



TWENTY YEARS

OF THE OFFICE FOR THE PROTECTION OF COMPETITION

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OFFICE FOR THE PROTECTION OF COMPETITION



OFFICE FOR THE PROTECTION OF COMPETITION

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TWENTY YEARS FROM THE CHAIRMAN'S POINT OF VIEW

The Office for Protection of Competition (hereinafter referred to as “the Office” or “the OPC”) is commemorating an important anniversary, it is twenty years since the establishment of the Office. Twenty years is quite long time to balance. For people is this age a symbol of maturity and also in case of the competition authority I can see partial analogy. In this connection I would like to take a think about the life cycle of the Office and its probable direction in the introduction of this Information Bulletin.

I can say with pleasure that our Office managed to get over “child’s illnesses” and now is indispensable subject that supervises over the market and has crucial importance for the Czech economy. On its way to “maturity” it passed through many changes. The greatest challenges were represented by dissolution of Czechoslovakia in the very first years of the Office’s existence as well as the accession to the European Union in 2004. In the legislative area years 2001 and 2006 were fundamental, because the fundamental legislation on the protection of competition and public procurement came into force. We managed to cope with all these changes successfully, a fact that was also confirmed by recent positive rating of the experts of recognized magazine Global Competition Review.

The Office is anticipating many important “maturity examinations”. In the first place it is the increase in number of staff as well as the increase of budget in connection with the amendment of the Act on the Public Procurement, which is also discussed in public media. It is essential to change not only decision making practice, but we also face a challenge in connection with Office’s human resources policy. Nevertheless I believe that we make the reform up. Looking back and reminding myself of challenges, that I or the other employees had successfully faced, I am convinced to have a reason to be optimistic.

Petr Rafaj

Chairman of the Office for the Protection
of Competition of the Czech Republic





20 YEARS OF THE CZECH COMPETITION LAW

Effective competition between the subjects in the market is inevitable for the proper functioning of the market. The competition hinders the companies to stagnate on their past achievement – they have to come with new and better products in order to keep their customers. The success in competition requires long-term investments and in that way it contributes to the innovation, economic growth and indirectly also to the employment. All at once it stimulates the effective allocation and exploitation of limited resource and among others it helps to protect the environment. Fair market conditions also facilitate the success not only to big market players, but also to the small and medium-sized enterprises. Thus functioning competition is in interest of all undertakings that are not afraid of irreproachable competitive fight. The customers benefit from the competition most of all – from larger offer of high-quality goods for better prices.

The purpose of the competition policy is therefore to facilitate fair competition in functioning markets. Indeed it is also important to realize that the competition is not the object itself. Competition policy is primarily a tool that ensures welfare to consumers – it is the main mission, which evaluates its activities.

Competition law in the Czech Republic

Most of the countries are aware of the necessity of the competition policy and its enforcement is generally performed by the independent bodies; in the Czech Republic it is the Office for the Protection of Competition, which has the exclusive competences for application of competition law.

Modern competition law is valid in our country since 1991. It should be noted that from its beginning it was modeled upon the law of the European Union, which enabled the Czech competition bodies to result from the experience of European institutions, mostly from the rich practice of the Court of Justice. On the other hand, the areas of the Czech national legal regulations which varied from European regulations showed as unsatisfactory in long-term perspective and were amended in the accordance with the European model.

This trend was intensified in 2004, when the Czech Republic became the member of the European Union. Since this date the Office is not only inspired by the European law, but also applies it by its own, i.e. it decides not only in accordance with the Czech competition law, but also according to the European law. Czech courts also initiated submission of the preliminary question, which is currently discussed at the European Court of Justice. This judgment will have significant meaning not only for the Czech Republic but also generally for the relationships of the Commission and national competition authorities.

Czech competition law (as well as the European) results from the permission that the effective competition can be destroyed by behavior of the undertakings with significant market power, if they don't apply fair means, or abuse it for their own profits, possibly at the expense of the other undertakings and consumers. As long as there are undertakings in the market that dispose with such market power and are able – by themselves or in the cooperation with others – to destroy fair competition and change basic market parameters in order to gain profits, for example by increasing prices above the market level, the competition authority has the aim to ensure non-abusing of their market power.

Prohibited agreements

The most obvious and serious example of such abusing is cartel – agreements between undertakings, that compete with each other in standard situations. If instead of the healthy rivalry, which in principle brings high quality goods for lower prices to consumers, they agree on joint conduct, the competition stops functioning. Most cases are concerning agreements on prices or market sharing. The European Commission estimates that as a result of cartel agreement the prices rise about 20% at relevant goods and services and the damages caused by this conduct is about EUR 70 billion per year in the European Union.

Extremely serious cartel is agreement on coordination of participation in public tenders (so-called bid rigging). The undertakings, instead of compete with each other by placing most favorable bid, agreed which one of them should win under what conditions. The sense of award procedure is not good, because the contracting authority would not gain the most favorable bid, but one that was agreed by the tenderers and first of all is profitable for them, not for contracting authority. Just bid rigging, respectively manipulation with public tenders at local, not European or global level, is considered by the Office as one of its top priority in cartel area.

Detection of cartel agreements is extremely difficult. One of the most effective tools, used by competition authorities, is so-called leniency programme. It ensures immunity to the cartel participants, who terminated their participation in cartel and submitted to the Office documents essential for cartel evidence, the Office would not be able to gain sufficient information without their cooperation. The undertaking terminating participation in cartel as a first one voluntarily, plead guilty and submit evidence, will not be imposed fine on. In many respects it is very similar to the institute of key witness known from criminal law.

The Office implemented this programme in 2001 and in 2007 it was significantly revised. Next revision is considered in

connection with next amendment of the Competition Act. By that leniency program should be embodied into the Act and strengthen the peace of the undertakings, that intend to apply (currently the program is published in form of Office's notice), and partly connect administrative liability with criminal and unambiguously exclude, that natural persons related to the undertakings sanctioned could be accused in criminal proceedings.

Leniency programme cannot start functioning immediately, the society needs certain time to "become accustomed" to it. After four years of functioning of its modern version we can see the first cases of admission of guilty in case of national bid rigging agreements and we can anticipate continuation of the trend after completion of legislative changes.

Dominant position and more economic approach

Not only "agreed" undertakings but also single company can dispose of significant market power – competition law entitled it dominant. Neither dominant can abuse its power and cause harm to the other undertakings or consumers. The most serious form of such conduct is the effort to exclude from the market other competitors that could bring new, innovative products and services, but are not able to resist the power of dominant.

Whereas the cartel agreements are without any doubts capable to destroy the competition due to coordinated behavior of its participants, and it is necessary to prohibit it, in case of dominant the conduct is on edge, we distinct "healthy" aggressive behavior, as a result of its quality and effectiveness, that support the competition even, if some less effective competitors are forced to leave the market and behavior which abuses its market power and infringes the competition. It is necessary to apply advanced economic and econometric methods in larger extent in order to define market correctly and assess the impact of conduct. This procedure is often called more economic approach.

Similarly to the implementation of the leniency program, also the more economic approach is the long distance run. Nowadays more economic approach is applied more or less by the Office in some complicated conduct suspected for abuse of dominant position and merger control. Also for the future it will be one of the Office's essential priorities.

Sector inquiry

Also unsatisfactory legal framework, for example regularization that impedes the competition development, could often lead to distortion of competition environment. The amendment of the Competition Act from 2009 enables the Office not only to investigate the particular anticompetitive conducts of single companies, but also "maps" functioning of the whole sector – to conduct so-called sector inquiry. The Office is able to deal with all subjects that are active in the area and their mutual relationship, as well as legal framework and other

effects of their activities. The inquiry could result into recommendation for changes, for example legislative one that could remove the obstacles for development of effective competition.

Sector inquiries could be also considered as a new tool of the Office, regarding its purpose, it is considered by the Office as a third area of priorities. In this year, the Office initiated its first large inquiry of energy sector.

Office's priorities

The resources of the Office are very limited, number of employees dealing particularly with competition law is in EU one of the lowest compared to the number of inhabitants. Therefore it is necessary to stipulate clear priorities and enables the effective usage of resources. For the future the ground should be represented by sector inquiries that enable not only detailed map of the market, but also remove long-term competition problems. From the perspective of single investigation the Office will focus on cartels, particularly on bid rigging. At the same time the Office would promote more economic approach in the broadest manner.



Michal Petr
Vice-chairman of the Office





THE OFFICE FOR THE PROTECTION OF COMPETITION IN DATES

1991

One of the first steps for promoting the establishment of market economy in Czechoslovakia after November revolution in 1989 was adoption of law on the protection of competition. The Act of the Federal Parliament on the Protection of Competition which came into force in March 1991 stipulated that the Office for the Protection of Competition in Brno would be responsible for the application of the Act in the Czech Republic. In that time the Federal Office seated in the capital of Slovakia, Bratislava. Headquartered of the Office located in south Moravian metropolis proclaimed among others its independence in its decision making. The Office started its activity on 1 July 1991. Stanislav Bělehrádek was appointed as a first Chairman and afterwards as a Minister for competition.



1992

The enforcement of competition law in the Czech Republic was commended to the newly established Ministry for Competition. The headquarter was kept in Brno, which in the same time became the judicial centre of the country. During the period 1992 – 1994 the Ministry had also its regional offices in Plzeň and Ostrava. The transformation of the Office into the Ministry was related to the privatization process.



1994

In this year the competences of the Ministry for Competition were expanded on the supervision over the public procurement. The reason of the mentioned change was to ensure, that the financial resources, mostly from tax payers, are spend transparently. Together with the aim that some subject are not given advantages over in the process of public procurement.

1996

The Ministry was transformed into the Office for the Protection of Competition. It is central administrative body, independent on the executive power. The Office is headed by a Chairman, nominated by the Government and appointed by the President of the Republic. The term of office for the Chairman is six years, and nobody may serve more than two terms. The Chairman may not be a member of any political party or political movement.

1999

Josef Bednář, who was former vice-chairman, was appointed as new Chairman of the Office by the President of the Czech Republic. He headed the Office until the beginning of September 2005, when his term of office expired.



2000

The competences of the Office for the Protection of Competition were extended again, this time on supervision over the state aid administration in the Czech Republic. From 2000 till 2004 the Office operated as "prolonged hand" of the European Commission, by supervising over observance

on the prohibition of provision of state aid incompatible with legal rules. After the accession of the Czech Republic into the European Union, the Office was entrusted with monitoring of state aid, as well as active assistance to the Czech subjects with the application of European law on state aid. But the decision making practice is done by the European Union.

2004

In May the Czech Republic became the member of the European Union. New legislative rules related to the Office for the Protection of Competition were adopted in the connection with this significant event. Also many acts in Office's competence were amended. The turning points that we can mention were loss of decision making practice in state aid control, significant decrease of turnover thresholds for merger evaluation, or abolishment of individual exemptions for prohibited agreements or abolishment of advantageous for national tenderers.

2005

Martin Pecina was nominated by the Government and appointed by the President Václav Klaus as a new Chairman of the Office for the Protection of Competition in the beginning of September.



2006

The Office for the Protection of Competition co-organised great international conference dedicated to the 15th anniversary of application of competition law in our country as well as the establishment of the OPC. Number of well-known Czech and foreign experts on competition law were present at this important conference. Also chairman of the German Cartel Office (Bundeskartellamt), Ulf Böge was one of the guests, in that time he was head of International Competition Network.



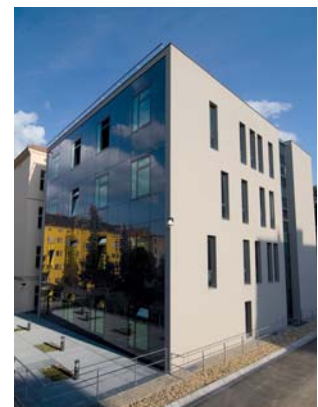
2007

At the turn of March the majority of Office's employees moved into their own new headquarter which is reconstructed building in Třída Kpt. Jaroše 7, street, in Brno. For the Competition Office it was crucial year, because after long sixteen years in temporary rented premises form the Constitutional Court, the Office gained its own building.



2008

All the employees were finally able to work "under one roof", because in spring was finished new additional building at Třída Kpt. Jaroše, street. During the ceremonial opening of new building the chairman of former Federal Competition Office, Imrich Flassik said, that the opening of new Office's headquarters is the most important event of the year for all its employees as well as for the stakeholders.



2009

This year was influenced by the Presidency of the Czech Republic in the Council of the European Union. Within the context of presidency the OPC organized prestigious international conference. In May it was European Competition Day, in which was present elite of experts on competition not only from European Union, but also from overseas. One of the most distinguished guests was Philip Lowe, who in that time was Director General for Competition in the European Commission. Also State Aid day was organised.



Without any doubts the most important event of the year was change of Office's Chairman. After almost four years in the Office leadership, Martin Pecina, left the Office and became the Minister of Interior Affairs at Jan Fisher's cabinet. On 9 July the President Václav Klaus appointed new Chairman nominated by the Government, Petr Rafaj.



2010

In February new the Act on Significant Market Power in the Sale of Agricultural and Food Products and Abuse thereof came into force. The Office for the Protection of Competition was entrusted to control the observance of the Act.

According to the number of expert and public discussions concerning the Act on Significant Market Power, in October

within the joint initiative of the Office and Ministry of Industry and Trade, Ministry of Agriculture and Ministry of Finance was established expert working group, with the aim to evaluate the functioning of above mentioned act.



2011

The Office for the Protection of Competition commemorating the anniversary, it is twenty years since its establishment. To highlight this important jubilee, the Office will host the fifth Saint Martin's Conference in November and December, which will be focused on last trends and developments in competition law. As contrasted to last years the participants of the conference will also discuss the topics of public procurement and state aid.



Kristián Chalupa



INTERNATIONAL COOPERATION

Also in the first days of the Czech Office's activities in 1991 one of the key issues was international relations and contacts with foreign partners. The first Act on the Protection of Competition assigned the responsibility for development of international cooperation to the Federal Office for the Protection of Competition, seated in Bratislava. Imrich Flassik, the first Chairman of the Federal Office, remembered how the first employees of the Office studied the agenda of cartel law from the documents of foreign antimonopoly authorities, German Bundeskartellamt and both US (US Federal Trade Commission – FTC and US Department of Justice's Antitrust Division). From the beginning were also developed contacts with other antimonopoly offices, for example in London, Warsaw, Budapest, Roma or Madrid. The cooperation was also initiated with European Commission that time General Directorate IV, which was responsible for the questions concerning competition. The Federal Office participated on the proposal of Association Agreement of European Union and Federal Republic of Czechoslovakia. First international conference on competition law was organized by the Federal Office in October 1991 in Tatra Mountains. The main presentation was made by prof. Wolfgang Kartte, that time Chairman of the German Antimonopoly Office, which later also worked as advisor of Russian President Boris Jelcin.

Also Czech Competition Authority headed by Chairman, Stanislav Bělehrádek, did not lag behind in the area of international contacts. He is also remembering the intensive cooperation with German and US antitrust bodies. These institutions even further offered valuable help by entrusted its experts with long term business visit as instructors for antimonopoly offices of Czechoslovakia. Initial period of cooperation was also remembered by Timothy Hughes from Federal Trade Commission in June 2011 in his opening speech at 4th Annual Workshop on Economic Issues in Competition Law that was hosted by the OPC.

On 1 October 1994 was established specialised department for the international cooperation at the Ministry for Competition. Its aim was to strengthen and upgrade the presentation of the Czech Republic in area of competition law abroad, especially within the European Union, Organisation for Economic Cooperation and Development (OECD) a European Free Trade Association (EFTA) and ensured the implementation rules to European Agreement. The activity of the department was focused on successive harmonisation of the Czech competition law with the law of European Union and cooperation with the relevant committees within the international organisations.

Since year 2004, when the Czech Republic became the member of the European Union, the most of international activities of the Office for the Protection of Competition is focused

on the meetings with the European Commission, particularly with the Directorate General for Competition responsible for coordination of convergence process of competition rules in member states, as well as in third countries.

The cooperation is also organised in the level of international organisations and networks focused on the questions related to the functioning competition, for example:

- ECN – European Competition Network
- ECA – European Competition Authorities
- ICN – International Competition Network
- OECD – Organisation for Economic Co-operation and Development
- UNCTAD – United Nations Conference on Trade and Development

Not less important is the presentation of the Czech Republic at the other international forums, as CEI seminars (Central European Competition Initiative), IDRC Conference (International Development Research Centre), International Federation for European Law congress (FIDE – Federation Internationale de Droit Européen), Annual Conference of IBA (International Bar Association), meeting of ABA (American Bar Association), International conference of antimonopoly law organised by Fordham Law School in New York, Annual conference for European competition law in German Trier, Conference of publisher Global Competition Review or International Competition Law Forum at St. Gallen University, which is one of the most prestigious events in completion law.

European Union

Representatives of the OPC are actively participating at international conferences where discuss competition issues with other foreign colleagues, and regularly visit main meetings of the heads of competition authorities – in spring under the aegis of European Competition Authorities (ECA) and spring and autumn meetings organised by Directorate General for Competition in European Commission. Within ECA the cooperation is also made with countries that are not members of European Union, for example Norway, Switzerland and Croatia.

In European Competition Network the OPC is active mostly in working groups of Cooperation Issues and Due Process, Abuse of Dominant Position and in sectoral subgroups of Financial Services, Energy, Pharmacy and Consumers. For example in the working group Cooperation Issues and Due Process OPC successfully led the project on parallel application of national and European law.

Within Technical Assistance and Information Exchange (TAIEX) the European Commission delegated the OPC's experts as

lectors, representatives of experienced competition authorities, for educational meetings organised for the support of partner countries when applying and enforcing European legislation. The Office's representatives had the opportunity to present own experience with enforcement of competition rules at conference in Albania, Serbia and Baltic countries. In the autumn of 2011 the representatives of Cyprus Antimonopoly Office will come to Brno for one week study visit within TAIEX programme.

The OPC and the Presidency of the Czech Republic of the Council of the European Union

The important part of the Czech role during the presidency in the first half of 2009 were the issues dealt by the Office for the Protection of Competition and focused on complex view on the competition and strengthening the role of antimonopoly offices in the time of financial and economic crises. One of the main goals of the Czech Presidency, in context of the motto "Europe without barriers", was competitiveness of member states in the European Union.

EU2009.CZ

České předsednictví Evropské unie

2009



In the field of competition the Czech Presidency succeeded by achieving the approval of final version and signature of the agreement between Korea and European Union on cooperation in the matters of anticompetitive conduct. The Office was also active in the working groups of European Competition Network (ECN) and in some of them enforced its own topics to be discussed and solved. The three experts of the OPC also took an important role of the rapporteur in advisory committees for mergers and antitrust. During the Czech Presidency the Office for the Protection of Competition organised number of important conferences with foreign

participants. One of the most prestigious was State Aid Day organised in April 2009 and above all the European Competition Day a month later, with almost 300 experts from more than 30 countries including the highest representatives of the European Commission and foreign competition authorities. The most distinguished guest was Director General of Competition in the European Commission, Phillip Lowe. After the conference was held the first and only Plenary Meeting of European Competition outside Brussels in the OPC's premises.

