



Czech Telecommunication Office

November 2016

Telegraphically on communications

Survey of customer experiences with the services of mobile operators

Independent agency Nielsen Admosphere carried out a survey of public opinion concentrating on customer experiences with domestic operators. The results prove that customers consider the most problematic issues in contracts to be lack of clarity, the size and complexity of the contracts, wording about contractual penalties which is too vague and information about amendments to contracts which is not always well-arranged and clear.

Chamber of Deputies supports a law to reduce the costs of deploying broadband

A government proposal includes measures to reduce the cost of deploying high-speed networks with a speed of at least 30 Mb per second. According to estimates made by the Ministry of Industry and Trade, operators should save 30 % of their costs by the year 2020. The Czech Telecommunication Office should take on the role of Single Information Point according to the proposal. This topic was also considered at a workshop which CTU organised on 24 November in collaboration with the Czech Association of Electronic Communications (ČAEK).

Decision-making practice: CTU imposes penalty on handing over a consignment to an unauthorised recipient

Czech Post (Česká pošta) issued a registered consignment intended for delivery in person to an unauthorised person and wrote in the confirmation of delivery note that it had been received by the authorised addressee. The authorised addressee, meanwhile, was demonstrably somewhere other than at the place of delivery of the consignment when the consignment was delivered. The ID card number which the deliverer wrote into confirmation of acceptance of the consignment next to the name of the addressee belonged to a person of the opposite sex than the addressee.

The post office first of all defended itself with the argument that the identity of the person to whom the deliverer handed over the consignment had not been checked, in that when delivering a consignment in person (in contrast to delivering in person to the addressee only), the consignment may be delivered to a person other than the addressee, for example the proxy of the addressee. It was reliably ascertained during administrative proceedings, however, that the person in question was not a proxy and that the addressee had not even appointed a proxy.

The post office then defended itself by saying that although its procedure in the case in question had been wrong, it was nonetheless a matter of delivering a consignment, whereby delivery is the purpose of a postal service according to the Act on Postal Service, and it is therefore impossible to consider it to be handling a consignment in a way which is not a component part of this service.

The view of CTU is that accepting this argument would lead to the alarming conclusion that issuing consignments to unauthorised persons is part of providing postal services, which is understandably an entirely absurd concept. If a consignment is to be delivered to the specified person as part of the provision of a postal service, then this service may not concurrently involve action which is in conflict with this, meaning issuing a consignment to a person other than the specified person.

At the same time, it was impossible to accept the argument of the post office that breach of a postal contract is in this case purely a matter of private law, only in the area of liability for a fault in the service provided. The deliverer issued a registered consignment intended for delivery in person and containing an official document to an unauthorised recipient. This could have had serious procedural and substantive repercussions, since the document was sent to the addressee of the consignment within the bounds of contentious administrative proceedings. Through its action, the post office frustrated the procedural act of the administrative body, disrupted administrative proceedings and caused delays in those proceedings.

There is naturally public interest in the due course of administrative proceedings that justifies intervention by the bodies of public authority in the form of administrative and legal sanction.



Constitutional Court: T-Mobile definitively fails in a dispute over a contractual penalty

In its Judgment IV. ÚS 2989/16 of 22 November 2016, the Constitutional Court definitively upheld the correctness of the consumer-based interpretation of the law applied by the Czech Telecommunication Office when it decided that, in the case of the premature termination of a subscriber contract entered into for a determinate period, the operator was entitled to payment according to Section 63(1)(p) of the Act on Electronic Communications of a maximum 20 % of the sum of remaining monthly fixed payments if the contract was prematurely terminated after 8 August 2013.

It was then that an amendment to the Act on Electronic Communications made through Act No. 214/2013 Coll. entered into effect. In the dispute, T-Mobile claimed that the rule in question does not apply from the effect of the amendment to the Act (8 August 2013), but from the time when the provider of services embedded it in the contractual terms and conditions and that it does not apply to earlier contracts.¹ T-Mobile failed with both these objections at the Constitutional Court.

