



Czech Telecommunication Office
with headquarters at Sokolovská 219, Prague 9
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Ref ČTÚ-41 828/2011-610

On the basis of the results of public consultation under Section 130 of Act No. 127/2005 on electronic communications and on amendment to certain related acts (the Electronic Communications Act), as amended (the “Act”) and on the basis of the decision of the Council of the Czech Telecommunication Office (the “Office”) under Section 107(8)(b)(2) of the Act, and in order to implement Section 85(7) of the Act, the Office as the appropriate state administration body under Section 108(1)(b) of the Act hereby issues this

**Measure of General Nature No. OOP/8/07.2011-11,
amending Measure of General Nature No. OOP/8/07.2005-11,
laying down the essentials and conditions of the reference offer
of unbundled access to the metallic local loop**

Article 1

Measure of General Nature No. OOP/8/07.2005-11, laying down the essentials and conditions of the reference offer of unbundled access to the metallic local loop, is hereby amended as follows:

1. In the title of this Measure, the word “metallic” is deleted.
2. Article 1, including its heading, shall read as follows:

**“Article 1
Introductory provisions**

This Measure of General Nature (the “Measure”) lays down the essentials of the reference offer of unbundled access to the local loop (the “reference offer”) to be issued by any undertaking designated in accordance with Section 51 of the Act as an undertaking with significant market power on relevant market No. 4 – “wholesale (physical) access to the network infrastructure (including shared or full unbundling of the local loop) at a fixed location”, such an undertaking being subject to the obligation to provide unbundled access to its local loop under Section 51(3)(d) of the Act (the “designated operator”).”.

3. In Article 2, Section 1(a) shall read as follows:

“a) defines the network elements to which access is offered, including, but not limited to, access to the local loop (the “local loop”) and access to the local-loop’s non-voice band frequency spectrum in the case of shared access to the local loop,”.

4. In Article 2, Section 1(c) shall read as follows:

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“c) lays down the technical conditions related to access to local loops and the use thereof, including the technical characteristics of the lines in the local loop,”.

5. In Article 2, Section 3(a) shall read as follows:

“a) contains data about the designated operator’s premises and about the possibility of collocation on those premises (including physical collocation, or remote, virtual or any other technical collocation solution),”.

6. In Article 2, Section 4(e) shall read as follows:

“e) payment terms and conditions, including, but not limited to, the form and due date of the payment for the services provided, as well as the terms and conditions for the use of financial or bank guarantees,”.

7. In Article 2, Section 4(g) shall read as follows:

“g) contractual penalties for failure to respect, or breach of, contractual obligations, including failure to meet the service delivery date.”.

Article 2 Entry into force

This Measure of General Nature shall enter into force on 31 August 2011.

Explanatory Memorandum:

The Office issues Measure of General Nature No. OOP/8/07.2011-11 to amend Measure of General Nature No. OOP/8/07.2005-11, laying down the essentials and conditions of the reference offer of unbundled access to the metallic local loop.

This Measure of General Nature is based on the principles set out in the Act and in European legislation, including, in particular, Directive 2009/140/EC of the European Parliament and of the Council of 25 November 2009, amending Directives 2002/21/EC on a common regulatory framework for electronic communications networks and services, 2002/19/EC on access to, and interconnection of, electronic communications networks and associated facilities, and 2002/20/EC on the authorisation of electronic communications networks and services. This Measure of General Nature also respects Commission Recommendation C(2010) 6223 of 20 September 2010 on regulated access to next generation access networks (NGA), which sets out a common approach for promoting consistent implementation of remedies with regard to the NGA networks.

This Measure of General Nature is issued on the basis of an evaluation of the existing Measure of General Nature and experience with its use in practice.

On Article 1(1), (3) and (4) of the statement:

The Office made the statement of the Measure of General Nature more accurate in this point by removing from the existing text the detailed specification of the local loop as copper local loop. This change was made to reflect Directive 2009/140/EC of the European Parliament and of the Council of 25 November 2009, amending Directives 2002/21/EC on a common regulatory framework for electronic communications networks and services, 2002/19/EC on access to, and interconnection of, electronic communications networks and associated facilities, and 2002/20/EC on the authorisation of electronic communications networks and services. According to this Directive, a local loop means the physical circuit connecting the network termination point to a distribution frame or an equivalent facility in the fixed public electronic communications network.

