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Czech Telecommunication Office
headquartered at Sokolovská 219, Prague 9
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[Stamp and Signature:



THIS DECISION BECAME FINAL

on [handwritten] 2. 5. 2006

Czech Telecommunication Office

Economic Regulation Department

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

Prague, 26 April 2006
Ref.: 9 963/2006-611/IV.vyř.

In proceedings instituted *ex officio* with ČESKÝ TELECOM, a.s. with registered office at Olšanská 55/5, 130 34 Prague 3, Reg. Number 60193336 on 17 February 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 Administrative Authority 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/11/04.2006-25:

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 "Wholesale unbundled access (including shared access) to metallic loops and sub-loops for the purpose of providing broadband and voice services" ("LLU Market"), issued through Czech Telecommunication Office's Measure of General Nature No. A/11/03.2006-2, the obligation 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 Party to Proceedings) to ensure – when negotiating the prices of the service of unbundling local loops and the facilities and services needed for the provision of services through the local loops (hereinafter referred to as "co-location") – that the maximum prices set out below are not exceeded:

1. One-time prices for the provision of the services of unbundling copper local loop or subloop:

	Name of the service	Maximum price in CZK, excl. of VAT
1.1 a	Establishing the service of copper local loop unbundling (LLU) (<i>LLU provision on PROVIDE basis</i>)	2,323.-
1.1 b	Establishing the service of shared access to copper local loop (SAL) (<i>SAL provision on PROVIDE basis</i>)	2,437.-
1.2	Change of the service class of unbundled access to copper local loop without changing the position on the transfer wiring (<i>Change of LLU service class on CHANGE (COS) basis without changing position on TW</i>)	646.-
1.3	Change of the service class of unbundled access to copper local loop with changed position on the transfer wiring (<i>Change of LLU service class on CHANGE (COS) basis with changing position on TW</i>)	1,780.-

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1.4 a	Change of the service provider using copper local loop unbundling without changing the service class <i>(TRANSFER LLU, including migration from the ADSL service of the Party to Proceedings (currently referred to as Internet Express/Carrier Broadband) to the ADSL service of another provider using LLU)</i>	1,693.-
1.4 b	Change of the service provider using shared access to copper local loop without changing the service class <i>(TRANSFER SAL, including migration from the ADSL service of the Party to Proceedings (currently referred to as Internet Express/Carrier Broadband) to the ADSL service of another provider using SAL)</i>	1,877.-
1.5 a	Cancellation of order before implementation of the service of copper local loop unbundling <i>(LLU order cancel – ABORT message)</i>	1,816.-
1.5 b	Cancellation of order before implementation of the service of shared access to copper local loop <i>(SAL order cancel – ABORT message)</i>	1,989.-
1.6	Change of the service of shared access to copper local loop to the service of copper local loop unbundling without changing position on the transfer wiring <i>(Change of SAL service to LLU service on CONVERT basis without changing the service class and without changing position on TW)</i>	1,221.-
1.7	Change of the service of shared access to copper local loop to the service of copper local loop unbundling with changed position on the transfer wiring <i>(Change of SAL service to LLU service on CONVERT basis with changed service class and with changed position on TW)</i>	1,595.-
1.8 a	Establishing the service of unbundled access to local sub-loop (USL) <i>(USL provision on PROVIDE basis)</i>	3,145.-
1.8 b	Establishing the service of shared access to copper local sub-loop (SSL) <i>(SLS provision on PROVIDE basis)</i>	3,436.-
1.9	Change of the service class of copper local sub-loop unbundling without changing the position on the transfer wiring <i>(Change of USL service class on CHANGE (COS) basis without changing position on TW)</i>	646.-
1.10	Change of the service class of copper local sub-loop unbundling with changed position on the transfer wiring <i>(Change of USL service class on CHANGE (COS) basis with changed position on TW)</i>	1,780.-
1.11 a	Change of the service provider using copper local sub-loop unbundling without changing the service class <i>(TRANSFER USL, including migration from the ADSL service of the Party to Proceedings (currently referred to as Internet Express/Carrier Broadband) to the ADSL service of another provider using USL)</i>	2,692.-
1.11 b	Change of the service provider using shared access to copper local loop without changing the service class <i>(TRANSFER SLS, including migration from the ADSL service of the Party to Proceedings (currently referred to as Internet Express/Carrier Broadband) to the ADSL service of another provider using SLS)</i>	2,973.-
1.12 a	Cancellation of order before implementation of the service of copper local sub-loop unbundling <i>(USL order cancel – ABORT message)</i>	3,123.-
1.12 b	Cancellation of order before implementation of the service of shared access to copper local sub-loop <i>(SLS order cancel – ABORT message)</i>	3,405.-
1.13	Change of the service of shared access to copper local sub-loop to the service of copper local sub-loop unbundling without changing the service class and without changing position on the transfer wiring <i>(Change of SLS service to USL service on CONVERT basis without changing the service class and without changing position on TW)</i>	1,221.-
1.14	Change of the service of shared access to copper local sub-loop to the service of copper local sub-loop unbundling with changed service class and with changed position on the transfer wiring <i>(Change of SLS service to USL service on CONVERT basis with changed service class)</i>	1,595.-

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	<i>and with changed position on TW)</i>	
1.15	Activities done due to incorrect fault message	2,227.-
1.16	Specific copper local loop identification – manual determination <i>MDF QUERY [MDF = main distribution frame]</i>	392.-
1.17	Checking the possibility of establishing a service of the required class <i>LQI [LQI = loop qualification inquiry]</i>	1.011.-
1.18	Checking the results of rejected order for the service of copper local loop unbundling <i>LQM [LQM = loop qualification measurement]</i>	5.099.-

