



# The Office and the Czech Presidency of the Council of the European Union

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## OUR OFFICE WILL TRY ITS BEST TO HELP THE CZECH REPUBLIC SUCCEED IN THE TEST OF MATURITY



**Martin Pecina**  
Chairman  
Office for the Protection of Competition

The Czech presidency of the Council of the European Union is undoubtedly a very significant moment in the history of the independent Czech Republic. The Office for the Protection of Competition and its Chairman do not share the opinion of some politicians who claim that this is a marginal, unimportant, or solely administrative event. Hence, our Office will do its best to help the Czech Republic succeed in this test of maturity among European states as much as possible.

It is unquestionable that there is no time for us to pursue or enforce significant changes or priorities in the European Union legislation, for a number of reasons. Not only because the Czech Republic is a relatively small country, but especially since during the period of the Czech presidency new European Parliament elections will be held. This is not a good time to prepare a new legislation, be it on national levels or in Brussels. Also, it is my opinion and hope that this is the time for the increase in importance of institutions like competition authorities whose term does not correspond to that of governments or European institutions.

Among the important topics we will have to deal with on the national level and on the European Union level as well as on the globalized world level is the ongoing process of solution of the economic and financial crisis. A part of this solution, I think, should be a new complex approach to competition. This is one of the reasons why the issues that the Office for the Protection of Competition deals with on regular basis should become an important part of the agenda of the Czech EU presidency. I have to admit I am really looking forward to the first six months of the year 2009.



## CZECH PRESIDENCY OF THE COUNCIL OF THE EUROPEAN UNION

Individual member states of the European Union take turns presiding over the Council of the EU ("Council"). It is not a mere formal issue. It is one of the most important instruments through which member states can affect the image and functioning of the European Union. Member states hold the presidency on a rotational basis according to a schedule broken down into six-month terms based on the principle of rotation and equality. The chronology according to which individual states take over was defined by the General Affairs and External Relations Council during its session that met on 13<sup>th</sup> December 2004. The order was pre-determined up to the year 2020 and the rotational principle was based on countries taking turns according to their size and geographical location.

The state that holds the current presidency of the Council enjoys significant powers. It calls and chairs meetings of the Council, it represents the Council in interactions with other EU institutions and it organizes both formal and informal sessions of the Council. It acts on behalf of the European Union as its speaker in relation to third countries or international organizations and it represents the Community abroad. It also plays the role of a negotiator in the Council where it serves as a mediator among member states in qualified majority decision making. As of the year 1974 when the European Council was founded, the presidency role also includes the possibility to initiate EU agenda.



[www.eu2009.cz](http://www.eu2009.cz) – official website of the Czech presidency

Prior to taking over the presidency, each state must present its priorities and objectives to the European Parliament for its six-month presidency term. This procedure was defined by the 1983 Solemn Declaration of the European Union. The Czech Republic introduced its programme document entitled *Priorities for the Czech EU Council 2009 Presidency* in October 2007.

As of January 2007 the presiding states are associated in the so-called Presidency Trios, within which the countries form the presidency team for their one-year-and-a-half mandate (three countries whose presidencies follow one another). As of 2007, the countries that form their respective Trios must submit to the European Parliament their own national six-month programmes and the 18-month programme that reflects the objectives of all three cooperating states and that shall remain valid over the entire term of the respective trio. The Czech EU Council presidency started on 1<sup>st</sup> January 2009, following France and to be followed by Sweden as of 1<sup>st</sup> July 2009. In the course of preparations of the Czech presidency extensive talks were held with these two countries and their joint trio programme was presented in June 2008.

### Presidencies between 2006 and 2010

- Austria (1<sup>st</sup> half of 2006)
- Finland (2<sup>nd</sup> half of 2006)
- Germany (1<sup>st</sup> half of 2007)
- Portugal (2<sup>nd</sup> half of 2007)
- Slovenia (1<sup>st</sup> half of 2008)
- France (2<sup>nd</sup> half of 2008)
- Czech Republic (1<sup>st</sup> half of 2009)
- Sweden (2<sup>nd</sup> half of 2009)
- Spain (1<sup>st</sup> half of 2010)
- Belgium (2<sup>nd</sup> half of 2010)

It is beyond doubt that the six-month Council presidency, which is only the second presidency held by a "new EU member" (the first one among the new 2004 and 2007 members was Slovenia), is a great challenge for the Czech Republic. The Czech Republic will gain experience both on the level of the European Union and on the international level, where it is going to act for an organization representing 27 European states with almost 500 million citizens.

### Priorities of the Czech presidency

The Czech Republic will preside over the European Union during tough times. In June 2009 elections to the European Parliament will be held and shortly after that the Czech presidency will have to launch the process of the appointment of a new European Commission. Significant role will be played by the issue of institutional framework of the Union, especially the fate of the Lisbon Treaty.

The Czech Republic's motto for this presidency is *Europe Without Barriers* – i.e. Europe that is able to take full advantage of its economic, human and cultural potential thanks to which it can succeed in the global political and economic competition. In the light of the current developments of the financial market and considering the economic growth stagnation it is this challenge that is of utmost importance for the European Union. The process of removal of barriers that prevent the use of the EU's potential must be carried out simultaneously with the protection against illegal activities that endanger the security and interest of Europeans. The said umbrella objectives will be the issues of attention of the Czech Republic during its following six months in the process of realization of three main priority areas: *Competitive Europe*, *Energy and Climate Change* and *Open and Safe Europe*.

### Competitive Europe

Within the key area of competitiveness, the Czech presidency shall focus on a further development of the single internal market that will make use of the benefits offered by the globalized economy in full extent. The Lisbon Strategy for growth



and employment shall become the leading platform for medium-term and long-term management of the new economic situation in the world. Within this context the Czech presidency will promote the development of all freedoms of the internal market, and the improvement of administrative environment for entrepreneurship as well as the promotion of employment and labour market flexibility. Moreover, the process of removal of outer barriers must continue – one can not accept the existence of world trade liberalization slowdown, unfair competition and insufficient protection of intellectual and industrial property rights in other countries.

### Energy and climate change

Another significant issue the Czech presidency will have to deal with is a complex aspect of energy and climate changes. As a part of preparatory negotiations on the Climate-Energy Package the Czech presidency will focus on providing safe, competitive and sustainable energy for Europe.

