

# Monthly monitoring report no. 12/2012 of the Czech Telecommunication Office December 2012

## *Executive summary*

On November 7 the CTU organized the workshop introducing to the professional public the newly created cost model for the calculation of prices of services provided in relevant markets no. 4 and 5 (wholesale markets for unbundling of physical infrastructure and broadband access in the networks of electronic communications). (more information can be found in Chapter 2).

On December 10 the CTU received comments from the European Commission concerning the decision relating to the determination of new lower regulated prices for the termination of call in fixed network (for the company Telefónica) and for the termination of call in mobile network (for the company Telefónica, T-Mobile and Vodafone). After discussing comments of the Commission, the CTU's Council endorsed the decision on prices for the termination of call in mobile network and this decision became legally effective (more information can be found in Chapter 2). Serious reservation of the European Commission, concerning the decision on prices for termination of call in fixed network of the company Telefónica, will be assessed in the second phase of the implementation process by BEREC expert group. The BEREC will then vote to reach common standpoint.

On December 14 the CTU organized the workshop for the professional public concerning prepared draft analysis of wholesale relevant market no. 2 – Origination of call (origination) in public telephone network in fixed location. (more information can be found in Chapter 2).

During December the CTU finished the analysis of relevant market no. 8 – Access and origin of call (origination) in public mobile telephone networks. In the draft the Office included the comments received from operators concerned ensuing from the workshop, which took place at the beginning of November (see MMZ 11/2012). The CTU published the draft analysis on its Internet pages on December 21 and began its public consultation. Comments concerning the draft analysis can be raised before January 31, 2013. (more information can be found in Chapter 2).

Simultaneously, on December 21, the CTU announced the beginning of the third round of the analysis of the relevant market no. 1 – Access to the public telephone network in fixed location. (more information can be found in Chapter 2).

In December the CTU published [The Program of statistic detection of the CTU](#) in 2013 and relevant [forms](#) for data collection for the year 2012.

The CTU also promulgated the decision in administrative proceedings against the company M77 Group S.A., which is a provider of services of satellite television Skylink and CS Link on the territory of the Czech Republic. In two administrative proceedings the Office imposed fines at the maximum amounts of CZK 5,000,000 and/or 10,000,000 for administrative delicts of the company (more information can be found in Chapter 2).

During December continued electronic auction phase of tender proceedings for granting rights for utilization of radio frequencies serving for public communication network in the bands of 800 MHz, 1,800 MHz and 2,600 MHz. Considering persisting interest of participants of the auction in frequencies offered, the auction continues in the month of January 2013 as well.

In the theme of the month the CTU concentrates itself to negotiations and main topics of the Conference on international communications WCIT-12, which was held on December 3 – 14, 2012, and the principal task of which was the approval of updated Telecommunication Order or ITRs (International Telecommunication Regulations) (hereinafter "the Order") (more information can be found in Chapter 1).

## **1. Current situation on the market**

### **Telefónica**

The company Telefónica prolonged, until the end of 2012, its special offer "O2 Internet Bundle". Customers, who, within the framework of this offer, have established the service of digital television O2 TV on the same connecting line with the tariff O2 Flexi, including the obligation to utilize this service for the period of 12 months and the service O2 Internet connection with the tariff Internet Optimal, have obtained price privilege. For the utilization of the tariff O2 TV Flexi during the period of 12 months, the Telefónica will charge them, starting from the day of establishment of the service, the price of CZK 200 per month (instead of standard price of CZK 450 per month) and for the lease of set-top-box the price of CZK 49 per month (instead of standard price of CZK 150 per month). During the period of privileged period a customer may order, within the framework of the tariff O2 TV Flexi, only program packages "Documenty, Sport, Děti, Styl, Hudba, Seriály and Filmy". During the period of twelve months customers will further pay for the utilization of the service Internet Optimal, starting from the day of establishment of the service, the price at the amount of CZK 450 per month (instead of standard price of CZK 750 per month), and/or for the utilization of the service Internet Aktiv the price at the amount of CZK 550 per month (instead of standard price of CZK 850 per month).

Until the end of 2012 the company prolonged validity of acquisition offers of Internet connection xDSL in variants Internet Optimal with the speed of up to 20 Mbit/s for CZK 500 per month and Internet Aktiv with the speed of up to 40 Mbit/s for CZK 600 per month for all new customers with the obligation for 12 months. Establishment of this service is free of charge, without any fees for fixed line and without any limitation of data transferred. Starting from the 13<sup>th</sup> month customers will be charged for the utilization of the service standard price, which is CZK 750 per month with the variant Internet Optimal and CZK 850 per month with the variant Internet Aktiv. For the extra fee of CZK 150 per month it is possible to obtain some of bonuses to the tariff Internet Optimal in the form of unbundling of the service O2 IPTV with up to 46 TV programs or the tablet Prestigio.

Also during the month of December 2012, the Telefónica offered in some regions<sup>1</sup> above mentioned services of Internet connection under more favourable conditions than they are provided within the framework of „standard“ acquisition offers. New customers, who, in selected corporate stores, concluded the contract with the obligation for twelve months, obtained the service Internet Optimal for the price of CZK 400 and the service Internet Aktiv for CZK 550 per month. Starting from the 13<sup>th</sup> month customers will pay standard prices.

The company Telefónica also offered to all its existing customers free activation of higher speed of Internet connection with the speed of up to 40 Mbit/s for data downloading if the activation is technically feasible. A subscriber, who will increase the tariff to Internet Optimal, will pay, for the period of 12 months, starting from the establishment of the service, the price of CZK 600 per month. A subscriber, who will increase the tariff to Internet Aktiv, will pay, for the period of 12 months starting from the establishment of the service, also the price of CZK 600 CZK per month.

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<sup>1</sup> Benešov, Břeclav, Čáslav, Hodonín, Cheb, Jablonec nad Nisou, Jičín, Jindřichův Hradec, Kutná Hora, Kyjov, Nymburk, Nový Jičín, Pardubice, Poděbrady, Olomouc, Plzeň, Praha Východ, Prachatice, Strakonice, Svitavy, Ostrava, Třebíč, Ústí nad Labem, Ústí nad Orlicí, Vlašim, Zlín.

## **T-Mobile**

Until December 31, 2012 the company T-Mobile provided acquisition offer to its xDSL service "Internet na doma Standard". Customers, who have concluded flat fee voice contract, will pay for fixed internet, if they conclude the contract for the period of 24 months, the price at the amount of CZK 349 per month. Standard price of the service "Internet na doma Standard", if the contract of voice flat fee is concluded, is either CZK 489 per month (with the voice flat fee of up to CZK 600 per month) or CZK 399 per month (with the voice flat fee above CZK 600 per month). The speed of the Internet depends on available technology and is either up to 8 Mbit/s (in case of ADSL) or up to 20 Mbit/s (in case of VDSL).

## **Vodafone**

Customers of the company Vodafone, who have activated pre-paid card "Divoká karta", could, from December 1, 2012 until December 31, 2012, call to the Vodafone network for CZK 1.50 per minute. From December 1, 2012 until January 31, 2013, customers may also call to other networks in the Czech Republic for CZK 1.99 per minute.

From December 1, 2012 until January 31, 2013, customers, who have activated pre-paid Vodafone card "Karta bez limitu", may call outside Vodafone network for discounted CZK 2.50 per minute.

## **UPC**

Until December 31, 2012 the company UPC prolonged the acquisition offer within the framework of which new customers, who have ordered the service UPC Telefon with the tariff Basic and concluded the contract including the obligation to utilize the service for the period of 12 months, will pay monthly flat rate at the amount of CZK 1 instead of standard price of CZK 222.

The company UPC prolonged the campaign earmarked for new customers, who ordered on-line the service of digital cable television Klasik with program packages Sport, Relax or Darwin before the end of 2012. Customers, who concluded the contract including the obligation to utilize the service for 12 months, received for the period of first six months discount from the monthly price. Instead of standard CZK 250 they will pay CZK 150 per month. Within the framework of the service Klasik more than 40 Czech and Slovak programs including 7 HD programs can be used.

For its new customers the company UPC prolonged the offer of the service of digital television Komfort. Customers, who by means of on-line order, requested the service Komfort with the obligation for 12 months before December 31, 2012, received discount from monthly price. For the period of six months these customers will pay CZK 350 instead of standard price of CZK 550. Within the framework of the service Komfort more than 80 programs including 15 HD programs can be used.

The company further prolonged the campaign earmarked for new customers who, before December 31, 2012, ordered on-line the service of digital cable television Mini. Customers, who concluded the contract for 12 months, will pay for this service the price of CZK 150 monthly instead of standard monthly price of CZK 210.76 and will be able to watch, within the framework of this service, 20 Czech programs including 6 HD programs.

The price for connection of services within the framework of these campaigns is CZK 99 instead of standard CZK 1,000.

Until December 31, 2012 the company prolonged acquisition offer of rapid connection to the Internet for households in variants Fiber Power 30 Mbit/s for privileged price of CZK 399 per month, Fiber Power 60 Mbit/s for privileged price of CZK 499 per month and Fiber Power 120 Mbit/s for privileged price of CZK 599 per month. These privileged prices are valid for the period of 6 months if the contract is concluded with the obligation for 12 months. Starting with the seventh year of utilization of the service standard monthly prices of CZK 499

for Fiber Power 30 Mbit/s, CZK 599 for Fiber Power 60 Mbit/s and CZK 799 for Fiber Power 120 Mbit/s will be applied.

