



Ivana Fára
Senior Associate, Prague
Head of TMT
T +420 2 96798 841
E ivana.fara@cms-cmck.com



Ian Parker
Partner
T +420 2 21098 815
E ian.parker@cms-cmck.com

CMS TMT legal update / spring 2012

Hot topics:

Auction of mobile frequencies

On 20 March 2012, the Czech Telecommunication Office (CTO) announced that there will be a public consultation on the tender conditions for the 800, 1800 and 2600 MHz band mobile frequencies. The tender for the mobile frequencies shall bring the high quality service provided by 4G mobile broadband to individuals and companies.

The public consultation on tender conditions represents the first step in the entire process. It enables the public to comment on the process, with the CTO obliged to provide answers to such individual comments. The CTO has announced that the public consultation will be prolonged for 21 days until 11 May 2012, so as to provide enough time to potential bidders.

For further details please contact Ian Parker at ian.parker@cms-cmck.com or Ivana Fára at ivana.fara@cms-cmck.com

New legislation:

Changes to the Act on Electronic Communications

On 1 January, the amendment to Act No. 127/2005 Coll. on Electronic Communications (the 'Act') came into force. The amendment aims to bring Czech law in line with European directives. The changes to the Act are opening doors to new business opportunities, and offer increased consumer protection.

New business opportunities

The amendment to the Act provides for an auction sale of frequencies that have become available following transfer to digital broadcasting. The Czech Telecommunication Office has published basic conditions for the auction. These conditions are currently subject to public discussions and comments. Such regulation should ensure that all important aspects of the tender will be subject to public supervision, which should in turn guarantee a transparent tender process.

Amendments seeking to protect the consumer

The amendment to the Act aims to improve the position for customers by making contracts for electronic communication services more transparent. For example, connection-providers are obliged to contractually guarantee a minimum level of service provided to the customer. Contracts between connection-providers and customers must also contain arrangements regarding compensation for damage, and reimbursement of monies. In addition, the law protects the consumer by imposing a duty upon entrepreneurs to inform the consumer of any changes to the consumer's contract at least one month prior to the effective date of such a change. In some cases, the law gives the consumer the option to terminate the contract without any penalties as at the effective date of the change, provided that the consumer does not accept the new changes in the contract. The Act also provides consumer protection in relation to the conditions of termination contained in consumer contracts.

For further details please contact Ivana Fára at ivana.fara@cms-cmck.com or Helena Hailichova at helena.hailichova@cms-cmck.com

Draft Act on Postal Services

A draft of Act No. 29/2000 Coll., on Postal Services (the 'Act') was passed by the Chamber of Deputies in March; however the Act was subsequently refused by the Senate. The Act will be approved if the Chamber of Deputies votes down the Senate.

The aim of the amendment is to complete the liberalisation of the postal market. From 1 January 2013, and provided that the Act is approved, private postal service providers shall be allowed to enter into the basic postal services market. Such liberalisation should ensure healthy competition and the quality of postal services in the Czech Republic.

The amendment deals in particular with the following areas of provision of postal services:

- providing a more detailed specification of the postal services market (e.g. service providers that are subject to the Act will have to register with the Czech Telecommunication Office, and will be subject to its control. At the same time, such service providers will contribute to the financing of universal service)
- determining the scope of universal service (being basic postal services for citizens in the Czech Republic, at an acceptable price and providing an acceptable level of quality)
- setting out how the universal postal service is financed
- setting out access to special services and dealing with elements of postal infrastructure
- dealing with the provision of other activities currently carried out by Česká pošta, s. p., (the '**Czech Post**') as the postal license holder (e.g. payment of pension benefits, collection of radio and TV broadcasting charges, operation of the data box information system, and acts performed by the public administration contact point – Czech POINT).

The draft Act guarantees that Česká pošta, s. p., will be granted the postal license for an additional five years, i.e. until the end of 2017. A call for tenders will then be announced for the next period.

The most controversial part of the Act seems to be the provision concerning the financing of the so-called universal service. Following liberalisation, universal service is to be provided under the law for the first five years by the Czech Post. A universal service compensation fund will be established to collect contributions from postal service providers that have a turnover in excess of CZK 10 mil./year. However, contributions will also be collected from postal service providers on whom an obligation of universal service has been imposed, regardless of their profits from operations or their market shares. Any losses incurred by the provision of universal service will be covered by the compensation fund.

If the Act passes through the approval process, the expected effective date of the Act is 1 January 2013.

For further details please contact Ivana Fára at ivana.fara@cms-cmck.com or Radka Lörincová at radka.lorincova@cms-cmck.com

Draft Amendment to the Act on TV and Radio Broadcasting

The Chamber of Deputies will discuss the draft amendment to Act No. 231/2001 Coll., on Radio and Television Broadcasting Operation and the Amendment to Other Acts (the 'Act'), regarding the volume of commercial advertisements. The Act aims to regulate the volume of commercials so as to achieve the same level of volume as the rest of the broadcast. According to the draft, compliance with the regulation would be supervised by the Radio and Television Broadcasting Council, who would be responsible for implementing the regulation, dealing with technical matters and administering any bans.

