



OFFICE FOR THE PROTECTION OF COMPETITION



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IMPORTANT EVENTS OF THE YEAR 2006





CONTENTS

EVENT OF THE YEAR	3	PUBLIC PROCUREMENT	11
Fifteen Years of Competition Law in the Czech Republic.	3	STATE AID	12
Selected Thoughts from Individual Speeches	4	PRESENTATION OF THE COMPETITION OFFICE IN THE MEDIA	12
OVERVIEW OF MAIN EVENTS OF 2006.	5	INTERNATIONAL COOPERATION	13
January.	5	JUDICIAL REVIEW OF DECISIONS.	13
February	5	BUDGET AND NUMBER OF STAFF	14
March.	6	NEW SEAT OF THE COMPETITION OFFICE	14
April.	6	AGENDA FOR 2007	14
May	7	I. Antitrust	14
June.	7	II. State Aid	15
July	8	III. Public Procurement.	15
August	8	PF 2007.	15
September.	8		
October	9		
November	10		
December	11		
ANTITRUST	11		
Main markets lacking fair competition in the opinion of the Competition Office	11		

OFFICE FOR THE PROTECTION OF COMPETITION

Joštova 8, 601 56 Brno

Press and HR Department

Editorial Board:

Kristián Chalupa, Filip Vrána, Martin Švanda, Jana Ištvanová

Photographs: Jiří Sláma, Igor Zehl

tel.: 542 161 288

fax: 542 210 023

e-mail: posta@compet.cz

www.uohs.eu

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EVENT OF THE YEAR

FIFTEEN YEARS OF COMPETITION LAW IN THE CZECH REPUBLIC

The Office for the Protection of Competition (ÚOHS) commemorated the fifteenth anniversary of competition law application in the Czech Republic in 2006. The event of the year was an international conference, **Competition and Competitiveness**, held on November 28th and 29th at the Brno trade fair grounds. This important meeting of competition law experts was organized by the Brno Chamber of Commerce.

One of the main objectives of the conference was to contribute to the general awareness of competition policy. In his introductory speech, the Competition Office Chairman, Martin Pecina, therefore decided to initiate the promotion of competition law in the Czech Republic. "This is necessary because the awareness of the Czech public as to what is and what is not allowed in terms of competition is still relatively low. That is also the main reason for this conference," Martin Pecina noted. As an example, he mentioned vertical cartels as certain companies in the Czech Republic are not even aware just how serious such conduct is. The Competition Office plans to crack down on cartels with greater intensity in the future, and companies will be threatened with higher fines than at present. "However, we still prefer to avoid sanction proceedings where possible. We want to give companies a chance to repent. **Higher fines will be used where companies refuse to correct their ways,**" the Competition Office Chairman stressed.

The amount of fines was one of the main topics of the conference and was subsequently presented in the media, one of the reasons being the new methodology of the European Commission. It was presented in Brno by Kris Dekeyser of the EC Directorate General for Competition. "A company entering a cartel can now calculate that the fine amount will depend on its turnover on the market in question and on the duration of its participation in the cartel. We also take into account the geographic area where the cartel took place," Dekeyser noted. **A 3-month cartel may thus cost the company up to**

Alberto Heimler, Italian Competition Office



Martin Pecina, Czech Competition Office Chairman

40% of its annual turnover. The EC methodology sends out a clear signal – do not form cartels, if you have already done so, withdraw as quickly as possible, and if you had been in a cartel in the past, do not repeat that mistake. The importance of this approach was symbolically underscored by a decision of the European Commission, published on the second day of the Brno conference. The European Commission imposed a fine in the aggregate amount of approximately EUR 519 million on an international cartel of synthetic rubber producers. The cartel included the Czech company Unipetrol.

Aside from addressing the general theme expressed in its title, the Competition and Competitiveness conference included three panel discussions:

Competition and Regulation, Crime and Punishment, and Protection of Competition in the International Context. More than thirty speakers had the opportunity to speak in Brno. The Crime and

Emil Paulis, European Commission





Punishment panel discussion ended with an interesting conclusion: that the possibility of criminal prosecution probably represents the greatest threat to cartel participants. In the cradle of Antitrust, the United States, it is possible to impose prison sentences of up to ten years. There is an apparent tendency to shift prosecution for competition law violations towards criminal prosecution. Criminal liability is an option even in the Czech Republic, even though it is not enforced in practice, similarly to claims for compensation for damages caused by anticompetitive conduct.

SELECTED THOUGHTS FROM INDIVIDUAL SPEECHES

Radek Pokorný, Chairman of the Czech Association for Competition Law:

For a long time, competition was treated as a Cinderella. The scope of this conference goes to show that competition has become an important part of our legal order, and that companies have accepted regulation as part of their business conduct. It is important for ÚOHS to build up clear case law. Predictability is of key importance, so that undertakings could see and know what behaviour the Competition Office considers unlawful, and could accordingly – or else prepare for a court battle to potentially change the decision-making practice.

Ulf Böge, Chairman of the German Bundeskartellamt and chairman of the international competition network, ICN: We currently need greater cooperation between offices so as to prevent cartels such as the Vitamin Cartel. We want to draw attention to the fact

that the conclusion of prohibited agreements leads to a distortion of the competitive environment, and that is detrimental to both the individual states and consumers. In the European Union, abuse of dominance is currently much debated. I think it may not progress as fast as we would like. We would like to set certain main directives but it is far from easy.

Frédéric Jenny, Chairman of the Competition Committee of the OECD: Companies are the first victims of unfair competition.

Giovanni Napolitano, Italian Antimonopoly Office: The debate on sanctions and leniency program was very useful because the European Commission has recently undertaken changes in its fining policy, and certain countries are also changing their leniency programs. As regards ÚOHS's position, I believe that it has gained an important position in the community of antimonopoly offices of EU member states over the last five years. I would like to wish to ÚOHS to continue developing successfully and contributing to the mutual exchange of experience between European antimonopoly authorities.

Emil Paulis, authorized representative of the General Director of EC DG Competition: Competition is an important element facilitating the integration process. To be able to face global competition successfully, we need to continue to develop the internal market. Competition plays an important role in this process because it drives innovation, helps integrate markets and make the economy more efficient.

Sir Christopher Bellamy, Chairman of the UK Competition Appeal Tribunal: Competition law is at several crossroads, and that makes competition attractive. It brings together law and economics – two large disciplines that are beginning to reach an understanding. It also brings together public and private law, administrative procedure and judicial intervention, law and politics (the court may help the antimonopoly office resist political pressures). The last crossroads are the influences of the various legislatures of different countries. And what is the way to effective enforcement of competition law? To focus on facts and keep an open mind even in lengthy proceedings. Officials should be skeptical but not cynical. It is also important to use a language everyone can understand, and, last but not least, to use common sense.