In December 2012 the company had also a special offer for tradesmen and entrepreneurs who, if they take over the obligation of 24 months, could obtain the service of Fiber Business with the speed of 60 Mbit/s for privileged monthly price of CZK 419, with the speed of 80 Mbit/s for privileged monthly price of CZK 599 CZK and in the variant of 120 Mbit/s for privileged monthly price of CZK 799. With the obligation for the period of 12 months privileged monthly prices are higher (CZK 499 for the speed of 60 Mbit/s, CZK 699 for the speed of 80 Mbit/s and CZK 899 for the speed of 120 Mbit/s). After the expiry of the obligation standard prices will be applied, i.e. for the service with the speed of 60 Mbit/s it is the price of CZK 599 per month, for the variant of 80 Mbit/s the price of CZK 799 per month and for the variant of 120 Mbit/s the price of CZK 999 per month. All above mentioned prices for entrepreneurs are brought forward without VAT.

### **Air Telecom – U:fon**

The company Air Telecom, which is active in the Czech Republic since December 1, 2012 under the trade mark U:fon (original owner was the company MobilKom, a.s.), introduced its new tariffs for its new and existing customers. Starting from December 2012 it offered for fixed lines new tariffs "Domáci linka MINI" and "Domáci linka STANDARD". Within the framework of the tariff "Domáci linka" U:fon offers 20 free minutes for monthly flat rate of CZK 179, which can be drawn for calls to all fixed and mobile networks in the Czech Republic and for international calls to fixed networks in selected countries. For monthly price of CZK 289, within the framework of the tariff "Domáci linka STANDARD", U:fon offers 100 free minutes for calls to remaining mobile networks in the Czech Republic and 100 free minutes for calls to fixed networks in the Czech Republic and to selected networks abroad. Both tariffs offer free of charge calls to own network and after free minutes are drawn out the price of a call to fixed lines out of own network is CZK 0.80 per minute and CZK 2 costs one minute of call to mobiles out of own network. To these tariffs it is also possible to buy, for example, for CZK 99 per month a package of 50 free minutes, or package of 100 free minutes for 149 CZK per month, which can be drawn for calls to all fixed and mobile networks in the Czech Republic and for calls to selected networks abroad. The operator also offers the tariff with unlimited calls from its mobile network for CZK 840 per month. With the help of this tariff customers may call, without any extra fees, to the networks of U:fon, to all fixed and mobile networks in the Czech Republic and also to fixed lines in selected foreign countries. Among these countries there are, for example, Slovakia, Germany, USA, Great Britain. SMS in own network is free of charge and out of the network a customer will pay CZK 1.50.

U:fon offers the tariff "Volání za korunu", where for monthly flat rate of CZK 199 a customer receives 100 free minutes for calls fixed and mobile networks in the Czech Republic, including selected foreign lines (from mobile U:fon network). Complementary service to this tariff are unlimited calls in own network if customer pays extra CZK 49. After the number of free minutes is consumed, the price of call is 1 CZK per minute to own network and out of the network (mobile/fixed). For SMS in the network and out of the network customer will pay CZK 1.50. In the tariff "Volání za korunu Plus" the company offers 200 free minutes for CZK 299 and calls and SMS within the framework of the network are free of charge. If the number of free minutes spent out of the operator's network is exceeded, customer pays CZK 1 per minute (in fixed and mobile networks).

### **Christmas and New Year's traffic in the networks of mobile operators**

According to the information published, mobile operators, during Christmas Day of 2012, as compared to the same period of preceding year, recorded the increase of traffic in their networks. Overall, the increase of traffic of SMS continued as compared to the previous year, and operators recorded enormous increase of traffic of MMS. During Christmas Day

Telefónica connected more than 14,700,000 calls, sent 25,200,000 SMS (a year-on-year increase by one million) and 332,600 MMS (a year-on-year increase by approximately 50 %). During Christmas Day T-Mobile connected 16,300,000 calls (a year-on-year decrease by 2,9 %), sent 26,300,000 SMS (a year-on-year decrease by 3,9 %) and 336,600 MMS (a year-on-year increase by 24,9 %). Vodafone connected almost 7,000,000 calls (a year-on-year decrease by 7 %), sent 17,200,000 SMS (a year-on-year increase by 1 %) and almost 170,000 MMS (a year-on-year increase 30 %).

During New Year's Eve the Telefónica connected more than 17,000,000 calls, sent 15,300,000 SMS (a year-on-year increase by one million) and 165,000 MMS (a year-on-year increase by approximately 8 %). T-Mobile connected almost 24,000,000 calls (a year-on-year increase by almost 19 %), sent more than 15,000,000 SMS (same as in the previous year) and 205,000 MMS (a year-on-year increase by 2 %). Vodafone connected almost 11,400,000 calls (a year-on-year increase by 7 %), sent 8,300,000 SMS (a slight year-on-year decrease) and almost 101,200 MMS (a year-on-year increase by 14 %).

### ***The Theme of the month – the Conference on international communications WCIT-12***

The Conference on international communications WCIT-12<sup>2</sup> was held on December 3 – 14 2012. The course of the Conference, which should have endorsed updated Telecommunication Order or ITRs (International Telecommunication Regulations), was unusual in terms of content as well as of the results.

The reason of this anomaly was the agenda of the Conference itself and different viewpoints on outcomes expected.

Original wording of the Order dates back to the year 1988 and was conforming to the time when each state owned its own monopoly telecommunication operator and international telecommunication traffic consisted mainly in telephone calls realised by means of fixed lines. At those times the Telecommunication Order was instrumental in helping to specify such issues as determination of currency in which states settled telecommunication services among themselves.

In the meantime telecommunication environment changed principally, in many countries monopoly of state terminated and liberal market prevailed. Many new operators were established. International communications did not need detailed regulations any more. Operators concluded commercial agreements among themselves without any state assistance. They have chosen necessary means all by themselves; they unified technical conditions and agreed on prices. The most dynamic development of telecommunications so far took place. Mobile networks were developed, which have made possible communication practically throughout the globe. 6 billions SIM cards operated currently speak for themselves. Development of communication networks further accelerated emergence of the Internet which became a tool of social and economic development.

Originally, the European countries came to the view that the Order has lost the reason of its existence and can be cancelled without any restitution. However, there were particularly the countries with still unliberalized telecommunications and the countries exhibiting high degree of state regulation of telecommunications (with numerous representation of emerging economies), which, over a long period of time, promoted that the conference convened will be focused on the revision of the Order. The prove can be found in

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<sup>2</sup> WCIT (World Telecommunication Conference on International Telecommunication) International Telecommunication Union (ITU – International Telecommunication Union), United Arab Emirates, Dubai 3. - 14. 12. 2012.

the Resolution 121<sup>3</sup>, which required the ITU Council to establish a working group dealing with the study of issues of the revision of the Order. However, the group did not arrive to consensus concerning further steps. This was followed by the Resolution 146<sup>4</sup>, which de facto authorized the ITU Council to convene the WCIT conference. Preparation of the conference was organized in working group of the ITU Council. Numerous representation of member states in negotiations and the proceedings of this group was a foreshadow of future development of the WCIT Conference. It was possible to find consensus in a limited number of provisions of the Order only. In particular, there were clearly obsolete parts of the text where consensus was found and which could be deleted. Efforts trying to include provisions concerning the Internet in the Order were confronted with resistance of countries supporting liberalized market and open society company which could not accept this. Other disputes came with making working documents open to the public. The main output of the group was the document, which, although it was conceived as the draft of the new Order, however, number of provisions had even several alternatives.

The initial phase of the conference, including discussion of comments sent to the conference, brought the evidence that the conference obviously will not accelerate existing positive development of telecommunications and will not contribute to maximum benefits for the largest possible share of the population. Some very frequently repeated themes of comments had almost criminal nature as, for instance, – cybercrime, misuse, security, fraud, theme of molesting/unsolicited communications (spam), child online protection or environmental pollution (eWaste).

Originator and proposer of these themes was number of developing countries. The Order should, however, be an international agreement stipulating main principles of international communications. The mission of the ITU is to solve technical problems of information transfers. Sovereignty of countries must be untouchable, and untouchable should be also the content transferred by means of telecommunications. Demands calling for including provisions, containing the above mentioned themes in the Order or extending the competency of the Order evidently have reasons, both objective as well as vicarious.

Realistically, it can be inferred that the reason may be, for example, the effort to solve not only economic problems but political or religious problems as well. Depending on their interests some states try to explain some notions for the sake of their purposes and argue the need of solution. Some proposals are more pregnant in content and often have irrational nature.

As an example may serves a small developing country, dependent on connection to the world through the territory of another state and by means of the only operator in a neighbouring country. Such a monopoly often means high prices. Representatives of such a country therefore saw the hope in the Order and its provisions, which can prevent this situation. It is, nevertheless, obvious, that such provisions do not belong to the document which should have universal validity and the solution rests in specific commercial contracts and the steps which will lead the best to the creation of another communication channels and to the stimulation of competition.

Notions are also used targeted at given purpose. Safety of communications is certainly dependent on the communication network through which international communications go, which must be resistant to overloading, disruption, weather conditions, earthquakes, flooding, power cuts in electric network. However, there are also demands requiring access to tools influencing communication network in order „to safeguard safety“, where, behind this notion of safety, different interpretation is concealed aimed at prevention of communication of persons belonging to different religious castes, access to sexual sensitive content or uncontrolled communication of members of political opposition.

