 Procedure No.: PS/00448/2020

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RESOLUTION R/00180/2021 TERMINATION OF THE PROCEDURE

BY VOLUNTARY PAYMENT

In sanctioning procedure PS/00448/2020, instructed by the Spanish Agency for

Data Protection to XFERA MÓVILES, S.A., given the complaint filed by

A.A.A., and based on the following,

BACKGROUND

FIRST: On February 12, 2021, the Director of the Spanish Agency for

Data Protection agreed to initiate a sanctioning procedure against XFERA MÓVILES,

S.A. (hereinafter, the claimed party), through the Agreement that is transcribed:

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Procedure No.: PS/00448/2020

935-240719

AGREEMENT TO START A SANCTION PROCEDURE

Of the actions carried out by the Spanish Data Protection Agency before

the entity, XFERA MÓVILES, S.A., with CIF.: A82528548, (hereinafter, “the entity

claimed"), by virtue of a complaint filed by D. A.A.A., (hereinafter, "the

claimant"), and based on the following:

FACTS

FIRST: On 10/16/20, you have entered this Agency, filed a complaint

by the claimant in which he indicated, among others, the following:

“I started a claim with you on 07/19/20, No.: E/06604/2020; where I

indicated that the company had complied with the right to object and was not allowed to

procedure, (understanding that they had taken the appropriate measures).

To this day, this operator continues to send SMS to my telephone line, (attached

the screenshots in the attached file), of more than 60 SMS in the last 30 days, so

that it is understood that this operator has not taken the measures that it has indicated".

The following documents were attached to the complaint letter:

- Screenshots of 26 SMS from 09/22/20 to 10/15/20, sent from the

company Yoigo with advertising messages, inviting the user to access

to certain web pages such as, http//shorturi.kairos365.com/MjkxNDM2 and

http//:yoigo.kairos365.com/coronavirus; or to call the numbers of

phone, ***PHONE.1 or ***PHONE.2 to contract the promotions

offered by the company.

SECOND: On 10/31/20, this Agency entered a second letter of

complaint filed by the claimant in which he indicated, among others, the following:

"On 09/24/20 I sent an email to Yoigo (Más-Móvil), informing that I was

receiving a lot of SMS on my mobile line with information

confidential information from third parties, who replied that they had taken note and

it wouldn't happen again. Well, this company, to this day, has sent me

phone line, an SMS with my phone number and a security key to

access its platform ("Mi Yoigo"), which I have accessed, since it has my number

and I have been able to verify that I have accessed personal data from a third party

outsider, with whom I have nothing to do, I have seen their invoices and the

possibility and to carry out any procedure in your profile".

The following documents were attached to the complaint letter:

- Email sent from the address ***EMAIL.1, dated 09/24/20

to the address ***EMAIL.2@masmovil.com denounced the receipt of shipments

massive advertising SMS and others with personal data of third parties

people.

- Email reply to the claimant, from the address

***EMAIL.2@masmovil.com, dated 09/24/20, indicating, among others, that,

have responded to your opposition request, dated 08/13/20 and that, regarding

of the commercial communications that you have received after said

date, they inform you that they have been carried out by a MÁSMOVIL agent,

who performs operations with its own database, committing to

give the order to said agent to remove your personal data from their

databases and stop sending you advertising.

of

and access data”

- Provide a screenshot: “My Yoigo Account - Manage your information

staff

the web address:

https://miyoigo.yoigo.com/datos-personales”, dated 10/31/20, where

You can see that, with the claimant's phone number, entered in

the "user" box, the personal data, address and number of

bank account of a third person other than the claimant. Also I know

attached invoice for the month of October 2020, of the services provided by the

company to said third person, where data such as: the name, the

address, checking account number, and contact phone numbers.

THIRD: On 11/10/20, this Agency received a third letter of

complaint filed by the claimant in which he indicated, among others, the following:

“The complaint filed with that Agency is extended, dated October 31,

2020, against the operator of Yoigo (MásMóvil), for the use of data in a way

fraudulent and repeated, including, after having been notified of these facts.

The following documents were attached to the complaint letter:

- Screenshots of 16 SMS, sent from 10/18/20 to 11/09/20, from

the company Yoigo, informing the user of the existence of problems

technicians for the management of your requests and the subsequent correction of the

themselves.