OECD – Peer Review of the Czech Republic

In the period of November 2007 till May 2008 the Office for the Protection of Competition had undergone the detailed review of competition law and policy within the OECD Peer Review. It is one of the most prestigious examination in great and depth complexity and detachment of reviewed subject. The results were presented at public three hours Peer Review of the Czech Republic at Competition Committee of OECD in June 2008. The examination was very successful. The examiners positively commented the development of Czech competition policy and enforcement of competition law in the Czech Republic and Office's activities at national level as well as international level. The final publication of OECD on the development of competition law and policy in the Czech Republic is the valuable verification that the OPC is respected institution enforcing competition law.

Bilateral relations

The Office successfully develops also bilateral relationships with competition authorities all around the world. It is mostly based on joint exchange of experience and opinions. In last years the cooperation was strengthen with Austria, Bulgaria, Estonia, Croatia, Latvia, Lithuania, Hungary, Poland, Romania, Slovakia, Slovenia and Switzerland through so-called Marchfeld Competition Forum. As one of its initiative are the symposiums organised by the Research Centre International Economics (FIW – Forschungsschwerpunkt Internationale Wirtschaft) in Innsbruck. Innsbruck's meetings are very important for the further development of the competition policy in central Europe.



Milena Marešová
External Relations Department



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OVERVIEW OF THE OFFICE IN THE AREA OF COMPETITION

The Czech Office for the Protection of Competition, the direct predecessor of today's Office for the Protection of Competition, was established by the Act no. 173/1991 Coll., which came into force on 26 April 1991. At the time was almost two months present the first modern Act on the Protection of Competition (63/1991 Coll.), which was also supervised by the Federal Office for the Competition and the Office for the Competition of the Slovak Republic.

The Office started to operate in very unpretending conditions on 1 July 1991, five days later was the first chairman, Stanislav Bělehrádek, appointed. In past two decades the Office was temporally transformed to the Ministry for Competition, gained another three competences and issued almost twenty thousand of decisions that in some cases significantly influenced the Czech economy.

In the long term the OPC places emphasis on the protection of competition, because antitrust decisions have the significant impact on the national economy. The current Act on the Protection of Competition (143/2001 Coll.) recognises three main issues, that are controlled by the OPC. These are the prohibited agreements between undertakings, abusing of dominant position and control of concentration (mergers).

On the occasion of the 20th Anniversary we issue the summary of the most important cases. The selected cases are all cases of prohibited agreements and abusing of dominant position, in which the Office in the first or second instance imposed fine higher than CZK 1 million, and also assessed concentrations of undertakings, that were prohibited or approved with commitments, or were fundamental for the Czech economy. The aim of case summary is to map the Office's activities from the historic point of view. Therefore there are also mentioned decisions, that were overruled or changed by the second instance or court, and from the legal point of view are irrelevant.

Above all the summary shows increase in complex case assessment. This is mostly caused by impact of court judicature on the decision making practice of the Office. In competition cases the courts request extensive evidence and precise law justification and quality requirements enormously raised in past years. Restrainedly we can say that the decision which was approved by the court ten years ago nowadays could not be issued by the Office. It is general trend, noticeable in all Europe, and pressing the OPC to consider carefully, whether it has evidence and data which enable to initiate administrative proceedings and issue decision.

Prohibited agreements

Prohibited agreements between undertakings, formerly the agreements restricting competition, are one of the most

serious delicts in competition law. Especially harmful are cartel agreements, thus agreements of price fixing, market sharing, customers or deliveries between undertakings on horizontal market. Detection and elimination of prohibited agreements is the main objective of competition authorities, because its impact on the competition environment is negative. It causes increase of prices, decrease of quality and possibility of choice for final customers. Prohibited are also vertical agreements between undertakings, for example resale price maintenance, although in compare with cartel agreements its harmfulness is much more lower.

Important cases of prohibited agreements

1992

The fine in the amount of CZK 2 million was imposed to companies Barum Otrokovice, spol. s.r.o. and Barum Centrum Praha, spol. s.r.o. (in first instance the fine was only 50 thousand) for alleged vertical agreement – favoured one of its wholesale customers. The Supreme Court in Prague overruled this decision one year later.

1994

The companies Balírny Tchibo, Balírny Douwe Egberts were fined in the amount of CZK 21 million for concerted practices on increased of coffee's price in July and August 1994. The fine was reduced by the second instance decision to CZK to 14 million. The Supreme Court in Prague cancelled the fines in March 1997.

The Office imposed sanction in total amount of CZK 3.205 million for alleged vertical agreements between undertakings Rostex Vyškov s.r.o. (CZK 1.5 million) and Rovel spol. s.r.o. (CZK 1.705 million). The first instance decision from September 1994 was changed by the Minister in May next year (only Rostex was fined). The fine was overruled by the judgment of the Supreme Court in Prague in October 1998.

The company Shöller zmrzlina a mražené výrobky spol. s.r.o. and Benzina a.s. were fined for prohibited agreement on exclusive dealings in total amount of CZK 1.2 million (each company 600 thousand). The decision was confirmed by the Chairman, but year after it was overruled by the Court.

Taxi Guild Karlovy Vary was fined by the Ministry for Competition in amount of CZK 1 million for concluded prohibited agreement on price rates of taxi services in town Karlovy Vary. The agreement included the obligation to observe the stipulated prices. The Minister reduced the fine to CZK 100 thousand.

In 1994 the Czech Pharmaceutical Chamber adopted Rules for certification of attestation for exercise of private

pharmaceutical practice. The rules were different for different applicants and some applicants were directly excluded. The Czech Pharmaceutical Chamber was fined of CZK 1 million. The Minister reduced by his decision the fine to half. The fine was cancelled by the Court in 1996, the action filed was rejected in merits.

1996

Financial sanction of CZK 60.25 million was imposed on companies participated in cartel of fuel distribution Benzina, a.s. (50 mil) Benzina, s.p. (10 million) and Čepro (250 thousand). The reason was coordination of prices of fuel. The second instance decision reduced the fine to 10 million for Benzina a.s. and 2 million for Benizna s.p. The decision was overruled by the Supreme Court in Olomouc in April 1997.

The fine of total amount of CZK 2.5 million was imposed to companies Česká pojišťovna, a.s. (1 million), CONSTRUCT A&D s.r.o. (1 million), Škoda automobilová a.s. (250 thousand), ŠkoFIN, s.r.o. (250 thousand) for giving producer Construct an advantage over the other customers in insurance contracts. The decision was overruled by the second instance.

The Office imposed fine of CZK 1.25 million to companies SVÚM a.s. and Škoda WELDING s.r.o., České dráhy a.s., Technický dozorčí spolek Brno, Vítkovice Steel, a.s. (every one 250 thousand). The first instance decision from September 1996 stipulated that the companies agreed on prices with welding schools, in second instance the fine was reduced to half. The action was dismissed by the Supreme Court in Olomouc in August 1997.

1997

Sanction of CZK 2.5 million was imposed to companies Jan Becher – Karlovarská Becherovaka a.s. (1.5 million) and Plzeňský Prazdroj, a.s. (1 million) for agreements on business cooperation and distribution of products contained the assessment of recommended maximum prices – prohibited agreements on restricted entrance to market. In second instance the fine was reduced to 100 thousand for both.

1999

Fine of total amount of CZK 7.05 million was imposed to Cukrovar a rafinerie cukru Dobruška TTD a.s. (1.95 million), Hanácké cukrovary, a.s. (1.8 million) and CUKROSPOL PRAHA – Modřany a.s. (1.8 million). The Office in its decision from August 1999 stated that the companies concluded alleged concerted practices concerning the increase of prices of white refined sugar, by the second instance decision the fine was annulled and the proceeding was terminated a year later.

To companies DELVITA a.s., JULIUS MEINL, a.s., BILLA, spol. s.r.o. were imposed fines in total amount of CZK 3 million for alleged concerted practices when agreed on price of returnable bottles. The fine was overruled by the second instance decisions from February 2000.

2000

The companies Bupak Obaly a.s., (2.3 million), MODEL OBALY, a.s. (2 million), AssiDomän Packaging Česká republika s.r.o. (400 thousands), Kappa Karton Morava, s.r.o. (1 million), OBALEX Znojmo a.s. (1.5 million), THIMM Obaly k.s. (600 thousand) were imposed fines for alleged coordinated increase of prices of package made by grooved cardboard. In September 2001 was the proceeding terminated by the Chairman and the fine was cancelled.

The OPC imposed fine of amount CZK 5 million to company Adidas ČR s.r.o. for prohibited agreements on direct fixing of price. The first instance decision from December 2000 was confirmed by second instance in November 2001 and the fine was reduced to CZK 2 million. The decision of the Office was confirmed by the Supreme Court in Olomouc.

2001

The OPC imposed a fine of total amount of CZK 1.45 million to breeding associations dealing with cultivation and breeding of cattle - Holding Československá plemenářská unie, k.s. (500 thousand), Jihočeský chovatel, a.s. (300 thousand), REPROGEN, a.s. (300 thousand), PLEBO BRNO, a.s. (300 thousand), AGRO – Měřín, a.s. (300 thousand), Plemenáři Brno, a.s. (270 thousand), CHOVSERVIS, a.s. (300 thousand), PLEMENÁŘSKÉ SLUŽBY, a.s. (300 thousand) for prohibited agreement on prices of insemination dose of breeding bulls. The Office's procedure was confirmed by the Supreme Administrative Court.

The fine of total amount CZK 1.45 million was imposed to the distributors of pharmaceuticals Bristol-Myers Squibb spol. s.r.o. (850 thousands), PHOENIX lékárenský velkoobchod, a.s. (600 thousand) for alleged agreement on non-charging of business surcharge when selling medicine Lipostat. The first instance decision was fully overruled by the Chairman's decision in January 2003.

2002

Six distributors of fuels AGIP Praha, a.s., Aral ČR a.s., BENZINA a.s., CONOCO Czech Republic s.r.o., OMV Česká republika, s.r.o. and Shell Czech Republic a.s. were fined of the total amount of CZK 313 million for entering into concerted practices aimed on fixing sale price for car petrol Natural 95 sold by their petrol stations in the period beginning on 28 May 2001 and ending on 30 November 2001. This practice was aimed on restricting competition in the market of car petrol delivered to consumers. The Regional Court in Brno accepted the action of distributors and overruled the Office's decision in 27 September 2006. The Court has the opinion that the Office is not allowed to impose fine to the legal successor of the undertaking that had breached the law. The Supreme Administrative Court overruled the judgment in December 2009 and returned it to Regional Court in Brno for additional hearing. The Regional Court in Brno decided in accordance with the

decision of the Supreme Administrative Court in September 2010. The new decision will be taken by the Chairman again.

The Office imposed a fine of total amount of CZK 51 million on the companies BILLA, spol. s.r.o. (28 million) and JULIUS MEINL, a.s. (23 million) for concluding an agreement on unify the purchases prices for goods and their commercial terms vis-à-vis their suppliers in years 2001 and 2002. The Regional Court in Brno decided on merits in summer 2006 and confirmed the cartel agreement, but returned it back to the Office to new assessment of the fine. The fines were newly assessed in March 2007 and reduced by 15% to CZK 23.80 million, or to 19.55 million CZK. The decision was confirmed by the Regional Court in Brno.

Sanction of CZK 3.5 million was imposed to company Plzeňský Prazdroj, a.s. (and Pivovar Radegast a.s.) for concluding prohibited agreements. The contract on advertisement and propagation obliged the entrepreneurs of catering industry to consumption of minimum quantity of beer per year. In the second instance the fine was reduced to CZK 2.3 million. The party to the proceeding filed an action to the Regional Court in Brno, but later was the action drawn back.

The fine of total amount of CZK 7.5 million was imposed by the Office to company ČEZ a.s. for concluding with its customers seven agreements on supplies of electricity, containing prohibited and void provisions forbidding to re-import exported electricity back to the territory of the Czech Republic. Chairman confirmed the fine in 2004. ČEZ filed an action to the Court, but did not succeed. In 2006 the Regional Court in Brno confirmed the decision of the OPC, as well as the Supreme Administrative Court in 2008.

The OPC imposed a fine of 7.5 million CZK to the undertaking ČESKÝ TELECOM, a.s. for prohibited agreements on prices of telephone cards. The company charged retail prices for sales of pre-paid cards X to its distributors in years 2001 and 2002. The fine was decreased to CZK 6.5 million by the second instance decision. The action was not submitted.

The company Český Mobil a.s. was fined by the first instance decision of amount CZK 6.5 million in July 2002. The second instance decision from May 2004 confirmed that the agreements on distribution of prepaid telephone card were anti-competitive. The proceeding of the OPC was confirmed by the Regional Court in Brno in 2005, but the fine was decrease to CZK 3 million. The judgment was overruled by the decision of the Supreme Administrative Court in autumn 2007. The Regional Court again confirmed the fine, but the judgment was again overruled by the Supreme Administrative Court in April 2011 – according to its opinion the prepaid telephone cards cannot be considered as separate goods, that allowed the seller to set the price independently, it is considered as reselling of services of mobile operator, that is offered for price stipulated in advance.

2003

The fine of CZK 44 million was imposed to mobile operators Eurotel Praha (CZK 22 million), T-Mobile (CZK 12 million), Český Mobil (CZK 10 million). The mentioned undertakings concluded in their interconnection agreements and subsequently fulfilled prohibited and void agreements on indirect determination of business conditions. The fines were overruled by the Regional Court in Brno – the dispute should be solved by the Czech Telecommunication Office – the Office filed an action to the Supreme Administrative Court and succeeded. In the end the Regional Court again overruled the OPC's decision and new cassation complaint was submitted. The fines were returned to the undertakings.

2004

Sanction of CZK 484 million was imposed for alleged cartel agreements to six building saving companies. One year later the fine was overruled by the Chairman Josef Bednář and case was returned for new proceeding to the first instance. The breaching of law was reassessed to the prohibited agreements on exchange of information and sanction was reduced to CZK 201 million. In August 2006 new Chairman Martin Pecina returned the case back to new proceeding to the first instance. New fine for possible distortion of competition by prohibited exchange of information was CZK 55 million. The decision was overruled by the Regional Court in Brno in January 2008 and cassation complaint of the Office was unsuccessful and the sanction was completely cancelled by the courts.

Companies DELTA PEKÁRNÝ a.s., ODKOLEK a.s. and PENAM spol s.r.o. were fined of total amount CZK 120 million for concerted practices when fixed prices of bakeries products. The existence of cartel agreement was confirmed, but the decision was returned to the first instance for new assessment of fine. The new decision imposed a fine of CZK 66 million and the second instance decision decrease the fine to CZK 52.8 million in August 2006. This decision was overruled by the Regional Court in Brno and finally the decision was overruled by the Supreme Administrative Court in September 2008. The fine was imposed again in the beginning of year 2009 and then confirmed by the judgment of Regional Court in Brno.

Against companies EASTERN SUGAR ČESKÁ REPUBLIKA, a.s., Moravskoslezské cukrovary, a.s. and Cukrovary TTD a.s. was imposed fine in total amount of CZK 118.7 million for prohibited agreement and alleged concerted practices when setting a price of sugar and concluded agreement on market sharing with sugar. Chairman Pecina overruled the decision in September 2005 a returned it back for new proceeding. The new first instance decision was issued in February 2006, it stated that the Competition Act was breached just by exchange of information through Bohemian and Moravian Association of Sugar Industry. The existence of prohibited agreements was not proved as well as concerted practices when setting a price of sugar or agreement on sharing market with sugar. The fine was not imposed for the breaching of act.

In year 2003 the company Český Telecom, a.s. concluded prohibited agreements by contracts concerning the ADSL delivery including the provision that prohibited contracting party to resell services to other companies in the Czech Republic for prices lower than prices stipulated by Český Telecom stipulated in contracts. To the undertaking was imposed fine of CZK 15 million. After appeal to the Chairman the fine was reduced to CZK 10 million. The action was not filed.

Ten producers of eggs concluded prohibited agreements on price fixing of eggs, for the anticompetitive behavior the companies were fined of total amount CZK 11.25 million. The fine was cancelled by the decision of Chairman Pecina in autumn 2005.

A fine in amount CZK 1.5 million was imposed by the Office to company Mediaprint & Kapa Pressegrasso, spol. s.r.o., for prohibited agreements – the company prohibited retail press sellers to enter into agreement with third person, i.e. not to buy press and publication offered by the undertaking from other press sellers and also prohibited to buy other press and publication from third companies without prior approval of the undertaking. The second instance decision confirmed the first instance in May 2005 and the appeal to the court was not submitted.

2005

The Office impose fine of amount CZK 2.3 million to company Tupperware for resale price maintenance. The first instance decision from October 2005 was confirmed by Chairman of the Office by the end of the next year. The undertaking Tupperware filed an action to the Regional Court in Brno, which overruled the decision. The judgment of the Court was overruled by the Supreme Administrative Court, but the Regional Court overruled the Office's decision again. In 2010 by repeated second instance decision the Office imposed again fine of CZK 2.3 million.

Against company AuTec Group, a.s. which was general importer of BMW cars into the Czech Republic, was imposed fine of amount CZK 9.5 million for anticompetitive provision in agreements concluded with commercial representatives and dealers in year 2005. Chairman overruled this decision and returned it back to new proceeding. New decision stated that the agreements included anticompetitive provision on sales and usage of spare parts of BMW cars. The fine was not imposed.

2006

In December 2006 fine of total amount CZK 113.064 million was imposed to four greatest pharmaceutical distributors in the Czech Republic (Alliance UniChem CZ CZK 23.859 million, GEHE Pharma Praha CZK 16.831 million, PHARMOS CZK 18.638 million, and PHOENIX Lékárenský velkoobchod CZK 53.736 million). The companies violated the Competition Act when during the period from 30 January 2006 until 14 February 2006, coordinated their joint intent to suspend the supply of the full range of pharmaceuticals to three important teaching hospitals – Thomayerova, Na Bulovce (both in Prague), and

Nemocnice u Sv. Anny (in Brno). On 12 November 2007 the fine was confirmed by the second instance decision of Chairman. The appeal was dismissed by the Regional Court in Brno, following cassation complaint was dismissed by the Supreme Administrative Court in March 2010.

2007

Sanction in an amount CZK 979.221 million was imposed to the biggest producers of gas-insulated switching mechanism (GIS), these concluded so called bid rigging agreement, when parties to the proceeding agreed on the price that would be offered to GIS, so that the contract would be granted to the company agreed in advance. The Office initiated the administrative proceeding in August 2006 on the basis of leniency application of ABB Company, which pleaded participation in cartel and gave relevant evidence. Hence this company has not been fined in terms of Leniency programme. 16 companies, which took part in the cartel agreement, were sanctioned. The decision was confirmed by the second instance decision on 26 April 2007. To the two companies the fine was decreased, so the total amount of fine was CZK 941.881 million. The decision was overruled by the Regional Court in Brno in June 2008. The OPC submitted cassational complaint that succeed at the Supreme Administrative Court in April 2009. The Regional Court has to hear an appeal again, but in November 2009 the proceeding was interrupted and the Court imposed a preliminary question to the Court of Justice.

