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Czech Telecommunication Office
headquartered at Sokolovská 219, Prague 9
P. O. Box 02, 225 02 Prague 025

[Stamp and Signature:



THIS DECISION BECAME FINAL

on [handwritten] 13. 4. 2006

Czech Telecommunication Office

Economic Regulation Department

Date [handwritten] 21. 4. 2006 [signature:Průšová]

Ref.: 39 557/2005-611/V.vyř.

Prague, 6 April 2006

In proceedings instituted *ex officio* with ČESKÝ TELECOM, a.s. with registered office at Olšanská 55/5, 130 34 Prague 3, Reg. Number 60193336 ("Party No. 1"); Contactel s.r.o. with registered office at Vinohradská 174, 130 00 Prague 3, Reg. Number 25733621 ("Party No. 2"); Czech On Line, a.s. with registered office at U nákladového nádraží 8/3153, 130 00 Prague 3, Reg. Number 63080150 ("Party No. 3"); TISCALI Telekomunikace Česká republika s.r.o. with registered office at Dělnická 213/12, 170 04 Prague 7, Reg. Number 64788610 ("Party No. 4"); GTS NOVERA a.s. with registered office at Sokolovská 131/86, 186 00 Prague 8, Reg. Number 61058904 ("Party No. 5"); NEXTRA Czech Republic s.r.o. with registered office at V Celnici 10, 117 21 Prague 1, Reg. Number 25683691 ("Party No. 6"); RADIOKOMUNIKACE a.s. (formerly JTR Management a.s.) with registered office at U nákladového nádraží 3144, 130 00 Prague 3, Reg. Number 26705036 ("Party No. 7"), on 30 November 2005, in the matter of the withdrawal of Pricing Decision No. 03/PROP/2004, laying down the method of price calculation and the maximum monthly price for interconnection of public fixed telecommunication networks for provision of broadband access to the Internet services and to other services using the ADSL technology (Asymmetric Digital Subscriber Line) in the access network ("Pricing Decision No. 03/PROP/2004") of 1 April 2004 and Amendment No. 1 thereto, dated 22 April 2005, the Council of the Czech Telecommunication Office (the "Council") as the appropriate state administration body under Section 107(8)(b)(5) of Act No. 127/2005 on Electronic Communications and on Amendment to Certain Related Acts (Electronic Communications Act) (the "Act") and under Section 5 of Act No. 71/1967 on Administrative Procedure (the "Rules of Administrative Procedure"), as amended, under Section 142(2) of the Electronic Communications Act, and on the basis of the outcome of public consultation held in accordance with Section 130 of the Electronic Communications Act, hereby issues this

Decision on Price:

Pricing Decision No. 03/PROP/2004) of 1 April 2004 and Amendment No. 1 thereto, dated 22 April 2005, are hereby revoked.

Substantiation:

Pricing Decision No. 03/PROP/2004 of 1 April 2004 and Amendment No. 1 thereto, dated 22 April 2005 were issued under Section 78(2) and (6) and in compliance with Section 95(7)(b) of Act No. 151/2000 on Telecommunications and on Amendment to Other Acts, as amended ("the Telecommunications Act") and under Section 2(2) of Act 265/1991 on the Powers of the Bodies of the Czech Republic in the Pricing Area, as amended, in compliance with Section 10 of Act No. 526/1990, on Prices, as amended.

Under Section 2(w) of the Electronic Communications Act, regulation means alignment and control of communication activities and relations in order to build and maintain a competitive environment, protect the electronic communications market, including protection of electronic

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communication service users, issue decisions, measures of general nature and issue opinions under and within the meaning of this Act.

In accordance with Section 142(2) of the Electronic Communications Act, the Pricing Decisions issued under the [former] Telecommunications Act should remain in effect until the Czech Telecommunication Office (the "Office") issues relevant Decisions on Price (Sections 57 to 59) but not longer than for 12 months of the effective date of the Electronic Communications Act. Within a period of 12 months of the effective date of this Act, the Office is entitled to issue this Decision on Price without previous analysis of the market.

