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Czech Telecommunication Office
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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.: 15 886/2006-611/IV.vyř.

In proceedings instituted *ex officio* with Eurotel Praha, spol. s.r.o., with registered office at Vyskočilova 1442/1b, 140 21 Prague 4, Reg. Number 15268306 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/16/04.2006-23:

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 Eurotel Praha, spol. s.r.o., with registered office at Vyskočilova 1442/1b, 140 21 Prague 4, Reg. Number 15268306 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.

* * *

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.

The Party to Proceedings stated that in its view the statutory conditions for commencement of administrative procedure were not met. It follows from Section 51 of the Act that the Office should determine an undertaking with significant market power on the basis of the results of an analysis of the relevant market. Only a completed and duly published analysis of relevant market No. 16 can provide a basis for commencement of the proceedings. In the Office's notification of the commencement of the proceedings, there is a reference to the results of analysis of market No. 16, made public under Ref. No. 1 515/2005-606/III on 16 March 2006 on the Office's electronic official notice board, but the Party to the Proceedings points out that this form of publishing does not comply with Section 125(2) of the Act, which expressly requires that the results of analysis of relevant markets should be published in *Telekomunikační věstník* [Telecommunications Bulletin]. The Party to Proceedings believes that the process of analysis of market No. 16 cannot be considered as completed before the results of the analysis of the relevant market appear in *Telekomunikační věstník* and, consequently, it is impossible (on the basis of an uncompleted analysis) to commence the proceedings for determining an undertaking with significant market power or for imposing any one or several of the aforementioned obligations.

Responding to this objection raised by the Party to Proceedings, the Administrative Authority notes that before commencing the administrative proceedings it performed the analysis of market No. 16 under Section 51 of the Act, completed public consultation under Section 130 of the Act, and published the result of the analysis of market No. 16 under Section 51(2) of the Act with the incorporated comments from the public consultation (including the opinion of the Office for the Protection of Economic Competition) under Ref. No. 1 515/2005-606/III vyř. on the Office's electronic official notice board on 16 March 2006. With respect to the deadlines set out in the Act in respect of the completion of the analyses of relevant markets, the Office notified the Party to Proceedings about the commencement of the administrative proceedings by letter dated 17 March 2006. The Administrative Authority granted the Party to Proceedings a reasonable period of time to submit its opinion. The process of the analysis was completed by publishing the result of the result of the analysis of market No. 16. The analysis was then sent to the European Commission for notification. The Administrative Authority therefore states that commencement of the administrative proceedings after publishing the result of the analysis – although it happened before the finality of Measure of General Nature No. A/16/04.2006-20 – was not in contradiction

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with the Act and that, therefore, 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 given an additional period of time for expressing its further 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.

The Party to Proceeding noted that under Section 51(3) of the Act, decision on the determination of an undertaking with significant market power should be made in a single administrative procedure: the last sentence of the paragraph says that "... only an undertaking ... may be a party to *this procedure*", not party to *these procedures*. As also noted by the Party to Proceedings, it follows from both the logical and grammatical interpretation of Section 51(5) of the Act that the same proceedings must also involve decision-making on maintaining, lifting or changing the obligations, if they already exist on the relevant market. While Act No. 151/2000 was still in force, Eurotel was classified as an undertaking with a significant share of the market and, on the basis of Section 139 of the Act, it remained subject to the obligations of non-discrimination, submission to the Office of the interconnection/access contracts, publication of a reference interconnection offer, and accounting separation of costs and revenues. It follows from all this, as the Party to Proceedings believes, that the Office made a mistake in the proceedings because it commenced three separate procedures for the determination of an undertaking with significant market power and for the imposition of obligations on that undertaking, and because it failed to include in the subject of the proceedings the issue of maintaining, lifting or changing the existing obligations. Eurotel therefore proposes to combine procedures under Ref. Nos. 10546/2006-609, 10537/2006-610 and 15886/2006-611 into one procedure and to include in it the issue of maintaining, lifting or changing the existing obligations of Eurotel as an undertaking with a significant market share.

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 more than one separate issue. 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.

