

Monthly Monitoring Report No. 10/2013 of the Czech Telecommunication Office October 2013

Executive Summary

Auction of frequencies

All 5 applications for participation in the tender for free frequencies for LTE networks complied with the prescribed requirements, and the applicants comply with the set conditions of participation in the auction according to chapter 6.1 of the Invitation to Tender. The negotiations with the participants and their training in the use of the electronic auction platform took place until the end of October, followed by two test auctions. The live phase of the electronic auction started on Monday, November 11, and the participants started submitting their bids.

Audit of the so-called unlimited plans

T-Mobile Czech Republic a.s., effectively starting from 1 October 2013, gave up its practice to limit their “unlimited plans” with the limit of 10,000 free minutes and text messages (SMS). This was in response to the notice of the Czech Telecommunication Office (hereinafter referred to as “the Office”) prior to the commencement of the administrative procedure, and the operator removed this limit from its terms and conditions. The Office will proceed similarly with other service providers who present their services as unlimited.

Data traffic control

The Office organized a workshop on the issue of data traffic control. Conclusions of the discussion with the experts on this topic and the preceding public consultations will be taken into account by the Office in the general rules and recommendations, which are in preparation, for the possibilities of control of data traffic of the end users.

Electronic Communications Market Situation

Telefónica

Telefónica launched a short-term marketing campaign for its service called Internet v mobilu+ S (Internet in mobile phone+ S) intended for the first 2000 participants who order in the period from 21 October to 8 November 2013 through the customer help line the Internet v mobilu +S plan in prepaid services. Customers can use a benefit in the form of a fixed weekly fee for the Internet v mobilu+ S plan at CZK 20 per week in comparison with the standard price of CZK 50 per week. The user will have a data limit of 20 MB per week as opposed to the standard conditions of the Internet v mobilu+ S plan. The initial data limit is 37.5 MB per week. The data plan includes also free text

messages (SMS) to O2 network which will be subject to prices according to the initial voice plan¹ if the limit is exceeded.

In mid October TELEFÓNICA, S. A., a majority shareholder of Telefónica Czech Republic, announced that it considers strategic alternatives related to its share in Telefónica Czech Republic, a.s., including negotiations with the PPF investment group. The companies presented the signing of an agreement on sale on 5 November 2013.

On 30 October 2013 Telefónica Czech Republic and T-Mobile Czech Republic announced that they signed an agreement on sharing of the existing 2G and 3G mobile networks with the exception of Prague and Brno. The intended goal of the cooperation is achievement of optimal coverage of the territory of the Czech Republic with 2G and 3G networks an improvement of effectiveness of operation of their mobile networks.

T-Mobile

On 1 October 2013 T-Mobile launched commercial operation of LTE network in Prague and Mladá Boleslav. In Prague the LTE signal coverage is currently 26% of the area (in particular in Prague 4) and 33% of the population. LTE network is accessible to all customers of T-Mobile who have an activated plan from the new series of plans called S name (With Us), are within the area covered, and have a mobile device supporting the LTE technology.

Maximum download speed up to 100 Mbit/s is available for the following plans: S námi bez hranic, S námi bez hranic +. In the other plans (S námi v síti, S námi v síti+, S námi síť nesít) the maximum download speed is up to 42 Mbit/s.

Vodafone

Further activity in the provision of services on LTE networks was announced by Vodafone on 31 October Vodafone, stating that it would use its frequencies in the 900MHz band and start covering rural areas with high-speed Internet services using the 3.5MHz channel in this band which is currently also used for the provision of GSM services.

From 10 October 2013 Vodafone started offering a new prepaid card called 'Karta pro partu' which offers its customers the possibility to call four selected numbers within the Vodafone network at CZK 1.90 per minute. Price of other calls within the Czech Republic is subject to charge of CZK 3.50 per minute. After the first minute, all calls are charged in one-second increments (60+1 charging). The price of one text message (SMS) to all networks within the Czech Republic is CZK 1.90.

UPC

Within a promo campaign valid until 31 October 2013 UPC offered its customers price discounts for the digital TV services Klasik+, Komfort+ and Mini. This offer is for on-line orders with the commitment to use the service for the period of 12 months. In the Klasik+ service customers will pay a monthly fee of CZK 200 instead of the standard CZK 400.57 per month and they can get one of the Sport, Relax or Darwin packages within this offer. Within this plan customers can use more than 50 Czech and Slovak programs including 12 HD programs. With the Komfort+ service, within this special offer, customer will pay CZK 379 per month instead of the standard price of CZK 578.49 per month and during this period they can use more than 100 programs including 22 programs in HD quality. Customers who ordered within the special offer on-line the Mini digital TV service will permanently pay a monthly fee of CZK 154 for this service instead of the standard price of CZK 221.64 per month and can watch more than 20 Czech programs including 7 HD programs. The price for the connection of the service is CZK 99.

¹ Price of one text message (SMS) within the NA!DLOUHO plan is CZK 2, in NA!HLAS plan CZK 2.60, and in NA!VÝBĚR and NA!PIŠTE plans it is CZK 1.90 per text message.

