CONTENTS

1 INTRODUCTION

Last year, the Office for the Protection of Competition (the "Office") exercised state administration in the area of competition, public procurement, and, as of May 1, 2000, also state aid.

Major part of the Office´s activities was focused on tasks resulting from the obligations of the Czech Republic as stipulated in the European Agreement with respect to both legislation and decision-making. The fact that the Parliament of the Czech Republic highly praised the quality of the draft Act on the Protection of Competition, and a prominent representative of the European Commission, Director General of DG Competition, Mr. Schaub, voiced his appreciation of the capability of the young staff members of the Office, serves both as a great encouragement and a challenge for our further work.

An important task, as well as a success, was the thorough preparation and the review of documents prepared by the Office and pertaining to the regulatory reform in the Czech Republic in the area of competition by OECD's Committee for Competition Law and Policy. Both the competition policy of the Czech Republic and the Office earned a highly positive evaluation.

Last year, the Office expanded its international activities and established closer links with the Italian and Danish Competition Authorities. The most important and permanent international activity is represented by the good contacts with the European Commission which foster mutual understanding.

The activities of the Office in the three areas falling within its scope have asubstantial impact on the resolution of economic and social issues of the state, and as such have an impact on the interests of all our citizens. For this reason, the management of the Office strives to ensure that the activities of the Office are as transparent as possible and correctly understood. The Office appreciates the credit given by the citizens, representatives of municipalities, business associations and other institutions, which manifests itself in the great number of queries, requests, as well as petitions for the initiation of proceedings, addressed to the Office.

The management of the Office is committed to ensuring that the Office and its staff will continually deserve the maximal credit and support of the public in the future, due to the results of their work.

Josef Bednář
Chairman of the Office for the Protection of Competition

2 LEGISLATION

As a central authority of state administration, the Office for the Protection of Competition was established pursuant to provisions implementing certain measures in the system of central authorities of state administration of the Czech Republic and amending Act of the Czech National Council (Competencies Act) with effect as of November 1, 1996.

The competence of the Office as defined by the law pertains to the support and protection of competition from unauthorized restriction, surveillance of the public procurement process and state aid supervision. Some powers concerning protection against dumping imports are also under the Office's competence.

The Office is an independent authority. In its decision-making process it is bound only by general legal acts, by the results of its investigation activities and principle of administrative reasonability. Independency of the Office is safeguarded through the person in its head, i.e. the Chairman of the Office, as follows from the special act.

As far as **protection of competition** is concerned**,** the Office focuses on the identification of agreements restricting competition, the prohibition thereof and granting of exemptions in justified cases, further on abuse of dominant position and control of concentrations.

As regards surveillance of the **public procurement process**, the Office ensures that both the contracting authorities and bidders comply with statutory requirements.

In connection with the entry into force of the Act on State Aid, as of May 1, 2000, the **powers of a monitoring unit of the state aid** were transferred from the Ministry of Finance to the Office. Pursuant to the aforesaid act, the Office is entitled to grant an exemption from the state aid prohibition. The Office may further grant, by means of a decree, a block exemption from the state aid prohibition, in particular where such state aid is aimed at small and medium-sized enterprises, science and research, environmental protection, facilitation of employment and education or regional concerns. The Office keeps a record of all the state aid provided and ascertains whether the same was granted in accordance with the act. The Office may further perform inspections at the state aid beneficiary so as to check whether the state aid was used in accordance with the law.

The Office's competence resulting from the Antidumping Act is based on submitting opinions to the Ministry of Industry and Trade concerning the questions of competition violation as the result of dumping imports. The Office gives its opinion related to drafts of decision on imposing interim or final custom and concerning results of proceedings.

NEW LEGISLATION DRAFTS UNDER THE COMPETENCE OF THE OFFICE AND THEIR APPROXIMATION TO EC LAW

In 2000, the Office participated in a number of legislation drafts and initiatives in the area of competition and state aid. The most important endeavours were represented by the elaboration of the Act on the Protection of Competition, which was approved on 24th April and entered into force on 1st July 2001.

In connection with the new Act on the protection of competition, decrees on general (block) exemptions from the prohibition of agreements distorting competition were drafted. They entered into force along with the new competition act. The Office also drafted the new law on the surveillance of the public procurement.

New Act on the Protection of Competition

The main purpose of the Act that is fully replacing the current Act No.63/1991 of 30th January 1991 is to attain full compatibility with the EC competition law in three areas of public

competition law, i.e. prohibited agreements restricting competition, abuse of dominant position and control of concentrations.

- The Act expressly regulates the application of competition rules to undertakings (public utilities) that provide services of general economic interest pursuant to a separate act or decision – **public utilities** within the meaning of Article 86 of theTreaty.
- As regards the area of agreements, the Act does not abandon the general clause pursuant to which any and all agreements by and among undertakings, decisions of their associations and concerted practices are prohibited unless the law stipulates otherwise or unless the Office grants an exemption.

In harmony with the EC law, practice of **new distinction between horizontal and vertical agreements** was established. Such a distinction is particularly significant with a view to the new definition of the ***de minimis*** agreements for which new thresholds are defined whereby if conditions stipulated by the Act are satisfied, such agreements are not subject to the prohibition. This means that the actual provision of law concerning the entry into force of such agreements upon their approval by the Office is abandoned as it is not supported by EC law. The Act further contains an empowering provision anticipating the adoption of general (block) exemptions from agreements distorting competition by means of implementing decrees which are to enter into force concurrently with the new Act on the Protection of Competition;

- As regards the protection against abuse of dominant position, the act, in accordance with the case law of the European Court of Justice, introduces the **notion of joint dominance**, defines the dominant position on the basis of **market power** which encompasses more criteria than the current provision based solely on market share; the same include, in addition to market share, the financial and economic strength of undertakings, legal or other barriers to entry, the degree of vertical integration of undertakings, etc. The Act abandons the undertakings' duty to notify the Office of their dominant position, which concept is not supported by EC law;
- The Act introduces significant changes in the area of concentrations, which is in compliance with the Council Regulation on the Control of Concentrations No. 4064/89 in terms of both substance and procedural aspects. The actual concentration is newly defined, new conditions for mandatory notification based **on the turnover**, rather than market share, of the concentrating undertakings, are introduced, together with fixed terms for the Office's

decision on approval of the merger that helps make the process more expedient, along with other changes;

- A publicly accessible cartel register is introduced; the same will contain agreements in respect of which the Office granted exemptions;
- The Act introduces further substantial procedural changes as compared to the current provision of law, in order to make the activities of the Office more expedient and effective;
- Undertakings may **apply to the Office** for the determination whether an agreement they plan to enter into in the future would be deemed prohibited and thus invalid;
- The Act introduces a new definition of the party to the proceedings whereby the Office may grant the status of party to the proceedings to persons whose rights or obligations may be substantially affected by the decision of the Office.

IMPLEMENTING DECREE PERTAINING TO THE ACT ON THE PROTECTION OF COMPETITION – GENERAL (BLOCK) EXEMPTIONS FROM THE PROHIBITION OF AGREEMENTS DISTORTING COMPETITION

So as to ensure high quality implementation and enforcement of the new Act on the Protection of Competition in compliance with EC law, and pursuant to the powers vested in the Office pursuant to the Act, the Office prepared implementing decrees on the approval of general (block) exemptions from the prohibition of agreements:

- for certain categories of vertical agreements;
- for certain categories of agreements in the area of insurance sector;
- for certain categories of agreements on technology transfer;
- for certain categories of agreements in the area of distribution and servicing of motor vehicles;
- for certain categories of research and development agreements;
- for certain categories of agreements on specialization;
- for certain categories of agreements in the area of rail, road and inland water transport;
- for certain categories of agreements on consultations on prices in air passenger transport and allocation of slots.

The decrees correspond to the individual Commission/Council Regulations which contain a similar exemption from the prohibition of agreements distorting competition in Article 81 (1) of the EC Treaty.

The area of State Aid

State Aid Act

The State Aid Act is in full compliance with Articles 87 and 88 of the EC Treaty regarding the prohibition of aid of any form provided by the state or from the state budget, where the same distorts or threatens to distort competition by putting certain companies or industries at an advantage, thus affecting trade between the member states. The adoption of this act helps to satisfy the obligation of the Czech Republic resulting from Article 69 of the Europe Agreement which aims to attain full compatibility of national regulations with EC law.

Decree on the formal requirements of the notification duty regarding state aid granted

On November 24, 2000 the Office issued a **decree** which stipulates the formal requirements of the notification duty with respect to state aid granted. The State Aid Act imposes on the aid provider or the state aid proposing entity the obligation to notify the Office of the provision of state aid. The information so obtained will be used to monitor state aid provided in the Czech Republic and also in the annual reports submitted to the European Commission and the Chamber of Deputies of the Czech Parliament.

The area of Public Procurement

Amendments to the Public Procurement Act

On January 18, 2000, the Czech Parliament adopted an amendment to the Public Procurement Act which was published in the Collection of Laws on February 22, 2000 and which entered into force on June 1, 2000. The amendment was drafted by the Office. It reflected the practical knowledge and experience gained by the Office in its surveillance of compliance with the Public Procurement Act, and helped eliminate doubts with respect to the interpretation of certain provisions of the act, thus increasing the legal certainty of both bidders and contracting authorities. The amendment applied to virtually the entire wording of the act. Changes pertained to the definition of the scope of application of the act, definitions of key terms, qualification requirements applicable to the bidders for public contracts. Those provisions of the act which regulate the course of a public tender and other methods for the award of public contracts were amended so as to make them more specific, and the provisions governing the objections filing against the decisions of the contracting authorities and review of the decisions on objections by the Office were also amended. One of the most significant changes brought about by the

amendment was the expansion of the circle of contracting authorities; as of the effective date of the amendment, these include **subjects engaged in energy sectors, water management, transport and telecommunications**. Contracting authorities further include **airport and port operators, trading companies engaged in the exploration and production of oil, gas, coal and other fuels**. Further, health insurance companies are obliged to act in compliance with the Public Procurement Act. The mentioned entities were included in the circle of contracting authorities in particular due to the transposition of the directive coordinating the public procurement procedures of entities operating in water, energy, transport and telecommunications sector. There are natural monopolies in the aforementioned areas, which in practice means that such entities are exposed to highly resticted competition, or no competition at all. Therefore, it is in the interest of consumers that these entities award their contracts publicly and on competition principle. Even after the amendment enters into effect, the act still allows for the granting of certain advantages to domestic entities, whereby a tender may be limited to domestic bidders only, or their bid prices may be evaluated more favourably. The possibility of granting certain advantages to domestic entities, that results from Article 68 of the Europe Agreement, and that is asymmetrical in favor of Czech bidders, is temporary.