FOURTH: On 11/30/20, by the Director of the Spanish Agency for

Data Protection agreement is issued for the admission of processing of complaints

presented by the claimant, in accordance with article 65 of the Organic Law

3/2018, of December 5, on the Protection of Personal Data and guarantee of the

digital rights (LPDGDD).

FOUNDATIONS OF LAW

I- Competition.

a).- Regarding the processing of personal data:

It is competent to initiate and resolve this Sanctioning Procedure, the Director of the Spanish Agency for Data Protection, by virtue of the powers that art 58.2 of Regulation (EU) 2016/679, of the European Parliament and of the Council, of 04/27/16, regarding the Protection of Natural Persons with regard to the Treatment of Personal Data and the Free Circulation of these Data (RGPD) recognizes each Control Authority and, as established in arts. 47, 64.2 and 68.1 of the Law Organic 3/2018, of December 5, on the Protection of Personal Data and Guarantee of Digital Rights (LOPDGDD).

Sections 1) and 2), of article 58 of the RGPD, list, respectively, the investigative and corrective powers that the supervisory authority may provide to the effect, mentioning in point 1.d), that of: "notifying the person in charge or in charge of the treatment of alleged infringements of these Regulations" and in 2.i), that of: "impose an administrative fine under article 83, in addition to or instead of the measures mentioned in this section, according to the circumstances of each case.".

b).- Regarding the sending of advertising SMS without the consent of the interested party:

It is competent to initiate and resolve this Sanctioning Procedure, the Director of the Spanish Agency for Data Protection, in accordance with the provisions of the art. 43.1, second paragraph, of Law 34/2002, of July 11, on Services of the Information Society and Electronic Commerce (LSSI), is competent to initiate and resolve this Sanctioning Procedure, the Director of the Spanish Agency of Data Protection.

II

From file No.: E/06604/2020, followed in this Agency as a result of the first complaint filed by the claimant against the entity claimed, it must be

keep in mind the following points:

On 07/17/20, the claimant filed a written complaint with this Agency,

indicating in it that: “he was receiving advertising messages on his phone

mobile, from the denounced company, which he had not authorized”.

Dated 09/14/20, in response to the request made by this Agency

Due to the reported facts, the company indicated that: “we confirm that

we have managed the right of opposition of the claimant in relation to all the

databases for which we are responsible for the treatment on the 13th of

August 2020 (…)”.

On 09/25/20, the entity claimed, in response to the request for

additional information made from this Agency, reported that: “In relation to the

extension made by the claimant, as can be seen in the messages

provided by it, point to a "url" with domain hazmeclic.es, which is not

ownership of my client, as proven through red.es., not being the

database of this company under the responsibility of Xfera Móviles”.

Vector Software Factory, S.L. is a distributor of MASMOVIL, with whom he has a

Agency contract, which carries out commercial campaigns on its own initiative and

on its own database, which, as we have indicated, is not under

responsibility, nor have we provided from MASMOVIL. However, the above

we will proceed to contact this agent in order to transfer the opposition

of Mr. A.A.A. in order to meet the right of the interested party.

By mail dated September 24, 2020, at 3:25 p.m., we have proceeded to

inform the interested party of the following: “We wrote to your email, to which

we have had access within the framework of the procedure followed by the Spanish Agency

of Data Protection E/06604/2020. in order to inform you of how we have

proceeded in the attention of your right of opposition. We hereby inform you

that we proceeded to manage your right of opposition regarding the numbering

XXX XXX XXX, by Xfera Móviles, S.L. (More Mobile) dated August 13

of 2020.

In relation to the communications indicated to us by the Spanish Protection Agency

of Data has received after that date, we inform you that we have

verified that they have been sent by an agent of the brand

MASMOVIL, who carries out commercial actions on its own databases. In

In this sense, we inform you that we will transmit your request to exercise your

opposition rights to this agent, after which we hope you will stop receiving our

advertising.

Well, dated 10/01/20, after analyzing the reasons given by the

claimed entity, and consider that the person in charge had attended the claim

presented, this Agency agreed not to admit the claim for processing

presented, notifying the same to the interested parties.

However, on 10/16/20, it has entered this Agency, a second

complaint filed by the claimant indicating that the operator was still

sending SMS to his telephone line, and attached the screenshots of more than 60 SMS received until that day, so he considered that the operator had not attended satisfactorily the first claim, and that the AEPD had inadmissible for processing the consider the opposite.