### Open and safe Europe

The position of Europe as a global player is particularly subject to the development of transatlantic ties. Strong dialogues with the new U.S. administration with respect to security, economy, safety and energy will be of major importance for the Czech presidency. Within Europe the Czech Republic shall launch the *Eastern Partnership programme* that represents a higher level of cooperation with the countries of the eastern dimension of the European Neighbourhood Policy, as well as with the countries of the South Caucasus and the Caspian regions. During the term of the Czech presidency, accession negotiations with prospective members will continue – i.e. Croatia, Turkey and FYROM.

In the contemporary global world external security threats have become to blend with the internal security area. Developing an area of freedom, security and justice is a common interest of the EU in the eyes of the Czech presidency, as it affects the lives of all citizens of the European Union.

## OBJECTIVES OF THE CZECH PRESIDENCY WITH RESPECT TO COMPETITION



**Kateřina Ševčíková**  
Director of the International  
Department  
Office for the Protection of  
Competition

The promotion of competitiveness of EU member states shall be one of the main objectives of the Czech EU presidency within its motto *Europe Without Barriers*. Better protection of competition and cooperation among individual competition authorities as well as cooperation with similar institutions outside Europe can truly play its positive part in supporting competition.

The Office for the Protection of Competition, just like other state administration bodies, started to define its priorities for the first six months of the year 2009 many months ago. Some of them were clear already at that time: especially those that are related to European regulations that will expire during the term of the Czech presidency, or shortly afterwards; and it will therefore be necessary to find out how satisfied member states are with their current wording and to suggest and negotiate on eventual amendments. Other priorities have been affected by a rapidly changing situation on markets, which is why they had to be updated and adjusted accordingly until the start of the Czech

presidency term. Everything has been prepared by now and it is our main task to fulfil our managerial role, which I think is the most important and the most visible role within any presidency. We also have to make sure that the defined elements of the agenda are dealt with and consensus among the member states is achieved.

The venue for negotiations on competition priorities is the EU Council, of course, namely its G12 Working Group on Competition. This group will officially be led by an employee of the Permanent Representation of the Czech Republic to the EU who will prepare the agenda of individual sessions in close cooperation with employees of the Office for the Protection of Competition who are in charge of the particular issues at hand. After negotiations within the working group, the agenda items will be presented to a higher level of the Council of the EU – the Permanent Representatives Committee (COREPER I) and further to the government level.

It is apparent that the greatest deal of expert and detailed work must always be done on the working group level. The role of a negotiator on the side of the presiding state is particularly important in dealing with controversial agenda items. The Chairperson must know the points of view of individual states long ahead. They must negotiate in advance on any reservations, requirements and any compromises. They must make sure that the working group session takes place on a professional and effective level and that it achieves conclusions that please everyone, if possible. Considering the current number of member states, it is an uneasy role, but if we do not underestimate it and if we are well-prepared, I am sure there will be positive results.

Specific priorities of the Czech presidency with respect to competition can be summarized into three categories: closer cooperation among competition authorities from individual member states and the European Commission within the European Competition Network; closer cooperation among competition authorities of EU member states and non-EU member states; and private enforcement of competition law.

European competition authorities (every member state has at least one institution comparable with the Czech Office for the Protection of Competition) and the European Commission formed the European Competition Network in 2004. It serves as a platform for cooperation, exchange of information, regular meetings, organization of seminars and establishment of informal contacts throughout Europe.

The basic conditions of the most important instruments of cooperation within the ECN are defined by the Council Regulation No 1/2003 on the implementation of the rules on competition laid down in Articles 81 and 82 of the Treaty. During the term of the Czech EU presidency we will celebrate the fifth anniversary of the ECN. It will include the obligation stipulated in the Regulation 1/2003, to present a report on the application of the present Regulation, or to propose a revision based on this report, if applicable. In 2008 member states were asked to voice their comments regarding the current application of the Regulation and propose any changes. By May 2009 the European Commission will have prepared a final report for the European Parliament and the EU Council. It will be the task of the Czech presidency to assist in publication and commencement of discussions on the outputs of the report, or in negotiations on legislative changes that will become necessary pursuant to the report. The Office for the Protection of Competition plans to support the initiative that is focused on the promotion of further cooperation within the ECN by hosting the international conference "European Competition Day" in Brno in May, part of which shall be devoted to the fifth anniversary of the ECN and the revision of the Regulation 1/2003.

The area of harmonization of enforcement of the competition law within the European Union also includes the issue of the so-called leniency programmes in individual countries: i.e. programmes that enable undertakings that have been a party to cartels which decide to collaborate with the Office in the investigation of the alleged cartel to avoid fines altogether, or be imposed reduced fines. On the EU level exists a model leniency programme that can serve as inspiration for national-level leniency programmes, and most member states have their own leniency programs they apply in practice. Due to non-uniformity of approaches towards leniency claims in individual countries, claimants have to face serious complications, as a result of which some applicants may choose not to utilize this instrument and the alleged cartel may remain uncovered. It will be our objective during the Czech EU presidency to keep supporting the further convergence of leniency programmes on the EU level.

Another key topic is the support of broader cooperation of European competition authorities and their non-EU

counterparts. This cooperation has been going on extensively both on the informal level and on the level of international organizations, such as the Organization for Economic Cooperation and Development (OECD) and the International Competition Network. However, in situations in which European and non-European competition authorities have to cooperate on investigation of cases of global-scale anti-competitive behaviour (they increase in numbers and they are the most serious ones) a certain level of formalization of mutual relationships and definition of the extent of cooperation and information exchange are essential. In order to achieve the aforesaid, agreements on cooperation in competition matters are concluded between the European Union and the particular non-EU country. Several agreements have already been in force and the parties concerned showed their intention to extend them so that they would cover sensitive and confidential information. Moreover, other countries strive for the conclusion of the said agreements. Active negotiations take place with Canada or South Korea. It will be our objective within the Czech EU presidency to present on the level of the EU Council such cooperation agreements that will ensure effective investigation of cartels and other serious anti-competitive conducts on the global scale without causing any harm to the functioning public enforcement of competition law in the EU.

During the year 2008 the EU saw the expansion of discussions about the private enforcement of the competition law, which is an important complement to public enforcement that is applied by competition authorities. Simply said, the purpose of private enforcement is to make sure that individuals who have been harmed by anti-competition practices can exercise their right to damage compensation. However, many member states do not dispose of sufficient instruments that would promote private enforcement of the competition law; or if these instruments do exist, individuals do not bring their cases before courts. The European Commission decided to promote the private enforcement: in 2008 it adopted a White Paper on damages actions for breach of the EC antitrust rules in which it presents possible solutions with respect to a broader claim exercise in competition. Lively discussions have taken place on the proposals mentioned in the White Paper both on individual national levels and on the level of EU institutions. Many proposals are widely appreciated by some countries and bodies, whereas other proposals are met with radical disagreement. The European Commission also declared its intention to present a binding legislative proposal (possibly a directive) that would govern the whole issue of private enforcement. The Office for the Protection of Competition fully supports this initiative of the European Commission; during the Czech presidency it will do its best to support the proposal for a legal instrument and its fast approval by the working group on competition.