2. Prices for the provision of the service of unbundling the copper local loop or subloop, charged on a monthly basis:

	Name of the service	Maximum price in CZK, excl. of VAT
2.1	Monthly lease of one copper local loop for the service of copper local loop unbundling	360.-
2.2	Monthly lease of one copper local loop for the service of shared access to copper local loop	92.-
2.3	Monthly lease of one copper local loop for the service of copper local sub-loop unbundling	341.-
2.4	Monthly lease of one copper local loop for the service of shared access to copper local sub-loop	92.-
2.5	Specific copper local loop identification <i>(Monthly flat rate for using the MDF QUERY on-line system)</i>	43.-

3. One-time prices for the provision of the co-location services:

	Name of the service	Maximum price in CZK, excl. of VAT
3.1	Preliminary local inspection – 1 preliminary local inspection report	2,693.-
3.2 a	Detailed local inspection – 1 detailed local inspection report for co-location room	12,432.-
3.2 b	Detailed local inspection – a further local inspection report for co-location room	7,085.-
3.3	Provision of co-location space – cabinet	36,726.-
3.4	Provision of technological power supply 48V – cabinet	4,758.-
3.5	Screened internal connection cable and strap on the main distribution frame, allocated to the Provider – connection cables, 96 pairs	4,651.-
3.6	Unscreened internal connection cable and strap on the main distribution frame, allocated to the Provider – connection cables, 96 pairs	4,651.-

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3.7	Screened internal connection cable, copper, 2 Mbit/s, including digital switchboard – pair	1,037.- ¹⁾
3.8	Optic fibre internal connection cable including optic fibre switchboard – fibre pair	5,031.- ¹⁾
3.9	Uninterruptible power supply (UPS) – UPS unit	3,288.-
3.10	Bus circuit cable – optic fibre, including optic fibre switchboard – fibre pair	5,031.-
3.11	Bus circuit cable – copper, including strap on transfer wiring – pair	1,037.-
3.12	External connection cable, copper, for indoor environment, including strap on the main distribution frame and strap on the transfer wiring – connection cables, 96 pairs	6,036.-
3.13	External connection cable, screened, copper, for indoor environment, including strap on the main distribution frame and strap on the transfer wiring – connection cables, 96 pairs	6,036.-
3.14	External connection cable, copper, for outdoor environment, including strap on the main distribution frame and strap on the transfer wiring – connection cables, 96 pairs	7,883.-
3.15	External connection cable, screened, copper, for outdoor environment, including strap on the main distribution frame and strap on the transfer wiring – connection cables, 96 pairs	7,883.-
3.16	Provision of power supply 230V – cabinet, rack	4,758.-
3.17	Issuing a chip card and meeting requirement for one access to the co-location area – for one employee of the lessee and one co-location room	1,891.-
3.18	Meeting requirement for one further access to the co-location area – for one employee of the lessee and one co-location room	1,173.-
3.19	Staff-accompanied entry – flat rate – one visit by any number of lessee’s employees in one co-location area	1,256.-
3.20	Staff-accompanied entry – utilisation – one started hour of staff-accompanied access of any number of lessee’s employees in one co-location area	377.-
3.21	Dismantling technological power supply 48V – cabinet	4,203.-
3.22	Dismantling screened internal connection cable and strap on the main distribution frame, allocated to the Provider – connection cables, 96 pairs	4,132.-
3.23	Dismantling unscreened internal connection cable and strap on the main distribution frame, allocated to the Provider – connection cables, 96 pairs	4,132.-
3.24	Dismantling screened internal connection cable, copper, 2 Mbit/s, including digital switchboard – pair	809.-
3.25	Dismantling optic fibre internal connection cable, including optic fibre switchboard – fibre pair	2,971.-
3.26	Dismantling uninterruptible power supply (UPS) – UPS unit	3,780.-
3.27	Dismantling bus circuit cable – optic fibre – fibre pair	2,971.-

¹⁾ Charged only where this service is not a part of the leased line service

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3.28	Dismantling bus circuit cable – copper – pair	809.-
3.29	Dismantling external connection cable, copper, for indoor environment – connection cables, 96 pairs	4,132.-
3.30	Dismantling external connection cable, screened, copper, for indoor environment – connection cables, 96 pairs	4,132.-
3.31	Dismantling external connection cable, copper, for outdoor environment – connection cables, 96 pairs	4,132.-
3.32	Dismantling external connection cable, screened, copper, for outdoor environment – connection cables, 96 pairs	4,132.-
3.33	Dismantling technological power supply 230V – cabinet	4,203.-
3.34	Putting co-location area in initial state – cabinet	2,675.-
3.35	Design examination work and project design documentation approval – one design by lessee, for which an opinion is issued	7,825.-