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<sup>3</sup> Endorsed by the Conference of Governmental Plenipotentiaries (Plenipotentiary conference), Marrakesh, 2002.

<sup>4</sup> Endorsed by the Conference of Governmental Plenipotentiaries (Plenipotentiary conference), Antalya, 2006.

In this case these efforts are particularly focused against unlimited dissemination of information by means of the Internet, or against „liberty of the Internet“.

Telecommunication Order is the document, which complements the Constitution and the ITU Convention. It is the international agreement which is subject to ratification. It defines the legal framework. Attempts to restrict freedom of the Internet by means of infiltration and erosion of the agreement had obvious character. As an example may serve the attempts which, for a long time already, are trying to insert, purposefully, provisions concerning safety of communications, which would justify requirements leading to decisions concerning the Internet. For example, Russia and China belong to the group of countries which, for a long period of time, demand that the issues of addresses, numbering, names and domains should be administered world-wide by the ITU. Very hardly can be accepted arguments maintaining that, for example, it is necessary to prevent lack of resources and „monopoly“ in the situation where it is evident how highly effective was independent administration of the Internet, not influenced by any power interests of any political representation, in transfer to the IPv6. To this approach belongs also the assertion that the Order should include the ICT, without precise definition what the notion of the ICT encompasses. The ICT, namely information and communication technologies, are, generally taken, understood broadly. Unlike telecommunications, where it is the transfer of signal carrying the information, among the activities falling under the ICT information processing can be easily included. And, consequently, breaking the taboo that communicated content does not belong to the competency of the Order and should not be aggrieved by the transmission.

On the other hand, less developed countries which, for various reasons, are unable to deal with really existing negative effects as, for example, spam, molesting calls, overcharged tariffs, are easily subject to the conception that proclamation of „necessary changes“ of the Order is in their interest.

Taking into account that provisions of the Order should suit both the countries whose legislation do not allow interventions in the commercial field and less developed countries with so far unliberalized market which require, for example, the existence of provisions determining that tariffs are stipulated by the state, we can state that those requirements are often completely contradictory. Therefore the search for compromise wording of individual provisions of the Order was very demanding.

Very curious was, for instance, requirement of some countries of developing world to know the route of communication across neighbouring countries. It was a kind of relict which was justified by the need to prevent frauds and/or manipulations leading to increase of prices, i.e. to have a tool of control for cases when operator selects the route of communication so that it is the longest and therefore brings the highest yields from transit.

The requirement demanding knowledge of the route of communication means interference in the sovereignty of other countries. In packet operation the route is not fixed and for individual connections it is not monitored even by operator, let alone the state on which the obligation to provide the information should apply. From this aspect this requirement was considerably out of reality.

To more serious issues belonged the question of definition of subjects to which obligations ensuing from the contract (namely the Order) relate. Signatories of the contract are member states and international communication is realised by commercial subjects in liberalized environment. Definition of these subjects plays a key role. If, in harmony with the conception of telecommunications, there are definitely operators who, by means of their networks, provide telecommunication operation and thus telecommunication services – based on transmission, routing of signals of electromagnetic or optical nature, the definition is clear. If the definition is less rigid, also Internet provider may be included among the subjects. And this is the beginning of opportunity to demand, by means of international agreement, prevention of transmission of unwanted content „for security reasons“. The threat

of "legal" introduction of censorship and intervention into general human rights can potentially rise.

During the Conference, similarly as during its preparation, participating countries in their majority were divided in principal issues in two camps. No wonder then that after the first half of the Conference no consolidated texts of updated Order were accepted. Nobody, who, at the beginning of the Conference, witnessed principal opposition of many countries against Swedish proposal, supported also by the Czech Republic, that the Conference is fully transparent towards public, that the media have full access to the Conference and that all its documents are publicly available, could be surprised by this development.

It was, in particular, thanks to the attitude of the General Secretary of the ITU, Mr Hamadoun Touré, who, at the beginning of the Conference, managed to carry through, despite the opposition, to hold at least daily press conferences, to open up webcasting from plenary sessions and documents endorsed by plenary sessions.

Therefore the public was not continuously informed about what proposals were submitted by what country and how the wording of proposals of specific provisions of the Order negatively or positively influenced the course of negotiations preceding plenary sessions. However, predicative value had the very course of plenary sessions which were, or their records, publicly available (they are available at <http://www.itu.int/en/wcit-12/Pages/webcast.aspx>). They provide certain picture on which states and how defended the interests of the public. It is only necessary to consider carefully where the substance was.

For example, to maintain that it is necessary to fight spam and demand, in the interest of users, that provisions on spam are included in the Order seems to be logical. However, it is true only until the time you realize that spam is primarily information which is considered unwanted by some user. However, the same information may be desirable for some user and is not considered a spam. Therefore, no complete „solution“ exists in any state. No international agreement is necessary for measures concerning application of technical resources against spam, neither training of users. So what is behind efforts to introduce spam in international agreement and to extend thus its competency? After all, the role of international agreement is to regulate something and it is hardly in the interest of public to regulate the information intended for it.

Background suggested that the same camp supported also the proposal that telecommunication conferences are held in regular, for example, four-years' intervals in order to „adapt continuously the Order to the needs“. The fact that direct costs of the ITU (without the costs of the Member states themselves) connected to the course of the conference itself are in millions of Swiss francs and that during the last 24 years, when no telecommunication conference was held and the Order was not „adapted“, saw the greatest boom of telecommunications in human history, was not mentioned.

Specialized agency of the United Nations (UN), which is the ITU, has its procedural rules customized to professional issues of telecommunications. Out of 193 Member states of the UN 151 states participated in the Conference on International telecommunications. Taking into account the number of members of delegations and number of observers, it is not surprising that in case of plenary sessions the main meeting room having the capacity over 1,300 participants was not enough to accommodate them all.

The number of plenary sessions on the ITU conferences is minimal. Their mission is decision-making process – plenary sessions decide on the structure of the conference, composition of committees, who will lead them, which materials will be prepared by whom and sessions then discuss and endorse these documents.

Under normal conditions plenary session does not prepare documents, only endorses them, and decides on minor changes at most. Formulation of integrated comprehensive texts on such a broad forum is practically impossible considering quantity of participants. To this purpose serve committees which constitute their working groups to prepare certain parts (for

example, articles of agreement). Details (for example, proposal of some specific provision), will be prepared by only a small group of participants in design group established by working group.

But the Conference WCIT-12 was anything but an ordinary conference. The degree of contradictions included in comments containing proposals of the text of the new agreement, i.e. the updated Order, was so principal that relevant committee entrusted with elaboration of proposal of the Order submitted the document having plenty of contradictory variants.

Therefore, instead of mere confirmation or minor corrections of the texts, comprehensive formulation had to be discussed by 151 delegations. View alternated view and nor night meetings brought about any result.

Chairman of the Conference decided to make a radical step. He stopped the plenary session meeting and asked for discussion in the narrowest circle of representatives of six regional groupings. These groupings represent Asia-Pacific region, both Americas, region of Europe, the group of Arab countries, the group of African countries and the group of independent (post-Soviet) states.

This circle already succeeded in formulating compromise conclusions and submitted them subsequently to the plenary sessions where they were acceptable for the majority of countries.

Because of obvious unacceptability for developed countries, Russian proposals, introducing provisions concerning the Internet directly in the Order and the set of proposals assembled by Arab countries, which would have similar, albeit indirect effect, were withdrawn or not submitted at all.

Instead of destruction the Conference entered into the stage where agreement in several issues solely was sufficient. However, a break was brought about by submission of proposal of resolution on the right of states for access to electronic communications initiated by Cuba. This resolution again returned back on the table the problems of the Internet which do not belong to the exclusive competency of the ITU. Moreover, vague formulations of the resolution could be misused by different interpretations even to the extent that a state has the right to insist on interconnection with other country without the obligation to pay for costs of utilisation of transmission routes. To the countries demanding withdrawal of the proposal from the discussion belonged also the EU countries. The request of Iran to continue in discussion over the resolution in the form of indicative vote had serious consequences. Utilisation of vote is the manifestation of intolerance, based on abundance of Arab and African countries only. Encouraged by the voting, by which, in a non-standard way, „acceptance“ of the text of the resolution was justified, these countries began not only to refuse compromise proposals of the USA and Europe, but started to raise demands asking for adaptations of some parts of the Order the wording of which they already accepted before.

As an example may serve the provisions of the Preamble, which does not contain originally proposed wording dealing with application of general human rights. It testified great unwillingness of many countries to fully recognize the rights of man for freedom of communications, speech and privacy. For example, two big countries denied that the rights enshrined in the Declaration of Human rights of the United Nations relate to man as individual and demanded the role of state supported by arguments that „there is no right of individual without the right of the state“ and that „human rights apply to both states and citizens“.

Already agreed provision was removed stipulating exhaustively that content (i.e. information transported by telecommunications) is outside the influence of the Order and was replaced by ambiguous wording. Thus the space was opened for efforts to enforce

ensorship, for efforts labelling any information as undesirable (they can be easily marked as spam), potentially allowing to propose prohibition of transmission.