Josef Bejček, head of Department of Commercial Law of Masaryk University in Brno: I share the view that competition policy is the best "industrial policy." Healthy growth of companies is unlikely to occur in an environment protected from competition, distorted by aid or exemptions from competition laws.

Martin Pecina, Chairman of ÚOHS: Much of what the participants have heard at the conference had been voiced in the Czech Republic for the very first time. Moreover, the participation of persons having such standing as Ulf Böge, Emil Paulis, Christopher Bellamy and Frederic Jenny, to mention only a few, lent an extra weight to the proceedings.

Note: in some cases, the speeches are not quoted verbatim, and shortened outlines of the main thoughts expressed in the individual papers are provided instead.



OVERVIEW OF THE MAIN EVENTS OF 2006

JANUARY

The Competition Office permitted several mergers on the **telecommunications market**. GTS Central European Holding B. V. gained control over Contactel, Telenor Networks and NEXTRA Czech Republic. The mergers resulted in a strengthening of competition vis-à-vis the market leader, ČESKÝ TELECOM (currently Telefónica O2 Czech Republic).

The Competition Office Chairman, Martin Pecina, imposed a fine of CZK 500,000 on Dopravní společnost Zlín-Otrokovice. The contracting entity acted contrary to the Public Procurement Act. In 2004, the company decided to extend its vehicle fleet by purchasing six low-floor trolleybuses in a negotiation proceeding without publication. In order to unify its rolling fleet, the company placed the order directly with **Karosa** from whom it had purchased buses in the past. In the case in question, a different kind of goods was involved and the delivery of trolleybuses thus could not be viewed as a an a delivery “additional” to the original bus order. **The contracting authority did not act with sufficient transparency and did not hold a tender for the public contract.**

The Competition Office issued two decisions pertaining to the actions of the Ministry of Transport in the public tender for a tolling system. In the case of the proceeding initiated by a motion filed by the MYTIA consortium, ÚOHS **did not find any violation** of the Public Procurement Act in the procedure pursued by the contracting authority. The Ministry, on the other hand, erred when it did not send to the other unsuccessful bidder, the Italian company AUTOSTRADE, within ten days of receipt of its objections a written notice of their processing. **That, however, has in no way influenced the ranking of the bids.** In mid-November 2005, the toll system contract was awarded to the KAPSCH consortium. Both disqualified bidders filed motions with the Competition Office, seeking to have the decision on their exclusion overturned so that a new assessment and evaluation of the bids could take place. Both the MYTIA consortium and AUTOSTRADE filed appeals against the decisions of the Competition Office; however, the Competition Office Chairman subsequently upheld prior conclusions of the Competition Office. Despite that, the case ended up in court because Autostrade filed a claim. **However, in the fall of 2006, the Regional Court in Brno upheld the findings of the Competition Office. The Competition Office thus succeeded in court in connection with one of the largest contracts it has ever reviewed.**

A fine of CZK 200 thousand, imposed on the city of Uherské Hradiště, was confirmed. In 2003, the contracting authority divided the **construction of a sports facility** (northern stand, southern stand, main entrance and reinforced surfaces, volleyball courts) into individual parts awarded by means of a simplified invitation to tender, although the **total amount of the financial obligation was nearly CZK 70 million**. The city was obliged to **hold a public tender** in order to ensure greater transparency and better competitive terms in the award process.

The Regional Court in Brno dismissed an action filed by UPC ČR against decisions of the Competition Office of October 2003 and April 2002. The decisions stated that abuse of dominance by DATTEL KABEL (currently UPC) was found to had occurred by way of a sudden increase of prices of cable TV program packages. The court noted that DATTEL KABEL first **deliberately set low prices to win as many subscribers as possible**. The court was of the opinion that the prices constituted predatory pricing. The purpose of predatory pricing is “**to temporarily sacrifice business profit by setting prices of products or services at a level preventing the entry of potential competition onto the market,**” the court stated in its ruling. The consumer had to decide whether to accept the new prices or whether to terminate the contract. Either option was unfavorable for the customer because DATTEL KABEL faced virtually no competition on the market.

FEBRUARY

The Competition Office imposed the second largest fine for a violation of the Public Procurement Act in its history by way of a decision that was not yet final and enforceable. The fine of CZK 750,000 concerns the city of Hradec Králové and a public contract for household waste disposal. The contracting authority **did not limit the scope of information concerning qualifications of the suppliers to information directly related to the subject of the public tender**. The contracting authority further violated the Public Procurement Act by **excluding the bidder ave CZ on the basis of an incorrect assessment of its bid** which was complete from the point of view of satisfaction of terms and conditions of the tender. In the fall of 2006, the Chairman quashed the decision and referred the matter back to the department in question in order to cure formal defects.

The Competition Office issued a new first-instance decision in the case of a cartel concluded between sugar companies, EASTERN SUGAR ČESKÁ REPUBLIKA, a. s. , Moravskoslezské cukrovary, a. s., Cukrovary TTD a. s. and Cukrovar Vrbátky a. s. The decision states that **the law was breached only with respect to exchange of information through Českomoravský cukrovarnický spolek**. However, the existence of prohibited agreements or acting in concert in the form of setting of prices for the sale of sugar or market division was not found to have occurred, and the proceeding was terminated in that respect. No sanctions were imposed for the ascertained violations of the law.

The Competition Office Chairman upheld the imposition of fines for a vertical price cartel. JIZERSKÉ PEKÁRNY as the initiator of the agreement was given a fine of CZK 300 thousand, the distributor, LS-ZETIS, a fine of CZK 50 thousand. In December, the companies in question made an agreement **on resale price maintenance with respect to wholesale trade in gluten-free bakery and confectioner’s products**. The parties complied with the agreement at least in the course of 2004.



The Competition Office approved, **without any conditions** attached, the formation of a joint venture in the baking industry between Bakeries International Luxembourg (BIL) and United Bakeries Luxembourg (UBL). Pursuant to the decision, a merger of the two largest companies on the market, ODKOLEK and DELTA PEKÁRNY, took place. The merger resulted in the creation of an undertaking that controls virtually the same entities that would have been controlled by the undertaking that would have resulted from the takeover of DELTA PEKÁRNY by BIL. The latter merger was previously prohibited by the then Competition Office Chairman, Josef Bednář, in February 2005. The Competition Office therefore examined whether any **changes have occurred on the relevant markets** during the previous year, and if so, to what extent. The Competition Office concluded that **through the merger, the undertaking will gain a leading position in the Czech Republic**. However, it will be exposed to competition from all the other producers of bakery products whose market shares are not very significantly lower. Moreover, its market power will be to a significant extent counterbalanced by the growing market and bargaining power of chain stores that are increasing their bakery output (e.g., Tesco Stores). The Competition Office noted that the merger will not result in a restricted choice for the customers or ultimately end consumers of bakery and confectionery products.

