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THE TECHNOLOGY,  
MEDIA AND  
TELECOMMUNICATIONS  
REVIEW

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SECOND EDITION

EDITOR  
JOHN P JANKA

LAW BUSINESS RESEARCH

# THE TECHNOLOGY, MEDIA AND TELECOMMUNICATIONS REVIEW

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This article was first published in  
The Technology, Media and Telecommunications Review, 1st Edition  
(published in October 2010 – editor John P Janka).

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Published in the United Kingdom  
by Law Business Research Ltd, London  
87 Lancaster Road, London, W11 1QQ, UK  
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ISBN 978-1-907606-23-6

Printed in Great Britain by  
Encompass Print Solutions, Derbyshire  
Tel: +44 870 897 3239

# ACKNOWLEDGEMENTS

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The publisher acknowledges and thanks the following law firms for their learned assistance throughout the preparation of this book:

ABOU JAOUDE & ASSOCIATES LAW FIRM

ADVOKATSKO DRUZHESTVO ANDREEV, STOYANOV & TSEKOVA  
IN COOPERATION WITH SCHOENHERR

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## EDITOR'S PREFACE

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The recent passing of TMT pioneer Steve Jobs provides an appropriate moment for reflecting on the impact that innovation in the sector has had on our lives, and how it also has driven – and outpaced – the development of the law.

Dramatic advances in microchips have fuelled the digital revolution, spawning a wide range of devices and services that our parents never could have imagined. The iPhone, the iPad, iTunes and the iPod are but a few examples of technological changes that have challenged old ways of doing business, and also have changed society. We are connected to our work and our social circles anywhere we go; we instantaneously access vast information resources from mobile devices; and we watch films and TV programmes, and listen to music, of our choosing, whenever and wherever we want.

Similarly, the Internet has changed the way people communicate, and has altered our preferences for receiving information and entertainment. Internet-based businesses have challenged traditional media businesses, such as print newspapers, print magazines, and television and radio broadcasting. Internet media delivery is now challenging more recently developed forms of media–cable and satellite delivery of subscription video programming. As a result, the legal constructs once put in place to govern media outlets are changing.

The existing telecommunications infrastructure is becoming outmoded. ‘Twisted pair’ (copper) is being bypassed in favour of fibre and wireless, as existing phone lines cannot readily support the increasing demand for broadband speeds and throughput. A robust wireless communications infrastructure is necessary to support the booming demand for mobile broadband connectivity to smart phones and tablets. As a result, government policy is evolving to support the deployment of broadband infrastructure, and to facilitate the growth of mobile services; but regulatory change never seems to occur fast enough. While nations are making significant investments to deploy high-speed broadband services to their citizens, significant private investment is still needed for tomorrow’s critical telecommunications and information infrastructure.

Historical spectrum planning did not provide for the current wireless boom. As a result, no incumbent user of spectrum is safe in the refarming of existing spectrum bands. The transition from analogue to digital signal forms is leading to more efficient use of the spectrum, and also is facilitating new approaches to sharing radio spectrum.

Regulators are coming under increasing pressure to capture the value associated with the spectrum bands that are being opened for these new purposes.

The broadband revolution has eliminated one information bottleneck that once existed when consumers had to rely on a few newspapers, TV stations and radio stations. Now they are able to use Internet-based services such as Facebook and Twitter – albeit sometimes in the face of governmental attempts to stem the free flow of information to and from their jurisdictions. Other ‘gatekeepers’ are developing in the distribution chain as application service providers seek to constrain access to certain content, whether by using their influence to cause broadband providers to block access to that content entirely, or to prioritise one information source over another.

We are being monitored, and our personal information is being collected, stored and mined, in a manner that regulators never envisioned and that the law is not well-suited to constrain. Virtually every Internet access and wireless device we use knows where we are, and tracks what we do. While this personal information can be used for purposes that some may find desirable (such as targeting products and services to us), gathering and storing that information virtually eliminates any expectation of privacy. In many jurisdictions, the law is inadequate to manage the chances for abuse and the consequences of security breaches.

This second edition of *The Technology, Media and Telecommunications Review* expands to 30 the jurisdictions in which we provide an overview of the legal constructs that govern these types of issues. While the authors cannot fully address every one of these topics in the following articles, we do hope this book provides a helpful framework for your analysis.

