



Czech telecommunication office

July 2017

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## Telegraphically on communications

### Winner of the auction for 3.7GHz is known

In the auction in the 3600 - 3800MHz band, Nordic Telecom 5G a.s. acquired two auction frequency blocks of total width of 80MHz. O2, Vodafone and PODA each acquired one auction block (40MHz). The final price stopped at an amount which was seven times the starting price; the auction will contribute CZK 1.015 billion to the state budget in total.

### Tender for postal license holder

The Office announced a tender for the postal license holder for the period 2018 - 2022. It proceeded to announce the tender on the basis of a review, after the public consultation of the plan with the parties involved, and with respect to the expiry of the current license of Czech Post as of 31 December 2017.

### DVB-T2 in additional regions

České radiokomunikace newly launched two new DVB-T2 transmitters in South Bohemia and in Vysočina. In addition to the existing transmitters in Ostrava, Brno and Prague, there are new ones built in Jihlava (Javořice) and in Votice (Mezivrata). For completion of nationwide coverage with DVB-T2 signal, the launch of additional six transmitters is scheduled until 2021. The current coverage is found at [dtv.ctu.cz](http://dtv.ctu.cz).

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## Decision history: Disconnection of a telephone number renders the right to the fine for lower than agreed spending void

**If an operator discontinues provision of services due to a failure to pay invoices it cannot, at the same time, successfully seek payment of a contractual fine for failure to comply with the minimum monthly spending. It follows from a final decision of CTU in a dispute between a business with general agreement for four telephone numbers and O2.**

In the agreement the subscriber agreed that his average monthly amount billed would not be less than four thousand CZK. When the customer later stopped paying for the voice and data services, O2 resorted to disconnecting the numbers and terminated the contract. In the dispute concerning the payments, the operator claimed, in addition to the due amounts for the service provided, also contractual fines amounting to the sum of the minimum monthly amounts, a total of CZK 11,467 with interest.

While CTU awarded to the operator the due amount for the services provided, it did not award the right to the contractual fine. By discontinuing the provision of the electronic communication service due to the failure to pay the bills, O2 got its customer in a situation where the customer, in spite of maximum effort and willingness, would not be able to comply with the contractual obligation to achieve the minimum monthly spending according to its commitment.

**It resulted in an absurd situation where the operator, in an effort to force the party to the agreement to honor its financial obligations, resorted to disconnection and thus prevented the customer from using the services and, at the same time, penalized this non-use with a contractual fine.**

The amount of the contractual fine is proportionally reduced depending on the growing volume of services used (it is a difference between the price of the service consumed and the amount of payment to which the customer agreed in the contract). This contractual fine which, according to the contract, should depend fully on the customer's actions has become, in this case, fully dependent on the operator's arbitrary actions. By suspending the services, O2 prevented the client from using the services provided at least to a certain extent, i.e., to meet the obligations under the contract at least in the minimum amount, and ultimately, by its decision, the operator achieved a contractual fine in the highest possible amount.

Although Section 545(1) of the Civil Code states that *“unless the provision concerning the contractual fine implies otherwise the debtor is obliged to discharge the obligation the fulfillment of which is secured by the contractual fine, even after it has been paid.”* The customer was therefore obliged to pay the contractual fine as well as to fulfill the obligation to achieve the minimum monthly amount of spending. But the operator was also obliged to allow the customer to use these services. O2, however, by disconnecting the telephone numbers, frustrated the fulfillment of the contractual obligation to achieve the minimum monthly amount of spending, and it is therefore not entitled to the contractual fine for that period.

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## Market Analyses

### Market 3a

wholesale local access provided at a fixed location and market 3b - wholesale central access provided at a fixed location for mass-market products

On 26 May CTU sent proposals of measures of general nature of analyses of markets No. 3a ([A/3a/XX.2016-Z](#)) and 3b ([A/3b/XX.2016-Z](#)) to the European Commission for notification. CTU received the Commission's position on the above-mentioned documents on 26 June. The European Commission raised suggestions on the proposals sent regarding the assessment of the indirect pressure (restrictions) by CATV and Wi-Fi networks, and the selected remedial actions related to price control. Based on this decision, CTU will take the suggestions of the European Commission into account to the maximum extent and subsequently issue a measure of general nature – analyses of relevant markets No. 3a and 3b.

## Market 4

## wholesale high-quality access provided at a fixed location

The CTU handled the comments of the Office for the Protection of Competition on proposal for market analysis [No. A/4/XX.2017-Z](#) and after approval by CTU Council, the subject proposal for the notification of the European Commission was sent on 23 June.

## Checked by CTU in June...

## Summary of the audit activities of the electronic communication services

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)	11								
2. Number of changes to certificates of notification of operating a business (Section 14 of the ZEK)	50								
3. The operation of communication activity without a certificate	4			0	0			0	0
4. Adherence to the terms and conditions of general authorisations	45		27	22	21			21	324000
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		0	0	0	0			0	0
c) in relation to the use of radio frequencies and the operation of devices (radio equipment)		45	27	22	21			21	324000
5. Inspection of radio frequencies	297		0	16	12			12	260000
a) the use of radio frequencies without authorisation		19	0	13	10			10	250000
b) adherence to the conditions of an individual licence for the use of radio frequencies		1	0	1	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		277	0	2	2			2	10000
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	0
b) the use of numbers in conflict with authorisation		0	0	0	0			0	0
7. Subscriber disputes resolution	0			4936	4446	1109	2972		
a) of opposition to the processing of complaints concerned to the provided services		0		0	2	0	0		
b) of opposition to the processing of complaints concerned to the billing for services		0		16	21	11	1		
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		4918	4421	1098	2971		
d) other		0		2	2	0	0		
8. Failure to provide information according to Section 115 of the ZEK				3	3			5	61000
9. Other	155		4	33	35			28	128000
TOTAL	562		31	5010	4517	1109	2972	66	773000

\*) 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.

