



Czech Telecommunication Office

July 2016

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## Telegraphically about communications

### CTU imposed a fine of CZK 4.5 million on O2 for automatic data top ups

CTU found an administrative delict of the violation of the ban of unfair business practices with respect to how the automatic renewal of data limit was introduced by the operator. O2 was also punished for a failure to meet the duty to inform about the right of the subscriber to terminate the contract as of the date when the amendment to the contract comes into effect. CTU also requested O2 to modify contracts with all subscribers-consumers who use data services so that all defective contractual covenants are removed within 60 days.

### The government approved the plan for the DVB-T2 transition

The government approved the Strategy for the Development of Terrestrial Digital Broadcasting on its session on July 20. The transition to DVB-T2, including the information campaign of the Ministry of Industry and Trade, will be initiated in the coming months. The current DVB-T networks are estimated to be switched off as of February 1, 2021.

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## From the decision-making practice: CTU made a decision on the return of payment for automatic top up of data

**In July, the Czech Telecommunication Office decided by final and conclusive decision in a dispute between the operator Vodafone and one of its customers about a payment for service “Data exceeding the bundle”. CTU already fined this operator in the past in relation to the violation of the ban of the usage of aggressive business practices upon the launch of this service. Now, in the objection proceedings, CTU assessed the client’s request to return the sum of CZK 98 which Vodafone charged the client for using data exceeding the limit of the service.**

Vodafone defended itself in the proceedings by claiming that it hasn’t changed the contract but only informed in advance about the proposed change of the contract which the customer may either accept or decline with all consequences associated with it. CTU assessed this statement as purpose-built. It wouldn’t have been a one-sided contractual change if the customer could remain in the contractual relationship agreed upon under the original conditions (should the customer disagree with the proposed change). Moreover, it is not relevant, whether the sufficient notification of the change of business terms and conditions pursuant to the Electronic Communications Act occurred or not. What matters is the fact that the change of the business terms and conditions constitutes an aggressive business practice which is forbidden by the law.

The payment for the “Data exceeding the bundle” service and its automatic activation was not agreed on in the original contract. Therefore, if the operator wanted to introduce this service, it was

obliged to, in accordance with Section 1817 of the Civil Code, ask the clients whether they agree with the prepared change and activate the service only after they have explicitly agreed to it. Alternatively, the operator could have notified the customer about the option to set up an automatic purchase of data but the service would remain inactive until the customer decided to activate it.

By activating to all of its customers using mobile data – as of September 13, 2014 – the automatic purchase of data after the basic package has been used up, Vodafone acted in clear contradiction to legislation. Thus, CTU accepted the objection and decided that the operator shall deduct the payment for the unordered service from the billed sum.

## Legislative changes

On July 11, regulation No. 214/2016 Coll. amending regulation No. 231/1996 Coll. which sets the blanket amount of costs associated with proceedings on administrative delicts, as amended by regulation No. 340/2003 Coll. was published in Chapter 82 of Collection of Laws.

This regulation amends the current legal provisions in cases when an expert is invited to proceedings on administrative delicts. In such situations, the blanket amount of proceedings costs increases by CZK 2,500. If a transportation expert or a health, namely psychiatry or toxicology, expert is invited, the blanket amount increases by CZK 5,000. If more experts were invited for a submission of an expert opinion, the blanket amount associated with the proceedings costs can amount to the maximum of CZK 10,000.

This regulation come into effect on July 15, 2016.

## Controls made by CTU in July

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)	9								
2. Number of changes to certificates of notification of operating a business (Section 14 of the ZEK)	23								
3. The operation of communication activity without a certificate	0			0	0			0	0
4. Adherence to the terms and conditions of general authorisations	35		12	20	19			18	488000
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		2	0	3	2			2	10000
c) in relation to the use of radio frequencies and the operation of devices (radio equipment)		33	12	17	17			16	478000
5. Inspection of radio frequencies	406		0	3	5			5	30000
a) the use of radio frequencies without authorisation		7		3	5			5	30000
b) adherence to the conditions of an individual licence for the use of radio frequencies		0	0	0	0			0	0
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	399		0	0	0			0	0
6. Inspection of numbers for the purposes of number administration (number of inspection calls)	0		0	1	0			0	0
a) the use of numbers without authorisation		0		1	0			0	0
b) the use of numbers in conflict with authorisation		0	0	0	0			0	0
7. Subscriber disputes resolution	0			3311	8079	1524	5676		
a) of opposition to the processing of complaints concerned to the provided services		0		1	0	0	0		
b) of opposition to the processing of complaints concerned to the billing for services		0		29	16	2	6		
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		3278	8059	1521	5669		
d) other		0		3	4	1	1		
8. Failure to provide information according to Section 115 of the ZEK				0	0			0	0
9. Other	18		6	42	31			28	160000
TOTAL	459		18	3377	8134	1524	5676	51	678000

\*) 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.

## CTU on the consumer's side

In July 2016

- **The CTU commenced 3,311 administrative proceedings** to concern subscriber disputes between a person conducting communication activity on the one hand and a subscriber on the other, in the matter of financial payment and proposals for the commencement of proceedings regarding an objection to the settlement of claims relating to the billing of price or to the publicly available electronic communication service provided, CTU deciding on such matters according to Section 129 of the Act on Electronic Communications. .
- **CTU issued 8,079 decisions,**
- of which **8,059 were decisions concerning matters of financial payment** (payment of the price of services).

### Changes to O2 contractual terms and conditions

As of July 15, O2 Czech Republic a.s. changed the terms and conditions for data transmission after reaching the data limit. It is no longer possible to transfer data at lower speed when the basic data package is used up and the data limit is exceeded. When the basic data package is used up, O2 stops the service and offers an option to make a one-time purchase of data, offers an automatic renewal of data limit to those subscribers who have activated this option or offers an option to choose another data package.

The above mentioned contractual change is currently under CTU's investigation and review.

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## Electronic collection of data

### New forms

On July 1, CTU published for entrepreneurs in electronic communications a half-year form ART161 – Services Provided in Electronic Communications on its portal Electronic Collection of Data, available at <https://monitoringtrhu.ctu.cz>. The form is to be filled in by August 31, 2016. Similarly to the forms published at the beginning of 2016, the form can be filled in via a web browser without the need to install additional software.

A template of this form is available at CTU's website: <https://www.ctu.cz/vzory-formularu-umistenych-v-systemu-esd>. However, the form can be filled in and submitted via the the ECD portal only.

### NGA mapping and a public consultation

During the first half of 2016, CTU collected and verified geographical data (on the level of address points) via the Electronic Data Collection portal (ESD), related to the accessibility of the Internet access service according to individual technologies. The data was fixed as of July 8, 2016 and used by CTU for the creation of background material (maps, tables) which were handed over to the Ministry of Industry and Trade of the CR for the purpose of verification within a public consultation.

The [public consultation](#), as part of the preparation of the subsidy programme for the support of the development of the NGA networks, takes places from July 28 and the Ministry of Industry and Trade accepts comments by September 16.