PRESS RELEASE
Monthly Monitoring Report 11/2019

Prague, 20 November 2019 – Monitoring report gives insight into the decision-making practice of the CTU and describes a dispute between Air Telecom and its customer, who accepted new device and continued to use the services provided on it but did not send the signed amendment of the contract back to operator. In final decision on objection to a claim the CTU concluded, that the acceptance of the device meant latently change of that part of the contract laying down the type and price of the service. It does not automatically mean, that the customer agreed with the attached draft contract amendment that amends the validity period and contractual fines.

In the concerned 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. 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 and 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.

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. But the unsigned amendment cannot be considered a valid and effective legal act that would bind both parties. The written contract from 2013 thus remained valid (except the latently agreed change of type of service) and according to the terms and conditions was changed to an indefinite-term contract after two years. If the customer consequently terminated such contract, the operator cannot impose any sanctions. Only breach of an obligation can be penalized, not exercise of the right as in this case.

The Monitoring report further brings attention to the need to choose clear and unambiguous wording of contract termination notice. It must be sufficiently comprehensible and clearly lead to the conclusion that the subscriber 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. 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. CTU noticed cases where even a properly sent and demonstrably delivered notice was not considered 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.

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The Monitoring Report is available here.

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