Not only the US proposal that subjects mediating international communications are positively defined by the statement that they provide „public correspondence“ was not accepted, but on contrary, relevant provisions were mitigated so that they can now be interpreted also on subjects which should have nothing in common with the Order. For instance, there are the issues of private or governmental networks and services.

Dissatisfaction of developed countries was also based on other ambiguous formulations, for example, security, which might be related to the content or to formulations of economic nature trying to prescribe a certain behaviour and/or responsibility of state.

Many countries including the USA responded to such obstructions by releasing the statement that in these circumstances they do not intend to join their signature to final deeds of the Conference. Analogical statements, indicating that a country do not intend to be bound by newly accepted Order, could be heard in speeches of representatives of Canada, Australia, Great Britain, Sweden and also the Czech Republic.

The meeting then terminated the discussion of remaining provisions without contradictions, and integrated document was generated, the text of which passed through the second reading with minimal interventions and was therefore endorsed by the meeting. The final deeds of the Conference are included in the updated Order and five resolutions<sup>5</sup> – see <http://www.itu.int/en/wcit-12/Documents/final-deeds-wcit-12.pdf>.

The course of the Conference is the proof of influence which telecommunications have in the current world. Polarization of opinion is the consequence of different perception of the role of telecommunications as technical tool serving to dissemination of information. The conception of open society and conception of society where decision-making process at the governmental level with autocratic elements is predominant have different priorities especially in the field of access to information.

Division of the current world is documented by the fact that out of 144<sup>6</sup> countries authorized to vote at the Conference and sign, 89 countries joined their signatures to final deeds.

Among the states that did not sign the deeds belong 40 countries, represented in regional grouping of European countries CEPT (i.e. including all EU Member states, Albania, Andorra, Montenegro, Croatia, Lichtenstein, Norway, Serbia, Switzerland), and countries from American grouping – USA, Canada, Chile, Peru, Costa Rica; Asian--Pacific grouping – India, Japan, Australia, New Zealand, Philippines etc.

The states who are not signatories of the new agreement are bound by original wording of the Order. The new Order will become effective on January 1, 2015.

## **2. Regulatory measures**

### **Market analysis**

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<sup>5</sup> RESOLUTION PLEN/1 (DUBAI, 2012) Special measures for landlocked developing countries and small island developing states for access to international optical fibre networks,  
RESOLUTION PLEN/2 (DUBAI, 2012) Globally harmonized national number for access to emergency services,  
RESOLUTION PLEN/3 (DUBAI, 2012) To foster an enabling environment for the greater growth of the Internet,  
RESOLUTION PLEN/4 (DUBAI, 2012) Periodic review of the International Telecommunication Regulations,  
RESOLUTION PLEN/5 (DUBAI, 2012) International telecommunication service traffic termination and exchange.

<sup>6</sup> See above - the total number of the ITU Member states is identical with the number of the UN Member states i.e. 193.

### **Market no. 1 – Access to the public telephone network in fixed location**

Pursuant to § 51 Para. 1 of the Act on Electronic communications the CTU, on December 21, 2012, [announced](#) that it launched, in harmony with the Measure of general nature no. OOP/1/02/2008-2<sup>7</sup>, the Implementation of the third round of the analysis of relevant market no. 1 – the Access to the public telephone network in fixed location.

### **Market no. 2 – origin of call (origination) in public telephone network in fixed location**

On December 14, 2012 the workshop was held with professional public concerning elaborated proposal of the analysis of wholesale relevant market no. 2 – Origin of call (origination) in public telephone network in fixed location. The comments raised were directed primarily to differentiation of services of „controlled“ and „uncontrolled“ VOIP and consideration of indirect influence of „uncontrolled“ VOIP services on this market. The CTU will evaluate comments and suggestions raised within the framework of discussion by representatives of providers of services of electronic communications and, when the evaluation is finished, it will publish the draft analysis for public discussion pursuant to § 130 of the Act on Electronic communications.

### **Market no. 8 – Access and origin of call (origination) in public mobile telephone networks**

Within the framework of implementation of analyzes of relevant markets pursuant to § 51 Para. 1 of the Act on Electronic communications, the CTU prepared [the Draft Measure](#) of general nature - the analysis of the market no. A/8/XX.2012-Y, relevant market no. 8 – the Access and origin of call (origination) in public mobile telephone networks. On the basis of detailed evaluation of the market the CTU states, that the wholesale market of access and origin of call (origination) in public mobile telephone networks demonstrates characteristics allowing the development of tacit collusion. The Office has thus proved the fact that on this market the competitors Telefónica, T-Mobile and Vodafone dispose of joint market power, and the Office therefore has not found any factor which could change this statement during the existence of validity of this analysis. To support competition, the CTU, in the document published, has proposed to apply selected remedial measures which should primarily allow access on the market also to other providers of mobile services.

The call requesting application of comments and [Draft Measure](#) were published on December 21, 2012 on the Internet pages of the CTU in the part called [Discussion place](#). The comments concerning the draft Measure OOP no. A/8/XX.2012-Y can be applied until January 31, 2013.

### **Markets no. 3 and 7 – Regulation of prices**

On December 10, 2012 the CTU received comments from the European Commission concerning the proposal of the decision on price for the termination of call in fixed network (for the company Telefónica) and the proposal of the decision on price for the termination of call in mobile network (for the companies Telefónica, T-Mobile and Vodafone). Within the framework of all four proposals of the decision the prices were determined using BU-LRIC cost models including only net incremental costs connected with the wholesale service of the termination in the price of termination. The European Commission recommends utilisation of this methodology in its [Recommendation dated May 7, 2009 on the Regulation of tariffs for termination of call in fixed and mobile networks in the EU](#). Since July 1, 2013 the prices proposed for termination in fixed network are falling by 75 % on average (as compared with currently applied prices), and namely to 0.04 CZK/min. for termination of call in off-peak hours and to 0.08 CZK/min. for termination of call in peak hours at the last transit exchange.

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<sup>7</sup> Measure of general nature no. OOP/1/02/2008-2, which stipulates relevant markets in the field of electronic communications, including criteria for evaluation of significant market power, as amended by Measure of general nature no. OOP/1/04/2012-4.

When connected to the local exchange, wholesale prices of 0.04 CZK/min. were proposed for the termination of call in off-peak hours and 0.07 CZK/min. for the termination of call in peak hours. Despite this distinctive decrease, proposed prices are approximately 2–6 hellers above the prices determined in some other EU countries, which have already implemented recommended methodology of net incremental costs. With regard to this difference the European Commission started review phase of notification process of remedial Measure pursuant to the Article 7a of the Framework Directive, the purpose of which will be to verify if the CTU's approach in its implementation of the Recommendation was correct (i.e., if the methodology used is in harmony with the Recommendation). Within the framework of review phase the Association of European regulatory bodies BEREC prepared its standpoint to the comments of the European Commission, which must respect it subsequently in promulgating its final decision. Thus the approval of the decision on price for the company Telefónica will be postponed at least by three months of duration of review phase .

The European Commission criticized the CTU that it did not submit to notification cost models for determination of prices of fixed and mobile termination. Concerning this issue the CTU notes that, before the commencement of administrative proceedings with individual operators, it published on its Internet pages transparently both cost models for the calculation of termination prices, and the methodology of calculation and user's manuals for cost models<sup>8</sup>. In the justification of the decision on price it then placed visible hypertext clicks leading to these documents, thus effectively making them part of justification, which was commented subsequently by operators both within the framework of commencement of administrative proceedings, and within the framework of public consultations. Therefore the CTU considers that cost models were part of justification of the decision on price and thus also a part of notification of these decisions.

Serious reservation of the European Commission to the proposal of the decision on price for termination of call in fixed network of the company Telefónica was assessed by expert group of the BEREC in the second phase of implementation process. Chairmen of regulatory bodies associated in the BEREC will vote on common opinion obviously in the fourth week of January.

The BEREC's opinion will be accepted after the detail review of [methodology and cost model](#) elaborated by expert group, to which the CTU provided all relevant documents necessary for evaluation of comments of the European Commission, after approximately one month.

The CTU notes that since 2009 the European Commission commenced, pursuant to Articles 7 and 7a of the Framework Directive, 21 review phases concerning proposals of analyses or remedial measures of individual national regulatory bodies. In all cases concluded so far, the BEREC supported, either fully or for the most part, legitimacy of comments of the European Commission. One exception from this existing practise is the [opinion of the BEREC](#) concerning the proposal of the analysis of relevant market no. 5 of the CTU, in which the BEREC supported the CTU's approach in July last year .

In case of wholesale prices for termination of call in mobile network the CTU proposed decrease of prices by approximately 51 % (compared to currently applied price) to 0.27 CZK/min. starting from July 1, 2013. Previous decrease of wholesale prices by approximately 50 % (from 1.08 CZK/min. to 0.55 CZK/min.) was realised by the regulation of the CTU in July 2012 (see [Monthly monitoring report of the CTU for June 2012](#)). The price proposed by the CTU corresponds to the prices determined by still valid method of net incremental costs by other regulatory bodies. The European Commission has not yet launched the review phase of notification process concerning proposals of the decision. The CTU promulgated the decision on price on December 18, 2012. Decision on price for the company [T-Mobile](#) became legally effective on December 18, 2012, Decision on price for the

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<sup>8</sup> [Cost model LRIC for termination of call in fixed location, methodology of calculation, user manual, cost model LRIC for termination of call in mobile network, methodology of calculation, user manual.](#)

company [Telefónica](#) and [Vodafone](#) became legally effective on December 19, 2012. Comments of the European Commission and reaction of the CTU to them are brought forward directly in the decision on price. Resulting prices 0.27 CZK/min. from July 1, 2013 will be reached by means of intermediate step from January 1, 2013, when wholesale prices will drop to 0.41 CZK/min. (the so-called glide path).