Virtual operators

CallPro

A new virtual operator, CallPro, started offering mobile service in September 2013 within the network of T-Mobile. Its customers can choose one of the three plans in post-paid or prepaid mode. In the "CallPro 0" plan calls to "own" network are subject to charge at CZK 1 per minute and calls to other networks within the Czech Republic at CZK 2.20 per minute. Customers pay CZK 1.40 for one text message (SMS) to all networks. In addition to the plans, customers can purchase a data package with FUP limit of 100 MB for CZK 60, 500 MB for CZK 150 or 2 GB for CZK 350. Within the "CallPro 40" plan at monthly fee CZK 80 customers get 40 free minutes to all networks within the Czech Republic, and with the "CallPro 80" plan at monthly fee CZK 160 customers get 80 free minutes to all networks within the Czech Republic. In both plans, calls to the operator's own "network" are priced at CZK 0.80 per minute, to the other networks within the Czech Republic at CZK 1.70 per minute with the CallPro 40 plan or CZK 1.40 per minute with the CallPro 80 plan. After the first minute, all calls are charged in one-second increments (60+1 charging). Customers pay CZK 1.40 for one text message (SMS) to all networks within the Czech Republic. In addition to the plans, customers can purchase a package with data limit of 100 MB for CZK 40, 500 MB for CZK 130 or a package with data limit of 2 GB for CZK 350.

PODA

On 14 October 2013 a virtual operator, PODA Mobil, of the Ostrava-based Internet connection provider, PODA a.s., started operating mobile services. The operator offers its services through GTS Czech s.r.o. within the network of T-Mobile. Its offering includes a plan for CZK 49 per month. Customers pay CZK 0.39 per minute within the mobile "network" of PODA and CZK 0.49 per minute to a fixed line of PODA. Text messages (SMS) within the "network" of PODA cost CZK 0.79. The company charges CZK 1.49 for one minute of a call or one text message to the other networks within the Czech Republic. After the first minute, all calls are charged in one-second increments (60+1 charging). In addition to the plan, customers can purchase a package with data limit of 50 MB for CZK 45 per month, 100 MB for CZK 65 per month, 200 MB for CZK 120 per month or 500 MB for CZK 280 per month. The operator charges CZK 249 for number porting.

VietCall

Virtual operator VietCall run by DRYDEN s. r. o, started offering its services from 15 August 2013, through DH Telecom a.s. operated within the GSM network of Vodafone. VietCall offers two types of plans. VietCall (50) at monthly fee of CZK 50 and VietCall (150) at monthly fee of CZK 150 .

The operator primarily focuses on customers whose calls go to China and Vietnam. Calls to these countries are priced CZK 1.90 per minute with the VietCall (50) plan and CZK 1.60 per minute with the VietCall (150) plan.

In the Czech Republic customer with the VietCall (50) plan are charged in one-second increments after the first minute (60+1 charging); calls to the other networks within the Czech Republic cost CZK 2.50 per minute, within the "network" of VietCall they cost CZK 1.50 per minute. One text message (SMS) to all networks within the Czech Republic costs CZK 1.50. Customers may purchase Internet in mobile phone for 24 hours with data limit 25 MB for CZK 25 or monthly data packages with data limit 150 MB for CZK 150 a month, 300 MB for CZK 190 a month, 500 MB for CZK 250 a month or 1 GB for CZK 390.

In the VietCall (150) plan at monthly fee of CZK 150 per month with charging per one-second increments (1+1 charging) calls to the other networks within the Czech Republic cost CZK 1.60 per minute and calls to own "network" are free of charge. One text message (SMS) to all networks within the Czech Republic costs CZK 1.50 and within the "network" of VietCall one text message (SMS) costs CZK 0.60. Customers can purchase a data package with 25MB

limit for 24 hours for CZK 20. In addition to the plan it is possible to purchase a data package with data limit of 150 MB for CZK 100 a month, 300 MB for CZK 160 a month, 500 MB for CZK 200 a month and 1 GB for CZK 350 a month.

OpenCall

A similar strategy, however with discounts on calls made to Slovakia, was chosen by virtual operator OpenCall. It offers its customers calls to Slovakia for the same rate as within the Czech Republic (CZK 2.50 per minute with the OpenCall easy plan or CZK 1.90 per minute with the OpenCall plus plan).

One Mobile

Virtual operator One Mobile run by One Mobile Česká republika a.s. started offering its services from 1 October 2013. The operator is part of the One Energy group (sale of gas and electricity). One Mobile offers three types of plans: Dohoda NA JEDNIČKU, Neomezený START, Neomezený ONE. The plan called Dohoda NA JEDNIČKU is offered without a monthly fee with calls to its own "network" at CZK 1 per minute, and to the other networks within the Czech Republic at CZK 1.50 per minute. One text message (SMS) to all networks within the Czech Republic costs CZK 1. Customers are charged for every 1 MB of downstream data at CZK per MB. The plans called Neomezený START and Neomezený ONE are offered in versions with commitment for two years or in version without a commitment. In the Neomezený START plan with the commitment for 24 months customers are charged CZK 249 a month, in the version without a commitment CZK 349 a month. Calls and text messages (SMS) within own "network" are not charged; calls made to the other networks within the Czech Republic cost CZK 1.50 CZK per minute. One text message (SMS) to the other networks within the Czech Republic costs CZK 1. The plan includes mobile Internet with monthly data limit of 100 MB. The Neomezený ONE plan offers its customers unlimited calls and text messages (SMS) to all networks within the Czech Republic and mobile Internet with monthly data limit of 1.2 GB. The plan is offered for a monthly fee of CZK 599 and with commitment for 24 months, or in version without a commitment for CZK 699 a month. Calls within the operator's own "network" under all plans are charged in one-second increments after the first minute (60+1); in the other networks within the Czech Republic the charging is 60+30.