A few days later, on 10/31/20, the claimant resubmits a writ of complaint before this Agency, indicating that he had contacted the claimed entity, on 09/24/20, to inform them that, although he had exercised before them the right of opposition continued to receive a huge amount of advertising SMS, receiving as a response from the entity that had dealt with your opposition request dated 08/13/20 and that it would not happen again, but the claimant returns to justify that you continue to receive SMS from the company after said date, providing a copy of all of them. On 11/10/20, he resubmitted a new brief before this Agency providing advertising SMS of the claimed entity, up to 16 SMS, from the from 10/18/20 to 11/09/20.

Apart from all of the above, the claimant also claims that he has received an SMS from the company, to your phone number with a security key to access the platform, ("Mi Yoigo"), in which, once accessed, has been able to verify that the profile belongs to another user, but has access to the personal data of this person, to their invoices, and even has the possibility of carrying out any procedure with the data of this person.

III- About the breach of the right to delete personal data.

This section examines the alleged breach by the claimed entity, of the deletion of all personal data from its databases data, which was requested by the claimant.

Article 17.1.c) of the RGPD establishes the right to delete data data of the interested party, ("the right to be forgotten"), which:

“The interested party shall have the right to obtain, without undue delay, from the person responsible for the treatment the deletion of personal data that concerns you, which will be obliged to delete personal data without undue delay when any of the following circumstances: (...)

c) the interested party opposes the treatment in accordance with article 21, paragraph 1, and does not other legitimate reasons for the treatment prevail, or the interested party opposes the treatment in accordance with article 21, paragraph 2;”.

Of the existing documentation in the file followed in this Agency, by the same facts denounced (E/06604/2020), of the documentation presented by the claimant in this sanctioning procedure (PS/00448/2020) and of the replies made by the claimed entity, to the requirements made by this Agency, set out in point II, it is verified that the known facts could constitute an infringement, attributable to the defendant, for violation of the article 17.1.c) of the RGPD, due to breach of the right to delete the data of the interested party, when he had exercised the right of opposition before the entity and it had even confirmed that it had correctly managed said law.

Article 72.1.k) of the LOPDGDD considers it very serious, for prescription purposes,

“The impediment or the obstruction or the repeated non-attention of the exercise of the rights established in articles 15 to 22 of Regulation (EU) 2016/679.”.

This infraction can be sanctioned with a maximum fine of €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

of greater amount, in accordance with article 83.5.b) of the RGPD.

In accordance with the precepts indicated, and without prejudice to what results from the

instruction of the procedure, in order to set the amount of the sanction to be imposed in

the present case, it is considered appropriate to graduate the sanction to be imposed in accordance

with the following aggravating criteria established in article 83.2 of the RGPD:

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The duration of the violation, taking into account the scope or purpose of the

data processing operation, as well as the damages caused to the

interested, since the entity stated that it had proceeded to delete the data from the

claimant from their databases on 08/13/20 and continued to send SMS

advertising until 11/09/20, (section a).

The negligence in the infringement, when verifying the lack of due diligence of the

entity claimed in the fulfillment of its obligations with respect to the

management of users' personal data (section b).

The way in which the supervisory authority became aware of the infringement,

because this occurred through several complaints filed by the

claimant, (section h).

The existence of a previous complaint, which was not admitted for processing by this Agency, when affirming the defendant entity that it had proceeded satisfactorily to address the right to delete personal data of the interested party, (section k).

For its part, article 76.2 of the LOPDGDD establishes that, in accordance with the provisions in article 83.2.k) of the RGPD, it will be taken into account, as aggravating factors of the penalty, the following:

- The continuing nature of the infringement, therefore, although the entity claimed affirms that it has proceeded to delete the personal data of the claimant of your databases on 08/13/20, you continue to send advertising SMS on your mobile, even after 11/08/20, (section a).

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The link between the activity of the offender and the performance of treatment of personal data, (section b).

The balance of the circumstances contemplated in article 83.2 of the RGPD, with Regarding the infraction committed by violating the provisions of article 17 of the RGPD, allows you to set an initial penalty of 50,000 euros, (fifty thousand euros).

IV- Regarding the lack of security measures in the company's systems.

