

# Changing faces

When Martin Pecina replaced Josef Bednar as chairman of the Czech antitrust authority last September, competition specialists broke out the bubbly. **JAMES CLASPER** went to Prague to find out why.

You know you've started a tough job when your new colleagues won't answer the telephone and are terrified of sharing an elevator with you. That's just what Martin Pecina thought when he became chairman of the Czech Republic's Anti-Monopoly Office last autumn. Apparently, his predecessor Josef Bednar had been so intimidating that staff jumped every time they saw Pecina coming down the corridor.

"The atmosphere in the office was extremely bad and the staff were very stressed," Pecina says today, with considerable understatement. "But it's changing now." Indeed, pretty much the first thing he did was post his colleagues' telephone numbers on the internet – reversing his predecessor's ban on direct communication between his staff and the outside world.

As strange as it sounds, that tells you everything you need to know about where Czech competition law has been and where it's going. At its heart is a tale of two men – one a law enforcer who kept his staff on a tight leash; the other a business-friendly pragmatist hoping to stop anti-competitive behaviour before it happens. In short, the difference between Martin Pecina and Josef Bednar couldn't be more striking. And the loss of the latter as chairman couldn't be less celebrated.

## Brick wall

When Josef Bednar became chairman of the anti-monopoly office in 1999, he banned case-handlers from talking to interested parties and effectively made his office ex-directory. All phone calls had to go through a single number – his secretary's. "She was like a brick wall," recalls Pavel Urban of Allen & Overy LLP.

One theory is that Bednar wanted to ensure impartiality. That is, he imposed such tight control on his staff – making it impossible for lawyers to call them and outlawing informal discussions – that they were impervious to corruption. When one competition lawyer finally got through to his case-handler to discuss a matter, the unfortunate enforcer was fired within a week. An

unfortunate coincidence? Nobody's saying. But many think that politics still managed to play a role. "There were many times when I was told: 'OK, you're the lawyers, but this isn't about the law, it's about politics,'" says one local practitioner. "For example, when the Cez energy company acquired a number of distributors, one of them had to be divested. But then exactly the same kind of acquisition was cleared unconditionally a few years later. Only political influence could have ensured that." Still, those kind of

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rumours are never confirmed and the office has never been rocked by scandal.

Others say the office was made impenetrable so that its staff would have more time to handle cases. Unable to discuss their case informally, lawyers would waste precious time wrangling over precise market definitions because they tended to differ from what Bednar's office had come up with. Pavel Dejl, a competition specialist at Kocián Šolc Balaščík, recalls then when Bednar's office failed to approve a merger, he didn't receive a single comment during meetings with the

office explaining why the commitments he'd suggested were insufficient. "It simply wasn't possible to exchange a point of view with them or present an argument regarding the commitments," he says.

Another theory is that Bednar enjoyed being the ultimate arbiter of everything that came across his desk – often at the expense of his case-handlers' hard work. "Bednar had a tendency to change his mind about decisions that had been recommended to him," says one lawyer. "Either he was wrong or his case-handlers were. Either way, something wasn't right."

One thing's for certain. Punishment was very much the watchword of the Bednar years. "Bednar was very tough," recalls one Czech competition specialist. "He wanted to prosecute a lot."

Indeed, three Czech bakeries, the fuel and sugar industries, and several savings banks all felt the wrath of Bednar, as his office launched a number of high-profile cartel investigations. In one notorious case, the AMO carried out dawn raids on several of the largest Czech banks, accusing them of collectively charging exorbitant fees to maintain and close bank accounts.

"You could call it an 'imaginary' cartel. We expect the case to be closed soon without formal charges," says Ludek Vrana, a partner at Linklaters, who criticises Bednar's frequently flimsy evidence.

Indeed, as one lawyer explains, "Bednar defined concerted efforts as an 'increase in prices' plus a 'meeting of parties'. Take the bakery case, which involved some 2000 bakeries. Ninety per cent of them increased prices, but only three were ever accused of concerted practices – because they had met."

Another common bugbear was that judicial proceedings took a long time under Bednar's watch. An investigation of the Czech fuel sector lasted for three years – the maximum period possible – and clogged up the courts for more than a year. By the time the case was dropped, the parties had spent years being described as cartelists in the press.