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On Article 1(2) of the statement:

The Office amended this article of the statement of the Measure of General Nature in order to ensure that the relevant market is properly designated in compliance with the current text of Measure of General Nature No. OOP/1/02.2008-2, laying down the relevant markets in the electronic communications sector, including the criteria to assess significant market power.

On Article 1(5) of the statement:

The Office made the statement of the Measure of General Nature more accurate in this point because the previous wording did not allow for collocation using other technical solutions.

On Article 1(6) of the statement:

The Office made the statement of the Measure of General Nature more accurate in this point. As found by the Office, the description of the payment terms and conditions appears to be insufficient in the existing reference offer (in its part concerning delivery terms). The Office therefore specified more precisely the requirements for payment terms indicated in the reference offer in order to ensure that the payment terms are determined in a clear and transparent manner and that they reflect the rules by which they are governed.

On Article 1(7) of the statement:

The Office made the statement of the Measure of General Nature more accurate in this point. As found by the Office, the description of contractual penalties for failure to respect, or breach of, contractual obligations appears to be insufficient in the existing reference offer (its part concerning delivery terms). The Office therefore considers it necessary that the fines for failure to meet the service delivery date should be clearly defined in the reference offer. This requirement of the Office stems from the fact that the delivery of service is of key importance for the subsequent provision of retail services by individual providers.

The Office considers it necessary to ensure that any undertaking obliged to publish a reference offer of unbundled access to its local loops reflects this new wording of the Measure of General Nature in its existing reference offer.

On Article 2 of the statement:

The effective date of this Measure of General Nature is set at 31 August 2011 in order to ensure that the undertaking obliged to publish a reference offer of unbundled access to its local loop has enough time to reflect this new Measure of General Nature in its existing reference offer.

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 at the discussion site on 9 May 2011 its proposed draft Measure of General Nature amending Measure of General Nature No. OOP/8/07.2005-11, laying down the essentials and conditions of the reference offer of unbundled access to the metallic local loop, and an invitation for comments. Comments on the proposed Measure of General Nature could be submitted within a month from the date on which the invitation was published, i.e. not later than by 9 June 2011. This deadline for the submission of comments was determined in compliance with Section 130(6) of the Act.

Two stakeholders submitted their comments within this period: Telefónica Czech Republic, a.s. ("Telefónica") and T-Mobile Czech Republic a.s. ("TMCR").

Telefónica proposed to delete point 6 from Article 1 of the proposed statement of the draft Measure of General Nature (contractual penalties for failure to respect, or breach of, contractual obligations, including failure to meet the service delivery date), i.e. to leave in

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place the existing formulation of subsection 4(g) of Article 2 of the initial Measure of General Nature. Telefónica believes that this is an unreasonable intervention in contracting parties' contractual freedom and that it even creates unequal conditions between the undertakings obliged to issue a reference offer, on which a new additional obligation (obligation to incorporate contractual fines for failure to meet the service delivery deadlines in their reference offer) would thus be imposed, and undertakings not having such an obligation.

The Office considered this comment and rejected it on the grounds of the findings from the ongoing checking of the details of the published reference offer. The Office came to the conclusion that the reference offer issued on the basis of the initial Measure of General Nature did not contain a sufficient specification of the contractual fines for failure to meet contractual obligations. As this is the part of the reference offer wherein the delivery terms and conditions are addressed, it is logical that contractual fines should apply mainly to the delivery of services. The Office believes that service delivery and a guarantee thereof is of key importance for subsequent provision of retail services by the individual providers.

Telefónica also proposed to delete point 7 from Article 1 of the proposed statement of the draft Measure of General Nature (control mechanisms for the delivery of services, on which it is possible to check and compare in a transparent manner the processes and periods for the ordering and provision of services with respect to the imposition of the non-discrimination obligation). Telefónica argues that such an intervention would significantly increase the costs related to the services concerned (including, but not limited to, the less frequently used wholesale services). In addition, Telefónica considers such a regulation as a breach of the non-discrimination obligation (in connection with the transparency obligation) and the proportionality principle. Telefónica also believes that a period of about 12 to 18 months would be required to address this requirement in a system-wide manner.

