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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] 2. 5. 2006

Czech Telecommunication Office

Economic Regulation Department

Date [handwritten] 2. 5. 2006 [signature: Prokopová]

Prague, 26 April 2006
Ref.: 16 261/2006-611/IV.vyř.

In proceedings initiated *ex officio* with ČESKÝ TELECOM, a.s. with registered office at Olšanská 55/5, 130 34 Prague 3, Reg. Number 60193336 on 16 March 2006 in the matter of the imposition of obligation related to price regulation on an undertaking with significant market power, the Council of the Czech Telecommunication Office as the appropriate state administration body under Section 107(8)(b)(5) of Act No. 127/2005 on Electronic Communications and on Amendment to Certain Related Acts (Electronic Communications Act), as amended (the "Act") and under Section 10 of Act No. 500/2004, Rules of Administrative Procedure, as amended, hereby issues this

Decision on Price No. CEN/1/04.2006-15:

I.

(1) Under Section 51(3)(g) and Section 59 and on the basis of Section 58(1)(b)(3) of the Act and in accordance with the results of the analysis of the relevant market of "Access to Public Telephone Network at a Fixed Location for Residential Customers", issued in Czech Telecommunication Office's Measure of General Nature No. A/1/04.2006-17, the obligation to ensure cost orientation of prices during negotiations on charges for the service of access to public telephone network at a fixed location for residential customers for the purpose of utilisation of the publicly available telephone service is hereby imposed on ČESKÝ TELECOM, a.s., with registered office at Olšanská 55/5, 130 34 Prague 3, Reg. Number 60193336 (hereinafter referred to as the "Party to the Proceedings").

II.

The Party to the Proceedings shall fulfil the obligation indicated in Part I of the Decision award from the effective date of the Decision, with the exception stated in Part II of the Decision award.

III.

In negotiations on charges for the provision of the service of access to public telephone network at a fixed location for residential customers, the Party to the Proceedings shall remove cross subsidisation from the MINI pricing plan so that the situation is remedied within one year of the effective date of this Decision at the latest.

Substantiation

In accordance with Section 51(1) and (2) of the Act, the Czech Telecommunication Office ("the Office") carried out analysis of Market No. 1 - Access to Public Telephone Network at a Fixed Location for Residential Customers ("Market No. 1"), which it made public on the official board on 16 March 2006 under Ref. No. 4 638/2006-609/III vyř. and, upon notification to the European

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Commission, it issued it as Measure of General Nature No. A/1/04.2006-17 of 19 April 2006. The results of the analysis showed that Market No. 1 is not an effectively competitive market because there is an undertaking with significant market power doing business on it. It was found during the analysis that the MINI pricing plan involved cross subsidisation.

By the administrative body's Decision No. SMP/1/04.2006-6 of 24 April 2006, which was issued under Ref. No. 11 497/2006-609/ IV. vyř. and became final on 25 April 2006, the Party to the Proceedings was determined to be an undertaking with significant market power.

On Part I of the Decision award

On the basis of the result of the analysis, Measure of General Nature No. A/1/04.2006-17 was issued in accordance with Section 51(2) of the Act, proposing to impose the obligation to enable access to specific network elements and associated facilities under Section 84 of the Act, obligation to allow carrier selection and pre-selection under Section 70 of the Act, obligation to maintain separate records of costs and revenues under Section 86 of the Act, and price regulation-related obligations under Sections 56 and 57 of the Act.

With respect to this proposal, the administrative body considered the proposed obligations. The obligation specified in Part I of the Decision award was imposed on the Party to the Proceedings through this Decision with reference to what is stated below. The imposition of obligations under Sections 51(3)(a) to (f) is the subject of separate administrative proceedings.

In analysing relevant market No. 1, the Office examined – in accordance with Section 137(3) of the Act – the question whether the market conditions in terms of prices for the end users were or were not significantly distorted by cross-subsidisation of the public telephone service provided by the undertaking with significant market power through the public fixed telecommunications network. Preliminary data on historic costs of the Party to the Proceedings were submitted and the Office examined the results of separate recording of costs, sales and revenues of ČESKÝ TELECOM, a.s., for 2004. The Office found that in the MINI pricing plan offered by the Party to the Proceedings the price did not cover the operating costs. On that basis, the Office imposes on the Party to the Proceedings the obligation to ensure cost-orientation of the price under Section 58(1)(a)(3) of the Act in respect of the service of access to public telephone network at a fixed location for residential customers in order that the publicly available telephone service could be used so as to remove the identified cross subsidisation and to apply prices that cover the costs and enable to generate a fair profit. A cost-oriented price is price under Section 55(2) of the Act.