MARCH

The Competition Office Chairman granted to Plzeňský Prazdroj an individual exemption from the prohibition of agreements distorting competition, subject to conditions. The exemption concerns **minimum purchase limits** of beer imposed on proprietors of restaurants and inns. In the appeal proceeding, obligations significantly facilitating the development of competition on the market were accepted. Customers of the market leader gained a significant opportunity to sell beer supplied by its competitors as well.

The Chairman, Martin Pecina, imposed a sanction in the amount of **CZK 80 million on ČESKÝ TELECOM, a. s. ("ČTc")** for the abuse of dominance on the market for provision of access to Internet and data transmission services using the ADSL technology. At a press conference held on November 26, 2003, ČTc published information on a new form of services in the retail market for the provision of access to the Internet through ADSL. As of January 1, 2004, those services were supposed to have been replaced with services provided through its branch, Internet On Line, and on the same day (i.e., November 26, 2003), ČTc further published a change in its wholesale offer whereby ADSL services are provided by other operators to end customers. By publishing both offers on the same day, ČTc did not give other operators enough time to evaluate the wholesale offer so that they could commence negotiations with ČTc about the new form of ADSL services, and conclude agreements with ČTc for the provision of such services. Through its actions, ČTc prevented alternative operators from offering ADSL services to end customers on comparable terms. Yet, alternative operators are unable to provide ADSL services without access to infrastructure held by ČTc. ČTc thus gained a considerable competitive edge and injured its competitors.

The Competition Office Chairman confirmed the imposition of a CZK 200,000 fine on the Statutory City of Zlín. The contracting

authority **repeatedly** violated the Public Procurement Act in connection with **delivery of computers**. As early as 2001, the contracting authority extended the performance to be rendered under the original public contract, without defining the scope of deliveries and services. Moreover, the contract was awarded in a **non-transparent manner** directly to IMPROMAT-COMPUTER **without a public tender**. For this breach, the Competition Office imposed a fine of CZK 95,000 on the contracting authority as early as 2002.

Notwithstanding that, the city of Zlín continued to violate the law, and fines in the aggregate amount of CZK 250,000 were therefore imposed in two administrative proceedings in 2005. The contracting authority did not challenge the CZK 50,000 fine but did file an appeal against the CZK 200,000 fine.

APRIL

The Competition Office Chairman confirmed the imposition of a fine of **CZK 300 thousand on Česká lékárnická komora (ČLK – Czech Chamber of Pharmacists)** for a violation of the Competition Act, due to anticompetitive measures relating to the promotion of pharmacies, provision of loyalty cards and other offences.

The Competition Office Chairman upheld the conclusions drawn previously in first-instance proceedings in the matter of Lesy ČR and the procedure the company followed in the selection of contractors to provide forestry activities. Two appeals filed by Lesy ČR were dismissed, as were the appeals filed by both claimants, CE WOOD and Dřevařská a lesnická společnost. Both companies requested a prohibition on performance under the contracts, and the Competition Office dismissed their motions. **As Lesy ČR did not comply with the Public Procurement Act in the selection of contractors, the issue at hand has been whether the company did or did not constitute a contracting authority pursuant to the Public Procurement Act. On that point, the Competition Office sided with both the conclusions of the European Commission and the claimants and confirmed that Lesy ČR had been obliged to act in accordance with the Public Procurement Act.**

The Competition Office terminated an administrative proceeding involving the Ministry of Defense and pertaining to a contract for new armored vehicles for the Czech army. The administrative proceeding was initiated by operation of law upon a motion filed by an unsuccessful bidder, the Finnish company **Patria**, who contended that there were defects in the formulation of terms and conditions of the tender and the actions of the evaluation committee. The Competition Office terminated the proceeding because the **Public Procurement Act does not apply to procurement related to the manufacturing, purchase or repair of weapons, arms systems, ammunition and procurement of other military materials required for the defense or security of the state**. The claimant moreover became aware of the fact that the tender would not be conducted pursuant to the Public Procurement Act as early as April 2005, or earlier, but made not objections to that fact. Patria filed an appeal against the decisions of the Competition Office, and the Chairman dismissed same in June 2006.

In two administrative proceedings, the Competition Office imposed fines of CZK 800,000 in aggregate on Všeobecná zdravotní pojišťovna

(VZP – health insurance company) by virtue of decisions as yet not final and enforceable. The offences concern the project of “**internet health status card**”. The Competition Office initiated the proceeding in March 2006 upon a request from an **investigation committee of the House of Deputies to the effect that the Competition Office ought to look into the economic activities of VZP**. It concluded that in the selection of the entity implementing the project, VZP **did not proceed in accordance with the Public Procurement Act**, and concluded agreements directly with IZIP, spol. s r. o. VZP thus completely **eliminated competition for the contract** when it prevented other potential contractors from taking part in the tender and perhaps offering more favorable conditions than IZIP. **The Chairman referred the decision in the fall of 2006 back to the first instance for rectification of formal defects. The fine was then imposed again in the same amount.**

MAY

The Competition Office Chairman, Martin Pecina, imposed a **CZK 2 million fine on ČSAD Liberec** for the abuse of dominance. Between January 24, 2005 and May 15, 2005, the company refused to negotiate about the use of a bus station in Liberec it operates with STUDENT AGENCY, and then failed to let the said company use the station from February 1, 2005 until June 6, 2005. Unlike its competition, STUDENT AGENCY was thus prevented from duly operating inter-state public passenger bus transport on the Praha - Liberec route.

The Competition Office permitted a takeover by Metrostav a. s. of a 50% share in TERRAFIN GROUP.

The Competition Office permitted a concentration of undertakings in the telecommunications sector. RADIOKOMUNIKACE was able to gain control over TELE2.

The Competition Office permitted, subject to obligations, a merger between Karlovarské minerální vody (KMV) and Poděbradka. The merger was permitted subject to the satisfaction of the following obligations: to procure preservation of the current trade marks of Poděbradka products for a period of five years from entry into force of the decision, to procure that even after the merger, for a period of five years, Poděbradka will negotiate its business and delivery terms with customers (chain stores) procuring “modern” distribution separately from Karlovarské minerální vody, to procure, for a period of five years, unbundling of prices produced by the merging undertakings, whereby the share of cheaper beverages, and to submit to the Competition Office a performance report while the obligations exist.