If I were to summarize the main categories of priorities with respect to the activities of the Office for the Protection of Competition during the Czech EU presidency, I would say that we decided to promote cooperation, communication and the beneficial effects of the protection of competition on individuals. It is my opinion that these objectives are fully in line with the most important role that any presidency shall play.

## STATE AID ISSUES WITH RESPECT TO THE EU COUNCIL PRESIDENCY



**Kamil Rudolecký**  
First Vice-Chairman  
Office for the Protection of  
Competition

The Czech presidency will undoubtedly be significantly affected by the ongoing financial crisis. State aid is one of the possibilities how to eliminate the effects of this crisis. Therefore it is logical to assume that the issues of compatibility of state aid forms applied specifically for this very purpose will be “on a daily agenda”. Prior to the initiation of the Czech presidency the *Temporary framework for state aid measures to support access to finances* was adopted by the European Commission. Having adopted this document, EU member states acquired an instrument the purpose of which is to overcome the current financial crisis, especially with respect to subjects that are affected the most due to limited access to credit resources.

This Temporary framework introduces several temporary measures that will enable the member states to tackle the exceptional problems that companies have to face now in obtaining financial resources. Once the Commission approves the state aid scheme (without the necessity to notify every single case) member states will be entitled to provide the aid in the following forms:

1. *subsidized loans* (e.g. for the financing of environmentally friendly products that comply with, or even exceed, the standards for environmental protection),
2. *loan guarantees in case of annual premium reduction*,
3. *risk capital for SMEs* up to the amount of EUR 2.5 million (instead of the current amount of EUR 1.5 million), provided that at least 30 percent (instead of the current 50 percent) of the funding of the investment come from private investors,
4. *cash grant not exceeding EUR 500,000*.

All the abovementioned measures are limited by 31<sup>st</sup> December 2010. Another restriction is represented by the fact that this form of aid can not be utilized by companies that had been in difficulty prior to 1<sup>st</sup> July 2008. This Framework also dictates that member states ensure that detailed reports regarding the granting of aid covered by this program be submitted. Based on these reports and economical situation the European Commission shall evaluate the overall situation and take any necessary measures.

### Aid to banking sector as a part of financial crisis measures

The crisis has had and will have significant impacts in particular on the EU banking sector in the whole. The interbank loan market practically froze and financial institutions experienced a decrease in access to available resources. In this regard the European Commission has adopted special rules for the support of the banking sector. It consists in the following:

- Communication from the Commission on the application of state aid rules to measures taken in relation to financial institutions in the context of the current global financial crisis (of 25<sup>th</sup> October 2008),
- Commission Communication on the Recapitalisation of financial institutions in the current financial crisis (of 5<sup>th</sup> December 2008)

The Czech Republic has extensive experience with tackling banking sector crisis from the past. State aid was utilized to prop up several banks. It is fair to say, though, that even though it was a systematic crisis in the Czech Republic resulting from market economy transition, the Commission did not consider the arguments that it was a serious and extraordinary fault in economy when evaluating the compatibility of the measures. In the current situation the Commission did argue in this way with respect to compatibility.

The Communication can be applied for systematic crisis solutions and cases particularly significant to the system, *ad hoc*. The objective is to calm down savers that they will not lose their money and to prevent them from massive withdrawals (the so-called *bank run*). Specifically speaking, this consists in a support in the form of guarantees and recapitalisation of financial institutions, whilst the recipients of this aid shall be selected based on unbiased and non-discriminatory criteria.

These measures should be temporary and they should be applied until the financial markets and institutions regain their trust. Every six months the member states shall review the justification of the guarantees and recapitalizations that were carried out. These measures must be structured and sufficient and planned, so that they avoid undue negative effects on competition and other member states. Hence, it is necessary that financial institutions that are recipients of the aid carry out restructuring and offer compensatory measures to limit distortions of competition. The aid recipients shall play a very significant part in the remedy of the situation, and they can not apply aggressive business strategies and they can not expand with the help of the state aid.

In order to facilitate cooperation with member states the Commission will attempt to adopt a decision within 24 hours, if necessary.

During the course of the Czech presidency we can expect that further rescue measures will be taken, not just in the banking sector but also in the production sector. That said, one can assume that we are seeing multitudes of all kinds of aids. However, it will be very important to acknowledge that state aid does not cure everything. It can only be a temporary solution until we manage to restore balanced market conditions and the mutual trust of market players. Snap and ill-judged utilization of aid measures can be counterproductive – it can cause the decrease in motivation of individual market players and it can worsen the crisis.

During the Czech presidency the state aid reform process shall continue in line with the Action plan. Its main elements are minimization and the suitable targeting of the state aid measures. Its objectives include a revision and reform and review of all legal instruments with respect to state aid, so that they can be simplified and less complex.

The revision has already taken place in the following areas:

- Research, development, innovations
- Regional aid
- Risk capital
- Environment
- State aid in the form of guarantees
- Communication regarding interest rates
- Services of public interest
- “Super” block exemption (ca. 70 % of aid cases can be resolved without EC assistance)

Currently works are in progress or will be launched on guidelines in the following areas:

- Cooperation between national courts and the European Commission with respect to state aid issues
- Direct business taxation
- State aid to public service broadcasting
- Short-term export credit insurance
- Air transportation guidelines (liberal approach of the European Commission towards regional airports)
- Seaports and their infrastructure

It is expected that the revision of the procedural rules will take form only via the so-called best practice guidelines. It is a document that shall govern and describe practical communication between a member state and the European Commission in the course of negotiations on the possibility to provide state aid. Plus, it shall speed up the flow of information and the assessment of the whole case.

During the Czech presidency an international conference will be held. It should focus on practical problems related to the application of state aid rules from the point of view of a member state and the exchange of experience in applying new state aid rules, including the “crisis plan rules”.

## PRIORITIES IN THE AREA OF PUBLIC PROCUREMENT



**Andrea Schelleová**  
Second Instance Decision-Making Department,  
Office for the Protection of Competition

The basic priority for the Czech presidency with regard to public procurement is the achievement of an agreement on a proposal for a directive on coordination of procedures of public procurement for construction works and services in the area of security and defence. The Czech presidency, just like the preceding French presidency, will also focus on eventual new initiatives of the European Commission with respect to granting of concessions and with respect to public-private partnership, which should be based on the work that has already been done. It shall also be necessary to review the positive role that public procurement could play with respect to

policies that affect small and medium-sized businesses, innovations and environment (ecological public procurement). Last but not least, efforts will be made in terms of support of the ambition to award public contracts by using electronic means (e-procurement).