The administrative body found this method of pricing regulation as the best for achieving the intended purpose. The implementation of the remedial measure will lead to increased prices for an extensive number of subscribers and may result in a decrease in the number of subscribers. As to the cost-oriented price, it is left for the Party to the Proceedings to decide to what extent to reflect a fair price in the price. In this way the Party to the Proceedings is given sufficient scope to increase its price and, at the same time, to eliminate as far as possible the possible adverse impacts. The one-year period granted for carrying out the obligation will allow the Party to the Proceedings to spread the impacts over time.

To prove the cost orientation of the prices for the provision of the service of access to public telephone network at a fixed location for residential customers in order to enable those customers to use the publicly available telephone service, the Party to the Proceedings should maintain separate records of costs and revenues in accordance with Measure of general nature No. OOP/4/03.2006-3, laying down the method of service costing / revenue distribution and the allocation thereof, and defining the structure of information to be disclosed.

On Part II of the Decision award

The maximum length of the period in which the above obligation must be fulfilled was set at one year after the finality of the Decision in accordance with Section 137(3) of the Act.

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With respect to the above, administrative procedure under Section 51(3)(g) of the Act was instituted against the Party to the Proceedings on 16 March 2006 in respect of the imposition of obligation related to price regulation on an undertaking with significant market power. As set out in Section 51 of the Act, the undertaking whose rights and obligations are to be decided on should be the Party to the Proceedings. Notification of the commencement of the administrative proceedings was sent to the Party to the Proceedings and it contained an invitation for the Party to the Proceedings to express its view and propose evidence, for which it was granted a period of 7 days after the date of delivery of the notification.

The Party to the Proceedings stated that the results of the analysis published in a format other than a measure of general nature, as required by Section 51(1), second clause, of the Act cannot provide a basis for the imposition of an obligation on an undertaking having significant market power in the relevant market. As the Party to the Proceedings also believes, the fact that the results were made public on the official board on 16 March 2006 cannot be considered as publishing under Section 51(2) of the Act, because consultation based on Section 131 of the Act was not completed. The Party to the Proceedings adds that publication in the Telecommunications Bulletin is the appropriate form of publishing the results of the analysis within the meaning of Section 125(2)(c) of the Act.

Referring to this objection raised by the Party to the Proceedings, the administrative body states that it commenced the administrative proceedings after performing an analysis of market No. 1 under Section 51(1) of the Act. Then, after completing the public consultation based on Section 130 of the Act, it published on the electronic official board the result of the analysis of market No. 1, reflecting the comments from the public consultation, including the opinion of the Office for the Protection of Economic Competition; it did so on 16 March 2006 on the basis of Section 51(2) of the Act under ref. No. 4 638/2006-609/III. vyř. With respect to the timing of the completion of the analyses of relevant markets as defined in the Act, the Office instituted these administrative proceedings on 16 March 2006. The administrative body granted the Party to the Proceedings a reasonable period for submitting its opinion. The process of analysis of market No. 1 was completed by publishing the result and the analysis was sent (notified) to the European Commission. Therefore the administrative body states that commencement of the administrative proceedings after publishing the result of the analysis – though before the effective date of Measure of General Nature No. A/1/04.2006-17 – does not involve any contravention of the Act; none of the rights of the Party to the Proceedings was infringed and it was given every opportunity to assert its rights under the legal regulations in force. Should any change be made in the results of the analysis on the basis of the notification, the Party to the Proceedings should have been granted an additional period of time to express its additional opinion. However, this did not happen. The text of the result of the analysis and the effective measure of general nature identical.

The Party to the Proceedings requested an amendment to Part I of the Decision by adding a new paragraph, which reads as follows: “In negotiations on charges for the provision of the service of access to public telephone network at a fixed location for residential customers, the Party to the Proceedings shall remove cross subsidisation from the MINI pricing plan so that the situation is remedied within one year of the effective date of this Decision at the latest.”

The administrative body granted this objection and reflected it in the draft Decision as a separate Part II of the Decision award.

Under Section 130 of the Act and in accordance with the Czech Telecommunication Office’s rules for maintaining consultations with the stakeholders involved, the administrative body published on 24 March 2006 the draft Decision at the discussion site, including invitation to submit comments at the site. The Ministry of Informatics raised comments of methodological nature. All the comments and the manner they were addressed were made public in the comment settlement table at the discussion site.

The Party to the Proceedings was given an opportunity to express its view in accordance with Section 122(5) of the Act. In its submission of 21 April 2006, the Party to the Proceedings stated that it had not found any new facts or circumstances to be commented on.

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

Advice on Remedies:

No remedy is allowed against this Decision.

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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