The Competition Office concluded during the proceeding that the obligations in question suffice to rectify existing concerns over a substantial distortion of competition. The Competition Office believes that even though the leader acquires a significant undertaking, the situation on the relevant markets differs from the situation prevailing in 2001, or rather 2002, when such merger was not permitted.

On May 30, 2006, the Regional Court in Brno upheld by its rulings two key decisions of the Office for the Protection of Competition. In the case of a cartel agreement between BILLA and JULIUS MEINL, the decision of the Competition Office was upheld on all counts, save for

the amount of the fine. In the second case, a claim filed by ČEZ against a decision imposing a fine of CZK 7.5 million for a prohibition of re-import of electricity was dismissed by the court in full.

JUNE

The Competition Office Chairman, Martin Pecina, confirmed the imposition of a **CZK 200,000 fine on Teplárny Brno** for an erroneous procedure in the award of a public tender for a loan for refinancing of debentures. The purpose of the contract was the provision of a long-term loan in the amount of **CZK 500 million** for the redemption of an issue of debentures issued to finance a combined cycle at Červený mlýn. During the tender procedure, the contracting authority received a total of 7 bids. The bid submitted by **ČSOB and HVB bank** was selected as most favorable. However, it did not comply with the terms and conditions of the tender. In its bid, ČSOB a HVB Bank reflected the release of the contracting authority's blocked funds in the amount of CZK 200 million as one of the options of performance under the contract. As the company chose as the lowest bid price as the principal selection criteria, **multiple-alternative bids were not permissible under the law**, and such bid could not be compared to other bids. By failing to disqualify the bidder ČSOB a HVB Bank from further participation in the public tender, the contracting authority further violated the principle of equal treatment and non-discrimination when it excluded another bid containing multiple alternatives.

On June 6, 2006, president Václav Klaus vetoed a parliamentary amendment bill on the protection of competition. The core of the amendment is the introduction of the notion of economic dependency into the act. The Competition Office did not support the adoption of the amendment in the form adopted by the House of Deputies. In the case at hand, it involved a potential regulation of the conduct of companies who do not enjoy a dominant position on the market but have such actual market power that they are able to put forward **unilaterally favorable business terms** in contractual relations with their business partners. In practice, this applies in particular to **chain stores**. The conduct of companies who abuse the fact that their business partners are economically dependent on them may lead to a significant distortion of competition. Such conduct, however, does not fall under the province of the Competition Office because the **undertakings in**



question do not have a dominant position on the market. Therefore, the Competition Office supported the original parliamentary bill. However, during the debate in the House of Deputies, changes were adopted that make this provision of law excessively stringent, and actually **create conditions for its misuse.** This is in particular the case of a provision that penalizes *the very acceptance* (rather than imposition) of more favorable conditions by the economically stronger entity, e.g., acceptance of a proposal for conclusion of a purchase agreement at a price below the seller's cost. Such provision of law would thus make it possible to penalize a purchaser who accepts a proposal from a seller in good faith, where the seller may moreover have legitimate reasons for selling goods below cost.

decision of the Competition Office imposing a CZK 10 million on the said company. The proceeding was terminated by virtue of withdrawal of the claim by KMV. Karlovarské minerální vody **breached** the Competition Act by **exercising voting rights** attached to ownership of shares in Poděbradka before the Competition Office's decision permitting the merger with Poděbradka entered into force, thus **influencing the competitive behaviour of Poděbradka.** The Office originally **declined to permit** the merger in 2002 (the merger was only permitted subject to conditions in May 2006).

By virtue of a decision which is yet to become final and enforceable, the Competition Office imposed thus far the highest fine imposed on a single company in a single administrative proceeding, namely, a fine of **CZK 370 million imposed on RWE Transgas** for abuse of dominance on the gas market. The dominant company had been violating the Competition Act since November 2004 when it proposed to operators of regional distribution systems outside the RWE holding contracts for purchase and sale of natural gas containing conditions **putting such operators in a disadvantage vis-à-vis regional distributors within the RWE Group.** According to the decision, RWE Transgas has further been restricting through its distributor contracts the option of selling outside the territories serviced by the distributors since January 1, 2005, thus **effectively preventing the development of competition on the gradually liberalized market.** The third form of abuse of dominance consist in the **setting of the price for gas storage for 2005 with respect to the authorized customer category,** which was set at the same level as the price set by the Energy Regulatory Office for protected customers, although the costs for each category of customers are different. In addition to the fine, measures to rectify the situation were imposed, whereby the contracts have to be amended so as not to disadvantage regional gas distributors outside the RWE group in the future. The removal of further barriers to competition consists in the condition that **gas supplies to the balance zone of any regional distribution system operator be permitted.** Measures have to be implemented to allow gas off-takers to chose the supply of this commodity from any supplier regardless of its balance zone.

JULY

As of July 1, a new Public Procurement Act, Act No. 137/2006, entered into force; it now applies also to small-scale public contracts. Further novelties introduced by the act include competition dialogue, simplified procedure for below-limit tenders, centralized procurement, master agreements for all contracting authorities, establishment of evaluation commissions, the option of fully electronic proceeding. The new notions include dynamic purchasing system, electronic auction, master agreement and central contracting authority.

The Competition Office noted that the contracting authority, Ministry of Defense, violated the Public Procurement Act when it awarded the "Nafukovací stany a haly - doplnění, nákup" contract. A fine of CZK 25,000 was imposed on the contracting authority. The Ministry of Defense violated the law when it provided in the notice of the tender and the tender documentation a **specification of a specific type of tent and hall,** thus making it possible to identify a specific manufacturer, the Italian company EUROVINIL S. p. A. Providing technical specifications with reference to specific brands or origin is prohibited by community law. **Such approach could have influenced the evaluation of the bids by deterring other suppliers of tents and halls from taking part in the tender.**

The Competition Office terminated administrative proceedings conducted against Telefónica O2 Czech Republic, a. s. (formerly ČESKÝ TELECOM, a. s.) for abuse of dominance. Termination of administrative proceedings is conditioned on the satisfaction of several measures that guarantee protection of competition and rectify offending situation on the market. Pursuant to the decision of the Competition Office, Telefónica O2 is obliged to apply cost-oriented and regulated prices in the provision of the wholesale service of circuit leasing, which prices consist of the price for the establishment of the service and the price of circuit lease. The company is further obliged to enter into written agreements on the circuit leasing for definite or indefinite terms, always with a termination option. All customers are entitled to discounts, and quantity discounts must be granted in a transparent manner on equal conditions and circumstances. **It is not allowed to grant other than quantity discounts.**

The Competition Office permitted the acquisition of the investment group J & T on the market for meat products. Pursuant to the decision, the group in question gained control over KMOTR-Masna Kroměříž a. s. , Vysočina, a. s. and Krahulík-MASOZÁVOD Krahulčí through Českomoravský uzenářský podnik.

