



Czech Telecommunication Office

October 2017

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## Telegraphically on communications

### O2 can use its block allocation in 450 MHz band for another 15 years

After completing a review of reasons to limit the number of rights in 450 MHz band, CTU issued the decision to assign a block allocation of radio frequencies in 451.3-455.74/461.3-465.74 MHz segment on 19 September. The block allocation will be valid from 8 February 2018 to 7 February 2033.

### Vodafone Pass and T-Mobile StreamOn

Operators Vodafone and T-Mobile launch number of extras to data packages in the autumn. As part of these, they plan not to include selected services in used data within the basic data tariff. CTU will focus on the terms and conditions of these services, particularly in relation to the principles of net neutrality.

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## Decision-making practice: Post Office to pay compensation for creased poster

Should an employee of the Post Office recognize the claim of a sender to receive compensation for damage, such action also binds the undertaking even when the employee concerned has exceeded the authority laid down by an internal regulation. Moreover, postal terms and conditions do not regulate which Post Office workplace is competent in deciding on claims to compensation for damage and the sender could not therefore have known that the Post Office employee had overstepped his authorisation. This was the result of the final decision of CTU in appellate proceedings against objections to the settlement of complaint about the damaged consignment.

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## Amendments to contract terms and conditions: Operators transpose statutory amendments to contracts

### T-Mobile

T-Mobile amended its general terms and conditions with effect from 1 September. In doing so, it broadened the possible ways of concluding a contract: in addition to visiting a branch in person, it is now possible to make a contract by filling in a subscriber contract form on the provider's website, by way of client application or, for existing customers, through the client centre.

If consent is not granted to prolong a fixed term contract within the time limit of 20 days prior to the passing off that fixed term, the contract will now automatically change into an indeterminate term contract under the new general terms and conditions. If the subscriber wants to transfer a telephone

number, the contract ends on the date of transfer of that telephone number, unless otherwise provided by law.

## Vodafone

Vodafone also published new general terms and conditions, with effect from 2 September. These now reflect the legal regulation of a maximum period of notice of 30 days. For special offers, contract terms and conditions continue to state that extension is automatic if the subscriber does not express his will to the contrary despite the amendment to legislation.

## O2

O2 amended its general terms and conditions on 15 September and its price list on 1 October. This amendment of contract terms and conditions comes in response to an amendment to the Act on Electronic Communications. The period of notice is regulated therein at 30 days following delivery of notice of termination to O2. Subscribers that ask O2 to transfer a telephone number at the same time as they submit notice of termination or an application for the termination of a service from 1 February 2018 onwards will have the service terminated not later than within 10 days of delivery of the application. O2 has also modified its rules for prolongation of contract, in which active consent to prolongation of contract will be required of subscribers/consumers.

## Checked by CTU in September...

### Summary of Inspection Activities in Electronic Communications - September 2017

Type of activity	Number of certificates or inspections		Number of calls to rectify shortcomings	Number of initiated administrative proceedings	Number of decisions issued	Decided in favour of		Sanctions imposed	
	Total	Of which				the subscriber	the provider	Number	Amount in CZK
1. Number of awarded certificates of notification of business (Section 14 of the Act*)	8								
2. Number of changes to certificates of notification of business (Section 14 of the Act*)	56								
3. Operation of communication activity without authorisation	4			0	3			3	80000
4. Compliance with the terms and conditions of general authorisations	32		21	10	14			13	330000
a) in relation to providing public communication networks and associated facilities		0	0	0	0			0	0
b) in relation to providing electronic communication services		0	0	0	0			0	0
c) in relation to the use of radio frequencies and the operation of devices (radio equipment)		32	21	10	14			13	330000
5. Inspection in relation to radio frequencies	262		1	4	10			6	146500
a) the use of radio frequencies without authorisation		15	0	4	9			5	145500
b) adherence to the conditions of an individual authorisation for the use of radio frequencies		1	1	0	0			0	0
c) identifying sources of interference to the operation of electronic communication equipment and networks, the provision of electronic communication services or the operation of radio-communication services		246		0	1			1	1000
6. Inspection of numbers for the purposes of number management (number of inspection calls)	0		0	0	0			0	0
a) the use of numbers without authorisation		0	0	0	0			0	0
b) the use of numbers in conflict with authorisation		0	0	0	0			0	0
7. Subscriber dispute resolution	0			2521	2418	778	1337		
a) of objections to the settlement of complaints about services provided		0		0	1	0	0		
b) of objections to the settlement of complaints about billing for services of		0		8	20	12	2		
ba) access to services with expressed price (data and voice)		0		0	0	0	0		
baa) access to data services with expressed price (provided on Internet or other data networks)		0		0	0	0	0		
c) on the payment of price for services (monetary performance)		0		2512	2391	765	1334		
d) other		0		1	6	1	1		
8. Failure to provide information according to Section 115 of the Act*				0	0			0	0
9. Other	257		7	47	63			53	786500
TOTAL	619		29	2582	2508	778	1337	75	1343000

\* Act No. 127/2005 Coll., on electronic communications and amending certain related acts