This section examines the alleged breach by the claimed entity, of the security in the treatment of the personal data of its customers, since the claimant reports having received an SMS from the company, with his telephone number and a security key to access the platform (“My Yoigo”), in which he has been able to verify that the profile belongs to another user, that

has access to this person's personal data, their invoices, and there is even the

possibility of carrying out any procedure with your personal data.

The security of personal data is regulated in article 32 of the RGPD,

where it is established that:

"1. Taking into account the state of the art, the application costs, and the

nature, scope, context and purposes of the treatment, as well as risks of

variable probability and severity for the rights and freedoms of individuals

physical, the person in charge and the person in charge of the treatment will apply technical measures and

appropriate organizational measures to guarantee a level of security appropriate to the risk,

(…)"

The GDPR defines personal data security breaches as "all

those breaches of security that cause the destruction, loss or

accidental or unlawful alteration of personal data transmitted, stored or processed

otherwise, or unauthorized communication or access to such data".

From the documentation in the file, there are clear indications that the

claimed has violated article 32 of the RGPD, when there was a breach of

security in their systems by sending an SMS to the claimant with the access codes to

the "Mi Yoigo" platform, belonging to another client of the company.

It should be noted that the RGPD in the aforementioned precept does not establish a list of the

security measures that are applicable according to the data that are subject

of treatment, but establishes that the person in charge and the person in charge of the treatment

apply technical and organizational measures that are appropriate to the risk involved

the treatment, taking into account the state of the art, the application costs, the

nature, scope, context and purposes of the treatment, the risks of probability

and seriousness for the rights and freedoms of the persons concerned.

Article 73.g) of the LOPDGDD, considers serious, for purposes of prescription, "The

breach, as a consequence of the lack of due diligence, of the

technical and organizational measures that have been implemented as required

by article 32.1 of Regulation (EU) 2016/679".

This infraction can be sanctioned with administrative fines of 10,000,000 EUR

maximum or, in the case of a company, an amount equivalent to 2% as

maximum of the overall annual total turnover of the previous financial year,

opting for the highest amount in accordance with article 83.4.a) of the RGPD.

In accordance with the precepts indicated, and without prejudice to what results from the

instruction of the procedure, in order to set the amount of the sanction to be imposed in

the present case, it is considered appropriate to graduate the sanction to be imposed in accordance

with the following aggravating criteria established in article 83.2 of the RGPD:

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The duration of the violation, taking into account the scope or purpose of the

treatment operation in question, (section a).

The negligence in the infringement, when verifying the lack of due diligence of the

entity claimed in the fulfillment of its obligations with respect to the

management of the security of the personal data of its clients, (section b).

The way in which the supervisory authority became aware of the infringement,

because it has been through the complaint filed by the claimant, (paragraph

h).

For its part, article 76.2 of the LOPDGDD establishes that, in accordance with the provisions

in article 83.2.k) of the RGPD, it will be taken into account, as aggravating factors of the

penalty, the following:

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The link between the activity of the offender and the performance of treatment of

personal data, (section b).

The balance of the circumstances contemplated in article 83.2 of the RGPD, with

Regarding the infraction committed by violating the provisions of article 32 of the

RGPD, allows you to set an initial penalty of 30,000 euros, (thirty thousand euros).

V- About the consequences of the lack of adequate security measures.

This section examines the alleged breach by the

claimed entity, of the security in the treatment of the personal data of its

customers, since the claimant reports that he has received an SMS from the company, with

your telephone number and a security code to access the platform (“My

Yoigo”), in which he has been able to verify that the profile belongs to another user, that

has access to this person's personal data, their invoices, and there is even the

possibility and to carry out any procedure with these personnel who are not the

his.

The RGPD establishes, in article 5, the principles that must govern the treatment of

the

personal data and mentions among them that of “integrity and confidentiality”.

The article states, in its point 1.f) that: "Personal data will be treated in such a way that

manner that ensures adequate security of personal data, including the

protection against unauthorized or unlawful processing and against loss, destruction

or accidental damage, through the application of technical or organizational measures

appropriate (“integrity and confidentiality”)”.

Well, in accordance with the evidence available in the present

moment, the fact that the claimed entity made it possible to view data

personal data of a third person other than the claimant, allow us to verify that the

claimed has not been able to guarantee the security in the treatment of the data

personal data of its clients, thereby showing a serious lack of due diligence and

therefore, incurring in the violation of article 5.1 f) of the RGPD, which establishes the

principles of integrity and confidentiality of personal data, as well as the

proactive responsibility of the controller to demonstrate its

compliance.