The Competition Office permitted the merger of Blue River and TATRA. A controlling block of shares in the car factory was sold by the American TEREX CORPORATION.

SEPTEMBER

Two days after his appointment, **on September 6, 2006, the new Prime Minister of the Czech Republic, Mirek Topolánek, visited the Brno seat of the Office for the Protection of Competition (ÚOHS).** It was the first visit of a Prime Minister to the Competition Office after more than three years. In April 2003, the then Prime Minister Vladimír Špidla visited the Competition Office. "I have advised the Prime Minister of interesting cases being handled by the office, our budget and the new seat. We discussed important things of

AUGUST

The Regional Court in Brno terminated a proceeding initiated by a claim filed by Karlovarské minerální vody ("KMV") against a 2004



common concern for us and any government, such as the energy sector. We spoke about liberalization and about what to do about electricity and gas," the Competition Office Chairman, Martin Pecina, stated after the meeting in Brno.

The Regional Court in Brno dismissed a claim filed by the district of Žabovřesky (a part of the city of Brno) against a CZK 150,000 fine imposed on it by a final and enforceable decision of May 2005 for a breach of the Public Procurement Act. The court did not take into account the new objections voiced in the claim, which objections the claimant should have raised during the proceeding before the Competition Office but failed to do so. The violation of the law concerned seven contracts for the repairs and revitalization of houses in the total amount of **CZK 45 million**. The contracts were awarded between 2003 and 2004. Pursuant to the law, the contracting authority must not **address invitations to tender to a repetitive circle of potential bidders** unless such an approach is justified by the nature of the contract. The contracting authority violated this statutory obligation by approaching the same companies repeatedly in connection with repairs of the said houses in Brno-Žabovřesky (a total of six construction companies in Brno was involved).

The Competition Office approved the takeover of eBanka by the Austrian company Raiffeisen International Bank-Holding AG. The transaction involved the approval of the transfer of all shares, i.e., a change of sole control over eBanka.

The Competition Office permitted, subject to conditions, an acquisition by the German publishing group Verlagsgruppe Passau. The group involved in the Czech Republic in particular through VLTAVA-LABE-PRESS can thus acquire control over printing houses, NTISK and NOVOTISK Olomouc (the printing houses print for instance Hospodářské noviny, AHA, Haló noviny). **Mediacore** is the seller in the transaction.

The Regional Court in Brno dismissed in full a claim filed by Telefónica O2 Czech Republic (formerly ČESKÝ TELECOM) against a decision of the Competition Office Chairman, Martin Pecina, of late 2005,

by which a fine of CZK 205 million was imposed on the company for a breach of community law. The fine which had already been fined was imposed on the company for abuse of dominance. Since 2002, ČESKÝ TELECOM offered price programs for household and smaller businesses, which price programs included, in addition to the fixed monthly fee, also **call credits or free minutes**. By tying services, the company hindered development of competition, development of alternative operators, and ultimately restricted consumers in terms of their ability to obtain better quality of services at competitive prices.

The Competition Office Chairman confirmed the imposition of a fine in the amount of CZK 150 thousand on JELÍNEK výroba nábytku from Valašské Meziříčí. Between March 2004 and early September 2005, the company concluded **prohibited price agreements with its distributors**. The agreements consisted in resale price maintenance with respect to products manufactured by the company, and lead to a distortion of competition on the market for furniture and mattresses.

The European Commission allowed the Czech Republic to compensate Elbe river carriers for losses. The Competition Office took part in the approval process. The aim of the approved measure is to compensate carriers (domestic and foreign) for losses sustained in consequence of low water level in the Elbe river, and subsequently encourage carriers to ship goods under less favorable conditions. **The objective is to transport as much goods as possible by boat, rather than by road.** The state aid program is to run for several years up until the completion of the channel in Děčín in 2010.

A new webpage of the Competition Office was launched as of September 1. Compared to the old webpage, it is much easier to navigate. Aside from the heretofore address, www.compet.cz, the webpage can also be found on the European domain, www.uohs.eu.



OCTOBER

The Competition Office imposed a CZK 500,000 fine on the Ministry of Labor and Social Affairs (MPSV) for a violation of the Public Procurement Act. It is so far the highest fine imposed in a single case on a ministry. The ministry erred in January 2006 when it concluded an agreement for the operation of its communication system in 2006-2008 directly with ANECT; **in the case on hand, the contract value exceed half a billion Czech crowns.**

The ministry argued during the administrative proceeding that the public contract in question could be implemented only by the company approached by the ministry because of the protection of rights and intellectual and industrial property. **This argumentation,**



however, is not supported by the fact that the contracting authority originally attempted to award the contract in an open tender, and received 2 bids compliant with the terms of the tender. However, the contracting authority canceled the open tender because of objections raised by the bidder who came second, ČESKÝ TELECOM. The ministry subsequently concluded the contract directly with ANECT when it used a negotiation procedure without publication, and argued that it urgently needed to award the contract. However, the type of proceeding chosen may be used only in urgent cases in crisis situations. **The ministry did not file an appeal against the fine.**

The Competition Office Chairman confirmed the imposition of a fine of **CZK 30,000 on a contracting authority, Zdravotnická záchranná služba Jihočeského kraje**, for errors in a public tender for the purchase of three ambulance cars. The contracting authority violated the Public Procurement Act when it defined technical specifications in such a way that certain suppliers had a competitive edge. Contrary to the principle of non-discrimination in the tender procedure, the circle of potential suppliers was thus limited. The action concerned could have had a significant influence on the ranking of the bids.

The Competition Office referred to the European Commission for review a case of state aid that the **Czech Republic intends to provide to the car manufacturer Hyundai**. It involves one of the largest investments in the Czech history. The Competition Office adopted a positive stance on the investment incentive.

NOVEMBER

The Competition Office concluded the investigation of contractual relations between film distributors and movie house operators. An indirect setting of prices occurred on the market via "minimum ticket prices". The case was tackled by means of competition advocacy, i.e., no administrative proceeding was initiated. The anticompetitive provision was set forth in the general business terms and conditions governing the granting sub-licenses for the dissemination of audio-visual works approved by an **association of movie house operators and union of film distributors**, pursuant to which business terms and conditions most film distributors and movie house operators concluded mutual contractual arrangements. The Competition Office asked both associations to rectify the situation by amending the respective provisions of the general business terms and conditions. However, the proposed amendments sent to the Competition Office by the Union of Film Distributors in early October 2006 failed to comply with the wording of the Competition Act: on the contrary, it actually **provided for direct price setting**. The second draft amendment to the general business terms and conditions was in compliance with the objections raised by the Competition Office, so as to prevent a further violation of competition rules on the market for distribution of films to movie house operators. The Union of Film Distributors replaced "minimum ticket price" with legally non-binding "recommended ticket price". **The Competition Office terminated the investigation** in light of this fact.

