



Czech Telecommunication Office

November 2017

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## Telegraphically on communications

### CTU Council ended competitive tendering for postal licence holder

CTU Council rejected the application submitted by Czech Post (Česká pošta, s.p.) for the postal licence holder competitive tendering in the period of 2018–2022. The reason was failure to provide cost-oriented prices and thus failure to meet the conditions for participation in the competitive tendering. CTU Council simultaneously initiated administrative proceedings, ex officio, by which it will grant the postal licence and the related obligations for the same period directly.

### Transition broadcasting network 12 extending coverage

Within transition network 12, on channel 28, two transmitters for DVB-T2 digital TV broadcasting were put into operation in October. CTU has been issuing other individual authorizations for transition broadcasting networks, so we expect an increase in coverage by its signal in the near future. The current situation can be viewed at [dtv.ctu.cz](http://dtv.ctu.cz).

### Annual conference of the Association of Mobile Network Operators

The forthcoming European Electronic Communications Code was the main topic of the annual conference of the Association of Mobile Network Operators, held at the City Tower congress centre in Prague on 26 October. At the meeting, CTU presented the regulator's view of negotiating a new telecommunications framework, including the European Code.

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## Decision-making practice: Even with blocked connection, the operator charged CZK 511 for 2 MB of data

**In the administrative proceedings, CTU legally imposed a fine of CZK 60,000 on O2 for the use of unfair commercial practice. The operator required a deferred payment of CZK 511.83 for downloaded data of 2,115 kB despite the fact that the consumer's connection was blocked and he had not ordered the service.**

O2 acknowledged that internet blocking did not work due to a technical failure, issuing a corrective invoice to the consumer. The customer justifiably believed that the service was not provided to him if the internet was deactivated during the period in question.

The operator stated in the subsequent administrative proceedings that the connection blocking service informs the customer about each charged data connection, providing the customer with a chance to decide whether to continue such connection. The information is received by the customer as an SMS with the following text: "Hello, you want to connect to the internet. You need to enable the connection on a free page by clicking at <http://mo2.cz/povoldata>. O2."

However, if the customer does not confirm his/her interest in activating the internet connection service, it is not possible to conclude that he/she requested the service. If it is provided to the customer despite the afore-mentioned, it is obviously unsolicited performance.

Therefore, if a certain conduct may be categorized as practice specified in Annex No. 1 or Annex No. 2 to Act No. 634/1992 Coll., on consumer protection, it is no longer necessary to examine whether it fulfils all signs of unfair commercial practice. The commercial practice is thus *“always considered to be aggressive if the seller requires the consumer to make immediate or deferred payment for the products or services supplied, even though the consumer has not ordered them, or requires return or storage of unsolicited products, unless it is replacement supply under a contract concluded in advance.”*

The afore-mentioned clearly implies that the prerequisite for assessing the operator’s conduct as an aggressive commercial practice was fulfilled: the consumer was required (through the issued invoice) to pay for a service that he had not ordered.

## O2’s economic results

On 25 October, O2 [published](#) economic results for the first nine months of 2017. Compared to the same period last year, O2’s total consolidated operating revenues increased by 0.6% to CZK 27.893 billion. Operating profit before EBITDA depreciation decreased by 0.6% year-on-year to CZK 7.804 billion, and net profit increased by 2.5% to CZK 4.114 billion. The total number of customers who used O2’s mobile services as of 30 September amounted to 4,917,000, which is a year-on-year decline of 0.1%. The number of post-paid customers increased by 1.6% year-on-year to 3,383,000. Compared to the same period last year, the number of customers decreased by 3.6% to 1,534,000 in prepaid services. Mobile data is used significantly more. In Q3 2017, mobile data traffic grew by 94% year-on-year.

## Checked by CTU in October...

Summary of Inspection Activities in Electronic Communications- October 2017

Type of activity	Number of certificates or inspections		Number of calls to rectify shortcomings	Number of initiated administrative proceedings	Number of decisions issued	Decided in favour of		Sanctions imposed	
	Total	Of which				the subscriber	the provider	Number	Amount in CZK
1. Number of awarded certificates of notification of business (Section 14 of the Act*)	1								
2. Number of changes to certificates of notification of business (Section 14 of the Act*)	18								
3. Operation of communication activity without authorisation	5			0	0			0	0
4. Compliance with the terms and conditions of general authorisations	33		16	14	12			11	269000
a) in relation to providing public communication networks and associated facilities	1		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)	32		16	14	12			11	269000
5. Inspection in relation to radio frequencies	245		4	1	1			1	1000
a) the use of radio frequencies without authorisation	11		0	1	1			1	1000
b) adherence to the conditions of an individual authorisation for the use of radio frequencies	4		4	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	230		0	0	0			0	0
6. Inspection of numbers for the purposes of number management (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 dispute resolution	0			2171	3065	987	1790		
a) of objections to the settlement of complaints about services provided	0			1	2	0	0		
b) of objections to the settlement of complaints about billing for services of	0			10	22	6	4		
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 price for services (monetary performance)	0			2160	3035	980	1786		
d) other	0			0	6	1	0		
8. Failure to provide information according to Section 115 of the Act*				1	1			1	3000
9. Other	219		7	26	31			24	184000
TOTAL	521		27	2213	3110	987	1790	37	457000

\* Act No. 127/2005 Coll., on electronic communications and amending certain related acts