2. Prices for the provision of the co-location service, charged on a monthly basis:

	Name of the service	Maximum price in CZK, excl. of VAT
4.1	Screened internal connection cable and strap on the main distribution frame, allocated to the Provider – connection cables, 96 pairs	607
4.2	Unscreened internal connection cable and strap on the main distribution frame, allocated to the Provider – connection cables, 96 pairs	116
4.3	Screened internal connection cable, copper, 2 Mbit/s, including digital switchboard – pair	9.- ¹⁾
4.4	Optic fibre internal connection cable including optic fibre switchboard – fibre pair	62.-
4.5	Power consumption – kW power supply to installed equipment	2,214.-
4.6	Provision of power supply 48 V - cabinet	11.-
4.7	Co-location area lease – zone A (number of population from 1,000,001 to 999,999,999) – location of one cabinet	9,550.-
4.8	Co-location area lease – zone B (number of population from 250,001 to 1,000,000) – location of one cabinet	8,113.-
4.9	Co-location area lease – zone C (number of population from 80,001 to 250,000) – location of one cabinet	8,975.-
4.10	Co-location area lease – zone D (number of population from 30,001 to 80,000) – location of one cabinet	7,363.-

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4.11	Co-location area lease – zone E (number of population from 5,001 to 30,000) – location of one cabinet	7,992.-
4.12	Co-location area lease – zone F (number of population from 0 to 5,000) – location of one cabinet	10,008.-
4.13	Uninterruptible power supply (UPS) – UPS unit	454.-
4.14	Bus circuit cable – optic fibre – fibre pair	62.-
4.15	Strap on the main distribution frame for the service of another technical solution	129.-
4.16	Bus circuit cable – copper – pair	9.-
4.17	External connection cable, copper, for indoor environment – connection cables, 96 pairs	131.-
4.18	External connection cable, screened, copper, for indoor environment – connection cables, 96 pairs	1,341.-
4.19	External connection cable, copper, for outdoor environment – connection cables, 96 pairs	131.-
4.20	External connection cable, screened, copper, for outdoor environment – connection cables, 96 pairs	1,341.-
4.21	Provision of technological power supply 230V – cabinet	11.-
4.22	Camera system – cabinet	519.-
4.23	Lease of area to locate the Lessee's rack in the building – one linear metre of cable rack	56.-
4.24	Lease of area to locate the Lessee's bar in the building – one linear metre of bar	26.-
4.25	Lease of area in the rack or bar of the Party to Proceedings in the building – one linear metre of one cable laid on the cable rack or cable bar	5.-
4.26	Lease of space to locate an antenna on the roof – site A (number of population from 1,000,001 to 999,999,999)	2,659.-
4.27	Lease of space to locate an antenna on the roof – site B (number of population from 250,001 to 1,000,000)	2,188.-
4.28	Lease of space to locate an antenna on the roof – site C (number of population from 80,001 to 250,000)	1,991.-
4.29	Lease of space to locate an antenna on the roof – site D (number of population from 30,001 to 80,000)	1,873.-
4.30	Lease of space to locate an antenna on the roof – site E (number of population from 5,001 to 30,000)	1,272.-
4.31	Lease of space to locate an antenna on the roof – site F (number of population from 0 to 5,000)	715.-
4.32	Lease of duct to the building – one linear metre of one cable laid on the cable rack or cable bar	5.-
4.33	Lease of area to build a duct to the building from the land of the Party to Proceedings outside the building to the cable room inside the building – one linear metre of cable route	56.-
4.34	Lease of area to locate the lessee's cable outside the building in the land, cable duct or trench belonging to the Party to Proceedings – site A (number of population from 1,000,001 to 999,999,999) – one linear metre of cable route	18.-
4.35	Lease of area to locate the lessee's cable outside the building in the land, cable duct or trench belonging to the Party to Proceedings – site B (number of population from 250,001 to 1,000,000)	10.-

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	– one linear metre of cable route	
4.36	Lease of area to locate the lessee's cable outside the building in the land, cable duct or trench belonging to the Party to Proceedings – site C (number of population from 80,001 to 250,000) – one linear metre of cable route	9.-
4.37	Lease of area to locate the lessee's cable outside the building in the land, cable duct or trench belonging to the Party to Proceedings – site D (number of population from 30,001 to 80,000) – one linear metre of cable route	8.-
4.38	Lease of area to locate the lessee's cable outside the building in the land, cable duct or trench belonging to the Party to Proceedings – site E (number of population from 5,001 to 30,000) – one linear metre of cable route	8.-
4.39	Lease of area to locate the lessee's cable outside the building in the land, cable duct or trench belonging to the Party to Proceedings – site F (number of population from 0 to 5,000) – one linear metre of cable route	8.-

II.

The Party to Proceedings is not entitled to request any other prices related to the copper local loop unbundling services or co-location services in addition to the service prices indicated in Part I of the ruling of this Decision.

III.

For newly concluded contracts, the Party to Proceedings must negotiate prices in compliance with price regulation under Part I of the ruling of this Decision, starting from the date of finality of the Decision.

In the remaining cases the Party to Proceedings has to negotiate prices in compliance with price regulation under Part I of the ruling of this Decision within two months after the finality of the Decision.

Substantiation

In accordance with Section 51(1) and (2) of the Act, the Czech Telecommunication Office ("the Office") carried out analysis of Market No. 11 – Wholesale unbundled access, including shared access, to metallic loops and sub-loops for the purpose of providing broadband and voice services ("Market No. 11"), which it made public on the official board on 1 February 2006 under Ref. No. 42 800/2005-609/III and, upon notification to the European Commission, it issued it as Measure of General Nature No. A/11/03.2006-2 of 3 March 2006. The results of the analysis showed that Market No. 11 is not an effectively competitive market because there is an undertaking with significant market power. As also demonstrated by the analysis, an excessively high price is charged in the market, detrimental to the end user, where there is no price regulation. For this reason, the Administrative Authority proposed to apply price-regulation obligations to be imposed under Section 51(3)(g) of the Act.