As a response to disputes on the amendment to the Telecommunications Network Interconnection Agreement in respect of the service of the provision of broadband access to Internet services using the ADSL technology, the Office issued the decisions enumerated below. These include the decision in the dispute between Party No. 1 and Party No. 2 – Decision Ref. No. 20479/2003-610/X; between Party No. 1 and Party No. 3 – Decision Ref. No. 11131/2003-610/XIV; between Party No. 1 and Party No. 4 – Decision Ref. No. 19893/2004-610/IV; between Party No. 1 and Party No. 5 – Decision Ref. No. 14854/2004-610/V; between Party No. 1 and Party No. 7 – Decision Ref. No. 13870/2005-610/IV. At present, there are administrative proceedings pending between Party No. 1 and Party No. 6 under Ref. No. 16157/2004-610, concerning a dispute on the amendment to the Telecommunications Network Interconnection Agreement to cover the service of the provision of broadband access to Internet services using the ADSL technology.

Pricing Decision No. 03/PROP/2004 was issued with effect from 15 April 2004 on the basis of the pricing disputes in respect of interconnection for ADSL services between the above Parties.

Two regimes are at present in effect on the wholesale level in the ADSL service market. One of them is the access regime offered by Party No. 1 and the interconnection regime that is subject to regulation. The situation is as follows:

Five basic ADSL services, distinguished by the speed of aggregation and by the volume of data transmitted, are regulated by Pricing Decision No. 03/PROP/2004, including its Amendment No. 1. This Pricing Decision makes it possible, upon agreement between the public fixed telecommunication network operators, also to use service parameters other than stated in that Decision. However, the aforementioned undertakings failed to agree on the provision of further services. Party No. 1 offers in its access regime a broader portfolio of services at a more advantageous price than in the case of the services regulated by Pricing Decision No. 03/PROP/2004 with its Amendment No. 1. As provided by Section 142(2) of the Electronic Communications Act, it is impossible to put under regulation any services that were not regulated before the effective date of the Electronic Communications Act. The current legislation, therefore, does not allow the Office to issue a Decision on Price, under which the range of services indicated in Pricing Decision No. 03/PROP/2004 could be extended to cover additional services.

The undertakings that had signed with Party No. 1 the above-mentioned Amendment No. 1 to the Telecommunications Network Interconnection Agreement (which amendment applies to the service consisting in the provision of broadband access to Internet services using the ADSL technology) and were providing ADSL services to end users, signed with Party No. 1 another Amendment to the Telecommunications Network Interconnection Agreement, extending the portfolio of services, and agreed to applying the access regime to all their subscriber lines. These ADSL service amendments to the Telecommunications Network Interconnection Agreements are not being used.

No services are being provided to subscribers through interconnection for ADSL services, or through Pricing Decision No. 03/PROP/2004 and its Amendment No. 1. In accordance with Section 2(a) of the Electronic Communications Act, a subscriber is any person that signed an agreement for the provision of publicly available electronic communication services with an undertaking that provides such services. As the access regime has been applied to all the subscribers, no services are being provided to the subscribers through the interconnection regime.

For this reason, and because Pricing Decision No. 03/PROP/2004 and its Amendment No. 1 fail to perform its regulatory function to secure a competitive environment in the electronic communication market, the Office instituted proceedings in the matter of issuance of a Decision

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on Price to cancel Pricing Decision No. 03/PROP/2004 of 1 April 2004 and Amendment No. 1 thereto of 22 April 2005.

Owing to the fact that the administrative proceedings in this matter had not become final before 1 January 2006 when Act No. 500/2004 Rules of Administrative Procedure entered into effect, the proceedings will, in accordance with Section 179(1) of that Act, be completed under the legal regulations currently in force, i.e. the current Rules of Administrative Procedure.