In 2000, the Public Procurement Act was amended by the Act on the State Agricultural Intervention Fund and Amendments to Certain Other Laws (Act on the State Agricultural Intervention Fund), which took effect on August 11, 2000. The mentioned amendment amended the negative definition of the scope of the act in the area of purchase, storage and sale of agricultural products and foodstuffs organized by the State Agricultural Intervention Fund.

In 2001, the Public Procurement Act was amended by the Act Amending the Act on the Czech TV, as amended, and on Amendments to Certain Other Acts. The act took effect on January 25, 2001. By virtue of this act, Czech TV and Czech Radio also became public contracting authorities.

Drafted new provision of law in the area of public procurement

Pursuant to Government Resolution dated December 22, 1999, on the Plan of Legislative Work of the Government in 2000 and the updated Outlook of Legislative Work of the Government for 2001 and 2002, it was decided that a new public procurement act would be drafted. The Office was charged with the preparation of the act on surveillance of the public procurement. The drafting of the public procurement act itself was entrusted to the Ministry for Regional Development. The Office prepared the draft act on surveillance of the public procurement so as to make it fully compatible with EC law in this area, in particular with the Directive on the coordination of the laws, regulations and administrative provisions relating to the application of review procedures to the award of state aid and public works contracts, amended by Article 41 of Directive 92/50/EEC relating to the coordination of procedures for the award of public service contracts, and Directive 92/13/EEC coordinating the laws, regulations

and administrative provisions relating to the application of Community rules on the procurement procedures of entities operating in the water, energy, transport and telecommunications sectors. The draft act aims to ensure compliance with a transparent and non-discriminatory procedure on the part of contracting authorities, and to define formally fairly straightforward, simple and thus more expedient procedures for the review of the award procedure, so as to ensure a smoother process.

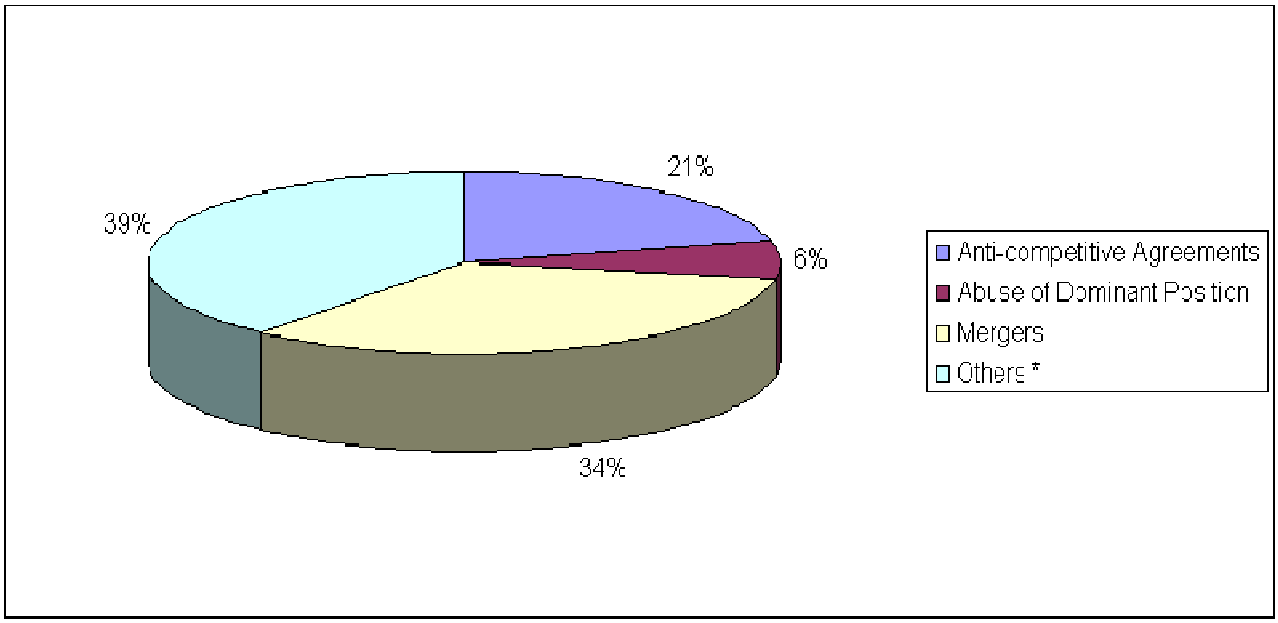
The draft introduces the institute of reconciliation between the contracting authority and the bidder. The Office would newly be able to issue a decision following the award of the public contract, whereby the Office would be entitled to assess the case and decide whether the bidder would have had a realistic opportunity to win the public contract. The Office further participated - through consultations and comments - in the preparation of the draft public procurement act.

Following the review of both acts, the Legislative Council of the Czech Government recommended the two drafts to be joined into “act on public procurement and surveillance of public procurement (the Public Procurement Act) and on amendments to the trade licensing act (the Trade Licensing Act), as amended“. The draft act was approved by the Government Resolution dated January 3, 2001 and subsequently submitted to the Chamber of Deputies of the Czech Parliament.

3 ANTITRUST, MERGERS

Statistics in 2000

In 2000 The Office recieved 607 submissions and issued 170 decisions within the administration proceedings. It imposed fines in total amount of 36.350 000 CZK.



* cases that were halted, interrupted or where a fine was imposed in administrative proceeding.

3.1 RESTRICTION OF COMPETITION BY AGREEMENTS

- In 2000 the Office elaborated and issued decree on permission of general exception from prohibition of anti-competitive agreements for defined kinds of franchise agreements. The Decree entered into force on 1st March of 2000

- In one case of granting individual exemption from anti-competitive agreements invalidity, the Office imposed duty to fulfil given obligation by the parties to the agreement

Selected cases

*The Office considers the **price fixing agreements and market sharing agreements ("hard-core cartels")** and vertical agreements on compulsory or non-compulsory resale price maintenance and on absolute territorial protection within a defined market the most dangerous threat to competition.*

Concerted practices of cardboard producers

In 2000, the Office investigated a case of purported **cartel agreement among six producers of cardboard packaging.** In the administrative proceeding, the Office demonstrated that the parties were in contact and intended, effective as of April 1, 2000, to increase the prices of paper products by 12 – 15 %. In consequence of the joint plan, there was no doubt of the competitors' further action in connection with price increases. In the first instance decision, the Office noted that the cardboard packaging producers violated the provision of Section 3 of the Competition Act by **concerted practices in the form of discussion on an increase of cardboard packaging price with their customers.** The Office prohibited any continuation of the agreement and **imposed a fine totaling CZK 7 800 000 on the parties** for the violation of the law. The decision has not enetered into force up to now.

Agreement on resale price maintenance – MIELE

The Office initiated the proceeding after it evaluated documents obtained during an investigation of contractual relations between distributors and sellers of washing machines, dryers, dishwashers, microwave ovens, etc. In agreements concluded for the period of one calendar year in 1999-2000 between **MIELE** and purchasers - retail shops, **MIELE imposed on the purchasers the obligation to purchase the electrical appliances supplied by MIELE for fixed retail prices,** thus violating the provision of Section 3 (1) of the Act as the above provisions of trade agreements **constitute prohibited and invalid agreements on resale price maintenance** and as such could result in **distortion of competition in the market for household appliances** (so called white technique) in the Czech Republic. The Office ordered the party not to enforce the price arrangements contained in the trade agreements and imposed the fine of **CZK 200,000 on Miele for the violation of the law. It was further proposed that the party to the proceedings propose to the purchasers -** retail shops - within sixty days of the effective date of the agreement **a new wording of the trade agreement** for 2000, or **an amendment to the existing trade agreement,** so as to ensure that the agreement for 2000 does not contain the obligation to sell MIELE appliances for retail prices set by the party to the proceeding.

Agreement among insurers regarding provision of insurance for the case of bankruptcy of a travel agency

Nine insurance companies – **Allianz pojišťovna, Česká podnikatelská pojišťovna, Česká pojišťovna, Česko–rakouská pojišťovna, ČS – Živnostenská pojišťovna, Generali Pojišťovna, IPB Pojišťovna, Komerční pojišťovna, Kooperativa, pojišťovna,** ("Nine Insurance Companies") agreed that they would provide **insurance for the case of bankruptcy of a travel agency,** submitted to the Office a draft agreement and applied for an **exemption from the invalidity of agreements distorting competition**.

The agreement consists in the establishment of a loose association of insurers without legal personality, a **pool**, established to provide mandatory contractual insurance for the case of bankruptcy of a travel agency.

In its decision that took effect on January 12, 2001, the Office **granted an exemption for 2 years.** The Office further determined that **the insurance companies are obliged to adopt measures which would enable them to continue providing the insurance on an individual basis once the exemption expires**.

Obligation of exclusive cooperation with Sazka

Sazka, **in the agreements on the provision of lottery services by means of on-line terminals imposed an obligation on the lottery service distributors to provide the relevant lottery services** (subject to the agreement) **and similar lottery services only for Sazka,** The Office qualified this action as a violation of Section 3 (1) of the Competition Act as such a provision in form agreements constitutes a **prohibited and invalid agreement,** and further defined in which years (starting from 1997) and in which lottery products markets this conduct distorted competition. Restriction of lottery services distributors in the application of their own independent business policy, i.e. as to what services from what suppliers and on what terms they would provide, restricted the business activities of such distributors and brought a negative impact on competition at the first level of distribution, i.e. among suppliers of identical or substitutable goods (lottery services in this particular context). The above mentioned agreement further restricts the access of other, in particular new, lottery service providers to independent distributors. In the decision, the Office ordered Sazka, **to rectify the situation** by proposing to the lottery service distributors bound by the prohibited agreement a new form agreement which would not contain such restriction - i.e. the provision of lottery services solely to Sazka.

