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----— Annual report 2001

Office for the Protection of Competition

1 FOREWORD BY JOSEF BEDNÁŘ, CHAIRMAN OF THE OFFICE

Last year, competitoin policy in the Czech Republic celebrated ten years of its existence. The Office for the Protection of Competition currently provides execution of state administration in the area of competition, public procurement and state aid.

In the area of competition, new Act came into force on 1 July 2001 bringing the Czech legislation on the level of full compatibility with the law of the European Union. Alike in the years before, also in the last year the activities of the Office for the Protection of Competition was aimed mainly at fulfilling the tasks related to the obligations of the Czech Republic under the Europe Agreement, especially in the area of state aid control. In this sense, strong encouragement but also obligation for further work is included in the positive assessment of the new Act on the Protection of Competition by the European Commission.

The European Commission in the last years evaluated positively also the decision making practice of the Office. The Office focused on assessing the impacts caused by concentrations and behaviour of undertakings on those markets, which affect broad public. These cases were assessed by the Office with the aim of preservation and support of functioning of effective competition and with the objective to prevent continuation of anticompetitive practices, always taking account of the interests of consumers. The Office thus for instance assessed the impacts resulting from concentrations in the food processing industry, on the market of mineral waters or eliminated the effect of anticompetitive practices on dynamically developing market of mobile telephony. In this case the companies, which were parties to the proceeding, already in its course took partial steps to remedy the situation, which had positive impact on final consumer. The Office intensified own control activity especially in the area of public procurement for the purpose of eliminating illegal procedures of contracting authorities. With the aim to eliminate the results of serious anticompetitive practices, in particular cartel agreements, the Office elaborated a leniency program, which was made known to the undertakings as well as the public in media.

In cases where a serious breach of the Act on the Protection of Competition and the Act on Public Procurement was proven, the Office applied higher sanctions in comparison with the past years.

The Office for the Protection of Competition extended its international activities in the last year. For instance a seminar in co-operation with Danish and Italian competition authority took place in Brno last June, the topic of which was the issue of investigation of cartel agreements and exchange of experience from the investigative practice of competition authorities concerned. In 2001 the Office was one of the first participants in activities within the ICN project (International Competition Network), which introduces informal co-operation

of all important competition authorities. Also the co-operation within the framework of WTO (World Trade Organisation) in the area of competition becomes more and more important in comparison with the past. In February of the last year the Office successfully presented its activities at the meeting of the OECD Committee on Competition Law and Policy in Paris. The Committee discussed, as a part of the regulatory reform review, the activities of the Czech competition authority with respect to the situation of competitive climate in the Czech Republic.

Despite the fact that competition is becoming an increasingly global issue, the competition policy in the European Union shall be continually decentralized in order to be closer to entrepreneurs and citizens. Their trust in the work and abilities of the Office is reflected by high number of inquiries, applications and also instigations for initiation of a proceeding that are sent to us.

Also this is the reason why the Office will make every effort to deserve the trust of the citizens and to keep protecting the interests of final consumer at the best possible rate also in the future.

2 LEGISLATIVE ACTIVITY

Activity of the Office for the Protection of Competition (hereinafter referred to as "the Office") in 2001 was dedicated mainly to fulfilling the tasks resulting for it from the obligations of the Czech Republic included in the Europe Agreement. Great effort was dedicated to **the legislative activity.** In the year 2001 the Office in the area of protection of competition elaborated number of legislation proposals. The most important legal regulation, which had been elaborated on the basis of the resolution of the government**, was the new Act on the Protection of Competition**.