Mobil od ČEZ

ČEZ Prodej, s.r.o. started offering mobiles services from 15 October 2013 through the Telefónica network, as a supplementary service in the portfolio of services of the utility provider ČEZ, a.s. Mobil od ČEZ offers a basic plan called "Platím, jak volám" (I Pay as I Call) without a monthly fee. Calls to all networks within the Czech Republic cost CZK 2.20 per minute. One text message (SMS) to all networks within the Czech Republic costs CZK 1.20. After the first minute which is charged as a whole, all calls are charged in one-second increments (60+1 charging). In addition to the basic package it is possible to purchase a voice package for CZK 200 a month with 100 free minutes to all networks (package called "Volám občas" (Calling occasionally)), or for CZK 340 a month with 200 free minutes to all networks within the Czech Republic (package called "Volám rád" (Enjoying Calling)). The price for one minute of call and one text message (SMS) to other mobile networks within the Czech Republic is the same in both packages as with the basic plan, only calls to the "network" of Mobil od ČEZ are free of charge. In both packages ("Volám občas" and "Volám rád") calls are charged in one-second increments (1+1). When calling on top of the free minutes the first minute is charged and then the calls are charged in one-second increments (60+1) and the price for one minute is CZK 2.20. The company offers a data package called "Dnes online" (Today Online) for CZK 20 with data limit 50 MB and validity for 24 hours, and a data package called "Často online" (Often Online) for CZK 200 per billing period with data limit of 300 MB, or a data package called "Žiju online" (Living Online) for CZK 300 per billing period with data limit of 1 GB. The service of the voice and data package is set up with automatic renewal starting every billing period. In the voice packages it is possible to transfer unused units to the following billing period, but no subsequent

transfer is possible. With the data package it is not possible to transfer the unused data limits to the next billing period. Customers can change the limit for a fee.²

Dragon

The existing Internet service provider Dragon Internet a.s. started offering mobile services at the beginning of October 2013 under the Dragon brand. The operator offers mobile plans in four versions. A plan called MobilCall 30 offers 30 free minutes to all mobile networks within the Czech Republic at monthly fee of CZK 80. With the plan called MobilCall 100 at monthly fee of CZK 148 customers can combine 100 free units in the ratio of 80:20 for calls and for text messages (SMS). The same option is offered to customers also with the plan called MobilCall 100Net for CZK 228 a month which includes also mobile Internet with data limit of 100 MB. The last plan called MobilCall NoLimit, with calls³ and text messages (SMS)⁴ to all networks within the Czech Republic not charged separately, for CZK 548 a month allows the customer to activate a data package at a price from CZK 79 a month (data limit 150 MB) to CZK 249 a month (data limit 3 GB).⁵ In all plans, after the free units have been used up, the cost of one minute of a call and one text message (SMS) is CZK 1.50, to all networks within the Czech Republic. The operator charges for the whole first minute, then calls are charged in one-second increments (60+1 charging). Data traffic costs CZK 1.50 per MB of downstream data, except for the plan called MobilCall NoLimit where the data package can be activated.

Komutel

In October 2013 virtual operator Komutel extended its offer by two plans intended for students up to 26 years of age. Both plans (“student píši” (student texting) and “student volám” (student calling)) cost CZK 200 a month and differ in the number of free units. With the “student píši” plan the customer gets 50 free minutes and 100 free text messages (SMS) to all networks within the Czech Republic. The “student volám” plan offers 180 free minutes to all networks within the Czech Republic. The price for one minute of a call and one text message (SMS) sent within the “network” of Komutel is CZK 0.50 in both plans. Calls and text messages (SMS) to the other mobile networks within the Czech Republic cost CZK 1.50 per minute or per SMS.

T-Mobile – Kaktus

From 8 October 2013 T-Mobile started offering mobile services under the Kaktus brand. Its offer is targeted at young people and students. The operator offers prepaid mobile services in the form of packages of calls, text messages (SMS) and data. Customers can also combine free units as 20 free minutes or 40 free text messages (SMS) or 80 MB of free data, for CZK 50 for the service selected. Or the customer can choose 50 free minutes or 100 free text messages (SMS) or 200 MB of free data for CZK 100. It is possible to purchase for CZK 300 200 free minutes or 400 free text messages (SMS) or 1 GB of free data. If the customer has used up the free units in the package and does not activate a new package after the expiry of 30 days of its validity they will be charged CZK 2.90 per minute for calls to all networks within the Czech Republic, charged in one-second increments (1+1). One text message (SMS) costs CZK 1.50 and 1 MB of downloaded data costs CZK 1, charged in 100kB increments. Customers who activate their SIM card by 31 March 2014 can have access to Facebook for unlimited time.

Voocall

² Reset of the data limit with the “Často online” (Often Online) plan costs CZK 100; with the data package called “Žiju online” (Living Online) it costs CZK 200.

³ Calls are limited by the maximum usage of 10,000 minutes a month, then the connection costs CZK 2.90 per minute.

⁴ Maximum number of text messages (SMS) is 10,000 a month, then each SMS costs CZK 2.90.

