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**Czech Telecommunication Office**  
with headquarters at Sokolovská 219, Prague 9  
P.O. Box 02, Prague 025, Postcode 225 02

Prague, 17 July 2008  
Ref.: 39 672/2008-611

On the basis 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) (the "Act") and on the basis 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 49(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/16/07.2008-7**  
**laying down the percent shares of revenue from the provision of services referred to**  
**in Section 49(5) of the Act**

Article 1

**Introductory provisions**

This Measure of General Nature lays down the individual payers' percent shares of revenues generated the provision of the services referred to in Section 49(5) out of the total revenue from the provision of the services referred to in Section 49(5) in the given accounting period.

Article 2

**Determination of individual payers' percent shares of the total revenue**

The following revenue shares under Section 49(7) of the Act out of the total revenue of CZK 117,200,720,000 for the accounting period of the calendar year 2006:

No.	Company name	Company ID No.	Percent share
a	b	c	d
1	AmiCom Teplice s.r.o.	61325546	0.01243
2	Aston com s.r.o.	26915588	0.01105
3	AT & T Global Network Services Czech Republic s.r.o.	25785435	0.09798
4	AVONET, s.r.o.	25322478	0.03582
5	BOHEMIA TELEKOM s.r.o.	25732048	0.03450
6	BroadNet Czech, a.s.	26201224	0.14463
7	BT Global Česká republika s.r.o.	26209101	0.03319
8	BT Limited, organizační složka	70802025	0.49368
9	CASABLANCA INT s.r.o.	25079832	0.03788
10	CL – NET s.r.o.	25011022	0.03329
11	Czech On Line, a.s.	63080150	0.54579
12	ČD – Telematika a.s.	61459445	0.03091
13	Česká síť s.r.o.	26088983	0.01224
14	České Radiokomunikace a.s.	27444902	1.24971
15	Český bezdrát s.r.o.	25902415	0.00863
16	ČEZnet, a.s.	26470411	0.93201
17	Dat, s.r.o.	25521233	0.01414
18	Dial Telecom, a.s.	25135198	0.17875
19	EMEA Telecom s.r.o.	26898101	0.04335

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20	eNET, s.r.o.	26458837	0.02019
21	ERIKA, a.s.	25098900	0.01134
22	ETEL, s.r.o.	25630636	0.20584
23	ETT ENERGETIKA, a.s.	26463806	0.01045
24	Faster CZ spol. s r.o.	60722266	0.01681
25	F.C.A. a.s.	61858137	0.00953
26	FORTECH, spol. s r.o.	48155811	0.02756
27	GiTy, a.s.	25302400	0.09804
28	GTS NOVERA a.s.	61058904	4.96376
29	ha-vel internet s.r.o.	25354973	0.05074
30	Infos Art, s.r.o.	25849638	0.01086
31	Internext 2000, s.r.o.	25352288	0.03350
32	IPEX a.s.	45021295	0.03183
33	Kabelová televize Kadaň, a.s.	46709584	0.01249
34	Kabelová televize Karviná, a.s.	25878310	0.00913
35	Kabelová televize Přerov, a.s.	47672099	0.02544
36	Kabelová televize Třinec, spol. s r.o.	48394980	0.01131
37	Karneval Media s.r.o.	61776203	0.02827
38	LICA s.r.o.	47542756	0.00983
39	MATTES AD, spol. s r.o.	42868602	0.03668
40	MIRAMO spol. s r.o.	43960987	0.01238
41	M-SOFT, spol. s r.o.	49434853	0.01842
42	net4net, a.s.	26152436	0.04485
43	OVANET a.s.	25857568	0.01334
44	POHODA - SERVIS spol s r.o.	62497901	0.01617
45	Ranger Czech Republic a.s.	26419203	0.17871
46	SATT a.s.	60749105	0.01027
47	SELF servis, spol. s r.o.	18826016	0.01300
48	SELECT SYSTEM, s. r.o.	25382292	0.01138
49	Sloane Park Property Trust, a.s.	25036459	0.06766
50	SkyNet, a.s.	25346687	0.10813
51	SMART Comp. a.s.	25517767	0.05820
52	STAR 21 Networks, a.s.	26223325	0.07103
53	TELE2 s.r.o.	25650009	0.31572
54	Telefónica O2 Czech Republic, a.s.	60193336	49.19355
55	TELEST, spol. s r.o.	47907665	0.01028
56	TERMS a.s.	14499037	0.02196
57	TISCALI Telekomunikace Česká republika s.r.o.	64788610	0.28154
58	T-Mobile Czech Republic a.s.	64949681	23.76651
59	T-Systems PragoNet, a.s.	61059382	0.39394
60	UPC Česká republika, a.s.	00562262	0.58371
61	Vodafone Czech Republic a.s.	25788001	15.23567

