

This is an unofficial translation. The legally binding text is the original Czech version.



Czech Telecommunication Office
headquartered at Sokolovská 219, Prague 9
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[Stamp and Signature:



THIS DECISION BECAME FINAL
on [handwritten] 30. 11. 2006
Czech Telecommunication Office
Economic Regulation Department
Date [handwritten] 30. 11. 2006 [signature: Mičíková]

Prague 2 November 2006
Ref. No. 45 161/2006-611/III. vyř.

In proceedings initiated *ex officio* with RADIOKOMUNIKACE a.s., with registered office at U Nákladového nádraží 3144, 130 00 Praha 3, Reg. Number 26705036, on 23 August 2006 in the matter of the imposition of obligation related to price regulation on undertaking with significant market power, the Council of the Czech Telecommunication Office as the appropriate state administration body under Section 107(8)(b)(5) of Act No. 127/2005 on Electronic Communications and on Amendment to Certain Related Acts (Electronic Communications Act), as amended (the "Act") and under Section 10 of Act No. 500/2004, Rules of Administrative Procedure, as amended, hereby issues this

Decision on Price No. CEN/18/11.2006-71:

I.

Under Section 51(3)(g) and Section 59 of the Act and in accordance with the results of the analysis of the relevant market of "Broadcast transmission services provided over the electronic communications networks to deliver broadcast content to end users", issued in Czech Telecommunication Office's Regulation of General Application No. A/18/08.2006-34, price regulation in the form of mandatory procedure in pricing under Section 58(1)(b)(3) is imposed on RADIOKOMUNIKACE a.s., with registered office at U Nákladového nádraží 3144, 130 00 Praha 3, Reg. Number 26705036 (hereinafter referred to as the "Party to Proceedings") as follows:

(1) The Party to Proceedings shall negotiate prices so that the prices are cost-oriented, i.e. they cover costs expended in an efficient and effective manner plus a reasonable profit and ensure recovery of the investment within a reasonable period of time, and reflect the related risks. In fulfilling this obligation, the Party to Proceedings shall proceed in accordance with the Regulation of General Application issued to implement Section 86(3) of the Act, laying down the method of service costing and cost and revenue allocation and defining the structure of the information to be reported.

(2) The Party to Proceedings may negotiate prices that are lower than defined by the procedure described in the preceding paragraph. In doing so, the Party to Proceedings must respect the non-discrimination principle and the prohibition of cross-financing.

II.

(1) The Party to Proceedings shall publish the prices in accordance with Part I of the Decision ruling and shall do so no later than 30 days of the finality of the Decision.

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(2) For newly concluded agreements, the Party to Proceedings shall negotiate prices in accordance with Part I of the Ruling from the date on which the prices are published.

(3) For already existing agreements, the Party to Proceedings shall negotiate prices in accordance with Part I of the Ruling within 60 days of the date on which the prices are published.

Substantiation

In accordance with Section 51(1) and (2) of the Act, the Czech Telecommunication Office (“the Office”) carried out an analysis of Market No. 18 – Broadcast transmission services provided over the electronic communications networks to deliver broadcast content to end users (“Market No. 18”), which it made public on the official board on 17 August 2006 under Ref. No. 44 517/2006-609 and, upon notification to the European Commission, the Office issued it as Regulation of General Application No. A/18/08.2006–34 of 17 August 2006. The results of the analysis showed that Market No. 18 is not an effectively competitive market because there is an undertaking with significant market power doing business on it. Without price regulation on the market, the existence of the monopoly would allow for applying disproportionately high prices, as there would be nothing to restrict the Party to Proceedings in determining the price. Remedial measures based on Section 51(3)(a) to (f) of the Act would not, by themselves, suffice to remedy the situation. For this reason, the administrative body proposed to apply price-control obligations, which it intends to impose in accordance with Section 51(3)(g) of the Act.

