



Czech Telecommunication Office

November 2019

Telegraphically on communications

Mrs. Hana Továrková joined the CTU Council

At its session on 4 November, the government appointed a new member of the CTU Council, Mrs. Hana Továrková. The attorney and chair of the IT and telecommunication division of the Chamber of Commerce was appointed for a five-year term starting from 15 November. In the Council she replaced Mr. Jan Duben whose term expired at the end of September.

Beware of set-top boxes with unsupported codec

A set-top box named Esperanza with an older codec H264/MPEG-4 was on sale in the retail network. But it can only be used to receive sound in the DVB-T2 network, not video. After notice made by CTU, Penny Market withdrew the device and offered customers cash refund. When buying a TV set or a set-top box, it is necessary to make sure that the device supports codec H.265/HEVC.

The Chamber of Deputies supported the “digital constitution”

The act on right on digital services, having the support of 163 deputies, was passed by the Chamber of Deputies and is now heading to the Senate. The legislation gives citizens the right to communicate with authorities digitally and imposes an obligation on the authorities to deal with the problems digitally. In addition, the authorities should not require information from the citizens which they can find themselves in their registries.

Decision-making practice of the courts: Unsigned amendment to a contract is not binding

If a customer receives a new device that they then continue to use and use the services provided on it, it does not automatically mean that they agree to a more extensive change to a previously concluded written contract. The Czech Telecommunication Office decided in the dispute of Air Telecom with its customer about an objection to a claim of financial settlement for early termination of a contract. CTU concluded that the implicitly accepted change in the type of service does not in itself mean that a written amendment to the contract regulating the term of the contract and the contractual fines, which the customer has not signed, has been validly concluded.

In this case, the claiming party was Air Telecom’s customer from July 2013. In 2017 the operator contacted the client with the information that it proceeds with network modernization and the related change of the existing prices of the tariffs. The customer agreed with receiving of a new device and thus to the change of the tariff. With the new equipment, the customer also received a written draft amendment to the contract that extended the fixed-term contract. However, the customer did not send the signed amendment in return, although he used the services and the equipment received and paid the bills sent later. Ten months after this technology change, the client terminated the service.

Air Telecom charged him an amount equal to 1/5 of the sum of the monthly fixed payments remaining until the end of the agreed contract term, which was the subject of the subsequent unrecognized claim.

When reviewing the claim, CTU considered proven that the change in the type of service and its price was made only implicitly by the customer receiving the equipment sent and continuing to use the services. The customer, however, did not sign the written amendment to the subscriber contract. And since the requirement to sign a written contract document cannot be substituted by implicit act, unsigned amendment cannot be considered a valid and effective legal act that would bind both parties. As this written amendment was not validly concluded, the passage of the written contract concluded in 2013, which provided that it was a fixed-term contract, concluded (only) for a period of 24 months, has not changed either.

CTU concluded that, according to the terms and conditions applicable to the case, the contract was changed to an indefinite-term contract after the expiry of the agreed term of the contract; Article 7.2. of the Terms and Conditions provided: "If the Contract is concluded for a definite period of time, it shall be automatically renewed for an indefinite period of time after it has expired, unless at least 15 days prior to the expiry of the agreed term of the Contract, either Party notifies the other in writing that it insists on termination of the Contract on the agreed date."

In addition, the Terms and Conditions provided that if the contract is concluded for an indefinite period of time, it may be terminated in writing with a notice period even without stating any reason. In this case, therefore, there was no premature termination of the contract since the agreed term of the contract has expired before the termination notice or, more precisely, the contract was already an indefinite-term contract at the time the termination notice was given.

Only breach of an obligation can be penalized, not exercise of the right (termination of the contract) made entirely in accordance with the written contract.