### Article 3 Effect

This Measure of General Nature should come into effect on the fifteenth day after its publishing in (*Telekomunikační věstník* [Telecommunications Bulletin]).

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## **Explanatory Memorandum**

To implement Section 49(7) of the Act, the Office issues a Measure of General Nature laying down the individual payers' percent shares of revenue generated from the provision of services referred to in Section 49(5) of the Act out of the total revenue earned by all payers from the provision of these services during the accounting period of the calendar year 2008.

Payers are obliged to contribute to covering the net costs. Under Section 49(5) of the Act, payers are businesses that, irrespective of whether they are or are not residents of the Czech Republic, provide the following services on the Czech territory during the accounting period in question: interconnection and access to the publicly accessible electronic communications network, publicly available telephone service, line leasing service, internet access service or any other publicly available data service.

It is stipulated in Section 49(6) of the Act that a business whose total revenues from the provision of publicly available telephone service, internet access services or any other publicly available data services for the period in question are smaller than CZK 10,000,000 in total should not be regarded as payers. Consequently, the calculation covered only the companies listed in Article 2 of this Measure, each of which had revenues above CZK 10,000,000.

For the purposes of this Measure, total revenues should be understood to mean the sum of payers' revenues for the services specified in Section 49(5) of the Act. Revenue shares should be understood to mean, for the purposes hereof, the shares of the revenues of the individual companies out of the total revenues defined above.

In defining the range of undertakings, the Office based its considerations on the list of undertakings maintained by the Office in accordance with Section 14(3) of the Act.

The Office addressed 1115 companies which had notified authorities about their electronic communication business and which conducted their electronic communications business activities to the extent defined in Section 49(5) of the Act. The Office requested these companies under Section 115 of the Act to submit the information, data and evidence necessary for determining the amount to be paid to the universal service account. The data was used for the calculation of each provider's percent share out of the total revenues from the electronic communication services indicated below and for the subsequent calculation of the contribution to covering the net costs incurred by the universal service provider in 2006.

In considering which of the given company's revenues (and the underlying services) were to be taken into account to check the CZK 10,000,000 threshold for the accounting period on the basis of Section 49(6) of the Act, and in determining the percent share of the total sum, the Office took into account those services (both wholesale and retail) from which the revenues were charged by the undertaking on the Czech territory and were subject to income tax in respect of the undertaking's income earned from sources located in the Czech territory. The Office included the revenue from such services in the calculation even in the cases where a part of the service was in fact used abroad, because the Office assumed that at least part of the transmission and processing of operating data was provided on the Czech territory. And as to retail services, such services are provided under conditions declared in the Czech Republic.

As to revenues from the services of provision of access to the publicly accessible electronic communications network, publicly available telephone service, line leasing service, internet access service or another publicly available data service, the Office included in these revenues those that were earned from the sale of such services, which were charged in

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accordance with Act No. 563/1991 on accounting in the calendar year 2006. From the addressed companies, the Office requested information on the individual types of sales revenues related to the following electronic communications services in the following order:

Interconnection:

- Wholesale sales revenue for traffic originated in the operator's network;
- Wholesale sales revenue for traffic terminated in the operator's network;
- Wholesale sales revenue for transit;
- Wholesale sales revenue for lines leased for interconnection purposes.