Article 72.1.a) of the LOPDGDD considers very serious, for purposes of prescription: "The

processing of personal data violating the principles and guarantees established in

Article 5 of Regulation (EU) 2016/679”

This infraction can be sanctioned with a maximum fine of €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

of greater amount, in accordance with article 83.5.b) of the RGPD.

In accordance with the precepts indicated, and without prejudice to what results from the instruction of the procedure, in order to set the amount of the sanction to be imposed in the present case, it is considered appropriate to graduate the sanction to be imposed in accordance with the following aggravating criteria established in article 83.2 of the RGPD:

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The duration of the violation, taking into account the scope or purpose of the data processing operation, as well as the damages caused to the interested party and third parties, (section a).

The negligence in the infringement, when verifying the lack of due diligence of the entity claimed in the fulfillment of its obligations with respect to the management of users' personal data (section b).

The way in which the supervisory authority became aware of the infringement, because this occurred through several complaints filed by the claimant, (section h).

The existence of a previous complaint, which was not admitted for processing by this Agency, when affirming the defendant entity that it had proceeded satisfactorily the problem raised, (section k).

For its part, article 76.2 of the LOPDGDD establishes that, in accordance with the provisions in article 83.2.k) of the RGPD, it will be taken into account, as aggravating factors of the

penalty, the following:

- The continuing nature of the infringement, therefore, although the entity claimed affirms that he proceeded to solve the problems caused on 08/13/20, continues existing sending SMS with data belonging to other people to the interested party, (section a).

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The link between the activity of the offender and the performance of treatment of personal data, (section b).

The balance of the circumstances contemplated in article 83.2 of the RGPD, with Regarding the infraction committed by violating the provisions of article 5.1.f) of the RGPD, allows you to set an initial penalty of 50,000 euros, (fifty thousand euros).

VI- Regarding the sending of advertising SMS without the consent of the interested party.

This section examines the alleged breach by the claimed entity, of article 21 of the LSSI, which establishes the prohibition of send advertising or promotional communications, by means of communication electronically, which had not previously been requested or expressly authorized.

Article 21 of the LSSI, on non-consensual commercial communications, establishes that:

"1. The sending of advertising or promotional communications by email or other equivalent means of electronic communication previously they had not been requested or expressly authorized by the

their recipients. 2. The provisions of the preceding section shall not apply

application when there is a prior contractual relationship, provided that the provider

had lawfully obtained the contact details of the recipient and used them

for sending commercial communications regarding products or services of your

own company that are similar to those that were initially subject to

contracting with the client. In any case, the provider must offer the recipient the

possibility of objecting to the processing of your data for promotional purposes by

a simple and free procedure, both at the time of data collection

as in each of the commercial communications that you direct. When the

communications had been sent by email, said means must

necessarily consist of the inclusion of an email address or other

valid electronic address where this right can be exercised, being prohibited

the sending of communications that do not include said address."

Of the existing documentation in the file followed in this Agency, by the

same facts denounced (E/06604/2020), of the documentation presented by the

claimant in this sanctioning procedure (PS/00448/2020) and of the

replies made by the claimed entity, to the requirements made

by this Agency, set out in point II, it is verified that the known facts

could constitute an infringement, attributable to the defendant, for violation of the

article 21 of the LSSI, for sending a large number of advertising SMS or

without the authorization of the interested party and after the claimed entity

affirm that they had responded to the request of the interested party not to send him or her

SMS.

The aforementioned infraction is typified as minor in art. 38.4.d) of said

standard, which qualifies as such, "The sending of commercial communications by e-mail

electronic or other equivalent means of electronic communication when in said

shipments do not meet the requirements established in article 21 and do not constitute

Serious offense".

Pursuant to the provisions of article 39.1.c) of the LSSI, minor infractions may

sanctioned with a fine of up to €30,000, establishing the criteria for its

graduation in article 40 of the same norm.