⁵ The plan called MobilCall NoLimit can be purchased at a special price of CZK 498 a month if purchased by 31 December 2013.

In October 2013 the virtual mobile operator Voocall modified its offering of voice plans. It now offers a variety of plans (Medius, Medius Plus, Maximus, Maximus Plus) with “unlimited”⁶ calls and text messages (SMS) to its own “network”, including plans with “unlimited” calls and text messages (SMS) to all networks within the Czech Republic. With the prepaid card without monthly fee customers are limited with the condition to recharge with at least CZK 200 at least once in two months. Otherwise the customer is charged CZK 30 for every month when the condition was not met. Relative to the original plans the operator increased the prices for one minute of a call (from the original price of CZK 1.69 per minute to CZK 1.90 per minute to other mobile networks within the Czech Republic and from the original price of CZK 0.59 per minute to CZK 1.90 per minute to its own “network”) and the prices for one text message (SMS) (from the original price of CZK 1.25 to CZK 1.50 per SMS to other mobile networks within the Czech Republic and from the original price of CZK 0.59 to CZK 1.50 per SMS to its own “network”).

⁶ Unlimited calls means such number of free minutes/text messages (SMS) which cover normal needs of a customer for calls and text messages. In the case of traffic exceeding the normal needs of the customer or traffic showing the signs of network abuse the services on top of the normal traffic will be subject to prices according to the standard price list.

In October the Office checked...

...performance of communication activities without authorization – in the period in question the Office carried out three inspections to check the conditions for the performance of communication activities by the entities checked. In one case the Office discovered provision of Internet connection without authorization and opened administrative proceeding with the person concerned.

...compliance with the conditions of individual authorizations for the use of radio frequencies – the Office carried out 35 audits of compliance with the conditions of individual authorizations for the use of radio frequencies, focusing primarily on the operators of UHF FM transmitters. In one of the cases the Office issued a request to remedy the deficiencies, also due to the exceeding of the permitted modulation output and noncompliance with the permitted transmission location.

... compliance with the conditions of general authorization No. VO-R/12/09.2010-12 to use radio frequencies and operate facilities for broadband data transmission in the bands from 2.4 GHz to 66 GHz. The Office performed 40 inspections. In 14 cases it discovered violations and in response to those violations demanded elimination of the deficiencies discovered and will open administrative proceeding in this case. The deficiencies consist primarily of utilization of frequencies in the band of 5150 MHz to 5350 MHz outside buildings.

...use of radio frequencies without authorization – the Office carried out six inspections focusing on entities whose individual authorizations have expired. In three cases the Office discovered use of radio frequencies after expiry of the individual authorization to use the frequencies. The Office will open administrative proceedings in these cases.

...sources of interference with the operation of electronic communication facilities and networks, provision of services of electronic communications or operation of radio communication services – the Office carried out 61 local investigations. In 7 cases it issued a call to remove the interference. In one instance of interference with digital television broadcasting the reception problems were caused by construction cranes.

...incorporation of the conditions of telephone number portability pursuant to the measure of general nature No. OOP/10/10.2012-12 dated 30 October 2012 which defines the technical and organizational conditions for the implementation of telephone number portability and the principles for number portability billing between undertakings, effective from 1 September 2013, into terms and conditions of the providers of publicly available telephone service – in October the Office continued with the checks whether the providers of publicly available telephone service made their draft user contracts comply with the above-mentioned measure of general nature. The inspection covers approximately 780 entities providing publicly available telephone service and the Office plans to finish it by mid December 2013.

Cooperation between the Office and Česká obchodní inspekce (the Czech Trade Inspection Authority) – in checking the vendors of telecommunication terminal and radio equipment within the cooperation between the Office and Česká obchodní inspekce (the Czech Trade Inspection Authority) both authorities in Semily and in Bohušovice nad Ohří discovered sale of models of radio controlled models of cars working in the 49 MHz band and models of helicopters in the 72 MHz band. Such radio equipment cannot be operated in the Czech Republic without an individual authorization for the use of radio frequencies. The authorities also discovered that vendors offer wireless doorbells operating in the 307 MHz band reserved for the Ministry of Defense in the Czech Republic. The deficiencies discovered are resolved by the Czech Trade Inspection Authority within its scope of powers.

Audit of postal services

In October the Office carried out 28 local investigations at selected post offices in order to check whether the information on the change of the postal conditions valid from 1 September 2013 and 1 October 2013 was published by Česká pošta in the manner and within the period as stipulated by the law. At the same time, the Office checked and documented mailboxes in these selected post offices. The investigation of the Office did not reveal any defects.

The Office imposed a fine (which has not come into force) in the amount of CZK 450 thousand in administrative proceeding with Česká pošta, s.p. It was opened by the Office in the case of violation of the postal obligation pursuant to Section 33 (1) a) of the Postal Services Act and treatment of postal consignment or remitted money in violation of Section 7 (1) of the same act (leaving mail bags at a publicly accessible place without securing them against tampering by unauthorized people).

Processing of remedies

Within a review procedure during the administrative appeal proceeding the Office confirmed the first-level decision by which the Office imposed a fine in the amount of CZK 50 thousand for administrative offence pursuant to Section 118 (14) j) of the Electronic Communications Act.