ALSTOM (Société Anonyme)	85 581 000 CZK
AREVA T&D SA	69 552 000 CZK
AREVA T&D AG	58 926 000 CZK
AREVA T&D Holding SA	28 000 000 CZK
Fuji Electric Holdings Co., Ltd.	44 408 000 CZK
Fuji Electric Systems Co., Ltd.	44 408 000 CZK
Hitachi Ltd.	54 600 000 CZK
Hitachi Europe Limited	54 600 000 CZK
Japan AE Power Systems Corporation	44 408 000 CZK
Mitsubishi Electric Corporation	75 348 000 CZK
Toshiba Corporation	70 762 000 CZK
Siemens AG	126 588 000 CZK
Siemens Aktiengesellschaft Österreich	88 816 000 CZK
VA Tech Transmission & Distribution GmbH & Co KEG	44 408 000 CZK
Siemens Transmission and Distribution Limited	44 408 000 CZK
Nuova Magrini Galileo S.p.A.	44 408 000 CZK

Total **first instance 979 221 000 CZK**
second instance 941 881 000 CZK

The fine of total amount CZK 14.208 million was imposed to the producers of poultry AGRODRUŽSTVO JEVIŠOVICE, Zemědělské družstvo PETŘÍN, Zemědělské družstvo "Roštýn", ZEVA CHLÍSTOVICE, a.s., SUŠÁRNA POHOŘELICE, s.r.o, Karlov, a.s. and AGROPRODUCT, spol. s.r.o., in Jevišovice the companies agreed on joint strategy of price settings of chicken in December 2006. The appeal against decision from July 2007 was submitted to the Chairman. The fine was confirmed. The undertakings appealed to the Regional Court in Brno, which overruled the decision of the Office in December 2009. The cassational complaint was dismissed for procedural reasons. By the new decision from May 2011 the Office imposed fine to the undertakings of total amount CZK 14.237 million, when reassessed the participation of Zemědělské družstvo PETŘÍN in cartel agreement.

2008

Kofola Holding was fined of amount CZK 13.552 million for prohibited and void vertical agreements on retail price maintenance with its distributors. The administrative proceeding was finished by the so-called settlement procedure in July 2008. The decision was not appealed. To Kofola was also imposed a procedural fine of amount CZK 11.836 million for withhold complete and truthful data and information. The fine was decrease to CZK 4.855 million by the decision of the Chairman Petr Rafaj in September 2009.

The fine of CZK 1.089 million was imposed to company DELLUX CZ, s.r.o. for vertical agreements on resale price maintenance that distorted competition in the market of distribution of selective cosmetics. The customers were obliged to observe the stipulated retail prices. The second instance decision reduced the fine to CZK 816 thousand in September 2009.

The Office imposed by its first instance decision a fine amounting CZK 1 million to the Czech Pharmaceutical Chamber for prohibited and void decision of the association, that could distort competition in the market with pharmaceutical services. The board of Chamber issued a document "Statement of the Board of the Czech Pharmaceutical Chamber on procedure of pharmacy, that paid cash to the patients when submitting a prescription", in which expressed disagreement with procedure of pharmacy (Dr. Max) offering to patients financial reward or other favour when submitting a prescription. The Chamber by its statement directly influenced the pharmacy operators in their independent decision making. The decision was confirmed by the chairman and no action was filed.

2009

On the company Karlovarské minerální vody, a.s. was imposed a fine amounting to CZK 5 million. The company in question and its subsidiary HBSW concluded prohibited agreements on export prohibition. Those agreements could have led to the distortion of competition in the markets of carbonated and non-carbonated beverages. The Office's investigation proved that the agreements were fulfilled by its customers. On the

other side the party to the proceeding did not control the fulfillment of agreement on export prohibition. The proceeding was closed through the so-called settlement procedure.

By the first instance decisions, the Office imposed a fine in the amount of CZK 2.316 million on HUSKY CZ s.r.o. for entering into prohibited agreements on resale price maintenance in the outdoor equipment market. HUSKY CZ committed repeated breaches of competition rules in its business relationships with purchasers from internet shops. The company based its pricing policy on oral agreements on obligatory compliance with recommended prices. HUSKY CZ s.r.o. did actually monitor the performance of agreements on recommended resale prices on the part of its customers and also enforced compliance with the same under the threat of suspension of supplies of goods or other penalties. The sanction was confirmed in 2011.

2010

In November 2010 was confirmed the decision of cartel agreement in the market of TV color picture tubes in years 1998 – 2004, the parties to the cartel agreements were Samsung SDI Co., Ltd., Chunghwa Picture Tubes, Ltd., Koninklijke Philips Electronics N.V., Technicolor S.A., Panasonic Corporation, MT Picture Display Co., Ltd., Toshiba Corporation and LG Electronics, Inc. For the cartel agreement was imposed a fine of total amount of CZK 51.787 million. The Office started to deal with the cartel on the basis of a request for application of leniency programme, so the fine for the company Samsung was remitted completely and decreased by 50% in case of the company Chunghwa. In case of the companies Philips and LG Electronics the fine could not have been imposed, as the statutory time limit for its imposition had already expired (these companies did not fulfill the agreement in question after 1 July, 2001). The fines imposed: Chunghwa Picture Tubes, Ltd. CZK 6.4 million, Technicolor S.A. CZK 13.858 million, Panasonic Corporation CZK 10.373 million, MT Picture Display Co., Ltd. CZK 9.43 million and Toshiba Corporation CZK 11.726 million.

By its decision of 8 January, 2010 the Office imposed a fine of CZK 17.283 million on company Sokolovská uhelná for concluded and performed restricted export prohibition agreements in years 1997 – 2007. The agreements were aimed for distortion of competition and which might have led to distortion of competition in the market of brown coal-cakes, brown energetic coal and brown sized coal in the Czech Republic. In its decision, the Office stated both Czech Competition Act infringement and infringement of Article 81 of the Treaty Establishing European Community (to-day Article 101 TFEU). On the contrary, during the course of the administrative proceedings, conclusion and performance of agreements on price-fixing, resale price maintenance or commitments on exclusive distribution of brown coal and fuel cakes was not proven. The decision was confirmed in summer 2010.

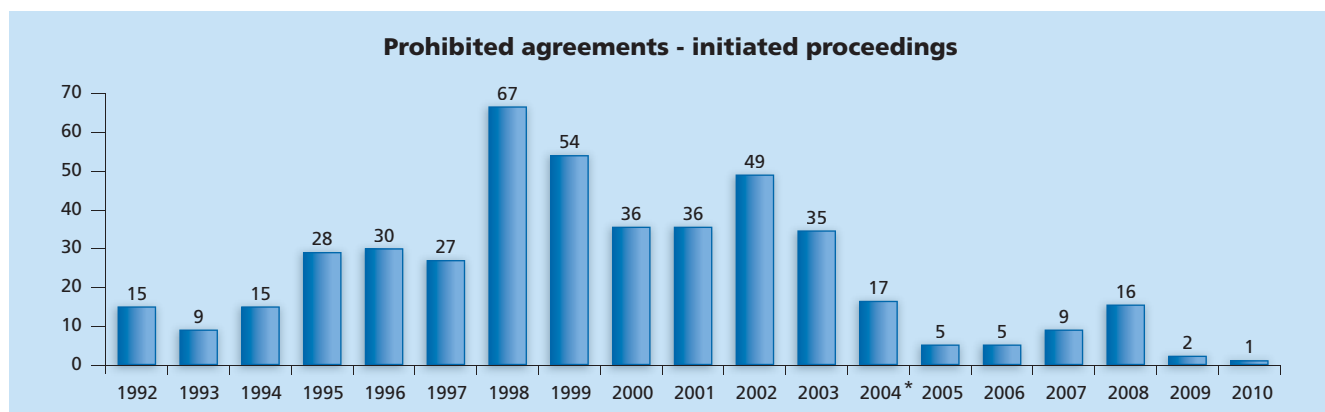
The Office imposed a fine amounting CZK 7.778 million to media agencies OMD Czech, a.s. and MEDEA, a.s. for concluding

and fulfilling the agreement on customers sharing in the market of media services in the Czech Republic. The parties to the proceeding concluded and fulfilled agreement on refrain the conduct leading to the influence of clients and business partner of the other party to the proceeding. Such agreement was considered by the Office as agreement on customers sharing in the market with media services in the Czech Republic. The Office stipulated that the Act on the Protection of Competition was breached and imposed a fine of CZK 5.493 million and CZK 2.285 million and prohibited to fulfill the agreements for the future.

In 2010 the Office issued first bid-rigging decision in which five undertakings HOKRA Spedition, s.r.o. ("Hokra"), INZET, s.r.o. ("Inzet"), PROMINECON GROUP a.s. (NAVATYP a.s. before; "Prominecon"), CBK SHIFT s.r.o. ("CBK") and NATURAL MYSTIC s.r.o. ("Natural") were fined for bid-rigging. The total amount of fines was CZK 4.906 million. The Office qualified the undertakings' collusive tendering as bid rigging in the form of concerted practices. The tender lunched by the Czech Ministry of Defence regarded military real estate service and administration. The decision was confirmed in August 2011.

2011

In February 2011 the first instance decision was issued and found liable the companies from Henkel, Procter & Gamble and Reckitt Benckiser groups of conclusion and fulfillment of prohibited agreement in the market of detergents, fabric softeners and hand dish cleaners, the investigation was based on application of Leniency. The Office prohibited further fulfillment of the agreement and imposed fines in the amount of CZK 29.274 million. The agreement had been fulfilled from 1999 until 2004, whereas the competitor Reckitt Benckiser took part in it only for limited time period (until year 2002). According to the findings of the Office, the manufacturers of „cleaning products“ during the course of regular meetings and communication had implemented rise in prices of some particular detergents and had set ranges for price fixing of detergents, and had mutually coordinated and limited frequency and value of promotion activities, namely the amount of price discounts provided for detergents, fabric softeners and hand dish cleaners. In this case was applied Leniency programme as well as settlement procedure.



* since 2004 the Office is not conducting proceedings on determination which led into significant decrease of cases

Abuse of dominant position

Position in the market of some undertakings can be so strong that allows them to act substantially independently of the other competitors, as well as the customers and suppliers. If the unilateral conduct is capable to cause harm to the other undertakings in the market, or to the final consumers, than we talk about so-called abuse of dominant position. The competition rules are stricter on the competitors in a dominant position than on those in a marginal position. They are not permitted to behave in a manner that would be perfectly acceptable in a small firm. The dominant companies have to consider their behavior carefully, seeing that it could be assessed as abuse of dominant position. Also in this area the Office applies the advanced methods, particularly when defining the relevant market and assessment of the impact of behavior, the Office applies so-called more economic approach.

1993

The Ministry for Competition by its first instance decision imposed a fine amounting CZK 5 million to state owned company Pražské komunikace for abusing its dominant position when concluding agreements on waste disposal. The decision was overruled in August 1993 by Minister, because the party to the proceeding submitted the objective reasons why the prices in contracts were increased.

1995

In June 1995 ŠKODA, automobilová a.s. was fined of amount CZK 5 million for abusing its dominant position by cut the production of sheet-metal spare parts. Minister confirmed the fine by his decision from 20 May 1995 and reduced the fine to CZK 3.5 million. The Supreme Court in Olomouc dismissed the action against Office's decision as well as the Constitution Court did.

The company LIKÉRKA Stock Plzeň – Božkov was fined of amount CZK 5 million for abusing its dominant position in the market of alcoholic beverages (type fernet), for tying the Fernet Stock to the other alcoholic beverages. By the second instance decision was the fine decrease to CZK 4 million.

The Office imposed fine in the amount of CZK 1 million to Veletrhy Brno, a.s. for alleged abuse of dominant position, when applying different condition to other competitors. The second instance decision decrease the fine to 200 thousand CZK in April 1996.

A fine amounting CZK 1 million was imposed to company Pražská kanalizace a vodní toky by the decision of Minister in August 1995. The company abused its dominant position by projects of dewatering conditioning to concluding an agreement on advance payment. The decision was overruled by the Supreme Court in Praha in 1998.

Středočeská energetická a.s. was fined in the amount of CZK 1 million for collecting the advanced payment as requirement for initialization of electric delivery. The fine was confirmed by the decision of Minister from 1996.

The Ministry for Competition imposed by its first instance decision a fine amounting CZK 1.5 million to company Jihomoravská plynárenská, a.s. The gas company concluded new agreements on the gas delivery to brickworks with the proviso that the customer would guarantee for the debt of previous customer – the debtor who operated the brickworks before. The fine was decrease to 500 thousand CZK by the second instance decision.

1996

Vodárny a kanalizace Karlovy Vary, a.s. abused its dominant position by charging inadequate fees in the contracts on line up to water supply and others. The fine of CZK 1 million was imposed. The action was dismissed by the Supreme Court in Olomouc.

Česká pojišťovna, a.s. was fined of CZK 1 million in 1996 for alleged exercise of different condition when collecting fees for similar services – issue a green cards to third party risk insurance. The fine was confirmed by the second instance decision in December 1996. The Chairman's decision was overruled by the Court in 1997. The fine of same amount was imposed to the same undertaking for abusing of dominant position in the market of budget account. In the second instance no fine was imposed.

The Office imposed fine CZK 2 million to company Pražská kanalizace a vodovodní toky in October 1996. As abuse of dominant position were qualified conditions necessary for granted approval to builders and investors for connecting to the sewer systems necessary for the issue a building permit by concluding contracts on payments. The Chairman of the Office confirmed the fine in 1997. The Supreme Court in Olomouc, however, it cancelled the fine in December 1997.

To the undertaking Středočeská energetická a.s. was imposed a fine of CZK 500 thousand by the decision of April 1996. The company conditioned the networking or increasing of reserved power requirement to the payment of 90 percent of the costs of networking. By the second instance decision was the fine increased to 5 million CZK. The Supreme Court in Olomouc by its judgment overruled the decision in 1997.

To the company Jihomoravská plynárenská, a.s. was imposed fine amounting CZK 9.145 million for abusing its dominant position, particularly for collecting fees on providing and installation of gas-meter. The first instance decision from November 1996 was overruled by Chairman in June 1997.

1998

Company SAZKA, a.s. abused its dominant position in the market of numerical lottery and the Office by its first instance decision from August 1998 imposed a fine of CZK 1.5 million. The fine was overruled by Chairman in July 1999 and he returned the case for new proceeding. By new first instance decision was stated breaching of Competition Act, but fine was not imposed.

1999

The Office imposed a fine CZK 10 million to undertaking Česká pojišťovna, a.s. for alleged abusing of monopoly position when settlement of insurance events. The decision was overruled by the second instance decision in December 2000.

ČSAD ÚAN Praha Florenc a.s. charged different prices to the providers of national and international bus transport for the entrance of bus station, by its behavior the undertaking abused its dominant position. A fine of CZK 1 million was imposed. In January 2000 Chairman overruled the decision including the fine. In new first instance decision was found the breaching of Competition Act, but no fine was imposed.

The OPC imposed a fine amounting CZK 1 million to company LOM PRAHA, s.p. The first instance decision from July 1999 stated the alleged breaching of Competition Act by refusing to provide the book on repairs of aircraft engines. The decision was overruled in October 2000 by the decision of Chairman. Later was assessed the different stipulation of amounts and methods of payments for above mentioned book. The decision from May 2002 imposing a fine in the amount of CZK 600 thousand was confirmed by the second instance in February 2003.

Company Pražská energetika, a.s. was fined by the Office's decision in the amount of CZK 5 million for alleged abuse of dominant position. The decision was overruled by Chairman in October 2000.

Jihomoravská plynárenská, a.s. in 1999 abused its dominant position. For unjustified collection of fees was imposed a fine in the amount of CZK 2.5 million. The decision was confirmed by the second instance decision of June 2000 as well as by the Court.

A fine of CZK 2 million was imposed to company Český Telecom, a.s. for abuse of dominant position in the market of providing single telecommunication network (Dattel a.s.) in December 1999. The conduct was confirmed by the Court and a fine was reduced to CZK 1.8 million.

Company ČEZ a.s. abused its monopoly position by reducing the demand of brown coal used for the production of electric energy from one of its suppliers without objective reasons. The Office imposed a fine in the amount of CZK 10 million, which was reduced to CZK 7.5 million by the second instance decision from December 2000. The decision was confirmed by the Supreme Court in Olomouc.

2000

To company Plzeňská energetika was imposed a fine in the amount of CZK 1 million by the first instance decision for the alleged abuse of dominant position for concluding exclusive contracts on heat, gas and water supply. Two years later Chairman overruled the decision.

The Office imposed a fine to company Dattelkabel, a.s. (today UPC Česká republika, a.s.) in the amount of CZK 7.8 million. The company abused its dominant position by offering programme packages for prices below the average total cost so as to gain control over the market, decided at the end of 2000 to increase its prices by up to almost 300% for the purpose of compensation of losses. In the second instance decision from October 2003 was the breaching Competition Act reassessed and the fine was overruled. The case was confirmed by the Regional Court in Brno in 2006 that confirmed the breaching of the Competition Act.

„Functioning competition is in behalf of all undertakings, but mostly brings profits to the consumers.“

Michal Petr
Vice-chairman of the Office

2001

Company Eurotel Praha (today Telefónica O2) abused its dominant position in years 2000 and 2001 and by the Office was imposed a fine in the amount of CZK 48 million. The company charged its customers for a minute call to the network of the company Český Mobil, a.s. (today Vodafone), amounting higher than the charge mutually for calls between company Radiomobil. The fine was finally confirmed by the Supreme Administrative Court. Company Telefónica submitted a constitutional complaint, that was confirmed and the Office's decision was overruled. Afterwards in August 2009 the Office

in repeated decision stated abusing of dominant position of the company Telefónica O2 Czech Republic, a.s. in the market of mobile radiotelephony services in public mobile telecommunication networks NMT in years 2000 and 2001. The company charged its customers for a call to the network of the Vodafone Czech Republic a.s. amounting higher than the charge for customers calls to the network of T-Mobile Czech Republic a.s. The fine was not imposed. On Company RadioMobil a.s. was imposed fine in the amount of CZK 15 million. The decision was overruled by the Supreme Administrative Court.

2002

OPC imposed in October 2002 a fine in the amount of CZK 8 million to the undertaking Česká rafinerska, a.s. for interrupting the deliver of raw material to its long-term purchaser CHEMOPETROL a.s. In the second instance the fine was reduced to 6 million CZK. The Regional Court in Brno overruled the decision and the OPC submitted the cassational complaint at the Supreme Administrative Court and succeeded. In 2009 the Regional Court overruled the decision again, nevertheless the Office again succeeded and the Supreme Administrative Court, that in April 2011 returned the case to the Regional Court in Brno.

2003

In February 2003 the undertaking Český Telecom, a.s. was fined in the amount of CZK 23 million for abusing of the dominant position in the market of arranging access to the Internet services and transfer of data with making use of broadband technologies xDSL (ADSL) by public fixed telecommunication network the detriment of other authorized public telecommunication networks operators and to the detriment of final customers. The second instance decision from October 2004 confirmed the first instance and the undertaking did not filed an action to the Court.

In June 2003, fines amounting in total CZK 119.5 million, was imposed for abuses of dominant position to the undertaking Český Telecom, a.s. in the market of provision of public telephone services to businesses via fixed telecommunications networks. In the second instance the decision was confirmed in January 2004. Telecom filled an action to the Regional Court in Brno, which dismissed the action. The Supreme Administrative Court handled the case and satisfied the plaintiff and the Regional Court in Brno after that overruled the decision of the Office. The Office succeeded at the Supreme Administrative Court with its cassational complaint in July 2010 and the judgment of the Regional Court in Brno was overruled. The Regional Court returned the case to the Office for new procedure.