The Office had also elaborated the Program on the conditions of application of lenient regime for imposition of fines in case of agreements distorting competition - **leniency program,** which was officially presented by the Chairman of the Office, Josef Bednář, on 3 July 2001. Lenient regime for imposition of fines may be applied to the undertaking, which provides as the first all the relevant information concerning existence of an agreement distorting competition. However, it must concern an agreement that till then the Office was not aware of or was informed on it but unable to acquire enough reliable evidence from other resources in order to prove the existence of presumed cartel agreement in administrative proceeding. By adoption and application of **leniency program** the Czech antimonopoly office became the seventh competition authority in the world, where such a program is applied (along with the USA, Canada, Great Britain, Germany, South Korea and the European Commission). **Leniency program is another effective instrument in the action against cartel agreements.**

For the purpose of achieving international transparency in assessment of **state aids** the Office ensured translation of individual European regulations and elaborated the methodical instructions for each of the areas of state aid. The Office also **designed in co-operation with other bodies of central state administration the regional maps** for state aid for the year 2001 and for the period of years 2002 – 2006 with regard to the economic development of individual regions.

In the area of **supervision over public procurement, draft new act on public procurement and supervision over public procurement** that in the opinion of the proposing entity was fully compatible with the law of European Communities and that should have facilitated the process of the awarding procedure was submitted in co-operation with the Ministry for Regional Development to the Legislation Council of the Government of the Czech Republic.

The Office for the Protection of Competition in constantly growing extent uses supportively the experience from the decision making practice of the European Commission and the European Court of Justice. In the last year the Office continuously performed **active supervision over fulfilment of conditions** imposed in the issued decisions.

DRAFT NEW LEGAL REGULATIONS WITHIN THE SCOPE OF THE OFFICE AND THEIR HARMONISATION WITH THE EC LAW

In 2001 the Office in the area of protection of competition elaborated number of legislative proposals. The most important legal regulation, which had been elaborated, was the new Act on the Protection of Competition (hereinafter "the Act"), which was published in the collection of laws under No. 143/2001 Coll. and came into effect on 1 July 2001. In relation to the new Act the Office elaborated eight decrees on approval of general (block) exemptions from the prohibition of agreements distorting competition pursuant to Article 3 par. 1 of the Act. The decrees on approval of general exemptions from the prohibition of agreements distorting competition took place on the basis of delegation included in the provision of Article 26, par. 1 of the Act. The Office also elaborated another decree, which stipulates the details on the requisites of the application for approval of concentration of undertakings, which was published under No. 368/2001 Coll. The decree was issued on the basis of legal delegation included in Article 26 par. 4 of the Act.

AREA OF PROTECTION OF COMPETITION

NEW ACT ON THE PROTECTION OF COMPETITION

With regard to the necessity of achieving compatibility of the Act with competition law of the European Communities in all the areas of public competition law the new Act brings number of important changes. As a result of implementation of these changes the aim was successfully reached and modern legal regulation was thus created, which not only fulfils the requirement of its compatibility with the competition law of the EC but also enables reaction to the actual need of preservation of effective competition and application of basic and necessary principles. These are applied by the European Commission and antimonopoly authorities of the member states of the EU. The draft act was **consulted with the Committee for European integration of the Chamber of Deputies of the Parliament of the Czech Republic**, which found the **full compatibility with the law of European Communities** and also with leading Czech and foreign experts in the area of competition law. Full compatibility was also confirmed by the position of Compatibility Department of the Office of the Czech Republic Government. Along with the submission of the draft act to the government the draft had been sent also for the assessment to the European Commission, which accordingly estimated high level of compatibility of the Act with the legal regulation of the European Communities.

- The very definition of the material competence of **the Act is much more precise** than in the case of the previous act, forasmuch the joint legislative abbreviation "distortion" of competition includes exclusion, restriction, other distortion and also the mere imperilment of competition. From the view of illegality it is not decisive which form of distorting the competition takes place. The Act for the first time regulates the manner of application of competition rules to the undertakings, which provide services of general economic interest. The Act applies to these undertakings with the exception of cases, where the application is not possible just for the cause of fulfilling the special tasks assigned to these subjects.
- The Act also specifies differently the personal competence. It is possible to consider undertakings not only the subjects but also the non-subjects. The participants in the competition, i.e. undertakings may be not only natural and legal persons, **but also the associations of these persons** regardless whether it is an association with legal subjectivity or without it. The condition for awarding a statute of undertaking however

always depends on the possibility of the undertaking to at least influence the competition by its activity. Hereby defined personal competence stipulates in more details which subjects may be perceived under the term undertaking.