**John P Janka**

Latham & Watkins LLP

Washington, DC

October 2011

# LIST OF ABBREVIATIONS

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3G	Third-generation (technology)
4G	Fourth-generation (technology)
ADSL	Asymmetric digital subscriber line
ARPU	Average revenue per user
BIAP	Broadband Internet access providers
BWA	Broadband wireless access
CATV	Cable TV
CDMA	Code division multiple access
CMTS	Cellular Mobile Telephone System
DAB	Digital audio broadcasting
DDoS	Distributed denial-of-service
DoS	Denial-of-service
DSL	Digital subscriber line
DTH	Direct-to-home
DTTV	Digital terrestrial TV
DVB	Digital video broadcast
DVB-H	Digital video broadcast – handheld
DVB-T	Digital video broadcast – terrestrial
ECN	Electronic communications network
ECS	Electronic communications service
EDGE	Enhanced data rates for GSM evolution
FAC	Full allocated historical cost
FBO	Facilities-based operator'
FTNS	Fixed telecommunications network services
FTTC	Fibre to the curb
FTTH	Fibre to the home
FTTN	Fibre to the node
FTTx	Fibre to the x
FWA	Fixed wireless access
Gb/s	Gigabits per second
GB/s	Gigabytes per second

*List of Abbreviations*

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GSM	Global system for mobile communications
HDTV	High-definition television
HITS	Headend in the sky
HSPA	High-speed packet access
ICT	Information and communications technology
IPTV	Internet protocol television
ICP	Internet content provider
ISP	Internet service provider
kb/s	Kilobits per second
kB/s	Kilobytes per second
LAN	Local area network
LRIC	Long-run incremental cost
LTE	Long Term Evolution (a next-generation 3G and 4G technology for both GSM and CDMA cellular carriers)
Mb/s	Megabits per second
MB/s	Megabytes per second
MMS	Multimedia messaging service
MMDS	Multichannel multipoint distribution service
MSO	Multi-system operators
MVNO	Mobile virtual network operator
MWA	Mobile wireless access
NFC	Near field communication
NGA	Next-generation access
NIC	Network information centre
NRA	National regulatory authority
PNETS	Public non-exclusive telecommunications service
PSTN	Public switched telephone network
RF	Radio frequency
SBO	Services-based operator
SMS	Short message service
STD-PCOs	Subscriber trunk dialling–public call offices
UAS	Unified access services
UASL	Unified access services licence
UHF	Ultra-high frequency
UWB	Ultra-wideband
UMTS	Universal mobile telecommunications service
USO	Universal service obligation
VDSL	Very high speed digital subscriber line
VHF	Very high frequency
VOD	Video on demand
VoB	Voice over broadband
VoIP	Voice over Internet protocol
WiMAX	Worldwide interoperability for microwave access

## Chapter 6

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# CZECH REPUBLIC

*Drahomír Tomašuk\**

### I OVERVIEW

The Czech communications market is currently undergoing a gradual process of consolidation. Major players have established their positions with the intention of providing their customers with a comprehensive set of services (both voice and data), regardless of the technology involved. The result has been the establishment of ‘converged operators’ who can offer services through both fixed and mobile networks.

In the fixed voice services market, the downward trend of recent years is continuing. With over 80 per cent of the total volume of voice traffic in 2010 originated over mobile networks, fixed networks are serving more and more as a means for broadband Internet access. In addition, next-generation optical-fibre fixed networks (NGN/NGA) are expected to develop considerably. The implementation of such networks, however, is still limited and rather local in terms of geography.

For broadband Internet access, infrastructure-based competition on the market is the major determinant. Unlike in the past, the market shares of individual technical solutions on the retail market have not changed much recently. Fixed radio WLL access (including Wi-Fi access), xDSL access in fixed networks, CATV network access, access through the gradually developing optical-fibre networks, as well as mobile data services, continue to hold a considerable market position.

Overall, broadband access on the retail market is estimated to be over 2.5 million, which corresponds to the 25 per cent level of broadband penetration (the number of accesses per 100 inhabitants). Although this has allowed broadband services to become more available, the Czech Republic still lags behind the international community, especially the EU, in terms of penetration.

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\* Drahomír Tomašuk is a senior lawyer at Kocián Šolc Balašítk, advocates.

The transition from terrestrial to digital broadcasting has proceeded successfully since it was first launched in the middle of 2008. As a result, analogue frequencies are now available for services based on new technologies.

## **II REGULATION**

There are two regulations in the Czech Republic that apply principally to telecommunications and radio and television broadcasting: the Regulation on Electronic Communications (which applies exclusively to transmission) and the Regulation on Radio and Television Broadcasting (which applies to the regulation of content).

### **i Regulation on electronic communications**

#### *Regulator*

Electronic communications are regulated by the Czech Telecommunication Office ('the CTO') and the Ministry of Industry and Trade. The CTO is the central authority responsible for the administration of matters involving electronic communications, including market regulation and rules for doing business in the electronic communications sector.

The primary responsibilities of the CTO include:

- a* issuing general authorisations;
- b* analysing relevant markets in the electronic communications sector;
- c* identifying, and imposing special obligations on, undertakings with significant market power;
- d* selecting universal service providers and related inspection mechanisms;
- e* regulating prices and enforcing price controls in the electronic communications sector;
- f* issuing decisions on disputes with operators;
- g* administering and collecting fees; and
- h* cooperating with other national regulators in EU Member States and the EU Commission.

