



Czech Telecommunication Office

April 2018

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## Telegraphically on communications

### Grants for free WIFI in the EU

Municipalities in the EU can now register and get a chance to use EU funds to set up free Internet hotspots. The first call will be announced in mid-May. For more information see the European Commission's web portal at [WIFI4EU](http://WIFI4EU).

### Czech Post generated profit

Consolidated profit of Czech Post (Česká pošta) in 2017 decreased by 48 per cent to CZK 110 million. One of the reasons is the reduction of the state contribution for basic services by CZK 100 million and increase in employees' salaries by more than CZK 400 million.

### Watch out for missed calls from exotic destinations

There is an increasing number of missed calls from exotic destinations whose country codes start with similar digits as domestic telephone numbers (e.g., +225, +247, +678, etc.). Their purpose is to deceive the recipients and make them call back – with an international call with higher rate. CTU recommends caution and careful checking of the country code.

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## Fine for O2 for non-ordered automatic additional data purchase upheld by court

**The operator filed an administrative lawsuit to contest a decision of CTU of July 2016 when CTU imposed a fine upon it amounting to CZK 4.5 million. According to the decision, O2 breached the prohibition to use aggressive sales practices and failed to comply with the notification obligation to all parties having a contract for a definite term regarding their right to terminate the contract without penalty. At the same time, CTU imposed an obligation on O2 to remove from the contracts all provisions under which the operator was entitled to renew, without an express and active ordering by the customer, automatically the new data package and charge a price for it after using up the data limit. The Municipal Court in Prague dismissed the lawsuit with a final ruling.**

In the grounds of its decision, the court confirmed as correct the legal opinion of CTU in all matters which O2 had contested in the lawsuit. It was thus evidently an unfair practice where the way the operator acted, taking into account all aspects and circumstances, **substantially impaired the free choice or actions** of an average consumer with respect to a product or service. The court evaluated as absolutely unfitting the operator's defense where the operator compared the introduction of this service with electricity consumption where the customer also continuously uses light, heating, stove

and other ways to consume electricity, checks the consumption thereof on the power meter, and no one questions it as aggressive sales practice.

For electricity, the customer enters into a contract which does not specify a particular volume (quantity, number of units) in which the service will be provided at a given period. It is up to the customer how many units of the commodity they consume, and subsequently the customer is charged price for the actual consumption. With the automatic purchase of additional data, the situation is quite different. The consumer agrees in the contract in advance and specifically on a certain quantity (volume) of the service for a certain period, and provision of the service on top of the agreed-upon quantity constitutes non-ordered supply for which, however, the operator requires payment from the consumer. Instead of leaving it up to the free will as to the quantity in which the consumer orders the additional data package, if the consumer orders it at all, while keeping the same data rate, O2 resorted to aggressive imposition (delivery) of a non-ordered service on top of the agreed-upon quantity.

The operator, motivated by an effort to gain a greater financial benefit, also hoped that the consumer would fail to notice the essence of the change to the mode of provision of the service, which is supported by the subscribers' complaints, and thanks to this O2 gained financial benefit which it would not have gained if the consumer had been given a free choice.

The court also confirmed the accuracy of CTU's opinion that it is insufficient that the customer's consent to the renewal of data is manifested by the customer's continuation of using the data after having used up the basic monthly limit. **Consent in consumer contracts must be manifested explicitly**, which is implied directly by Section 1817 of the Civil Code. The court specified that express consent needs to be understood as timely "active" consent, i.e. explicit manifestation of the intention to make another payment.

Finally, the lawsuit also did not succeed with the argument that the change in question is an irrelevant change to which the operator's notification obligation regarding the right to terminate the contract without penalty as of the effective date does not apply. The general legal regulation of an unilateral change to the terms and conditions provided in Section 1752 of the Civil Code for a potential change of contract requires that both parties agree on such option in the contract with sufficient certainty and, in addition, that an arrangement is made that the change to the terms and conditions will be notified to the other party. At the same time, the other party must be given the right to reject the changes and terminate the commitment for this reason, whereas the termination period must be sufficient for procuring similar supplies from another provider. According to the ruling, it is not relevant whether the change to the contract is significant since Section 1752 uses solely the term 'change' without any attributes, and the operator had the notification obligation under this provision alone.