Decision of Entrepreneurs Association on declaration of purchase price for 1kg of slaughter pigs live weight

The Office affected the Asociation of pork producers, Agropork – cooperative, for its prohibited decision, adopted by the Entrepreneurs Association, where the board of directors decided on setting the minimum purchase price for 1 kg of slaughter pigs live weight meat, which price should have been required by the members of co-operative from their customers, and imposed a fine on Agropork.

3.2 ABUSE OF DOMINANT POSITION

In 2000, most of decisions concerning abuse of dominant position related to abuse by the **administrative and local monopolies** (e.g. Česká pošta, ČESKÝ TELECOM, Jihomoravská plynárenská, ČEZ).

Selected Cases

Sale under the limit of average total cost

In the third quarter of 2000, the Office received a fairly high number of complaints on the operators of cable TVs, which practically all related to the announced **increase of user prices by Dattelkabel,** whereby aligning the prices for all the customers of the UPC group brought increase of prices with respect to the MINI and Klasik packages. The Office issued a first-instance decision wherein it stated that when **Dattelkabel, due to the fact that in 1998 – 2000, it offered program 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 289% for the purpose of compensation of losses,** it abused its dominant position on the market for TV broadcasting through cable at the expense of the consumers. **The Office imposed the fine of CZK 7.8 million on the company.** The decision has not entered into force up to now**.**

Reduction of brown coal purchasing without an objective reason

ČEZ (Czech Power Plants) resolved the lower consumption and purchase of brown coal for the generation of electric power, which occurred in 1999 due to a decline in electricity consumption in the Czech Republic, by **gradually reducing, without an objectively justifiable reason, the purchase of brown coal supplied only by one of the long-term suppliers, namely Mostecká uhelná společnost**, while the purchases from the other suppliers remained unchanged. The Office resolved such conducts constituted **abuse of dominant position on the relevant market for**

brown coal for power generation to the detriment of Mostecká uhelná společnost; a fine of **CZK 7.5 million** was imposed on ČEZ.

The Office drew on the fact that under extraordinary circumstances on the market (a major reduction in the consumption of electric power), abuse of dominant position is constituted by an action whereby **the dominant undertaking significantly reduces its purchases in disproportion to one of the undertakings,** provided that such action may result in a material **competitive disadvantage** on the part of such undertaking, and threatens its further existence, provided that the dominant entity is unable to justify its conduct. The Office admits that dominant entities may consider certain specifics and differences in the situations of their customers; however, in the above circumstances, the dominant entity is obliged to deal with the customary suppliers first and start reducing its purchases at times of reduced consumption during a reference period in the year preceding the sharp decline in production. This means that **a dominant entity ought to be impartial in dividing its purchasing needs between all its suppliers, so as to avoid abuse of dominant position.**

The Office concluded that in the given case, a serious situation occurred on the market for brown coal supplied to ČEZ's power plants, which situation required a sensitive and responsible solution by ČEZ, that should not merely reflect the company's own economic interests but also the interests of all the undertakings concerned; only such approach would not result in a distortion of competition between the coal companies. In this particular case, the Office was of the opinion that the justification of non-purchase of coal in an effort to avoid potential income

losses would mean that elimination of competition is viewed as a legitimate tool for the enforcement of interests of a strong company. Therefore, the Office believes that the decision that the entire decline in coal consumption in ČEZ's power plants would be resolved at the expense of a single company, is in conflict with fair competition practice and as such discriminates one undertaking on the related market.

Unauthorized collection of fees for the installation of gas meters

In the case of **Jihomoravská plynárenská,** (regional gas distributor), it was established that JMP **collected fees for the installation of gas meters from consumers,** such collection having been beyond the scope of the Energy Act. The proceeding showed that by the above action, JMP effected an unauthorized transfer of cost related to the installation (acquisition) of gas meters to the consumers, although within the meaning of relevant regulations, such cost should be borne by the supplier. In the proceeding, the Office further drew on the decision of the State Energy Inspection, according to which a gas meter, i.e. a measuring device within the meaning of the Energy Act, does not serve for distribution, and the costs of installation and maintenance thus cannot be transferred to the consumer. By this action, **JMP abused its dominant position in the market for gas supplies to the detriment of consumers,** and a fine of CZK **2,5 million** was imposed on it. JMP, contested the decision rendered by the Office by filing an application which was rejected by the High Court in February 2001. This case is very important from two points of view:

1. The case has confirmed that competition rules exist to ensure consumers' profit. As results from the Competition Office involvement, **65.000 consumers receive back money illegal collected by the undertaking.**

2. The decision upheld by the High Court has contributed to the competition environment cultivation. In media there was information that **the Director of company made a written apologize to consumers strucked by undertaking's illegal behaviour**.

Refusal to enter into an amendment to an agreement

In 2000 the Office intervened in the case of a dominant operator of the unified telecommunications network ČESKÝ TELECOM, against the competitor, DATTEL, who provided telecommunication services through the unified telecommunications network in some parts of Prague.

The Office examined the conduct of ČESKÝ TELECOM with respect to another undertaking on the market for the operation of the unified telecommunication network, DATTEL, and resolved it was a breach of the Competition Act. **ČESKÝ TELECOM further refused to enter into an amendment to the existing interconnection agreement, which amendment would address the sharing of fees** (or the reduction thereof, as the case may be) **for the interconnection of networks of both operators with respect to the charging of a special reduced rate** (tarif for the Telecom's new service Internet 99) for the use of ČESKÝ TELECOM and DATTEL networks for the transmission of data between the customer and the Internet service provider. By the above action, ČESKÝ TELECOM aimed to exclude a competitor from effective competition

in connection with a special reduced rate. Due to the anti-competitive behavior of the dominant operator, DATTEL was forced to make its transmission network available for Internet calls at a reduced rate to its network for free, without receiving interconnection fees from ČESKÝ TELECOM in such cases. DATTEL was forced to accept the situation so as to maintain its Internet service providers. ČESKÝ TELECOM thus prevented DATTEL from competing on equal terms in the "Internet traffic" at a reduced rate between networks. For the above action, a fine of **CZK 2 million** was imposed on ČESKÝ TELECOM.

3.3 CONCENTRATIONS OF UNDERTAKINGS

- In 2000, the Office paid particular attention to the improvement, acceleration and increasing of transparency of the merger control procedure. The Office used its powers and where concentrations would result in the creation of a strong position on the market threatening to abuse dominant position, the Office would impose conditions on the parties in order to eliminate their negative impact on competition or cleared mergers on the basis of by undertakings submitted and by the Office approved obligations aiming at reducing their impact on competition.

- **The major increase** in concentrations in 2000 was realized in **chemical industry, elektricity sector and telecommunications.** While strong concentration tendencies manifested themselves in the chemical industry as early as 1999, telecommunications experienced a rapid increase in the number of cases only in 2000, in particular in connection with the envisaged liberalization of the market and the development of the Internet. The developments in the power generation industry occured mainly due to the entry of foreign partners into regional power distribution companies.
- **The number of concentrations increased from** 51 in 1999 to 58 in 2000. There was a **decline in the number of concentrations** in the food-processing industry that exhibited a high number of mergers for several recent years .

selected cases

Merger of Erste Bank der ősterreichischen Sparkassen AG and Česká spořitelna

The merger of Erste Bank der ősterreichischen Sparkassen AG ("Erste Bank") and Česká spořitelna, was effected by virtue of Agreement on the Purchase of Shares in Česká spořitelna, dated March 1, 2000, entered into by and among the National Property Fund as the seller and Erste Bank as the purchaser, pursuant to which Erste Bank bought 56.22 % of issued common shares with voting rights, and 52.07% of all shares in Česká spořitelna, The sale of the above

shares was approved by the Government as part of the privatization process. In the Czech Republic, Erste Bank further controls 66.7% of the shares in Erste Bank Sparkassen (CR).

Based on an analysis of the effects of the merger on competition and the benefits it may bring, the Office decided that the **merger would be beneficial** (in particular in stopping the trend of a decline in the use of Česká spořitelna's services in the Czech

Republic, improving the technical quality of services and expanding the range of products on offer, providing access to new investment opportunities and strengthening the focus on client needs), **and the consumers will ultimately profit from those benefits. The merger was approved without any conditions attached.**

Concetration of PLIVA Kraków and LACHEMA

Pursuant to a share purchase agreement, PLIVA Kraków gained a 66.67 % share in Lachema, thus gaining direct control over the company.

The merging companies both compete in the market for pharmaceuticals; PLIVA also on the market for agricultural chemicals, foodstuffs, cosmetic and hygienic products, and Lachema on the market for laboratory diagnostic products (in particular diagnostic sets and strips) and special chemicals.

The Office within the frame of assessing the impacts of concentration concluded that **the merger will not result in a substantial increase in the market shares in any of the markets involved,** adding that **sufficient competition would continue to exist** on the relevant markets **following the approval of the merger**, because there are mostly foreign entities present (Bayer, Dade Behring, Orion, Roche), that supply products of comparable quality; therefore, competition in the market in question will not be distorted significantly.

The merger was approved without any conditions attached.

Merger of Hamé and OTMA

The Office examined an application 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.