Furthermore, CTU pointed out that due to the failure to provide the price list referred to in Article 7.8. of the Terms and Conditions, this Article of the Terms and Conditions would have to be regarded as an vague provision as it does not provide the amount of the payment in the event of early termination of the contract in accordance with Section 63(1)(p) of the Electronic Communications Act, with wording in effect at the time of conclusion thereof: "The contract on the provision of a publicly available electronic communications service or connection to a public communications network shall specify in a comprehensible, complete and easily accessible manner always (...) p) the amount of payment in the event of termination of the contract prior to the expiry of the term for which the contract is concluded, including the amount of reimbursement of the costs related to the telecommunications terminal equipment provided to the user to use the service."

CTU therefore concluded that the charged amount of the financial settlement, which is regarded as a quasi-penalizing provision, is contrary to the contract concluded, and therefore changed the claimed bill to reduce it to CZK 0.

Checked by CTU in October...

...adherence to terms and conditions of General Authorization No. VO-R/12/09.2010-12 for using radio frequencies and operating broadband data transmission devices in the 2.4 GHz to 66 GHz bands.

Out of 23 inspections performed, CTU discovered 17 defects. This included in particular use of indoor frequencies outside a building. CTU requested of the deficiencies and subsequently initiated administrative proceedings.

...use of radio frequencies without authorization.

CTU carried out 10 inspections focusing on the use of frequencies without authorization. In six cases, CTU discovered operation on frequencies without or after the expiration of individual authorization. Administrative proceedings have been initiated.

...sources of interference of the electronic communication equipment and networks traffic, the provision of electronic communications services or the operation of radio communications services.

In October CTU has completed 63 investigations, of which 42 cases involved interference with television signal (out of which 9 cases involved interference with DVB-T2 reception), 12 cases involved interference with GSM, UMTS and LTE public mobile communication networks, 3 cases of interference of broadcasting and satellite reception. And one case involved interference with the base station of the integrated rescue system. One case involved interference with amateur service devices, one case involved interference with IoT devices, one case involved interference with a radio relay link, one case involved interference with the wireless metropolitan information system and wireless speakers. There were two cases of interference with public mobile communication networks where the source of interference was an active element of TV signal reception component; in one case the source was illegal operation of a GSM repeater. In two cases, BTS LTE in the 800 MHz frequency band (see the next section) was identified as the source of interference with DVB-T reception (DVB-T and DVB-T2). The investigation of 9 complaints on bad reception of DVB-T2 revealed in 6 instances a defect on the viewer's equipment, in one case the interference was caused by the operation of an LTE base station in the 800 MHz frequency band.

...pilot operation of LTE base stations in the 800 MHz frequency band.

As of 31 October 2019, 280 base stations were in pilot operation and 16,582 base stations were in permanent operation. In October CTU received 65 reports of interference and completed investigation of 42 cases of interference with television reception; BTS LTE in the 800 MHz frequency band was identified as the source of interference with the signal of terrestrial digital television broadcasting (DVB-T and DVB-T2) in two cases which represents 4.8% closed cases of interference with television reception. In 28 cases CTU discovered defects of the viewers' reception equipment. In one case the cause of the reception failure was a problem with electromagnetic compatibility of the equipment subject to interference.

Beware of ambiguous wording in contract termination notices

CTU noticed cases where even a properly sent and demonstrably delivered notice was not taken into account by the operator and continued sending the customer invoices even after the notice period. If people have this or similar negative experience related to termination of contract by notice, they should defend themselves and inform CTU accordingly.

First of all, it is necessary to draw attention to the need for customers to choose a clear and unambiguous wording of the notice, preferably in writing. It must be sufficiently comprehensible and clearly lead to the conclusion that the consumer intends to terminate a particular contractual relationship.

Termination notice is always a unilateral legal act, and does not require the acceptance or confirmation by the other party. For its delivery, we recommend choosing a procedure that will be demonstrable. This is crucial for any subsequent disputes as to whether the operator has received the notice. For example, although verbal notice of termination during a telephone call may be considered sufficient by the contract and may appear to be the easiest way to terminate the contract, it is preferable to

choose a written notice of termination and such a method of its delivery that allows proof, either by receipt or by acknowledgment of receipt, that the notice has been effectively delivered to the operator.