By its first-instance decision which is yet to enter into force, the Competition Office imposed on Dopravní podnik Ústeckého kraje (DPÚK) a **fine of CZK 700 thousand** for abuse of dominance. As of

August 1, 2006, DPÚK suspended bus transportation in the Ústecký Region. In total, the operation of over 2,000 bus lines operated mainly under the public service obligation was suspended. DPÚK found itself in a financial situation that objectively **prevented it from further operation of the lines**, and the Competition Office recognized that as conduct compliant with the Competition Act. However, a dominant undertaking providing regular long-term services to consumers cannot suspend the provision of such services without **giving adequate prior notice of such suspension, so as to allow for a timely adaptation to the new business strategy of the service provider**. Given the nature of public bus transport and the area services by lines discontinued by DPÚK, the merely **five-day notice** given on July 26, 2006 to the Ústecký Region cannot be deemed to constitute an adequate and timely notice.

The European Commission upheld a decision of the Competition Office pertaining to state aid to the iron works in Třinec. The Commission commenced a detailed investigation in December 2004 in order to verify whether the measures in question do not constitute aid for the restructuring of Třinecké železářny, prohibited prior to the accession under Protocol No. 2 of the Accession Treaty. In November 2006, the Commission ruled that none of the measures constituted unlawful aid. Specifically, the Commission concluded that the most extensive measure, specifically, the purchase of shares in Ispat Nová huť held by Třinecké železářny by the Czech government for CZK 1.6 billion did not constitute state aid granted to the company as the price paid by the government was identical with price that would have been paid by a market investor. The Commission further found that the second measure, i.e., aid towards training at Třinecké železářny, in the amount of CZK 44 million, was in compliance with the applicable EU rules and as such constituted compatible aid. The third measure, a direct grant in the amount of CZK 4 million, in support of closure of capacities of a part of the manufacturing activities, was not implemented in the end.

The Competition Office terminated an administrative proceeding conducted since mid-September with ČEZ. In the said administrative, as in other similar cases, the Competition Office gave preference to rectification by the party to the proceeding instead of imposition of a fine. The power company set differential conditions in supply contracts applicable as of January 1, 2006. Without any justifiable grounds for such approach, the company applied a **differential price formula** to determine prices of lignite supplied to ČEZ. Specifically, **Sokolovská uhelná** was discriminated against. Its contracts stipulate minimum and capped increases of prices for which it supplies the raw material to ČEZ. Sokolovská uhelná is the only supplier who currently does not have reflected in its effective contract (for 2005 through 2009) the impact of year-to-year changes in the prices of electricity. **Due to that fact, Sokolovská uhelná is discriminated against as compared to its competitors, including Severočeské doly or Mostecká uhelná.**

In the administrative proceeding, ČEZ proposed obligations accepted by the Competition Office as adequate and leading to rectification of the offending situation. The same now contain an amendment to the contract for the benefit of Sokolovská uhelná. Moreover, ČEZ undertook to enter into a long-term purchase contract with Sokolovská uhelná, to apply until the mines are completely mined out.



DECEMBER

A decision confirming a fine of **CZK 500,000, imposed on the city of Prostějov**, became final and enforceable. When awarding a contract for the **construction of a municipal recreation and**

sports center worth more than CZK 200 million, the contracting authority paid absolutely no heed to the Public Procurement Act. The case represents a very serious violation of the law. Had the contract been awarded in an open or restricted tender, **bids offering more favorable terms of execution than the selected bid may well have been submitted.**

ANTITRUST

HIGHEST FINES IMPOSED IN 2006

RWE Transgas	abuse of dominance	370 mil.	not yet final and enforceable
ČESKÝ TELECOM (Telefónica O2)	ZDP – ADSL	80 mil.	final and enforceable
Pekárenské společnosti	cartel	52,8 mil.	final and enforceable

As of December 1, 2006

In 2006 (up to the end of November), the Competition Office imposed fines in the aggregate amount of CZK 542.6 million. Of that, CZK 406.7 million were fines imposed pursuant to first instance, no yet final and enforceable decisions. CZK 287.5 million in fines was paid in total (this includes payment of certain fines imposed by virtue of final and enforceable decisions from the previous year).

As in past years, most of the proceedings concerned mergers – 51 administrative proceedings in total. No merger was prohibited, only a few were permitted subject to obligations (e.g., KMV). The Competition Office further initiated 4 administrative proceedings pertaining to agreement distorting competition. Three cases had to do with abuse of dominance, and one a potential implementation of a merger prior to notification to the Competition Office. A total of 16 cases was resolved by means of competition advocacy, i.e., outside an administrative proceeding. Fifteen competition-related decisions were rendered in the second instance.

MAIN MARKETS LACKING FAIR COMPETITION IN THE OPINION OF THE COMPETITION OFFICE

Aside from the cases mentioned above, these involved an investigation of the beer market in connection with the conclusion of exclusive contracts between breweries and proprietors of restaurants and inns. The Competition Office further investigated internal regulations of undertakings – professional associations, especially chambers of architects, engineers and structural technicians, auditors, pharmacists and executors. Another issue that was investigated was resale price maintenance of radio-controlled models. The Competition Office received a number of motions concerning lumberjacking, including related markets on which sawmills conduct their business, and the market for wood mass used as fuel and for the production of chipboard. The Competition Office further addressed motions regarding resale price maintenance of household appliances. It is also investigating several motions concerning a potential distortion of the competitive environment by virtue of passenger car qualitative selection distribution systems. Talks were held with representatives of processing organizations and individual companies on the market for meat and milk in order to review potential price agreements and decisions of associations of undertakings. Other investigation concerned bakery products price increases, railway transportation, TV commercials, drug supply and other cases.

PUBLIC PROCUREMENT

HIGHEST FINES IMPOSED IN 2006

contracting authority	contract	fine	final and enforceable
VZP	internet health status cards	CZK 800 thousand	No
Dopravní společnost Zlín-Otrokovice	purchase of trolley-buses	CZK 500 thousand	yes

MPSV	communication system	CZK 500 thousand	yes
Prostějov	construction of an aquapark	CZK 500 thousand	yes

As of December 1, 2006

Note. In the course of 2006, a fine of CZK 750 000 was imposed on the city of Hradec Králové for errors in a public tender for household waste disposal. The decision was quashed on formal grounds. A new decision is yet to be rendered.

