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Czech Telecommunication Office
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[Stamp and Signature:



THIS DECISION BECAME FINAL
on [handwritten] 30. 11. 2006
Czech Telecommunication Office
Economic Regulation Department
Date [handwritten] 30. 11. 2006 [signature:Mičíková]

Prague 18 October 2006
Ref. No. 40 345/2006-611/IV. vyř.

In proceedings initiated *ex officio* with Telefónica O2 Czech Republic, a.s. with registered office at Olšanská 55/5, 130 34 Prague 3, Reg. Number 60193336, on 21 July 2006 in the matter of the imposition of obligation related to price regulation on 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/7/10.2006-68:

I.

Under Section 51(3)(g) and Section 59 of the Act and in accordance with the results of the analysis of the relevant market of "Minimum Set of Leased Lines", issued in Czech Telecommunication Office's Regulation of General Application No. A/7/08.2006-29, price regulation in the form of mandatory procedure in pricing under Section 58(1)(b)(3) is imposed on Telefónica O2 Czech Republic, a.s., with registered office at Olšanská 55/5, 130 34 Prague 3, Reg. Number 60193336 (hereinafter referred to as the "Party to Proceedings") as follows:

The Party to Proceedings shall negotiate prices so that the prices are cost-oriented, i.e. they cover costs expended in an efficient and effective manner plus a reasonable profit and ensure recovery of the investment within a reasonable period of time, and reflect the related risks. In fulfilling this obligation, the Party to Proceedings shall proceed in accordance with the Regulation of General Application issued to implement Section 86(3) of the Act, laying down the method of service costing and cost and revenue allocation and defining the structure of the information to be reported.

The Party to Proceedings may negotiate prices that are lower than defined by the procedure described in the preceding paragraph. In doing so, the Party to Proceedings must respect the non-discrimination principle and the prohibition of cross-financing.

The Party to Proceedings shall negotiate prices for the individual types of lines, split into a one-off charge for installing the line and the monthly charges for the lease of the line. The type of line shall be understood to mean a line of a given length and transmission speed (capacity). The Party to Proceedings is entitled also to apply other criteria to differentiate line types.

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II.

(1) The Party to Proceedings shall publish the prices in accordance with Part I of the Decision ruling and shall do so no later than 60 days of the finality of the Decision.

(2) For newly concluded agreements, the Party to Proceedings shall negotiate prices in accordance with Part I of the Ruling from the date on which the prices are published.

(3) For already existing agreements, the Party to Proceedings shall negotiate prices in accordance with Part I of the Ruling within 45 days of the date on which the prices are published.

Substantiation

In accordance with Section 51(1) and (2) of the Act, the Czech Telecommunication Office ("the Office") carried out an analysis of Market No. 7 – Minimum Set of Leased Lines ("Market No. 7"), which it made public on the official board on 13 July 2006 under Ref. No. 33 180/2006-609/II. vyř. and, upon notification to the European Commission, the Office issued it as Regulation of General Application No. A/7/08.2006-29 of 14 August 2006. The results of the analysis showed that Market No. 7 is not an effectively competitive market because there is an undertaking with significant market power doing business on it. The analysis also showed that prices disproportionately high and unfair to the end users are used on the market. For this reason, the administrative body proposed to apply price-control obligations, which it intends to impose in accordance with Section 51(3)(g) of the Act.

By the administrative body's Decision No. SMP/7/09.2006-61 of 11 September 2006, which was issued under Ref. No. 36 517/2006-609/V. vyř. and became final on 12 September 2006, the Party to the Proceedings was determined to be an undertaking with significant market power.

On Part I of the Ruling

On the basis of the result of the analysis, Regulation of General Application No. A/7/08.2006-29 was issued in accordance with Section 51(2) of the Act, proposing to impose the obligation to provide lease line services to the extent of the minimum set of leased lines in the entire territory of the state under Section 76 of the Act, to ensure non-discrimination under Section 77 of the Act, to ensure separation of costs and revenues under Section 86 of the Act, and obligations related to pricing regulation under Sections 56 and 57 of the Act.

