

## An ounce of prevention at ÚOHS

The government's view of economic competition has been changing significantly following amendments to the law and through the appointment of Martin Pecina as the new head of the country's antimonopoly watchdog, the Office for the Protection of Economic Competition (ÚOHS).

"We want to be uncompromising and act strongly against tough cartels. In other cases we want to work preventatively or by reproof," said Martin Pecina, who took over the chairman's post from Josef Bednář in September.

One of the priorities Pecina laid out back then was to make the agency more preventative. "In the past nothing was said, and then, suddenly, ÚOHS would launch an investigation," he said. One personal goal, Pecina said, is more cooperation among similar offices in member states of the Organization for Economic Cooperation and Development (OECD) — 30 countries, who are committed to a democratic government and a market economy.

There's a growing trend in Europe toward state subsidies in sectors like agriculture and renewable energy, Pecina said, and this can interfere with the competitive environment.

**Q: Parliament adopted another amendment to the Act on the Protection of Economic Competition some time ago. Did that change your office's approach to this issue?**

A: The latest amendment to the Act on the Protection of Economic Competition brought only some technical changes. But much more important, I think, is that the amendment has introduced the possibility to conclude administrative proceedings by [more than] just sanctions. If there's even a slight chance of success, we'll give the transgressor a chance to remedy [the situation] before employing any type of penalty.

**Q: Can you be more specific?**

A: Regarding abuse of dominant market position and mergers, our view is different than during the time of my predecessor. Today, it isn't about calculating the entities' market share based on some elementary numbers; we look at what the entity has caused or could cause as a result of its market behavior. For example, a prohibited merger in the mineral water sector in 2001 was justified. But the situation has changed since then.

In the era of supermarkets and imports from neighboring countries the weakening of one player would be disputable today. We have to ask more about the consequences of our actions if we permit the merger, but we must also consider what would



### MARTIN PECINA

**Born:** July 9, 1968

**Education:** 1997–2000, MBA, Masaryk Institute of Advanced Studies (MÚVS) Sheffield Business School; 1986–91, engineering degree, Technical University of Ostrava (VSB Ostrava), engineering faculty

**Work history:** Since Sept. 2, chairman of the Office for Protection of Economic Competition; 2003–05, deputy industry and trade minister specializing in energy; 1996–2003, from 1999 CEO, Hutní projekt Frýdek-Místek land surveying company; 1992–96 sales director Proxima; 1990–92, entrepreneur, software development

happen if the merger was prohibited. We want to be more liberal rather than to proceed strictly on the basis of some pattern. We are aware that the market is able to solve such situations.

**Q: Are you going to be nicer to dominant companies, too?**

A: Concerning abuse of a dominant position, we will focus primarily on utilities. Customers can't defend themselves in fields with natural dominance because they can't choose a different supplier based on objective reasons. But again we'll be very liberal in areas with natural competition or product substitution. Every time a dominant entity conducts unfair competition, it influences profits. This is reflected in how attractive the market is and [how easy it is] to bring new competitors to the market. When we start to regulate a dominant entity, the market segment in question will cease to be interesting to new players. And the dominant entity will stop behaving efficiently, which results in a kind of pseudosocialism.

**Q: What did EU accession mean for the operation of the antimonopoly office?**

A: One important competency in the field of economic competition was eliminated following accession, namely the assessment of state assistance. We are just an advisory body, and the assessment of specific cases is done directly by the European Commission. As for other changes, cooperation between the antimonopoly offices of individual member states has obviously deepened.

On a personal note, however, I want to achieve as close cooperation as possible between us and the antimonopoly offices of the OECD [members]. A short time ago, I visited the chairman of the Russian antimonopoly office. We agreed to update an older treaty with the Russian Federation. We've started evaluating abuse of dominant position and, generally, breaches of fair competition rules based on the applicable article of the Treaty on European Communities. It means that cartel agreements and abuse of dominant position can be assessed not just in light of Czech law, but in accordance with EU law, if the cases have an international dimension.