The Office considered this comment and accepted it. A part of the proposed article and the respective part of the explanatory memorandum were removed from the proposed draft Measure of General Nature.

Telefónica also proposed to delete the second part of point 7 from Article 1 of the proposed statement of the draft Measure of General Nature (description of the process of service migration if the existing infrastructure is replaced by a new infrastructure, including the timescale of such a migration) – i.e. not to add clause (i) to subsection 4 of Article 2 in the initial Measure of General Nature. The reason is that such a modification would create a situation where part of the imposed obligations related to migration from the existing copper infrastructure to optic fibre access networks or hybrid access networks would be governed by a specific individual administrative decision (currently: Decision REM/4/10.2010-77) and another part of the imposed obligations would be governed by the Measure of General Nature. In addition, in the current wording of the proposal of these obligations would contradict each other.

The Office considered this comment and accepted it. A part of the proposed article and the respective part of the explanatory memorandum were removed from the proposed draft Measure of General Nature.

TMCR proposed in its comment to extend the text of point 7 of Article 1 of the proposed statement of the draft Measure of General Nature to ensure that the individual specific parts of the processes are also available within the control mechanisms, in addition to the total process lengths.

The Office considered this comment. However, as the Office accepted another comment, the relevant part of the proposed article and the respective part of the explanatory memorandum were removed from the proposed draft Measure of General Nature.

TMCR proposed to change the wording of point 7 of Article 1 of the statement of the draft Measure of General Nature (the migration process) so as to provide a description of the

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process not only in the case of replacement of the existing infrastructure by a new infrastructure but also in the case of a change in network configuration.

The Office considered this comment. However, as the Office accepted another comment, the relevant part of the proposed article and the respective part of the explanatory memorandum were removed from the proposed draft Measure of General Nature.

TMCR also proposed to extend the wording of point 7 of Article 1 of the statement of the draft Measure of General Nature by adding a new clause (j), which would impose the obligation to indicate the minimum offered, and minimum guaranteed, quality level of the service provided.

The Office considered this comment and rejected it on the grounds that, according to the Office's view, quality must be guaranteed by the retail service provider, which can secure adequate quality by negotiating quality assurance mechanisms in wholesale commercial negotiations. In addition, the Office is not aware of any case indicating possible poor quality of wholesale services.

Telefónica also proposed to reduce the text of the explanatory memorandum of the Measure of General Nature, lines 103-105 (*"The previous wording did not allow for collocation using other technical solutions on the basis of another undertaking's individual request"*), because a reference offer is, in essence, a proposed draft contract for the provision of the relevant services, intended for all prospective customers interested in using the services and as such it cannot take into account the individual requirements of another undertaking.

The Office considered this comment, accepted it and modified accordingly the text of the explanatory memorandum to the Measure of General Nature.

TMCR also submitted a general comment, objecting that a Measure of General Nature laying down the essentials and conditions of the reference offer of unbundled access to the local loop should define the processes taking place – where the service provider is being changed – between the designated operator and another operator as well as between operators other than the designated operator. The reference offer should make it possible to unbundle any existing local loop (i.e. all active and non-active lines).

The Office considered this comment and rejected it. The Office states that under this Measure of General Nature, obligations may be imposed only on undertakings with a significant market power in relevant market No. 4. It is therefore impossible to set up any processes to be mandatory for another service provider, i.e. provider in the position of an operator being abandoned. The Office also states that the obligation to unbundle local loops applies to all lines (both active and non-active), irrespective of what types of services are being provided on the lines at the moment. Should a local loop fail to be unbundled, this might amount to a breach of the obligations imposed. However, the Office did not receive any warning about possible problems in this area.

The complete text of the comments and the settling thereof are indicated in the table of the clearing of comments during the public discussion.

For the Council of the
Czech Telecommunication Office:

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