



Czech Telecommunication Office

August 2016

Telegraphically on Communications

BEREC has defined the interpretation of the net neutrality guidelines

The Body of European Regulators for Electronic Communications (BEREC) received and processed 481,547 suggestions for the implementation of the Net Neutrality Guidelines within the public consultation. The suggestions were raised by different groups of respondents (representatives of the public, public institutions, independent experts, ISPs, providers of content and applications on the Internet, and other representatives of the IT industry). The final version of the [Guidelines](#) was published on 30 August 2016 at a press conference together with the report on the public consultation. The settlement of all suggestions which were not marked as confidential will be published on 30 September 2016 due to their large volume.

Interactive calculations for example for radio network planners

CTU updated its Radio Spectrum Utilization application (spektrum.ctu.cz) by adding an interactive module called Calculations. It provides users with calculation formulas related to radio transmitters and receivers.

Decision-Making Practice: A Major Customer Contract cannot be terminated prematurely by notice

The contractual mode of the Major Customer Contract (MCC) and the subscriber contract are so interconnected that they form an inseparable entity. A Major Customer Contract therefore cannot be merely a business contract on providing benefits. In fact, it is governed by the Electronic Communications Act regulating subscriber contracts and their requisites. The existence of a Major Customer Contract and provision of benefits and the related electronic communications services cannot be separated from the existence of a subscriber contract. It follows from a final decision of CTU on an objection against the settlement of a complaint about the billing of the price in a dispute between T-Mobile and a company which was its customer.

In July 2014 (i.e., in the effective period of the Electronic Communications Act which made it possible for consumers as well as business customers to terminate a contract made for a definite term under the condition of payment of 20% of the monthly fees remaining until the end of the contract term) the customer terminated the Major Customer Contract and the subscriber contracts related to it. At the same time, it asked for generation of an identifier necessary for transition to another operator.

CTU decided that although the Major Customer Contract is of general nature it does not give the operator the right to divide the contractual relationship self-servingly into the Major Customer Contract and the subscriber contract and thus avoid the application of the Electronic Communications

Act to the contract in question. The Major Customer Contract changes the contractual provisions in the subscriber contracts where the customer agrees in the Major Customer Contract to purchase from the respondent services in higher value than as agreed in the subscriber contracts and the operator agrees to provide these services in greater quantity than as agreed in the subscriber contract. It therefore constitutes an agreement on provision of electronic communications services which is governed by the provisions of the Electronic Communications Act.

CTU concluded that the Major Customer Contract as well as the subscriber contracts connected with it could be terminated, which the customer did. As a result, the contracts in question ceased to exist after the expiry of the termination notice period. If T-Mobile subsequently (after the expiry of the termination notice period) charged the customer contractual fines for a breach of the terms of the Major Customer Contract it did not do so legitimately because the contracts in question have already ceased to exist at that time, and T-Mobile was therefore no longer entitled to the payment for services or the contractual fines. CTU therefore decided to reduce the contested bill to CZK 0.

Legislative Changes

On 3 August 2016, Act No. 250/2016 Coll., on liability for petty offences and proceedings relating thereto, was published in Part 98 of the Collection of Laws. This act represents a new legal regulation of procedural nature in the area of legal punishment which unifies the conditions for hearing petty offences and other administrative offences (newly referred to as “offences”).

Dealing with offences has been always governed by Act No. 200/1990 Coll. unless separate regulations provide otherwise, while other administrative offences are dealt with essentially within proceedings according to the Code of Administrative Procedure (Act No. 500/2004 Coll.) and, as the case may be, also conditions laid down by separate regulations (typically with focus on specific sector). The regulation included in Act No. 200/1990 Coll. has been evaluated as obsolete, stating that proceedings relating to offences in general are not sufficiently regulated and do not reflect the development of the legislation in the related laws and regulations.

The new Act No. 250/2016 Coll. therefore represents a uniform and comprehensive legal regulation of the basics of administrative-law liability of individuals, legal entities and individuals carrying out business activities, lays down the procedural conditions for proceedings concerning offences, and also extends the group of potential penalties for the breach of laws and regulations on the offence level. With respect to the new legislation, Act No. 200/1990 Coll., on offences, as amended, and some other related regulations are abrogated.

Inspections Performed by CTU in August ...

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)	7								
2. Number of changes to certificates of notification of operating a business (Section 14 of the ZEK)	33								
3. The operation of communication activity without a certificate	5			2	0			0	0
4. Adherence to the terms and conditions of general authorisations	35		23	21	24			23	562000
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	1			0	0
c) in relation to the use of radio frequencies and the operation of devices (radio equipment)		35	23	21	23			23	562000
5. Inspection of radio frequencies	419		1	8	9			9	114000
a) the use of radio frequencies without authorisation		9		6	7			7	103000
b) adherence to the conditions of an individual licence for the use of radio frequencies		1	1	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	409		0	2	2			2	11000
6. Inspection of numbers for the purposes of number administration (number of inspection calls)	0		0	2	2			2	13000
a) the use of numbers without authorisation		0		2	2			2	13000
b) the use of numbers in conflict with authorisation		0	0	0	0			0	0
7. Subscriber disputes resolution	0			8921	8544	1739	5547		
a) of opposition to the processing of complaints concerned to the provided services		0		1	1	0	0		
b) of opposition to the processing of complaints concerned to the billing for services		0		24	14	5	3		
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		8891	8526	1733	5543		
d) other		0		5	3	1	1		
8. Failure to provide information according to Section 115 of the ZEK				2	1			5	91000
9. Other	101		1	28	39			36	219800
TOTAL	555		25	8984	8619	1739	5547	75	999800

*) 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 August 2016

- **The CTU commenced 8,921 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 8,544 decisions,**
- of which **8,526 were decisions concerning matters of financial payment** (payment of the price of services).

Disputes between Businesses in Electronic Communications

In August 2016 CTU commenced two administrative proceedings upon request of Vodafone Czech Republic against VBC CZECH s.r.o., upon request of UPC Česká republika s.r.o. against Mr. Michal Škvařil, and administrative proceeding was also commenced upon request of Mr. Petr Neuman, insolvency trustee of Voinet s.r.o., against ELIS Therm s.r.o. In all of the above-mentioned cases the dispute is about payment.

CTU Working for the Consumer

In August 2016

Administrative proceedings with O2 due to a breach of disclosure obligation

In July CTU performed an inspection in O2 in order to check the compliance with the disclosure obligations under the Electronic Communications Act in connection with a unilateral change of contract. As a final result of the change, after 15 July 2016 O2 no longer reduces the data connection speed after having used up the basic data volume, but instead further use of data is interrupted for the subscribers who do not have automatic data renewal set up and, if applicable, those who do not purchase an additional bundle only until the beginning of the following billing period.

Based on the results of the inspection, CTU commenced administrative proceedings with O2 based on a suspected commitment of an administrative offence pursuant to Section 118(14)v) of the Electronic Communications Act which O2 allegedly committed by failing to inform subscribers properly about the change in question.