After the evidence obtained, and without prejudice to what results from the investigation,

considers that it is appropriate to graduate the sanction to be imposed in accordance with the following

aggravating criteria, established by art. 40 of the LSSI:

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The existence of intentionality, an expression that must be interpreted as

equivalent to a degree of guilt according to the Judgment of the

National High Court of 11/12/07 relapse in Appeal no. 351/2006,

corresponding to the denounced entity the determination of a system of

Obtaining informed consent that is in accordance with the mandate of the LSSI.

- Period of time during which the infraction has been committed, since the

entity stated that it had agreed not to send any more SMS to the interested party, the

08/13/20 and continued sending SMS until 11/09/20 (last SMS that this

Agency is aware) (subsection b).

Pursuant to these criteria, it is considered appropriate to impose on the defendant entity

a penalty of 20,000 euros (twenty thousand euros), for the infringement of article 21 of the

LSSI, regarding the sending of commercial communications via SMS without the

consent of the affected.

Therefore, in accordance with the foregoing, by the Director of the Agency

Spanish Data Protection,

HE REMEMBERS:

START: SANCTION PROCEDURE against the entity XFERA MÓVILES, S.A.,

with CIF.: A82528548, for the following infractions:

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Violation of article 17 of the RGPD, punishable in accordance with the

provided in art. 58.2 of the aforementioned RGPD, due to non-compliance, of the deletion

of personal data from their databases, requested by the claimant.

Violation of article 32 of the RGPD, punishable in accordance with the

provided in art. 58.2 of the aforementioned RGPD, due to breach of security

in the treatment of the personal data of its clients.

Violation of article 5.1.f) of the RGPD, punishable in accordance with the

provided in art. 58.2 of the aforementioned RGPD, for breach of the principle of

integrity and confidentiality in the treatment of personal data of its

customers.

Violation of article 21 of the LSSI, regarding the sending of commercial SMS or

advertising without the express consent of the recipient.

APPOINT: Mr. R.R.R. as Instructor, and Secretary, if applicable, Ms. S.S.S.,

indicating that any of them may be challenged, as the case may be, in accordance with

established in articles 23 and 24 of Law 40/2015, of October 1, on the Legal Regime

of the Public Sector (LRJSP).

INCORPORATE: to the disciplinary file, for evidentiary purposes, the claim

filed by the claimant and his documentation, all of them part of this

Administrative file.

WHAT: for the purposes provided in art. 64.2 b) of Law 39/2015, of October 1, of the

Common Administrative Procedure of the Public Administrations, the sanction that

could correspond would be:

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50,000 euros (fifty thousand euros) for the infringement of article 17

of the RGPD, without prejudice to what results from the instruction of this

penalty procedure.

30,000 euros (thirty thousand euros) for the infringement of article 32 of the

RGPD, without prejudice to what results from the instruction of this

penalty procedure.

50,000 euros (fifty thousand euros) for the infringement of the article article

5.1.f) of the RGPD, without prejudice to what results from the instruction of this

sanctioning procedure

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20,000 euros (twenty thousand euros) for the infringement of article 21 of the LSSI, without prejudice to what results from the investigation of this procedure sanctioning

Therefore, for the purposes provided in art. 64.2 b) cited, the total sanction that could corresponding would be 150,000 euros (one hundred and fifty thousand euros)

NOTIFY: this agreement to initiate sanctioning proceedings to the entity XFERA MÓVILES, S.A., granting a hearing period of ten business days to to formulate the allegations and present the evidence it deems appropriate.

If within the stipulated period it does not make allegations to this initial agreement, the same may be considered a resolution proposal, as established in article 64.2.f) of Law 39/2015, of October 1, of the Common Administrative Procedure of Public Administrations (hereinafter, LPACAP).

In accordance with the provisions of article 85 of the LPACAP, in the event that the sanction to be imposed was a fine, it may recognize its responsibility within the term granted for the formulation of allegations to this initial agreement; it which will entail a reduction of 20% of the sanction to be imposed in this procedure, equivalent in this case to 30,000 euros. with the app of this reduction, the sanction would be established at 120,000 euros, resolving the procedure with the imposition of this sanction.

Similarly, you may, at any time prior to the resolution of this procedure, carry out the voluntary payment of the proposed sanction, which will mean a reduction of 20% of the amount of the same, equivalent in this case to 30,000 euros. With the application of this reduction, the sanction would be established

in 120,000 euros and its payment will imply the termination of the procedure.