The Constitutional Court explained that the legal regulation of the previous Civil Code (Act No. 40/1964 Coll., as amended) is decisive in consideration, determining in its Section 55(3) that in cases of doubt as to the meaning of consumer contracts, the interpretation which is more favourable for the consumer applies. The provision must therefore be perceived such that where there is more than one interpretation, the one which is more favourable for the consumer must invariably be chosen. This procedure was subsequently approved by the legislator, which even introduced the superlative in Section 1812 of the new Civil Code (Act No. 89/2012 Coll.): in cases of doubt, the interpretation which is *most* favourable for the consumer must be applied. An alternative interpretation would lead to the actual deferral of the effect of the amendment by up to 6 months and moreover to favouring operators

¹ The contractual penalty limitation of 20 % only concerns consumers and no longer other subscribers since 4.12.2004.

that make amendments to contractual terms and conditions in the latest possible terms, in contrast to those that paid due attention to the requirements of the law and adjusted contractual documentation with subscribers immediately after the amendment entered into effect, which was certainly not the intention of the legislator.

The judgment also opens the way to the possibility of exercising a private claim for the return of unjust enrichment through the courts in the case in which the factual circumstances are evident according to the judgment of the Constitutional Court and when the subscriber has already paid a higher amount as a contractual penalty for premature termination of the contract.

Universal service

Special prices

CTU issued a decision on 28 November on coverage of the loss from the provision of special prices for 2015 amounting to CZK 85,932,508.82. O2 submitted an application for the coverage of the loss on 28 July 2016. CTU examined whether the calculation submitted corresponds to Government Regulation No. 109/2008 Coll., as amended, and whether the loss was incurred only as a result of providing discounts to the disabled, as defined in the Act on Electronic Communications. O2 remedied the shortcomings ascertained in a corrected calculation. The decision came into legal force on 29 November 2016. The coverage of net costs and the loss on the provision of special prices will be paid from the state budget via CTU.

CTU published, on 16 November, in [Issue 20/2016](#) of the Telecommunication Bulletin (Telekomunikační věstník), the announcement of a tender for business undertakings providing a publicly available telephone service on which the obligation will be imposed 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 which differ from the price plans provided under normal commercial terms and conditions such that these persons have access to and can use partial services and a publicly available telephone service (i.e. the special prices obligation).

The deadline for registering for the tender was set at 30 December 2016 and those interested in bidding in the tender had the opportunity to send questions to CTU concerning the subject-matter of the tender by 5 December. Any questions were to be answered at 11 a.m. on 9 December 2016 in the large CTU meeting room.

Rejected appeal in cassation by Vodafone

In the Monthly [Monitoring Report](#) for December 2015, CTU provided information about a judgment in which the Metropolitan Court in Prague rejected an action brought by Vodafone in January 2013 against a decision on the price on the wholesale market for voice call termination on individual mobile networks which CTU issued for Vodafone in December 2012 ([CEN/7/12.2012-7](#)). In the contested pricing decision, CTU imposed on Vodafone, among other, the obligation to charge a wholesale price for termination of CZK 0.27 per minute not including VAT from 1 July 2013. This price was newly determined using the bottom-up long-run incremental cost (BU-LRIC) model, with the application of which Vodafone did not agree. Vodafone lodged an appeal in cassation against the judgment of the Metropolitan Court in Prague in January 2016, which the Supreme Administrative Court dismissed at the end of November 2016. In light of the fact that no appeals may be lodged against a judgment by the Supreme Administrative Court, Vodafone has currently exhausted the possibility of judicial protection against the pricing decision at issue.

Net neutrality: Workshop

A workshop was held on CTU premises with the participation of the expert public on 29 November in relation to the issue of access to an open internet and European net neutrality rules which draw on Regulation of the European Parliament and of the Council (EU) 2015/2120 of 25 November 2015 and subsequently published as BEREC Guidelines on 30 August 2016. The workshop was attended by the representatives of operators, content providers, professional organisations and the Ministry of Industry and Trade of the Czech Republic.

At the workshop, CTU presented an approach to complying with the new obligations arising from the Regulation under the conditions in the Czech Republic, with particular emphasis on the market specifics in the Czech Republic. The workshop also involved a discussion in which CTU asked participants for feedback, in that it would use the suggestions made in its onward activity in this area.