For the time being, the main topic on the agenda of the meeting of the Council of the EU working group for public procurement is a proposal for directive on defence procurement – the so-called defence directive. The purpose of adoption of this directive is to prevent the excessive use of a factual exemption from the application of award directives under the Article 296 of the EC Treaty. Under this article any member state can introduce measures that are deemed necessary in order to protect its key security interests with respect to the production of arms, munition and war material and trade thereof. The Article 296 of the EC Treaty enables military equipment to be exempt from single market rules and its essential purpose is to prevent consolidation of the European arms industry. It is considered by many to be a necessary prerequisite for the creation of truly functional European defence equipment market.

European arms markets are characterized by their fragmentation. Since the 1990s the EU has started to realize that this fragmentation affects economy for several reasons:



- a) Defence spending has decreased by 50 percent over the last 20 years due to changes in geopolitical developments (the so-called "Peace Dividend"), as a result of which we can notice a decrease in revenues and employment and investments into research and development. For the time being, however, we can not expect that defence spending would increase again.
- b) Costs related to new armament systems development have increased so much that even big member states can not easily afford to bear these financial costs.
- c) The creation of new structures of armed forces since the end of the Cold War led to a decrease in the numbers of conventional equipment, but also to new requirements regarding the quality of new defence capacities.

Therefore, it is the objective to achieve better cost effectiveness which should help national budgets and industries, and thanks to which the armed forces will be provided with the best material possible.

The establishment of the European Security and Defence Policy calls for the development of the necessary capacities that require efficient European industry. This shall be achieved through the development of European technological and industrial base in terms of defence and continuous creation of the European defence material market. Both of the aforesaid shall promote capacities that are necessary so that we can be able to face the global tasks in terms of defence and new security challenges.

### Article 296 of the Treaty

Public contracts in the area of defence procurement fall within the scope of the Directive 2004/18/EC (Article 10), with the exception of the Article 296 of the EC Treaty that governs exceptions from EU regulations regarding public procurement due to national security matters. In reality, however, member states apply the provisions of the Article 296 of the EC Treaty systematically in order to exempt almost all defence contracts from EU procurement rules. Similar situation can also be seen on the market with non-military security material that keeps increasing in economic importance. In both cases member states often refer to the Article number 14 of the Directive 2004/18/EC, in order to bend the Community rules. Most contracts in this area are therefore awarded in line with national regulations and procedures. Statistics from the years 2000 to 2004 show that 15 member states published only 13 percent of all defence material contracts in the Official Journal of the European Union, whereas this figure ranges between 2 percent (Germany) and 24 percent (France). The exemption from the liability that should be limited to exceptional cases under Community legislation has become a rule in reality.

This generally used procedure of some member states violates the case law of the European Court of Justice that ruled that the application of Article 296 of the EC Treaty should be limited to clearly defined and legitimate exceptional cases. The European Commission adopted an interpretative communication based

on the ECJ ruling explaining how to proceed in similar cases in the future.<sup>1</sup>

### Public procurement defence directive

This new proposal for a directive should reflect doubts of some member states as to whether the current Directive 2004/18/EC reflects the special nature of military public procurement sufficiently. This proposal for a directive was submitted on 5<sup>th</sup> December 2007 along with a proposal for a directive on simplification of transfers of goods for defence purposes within the Community and with Commission communication. Both directives strive for the creation of a joint European defence equipment market with the use of instruments that must be dealt with separately.

The purpose of this proposal for a directive is to establish a unified European legal framework that could enable all member states to apply the Community legislation without endangering their own national security interests. In doing so the need to apply the provisions of the Article 296 of the EC Treaty by member states shall decrease. In other words, the Article 296 of the EC Treaty shall remain in effect but the use of the exemption shall be limited to truly exceptional cases, as it is stipulated by the EC Treaty and as it is required by the ECJ. Therefore, the provisions of the Article 296 of the EC Treaty would be applied only to cases in which special provisions of the new directive are not sufficient to protect national safety interests of individual member states.

On 17<sup>th</sup> November 2005 the European Parliament (EP) adopted a resolution on the **Green Paper on defence procurement**. The EP called upon the Commission to propose a directive that would increasingly reflect individual national security interests of member states, develop foreign and defence policies and contribute to coherence within Europe. Moreover the directive preserves the nature of the Union as a "civilian power" and it is to be particularly focused on small and medium-sized businesses that enjoy strong representation in this area.

The proposal for a directive shall not affect the **exemption** stipulated by the Article 296 Para.1 (a) of the EC Treaty. However the provision of Article 9 offers this provision in the form corresponding to public procurement law. Its purpose is to increase legal certainty and to prevent the abuse of the Article 296, or its overuse, respectively. Authorities awarding public contracts will be able to refer to an exemption guaranteed by secondary law.

As far as the **security of information and supply** is concerned, it is important for the awarding authority that a tenderer accepts strict obligations and conditions. However, tenderers can not always accept a definite obligation or they can not present the required evidence, especially with respect to subcontractor entity activities or goods transportation permits. The proposal for a directive contains amendments thanks

<sup>1</sup> [www.europarl.europa.eu](http://www.europarl.europa.eu)

to which tenderers will have more possibilities to fulfil the imposed requirements.

Another significant aspect of the proposed directive is the introduction of a **review procedure** that shall provide tenderers with effective legal protection. This procedure will increase transparency, it will prevent discrimination in the award procedures and it will contribute to actual liberalization of these contracts. The system of corrective measures that is proposed by this directive is essentially based on general directives on corrective measures, whilst respecting particular interests of member states in the process of defence and security procurement.<sup>2</sup>

On 13<sup>th</sup> January 2009 the European Parliament and Council of the EU agreed on the submitted proposal of the directive. This Directive along with the Directive on Simplification of Transfers of Goods for Defence Purposes among the member states, which was adopted on December plenary meeting, constitutes so-called “defence package”. From the economic point

<sup>2</sup> [www.europarl.europa.eu](http://www.europarl.europa.eu)

of view the European companies, including small- and medium-sized firms, national budgets and employment markets should be profiting from this reform. The new Directive should enforce the cooperation between industrial companies, limit the market fragmentation and contribute to the more coherent enforcement of the internal market rules focusing on reducing of prices and increasing the quality of products together with strengthening their competitiveness. Current legislation has not limited sovereignty of particular member states and respected the autonomy of the EU and its cohesion. By request of the European Parliament a new chapter was included, regarding the agreements revision, which should ensure that the public procurement shall be subject to the legal protection and ensuring the transparency and non-discrimination during the awarding process while creating a true internal market.