Taking into account this proposal, the administrative authority considered the proposed obligations and issued this Decision, imposing on the Party to Proceedings, with reference to the explanations below, the obligation set out in part I of the Decision ruling. Imposition of obligations under Section 51(3)(a) to (f) is the subject of separate administrative proceedings.

In Part I of the Decision ruling, the obligation of cost orientation of the prices for the leased line service and the mandatory procedure in pricing or price calculations are imposed on the Party to Proceedings in accordance with Section 58(1)(b) of the Act. Upon analysing relevant market No. 7 and on the basis of the result obtained, the administrative authority decided to apply a milder form of price regulation to the undertaking with significant market power. This regulation consists in pricing rectification by defining two conditions: cost orientation of the prices and the mandatory pricing procedure.

The Party to Proceedings shall negotiate prices so that the cost-oriented prices cover the costs expended in an effective and efficient manner plus a reasonable profit, reflect the related risks and ensure recovery of the investment within a reasonable period of time. In determining the price, the Party to Proceedings should proceed in accordance with the Regulation of General Application

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issued to implement Section 86(3) of the Act, laying down the method of service costing and cost and revenue allocation and defining the structure of the information to be reported.

The Party to Proceedings is allowed also to offer prices lower than the cost-oriented prices to the detriment of profit, provided, however, that at least the costs expended in an effective and efficient manner are covered and any cross financing is avoided. By offering its prices, the Party to Proceedings must not breach the non-discrimination principle: if it negotiates lower prices it must do so under the same conditions for all end users, depending, for example, on the 'quantity used'.

On Part II of the Ruling

Determining the effective date, the administrative authority considered the time needed by the Party to Proceedings to determine the price of the lease line services so that it complies with the condition defined in Part I of the Ruling, also taking into account the time needed to renegotiate any change to the contractual conditions for the contracts already signed.

With respect to the above, administrative procedure under Section 51(3)(g) of the Act was instituted against the Party to Proceedings on 21 July 2006 in respect of the imposition of obligation related to price regulation on 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 only be the Party to Proceedings. Notification of the commencement of the administrative proceedings was sent to the Party to Proceedings and it contained an invitation for the Party to Proceedings to express its views and propose evidence, for which it was granted a period of 14 days after the date of delivery of the notification.

On 4 August 2006 the administrative authority received the statement of the Party to Proceedings in respect of the commenced administrative proceedings. The comments indicated below were contained in the statement submitted by the Party to Proceedings.

The Party to Proceedings stated that in the notification of the commencement of administrative procedure ("the Notice") the administrative authority had referred to the results of the analysis of market No. 7, made public on 13 July 2006 under Ref. No. 33 180/2006-609/II.vyř. on the electronic notice board of the Czech Telecommunication Office. Results of the analysis, if published in any form other than as Regulation of General Application ("OOP"), required by Section 51(1), second clause, of the Act, cannot serve as a basis for the imposition of any obligations on an undertaking that has significant market power in the relevant market. In addition, as the Party to Proceedings believes, making the results public on the electronic official notice board on 13 July 2006 cannot be considered as publishing in accordance with Section 51(2) of the Act, because the consultation process under Section 131 of the Act had not been completed. The Party to Proceedings added that, within the meaning of Section 125(2)(c) of the Act, publication in Telekomunikační Věstník (Telecommunications Bulletin) is the appropriate form of publishing the results of the analyses (in accordance with Section 51).

Referring to the objection raised by the Party to Proceedings, the administrative authority states that it commenced the administrative proceedings after carrying out an analysis of market No. 7 under Section 51(1) of the Act and that after completion of the public consultation under Section 130 of the Act, it published on its official electronic notice board, in accordance with Section 51(2) of the Act, the result of the analysis of market No. 7, including comments from the public consultation that were incorporated into it and also including the opinion of the Office for the Protection of Economic Competition, doing so under ref. No. 33 180/2006-609/II. vyř. To meet the timescales required by the Act for the completion of the analyses of relevant markets, the Office commenced the administrative proceedings on 21 July 2006. The administrative authority granted the Party to Proceedings a reasonable period to express its opinion. The process of analysing market No. 7 was completed by publishing the results of the analysis and,