The overall judgment on Bednar's regime, then? "He discredited himself in office," says one lawyer matter-of-factly. Still, his tough-guy stance paid some dividends. "General understanding of competition law in the Czech Republic is getting better," says Vaclav Valvoda. "We should give Bednar some credit for that, because of his fines." Pavel Dejl agrees. "Bednar was good with the media, announcing each new case on TV," he says. "Publicity was certainly his forte."

In the end, good publicity wasn't enough to guarantee his job. Bednar had had his eye on a second term in office and thought his hard-hitting approach would assure his renomination. But the ruling Social Democrats finally had a chance to put one of their own in office. They replaced Bednar with the deputy minister of trade and industry in September 2005.

### The popular pragmatist

With Martin Pecina at the wheel there's a real sense that the anti-monopoly office has finally turned the corner. "I expect a significant change," says Jiri Fiala, a senior associate at Clifford Chance LLP. "He's already said that he'd like his office to play an active role and have discussions with parties." Pecina is keen to shed his office's image of being afraid to discuss competition issues. Now, lawyers will be able to call case-handlers directly. Pecina also welcomes the kind of informal, pre-notification meeting that works well in Brussels.

What's more, he wants to make himself more accessible to lawyers – a far cry from his predecessor's attitude. "It was often impossible to speak to people dealing with your case," laments Vaclav Valvoda, a partner at Allen & Overy. "In 2001 even employees at the Slovakian anti-monopoly office were privately admitting they had difficulty to reach their Czech counterparts." Pavel Dejl says he met Bednar twice in six years – the same number of times he's already met Pecina.

But the most crucial difference between Pecina and his predecessor is in their attitude to business. Not only was Pecina the deputy minister of trade and industry, he was also on the advisory board of Cez, an energy company. Bednar had no background in business. A scientist by trade, rumour had it he learned everything he knows about competition law from a two-week seminar in Ireland.

Their contrasting approach is best exemplified by Pecina's reaction when oil prices rocketed last summer. He had barely settled at his desk when Hurricane Katrina hit the Gulf Coast of America. Overnight the price of gasoline in the Czech Republic soared by almost 10 per cent in response to a world-wide hike in oil prices.

Pecina immediately summoned the heads of the Czech oil industry to a meeting. Instead of threatening them with sanctions, however, he asked them why their prices had gone sky-high – increased wholesale prices, it turned out, a result of inactive oil refineries on the Gulf Coast – and also discussed potential problems down the line.

Pecina's approach went down very well, not least because four years earlier Josef Bednar had taken a very different tack. In the summer of 2001, Czech fuel retailers raised their prices at the same time, by the same amount. Instead of getting everyone round the table to discuss what had happened, Bednar's office immediately launched three separate investigations.

### The future's bright

So if punishing alleged cartelists was Josef Bednar's calling card, then Martin Pecina's will be talking to businesses, encouraging compliance with competition law, and stopping illegal activity before it occurs. "His goal is to pre-empt anti-competitive behaviour, rather than just fine companies to reinforce the state budget," says Vrana. "He wants companies to respect the law."

And nobody doubts he'll be keen on cartel investigations too. He'll just be much less officious. "He's well aware of how the office worked before," says Alexandr Cesar, head of competition at Baker & McKenzie LLP. It's well known that Pecina considers that the previous regime was too pushy and would rather negotiate with dominant players than go after them with a stick.

So it looks like all Pecina has to do is get his house in order. But there will be other hurdles to overcome too. For example, Pecina needs to sort out the Czech leniency programme, which has never really taken off. He's hardly a fan of it – in fact, he's positively cautious about the idea of giving wrongdoers amnesty – but the programme exists and deserves better publicity. Others think the office needs to rejig the attitude to using economic evidence. "They don't have a clue how the telecoms industry works, a weakness Pecina recognises," says Cesar. "Hopefully he'll hire some more economists."