- In the area of agreements distorting competition the major change consists in leaving the hitherto principle of approving the non-prohibited and valid agreements only for the purpose of their coming into effect (Article 3 par. 4 and 5 of the abolished Act on the Protection of Competition). The provision lost its practical meaning and the Act therefore branches alike the EC law from **general prohibition of agreements distorting competition.** An agreement is therefore prohibited or not, while it is possible to grant an individual exemption in administrative proceeding or general exemption on the basis of applicable decree of the Office.
- Another very important change in the area of agreements is the new regulation of the **de minimis rule**, which is applied differently to horizontal agreements and differently to vertical agreements, which do not bring sensitive impact on competition and therefore are not subject to the prohibition of agreements distorting competition. The Act accordingly stipulates when the de minimis rule is not applied.
- New institute established by the Act is **so called negative clearance.** In case that new undertakings are not sure whether the agreement which they are willing to enter is subject to the prohibition pursuant to Article 3 par. 1 of the Act, they may submit an application for determination whether it is a case of prohibited agreement or not. The institute is also stipulated for the area of abuse of dominant position.
- An essential change took place also in the regulation of criteria for granting individual exemption. The criterion of public interest is not among the enumeration of it anymore and **the Act replaces it with exclusively competition criteria.**
- Newly stipulated in enumerative manner are also the requisites of the application and approval of the exemption. In behalf of increasing the legal safeguard and ensuring equal position of the parties to a proceeding on granting an exemption the Act also stipulates a rule according to which if the Office fails to make a decision within stipulated period then a presumption accrues that the individual exemption was approved for the period required by the applicant (two years at most).
- Regulation of dominant position and the abuse of it also enjoyed important changes. **Dominant position is based on the principle of market power of undertakings,** which is the aggregate of more criteria than mere amount of the market share.
- On the contrary the Act newly establishes in the Czech competition law the **institute of collective (joint) dominance** of several subjects. The institute is not explicitly defined even in the European legal practice, however its attributes may be characterised e.g. on the basis of judicature of the European Court of Justice. The abovementioned term does not include any element of agreement, co-operation or other form of consensus. However it is possible to include in joint dominance the situation, when several strong undertakings on the market, which (without any form of consensus among them) instead of mutual competition action aim their competition behaviour against third subjects, which could enter the market or similar behaviour against consumers.
- The most important changes were implemented in the legal regulation of concentration of undertakings. Newly regulated is the **definition of concentration, which is based**

on Article 69 of the Commercial Code. The decisive criterion for assessment, whether there is a concentration is the autonomy of the concentrating undertakings in the operation on the market

- Completely different from the previous concept is the introduction **of the amount of the turnover as a criterion for assessment, whether given concentration is subject to the approval** by the Office or not, established by the Act. The Act introduces the concept on the basis of principle that only those concentrations are subject to the approval, which may bring substantial impact on effective functioning of competition.
- Another important changes took place in the area of the proceeding on approval of concentration especially by **introduction of periods within which the Office is obliged to issued a decision on concentration.** The regulation of these periods contributes to ensuring the legal safeguard of undertakings. Newly is also regulated the prohibition for the undertakings to realise concentration before the date of legal power of the decision of the Office on approval of concentration, while the Act regulates also the exception from the principle.
- In the area of imposition of fines an important change took place, when **the subjective one-year term for imposition of a fine was omitted.**
- The Act also includes new **duty of the Office to run a cartel register** (register of agreements) from the prohibition of which it approved, prolonged or abolished exemption, or in case of which it defined that the agreement is subject to the prohibition. The public nature of cartel register will contribute to the transparency of the activity of the Office and the competition climate on the given market.

