



Czech Telecommunication Office

April 2017

Telegraphically on communications

Jiří Havlíček became the new Minister of Industry and Trade

The President of the Czech Republic, Miloš Zeman, appointed Jiří Havlíček as the new Minister of Industry and Trade to take office on 4 April with the support of Prime Minister Bohuslav Sobotka. Prior to that, Jiří Havlíček was a Deputy Minister responsible for the Administrative Section.

The Chamber of Deputies endorsed the amendment to the Electronic Communications Act in the first reading

On Wednesday, 5 April, the Chamber of Deputies approved the amendment to the Electronic Communications Act in a summary approval procedure. Prime Minister Bohuslav Sobotka also said that this was the first important accomplishment of the new Minister of Industry and Trade, Jiří Havlíček.

Ondřej Malý stopped working for CTU and will replace Tomáš Prouza

Ondřej Malý's mandate of CTU council member expired in mid-March. The former councillor was approved by the government on 5 April 2017

as a new Digital Agenda Coordinator. Ondřej Malý will replace Tomáš Prouza, who is going to work in the private sector.

Decision-making practice: Parents are responsible for minors' unpaid telephone invoices

It is the statutory representative who is responsible for meeting the obligations of the contract concluded by the parent for the benefit of a minor. This is implied by CTU's effective decision in a dispute in which O2 demanded payment of the debt of over CZK 60,000 by a participant who was 6 years old at the time when the contract was concluded.

The contract was signed by the minor's father. Under Section 36 (1) of the Family Act, a minor may be represented by his/her father in legal acts to which the minor is not fully competent. The contract for the provision of electronic communications services, which is binding with regard to long-term performance where the amount of such performance is practically not limited in any way, is an act in which a 6-year-old child is unable to understand and assess the consequences of his/her actions.

In general, it applies that the payee is a party to the contract or, as the case may be, a user, as provided for in Section 64 (1) of the Electronic Communications Act. However, the parent is the holder of parental responsibility within the meaning of Section 31 of the Family Act, and it is the parent who is also responsible for meeting the minor's obligations. This conclusion is also supported by the judgment

of the Supreme Court, which stated the following in decision No. 28 Cdo 3429/2008 of 4 February 2010: “if a minor is a party to a building savings contract, then such a legal relationship establishes certain rights and obligations. The statutory representatives are responsible for meeting the minor’s obligations. These obligations are part of parental responsibility under Section 31 of the Family Act. If an obligation to perform something is implied by the content of the contractual relationship a party to which is a minor, the statutory representative of the minor is required to meet such an obligation.”

Having stated the aforementioned, CTU diverged from the previously applied interpretation, i.e. that the petition is to be directed against the minor, by rejecting O2’s motion in its entirety in the present case due to the fact that it is exclusively the parent who can be the passively legitimated person.

Decision-making practice: A vaguely agreed contractual penalty is invalid

Unless a contractual arrangement clearly stipulates the commencement of the period from which the contractual penalty can be charged, it is regarded as a vaguely agreed contractual penalty, which constitutes a reason for the invalidity of such arrangement. This is implied by CTU’s final decision in the dispute concerning payment of a contractual penalty bill. O2 unsuccessfully claimed a contractual penalty of CZK 3,250 from its customer for failure to comply with a contractual obligation.

In December 2013, O2 sent a bill with a penalty to a client and, in June 2016, the operator filed a petition to initiate subscriber litigation. The case was, therefore, assessed under the former Civil Code (Act No. 40/1964 Coll.). Under Section 544 (2), it applied that a contractual penalty may only be agreed in writing and that the amount of the penalty must be determined or a method of its determination must be stipulated.

The operator and the customer agreed on a contractual penalty in Article 7 of the contract as follows: “If I breach the obligation under the Contractual Terms and Conditions (in this Specification, Price List, Terms of Service or General Terms and Conditions), I undertake to pay a contractual penalty to the Provider. The contractual penalty shall be stipulated in the Price List. In the case of NEON tariffs, it shall be a multiple of the monthly fee and the remainder of the months until the end of the commitment (...).”