The CTO is responsible for monitoring whether operators comply with the Electronic Communications Act and it is authorised to impose penalties should the obligations set out in the Electronic Communications Act be breached.

The Ministry of Industry and Trade, on the other hand, is responsible for the long-term administration of the electronic communications services sector. Its main duties include drafting and submitting proposals on electronic communications policies to the Czech government, ensuring compliance with obligations arising from international treaties to which the Czech Republic is a party, and representing the Czech Republic in EU authorities.

#### *Main sources of law*

In the Czech Republic, the legal regulation on electronic communications is subject to and governed by the Electronic Communications Act, which applies to all electronic communications networks (communication networks) and to services that are based on

and involve electronic signal transmission. The Electronic Communications Act covers the entire infrastructure: telecommunications, transmission of radio and television broadcasting, etc.

The Electronic Communications Act became effective on 1 May 2005 (replacing and superseding the 2000 Telecommunications Act), by which the European Union's 2002 regulatory framework for electronic communications described above was implemented at a national level. The Electronic Communications Act does not apply to the content of the services provided through electronic communications networks, such as the content of broadcasting, financial services, and certain information society services.

The regulation itself is aimed at addressing any aspects of economic competition that are lacking and at establishing an appropriate environment for competition and for the protection of consumers and other market players.

Currently, an extensive amendment to the Electronic Communications Act is in its second reading in the Chamber of Deputies. The amendment is to transpose the 2009 Directives of the EU's regulatory framework applicable to the electronic communications sector, which the Czech Republic was supposed to have implemented in May 2011.

#### *Ownership restrictions*

There are no regulations restricting direct or indirect foreign ownership interests in electronic communications companies in the Czech Republic.

#### *Consent to mergers and acquisitions*

Czech law distinguishes between a 'transfer' (in Czech, *převod*) of rights and obligations (typically a disposal of rights and obligations by virtue of a contract) and a 'passage' (in Czech, *přechod*) of rights and obligations (such rights and obligations arising on grounds other than a contract, such as a merger or demerger).

All private law rights and obligations (rights and obligations established by a contract between legal entities) pass to the legal successor in the case of mergers, demergers, etc. To determine whether public law rights and obligations (such as licences or authorisations issued by public authorities) also pass to the legal successor, an analysis of the law under which such rights and obligations were vested or imposed should be conducted, especially in terms of whether the licences or authorisations were allowed to be passed, and whether the passage was subject to any requirements or conditions.

Neither a passage nor a transfer of individual authorisations is subject to any special explicit requirements under the Electronic Communications Act. The Act only states that an authorisation may expire if, for example, the holder thereof no longer exists and there is no legal successor.

The Electronic Communications Act also does not state whether the successor company must comply with any special requirements before the authorisations are passed; such requirements are not believed to be necessary. However, standard procedure for mergers has been to either cancel the old authorisations and have new ones issued to the successor companies or to amend the existing authorisations as needed.

General Czech competition rules also apply. These rules, which are in line with EU competition policy, include merger control procedures and the prohibition of, among other things, anti-competitive agreements and abuse of a dominant position.



## **ii Radio and television broadcasting regulation**

### *Regulator*

The Radio and TV Broadcasting Council is the authority in charge of administering radio and TV broadcasting, retransmission, and on-demand audio-visual media services.

The Radio and TV Broadcasting Council's responsibilities include:

- a* supervision over the sustainability and development of programme and information plurality in both radio and TV broadcasting and retransmission;
- b* ensuring that both radio and TV broadcasting and retransmission are independent in terms of content;
- c* monitoring compliance with broadcasting legislation and licence or registration-related requirements;
- d* the power to grant, alter or revoke broadcasting licences and authorisations for retransmission;
- e* maintaining a list of broadcasting and retransmission operators;
- f* monitoring the content of radio and TV broadcasting;
- g* cooperating with the CTO;
- h* establishing programmes and related services that are in the public interest and the mandatory distribution of such programmes; and
- i* cooperating with EU authorities and national regulators of EU Member States.

The Radio and TV Broadcasting Council is also responsible for fulfilling other radio and TV broadcasting-related tasks arising from, or implied by virtue of, the Czech Republic's membership in the European Union.

The Radio and TV Broadcasting Council comprises 13 members, who are nominated by the Chamber of Deputies and appointed or recalled by the Prime Minister. Serving on the Council constitutes a public office.

### *Main sources of law*

There are two Acts that are the cornerstone pieces of legislation applicable to radio and TV broadcasting: the Radio and TV Broadcasting Act, and the On-Demand Audiovisual Media Services Act.