BLOCK EXEMPTIONS

The antimonopoly Office adopted the whole system of general exemptions applied within the EU. Altogether eight decrees on granting general exemption from the prohibition of agreements distorting competition were issued:

- The Decree of the Office No. 198/2001 Coll. on granting general exemption from the prohibition of agreements distorting competition pursuant to Article 3 par. 1 of the Act **for certain categories of vertical agreements**
- The Decree of the Office No. 199/2001 Coll. on granting general exemption from the prohibition of agreements distorting competition pursuant to Article 3 par. 1 of the Act **for certain categories of research and development agreements**
- The Decree of the Office No. 200/2001 Coll. on granting general exemption from the prohibition of agreements distorting competition pursuant to Article 3 par. 1 of the Act **for certain categories of technology transfer agreements**
- The Decree of the Office No. 201/2001 Coll. on granting general exemption from the prohibition of agreements distorting competition pursuant to Article 3 par. 1 of the Act **for certain categories of specialisation agreements**
- The Decree of the Office No. 202/2001 Coll. on granting general exemption from the prohibition of agreements distorting competition pursuant to Article 3 par. 1 of the Act **for certain categories of agreements in insurance sector**

- The Decree of the Office No. 203/2001 Coll. on granting general exemption from the prohibition of agreements distorting competition pursuant to Article 3 par. 1 of the Act **for certain categories of agreements concerning consultation on prices in passenger air transport and allocation of airport slots**
- The Decree of the Office No. 204/2001 Coll. on granting general exemption from the prohibition of agreements distorting competition pursuant to Article 3 par. 1 of the Act **for certain categories of agreements of motor vehicle distribution and servicing agreements**
- The Decree of the Office No. 205/2001 Coll. on granting general exemption from the prohibition of agreements distorting competition pursuant to Article 3 par. 1 of the Act **for certain categories of agreements in the field or railway, road and inland waterway transport**

Adoption of the exemptions will lead to increase of legal safeguard of the undertakings and accordingly to the decrease of administrative burden of the Office, which will be able to attend to the more serious distortions of competition.

DECREE OF THE OFFICE STIPULATING THE DETAILS OF REQUISITES OF THE APPLICATION FOR THE APPROVAL OF CONCENTRATION OF UNDERTAKINGS

The abovementioned decree is the implementing regulation of the Act No. 143/2001 on the protection of Competition. Issue of this decree was necessary especially for ensuring the realisation of the duty of submitting due application for approval of concentration and the legal safeguard of undertakings. The decree in clear and transparent manner stipulates which documents and other requisites must the application contain in order to be considered legally perfect. Integral part of the decree is a questionnaire, which includes detailed information on the intended concentration.

THE AREA OF PUBLIC PROCUREMENT

AMENDMENTS TO THE ACT ON PUBLIC PROCUREMENT

In 2001 the Act on Public Procurement was amended for the first time by the act No. 39/2001 Coll. amending the act No. 483/1991 Coll. on Czech Television as amended and on the change of several other acts. The act No. 39/2001 Coll., which came into effect on 25 January 2001 brought among the contracting authorities Czech television and Czech broadcast. On 3 April 2001 the Parliament of the Czech Republic passed the deputies´draft amendment of the Act on Public Procurement, which was published in the Collection of laws on 26 April 2001 under No. 142/2001 Coll. and which came into force on the same day, i.e. 26 April 2001. The above mentioned last amendment withdraws from the group of contracting authorities the operators of public telecommunication networks or the operators of telecommunication services and also the companies performing extraction of oil, coal or other fuels. The amendment also changed (increased) the limits of pecuniary obligations without the value

added tax in the individual ways of public procurement, which are one of the decisive factors in the selection of the manner of awarding a contract.