On 15 November 2005, the Office as the appropriate state administration body under Section 108(1)(f) of the Electronic Communications Act published a notification that on the date of delivery of the notification to the Parties the Office would institute administrative procedure for issuance of a Decision on Price, cancelling Pricing Decision No. 03/PROP/2004 of 1 April 2004 and its Amendment No. 1 of 22 April 2005.

In accordance with Section 26(2) of the Rules of Administrative Procedure, notification of the commencement of administrative proceedings was delivered to the Parties by public notice on 30 November 2005.

In accordance with Section 14 of the Rules of Administrative procedure, the Party to the Proceedings is any person whose rights, interests protected by law or obligations are to be addressed in the proceedings or whose rights, interests protected by law or obligations may be directly affected by the decision to be made; any person asserting that his rights, interests protected by law or obligations may be directly affected by the decision to be made may also be a Party to the Proceedings, unless an until the reverse is proved.

The administrative body conducted administrative proceedings with the persons that have entered, or are entering, into a Public Fixed Telecommunications Network Interconnection Agreement for the provision of broadband access to Internet services and other services using the ADSL technology (Asymmetric Digital Subscriber Line) in the access network. No person other Parties No. 1 to 7 did claim to be likely to be affected by the proceedings.

In accordance with Section 122(3) of the Electronic Communications Act, the Parties were invited to submit their comments on the matter within 7 days of the delivery of the notification of the commencement of administrative proceedings, in which the invitation to comments was contained, i.e. by 7 December 2005.

On 7 December 2005, the Office received comments from Party No. 1 and Party No. 6. Comments from Party No. 3 was delivered on 8 December and comments from Parties No. 2 and No. 5 were delivered on 9 December 2005.

Party No. 1 argued in its comments that it "has no objections and perceives the move as indication that the administrative body arrived at the conclusion that price regulation, i.e. determination of the calculation method and of the maximum monthly price for public communications network interconnection for the provision of broadband access to Internet services and other services using ADSL technology, is not necessary at present".

Party No. 6 stated that it currently did not use Party No. 1's service of ADSL access to Internet services in the interconnection regime, the primary reasons being the prices and the broader service portfolio available in the access regime. Party No. 6 also stated that the current regulation of prices for ADSL services was entirely ineffective and, in that Party's view, it could be cancelled under certain conditions. Party No. 6 indicated the following conditions for stopping regulation in ADSL pricing:

- A. A significant reduction of the price for unbundling the local copper subscriber lines, including the prices of the associated co-location services; and
- B. the Office's Decision to ban Party No. 1 from limiting economic competition by setting dumping prices for ADSL services in accordance with Section 51(9)(d) of the Electronic Communications Act.

Party No. 3 stated, in the introduction to its comments, the facts underlying Pricing Decision No. 03/PROP/2004 and the Decision in administrative proceedings of 30 April 2004 by which the Office imposed on Party No. 1 the obligation to interconnect its networks for ADSL services. Like Party No. 2, Party No. 3 also drew attention to the fact that two decisions made by the Office

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were not respected: Decision on interconnection for ADSL services and Pricing Decision No. 03/PROP/2004. This Party to the Proceedings also highlighted the issuance of Amendment No. 1 to Pricing Decision No 03/PROP/2004 of 22 April 2005 and the issuance by Party No. 1 of its wholesale ADSL service offer, based on access to the network, which was published by Party No. 1 with effect from 1 June 2005.

The facts related to the issuance of Pricing Decision No 03/PROP/2004 and Amendment No. 1 thereto, as well as the publishing of the wholesale ADSL service offer in the access regime, was addressed in a similar manner in the comments submitted by Party No. 5.

Party No. 3 further indicated that Party No. 1 used its pricing policy to force all its wholesale partners, who provide ADSL services through the infrastructure of Party No. 1, to submit to the regime of access to its network, where, however, all conditions are dictated by Party No. 1 without any guarantees for any operator acceding to those conditions and for the subscribers of such an operator. Party No. 3 also emphasised the impossibility to resist one-sided changes to the agreement, including price increases by Party No. 1. Parties No. 2 and No. 5 held a similar view.

