



EUROPEAN COMMISSION

Brussels, 30.05.2007
C(2007)2200

PUBLIC VERSION
WORKING LANGUAGE
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Subject: State Aid n° NN 24/2007 – Czech Republic
Prague Municipal Wireless Network

Sir,

I. PROCEDURE

- (1) By a letter registered on 13 June 2006, the Czech Association of Competitive Communications (CACC) and the Association of Public Telecommunications Network Operators (APVTS) lodged a complaint with the Commission against the public funding for a free broadband wireless network in the City of Prague. Both associations together represent almost all major telecom operators (including ADSL, cable, wireless and mobile operators) and internet service providers in the Czech Republic. The complainants submitted further information on several occasions and the Commission met representatives of the complainants in June and December 2006. By a letter registered on 21 February 2007, another complaint against the planned measure was submitted by an organisation advocating the interests of internet users and WiFi operators called "Internet for Everyone".
- (2) The Commission requested further information from the Czech authorities on the project on 18 July 2006 and 12 December 2006 respectively. The Czech authorities submitted the requested information by letters registered on 4, 9 and 11 October 2006, 30 January 2007 and 13 April 2007. Two meetings between the Czech authorities and the Commission took place in October and December 2006 to discuss and clarify certain aspects of the project.

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II. CONTEXT

- (3) According to the European Commission's 12th report on the Implementation of the Telecommunications Regulatory Package¹, despite strong growth in the number of broadband subscribers in recent years, broadband penetration in the Czech Republic remains below the EU average: it reached 9.6% of the population in 2006 compared to 15.7% on average in the EU-25.

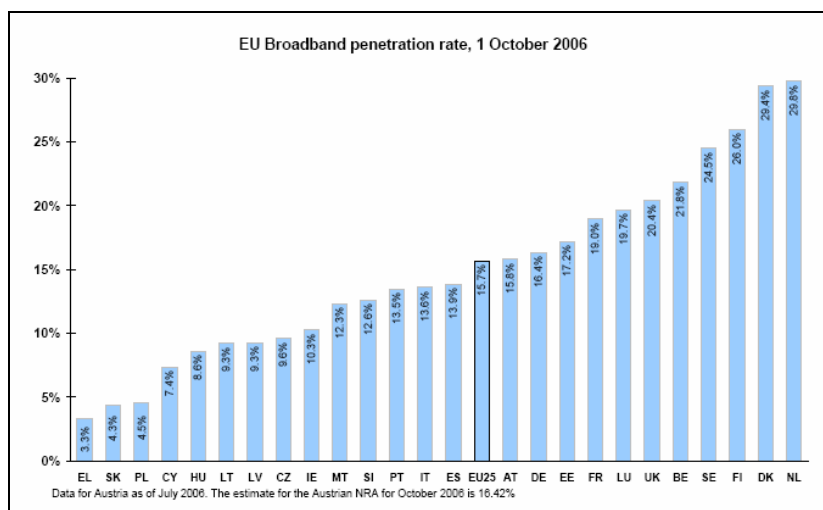


Figure 1 - EU Broadband penetration rate, 1 October 2006²

- (4) The broadband market in the Czech Republic is characterised by significant platform competition, with the third highest market share for alternative operators in the EU. Broadband access is provided over several competing technology platforms such as ADSL, cable, wireless or mobile communications. A notable feature of the Czech broadband market is the significantly higher market share of wireless connections compared to other EU countries³.
- (5) In terms of internet usage, the City of Prague is above the Czech Republic average. Data from 2006⁴ indicate that while internet usage reached 27% of all households in the Czech Republic, it was 37% in the City of Prague. The city is characterised by the availability of different broadband services over several competing infrastructures (such as telephone, cable TV, wireless or mobile networks) at competitive tariffs⁵.

¹ 12th Report on the Implementation of the Telecommunications Regulatory Package - 2006. COM(2007) 155 - 29 March 2007.

² Source: 12th Report on the Implementation of the Telecommunications Regulatory Package - 2006. COM(2007) 155 - 29 March 2007.