In light of 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 merging companies on the relevant markets amounts to as much as 56 %, **the Office approved the concentration on the following conditions:**

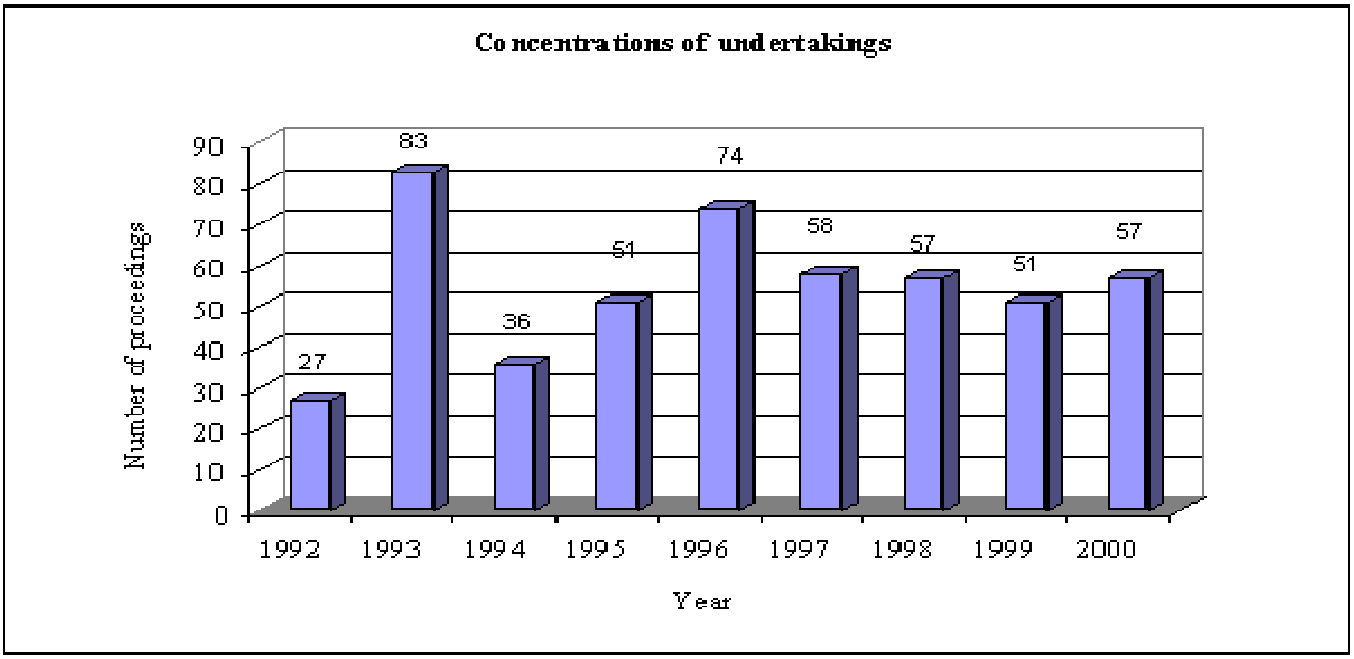
- Hamé is obliged to consult with the Office any further acquisition plan where the envisaged acquisition is in excess of 5 % of the registered capital of an undertaking engaged in the canned products market, such consultation to take place not later than 1 month prior to the execution of the plan, the mentioned condition to apply for 3 years from the effective date of this decision;

- 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, to the statutory bodies of another undertaking engaged in the canned products market in the Czech Republic, within 2 weeks of such election or appointment, the mentioned condition to apply for years from the effective date of this decision;

The Office imposed such restrictions so as to obtain in a timely manner information required for the assessment of the development of Hamé's position in all relevant markets with canned products including the ones where undertakings don't achieve market share above 30% and assessment of their possibilities to influence competition behaviour of the other competitors. The Office deems the period for which the foregoing obligation applies adequate with a view to direct and effective competition with foreign producers of canned products to which the company will be exposed upon the Czech Republic's entry into the European Union.

STATISTICAL DATA

	Year								
	1992	**1993**	**1994**	**1995**	**1996**	**1997**	**1998**	**1999**	**2000**
Control of concentrations – number of administrative proceedings	27	83	36	51	74	58	57	51	57



Mergers

In 2000 the Office initiated 57 administrative proceedings concerning concentration of undertakings. Conditions or obligations were imposed in 6 cases, which is 10,5% of the total number. The percentage corresponds to the European Commission practice. The Commission imposed in 2000 conditions or obligations in 10% of concentration cases.

Assessment of conncetration of undertakings

Number of concentrations	57
Number of concentrations with conditions and restrictions	6
Prevailing concentration type	horizontal
Industries highly prone to concentration	chemical industry **POWER GENERATION** telecommunications
Industries not prone to concentration	construction materials agriculture exploitation of natural resources
Most common economic benefits of contemplated concentrations as presented by parties to the proceedings	1. Investments for the reconstruction and modernization of production, new technologies. Direct financing of investments (improvement of the company's financial condition, financial stability, pooling of resources, etc.), creation of a strong capital structure 2. Improvement of consumer comfort (better goods, a broader range of comprehensive services, goods packets) 3. Know-how and technologies; Joint research, technical knowledge, optimization of technological development

The increase in the number of proceeding is most significant where the realisation brought **provision of the investments for reconstruction and modernisation of productions for new technologies, acquirement of direct financial resources including the improvement of financial situation of the undertakings, establishment of financial stability and interconnection of resources and creation of strong capital structure.** Major stress was also put on provision of **improved consumer comfort** (offer of superior goods, more complex services, offer of product groups in the form of packets). The number of concentration cases, aimed at provision of investments for reconstruction and modernisation of productions, **provision of know-how** in technology and provision of know-how for effective management of a company in comparison with 1999 also increased.

3.4 APPEAL PROCEDURE

- Number of decisions appealed in 2000……..…….....16
  out of them with final decisions made……..…….....4

- Number of decisions appealed in 1999 with final decision made in 2000 …….…….....11

- Number of decisions on the appeals issued before 1999 and reheard
  and issued after cancellation of the decision by the High Court.....……...1

- **Total number of decisions on appeals issued in 2000…….....16**

The number of decisions appealed in 2000 decreased in comparison with 1999, when 19 decisions were appealed. Thus, the positive trend of decision making practice of the Office in the area of protection of competition went on, documenting the improvement of the first instance decisions.

The appeal proceedings in 2000, alike 1999, were throughout aimed on assessing whether the application of the Act on Protection of Competition in the decision making practice is not in conflict with the competition law of the European Communities and with the approaches, preferred by the European Commission in dealing with partial competition problems. Significant resources of knowledge were represented by the competition law of the European Communities itself, especially by the decisions of the European Commission, judicial acts of the Court of Justice of the European Communities, or the national regulations of competition law of the member states of the European Communities and their application in particular cases.

Selected decisions on appeals, supportively following the competition law and the decision making practice of the European Communities

- **Prohibited decision of association of undertakings on declaration of purchase price for 1 kg of live weight of slaughter pigs.**

  Board of directors of the business association in the area of agricultural primary production (Agropork co-operative) decided on minimum purchase price, which should have been required by the members of the co-operative for 1 kg of live weight of slaughter pigs.

The decision of the Office that setting minimum purchase price for the members of the co-operative is prohibited and void decision of association of undertakings, was based on the prohibition of price agreements pursuant to the provision of Section 3, par. 1 of the Act on the Protection of Competition that corresponds to both the Article 81 (1) of the EC Amsterodam Treaty and the Council Regulation 26/1962, applying certain rules of competition to the production and trade in agricultural products. According to the Regulation, the Article 81 (1) shall not apply to arrangements, pursuant to which the farmers **selling through the co-operative** shall receive the proportionable part of the realisation price for their products sold by the co-operative, but on the contrary it shall apply to the price agreements of members of the co-operative or the price fixing by the co-operative in cases, where members of co-operative **realise the sale of their agricultural production individually on their own account and responsibility within their own business activity.**

- **Abuse of dominant position in the market of unified telecommunication network operating**

ČESKÝ TELECOM, abused its dominant position on the market of unified telecommunication network (UTN) operating in the Prague district UTO 02 due to its rejection to make an agreement with its competitor on such kind of interconnection both parts of UTN that would enable that competitor to obtain even in case of Internet calling between networks relative part of income from incoming calls in the part of network operated by undertaking ČESKÝ TELECOM. By this way the competitor was economically disadvantaged.

Assessing the case whether this dealing may be considered to be abuse of dominant position by the Office proceeded from the wording of Section 9 (3) of the Act on Protection of Competition, that corresponds to both the Article 82 of EC Treaty and other legislation, especially **Article 6 of EC Directive 97/33/EC**, that puts on operators with significant market power obligation to offer interconnection for other operators with identical conditions which it offers for telecommunication services providing for its own or subsidiary company without any discrimination. Further the Office followed the European doctrine of law application in cases of so called **access to essential facilities**. Essential facilities are for example bus or train stations, airports, harbours and public nets including unified telecommunication networks. According to the European Commission's view a dominant undertaking controlling of these facilities abuses its dominant position if rejects competitor's access to above mentioned facilities or enables it **under less favourable conditions in comparison with its own.**

- **Abuse of dominant position in the market of brown coal for electric power generation**

ČEZ (Czech Power Plants), abused its dominant position in the brown coal market for electricity generation due to solution to electricity consumption drop in 1999 in the Czech Republic by a considerable decreasing of brown coal deliveries only from one of its long-time suppliers.

Similarly to the above mentioned case and all other cases of this type the Office followed the Article 82 of EC Treaty and especially the European Commission's Decision in the

case of **No IV/28.841 "BP"** (OJ L 117 of 9 May 1977) according to which "…abuse of dominant position within the meaning of Article 82 of EC Treaty may be defined as any action of undertaking in dominant position that reduces suppliess to comparable customers in various way without reasonable justification by means that some of them are disadvantaged comparing to competitors, especially in that case if such type of treatment may lead to changes in given market structure. If an undertaking in dominant position does not want take the risk accusation of dominant position abuse according to Article 82, it has to divide any amount of supplies among individual suppliers without differences. This is not to say that dominant undertakings are not justified to take into account in period of crises particulars and differences that may exist in business position of their customers. **Nevertheless any differences in treatment have to be well founded in objective way and choice must not be of any discriminatory character.** It is not the right way to treat a regular long-time and important customer in a way that is obviously discriminative comparing with other customers. In the given case the Office took into account the European Commission's opinion in the case of **"Boosey&Hawkes"** of July 29, 1987 (IV/32.279, OJ L 286 of 9th October 1987) according to that a competitor in dominant position is **obliged to offer to long-time supplier relevant term** to be able to adopt on given situation, especially in a case if supplier's dependency on purchaser in dominant position is so large that its rejection or considerable decrease of deliveries may lead in liquidation of supplier, provided it happens without notice.

4 PUBLIC PROCUREMENT

EVALUATION OF THE OFFICE'S ACTIVITIES IN THE AREA OF PUBLIC PROCUREMENT

In the course of 2000 following changes and activities took place in the field of public procurement:

- □□□ Pursuant to State Control Act No. 552/1991 Coll., as amended, the outer control of procedures of contracting authorities awarding public procurement was made more intensive at the locations of contracting authorities, in the towns of Třinec and Litovel, at Charles University, in the State Information System Office (which is now The Office for public information systems), in the local authority in Vyškov, in the village of Petrovice u Blanska, at Mendel University of Agriculture and Forestry in Brno – the school's Training Forest Enterprise Masaryk Forest Křtiny , in the hospital in Nové Město na Moravě, in České dráhy, s.o. (Czech Railways)

- Based on the Government Resolution No. 1350 of 22.12.1999, a draft of a new Act on Execution of Supervision over Public Procurement, which is aimed **on following transparent and non-discrimination procedures by the contracting authorities and attaining a complete compatibility with the EC regulations in the given area of public law** was compiled. Having been dealt with by the Legislative Committee of the Government, the draft act became part of the draft of the new Public Procurement Act. In January 2001 the new Act on Public Procurement and Surveillance over Public

Procurement having been dealt with in the Government of the Czech Republic was passed on to the Parliament of the Czech Republic.