Up until the end of November 2006, the Competition Office instigated a total of 260 administrative proceedings, of that, 166 were initiated upon motions of the individual bidders (148 pursuant to Act No. 40/2004, and 18 pursuant to the new act, Act No. 137/2006). The Competition Office instigated 94 proceedings at its own initiative (68 pursuant to Act No. 40/2004, 24 pursuant to Act No. 199/1994, 2 pursuant to Act No. 137/2006). A total of 199 cases ended by the issuance of first-instance decisions. Of that, 129 were decisions on merit, and 70 proceedings were terminated on procedural grounds.

Fines were imposed in 50 cases. Preliminary injunctions were granted in 57 cases. A motion for preliminary injunction was dismissed in 16 cases. In 60 cases, contracting authorities were ordered to pay the costs of the proceedings. Forfeited bonds paid into the state treasury amounted to more than CZK 15 million.

There is a fairly high number of appeals against first-instance decisions filed by parties to the proceedings. As of December 4, 2006, 141 such appeals had been filed. In the course of the same period, a total of 112 second-instance decisions had been rendered; of that, in 87 cases, the appeals were dismissed and the first-instance decisions upheld. In 2006, a total of 29 actions against decisions of the Competition Office in the area of public procurement were filed.

STATE AID

Even in 2006, the Competition Office continued intense consultations and advisory discussions with providers and beneficiaries of state aid in the Czech Republic, as well as the European Commission. The Competition Office provided a total of 80 opinions to the Ministry of Industry and Trade, and issued 46 opinions under 18 notifications to the European Commission. In addition to that, the Competition Office replied to several hundred queries concerning state aid.

A great success was in particular the decision of the European Commission confirming the correctness of the Competition Office's decision of April 2004 concerning Třinecké železárny. The Czech Republic has generally been very successful in the notification of state aid to the European Commission as none of the EC's decisions has thus far been negative.

The Competition Office has further prepared a notification of a new regional state aid map for 2007 through 2013, subsequently approved by the European Commission. All of the regions in the Czech Republic, except for Prague, will be eligible for regional aid according to the map to the maximum extent of 30 to 40% of eligible cost. The Prague region will be eligible for regional aid in 2007 and 2008 to the maximum extent of 10% of eligible cost. After 2008, the Prague region will be no longer eligible for regional aid.

Much debated topics included the introduction of free high-speed internet by municipalities, and state aid in the sale of municipal

housing stock. As regards privatization of municipal apartments for more favorable prices, the Competition Office drew attention to the options available under the law, and subsequently sought an increase of the *de minimis* threshold from the European Commission. The Competition Office proposed that the *de minimis* threshold be increased up to EUR 300 thousand (approx. CZK 8.4 million), which would resolve the situation of a greater number of sales. The European Commission did not agree, however, and increased the threshold to only EUR 200 thousand. Therefore, in case of really large houses where the aid may easily exceed the maximum aid limit available under the *de minimis* rule, sale of individual apartments to the tenants thus remains a suitable solution.

Number of opinions and their outcome vis-à-vis investment incentives for the MIT in 2006

Total number of opinions requested	92
Opinion issued	80
– of that	
– recommendation to reduce aid level	6
– recommendation not to provide aid	3
– notification to the EC required	3

As of November 30, 2006

PRESENTATION OF THE OFFICE IN THE MEDIA

In 2006, the Competition Office continued to develop its concept of openness and transparency vis-à-vis the public. Nearly 120 press releases on important decisions have been issued, the most important topics were presented at press conferences or briefings by the Chairman himself. Monothematic information bulletins issued six

times a year and intended in particular for the professional public, journalists and students, focused *inter alia* on public procurement, 15 years of competition law in the Czech Republic, competition advocacy, international relations and state aid. An international conference, Competition and Competitiveness, held in Brno in



November, was also dedicated to the anniversary of Czech competition law. At the conference, a video clip was premiered that the Competition Office would like to use to increase the general public awareness of the rules and importance of competition. Chess play is used in the video presentation to explain the principles of competition and the most frequently encountered forms of its violation. The preventative role of the Competition Office is stressed.

The work of the Competition Office continues to be a much debated topic in the Czech media. In the monitored press, on TV and radio stations and news servers, nearly 6,000 articles concerning the activities of the Competition Office were featured. Interviews with the Chairman of the Competition Office were printed in all the important daily newspapers and economic journals throughout the year. Martin Pecina was also a guest on the main TV debate program of national TV, *Otázky Václava Moravce*.

INTERNATIONAL COOPERATION

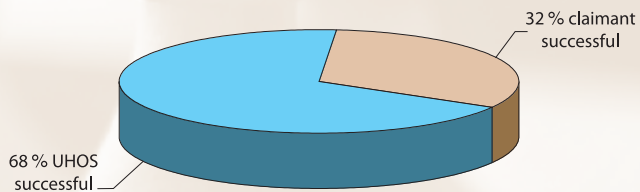
Activities in European competition organizations, European Competition Network and European Competition Authorities and their working groups continued to be at the core of international relations maintained by the Competition Office in 2006. Of importance was also the participation of a delegation from the Competition Office at the annual conference of the International Competition

Network (ICN) in Capetown where the Chairman, Martin Pecina, successfully presented the implementation of a number of ICN recommendations in the area of merger control into the Czech legal framework. Bilateral relations were further strengthened through visits made by the Chairman to his counterparts in Germany, Italy, Ireland and Hungary.

JUDICIAL REVIEW OF DECISIONS

In the area of competition, the Competition Office was successful in proceedings before the Regional Court in Brno in 13 cases, while six claims were found to be substantiated.

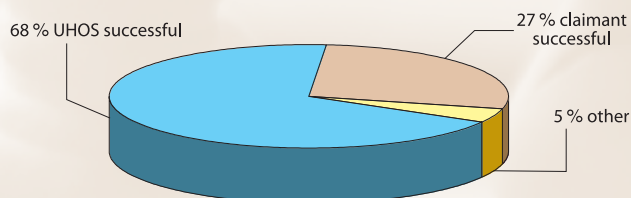
Success rate of judicial review of ÚOHS's decisions in the area of economic competition in 2006



As of December 1, 2006

In the area of public procurement, the Regional Court in Brno issued a total of 22 rulings. ÚOHS was successful in 15 cases, and six decisions were quashed by the court. In one case, ÚOHS was ordered to decide, and has done so since.

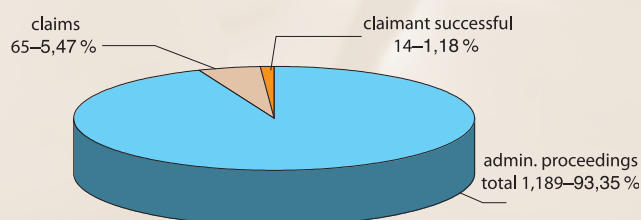
Success rate of judicial review of ÚOHS's decisions in the area of public procurement in 2006



As of December 1, 2006

The diagram below shows the number of administrative proceedings conducted by ÚOHS in the area of competition over the last fifteen years as compared to the number of claims filed, and the percentage of court rulings in favor of the claimant.