### *Ownership restrictions*

In the Czech Republic, there are no rules limiting media investments, cross-media ownership, or foreign ownership of media. As a general rule, however, the provision of programme services by a radio or television broadcaster is subject to a licence from the Czech Broadcasting Council. The same applies to the original radio and TV broadcasting via satellite and cable systems. On the other hand, all that is required for radio and TV retransmission is registration with the Radio and TV Broadcasting Council. Such registration, however, is not granted simply upon a written or verbal notification. The applicant is required to submit an application, which the Radio and TV Broadcasting Council will then review to determine whether or not to grant the registration.

Broadcasters who provide programme services via satellite, communal aerial systems, terrestrial digital television broadcasting, or short-wave broadcasting are not

required to hold a licence, but they are required to register with the Radio and TV Broadcasting Council.

***Consent to mergers and acquisitions***

The Radio and TV Broadcasting Act imposes the following restrictions:

- a* Subject to prior consent from the Radio and TV Broadcasting Council, licensed radio broadcasters or TV broadcasters – legal entities – or shareholders therein may transfer their shareholdings in the licensed radio or TV broadcaster to third parties; the Council may refuse to grant consent only if information plurality is jeopardised. The parties who were the shareholders in the legal entity on the date on which the decision to grant the licence was issued are required to retain a 66 per cent shareholding or 66 per cent of the voting rights for at least five years after the licence was granted.
- b* Subject to prior consent from the Radio and TV Broadcasting Council, parties who are 100 per cent shareholders in several licensed broadcasters – legal entities – may consolidate (whether by merger or formation of a new company) all or some of these legal entities into a single successor company, which takes the form of a limited liability company or a joint-stock company;
- c* Individuals who are licensed broadcasters or retransmission operators may apply to transfer the licence or registration to a legal entity; the Radio and TV Broadcasting Council shall approve the application only if the transferee is a legal entity in which the transferring individual holds a 100 per cent shareholding.
- d* Subject to prior consent from the Radio and TV Broadcasting Council, licensed radio broadcasters may retransmit other licensed radio broadcaster's programmes, including the identification of the retransmitted programmes, unless the base software specification is altered as a result thereof.

In addition, Czech competition and merger control rules may apply.

### **III TELECOMMUNICATIONS AND INTERNET ACCESS**

#### **i Internet and Internet protocol regulation**

The regulation and classification of Internet and IP-based services is governed by the general electronic communications law, which requires parties wishing to be engaged in this type of communications to inform the CTO via written notice in advance of their intention. Starting up a business in this area is not subject to any further trade authorisations, concessions or licences.

Many special laws, however, such as the following, may apply or be relative to Internet and IP-based services:

- a* the Civil Code;
- b* the Certain Information Society Services Act; and
- c* the Personal Data Protection Act.

**ii Universal service**

The CTO is entitled to impose an obligation on an operator to provide universal services if the market is not competitive enough to ensure that such services are available. The universal services that could be imposed include fixed-point connection to a public telephone network, or fixed-point access to publicly accessible telephone services. Should there be a need for universal services, the CTO shall issue a call for tender. If there is no bidder or if no bidder manages to meet the tender requirements, the CTO may impose the obligation to provide universal services on operators with significant market power or, if there is no such operator, on an operator that best meets the tender requirements.

In preparing the government-approved Digital Czech Republic policy, in 2010 the Ministry of Industry and Trade conducted an extensive study to determine the number of providers offering access to broadband Internet with the nominal speed of at least 2MB/s (download speed), which is defined as the principal short-term goal in this area. The study resulted in the following major conclusions:

- a* 10.1 per cent of inhabitants in communities (municipalities) do not have access to broadband Internet;
- b* 20.4 per cent of inhabitants in communities (municipalities) can access broadband Internet through one provider; and
- c* 69.5 per cent of inhabitants in communities (municipalities) can choose from several providers offering access to broadband Internet.

Given the findings outlined above, the Czech Republic Digital Policy set the following goals:

- a* to ensure that by 2013 all inhabited communities (municipalities) in the Czech Republic have access to broadband Internet with a speed of at least 2 MB/s (download) – in cities the speed shall be at least 10 MB/s; and
- b* to ensure that by 2015 the speed of broadband Internet available in rural areas is at least 50 per cent of the average speed in cities – 30 per cent of households and businesses in cities should have access to broadband Internet with a speed of at least 30 MB/s.

**iii Restrictions on the provision of service**

*Price regulation*

In 2010 six decisions enforcing price regulations on undertakings with significant market power were issued based on analyses of relevant markets.

The prices for call termination and call origination on public fixed networks were calculated using the LRIC method. In calculating the price for call termination on mobile networks, the CTO used the FAC method. The CTO then calculated the prices for local loop unbundling on the metallic path facility.

