



Czech Telecommunication Office

October 2016

Telegraphically on communications

Penalty for O2 for its failure to inform customers when making a unilateral amendment to a contract

CTU imposed a penalty of 6 million CZK on operator O2 for repeated breach of its obligation to inform. The company failed to properly inform its customers of a fundamental unilateral amendment to a contract in connection with a change to the billing of data services after exhausting the basic volume of data. O2 has therefore repeatedly committed the same type of violation.

European Commission commences proceedings regarding a network sharing agreement

The Commission is examining whether network sharing between Czech mobile operators O2 Czech Republic and T-Mobile Czech Republic is at odds with EU rules on the protection of competition. More information about the investigation can be found at the Commission website.

Decision-making practice: Penalty for repeated violation of the terms and conditions of general authorisation

If a business undertaking is in breach of the terms and conditions of general authorisation and does not take corrective action in spite of being called upon to do so, the regulatory bodies are obliged to take adequate measures, which may also take the form of financial sanctions. However, this cannot be interpreted in such a way that breach of the terms and conditions of general authorisation becomes an administrative infraction *after* failure to comply with such a call and that sanctions are not possible until such time. This is the result of a final and conclusive decision on the imposition of a penalty of 80 thousand CZK on the company VYLADĚNÝ INTERNET Příbramsko, s.r.o. for operating transmission equipment in conflict with general authorisation.

The operator used frequencies designated by General Authorisation VO-R/12 for use inside a building for the operation of transmitting equipment outside a building in spite of the fact that it had already been fined 20 thousand and 40 thousand CZK for two cases of similar conduct in the past.

In its appeal against the decision, the operator argued that a penalty may only be imposed when corrective action is not taken based on a call to rectify any shortcomings identified and a written report on this is not presented to CTU. According to the operator, therefore, the imposition of a penalty is conditional on prior failure to comply with a call to rectify shortcomings identified.

CTU firmly rejected this interpretation. If this sort of procedure were applied, the party to the proceedings would be able to freely breach the terms and conditions of general authorisation to use radio frequencies. Impunity would be secured by complying with the demands of the call to rectify the

shortcomings identified by the inspection. It could then, for example in another place and on different equipment, again begin using radio frequencies in conflict with the terms and conditions until such time as this was identified by an inspection and it was called upon to end such illegal action. This sort of approach would lead to loss of control over the frequency spectrum.

Therefore, an administrative infraction was committed according to Section 118(1)(b) of the Act on Electronic Communications not at the time of failure to comply with the call according to Section 114 of the Act, but at the time of actual breach of the terms and conditions of general authorisation. For this reason the Chairman of the CTU Council upheld the decision after discussion at the Remonstrance Committee.

Decision-making practice: Parents are responsible for payments arising from contracts made with minors

Legal representatives must discharge the obligations arising from contracts made by such representatives in the name and on behalf of a child. This legal representative – parent – is therefore passively able to be sued in disputes over financial payments. This ensues from the decision taken by CTU in a dispute instigated by O2 Czech Republic, which demanded payments from a minor client who was 6 years of age at the time his legal representative signed the contract.

The first-instance decision emphasised that in the situation in which a minor is entirely materially dependent on his/her parents and is not economically active, the obligations arising from the signed contract are not appropriate to his/her situation. Article 3 of the Convention on the Rights of the Child was also mentioned in this regard, according to which the interest of the child must be the prime perspective in any activity to concern the child, whether undertaken by public or private social care facilities, courts, administrative or legislative bodies.

It also ensues from the provisions of Section 37(1) of the Family Act that it is enough if there is the *threat* of a conflict of interests between the parent and the child; the conflict need not actually occur. The administrative body took into consideration the other options which the electronic communications market offers, primarily pre-paid cards which allow parents to be in contact with their children without the child being exposed to the risk of future exaction of outstanding bills. Failure to use this option was the primary conflict with the interests of the child. The conclusion was drawn from this that the minor could not have been represented by his/her legal representative when arranging the relevant contract and that contractual relations could not therefore have been validly entered into.