- According to the importance and particular circumstances of the procurement the Office experts took part in the procedure of opening bid envelopes with the contracting authorities, i.e. with the Brno Psychiatric hospital (Psychiatrická léčebna Brno) and the Brno Teaching Hospital (Fakultní nemocnice Brno) ;

- Based on incentives from the Supreme Audit Office the public procurement procedure was checked in Blansko local authority (Okresní úřad Blansko), in Brno – Chrlice nursing home (Ústavu sociální péče Brno-Chrlice), at Palacký University in Olomouc, at the General Customs Headquarters (Generální ředitelství cel), in Masaryk Oncology Institute in Brno (Masarykův onkologický ústav v Brně), in the Medical Research Institute in Brno and at the Constitutional Court;

- An important activity in the surveillance department is to provide information to the public (both the contracting authorities and the bidders) with the interpretation of the Public Procurement Act. In the course of the year 2000 about 500 questions in writing form were answered, concerning the Public Procurement Act. The surveillance department took part in lectures and seminars for the contracting authorities and bidders, which was organised by the Educational centre for public administration of the Czech Republic, the successor of the foundation "The Fund of Support to the Local Authorities in the Czech Republic";

Analysis of shortcomings occurring in public procurement proceedings

Despite the training held, practical application of the Act very often results in formal and other errors on the part of the contracting authorities and the bidders, because of lack of understanding or misinterpretation of the Act.

a) Contracting authorities errors most frequently occurring in the public procurement proceedings:

- setting unclear terms in the invitation to tender, so that it is not quite clear what the offer should look like to meet the terms, or how the evaluation criteria should be best met;

- amendments to the Act which came into effect at the time of the indication of the procurement are not taken into account;

- the contracting authority invites fewer candidates than the Act sets out when sending invitations to several parties interested in public procurement;

- not all terms specified in the Act are required, e.g. setting the terms of payment is sometimes required by the contracting authority to be stated by the bidders;

- incorrect choice of criteria for the evaluation of bids, regarding the subject of the delivery of the procurement (the criteria are often too general, e.g. overall expedience of the offer – out of which it is impossible to infer what the contracting authority aims to assess within this criterion – it is not transparent);

- in the invitation to tender there is no requirement set as regards the way in which the fulfilment of the respective criteria should be proved;

- the conditions in the invitation to tender include discriminatory elements (e.g. submitting the tender is tied to the obligatory collection of the invitation to tender or "special terms" for the procurement are set to discriminate in favour of some interested parties);

- "very strict terms" are set by the contracting authority outside the scope of the Act and later when assessing and evaluating the bids the contracting authority finds out that bids which do not meet these strictly set terms are acceptable (and sometimes even favourable);

- scope of the bid is divided up so that the contracting authority is not obliged to follow a more complicated procedure of calling for public tender;

- the contracting authority uses an extraordinary way of invitation to tender – invitation to a single candidate – despite the fact that legal conditions for this form of invitation have not been met.

b) Contracting authorities errors most frequently occurring in evaluating and selecting the best suited bid:

When assessing the bids two basic principles governing the process of awarding public procurements are not complied with, namely **transparency of the procedurethe procedure and non-discrimination** (elimination of preferential treatment) of any and all bidders.

Bid evaluation is done according to the bid price or the economic suitability of the bids in accordance with the criteria stated in the terms for public procurement (Section 6 of the Act) If the contracting authority chooses to evaluate the bids according to their economic suitability, a very important step in the process of invitations to tender is the choice of corresponding criteria according to the subject of the delivery of the bid that should lead to the selection of the most suitable bid.

Contracting authorities very often choose unsuitable criteria, such as "proof of suitability" or "compliance with the term of delivery" etc. Completely non-specified criteria are e.g. criteria like "the overall suitability of the bid", "complexity of the bid", "advantages

of fixed job contracts" etc., which make it impossible for the candidates to find out what is most suitable for the contracting authority and what the contracting authority prefers.

The evaluation of bids itself, according to several criteria, is in many cases impossible to review as the report on assessment and evaluation very often does not include a brief description of the mode of assessment. The method of assessment should be particularly thorough when criteria are used which cannot be measured objectively. Other most frequent shortcomings in the assessment and evaluation process of the bids include:

- preferential treatment of candidates, by which the principle of equality of all bidders is infringed, e.g. by concluding a contract on the public order with an applicant that should have been excluded from the participation in the procurement on the grounds of not proving suitability or not meeting the conditions of the invitation to tender;

- the decision on the selection of the most suitable bit (or on the exclusion of a candidate) which must be made in compliance with the Act by the contracting authority, is made by a person authorised to administer the tendering procedure;

- proof of qualification of the bidders is not assessed correctly;

- insufficient justification of the decision procedure of the contracting authority when establishing what is and is not an extraordinarily low bid price;

- the importance of the respective criteria is not distinguished when assessing the bids;

- the bids are assessed according to other criteria than those stated in the terms of the public procurement;

- the members of the commission for assessment and evaluation of the bids evaluate the bids each on their own and then average their evaluation, which can lead to incorrect selection of the most suitable bid;

- in the report on evaluating the bids the verbal evaluation of criteria and reasons justifying the selection of best bid are missing;

- documents specified in the Act as proof of suitability are not required before concluding the contract with the selected candidate;

- the decision of the contracting authority about the selection of the most suitable bid is not sent to the candidates by registered delivery which makes it impossible for the contracting authority to judge the time-limit for lodging objections;

- decision on objections do not include a mention about the possibility of submitting a proposal to the supervisory body to initiate proceedings;

- all documents in connection with the selection of the most suitable bid, including submitted bids are not filed, which makes it impossible to review the correctness of the contracting authority's procedure .

c) Shortcomings occurring in bidding documents and in lodged objections, or in motions to initiate review of the decisions issued by contracting authorities on objections raised by bidders:

- only unit prices are given in the bids by the candidates and not prices for the whole of the public offer, which is sometimes caused by unclear conditions provided in the invitation to tender;

- incomplete affidavits as proof of suitability are submitted in the bids;

- documents proving suitability are not submitted as legally attested copies or originals or their age may not comply with the requirements of the Act;

- when processing the bids, candidates very often do not take into account the amendments to the Act which have come into force;

- the bids are not processed in accordance with the terms set in the invitation to tender (documents required by the contracting authority are missing, the bids are not protected against fraudulent handling etc.);

- objections or proposals to review the decision of the contracting authority on objection are submitted late, in the case of proposals they are not submitted to the contracting authorities as well;

- objections, or proposals which do not include all necessary documents provided for in the Act. Candidates point out that contracting authorities infringe the provisions of the Act which the contracting authority is not obliged to comply with in the particular form of invitation to tender.

selected cases

The town of Bystřice nad Olší – actualization of the construction of an "indoor swimming pool - 25 m"

The town of Bystřice nad Olší called for tenders for the actualisation of the construction of an "indoor swimming pool - 25 m". In the terms of the tender the subject of the public procurement was "actualisation of the construction", the invitation to tender moreover required also project documentation for the construction. Although the Act makes it possible for the bidders to provide a security, both in the form of a banker's guarantee and by paying in a pecuniary amount on the contracting authority's account, the contracting authority, contrary

to the Act, restricted the provision of a security to the pecuniary amount only. The procedure for opening the sealed envelopes is strictly determined by the Act. Contrary to the Act the contracting authority communicated facts contained in the envelopes to the participants at the opening of envelopes, which were consequently parts of the criteria for assessment of bids. Although some of the bidders did not submit a proof of suitability in accordance with the Act, or their bids did not comply with the terms of the tender as far as their contents was concerned, the contracting authority did not exclude them and continued to assess and evaluate their bids. In the process of selection of the most suitable bid, the above mentioned contracting authority committed several severe infringements of the Act. Since the order was already fulfilled, it was not possible to start a new public procurement, so a fine was imposed. A fine, which represents two basic functions of legal responsibility, the repressive function (recourse for infringement of obligations specified by the Act) and the preventive function (preventing the infringement of the Act), was imposed by the supervisory body, amounting to CZK 30,000, that is the lower limit of the charge, for this was the first time a serious infringement of the Act had been established.

The Ministry of the Interior of the Czech Republic – supply of instruments establishing the blood alcohol levels by measuring concentrations of alcohol in breath of persons under investigation for the Police of the Czech Republic.

In accordance with Chapter II of the Act on Public Procurement the Ministry of the Interior of the Czech Republic called for tenders for "delivery of instruments establishing the blood alcohol levels by measuring concentrations of alcohol in breath of persons under investigation for the Police of the Czech Republic". Among other things it was set in the terms of the tender that "when all terms of the tender are met and the required technical specifications of the instrument, in compliance with article 2 of the invitation to tender, are adhered to, the bids would be evaluated according to the bid price." Bids were submitted by two candidates. The commission for assessment and evaluation of bids did not exclude any bid on the grounds of not complying with the terms of the tender and using one single criterion – the bid price – established the following order of bids: 1. CHROMSPEC, 2. Dräger. The contracting authority accepted this order of bids and communicated its decision about the selection of the most suitable bid to the candidates. Dräger lodged objections to this decision of the contracting authority in which it also objected that the bidder in the first place did not fulfil the terms of the tender; the contracting authority complied with the objections in this part and suggested a new selection. After re-assessing the bids from the point of their contents the contracting authority decided to exclude CHROMSPEC from further participation in the competition, since, according to the contracting authority's view, this company had not shown how the required "calibration of the instruments" would be provided. CHROMSPEC lodged objections against the decision of the contracting authority on its exclusion from the competition, which were not met. CHROMSPEC did not find the decision of the contracting authority on objections correct and thus submitted a proposal to the Office to review the decision of the contracting authority on objections. The decision of the contracting authority on the exclusion of CHROMSPEC on the grounds of omitting another term of the tender was cancelled by the Office in its administrative proceedings, since the way of calibration of instruments was not part of the terms for the tender and the above mentioned company had thus been discriminated against the other bidder. The contracting authority was also asked to

include the CHROMSPEC bid inthe competition again. In accordance with the decision of the Office the contracting authority made new assessment and evaluation of both bids and, due to the lower bid price, which was the only evaluation criterion, decided that the most suitable bid had been submitted by the originally selected company - CHROMSPEC. Dräger lodged objections against the selection of the most suitable bid, which were not met by the contracting authority. Dräger then submitted a proposal to review the decision of the contracting authority with the Office, which had to reject the proposal since it had not been submitted pursuant to the Act. The Office, however, reviewed the procedure of the contracting authority in connection with the renewed selection of the most suitable bid and established that the selection had been made in compliance with the Act and the terms of the tender.