By the Administrative Authority's Decision No. SMP/11/03.2006-1 of 30 March 2006, which was issued under Ref. No. 603/2006-609/ IV. and became final on 30 March 2006, the Party to Proceedings was determined to be an undertaking with significant market power.

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On Part I of the Ruling

In accordance with Section 51 of the Act, by which the provisions of Articles 9 to 13 of Directive 2002/19/EC of the European Parliament and of the Council on access to, and interconnection of, electronic communications networks and associated facilities (Access Directive), Articles 17 to 19 of the European Parliament and of the Council on universal service and users' rights relating to electronic communications networks and services (Universal Service Directive) and Regulation (EC) 2887/2000 of the European Parliament and of the Council on unbundled access to the local loop (hereinafter referred to as "the Regulation") are transposed in the Czech legislation, and depending on the results of the analysis of the relevant market and assessment of the regulatory measures taken so far, the Office shall make a decision to determine the undertaking with significant market power and impose on such an undertaking one or several of the obligations set out in clauses a) to g) of the aforementioned provision of the Act.

On the basis of the analysis, Measure of General Nature No. A/11/03.2006-2 was adopted in accordance with Section 51(2) of the Act, proposing the obligation of transparency under Section 82 of the Act, obligation of non-discrimination under Section 81 of the Act, obligation to maintain separate records of costs and revenues under Section 86 of the Act, obligation to provide unbundled access to the facilities and to share the capacities under Section 84, and obligations related to price regulation under Sections 56 and 57 of the Act.

The Administrative Authority considered the proposed obligations and, with reference to what is stated below, the obligations set out in Part I of the ruling of this Decision were imposed by this Decision on the Party to Proceedings. Imposition of the obligations under Section 51(3)(a) to (f) is the subject of separate administrative proceedings.

For the purposes hereof, the price for the unbundling service and for the co-location service is the price that the operator entitled to operate an electronic communication network or provider entitled to provide an electronic communication service negotiates for access to the copper local loop or subloop with the Party to Proceedings as owner of the copper local loop or subloop. Such a price may be up to the specified maximum price.

The names of the services given in parentheses in Table 1 "One-time prices for the provision of the services of unbundling copper local loop or subloop" are added in order to provide continuity of the names with the Unbundling Reference Offer of the Party to Proceedings dated 1 June 2005.

The method of price regulation in the form of maximum prices for the unbundling services, including co-location, under Section 58(1)(a) of the Act was selected because price determination using the LRIC model applied to the local loop unbundling services, including co-location, requires large quantities of data to be fed to the model. The specific level of the prices must be verified in detail by the Administrative Authority in order to apply them correctly.

In determining the maximum prices for the individual unbundling services, including co-location, the Administrative Authority used the input data structure specified in Annex No. 1 to Measure of General Nature No. OOP/4/03.2006-3, laying down the methodology of service cost and revenue distribution and allocation and defining the structure of information to be reported, and the calculation was performed on the basis of the LRIC cost model and the reasonable profit was determined in accordance with Article 6 of the aforementioned Regulation. The LRIC method was used in order to determine, in an objective way, the costs of an efficient operator. The cost models for calculating the prices of local loop unbundling and co-location services were made public on the electronic notice board of the Czech Telecommunication Office, including the "cost model for the unbundling of facilities and services essential for the provision of services through the copper local loop (co-location)" under Ref. No. 13 182/2006-611 and the "cost model for the services of wholesale unbundled access to the copper local loop or shared access to the copper local loop or subloop of the network for the purposes of provision of electronic communication services" under Ref. No. 18 859/2006-611.

For the service of "specific copper local loop identification", the Party to Proceedings offers two options: either to charge a fee for each individual inquiry or to use a flat rate charge on a calendar month basis. The Administrative Authority therefore determined the maximum prices for both options.

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On Part II of the Ruling

In Part II of the ruling it is stated that the Party to Proceedings is not entitled to request any other prices related to the copper local loop unbundling services or co-location services in addition to the service prices indicated in Part I because the decision on price, related to the reference offer, contains a list of all the partial services that are essential for the provision of the unbundling service. If fees were required for any other partial services, such a requirement would not comply with the LRIC model.

On Part III of the Ruling

For newly concluded contracts, the Party to Proceedings must negotiate prices in compliance with price regulation from the first day of finality of the Decision. In the remaining cases it has to negotiate prices in compliance with price regulation so that such prices can start being charged, at the latest, from the date of expiration of a two-month period after the finality of the Decision.

* * *

With respect to the above, administrative procedure under Section 51(3)(g) of the Act was instituted against the Party to Proceedings on 17 February 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 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 7 days after the date of delivery of the notification.

On 22 February 2006 the Party to Proceedings inspected file Ref. No. 9 963/006-611 in accordance with Section 38 of the Rules of Administrative Procedure. On 24 February the Party to Proceedings expressed its opinion as to the initiation of the proceedings. On 1 March 2006 the Party to Proceedings extended its opinion in respect of the information contained in file Ref. No. 9 963/006-611.

The Party to Proceedings stated that the results of the analysis, if published in any form other than as Measure of General Nature, required by Section 51(1), second clause, of the Act, are only of informative nature and are legally non-binding and as such they 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 1 February 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 yet been completed. The Party to Proceedings added that publication in Telekomunikační Věstník (Telecommunications Bulletin) is the appropriate form of publishing the results of the analyses.