Success rate of judicial review of ÚOHS's decisions in the area of economic competition in 1991–2006



As of December 1, 2006



BUDGET AND NUMBER OF STAFF

Year	approved budget in CZK	staff number limits
2000	63 011 000	114
2001	57 422 000	129
2002	61 549 000	129
2003	69 209 000	129
2004	142 964 000*	126
2005	143 801 000*	123
2006	134 209 000**	123
2007	137 952 000***	124

* of that, CZK 70 million for the new seat of the Competition Office

** of that, CZK 38.707 million for the new seat of the Competition Office

*** of that, CZK 26.163 million for the new seat of the Competition Office, as approved by the Economic Committee of the Chamber of Deputies

NEW SEAT OF THE COMPETITION OFFICE

Shortly after Martin Pecina became Chairman of the Competition Office in September 2005, it was decided that instead of purchasing a plot of land for approximately CZK 7 million and constructing a new building in a “greenfield” fashion, the Competition Office would acquire, without consideration, the former army building at třída Kpt. Jaroše No. 7 in Brno. In early February 2006, the lengthy administrative process of transfer of the building of the Municipal Military Administration was completed. ÚOHS obtained the building dating back to 1895 together with a plot of land. The planned reconstruction and construction is divided into two stages. First, the existing building will be reconstructed; the envisaged completion date is spring 2007. The second stage includes the construction of an annex so that the building could accommodate all of the Brno employees of the Competition Office (approx. 110).

In early March 2006, following a single-criterion open tender procedure, a contract for the preparation of the complete project documentation and building supervision was signed with MORAVIA CONSULT Olomouc (the lowest bid price – CZK 3.5 million). Half a year later, the building permit for the first stage of construction came into force. In late September, following a single-criterion open tender procedure, a contract was signed with the main contractor



for the first stage of construction, KALÁB Olomouc (the lowest bid price – CZK 77.9 mil.). Construction was commenced on September 25th, and is planned to be completed in March 2007, and facades are to be completed by May 30, 2007. The annex is to be built by the end of 2007. After more than 16 years of the existence of the Competition Office, all of its Brno-based employees are to work in its new seat, rather than rented premises, as was the case until now.

AGENDA 2007

I. ANTITRUST

1. Act on Electronic Communication

The scope of operation of competition law in the telecommunications area was limited pursuant to Act No. 127/2005 Coll., on

Electronic Communications. This could further impact the ability of the Competition Office to apply community competition law, The European Commission thus initiated the infringement procedure against the Czech Republic. Although the Office repeatedly filed motions for the removal of the offending provisions, it only won the support from

other government agencies when the Commission took the said step. An amendment abrogating the provisions restricting the scope of application of competition law was prepared by the Competition Office and submitted to the government in the fall of 2006; It is expected to be approved by the Czech Parliament in early 2007.

2. Leniency program

With a view to the intent of the European Commission, to significantly modify the *leniency program*, i.e., a program defining conditions on which the Office may refrain from imposing a fine (or reduce a fine) on a party to a prohibited agreement who enables the Competition Office to prove the existence of such agreement, it will be necessary to revise the statement of the Competition Office referring to the *leniency program*. The scope of such revision and its timing depend on the activities of the Commission but are expected to take place in the course of 2007.

3. Rules for proceedings before the Competition Office

In 2007, the Competition Office began working on an amendment to the Competition Act that is to re-codify procedural provisions governing proceedings before the Office. The new Rules of Administrative Procedure which apply to administrative proceedings before all bodies of the state administration are not conceived for proceedings concerning offences. Moreover, proceedings before the Competition Office are so specific that they frequently require a completely separate provision of law. Legislative work is to result in a draft amendment providing a comprehensive provision of law for the rules of proceedings before the Competition Office, largely independently on the Rules of Administrative Procedure. The draft amendment is expected to be completed by the end of 2007.

4. Market monitoring

As in previous years, the Competition Office will continue to monitor the telecommunications market. The Competition Office will monitor the shift from analogue towards digital TV broadcasting, together with the market for TV commercials, as well as railway transport and charge cards. Investigation of the prohibition of cross-border sales stipulated in contracts of many domestic breweries will be initiated. The Competition Office will further focus on internal regulations of individual professional associations and chambers which in its past experience contained many anticompetitive provisions. The procedure employed by Lesy ČR (a forestry company) in the conclusion of contracts with lumberjacking companies will be reviewed.

Even after the administrative proceedings with ČEZ, or rather RWE Transgas, the Competition Office will continue to closely monitor the developments in the gas and electrical power sectors. The investigation of contractual relations of Mostecká uhelná and its customers will be completed.

II. STATE AID

In 2006, the Competition Office prepared an amendment to Act No. 215/2004 Coll. regulating certain relations in the area of state aid. The objective of such amendment is in particular to extend the scope of application of the law to agriculture and fishery sectors. Powers related to state aid are to be exercised by a *coordinating body* – the Ministry of Agriculture in the area of agriculture and fisheries, and the Competition Office in other areas.

The proposed provision of law aims to rectify insufficiencies discovered through the heretofore practical application of the law. For that reason, it newly introduces stronger powers of coordinating bodies in terms of record keeping and application of block exemptions in the area of state aid, and to that end, it also introduces certain new institutes (opinions on proposed state aid, central registry of small-scale aid, etc).

The amendment is further to introduce fines for non-compliance by the provider with the obligation to recover unlawful state aid, and the obligation to enter the provision of small-scale aid into the electronic registry.

III. PUBLIC PROCUREMENT

The Competition Office will focus its educational activities on the new Public Procurement Act – Act No. 137/2006, which entered into force in mid-2006. The act introduces certain new procurement institutes and significantly expands the category of contracting authorities because it applies also to small-scale public contracts. In 2007, the Competition Office will continue to strive to expedite administrative proceedings as much as possible. As regards the imposition of fines, contracting authorities have to be prepared for higher fines in cases of flagrant violations of the law. This applies in particular to contracts where the contracting authorities circumvent the law or act without sufficient transparency.

PF 2007

On the occasion of the 15th anniversary of competition law in the Czech Republic, sports team The Pecina's Fifteen has appeared and played several friendly matches during the second half of the year.

Very best of luck, good health and many successes to all readers of our news-sheet wishes the Chairman Martin Pecina along with all employees of the Office for the Protection of Competition.



