



Czech Telecommunication Office

December 2018

Telegraphically on communications

CTU open data used by other developers

CTU data sets were used to create two applications that entered the competition “Společně otevíráme data” (Opening Data Together). An application called “Budka sem, budka tam ...” (Payphone here, payphone there) uses data about the location of public payphones. In the other visualisation, the competing team processed data collected via NetMetr application during the first eight months of the year 2018.

58 new stamps for collectors in 2018

A stamp to mark the 100th anniversary of the establishment of the Castle Guard was the final one issued in 2018. It is marked with the letter A, which corresponds to the price of a standard domestic letter. In total, the Ministry of Industry and Trade issued 58 new stamps this year. All new releases were announced in advance in the Postal Bulletin.

European Commission investigates the acquisition of UPC by Vodafone

The European Commission has launched an in-depth investigation into the planned purchase of the assets of the Liberty Group by Vodafone. The reason for this is that it fears merger of the companies could threaten competition on the markets in Germany and the Czech Republic. The Commission has 90 days to conduct its investigation and must announce the result by 2 May 2019.

Decision-making practice: A loyalty discount must not be a hidden contractual penalty

Any retrospective billing of the difference between the standard price and the loyalty price must be viewed as a contractual penalty. This stems from a final decision taken by CTU in a dispute between UPC and one of its customers, in which the operator claimed a payment of CZK 303 plus interest for “Difference standard price to loyalty price Digital” and “Difference standard price to loyalty price Internet”.

UPC subsequently argued in proceedings that the difference between the standard and the loyalty price is not a penalty, but the price of electronic communication services, whereby the client only becomes entitled to the loyalty price when satisfying the terms and conditions (taking the service for the entire loyalty period). In practice this frequently leads to a paradox in which the longer the client has remained faithful to the operator and taken these services at a discounted price, the higher the additional charge which UPC then bills them when terminating the contract before the loyalty period has expired.

The operator stated as follows about the loyalty discount in the price list: *“If you have chosen and want to use a service from the loyalty portfolio, you shall fulfil the terms and conditions for the provision of a discount for the period of time specified in the contract; otherwise after 12 months of due use of services (loyalty period). The discount, however, is projected in billing from the outset, meaning from the time of activation (installation) of the service from the loyalty portfolio. If, however, you fail to fulfil the terms and conditions for the provision of a discount, we will send you a corrective bill for the price. In this corrective bill we will retrospectively charge you the price of services in the standard amount, from the beginning of the ongoing loyalty period.”*

It is clear from this arrangement that any retrospective billing of the difference between the standard and the loyalty price is a measure designed to secure (or strengthen), meaning that it is designed to motivate the customer, under threat of losing the arranged benefit in the form of a financial penalty (retrospective billing of the difference in prices), to duly fulfil the contractual obligations, in particular to pay the arranged price in a due and timely manner, and to stick to the arranged duration of the contract, when the provision of a loyalty discount is tied to the due use of the services for a period of 12 months.

According to Judgment file No. 32 Cdo 3092/2011 of the Supreme Court of 17 September 2013, the legal term used is not decisive in evaluating the legal nature of an arrangement, but the content of that arrangement, from which it is clear where the will of the parties was directed. It is clear from the evidence that the will of the parties to the proceedings was such that when the customer duly paid the arranged price for a period of 12 months, he/she would not be penalised with a contractual penalty equalling the difference between the standard and the loyalty price, and that the customer would receive the benefit of the loyalty price in advance. If, however, the subscriber were to breach his/her obligations (for example by withdrawing from the contract before 12 months had passed), the operator would be authorised to claim the payment of a contractual penalty equalling the difference between the so-called standard price and loyalty price.