By the administrative body’s Decision No. SMP/18/09.2006-64 of 11 September 2006, which was issued under Ref. No. 36 520/2006-609/IV.vyř. and became final on 12 September 2006, the Party to the Proceedings was determined to be an undertaking with significant market power.

On Part I of the Ruling

On the basis of the result of the analysis, Regulation of General Application No. A/18/08.2006-34 was issued in accordance with Section 51(2) of the Act, proposing to impose the obligation to provide access to the facilities and enable capacity sharing under Section 84 of the Act, enable transparency under Section 82 of the Act, ensure non-discrimination under Section 77 of the Act, ensure separation of costs and revenues under Section 86 of the Act, and obligations related to pricing regulation under Sections 56 and 57 of the Act.

Taking into account this proposal, the administrative authority considered the proposed obligations and issued this Decision, imposing on the Party to Proceedings, with reference to the explanations below, the obligation set out in part I of the Decision ruling. Imposition of obligations under Section 51(3)(a) to (f) is the subject of separate administrative proceedings.

In Part I of the Decision ruling, the obligation of cost orientation of the prices for the broadcast transmission services provided over the electronic communications networks, and the mandatory procedure in pricing or price calculations, are imposed on the Party to Proceedings in accordance with Section 58(1)(b) of the Act. Upon analysing relevant market No. 18 and on the basis of the result obtained, the administrative authority decided to apply a milder form of price regulation to the undertaking with significant market power. This regulation consists in pricing rectification by defining two conditions: cost orientation of the prices and the mandatory pricing procedure.

The Party to Proceedings shall negotiate prices so that the cost-oriented prices cover the costs expended in an effective and efficient manner plus a reasonable profit, reflect the related risks and ensure recovery of the investment within a reasonable period of time. In determining the price, the Party to Proceedings should proceed in accordance with the Regulation of General Application

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issued to implement Section 86(3) of the Act, laying down the method of service costing and cost and revenue allocation and defining the structure of the information to be reported.

The Party to Proceedings is allowed also to offer prices lower than the cost-oriented prices to the detriment of profit, provided, however, that at least the costs expended in an effective and efficient manner are covered and any cross financing is avoided. By offering its prices, the Party to Proceedings must not breach the non-discrimination principle.

On Part II of the Ruling

Determining the effective date, the administrative authority considered the time needed by the Party to Proceedings to determine the prices of the broadcast transmission services provided over the electronic communications networks so that the prices comply with the condition defined in Part I of the Ruling, also taking into account the time needed to renegotiate a change to the contractual conditions for the contracts already signed.

With respect to the above, administrative procedure under Section 51(3)(g) of the Act was instituted against the Party to Proceedings on 23 August 2006 in respect of the imposition of obligation related to price regulation on undertaking with significant market power. As set out in Section 51 of the Act, the undertaking whose rights and obligations are to be decided on should only be the Party to Proceedings. Notification of the commencement of the administrative proceedings was sent to the Party to Proceedings and it contained an invitation for the Party to Proceedings to express its views and propose any evidence, for which it was granted a period of 14 days after the date of delivery of the notification.

The Party to Proceedings did not raise any comments within the 14-day period.

On the basis of Section 130 of the Act and in accordance with the Czech Telecommunication Office's Rules for consultations at the discussion site, the Office published its draft Regulation on 18 September 2006. There were no comments on the draft.

The Party to the Proceedings was given an opportunity to express its view in accordance with Section 122(5) of the Act. The Party to the Proceedings familiarised with the file on 31 October 2006 and did not raise any comments.

The administrative body decided as indicated in the Decision ruling. It did so, with respect to the above, in compliance with the key principles based on the legal framework of the European Communities, seeking to substitute for the absent action of economic competition, to create conditions for appropriate functioning of economic competition and to protect users and other market players until a fully competitive environment is created.

Advice on Remedies:

No remedy is allowed against this Decision.

PhDr. Pavel Dvořák, CSc.
Chairman of the Council of the
Czech Telecommunication Office