Of course, Pecina has one advantage his predecessor didn't. Ever since the Czech Republic joined the European Union in 2004, plenty of deals that would previously have cluttered up the Czech anti-monopoly office are now heading to Brussels. This gives Pecina more time and resources to promote competition law, prevent anti-competitive behaviour, and stimulate the Czech economy. Doubtless he'll give it his best shot. But, by the sound of things, you can't help feeling that the hardest part of his new job will be getting his staff smiling again.

## An interview with Martin Pecina



Martin Pecina recently replaced Josef Bednar as chairman of the Czech Republic's Anti-Monopoly Office. **JAMES CLASPER** spoke to him about the unpopularity of his predecessor, the office he inherited, and his plans for the year ahead.

**GCR:** What is your background?

**MP:** I trained as a mechanical engineer and received an MBA from the Czech Technical University and Sheffield Hallam University in 2000. I first worked as a programmer with a small private company and then joined a design engineering company involved in steelworks. I began as an assistant general manager, then became a financial manager, and in February 2003 became general manager. Two years ago I joined the Ministry of Industrial Trade, as deputy minister responsible for energy, steelworks and mining. In September 2005, I was elected chairman of the Czech anti-monopoly office.

**GCR:** What are the strengths of the office?

**MP:** The people who make decisions aren't bad at all. In fact, there are a lot of skilled people here. And many of them are very young. Before I joined, staff turnover was incredibly high, but it led to a lot of young people joining. I also think we've got a good mix of people here. This office also has a very good track record before the courts. I think we've won more than 90 per cent of our cases. There's only a handful of cases which were overturned by one of the courts. So that's a strength to build on for the future.

**GCR:** And what are the weaknesses?

**MP:** One thing I have a problem with is normal office procedure. Administrative processes, such as how to deal with letters from government ministers, aren't clear at all. Another weakness is that we knocked our old building down and are currently housed in the same building as the constitution court. But perhaps within the next nine months or so we will have solved that problem. And a third major weakness is that the atmosphere here among is extremely bad. People in this office are very stressed. But it's changing.

**GCR:** Why is it so bad?

**MP:** Because of the previous chairman. The problem is, I've only been here one month, while the people here worked alongside him for six years. Some of them are worried about running into me in the corridor or the lift, which is crazy.

**GCR:** How will you change the atmosphere?

**MP:** I'm just trying to talk to my staff normally. It's normal human behaviour to say good morning to people and to speak with your staff, rather than shout at them.

**GCR:** How many staff do you have at the moment?

**MP:** About 110. I'm trying to hire some more staff and increase the number to 120. That means we'll have about 44 case-handlers working on competition issues, about 35 for public procurement, and another 10 or so working on state aid. The rest of the office provides administrative support. I'd like to have more people dealing with legislation, as well as five people in the international department.

**GCR:** Many lawyers say it used to be hard to get in touch with your case-handlers. What will your office be doing to open up the channels to lawyers?

**MP:** I think I made the situation very clear from the first day here. I was very open at the Ministry of Industry and the first step is for me as chairman is to start talking to people. The previous chairman used only to speak with government ministers. But even they had to send him a letter to talk to him, which was crazy. But I've opened up two days, Thursday and Friday, to speak with lawyers, company managers, and people from other ministries. And I've also published my mobile telephone number on the website. So that's the first step, for me to start communicating. People need to see the chairman communicating. And every month I want to hold general meetings in this office with all my employees, to talk to them about normal office behaviour and communi-

cation. In fact, my first decision in office was to allow clerks to use the telephone, because they were prohibited before and there was only one line in this office, which was totally crazy! But I think that the situation is changing very fast and perhaps by the end of this year it'll be a normal office.

**GCR:** What are you doing to promote the visibility of the office in business circles?

**MP:** We've started by organising some seminars. The first one was in October and was about public procurement. Plenty of people came.

**GCR:** Who was invited?

**MP:** Individuals and businesses which are obliged to follow public procurement law – towns, municipalities, ministries, large companies in the energy sector, for example. We will be organising a seminar on abuse of dominant position, and perhaps one on state aid. But it's hard to find the right people for a seminar on abuse of dominance. I think the European Commission wants to produce some guidelines for applying article 82 to the private sector – guidelines for normal people so they can read them and say, 'OK we think that this or that energy company is abusing its dominant position,' for example. I think we'll produce some similar materials next year. Perhaps a television station would be willing to help us out. Perhaps somebody could explain some competition problems in a television slot, although it wouldn't be all that interesting. Nobody would be killed!