#### **Cost model for the calculation of prices for services provided on markets no. 4 and 5**

On December 7, 2012 the workshop was held in the seat of the CTU to present to professional public newly created cost model for the calculation of prices of services provided on wholesale relevant markets no. 4 (local loop unbundling) and no. 5 (broadband access in networks of electronic communications) and in related retail market. Primary task of cost model is the calculation of regulated prices of services provided on relevant markets if, depending on results of analyses of relevant market, the operators having significant market power are imposed the obligation relating to the regulation of prices. The model will also permit to determine average margin between prices of services on individual consecutive markets (and the comparison with real margin of operator with significant market power will permit to verify if margins are not squeezed) and the control over compliance of other remedial measures (obligation of non-discrimination). Representatives of the advisory company Grant Thornton Advisory, representatives of operators acting on the market of electronic communications and representative of the Office for the Protection of economic competition (OPEC) participated in the workshop.

#### **Methodology of purpose breakdown of costs and yield and their assignment**

On December 4 the CTU promulgated [Measure of general nature no. OOP/4/11.2012-15](#), which amended the Measure of general nature no. OOP/4/03.2006-3<sup>9</sup>. The amendment of the Measure of general nature the CTU promulgated following the implementation of the Recommendation of the Commission on terminating prices and application of new LRIC models for prices for termination of call in fixed and mobile networks. To provide the necessary inputs into these cost models it is necessary that an enterprise on the relevant market is obliged to divide costs in its cost bookkeeping and register relevant running and technical data corresponding to the new annexes no. 1 and 5 of the Measure. The measure of general nature became effective on January 1, 2013.

### **3. Disputes pursuant to § 127 of the Act on Electronic Communications**

#### **Proceedings initiated in December 2012**

<b>File number</b>	<b>Plaintiff</b>	<b>Defendant</b>	<b>Case</b>
CTU-222 324/2012-606 dříve CTU-222- 324/2012-631	COMTES CZ spol. s r.o.	COPROSYS a.s.	Dispute concerning non-portion of numerical series
CTU-250 014/2012-606	COPROSYS a.s.	Telefónica Czech Republic, a.s.	Objection against settlement of claim concerning failure to provide service and/or poor provision of service, settlement of price

<sup>9</sup> Measure of general nature no. OOP/4/03.2006-3, which stipulates the methodology of purpose breakdown of costs and yield and their assignment and determines the structure of information monitored.

## Proceedings terminated as legally effective or returned to new hearing in December 2012

File number	Plaintiff	Defendant	Case
CTU-68 102/2012-606 – I. degree	Českomoravská telecommunication s.r.o.	NOEL, s.r.o.	Dispute concerning settlement of the amount of CZK 21,408 with accessories paid for services of electronic communications provided for the period from April 1, 2009 until May 31, 2009. (remonstrance of defendant has been rejected and the decision confirmed - legal power as of December 12, 2012)
CTU-218 287/2012-603 – II. degree			

### 4. Universal service (US)

The CTU promulgated the decision on net costs for 2011 at the amount of CZK 55,028,578 and determined that net costs represent for the provider of the Universal service, the company Telefónica, an unbearable burden. The company Telefónica incurred these net costs during 2011 in connection with provision of partial services of the Universal service, and namely the service of public telephones (in municipalities under 5,000 inhabitants) and the sale of specially equipped telecommunication terminals. This decision became effective on December 6, 2012 and the reimbursement was made from the State budget through the CTU.

In December 2012 the CTU also finished verification of request for reimbursement of the loss ensuing from provision of special prices (price benefit) for selected groups of handicapped users for 2011 submitted by companies Telefónica and Vodafone. During inspection, which verified if special prices were provided to authorized persons only and if no duplicative reporting of losses took place with the same subscribers, the CTU afterwards decided about the level of loss incurred from provision of special prices of the company Telefónica at the level of CZK 102,854,621 and of the company Vodafone at the level of CZK 1,172,086. The company Vodafone offered this service within the framework of the Universal service in the first half of 2011 only. The reimbursement of losses for both companies was made from the State budget through the CTU.

### 5. Inspection activities

#### Inspection activities in the field of provision of services and support of networks of electronic communications

During the month of December the CTU performed the following Inspection activities :

- Performance of communication activities without authorization – in the period monitored the CTU performed one inspection focused on performance of communication activities without authorization. Its termination is envisaged in January 2013.
- Observance of conditions of general authorization no. VO-R/12/09.2010-12 concerning utilization of radio frequencies and operation of devices for broadband transfer of data in the bands from 2.4 GHz to 66 GHz – the CTU performed 51 inspections. In fifteen cases the CTU discovered defects which will be resolved by the call requesting elimination of defects and will be dealt with in administrative

proceedings. In Holešov the CTU discovered „parasitic“ radiation of wifi devices which caused interference of radio stations of emergency service.

- Observance of conditions of general authorization no. VO-R/24/11.2008-16 concerning operation of infrastructure equipment serving for dissemination of radio signal inside tunnels and internal spaces of buildings – the CTU discovered violation in Brno, Česká Lípa and in Poutnov, where GSM repeaters were operated (in Brno UMTS system of repeaters) without written consent of operators of networks, whose signal is covered by this repeater; moreover, these devices caused jamming of networks of mobile telephony.
- Inspections of radio frequencies without authorization – the CTU performed altogether four inspections orientated at subjects whose individual authorization's validity terminated. In two cases utilization of frequencies without authorization was discovered.
- Inspection of observance of conditions of individual authorization for the utilization of radio frequencies – the CTU performed 21 inspections of observance of conditions of individual authorization for the utilization of radio frequencies. No defects were detected, no call requesting elimination of defects was promulgated.
- Determination of sources of jamming of the operation of electronic communication facilities and networks, provision of services of electronic communications or operation of radiocommunication services – the CTU performed altogether 77 local investigations, of which were 10 cases of jamming of mobile telephone networks and 9 cases of jamming of meteorological radars, during which it determined sources of jamming of the operation of electronic communication facilities and networks. In 18 cases a call requesting elimination of defects was promulgated.

In one case receiver of time signals DCF 77.5 kHz, serving in a grammar school for control of the bell ringing beginnings and ends of lessons, was jammed. As the source of jamming was discovered power supply in computer network of the school.

- Checking numbers for the purposes of administration of numbers – in the period monitored the CTU performed 22 inspection calls, z of which in sixteen cases in connection with investigation performed by the Police of the Czech Republic concerning utilization of numbers with defined price. The results of investigation were handed over to the Police of the Czech Republic for further proceedings.
- Collaboration with the Česká obchodní inspekce (ČOI) – during inspection of sellers of telecommunication terminal and radio devices sale of radio controlled models, which cannot be operated in the Czech Republic without individual authorization for the utilization of radio frequencies transmitters, was discovered in Vejprty and Hatě. Deficiencies discovered are solved by the ČOI within its competence.
- Inspection of observance of conditions of general authorization no. OOP/10/07.2005-3, which determines technical and organizational conditions for the implementation of portability of telephone numbers and principles for charging prices among entrepreneur sin connection with number portability.
- In December the inspection of number portability continued with the company Vodafone Czech Republic; currently the CTU evaluates results and in January final protocol will terminate the inspection.

Přehled kontrolní činnosti při výkonu státní kontroly elektronických komunikací za měsíc prosinec 2012

Druh činnosti	Počet osvědčení nebo kontrol		Počet výzev k odstranění nedostatků	Počet zaháj. SR	Počet vyd. rozh. *)	Rozhodnuto ve prospěch		Uložené pokuty	
	Celkově	Z toho				účastníka	poskytovatele	počet	výše v Kč
1. Počet vydaných osvědčení o oznámení podnikání (§14 ZEK)	19								
2. Počet změn osvědčení o oznámení podnikání (§14 ZEK)	18								
3. Výkon komunikační činnosti bez osvědčení	1							2	15000
4. Dodržování podmínek všeobecných oprávnění	51		15	4	5			5	26000
a) k zajišťování veřejných komunikačních sítí a přiřazených prostředků		0	0	0	0			0	0
b) k poskytování služeb elektronických komunikací		0	0	1	1			1	5000
c) k využívání rádiových kmitočtů a provozování přístrojů (rádiových zařízení)		51	15	3	4			4	21000
5. Kontrola rádiových kmitočtů	101		18	5	7			8	78000
a) využívání rádiových kmitočtů bez oprávnění k jejich využívání		3		4	6			6	35000
b) dodržování podmínek individuálního oprávnění k využívání rádiových kmitočtů		21	0	1	1			2	43000
c) Zjišťování zdrojů rušení provozu elektronických komunikačních zařízení a sítí, poskytování služeb elektronických komunikací nebo provozování radiokomunikačních služeb	77	0	18	0	0			0	0
6. Kontrola čísel pro účely správy čísel (počet kontrolních volání)	22		0	0	0			0	0
a) využívání čísel bez oprávnění k jejich využívání		0		0	0			0	0
b) využívání čísel v rozporu s oprávněním k jejich využívání		0	0	0	0			0	0
7. Rozhodování účastnických sporů	0			16684	3468	272	2227		
a) o námítce proti vyřízení reklamace na poskytnutou službu		0		1	2	1	0		
b) o námítce proti vyřízení reklamace vyúčtování cen za služby		0		16	20	4	6		
ba) přístupu ke službám s vyjádřenou cenou (datové i hlasové)		0		0	5	0	0		
baa) přístupu k datovým službám s vyjádřenou cenou poskytovaným na síti Internet nebo na jiných datových sítích (Dialer)		0		0	0	0	0		
c) o zaplacení ceny za služby (peněžité plnění)		0		16665	3440	265	2221		
d) ostatní		0		2	6	2	0		
8. Neposkytnutí informací podle § 115 ZEK				1	2			2	13000
9. Ostatní	16		5	6	12			11	56500
CELKEM	190		38	16703	3497	272	2227	28	188500

\*) Celkový počet vydaných rozhodnutí zahrnuje i případy ukončení správního řízení usnesením, tj. případy úmrtí účastníka, zániku firmy, přerušení řízení ze zákona (konkurz), nepříslušnosti rozhodovat apod.