³ ADSL represents 36.9% (EU-25: 81.8%), cable networks 21.3% (EU-25: 15.5%) of all broadband connections, while wireless access comprises 31.1% (other technologies in the EU-25, including wireless access: 2.7%). Source: 12th Report on the Implementation of the Telecommunications Regulatory Package, European Commission, March 2007.

⁴ Source: Czech Statistics Office, 2006.

⁵ Broadband services (512 kbps/256 kbps) are available from 450 CZK (approx. € 15) per month on ADSL or cable network, from 700-800 CZK (approx. € 27) per month on mobile operators' networks (EDGE, CDMA, UMTS) or 500 CZK (approx. € 17) per month on WiFi networks (data from the Czech authorities).

- (6) However, the Czech authorities consider that the city of Prague and the Czech Republic lag behind compared to other European cities and countries in terms of broadband internet connections, partly because large portions of the population still do not have internet access. The authorities consider that the offers of private internet service providers alone will not be able to close this perceived gap between Prague and other major European cities.
- (7) Therefore, the authorities deem it essential to raise citizens' interest in broadband services in order to foster the widespread usage of broadband access. Accordingly, the City of Prague decided to finance the construction of a wireless⁶ (WiFi⁷) municipal network that will provide high speed internet connectivity to public buildings including schools as well as internet access for citizens limited to municipal and other public-sector information.

III. DESCRIPTION OF THE PROJECT

- (8) *Setup of the project:* The project includes the provision of high-speed connectivity to public buildings and institutions (such as schools or municipal buildings), the provision of free internet access to public administration services (such as eGovernment services) and to public sector information for citizens as well as the development of public-sector applications (such as mobile camera surveillance of municipal areas or traffic monitoring and control). The network would enable all citizens in the covered areas to have free broadband access (using their laptops, mobile devices, etc.) limited to public-sector websites and content.
- (9) *Objectives:* According to the Czech authorities, the measure aims to support the development of the knowledge society⁸ in Prague and to improve the competitiveness of the city.
- (10) *Legal basis:* The measure is based on the Czech broadband strategy, adopted under Resolution of Czech Government No. 105 on 25 January 2005, setting up a National Policy for Broadband Internet Access.
- (11) *Target areas:* The project intends to cover 21 out of 57 Prague municipal districts that is approximately one-third of the territory of Prague⁹.

⁶ A wireless broadband network in this context is a telecommunications network enabling the users to access the internet not utilizing wireline networks (such as telephone or cable) but via technology using radio waves. This provides users with the possibility to move within the coverage area (compared to stay in a fixed point required by ADSL or cable access) and still be connected to the network.

⁷ WiFi is a Wireless Local Area Network technology using mainly the 2.4 GHz and 5 GHz bands (where no license is needed for the transmission of radio signals, unlike for GSM or UMTS), as a local-area wireless extension to broadband. It offers a cheap and easy way of providing internet connectivity at short distances (typically 50 to 350m) via so-called hotspots.

⁸ Based on market research conducted by the Prague City Hall, 93% of the respondents would welcome the opportunity to have a permanent wireless connection, and 63% claimed they would use the wireless network for e-Government services.

⁹ Namely Praha 1, Praha-Březiněves, Praha-Ďáblice, Praha-Dolní Chabry, Praha 12, Praha-Libuš, Praha 14, Praha-Dolní Počernice, Praha 15, Praha-Dolní Měcholupy, Praha-Dubeč, Praha-