Statistical data

Survey of administrative proceedings as part of the surveillance over public procurement according to the Act in 2000

	Total
Number of received submissions (proposals and instigations)	826
Initiated administrative proceedings	508
Published decisions on the matter	296
Suspended administrative proceedings	121
Number of proposals overruled upon decision	133
Number of imposed fines	68
The amount of fines imposed by first instance decisions in thousands of CZK	1 396,5
The amount of fines after coming into force of the decisions in 2000 (in thousands of CZK)	844,5
Other decisions issued as part of administrative proceedings (e.g. preliminary decisions)	58
Administrative fees for 2000 in thousands of CZK	4 415

The building which is the seat of the office for the Protection of Competition is situated in Jostova Street in Brno

5 STATE AID

The State Aid Department was established at the Office for Protection of Competition on December 1, 1999. The task of a monitoring institution for state aid was transferred from the Ministry of Finance to the Office in connection with the Act on State Aid becoming effective on May 1, 2000.

11 employees represented the Department´s staff on January 1st, 2000 and their number increased to 15 by the end of the year.

Since 2000 British expert in state aid operates at the Office within the Phare Programm. His experience and knowledges significantly contribute to solving problems in this field.

DECISION-MAKING ACTIVITIES

The basis for decision making is represented by sufficient information on the given case. In many areas it was possible to make the providers of state aid acquainted with information requirements without which the Office is unable to make a decision. Particularly in assessing state aid in the form of investment incentives the quality of applications is satisfactory.

Regarding the number of cases in the individual areas, and also with regard to the most effective organisation of the activities, the department was divided into three parts – decision-making department I, decision-making department II and the monitoring department.

The decision-making department I deals mainly with assessing state aid in the form of investment incentives, that is state aid focusing on regional development. There are new cases of state aid in the form of preferential sales of land, which have to be monitored carefully because it is mostly municipalities who are the providers and so far have not had any experience with the State Aid Act.

The decision-making department II deals mainly with the assessment of providing restructuring aid for businesses in need, but also for those in research and development, coal and uranium industries and the environment etc. Undertakings in difficulties belong to the most difficult cases and that is why assessing an exemption from the prohibition of state aid is very demanding, especially concerning active communication with the providers of state aid. There were 8 cases dealt in 2000 (with the following companies: Walter, Tatra, Zetor, Vítkovice, Nová huť, Královopolská, Investiční a poštovní banka, Textilana).

The Office emphasises dealing with these cases in advance to secure co-operation in the initial stages of handling the problems. The experts of this department participate regularly in meetings of working groups for dealing with the problems of businesses in need, where they get information about the proposed measures, in regard to which they provide statements in order to secure compliance with the Act on State Aid and the EC rules. The Office dealt with state aid for steel mills (Vítkovice, Nová Huť). In this area, however, only state aid for the purposes of environmental protection, research and development, or activities connected to attenuation of activities can be granted. Since it is impossible for the Office to allow state aid to these enterprises before the extension of the exemption by the European Commission, which had set a condition for the Czech Republic to work out a plan of restructuring the steel industry in the whole of the Czech Republic, negotiations with the European Commission were initiated. A representative of the Office participated in these negotiations. They have, however, not been finished yet.

In the course of 2000 issues of **state companies specialised on supporting export activities** were dealt with – EGAP, (Export Guarantee and Insurance Corporation) and ČEB, (Czech Export Bank). Activities of these companies were divided into two parts – activities based on the OECD consensus, which are not concerned with state aid in the sense of the Act on State Aid, and activities which are incompatible with the Act on State Aid and with the obligations following from the Europe Agreement.

Monitoring ActiviTies

The **Department of monitoring** state aid was established within the Department of State Aid. The former assesses submitted projects of state aid and suggests measures securing their compatibility with the obligations following from the Europe Agreement. The Government of the Czech Republic was also informed on the results of the assessment. In January 2001 providers of state aid were informed on the time limit for updating of state aid projects which are not in compliance with the EU state aid rules. In all of these cases the changes were implemented.

The area of State aid documentation

- Projects having characteristics of state aid suggested by individual providers are selected from the aid programs announced by individual contracting authorities and a database will be created for every year separately. Subsequently, this database will serve as a control base for the fulfilment of the notification obligation on the part of providers and for preparing the annual report on state aid for the European Commission.
- State aid ad hoc will also be recorded and the itemization pursuant to the requirements of the European Commission for the itemization of the annual report on state aid is provided for.
- Continuous addition of records of project of state aid and ad hoc aid is provided for. (Every year's inventory).
- **Elaboration of the industrial zones list** is among the achievements of the monitoring activities. This list was designed to inform municipalities and other potential state aid providers about the Act on State Aid and the role of the Office because these entities have not much experience in this new field. The list of industrial zones and investors who intend to invest in these zones will be kept up to date.

The area of analysis and elaboration of annual reports for the European Commission

In early December 2000 an annual report on state aid granted in 1999 was sent to the European Commission and to the Chairman of Deputies Chamber of Parliament. The report was put together by the Office in co-operation with the Ministry of Finance. The structure and methodology of annual reports applied in the European Union were used when preparing the annual report and comments of the European Commission concerning previous reports were incorporated.

In accordance with Article 64, point 4 b of the Europe Agreement the Czech Republic undertook to provide reports about the total amount and about the distribution of the granted state aid to the Commission of the European Communities to ensure transparency in state aid. The European Commission in the letter of the Director General of DG Competition Mr. Alexander Schaub, favourably commented on the level of the annual report for 1999 and assured that the annual report fully complies with the requirements on its contents and form and fully fulfils the requirement of transparency laid down in the Europe Agreement.

Selected cases and statistical data

An administrative decision was issued on December 13, 2000 to **grant an exemption from the prohibition of state aid for the TATRA** in the form of capitalization of the claim of KRAS (joint stock company), Brno amounting to approx. CZK 4 billion by its investment in the basic capital of the TATRA. State aid should secure the viability of an enterprise. The decision was made on condition that within six months from coming into force the Ministry of Finance would submit a report to the Office for the Protection of Competition on the progress of the approved restructuring project of the TATRA, which will be brought up-to-date every six months and after finishing the restructuring a final evaluation report about its development will be submitted. The process of selling the company to a strategic owner in accordance with the restructuring project will be finished by January 1, 2002.

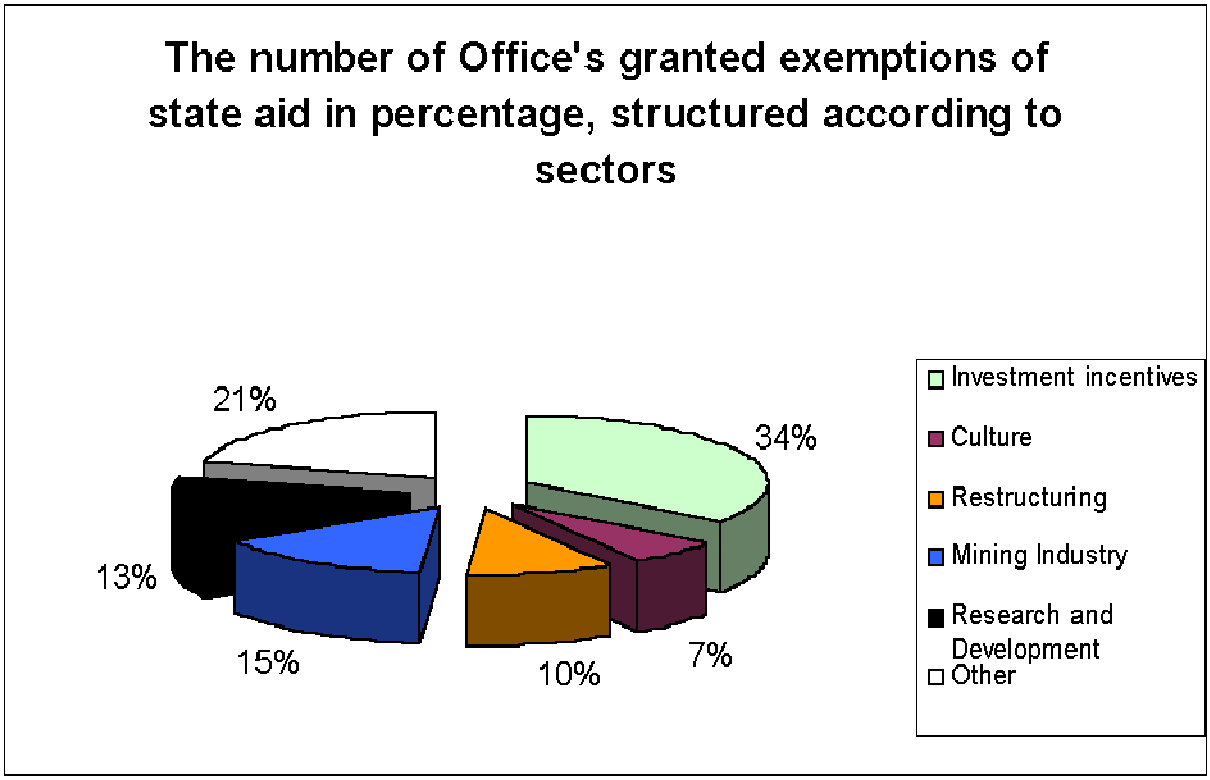
Administrative proceeding on granting an exemption from the prohibition of state aid to the Zetor **was suspended by a decision from December 14, 2000. The reason for suspending of the proceeding was the fact that granting state aid in the form, amount and for the purpose and under the conditions which** were described in the submitted application and do not fulfil the condition of distortion or threat of distortion of the competition to such an extent by which trade between the Czech Republic and the member states of the European Union can be affected and thus it does not fulfil the characteristics defining prohibited state aid.