Překlad tabulky : Přehled kontrolní activities při výkonu státní kontroly elektronických komunikací za měsíc prosinec 2012

**The Survey of inspection activities in performance of State control of electronic communications for the month of December 2012**

Druh activities = kind of activity

počet osvědčení nebo kontrol = the number of certifications or inspections

celkově = in total z toho = of which

počet výzev k odstranění nedostatků = the number of notices to eliminate deficiencies

počet zahájených správních řízení = the number of administrative proceedings commenced

počet vydaných rozhodnutí\* = the number of decisions promulgated

rozhodnuto ve prospěch = decided in favour

účastníka = participant poskytovatele = provider

uložené pokuty = fines imposed počet = number výše v Kč = amount in CZK

1. The number of certifications notifying business activities issued (§ 14 of AEC)
2. The number of changes of certifications notifying business activities (§ 14 of AEC)
3. Performance of communication activities without certification
4. Observance of conditions of general authorisations

- a) for the operation of public communication networks and associated facilities
- b) for provision of services of electronic communications
- c) for utilization of radio frequencies and operation of instruments (radio equipment)

**5. Inspection of radio frequencies**

- a) utilization of radio frequencies without authorisation for their utilization
- b) Observance of conditions of individual authorisation for utilization of radio frequencies
- c) locating sources of interference of operation of electronic communication facilities and networks, provision of services of electronic communication or operation of radiocommunication services

**6. Inspection of numbers for the purposes of management of numbers (number of inspection calls)**

- a) utilization of numbers without authorisation for their utilization
- b) utilization of numbers violating authorisation for their utilization

**7. Resolution of subscribers' disputes**

- a) on objection against the settlement of reclamation of service provided
- b) on objection against the settlement of reclamation of charging of services
  - ba) on access to data services with specific price (data and voice)
  - baa) on access to data services with specific price provided on the Internet network or on other data networks (Dialer)
- c) on reimbursement of price for services (monetary performance)
- d) others

**8. Withholding of information pursuant to § 115 of AEC**

**9. Others**

IN TOTAL

\* the total number of decisions promulgated includes also cases of termination of administrative proceedings in the form of resolution, i.e. cases of death of subscriber, extinction of a company, interruption of proceedings ex lege (bankruptcy), incompetency to decide etc.

Within the framework of the CTU's activities in the field of review of decisions promulgated in the first degree of administrative proceedings, the result of one of remonstrance proceedings performed is the final decision, in which the CTU imposed the penalty at the amount of CZK 80,000 for administrative offence pursuant to § 118 Para. 1 Letter a) of the Act on Electronic communications, perpetrated by a juristic person (a business company), because from February 4, 2010 until January 31, 2012 it was engaged in doing business in the field of electronic communications contrary to § 8 of the same Act by performing communication activities of support of public fixed network electronic communications and providing publicly available service of access to the Internet network, which are the subject-matter of entrepreneurship in electronic communications, without notification of making business meeting requirements of § 13 the Act of Electronic communications.

In another remonstrance proceeding the fine was lawfully imposed at the amount of CZK 100,000 to another juristic person (business company) for administrative offence pursuant to § 118 Para. 1 Letter b) of the Act on Electronic communications, in the wording effective until December 31, 2011. This administrative offence was committed by this person because it did not notify the CTU beforehand of the commencement of communication activities pursuant to § 13 of the Act on Electronic communications for the period from December 2008 until November 11, 2011, when it submitted the notification of communication activities.

In the period monitored the CTU lawfully imposed the fine to a natural person at the amount of CZK 3,000 for offence pursuant to § 119, Para. 1, Letter e) of the Act on Electronic communications. This natural person committed this offence because on June 26, 2012, between 21:53 to do 23:25 hours, it repeatedly performed malicious calls to the emergency number 158.

## **6. Other regulators, inspection authorities, courts**

### **Regulation in the market no. 1 in Spain**

Spanish regulator CMT promulgated regulatory decision in the third round of analysis of the market no. 1 (retail market of access to the public telephone network in fixed location). CMT analyzed „mass market“ only, including natural persons engaged in business activities with standard offer, because it arrived to the conclusion that there is a big difference between services of offers for „mass market“ and the offer of big corporate customers. A part of the market is also the access to the PSTN in fixed location regardless of technology and includes also the NGA access. Respecting the comments of the European Commission, the CMT will keep in force the obligations imposed in the preceding round of the analysis on corporate customers until the analysis of this segment is made in 2013. The CMT determined the company Telefónica to be the enterprise with significant market power on the market no. 1, and proposed to keep existing obligation in force with the exception of price regulation, because this obligation has already been imposed on analogue lines within the framework of the Universal service. The obligations demanding approval of retail offers by the CMT 21 days beforehand remain in force, prohibition of anti-competition behaviour (for example, with margin squeeze, packages, contractual conditions), keeping of separated records of costs and yields, selection and pre-selection of operator.

### **Regulation on the markets no. 4 and 5 in Holland**

On December 28 Dutch regulator OPTA promulgated final decision on regulation in the third round of analyses of submarket 4 (wholesale physical access to the network) of optical networks for the access of corporate customers and submarket 5 (wholesale broadband access to the network) for high-quality WBA (aggregation ratio between 1:20 and 1:1). OPTA began regulating after the European Commission raised its serious doubts and on the basis of the opinion of the BEREC. The comments of the Commission related to different methodology of cost book-keeping in determination of prices for unbundling of optical lines for the access of corporate customers and the WBA of optical networks for the access of corporate customers. OPTA proposed to impose on KPN, as the enterprise with significant market power, the following obligations :

- in the market no. 4 unbundling of optical subscriber line for the access of corporate customers (on net) and corporate customers remote to 250 m (near net), non-discrimination (including the test of margin squeeze), transparency (including publication of reference offer), regulation of wholesale prices based on the model of return of invested funds (IRR) measured with the help of discounted cash flow (DCF), which reflects risk investment premium,

- on the market no. 5 unbundling of high-quality WBA by means of copper and optical networks for the access of corporate customers (on net) and corporate customers remote to 250 m (near net), non-discrimination (including margin squeeze test), transparency (including publication of reference offer), regulation of wholesale cost-oriented prices based on the model of direct costs (EDC), which is the methodology of fully allocated costs (FAC), where specified wholesale costs are proportionately distributed so that their major part is borne by the KPN.

Therefore, the OPTA announced its intention to prepare, in collaboration with subscribers on the market, the decision on price control, where this issue will be discussed together with the methodology of cost book-keeping and margin squeeze test. The Commission welcomed this approach.

## **7. Asociations**

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## **8. Consumer issues**

### **Subscriber disputes – disputes concerning pecuniary performance and objections against the settlement of complaint**

During the month of December the CTU initiated 15,952 administrative proceedings concerning subscriber disputes (of which 16,665 cases were related to pecuniary performance) between a person performing communication activities, on the one hand, and a subscriber, on the other hand, concerning pecuniary performance, and proposals for commencement of procedure concerning objection against the settlement of complaint against price settlement or provision of publicly available service of electronic communications, which the CTU decides pursuant to § 129 of the Act on Electronic Communications. 3,468 decisions in re were promulgated, of which 3,440 were decisions concerning pecuniary performance (payment of price for services).

### **Protection of consumer**

Concerning consumer agenda in December it is necessary to mention particularly promulgation and delivery of the decision in the administrative proceedings against the company M77 Group S.A., which is a provider of services of satellite television Skylink and CS Lin in the territory of the Czech Republic.

In the administrative proceedings dealing with perpetration of administrative offence pursuant to the provisions of § 24 Para. 1 of the Act no. 634/1992 Coll., on the Protection of consumer, the CTU imposed the penalty on the company M77 Group S.A. at the maximum amount of CZK 5,000,000. The company M77 Group S.A. perpetrated this offence by offering, under the designation GRATIS (with the service Skylink), and/or FREE (with the service CS Link), free of charge packages of services of satellite television, although starting from September 1, 2012 service fee had to be paid to be able to watch them. The above defined facts correspond to the description of deceitful commercial practices stipulated in the Annex no. 1, Letter. s) of the Act on the Protection of consumer.