The jurisdiction of CTU to decide on a contractual penalty also ensues from Resolution of the Special Board of the Supreme Administrative Court of Konf 27/2008-7 of 9 September 2008: *“the body which has, by law, jurisdiction to decide disputes on breach of obligation as such shall decide on a contractual penalty for breach of or failure to fulfil the obligations arising from a contract.”*

In this case it is also possible to apply Judgment of the Constitutional Court I ÚS 3512/11 of 11 November 2013, which prohibits an arrangement in a consumer contract which would establish a contractual penalty outside the actual body of the contract, meaning the document which the customer signs. If such an arrangement is part of the general commercial terms and conditions, it is invalid in the case of consumer contracts.

In light of the fact that the operator concealed the arrangement regarding the contractual penalty in the general terms and conditions, it fundamentally deviated from good commercial practices and legal protection cannot be provided to such action. The consumer, as the weaker contracting party, does not have an opportunity to influence which arrangements will be set out in the contract and which will be located in the general commercial terms and conditions or in the price list. In the case in question, the contract (the instrument bearing the signature of the customer) does not contain any arrangements regarding the discount and all terms and conditions fundamental to the provision of the discount are regulated in the general terms and conditions and in the price list of services of UPC. CTU therefore concluded that this contractual penalty was arranged contrary to the cited judgment of the Constitutional Court and for this reason did not recognise the claim made by UPC.

Amendments to contractual terms and conditions

O2

O2 amended its Price List of Basic Services on 1 December. A SIM card may now be delivered also by Česká pošta (Czech Post) and not only by a courier. A public dynamic IP address is no longer offered and the fee for a VIP number (with logical sequence, for example 234 or 321) and a gold number (a number which is easy to remember, for example 331 333), for changing a number to one which is different to that currently used and for disconnection at one's own request has been reduced. A fee of CZK 99 has been introduced for sending out a contract or a new SIM card.

Vodafone

Vodafone also amended its price list, on 17 November. Also the way of billing calls to foreign countries has been changed within the Business Tariff plan.

GoMobil

GoMobil - Terms published a new price list of prepaid services and a price list for the GoInternet service, coming into effect on 3 November. The changes primarily concern a definition of the quality of services and responsibility for it.

Czech Post increases the price of parcels

Czech Post increased the price of its "Balík Do ruky" (Parcel Delivery to Hand) service by CZK 10 in all weight categories with effect from 15 November. The basic price of Parcel Delivery to Hand in the category up to two kilograms was CZK 128, becoming CZK 138 from the middle of November. Such parcels are not included in the universal postal services having price regulation laid down by law. The price of "Balík Na poštu" (Parcel Delivery to Post Office) and of other parcel consignments remain the same.

When it is possible to withdraw from a contract

A consumer has the right to withdraw from a contract within a time limit of 14 days according to Section 1829 of the Civil Code only in the case that the contract was arranged outside usual business premises (meaning outside the premises of the provider) or if the contract was arranged using remote means of communication (by telephone or over the Internet). The right to withdraw from a contract within this time limit, without giving a reason, however, cannot be exercised by consumers who entered into a contract in the premises of the operator.

As a typical example, it is not possible to withdraw from a contract when someone amended their existing contract at a brick-and-mortar store of an operator, reconsidered (after a period of time) the changes made and would afterwards like to return the contract to its original format.

When a contract is concluded (or amended) with a consumer outside usual business premises or using remote means of communication, the consumer has the right to withdraw from such contract, without having to provide their reason for doing so, within a time limit of 14 days after concluding the contract. If the consumer is not informed of this right, the time limit for withdrawal is extended by a year, meaning one year and 14 days. The provider, however, may also fulfil its obligation at a later date. If, therefore, the consumer is subsequently informed of this right, the fourteen-day time limit commences on the day following the provision of this information.

However, this legal regulation only protects the consumer. Subscribers that concluded a contract remotely or outside usual business premises, but that are acting in the contractual relationship as business undertakings, do not have the right to withdraw from the contract.