The General Terms and Conditions lay down a considerable number of obligations on the part of the subscriber with unequal importance (and thus the seriousness of their breach). Additionally, it is not possible to determine in each obligation when the breach occurred. However, any contractual arrangement must be so specific as to give a clear answer concerning the content of the rights and obligations of the parties to the contract, without their interpretation being subject to an open discussion or even – as in this case – without a possibility that the relevant answer is not implied by the contract at all. The fact is that it is not possible to determine with certainty how O2 reached the amount of the contractual fine of CZK 3,250.

In addition, in the present case, the operator did not sufficiently define its claim in the motion to initiate administrative proceedings by failing to specify the obligation for the breach of which the client was charged a contractual penalty, as well as the time when the breach occurred.

Finally, the invalidity of the contractual arrangement could also be stated in this case based on the fact, that the contractual penalty bill refers to the General Terms and Conditions. In its judgement Ref. No. I. ÚS 3512/11, the Constitutional Court stated that arrangements regulating contractual penalties

in consumer contracts may not be part of general business terms and conditions but only of the consumer contract itself (i.e. of the instrument signed by the consumer).

Checked by the CTU in March...

Type of activity	Number of certificates or inspections		Number of calls to rectify shortcomings	Number of administrative proceedings commenced	Number of decisions awarded*)	Decided in the favour of		Penalties imposed	
	Total	Of which				the subscriber	the provider	Number	Size in CZK
1. Number of awarded certificates of notification of operating a business (Section 14 of the ZEK)	8								
2. Number of changes to certificates of notification of operating a business (Section 14 of the ZEK)	18								
3. The operation of communication activity without a certificate	0			0	0			0	0
4. Adherence to the terms and conditions of general authorisations	39		16	19	26			26	563000
a) in relation to providing public communication networks and associated facilities		0	0	0	0			0	0
b) in relation to providing electronic communication services		1	0	0	1			1	5000
c) in relation to the use of radio frequencies and the operation of devices (radio equipment)		38	16	19	25			25	558000
5. Inspection of radio frequencies	14		0	17	17			17	263000
a) the use of radio frequencies without authorisation		13		14	14			14	231000
b) adherence to the conditions of an individual licence for the use of radio frequencies		1	0	1	1			1	10000
c) identifying sources of interference to the operation of electronic communication equipment and networks, the provision of electronic communication services or the operation of radio-communication services	326		0	2	2			2	22000
6. Inspection of numbers for the purposes of number administration (number of inspection calls)	0		0	0	0			0	0
a) the use of numbers without authorisation		0		0	0			0	0
b) the use of numbers in conflict with authorisation		0	0	0	0			0	0
7. Subscriber disputes resolution	0			2411	6057	1038	4475		
a) of opposition to the processing of complaints concerned to the provided services		0		0	3	2	0		
b) of opposition to the processing of complaints concerned to the billing for services		0		9	24	4	2		
ba) access to services with expressed price (data and voice)		0		0	0	0	0		
baa) access to data services with expressed price provided on Internet or other data networks		0		0	0	0	0		
c) on the payment of the price for services (monetary performance)		0		2399	6026	1030	4472		
d) other		0		3	4	2	1		
8. Failure to provide information according to Section 115 of the ZEK				6	3			3	16000
9. Other	196		6	38	43			37	287000
TOTAL	601		22	2491	6146	1038	4475	83	1129000

*) The total number of decisions awarded includes cases in which administrative proceedings are concluded with a resolution, i.e. cases of the death of the subscriber, the cessation of existence of the company, the discontinuation of proceedings by law (bankruptcy), not having the remit to decide etc.