The above-mentioned administrative offence was committed by a legal entity by providing the Police of the Czech Republic in July 2012 with a recording of a telephone call of a user with its customer help line, although there was no legal reason to submit the recording. In doing so, the penalized entity jeopardized confidentiality of messages and the associated operating and localization data.

Market analyses

Market No. 2 – call origination on the public telephone network provided at a fixed location

Based on the results of the analysis of relevant Market No. 2 published on 13 September 2013 in part 13/2013 of the Telecommunication Bulletin as a measure of general nature No. A/2/09.2013-4. The Council of the Office opened an administrative proceeding with Telefónica Czech Republic, a.s. in the case of determination of an undertaking with significant market power (SMP decision) and administrative proceeding in the case of imposition of remedies, including obligations related to the control of prices. In this matter the Office published on 16 October a call to raise objections against the draft decision on determination of Telefónica Czech Republic, a.s. as an undertaking with significant market power and on 11 October 2013 a call for draft decision No. REM/2/XX.2013-Y which impose the individual remedies.

Market No. 3 – call termination on individual public telephone networks at a fixed location

Objections against the draft analysis were raised only by GTS Czech s.r.o which disagreed with the intention to apply the obligation of access and connection to all undertakings with significant market power and suggested that the Office only impose this obligation on Telefónica Czech Republic, a.s.

On 24 October 2013 the Office published a table of settlement of the objections including the information on the result of the second public consultation in which it did not accept the objection of GTS Czech s.r.o.

The draft analysis was sent on 25 October 2013 to the Office for the Protection of Competition (ÚOHS) for a statement. After having incorporated the objections the draft ART 3 was sent to the EC for notification on 7 November 2013.

Market No. 4 – wholesale (physical) network infrastructure access (including shared or fully unbundled access) at a fixed location, and market No. 5 – wholesale broadband access within electronic communications networks

On 8 October 2013 the Office sent to the European Commission for notification draft analyses of relevant markets No. 4 and No. 5, including the texts of the draft decisions on determination of an undertaking with significant market power (Telefónica Czech Republic, a.s). On 17 October 2013 the Office received from the European Commission a request for information (RFI) regarding the draft analyses sent pursuant to Article 5(2) of the framework Directive. The Office responded to this request on 22 October 2013.

Market No. 6 – wholesale terminating segments of leased lines, irrespective of the technology used to provide leased or dedicated capacity

On 10 October 2013 the Office published a call to raise objections against the draft measure of general nature – market analysis No. A/6/XX.2013-YY, of market No. 6. The objections against the draft analysis could be raised within one month of the date of publication of the call.

Market No. 7 – call termination on individual public mobile telephone networks

On 15 October 2013 the Office published the second call to raise objections against the modified draft analysis of market No. 7. Within the prescribed period only one entity raised objections - T-Mobile Czech Republic a.s. The objections were raised against the difference in the controlled prices for mobile and fixed call termination and also against the definition of the market with respect to the intention to exclude calls coming from outside the European Economic Area from price control.

On 24 October 2013 the Office published a table of settlement of the objections in which it did not accept the objections of T-Mobile. Subsequently the Office sent it to the Office for the Protection of Competition on 25 October 2013 for a statement. After having incorporated its comments the draft ART 7 was sent to the European Commission for notification on 7 November 2013.

Broadband coverage development in the EU

Neelie Kroes, EU commissioner for Digital Agenda, welcomed the achievement of 100% basic broadband coverage in Europe even before the deadline according to the original expectations. Satellite broadband connection (currently available in all 28 Member States) is a high-speed two-way Internet connection via communication satellites instead of the fixed telephone network or other terrestrial equipment.

In fixed connection (ADSL, VDSL, cable, optical, metal) the report mentions 96.1% coverage, in mobile connection (2G, 3G, 4G) 99.4% coverage and in satellite connection 100% coverage.

When providing broadband connection to households and companies in the EU, mainly in rural areas, public funding still plays a role. The Commission issued instructions for state aid according to which Member States can implement broadband connection in a way that promotes competition.

The broadband connection support will be available through the instrument for the interconnection of Europe while information and communication technologies are now the priority of the EU structural funds.

Other objectives of the Digital Agenda in the area of broadband connection are:

- Basic broadband connection for all by 2013
- New generation networks (20 Mb/s and more) for all by 2020
- 50 % households with the connection with speed 100 Mb/s or higher.

From European regulators

Deregulation of market No. 3 in Finland

The European Commission informed about the commencement of a review concerning relevant market No. 3 (hereinafter referred to as “RT 3”) in Finland. FICORA⁷ has proven nonexistence of an undertaking with significant market power (SMP) in RT 3 as well as in relevant markets No. 1 and 2. The European Commission disagrees with this finding and believes in the market of call termination at a fixed location (RT 3) there is no replication capacity which is necessary for the provision of retail call services. Replication capacity is determined by a review of the respective RT, which FICORA failed to do in 2007.

Therefore, according to the European Commission, FICORA failed to provide a convincing proof that in spite of the 100% market share the operators do not have significant market power (SMP) in the market under review. There could also be obstacles to the single market and, in spite of regulation, FTR⁸ in Finland are quite high and that based on the evidence provided by FICORA the criterion of nonexistent or weak compensation power on the demand side will probably have no impact on FTR in the future. The European Commission concludes that if SMP is not properly evaluated, i.e., based on a thorough analysis of the competition conditions, the proposed deregulation of RT 3 is not justified and creates a barrier to the single market.