Referring to the objection raised by the Party to Proceedings, the Administrative Authority states that it started the administrative proceedings after carrying out an analysis of market No. 11 under Section 51(1) of the Act and that, on 1 February 2006, after completion of the public consultation under Section 130 of the Act, it published on its official electronic notice board the result of the analysis of market No. 11, 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. To meet the timescales required by the Act for the completion of the analyses of relevant markets, the Office commenced the administrative proceedings on 17 February 2006. The Administrative Authority granted the Party to Proceedings a reasonable period to express its opinion. The process of analysing market No. 11 was completed by publishing the results of the analysis and, 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 Measure of General

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Nature No.A/11/03.2006-2, was not in contradiction with the Act and that the rights of the Party to Proceedings were not at all violated, because it 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 or the analysis is identical with that of the Measure of General Nature in force.

Further, the Party to Proceedings saw a contradiction in the information on the consequences of missing the deadline for the submission of its opinion, including the proposed evidence on the one hand and, on the other hand, its being informed about its right to propose evidence and submit proposals and opinions at any time during the administrative proceedings until a decision is issued.

The Administrative Authority admits that this is a legitimate objection. Section 122(3) of the Act – as a special provision focusing on the administrative procedure for making decisions under Section 107(8)(b), points 3 to 5 of the Act – applies to this issue. As the Administrative Authority made a mistake in providing the aforementioned information, it would have had also to take into account any opinions submitted at a later date, including proposed evidence.

Further, the Party to Proceedings noted that two proceedings were initiated, each under a different reference number.

By letter of the President of the Council, dated 3 March 2006, the Party to Proceedings was informed that the administrative proceedings under Reference No. 602/2006-611 had been launched by an inappropriate administrative body and had therefore been terminated.

The Party to Proceedings noted the incorrect reference numbers in the file inspection protocol.

The Administrative Authority corrected the typing error in the protocol.

The Party to Proceedings noted that it had not received, with the notification of the commencement of the proceedings, the cost calculations with specific adjustments of the cost models, and stated that, as a result, it had been able only to submit its objections in general terms.

In response to the comment that the Party to Proceedings did not receive the cost calculations, it is stated by the Administrative Authority that all the adjusted relevant cost calculations are contained in file Ref. No. 9 963/2006-611. The Party to Proceedings familiarised with the content of that file, and in its submission it made references to the adjustments made by the Administrative Authority.

The Party to Proceedings also requested that the change to the officially determined maximum wholesale prices should come into effect from 1 May 2006, as the Party to Proceedings needed more time to modify its internal processes. The Party to Proceedings also drew attention to the problems that arise if changes are made in the middle of a month.

The Administrative Authority granted this request and reformulated part III of the ruling so that it allows the Party to Proceedings to negotiate the new prices to be effective from the first day of the month.

The Party to Proceedings believed, as it stated in its submission, that the proposal to regulate the prices for the co-location services by officially determining the maximum prices was unjustified, because, in its view, it is not an electronic communication service: in its opinion, co-location services are in the nature of lease, the prices of which are not subject to general price regulation and are, instead, contractual prices.

Responding to the comment concerning the co-location service price, the Administrative Authority states that it is clearly set out in Article 4(2)(a) of the Regulation that the national regulatory body may order changes to the reference offer for the unbundling of the local loop and the associated equipment, including the prices, provided that such changes are justified. According to Article 2(h) of the Regulation, co-location means making available the physical space and technical equipment needed for appropriate location and interconnection of the equipment of an authorised operator. Further, in clause i) of the same Article, associated equipment is defined as equipment

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related to local loop unbundling, including, but not limited to, co-location, cable connections and the related information technology systems to which the authorised operator needs access in order to be able to provide services on a competitive and equitable basis. Under Section 78(1)(a) of the Act, access is defined as access to the network elements and the associated facilities, which may include connection of equipment through fixed facilities or through facilities other than fixed, and it includes in particular, the unbundling of local loops and the facilities and services needed for provision of services through the local loop. It is also stated in the analysis of market No. 11 that co-location services are referred to as part of the unbundling services. The Administrative Authority recognises that the prices are contractual prices. However, the contractual prices must be negotiated with respect to price regulation.

On the date of inspection of the file, the Party to Proceedings requested that the period determined at the onset of the administrative proceedings should be extended to 7 days on the grounds that documents Nos. 4 to 12 had been added to the file.

The Administrative Authority did not extend the period. Nevertheless, it fully took into account the comments raised by the Party to Proceedings after expiry of the period.

Other objections filed by the Party to Proceedings related to the specific adjustments made by the Administrative Authority to the models submitted by the Party to Proceedings.

The Party to Proceedings rejected the Administrative Authority's determination of the WACC and requests a WACC of 13.06%.

In accordance with Measure of General Nature OOP/4/03.2006-3, the WACC is 11.18%.

The Party to Proceedings requests a change to be made to the allocation of the costs for establishing the co-location service.

The Administrative Authority granted the request and changed the method of cost allocation for introducing the co-location service on the basis of the proposals submitted by the Party to Proceedings.

The Party to Proceedings does not agree with the exclusion of administrative processes from the models of one-time prices of the co-location and unbundling services.

The Administrative Authority accepted this comment. It has modified the lengths of the administrative processes with respect to their reiteration and to the electronic method of their processing. The duration of the individual activities does not appear among the evidence submitted by the Party to Proceedings; nevertheless, having examined the submissions, the Administrative Authority determined that the duration of an individual process is 0.1 hours.