## Summary of the audit activities of the 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	0											
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	5		0	0	1	0				0	0	1
Compliance with the postal conditions according to § 6 of ZPS		5	0	0	1	0				0	0	1
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			79	24	36	5	23	8			67
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 local inspection	2		0	10	8	6				5	42000	12
Administrative procedure in the matter of a tort according to § 37a subsection 3 paragraph a)		0	0	3	2	2				2	29000	3
Administrative procedure in the matter of a tort according to § 37a subsection 2 paragraph f)		0	0	0	0	0				0	0	0
Administrative procedure in the matter of a tort according to § 37a subsection 1 paragraph a)		0	0	1	0	0				0	0	1
Administrative procedure in the matter of a tort according to § 37a subsection 2 paragraph a)		0	0	1	0	0				0	0	1
Administrative procedure in the matter of a tort according to § 37a subsection 2 paragraph e)		0	0	3	3	3				3	13000	3
Administrative procedure in the matter of a tort according to § 37a subsection 1 paragraph c)		0	0	0	1	0				0	0	1
Administrative procedure according to § 142 Administrative procedure code		0	0	0	1	0				0	0	1
Administrative procedure in the matter of a tort other		0	0	2	1	1				0	0	2
TOTAL	7		0	89	33	42	5	23	8	5	42000	80

## Rejected complaint only with advice about out-of-court settlement

For more than a year, operators have been obliged to inform consumers about the possibility of out-of-court settlement of disputes in case the complaint does not resolve the problem. The disclosure obligation was introduced by the amendment of the Consumer Protection Act and applies also to the providers of electronic communication services and postal services.

Pursuant to Section 14(2) of Act No. 634/1992 Coll., on consumer protection, in the case if a dispute between the consumer and the seller which could not be settled between the parties directly, the seller shall inform the consumer about the entity of out-of-court settlement of consumer disputes which is relevant for the particular type of product or service offered, sold, provided or brokered. The information must include also web address of that entity. The information must be provided to the consumer in paper form or on other permanent data media.

This obligation applies to all providers of electronic communication services in case of complaints raised by consumers pursuant to Section 64(7) of Act No. 127/2005 Coll., on electronic communications. This obligation is also applicable to the providers of postal services in the case of a complaint about postal services. The above-mentioned provision of Section 14 of the Consumer Protection Act also applies to the situation where the provider/operator rejects the complaint. In such

case, it must inform the consumer about the possibility of out-of-court settlement of the situation. A mere mention of the information on out-of-court settlement of disputes in the terms and conditions or postal terms of the provider is not sufficient. A failure to fulfill the information obligation pursuant to Section 14 of the Consumer Protection Act is an administrative offence which can be penalized with a fine up to CZK 1,000,000.

CTU informs that in the event of rejection of the complaint by the provider of electronic communication services or provider of postal services, the consumer must be demonstrably informed, among other things, that the relevant entity for the dispute settlement is Czech Telecommunication Office, including the web address of the Office, i.e., [www.ctu.cz](http://www.ctu.cz).

More information on the possibility of out-of-court settlement of consumer disputes can be found on CTU's website in the consumer protection section (<https://www.ctu.cz/ochrana-spotrebitele>) which provides information how and when it is possible to contact CTU regarding the out-of-court settlement of consumer disputes.

In this respect, CTU receives reports from consumers whose complaint has been rejected by the operator and collects the necessary information prior to the commencement of the administrative proceedings with those providers of electronic communication services and providers of postal services who failed to provide the above information.

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## Radio Spectrum Management

### General authorization VO-R/1

General authorization No. [VO-R/1/05.2017-2](#) for operation of user terminals of radio networks of electronic communications, which replaces the current general authorization No. VO-R/1/6.2016-8, came to effect on 19 June. The reason for issuing it is, above all, implementation of some decisions and recommendations of CEPT and the European Commission. In particular the annex to the general authorization for operating terminals onboard aircraft has been updated.

### Auction of 3.7GHz band

The auction phase of the bidding procedure for allocation of frequencies in the band of 3600 – 3800 MHz for high-speed data networks has ended. In addition to the existing two operators (O2 Czech Republic a.s. and Vodafone Czech Republic a.s.), two new parties succeeded in the auction: Nordic Telecom 5G a.s. and PODA a.s.

The existing operators could acquire frequency allocation of 40MHz; for new bidders the spectrum limit was double. This auction condition was used by Nordic Telecom 5G a.s. which acquired two auction frequency blocks of total width of 80MHz; other parties have one frequency block each. 6 bidders took part in the auction. Out of these bidders, Suntel Net s.r.o. and T-Mobile Czech Republic a.s. did not submit a winning bid for any auction frequency block.

Each of the five auction frequency blocks was sold for CZK 203 million, i.e., seven times the starting price. The auction will contribute CZK 1.015 billion to the state budget in total.

CTU envisages issuing the decision on allocation of the acquired radio frequencies immediately after the successful bidders have paid the prices for the spectrum acquired. They plan to start providing publicly available commercial services on the frequencies acquired in the auction within 2 years after the allocation has become final.