As far as the issue of public procurement is concerned the European Commission does not plan to present any legislation related to public procurement, as its term is about to expire.

## THE CZECH PRESIDENCY OF THE COUNCIL OF THE EU WITH RESPECT TO THE PROTECTION OF COMPETITION



**Ondřej Dostal**  
Secretary for Competition, State Aid and Public Procurement  
Permanent Representation of the Czech Republic to the European Union  
and  
Chairman of the Council working group on competition during the CZ PRES

Council”) by advisory committees of the Commission pursuant to enabling regulations of the EU Council.

The adoption of competition law proposals by the Council was limited after the 2004 enlargement, with certain exceptions<sup>2</sup> (the monopoly for presentation of legislative proposals is held by the European Commission in this area). Currently in the area of competition law we can expect that a proposal for a regulation or directive<sup>3</sup> is submitted only after the issuance of the Commission report on the application of the aforementioned procedural regulation in the area of cartels and abuse of dominant position, a report on the application of the Regulation on merger control, or with respect to the initiative of the European Commission aimed at the promotion of private enforcement of the competition law. The first of the aforementioned reports is to be presented to the Council and the European Parliament (hereinafter referred to as “the EP”) by 1<sup>st</sup> May 2009<sup>4</sup>. The report on the application of the Regulation on mergers will be presented in July 2009.<sup>5</sup> Both can (but do not *have to*) include recommendations related to any eventual amendments to the abovementioned regulations, which would occur after the Czech presidency (hereinafter also referred to as “the CZ

### 1. Common grounds

The activity of the Council of the EU<sup>1</sup> in the area of competition is currently being affected by two factors. A significant reform of the Community competition law took place prior to the 2004 enlargement, within which Council Regulation (EC) No 1/2003 on the implementation of the rules on competition laid down in Articles 81 and 82 of the EC Treaty and Council Regulation (EC) No 139/2004, on the control of concentrations between undertakings, were adopted. Moreover, numerous competition law instruments take form of implementing regulations of the European Commission (hereinafter referred to as “the Commission”), whose proposals are discussed and adopted outside the Council of the EU (hereinafter referred to as “the

<sup>1</sup> The particular body is the EU Competitiveness Council.

<sup>2</sup> See e.g. the Council Regulation (EC) No 1419/2006 of 25<sup>th</sup> September 2006, repealing Regulation (EEC) No 4056/86 laying down detailed rules for the application of Article 85 and 86 of the Treaty to maritime transport and amending Regulation (EC) No 1/2003 as regards the extension of its scope to include cabotage and international tramp services.

<sup>3</sup> This option is particularly stipulated by Article 83 of the Treaty.

<sup>4</sup> <http://europa.eu/rapid/pressReleasesAction.do?reference=IP/08/1203&format=HTML&aged=0&language=EN&guiLanguage=en>

<sup>5</sup> <http://europa.eu/rapid/pressReleasesAction.do?reference=IP/08/1591&format=HTML&aged=0&language=EN&guiLanguage=en>

PRES”)<sup>6</sup>. Similarly, it is not clear yet whether and in what form an eventual proposal for the private enforcement of the competition law will be presented to the Council. A significant moment in this area is the plenary voting in the European Parliament on the White Paper of the European Commission on this issue; the Parliament shall be in session on this issue in early March 2009. Theoretically speaking, the discussions on the proposal for the new legislative measures could start even during the CZ PRES.

The legislative activity of the Council in the area of protection of competition is not limited to proposals for regulations or directives. This can be proved by the fact that over the last two years the Council has been active in the area of international cooperation agreements with respect to anti-competitive behaviour between the European Community and its significant trade partners<sup>7</sup>. An agreement of this kind is about to be concluded with South Korea, similar negotiations on agreement proposal are in progress with Canada and we can expect that this process shall continue, as the European Commission strives to combat the international cartels.

During the Czech presidency term the aforementioned circumstances can affect the activities of the Council in the area of competition and legislation on the ministerial level, its preparatory body – the EU Permanent Representatives Committee (COREPER) as well as the working group on competition, which is the initial chain link in the process of legislative discussions on a proposal in the Council. The text below deals with the framework and the expected agenda of the said working group.

## 2. Procedural and organizational issues regarding the presidency within the Council working group on competition

### 2.1 Council working group on competition

This working group (its technical classification within the working group nomenclature is G12) is one out of 200 working groups within the Council of the EU. Working groups are staffed by representatives of the member states who are experts in their respective fields and areas; their task is to review legislative proposals of the European Commission article by article and to raise objections, if any. Working group sessions are also attended by representatives of the European Commission and the General Secretariat of the Council, which includes a member of the Legal Service of the Council, who can explain the legal aspects of the legislative proposals from the Community law point of view, if necessary. Working group sessions are convened by the presidency in line with the time schedule of submissions of legislative proposals by the European Commission and the speed at which these negotiations on individual texts take place can be adjusted accordingly.

<sup>6</sup> There is a possibility to focus on the results of the report on the application of the Regulation No 1/2003 within an associated event of CZ PRES, namely the Competition Day that will be held in Brno in May 2009, which can contribute to the formulation of further steps in this area.

<sup>7</sup> The legal grounds for the adoption of these agreements are usually Articles 83 and Article 308 of the Treaty.

Just like other working groups, the G12 presents a report on discussion on a proposal to the EU Permanent Representatives Committee (hereinafter referred to as “COREPER”). The issues of competition, fall within the competence of COREPER I, consisting of deputy permanent representatives of EU member states whose agenda includes the internal market, transport and social issues.

### 2.2 The role of the working group chairperson

Considering the neutral and unbiased nature of the institute of the EU Council presidency, the role of the chairperson is largely that of a discussion moderator within the working group, his or her task is to facilitate discussion among delegations and to find a compromise with respect to controversial items of the particular proposal. His or her task differs from that of a national delegate who attends the working group meeting along with the representatives of other member states and who presents their objections and amendments to the text at hand. The chairperson provides the delegations with an overview of the general status of the situation in the process of proposal discussions, as well as on issues that require further discussion. For this purpose, the chairperson shall constantly be in touch with individual member state representations, the European Commission and the European Parliament.