In 2010 the regulation of wholesale prices through setting a price cap resulted in an approximately 10 per cent and 30 per cent reduction of the maximum prices for call termination on fixed networks and mobile networks, respectively. Average monthly prices for full access dropped by 7.43 per cent and shared access fell by 14.45 per cent.

### *Access to networks*

The Electronic Communications Act sets out that operators (parties engaged in, or in charge of, operating a public communications network) must allow providers of public electronic communications services access to their networks. This rule indicates that the operator's duty to grant access to its network applies only to providers of public electronic communications services (the operator can refuse to grant access to any other party, such as parties providing non-public services) regardless of the publicly available electronic communications service concerned.

Such access is granted under a written contract entered into by and between the operator and the provider of the public electronic communications services. The full version of the contract, including any appendices thereto, must be submitted to the CTO. The same duty applies to any amendments to or modification of the contract. Where desirable, especially where it is essential for achieving any regulation-related goals, the CTO may, whether at its own discretion or upon the initiative of any party involved, enter into and take part in negotiations concerning the contract. If a contract is not entered into within two months of the commencement of the negotiations on the draft contract, the CTO is entitled to issue a decision on the dispute based on a proposal submitted by either party.

Although neither the Electronic Communications Act nor related legislation explicitly prevents the operator from using, or imposes a duty on the operator to use, particular technologies, systems, applications or services, any conditional access to networks by particular technologies, systems, applications or services applied by the operator could be in conflict with the regulation principles declared in the Electronic Communications Act, particularly with respect to transparency, technological neutrality, and non-discriminatory access.

### *Content monitoring and control*

In terms of content control and monitoring, the Electronic Communications Act requires all parties engaged in the operation of public communications networks or those providing public electronic communications services to ensure – both in terms of engineering and organisation – the confidentiality of all messages and associated operating and localisation tools transferred via their public communications networks and through their public electronic communications services. Impermissible activities include, in particular, wiretapping, message storing, and any other types of message and associated data interception or monitoring by parties other than the user. This does not apply to special circumstances described by law, such as criminal proceedings.

The Electronic Communications Act also sets out that anyone wishing to use electronic communications networks to store data or to obtain access to data stored in an end-user's device is required to give the user prior notice (proof of delivery is required) of the scope and purpose of the data processing and to offer the user the chance to refuse to have such information processed.

The duties outlined above shall not apply to technical storage or access solely for the purpose of executing or facilitating the transmission of messages through an electronic communications network or if such storage or access is required for providing information society services explicitly required by the user.

#### **iv Security**

##### *National security*

The Electronic Communications Act states that all parties engaged in the operation of public communications networks or those providing public electronic communications services are required to establish and provide, at the costs of the applicant, a secure interface for monitoring and recording messages for the following authorities:

- a* the Police of the Czech Republic;
- b* the National Intelligence Agency; and
- c* the Military Intelligence Agency.

The authorities listed above, however, must present a warrant to prove they are authorised to intercept and record messages, and such warrant must include the reference number of the relevant court case. Previously, the Electronic Communications Act granted these authorities the right to receive historical information on telecommunications operations; however, because of its infringement on personal privacy, the Czech Constitutional Court repealed the relevant provision in the spring of 2011.

The Electronic Communications Act also requires parties engaged in the operation of public communications networks or those providing electronic communications services available to the public to ensure the integrity and safety of their networks, as well as the interoperability of their services in events of emergency or threats to national security.

##### *Personal data processing and privacy*

Personal data processing and consumer privacy is generally governed by the Personal Data Protection Act, although certain rules for electronic communications are also set out in the Electronic Communications Act.

The rules found in the Electronic Communications Act include specific principles concerning the collection and processing of traffic and location data. These rules, however, limit the use of such data to certain situations.

Processed operating and localisation data must be deleted or anonymised as soon as it is no longer needed for transmitting the message. This does not apply to the processing of operating data required for charging, invoicing, and calculating fees for connecting to or accessing services. Such processing is admissible only within the period in which the bills or rights to receive a payment can be legally challenged or raised. For the purpose of marketing electronic communications services or providing value-added services, such data can only be processed to the extent and duration as such processing is essential for the marketing or the services, provided the concerned user (to whom the data applies) has granted his or her consent. The parties or users involved must have a chance to retract their prior consent to having their operating data processed.

##### *Protection of children*

Although there are no specific regulations in the Czech Republic regarding the protection of children online, an initiative known as 'Red Button' has recently been introduced by the Minister of Human Rights to address this important issue. 'Red Button' is a software tool that allows the reporting of pictures of abused children (child pornography),

child prostitution, paedophilia, child trafficking, age-inappropriate content, racism, xenophobia, drug trafficking, self-harm and incitement to violence or hatred.

### *Cybersecurity*

Many Czech laws, including the Electronic Communications Act, have special provisions on the protection, safety and integrity of public communications networks.