Postal services

Type of activity	Number of certificates or audits		Number of measures in the interest of proper provision of the services according to § 6, subsection 4 and § 37 of ZPS	Number of administrative proceedings from the previous month	Number of initiated administrative proceedings	Number of issued resolutions	Decided in favour of			Sanctions imposed		Number of the administrative proceedings carried forward to the next month
	total	of which					subscriber	provider	Other	number	amount in CZK	
1. Number of issued certificates on business notification	0											
2. Number of changes to certificates on business notification	1											
3. Execution of the postal service without certificate	0		0	0	0				0	0	0	
4. Compliance with the conditions of the Postal services act ("ZPS") and other regulations	1		0	0	0	0			0	0	0	
Compliance with the postal conditions according to § 6 of ZPS		1	0	0	0	0			0	0	0	
Compliance with the conditions for quality requirements according to Decree No. 464/2012		0	0	0	0	0			0	0	0	
5. Decision about objections against settlement of the complaint according to § 6a of ZPS	0			68	31	28	4	19	5			71
6. Settlement of the disputes according to § 37, subsection 3, paragraph a) of ZPS	0			0	0	0	0	0	0			0
7. Failure to provide information according to § 32 a) of ZPS				0	0	0				0	0	0
8. Other	2		0	3	11	2				1	3000	12
local inspection		2	0	0	0	0				0	0	0
Administrative procedure in the matter of a tort according to § 37a subsection 3 paragraph a)		0	0	2	4	1				1	3000	5
Administrative procedure in the matter of a tort according to § 37a subsection 2 paragraph f)		0	0	1	0	1				0	0	0
Administrative procedure in the matter of a tort according to § 37a subsection 1 paragraph a)		0	0	0	2	0				0	0	2
Administrative procedure in the matter of a tort according to § 37a subsection 2 paragraph a)		0	0	0	1	0				0	0	1
Administrative procedure in the matter of a tort according to § 37a subsection 2 paragraph e)		0	0	0	1	0				0	0	1
Administrative procedure in the matter of a tort other		0	0	0	3	0				0	0	3
TOTAL	4		0	71	42	30	4	19	5	1	3000	83

You can defend yourself against annoying phone calls

The Electronic Communications Act regulates the management of “directories of subscribers”, i.e. directories that contain selected data (name and surname or business/company name, address, telephone number, email address, etc.), as well as an indication that the subscriber does not wish to be contacted for marketing purposes.

Disclosure of the data in the directory of subscribers is preceded by the subscriber’s consent. As a rule, the subscriber decides on whether he/she wishes to provide such consent when concluding a contract for the provision of electronic communications services, and may withdraw such consent at any time free of charge; the subscriber may also determine at any time free of charge that he/she does not wish to be contacted for marketing purposes.

Assuming that the subscriber consented to the disclosure of his/her data in the directory of subscribers and, simultaneously, stated that he/she does not wish to be contacted for marketing purposes, any unsolicited marketing call is an administrative delict or more precisely, it is an offence for which may be imposed a penalty of up to CZK 20 million if committed by a legal entity or a natural person acting as an entrepreneur, or up to CZK 100,000 if committed by an unincorporated natural person. Therefore, CTU recommends those subscribers who do not wish to be annoyed by unsolicited marketing calls to ask their service providers to indicate that they do not wish to be contacted for marketing purposes, if the subscribers consented to the disclosure of their data in the directory of subscribers.

In addition to the subscriber’s name, surname and address, his/her telephone number is also considered to be personal data and is, therefore, subject to the personal data protection laws. In the

event, that the subscriber did not consent to the disclosure of his/her data in the phone book or, as the case may be, that he/she has withdrawn such consent and receives a marketing offer by telephone, we recommend contacting the Office for Personal Data Protection, which is responsible for this area.

In this context, CTU launched an inspection of the three largest network operators and of the subscriber directory provider in March to check compliance with the disclosure requirements concerning information on subscribers in directories of subscribers as provided for by the Electronic Communications Act.

Auction of frequencies in the 3.7 GHz band

The Czech Telecommunication Office has announced an auction of frequencies in the 3600–3800 MHz band for high-speed data networks in order to promote competition in electronic communications. This opens up space for a potential new entrant to provide high-speed Internet. The auction will offer 5 blocks, each of 40 MHz. Based on comparative analyses, the opening price of one block is CZK 29 million. Tenders may be submitted until 9 May 2017, 12:00 p.m. More information about the auction can be found on [CTU's official electronic board](#) and in the [Telecommunication Bulletin](#).

Refarming to be completed in the summer

On 6 March, CTU issued a decision to change the radio frequency allocations in the 1800 MHz band to O2 Czech Republic a.s., T-Mobile Czech Republic a.s. and Vodafone Czech Republic a.s. The decision was preceded by a request of the aforementioned companies in accordance with a commitment for refarming the frequencies in that band accepted in the tendering procedure. Following the decision to change the radio frequencies block allocations, CTU also issued the relevant individual authorisations for the use of the newly acquired frequencies.

Based on the issued decision and the subsequent agreements between the operators, the process of refarming the 1800 MHz band will be technically completed by the operators by 30 June 2017. CTU thus supported the possibility for all operators to provide innovative mobile data services offerings.