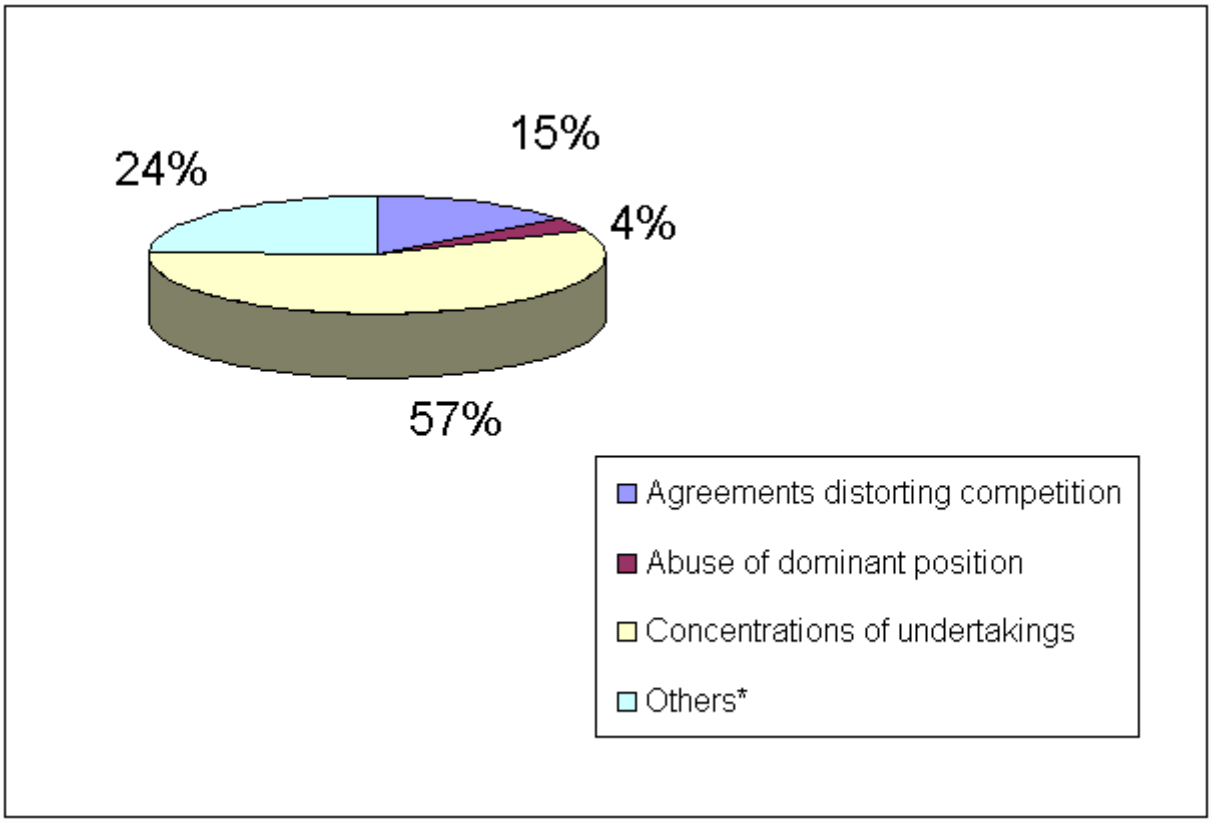
SITUATION IN PREPARATION OF NEW LEGAL REGULATION

The draft new Act on Public Procurement and on the Administration of Supervision, which, following the approval by the government, had been submitted for discussion to the Parliament of the Czech Republic, was returned by the House of Deputies of the Parliament of the Czech Republic to the Ministry of Regional Development for readjustment. That is the reason why the resolution of the Government of the Czech Republic of 19 December 2001 No. 1355 on the Plan of legislative works of the government for year 2002 includes legislative task, pursuant to which the Ministry of Regional Development shall submit to the government in September of this year new draft Act on Public Procurement. In elaboration and discussion on this draft the Office will continue to enforce competition principles in order to ensure as high efficiency of spent public resources in public procurement as possible. According to hitherto application practice it seems desirable that the competition principles were applied in maximum intensity and on the contrary the exemptions were used only in very reduced intensity and in legally stipulated extent and that the possibility of legal responsibility of particular natural persons was accordingly considered.

3 APPLICATION OF THE ACT IN THE AREA OF ANTITRUST AND MERGERS

Statistics for year 2001

In 2001 the Office received 464 instigations, initiated 244 administrative proceedings and imposed fines in amount of CZK 67.520.000.



