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The control of compliance with obligations in the dissemination of business communications was initiated on the basis of 4 initiatives received by the Office and also on the basis that control and administrative proceedings had already been conducted with this company in the past and there was therefore a suspicion of repeated violations. The messages were sent via e-mail messages and contained offers of goods or services both of the controlled person and of another company for whose benefit these messages were disseminated and also encouraged visitors to visit websites designed to directly support the offered goods and services. The domain mamemail.cz was mentioned in the footers of the sent commercial messages, as the address where the e-mail addresses to which the commercial messages were sent were registered. According to the extract from www.nic.cz, this domain is now registered to a foreign company. The audited person stated that years ago she founded the website masmail.cz, which was later purchased from her by another company, which renamed it mamemail.cz. From further investigations by the Office, which included requests for cooperation, examination of historical websites, technical analysis of the headers of individual delivered messages with commercial messages and, last but not least, also the statement of the controlled person and the registration of the e-mail addresses in question, it was established that the sender of the commercial messages in question the message was a controlled person. With regard to the fact that one of the complainants confirmed this registration in his statement and furthermore that the inspected person in his statements from the database also mentions and documents the confirmation of registration, although this fact with regard to the fact that the relevant registrations took place more than 5 years ago years ago, which can no longer be proven with certainty, the Office came to the conclusion that these were indeed registered users of the masmail.cz service (now mamemail.cz or mailfeed.cz). However, all the complainants stated in their complaints and also duly documented that they had previously refused to receive commercial communications. In view of this fact (refusal to send commercial communications), it was necessary to state that the controlled person did not have the appropriate legal title to send them at the time of sending commercial communications (consent) and thus committed a violation of § 7 paragraph 2 of Act No. 480/2004 Coll., on certain information society services. In addition, she also committed a violation of § 7 paragraph 4 letter b) of Act No. 480/2004 Coll., as the commercial communication did not contain information about the sender, on whose behalf the communication takes place. Objections to the control protocol were not filed by the controlled person. For this action, the Office imposed a fine of CZK 9,000 on the inspected person, when the administrative body took into account in particular the extent of the consequence of the offense, which was relatively small

considering the fact that the misconduct occurred with only 3 recipients. At the same time, however, the Office also took into account the fact that the accused had committed this offense repeatedly, as she had already been prosecuted in the same case in 2018.

Recommendation:

The Office draws the attention of commercial companies to adopt and regularly evaluate the effectiveness of systems (including the assignment of sending commercial messages to other entities) for sending commercial messages. These systems must be set up in such a way that a commercial message cannot be sent to an electronic contact whose user has refused to receive commercial messages from the merchant (distributor or sender). A suitable measure is, for example, the registration of customers who refused to receive commercial communications (the so-called Robinson database). Each mailing of commercial messages must then be compared with this list.

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