In January 2003 was to undertaking LINDE TECHNOPLYN a.s. imposed fine in the amount of CZK 12 million, confirmed by the second instance decision in October 2004. The undertaking abused its dominant position in the market of deliveries of bottled technical gases by obliging purchasers in contracts

to purchase the whole amount of technical gases mentioned in the contract on bottled technical gases deliveries exclusively from the undertaking Linde. The decision was cancelled by the Regional Court in Brno in 2007. The fine was imposed again in 2008. The following action was dismissed by the Regional Court in Brno in 2009.

Sky area in Špindlerův mlýn abused its dominant position by presented proposals for contracts that contained, without objectively justified reasons, dissimilar conditions in relation to comparable services provided. The sanction imposed by the first instance decision in the amount of CZK 2.8 million was reduced by the second instance decision to CZK 200 thousands.

2004

The fine imposed on ČESKÝ TELECOM, a.s in the amount of CZK 210 million was decreased to CZK 205 million by the Office's decision. The administrative proceeding was conducted not only according to the national law, but also for an infringement of the Article 82 of the EC Treaty (today Article 102 of the TFEU). The reason for the proceeding were the unregulated price plans of company ČESKÝ TELECOM, a.s. designed for its final customers from among households, small undertakings and customers comprising a monthly lump for a lease of a telephone station an inseparable part of which are call credits or free minutes for „free“ calling, that lead to the tying of services. The Regional Court in Brno by the end of September 2006 fully confirmed the Office's decision. The cassational complaint submitted by the company Telefónica 02 was dismissed by the Supreme Administrative Court in 2009.

Another fine imposed on ČESKÝ TELECOM in amount of CZK 90 million was imposed for failure to provide the other operators with a time period sufficient for assessing the wholesale offer in such a way that these operators could enter into negotiation with ČESKÝ TELECOM about the new form of ADSL services and enter into an agreement with ČESKÝ TELECOM that would have made provision of these services possible. These services were intended to substitute the services provided through the company's section „Internet On Line“ from 1 January 2004 and on the same day (i.e. on 26 November 2003) the company also made public the change of its wholesale offer on the basis of which the end - customers are provided with ADSL services by other operators. The fine was reduced to CZK 80 million by the chairman Martin Pecina. The company filled an action to the Regional Court in Brno, but it was dismissed.

The Office imposed a fine in the amount of CZK 55 million to company ŠKODA AUTO a.s. for alleged abused of dominant position when negotiated different conditions of the wholesale purchase of personal motor vehicles of the „ŠKODA“ brand in agreements with individual parties to the contract (wholesale purchasers). It was also proved that the ŠKODA AUTO had been refusing to grant the same conditions resulting from wholesale - supply agreements. In February 2006

the fine was cancelled and the case was returned to new proceeding. In August 2006 the fine was reduced to CZK 36 million. The company filed an appeal and Chairman terminated the proceeding.

The company SAZKA was imposed upon a fine amounting to CZK 12 million for abusing dominant position by the decision from year 2004. The company exercised towards its procurers inappropriate contractual terms and conditions that consisted particularly in relation to the scraping lots. The fine was reduced to CZK 1.2 million by the second instance decision. The SAZKA's action was dismissed by the Regional Court in Brno.

Company ČAS SERVICE, a.s. abused its dominant position in the market of providing services in bus station in Znojmo. For its behavior the company was fined of CZK 1.5 million. The party to the proceeding appealed to Chairman and the decision was cancelled in 2005.

Sanction CZK 1.5 million was imposed on company A.S.A. TS Prostějov, s.r.o. in 2004 for abusing of dominant position in the market with funeral services. By the second instance decision the fine was reduced to CZK 900 thousand. The action was refused by the Regional Court in Brno, unsuccessful was also cassational complaint.

2006

In August 2006 the Office imposed fine of CZK 370 million on RWE Transgas for abuse of dominance on the gas market. The dominant company violated the Competition Act and Article 82 of the EC Treaty (today Article 102 of the TFEU) since November 2004 when it proposed to operators of regional distribution systems outside the RWE holding group contracts for purchase and sale of natural gas containing conditions disadvantaging such operators vis-a-vis their competitors - regional distributors within the RWE Group. According to the decision of the Competition Office, RWE Transgas had further been restricting through its distribution contracts the option of selling gas outside the territories serviced by the distributors since 1 January, 2005, thus effectively preventing the development of competition on the gradually liberalized market. The third form of abuse of dominance consists in the setting of the price for gas storage. In the second instance the proceeding was terminated in the third conduct. During the investigation the dominant cooperated with the Office and also changed the contracts and the fine was reduced to CZK 240 million. The Regional Court in Brno overruled the Office's decision in the autumn 2007. The Office disagreed with verdict and filled cassational complaint to the Supreme Administrative Court, that overruled the Regional Court judgment. The follow-up proceeding at the Regional Court in Brno again overruled the Office decision in October 2009 and the judgment was overruled by the Supreme Administrative Court in September 2011.

2008

By its decision the Office imposed a fine of CZK 270 million on České dráhy, a.s. for abuse of dominant position in the market of railway freight transport of substrates transported in large volumes. The company charged its customers, without objectively justifiable reasons, different prices for services in railway freight transport with comparable calculation parameters, and it also applied different profit margins. České dráhy made it impossible for the companies SPEDIT-TRANS, a.s. and ŠPED-TRANS Levice, a.s. to conclude contracts on customer tariff and thus to obtain discount from the public pricelist. The delict was confirmed in May 2009, the fine was reduced to CZK 254 million. České dráhy filed an action to the Regional Court, but it was dismissed in year 2011.

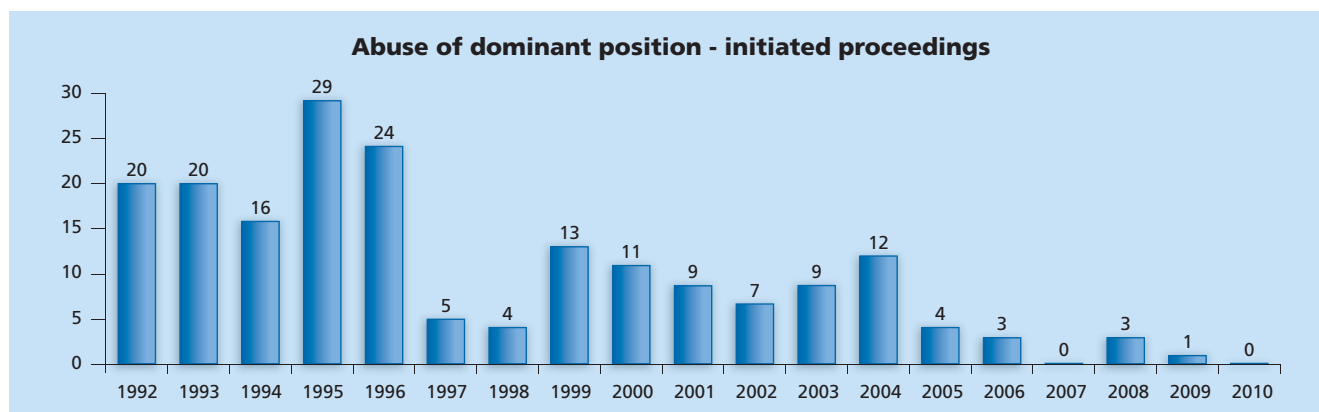
2009

In the half of year 2009 by the settlement decision, the Office imposed a fine of CZK 10 million against RWE Transgas, a.s. The reason was abuse of dominant position, RWE had committed

towards some of its customers, small-scale consumers of natural gas and households. In September 2008, on the basis of an error in a calculation formula, RWE set disproportionately high advance payments.

2010

On 3 November 2011 a fine in the amount of CZK 6.185 million was imposed on STUDENT AGENCY, s.r.o., for abuse of dominant position in the market for providing the transportation of persons by public bus services on the route from Prague to Brno and back. Specifically, Student Agency applied predatory pricing with the intention of forcing ASIANA, spol. s.r.o. to leave the market. By the second instance decision the fine was reduced to CZK 5.152 million. The undertaking filled an action against the Office's decision.



Concentration of undertakings

Control of concentration of undertakings (mergers) is the substantial part of the protection of competition. Concentration of undertakings is assessed with the aim to evaluate whether the merger is capable to cause harm to competition in the relevant market. Thus, the merging undertakings are obliged, should they meet the turnover criteria determined by law, to inform the Office about the intended merger. In 2004 the turnover criteria were increased and currently the total net turnover of all undertakings concerned achieved in the last accounting period in the market of the Czech Republic has to exceed CZK 1.5 billion and each of at least two of the undertakings concerned achieved in the market of the Czech Republic in the last accounting period a net turnover exceeding CZK 250 million in the Czech Republic, and for some undertaking the turnover is higher than CZK 1.5 billion and at the same time the worldwide net turnover achieved in the last accounting period by another undertaking concerned exceeds CZK 1.5 billion, these undertakings are obliged to submit to the

Office so-called "Notice on notion of undertaking concerned under the Act on the Protection of Competition".

Compare to the past, the Office is not obliged to deal with mergers, that are not capable to influence a market due to its extent, and the Office can now focus on important cases. When assessing the concentration of undertakings, first of all, the OPC defines relevant markets, where both undertakings are active, than finds out the market shares of the undertakings and its possible increase. These factors are, along with the power of other competitors active in relevant market, crucial for the evaluation of merger's impacts on the competition.

Whereas in the 1990's were assessed mergers from the terms of the ongoing privatization and instead of assessment of the restriction of competition the most important was input of foreign capital, new technologies, production expansion or

continuation of employment. In last decade, with the new Act No. 143/20001 Coll. (particularly after its amendment in 2004 and introduction of SIEC test), were the mergers assessed strictly with regard to the competition. The crucial is whether the proposed merger has the potential to distort competition in the relevant market. This trend can be seen as well as on character of remedies imposed in problematic concentrations. While in the past mostly behavioral remedies were imposed as maintaining the amount of production, purchasing raw materials from domestic producers and others, today are almost only structural remedies imposed, as for example sale of company or its subsidiaries.

1992

With conditions was approved sale of shares in company Čokoládovny, a.s. by Fond národního majetku (Fund of National Property). The buyer was Čokoládovny Partners, B.V. European Bank for Reconstruction and Development and První investiční, a.s. The Office in stated that Čokoládovny a.s. had priority to deliver to national market and for five years is prohibited to increase prices.

The Office cleared a merger with conditions of companies Procter and Gamble Eastern Europe, inc. and Rakona Rakovník, a.s. The condition to buy all shares from Fond národního majetku (Fund of National Property) was to use the name Procter and Gamble – Rakona, a.s. and introduced non-phosphate products until the end of 1993.

Approved was transfer of 30% shares of company Tabák Kutná Hora, a.s. and anticipated transfer of next 38% in future to company Philip Morris Holland B.V. The condition was to introduce production of cigarettes with lower content of nicotine and tar in newly established undertaking within 25 months.

1993

Ministry for Competition prohibited the establishment of joint company PRINTCO, spol. s.r.o., that was intended to be created by SEPAP Štětí a.s. and Leykam – Mürztaler Papier und Zellstoff Aktiengesellschaft. The reason was concerns about company Leykam – Mürztaler that could significantly affected the competition environment in the papers sales, especially newsprint. A month later, the Minister in second instance proceeding changed the decision and approved the concentration with condition, that the agreement between merging entities would be consistently observed.

Ministry for Competition approved the merger between companies UNILEVER ČSFR, spol. s.r.o. and Povltavské tukové závody, s.p. with the condition, that the newly established undertaking would buy all raw materials and product necessary for production only in the Czech Republic.

Compagnie Gervais Danone was approved to buy 49% of shares in company Benešovské mlékárny, a.s. The merger was approved with condition, that 80% of raw materials used for

production had to be from Czech resources and raw materials bought abroad had to be bought for current prices. The condition was valid until end of year 1998.

TCHIBO Frisch-Roest-Kaffee GmbH increased its shares in company Balírný Tchibo, a.s. as to 78%. The Ministry approved the transaction on condition that the merged entity would prioritize Czech suppliers of packaging materials and the purchase of raw cafe in the international markets would be realized for current prices.

„I see competition policy as a means of strengthening our social market economy, and enhancing its efficiency and fairness.“

Joaquín Almunia

Commissioner for competition, European Commission

Joint stock company Vitana, a.s. was taken over by Norwegian company Rieber & Son a/s. Ministry issued a decision cleared the merger on the conditions, that Vitana would not reduce the production for five years in market where it has or would have dominant position. At the same time Vitana was obliged to give a preferential treatment to domestic sources of raw materials and any foreign purchases realized for current prices.

Ministry for Competition cancelled a treaty between District Offices in Beroun, Mladá Boleslav, Příbram, Jindřichův Hradec, Prachatice, Strakonice, Klatovy, Česká Lípa, Děčín and Most with publisher Vltava, to District Offices were transferred regional magazines. The treaty was not notified at the Ministry, although it was concentration of undertakings. In the end the merger was notified and approved by the Ministry.

1994

Ministry for Competition approved with condition merger of Jihočeská Keramika, a.s. and Dřevojas, v.d. For the protection of competitions in the market with sanitary ceramics the Ministry decided that the Dřevojas had to trade off its shares in company Keramické závody, until two years since the decision came into force and the company board was not allowed to be active in board of Keramické závody.

1995

Ministry for Competition by its first instance decision did not approve the merger of undertakings Progas, a.s. and Česká TYCZKAPLYN, k.s. According to the decision the merger of two important liquid heating gas suppliers that competed to each other, the competition could be affected, that overweighed the benefits of concentration. Next year the second instance decision approved the merger for proven benefits of the concentration.

Merger of undertakings Schott Nederland B.V. and STV Glass was approved with condition, that the size of supply of conuses for colored TV would be maintenance.

1996

OPC did not approved merger of REC Mankovice and Veterinární asanační ústav Tišice. The merger was disapproved because of strengthening the actual capital and personal link of company REC Mankovice to Agris (operating in the same market – animal protein flour) and also for the existence of entrance barriers for new competitors to the market with veterinary sanitation and protein flour.

Merger Gillette Czech, Inc., and Astra Jevíčko, a.s. was approved with condition, that parallel delivery of both trademarks would maintain in case of customers interest. The newly established undertaking should introduced to the market at least one product of Astra as razor-blade with double edge as well as products in segment of single-use razors. Raw materials and semi-products had to be bought from national suppliers.



To undertaking Kovohutě Břidličná, a.s. was imposed fine of CZK 50 thousand for unnoticed merger with company TAPA Tábor, a.s.

The Ministry approved merger of Výtahy Shindler, a.s. and Výtah Brandýs, a.s. with the condition that the transfer would be realized by the end of year 1996.

1997

With conditions was approved merger of undertakings Bongrain (Europe) S.A. and Povltavské mlékárny, a.s. The case is interesting, because the first instance decision did not clear the merger and approval was done by second instance decision after submission of additional technical and economical analyses from parties to the proceeding. The concentration brought benefits for consumers as larger and varied products from traditional trademarks. The next condition was to provide the protection for consumers against possible application of high prices.

Merger of undertakings Natura, a.s., Narutramyl a.s., Luisana do Brasil CIR Ltd. And Dr. Oetker, s.r.o. operating in the market of powdery puddings was approved with commitments

and remedies necessary for the protection of competition. OPC approved merger, because the parties to the proceeding proved that the harm which may arise to distort competition would be outweighed by economic benefits (increase of quality, improve the ecological production, financial sources and create new job opportunities in region). In addition merger would enriched the market in the Czech Republic by qualitative food products reflecting the trends in nutrition and modern way of life, while maintaining price and availability of products according to the original recipe of Natura.

1998

In accordance with Government decree the Office approved merger of Nomura Europe plc and Investiční a Poštovní Banka, a.s. The Office approved merger, because merger of strong financial and capital Nomura Europe and Investiční a Poštovní Banka, that dispose of national systems of offices and controlling large industrial assets, should provide capital to IPB and contributed to the development of IPB as well as long term stabilization of the banking sector in the Czech Republic. By its decision from May 1998 the Office approved the merger of Nomura Europe plc. and Investiční a Poštovní Banka, also at the same decided about legal relations of companies, whose shares are owned (among others Plzeňský Prazdroj and Pivovar Radegast).

1999

The Office assessed the merger between South African Breweries International (Finance) B.V. (hereinafter referred to as "Sabifin") and Plzeňský Prazdroj, which was realized by the transfer of shares of Plzeňský Prazdroj to Sabifin. Firstly it was majority owner, than 100% owned holding company Pilsner Urquell Investments B.V., which controls Plzeňský Prazdroj and Pivovar Radegast and in the time of the Office's decision was fully owned by banking group Nomura. The Office approved the takeover of company with 44% market share with conditions: to preserve the availability of merged breweries brands Plzeňský Prazdroj, Radegast, Gambrinus and Velkopopovický Kozel in the domestic market for five years, and to discuss in advance with the Office any intention of selling all or substantial part of shares of Výzkumný ústav pivovarnický a sladařský, a.s.

2000

The Office assessed notification for the approval of a merger between Hamé, OTMA - Sloko and OTMA - Slovácká Fruta, which was effected by the purchase of shares by OTMA - Sloko, and OTMA - Slovácká Fruta by Hamé. Regarding the condition of the competitive environment in the canned products market where a higher number of undertakings is currently involved, both domestic producers and importers of foreign products, and given by the fact that the combined share of the meeting companies on the relevant markets amounts to as much as 56 %, the Office approved the concentration with conditions. Hamé is obliged to consult with the Office any

further acquisition plan where the envisaged acquisition of an undertaking engaged in the canned products market, and Hamé is obliged to advise the Office of all the elections and appointments of members of statutory bodies of Hamé, or companies controlled by Hamé. Both conditions were valid for three years since the decision came into force.

The Office approved the intend of the city Prague, RWE and GESO and Pražská Energetika, a.s. to gain to the city Prague, RWE and GESO control over company Pražská Energetika, a.s., through company Pražská Energetika Holding, a.s. The Office approved the concentration with remedies necessary for protection of competition – the parties to the proceeding were not allowed, without prior approval of OPC, to conduct legal acts under which the company RWE acquired a separate direct or indirect control over companies Pražská Energetika Holding, a.s. along with Pražská Plynárenská Holding, a.s. With the same restriction the Office also approved the merger of capital city of Prague, RWE and Ruhrgas and Pražská Plynárenská, a.s.

The Office approved merger of the undertakings LINDE TECHNOPLYN, a.s. and AGA GAS, spol. s.r.o. with the condition that the company AGA GAS, eventually LINDE TECHNOPLYN had to sell two filling plants, within two years from the issued decision. The filling plants had to be sold to company, which ensure continuation of providing services at comparable level. Another condition was to set up business contracts with persons, that companies AGA GAS, spol. s.r.o. and LINDE TECHNOPLYN, a.s. provide distribution of gas in bottles to final consumer, so that was abolished exclusivity regarding the supplies, after 3 months after the decision came into force.

2001

The Office did not approve concentration of companies Karlovarské minerální, a.s. vody and Poděbradka, s.r.o and Hanácká kyselka. Concentrating producers of mineral waters command extensive capacities of licensed sources of mineral waters, which despite its partial use are able to master substantial part of the market. Their strong negotiation position against supermarkets and hypermarkets and credit of their trade marks will enable them to offer much better conditions for customers, which would lead to suppressed availability of other trade marks and to increase of prices of mineral waters to the prejudice of final consumer. In July 2004 was imposed fine to company Karlovarské minerální vody, which executed its voting rights connected to the shareholding and influenced the behaviour of the controlled undertaking before the legal effect of the Office's decision on approval of concentration between undertakings. In 2006 the proposal for merger was submitted again and the Office according to the changed market approved the merger with conditions. KMV had to preserve the current trade marks of Poděbradka product for a five years, after the merger, for a period of five years, Poděbradka would negotiate its business and delivery terms with customers (chain stores) procuring "modern" distribution separately from Karlovarské minerální vody, and for

a period of five years, unbundling of prices produced by the merging undertakings, whereby the current share of cheaper beverages would not be reduced.