In order to ensure better effectiveness, the working group chairperson does not only chair formal session, but he or she also conducts both bilateral and multilateral negotiations with the representatives of the member states on their standpoints and possible compromises, with the assistance from the General Secretariat of the Council. In order to provide for clarification of standpoints of individual EU member states prior to a working group session, it is also possible to make use of a written procedure. Provided that the proposal was discussed sufficiently and any controversies were solved on the working group level, and/or in case a technical discussion within a working group is not sufficient to reach a compromise on some issues, the chairperson shall submit a report to the COREPER.

Working group chairpersons receive assistance from the respective departments of the General Secretariat of the EU Council. In case of the working group on competition it is the Department of Competition, Customs Union, Company Law, Intellectual Property and Public Procurement of the Directorate 1 of the Directorate-General C. Just like in case of other Council working groups, the task of the department is to assist in the preparation of agenda for individual sessions and it provides the chairperson with legal standpoints and logistic support, which includes translations and distribution of documents.

### 2.3 Legislative procedure for Community regulations in the area of competition – consultation procedure

The process of dealing with legislative proposals of the Community in the area of competition takes place within the so-called consultation procedure that is governed by Article 192 of the EC Treaty. The consultation process has its roots in the original EC Treaty when the involvement of the European Parliament in the legislative process was rather symbolical (as compared to the current situation) and the European Commission



and the Council were considered to be the “main players”. *The consultation procedure enables the European Parliament to give its opinion on a proposal from the Commission. In the cases laid down by the Treaty, the Council must consult the European Parliament before voting on the Commission proposal and take its views into account. However, it is not bound by the Parliament’s position but only by the obligation to consult it. Parliament must be consulted again if the Council deviates too far from the initial proposal. The powers of Parliament are fairly limited under this procedure, if compared with the so-called EP codecision procedure*<sup>8</sup>. Moreover, the European Economic and Social Committee and the Regional Development Committee may present their opinion regarding the proposal.

### 3. Expected topics for CZ PRES in the area of competition – chronological overview

#### 3.1 Agreement between the Community and South Korea on the cooperation in investigation of anti-competitive practices

The abovementioned agreement is a so-called first-generation agreement that does not enable the exchange of classified information related to the infringement among the parties concerned that is being investigated. Like in other cases of first-generation agreements, we can expect the amendment to conditions of mutual notification, cooperation in the investigation of anti-competitive behaviour that affects the jurisdiction of the other party to the agreement, negative comity provisions and positive comity provisions governing the relationship between the competition authorities of the European Community and South Korea. This category of agreements includes the agreements between the Community and the United States, Japan and Canada. Considering the advanced stage of negotiations with South Korea we may expect that the agreement will probably be submitted during the CZ PRES.

#### 3.2 Agreement between the EC and Canada on the cooperation and exchange of information in investigating anti-competitive behaviour

Unlike the aforementioned first-generation agreements, this second-generation agreement (first of second-generation agreements) enables the exchange of classified information collected during the investigation of anti-competitive practices by the European Commission and the Canadian competition authority. According to the European Commission, this qualitative change is necessary in order to ensure an adequate reaction to global-scale cartel agreements that increase in complexity. In October 2008 the Council adopted the mandate to negotiate this agreement. We can expect that the text will be included on the agenda of particular Council bodies during the second half of the Czech presidency.

#### 3.3 Private enforcement of the competition law

As mentioned above, it is not clear so far what the further development of the European Commission initiatives will look like in terms of the remedy of the unsatisfactory situation of private enforcement of the competition law within the European Union. Both companies and individuals who have suffered

damages as a result of anti-competitive behaviour usually give up their attempts to bring their cases to the courts, especially due to a large number of procedural obstacles. However, the European Court of Justice has ruled before<sup>9</sup> that the full legal force of the EC Treaty would be endangered, should any individual be deprived of their right to seek compensations for damage suffered due to behaviour that limits or distorts competition and the court has ruled that the member states are obliged to provide effective measures for the exercise of right for damages.

In this respect the European Commission issued several documents dealing with possible solutions of the particular situation – the initial study in 2004, the so-called Green Paper in 2005 and the so-called White Paper in 2008. For the time being the White Paper is dealt with by particular committees of the European Parliament and it is expected that the EP will publish its opinion during its plenary session between 9<sup>th</sup> and 12<sup>th</sup> March 2009 with respect to the most appropriate framework for the eventual future legislation, as well as instruments it shall consist of.

In the meantime the European Commission included this issue (as the only topic from the area of competition) on the list of priority and strategic initiatives of its working programme for the year 2009<sup>10</sup>. This document also includes an overview of possible development alternatives: *a) taking no further action, b) development of optional practical tools/best practices which could be recommended to the member states, c) certain approximation of national procedural rules through the Community legislation (guidelines), and d) full harmonization of national procedural rules through the Community legislation (directive or regulation).*

Another indicia of further development can be the opinion of the EP Committee on the Internal Market and Consumer Protection (IMCO) of 3<sup>rd</sup> December 2008<sup>11</sup> by which the Committee calls on the Committee on Economic and Monetary Affairs (ECON), as the committee responsible for the issue, to incorporate the following call on the Commission into its proposal for a resolution of the EP:

*For the sake of a greater degree of legal certainty and increased consumer protection the Commission shall consider proposing an appropriate mix of legislative and non-legislative measures with common rules and mechanisms that will allow access to full compensation for any individual suffering damage as a result of an infringement of competition law. This opinion also expresses support of some measures suggested by the White Paper of the Commission, which is to include representative actions and opt-in collective actions, better access to evidence for claimants, or the costs of damages actions that do not deter claimants, and other measures for the quantification of damages.*

9 Case C-453/99, *Courage and Crehan*, [2001] ECR I-6297, and joint cases C-295/04 to C-298/04, *Manfredi*, [2006] ECR I-6619.