Proper delivery of a clearly, unambiguously and definitely phrased notice is a necessary condition for the notice to take effect legally, i.e., it determines the start of the notice period and hence the termination of the contractual relationship. The notice period must not exceed 30 days. If the subscriber requests to port the number to another operator, the contract will be terminated within 10 days of the termination and the date of the request for porting of the number.

In the event of termination of fixed-term contracts, the parties should be aware of possible penalties for failure to comply with the agreed time commitment.

Regulation

Wholesale market for mobile access

A [public consultation](#) ended on 14 October 2019, concerning the new wording of the Measure of general nature establishing the relevant markets of the electronic communication sector, including the criteria for assessment of significant market power. In this document CTU proposes, based on the processing and conclusions of the 3 criteria test for the market of mobile services, establishing a new relevant market No. 5 – wholesale market for mobile access. During the one-month period, during which the public consultation was conducted, CTU received comments and opinions from five entities – O2 Czech Republic a.s., T-Mobile Czech Republic a.s., Vodafone Czech Republic a.s., Český bezdrát s.r.o., and FAYN Telecommunications s.r.o. CTU [responded](#) to the comments received and [published](#) them at the discussion site. Subsequently, it will also consult the Office for the Protection of Competition regarding the Measure of general nature.

Market No. 1 – Wholesale call termination on individual public telephone networks provided at a fixed location and Market No. 2 – Wholesale voice call termination on individual mobile networks

Public consultations on the proposed analyses of the relevant markets for [market No. 1](#) and [market No. 2](#) ended on 24 October 2019. During the one-month period, during which the public consultations were conducted, CTU received comments from two entities on the proposed analyses of market No. 1 – Česká telekomunikační infrastruktura a.s. and T-Mobile Czech Republic a.s. On the proposed analysis of market No. 2 CTU did not receive any comments or opinions submitted according to the Rules for conducting consultations at the discussion site. Within the public consultation on market No. 2, CTU received a statement from Verizon France SAS. CTU has now responded to the comments received and will publish the responses.

Radio spectrum management

General authorizations

CTU commenced a public consultation on the proposed general authorizations [VO-R/10/xx.2019-y](#) for use of the radio frequencies and to operate short-range devices (the reason for the update of the general authorization is minor changes within the implementation of EU Decisions and Recommendations) and [VO-R/12/xx.2019-y](#) for use of the radio frequencies and to operate devices for broadband data transmission in the 2.4 GHz to 71 GHz frequency bands (the reason is extension of the

60 GHz frequency band including allowing fixed outdoor installations). The consultation at the discussion site was open until 23 November.

Digital television broadcasting

CTU commenced a public consultation on the proposed Measure of general nature No. PV-P/10 for the 470-960 MHz frequency band. The aim is to allow the extension of existing regional broadcasting, where possible, until 30 June 2020. Comments could be submitted until 25 November.

Digital radio broadcasting

The following T-DAB transmitters were launched in October:

- **multiplex RTI** (channel 5B): Plzeň – Sylvan,
- **multiplex Teleko** (channel 8A): Jihlava – Strážník,
- **Český rozhlas** (channel 12C, D): České Budějovice – Kleť, Jáchymov – Klínovec, Plzeň – Sylván, Brno – Kojál, Zlín – Tlustá hora, Olomouc – Radíkov, Nový Jičín – Veselský kopec, Tasov – Za šibeníci, Klatovy – Doubrava

The coverage can be monitored at digi.ctu.cz.

Analog broadcasting

On 15 October, a new VHF transmitter was launched in České Budějovice, transmitting the ČRo Plus programme (98.0 MHz, 100 W).

Telecommunication Regulation in the EU

Security of 5G networks

On 9 October the EU Member States published an EU-wide coordinated [risk assessment of 5G networks security](#). This step is a part of the implementation of the [Commission Recommendation](#) of 26 March 2019 to ensure high level of cybersecurity of 5G networks throughout the EU. The report, prepared with the support of the European Commission and the EU Agency for Cybersecurity (ENISA), identifies the main cyber threats and their actors, the most sensitive assets, key vulnerabilities, and a number of strategic risks.