The Office approved with restrictions merger of Bijou Terra, s.r.o. and Železnobrodské sklo, a.s. The company Bijou Terra was obliged to take measures, for at last ten years from the final decision, that maintain supply of glass technical marbles and semi-products used for the production of bijouterie for its customers in the Czech Republic, at least in the range of deliveries of 2000. Parties to the proceeding Bižuterie Česká Mincovna, a.s., ORNELA, a.s. and PRECIOSA, a.s. were required to maintain supply of glass technical marbles and glass in shape of stick and semi-products used for the production of bijouterie for its customers in the Czech Republic, including supplies from company Jizerské sklo, a.s., at least in the range of deliveries of 2000, for ten years. The company ORNELA, a.s. was imposed to offer for purchase its property shares in company Sklářská surovina, s.r.o. Also was imposed to remove personal connection between partners in companies Bijou Terra, s.r.o. and Jizerské sklo a.s.

The concentration of undertaking PRAGUE WATER CGE-AW, Paris, France and Pražské vodovody a kanalizace, a.s. Praha was approved, however accordingly imposed on the company PRAGUE WATER a duty to fulfil an obligation for the cause of necessary protection of competition with regard to possible impacts on final customer. In co-operation with the capital Prague the undertakings had to within five years from the date of effect of the decision achieve decrease of the intra-annual increase of the price of drinkable water and sewage charge from current 7.6% in 2001 to the inflation increase, saved fulfilling the obligation was prevented by extraordinary investment costs of the capital Prague.

The Office approved concentration of undertakings UNIPETROL, a.s. and PARAMO, a.s. The Office approved the concentration with a condition necessary for the protection of competition. The Office imposed on the company UNIPETROL a duty not to reduce in comparison with the situation on the day of issue of the decision without justifiable reasons supplies of asphalts, diesel oil, motor, gear, industrial and other oils to the domestic market produced by company PARAMO. The condition was stipulated for the period of five years from the date of legal power of the decision.

2002

In May 2002, the Office approved, subject to compliance with three imposed conditions, the merger of the company RWE GAS AG (RWE) with the company Transgas, a.s. and eight distribution gas companies. The company RWE was not allowed, directly or indirectly, acquire control of the company Moravské naftové doly, a.s., (MND) and block its decisions related to intentions, which will have an obviously competitive character in relation to the company RWE. In addition, the company RWE was not allowed, until the completion of the process of electricity privatization, acquire control of shares in electricity

distributional and heating distributional companies or build new electricity distributional and heating distributional companies in the Czech Republic, however, for the period of no more than five years. The Office also aimed to prevent consumers from being under pressure of monopoly prices and that the prices paid for gas resulted from competition. RWE Gas sold its share in the company MND and in this way fulfilled the condition imposed by the Office.

The merger of company ČEZ, a.s. and distributional companies: Středočeská energetická a.s., Východočeská energetika a.s., Severočeská energetika a.s., Západočeská energetika a.s., Severomoravská energetika a.s. The merger could result in substantial distortion of economic competition on the relevant market of electricity supplies to eligible customers and on the market of electricity production. So the merger was subjected to three conditions in favour of effective competition preservation. The first condition is the sale of 34% of ČEZ's share in the company ČEPS, a.s. (the monopoly operator of transmission network) that ensures complete separation of the transmission network from the dominant producer. The second condition, the sale of ČEZ's share in Jihomoravská energetika, a.s., Jihočeská energetika, a.s. and Pražská energetika, a.s. guarantees the full independence of those companies – competitors – of the company ČEZ. The sale of one out of five distributional firms to a third person is the minimal structural arrangement which eliminates the existence of a strong dominant position preventing effective operation of economic competition and which would result in the strengthening of the competition environment in favor of the purchases from independent producers and sellers.

The merger that resulted from a planned privatization of the company Unipetrol, a.s. was approved by the Office subject to obligations in August 2002. The obligations consisted in continuing supplies of fertilizers for companies outside of the group Agrofert Holding a.s. for the period of five years, maintaining the level playing field related to the conditions of distribution and regular publishing of the anticipated price development for nitrogen fertilizers. The obligations solved the danger referred to by some third parties. In the end the merger was not realized.

The concentration of undertakings LASSELBERGER Holding-International GmbH and Rako a.s. was realized on the markets of tiling materials and raw materials for their production. The concentration was approved subject to conditions ensuring effective competition. The conditions related in particular to ensuring access to distributional networks, ban on discrimination of purchasers, continuation of deliveries and preservation of trademarks of all the participating undertakings.

In September 2002, the Office issued a decision authorizing the merger between competitors by which the undertaking Generali pojišťovna a.s. acquires part of the undertaking and insurance trunk of the insurance company Zurich. The concentration was carried out on several insurance markets

where the merging companies had only a small market share. The only exception was the market of the guarantee for the case of travel agency bankruptcy. In its decision the Office approved the concentration, it imposed an obligation on the undertaking Generali to ensure the provision of insurance for the case of travel agency bankruptcy at least at the level, as far as the volume of concluded insurance contracts.

2003

The Office blocked merger of undertakings Saint Louise Sucre and Südzucker, that should have been carried out in the sugar market. The undertaking Saint Louise Sucre had controlled sugar refineries of the group Eastern Sugar. The undertaking Südzucker controlled sugar refineries of the group Agrana. This was the case of a merger of two out of the three most important competitors on the market. The subject created by the merger would have become a considerably dominant undertaking on the relevant markets of sugar consumed by household and industrial sugar. On the basis of the facts acquired throughout the investigation, in February 2003 the Office's decision stated that the merger would have led to a creation of a dominant position of the merging companies that would have resulted in significant distortion of competition. The decision was appealed, but Chairman rejected appeal. The decision was overruled by the judgment of Regional Court in Brno in 2006 and the Office assessed the merger again. Regarding the changes in property ownership, the Office issued a decision that the merger is not a subject to approval by the Office, because the undertakings did not reach the relevant turnover.

The merger of ZENTIVA B.V. and S.L. Pharma Holding Gesellschaft M.B.H. carried out in the field of pharmacy was cleared in June 2003 under commitments adopted by the merging undertakings. This is the case of the merger of two important drug producers, specialising in particular in the production and sale of generic (non-original) drugs for human use. The Office defined a large number of relevant product markets the dominant position of meeting undertakings would be created or strengthened that would result in a significant distortion of competition. The Office conditioned cleared the concentration by imposing commitments on the parties to the proceedings, which were connected with the transfer of all the activities related to the production and trade in selected drugs to the third persons.

As a result of the concentration, which was conditionally approved, the undertaking ČESKÝ TELECOM became the only partner to the undertaking Eurotel Praha, spol.s.r.o. The Office's definition of a relevant market resulted from the analysis of services provided by the merging companies and their substitutability and it took also into account the European Commission's decisions in this field. The concentration was predominantly of a conglomerate nature because the activities of the merging companies did not overlap and a vertical integration was created on some markets, which resulted in strengthening position of the merging companies. In the decision

the Office imposed an obligation in order to minimize the risk that undertakings and final consumers would be deprived of beneficial effects resulting from market liberalization as a result of anticompetitive practices.

The Office conditioned clearing the merger of undertakings PPF (CYPRUS) LIMITED and NOVA HOLDING, a.s. The subjects, controlled by the undertaking NOVA HOLDING, focus on service activity for the undertaking CET 21 which is an operator of television NOVA. The assessed merger would result in interlocking the undertakings Krátký film Praha and Studio animovaného filmu. The Office conditioned clearing the merger by obliging the undertaking Krátký film Praha to provide its services to all purchasers under free and equal access.

2004

The companies to merge were Bakeries International Luxembourg S.A. and DELTA PEKÁRNY a.s. The parties to the proceeding are the two most important players on the market of fresh standard baked goods and bread in the Czech Republic. The Office stated in its first instance decision that implementation of the merger would have led to a substantial lessening of competition environment, in particular on the market of fresh standard baked goods and bread. The Office prohibited the merger. The Chairman of the Office, Josef Bednář, confirmed prohibition of the merger by his second instance decision of 1 February 2005. By the end of 2005 the Office received the proposal in modified version again. The merger was approved without commitments. In new proceeding the Office investigated the changes in the relevant markets. The most important change was the fact, that none of the undertakings operated in the market with flour-milling products.



Following the acceptance of the commitments proposed by the parties to the proceeding the Office approved the merger of companies Bijouterie Trading Company a.s., and Swarovski Bohemia spol. s r.o., ORNELA a.s. and Bižutérie Česká Mincovna, a.s. The merger was realized in the market with bijouterie, domestic glass, gifts made of glass and other markets.

The companies Bijouterie Trading Company and Swarovski Bohemia accepted numbers of commitments in order to maintain functioning competition in the market.

2005

The concentration in question was realized in connection with the governmental resolution concerning the sale of ownership interest of the Czech Consolidation Agency in Autoklub Bohemia Assistance (ABA) to the direct competitor of ABA, the company ÚAMK. The proposed concentration of competitors concerned particularly the area of assistance service to drivers, traffic and mototourist information, distribution and sale of expressway coupons and related services, where both the merging subjects operated, i.e. ÚAMK and ABA and companies controlled by them. After the investigation within the five-month period, the Office issued the decision, whereby it approved the concentration on condition of the fulfillment of obligations in favor of maintaining and developing effective competition, which concerned maintaining conditions and extent of assistance and related services provided by the merging subjects to customers for the period of five years from the legal force of the decision.

2006

The Office approved merger of the number one and number two undertakings on the cable TV market. UPC became able to control its competitor, Karneval Media, only after it proposed five undertakings that concern the maintenance of programming, no price increases, programmer protection (providers of TV programmes), address concerns over cross-financing of services, and, last but not least, guarantee access to the programmes of the transferee, UPC, to other TV network operators.

The Office approved the concentration of German media group Verlagsgruppe and Czech printing houses NTISK Praha and NOVOTISK Olomouc subject to conditions. The Office concluded that there will be a major change in the structure of the newspaper printing market and a significant strengthening of Verlagsgruppe Passau's position as a result of the merger. Therefore the acquiring company had to submit several pledges that competition will be maintained as there was a real possibility that Verlagsgruppe Passau would influence prices of services and products to the other clients disadvantage. Verlagsgruppe has to modernise the printing houses and maintain the existing conditions for its current clients, for instance, until the market stabilizes.

2007

The Office approved the merger of undertakings Telefónica O2 Czech Republic, a.s. and DELTAX Systems a.s. (under the condition of fulfillment of a commitment proposed by the parties to the proceeding in order to maintain effective competition. Deltax, had to, according to the commitment withdraw from a public contract concerning an information

system for the maintenance of interactive forms (IS ASDM) for the Czech Telecommunication Office. It was the opinion of the Office that there had existed the risk that upon the merger the new entity would get access to secret data on its competitors that it could use in competition. Therefore Telefónica would have gained unfair advantage to other undertakings on the market.

2008

REWE/Plus Discount merger has been approved under the condition of fulfillment of commitments which the party to the proceedings accepted in the course of the administrative proceedings to the benefit of maintenance and development of effective competition. Prior to the merger, group REWE had been present in the Czech Republic through the network of retail stores BILLA and Delvita (total of 181 stores) and network of discount retail stores Penny (the total of 171 stores). The acquired company PLUS which prior to the merger belonged to the Tengelmann group had in the Czech Republic operated in a network of discount retail stores Plus (total of 146 stores). The entity created by the concentration became the second strongest competitor in the national market of retail sale of goods of daily use after Schwarz group and ahead of Ahold and Tesco. The Office carried out analysis of local markets. The investigation concluded that the assessed merger would lead to high concentration in local retail markets in the area of four regions. Such a strong position would enable REWE group to behave in a significant extent independently on other undertakings or customers. In order to eliminate the concerns about the distortion of competition, the party to the proceeding submitted proposal of structural remedies. According to the proposal, the REWE group was obliged to sell one store from its portfolio on each of the problematic markets. Despite the fact that the commitments were mitigated in the future, the company REWE did not sell any of its store, the Office was obliged to initiate new proceeding on imposing the fine for not fulfilling the remedies in year 2011.

The Office approved the merger of AGROFERT HOLDING and PRVNÍ ŽATECKÁ with commitments to the benefit of maintenance effective competition on the affected markets. The Office identified possible distortion of competition in the retail market of industrial fertilizers in Ústecký and Středočeský region, on the retail market of chemicals for plant protection in Ústecký region, on the market of storage of plant commodities in Ústecký and Středočeský region, and on the retail market of feeding mixtures in Ústecký region. In order to maintain the effective competition the Office proposed structural remedies and restrictions which the party to the proceedings accepted and fulfillment of which was stated by the Office as a condition of the merger approval. To be specific, the acquirer, AGROFERT HOLDING, was obliged to divest several parts of PRVNÍ ŽATECKÁ company to an independent third party that would be qualified to operate such assets; this resulted into the removal of concerns about the distortion of competition on the mentioned markets in Středočeský and Ústecký region.

2009

In March 2009, the Office approved the concentration of undertakings AGROFERT HOLDING, a.s. and Agropol Group, a.s. However, the Office qualified its consent with the condition of the fulfillment of several structural remedies in favour of preserving effective competition, which the party to the proceedings accepted prior to the issuance of the decision. The Office identified possible concerns of the distortion of competition on a total of nine relevant markets of retail fertilizer sales, retail feed mix sales, purchase of grains and purchase of oil plants in six regions of the Czech Republic. In the interest of preserving effective competition on the markets most affected by the concentration, AGROFERT undertook to sell off selected parts of the business of some companies of the AGROFERT and Agropol groups as well as a minority equity share that it owned in one of their competitors.

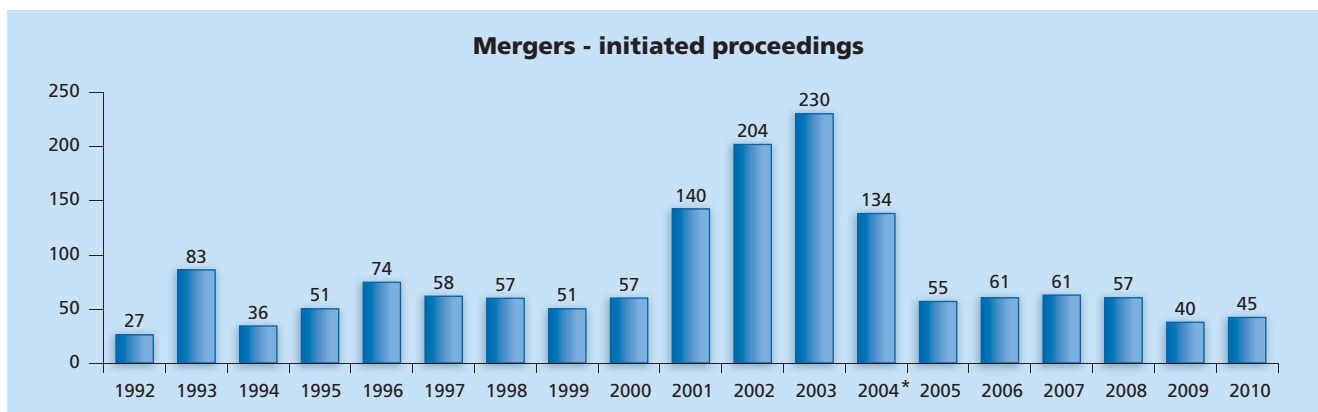
2010

The Office approved the merger of the undertakings EUROVIA SA and Tarmac CZ a.s. by its first instance decision. However, since the initial assessment of the merger prompted concern regarding potential distortion of competition in the markets in question, the decision was subject to the fulfillment of several structural remedies. The merger took place in the markets for crushed aggregates and mined aggregates, asphalt covered mixtures and in the structural engineering sector within localized markets in central, west, north and east Bohemia. The Office was concerned that there could be a potential violation of competition, particularly due to the fact that after the merger Eurovia would gain sufficient economic power on particular local markets that could restrain or restrict its competitors in the production of covered mixtures and structural engineering from accessing crushed aggregates. Eurovia proposed commitments to meet these concerns, including the sale of several quarries in north and west Bohemia to an independent undertaking. The Office found such commitments sufficient and approved the proposed merger.

A fine in the amount of CZK 477 thousand was imposed on Lumius, spol. s r. o. for implementing a concentration of undertakings prior to submission of a notification of initiation of proceedings on the approval of the concentration and prior to the legal effect of the decision of the Office approving the concentration. Lumius acquired shares representing 89% of the registered capital and votes in Českomoravská energetická, a. s. on 20 April 2009 and thus acquired the possibility to directly and exclusively control this company. The Office received the notification of the concentration of undertakings on 13 July 2009 and issued the decision on the approval of the concentration of undertakings on 21 August 2009, which became effective on 11 September 2009. During administrative proceedings, the Office found out that Lumius had been exercising a decisive influence on the activity of ČME in violation of the law, specifically by providing its business manager with a general full power of attorney to

execute all legal acts and act in the name of ČME, by using its votes to influence the approval of the regular financial statement and proposal for the distribution of the profit of ČME for 2008, by approving the business plan of ČME for 2009,

by removing existing members of the board of directors and the supervisory board of ČME and appointing new members, and other actions before submitting the proposal for the approval of the concentration of undertakings.