The Office on the consumer’s side

In October the Office opened 20,174 administrative proceedings pertaining to subscriber disputes between a person performing communication activities, on the one hand, and a participant, on the other hand, concerning payments and motions for opening proceeding on objection against the settlement of a complaint about the billing of the price or publicly available service of electronic communications. 6,129 decisions were issued on the subject, of which 6,098 decision concerning payments (of the price for the services).

The Office noticed a growing number of complaints of the consumers about the practices of some providers of electronic communications services who contact them by phone in order to change the contract on provision of electronic communications. They allegedly provide inaccurate or incorrect information which is capable of influencing the decisions of the consumers. For example, they tell the customer that his/her current plan will be discontinued and it is necessary to change it, and the change of the plan is typically associated with the acceptance of a new commitment.

Due to the growing number of complaints about these practices the Office deems it beneficial to inform again about the consumer rights as implied by the Electronic Communications Act. Section 63 (6) of the Electronic Communications Act lays down the procedure which operators must follow if they wish to unilaterally change contracts which have already been signed.

The operator must inform about the intended change of contract at least one month before the effective date of the change, in all its outlets, and also in a manner allowing remote access (on the website). The consumer must be also notified in a manner for which he/she had opted for the receipt of invoices. In the case of written invoice the

⁷ FICORA – Finland’s telecom operator.

⁸ FTR – Price for call termination in fixed network.

invoice shall include written information on the upcoming change of contract; in the case of an electronic invoice the mobile operator will comply with its obligation by sending a message, another notification within the self-service system or, if applicable, by an e-mail message.

If the change pertains to the so-called substantial requisites of the contract (e.g., price or calculation thereof, time for which the contract is made, duration of the notice period, and other substantial requisites specified in Section 63 (1) c) through q)), the above-mentioned notification obligation shall be accompanied by the obligation to inform the consumer about the possibility to terminate the contract without penalty as of the effective date of the change of the contract. The operator shall have the same obligation if the intended change of the contract results in impairment of the subscriber's position. If the mobile operator complies with its statutory notification obligation and the consumer does not explicitly manifest that he/she wishes to terminate his/her current contract as of the effective date of the change of the contract he/she shall be deemed to have accepted the changes of the contract, and such changed contract will become effective from the stated date.

The consumers' complaints imply that they are informed about the intended discontinuation of some plans only informally, most often by telephone, and so tend to be convinced to accept the change offered. In this respect, therefore, the Office deems it helpful to mention the right to terminate the contract which was entered into by means of remote communication. The consumer is entitled to withdraw from a contract which was made or changed in such manner, without stating the reason and without any penalization, within the period of fourteen days. This period starts running at the moment when the consumer is provided in writing (as a document or electronically) with information on the execution or change of the contract.

Questions and answers about the requisites of the contracts

Act No. 214/2013 Sb. (Collection of Laws), which, inter alia, amended Section 63 of the Electronic Communications Act (ECA) which regulates the requisites of the contracts on provision of publicly available service of electronic communications and connection to the public communication network entered into effect on 8 August 2013.

In connection with the above-mentioned amendment the Czech Telecommunication Office received a number of questions from businesses and consumers. It therefore now published the answers to the frequently asked questions.

So-called secondary contracts – provision of quantity discounts, etc.

Do the provisions of Section 63 (1) p) of the ECA and Section 63 (11) of the ECA, as amended (by Act No. 214/2013 Sb. (Collection of Laws)), apply also to the so-called secondary contracts (for example, general contracts, general agreements, significant customer contracts) the subject matter of which is not provision of the services of electronic communications but instead an obligation of the provider of the services of electronic communications to grant to the subscriber a discount on the price of the services subject to purchasing at least a certain volume of these services?

If the respective secondary contracts include arrangements on price for the provision of the services of electronic communications these arrangements become a part of the contract on provision of publicly available service of electronic communications or connection to the public communication network pursuant to Section 63 of the ECA.

With respect to the above, the provisions of Section 63 (1) p) and Section 63 (11) of the ECA, as amended, apply also to the above-mentioned contracts.

Investment costs of the set-up of the services of electronic communications

Are the provisions of Section 63 (1) p) and Section 63 (11) of the ECA, as amended, also applicable to the agreements the subject of which is a commitment of the company providing the publicly available service of electronic communications or providing connection to the public communication network to upgrade or adapt the networks according to the requirement of the subscriber and does the clause on protection of investment apply to the implementation of these requirements?

Is the subscriber obliged in the event of early termination of the use of the services of electronic communications to pay to the company providing the publicly available service of electronic communications or providing connection to the public communication network the aliquot part of the investment spent in vain (not redeemed)?

Section 63 of the ECA regulates the statutory requisites of the contract on provision of publicly available service of electronic communications or connection to the public communication network, but not investments in electronic communications networks or the protection thereof if they go beyond the connection to the public communication network (see also Section 40 of the ECA).

With respect to the above, provisions of Section 63 (1) p) and Section 63 (11) of the ECA, as amended, are therefore not applicable to the agreements the subject of which is an upgrade or adaptation of a network according to the requirement of the subscriber and clauses on protection of investment are not applicable to the implementation of these requirements if they exceed the requirements for connection to the public communication network, as stated above, regardless of whether they are included in one document or agreed-upon separately.