- (12) *Technology*: According to the Czech authorities, the choice for the technology, i.e. building a WiFi network, was underpinned by several technical, economic and legal arguments, such as coverage, mobility, deployment costs, quality of service or licensing requirements.
- (13) *Infrastructure*: Access locations for the wireless network (hotspots) will be established in the buildings of primary and secondary schools in individual municipal districts or in other suitable places owned by the city of Prague or the municipal districts¹⁰. The installation of the backbone hotspots in primary and secondary schools is also expected to result in improved access for pupils to the internet. The selection of the hotspots will be optimized so that the signal coverage makes the service available to as many users as possible. Where a wireless network already exists, it will be ensured that technical interference due to the use of the same frequency for the WiFi connection is limited. The required backbone connectivity (used for connecting the hotspots and the WiFi network to the internet) is purchased as a service from the market as part of an open public tender, avoiding thus any unnecessary duplication of existing infrastructure.
- (14) *Initially planned phases*: Originally, the project also foresaw the possibility for third party operators to use the network to offer commercial services. In July 2006, the Czech authorities requested the Czech Competition Authority (ÚOHS) to provide its observations on the project and then decided to split the project into two phases.
- (15) Phase 1 entails the construction and operation of a complete WiFi infrastructure (antenna for hotspots in the target areas, backbone connection to link the various hotspots) and the provision of free wireless internet access only to non-commercial public-sector content and services, such as e-Government services and tourism information.
- (16) The envisaged Phase 2 involved the commercial exploitation of the new network through a public tender process. According to the authorities, third party operators would have had the possibility to obtain wholesale access to the network at non-discriminatory conditions. These operators would have been able to use capacity on the new wireless network to offer broadband internet access to citizens and business users.
- (17) After these changes, the Czech authorities requested once more the opinion of the Czech Competition Authority (ÚOHS) about the modified project. The authority came to the conclusion that Phase 1 of the measure would not represent State aid if (i) free wireless access was only limited to non-commercial services; (ii) the project would be based on the usage of available free frequency spectrum for transmission, (iii) it would not compete with existing internet service providers

Petrovice, Praha-Štěrboholy, Praha 19, Praha-Čakovice, Praha-Satalice, Praha-Vinoř, Praha 20, Praha 21, Praha-Běchovice, Praha-Klánovice municipal districts.

¹⁰ 171 schools and local administration buildings are in the plans that serve as distribution points for additional 409 access points (hotspots) comprising altogether 580 access points for the wireless network.

and (iv) the builder and the network operator would be chosen on the basis of a public procurement¹¹.

(18) Following concerns voiced by the complainants, the Czech Competition Authority (ÚOHS) and following the preliminary discussions with the Commission¹², the Czech authorities decided to abandon the plans for Phase 2 at this stage. In their letter of 13 April 2007, the Czech authorities stated to the Commission that, if they decided to go ahead with such plans in the future, they would formally notify any extension of the project under the State aid rules before putting it into effect. Secondly, the Czech authorities also declared that any material changes concerning the implementation of Phase 1 will be notified to the Commission. Thirdly, the Czech authorities also confirmed that during Phase 1, only public services and content will be offered over the newly-built network and they will monitor that the operation will not result in distortion of competition *vis-à-vis* third parties offering similar content and/or services.

(19) *Procurement*: In parallel with the Commission's preliminary investigation, an open tender was carried out by the Prague City Hall in accordance with EU procurement rules¹³ for building and operating the wireless network for Phase 1 of the project. Two contracts have been signed with the winning consortium¹⁴ on 2 January 2007: one for the construction and one for the 5 year operation and maintenance of the network. Both the tender and the award of the contracts were published in the Official Journal of the European Union¹⁵. The construction and operation of the network will start in 2007 and the complete infrastructure is planned to be ready in 2008.

(20) *Budget*: The total budget of the measure over 5 years amounts to CZK 342 million (approx. € 12.2 million), fully provided by the Prague municipality. From the overall budget, approximately CZK 88 million (approx. € 3.1 million) will be earmarked for the construction of the wireless network and CZK 254 million (approx. € 9.1 million) for the operation and maintenance of the network.

IV. THE VIEW OF THE CZECH AUTHORITIES

(21) The authorities argue that a large portion of the population in Prague does not use broadband due to high costs and lack of motivation. They consider that the current offers by private operators alone will not remedy the current situation and the perceived gap between Prague and other major European cities in terms of

¹¹ The opinion of the Czech Competition Authority (ÚOHS) was enclosed in the answer to the Commission's first request of information to the Czech Authorities, submitted on 9 October 2006.

¹² See below, paragraph 36.

¹³ The Czech authorities declared explicitly that the tender for the project was conducted in full compliance with the applicable national and Community public procurement rules.

¹⁴ According to the Czech authorities, 24 undertakings requested and received the tender documentation. The tendering documentation was also sent to the Czech Competition Authority for evaluation. Two consortia submitted their bids for the public tender. During the tender evaluation, which also involved external legal and technical experts, the bid of one consortium was considered not to comply with the qualification criteria. The winning consortium comprises ICZ, a local telecommunications company, and T-Systems, a subsidiary of Deutsche Telekom (see also footnote 20).