The reduction for the voluntary payment of the penalty is cumulative with the corresponding

apply for the acknowledgment of responsibility, provided that this acknowledgment

of the responsibility is revealed within the period granted to formulate

arguments at the opening of the procedure. The voluntary payment of the referred amount

in the previous paragraph may be done at any time prior to the resolution. In

In this case, if it were appropriate to apply both reductions, the amount of the penalty would be

set at 90,000 euros (ninety thousand euros).

In any case, the effectiveness of any of the two reductions mentioned will be

conditioned to the abandonment or renunciation of any action or resource in via

administrative against the sanction.

If you choose to proceed to the voluntary payment of any of the amounts indicated

above, you must make it effective by depositing it in account number ES00

0000 0000 0000 0000 0000 opened in the name of the Spanish Agency for the Protection of

Data in Banco CAIXABANK, S.A., indicating in the concept the number of

reference of the procedure that appears in the heading of this document and the

cause of reduction of the amount to which it is accepted. Also, you must send the

proof of admission to the Subdirectorate General for Inspection to continue with the

procedure in accordance with the amount entered.

The procedure will have a maximum duration of nine months from the

date of the start-up agreement or, where appropriate, of the draft start-up agreement.

Once this period has elapsed, it will expire and, consequently, the file of

performances; in accordance with the provisions of article 64 of the LOPDGDD.

Finally, it is pointed out that in accordance with the provisions of article 112.1 of the LPACAP,

There is no administrative appeal against this act.

Sea Spain Marti

Director of the Spanish Agency for Data Protection.

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: On March 3, 2021, the claimant has proceeded to pay the

SECOND

sanction in the amount of 90,000 euros making use of the two planned reductions

in the Startup Agreement transcribed above, which implies the recognition of the

responsibility.

THIRD: The payment made, within the period granted to formulate allegations to

the opening of the procedure, entails the waiver of any action or resource in via

administrative action against the sanction and acknowledgment of responsibility in relation to

the facts referred to in the Initiation Agreement.

FOUNDATIONS OF LAW

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By virtue of the powers that article 58.2 of the RGPD recognizes to each authority of

control, and as established in art. 47 of the Organic Law 3/2018, of 5

December, of Protection of Personal Data and guarantee of digital rights (in

hereinafter LOPDGDD), the Director of the Spanish Agency for Data Protection is competent to sanction the infractions that are committed against said Regulation; infractions of article 48 of Law 9/2014, of May 9, General Telecommunications (hereinafter LGT), in accordance with the provisions of the article 84.3 of the LGT, and the infractions typified in articles 38.3 c), d) and i) and 38.4 d), g) and h) of Law 34/2002, of July 11, on services of the society of the information and electronic commerce (hereinafter LSSI), as provided in article 43.1 of said Law.

II

Article 85 of Law 39/2015, of October 1, on Administrative Procedure Common to Public Administrations (hereinafter, LPACAP), under the rubric "Termination in sanctioning procedures" provides the following:

"1. Started a sanctioning procedure, if the offender acknowledges his responsibility, the procedure may be resolved with the imposition of the appropriate sanction.

2. When the sanction is solely pecuniary in nature or it is possible to impose a pecuniary sanction and another of a non-pecuniary nature, but the inadmissibility of the second, the voluntary payment by the alleged perpetrator, in any time prior to the resolution, will imply the termination of the procedure, except in relation to the replacement of the altered situation or the determination of the compensation for damages caused by the commission of the infringement.

3. In both cases, when the sanction is solely pecuniary in nature, the competent body to resolve the procedure will apply reductions of, at least, 20% of the amount of the proposed sanction, these being cumulative with each other. The aforementioned reductions must be determined in the notification of initiation of the procedure and its effectiveness will be conditioned to the withdrawal or resignation of any administrative action or recourse against the sanction.

The reduction percentage provided for in this section may be increased

regulations.

In accordance with the above, the Director of the Spanish Agency for the Protection of

Data RESOLVES:

FIRST: TO DECLARE the termination of procedure PS/00448/2020, of

in accordance with the provisions of article 85 of the LPACAP.

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

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In accordance with the provisions of article 50 of the LOPDGDD, 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 as prescribed by

the art. 114.1.c) of Law 39/2015, of October 1, on Administrative Procedure

Common of the Public Administrations, the interested parties may file an appeal

contentious-administrative 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.

Sea Spain Marti

Director of the Spanish Data Protection Agency

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