In its statement, the government expressed its opinion on the draft amendment to the Act. The government pointed out the fact that the submitted draft, contrary to constitutional requirements, does not determine particular issues that are to be regulated by a decree. Moreover, the draft decree is not attached to the amendment and therefore a technical solution to the matter has not been proposed.

The proposed effective date of the amendment is 1 August 2012.

For further details please contact Ivana Fára at ivana.fara@cms-cmck.com or Radka Lörincová at radka.lorincova@cms-cmck.com

Recent case law:

Issue of royalties and car radios in company cars

At the end of 2011, a vigorous discussion arose regarding the issue of whether employers who have car radios installed in company cars are obliged to pay royalties to collective administrators, or to artists, for 'dissemination of copyright works to the public'.

In a detailed statement of opinion, the Ministry of Culture set out that based on a survey of domestic, EU and international legislation, case law, the practices of foreign collective administrators and foreign and local literature, fee collection is not authorised. According to the Ministry of Culture's findings, no licensing or collection of fees is applied in any of the EU Member States for the use of radios in company/business cars. The Ministry of Culture further argues that in the case of car radios, copyright works are not made available to the public. By definition, non-public dissemination may occur not only in the case of private use by an individual, but also within the framework of a legal entity performing such an activity. This is of course provided that the recipients can be individually identified.

Website operator's responsibility for website content

A frequently discussed issue is that of a website operator's responsibility for website content, specifically regarding the content of readers' discussions of articles published on the website.

In a recent dispute, an unnamed company (the 'Claimant') filed an action against a website operator (the 'Defendant') on the grounds of 'protecting the good reputation of a legal entity'. The Claimant argued that the Defendant should be held responsible for the content of the Defendant's websites, pursuant to the provisions of Section 5 of Act No. 480/2004 Coll., on Certain Information Society Services.

In the first instance, the court ordered the Defendant to remove the relevant discussion thread from the website, on the grounds that the Defendant operated websites dealing with evaluating the activities of various entities. This is the Defendant's key business concept and profit-earning activity. The court ruled that

since the Defendant uses the form of discussion to make the Defendant's websites more attractive, thereby gaining commercial advantage, as a result the Defendant must also be held responsible for the level of discussion contained in the website. The court also concluded that the defendant could have been aware that the content of the stored information was illegal (contrary to the general rules of decent conduct), and yet took no steps to remove offensive and defamatory expressions addressed to the Claimant.

However, in the subsequent appellate procedure, the High Court in Prague came to the conclusion that the defendant's responsibility was not set out. The court concluded that the defendant was not obliged to examine whether the contributions to the website were capable of affecting the 'good reputation of a legal entity'. Instead, this must be proved by the Claimant. Moreover, the Claimant must prove whether he actually has a 'good reputation'. The High Court did however state that some expressions in the discussion were not appropriate, and the High Court ordered some of them to be removed from the website.

The High Court's judgment provokes an interesting discussion. On the one hand, the High Court defends freedom of expression, and considers the use of vulgarisms in the discussions 'to be common'. On the other hand, the High Court did not apparently deem the defendant's vulgar designation to be either illegal or capable of affecting the good reputation of a legal entity. The court imposed a remedy, despite not having found any particular breach of a legal obligation.

However, it remains that this is only one of a few cases in which the local courts have dealt with website operators' responsibility for website content.

For further details please contact Denisa Assefová at denisa.assefova@cms-cmck.com

Upcoming seminars:

June-December 2012 (dates tbc)

Seminar Series on the new Czech Civil Code

This is a breakfast seminar series covering how your business will be affected by the new Czech Civil Code. Among others, the series will include the specific seminars for the new Civil Code for Banks; the new Civil Code and Real Estate Investors and Developers; Contracts under the new Civil Code (types, conclusion, termination and all relating issues); Insurance under the new Civil Code; Liability Issues under the new Civil Code; and Consumer Protection under the new Civil Code.

June - December 2012 (dates tbc)

Business Breakfast Series on Act on Corporations

Breakfast seminars covering how your business will be affected by the new Act on Corporations. A general-focused seminar will be followed by seminars concentrating on individual types of companies and corporate law principles.

If you would like to stay informed about upcoming seminars, please email prague.events@cms-cmck.com

CMS Cameron McKenna in Prague, winner of:

CEE Law Firm of the Year 2012

The Chambers Europe Awards

Acquisition International Legal Award – Czech TMT Law Firm of the Year

2012 Czech law firm of the year - IFLR

