

□ Procedure No.: PS/00031/2021

RESOLUTION OF PUNISHMENT PROCEDURE

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

BACKGROUND

FIRST: A.A.A. (hereinafter the claimant) filed a claim with the Agency
Spanish Data Protection Agency (hereinafter AEPD) for receipt on January 31
2020, at 11:34 a.m., from a commercial call on behalf of “Vodafone
España, S.A.U.”, with NIF A80907397 (hereinafter VDF), to its telephone line
***TELEPHONE.1 that is registered in the advertising exclusion list
Robinson, from the line ***TELEFONO.2.

Relevant documentation provided by the claimant:

- 34-second audio file corresponding to the recording of the call
commercial on behalf of VDF.
- Copy of the invoice (issued by XFERA MÓVILES, S.A.U. with NIF A82528548) of the
telephone line ***TELEFONO.1 in which the ownership of it by the
of the claimant.
- Copy of the registration certificate on the Robinson List issued on 01/31/2020, in which
your telephone line ***TELEFONO.1 registered against telephone calls
commercials from 08/03/2018.

SECOND: In view of the facts denounced in the claim and the
documents provided by the claimant / of the facts and documents of which he has
had knowledge of this Agency, the Subdirector General for Data Inspection
proceeded to carry out preliminary investigation actions for the
clarification of the facts in question, by virtue of the investigative powers

granted to the control authorities in article 57.1 of the Regulation (EU)

2016/679 (General Data Protection Regulation, hereinafter RGPD), and

in accordance with the provisions of Title VII, Chapter I, Second Section, of the Law

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

digital rights (hereinafter LOPDGDD).

As a result of the research actions carried out, it is found that the

responsible for the treatment is the claimed.

BACKGROUND

Claim entry date: February 3, 2020.

Complainant: A.A.A.

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Dated 04/15/2020 in entry record 014582/2020, associated with the

procedure E/02271/2020, the AEPD verified allegations by the VDF in which it

established that there is no record in its database of the number ***TELEFONO.2

associated with your collaborators who make recruitment calls on your behalf. VDF

In that same record, he stated that the claimant was registered on the List

Robinson corresponding since 08/03/2018. In addition, VDF reports having included

in the internal Robinson list of your entity to the telephone line ***TELEFONO.1 of the

claimant as a result of the transfer of the claim, becoming recorded as registered in

she. VDF stated that it had not contacted the claimant to notify him of the steps

made for not having your contact information

INVESTIGATED ENTITIES

As stated in the Diligence, incorporated in the associated Investigation File (E/09385/2020) on 11/25/2020, the telephone line with number ***TELEFONO.2 was operated by SEWAN COMUNICACIONES, as stated in the Records of Numbering and Telecommunications Operators of the National Commission of Markets and Competition (hereinafter, CNMC).

Consequently, during these proceedings, the following has been investigated:

entity:

SEWAN COMUNICACIONES, S.L.U. (hereinafter, investigated #1), with NIF B73619215 and address at AVDA. DE MANOTERAS, N° 22, BUILDINGS 73 AND 74 - 28050 MADRID (MADRID).

Likewise, due to the course of these previous actions of investigation, the need was established to proceed to investigate also the following entity:

VAMAVI PHONE, S.L. (hereinafter, the investigated #2, or Vamavi), with NIF B87914446 and address at C/ COPENHAGUE, 23 - 3º 1ª - 28922 ALCORCÓN (MADRID).

RESULT OF THE INVESTIGATION ACTIONS

The claimant's telecommunications operator, XFERA MÓVILES, S.A.U.

expresses confirmation of receipt at the number ***TELEFONO.1

(ownership of the claimant) of the call made by the line

***TELEFONO.2, on January 31, 2020 at 11:34:50 a.m. This line of origin of the call appears as incoming in the interconnection platform operated by the investigated #1.

Investigated #1 claims to be a telecommunications operator that provides telephone services to customers, end users and resellers. The investigated #1 provides a copy of the public registry of operators of the CNMC in which is thus identified.

Investigated #1 identifies Investigated #2 as her main client of the telephone line ***TELEFONO.2 on January 31, 2020 at 11:34:50 a.m., and specifically in its ownership since October 2, 2019. The investigated

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#1 alleges that he did not make the call or have a contract or any association with VDF to advertise its commercial services.