¹⁵ OJ 2006/S 122-130151 and OJ 2007/S 29-034612, respectively.

broadband uptake. Therefore, it is essential to raise citizens' interest for the internet and provide access to public content for free to foster the widespread usage of broadband.

(22) Apart from various fixed line broadband offers by telephone and cable operators, there are also at least 49 local private WiFi operators in Prague. Moreover, three mobile operators offer access to hotspots (T-Mobile, Telefonica O2 and Vodafone)¹⁶. However, the main disadvantage of the offers by these service providers, according to the Prague City Hall, is that they provide very fragmented and limited coverage without the possibility of roaming between different service operators¹⁷.

(23) The Czech authorities argue that Phase 1 of the project does not constitute State aid since it neither provides an advantage nor distorts competition. They also expect positive externalities from the new wireless infrastructure (realized by Phase 1) on existing market operators' business: increasing internet literacy would stimulate demand for commercial internet access services ("crowding-in" effect).

V. THE VIEW OF THE COMPLAINANTS¹⁸

(24) After the Czech authorities abandoned Phase 2, the complainants still argued that Phase 1 threatens to distort competition because it would become a substitute for their own existing services (such as internet connectivity provided to schools) or would directly compete with the services provided by other private operators (such as tourism information).

(25) According to the complainants, other instruments could have been considered to achieve the set objectives, such as procuring services delivered over the networks of private operators¹⁹. They claim that the municipal project will bring significant extra capacity to a market where broadband penetration is high and where all citizens can have broadband access via at least 3 different technology platforms (such as ADSL, cable, wireless or mobile). The project – even if only Phase 1 will be realized - will threaten market operators' existing and future investments in the broadband market.

VI. STATE AID ASSESSMENT

(26) According to the EC Treaty and established case-law there is State aid within the meaning of Article 87(1) when:

¹⁶ Based on data submitted by the Czech authorities.

¹⁷ For instance, in early 2006, Vodafone had 16, T-Mobile had 28, WIA (a WiFi provider) had 10 access points in those areas of Prague that are planned to be covered by the Municipal Wireless project, compared to 580 access points that are planned by the municipality (source: Czech authorities). An Ernst & Young survey from 2006 estimated the total numbers of private WiFi access points in Prague as 876 with a very dynamic growth rate (45% compared to previous year).

¹⁸ See also paragraph (36) and following.

¹⁹ The private operators are proposing that state intervention should be focused on rural areas only on supply side and to develop public content or initiate other demand-side measures (such as vouchers for broadband usage).

- there is an intervention by the State or through State resources;
- it confers an economic advantage on an undertaking;
- it distorts or threatens to distort competition;
- the intervention is liable to affect trade between Member States;

Given that the Czech authorities have decided not to implement Phase 2 of the project, the scope of the State aid assessment focuses only on Phase 1.

State resources

(27) The city-wide wireless access in Prague is funded from public resources of the Municipality of Prague, hence state resources are involved.

Economic advantage

No economic advantage to the selected service provider

(28) The Commission considers that the award of the contract will not lead to an economic advantage within the meaning of Article 87 (1) EC Treaty that the selected service provider would not receive under normal market conditions, taking into account the following considerations:

(29) An open tender²⁰ was carried out by the city of Prague for building and operating the wireless network. The Czech authorities have confirmed to the Commission²¹ that the relevant tender was conducted in full compliance with the applicable national and Community public procurement rules, i.e. using a competitive procurement procedure with prior publication at EU level, in which any economic operator might have participated under equal conditions.

(30) The complainants have argued that the new network will substitute the current provision of internet access services to schools and other public bodies by private operators. However, the Commission considers that the mere fact that the municipality decided to build its own public-sector network in order to satisfy its own needs for internet connectivity instead of procuring such services from private operators does not raise concerns under Article 87 (1) of the EC Treaty, this being an autonomous organizational decision by a public authority.