Controls made by CTU in November

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)	26								
3. The operation of communication activity without a certificate	0			1	2			2	7000
4. Adherence to the terms and conditions of general authorisations	56		18	13	11			11	254000
a) in relation to providing public communication networks and associated facilities	0	0	0	0	0			0	0
b) in relation to providing electronic communication services	0	0	0	0	0			0	0
c) in relation to the use of radio frequencies and the operation of devices (radio equipment)	56	18	13	11				11	254000
5. Inspection of radio frequencies	481		0	5	7			7	82000
a) the use of radio frequencies without authorisation	9			2	3			3	38000
b) adherence to the conditions of an individual licence for the use of radio frequencies	0	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	472		0	3	4			4	44000
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	0
7. Subscriber disputes resolution	0			2334	9441	2007	6425		
a) of opposition to the processing of complaints concerned to the provided services	0	0		3	1	0	0		
b) of opposition to the processing of complaints concerned to the billing for services	0	0		27	20	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			2301	9412	1999	6422		
d) other	0			3	8	3	2		
8. Failure to provide information according to Section 115 of the ZEK				3	2			2	31000
9. Other	315		7	20	20			14	136200
TOTAL	852		25	2376	9483	2007	6425	36	510200

*) 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

- **The CTU commenced 2,334 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 9,441 decisions,**
- of which **9,412 were decisions concerning matters of financial payment** (payment of the price of services).

Management of the radio spectrum

General authorisations

The CTU Council approved General Authorisation VO-R/7/11.2016-12 to use radio frequencies and to operate Citizens' Band Radio in the 27 MHz band, replacing General Authorisation VO-R/7/01.2015-1 in the process. This now allows transport infrastructure entities to broadcast short warning reports at times of short-term extraordinary incidents in transport (maintenance work, traffic accidents etc.) for drivers on roads.

The CTU Council approved General Authorisation [VO-R/10/11.2016-13](#) to use radio frequencies and operate short range devices. This replaces General Authorisation [VO-R/10/05.2014-3](#) and primarily implements the updated wording of [CEPT ERC/REC 70-03](#) – Using short range devices – and other CEPT decisions and recommendations, as well as incorporating a number of harmonised standards. Another reason for publication is that, in spite of the regulation introduced in the most recent updating of the General Authorisation, manufacturers and importers of devices have in certain cases provided contentious or incorrect information to the operators of short range devices on the conditions of operating such devices in the Czech Republic that drew on non-uniform or erroneous interpretation of the categorisation of individual types of devices in the General Authorisation, in that such interpretation was not compliant with the requirements of the relevant part of the Radio Spectrum Utilization Plan. Both General Authorisations entered into effect on 15 December.

Block allocations of radio frequencies

CTU, in accordance with Section 20(3) of the Act on Electronic Communications, conducted a [review](#) of whether the reasons remain for restricting the number of rights to utilize radio spectrums in the 880–915/925–960 MHz frequency band, with the result that the restriction in the number of rights to utilize the radio frequencies in question must be maintained.

Auction of radio frequencies

CTU announced [Public Consultation of the amended terms and conditions of the auction of frequencies](#) – tender for frequencies in the 3.7 GHz band – on 11 November. Following on from the conclusions of public consultation carried out in March of this year, CTU adjusted the wording of the Tender Announcement and, as it had advised in previous consultations, ensured that the value of the starting price for individual frequency blocks was updated. Based on a new comparison (benchmark) of minimum prices from foreign auctions for radio frequency allocation in the 3.4 – 3.8 GHz bands, CTU increased the minimum price of auction blocks for the tender under preparation.

With respect to the fact that the 3.7 GHz band, as part of the 3400-3800 MHz band, was identified as one of the frequency bands designated in Europe for the deployment of 5G mobile technology and services with absolute priority and that CTU had received certain remarks from potential bidders in the tender under preparation in this regard, the Office also considered whether or not the set conditions of the tender were in conflict with the specified plan.

Although CTU found that there is no reason to change the set conditions from the perspective of the knowledge that we currently have of the expected utilization of the relevant frequency band for 5G technology and services, it decided, with consideration for the circumstances specified above and the time having passed since the previous consultation of the proposed Tender Announcement, to submit an updated version of the terms and conditions of the tender under preparation for new public consultation according to Section 130 of the Act. A comprehensive draft wording of the Announcement has again been submitted for comments in the interest of ensuring maximum transparency of the entire process.

Digital transmissions

Experimental digital radio transmission in the T-DAB+ system, which is transmitted from a heavy-duty transmitter at the Praha město (Prague City) station in frequency block 12C, has been ongoing in Prague and the surrounding area since August 2015 based on authorisation issued for experimental purposes. Termination of this experimental transmission had been scheduled for 30 November 2016, but it was extended to 31 May 2017 with the publication of new authorisation and broadened to

include a transmitter located at the station in Beroun that transmits in the same frequency block. The technical parameters suitable for achieving quality coverage of the territory with radio transmission will be verified in the single-frequency network created in this way. It is expected that the switchover to normal transmission will occur during this experiment.