**Summary of Inspection Activities in Postal Services - September 2017**

Type of activity	Number of certificates of inspections		Number of measures in the interest of proper provision of the services according to Section 6 paragraph 4 and Section 37 of ZPS	Number of administrative proceedings from the previous month	Number of initiated administrative proceedings	Number of decisions issued	Decided in favour of			Sanctions imposed		Number of the administrative proceedings carried forward to the next month
	total	of which					subscriber	provider	Other	number	amount in CZK	
1. Number of awarded certificates of notification of business	0											
2. Number of changes to certificates of notification of business	1											
3. Operation of communication activity without authorisation	0			0	0	0				0	0	0
4. Compliance with the conditions of the APS*	4		0	1	0	1				1	7000	0
Compliance with the postal conditions according to Section 6 of APS		2	0	1	0	1				1	7000	0
Compliance with the conditions for quality requirements according to Decree No. 464/2012		2	0	0	0	0				0	0	0
5. Resolution of objections to the settlement of complaints about services provided according to Section 6a of APS	0			76	25	30	3	15	12			71
6. Dispute resolution according to Section 37 paragraph 3 letter a) of APS	0			0	0	0	0	0	0			0
7. Failure to provide information according to Section 32 letter a) of APS				0	0	0				0	0	0
8. Other	2		0	12	0	4				4	11000	8
on-site surveys		2	0	0	0	0				0	0	0
Administrative procedure in the matter of an offence according to Section 37a paragraph 3 letter a)		0	0	2	0	1				1	1000	1
Administrative procedure in the matter of an offence according to Section 37a paragraph 1 letter a)		0	0	2	0	0				0	0	2
Administrative procedure in the matter of an offence according to Section 37a paragraph 2 letter a)		0	0	1	0	0				0	0	1
Administrative procedure in the matter of an offence according to Section 37a paragraph 2 letter e)		0	0	5	0	3				3	10000	2
Administrative procedure in the matter of an offence according to Section 37a paragraph 1 letter c)		0	0	1	0	0				0	0	1
Administrative procedure in the matter of an offence other		0	0	1	0	0				0	0	1
TOTAL	7		0	89	25	35	3	15	12	5	18000	79

\* Act No.29/2000 Coll., on postal services and amending certain acts

## CTU working for the consumer: Agreeing of contract penalties with consumers

**Provisions regarding a contract penalty may only be validly agreed upon in contracts made between an operator and a consumer when such provisions are stated directly in the contract document which the consumer signs.**

When resolving payment disputes, CTU frequently finds that in addition to the payment of overdue bills, providers also demand in their offers fees or payments that are in fact contract penalties. The right to payment of such fees or payments is based on provisions found in their general terms and conditions, and/or price list.

In resolving such disputes, the administrative authority takes the formal requirements on a contract penalty set by legal regulations into account and considers whether a contract penalty has been arranged validly with regard also to Judgment ÚS 3512/11 of the Constitutional Court of the Czech Republic of 11 November 2013.

A contract penalty is a guaranty in the event when one of the contracting parties infringes contract obligations. In its judgment, the Constitutional Court only considers a contract penalty that is found in key elements of the contract and not in the general commercial terms and conditions or the price list, for example, to have been validly agreed upon in consumer contracts. The aim of the Constitutional Court was to make contracts concluded with consumers more understandable and readable, logically organised and clear for the average consumer. It is therefore the view of the Constitutional Court that

contract penalties in consumer contracts should be stated directly in the contract document (or form) which the consumer signs.

As part of an analysis of contract terms and conditions (carried out ad hoc or in relation to a “consumer semaphore”), CTU ascertained that some providers do not take the above-mentioned judgment of the Constitutional Court into consideration in their terms and conditions and have provisions regarding a contract penalty incorporated in their general terms and conditions. If a contract penalty is not agreed upon in a consumer contract itself (the document which the consumer signs), CTU does not award a contract penalty to providers in payment disputes (conducted with consumers).

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## Market analyses

### Market no. 3a - Wholesale local access provided at a fixed location and market no. 3b – Wholesale central access provided at a fixed location for mass-market products

After the CTU Council had commenced administrative proceedings with the company Česká telekomunikační infrastruktura a.s. (hereinafter referred to as CETIN) on determination of an undertaking with significant market power, based on the results of analyses of relevant markets 3a (A/3a/07.2017-3) and 3b (A/3b/07.2017-4), CTU published calls (for market 3a and market 3b) to lodge comments on decision proposals in this matter at the discussion forum on 15 September. Comments could be lodged as part of public consultation until 16 October.

CTU commenced administrative proceedings with CETIN on 8 September in the matter of imposing obligations relating to the regulation of prices on the concerned relevant market based on the results of the analysis referred to above (A/3a/07.2017-3). Specifically, CTU intends to use administrative proceedings to impose the obligation to apply maximum prices for collocation services and a cost-oriented price for dark fibre access.

On the same day, the CTU Council also commenced administrative proceedings with CETIN on the imposition of remedies on the undertaking with significant market power, on market 3a and 3b. Dealing with the comments of the party to the proceedings on the commencement of administrative proceedings will be followed by public consultation of the proposals of both decisions.

### Market no. 4 - Wholesale high-quality access provided at a fixed location

The CTU Council commenced administrative proceedings with CETIN on 18 September in the matter of determination of an undertaking with significant market power based on the result of analysis of relevant market no. 4, which was published on 25 August in Telecommunications Bulletin 11/2017 as Measure of General Nature A/4/08.2017-5. Administrative proceedings will subsequently be commenced in the matter of imposing remedial measures. The CTU Council commenced administrative proceedings with CETIN on the imposition of obligations on an undertaking with significant market power on 3 October.