Investigated #1 confirms that the call from the telephone line

***PHONE.2 to line ***PHONE.1 (owned by the claimant) is

occurred on January 31, 2020 at around 11:34 a.m. and had a

duration of 39 seconds. The investigated #1 provides a copy of the invoice

corresponding to the month of January 2020 issued to the investigated #2, as its

client owner of the telephone line ***TELEFONO.2, in which it is reflected

that phone call.

The investigated #2 confirms the realization of a commercial call on 31

January 2020 at 11:34 a.m. to offer commercial services of the VDF,

to the claimant's telephone line ***TELEFONO.1 from the line

***TELEPHONE.2 (under your ownership).

Respondent #2 is identified as a sub-agent of the entity SOLIVESA

MASTER FRANCHISE, S.L. (hereinafter SOLIVESA), with NIF B97154488,

who acts as an authorized commercial distributor of the VDF. The investigated

#2 provides a commercial contract between you and SOLIVESA dated

03/21/2019, for the intermediation activity in customer registrations through

commercial telephone calls in favor of VDF and with a duration of 12 months.

Respondent #2 states that capturing customers for VDF through

commercial telephone calls occurred in the particular segment, of

self-employed and microenterprises.

Respondent #2 alleges that she does not have files relating to the owners of the

telephone lines that he called commercially because he was

generated lists of random numbers from the list of numbers

valid published by the CNMC. Respondent #2 provides a copy of the list of

telephone numbers presumably extracted from the CNMC.

Respondent #2 states that she has a Robinson list in which to carry out the

filtered to avoid numbers that oppose business calls and

adds recognition of the claimant's telephone line ***TELEFONO.1 included in

said list. Respondent #2 alleges, after identifying the number of the

claimant involved in the commercial call produced, that [sic]: "(...) by

what seems to be a punctual error in our filtering system."

THIRD: On January 27, 2021, the Director of the Spanish Agency for

Data Protection agreed to initiate a sanctioning procedure against the claimant, for the

alleged infringement of Article 28 of the RGPD, typified in Article 83.4 of the RGPD.

FOURTH: On February 8, SOLIVESA received allegations of the agreement in the following terms:

1. SOLIVESA began a contractual relationship with Vamavi on 03/21/2019, with the purpose of distributing products offered by Vodafone.

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2. On 03/27/2019 SOLIVESA receives confirmation from Vodafone regarding the registration of Vamavi for the direct distribution of Vodafone services.

3. Vamavi provided his services to SOLIVESA until 04/17/2019, the day on which uploaded the last upload to your CRM.

4. On 05/16/2019, SOLIVESA informed the legal representative of Vamavi that it they are making no sales.

5. On 06/04/2019 SOLIVESA asked the legal representative of Vamavi if they are going to continue in the Vodafone campaign.

6. On 06/11/2019, the legal representative of Vamavi responds to SOLIVESA that is in the process of hiring personnel and for that reason does not carry out sales.

7. On 07/15/2019 SOLIVESA asked the legal representative of Vamavi the reason for which they have not loaded any sales since 04/17/2019, without record answer.

8. On the same day, 07/15/2019, SOLIVESA decides to inform Vamavi of the suppression of your password as a Vodafone user.

9. That same day, 07/15/2019, Vodafone instructed SOLIVESA to proceed to update distributors to unsubscribe those who request, indicating SOLIVESA to Vamavi as low distributor.

10. On September 2019, Vamavi and Vodafone sign a direct contract to distribute Vodafone services.

11. The call to the claimant was made on 01/31/2020 by Vamavi, so that date there was no relationship with SOLIVESA since Vamavi distributed services directly from Vodafone.

12. After the initiation agreement, SOLIVESA requested a meeting with the DPD of Vodafone to be informed how Vamavi had access code directly from Vodafone for subscriptions to contracted services, at which time Vodafone informs SOLIVESA that Vamavi indeed has a key direct from Vodafone as an authorized direct distributor since September 2019.

The foregoing is accredited by SOLIVESA providing a copy of emails, communications contracts and documentation internal between Vodafone/Solviesa/Vamavi.