It is further stated in the comments submitted by Party No. 3 that Party No. 3 does not consider the removal of the regulatory measure, which the dominant operator refuses to respect, as an appropriate move to be taken by a market regulator. Party No. 3 believes that such a move would lead to considerable legal uncertainty and to denial of the principle that one's own breach of law cannot be invoked: analogically in this case, the fact that the regulated entity, Party No. 1, neglects the Pricing Decision and, in addition, forces all its wholesale business partners to circumvent the Decision, would be a reason for revoking the Pricing Decision. Party No. 3 therefore believes that price regulation must be maintained and that this is essential for further development. Party No. 5 held a similar view.

Further, Party No. 3 and Party No. 5 addressed in their submissions the issue of ADSL service quality in the Czech Republic and the issues related to the National Policy for High-speed Access (the Broadband Strategy of the Czech Republic).

Party No. 3 noted that, basing its considerations on its experience with the development of ADSL service provision in the Czech Republic, it considered the intention of the Office to revoke the aforementioned Pricing Decision as very objectionable and anticompetitive, with anti-liberalisation focus, threatening to affect heavily the ADSL service market and the subscribers in particular. The Office should carry out regulation under Section 4 of the Electronic Communications Act in order to substitute for the absent action of economic competition, to create conditions for appropriate functioning of economic competition and to protect users and other market players until a fully competitive environment is created: hence, the Office should not cancel the regulatory measures that are not respected because the dominant operator (against the conduct of which such measures are aimed) obviates them and abuses its market position in a situation where the regulator does not effectively enforce such measures. Parties No. 2 and No. 5 held a similar view.

Party No. 5 refers to the need to maintain Pricing Decision 03/PROP/2004 and Amendment No. 1 thereto in relation to the Office's Decision Ref. No. 29220/2005-610 of 19 August 2005 in respect of the dispute between Party No. 5 and Party No. 1 on extending the interconnection of telecommunication networks to accommodate the data transmission service using the xDSL technology and the ATM protocol. In this Decision, the Office relies on Pricing Decision 03/PROP/2004, including Amendment No. 1 thereto, which is being lifted; it does so because the issue of the price of the service was among the controversial points. Party No. 5 also argues that there is no unregulated offer by Party No. 1 in respect of ATM-based services.

Party No. 3 and Party No. 5 state that the proportion of ADSL lines belonging to Party No. 1 is increasing and that Party No. 1 provides its own retail services below the determined wholesale prices, which logically forces other providers on the Czech market to incur losses from the provision of their ADSL services: this considerably undermines their competitiveness and may lead, in the long run, to a mass exodus from the market. Party No. 3 and Party No. 5 also drew attention to the significant market power held on the market by Party No. 1.

Party No. 2 further noted that Party No. 1 as dominant operator was aware of the importance of not leaving the very promising and attractive market for broadband services without regulation. If

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the ADSL market is left unregulated, Party No. 1 as a dominant provider of broadband infrastructure would be able to continue dictating the conditions that would govern that market.

Party No. 3 also drew attention to the fact that if the Pricing Decision that sets a cap on the wholesale price of the ADSL service were revoked without being replaced by any other regulation, would widen the gap on the ADSL service market and, as a result, alternative operators would have to stop providing their ADSL services soon, unlike the dominant undertaking, Party No. 1.

Party No. 3 and Party No. 5 also believed that the Office was not entitled to revoke this Pricing Decision and referred to the provisions of Section 51 and 57 of the Electronic Communications Act.

Party No. 3 and Party No. 5 referred to the need to promptly complete the analysis of the relevant market before expiry of the periods set out in the Electronic Communications Act and to take comprehensive and effective measures to remedy the situation in the ADSL services market, including, but not limited to, reduction of interconnection prices so that they at least correspond to the current wholesale price level as determined by ČTc in its reference offer of network access for the ADSL service.

Party No. 3 summed up its submission as follows: "For the above reasons, the COL Company substantially disagrees with the Czech Telecommunication Office's intention to issue a Decision on Price to revoke Pricing Decision No. 03/PROP/2004 and its Amendment No. 1". Party No. 5 expressed a similar view.