The individual items also comprise sales revenue for roaming, dial-up, virtual calling cards, SMS and MMS.

Access to publicly accessible electronic communications network:

- Wholesale sales revenue for local copper loop unbundling, full and shared access;
- Wholesale sales revenue for co-location;
- Wholesale sales revenue for broadband access;
- Other revenues from access-related services and activities that are not comprised in other items of the sales revenue for access to publicly accessible electronic communications network.

Publicly accessible electronic communications service:

- Retail sales revenue for installing, re-laying, transfer and removal of subscriber lines;
- Retail sales revenue for the use of subscriber lines;
- Retail sales revenue for mobile station and service activation (e.g., SIM cards);
- Retail sales revenue from fixed network subscribers or end users for calls;
- Retail sales revenue from mobile network subscribers or end users for calls;
- Retail sales revenue for number porting;
- Wholesale sales revenue for number porting;
- Retail sales revenue for telephone service resale;
- Other retail sales revenues for publicly available telephone service.

Line leasing service:

- Wholesale sales revenue for leased lines (not including loops used for interconnection);
- Retail sales revenue for leased lines;
- Sales revenue from line lease resale.

Internet access service:

- Wholesale sales revenue for Internet access, including dial-up;
- Retail sales revenue for Internet access, including dial-up;
- Sales revenue from Internet access resale.

Other publicly available data services:

- Retail sales revenue for the short message service (SMS);
- Retail sales revenue for multimedia service (MMS);
- Retail sales revenue for VoIP (calling to numbers 910 and 970);
- Other retail sales revenues for other publicly available data services;
- Wholesale sales revenue for data transmission;
- Sales revenue from data services resale.

Other activities of the undertaking:

- Sales revenue and income from other activities within the undertaking, including extraordinary and financial income.

The data was assessed for compliance with the list of undertakings. The Office checked the range of revenue data filled in. After checking the data the Office took into account only the revenues from those services whose provision was notified by the undertaking in accordance with Section 13 of the Act.

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The sum of the sales revenues referred to above was then checked by comparing it with the sum of the sales and income for the calendar year 2006, as disclosed in the income statement under Act No. 563/1991 on accounting.

As stated above, only the companies referred to in Article 2 of this Measure, whose income is (as the Office found) above CZK 10,000,000, were included in further calculations for the purposes hereof.

The total income, from which the percent shares of individual payers were determined, was calculated as the sum of the revenues earned by the payers from the above-mentioned electronic communications services. The sum of the individual payers' revenues was CZK 117,200,720,000, as stated in the first sentence of Article 2 of this Measure.

The individual payers' percent shares, shown in the table in Article 2 of this Measure, were determined as the ratio between the individual payers' revenues to all payers' total revenues from the provision of the services referred to in Section 49(5) for the given accounting period, based on the following formula:

$$P_i = \frac{V_i}{\sum V_i},$$

where:

$P_i$  = share of the  $i^{\text{th}}$  payer

$V_i$  =  $i^{\text{th}}$  payer's revenues from the provision of the services referred to in Section 49(5) of the Act;

$\sum V_i$  = sum of all payers' revenues.

The individual companies' shares are stated in percent, after adjustments performed upon consultations, with accuracy to five decimal places.

The effective date of the Measure is determined in Article 3 of the Measure in compliance with Section 124(2) of the Act.

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On the basis of Section 130(1) of the Act and in accordance with Article 5 Paragraph 1 of the Czech Telecommunication Office's Rules for maintaining consultations at the discussion site, the Office published at the discussion site its draft Measure of General Nature No. OOP/X/XX.2008-Y on 6 May 2008.

Within the one-month period of public discussion, the Office received comments from two undertakings. The comments were primarily focused on why the services that were not (according to the views of the commenting entities) provided in the Czech Republic were also included in the revenue. Other comments addressed the question of whether the decision contained in this Measure was sufficiently justified. One comment concerned the completeness of the formal essentials of the Measure.