On 28 October the European Commission published a [report](#) in which it assessed how EU Member States identified public and private organizations which are obliged to adopt measures for security risk management and report serious incidents pursuant to [Directive 2016/1148/EU](#) concerning measures for a high common level of security of network and information systems across the Union (“NIS Directive”). These organizations, known as “operators of essential services”, are active in critical sectors of the economy and society, such as healthcare, transport, energy, financial infrastructure, water supply services, etc., and must be particularly resistant to cyberattacks. The European Commission mainly focused on assessment whether the methodologies of the Member States for identifying such operators are consistent.

eGovernment

On 18 October the European Commission published [eGovernment benchmark report](#) for the year 2019 which evaluates the use of information and communication technologies in public administration as well as the level of cross-border interoperability and digital interaction between the administrations

and the individuals or companies in EU Member States and in eight non-Member States. This year's study shows improvement in the level of transparency and use of digital services.

ITU

From 28 October to November 22, the [World Radiocommunication Conference](#) of the International Telecommunication Union (ITU WRC 2019) took place in Sharm El Sheikh, Egypt. It is the supreme assembly within the ITU [Radiocommunication Sector](#) which takes place every four years. Radio frequency experts meet and discuss further use thereof at the ITU platform. In four weeks, they were supposed to reach an agreement on updating the rules of the radio spectrum management laid down in the Radio Regulations to support further social and technical progress. From advanced wireless communication, IT systems, industry digitization up to scientific applications, these are topics where radio spectrum plays a crucial role and affects every individual.

Wifi4EU

The Innovation and Networks Executive Agency (INEA) published the [list of winners](#) of the third Wifi4EU call. A total of 1,780 municipalities from all over the EU will receive vouchers worth EUR 15,000 to fund the set-up of wi-fi networks in public spaces. The latest call has a budget of EUR 26.7 million. The winners include also 86 municipalities from the Czech Republic. The next round of the call is scheduled for the next year.

Geographical surveys of network deployments

Draft BEREC Guidelines on geographical surveys of network deployments were published on 10 October ([for public consultation](#)). These guidelines were prepared by the relevant working group of BEREC pursuant to Article 22 of the [European Electronic Communications Code](#).

The guidelines should assist regulators and other relevant bodies on the consistent compliance with obligations pursuant to Article 22 of the Code. Article 22 is related to geographical surveys of network deployment, describes the mandatory and optional elements, and the geographical surveys according to this Article will have to be completed no later than 21 December 2023.

Comments and suggestions on the guidelines consulted could be submitted until 21 November 2019 at PC_Geo_surveys@berec.europa.eu.

Universal service

Public payphones

On 24 October, CTU issued a decision on net costs for the year 2018 in the amount of CZK 32,219,342.35 and determined that the net costs constitute unfair financial burden on the provider of the universal service, O2. These net costs were incurred in 2018 in connection with the provision of the sub-services of the universal service, namely services of public payphones (in municipalities with population up to 699 and at selected places in municipalities with population up to 4999) and sales of specially equipped telecommunication terminal equipment devices. O2 submitted the request for the reimbursement on 25 July. CTU verified the submitted calculation both on the basis of the documents attached to the request and on the basis of additionally requested documents. The net costs for the service of sales of specially equipped telecommunication terminal equipment devices exceeded the limit set by CTU and were therefore counted in the amount of the limit. The net costs will be covered from the state budget through CTU.

Special prices

On 13 November, CTU decided to cover the loss resulting from the provision of special prices for the year 2018 in the amount of CZK 71,820,082.37. O2 submitted the request for the compensation of the loss on 19 July. CTU checked compliance of the calculation submitted with Government Regulation No. 109/2008 Coll. and whether the loss resulted only from the provision of discounts to people with disabilities as defined in the Electronic Communications Act. O2 corrected the defects in the corrected calculation.