Party No. 3 proposed to "maintain the Pricing Decision and amend the prices by the defined method with respect to the real costs that are reflected in the ČTc's wholesale offer".

Party No. 2 recommended in its submission to terminate the proceedings and maintain the aforementioned Pricing Decision.

The Office responds to the above comments as follows:

The Office is the appropriate state administration body to perform the activities based on the Electronic Communications Act.

As stated above, regulation under Section 2(w) of the Electronic Communications Act means alignment and control of communication activities and relations to build and maintain a competitive environment, protect the electronic communications market, including protection of electronic communication service users, issue decisions, measures of general nature and issue opinions under and within the meaning of this Act.

Within its scope, the Office must ensure that regulatory measures (especially the most stringent ones such as Decisions on Price) are only applied where absolutely necessary. Owing to the fact that no ADSL services are provided to end users through Pricing Decision No. 03/PROP/2004 and Amendment No. 1 thereto, the Office is of the opinion that the assertions of Party 3 and Party 5 as to the need to maintain this Pricing Decision in order to set a cap on the wholesale prices for ADSL services are not justified. The prices for alternative solutions in the provision of wholesale ADSL services, i.e. the prices of wholesale ADSL services provided in the access regime, are declining over time, whereas the quality of these services keeps improving, this being so irrespective of the development of ADSL service prices in the interconnection regime, as testified to by another ADSL service offer in the access regime, valid from 1 February 2006.

In respect of the above statements, the Office refers to the relevant market analyses, which are now under way and which will prove whether or not there is sufficient economic competition in market No. 12 – wholesale broadband access in the electronic communications networks, including access to the datastream. Assessment of the position of Party No. 1 in the relevant market and the increasing proportion of installed ADSL lines is the subject of analysis of relevant market No. 12 – wholesale broadband access in the electronic communications networks, including access to the datastream. If it is proved that there is an undertaking with significant market power on that market, obligations will be imposed on that undertaking in accordance with Section 51(3) of the Electronic Communications Act. In evaluating the markets and determining

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undertakings with significant market power and their obligations, the Office respects the Electronic Communications Act and Measure of General Nature OOP/1/07.2005-2, defining the relevant markets in the electronic communications sector, including the criteria to assess significant market power.

Imposition of obligations on undertakings with significant market power must comply with the Electronic Communications Act. The conditions specified by Party No. 6. are related to the relevant markets analyses and, in compliance with Section 51(3) of the Electronic Communications Act, the measures indicated by Party No. 6 may be imposed on an undertaking with significant market power on the basis of the results of the relevant market analysis. Hence, these conditions are not directly related to these proceedings.

Parties No. 3 and No. 5 did not furnish evidence to support their assertions concerning the provision of their own services under the level of wholesale prices, nor any evidence in support of their assertions concerning the provision of ADSL services at the cost of considerable losses. The Office does not identify itself with the view of Parties No. 2, 3 and 4 that revocation of this Pricing Decision is very objectionable and anticompetitive, with anti-liberalisation focus, threatening to affect heavily the ADSL service market and the subscribers in particular. In the Office's view, this assertion is purposefully fabricated. The Pricing Decision in question is not involved in the provision of any services, and the aforementioned Parties failed to demonstrate any influence of the Decision on the market. The Office also notes that Party No. 1 offers services on the basis of agreement on access to the network infrastructure of Party 1, which services make use of the broadband technologies on the basis of which the remaining Parties to the Proceedings offer their own ADSL services. The office further states that, in addition to the wholesale offer of ADSL services, it is also possible to use the local loop unbundling service under Section 85 of the Electronic Communications Act, on the basis of which ADSL services can be provided. These possibilities are real possibilities, and this also proves the groundlessness of the assertion by Party No. 2 concerning the ability of Party No. 1 to decide at will on the conditions of the ADSL market. As no operators do at present use the interconnection regime for the ADSL services, it is impossible, regardless of market analysis, to expect this Pricing Decision 03/PROP/2004 and its Amendment No. 1, or the revocation thereof, to have any influence on the result of analysis of market No. 12 – wholesale broadband access in electronic communications network, including access to datastream.

