

Telefónica Czech Republic has filed a lawsuit against the conditions of the spectrum auction

Telefónica Czech Republic has filed a lawsuit against unlawful interference at the Municipal Court in Prague. The lawsuit is filed not against the auction as such. The lawsuit is filed against discriminatory and unlawful provisions of the terms and conditions of the spectrum auction in the 800, 1 800 and 2 600 MHz bands, which deform the rules of the auction.

The **Czech Telecommunication Office (CTO)** intends to **introduce a number of discriminatory and unlawful measures. The alleged objective is to support an entry of a new operator in the market. But for such unlawful measures** the Office did not provide any justification, failed to conduct an analysis of the relevant market and did not submit the newly announced auction rules to the proportionality test. A similar approach has for example in Hungary resulted in a repeal of a result of a similar auction, as the Supreme Court concluded that reserving spectrum for new entrant was unlawful. Also in the neighbouring Slovakia the spectrum in the lucrative 800 MHz band is not exclusively reserved.

Public authorities **have the duty to properly justify and demonstrate that restrictive or discriminatory measures pursue a legitimate aim**, are capable of achieving it, do not go beyond what is necessary to achieve the aims and at the same time no less burdensome alternatives exist. But the regulator has failed to do this.

Given that the regulator of the telecommunications market failed to reflect the current developments on the mobile communications market prior to the start of the auction and ignored serious reservations of Telefónica Czech Republic, it was necessary to apply to the court to examine the legality of the contested provisions.

In connection with the announced auction rules Telefónica Czech Republic protests in particular:

- **An unauthorised state aid in the form of a dedicated spectrum block to new entrant**
 - In addition, the Czech Telecommunication Office has not submitted the rule reserving the spectrum to the proportionality test, which is required by the law in case of imposition of discriminatory and restrictive measures.
 - The course of the previous auction proved unnecessary any preferential measures to create more favourable conditions for the entry of a new operator, as there is at least one entity on the Czech market, which is – without any state aid - capable of entering the market as an adequate competitor to the existing operators.
- **An undue interference with the rights of existing operators by imposition of the obligation of national roaming in favour of new entrant**
 - The national roaming obligation is one of the most powerful tools of *ex-ante* regulation. The CTO may impose it only in the case of proven competition failure. Imposition of such obligation must be preceded by a detailed analysis of the relevant market and by identification of an entity with significant market power. The analysis hasn't been completed yet, but despite this CTO is imposing national roaming on all existing operators that are interested in participating in the tender .
 - CTO exceeded the powers limited by the Act on Electronic Communications. Regardless of any legal rules CTO is attempting to change the existing binding decisions on frequency allocation, again only in favour of other privately held subject. These rules may relate solely to the frequencies that are the subject of the tender.
- **Discriminatory disruption of competition by imposition of the obligation of wholesale offer**

- The imposition of the obligation to provide a wholesale offer must be according to the Law on Electronic Communications preceded by a detailed analysis of the conditions of competition in the relevant market and identification of an entity with significant market power. These have not been completed by the CTO. Despite this fact, CTO incorporated such obligation into rules without any proper reasoning, moreover for duration of 12 years from the date of allocation of radio frequencies on request from an applicant
- Such condition is all the more indefensible, while the mobile services market is currently experiencing an extraordinary development of services from virtual mobile operators, who offer their services using the frequencies of the existing operators, with no intervention from the CTO applied.