In July 2011 the Ministry of the Interior, the guarantor of the Czech Republic's cybersecurity, introduced the launch of the Ministry of GOV CERT CZ (the Emergency Computer Response Team), which is the government cyber security and protection centre in the Czech Republic. The portal is the first piece in the puzzle that, when complete, will provide a framework for secure and reliable Internet and ICT use.

## **IV SPECTRUM POLICY**

On an international level, the use of the radio spectrum is governed by the Radio Regulations of the International Telecommunication Union ('the ITU'). The ITU's Radio Regulations are applied in the Czech Republic by means of the Frequency Allocation Plan (National Frequency Table), which defines the allocation of frequencies to individual radiocommunication services.

The Allocation Plan is followed by the Radio Spectrum Application Plan, in which the CTO sets out the technical parameters and requirements for applying radiocommunication services to the radio spectrum. In frequency planning, the CTO is further subject to the legislation of the European Commission and the recommendations of the European Conference of Postal and Telecommunications Administrations.

### **i Flexible spectrum use**

Under the Frequency Allocation Plan, rights to radio frequencies are basically understood in the following two ways:

- a* in competition terms, the number of rights basically means the number of allocation holders (typically the number of rights in GSM 900 and 1800 bands); and
- b* in technological terms, the number of rights means the number of basic and indivisible spectrum sections (typically a total of 27 rights in the L-band, six rights in the 800MHz band, 24 rights in the 2.6GHz band, and up to 80 rights in the 3.5GHz band).

Following the need to ensure that trading in the rights to radio frequencies is feasible and that the spectrum is used efficiently, in the future the number of rights is to be defined solely in technological terms.

Given the principles of European harmonisation in relation to the terms and conditions for using the given frequency bands, the current allocation of the frequencies to GSM operators is to be changed soon so that the defined terms and conditions allow for technologies other than GSM to be used, and a portion of the rights to be transferred, such as for refarming. At the same time, new terms and conditions in the revised allocations will also be determined.

The demand for creating compact frequency blocks for the existing GSM operators is legitimate for 5MHz blocks in the GSM 900 and 1,800 frequencies. Given the current conditions, operators will be required to exchange the allocated frequencies. The re-farming and its impact on radio frequency allocation should not, however, result in any change to the range of radio frequencies.

As for the next steps that should be taken to ensure the radio spectrum in the frequencies concerned is managed effectively, however, it is necessary to consider the technologies that will play a key role in using the frequencies. Such technologies are as follows:

- a* frequency-division duplex (FDD) systems such as LTE technology;
- b* time-division duplex (TDD) systems such as WiMax technology; and
- c* existing systems and technologies: GSM, UMTS and CDMA.

## **ii Broadband and next-generation mobile spectrum use**

Competing operators are becoming more and more interested in providing both voice and data services across the frequencies allocated to them. This is apparent with the existing GSM operators (voice on GSM 800 and 1,800MHz) that provide data services on frequencies 450MHz, 872MHz or 2.1GHz. Multiband operations on advanced networks, where all services are provided on the IP platform, are desirable primarily because of cost efficiency and network optimisation.

In technical terms, the transmission capacity of any channel of identical width is the same regardless of the frequency used. Since frequencies in different bands travel differently, the frequency band used is substantial in terms of the value for money. This is why lower frequencies are used to ensure basic services are available, while higher frequencies are reserved for high-capacity coverage (areas where there is high customer penetration). Thus, in the future frequency combinations will ensure services provided via area-wide networks, so-called hybrid networks, are more efficient (several technologies and different frequencies shared for a single service depending on geography – cities as opposed to rural areas).

A special situation has arisen with regard to newly available bands. Since the 800MHz band is to be made available and the already available 2.6GHz band offers free pair sections, this pair of bands was determined to be prioritised for the launch of 4G networks (technologies based on the IP platform). This applies to the currently free frequencies of the 1,800MHz band, where, in addition to the potential development of yet another area-wide GSM network, the future deployment of 4G technologies for providing broadband services is expected.

As far as enhancing competition on the broadband services market is concerned, using selected frequencies from non-pair sections in 2.6 and 3.5GHz bands is being contemplated for applications supporting primarily both the nomadic or fixed character of broadband services.

The following bands constitute the primary frequency bands for mobile and broadband services: 800MHz, 900MHz, 1,800MHz, 2,100MHz, 2,600MHz and 3,500MHz, all of which have harmonised conditions for use. The 400MHz band is also drawing interest for use in wireless broadband Internet access.

### **iii Spectrum auctions and fees**

On 26 January 2011, the government discussed and approved a document entitled ‘The Czech Telecommunications Office’s Procedure for Administering Selected Sections of the Radio Spectrum with a Focus on Providing Support for Mobile Broadband Services’.