The Party to Proceedings does not agree with the volume adjustments made to the models for the calculation of the prices of one-time unbundling services.

It must be stated with respect to this comment that the assumed numbers of the individual services cannot be related to the years 2003 and 2004, when these services were not provided or were only provided to a limited extent. For 2008 and 2009, the Administrative Authority based its considerations on the 2007 volumes and did not even foresee any growth for the subsequent years, which may be considered a minimalist option from the viewpoint of the extension of these services. A similar procedure was used in the models for calculating the prices of the co-location services.

The Party to Proceedings does not agree with the exclusion of the costs of the OSS systems.

OSS systems were excluded from the models in accordance with Regulation No. OOP/4/03.2006-3, where it is stated that the OSS systems are a part of the company-wide overheads, and in accordance with the previous statement by the Party to Proceedings.

The Party to Proceedings also requests adjustments to be made to the calculation of the prices for one-time unbundling services.

The Administrative Authority agreed with making the proposed changes associated with adjustments to weighted mean calculations in determining the prices for unbundling services.

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The Party to Proceedings does not agree with adjustments to the lengths of the processes in calculating the prices of the unbundling and co-location services.

The duration of "Processing the work order and entry in the network database" in the service of "Carrying out the Order for Establishing LLU (SAL) [LLU = copper local loop unbundling; SAL = shared access to copper local loop] without reconfiguration with MIGRATION" reduced from 1.2 hours to 0.6 hours; duration of "Processing the work order and entry in the network database" in other services reduced from 0.8 hours to 0.4 hours; duration of the process of "Visiting the room" in the service of "Detailed local inspection" reduced from 12 hours to 6 hours; duration of the process of "Viewing the co-location site with OLO [OLO = (an)other licensed operator(s)], hand-over of the co-location site to the OLO" in the service of "Provision co-location area", including transport, reduced from 12 hours to 6 hours; and duration of process of "Organising a review of the installed equipment and the review process itself" in the service of "Equipment installation carried out by an OLO" reduced from 30 hours to 15 hours, is considered by the Administrative Authority as adequate for performing all the acts that need to take place during the process.

The Party to Proceedings does not agree with adjustment of the lengths of useful life of cables and buildings.

With respect to this issue, the Administrative Authority states that the Party to Proceedings had failed to provide any evidence to support its assertion that a cable that was used by another operator cannot be re-used after termination of the alternative operator's services, nor its assertion that a dismantled cable must be disposed of in an environmentally friendly manner. In the Administrative Authority's opinion, these are false assertions. With respect to common practice and to the normally used lifespans, the Administrative Authority insists on the cable lifespan of 20 years. The length of useful life of the co-location room was set at 40 years with respect to the commonly used useful lives. The Administrative Authority does not agree with determining the useful life of the rooms on the basis of that of the equipment installed therein.

The Party to Proceedings requests a correction: exclusion of the item of increasing the number of terminal distribution blocks by the number of subscribers connected directly to the main distribution frame.

The Administrative Authority accepted the comment concerning the exclusion of the item of increasing the number of terminal distribution blocks by the number of subscribers connected directly to the main distribution frame.

The Party to Proceedings does not agree with the adjustment related to reserves for the access network.

The Administrative Authority accepted the comment concerning the exclusion of reserves. Development reserves were excluded from the model but the remaining reserves were left as they were – an adjustment (with which the Party to Proceedings agreed) was only made in the method of determining the technological reserve. The calculation must be based on the actual numbers of lines used and the reserves should not be artificially increased by more than 100%. The by-laws and internal standards of the Party to Proceedings should not have a decisive influence on the determination of prices for other undertakings on the market.

The Party to Proceedings also expressed objections against the exclusion of the costs of subloop (access network segment) from the price of the service of "Monthly Lease of One Copper Local Loop for the Service of Shared Access to Copper Local Loop". The Party to Proceedings refers to the unfinished process of unbalancing and states that it does not agree with submitting the cost calculations that serve as a basis for regulation reflecting the impacts of partial write-off of the access network (imperment), The Party to Proceedings therefore firmly requires that the loss caused by the use of the access network should be included in the cost calculation and, thereby, it should be reflected in the wholesale price for the service of shared access to the copper local loop or subloop for the purposes of the provision of electronic communication services. As asserted by the Party to Proceedings, a one-time increase of the price of the monthly flat rate price for residential subscriber lines would have an adverse economic impact on the Party to Proceedings as well as on other operators and providers of publicly accessible electronic communication services provided at a fixed location.

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In respect of non-inclusion of compensation for alleged access network losses in the price for the service of “Monthly Lease of One Copper Local Loop for the Service of Shared Access to Copper Local Loop”, the Administrative Authority states that the regulation of the price for access to the public telephone network at a fixed location is to be lifted on 1 May 2006. When negotiating the levels of these prices, the Party to Proceedings must respect the ban on cross financing. It will be for the Party to Proceedings alone to decide whether to increase the price or to leave the price level as it is (and thereby to reduce its profit).

The Party to Proceedings drew attention to the inclusion of the process of ordinary transfer, and also the process of subscriber migration from IE/CB to LLU, in the calculation of the service of “Change of the Provider of the Service of Copper Local Loop Unbundling / Shared Copper Loop Access”.

The Administrative Authority accepts the changes concerning the allocation of the costs of establishing the co-location services and the changes made to the service of “Change of the Provider of the Service of Copper Local Loop Unbundling / Shared Copper Loop Access”.