In the administrative proceedings dealing with perpetration of administrative offence pursuant to the provisions of § 118 Para. 14 Letter u) Act č. 127/2005 Coll., on Electronic communications, the CTU promulgated the decision in which it stated that the company M77 Group S.A. perpetrated this administrative offence, because, contrary to provisions of § 63 Para. 6 of the same Act, no later than on May 15, 2012, it did not publish in each of its premises and in a manner allowing remote access to information concerning the change of

the contract, resting in the amendment of General commercial conditions of the service „Skylink“ for the Czech Republic and General commercial conditions of the service „CS Link“ for the Czech Republic and did not inform subscribers about this change. Simultaneously, no later than on May 15, 2012, it did not inform subscribers about the change of essential prerequisites of the contract resting in the amendment of General commercial conditions of the service „Skylink“ for the Czech Republic and General commercial conditions of the service „CS Link“ for the Czech Republic and about the right of participants to terminate, without any sanction, to the date when this change became effective, thus June 15, 2012, subscriber contract, if subscriber do not agree to new conditions. For the perpetration of the above mentioned administrative offence the CTU also imposed on the company M77 Group S.A. the penalty at the maximum amount of CZK 10,000,000. At the same time the CTU advised that the above mentioned decision has not yet became legally effective and that the company lodged appeal against the decision in statutory deadline.

In connection with the company M77 Group S.A. the CTU registered, similarly to the previous month, also in December complaints of subscribers concerning unavailability of subscriber line of services Skylink and CS Link. Concerning this the CTU repeatedly recommends to consumers to consistently exercise the right to claim pursuant to General commercial conditions of both services, and if provider of the service does not settle their claim within the statutory deadline of one month, to exercise objection against the settlement of the claim with regional department of the CTU competent according to their place of residence.

### **Price calculator Tariffon**

In December 2012 the CTU awarded accreditation to price calculator [Tariffon](#), comparing both tariffs and prices of pre-paid cards of mobile telephone services including mobile access to the Internet, and the prices of fixed telephone services and prices of fixed access to the Internet of biggest providers. Overall, this is already the second accredited calculator in this year, which will facilitate selection of the most suitable service to end users. Users can find references to both accredited price calculators on [web pages of the CTU](#). The CTU launched the accreditation of price calculators in January 2012 promulgating the document [Accreditation of price calculators](#), determining criteria accomplishment of which is prerequisite for accreditation award.

### **The change of the VAT rate**

In the month of December the CTU also registered increased number of queries concerning impacts of the change of the VAT rate for 2013 on contractual relations between users and operators of services of electronic communications. In this connection the CTU, on December 7, 2012, promulgated [press release](#), in which it explained the above mentioned issues. At the same time it published detailed [information](#) concerning the issues mentioned in the section of protection of consumer.

## **9. Legislative changes**

During the month of December 2012 the CTU finished the legislative process of promulgation of new implementing decrees to amended Act on postal services.

### **a) The Decree no. 432/2012 Coll., on the Method of keeping records of revenue and income of operator, which provides postal services or ensures postal service abroad**

On December 7, 2012 the Decree no. 432/2012 Coll., on the Method of keeping records of revenue and income of operator, which provides postal services or ensures postal services abroad, was published in the Volume 157 of the Collection of Laws. This

Decree was promulgated to implement § 32b Para. 3 of the Act on Postal services (as amended by the Act no. 221/2012 Coll. which becomes effective on January 1, 2013).

Pursuant to § 36a of the Act on Postal services the CTU determines, collects and enforces payments to the account for financing of basic services. Within the framework of this activity the CTU determines percentages of revenues for provision of postal services and foreign postal services on total revenues for provision of postal services and foreign postal services in relevant billing period of individual payers. In order that the CTU is able to determine these percentages, it is necessary that it receives from potential payers relevant information, which is the revenue and income for postal services and foreign postal services. For this purpose the Decree no. 432/2012 Coll. stipulates for operators conditions for modification of revenue accounts, which these operators will make within the framework of modifications in their accounting books or will introduce, in harmony with relevant Decree, independent records of income so that they are able to provide necessary documents to the Office.

This Decree becomes effective on January 1, 2013.

b) The Decree no. 433/2012 Coll., on Determination of content, form and the method of publication of information on results of provision and ensuring of basic services and evaluation of accomplishment of parameters of quality

On December 7, 2012 the Decree no. 433/2012 Coll., on Determination of content, form and the method of publication of information on results of provision and ensuring of basic services and evaluation of accomplishment of parameters of quality was published in the Volume 157 of Collection of Laws. This Decree was promulgated to implement § 33 Para. 4 Letter e) of the Act on Postal services (as amended by the Act no. 221/2012 Coll., which becomes effective on January 1, 2013).

Pursuant to the Act on Postal services a holder of postal licence is obliged to publish annually the information on results of basic services provided and secured by holder, in particular for the purpose of provision of reasonable protection of users of these services. Relevant Decree no. 433/2012 Coll. stipulates in a transparent form reporting of necessary information presented in a tabular manner. Holder of postal licence is obliged to publish the information in a manner allowing remote access on its Internet pages, which must be easily accessible.

This Decree becomes effective on January 1, 2013.

c) Decree no. 434/2012 Coll., on Determination of model form of the notice of doing business in the field of postal services

On December 7, 2012 the Decree no. 434/2012 Coll., on Determination of model form of the notice of doing business in the field of postal services was published in Volume 157 of the Collection of Laws. This Decree was promulgated to implement § 18 Para. 1 of the Act on Postal services (as amended by the Act no. 221/2012 Coll., which becomes effective on January 1, 2013). The Act on Postal services introduces notification principle of origin of authorization in the field of postal services. The Decree č. 434/2012 Coll., in harmony with this Act and requirements of the Directive 97/67/EC, as later amended, stipulates model form of written notice of doing business in the field of postal services.

This Decree becomes effective on January 1, 2013.

d) The Decree no. 464/2012 Coll., on Determination of specification of individual basic services and basic quality demands for their provision

On December 21, 2012 the Decree no. 464/2012 Coll., on determination of specification of individual basic services and basic quality demands for their provision, was published in the Volume 173 of the Collection of Laws. This Decree was promulgated to implement § 3 Para. 3 of the Act on Postal services (as amended by the Act no. 221/2012 Coll. which becomes effective on January 1, 2013).

The Decree no. 464/2012 Coll. is the implementation of the arrangement of the Act on Postal services chosen by legislator, where the extent of basic services and mechanism of their security, together with minimal qualitative requirements, is stipulated directly by the Act with the proviso that details will be stipulated in implementing legal regulation. In order to secure reasonable protection of users of postal services the Decree determines specification of basic services and the method of their provision, including qualitative requirements so that in public interest they are provided in necessary quality, in particular, the speed, reliability and regularity of basic services, sufficient density of service points securing postal delivery, as well as inevitable level of awareness of users about provision of basic services, and extraordinary cases where delivery to the address of each natural and juristic person might not be secured.

The legislation in question is materially based on existing legal arrangement of given issues, however, individual requirements are determined so that they are, generally taken, valid for any provider which will be designated as provider of basic services, which supports the principle of transparency what contributes to the increase of legal certainty of subjects concerned in this field.

This Decree becomes effective on January 1, 2013.

e) Decree no. 465/2012 Coll., on the Method of keeping separated records of costs and revenues of a holder of postal licence

On December 21, 2012 the Decree no. 465/2012 Coll., on the Method of keeping separated records of costs and revenues of a holder of postal licence, was published in Volume 173 of the Collection of Laws. This Decree was promulgated to implement § 33, Para 2 of the Act on Postal services (as amended by the Act no. 221/2012 Coll., which becomes effective on January 1, 2013).

In its § 33a the Act on Postal services stipulates the obligation of holder of postal licence to keep separated records of costs and revenues. A holder of postal licence has this obligation also in the present time, however, the method of keeping separated records of costs and revenues is based on decision promulgated by the CTU within the framework of administrative proceedings towards holder of postal licence. The new legal arrangement changes the form with the help of which the CTU stipulates the methodology of purpose-oriented division of keeping separated records of costs and revenues of a holder of postal licence, including their assignment, determination of reasonable profit and also the structure of information reported. Transfer in the form of decree contributes to transparent determination of the method of keeping separated records of costs and revenues.

The Decree is based on the current situation, however, it specifies the obligation of keeping separated records of costs and revenues in harmony with the Act on Postal services and introduces greater level of detail of some reported information as compared to the current situation in order to meet requirements of the Act on Postal services considering further utilisation of such information. However, simultaneously it does not take over some information required so far because they became obsolete from the viewpoint of the new legal arrangement (for example, independent monitoring of selected services).

The information obtained from separated records, kept according to the Decree in question, will then serve as the basis particularly for the calculation of net costs of a holder of postal licence for individual basic services, for the regulation of prices of basic services and for the demonstration that no cross-financing takes place between basic services, which are included in its postal licence and other services.

This Decree becomes effective on January 1, 2013.

f) The Decree no. 466/2012 Coll., on the Procedure of the Czech Telecommunication Office in calculation of net costs and their impact on the observance of the obligation to provide basic services

On December 21, 2012 the Decree no. 466/2012 Coll., on the Procedure of the Czech Telecommunication Office in calculation of net costs and their impact on the observance of the obligation to provide basic services, was published in the Volume 173 of the Collection of Laws.