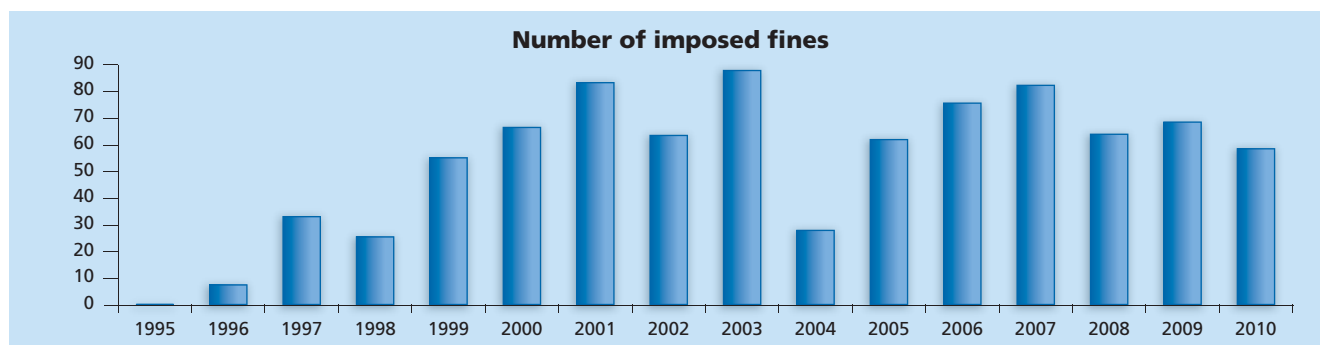
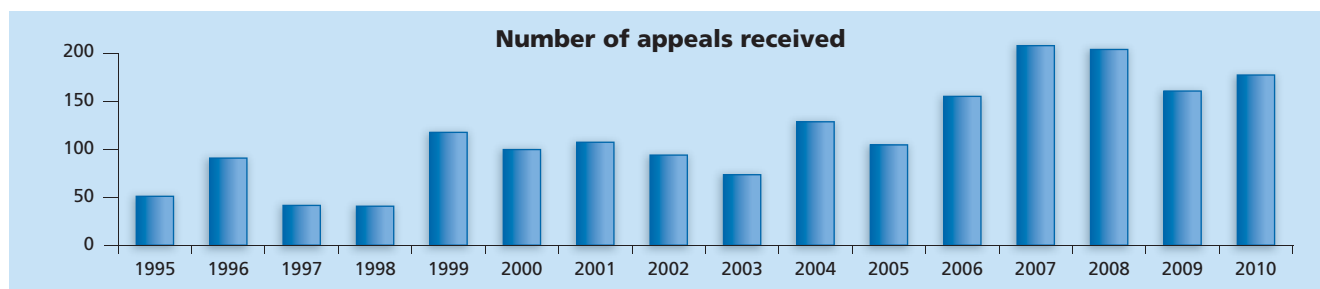
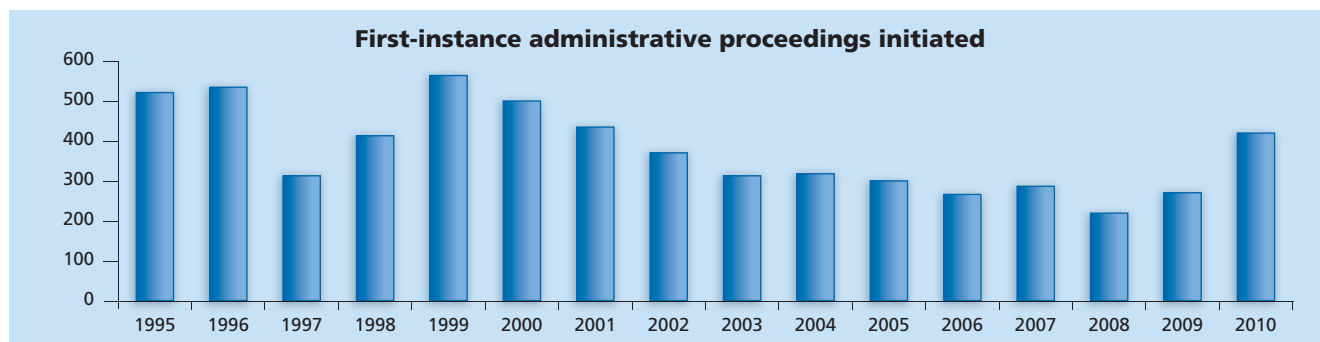
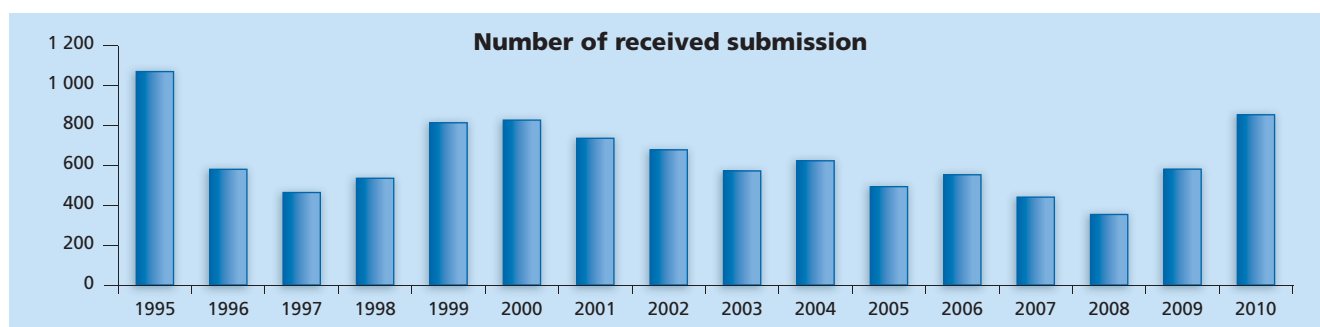
* In 2004 financial thresholds for merger notification were changed which led into significant decrease of cases



OVERVIEW OF THE OFFICE IN THE AREA OF PUBLIC PROCUREMENT

Office for the Protection of Competition supervises the public procurement control since January 1995. As of 1 January 1995 the Act on Public Procurement No.199/1994 Coll. entered into force and the new supervision power was given to the Ministry of competition (the OPC from 1996). Merging the public procurement control with competition protection has pro-

ven useful during almost 17 years of the practice, providing platform for intensive exchange of information and cooperation of both divisions and enabling promotion of competition principles in the Czech economy and detection of prohibited conduct of undertakings.



During its practice of public procurement control, the Office has received almost 10.6 thousand submissions, initiated 6,331 administrative proceedings and has issued 6,256 first-instance and 1,880 second-instance decisions. Total number of 881 fines has been imposed in total amount reaching almost CZK 46 million.

In a limited scale, the Office deals also with the issues of concessions as of February 2005, when the Act on Public Procurement was amended and provisions on concessions in construction works and services were implemented. Subsequently, due to complexity of issues including cooperation of private and public entities (Public Private Partnership – PPP) a new enactment was introduced. Act No. 139/2006 so-called Concession Act entered into force in second half of year 2006. More changes in the area of concessions were implemented by the Act. No. 417/2009 which entered into force on 1. January 2010.

„In the public sector, number of tenders has decreased. Tenderers now struggle to use all tools at their disposal, including proposals to the competition authority to review contracting authorities' decisions.“

Petr Rafaj, interview for
Parlamentní magazin, January 2011

1995

It became obvious right at the beginning of the application of the Act. No. 199/1994 Coll. that substantial amendments would be required. The Office received record number of 1,085 submissions on revision of contracting authority's conduct and by the end of May 1995 more than 150 awarding procedures were annulled. Therefore, the minister proposed over 70 changes and amendments regarding the scope of application of the Act, key terms definition, thresholds amounts for different types of awarding procedures, definition of contracting authorities, qualification prerequisites requirements etc. Several enactments were introduced during following years, changing the substance of almost all provisions of the Act.

First decision in area of public procurement

Decision issued on 13. January 1995 ordered the Road Investments Department Prague to cancel public tender, which didn't contain information on fulfillment duration of public tender, requirements for basic qualification criteria for tenderers, assessment criteria, payment conditions and competition and contractual time frameworks, it lacked place and time for bid submissions as well.

1996

On the basis of its experience the Office issued first analysis on the most frequent imperfections in tender procedures. Among other an insufficient preparation of contracting authority was mentioned together with inaccurate definition of awarding criteria. As for the awarding criteria contracting authorities infringed the rules of public procurement mostly by setting diverse criteria, providing additional requirements and by changing the level of assessed importance. The analysis also identified potential illegal tendencies to restrict competition by awarding the tender to previously selected tenderer. Most common restrictions of competition involved exclusion of tenderers from participation due to entirely formal reasons, division of tender in order to apply simplified, less transparent awarding procedure, unauthorized award of public contract directly to one tenderer or abuse of so-called special conditions of public procurement procedure connected e. g. with regional solution of particular issues. In connection with outcomes of the analysis the Office initiated educational activities and launched series of lectures and seminars not only for contracting authorities. These activities, together with specialized consultations, contribute to the quality of awarding procedure.

ICT for ČVUT in Prague

In 1996, among others, the Office canceled the decision on ICT tender of the Czech Technical University in Prague, Faculty of Civil Engineering. Contracting authority in question failed to meet the awarding procedure requirements by omitting unified bid assessment including payment conditions. Awarding documentation lacked documents prescribed by law and other written attachments. Evaluation committee was not established according to law and did not mention the procedure of the bid evaluation in its report. Moreover, contracting authority infringed the public procurement rules in awarding procedure announcement for it wasn't signed by the statutory representative and did not contain information required by law.

1997

The greatest task for the Office in 1997 was to prepare background analyses for further amendment of Act on Public Procurement in order to reach higher level of interoperability between Czech and EC rules and strengthening the legal safeguard in merit issues. Moreover, the Office initiated preparations on the Czech Technical Standard (CTS) as a methodological document for awarding procedures in construction works. Employees of the Office participated in committees for assessment of the most suitable bids of tenders over CZK 100 million nominated by respective minister and over CZK 500 million of tenders nominated by the government pursuant to Government's Decree No. 228 of 16 April 1997.

The decision-making practice of the Office proved that in order to complete the reform of the public procurement system

not only gradual improvement of a legal framework is necessary but also significant professionalization of public sector employees responsible for awarding procedures is inevitable.

Preparations for functioning of the second chamber of the Parliament of the Czech Republic

Based on the audit findings of the Supreme Audit Office of the Czech Republic the Office initiated administrative proceedings concerning tender on preparations for functioning of the Senate of the Czech Republic. The Office proved that award procedure on securing whole engineering-investment and plan activities including ICT and furniture supply was not conducted pursuant to Act on Public Procurement. Vagueness of subject of a tender and possibilities to submit various bids were not stimulating tenderers to seek for optimal adjustment of their bids especially in cases where subcontractors' prices were free to be changed. The Office imposed a fine of CZK 200 thousand upon the Senate's Cabinet as a contracting authority.

1998

In 1998 the OPC submitted the Czech Government proposal of amendment to the Act on Public Procurement. The Government adopted the amendment in February 1999, Parliament for almost one year later and amendment No. 28 entered into force in June 2000. Reasons why the amendment was introduced were practical experience gained during the decision-making process of the OPC and further harmonization of the Act with EC procurement rules.

In connection with the initiations of accession negotiations of the Czech Republic to the EU, the OPC focused on preparations of so-called position papers for the Czech delegation representatives who negotiated extensively with the representatives of European Commission in the area of competition and public procurement. These documents dealt mainly with negotiation proposals and assessments of impacts connected with EU membership. In June 1998 a public procurement legislation screening was conducted (analytical assessment of the Czech and EC legislation) within a framework of Free movement of goods Accession Chapter. It was stated that the Czech Republic accepted *acquis communautaire* in the area of public procurement and wouldn't require negotiation of provisional periods.

Reconstruction of Nostic Palace

The OPC dismissed the decision of Ministry of Culture on selection of the most suitable bid for reconstruction of Nostic Palace in Prague and ordered the contracting authority to re-launch the awarding procedure. Company CERTOS Prague as a organizer of the tender conducted and presented assessment of the bids including the rating proposals and order of bids, thus influenced inappropriately decision-making of the assessment committee and favored particular tenderers. Moreover the contracting authority adjusted item prices of

selected bids and did not stated this reassessment in the final report. By the Chairman's decision the first-instance decision was changed and the contracting authority had to select new awarding procedure.

1999

The Office initiated pro-transparent approach in its decision-making in reaction on the European Commission's assessment report in October 1999. The OPC started to publish all of its decisions in the Annual Decision Report and at its website (www.compet.cz).

In the second half of the year 1999 preparation works on amendment to the Act on Public procurement were finished and preparations for amendment of Act on Surveillance over Public Procurement were initiated.

Construction of sewerage in Lysice

The OPC cancelled a decision of a contracting authority on selection of the most suitable bid on sewerage construction in city of Lysice and ordered the contracting authority to initiate a new awarding procedure. Contracting authority infringed the Act on Public Procurement by disregarding the qualification criteria and it failed to collect reasoning for the exceptionally low bid. The assessment committee adjusted the prices in bids according to the number of house connections and selected the cheapest bid but due to exceptionally low bid price and technical difficulties stated that the tenderer in question wouldn't be able to meet the tender's criteria. However the tenderer was not allowed to prove that the price in bid was justifiable.

2000

In January, the Parliament of the Czech Republic approved amendment to the Act on Public Procurement which entered into force on 1. June 2000 as a amendment No. 28. In 2000 The Office issued 550 first-instance decisions, which was the highest number up to day when the OPC celebrates its twentieth anniversary.

Supply of blood alcohol testers for the Police of the Czech Republic

Ministry of Internal Affairs of the Czech Republic in its tender for devices for measuring the level of alcohol in a blood in breath for the Police of the Czech Republic evaluated on the basis of sole criterion a bid of company Chromspec as the most suitable. On the basis of a complaint stating the company Chromspec hadn't meet required criteria, received from the second tenderer, company Drager, contracting authority conducted another selection and excluded Chromspec from the tender for failure to prove calibration standards of the device. The Office subsequently cancelled the decision on the exclusion from a tender and ordered the contracting authority to repeat whole procedure.

2001

In this year, significant increase in number of investigations occurred, especially on the basis of findings made by Supreme Audit Office. Moreover, the Office cooperated with the State Environmental Fund on assessment of contracting authorities' conduct in projects of environmental improvement, which were supported by state funds (e.g. sewerage plants, sewerage systems, gas service networking and also purchases of means of transport in order to increase accessibility of certain regions).

Monitoring and call center for The Office for State Informational System

Following the recommendation of the Supreme Audit Office, the OPC investigated contracts and procedure of tenders of the Office for State Informational System. The tenders in question concerned establishment and maintenance of monitoring center for Y2K support in connection with the National Security Plan and call center for supporting thereof. In both cases the OPC imposed the fine for infringement of the Act upon the contracting authority in a total amount of CZK 150 thousand.

2002

Legislation activity of the Office focused on the area of tender proceedings in 2002. Six amendments were adopted and together with the Ministry for Regional Development the Office initiated preparations for new amendment that transposed the Office's experience and experience derived from European regulations into Czech legislation framework. The purpose of the amendments was to speed up and improve process of awarding proceedings in order to save resources.

In reaction to the floods in the Czech Republic the Act No. 424/2002 Coll. was adopted, regulating conduct of contracting authorities in cases of recovery from natural disasters.

Together with German experts a twinning project was launched in 2002. Conferences and seminars on public procurement were attended by the experts from the Ministry of Finance and Ministry of Regional Development. Experience of the OPC's experts and particular lectures were given in coordination with Educational Centre for Public Administration of the Czech Republic.

Control of awarding procedure of Prague

The Office conducts also control of selected contracting authorities. One of the contracting authorities inspected in 2002 was municipal authority of capital city of Prague. The Office investigated 66 tenders and out of these 47 administrative proceedings were initiated. Most of the cases indicated infringement of the Act and the total amount of the sanctions reached CZK 715 thousand. Serious infringements

detected involved mainly failure of tenderers to meet the qualification criteria before conclusion of the contract. In 39 cases the contracting authority acted contrary to the Act while assessing the bids. None of the decisions were challenged.

Control of awarding procedure of city of Brno

Based on its investigation of the tender procedures the OPC initiated 17 administrative proceedings ex officio. The first-instance decisions imposed in total CZK 520 thousand upon the contracting authority. Chairman of the Office decided to decrease the amount of a fine by CZK 40 thousand. The cases involved e.g. reconstruction works of Janáček Theatre, Jiří Mahen Library, schoolhouses renovations etc.



2003

Legislation works of the Office were fully engaged in preparations for the Czech Republic's accession to the EU. The Office together with Ministry for Regional Development prepared another amendment to Act on Public Procurement which entered into force on 1 May 2004.

The Office focused on speeding up the process of dealing with complaints and initiation of administrative proceedings according to the Act. Great attention was given to the findings of the Supreme Audit Authority. In 2003 a significant increase was observed in cooperation with the Police of the Czech Republic in connection with suspicions on corruption, abuse of public authority and machinations in public competition. Moreover, the Office was extensively asked to give its opinion on various cases by the National Security Office. In 2003 the OPC imposed a record number of 90 fines.

Pilot project of GSM-R of the Czech Railways

Company Czech Railways as a contracting authority in business tender on project proposal and realization of pilot project of GSM-R on track Děčín, national frontier – Ústí nad Labem-Praha-Kolín chose not to follow the recommendation of the selection committee (which recommended the Company Siemens as the most suitable bid) and selected the company KAPSCH as the most suitable. The Office in its decision stated that the contracting authority violated the Act by failing to prove that selected bid was the most suitable according to the awarding criteria. Contracting authority challenged the first-instance decisions but the Chairman confirmed the Office's decision at the second instance level.

2004

Year of the Czech Republic's accession to the EU covered mostly the activities connected with a harmonization of the Czech national law and European regulations. The Act on Public Procurement had already been harmonized by the May 2004 and included European procurement directives, excluded discrimination of foreign tenderers and implemented changes in appointment of assessment committees. New Act also extended the scope of contracting authorities and included public entrepreneurs which received more than 50% grant from the public funds. Military and defense tenders were excluded from the scope of the Act with regard to the vital security interest of the country.

In 2004 new preparation works on another amendment were launched in prospect of implementation of changes regarding the new directives 2004/17 (EC) and 2004/18 (EC). The amendment was adopted in 2006.

Securing of IT services for city Ústí nad Labem

The contracting authority concluded contracts on provision of activities in the area of information technologies for a non-specified period with company Metropolnet, of which it was the only founder and shareholder. The contracting authority resulted from a false presumption and that was why it had not awarded the contracts pursuant to the law. It presumed that the Act on Public Procurement was not related to cases, where the performance of the contract is fully provided by a business entity, whose founder and the only party to it is a municipal authority and which was established for the purpose of provision of performance constituting the object of the given contract. The contracting authority did not observe the obligatory procedure for conclusion of the contracts by not awarding the public contracts in form of announcing public tenders, by which, along with the conclusion of the agreements themselves, seriously breached the law. With respect to the fact the performances according to the two abovementioned contracts had been realized and it was not possible to impose a duty to redress on the contracting authority, the Office imposed a fine in amount of CZK 145 thousand. The contracting authority filed an appeal against

the decision. The Chairman of the Office confirmed the decision and dismissed the appeal.

2005

With an appointment of a new chairman, Martin Pecina, the Office entered into another era of its development. The Office set its priority in the area of public procurement in complex assessment of particular cases and withdrawal from the purely legal and unified approach. In cases where a penalty was to be imposed the OPC preferred concrete and specified identification of infringer and adjust accordingly level of the fine.

Starting February 2005 the Office deals also with concessions. One of the very first cases the Office dealt with was administrative proceeding with city district of Prague 1 concerning using of so-called Werich villa. The administrative proceeding was terminated in December 2005 due to a fact that the contracting authority cancelled the tender.

Trolleybuses for Zlín-Otrokovice

The Transport Company Zlín-Otrokovice was imposed a penalty of CZK 500 thousand. The contracting authority proceeded in contradiction with the Act on Public Procurement. In 2004, it decided to add to its car park six low floor trolleybuses in the proceedings without publishing. With the aim to unify its car park it awarded the contract directly to the company Karosa, who had been its supplier of buses in the past. However, in this case it was the purchase of goods of a different kind and that is why it was not possible to consider this supply of trolleybuses a "supplementary" contract to the original contract for buses, as viewed from the point of the law. The contracting authority did not proceed transparently and it did not ensure a tender for a public contract. It did not prove in a due and legal procedure that there was no other supplier on the market which would offer a lower price for the delivery of trolleybuses than the chosen company Karosa and that this lower price could not compensate additional costs ensuing from the subsequent service of vehicles of both makes. It was increased costs for the acquisition of service equipment and both material and personal costs that the contracting authority used as arguments to defend its course of action. However, such conclusion, in the Office's view, is not in accordance with the facts. The price of the public contract in the investigated case was CZK 77.8 million.