(31) As stated above (see paragraph (18)), the project will not allow the commercial exploitation of the new network to provide broadband services to residential or business users. Moreover, it is highly unlikely that existing broadband users will give up their existing broadband subscription just because public-sector websites are now available for free via the municipal wireless network. Hence, the project has no perceived impact on existing broadband providers, and no advantage is transferred to the selected operator of the municipal wireless network. Broadband users will still need to use the services of existing broadband access providers to

²⁰ Both the tender (OJ 2006/S 122-130151), and the award of the contracts (OJ 2007/S 29-034612) were published in the Official Journal of the European Union. On the basis of the information at its disposal, the Commission has no reasons to believe that the procedure was tainted by any sort of irregularities committed or arbitrary conditions set by the tendering authority.

²¹ By letter submitted to the Commission and registered on 13 April 2007.

connect to the internet, in that sense it is highly unlikely that there is any substitutability between the two forms of access: limited access to the public-sector websites for free and unlimited broadband access to the internet.

No economic advantage to public-sector content providers

(32) The Czech authorities informed the Commission that only public services and public-sector content will be accessible over the network and that the Czech authorities will monitor that there is no distortion of competition vis-à-vis third parties offering similar content and/or services²². The public-sector organisations running the websites that can be accessed for free are not considered to exercise a commercial activity and hence do not qualify as undertakings²³ under Article 87 (1) EC Treaty.

(33) Moreover, the offered public content is already available in its entirety via the networks of existing market operators²⁴. The new wireless network will therefore not provide any advantage to the limited number of entities to which websites access for citizens is for free²⁵.

No economic advantage to end users

(34) Finally, there is no extra economic advantage for citizens or undertakings using the services provided through the network. The new network will not be able to substitute existing market offers taking into account its limited usability. Neither individual nor business users can rely exclusively on the new wireless network due to the very limited offer of available public sector websites. As stated before, the offered public-sector content is available via the network of existing market operators as well.

(35) Hence, as the measure does not confer an economic advantage on an undertaking, the measure does not contain State aid within the meaning of Article 87 (1) EC Treaty.

VII. ANCILLARY CONSIDERATIONS

The abandonment of Phase 2

(36) If Phase 2 of the Prague wireless project had been pursued (provision of full internet connectivity to citizens), potential problems related to State aid could have arisen. The creation of a new broadband network with public funds and its

²² Information submitted to the Commission by letter registered on 13 April 2007.

²³ The concept of an undertaking encompasses every entity engaged in an economic activity, regardless of the legal status of the entity and the way in which it is financed. See for instance: judgement of the Court of 23 April 1991 in case C-41/90, Klaus Höfner and Fritz Elser vs Macrotron GmbH.

²⁴ The webpages also are available – partly even for free - via commercial wireless providers in Prague such as <http://www.free-hotspot.com>.

²⁵ In other words, this is about free accessibility of public services online which would also be available gratuitously offline such as administrative information, e-Government (e.g. forms) or non-commercial tourist information. Alternatively to accessing this information online, citizens could go to the city hall or request administrative documents or tourism brochures by post (often for free).

availability for commercial exploitation, *prima facie* at advantageous conditions, in a market characterised by high density of broadband platforms, and in light of the existing investments made by private network operators could have raised questions about the necessity and proportionality of such a measure in an area well-covered with broadband services such as Prague²⁶.

- (37) In this respect, the Commission would recall that State aid granted to undertakings for the provision of (wireless) broadband services may be deemed to be compatible with the Treaty if it aims to provide fast internet access in areas which are not covered and where there are no commercial plans to do so.
- (38) The Commission would also like to emphasize that many other possibilities exist for public authorities to facilitate the provision of (wireless) broadband services by commercial operators without granting State aid. Apart from measures boosting broadband uptake on the demand side (such as vouchers, awareness-raising and educational measures), municipalities may streamline permissions and other administrative procedures, facilitate the deployment of hotspots by allowing non-discriminatory access to public infrastructure²⁷, coordinate the deployment of hotspots or develop public content for citizens. All these measures can be implemented without interfering with the market and limit the potential distortion of competition with existing market operators.