Transitory provision – individually agreed contracts

How should a company providing the publicly available service of electronic communications or providing connection to the public communication network make the contracts on provision of publicly available service of electronic communications or connection to the public communication network entered into individually with each subscriber comply with the amended provisions of the ECA, provided that the contents of such contracts are not outlined in the terms and conditions or another similar document and therefore cannot be changed unilaterally as foreseen by the ECA?

Is it possible to ensure compliance of the above-mentioned individual contracts with the amended version of the ECA by sending a written notification to all subscribers concerned that the provisions of the contracts affected by the obligation to ensure compliance with the amended version of the ECA were changed upon expiry of 6 months after the effective date of the amendment ex lege or is it necessary to change these contracts by signing a written addendum with all subscribers concerned?

Who will be responsible for “failing to ensure compliance of the contracts” pursuant to the transitory provision of the amendment of the ECA if the subscriber refuses to sign such addendum?

In this respect it is necessary to inform that the obligation laid down in the transitory provision of Act No. 214/2013 Sb. (Collection of Laws), i.e., obligation to ensure compliance with the respective amendment of the ECA applies to all types of contracts on provision of publicly available service of electronic communications or connection

to the public communication network regardless of whether the rights and obligations are regulated in the terms and conditions or directly in the contract concerned.

The Electronic Communications Act foresees changes of the contracts on provision of publicly available service of electronic communications and connection to the public communication network. If an individual contract provides for a different mechanism it is necessary to proceed according to the contract, i.e., respect the agreed-upon mode and fulfill it, e.g., by sending a draft addendum to the contract containing the respective change of the contract pursuant to the amendment of Section 63 of the ECA. If, however, a subscriber who has been notified in time refuses to sign such addendum to an individual contract which includes only the change of the respective provisions of the contract to make it comply with the amended wording of the Electronic Communications Act it may not be to the detriment of the company if the noncompliance with the statutory obligation was caused only by circumstances beyond the company's control.

Regarding this issue, it is necessary to add that the wording of the transitory provision of Act No. 214/2013 Sb. (Collection of Laws), including the period set for ensuring compliance of contracts with the new wording of the Electronic Communications Act, is the same as in the case of the so-called implementation amendment made by Act No. 468/2011 Sb. (Collection of Laws) which came into effect on 1 January 2012.

The method of execution of the change of an individual contract can therefore be similar to this above-mentioned case. The Office is not entitled to evaluate the period laid down by Act No. 214/2013 Sb. (Collection of Laws) for ensuring compliance of contracts with the amended wording of the ECA, or, more precisely, its adequacy. Nevertheless, as such stipulated obligation had been used before (Act No. 468/2011 Sb. (Collection of Laws)) and no major problems were encountered the lawmaker, when laying down the transitory provision, had no reason to stipulate this obligation, including the period, differently, either.

Disputes about the payment for terminals provided at discounted prices under the condition of early contract termination

Does the Office decide on the entitlement to payment of the costs associated with the provision of a terminal at discounted price in the event of early termination of the contract on provision of publicly available service of electronic communications or connection to the public communication network when Section 63 (1) p) of the ECA newly implies that the requisites of the contract on provision of publicly available service of electronic communications and connection to the public communication network include also the amount of payment of the costs associated with the telecommunication equipment which was provided to the subscriber at a discounted price and it is therefore a dispute about payment which is based directly on the ECA?

Pursuant to Section 129 (1) of the ECA, the Office decides disputes between a person performing communication activities (Section 7) on the one hand, and a subscriber or, as the case may be, user, on the other hand, based on a motion of any party to the dispute if the dispute pertains to the obligations stipulated by or under this act.

Section 64 (1) of the ECA clearly implies that a dispute, if any, about the payment of the costs associated with the provision of a terminal does not concern the obligations imposed by or under the ECA, pursuant to Section 129 of the ECA. This is a dispute about payment for provided goods and not for provided services of electronic communications, even if the entitlement to the pay-up of the purchase price, for example, for a mobile phone (terminal) incurred as a result of the user's obligation to pay the fixed fee for the service and usage – i.e., in causality with the breach of the contract on provision of telecommunication services. In such case it is still entitlement under a normal private-law relationship established by the purchase contract. It is therefore the court, not the Office that is competent to decide on it.

Similar approach is followed in the case of decisions on a contractual fine, which is decided by the authority which is competent, according to the law, to settle disputes regarding the breach of the obligation itself.

It is therefore always necessary to distinguish the breach of obligation from which the entitlement to the contractual fine breach resulted. If it is a breach of obligation under the contract where the subscriber fails to pay the price for the service provided it will be the Office that will decide on the contractual fine because the nonpayment of the price for the service provided constitutes a breach of the ECA and the entitlement to the contractual fine is directly related to this breach. A different situation is the case of a contractual fine resulting, e.g., from failure to return the terminal equipment. The court is competent to decide on the entitlement to such contractual fine.

With respect to the above, it is clear that it is the court that would be competent to decide on the entitlement to the payment of the price or costs associated with telecommunication terminal equipment provided at a discounted price.

Provision of information in the event of execution or change of contract by means of a text message (SMS)

What should be the procedure when entering into contracts using remote communication systems?