Czech Federation of Physical Training

The largest inspection in 2005 was conducted at the premises of Czech Federation of Physical Training, following the inspection at other construction sites of regional sports federations. In case of Czech Federation of Physical Training tenders of minimal state support of CZK 10 million were inspected. This covered tenders in period 2002-2004 in total amount of CZK 700 million. During the control 17 tenders were reviewed and 12 administrative proceedings were initiated. During the course of proceedings fines of total amount

CZK 274 thousand were imposed. The Federation violated the Act especially in transferring the decision-making authority to the sport clubs; hence this authority was solely limited to the contracting authority.

2006

The difficulties in public procurement control was illustrated by the fact that in 2006, the Office supervised public procurement pursuant to Act No. 199/1994 Coll., on Public Contracts, as amended, Act No. 40/2004 Coll., on Public Procurement, as amended, and Act No. 137/2006 Coll., as amended which entered into force on 1 July 2006. The main novelties included public contracts of a smaller size, greater flexibility, new proceedings – competitive dialogue, simplified sub-limit proceeding, central procurement, master contracts for all contracting authorities, establishment of evaluation committees, provisions for fully electronic proceedings, etc. New principal institutes introduced: a dynamic purchasing system, electronic auction, master contract and central contracting authority. The dynamic purchasing system is a fully electronic system for common public contracts, limited in duration and open to all suppliers who meet the entry conditions for its entire duration. New six guidelines were issued to specify certain provisions of the Act.

Together with the Public Procurement Act, the new Act No. 139/2006 Coll., Concession Act, entered into force. It stipulates terms and conditions and procedures to be followed by a contracting authority in the conclusion of license agreements in the area of cooperation between contracting authorities and other entities. The Competition Office was also entrusted with supervision of the compliance with this law.

Czech Highways toll system

This was the largest public contract reviewed by the Competition Office thus far. The Competition Office examined the case upon motions filed by two unsuccessful bidders, MYTIA consortium and AUTOSTRADA, still in the late 2005. While certain shortcomings were found in the procedure followed by the contracting authority, the Ministry of Transport, the same did not impact the ranking of the bids. The decision of the Competition Office was subsequently upheld by the Regional Court in Brno in the fall of 2006 and finally in 2007 also by the Supreme Administrative Court in Brno.

The Office returned to the toll system contract at the end of 2006 when it reviewed an amendment to the contract, concluded between the ministry and the winning bidder, KAPSCH. The Office find violation of the Act in changes of original contract contrary to the awarding procedure criteria and in additional selection of supplementary solution for toll gates by diesel aggregates that should had been introduced as another tender. The Office did not impose another fine upon the contracting authority for the decision on bid selection was not influenced and additional costs were transferred to KAPSCH.

Ministry of Labor and Social Affairs concluded a contract without prior tender

The Office imposed a CZK 500 thousand fine on the Ministry of Labor and Social Affairs. It was one of the highest fines imposed on a ministry in a single case. The ministry erred in January 2006 when it concluded an agreement for the operation of its communication system in 2006-2008 directly with ANECT; however, in the case on hand, the contract value exceeded CZK half a billion. 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 two 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.

2007

In the course of its activities the Office had been collecting information and experience that it should use in the process of amendment to the applicable legislation on which the Office cooperated with the Ministry for Regional Development that guarantees the legislation in the sector of public procurement. A key part of the amendment was the inclusion of the new European directive on the increase of the efficiency of review proceeding in public procurement that was adopted by the European Parliament. In 2007 the Czech Parliament dealt with the issue of “technical” amendment to the Act.

Moravian Oil Mines

The Office imposed the biggest sanction insofar in the amount of five million Czech crowns on the state enterprise Moravské naftové doly (Moravian Oil Mines in liquidation in that time). The reason for the fine was that the company had awarded a public contract for the settlement of environmental damages – liquidation and removal of gas-oil drilling rigs and exploring wells without public tender notice, i.e. under non-transparent competition conditions. The overall amount of the contract exceeded 4 billion Czech crowns. Former liquidator of the state enterprise was found responsible and was recalled in mid-July 2007. The newly appointed liquidator issued a statement in administrative proceeding in which he admitted that in this specific case the conditions of the law that allow the awarding of a contract without prior public tender notice had not been fulfilled. The contracting authority failed to prove that this specific case had represented highly urgent situation.

Statutory city of Zlín

In the area of public procurement control a large inspection of public tenders of statutory city of Zlín was concluded. In total 71 tenders were reviewed from the 2006. Initial first-instance decision imposing a fine in total amount of CZK 3 million for 18 administrative proceedings was dismissed by the judgment of the Regional Court in Brno and the Supreme Administrative Court. The Office reopened the investigations and reassessed outputs of the tenders' assessment committee and subsequently imposed a fine in total amount of CZK 800 thousand for infringement of the Act on Public Procurement in 13 tenders concerning services and supply for almost CZK 421 million. In its decision the Office stated that the limitation of number of tenderers by ballot hadn't been transparent and tended to discriminatory practices. Aspect of public control during the ballots was completely missing during the whole procedure. The decision was finally upheld by chairman Petr Rafaj in February 2011.



Inadequate qualification criteria of Hradec Králové

The Office imposed one of the highest fines upon city of Hradec Kralove for error in public contract on municipality waste disposal. The fine reached CZK 700 thousand. The contracting authority breached the Act by imposing discriminatory criteria upon tenderers requiring information that wasn't directly related to the scope of the activities required to complete the tender. Contracting authority required at least 70 vehicles for waste disposal, 5 devices for waste removal and another 5 devices for further waste disposal. The specification of the capacity wasn't available even though the contracting authority was able to determine it. Such conduct was due to restrict number of bids and influence the final ranking of the tenderers.

Non-transparent ballot in Karlovy Vary

Based on information found on the Internet the Office started to investigate non-transparent ballot in the process of public procurement by a contracting authority which was the municipality of Karlovy Vary. The contracting authority was fined

in total amount of CZK 500 thousand. Among other reasons for the fine were significant malpractices in the process of public procurement for the "Exhibition, sports, cultural and congress center" the overall amount of which was to exceed CZK 1 billion. The contracting authority broke the law (the Act on Public Procurement) when it did not narrow down the number of tenderers in a transparent manner. The decision was upheld by the chairman Petr Rafaj. A Cassation complaint was filed with the Supreme Administrative Court which upheld the decision of the Office. The whole procedure of awarding proceedings has to be transparent regardless the fact that the competition authority proves particular infringement of Act on Public Procurement. This presumption is valid also in cases of ballots which is a conduct that is hardly to be objectively reviewed.

2008

The year 2008 did not bring any significant legislative changes, neither in the concession area, nor in the public procurement. The current legislative framework mirrors validated norms of the European Communities, however, as it is true with majority of relatively new legal regulations, also the current act needs legislative changes resulting from its practical application. At present some of the ambiguities are solved by the explanatory position of the Office in its final decisions. However, certain incoherence of individual provisions of the Act or their logical discrepancy still do exists. The Office gathered experience in its surveillance practice which is a basis for material for further amendments. In the first half of the 2008 the Office launched a control of the duty of contracting authorities to publish awarding procedures at the Information System on Public procurement. The control involved hundreds of contracting authorities. Most of them didn't fulfilled their duty to publish. In 2008 the Office received 459 complaints on review of the contracting authority which had been the smallest number insofar; similarly the number of initiated administrative proceedings was one of the lowest.

Health Insurance Companies are public contracting authorities

For the first time in its decision-making practice the Office stated that health insurance companies had the legal status of a public contracting authority. Health insurance company is a legal person established or found with the aim to meet the needs of public interest which do not have industry or business character, because it provides public health insurance. Funding of health insurance companies is not strictly separated from the state, because the health insurance company may not treat the income from the public health insurance at will. From the structure of health insurance in the Czech Republic it results that it is not a voluntary, but a mandatory payment, which the health insurance company is obliged to treat in accordance with the Act on insurance and other procedures stipulated by the state. These main features thus fulfill the definition of a public contracting authority in the case of health insurance companies.

Fine for Prostějov again confirmed

The Chairman of the Office for the Protection of Competition confirmed a fine of CZK 500 thousand, imposed on the city of Prostějov. 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. Instead of opening the awarding procedure the city of Prostějov concluded an agreement with companies MICOS and MI PRO STAV. During the second-instance proceedings it was stated that the conduct of contracting authority resembled to tendency to evade the law. Symbolic fine of CZK 10 thousand was imposed also upon company MI PRO STAV. The sanctions were imposed in November 2006 but the Regional Court in Brno dismissed the decision for the incoherency in the reasoning. The Office refined its reasoning and supplemented the reasoning with description of exceptional steps of the contracting authority (conclusion of memoranda, agreements etc.) that made the reasoning very difficult to understand and to describe. In its second decision the court confirmed the decision of the Office and asked for another correction in the decision's statement.

„The OPC by preferring its prevention function over repression, contributes to the cultivation of the competition environment in the Czech Republic.“

Petr Rafaj, interview for magazine Veřejná Správa, June 2011

2009

The period of 2009 brought about a number of significant legislative changes. The legislative work of Ministry for Regional Development and the Office for the Protection of Competition which has been continuing since 2008, has reached its climax by approving the amendment of No. 417/2009, effective as for 1 January 2010. The amendment transposed European Parliament and Council Directive dated 11 December 2007 with regard to improving the effectiveness of review procedures concerning the award of public contracts and concession contracts, into the Czech legal system. One of the most significant changes is the option for the Office to impose a ban on the performance of a contract as a remedial measure. Another new change is the introduction of the public blacklist of bidders who has been banned to participate in public procurement for the period of three years. The mentioned amendment also led to changes in concessions act.

The Section for Public Procurement in cooperation with the Competition Section focused on detecting cartel agreements in public procurement, so-called bid rigging. This year the Office for the Protection of Competition started record number of 581 proceedings in the field of public procurement.

Awarding of the tenders without prior transparent competition

The Office for the Protection of Competition awarded the fines in total amount of CZK 1,8 million to the Ministry of Agriculture for violation of the Act on Public Procurement in two tenders on integration of web application (e-AGRI) and on system centralization within the resort. Ministry made contracts with the company called Telefónica O2 Czech Republic, in case of e-AGRI portal even with the company called T-SOFT spol. s. r. o. , even though there was no open tender done in none of these public procurement. The contracting authority proceeded on the basis of negotiation procedure without publication, justifying this by succession of the previous realized tender and copyrights, whose owner is the chosen tenderer. During the proceedings the Office came to a conclusion that expert evidence presented proved succession for previous tender realized, however they do not prove the fact that the particular tender could not be realized by another supplier. Thus, the conditions for the procedure according to negotiation procedure without publication were not fulfilled. The second-instance decisions made by the Chairman confirmed the sanctions in 2010.

The Fine for Lesy České republiky for Failure to Retain Documentation

The Office imposed a fine of CZK 1 million upon Lesy České republiky for serious errors in contracts from 2007 pertaining to computer technology. The contracting authority failed to retain documentation to a total of seven contracts, to the administration and monitoring of ICT structure and the provision of services consisting in the operation and maintenance of communications technologies. The total volume of the said public contracts was equal to approximately CZK 35 million not including VAT. Except for the mentioned error, the Office determined in at least one case of a contract for the supply of computer technology that the contracting authority, in violation of the law, divided up the object of performance in such a way that the anticipated value of the public contract was reduced. The decision came into force in May 2010

Hradec Králové Region and Unauthorized Use of Negotiation Procedure without Publication

The Office imposed a fine of CZK 800 thousand on the Hradec Králové Region for serious offences in the acquisition of furniture for its new administrative headquarters. In 2004, the Region entered into a "lease (leasing) agreement" s.r.o. with volume equal to value of CZK one billion with IMMORANT ČR for the location for the Government of the region, Regional

authority, Historical monument authority, detached offices of ministries and other bodies of the Government. Three years later, the object of performance was extended so as to include the supply of furniture for a price of approximately CZK 36 million not including VAT. This contract was once again awarded to IMMORANT in a negotiation procedure without publication, in violation of the act on public procurement, even though a single one of the conditions for this type of proceedings has been fulfilled. The contracting authority thus limited the sphere of bidders without justification, and should have conducted a separate procurement procedure. The decision was confirmed by the Office for the Protection of Competition's Chairman, the Regional Court in Brno the second-instance decision cancelled in September 2011.

„Essential contribution of the Amendment is significant transparency of the awarding procedure which will bring great savings.“

Petr Rafaj, interview for Magazine Moderní Obec, April 2011

2010

At the beginning of 2010, the amendment to Act No. 417/2009 Coll., on Public Procurement, and the amendment to the Concessions Act became effective. In September the Act No. 179/2010 Coll. brought changes in the rights and obligations of contracting authorities and suppliers, specified some of the enactments and transposed the European Directive on the aid of clean and energy useful road vehicles. In 2010, there commenced preparations on two further amendments to the Act on Public Procurement. The first transposes European Directive No. 2009/81 (EC) into the Czech law, regulating the assignment of public contracts in regard to defense and security. The second amendment is considered to be crucial due to the fact that the proposal contains a few Fundamentals news which increase the transparency of public procurement procedure.

In 2010 the fine imposed by the Office reached the maximum level: CZK 11,24 million.

Discriminatory Requirements of the Contracting Authority

Chairman of the Office, Petr Rafaj, confirmed a first-instance decision that imposed one of the highest fines in the area of public procurement on the city of Liberec. A fine in the amount of CZK 3 million was imposed on the contracting authority for errors in the one-billion-crown tender for the provision of services in the waste management sector. Liberec violated

the principle of the ban on discrimination by stipulating a requirement to submit a decision granting of approval from the Liberec Region to operate a scrap yard in the tender documentation. This qualification requirement reduced the number of potential suppliers to undertakings that had the consent to operate such a facility or that operated such a facility in Liberec. Thus, suppliers who did not have the consent to operate a scrap yard at the time of tender proceedings were initiated were discriminated against; if their offer had been chosen as the most suitable, they could have arranged the consent and set up a scrap yard subsequently, since the contracting authority wanted to commence the implementation of the project one year after the tender announcement. The contracting authority thereby discriminated against suppliers who did not have their own facilities in Liberec at the time of the tender announcement (scrap yard, administrative building) but who would have been able to arrange them in time for fulfillment of the public contract. This procedure could have had a significant impact on the selection of the most suitable bid as it resulted in restricting the competitive environment.

Incorrect Selection of the Type of Tender

The Chairman of the Office for the Protection of Competition confirmed a fine in the amount of CZK 1.5 million imposed on the statutory city of Hradec Kralove for its procedure in procuring the construction of new parking spaces that was in violation of the Act on Public Procurement. The city signed a concession contract, at the time of the validity of Act No. 40/2004 Coll., on Public Procurement, with the selected bidder, the company ATOL, on the construction, operation and development of a parking system in the territory of the statutory city of Hradec Kralove, including the obligation of the concessionaire to create parking technology and new parking spaces. Based on an investigation by the Office, it was stated that the indicators defining a concession were not fulfilled. Thus the given case did not involve a concession, but an over-limit public contract for construction works. The contracting authority should have announced a tender for public procurement according to the Act on Public Procurement and published the information both at its central address and in the Official Journal of the European Union, which the contracting authority failed to do. The decision was legally upheld in November 2010.

2011

In 2011 the legislative works shall be finished. The big amendment shall make the whole awarding procedure more transparent. Big tenders from presumed amount of CZK 300 million and more should be, according to the amendment, introduced to the central administrative bodies for their assessment – so called panel of experts for assessment committee. Similar principle should be valid in cases of important tenders of regions and municipalities, which should be approved by the municipal council. Thresholds for small-scale tenders shall be decreased to CZK 1 million for tenders on supplies and

services. The same thresholds should be applicable to tenders in construction works starting in year 2014. Until 2014 the thresholds for small-scale tenders in construction shall be decreased from 6 to 3 million. Among proposed amendments there is a possibility of double the fine imposed for the infringement – from 5% to 10% of the tender's price respectively from CZK 10 million to 20 million. That shall enable to punish more severely hard-core infringements of the Act. The fines shall be doubled for repetitive infringement. Some of the changes should be incorporated into another enactments e.g. amendment to the Act on Protection of Competition expects the possibility to exclude the supplier that has been convicted of participating in a secret cartel, from the possibility of participate in tenders and concessions for three years. Amendment of tendering in the area of defense and security shall be implemented in August.

Liberec fined for tender on World Ski Championship in year 2009

Fines in total amount of CZK 6.55 million were imposed by the Office for the Protection of Competition upon city of Liberec for breaching the Act on Public Procurement during the awarding procedure of 72 tenders connected with World Ski Championship in 2009. Sanctions were imposed within six administrative proceedings. All cases involved illegal division of the tender in order to decrease the thresholds and enable the contracting authority to open awarding procedure with lenient rules. The decisions are not in force yet, for the contracting authority filed an appeal against the decision. Due to number of inspected tenders this case represents one of the most complicated proceedings ever dealt with. The Office assessed, while setting the amount of a fine, circumstances of the event and seriousness of the infringement in question as well as mitigating circumstances such as organizational and financial seriousness of the unique event like world championship.

Tender for the Prague metropolitan network awarded illegally

Capital city of Prague infringed the Act on Public Procurement according to the Office's findings when large-scale tender for securing of maintenance of metropolitan network in total volume of CZK 197 million awarded in so called procedure without publication the tender to company T-Systems Czech Republic. The OPC by its decision imposed a fine upon contracting authority of amount CZK 1.1 million and for the first time in its history restricted the fulfillment of the agreement with the tenderer. The first-instance decision was upheld by the chairman of the OPC Petr Rafaj.

City of Františkovy Lázně illegally excluded four suppliers to participate in tender

In a tender of estimated value of almost CZK 200 million on reconstruction of elementary schoolhouse including construction of multipurpose sport hall city of Františkovy Lázně

breached the Act on Public Procurement due to a fact that wrongly assessed the request for inclusion in the tender of companies Metrostav, a. s. and SWIETELSKY stavebni, Ltd. These tenderers were disregarded even though both companies presented written request for inclusion in the awarding procedure. Moreover the city excluded company Bilfinger Berger Baugesellschaft m. b. H. and BERGER BOHEMIA a. s. despite the fact that both companies met the qualification criteria. The Office imposed a fine in amount of CZK 700 thousand. The decision is not in force yet for the contracting authority filed an appeal against the first-instance decision.

The OPC imposed two fines on Krajská zdravotní a.s.

Office for the Protection of Competition has imposed two fines on Krajská zdravotní a.s. for breaching the Act on Public Procurement namely in amount of CZK 700 thousand for public procurement in estimated value of CZK 420 million for a complement of medical equipment and instruments and CZK 200 thousand in a procurement for suture materials in estimated value of CZK 50 million. The contracting authority has lodged an appeal against both first instance decisions.

During the procurement process for the complement of medical equipment and instruments Krajská zdravotní violated the Act on Public Procurement by not adequately extending the deadline for the submission of tenders after making some modifications in the published announcement of a tender. The contracting authority didn't proceed transparently and in reviewable way during assessment of the offer from chosen association. In the case of the public procurement for suture materials Krajská zdravotní determined a nontransparent way of offer assessment in specification documentation when the way of assessment of two sectional criteria did not express their meaning. The contracting authority made many other mistakes and its procedure is considered as nontransparent by the Office for the Protection of Competition.