Ancillary considerations regarding certain points raised by the complainants

- (39) Besides the points addressed in the previous parts of this decision, the complainants also raised several additional arguments that are not related to State aid issues.
- (40) First, the complainants suggested that private operators could offer access to eGovernment services to the general public free of charge for end-users via existing networks, but Prague City Hall allegedly did not take up their offer. The Czech authorities, in contrast, argued that the other objectives of the project (such as camera surveillance or other innovative services for the Municipality) could not

²⁶ In the past, the Commission has assessed several cases of public funding for broadband networks under the State aid rules. The Commission's assessment has been based on the different degrees of broadband coverage in the areas where State intervention takes place. In *white areas*, which are rural and scarcely populated zones where no broadband services or only expensive leased line or satellite services are offered, State support for broadband is generally deemed compatible if certain proportionality conditions are respected. State intervention in *grey areas*, where basic broadband services are partly already provided by one operator, required a more detailed assessment by the Commission. In *black areas*, characterised by the availability of different broadband services over at least two competing infrastructures (such as telephone and cable TV networks), the justification for State aid is doubtful as there is a high risk that state intervention crowds out existing and future investments by market players. See for instance Commission decision N201/2006 "Broadband access development in underserved territories" - GR of 04.07.2006 OJ of 06.12.2006, N284/2005 "Regional Broadband Programme: Metropolitan Area Networks" ("MANs"), phases II and III" - IRL of 08.03.2006, OJ of 30.08.2006, or C35/2005 "Broadband development in Appingedam" - NL of 19.07.2006, OJ of 27.03.2007. The decisions are available via http://ec.europa.eu/comm/competition/state_aid/official_journal/oj.html.

²⁷ Such as, for instance, lamp posts, streets or municipal buildings to install or link antenna sites.

be achieved via the existing networks due to technical constraints²⁸. In any event, the Commission does not consider this to be a State aid issue.

- (41) Another concern of the complainants is the alleged technical impact of the project on existing wireless networks. The complainants claim that, as the new network uses the same frequency bands as some existing wireless operators, this could lead to frequency interference and operators would have to adjust the configuration of their networks to avoid a reduction of the quality and accessibility of their networks. The complainants assert that this would lead to extra expenses and hence to a distortion of competition. However, the Czech authorities have confirmed in writing that any frequency interference between the newly-built network and private networks will be minimised due to the differences of areas covered and the fact that the planned wireless network will be deployed in co-operation with the national regulator for telecommunications (ČTÚ). Again, in any event, the Commission does not consider this to be a State aid issue.
- (42) The complainants also argued that with Phase 1 of the project completed, only minor modifications would be required by the Prague City Hall to launch Phase 2. In this respect, the Czech authorities confirmed in writing to the Commission that any changes to the current Phase 1, including a possible commercial utilization of the network, would be notified to the Commission and will not be put into effect pending the Commission's assessment.

VIII. CONCLUSIONS

- (43) In view of the above, the Commission has come to the conclusion that Phase 1 of the modified Prague wireless project does not constitute State aid within the meaning of Article 87 (1) EC Treaty as it does not confer any economic advantage to an undertaking within the meaning of Article 87 (1) EC Treaty. The network is only used for the public sector and to offer free public access strictly limited to non-commercial public services and content. In this respect, the Commission takes note of the confirmations submitted by the Czech authorities. In particular, the Czech authorities stated that, should Phase 2 of the project be pursued in the future, these plans will be notified to the Commission before putting them into effect.

IX. DECISION

On the basis of the foregoing assessment, the Commission has decided that Phase 1 of the project does not constitute State aid within the meaning of Article 87 of the EC Treaty.

²⁸ Such as fragmented existing wireless networks, limited coverage or limited roaming possibility between different networks.

The Commission reminds the Czech authorities that any modification of the measure and in particular the implementation of the initially foreseen Phase 2 of the project has to be notified according to Article 88 (3) EC Treaty.

If this letter contains confidential information which should not be disclosed to third parties, please inform the Commission within fifteen working days of the date of receipt. If the Commission does not receive a reasoned request by that deadline, you will be deemed to agree to the disclosure to third parties and to the publication of the full text of the letter in the authentic language on the internet site:

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Your request should be sent by registered letter or fax to:

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Yours faithfully,

For the Commission

Neelie KROES
Member of the Commission