Moreover, the change in this case was significant. The court emphasized that **every change to the terms and conditions affecting the financial sphere of the consumer (subscriber) is a significant change** which may occur, and therefore, it had to be a significant change to the conditions.

The ruling of the Municipal Court in Prague, file No. [6A 182/2016](#), is final.

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## Price calculators

In March CTU completed the process of accreditation of price calculator Tarifon and extended the accreditation period of this calculator by another year. Price calculator Tarifon compares the prices of mobile calls, calls made from fixed lines, and mobile and fixed Internet access.

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## Market Analyses

### Preliminary Analysis of the Mobile Backhaul Market

The public consultation regarding a preliminary analysis of the mobile backhaul market, which had taken place at the CTU's discussion site since 26 February, was finished on 26 March.

#### Markets No. 3a/3b

(3a) – wholesale local access provided at a fixed location and (3b) – wholesale central access provided at a fixed location for mass-market products

On 27 February CTU received the opinion of the Office for the Protection of Competition to the draft decisions on the imposition of obligations on relevant markets No. 3a and No. 3b. After settlement of the comments contained in the opinion, CTU notified both draft decisions to the European Commission at the end of March.

#### Market No. 4

wholesale high-quality access provided at a fixed location

On 27 February CTU received the opinion of the Office for the Protection of Competition to the draft decision on the imposition of obligations on relevant market No. 4. After settlement of comments contained in the opinion, CTU notified the draft decision to the European Commission at the end of March.

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## UNIVERSAL SERVICE

### Special terminal equipment

A single application was submitted, namely from O2 Czech Republic a.s., for the tendering procedure for companies that will be obliged, within the universal service, to provide the sub-service of access of the disabled to the publicly available telephone service, the information service on telephone numbers, and to subscriber directories equal to the access enjoyed by other end users, in particular by means of specially equipped telecommunication terminal equipment pursuant to Section 38(2)(e) of the Electronic Communications Act.

The selection committee, created for this tendering procedure, evaluated the application and recommended that the CTU Council impose the above-mentioned obligation upon O2 Czech Republic a.s.

The public consultation of the draft decision on the above-mentioned sub-service started on 27 March. Comments on the draft decision can be submitted within one month of the date of publication of the invitation.

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## Postal services

In March, CTU issued one new certificate of notification of business activities in the area of postal services. The new authorized operator of postal services is BXB s.r.o.

Geis Parcel CZ s.r.o. terminated business activities under the Postal Services Act and continues operating only as a shipping agent.

The current list of all notified operators is available through the [search database](#) on CTU's website.

## O2 breached the net neutrality rule with the Spotify service

**The method by which O2 Czech Republic mediated in its network the access to the Spotify service restricted the end user's rights to free choice which is a practice prohibited by the European regulation on net neutrality. CTU therefore, within the administrative proceedings which have been finalized, ordered O2 to amend the contract terms to comply with this regulation.**

According to the principle regulated by the Regulation (EU) 2015/2120 of the European Parliament and of the Council of 25 November 2015, end users have the right to choose the content, applications or services which they will use through their Internet access service. The providers of the Internet access service are obliged to treat all traffic equally, without discrimination, restrictions or interference.

From June 2016 O2 allowed its customers to purchase a special subscription of the Spotify service and, at the same time, adjusted the way its mobile network treats the data transmitted when using this service: users of selected data plans with volume limits did not have this data included in the data usage limit (the so-called zero rating), while other data was included. In addition, these users could use the Spotify service also at the time when they have already used up their volume limit and no other services or content on the Internet was available to them.

If an operator decides to limit data traffic with a data limit it must not treat any particular service or application preferentially to the detriment of the entire content. Should the provider wish not to include the volume of the data transmitted within a certain service it must not do so by restricting other services or applications of the same nature. CTU therefore ordered O2 within the administrative proceedings to amend the contracts concluded so as to comply with the Regulation.