10 [http://ec.europa.eu/atwork/programmes/docs/clwp2009\\_roadmap\\_priority\\_initiatives\\_en.pdf](http://ec.europa.eu/atwork/programmes/docs/clwp2009_roadmap_priority_initiatives_en.pdf)

11 <http://www.europarl.europa.eu/sides/getDoc.do?pubRef=-//EP//NONSGML+COMPARG+PE-412.282+02+DOC+PDF+V0//EN&language=EN>

8 Cf. [http://europa.eu/scadplus/glossary/consultation\\_procedure\\_en.htm](http://europa.eu/scadplus/glossary/consultation_procedure_en.htm)



## COMPETITION DAY 2009

The *Competition Day* is organized twice a year during individual terms of the EU Council presidencies. It is the most important event in the area of competition and it is also an opportunity to draw the attention of Europe to less traditional places than Brussels or Paris, in terms of competition policy. For the time being there is no prescribed framework, as to how the event shall be organized. Further the *Competition Day* as such was not based on Treaties, but as an informal event that is organized as a part of the Council presidency during which experts in competition law from the EU and member countries meet on a summit level. Over time this event has developed into one- or two-day meeting and most topics that are discussed during the *Competition Day* reflect the most recent developments of the competition law and policy in the EU. However, it is completely up to the presiding state that holds the *Competition Day* to draw attention of all the participating member states not just to general topics but also to some particular topics the presidency finds important. The *Competition Day* is attended by representatives of the European Commission, European Parliament, chairpersons of competition authorities, government ministers from EU member states, as well as representatives of international organizations and leading law firms that specialize in the competition law. The number of delegates is based on the capacities of the host state and topics that can be both general (with general public attending) and specialized (representatives of competition authorities prevail).

The process of preparation for the *Competition Day* starts with setting a date and venue. It is necessary to make plans at least 18 months ahead as the term shall not collide with that of other significant events related to competition (e.g. meeting of the OECD Competition Committee, regular international conferences) or work schedules of representatives of European institutions. Therefore, the Office has decided to hold the *Competition Day* in the congress centre of the Holiday Inn Hotel in Brno on 13<sup>th</sup> and 14<sup>th</sup> May 2009. It is not a coincidence that this important event will be held in Brno. The main reason for doing so was to promote the image of the city and to put it on the symbolical "competition map of Europe". Moreover, it is usual to hold the meetings in the particular competition authority's seat. In our case it is rather different meeting place for the delegates, which makes it even more attractive.

Once a date and venue have been set it is necessary to invite "VIP guests" (European Commissioner for Competition, representatives of the European Parliament) whose work schedules demand to be informed of the event as soon as possible. Moreover, it is necessary to define the agenda and to find the most suitable speakers who are respected experts on the particular agenda topics. Approximately three months prior to the event, there comes the time for practical tasks, such as the creation of a website for the event, hotel bookings for a sufficient number of delegates, organization of registration and security measures, or airport shuttles for the delegates, if necessary.

The *Competition Day* and its organization will be the responsibility of the Office for the Protection of Competition (hereinafter referred to as "Office") as the main organizer; the Office will coordinate the process of preparation with the Office of the Government of the Czech Republic. At present we already know the basic format of the *Czech Competition Day*. The opening ceremony will be hosted, as tradition requires, by the European Commissioner for Competition Neelie Kroes and the Chairman of the Office Martin Pecina. The topics of the agenda that the delegates will deal with on the first day are naturally based on the priorities defined by the Office with respect to competition. They shall stress the expert level of the issue of the competition law. According to a preliminary proposal the agenda should be focused on private enforcement of the competition law, the process of unification of leniency programs within the European Union, and the issue of criminalization of cartels, which is, for the time being, a very hot and controversial issue, not just throughout the EU.

The second day shall be devoted to the fifth anniversary of the existence of the Regulation (EC) No 1/2003. The Regulation entered into force on 1<sup>st</sup> May 2004 and it entrusts national competition authorities and courts to apply European competition rules. Currently this Regulation is subject to revision in the form of negotiations between the Commission and individual competition authorities and experts, in order to ensure the maximum level of discussion on all aspects of application of competition rules in practice. We can expect that during the Czech presidency a report on the application of the present Regulation will be adopted and presented to the European Parliament. Simultaneously with the Regulation (EC) No 1/2003 we will also celebrate the "fifth birthday" of the European Competition Network (ECN). ECN was founded as a platform for discussion and cooperation among competition authorities in cases where Articles 81 and 82 of the EC Treaty are applied. The fundamental principles of functioning of ECN are laid down in "*The Commission Notice on Cooperation within the Network of Competition Authorities*" and "*The Joint Statement of the Council and the Commission on the functioning of the network of Competition Authorities*". Particular problems related to the competition are discussed within the ECN and a common approach of expert groups in specific areas is promoted.<sup>1</sup>

The second part of the Brno *Competition Day* shall focus on the most actual topic – current economic crisis and its impacts on the EU member states competition policies. It is expected that issues of harmonization of the state aid rules and competition will be discussed along with the remedial measures which may – in particular cases – save whole industries.

Of course the Office will organize an evening programme that shall take place at the Špilberk Castle in downtown Brno. It should include gala dinner and social programme.

<sup>1</sup> E.g. banking, securities, energy sector, automobile industry, insurance sector, food production, pharmaceuticals, professional services, health-care, environment, telecommunications, media, IT & information etc.

Having to organize the *Competition Day* is also a challenge in terms of logistics, not just in terms of its agenda. Experience of the previous organizers is telling us that delays between speeches or less interesting topics or speakers are forgotten soon, but long delays of poorly organized shuttle service from the conference venue leave negative memories of otherwise perfect event. A topic of its own is the venue as such and the organization of evening programme, in case of a two-day event. This programme is always unique and it is up to organizers how they want to entertain the delegates. The Slovenian presidency held an organized tour of the capital and a gala dinner in a convention centre, whereas the delegates of the Paris *Competition Day* had a chance to enjoy a special tour of the Louvre. Even though our Office can not offer such unique venues that could compete with the Louvre, representatives of our Office and other organizers will do their best to ensure that the Brno *Competition Day* is an honourable event of the Czech presidency that all

delegates will have good memories of. It is understandable that every last detail of organization has to be considered: be it the time schedule of arrivals of delegates and their accommodation, or the provision of suitable refreshments for coffee breaks or smooth and qualified interpreting.

We hope that our Office will be able to prepare the Czech *Competition Day* to make it a successful event attended by experts covering the most interesting issues of the current events, and a good opportunity for sharing experience and contacts in a dynamically developing area of the competition law. The purpose of the *Competition Day* meetings is not just the exchange of opinions among experts in competition, but also – thanks to extensive media attendance – the promotion of awareness of the activities of European competition authorities and their involvement in the active cooperation with the European Commission and the Council of the European Union.

## COOPERATION WITHIN THREE CONSECUTIVE PRESIDENCIES



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The presidency of the Council of the European Union (hereinafter referred to as “the Council”) is based on a principle of rotation of member states, which means that member states take turns presiding over the Council every six months. In order to provide the continuity and harmonization of joint European policies in particular areas, the institute of “Presidency Trios” was introduced. The Presidency Trio is an association of three consecutive presidencies that cooperate to make sure their eventual disputes in terms of their respective priorities do not affect the smooth functioning of the European Union. Pursuant to a decision of the Council of 1<sup>st</sup> January 2007 that reacted to the accession of two new member states, the Czech presidency falls under the Presidency Trio consisting of France, which presided over the EU in the second half of the year 2008 and Sweden, which will preside over the EU in the second half of the year 2009, i.e. after the Czech Republic. The member states are not randomly chosen: the selection process reflects the idea that the Trio shall include one big member state with previous presidency experience and one of new member states.