Is it admissible, from the Office's point of view, that the obligation newly imposed on the company providing the publicly available service of electronic communications or providing connection to the public communication network under Section 63 (9) of the ECA, i.e., that it provide the subscribers with information on the execution or change of the contract on provision of publicly available service of electronic communications or connection to the public communication network using remote communication systems in writing, namely in electronic or document form, is in certain cases (e.g., set-up of the roaming package of services or activation or deactivation of a voice mailbox) complied with by sending such information to the subscriber by a text message (SMS)?

When entering into contracts using remote communication systems, for example when entering into a contract over the telephone where the subscriber does not get the complete terms and conditions, the company providing the publicly available service of electronic communications or providing connection to the public communication network is obliged to provide the subscriber immediately after the execution or change of the contract with information pursuant to Section 63 (1) of the ECA (the respective terms and conditions) in writing, namely in electronic or document form, and from the date of provision of these terms and conditions the subscriber will have 14 days to withdraw from the contract pursuant to Section 63 (9) of the ECA.

With respect to this fact and with respect to the characteristic of a text message (SMS) it is possible to assume that the statutory obligation in question cannot be complied with by using a text message (SMS).

Entitlement to the payment of the discount provided on the price of a service or non-charged activation fee as a result of the subscriber's non-compliance with the contract term

Is the company providing the publicly available service of electronic communications or providing connection to the public communication network entitled to require from the subscriber who terminates a contract on provision of publicly available service of electronic communications or connection to the public communication network prior to the expiration of the term for which the contract was signed, on top of the payment newly implied under Section 63 (1) p) of the ECA:

a) also retroactive payment of the discount for the period from the beginning of the commitment until the early termination of the contract?

b) also pay-up or aliquot part of the installation fee which was not charged due to signing of contract for a definite period, due to the anticipation that the costs of the activation thereof would be written off by the compliance with the agreed-upon term of the commitment?

This formulation of the entitlement to payment in the event of termination of the contract prior to the expiration of the term for which the contract has been provided in Section 63 (1) p) of the ECA since the so-called implementation amendment of the ECA made by Act No. 468/2011 Sb. (Collection of Laws) which entered into effect already on 1 January 2012. The amendment made by Act No. 214/2013 Sb. (Collection of Laws) only introduced the maximum limit, i.e., stipulated the maximum amount (method of determination thereof) of such payment which can be applied in the event of termination of a contract before the expiry of its term.

Construction of Section 63 (1) p) of the ECA implies that it is a mandatory provision, i.e., one from which the contracting parties may not depart.

The method of determination of the amount of payment in the event of termination of a contract before the expiry of its term, i.e., for example of which components the payment will consist, can be agreed between the contracting parties. Total amount of the payment in the event of termination of a contract before the expiry of its term, however, may not exceed the limit stipulated by the Act, i.e., must not be higher than 1/5 of the sum of monthly fees remaining until the end of the agreed-upon term of the contract or 1/5 of the sum of the minimum agreed-upon monthly payments remaining until the end of the agreed-upon term of the contract.

The conclusions following from the answer to the previous part of the question can be applied similarly to the requirement, if any, for pay-up of the installation fee or its aliquot part which was not charged due to signing of contract for a definite period, provided that the maximum amount of the payment in the event of termination of a contract before the expiry of its term is strictly defined by the Act and may not be exceeded.

Moment of application of the provisions of Section 63 (1) p) of the ECA

As of what point of time is the company providing the publicly available service of electronic communications or providing connection to the public communication network obliged to apply the provisions of Section 63 (1) p), i.e., to require from the subscriber of the contract on provision of publicly available service of electronic communications or connection to the public communication network, if terminated before expiry of its term, payment which must not be higher than 1/5 of the sum of monthly fees remaining until the end of the agreed-upon term of the contract or 1/5 of the sum of the minimum agreed-upon monthly payments remaining until the end of the agreed-upon term of the contract?

Does the above-mentioned obligation exist only when the changes of the contracts in question have been incorporated into the terms and conditions or similar terms of provision of the services within the set period of six months, or does this limit have to be applied at this point of time?

When comparing the provisions of Section 63 (1) p) of the ECA before and after the amendment made by Act No. 214/2013 Sb. (Collection of Laws) it is clear that this amendment only introduced the statutory limitation of the amount of payment which can be required in the event of termination of a subscriber contract before the expiry of its term for which it was signed by a notice by the subscriber or the company or by agreement of the two parties thereto. This statutory limitation brings effects immediately at the time of coming into effect of the amendment in question, i.e., from 8 August 2013.

The period in maximum duration of six months specified in the transitory provision of the amendment in question (Act No. 214/2013 Sb. (Collection of Laws)), is a period, in the Office's opinion, intended for the providers of the services of electronic communications only for the purpose of making changes of the current contractual

documentation so that it would comply with the amended wording of the ECA (see also Section 63 (5) in conjunction with Section 118 (14) t) of the ECA).

The moment of incorporation of the changes concerned into the terms and conditions or, as the case may be, in general or similar terms and conditions is therefore not determining for the obligation to apply the limit specified in Section 63 (1) p) of the ECA from the coming into force of the amendment in question because this obligation arises directly from the Act.

The above opinion can be deduced also from the fact that the lawmaker specified the obligation including the period in the transitory provision of the amendment in question and did not use for this purpose the institute of the deferred effect of a part of the Act.