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subsequently, the analysis was sent to the European Commission for notification. The administrative authority therefore states that the launching of the administrative proceedings after making the result of the analysis public, though before the finality of Regulation of General Application No.A/7/08.2006-29, was not in contradiction with the Act and that the rights of the Party to Proceedings were not at all violated, because the Party to Proceedings had been given every opportunity to assert its rights under the legal regulations in force. Should any change be made to the results of the analysis on the basis of the notification process, the Party to Proceedings would have to be provided an additional period of time for expressing its opinion. However, this did not happen and the text of the results of the analysis is identical with that of the Regulation of General Application in force.

The Party to Proceedings recommends in its submission to strengthen the precision of the definition of line type in the fourth paragraph in Part I by making the text of the last clause more accurate: "For the purposes of this Decision, the type of line shall be understood to mean a line of a given length and transmission speed (capacity)." It also recommends to add another sentence: "The Party to Proceedings is entitled also to apply other criteria to differentiate line types." The proposal of the Party to Proceedings is based on what it has learned from practical experience: as a result of the rapid development of technologies and infrastructure in the electronic communication area, it is necessary in contractual pricing to pay due respect to the obligation of cost orientation and to other obligations, including those based on other criteria. For this reason, the Party to Proceedings considers it correct to request to be given the possibility also to choose other distinguishing criteria.

The administrative authority granted this request.

Owing to the fact that the administrative authority's draft decision No. CEN/7/XX.2006-Y is also largely related to wholesale supply on market No. 13 – "Wholesale Terminating Segments of Leased Lines", i.e. to draft decision No. REM/13/XX.2006-Y and draft decision CEN/13/XX.2006-Y, the Party to Proceedings considers it logical that the periods for compliance with the imposed obligations should be defined in a uniform manner. The reasons for requiring standard periods for compliance with the obligations also include the fact that under Section 63(6) of the Act the subscriber must be notified of any significant changes at least one month before the finality thereof. If a new leased-line price list is to be issued for the end user, the Party to Proceedings will have to fulfil the above obligation, which, according to its opinion, is difficult to achieve from the administrative point of view. The existing Leased Line Service price list in force from 1 July 2006, which meets the basic requirements proposed in both REM /7/XX.2006-Y and CEN/7/XX.2006-Y, will meanwhile remain in force, so that there is no danger to the further development of competition. For the above reasons, the Party to Proceedings requests – and considers its request fully justified – that the periods determined in the decision on price regulation should be set uniformly at 180 days in part II Paragraph (1) of the administrative authority's decision No. CEN/7/XX.2006-Y as well as REM/13/XX.2006-Y and CEN/13/XX.2006-Y, and at 60 days in Part II Paragraph (2) of those Decisions.

The administrative authority did not grant this request. The minimum lease line service is not a new service and the periods defined in Part II of the Ruling reflect the periods for issuance of the price list and for notifying the subscriber of any changes to prices before the changes become final.

On the basis of Section 130 of the Act and in accordance with the Czech Telecommunication Office's Rules for consultations at the discussion site, the Office published its draft Regulation, including invitation to raise comments, at the discussion site on 23 August 2006.

The Party to Proceedings was the only entity to raise comments during the public consultation process. It requested the period for publishing the prices to be extended from 45

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days to 60 days. With respect to the integration of ČESKÝ TELECOM and Eurotel, the administrative authority accepted this comment.

The above comment and the manner it was addressed were made public in the comment settlement table at the discussion site on 13 October 2006. The administrative authority modified the draft Decision according to the result of the public consultation.

The Party to the Proceedings was given an opportunity to express its view in accordance with Section 122(5) of the Act. The Party to the Proceedings familiarised with the file on 6 October 2006 and did not raise any further comments.

The administrative body decided as indicated in the Decision ruling. 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.

PhDr. Pavel Dvořák, CSc.
Chairman of the Council of the
Czech Telecommunication Office