In the document, the CTO presented to the government comprehensive information on how to allocate a substantial number of frequencies already available in the 1,800MHz (1710–1785/1805–1880 MHz) and 2.6GHz (2,500–2,690 MHz) bands and frequencies in the 800MHz (790–862MHz) band that are not yet available as a result of switching to the terrestrial digital TV broadcasting (the Digital Dividend). The suggested allocation/disposal shall be as follows:

- a* frequencies in the 790–862MHz band (the Digital Dividend) will be used for broadband services, effective 1 January 2012; and
- b* an auction of frequencies in the 790–862 MHz (the Digital Dividend), 1,800MHz, and 2.6GHz bands shall be held.

The same applies to the radio spectrum of 300MHz, which is to be made available to bidders to develop new electronic communications, especially mobile services to be provided through area-wide broadband networks. The auction will be subject to the requirements laid out in the pending amendment to the Electronic Communications Act.

The use of frequencies in the Czech Republic is subject to a fee.

## **V MEDIA**

### **i Restrictions on the provision of services**

Legislation in the Czech Republic that is applicable primarily to telecommunications and radio and television broadcasting is the Electronic Communications Regulation (which applies exclusively to transmission); and the Radio and Television Broadcasting Regulation (which applies to content). This means that network operators and content providers are regulated separately.

The Broadcasting Act imposes a number of duties on radio and TV operators and retransmitters, including:

- a* in terms of programming, to provide objective and balanced information necessary for free formation of opinions, ensure that news and political reporting is objective and balanced, structure programmes to provide all viewers with a balanced offer with regard to age, sex, race, religion, political or other opinions, nationality, ethnicity or social origin, and belonging to a minority community;
- b* in terms of essential duties, to ensure that the broadcast does not promote war or depict cruel or otherwise inhumane conduct; ensure that the broadcast does not instigate violence on the grounds of sex, race, language, faith and religion, political or other opinions, nationality or social origin, belonging to a minority community, property, family or any other position; and
- c* in terms of broadcasting events of substantial social importance, to refrain from using exclusive rights to broadcast such events in a manner that would fail to provide a substantial portion of the Czech population with the opportunity to watch such event live or as a recorded broadcast on nationwide TV free of any coding or fee.



## **ii Digital switchover**

The process of digitalisation was launched between 2000 and 2004 by pilot digital terrestrial broadcasting projects of Czech TV. The first tender for allocating licences to content providers for digital broadcasting lasting from 2005 to 2006 was not carried out in strict compliance with the legal and regulatory framework. Only certain TV stations (Z1, Febio TVk, TV Barrandov, Óčko, RTA and TV Pohoda) were assigned licences. Nevertheless, certain TV stations (such as CET 21 and FTV Prima), as holders of licences for analogue TV broadcasting, managed to challenge the decision of the Broadcasting Council successfully before the courts.

Radio and TV analogue broadcasting will gradually be replaced by digital broadcasting. The detailed provisions on the switchover to digital TV transmission are contained in the TTP.<sup>1</sup>

Under the former analogue broadcasting regime there was a limited number of channels that could be broadcast within the frequency spectrum. Only four channels (CT1, CT2, NOVA and PRIMA) were broadcast. The conversion to digital broadcasting allowed more radio and TV channels to be broadcast nationwide. Currently, the licences for analogue radio broadcasting are valid until beyond 2020. Under the current framework, all analogue TV transmitters will be switched off by 30 June 2012.

The digital TV signal in individual digital networks covers the Czech Republic as follows: MUX 1: 99.8 per cent of inhabitants; MUX 2: 90.5 per cent of inhabitants; MUX 3: 85.2 per cent of inhabitants (data calculated and applicable on 31 December 2010). The MUX 4 signal's coverage has not changed and continues to amount to approximately 22 per cent of inhabitants.

The transition from analogue to digital transmission has provided access to more TV channels for consumers and has also provided a range of options for putting together TV channel packages.

## **iii Internet-delivered video content**

In addition to terrestrial transmitters, CATV, and satellite TV, IPTV is the fourth alternative for accessing TV broadcasting. IPTV, however, is not available everywhere. Subscribers can get IPTV only where the service is made available by providers and only two providers – Telefónica O2 and Volný – currently distribute IPTV. As they provide the service via phone lines, the lines cannot be far from the telephone exchange and must allow ADSL2+ technology.

IPTV can make its way to TV watchers through optical fibre as well, but it is reserved solely for people who subscribe to an Internet fibre-optic connection. There are now only several companies operating local (usually urban) optical fibre networks in which customers have access to IPTV.

The Radio and TV Broadcasting Council deems IPTV to constitute retransmission (IPTV operators only distribute TV programmes operated by other companies). If the Radio and TV Broadcasting Council did not regulate IPTV, it could not enforce statutory

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1 Technical Plan of the Switchover from Terrestrial Analogue TV Broadcasting to Terrestrial Digital TV Broadcasting.

measures against IPTV operators, such as ensuring that all transmitted programs or any change thereof are approved (registered) and imposing penalties for breaches of law.