The comments drawing attention to alleged incorrect action of the Office in determining the range of the revenues to be included in the calculation were not accepted by the Office, and the requirements for excluding from the revenues those generated from the services provided abroad were not met. The method used by the Office to calculate the percent shares of revenues is in keeping with Section 49 of the Act. The term "services provided on the territory of the Czech Republic" must be understood to cover all wholesale and retail services whose revenues are stated in the undertaking's books maintained in the Czech Republic as revenues generated from sources on the Czech territory. This does not exclude

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that part of such services may in fact be used outside the Czech territory. According to the Office's opinion, it must also be taken into account that the provision of electronic communication services also includes the transmission and processing of operating data, i.e. the data serving for message transmission over the electronic communications network, or for the accounting thereof. To decide that the assumption contained in Section 49(5) of the Act is met, it is only necessary that at least one of the activities referred to above is provided in the Czech territory. And as to retail services, such services are provided under conditions declared in the Czech Republic in accordance with the Act.

In its response to this comment, the Office modified the part of the explanatory memorandum concerned.

Comments concerning the insufficient justification were acknowledged and the Office amended and extended the explanatory memorandum. A clearly defined procedure of the calculation of the individual payers' contributions was included in the memorandum. In this context, however, the Office did not indicate in the memorandum the individual payers' actual revenues but, in stead, offered the formula by which the individual payers' percent shares of the total revenues were calculated. Using this formula, payers can verify the level of their revenues used by the Office to calculate the shares.

In its response to the comment concerning the absence of evaluation of the data submitted, the Office extended the explanatory memorandum and explained how it had proceeded in assessing the data for conformity with the undertakings' books. Comparison of the submitted data with the income statement had already been referred to in the memorandum.

The Office did not accept the comment concerning insufficient formal details – it claimed that the draft Measure lacked advice on remedies, based on Section 68(5) of the Rules of Administrative Procedure. Measures of General Nature are specific administrative acts (normative administrative acts). Remedies (appeals) in respect of such acts are excluded by law (Section 173(2) of the Rules of Administrative Procedure).

In addition, the details to be contained in Measures of General Nature are specified in Sections 172(1) and 173(1) of the Rules of Administrative Procedure (and for electronic communications also in the second sentence of Section 124(1) of the Electronic Communications Act). According to these special content arrangements, Measures of General Nature must include justification (explanatory memorandum), which itself should include the settlement of comments. There is no stipulation concerning the obligation to include advice on remedies in Measures of General Nature, as distinct, for example, from provisions concerning the content essentials of Decisions – see Section 68 of the Rules of Administrative Procedure. As said, there are special content arrangements for Measures of General Nature and therefore it is impossible to apply, *mutatis mutandis*, the provisions of Section 68 of the Rules of Administrative Procedure.

Should the legislator have wished to stipulate the claimed advice on remedies as a mandatory detail of Measures of General Nature, the legislator would have expressly done so (like in the case of Decisions, Orders etc.). It should be added in this context that Measures of General Nature are issued in a specific process, which differs from the administrative procedure that precedes the issue of administrative Decisions. The procedure that leads to the issue of a Measure of General Nature does not involve “parties” within the meaning of Section 27 of the Rules of Administrative Procedure, and it can be inferred from this that the claimed “advice to the party to the proceedings in respect of the possibility to file a remedy” would also have been ungrounded from the general point of view.

The principle contained in Section 4(2) is not affected by this. In addition, impossibility of appeal in the case of Measures of General Nature is stipulated by law (the Rules of Administrative Procedure).

The comment settlement table, made public at the discussion site, contains the texts of all comments and how they were settled.

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The Council of the Czech Telecommunication Office considered the draft Measure of General Nature on 17 July 2008 and decided to issue it.

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Czech Telecommunication  
Office  
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for the Council of the  
Czech Telecommunication Office

[*signature*]

Pavel Dvořák  
President of the Council of the  
Czech Telecommunication Office