Management of the radio spectrum

Digital TV broadcasting

The following DVB-T2 transmitters have been put into operation in November 2018:

Transition network No. 11 (Česká televize):

Channel 26	Huslenky, Klatovy-Hůrka, Havlíčkův Brod, Mariánské Lázně, Jablonné nad Orlicí, Kdyně
Channel 27	Náchod
Channel 28	Huslenky
Channel 29	Železná Ruda, Jince
Channel 30	Letohrad
Channel 31	Frýdlant
Channel 33	Příbram – Březové hory
Channel 50	Loučovice, Velký Šenov

Transition network no. 12 (České Radiokomunikace):

Channel 27	Jablonné nad Orlicí, České Budějovice – Kletř, Vimperk – Mařský vrch, Loučovice, Volary, Zdíkov, Týn nad Vltavou, Letohrad
Channel 28	Jince
Channel 31	Mariánské Lázně, Velký Šenov, Kdyně
Channel 40	Příbram – Březové hory
Channel 47	Železná Ruda

Transition network No. 13 (Digital Broadcasting):

Channel 24	Dačice, Pelhřimov, Tachov, Vimperk, Vrchlabí, Žďár nad Sázavou
Channel 28	Šluknov
Channel 31	Hranice, Přerov, Třinec
Channel 32	Volary
Channel 43	Boskovice, Rosice, Slavičín

Broadcasting in transition network No. 13 can already be received by 9,3 million of TV viewers (89,2 % of inhabitants of the Czech Republic).

Analogue radio broadcasting

Broadcasting of ČRo Dvojka (89.6 MHz) and ČRo Plus (99.5 MHz) from the Jindřichův Hradec – Vajgar transmitter (0.1 kW) was launched in November. FM broadcasting, on the contrary, came to an end for Rádio Samson (Domažlice – Vavřinec 103 MHz and Karlovy Vary – Sedlec 105 MHz transmitters).

No new T-DAB transmitters for ČRo (Czech Radio) have been put into operation.

From the decision-making practice of courts: Penalty of CZK 4.5 million for the automatic purchase of additional data stands

The Supreme Administrative Court upheld a penalty of CZK 4.5 million which CTU imposed on O2 Czech Republic for violating the provisions prohibiting unfair business practices. The operator has committed this by automatically activating for all consumers who had a data tariff in place with it the “Renewal of data volume” service as of 15 May 2015, without their consent, and thereafter billing consumers (who did not deactivate the service) for additional data services after they had exhausted their basic data bundle.

O2 also failed to inform all subscribers having a fixed-term contract that contained provisions regarding a contractual penalty of their right to terminate the contract without sanction (if they did not want to accept the new conditions) as of the date on which this unilateral change came into effect.

The operator unsuccessfully opposed the final decision of CTU with an administrative action. The Metropolitan Court in Prague stated in its judgment that by introducing the service in relation to mobile Internet, O2 circumvented the free will of the customer since it automatically renewed the service and demanded payment for this without having the customer’s consent to such action. Neither did the court concur with the contention made by O2 that the customer had expressed consent to the renewal of data by continuing to take data after the basic monthly limit of data had been used up. According to the court, it is important to remember that this is a relationship between the operator (a business undertaking) and its customers (consumers), who enjoy greater legal protection. Consent in consumer contracts must thereafter be expressly given, which ensues from the provisions of Section 1817 of the Civil Code. Express consent is understood to be a timely, “active” consent, meaning the explicit expression of will in relation to such further payment (for example, crossing a box on an electronic form, but not uncrossing a box that has been crossed in advance). Therefore, the situation in which the customer was obliged to sign into the “My O2” internet account and express their disagreement by crossing the box marked “I do not agree with automatic renewal” in the case that they did not want to use the “renewal of data” service cannot be deemed an express consent.