The Party to Proceedings indicated that the Office must, in accordance with Section 57(3) of the Act, take into account the investments made by the given undertaking and the risks related thereto, and to provide conditions for the undertaking to recover its investments within a reasonable period of time.

The return on investments and the related risks are reflected in the WACC used in the determination of the reasonable profit. No justified capital expenditures were excluded from the calculation submitted by the Party to Proceedings.

The Party to Proceedings agreed with the adjustments made by the Administrative Authority in respect of the exclusion of the allocation of overheads to external costs and with the replacement of the number of kilometres of trenches by the length of routes in kilometres of the underground and aboveground lines according to the TZ Report (ČTÚ) 1-02 for 2006 [ČTÚ = *Czech Telecommunication Office*].

Referring to the above, the Administrative Authority did not meet the request of the Party to Proceedings for determining the maximum prices for the unbundling and co-location services, as proposed by the Party to Proceedings in its submission.

The Party to Proceedings does not agree with the conclusions from the analysis published on 1 February 2006 in which it was stated that “currently the issue of unreasonably high prices persists in the co-location service” and that “the issue of unreasonably high prices remains unsolved in the co-location service”. The Party to Proceedings asserts that these conclusions are not at all supported by the analysis, and believes that the Administrative Authority failed to prove that the application of remedial measures based on Section 51(3)(a) to (f) would not lead to improvement. The Party to Proceedings proposed not to regulate the prices of co-location services.

In response to this, the Administrative Authority states that the result of the analysis is not the subject of these administrative proceedings. The Party to Proceedings could raise such comments during the public consultation concerning the results of the relevant market analysis.

On 27 March 2006, upon being invited to do so, the Party to Proceedings submitted additional evidence and data for the calculation of monthly rents for the co-location services and, at the same time, it submitted an opinion concerning the allocation of the costs of OSS systems. The Party to Proceedings substantially disagrees with the exclusion of the costs of the OSS systems; it submits evidence to support its assertion and states that this is not a case of duplicated allocation of costs to both LLU services and to overheads.

Responding to the above, the Administrative Authority states that the costs of OSS systems are not unjustified costs from the Administrative Authority’s point of view. The Administrative Authority does not prohibit their reflection in the costs of the network or in the overheads. These systems underlie and enhance the functionality of the network, thus making it possible for the Party to Proceedings to comply with the requirements of the Act – in the specific case to enable local loop

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unbundling. This benefits all customers, not only those that make use of local loop unbundling. Hence, it is not possible to only include the OSS systems costs in the price for local loop unbundling. Such an approach would in addition significantly increase the price for unbundling, which means that the economic competition would not reach the desired effects. The method chosen by the Administrative Authority also protects the Party to Proceedings who was obliged to make the investment. Acting as proposed by the Party to Proceedings might lead to a situation in which the OSS system costs could not be applied at all. This would happen if there were no requests for unbundling or if the number of cases of unbundling were much lower than estimated.

The Party to Proceedings reiterated in its opinion its disagreement with the lengths of useful life of the cables as used by the Administrative Authority in the calculation of prices.

The Administrative Authority insists on the useful lives it used in its calculation of the monthly prices for the co-location services (see above).

The Administrative Authority examined the underlying data and, on that basis, adjusted the prices for the services of local loop unbundling and co-location.

The proposals and objections of the Party to Proceedings and its opinion regarding the evidence used during the administrative proceedings to support the decision were addressed by the Administrative Authority as described above and the Administrative Authority drew up a draft decision on this matter.

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 on 9 March 2006 its draft Regulation, including invitation to raise comments, at the discussion site. All the comments and the manner they were addressed were made public in the comment settlement table published at the discussion site on 18 April 2006.

The Administrative Authority received comments during the public consultation period from six undertakings.

The comments drew attention to the level of the prices, which (according to the explanation of the comments) does not allow making a competitive service offer, and exceeds the EU25 average. They also highlighted the impossibility to check the prices and the amounts of the individual prices.

On the basis of consultations, the prices were checked again and were determined in accordance with Section 55(2) of the Act so as to comprise only the effectively and efficiently incurred costs and a reasonable profit. The calculation of the prices was made on the basis of the LRIC cost model, the WACC being used at the level indicated in Article 6 of Measure of General Nature No. OOP/4/03.2006-3, quoted above, laying down the methodology of service cost and revenue distribution and allocation and defining the structure of information to be reported.

In compliance with the above-quoted Regulation, the "Cost Model for the Wholesale Services of Copper Local Loop Unbundling or Shared Access to the Copper Local Loop or Subloop for the Purposes of Provision of Electronic Communication Services" was published on 3 April 2006 and the "Cost Model for the Unbundling of Facilities and Services Essential for the Provision of Services through the Copper Local Loop (Co-location)" was published on 9 March 2008.

In other comments the Party to Proceedings required separate determination of the prices for the services of copper local loop unbundling and shared access to the local loop.

The Administrative Authority granted these comments.

Further comments concerned the two-month period for negotiating the prices indicated in the Decision.

Parties to contracts must be given a reasonable period of time to adjust their contractual relations for compliance with the price regulations in force. Issuance of the decision on price in itself does not mean specification of the price for the service – rather than that, it is a binding rule for how to adjust the contractual relation. The negotiated price is then used on the basis of the signed contract.

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The Administrative Authority adjusted the draft decision according to the result of the public consultation and the additional evidence submitted by the Party to Proceedings.

The Party to Proceedings was given an opportunity to express its opinion in accordance with Section 122(5) of the Act.