**Q: Globalization will probably be a huge challenge in the field of antimonopoly policy. Are there any problems that are common to other countries?**

A: We face several problems that are similar to those of other EU countries. One of them is the issue of utilities, where we have initiated administrative proceedings with the gas company RWE Transgas.

Another problem is the market power of supermarkets. It's directly related to what you have mentioned — to globalization — when one link of the whole chain is formed by extremely strong entities. Although there are obviously no cartel agreements between them, and none of these entities takes up a dominant position, their power relative to the other links of the chain is so large that it can cause market disruptions. This is definitely one of the topics we'll have to deal with in all of Europe.

**Q: Businessmen often complain about various subsidy programs — that they interfere with the competitive environment to some extent because not all companies qualify.**

A: As an antimonopoly office, we would be certainly happy if there were as few state subsidies and [as little] assistance as possible.

The actual trend in the European Union is, however, that the number of subsidies and interventions with the market environment is unfortunately growing rather than declining. This involves agriculture, renewable energy and many other areas where the market doesn't function well simply because state intervention is too large. But

our position in this respect is only advisory, and the final decision is up to the office that deals with the specific subsidy. It may or may not accept our recommendation. We can only check if the subsidy has been provided according to the rules that determine its allocation.

**Q: You mentioned subsidies. Aren't they, and investment incentives, typical examples of a breach of the competitive environment?**

A: It's true. We have no objections to what the Czech Republic has negotiated in this area. But we'll monitor the situation to avoid investment incentives that have the potential to result in a breach of market conditions.

A typical example is a company that wants to build an automobile factory where 90 percent of its production will be exported. There's no doubt that it's a benefit for the Czech Republic because it will ultimately lead to further investments, and the money spent on this investment incentive will be repaid.

An opposite example would be a maker of a product that's already manufactured here, wishing to build a plant here with the help of a state subsidy. It could interfere with equal market conditions because its competitors wouldn't have the advantage of a state subsidy. We definitely wouldn't recommend this type of investment incentive.

**Q: Is it possible that your office would scrutinize a small or medium-sized business?**

A: It would have to be something really brutal. It could happen in two instances. First is the issue of public procurement, if [an SME] bids for one. Another case is worse — cartel agreements. We would interfere without any discussion in that case because it's clearly illegal conduct. Small and medium-sized businesses should realize that market division and the arrangement of fixed-price agreements are illegal activities regardless of market size. But most of our office's agenda doesn't concern them.

**Q: Is the system of pub and restaurant franchising, when the brewery fully equips the pub and wants it to sell only one brand of beer, an example of a cartel?**

A: It's a traditional example of a vertical cartel. But the culprit is the brewery, and we would penalize it. Vertical cartels form the core of our office's work. ČEZ, for example, isn't a cartel although it provides both production and distribution of power. Individual subsidiaries are expected to be in a dependent position and carry out a pricing policy ordered by the head office. That's why we look at the entire market share, not the individual parts of the company. If, however, one link in the chain tells the other parts what [they have to sell] and at what price they have to sell [it], that's something completely different. And many businessmen aren't even aware that this type of behavior is prohibited. These cases aren't, however, penalized drastically.

**Q: When are you going to be really uncompromising?**

A: Drastic penalties would be given if five businessmen met at a table, portioned out the market into individual sections and agreed to sell the product at the same price in all areas. It's a typical hard cartel involving market division and price agreement; something considered a crime in many countries. It isn't a crime in our country, but the penalty is really high. Unfortunately, it's very hard to prove cartel agreements unless the firms confess. The agreement usually isn't in writing; it's always oral. The suspicion is therefore based on rather indirect evidence, such as behavior of the entities on the market. Where cartel agreements are concerned, antimonopoly offices

and courts unfortunately find themselves lacking evidence. This problem isn't specific to us, it can be encountered worldwide.

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