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The inspection of this company was initiated on the basis of more than 500 complaints about the sending of unsolicited commercial messages. Complaints were also filed during the entire inspection process. The subject of the inspection was the assessment of compliance with the obligations arising from Act No. 480/2004 Coll., on certain services of the information society, regarding the sending of commercial messages by electronic means. The commercial communications in question contained offers of goods and services from various online stores and also encouraged visitors to visit websites designed to directly support the goods and services offered, both by the controlled person and also by third parties for whose benefit it was also disseminated.

When assessing the responsibility for sending unsolicited commercial messages, the Office was based both on the texts of the commercial messages themselves, as well as on the determination of who is the owner or holder of the sending domain names, or on whose behalf the commercial messages are sent, how the commercial messages are created, etc. As part of this during the inspection, cooperation was also required from companies operating hosting services on relevant domains or IP addresses, from companies registering domain addresses, from companies on whose behalf certain commercial communications were sent. Due to the fact that the inspected person did not cooperate in any way during the inspection and did not respond to the Office's repeated calls, a fine of CZK 300,000 was imposed on him for non-cooperation. On the basis of a thorough assessment of all the established facts and their interrelatedness, the Office stated that the sender of all subject commercial communications is the controlled person. With regard to the fact that during the inspection the inspected person did not provide any evidence, or did not prove that it had the consent of the addressees to send commercial messages, nor that they were possibly its customers, thereby committing a breach of the obligation set out in Section 7, Paragraph 2 of Act No. 480/2004 Coll., i.e. the obligation to use electronic contact details for for the purpose of disseminating commercial messages by electronic means only in relation to users who have given their prior consent.

Since some commercial communications were disseminated not only for the benefit of the controlled person, but also for other entities, the Office also assessed the circumstance of who is the distributor of the commercial communications, from the position of the principal, i.e. the sender of the mailing of commercial communications, the person for whose benefit the commercial communications were controlled also sent by the person. The authority found that commercial communications were disseminated by the controlled one for the benefit of two other companies.

The Office also assessed compliance with other conditions for sending business communications listed in Section 7, Paragraph 4 of Act No. 480/2004 Coll. In this context, he noted that in some cases of sent business messages, the labeling of these messages was quite misleading and the addressee was thus unable to clearly determine from the subject of the sent message whether it was a business offer. Furthermore, the Office came to the conclusion that there was also a violation of § 7 paragraph 4 letter b) of the given Act, as no commercial communication contained information about the sender, on whose behalf the communication takes place.

The inspected person did not object to the inspection report.

In this context, the Office has initiated the appropriate proceedings on the offence, in the form of joint proceedings, which are conducted with the audited person as the sender of the commercial communications in question, as well as with the company for whose benefit the commercial communications were also sent by the audited person. In the case of the second company, the Office only sent a warning letter with an invitation to negotiate a remedy, since part of its violation concerned only 6 addressees, and thus only a minor interference with the interest protected by law, which is privacy in electronic communication, was established. The administrative proceedings in question have not yet been legally terminated.

In general, it can be stated that this inspection was an extensive inspection carried out by the Office in the field of sending business communications, especially in view of the considerable number of complaints received and the very complex interrelationship between individual entities, which also changed their positions as part of the inspection, whether in the position of the operators of the relevant online stores, for whose benefit the commercial communications were disseminated, in the positions of the holders of domain names (online stores and sending e-mail addresses), as well as in the changes of executives or statutory bodies of the individual companies to which the mailing concerned.

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