#### **iv Mobile services**

There are three major GSM operators on the mobile services market: Telefónica O2, T-Mobile, and Vodafone. Compared with other countries, GSM services were quickly introduced in the Czech Republic and relatively high penetration was achieved quickly (140 per cent at the end of 2009). In 2008, MobilKom commenced its mobile voice services but it operates in the 410MHz band and uses CDMA technology. The mobile services market seems to have stagnated, according to up-to-date figures showing the number of active SIM cards, number of phone calls, and number of sent SMS messages.

Mobile operators, however, have not yet exhausted all their innovation potential and new technology platforms. This applies especially to the lagging introduction and launch of 3G UMTS networks, the higher forms of which allow for 1 to 10+ MB/s Internet access.

The facts outlined above and various technological difficulties result in the unavailability of digital broadcasting (whether radio or TV) for mobile telephones in the DVB-H standard in the Czech Republic. The only digital broadcasting available for mobile devices is Internet streaming. Nevertheless, given the government-approved progress schedule of the Czech Telecommunications Office in administering selected portions of the radio spectrum with a focus on supporting the provision of broadband access mobile services, substantial changes can be expected to take place in the near future.

## **VI THE YEAR IN REVIEW**

The amendment to the Electronic Communications Act takes into account over four years of experience of applying the Act. The amendment introduced changes primarily to the radio spectrum administration (the possibility of altering or cancelling radio frequency allocation) and the financing of universal service (a new mechanism of compensation from the state budget).

The process of transposing the European Union's Regulatory Framework for Electronic Communications, adopted and published in the European Union's Official Bulletin in 2009, was started in the Czech Republic in 2010. The Ministry of Industry and Trade is the authority in charge and the transposition process is still pending.

In December 2010, Falcon Group agreed to sell its 100 per cent share in České Radiokomunikace to another group of funds administered by Macquarie. The value of the transaction was €574 million. České Radiokomunikace has been in the Czech market for 47 years and it is the leading expert in broadcasting services. As the first to launch both public and commercial digital TV broadcasting, the company has its own extensive network and, thanks to its strong broadcasting infrastructure, it can offer wireless solutions or, as the case may be, connect locations that are not far from one another through optical fibre.

On 26 January 2011, the Czech government discussed and approved a document entitled 'The Czech Telecommunications Office's Procedure for Administering Selected

Sections of the Radio Spectrum with a Focus on Providing Support for Mobile Broadband Services', which provides comprehensive information on how to allocate a substantial number of frequencies already available in the 1,800MHz (1,710–1,785/1,805–1,880MHz) and 2.6GHz (2,500–2,690MHz) bands and frequencies in the 800MHz (790–862MHz) band from the Digital Dividend that are not yet available.

In March 2011, the Constitutional Court repealed the portion of the Electronic Communications Act that required operators and providers to keep and submit operating and localisation data on communications traffic to the police and intelligence agencies. Operating and localisation data include data on the time and numbers of the calling and called parties, data on SMS messages, e-mail communications, and website visits, and data on the use of certain Internet services.

## **VII CONCLUSIONS AND OUTLOOK**

The following significant milestones should be achieved in the electronic communications market at the end of 2011 and the beginning of 2012:

- a* completion of the transposition of the European Union's Regulatory Framework for Electronic Communications adopted and published in the European Union's Official Bulletin in 2009;
- b* drafting and adoption of yet another amendment to the Electronic Communications Act to reflect the basic rules and conditions for participation in auctions in which frequencies are to be made available in the following bands: 790–862MHz (Digital Dividend), 1,800MHz, and 2.6GHz; and
- c* making available of the radio spectrum for the development of new electronic communications services (especially mobile) through area-wide radio broadband networks.

## Appendix 1

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# ABOUT THE AUTHORS

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Drahomír Tomašuk is a senior lawyer at Kocián Šolc Balaštík. He specialises in telecommunications, data protection, banking, company law, and administrative law and proceedings. In the area of telecommunications, he has advised major international corporations in connection with their entry on the Czech telecommunications market, on various global e-commerce projects, and on drafting access, services and other documentation for network operators and users. He has drafted numerous legal opinions on the Czech telecommunications regulatory regime, including recommendations on the building and operating of telecommunications networks (both fixed and mobile networks) in the Czech Republic and the implementation of various technologies.

Mr Tomašuk has also actively participated in the Client Information Bank Register project, the first operating credit bureau in the Czech Republic and in the Client Information Non-bank Register project in the Czech Republic, in which all major leasing and sales finance companies participate. He is also very active in the field of outsourcing. Mr Tomašuk is a member of the Czech Bar Association. He contributes to international professional publications focused on telecommunications, technology and data protection.

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