The Party to Proceedings familiarised with the materials (data on the basis of which the decision was issued and the draft Decision on Price), contained in File No. 9 963/2006-611, on 14 April 2006. The Party to Proceedings submitted updated models for the calculation of the prices for the services of copper local loop unbundling and the services of co-location.

In its submission, the Party to Proceedings required that the costs of OSS systems should be included in the monthly prices for the services of copper local loop unbundling.

The Administrative Authority accepted this adjustment.

The Party to Proceedings did not agree with the change regarding the width of the cable rack, used in the calculations by the Administrative Authority.

The Administrative Authority insists on using the actual width of the rack. The Party to Proceedings did not prove the need for a safety zone. In addition, such an approach would artificially increase the costs of the service.

The Party to Proceedings required uniform lengths of useful life of the equipment for the service of the "Lease of the Duct to the Building and the service of Lease of Area in the Rack or Bar of the Party to Proceedings in the Building", and proposed such uniform lengths of useful life.

The Administrative Authority unified the lengths of the useful life of the equipment and determined useful life lengths as indicated above.

The Party to Proceedings did not agree with the adjustment of volumes used for calculating the prices of the services of copper local loop unbundling and the co-location service.

For the year 2005, the Administrative Authority used the volumes submitted by the Party to Proceedings. Increases in 2005 by the 2003 and 2004 figures were only used in the case of the number of items charged on a monthly basis for the calculation of unit costs of billing so as to convert the capital expenditures for billing for 2005 to correspond to the actual number of the items charged.

The Party to Proceedings provided its own Business Study as part of its submission.

The Administrative Authority acknowledged the study. The WACC rate is 11.18% in compliance with Measure of General Nature No. OOP/4/03.2006-3. The Administrative Authority believes that the maximum prices for the provision of the unbundling services, as indicated herein, will lead to more intensive utilisation of the unbundling service by other operators and, thereby, to a higher return on capital expended.

The Party to Proceedings does not agree with the volumes for the service of detailed local inspections, as used by the Administrative Authority, and explains that no new co-locations are planned to be built in 2008 and 2009.

The Administrative Authority does not believe that no new co-locations are to be built in 2008 and 2009. The local inspection volumes are estimated for individual years. Owing to the fact that the Party to Proceedings also requires payment for detailed local inspection when extending the service in a given co-location room, it is necessary to take this into account and to reflect in the calculations any subsequent local inspection. If the Party to Proceedings is able to prove that the estimates differ from reality, the Administrative Authority will have to re-examine the costs and determine the prices on the basis of the actually demonstrated volumes of individual services and on the basis of the costs effectively and efficiently incurred in those services.

The Party to Proceedings did not agree with the numbers of the racks as used in the Administrative Authority's calculations.

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The numbers of racks indicated in the opinion submitted by the Party to Proceedings are only based on the estimates made by the Party to Proceedings. The Administrative Authority used in its calculation the maximum total number of racks as indicated by the Party to Proceedings for the total number of co-location rooms built. For the determination of the number of racks per co-location room, the Administrative Authority only assumed partial load. In addition to the above, it must be taken into consideration that there may be even more racks for one alternative operator at some sites. In the event that the Party to Proceedings is able to prove that these estimates differ from reality, the Administrative Authority will have to re-examine the costs and determine the prices on the basis of the actually demonstrated volumes of individual services and on the basis of the costs effectively and efficiently incurred in those services. When determining the prices for the co-location services, the Administrative Authority took into consideration the costs expended for the partially utilised co-location room.

The Party to Proceedings did not agree with the adjustment of the estimated hours in the processes of “Work on Design Research Projects”.

The Administrative Authority assessed the time needed for the processes in the service of “Work on Design Research Projects”. It considered, first of all, the fact that the alternative operator proposes a design research project prepared in accordance with the requirements of the Party to Proceedings. The Administrative Authority also based its considerations on the fact that the Party to Proceedings possesses knowledge of the specific co-location room from the local inspection and preparation of the co-location room. On this basis the Administrative Authority arrived at the conclusion that the duration was excessively long.

The Party to Proceedings did not agree with the split of the Detailed Local Inspection service into “one report” and a “further report”, and objected that more time is needed for the processes.

The requirement for splitting the detailed local inspection into one report and a further report resulted from consultations with the undertakings concerned, based on Section 130 of the Act, and the Administrative Authority believes that this provides a better reflection of the actual situation. The Administrative Authority also partially reflected the time of duration of the processes.

The Party to Proceedings did not agree with the text in Part II of the Decision on Price.

The Administrative Authority determined the prices for the existing offer. The Party to the Proceedings is free to negotiate the prices for the new services that are not the subject of this Decision on Price, but only on the basis of a prior request from the alternative operator and on the basis of that operator’s consent with the provision of the new service. However, the price for any new service must be determined on the basis of effectively and efficiently expended costs and reasonable profit, which is in compliance with Measure of General Applicability OOP/4/03.006-3.

The Administrative Authority adjusted the costs of billing for all the copper local loop unbundling services in a uniform manner.

As to the prices of the services whose costs, as submitted by the Party to Proceedings, exceeded at their regulated level the amount determined in the Offer of Co-location Services of the Party to the Proceedings dated 1 March 2005, the Administrative Authority determined those prices so as to ensure that their maximum level complies with that Offer of Co-location Services of 1 March 2005.

With respect to the above, the Administrative Authority decided as indicated in the ruling of this Decision. It did so 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
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