In the second instance of administrative proceedings, CTU upheld the conclusion that the claim made is groundless, but for other reasons. The parent is, in accordance with the provisions of Section 31 of the Family Act, the bearer of parental responsibilities and for this reason is also responsible for discharging the obligations of the minor. This also ensues from Judgment of the Supreme Court of 4 February 2010, reference number 28 Cdo 3429/2008: *“if a minor is a party to a contract on building savings, certain rights and obligations arise for him/her from the legal relations created in this way. The legal representatives of the minor are again responsible for the discharge of the obligations of the minor. These obligations are a component part of parental responsibility according to Section 31 of the Family Act. If the obligation to do something thereafter ensues from the content of the relations of obligation to which the minor is a party, the legal representatives of the minor are summoned to discharge this obligation”*. An explanatory memorandum regarding Section 898 of the new Civil Code takes a similar view of this, considering contracts with mobile operators to be contracts which are

entered into in the name and on behalf of the child, but invariably by legal representatives and these legal representatives discharge the obligations arising from them.

The administrative body is bound in contentious proceedings by the defined circle of parties in the application. A person other than the minor specified in the application is therefore responsible for the outstanding sum demanded, and for this reason the application could not be satisfied.

Universal service

Public payphones

CTU published, on 31 October, notification of the commencement of a review of the reasons for which the obligation to provide a constituent service – a public payphone service or other, similar technical facilities allowing access to a publicly available telephone service according to Section 38(2)(e) of the Act on Electronic Communications – is imposed within the scope of a universal service. CTU is launching the review with regard to the expiration of the force and effect of Decision ČTÚ-43 493/2014-610/X.vyř., as amended by Decision ČTÚ-33 735/2015-610/VII.vyř. and Decision ČTÚ-53 346/2016-610/VI.vyř. CTU needs to gather information, comments and input regarding the provision of the public payphone service for the purposes of its review. The information it obtains will be used as the source material for a review of the provision of the public payphone service. Based on the results of the review, CTU will issue a plan to further impose, or not impose, the obligation to provide a public payphone service.

Special prices

The CTU brought to a close, on 14 October, public consultation of the Plan to impose the obligation (as part of a universal service) to allow persons with special social needs in accordance with Section 44 and 45 of the Act on Electronic Communications to choose prices or price plans that differ from the price plans provided under normal commercial terms and conditions such that these persons have access to and can use constituent services and a publicly available telephone service according to Section 38(3) of the Act on Electronic Communications (the “special prices” obligation). No comments were submitted within public consultation. CTU prepared and announced public procurement for a provider of special prices within the scope of the universal service.

Checked by the CTU in October...

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)	15								
2. Number of changes to certificates of notification of operating a business (Section 14 of the ZEK)	13								
3. The operation of communication activity without a certificate	0			0	2			1	1000
4. Adherence to the terms and conditions of general authorisations	29		13	13	14			14	392000
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	0			0	0
c) in relation to the use of radio frequencies and the operation of devices (radio equipment)		28	13	13	14			14	392000
5. Inspection of radio frequencies	480		0	13	13			13	108000
a) the use of radio frequencies without authorisation		10		3	4			4	53000
b) adherence to the conditions of an individual licence for the use of radio frequencies		2	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	468		0	10	9			9	55000
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			5522	7220	1252	5146		
a) of opposition to the processing of complaints concerned to the provided services		0		3	0	0	0		
b) of opposition to the processing of complaints concerned to the billing for services		0		18	12	5	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		5499	7206	1246	5145		
d) other		0		2	2	1	0		
8. Failure to provide information according to Section 115 of the ZEK				2	2			1	5000
9. Other	235		2	28	24			23	6171500
TOTAL	744		15	5578	7275	1252	5146	52	6677500

*) 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.

... adherence to the terms and conditions of General Authorisation no. VO-R/12/09.2010-12 for the use of radio frequencies and for the operation of devices for broadband data transmission in the 2.4 GHz – 66 GHz bands – the CTU conducted a total of 25 inspections. It found shortcomings in 13 cases, which it dealt with by issuing a call to rectify the shortcomings identified, and these will subsequently be resolved within the scope of administrative proceedings.

... observance of the terms and conditions of individual authorisations to use radio frequencies – CTU conducted two inspections of whether the terms and conditions laid down in individual authorisations were being observed by operators. No shortcomings were found by the inspections.

... the use of radio frequencies without authorisation – CTU conducted ten inspections; it discovered five Wi-Fi devices using frequencies outside the band determined in General Authorisation No. 12 and three terrestrial mobile service stations whose individual authorisation had expired. The Office commenced administrative proceedings with the operators of these devices.