## Summary of Inspection Activities in Postal Services- October 2017

Type of activity	Number of certificates or inspections		Number of measures in the interest of proper provision of the services according to Section 6 paragraph 4 and Section 37 of ZPS	Number of administrative proceedings from the previous month	Number of initiated administrative proceedings	Number of decisions issued	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 awarded certificates of notification of business	1											
2. Number of changes to certificates of notification of business	0											
3. Operation of communication activity without authorisation	0			0	0	0				0	0	0
4. Compliance with the conditions of the APS*	3		0	0	0	0				0	0	0
Compliance with the postal conditions according to Section 6 of APS		3	0	0	0	0				0	0	0
Compliance with the conditions for quality requirements according to Decree No. 464/2012		0	0	0	0	0				0	0	0
5. Resolution of objections to the settlement of complaints about services provided according to Section 6a of APS	0			73	38	24	2	16	5			87
6. Dispute resolution according to Section 37 paragraph 3 letter a) of APS	0			0	0	0	0	0	0			0
7. Failure to provide information according to Section 32 letter a) of APS				0	0	0				0	0	0
8. Other	28		0	8	4	1				1	1000	11
on-site surveys		28	0	0	0	0				0	0	0
Administrative procedure in the matter of an offence according to Section 37a paragraph 3 letter a)		0	0	1	1	1				1	0	2
Administrative procedure in the matter of an offence according to Section 37a paragraph 1 letter a)		0	0	2	1	0				0	0	3
Administrative procedure in the matter of an offence according to Section 37a paragraph 2 letter a)		0	0	1	0	0				0	0	1
Administrative procedure in the matter of an offence according to Section 37a paragraph 2 letter e)		0	0	2	0	3				3	0	2
Administrative procedure in the matter of an offence according to Section 37a paragraph 1 letter c)		0	0	1	2	1				1	1000	2
Administrative procedure in the matter of an offence other		0	0	1	0	0				0	0	1
TOTAL	32		0	81	42	25	2	16	5	1	1000	98

\* Act No.29/2000 Coll., on postal services and amending certain acts

## CTU on the consumer's side: Complaints about the poor quality of the service provided

Given the gradually growing number of internet connection quality complaints, CTU points to the fundamental legal framework governing the service provision quality.<sup>1</sup>

This Regulation lays down, inter alia, the requirements for a contract for the provision of the internet access service which may affect the quality of the internet connection and operation. The Regulation also lays down consumer rights in case the provider of the internet access service fails to comply with its contractual obligations.

Given that no legal regulation lays down the specific quality parameter values of the internet access service, **the quality parameter values agreed in the contract are the only relevant basis for potential assessing of the eligibility of complaints or claims about insufficient quality of this service.** CTU therefore recommends all participants to verify that their contract contains the information specified below. Failure to comply with contractually agreed quality parameter values of the internet access service may be a reason for filing a complaint.

<sup>1</sup> Regulation (EU) 2015/2120 of the European Parliament and of the Council of 25 November 2015 laying down measures concerning open internet access and amending Directive 2002/22/EC on universal service and users' rights relating to electronic communications networks and services and Regulation (EU) No. 531/2012 on roaming on public mobile communications networks within the Union.

According to the Regulation (Article 4), the contract for the provision of an internet access service should always include:

- setting of the minimum, commonly available, maximum and advertised download and upload speeds for access to the fixed internet, and estimated maximum and advertised download and upload speeds for mobile internet access;
- remedies in case the agreed quality parameters of the internet access service are not met, especially the possibility of asserting a complaint; as a rule, this information can be found in the operator's general terms and conditions;
- information about the impact of traffic management measures, data volume limitations, speed or other quality service parameters or, alternatively, use of specialized services (IPTV) for internet access services. Typically, this is information about what specific limitations may apply to a certain service or tariff, as well as the traffic type for which the data connection of a certain tariff is appropriate.

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## Market analyses

### Market No. 3a

#### **Wholesale services with local access provided at a fixed location, and market No. 3b – wholesale services with central access provided at a fixed location for products for general consumption**

On 16 October, the public consultation on the draft decisions to establish Česká telekomunikační infrastruktura a.s. (CETIN) as an undertaking with significant market power in relevant markets [No. 3a](#) and [3b](#) was ended. CTU did not receive any comments on the submitted proposals. Subsequently, it sent the draft decisions in question to be commented on by the Office for the Protection of Competition.

CTU also initiated consultation on draft REM remedial measures (for markets No. 3a and 3b).

### Market No. 4

#### **Wholesale services with high-quality access provided at a fixed location**

On 11 October, CTU published a call for submitting comments on the [draft decision](#) to establish CETIN an undertaking with significant market power in relevant market No. 4. Comments on the draft decision could be submitted by 13 November.

### Mobile services market

On 17 October, a public consultation on the proposed [three criteria test for the Mobile Services Market](#), focusing specifically on mobile data services, was ended. Comments on the draft three criteria test in question were submitted by a total of ten affected entities<sup>2</sup>. CTU will now settle the comments received, in accordance with the consultation management rules, and publish their settlement at the discussion point within 1 month from expiry of the period for submitting comments (i.e. by 20 November 2017). Based on the results of the public consultation, CTU will subsequently publish information on the further procedure.

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<sup>2</sup> MAXPROGRES mobile, s.r.o., Výbor nezávislého ICT průmyslu, z.s., Asociace českých virtuálních operátorů, Český bezdrát s.r.o., FAYN Telecommunications s.r.o., KlokánMobil, s.r.o., O2 Czech Republic a.s., Quadruple, a.s., T-Mobile Czech Republic a.s. and Vodafone Czech Republic a.s.