated; all measures will be taken reasonable for the personal data to be erased or rectified without delay that are inaccurate with respect to the purposes for which they are processed ("accuracy");

e) maintained in a way that allows the identification of the interested parties during no longer than is necessary for the purposes of data processing personal; personal data may be kept for longer periods provided that they are treated exclusively for archiving purposes in the public interest, purposes scientific or historical research or statistical purposes, in accordance with the Article 89, paragraph 1, without prejudice to the application of technical measures and appropriate organizational measures imposed by this Regulation in order to protect the rights and freedoms of the data subject ("retention period limitation");

f) processed in such a way as to ensure adequate security of the data including protection against unauthorized or unlawful processing and against loss, destruction or accidental damage, through the application of appropriate technical or organizational measures ("integrity and confidentiality").

2. The data controller will be responsible for compliance with the provided in paragraph 1 and able to demonstrate it ("proactive responsibility").

The infringement is typified in article 83.5 of the RGPD, which considers as such:

“Infractions of the following provisions will be sanctioned, in accordance with paragraph 2, with administrative fines of a maximum of EUR 20,000,000 or, in the case of a company, an amount equivalent to a maximum of 4% of the global total annual turnover of the previous financial year, opting for the largest amount:

- a) the basic principles for the treatment, including the conditions for the consent under articles 5, 6, 7 and 9;
- b) the rights of the interested parties according to articles 12 to 22;
- c) transfers of personal data to a recipient in a third country or a international organization under articles 44 to 49;
- d) any obligation under the law of the Member States that is adopted under Chapter IX;
- e) Failure to comply with a resolution or a temporary or definitive limitation of the processing or suspension of data streams by the data protection authority control pursuant to Article 58(2) or failure to provide access in non-compliance with article 58, section 1.”

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III

This infraction can be sanctioned with a fine of €20,000,000 maximum. or, in the case of a company, an amount equivalent to a maximum of 4% of the global total annual turnover of the previous financial year, opting for the of greater amount, in accordance with article 83.5 a) of the RGPD.

IV

For its part, article 72.1 a) of the LOPDGDD states that:

“Based on the provisions of article 83.5 of Regulation (EU) 2016/679 are considered very serious and will prescribe after three years the infractions that suppose

a substantial violation of the articles mentioned therein and, in particular, the following:

a) The processing of personal data violating the principles and guarantees established in article 5 of Regulation (EU) 2016/679.”

v

In accordance with the provisions of the RGPD in its art. 83.2, when deciding to impose an administrative fine and its amount in each individual case shall be taken into account aggravating and mitigating factors that are listed in the aforementioned article, as well as any other that may be applicable to the circumstances of the case.

Consequently, the following have been taken into account as aggravating factors:

a) The nature, scope or purpose of the treatment according to article 83.2 a) of the RGPD, since the claimed entity repeatedly requires the claimant the payment of a debt that is not yours, erroneously informing the claimant of the situation of a debt of a third party unrelated to it.

b) Negligence in the infringement; under article 83.2 b) of the RGPD, since the entity claimed, in response to the request of the AEPD, alleges that it is lawful to make calls to claim a debt by virtue of the interest legitimate, although it does not rule out that the data (telephone number) could be inaccurate and is due to an error when writing down the telephone number, which is why it recognizes that by not making the correct identification of the interlocutor, he has informed the claimant of the situation of a debt of a third party unrelated to it.

d)

c) No corrective measures have been adopted, according to article 83.2 c) of the RGPD, since the claimed entity, although it indicates that it will prevent it from happening again, does not inform this Agency about the measures adopted or the actions followed in the present case.



-Regarding the degree of cooperation with the supervisory authority in order to remedy the violation and mitigate the potential adverse effects of the violation infringement; under article 83.2 f) of the RGPD, point out that although the AEPD sent a new request for information to clarify the origin of the telephone number of the claimant, with registration number 203984/2018 and acknowledgment date of December 18, 2018, no reply has been received, in

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the given period of one month, until almost four months later, on April 12, 2019, in response to the agreement to initiate this procedure

sanctioning party (point four of the background, page 2).

Therefore, in accordance with the applicable legislation and having assessed the criteria for graduation of sanctions whose existence has been proven,

the Director of the Spanish Data Protection Agency RESOLVES:

FIRST: IMPOSE XFERA MÓVILES, S.A. (YOIGO), with NIF A82528548, by an infringement of article 5 of the RGPD, typified in article 83.5 of the RGPD, a fine of €65,000.00 (SIXTY-FIVE THOUSAND euros).

SECOND: NOTIFY this resolution to XFERA MÓVILES, S.A. (YOIGO).

THIRD: Warn the sanctioned party that he must make the imposed sanction effective once

Once this resolution is enforceable, in accordance with the provisions of the

art. 98.1.b) of Law 39/2015, of October 1, on Administrative Procedure

Common Public Administrations (hereinafter LPACAP), within the payment term

voluntary established in art. 68 of the General Collection Regulations, approved

by Royal Decree 939/2005, of July 29, in relation to art. 62 of Law 58/2003,

of December 17, through its entry, indicating the NIF of the sanctioned and the number of procedure that appears in the heading of this document, in the account restricted number ES00 0000 0000 0000 0000 0000, opened on behalf of the Agency Spanish Data Protection at Banco CAIXABANK, S.A. Otherwise, it will be collected during the executive period.

Received the notification and once executed, if the date of execution is is between the 1st and 15th of each month, both inclusive, the term to carry out the voluntary payment will be until the 20th day of the following month or immediately after, and if is between the 16th and last day of each month, both inclusive, the term of the payment will be until the 5th of the second following month or immediately after.

In accordance with the provisions of article 50 of the LOPDPGDD, the

This Resolution will be made public once it has been notified to the interested parties.

Against this resolution, which puts an end to the administrative procedure in accordance with art.

48.6 of the LOPDPGDD, and in accordance with the provisions of article 123 of the

LPACAP, the interested parties may optionally file an appeal for reconsideration

before the Director of the Spanish Agency for Data Protection within a period of

month from the day following the notification of this resolution or directly

contentious-administrative appeal before the Contentious-Administrative Chamber of the

National Court, in accordance with the provisions of article 25 and section 5 of

the fourth additional provision of Law 29/1998, of July 13, regulating the

Contentious-administrative jurisdiction, within a period of two months from the

day following the notification of this act, as provided in article 46.1 of the

aforementioned Law.

Finally, it is pointed out that in accordance with the provisions of art. 90.3 a) of the

LPACAP, the firm resolution may be provisionally suspended in administrative proceedings

through the

if the interested party expresses his intention to file a contentious appeal-

administrative. If this is the case, the interested party must formally communicate this

made by writing to the Spanish Agency for Data Protection,

introducing him to

the agency

[<https://sedeagpd.gob.es/sede-electronica-web/>], or through any of the other

records provided for in art. 16.4 of the aforementioned Law 39/2015, of October 1. Also

must transfer to the Agency the documentation that proves the effective filing

of the contentious-administrative appeal. If the Agency were not aware of the

filing of the contentious-administrative appeal within two months from the

day following the notification of this resolution, it would end the

precautionary suspension.

Electronic Registration of

Sea Spain Marti

Director of the Spanish Data Protection Agency

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