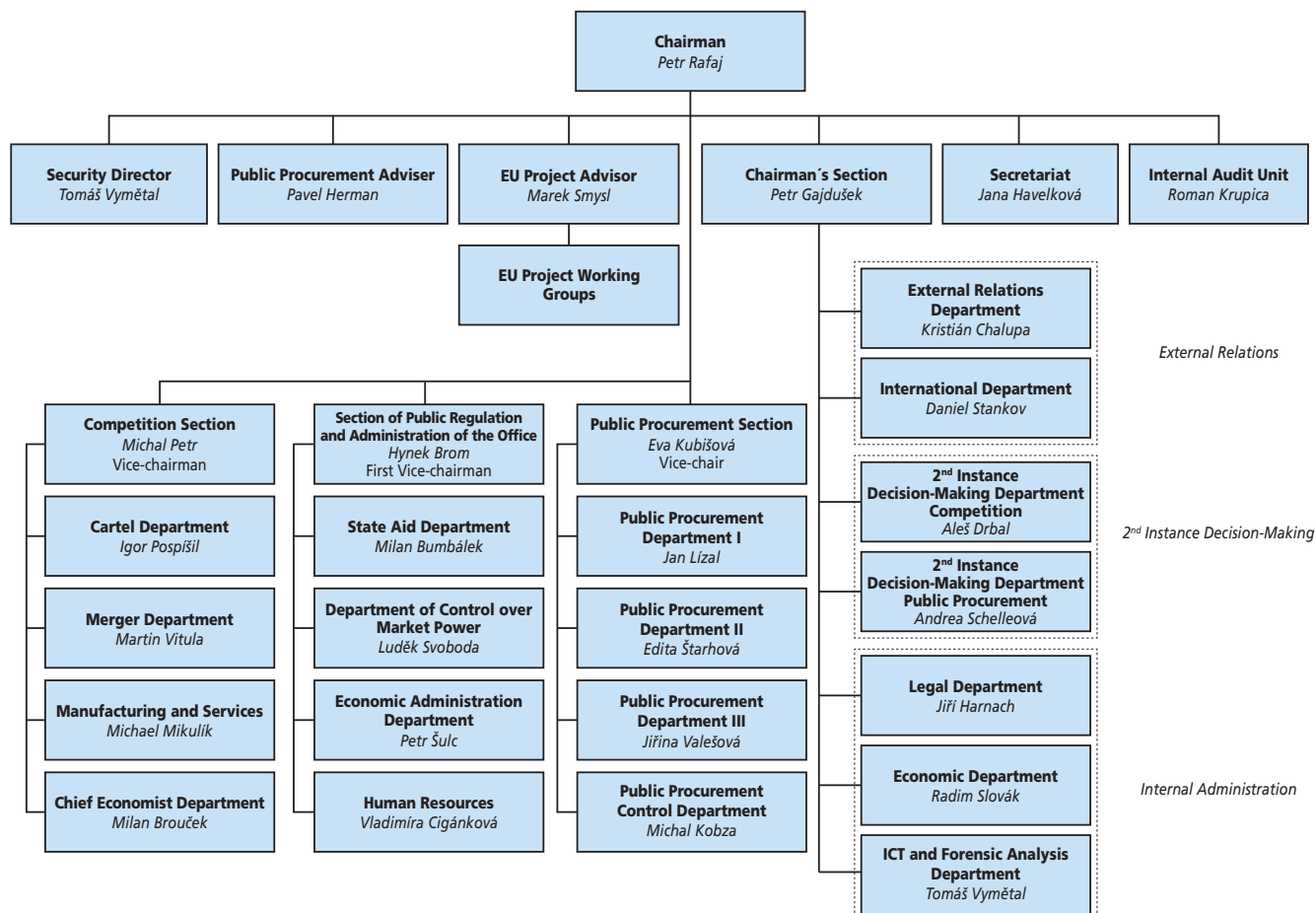
Stavoenergo is the first company to be registered in so-called blacklist

The Office has imposed a fine of CZK 500 thousand on Ostrava Stavoenergo and has prohibited to Stavoenergo a participation in public tenders for three years for commitment of administrative infringement during demonstration of basic qualifying prerequisites for the tender Kanalizace Baška. Stavoenergo has participated in this procurement process as a part of association Čistá Baška. In the offer of the association applicant submitted false confirmation from the Financial Office and from Regional Social Security Administration which were supposed to be the evidence of its basic qualifying criteria. The first instance decision has already come into force.

**Overview of the highest fines
imposed by the Office in the area of public procurement
(in a single administrative proceeding)**

Contracting authority	year	No. of Administrative file	Amount of fine in CZK	Entered into force
City of Liberec	2011	S286, 287/2009 S290,307/2009 S300/2009 S291/2009 S284, 285/2009 S296, 297/2009	5 000 000 1 000 000 300 000 100 000 100 000 50 000	NO
Moravské naftové doly, s. p.	2007	S195/07	5 000 000	YES
City of Liberec	2010	S255/09	3 000 000	YES
City of Hradec Králové	2010	S36/2010	1 500 000	YES
Capital city of Praha	2011	S448/2010	1 100 000	YES
Lesy ČR	2009	S204/09	1 000 000	YES
Ministry of Agriculture	2009	S108/09	1 000 000	YES
Ministry of Agriculture	2009	S109/09	800 000	YES
Transport Company of the City of Prague	2009	S267/08	800 000	NO
Ministry of Labor and Social Affairs	2009	S47/09	800 000	YES
Královéhradecký Region	2009	S01/09	800 000	YES
City of Zlín	2007	S395/06	800 000 <i>(decreased from 3 000 000)</i>	YES
Municipality of Prague	2002	S155/02	715 000	YES
Krajská zdravotní, a. s.	2011	S489/2010	700 000	NO
City of Františkovy Lázně	2011	S139/2010	700 000	NO
City of Hradec Králové	2007	S249/05	700 000	YES
Stavoenergo, s. r. o.	2011	S196/2010	500 000	YES
City of Prostějov	2008	S140/06	500 000	YES
City of Karlovy Vary	2007	S169/07	500 000	YES
Ministry of Labor and Social Affairs	2006	S213/06	500 000	YES
Transport Company Zlín-Otrokovice	2005	S048/05	500 000	YES
City of Brno	2002	S114/02	480 284	YES
City of Turnov	2010	S041/2010	350 000	YES
District of Ostrava – South	2011	S69/2011	300 000	NO
Tomáš Baťa University	2011	S42/2011	300 000	YES
Lesy ČR	2010	S111/2010	300 000	YES
Medical Holding of Královéhradecký Region	2009	S188/09	300 000	YES
Administration and Maintenance of Roads Kutná Hora	2009	S045/09	300 000	YES
City of Ústí nad Labem	2009	S032/09	300 000	YES
Vítkovice Aréna a. s.	2007	S196/07	300 000	YES
Community of Dolní Třeboňín	2004	S106/04	300 000	YES
České dráhy, a. s.	1997	S097/97	300 000	YES

ORGANIZATIONAL STRUCTURE OF THE OFFICE IN 2011



EXPERTS ARE TALKING ABOUT THE IMPACT OF THE OFFICE ON THE CZECH ECONOMY – QUESTIONNAIRE

In connection with the celebration of the Office's anniversary we have asked two questions to experts acting in competition policy:

- 1) **What is the contribution of the Office to the development of the Czech economy in past 20 years?**
- 2) **Which case handled by the Office do you consider as most important and why?**



Danica Paroulková
Chairperson
Antimonopoly Office
of the Slovak Republic

Ad 1)

Twenty years is a period during which not only individuals can shape up, but also an institution and in this regard I mean the Office for the Protection of Competition. It is the period during which the Office was formed into its current form not only in the system of administrative bodies in the Czech Republic, but also within the international network of competitive institutions. Congratulations! The aim of each country is to have a functioning and effective protection of competition. And there is a space for the competition authority – OPC – that by its interventions helped to Czech economy to make market functioning for consumers due to increase of economic efficiency.

Ad 2)

My opinion is that the activities of the Office have to be evaluated comprehensively. Various activities of the Office promote and develop competitive environment, fair competition, as well as competition culture in the country.

Not always the application of competition law (decision making) is the most effective tool for removal problems in the market and restriction of competition. And here plays key role competitive advocacy that is important activity allowing to sets up system for opening markets for competition, removes unjustified regulation and promote further liberalization of economy. As essential I consider that the Office should continue in independent and professional activities, in which succeeds and I am keeping my fingers crossed.



Imrich Flassik
Former Chairman
of the Federal Office
for the Protection
of Competition

Ad 1)

When I have red that the Office for the Protection of Competition in Brno is operating for 20 years, problems that were connected with its establishment came to my mind, and now it is celebrating its 20 years of fruitful activities. I think that its staff may be proud of their work. Not only because of the amount of work, but also of tamper into new and crucial issues. They chose concept of the Office that manages the agenda of protection of competition as well as public procurement, while both of them are very difficult and by now realized by the Office since 1994.

Since the 7th amendment of the German Act on the Protection of Competition (GWB), i.e. 1 July 2005 also Federal Republic of Germany has similar regulation, the original was extended to so-called fourth section called Award procedure. This section contains the basic provisions that enable to define the relevant institutes and other provisions necessary for the compactness of the system. (Also executive norm was issued.)

Although the Office proceeds in assessment of these questions in accordance with "its" act, it does not cause any problems, even though the German procedure is perhaps more modern.

Symbiosis applied in these two countries (the situation in other countries was not examined) is the evidence that public procurement includes number of elements joint with competition, which helped to fulfill social needs. And this is right.



Josef Bejček
Professor
Faculty of Law
Masaryk University in Brno

Ad 1)

Competition “watch dog” in the form of Competition Office had to be established as far as we wanted to become a country with market economy. Antitrust agencies are the basic institutional instruments of these countries; their name, organizational integration and subordination, respectively their structure and methods of appointment of the head are important, but only derivatively.

In the early years of the Ministry for Competition blocked number of unconsidered privatizations; however it had not power to face some of them and its successor has to solve its consequences (especially as a alleged abuse of dominant position). Nevertheless, thanks to the Ministry for Competition we avoided to conduct simple privatization of state monopolies.

I think, that after natural phase of finding its own face (somewhere between “rough policeman” against entrepreneurs and its friend) the Office have found appropriate position, that deters from violation of competition law, but also helps to cultivate entrepreneurs environment. Protection of competition as an institution which is the consumer’s best friend, indirectly contributes to the protection of consumers. It concerns also agenda of public procurement.

I appreciate the openness and undogmatism of the Office, monitoring of European and International trends in competition policy and the appropriate response, which is also accompanied and supported by its international reputation and involvement in international networks. I consider the existence of the Office as an element in our system of economy, without which it would lose one of unique correctives “managed by the derogation”.

Ad 2)

I had an opportunity to work as an external expert of the Office (or Ministry) from the very beginning and maybe therefore it is difficult for me to identify the most important decision among hundreds of them. As more important than individual decision I consider general consensus between the executive and judiciary about the direction of competition policy and its explicit euro conformity orientation long before our accession to the European Union. The Association Agreement was taken very seriously; in earlier decisions of the Ministry and the Office was noticeable more formalistic correctitude argument that Czech law is applied, not Euro-

pean (in answer to the arguments of the parties about euro conform interpretation of certain terms).

Romantic and ideological vision of competition as a new “idol”, that would ensure prosperity, equality of opportunity and sustainable development in our skeptical and pragmatic environment fortunately were not taken in – necessarily it would led into disappointment of exaggerated and unrealistic hopes. However, irreplaceable role of the Office in the regulatory framework of the economy is now generally recognized.

The analytical and argumentative level of the decision of twenty of fifteen years ago and now could be hardly compared – the significant progress is evident.

I wish to the Office, so that after few years it would not been recognize any qualitative difference (except for language) from its decisions and decisions of competition authorities of the “old countries” of the European Union, or from other developed countries with a long tradition of antitrust law and better possibilities of cultivating decision-making.



Martin Nedelka
Law firm Schönherr

Ad1)

Benefit of the Office is inseparably connected with benefits of competition rules and is influenced by the quality of these rules. By reasonable application of the competition rules, the Office contributed to our functioning market economy, in which are present competition rules.

Ad 2)

Concerning the major cases I could give a few. From the last time it is a decision concerning GIS. In this decision, the Office was dealing with the question whether is allowed to conduct proceeding for anticompetitive conduct, which was initiated before the accession of the Czech Republic to the European Union and terminated after the accession, as to when the same anticompetitive conduct was investigated by the European Commission. The case now come up before the Court of Justice, and its decision would specify the direction of future procedure in all similar cases.

Also important decision is related to the bid rigging in the tender for operation of military dormitory. This case showed that also cooperation with police could lead to the effective detection of secret cartel agreements.



Tomáš Fiala

Law firm Vejmelka & Wüncch s.r.o.

For the decision making practice of the Office was crucial factual and legal examination of its decisions within the judicial review. Although some Office's decisions were overruled by the courts, as for example building societies cartel, there is no doubt that also this decisions helped to improve its decision-making practice. This fact is evident from the present effort of the Office to assess complex economic context of the investigation conducted and its real impact on the competitive environment. In this respect, I wish to the Office, to continue in this trend, because only for this assumption will the Act on the Protection of Competition serve its real purpose, i.e. restrain the conduct, that threaten the functioning competition in the relevant market itself.

Ad 1)

I believe that during its activity the Office managed to convince both the professionals and public as well about the importance of fair competition and its importance for whole economy, as only companies operating in competitive environment are able to offer competitive products and services. By its activity the Office demonstrated the justness of its existence as an institution that protects market and consumers against entities which wanted by their behavior destroy competition and abuse principle of market liberty to restrict mutual competition to the detriment of customers and economy as whole. The importance of the Office's activities for the past 20 years lies, above all, in the fact that market in the Czech Republic can operate without distortion and excesses, and offer equal chances for all business entities.

Ad 2)

It is very difficult, in my view, to select only one of the most important cases dealt by the Office. But I believe that, from the view of all pillars of the protection of competition, it is worth to recall the following cases. Regarding agreements distorting competition, I consider as important cases of classic cartel on price fixing or market sharing, as for example cartel of producers of gas insulated switchers, distributors of fuel or bakery companies, which led to the distortion or even elimination of actual competition. In the area of abuse of dominant position I would especially remind Office's interventions in the newly liberalized markets, as cases of abuse of dominant position of telephone operators, or gas company where is the active approach of competition authorities needed for progressive creation of competitive environment in the Czech Republic. The development of competition environment in the Czech Republic, according to my opinion, was mostly influenced by the decisions of the Office concerning the merger of company ČEZ with regional distributors of electric energy, which was subject, beside others, to the unbundling of transmission system from company ČEZ.

CHAIRMEN OF THE OFFICE FOR THE PROTECTION OF COMPETITION (1991 – 2011)
STANISLAV BĚLEHRÁDEK, JOSEF BEDNÁŘ, MARTIN PECINA, PETR RAFAJ



Stanislav Bělehrádek



Stanislav Bělehrádek and Martin Pecina



Ladislav Špaček, Václav Havel, Josef Bednář and Zdeněk Kessler (December 2001)



Josef Bednář welcomes Vladimír Špidla



Martin Pecina with journalists (June 2007)



Petr Rafaj and Václav Klaus at inauguration (9 July 2009)



Petr Rafaj at St. Martin Conference (11 November 2009)



Petr Rafaj and Michal Petr

SEAT OF THE OFFICE FOR THE PROTECTION OF COMPETITION



Historical picture of today's Třída Kpt. Jaroše street, end of 19th century



Buildings at Třída Kpt. Jaroše street destroyed by bombing in year 1944



Boarding School Brünner Frauenerwerb-Verein (1903)



Reconstructed building of the Office (2007)



Building of the Constitutional Court at Joštova street in Brno –from 1991 to 2007 the first seat of the Office



New additional building of the Office



Visit of Václav Klaus (2 September 2005)



William Cabaniss and Martin Pecina (24 October 2005)



Emil Paulis, Václav Horák, Ondřej Dostal, Martin Pecina, Ulf Böge and Alberto Heimler at Conference Competition and Competitiveness (28 - 29 November 2006)



Martin Pecina, Petr Fiala and Václav Horák at Conference Competition and Competitiveness (28 - 29 November 2006)



Conference at 15th Anniversary of the Office: Competition and Competitiveness (28 - 29 November 2006)



Public Procurement – Conference OPC (27 November 2007)



Jiří Crha, Stanislav Bělehrádek and Imrich Flassik at ceremony to opening of new Office's building (17 May 2008)



Otakar Motejl, Danica Paroulková, Martin Pecina, Stanislav Bělehrádek and Pavel Rychetský at ceremony to opening of new Office's building (17 May 2008)



Otakar Motejl, Pavel Rychetský and Danica Paroulková at ceremony to opening of new Office's building (17 May 2008)



Humbert Drabbe and Klaus Otto Junginger-Dittel at conference State Aid Day (16 - 17 April 2009)



Martin Pecina at European Competition Day (13 - 14 May 2009)



Aleš Musil, Radek Pokorný, Martin Pecina and Michal Hašek at European Competition Day (13 - 14 May 2009)



Dan Sjöblom, Monica Widegren, Jacques Steenberg, Eddy de Smijter and Theodor Thanner at European Competition Day (13 - 14 May 2009)



Michal Petr and Philip Collins at European Competition Day (13 - 14 May 2009)



Robert Neruda, Miroslav Koberna, Jindřich Šnejdrla, Petr Vyhnálek, William Prasifka and Barbara Zubricky at St. Martin Conference (11 - 12 November 2009)



Petr, Rafaj, Robert Neruda, Michal Petr, Milan Brouček and Kateřina Ševčíková at St. Martin Conference (11 - 12 November 2009)



Michal Petr, Milan Brouček and Petr Rafaj at St. Martin Conference (11 - 12 November 2009)



William Prasifka and Michal Petr at St. Martin Conference (11 - 12 November 2009)



St. Martin Conference (11 - 12 November 2009)



Petr Rafaj at St. Martin Conference (11 - 12 November 2009)



Theodor Thanner and Petr Rafaj (20 January 2010)



Visit of Theodor Thanner (20 January 2010)



Petr Gajdušek, Philips Mardsen, Morvan Le Barre, Robert Neruda, Tihamér Tóth at Second Annual Conference on Competition Enforcement in the Recently Acceded Member States (22 April 2010)



Visit of Chinese delegation (26 July 2010)



Meeting of Kang Guoyi (first left) with Petr Rafaj (26 July 2010)



Danica Paroulková, Daniela Zemanovičová, Daniel Stankov, Petr Rafaj and Michal Petr (7 October 2010)



Hynek Brom, Tomáš Balint and Luděk Svoboda at Conference on the Act on Significant Market Power (10 November 2010)



Luděk Svoboda and Hynek Brom at Conference on the Act on Significant Market Power (10 November 2010)



St. Martin Conference (11 - 12 November 2010)



Hans Zenger, Daniel Donath, Derek Ridyard, Katie Curry, Arndt Christiansen at St. Martin Conference (11 - 12 November 2010)



Petr Rafaj, Milan Brouček, Michael Mikulík, Michal Petr, Igor Pospíšil and Martin Vitula at St. Martin Conference (11 - 12 November 2010)



Michal Petr at St. Martin Conference (11 - 12 November 2010)



Petr Rafaj and Petr Křižan at St. Catherine Conference on State Aid (25 November 2010)



Petr Rafaj, Hynek Brom, Michael Kincl and Ondřej Dostal at St. Catherine Conference on State Aid (25 November 2010)