PROVEN FACTS

FIRST: SOLIVESA began a contractual relationship with Vamavi on 03/21/2019, following the Vodafone protocol.

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SECOND: On 03/27/2019 SOLIVESA receives confirmation from Vodafone about the registration of Vamavi for the direct distribution of Vodafone services.

THIRD: Vamavi provided his services to SOLIVESA until 04/17/2019, the day on which that the last upload was uploaded to your CRM.

FOURTH: On 05/16/2019, SOLIVESA informed the legal representative of Vamavi that they are not making any sales.

FIFTH: On 06/04/2019 SOLIVESA asks the legal representative of Vamavi if they will continue in the Vodafone campaign.

SIXTH: On 06/11/2019, the legal representative of Vamavi responds that he is in process of hiring personnel and that for this reason does not make sales.

SEVENTH: On 07/15/2019, the legal representative of Vamavi was asked why which have not uploaded any sales since 04/17/2019, without stating reply.

EIGHTH: On the same day, 07/15/2019, SOLIVESA decides to inform Vamavi of the deletion your password as a Vodafone user.

NINTH: That same day, 07/15/2019, Vodafone instructed SOLIVESA to proceed to update distributors to unsubscribe those who request, indicating SOLIVESA to Vamavi as low distributor.

TENTH. On September 2019, Vamavi and Vodafone sign a contract directly to distribute Vodafone services.

ELEVEN: The call to the claimant was made on 01/31/2020 by Vamavi, so at that date there was no relationship with SOLIVESA since it distributed services directly from Vodafone.

TWELFTH: After the agreement to initiate this sanctioning procedure, SOLIVESA requested a meeting with the DPD of Vodafone so that they inform how Vamavi had a direct access code from Vodafone for registering services

contracted, at which time Vodafone informs SOLIVESA that effectively

Vamavi has a direct key from Vodafone as an authorized distributor since

September 2019.

FOUNDATIONS OF LAW

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

control, and according to the provisions of articles 47 and 48 of the LOPDGDD, the Director

of the Spanish Agency for Data Protection is competent to initiate and to

resolve this procedure.

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Article 89.1.c) of Law 39/2015, of October 1, on Administrative Procedure

Common of the Public Administrations, indicates the following:

<Article 89. Resolution proposal in sanctioning procedures.

II

1. The investigating body will resolve the completion of the procedure, with a file of the

actions, without it being necessary to formulate the resolution proposal,

when in the procedure instruction it becomes clear that there is any

of the following circumstances:

(...)

c) When the proven facts do not constitute, in a manifest way, an infringement

administrative.

(...)

In the present case, of the allegations to the initiation agreement and documentation provided by the Solviesa entity, it has been proven that said entity was not the responsible for the publicity call made to the claimant on 01/31/2020, since the call was made by a third entity that at that date did not keep any relationship with SOLIVESA.

Therefore, in accordance with the applicable legislation, the Director of the Agency Spanish Data Protection RESOLVES:

FIRST: FILE this sanctioning procedure.

SECOND: NOTIFY this resolution to SOLIVESA MASTER FRANCHISE S.L., with NIF B97154488.

THIRD

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

: In accordance with the provisions of article 50 of the LOPDGDD, the

Against this resolution, which puts an end to the administrative procedure in accordance with art. 48.6 of the LOPDGDD, 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 month from

counting 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,

may provisionally suspend the firm resolution in administrative proceedings if the

The interested party expresses his intention to file a contentious-administrative appeal.

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If this is the case, the interested party must formally communicate this fact by

writing addressed to the Spanish Agency for Data Protection, presenting it through

Electronic Register of the Agency [[https://sedeagpd.gob.es/sede-electronica-](https://sedeagpd.gob.es/sede-electronica-web/)

[web/](https://sedeagpd.gob.es/sede-electronica-web/)], or through any of the other registers provided for in art. 16.4 of the

aforementioned Law 39/2015, of October 1. You must also transfer to the Agency the

documentation proving the effective filing of the contentious appeal-

administrative. If the Agency was not aware of the filing of the appeal

contentious-administrative within a period of two months from the day following the

notification of this resolution would end the precautionary suspension.

Sea Spain Marti

Director of the Spanish Data Protection Agency

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