... sources of interference to the operation of electronic communication equipment and networks, the provision of electronic communication services or operating radio communication services – CTU conducted and concluded a total of 468 investigations, of these 432 cases of interference to television reception, 10 cases of interference to public mobile communication networks (GSM, UMTS, LTE), six cases of interference to short-range devices, four cases of interference to radio and satellite reception, two cases of interference to private PPS and three cases of interference to the meteorological radar. BTS LTE in the 800 MHz band was identified as the source of interference to DVB-T in 281 cases (see next paragraph), three Wi-Fi devices as the source of interference to the meteorological radar, two active TV antennae as the source of interference to public mobile networks and several different sources of interference for other services.

...the trial operation of LTE base stations in the 800 MHz band – 1,823 base stations were in trial operation and 10,440 stations were in permanent operation as at 31 October 2016. CTU received 449

reports of interference to terrestrial digital television in October and BTS LTE in the 800 MHz band was identified as the source of interference in 281 cases. The investigation of 432 cases of interference to DVB-T was concluded; BTS LTE in the 800 MHz band was the cause of interference in 62.6% of cases of television interference received. Faults to the viewers' reception equipment were identified in 100 cases, no interference was found in 43 cases and insufficient TV signal in eight cases.

Cooperation between CTU and Česká obchodní inspekce (Czech Trade Inspection Authority) – When conducting inspections at dealers in telecommunication terminal and radio equipment as part of cooperation between CTU and the CTIA, the sale of radio-controlled model cars, motorbikes and helicopters operating in the 27 MHz and 45 MHz bands (outside the frequencies determined in General Authorisation VO-R/10/05.2014-3) and in the 35 MHz and 49 MHz bands was discovered in the Chomutov area, the Děčín area and the Semily area. Such radio equipment cannot be operated in the Czech Republic without individual authorisation to use radio frequencies. The sale of wireless bells operating in the 313 MHz to 318 MHz bands, which are reserved in the Czech Republic for the Ministry of Defence, was also discovered. The CTIA is dealing with the shortcomings identified within the scope of its duties.

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Postal services

CTU checked the publication of information about a change to postal conditions on the premises of the operator and in a manner allowing for remote access a minimum of one month in advance of the effective date of the change; this it did at five postal service operators in five cases. No errors were discovered. In another five cases, the availability of post boxes and information on post boxes was verified. No errors were discovered here either. A further two local investigations were conducted in connection with checking complaints or within the bounds of proceedings regarding objections to the handling of claims, in which the information gathered could be used as evidence in administrative proceedings. CTU also commenced an inspection of the course of the claims process at Česká pošta (Czech Post). The inspection findings are currently being evaluated. CTU will decide on further procedure in the matter depending on the specific findings of the inspection.

Disputes between undertakings in electronic communications

CTU commenced administrative proceedings in October at the instigation of the company O2 Czech Republic a.s. against the company MITO Infonet s.r.o. in a dispute over financial payment for electronic communication services provided.

It also decided two disputes in the case of an objection to the handling of claims for electronic communication services provided in a poor quality between the claimant MASTER IT Technologies a.s. and the respondent Telematika a.s. and between the claimant NEW TELEKOM spol. s.r.o. and the respondent Česká telekomunikační infrastruktura a.s. Both proceedings were discontinued on the grounds of failure to pay the administrative fee and the resolutions on the discontinuation of proceedings entered into legal force on 21 October 2016.

CTU on the consumer's side

- **The CTU commenced 5,522 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 7,220 decisions,**
- of which **7,206 were decisions concerning matters of financial payment** (payment of the price of services).

Penalty of 6 million CZK for O2 for repeated violation of the law

CTU imposed, in October 2016, a penalty of 6 million CZK, at present not final and conclusive, on the company O2 for repeated breach of the obligation to provide information about an amendment to a contract. The amendment to the contract concerned the manner of using data services following the exhaustion of the basic volume of data. Before the contract amendment, subscribers had the opportunity to take data at a reduced speed; O2, however, has stopped providing the option of slower taking. O2 did not inform its subscribers to the extent laid down by law of a fundamental and unilateral amendment to the contract leading to a worsening of the position of subscribers and in doing so disabled them from terminating the contract on the effective date of the amendment, thus committing an administrative infraction.

A provider may, according to the Act on Electronic Communications, make a unilateral amendment to a contract. However, it is obliged to inform its subscribers of the amendment and in the case of a fundamental amendment to a contract leading to a worsening of the position of the subscribers, to inform them of the option of terminating the contract without sanction on the effective date of the amendment, which did not happen in this case. The decision to impose a penalty of 6 million CZK is not yet final and conclusive and so O2 may lodge a remedial measure against this decision.