**GCR:** Would you like a system where parties can come to your office and discuss cases informally?

**MP:** Yes, that's certainly an idea we've now got going. The first step is to start a discussion and, if that's successful, everything's ok. If the discussion is unsuccessful, we will start proceedings or launch an investigation. Then we'd have two options: either to make a statement of objections and say, OK we've discovered a problem in your company, now you must take certain steps. Or we discover everything is in fact all right in the course of those proceedings. So, yes – there's plenty of opportunity for discussion and I want to discuss cases, informally or formally, without necessarily having to penalise parties.

**GCR:** Have you introduced statements of objection yet?

**MP:** We'll be introducing them in all cases soon.

**GCR:** And what about mergers? Would you like more informal discussions pre-filing?

**MP:** Of course. We are totally open to this type of discussion. You must understand that

previously if somebody tried to contact our office, they wouldn't have been successful. But if somebody tried to contact me directly now, they would be successful. We've only just started this process. I've explained this kind of decision-making or case-handling to my people, but I'm not sure they understood it well. It will take some time, but it will be all right eventually.

**GCR:** So how would a lawyer know that informal discussions are now welcome?

**MP:** Everyone knows that I'm a communicative person. I've spoke about it on TV and everybody knows our telephone number here. Plus, every Thursday and Friday, plenty of people have been coming.

**GCR:** Many mergers are being sent to Brussels. What will you be channelling your time and resources into now?

**MP:** The previous structure of the office meant it was focused on competition enforcement, merger control and cartels. I would like to restructure it. There would then be specific departments handling special types of services and industry – energy and telecoms, for example. All departments would handle merger control and cartels. But the main focus of these two new departments would be solving problems to do with abuse of dominant position and, from time to time, some big cartel cases. In fact, we'd have special cartel-handlers. But we don't see too many problems with cartels. We see problems with dominant positions.

**GCR:** Are there industries that you see as being particularly problematic?

**MP:** Utilities such as telecommunications, gas, electricity, waste disposal, perhaps even the water system. Then there are some special cases, like the iron industry in the Ostrava region of northern Moravia. But the biggest problems are in the utilities.

**GCR:** How long on average does it take to investigate an abuse of dominance or a cartel?

**MP:** It depends, but for the biggest cases, it takes about 100 days. That's if we're talking about competition enforcement – if we talk about public procurement, it's more like 30 days. With abuse of dominance, though, I hope we can get from the launch of proceedings to a statement of objection within 30 days. That should be enough time to gather enough information and make a statement of objection.

**GCR:** In certain sectors, there's another regulator involved that also oversees compliance with the law. Is there ever a problem with different opinions?

**MP:** No. I think we need to cooperate. I'll give you an example. The energy regulator started an investigation at the beginning of the year, and launched official proceedings in July. They finished those in October and gave us all the relevant information. And, because of their results, we launched our own investigation. They have very good professional skills. So we will use the results of their proceedings, which they launched under the Energy Act to check whether energy prices are at the right level. From our point of view, however, there's a potential abuse of dominant problem and it's a question of the contracts involved in the deal.

**GCR:** So you don't see a contradiction?

**MP:** No, I think we need to be friends with other regulators and combine forces to combat big German companies.

**GCR:** Tell me about your leniency programme. Do you think it works well?

**MP:** To be truthful, I've got a problem with leniency. I understand that it's a tool to persuade the companies and competitors to terminate cartel agreements. But I have a problem with the idea that somebody will organise a meeting, arrange a cartel, then come to our office, get total amnesty and destroy their competitors simply by admitting to being in the cartel and being the first to give evidence. But it is one of our tools and we will use it.

**GCR:** Are you happy with the degree of economic expertise in your office?

**MP:** No. But I think we will start using external economists from universities and academies. Half of the office are economists – technically-educated people – and the other half are lawyers. But I think that for economic expertise, particularly in complicated cases, we will use external economists much more than before. It was practically prohibited before.