This Decree was promulgated to implement § 34b Para. 7 of the Act on Postal services (as amended by the Act no. 221/2012 Coll. which becomes effective on January 1, 2013). The Act on Postal services introduces the new notion of the so-called net costs, which represents the compensation for a holder of postal licence for discharge of the obligation imposed on it to provide basic service, and it further stipulates the general procedure of their calculation and the method of their financing.

The Decree in question stipulates also the details of procedure of the CTU in calculating these net costs, procedure of calculation of net costs of individual basic services, defines intangible and tangible benefits which should be taken into consideration within the framework of relevant procedure and, in harmony with statutory authorization, it also stipulates documents by which these calculations must be supported.

This Decree becomes effective on January 1, 2013.

During December 2012 no legal regulations were published in the Collection of Laws having principal impact on the fields of electronic communications.

## **10. European Union**

On December 3, 2012 the European Commission proposed new rules simplifying utilization of public services by means of the Internet. [The Directive on accessibility of Internet pages of subjects of public sector](#), proposed by the Commission, would, starting from the end of 2015, introduce obligatory functions relating to accessibility with 12 types of Internet pages which would be unified throughout the EU. The obligation to ensure accessibility would relate to basic public services, as for instance, social security and health care services, job hunting, applications to universities and issuance of personal documents and certifications. A single set of rules would allow creators of Internet pages to offer their products and services throughout the European Union without additional costs and complications connected with adaptations to different requirements. Proposed Directive is now submitted to the Council of Ministers and the European Parliament for approval. Member States would have to implement this Directive in domestic rules and regulations before June 30, 2014.

On December 5 – 6, 2012 the 42<sup>th</sup> Meeting of the Group for radio spectrum (RSC) was held in Brussels. Within the framework of the meeting proposal of the mandate of the CEPT concerning the band 700 MHz was discussed, the principal purpose of which is the proposal of technical conditions of the band 700 MHz, including channel raster and BEM

(Block Edge Mask). This proposal should serve as the basis for „political“ decision of the EU on the utilisation of the band. Opinion of Member countries concerning the mandate was not uniform and relatively long and sharp discussion lead to compromise proposal of the text. Controversial points were, in particular, timing of the mandate, where many states are of the opinion that the mandate is premature and the second controversial point was the proposal of the EC for the allocation of the band 700 MHz for broadband applications PPDR (Public Protection and Disaster Relief). Compromise text of the proposal was sent to Member States for comments. Another important issue discussed was also proposal of the implementation act for the execution of review of spectrum within the meaning of Article 9 of the RSP (Radio Spectrum Policy Program) in the band of 400 MHz–6 GHz. The purpose of the review of spectrum is to get detailed survey of utilization of radio spectrum in Member States of the Union and, in connection with results of studies of technological development, to identify bands suitable for harmonization and bands which could be effectively and efficiently used including utilization of principles of sharing the spectrum (LSA – Licenced Shared Access, ASA – Authorized Shared Access). Another issue discussed was the 5<sup>th</sup> review of the EC Decision on SRD (Short Range Device) and the issue of jamming of the networks GSM-R by commercial networks GSM. Important issue discussed was the derogation – application of request for exception from performance of the Decision of the Council of Ministers and the European Parliament concerning the band of 800 MHz. The Czech Republic applied reasoned request for derogation concerning release and authorization of the band of 800 MHz considering restrictions from the Polish side and ongoing auction. The band in the last two locations will be released on the basis of negotiations with the Polish side by transition to the channel 38 (location Trutnov) and channel 45 (location Ostrava) in the first half of 2013.

On December 6 – 7, 2012 was held the 13<sup>th</sup> Meeting of the General Assembly of the IRG (IRG General Assembly) and the Association of the European Regulatory Bodies in the field of electronic communications (BEREC). The subject of discussion of the Council of regulators BoR was approval of reviewed common positions of the BEREC concerning wholesale local and broadband access (WLA, WBA) and the access through leased circuits for wholesalers (wholesale leased circuits WLL). Modifications of working plan BEREC were discussed together with the proposal of budget for 2013. Steering committee approved the Strategic plan of internal audit of the office BEREC for the years 2013–2015. New Chairmen and Vice-Chairmen were elected for another two years.

On December 15, 2012 two documents from the field of electronic communications were published in the Official Journal of the European Union :

- [Implementing regulation of the Commission \(EU\) no. 1203/2012 dated December 14, 2012 on Separated sale of regulated retail roaming services in the Union,](#)
- [Report on verification of annual financial statement of the Office of the Association of European regulatory bodies in the field of electronic communications for financial year 2011 together with answers of the Office.](#)

On December 18, 2012 the European Commission endorsed [seven new priorities for digital economy and company.](#) These priorities are the result of comprehensive review of [Digital agenda for Europe from 2010.](#)

New priorities:

1. Creation of new and stable regulatory environment in the field of broadband connection.
2. New infrastructures of public digital services with the help of tool for connection of Europe.
3. Creation of big coalition for digital skills and working places.
4. Proposal of strategy and the Directive in the field of cybernetic safety in the EU.
5. Updating the EU framework for copyright.
6. Acceleration of implementation of cloud computing by means of purchase power of the public sector.

## 7. A new industrial strategy for electronics.

Full implementation of this updated digital agenda would increase GNP in Europe by 5 % in the next eight years. Investments in information and communication technologies would increase, the level of computer skills of employees would improve (eSkills), innovations in public sector would be possible and framework conditions for the Internet economy would be reformed.

On December 19, 2012 the Official Journal of the European Union published [Recommendation of the Commission no. 2012/798/EU dated December 12, 2012 on notification procedure stipulated in Article 22 Para. 3 of the Directive of the European Parliament and the Council 2002/22/EC on the Universal service and rights of users concerning networks and services of electronic communications](#). The purpose of this Recommendation is to ensure uniform access, complete transparency and simplified procedure for domestic regulatory bodies willing to accept a measure stipulating minimum quality of services pursuant to Article 22 Para. 3 of the Directive [2002/22/EC](#). According to the need, the Commission will consider the necessity of review of this Recommendation two years after it is published in the Official Journal of the European Union.

## **11. ITU and other international organisations**

### **CEPT**

On December 12 – 13, 2012 the working meeting of project team ECC/FMWG/PT 49 on PPDR (Public Protection and Disaster Relief) took place in Bienne, Switzerland aimed at the issues of security communications and communications during natural disasters. The goal of the PT 49 meeting is the identification of bands suitable for harmonization of security broadband communication (BB PPDR). Within the working meeting the proposal of the ECC Report, describing requirements for radio spectrum for BB PPDR applications, was finished. Calculations of frequency needs were performed on the basis of probable scenarios for the category PP 1 (Day to day operation) and PP 2 (Predicted and unpredicted operations). Requirements for DR (Disaster Relief) were not calculated separately but as a part of requirements for routine everyday operations allowing utilisation of additional capacities and means also in other bands than the bands harmonized for BB PPDR. This report will be used in another prepared ECC Report, which will describe transformation of requirements of users concerning frequency requirements in identified frequency bands and study of compatibility with remaining services. Within the framework of negotiations the issues of technological neutrality and those of future utilisation of the band 380– 385/390–395 MHz, currently used for narrowband PPDR applications, were resolved.

## **12. Digitalisation of RTV**

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## **13. Radio spectrum management**

### **Auction of frequencies**

During December the electronic auction phase of tender proceedings for granting rights for the utilization of radio frequencies supporting public communication network in the bands of 800 MHz, 1,800 MHz and 2,600 MHz, which started on November 12, was not terminated. The reason is continuing interest of auction participants in frequencies offered and submission of another offers in the auction. Therefore the auction continues also in January 2013.

## **Plan for the utilization of radio spectrum**

On December 7 the CTU promulgated the Measure of general nature of the part of the Plan of utilisation of radio spectrum [č. PV-P/13/12.2012-16](#) for frequency band 10–12.5 GHz. The reason for the promulgation of this part of the Plan is, in particular, the update of conditions for the utilization of radio frequencies in harmony with valid harmonisation documents. This modification is significant mainly in more flexible utilisation of the band 10.7–11.7 GHz in the fixed service from the viewpoint of enlargement of variants of utilisation of channel spacing.

### **General authorizations**

On December 21 the CTU promulgated the General authorization no. [VO-R/14/12.2012-17](#) for the utilization of radio frequencies and the operation of facilities in the frequency band of 10 GHz. The reason for the promulgation of this General authorization, which replaces existing General authorization no. [VO-R/14/06.2012-8](#), is to complete provisions that the station must be set at fixed frequency and that the function of automatic change of transmitting radio frequency must not be used. In the frequency band of 10 GHz great number of stations is already in operation, which are not equipped with the function of search for free channel; if free channel is searched for automatically on the principle of mere automatic change of transmitting radio frequency by facilities having such function, utilization of radio frequencies may be jammed by existing stations. Conditions were further adapted to allow polarization of antenna. General authorization will become effective on January 15, 2013.

## **14. Postal service**

### **Administrative proceedings on the violation of conditions for provision of basic postal services**

During the month of December two fines against which the Česká pošta s.p. did not file remonstrance. One fine related to valuable package which was deposited without an attempt was made before to deliver it in the place of residence of addressee by the Česká pošta s.p. The second fine was imposed on the Česká pošta s.p. for the violation of postal secrecy, when registered consignment, which should have been received by addressee only, was delivered to another, unauthorized person.

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Discussed in the CTU Council on January 15, 2013