On June 19, 2000 an administrative decision was issued approving an exemption from the prohibition of state aid for IPB on condition that within 3 months of coming into force of the decision the Ministry of Finance would submit to the Office for the Protection of Competition a complex plan of restructuring of IPB which was bought on the basis of a sales contract by Československá obchodní banka, complete with details about the preliminary extent of state aid in the form of guarantee.

On July 14, 2000 an administrative decision was issued by which the Office for the Protection of Competition granted an exemption from the prohibition of state aid in the form of preferable lease of land (cca 65 hectares) at CZK 1 per year and its subsequent sale at a favoured price to the Flextronics International, spol. s r.o. This was a decision on condition that the overall value of state aid in the form of the difference between the actual price paid for the rent and the actual price paid for the land and the sum calculated pursuant to the Act No. 151/1997 Coll. on appraisal of assets and on amendments to some acts, will not surpass 50 per cent of the value of investment in the tangible fixed assets and that the investment will be maintained for 5 years from the date of coming into force of the final inspection decision and that the city of Brno will inform the Office for the Protection of Competition within 2 months of coming into force of the decision on approbation for use about the finishing of the investment and about the means that the investor put in the tangible fixed assets.

Number of decisions issued in 2000

	Total
Issued decisions	**92**
- approved	12
- approved with conditions	49
- not approved	2
- proceedings suspended	27
- proceedings interrupted	2



6 COMPETITION ADVOCACY

In 2000 the Office aimed its activities at competition principles enforcement in the process of restructuring and privatization of dominant and monopoly undertakings predominantly in the field of electricity and gas industries. The Office participated especially at the beginning of decision-making process when its experts took part in negotiations of privatization commissions and actively strived after enforcement of **market principles within assessment and choice of strategic partner for privatised companies.**

As far as electricity and gas sector privatization are concerned **the Office worked towards elimination of vertical integration**, consisting in distribution companies interlocking with present dominant producer of electricity or with monopoly gas importer. The office also strived after transmission net removing out of dominant electricity producer ownership. **It recommended to realise privatization** of gas distributors in the way that **one owner doesn't acquire two or more undertakings of the same kind which operate on neighbouring geographical markets or two various undertakings on the same territory.**

In October 2000 the Government approved the **procedure of privatization of energetics undertakings** – ČEZ (main producer of electricity with market share of 62%) and regional electroenergetics distribution undertakings. It is the **case of joint sale** of ČEZ shares, which are in holding of the National Property Fund and ČEZ in six regional distribution companies, and shares offered by municipalities in relevant regions, **to the strategic investor on the basis of tender results**. Concerning the undertaking Pražská Energetika and Jihočeská Energetika in which the Fund is not majority owner the method of tender for selling shares has been chosen. Following the above mentioned procedure **the highvoltage transmission net undertaking becomes independent on ČEZ** within 1 year so as to **guarantee decisive**

state influence on working, management and regulation of energy transmission system in the Czech Republic.

The draft of Czech Railways Transformation Act submitted in the second half of 2000 includes the basic principle of **transformation of state undertaking České Dráhy into two subjects, joint stock company České Dráhy and state undertaking Správa Železniční Dopravní Cesty (Administration of Rail Transport Road).** České Dráhy shall become the railways operator and at the same time railtrack operator for needs of state(Undertaking Správa Železniční Dopravní Cesty will ensure infrastructure operation through undertaking České Dráhy). The model **doesn't represent consistent infrastructure separation from transport activities**; at the end it may result in raising some **barrier preventing new undertaking to enter the market**. The Office submitted this standpoint within discussion on the Act.

The Office in 2000 worked out **376 opinions** related to draft acts and other legal documents assessing their influence on economic competition, as part of interministerial commentary procedure or for government sessions**.**

The Office submitted important comments concerning the draft of Government Regulation fixing principles for granting export subsidies for milk products. The Regulation has not explained in sufficient way if enclosed list of subsidised products belongs to farm products that fall under exemption from state aid prohibition. The Office gave its comments in the sense that it has to be obvious that listed products fall under the exemption. The comments were accepted.

In 2000 the Office aimed its activities at competition principles enforcement in the process of restructuring and privatization of dominant and monopoly undertakings predominantly in the field of electricity and gas industries. The Office participated especially at the beginning of decision-making process when its experts took part in negotiations of privatization commissions and actively strived after enforcement of **market principles within assessment and choice of strategic partner for privatised companies.**

As far as electricity and gas sector privatization are concerned **the Office worked towards elimination of vertical integration**, consisting in distribution companies interlocking with present dominant producer of electricity or with monopoly gas importer. The office also strived after transmission net removing out of dominant electricity producer ownership. **It recommended to realise privatization** of gas distributors in the way that **one owner doesn't acquire two or more undertakings of the same kind which operate on neighbouring geographical markets or two various undertakings on the same territory.**

In October 2000 the Government approved the **procedure of privatization of energetics undertakings** – ČEZ (main producer of electricity with market share of 62%) and regional electroenergetics distribution undertakings. It is the **case of joint sale** of ČEZ shares, which are in holding of the National Property Fund and ČEZ in six regional distribution companies, and shares offered by municipalities in relevant regions, **to the strategic investor on the basis of tender results**. Concerning the undertaking Pražská Energetika and Jihočeská Energetika in which the Fund is not majority owner the method of tender for selling shares has been chosen. Following the above mentioned procedure **the highvoltage transmission net undertaking becomes independent on ČEZ** within 1 year so as to **guarantee decisive**

state influence on working, management and regulation of energy transmission system in the Czech Republic.

The draft of Czech Railways Transformation Act submitted in the second half of 2000 includes the basic principle of **transformation of state undertaking České Dráhy into two subjects, joint stock company České Dráhy and state undertaking Správa Železniční Dopravní Cesty (Administration of Rail Transport Road).** České Dráhy shall become the railways operator and at the same time railtrack operator for needs of state(Undertaking Správa Železniční Dopravní Cesty will ensure infrastructure operation through undertaking České Dráhy). The model **doesn't represent consistent infrastructure separation from transport activities**; at the end it may result in raising some **barrier preventing new undertaking to enter the market**. The Office submitted this standpoint within discussion on the Act.

The Office in 2000 worked out **376 opinions** related to draft acts and other legal documents assessing their influence on economic competition, as part of interministerial commentary procedure or for government sessions**.**

The Office submitted important comments concerning the draft of Government Regulation fixing principles for granting export subsidies for milk products. The Regulation has not explained in sufficient way if enclosed list of subsidised products belongs to farm products that fall under exemption from state aid prohibition. The Office gave its comments in the sense that it has to be obvious that listed products fall under the exemption. The comments were accepted.

7 COURT'S DECISIONS

COMPETITION

a) Actions filed with the High Court in Olomouc against the decisions by the Chairman of the Office on the appeals filed against the decisions issued pursuant to the Act on the Protection of Competition

- Actions filed in 2000.....**2**

  Out of that actions decided.....**1**

- Number of rulings given by the High Court in Olomouc

  on the actions filed before 2000.....**1**

Overall, 2 actions were decided in 2000, out of that 1 action was overruled, 1 action overruled in part and 1 action has remained undecided.

It follows from the survey that the number of actions (2) brought against the Office's decisions in 2000, like in 1999 (1 action) dropped significantly compared to the past period with 5 actions filed in 1993, 3 actions filed in 1994, 10 actions filed in 1995, 6 actions filed in 1996, 10 actions filed in 1997 and 5 actions filed in 1998.

The reasons for the reduced number of filed complaints may be attributed to the improvement in the decision-making practices of the Office on two-stage decision level where each analysis of a first-stage decision is examined among others also from the point of competition law and its implementation in the European Communities. Further reason can be seen in the adopted organizational and personnel measures of the Chairman of the Office in the area of managerial and executive activities, or in the measures adopted ad hoc, according to the needs of particular administrative proceedings or proceedings on an appeal.

b) The most important legal opinions expressed in the rulings of the High Court in Olomouc relating to further decision-making practice of the Office:

- Infringement of the provisions of Section 9, par. 3 of the Act on the Protection of Competition in cases of infringement of a special act that regulates the object of activities of the competitor in a monopoly or dominant position.

Pursuant to the judgement of the High Court in Olomouc, ref. No. 2 A 8/2000-47 of February 1, 2001, the Act No. 63/1991 Coll. on the Protection of Competition as amended, the protection of competition is laid down in the provisions of Section 9, paragraph 3 by prohibiting competitors in monopoly or dominant positions on the market to abuse their position to the detriment of other competitors or consumers or to the detriment of public interest. A competitor in such a position must submit to stricter rules of conduct in the market than a competitor who is not in such a position. A situation in which a monopoly competitor keeps infringing the act regulating his performance of his object of activities in the given case it was the energy act) to the detriment of consumers, asking for payment for certain operations connected to the delivery of his goods outside the scope of this particular act, can be thought to constitute an infringement of the Act on the protection of competition through abuse of monopoly or dominant position.

c) Complaint submitted to the Constitutional Court

In 2000 a constitutional complaint was filed against point II of the judgement of the High Court in Olomouc from March 3, 2000, ref. No. 2A 15/99-28, by which the court overruled the action against the decision of the Chairman of the Office ref. No. R 1/99 and R 2/99 from October 19, 1999 in the matter of exclusive sale and purchase of goods. The Constitutional Court in its ruling of March 20, 2001 ref. No. I. ÚS 365/2000 overruled the

complaint because it had found no error in the procedural method of the Office or the court when deciding on the matter.

PUBLIC PROCUREMENT

Actions filed with the High Court in Olomouc against the decisions by the Chairman of the Office for the Protection of Competition on the appeals filed against the decisions issued pursuant to the Act on Public Procurement as amended.

Actions filed in 2000.....**9**

Out of that, judgements.....**7**

In 2000, 7 actions were decided overall, out of which 2 action were suspended by the court, 2 actions were granted and 3 actions were overruled.
Compared to 1999, when 14 actions were filed against the decisions of the monitoring department, there has been a significant decline which has certainly been influenced by the quality of first-stage and second-stage decisions.

8 INTERNATIONAL ACTIVITIES

EUROPEAN UNION

In connection with the ongoing negotiations about the admission of the Czech Republic to the EU, the foreign co-operation conducted by the Office focused mainly on the relations with the European Union, in particular with the Directorate General of the European Commission for Competition (DG Competition) and the Directorate General of the European Commission for Internal Market and Financial Services which is also responsible for public procurement.

