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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: Smrkovská]

Prague, 26 April 2006  
Ref.: 15 883/2006-611/IV.vyř.

In proceedings instituted *ex officio* with T-Mobile Czech Republic a.s., with registered office at Tomíčková 2144/1, 149 00 Prague 4, Reg. Number 64949681 on 21 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 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/16/04.2006-22:**

##### **I.**

(1) 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 "Call Termination on the Individual Public Mobile Telephone Networks", issued through Czech Telecommunication Office's Measure of General Nature No. A/16/04.2006-20, the obligation to negotiate the prices for interconnection in its public telephone network for the call termination service (hereinafter referred to as "termination prices") is imposed on T-Mobile Czech Republic a.s., with registered office at Tomíčková 2144/1, 149 00 Prague 4, Reg. Number 64949681 so as to prevent exceeding the maximum price of CZK 2.99 per minute, exclusive of the VAT.

(2) Regulation in the form of maximum prices as indicated in Paragraph 1 above applies to calls terminated on the public telephone network of the Party to Proceedings, incoming from another public electronic communication network.

##### **II.**

(1) For newly concluded contracts, the Party to Proceedings must negotiate the prices in accordance with price regulation based on Part I of the ruling of this Decision from the date of finality of the Decision.

(2) 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. 16 – Call Termination on the Individual Public Mobile Telephone Networks (hereinafter referred to as Market No. 16), which it made public on the official board on 16 March 2006 under Ref. No. 1 515/2006-609/III.vyř. and, upon notification to the European Commission, it issued it as Measure of General Nature No. A/16/04.2006-20 of 19 April 2006. The results of the analysis showed that Market No. 16 is not an effectively competitive market because there are undertakings with significant market power in it. It follows from the

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nature of market No. 16 that any service provider is an undertaking with significant market power in that market, because in its network it has a 100% market share. 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/16/04.2006-10 of 24 April 2006, which was issued under Ref. No. 10 546/2006-609/IV vyř. and became final on 25 April 2006, the Party to Proceedings was determined to be an undertaking with significant market power.

On Part I of the Ruling

On the basis of the market analysis, Measure of General Nature No. A/16/04.2006-20 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 ensure accounting separation of costs and revenues under Section 86 of the Act, obligation to provide unbundled access to the facilities 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 the 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.

The method of price regulation in the form of maximum prices for termination under Section 58(1)(a) of the Act was selected in order to meet the need to determine a single maximum price for this market and ensure, in this manner, that the prices for calling to different mobile networks do not vary. For an optimum competitive environment and for price transparency in relation to the subscribers, the determination of a single maximum price under which the operators are to negotiate their prices appears to be the best solution.

The maximum price, as determined, reflects the costs expended in an effective and efficient manner, the related risks and the return on investments within a reasonable period of time in compliance with Section 57(3) of the Act.

The rate of 13.26%, i.e. the rate specified in Measure of General Nature No. OOP/4/03.2006-3, was used for the return (before tax) on the capital expended, WACC. Determination of the return (%) (before tax) on capital expended complies with general practice in the area of electronic communications. Its value was determined as arithmetic mean for the values used in the studies by Raiffeisenbank a.s. and CENTRAL EUROPEAN CAPITAL CZ, s.r.o. Both these studies were prepared for the Czech Telecommunication Office in 2005. The mean also comprised the WACC values determined for the Czech Telecommunication Office in 2005.

Undertakings with significant market power provide their services within comparable networks (they use the same frequency bands and networks with national coverage) and these networks are operated in a competitive environment: as a result, they can be considered as being of the same efficiency. In determining the maximum termination price, the Administrative Authority based its considerations on the 2004 costs (as submitted by the mobile operators), which the mobile operators expended for call termination in their respective networks, respecting the method of fully allocated historical costs. The maximum price determined by the Administrative Authority reflects the numbers of minutes terminated in the individual mobile operators' public telephone networks, disclosed in statistical reports TP (ČTÚ) 1-02 [ČTÚ = *Czech Telecommunication Office*]. The resultant maximum termination price is determined by weighting the unit costs per minute of calls terminated on the individual networks, based on the number of minutes of calls terminating in the individual networks.

In the case of an operator with higher costs, a price negotiated at the level of maximum price means a lower reasonable profit, whereas in the case of a more efficient operator with lower costs the rate of profit is higher. A profit generated in this way, with the application of the maximum price, complies with the profit adequacy rule set out in the Act, which the Administrative Authority must reflect in its decisions.

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In the first paragraph of Part I of the ruling of the Decision, the Administrative Authority determined the maximum price for termination and in the second paragraph it defined the calls subject to regulation in the form of maximum prices (under the first paragraph).

On Part II 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 within two months after the finality of the Decision.

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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 Proceedings on 21 March 2006 in respect of the imposition of obligation related to price regulation on undertakings 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 28 March 2006 the Party to Proceedings submitted its opinion in respect of the institution of the proceedings.

In its submission, the Party to Proceedings raised a general comment that in its opinion it would be useful and advisable, in compliance with the principle of process economy and subsidiarity set out in Section 6 of Act No. 500/2004 (Rules of Administrative Procedure) to conduct jointly the three administrative proceedings concerning one and the same Party, such three proceedings being those on the determination of an undertaking with significant market power, on the imposition of obligations under Section 51(3)(a) to (d) of the Act, and on imposition of obligations related to price regulation under Section 51(3)(g). In all the three proceedings, the Council of the Czech Telecommunication Office is the appropriate authority to make decisions under Section 107(8)(b) of the Act. Hence, there is no objective obstacle that could hinder conducting single proceedings, as also indicated in Section 51(3) of the Act, in which it is set out that: "Depending on the result of the relevant market analysis, the Office shall issue a decision defining the undertaking with significant market power and impose on it one or more of the following obligations ...".

The Administrative Authority considered the objection of the Party to Proceedings and arrived at the conclusion that it is not advisable to conduct one administrative procedure to address two different issues. In addition, doing so would be in contradiction with Section 51(3) of the Act, under which the Administrative Authority must first make a decision to determine an undertaking with significant market power and only then, on that basis, can it impose one or several of the obligations under the above-cited provisions.

Another comment raised by the Party to Proceedings relates to the method of determining the termination price. The Party to the Proceedings proposes to define, in the substantiation, more precisely the method of determining the termination price (i.e. at least to indicate the FAC method, if the Office used it in calculating the price).

The Administrative Authority granted this comment.

The Party to Proceedings draws attention to the need for public consultation and for notification of the proposed measures to the European Commission. According to the Party to Proceedings, direct regulation of the prices for termination of calls in the public mobile networks is without any doubt a remedial measure, to which Article 7(3)(b) of the Framework Directive applies, as it could

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affect trade between the EU member states (especially in the area of international calls and international roaming). Therefore, the specific form of this measure, as proposed (including future amendments, if any), must inevitably go through public consultation and be notified to the European Commission.

In its response the Administrative Authority states that the decision on imposing this obligation is subject to public consultation under Section 130 of the Act but is not subject to public consultation under Section 131 of the Act. Issuance of the decision will be notified to the European Commission.

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 6 April 2006 its draft Regulation, including invitation to raise comments, at the discussion site. The Administrative Authority received only comments from one undertaking which had methodological comments.

The comment settlement table, made public at the discussion site on 21 April 2006, contains the texts of all comments and the way they were addressed.

The Party to Proceedings was given an opportunity to express its opinion in compliance with Section 122(5) of the Act. The Party to Proceedings inspected the file on 21 April 2006 and it indicated that it did not find it important to make any further submissions or statements.

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