Czech Prime Minister Mirek Topolánek, Deputy Prime Minister for European Affairs Alexandr Vondra and Minister of Foreign Affairs Karel Schwarzenberg, along with the French Secretary of State for European Affairs Jean-Pierre Joyet, Swedish Minister for Foreign Affairs Carl Bildt and Swedish Minister for European Affairs Cecilia Malström agreed on the common direction of all three six-month presidencies: **reform**. France, the Czech Republic and Sweden preside and will preside over the EU at a time when new institutional changes are about to become effective, as stipulated by the EU Reform Treaty.

A Presidency Trio cooperates especially on formulation of priorities. It is essential that the signal sent by the three presidencies should be clear and understandable; and in the ideal case the particular topics of the three presidencies shall complement one another; they shall not overlap nor contradict. One could assume that the coherence of the French and Czech presidency is affected by their respective mottos. France launched its presidency with the motto „*Une Europe plus protectrice*“, which means „Europe more protective“, which refers particularly to an attempt to unify immigration policies within the European Union, not to the potential restrictive measures in the area of competition. As opposed to the more protective Europe, the motto of the Czech presidency is „*Europe Without Barriers*“. The main priority of the Czech presidency is the promotion of competitiveness, deregulation and an emphasis on four basic freedoms in the EU (the free movement of persons, services, capital and goods) and the promotion of liberal trade policy. In consequence, this does not contradict the French motto. The priorities of the Swedish presidency are related to those of the French and Czech presidencies and include: climate, energy and environment, growth and competitiveness along with EU budget revision and efforts to build more secure, transparent and open Europe.

Following the general priorities, it is necessary to come up with particular sector priorities and to unify any future steps on the level of competition authorities, as being responsible for participation on Council working groups and for expert reports in the area of competition or state aid and public procurement, which is also the case of the Czech Office for the Protection of Competition (hereinafter referred to as „the Office“). Representatives of the Office repeatedly met with the representatives of the French and Swedish competition authorities in the time of the Czech presidency preparation, in order to coordinate their future steps in the process of legislation initiatives, proposals and priorities that are to be emphasized during the particular presidencies.

During this period of time, approximately one year prior to the commencement of the French presidency, it became apparent that the French and Swedish authorities had their different approaches concerning the coordination of common standpoints<sup>2</sup>. The French approach is based on their long-term experience with the participation in decision-making processes in the EU and strong institutional and financial support of the French administrative system, which is multiple times larger than that of the Office. By contrast, the Office has to rely on preparations and negotiations that generally require a longer period of time, especially as the Office can not assign as many people to work on priority modifications or common attitudes, should there be instant changes.

The representatives of the Office learned, that despite the fact that the French presidency preceded the Czech one, the priorities open for discussion were prepared in the same time as the French, that means half a year in advance.

The representatives of the Swedish authority, who had had experience with the previous presidency that succeeded after France, affirmed the similar experience with French partners, who were, in relatively short time, able to actively engage experts on competition and prepare several possible alternatives for negotiations at once. Thus the Czech Republic and Sweden should be ready to react swiftly.

France, as a strong EU member state that enjoys stable administrative system, can promote its interests much easier and it does not depend on its partners within the 18-month presidency that much. Nevertheless, the Office did not act only as an intermediary between the French and Swedish delegations, but also suggested compromises and presented proposals that would reflect the French ambitions to promote challenging steps without blocking the Council session through the fact the presiding states being different in their opinions in terms of priorities promotion.

The Office has gained a positive experience from both the Swedish tradition of transparency and responsibility towards

the citizens (all priorities and documents are automatically made public, accessible on the Internet and available in Swedish) and the French administrative and responsible approach – even six months before France was to commence its presidency it was not possible to discuss some of the particular priorities, as the French competition authority was not approved to declassify them with respect to its sensitive content and focus on the protection of French citizens interests. During the final stages of preparations for the presidencies an enormous increase in the activity of our offices occurred along with frequent “last minute” changes which were sometimes complicated to implement into the joint presidency framework.

The Office has also gained a valuable experience from the frequent meetings with the French and Swedish colleagues. In this regard, a visit to the Swedish authority in the fall of 2007 proved to be very useful. The size of the office is similar to that of the Czech Office. During the meetings, our Swedish colleagues focused on the importance of long-term planning and preparation, including a creation of financial framework, administrative preparations for the communication with media, close cooperation with other ministries and, above all, practical tips on how to successfully handle working group meetings. We were informed about the problems that may occur if organization of the *Competition Day* is delayed, in case of poor interpreting services or in case of other organizational problems. What should be mentioned is that especially foreign languages skills of our delegates are not to be underestimated. We were told (and we had learned this in practice before) that many delegates use French as the official EU language while attending the working group and send some of their documents in advance in French only while the English translations follow with delay, causing problems for those who don't speak French, intending to read all the background documents in advance.

Despite the occasional differences in opinions, the cooperation with the French and Swedish competition authorities has been really friendly. The Office has the unique opportunity to take part (although not on the highest level) in the EU decision making process and contribute with its experience to the process of formulation of common competition policy. We hope that this experience will help the Czech presidency run smoothly and that the Presidency Trio consisting of France, the Czech Republic and Sweden will master all challenges and difficulties it will face over the next 18 months, not only in the area of competition.

We can conclude by saying that cooperation within the Trios also plays its significant part in cases when the EU must face sudden problems or challenges that one state can not face on its own. We witnessed a fast reaction of France to the financial crisis that already affected Europe and that will certainly be reflected in the modification of priorities of individual presidencies. This is also why meetings with the representatives of the French and Swedish competition authorities are planned for the future, ensuring common approach towards competition issues and prevent any “surprises” that might occur in case of attempts for unilateral adoption of measures that might appear necessary but that could harm the EU competition policy in the long run.

<sup>2</sup> There were two institutions in France dealing with the issues of competition: DGCCRF – *Direction générale de la concurrence, de la consommation et de la répression des fraudes* and *Conseil de la concurrence*. As of 13<sup>th</sup> January 2009 these two institutions were merged as a part of French administration reform, to form *Conseil de la concurrence*. The DGCCRF shall remain responsible only for issues regarding consumer protection.

