

More competition or more regulation? Amended Act on electronic communications

An important amendment to the Act on Electronic Communications entered into force on 1 January 2012, several months after the May deadline imposed by the EU. The Act is expected to transform the legal environment in which communication providers, such as telecoms businesses or internet service providers, operate. In particular, it is likely to improve the position of consumers and change the tendering procedure for the allocation of radio frequencies. This article briefly describes the key changes the amended Act has introduced.

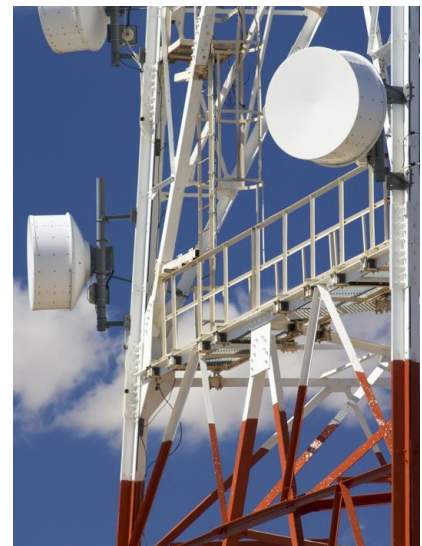
Tendering procedure for allocation of radio frequencies

The Act amends the tendering procedure for the allocation of available radio frequencies. This amended procedure is intended to be used for the tendering of frequencies (slots) in the 800, 1800 and 2600 MHz bands, the first of which became available as a result of the recent digitalisation process. The purpose of the tender, which has to be opened by the end of March 2012, is to increase competition on the market, incentivise technological innovation, stimulate the development of new telecommunication services and achieve the Government's objective of "digitalisation across the country". It is also likely to benefit the Government budget.

Until the end of 2011, tendering procedures were generally based on a number of criteria with which competitors had to comply. The winner was then chosen based on how many of the criteria it fulfilled and how well it fulfilled them. Under

the new regime, the Czech Telecommunication Office can auction off frequencies. In the proposed auctions the individual competitors have to comply with the same criteria as under the old procedure but, unlike with the original procedure, the criteria only serve as a basic benchmark. Once the criteria are satisfied, the final decision is based on price. The Czech Telecommunication Office has published basic principles for auctions and it is expected that the auction rules will be based on them.

The spectrum of radio frequencies available makes it technically possible to build up a full-fledged countrywide network, which may attract a fourth telecommunication operator to the Czech market. However, the existing operators may bid for the frequencies as well to improve their coverage, reduce their costs (800 MHz may be particularly attractive for some operators) or prepare for the launch of new technologies. The frequencies offered are technology neutral and can be used for all these purposes. It is possible that the Czech Telecommunication Office will



impose a duty on the successful bidder to allow virtual operators to provide their telecommunication services (roaming) through the new frequencies (or relevant slots). On a related note, the Act now also enables the leasing of frequencies, if the lessee meets the general requirements of a holder of radio frequencies and the lease is not in breach of the decision on allocation of the frequencies to the lessor.

Key issues

- New tendering procedure for allocation of radio frequencies
- Greater transparency to contracts between providers and consumers
- Obligation to inform customers of important changes to contracts
- Limit on the duration of fixed term contracts
- Radio frequencies for experimental purposes

It is too soon to tell whether or not the auctioning of frequencies is a good move or not. New operators could indeed improve competition on the Czech market and in turn decrease the price of telecommunication services and data transfer. The Czech Telecommunication Office even estimates a price decrease of up to 50%. This may be too optimistic, however.

Good signal for consumers

The Act allows the Czech Telecommunication Office to take a more active part in regulating electronic communication providers' behaviour. Until now, it was the Czech Trade Inspection (*Česká obchodní inspekce*) which scrutinised providers' behaviour in accordance with the Consumer Protection Act. It sought to prevent, amongst other things, unfair competition and unfair advertising, imposed a duty on providers to regulate their prices in accordance with existing legislation and made it compulsory for providers to inform consumers about prices and conditions. It will now be up to the Czech Telecommunication Office to

act as watchdog. The amended Act should facilitate its task, which is by no means easy given the bargaining power communication providers have.

Better consumer protection

No more unfair contracts

The amended Act aims to introduce greater transparency to contracts between providers and customers. It, amongst other things, requires providers to give customers all necessary price information, methods of billing and payment, and to guarantee a certain level of services. This means, for example, that an internet service provider will have to inform its customers if the actual internet speed is lower than that advertised. Providers will also be penalised for customer discrimination or aggressive commercial practices which violate either the amended Act or the Consumer Protection Act.

Calling emergency numbers for free

Communication providers' obligation to allow customers to call emergency numbers within the EU for free remains in place. The amended Act, however, introduces a fine of up to CZK 20,000,000 for not complying with this obligation. The amended Act also introduces a fine of up to CZK 200,000 against individual customers who misuse the emergency numbers.

Right to know

Communication providers now also need to inform customers of any changes they intend to make to contracts at least one month before the change is to take effect. Information about changes must be displayed in all their shops, on the internet and provided directly to individual customers. If the change is significant (the amended Act lists the

changes it considers significant) or is likely to worsen the customer's position, the communication provider must not only inform its customers of the planned changes but also of the customer's right to terminate the agreement on the date the changes are to take effect if the customer does not agree with the changes. Such termination must be possible without any sanctions against the customer. Clearly, the right to terminate a contract with the provider does not apply if a contract is amended as a result of compulsory legislative changes.

Duration of fixed term contracts

Up until now communication providers were able to tie in customers for several years through fixed term contracts. The amended Act limits the duration of first fixed term contracts entered into between providers and customers to two years. Customers may also ask for their contracts with providers to be limited to twelve months and providers are obliged to agree to this. However, should a customer so request, its contract with the provider may be entered into for longer than two years. Arguably, this leaves customers in the same or a very similar position to that which they were in under the old regulation. For example, by showing customers the carrot of a better rate which they need to "request", the operator can then beat them with the stick of a long contract without necessarily breaching the law. It remains to be seen how this provision will be interpreted and whether longer contracts will continue to be the general trend.

Experimentation

The Czech Telecommunication Office is now also able to grant licences for the use of radio frequencies for experimental purposes, such as the development and testing of radio devices. However, such licences may only be granted if there is no economic benefit for the licensee.

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