**GCR:** Your term of office is six years – do you have a six-year plan?

**MP:** No, I have short-term plans. Within two years, I want a new building, more staff and increased powers. Those are my immediate problems and they must be finished by the end of next year.

**GCR:** Finally, you have a picture of Lenin by your desk – that's rather unusual for a competition regulator, isn't it?

**MP:** No, because in the picture he's telling us not to drink, otherwise we'll never reach true socialism. So really it's a justification for drinking!

**GCR:** Thank you.

## Opportunity knocks

They say there's no such thing as a competition superstar in the Czech Republic. **JAMES CLASPER** visited Prague to see who is most likely to break the mould.

Law firms have been flocking to the Czech Republic ever since it cast off its communist past. The fall of the Berlin Wall heralded an era of enthusiastic capitalism, rapid privatisation and massive foreign investment. Suddenly, the Czech Republic was awash with cash, as multinationals poured across the border to snap up former state incumbents. And with them came the law firms – English, US, German and Austrian – setting up a stall in Prague, intent on matching their newly-formed Czech rivals.

Two things strike you about the legal market today. First, many of those new arrivals managed to stick around, having successfully developed a corporate practice. True, a few firms bit the dust – such as Freshfields Bruckhaus Deringer and Hogan & Hartson – either latecomers to the ball or perhaps preferring to concentrate on more lucrative markets. But most of the firms that showed up in the 1990s are still there.

And not a single firm has managed to launch its own stand-alone competition practice. All of them see competition law solely as a spin-off from the corporate practice.

Despite the lack of independence for competition within the law firms, there's the handful of firms who have a robust and varied competition practice: Linklaters, Gleiss Lutz and the Czech firm Kocián Šolc Balaščík.

Not only do these three firms enjoy a good mix of merger control, restrictive practices and state aid work, they're also popular among their rivals. Indeed, some of their peers say they're the three firms which show the most interest in developing a competition practice and – coincidentally or not – seem to have the most interesting work.

A tier below them is a large cluster of firms vying to break into the top division. They include 'GCR 100' candidate Glatzova & Co, global titan Baker & McKenzie LLP, and central European powerhouse Salans.

Then there's a handful of firms who are either on the fringes of Czech competition law and have concentrated on bulking up their corporate practices, or who are poised to grow this year with changes at the Czech competition authority.

### Three of a kind

The undisputed leader of the pack is **Linklaters**. "They do have a well-established practice," says one rival. "They certainly have people solely focused on competition issues, which isn't the case with every firm," adds another.

In fact, Linklaters has five Czech lawyers spending more than half their billable time on competition law. The group is led by respected corporate partner Ludek Vrana. Managing associate Daniel Cekal and another young associate also specialise in competition cases, though three other lawyers claim ad hoc involvement.

Before the Czech Republic's accession to the European Union, the group focused mainly on merger notification. But with many more deals going to Brussels, Linklaters busies itself handling cartel investigations and abuse of dominance cases. They've recently done work for the likes of Microsoft, as well as reviewing distribution deals, such as pricing agreements and exclusivity clauses.

Linklaters also advised a couple of parties in a recent cartel investigation, brought by the Czech anti-monopoly office in the fuel retail sector. Today, Vrana reckons about 60 per cent of the group's work is spent on cartels.

The group also offers its clients a competition compliance programme, interviewing management, assessing the competition risks, and reviewing contracts.

If Linklaters is the top international firm in Prague, it's run a close second by **Gleiss Lutz**. The German firm's competition practice is spearheaded by partner Martin Nedelka, who has two senior associates and two junior associates working with him.

Its main competition clients include Siemens, DaimlerChrysler, Deutsche Bank, and Tyco. As proof of its diverse work, the firm offers the Deutsche Postbank/BHW Group merger; work for Linde, an international gas company, in relation to alleged abuse of dominance; and representation of Wüstenrot in relation to an alleged cartel agreement among Czech mortgage banks. It has also advised the City of Prague in a state aid case.

Nedelka believes his closest rivals are Linklaters and Czech firm Kocián, Šolc &