The Party to Proceedings also objects that the obligation the Office proposes to impose on Eurotel is not supported by the administrative file. The Office had an opportunity to apply price regulation collectively to all undertakings with significant market power by issuing a Decision on Price under Section 57 of the Act and to do so in proceedings involving, as parties, all the undertakings whose rights and obligations were being decided on. And if the Office applies price regulation individually in separate proceedings with Eurotel, the proposed maximum price must only apply to Eurotel and the proceedings must not rely on evidence that does not relate to Eurotel. As can be seen from the administrative file, the Office, when calculating the price of call termination in Eurotel's network, arrived at a higher amount, which differs from the proposed maximum price, and the Office did not offer any relevant substantiation for this difference in relation to Eurotel. Hence, for the above reason, the imposition of the proposed obligation would necessarily be a decision that could not be reviewed.

In its notification of the commencement of administrative proceedings, the Administrative Authority submitted to the Party to Proceedings the content of the Decision on Price. The Administrative Authority stated in the notification that in determining the maximum termination price it based its calculations on the data that had been submitted to the Office by the mobile operators for 2004, concerning the costs expended by the mobile operators for call terminations in their networks. The determination of the maximum price reflected the numbers of minutes terminating in the individual mobile operators' public telephone networks disclosed in statistical reports TP (ČTÚ) 1-02. The resultant maximum termination price is determined by weighting the unit costs per minute of calls terminating in the individual networks, based on the number of minutes of calls terminating in the individual networks. The file contains calculations of the maximum price for termination, i.e. the costs of all the three mobile operators. The Party to Proceedings had an opportunity to inspect the file, but the data for the remaining two mobile operators were confidential (they were part of those operators' trade secret, which could not be disclosed to the Party to

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Proceedings). The Party to Proceedings familiarised with the calculations concerning its costs per minute of terminated calls. The Party to Proceedings knows well the procedure of calculation of the maximum termination prices as it was described in the notification of the commencement of administrative proceedings. The Administrative Authority partially granted this objection by complementing the text of the substantiation.

The Party to Proceedings believes that the proposed maximum termination price in Eurotel's network is in contradiction with the Act. As required by Section 56(4) and Section 57(3) of the Act, the Administrative Authority must take into account the protection of the undertaking whose prices are regulated so that the price based on the Office's decision is at least cost-based, and must likewise take into account the investments and the risks, and enable recovery of the investments. As can be seen from the content of the administrative file, the Office – taking into account the costs, risks and investments (including the requirement to ensure the recoverability of the investments) – arrived at a higher price for the termination of calls in Eurotel's network, and in spite of that, the Office proposes, without offering a substantiation, to impose on Eurotel the obligation to negotiate a lower price.

In conducting administrative proceedings, the administrative authority respects Section 51(3) of the Act, in which it is set out that only an undertaking whose rights and obligations are to be decided on may be a party to these proceedings. As stated by the Administrative Authority, the determined maximum price covers effectively and efficiently the costs expended the related risks and the recovery of the investment within a reasonable period of time.

The Party to Proceedings also notes that on the basis of the aforementioned notification, Eurotel was invited to submit its opinion within 7 days; at the same time it was invited to inspect the file, and was enabled to do so on 24 March 2006. As the proposed obligation would have a substantial impact on Eurotel's business, and with respect to the complexity of the operations needed for evaluating that obligation, the Party to Proceedings considered the abovementioned period as too short and requested the Office to take into account in the proceedings also additional submissions, if any, made within 7 days after inspecting the file, i.e. by 31 March 2006.

The Administrative Authority enabled the Party to Proceedings to see the file on the required date. The Administrative Authority took into account the submission made on 30 March 2006.

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.

During the public consultation, the Administrative Authority received comments from two undertakings, one of them being the Party to Proceedings. The Party to Proceedings indicated in its submission its opinion and view as to how the Administrative Authority had proceeded in commencing these administrative proceedings. The submission is identical with the statement already submitted by the Party to the Proceedings in the administrative proceedings on 23 March 2006. The other undertaking 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, referring to its previous statements, it indicated that it would not 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.

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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