Neither did the court concur with the contention that the operator had fully discharged its duty to inform according to Section 63(6) of the Act on Electronic Communications. O2 delivered notice of the amendment to the contract, worded as follows, to a total of 1,065,613 subscribers: *“We will be changing how the data limit for mobile data services works from 15 May. You will find the new terms and conditions from 15 April 2015 in the price lists for O2 Mobile Voice Service and O2 Mobile Internet Connection, which can be found at www.o2.cz/cenik-sluzeb. Following on from the issue of the new General Terms and Conditions (VP), we would like to inform you that there will be a change in the manner of announcing amendments to a contract (Article 17 VP) by O2 and in the manner of ordering the current range of optional services (paragraph 2.1 VP and Annex 1 to the Price List). These changes will apply to you 1 month after receiving this information. The full wording of VP can be found at www.o2.cz.”*

It is clear from the notice regarding the planned amendment to the terms and conditions that the most important information regarding the right of the consumer to terminate the contract to the effective date of the amendment if they do not accept the new terms and conditions is absent from the notice.

Finally, the court did not concur that the relevant amendment is an insignificant amendment and is not subject to the duty to inform. According to the court, whether there was a “significant amendment to the contract” is not decisive, since Section 1752(1) of the Civil Code works only with the term “amendment”, without differentiation.

O2 filed an appeal in cassation against the unfavourable judgment. The Supreme Administrative Court concurred with the metropolitan court and with CTU in stating that the amendment made to the contract was a significant amendment. Any amendment to a contract which results in the subscriber having to pay out more is, in the view of the court, invariably a significant amendment which worsens the position of the subscriber.

Telecommunication regulation in the EU

WIFI4EU

The European Commission launched a call for the [WiFi4EU](#) initiative (support for Internet connection in local communities throughout the EU) on 7 November. The call was open until 9 November. As part of this call, a total of [2,800 municipalities](#) will receive a voucher to support Internet connection, each voucher having a value of EUR 15 000. There was huge interest among municipalities, the European Commission received more than 13,000 applications from all participating countries throughout Europe. Applications were chosen according to the time of submission, whereby each participating country was guaranteed a minimum of 15 vouchers and a maximum of 224. A total of 361 Czech municipalities submitted an application. The second call is planned for the beginning of 2019.

TERMINATION RATES

On 14 November the European Commission adopted an evaluation report on its recommendation on termination rates from 2009 (Recommendation 2009/396/EC). An executive summary of this report is available on the European Commission’s [website](#).

OFFICIAL JOURNAL OF THE EU

[The European Parliament](#) approved the Directive establishing [the European Electronic Communications Code](#), which reviews the existing EU regulatory framework in electronic communications, at its plenary session held on 14 November. The Regulation establishing [the Body of European Regulators for Electronic Communications \(BEREC\)](#) was also approved. Both regulations were subsequently approved by the Council of the EU on 4 December and published in the Official Journal of the EU on 17 December.

The Regulation of the European Parliament and of the Council on a framework for the free flow of non-personal data in the European Union was published in [the Official Journal of the EU](#) on 28 November. This Regulation entered into force on 18 December and will become effective 6 months later.

EVALUATION OF ROAMING REGULATION

An [analysis](#) entitled “Roaming: One Year After Implementation”, which was compiled at the request of the Industry, Research and Energy (ITRE) Committee of the European Parliament, was also published in November. To mark the occasion, the ITRE Committee organised a [public hearing](#) on 22 November, attended by the representatives of operators, consumers and regulators.

EGOVERNMENT

The European Commission published a new [study](#) – a report on eGovernment in 2018 – on 22 November. The study showed that the availability and quality of online public services in the EU has

improved. There was a significant advancement in general as far as the effective use of public information and services online, the transparency of operations of government bodies and control of the personal data of users, cross-border mobility and key factors such as the availability of electronic identity cards and other documents are concerned. The study includes [chapters on individual EU States](#), candidate countries and countries of the EEA.

ITU

[The International Telecommunication Union \(ITU\) Plenipotentiary Conference](#) was held in Dubai from 29 October to 16 November. This Conference is the highest policy-making body of the ITU, deciding on the principles of how the [ITU](#) works, its management and the onward direction of work in individual sectors – radiocommunication, standardisation and development – for the next four-year period. The Conference adopted [Final Acts](#) containing resolutions, decisions and recommendations. The Czech Republic, represented by Chairman of the Council of CTU Jaromír Novák, was also a signatory to the Final Acts.