As to retail prices, the Office's view is that the end prices of ADSL services are not addressed in these proceedings and that the Office does not regulate the end prices of ADSL services. The development of the prices of the alternative solution, i.e., access to ADSL services, does not show any indication of future growth of those prices, and as indicated above, there are also other possibilities of ADSL service provision.

As to the question of the Office's not being authorised to issue a Decision on Price which would revoke an existing Pricing Decision, the Office states the following: These administrative proceedings were instituted in accordance with Section 142(2) of the Electronic Communications Act, in which it is set out that the Pricing Decisions issued under the Telecommunications Act should remain in effect until the Office issues relevant Decisions on Price (Sections 57 to 59) but not longer than for 12 months of the effective date of the Electronic Communications Act. Within a period of 12 months of the effective date of this Act, the Office is entitled to issue this Decision on Price without previous analysis of the market. In this case the Office considered all the facts known to it and issued its Decision on Price, as it could do, without prior analysis of the relevant market. Provisions of Section 142 of the Electronic Communications Act only allow for issuing substantive Decisions on Price. The Office may not issue a Decision on Price to determine maximum prices for services that were not regulated by the [former] Telecommunications Act.

As to the assertions by Parties No. 2, 3 and 5 concerning one-sided changes to agreements and those Parties' being forced by Party No. 1 to use ADSL services provided in the access regime, it can be stated that any agreement is a bilateral act and that it is entirely for the parties themselves to determine the conditions under which an agreement is to be entered into, unless otherwise provided in applicable legal regulations.

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The National Policy for High-speed Access (the Broadband Strategy of the Czech Republic) and the quality of ADSL services provided in the Czech Republic are not the subject of these administrative proceedings.

The issues of the agreements on telecommunication network interconnection and on the data transmission service using the xDSL technology and the ATM protocol are not addressed in these proceedings, and the same applies to the issue of feasibility of the decision on the interconnection.

A representative of Party No. 3 and representative of Party No. 1 examined File Ref. No. 39 557/2005-611 on 22 December 2005 and representative of Party No. 7 did so on 23 December 2005. These representatives of the Parties stated that they had no further comment on the information contained in the file.

Under Section 130 of the Electronic Communications Act and in accordance with the Czech Telecommunication Office's rules for maintaining consultations with the stakeholders, the Office published on 6 February 2006 its draft Decision at the discussion site. Comments on the draft Decision on Price could be submitted by 6 March 2006. Two parties filed their comments within that period.

In the first comment it was claimed that insufficient attention was paid to the comment raised by Party No. 5, which proposed to complement the telecommunications network interconnection by adding to it the data transmission service using the xDSL technology and the ATM protocol. This comment was not accepted.

The remaining comments required Pricing Decision No. 03/PROP/2004 and Amendment 1 thereto to remain in force. Those comments were not accepted.

All the comments and the manner they were addressed were made public in the comment settlement table at the discussion site.

As no operators do at present use the interconnection regime for the provision of their ADSL services, and as ČESKÝ TELECOM, a.s. is currently offering in the access regime a wider service portfolio at lower prices, Pricing Decision 03/PROP/2004 and its Amendment No. 1 do no longer fulfil their function of securing a competitive environment on the electronic communications market. Hence, regulation of the prices for ADSL services in the interconnection regime has lost its purpose and there is no need to continue applying this regulation. The Office is obliged to review its regulatory measures and if it is found that any measure has become unnecessary the Office should revoke it.

Having considered the above, the administrative body decided as indicated in the awarded Decision.

Advice on Remedies:

No remedy is allowed against this Decision.

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Czech Telecommunication
Office
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[*signature*] Pavel Dvořák
PhDr. Pavel Dvořák, CSc.
Chairman of the Council of the
Czech Telecommunication Office