In 2000 the Office prepared two types of documents for the European Commission – namely a **"Report on the preparedness to incorporate 'acquis' for the period between 1998 and 1999"** and a **"Report on the progress made in the chapter Competition".**

In the Report on the preparedness to incorporate 'acquis' the Office stated that it does not expect any problems in the field of competition when incorporating the relevant legislation of the European Communities and that it will guarantee the full adoption of community law in the Czech Republic after it joins the European Union.

The report on progress included information about the process of adopting and implementation of competition legislative of the European Communities. The Office first informed about the preparation of the new act on the protection of competition, about the measures taken to increase transparency in its decision-making activities and about the new legal regulations concerning the monitoring of provision of state aid, including the involved institutions.

State aid was also the subject of technical consultations with the representative of the European Commission which took place on May 4, 2000 in Brussels.

Representatives of the Czech Republic informed about the transfer of competencies of the monitoring institution from the Ministry of Finance to the Office for the Protection of Competition, including staff training, and about the newly adopted Act on State Aid and measures to guarantee transparency in this area.

Information from this meeting was subsequently passed on to the European Commission in writing in the form of the third supplementary report to the Chapter on Competition.

In 2000 negotiations with the European Union took also place within the common authorities monitoring fulfilment of obligations following from the Europe Agreement. It was the meeting of Association Council of the EU and the Czech Republic which took place in Prague in June 2000. At this meeting the representatives of the Office presented a report on fulfilment of commitments resulting from the Europe Agreement, with a special focus on the progress of harmonisation of law in the area of the protection of competition and in public procurement.

In September 2000 there was held the 6th Competition Conference of the Central and Eastern European Countries in Tallin, organized by the European Commission and the Estonian Competition Authority, focusing on the latest developments in competition law of the European Communities, and focusing mainly on the most severe cases of the distortion of competition and the decentralisation of enforcement of the Community competition law. The other part of the conference was aimed at state aid, in particular regarding the support of regions. The representatives of the Office presented a contribution on the preparation of regional maps of state aid intensity and another one on the problems of using conditions and obligation when approving mergers.

In 2000 the representatives of the Office also took part in a number of conferences and seminars, e.g. the Scandinavian conference on contesting the cartel agreements in Stockholm, the conference on the occasion of the tenth anniversary of the adoption of the Council Regulation on the control of concentrations in Brussels, an international conference entitled "EU Member States and modernization of the European Competition Law" or the conference "A European Competition Day" held in Lisbon on the occasion of the Portuguese presidency in the EU Council. Direct consultations with the representatives of the DG Competition and

with the representatives of foreign competition authorities bring invaluable experience for the continuing process of Czech competition law harmonisation with the EC competition law and its practical application.

R**eport of the European Commission on the progress of the Czech Republic in preparation for the membership in the EU** was published in November 2000. The Report states that the legal regulations in the field of competition are mostly compatible with "acquis" and further progress of harmonization will be inevitable, especially with regard to the development of "acquis" in the field of vertical agreements. The Regular report also positively evaluates the developments in the field of state aid, especially regarding the adopted Act on State Aid and the establishment of a monitoring institution within the Office. In the field of the protection of competition the Regular report did not take into account the fact that the Office worked out and submitted draft new Act on the Protection of Competition to the Government which was approved of by the Government on August 30, 2000. In the field of public procurement the Regular report comments favourably on the progress made on the basis of the amended Act on Public Procurement which extended the scope of the Act to natural monopolies.

WTO and OECD

In 2000 the Office continued to carry on active work in international organisations, particularly in OECD and WTO. Negotiations within the **World Trade Organization** (WTO) in the working group on relations between business and competition policies continued. The Office maintains the attitude that in order to ensure comparable conditions for business entities on the world scale it is beneficial to aim at enforcement of a multilateral agreement on rules of fair competition based on the principle of non-discrimination, transparency and co-operation among individual competition authorities.

Representatives of the Office took part in the meetings of **the OECD Committee on Competition Law and Policy** and its working groups. At the first meeting in February 2000 the Office in co-operation with the Ministry of Industry and Trade prepared a written contribution concerning gas industry. The main topics of the spring session (June 2000) included round-table discussion on competition policy in pharmaceutical industry. The Office prepared a paper on its own experience in this sector and on concentrations in the financial sector. The autumn meeting (October 2000), in which the representatives of the Office also participated was concerned with competition aspects of electronic business, when it was stressed that despite the undisputed advantages of this new and dynamically developing way of business realisation there are certain possibilities of distorting the competitive environment and it is necessary for the competition authorities to follow them from the point of view of possible distortion of competition. Further topics of the October meeting were roundtable discussions on competition and regulation in road traffic and the problems of joint ventures in which the Office also participated with written contributions.

Dealing with the Draft Chapter 3 – "The role of competition policy in the regulatory reform" at the meeting of the OECD Committee on Competition Law and Policy.

On February 14, 2001 a meeting of the OECD Committee on Competition Law and Policy was held in Paris **to deal with the Draft Chapter 3 of the report on the regulatory reform in the Czech Republic, entitled "The role of competition policy in the regulatory reform", which was part of the project of evaluation of regulatory mechanisms in the Czech Republic on the part of OECD.** A detailed report will be the result, including the above mentioned chapter falling within the competence of the Office for the Protection of Competition. The Office has realized since the beginning of this project its significance for the Czech Republic and that is why the Czech delegation took part in dealing with this chapter in the OECD Committee, led by the Chairman of the Office and consisting of representatives of the Ministry of Industry and Trade, the Ministry of Finance, the Ministry of the Interior and the Permanent mission to OECD.

In his **opening speech the representative of OECD Secretariat**, responsible for this chapter, briefly summed up its contents and the most significant points and spoke highly of the level of competition policy and its institutional provision in the Czech Republic.

Then the Chairman of the Office in his speech briefly summarized the history of the competition policy of the Office and the present focus of the Office activities on the harmonization of competition law with the EC legislation and the Office's preparedness to decide and proceed in accordance with this law.

Further the Chairman spoke about the **standpoints of the Czech Republic to the recommendations included in the motion of Chapter 3**, accepting many of these recommendations, stating at the same time which steps the Office took or has been taking (e.g. the recommendation to enforce anti-competition principles in the process of restructuring and privatization, to establish formal relations with the newly established sector regulators, to remove the market share as a factor for the notification obligation of merging undertakings pursuant to the new Act or the establishment of a "leniency" program, which means reducing or complete exemption from fines for those participants of a cartel agreement who notify the Office about the existence of such an agreement and supply the evidence for it).

After the introductory speech of the Chairman of the Office, Mr. Josef Bednář, a round of **technical queries followed from the examiners – the representatives of Poland and Spain**, and then the Chairman answered a high number of questions raised by the other OECD member states representatives. The questions concerned in fact all aspects of the activities of the Office with emphasis on the issue of the protection of competition (e.g. methods and effectiveness of competition advocacy, the influence of the Office on competition advocacy, statutory, individual and block exemptions from the prohibition of

agreements distorting competition, publication of decisions and transparency when assessing state aid, co-operation with other competition authorities etc.).

It clearly follows from the closing word of the chair of the Committee on Competition Law and Policy and from the reactions of other participants in the meeting that the discussion brought favourable conclusions for the Czech Republic and the negotiating may be deemed very successful.

CO-OPERATION WITH COMPETITION AUTHORITIES

As part of establishing contacts with partner competition authorities, the Chairman of the Office, Mr. Josef Bednář, visited **competition authorities in Italy and in Denmark** in 2000. The topic of the discussions was mainly the exchange of experience gained in implementing rules for the protection of competition in relation to severe distortion of competition (detecting cartel agreements), harmonization of competition acts with EC legislation and competencies of individual competition authorities. As a result of establishing this co-operation, a seminar was organized in co-operation with the **Italian Competition Authority** and with organizational help from **TAIEX** in Brno in December 2000. The seminar whose topic was the fight against cartel agreements made it possible for the Office's staff to confront their experience with foreign practice and procedures. A similar seminar was planned for spring 2001 in co-operation with the Danish Competition Authority.

I**nformal co-operation with experts from foreign competition authorities** was a characteristic feature for the Office in 2000 when dealing with individual cases. These were in particular the cases in the field of cable televisions, investigation in the market with motor fuels or the possibility for insurance companies to conclude agreements on insurance of particular kinds of risk. In the cases of administration proceedings with companies operating cable televisions working consultations with the **representatives of the Hungarian and Polish competition authorities** took place. These authorities had dealt with similar cases on their territory. The Office, on the other hand, in the same case met the requirement for consultation from the **Slovak Anti-monopoly Office**. Experience in the field of training, working with the media and experience with investigating cartel agreements – these were the topics of the visit of Office experts to the **Federal Cartel Office in Germany**.

The Chairman of the Office in the course of his speech during the international conference on cartel agreements in Brno

9 INFORMATION ACTIVITIES OF THE OFFICE

In 2000 the Office's significant priority was the achievement of transparency in decision-making activities. A measure taken to increase transparency in the Office's activities is the notification of all authorised decisions both in the **Collections of the Decisions of the Office,** and on the **Internet sites** (www.compet.cz), where the public can also find a list of all decisions authorized by the Office, divided in accordance with the fields of activities (competition, public procurement, state aid).

T**he Guide for Entrepreneurs on Control of Concentrations** drawn up by the Office pursuant to the Competition Act also contributed to the enhancement of the Office's practices transparency. The Office has been preparing the publication of other methodical materials to provide information for business and lawyers community. Better knowledge of the law on the part of entrepreneurs should also improve the communication between the Office and the business community and lead to a better understanding of the competition principles by the entrepreneurs.

A Press and Information Department was established to improve the communication of the Office with the public, the media and news agencies. The Press and information staff respond to questions, arrange the participation by the Chairman of the Office and Office's

other representatives in the media and issue information on foreign visits by the Office representants, their participation in conferences, meetings of the OECD Committee of Competition Law and Policy, at the meetings with the representatives of the DG Competition in Brussels etc. The Chairman and other representatives of the Office for the Protection of Competition also lecture at conferences, e.g. the conference held by the Economic Chamber, conference on telecommunications Vision 2001 etc.

Brno by night

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