* cases which were ceased, interrupted or where a procedural fine was imposed in administrative proceeding

3.1 AGREEMENTS DISTORTING COMPETITION

- The number of franchise agreements decreased in 2001 in comparison with year 2000 from 10 to 7 (for illustration – in 1999 it was 19 administrative proceedings).
- **The number of administrative proceedings related to horizontal and vertical slightly increased,** especially in case of vertical agreements on exclusive purchase and sale.
- In 2001 the Office recorded increased number of cases of **binding the retail sellers to maintenance of recommended prices within shop networks.**
- The Office as the seventh antimonopoly office in the world (following EC, USA, Canada, Germany, Great Britain and Korea) established with effect from 1 July 2001 the Program on conditions of application of leniency regime in imposition of fines pursuant to Article 22 of the Act No. 143/25001 Coll. on the Protection of Competition in case of prohibited agreements distorting competition.

SELECTED CASES

Price agreement between supplier of medicament Lipostat 30x20 mg and wholesale distributor of medicaments

Company **Bristol-Myers Squibb** spol.s.r.o., supplier of medicament Lipostat 30 x 20 mg to the domestic market, concluded with the wholesale distributor of medicaments **PHOENIX** lékarenský velkoobchod (PHOENIX pharmacy wholesale), a.s. **price agreement** (or a price component) concerning this medicament, pursuant to which the wholesale distributor obliged himself not to charge his business mark-up for the performance of the wholesale in the sale of medicament Lipostat 30 x 20 mg to the selected pharmacies. The mentioned agreement is prohibited and void agreement on price of goods for its further sale pursuant to Article 3 par. 1 of the Act and in the sense of Article 3 par. 2 letter a) of the Act, which distorted competition on the relevant market of medicaments indicated as statins. The Office in its decision prohibited fulfilling the above mentioned agreement and imposed on both of the parties to the proceeding for the breach of the Act fine in differentiated amount of **CZK 850 000,- and 600 000,-.**

Agreements on direct fixing prices of goods for sale to retail customers concluded between companies GILLETTE CZECH, s.r.o. and wholesalers

Company GILLETTE CZECH, s.r.o., in the agreements concluded in 1998 and 1999 with wholesalers – customers of the goods of Gilette label (including the goods of label Astra, Oral–B and Duracel) an agreement pursuant to which **the customers obliged themselves to maintain recommended prices for retailers** according to price list of company Gillette Czech, s.r.o. The agreement was qualified by the Office as prohibited and void agreement on direct fixing of price of goods for sale to retail customers in the sense of Article 3 par. 2 letter a) of the Act on the Protection of Competition, which in 1998 and 1999 resulted in the distortion of competition on the market of products for wet shave, on the market for mechanical teeth cleaning and on the market of cosmetic preparations before, for and after shave. For the breach of prohibition stipulated in Article 3 par. 1 of the Act the Office imposed on company GILETTE CZECH, s.r.o., a fine in amount of **CZK 800 000,-.**

Decision of association of undertakings – Chamber of veterinaries of the Czech Republic on the minimum price for assessment of X-ray photographs of dogs´ hip joints concerning dysplasia of hip joint (DHJ).

Chamber of veterinaries of the Czech Republic breached the provision of Article 3 par. 1 of the Act on the Protection of Competition by the fact that the Club of reviewers for DHJ and DKL, which is an organisational part of the Chamber as a specialised body in branch of orthopaedy, decided repeatedly on its meetings on **setting minimum price** for assessment of X-ray photography of hip joints concerning DHJ of dogs in amount of CZK 350,-. The decision on setting minimum price for the above mentioned service was qualified by the Office as prohibited and void decision of the association of undertakings, which on the market of X-ray photography assessment resulted in distortion of competition among providers of the service. For the breach of the prohibition stipulated in Article 3 par. 1 of the Act the Office imposed on the association of undertakings a fine amounting to **CZK 200 000,-.** Accordingly the Chamber of veterinaries of the Czech Republic was imposed a duty to abolish the decision of the Club of reviewers for DHJ a DKL on setting minimum price for the above mentioned service **and to inform all its members of the reasons for the abolishment.** After coming into force of the decision the Chamber fulfilled the remedy measure and informed all its

members of the reasons for abolishment of the above mentioned decision through its professional journal.

Prohibited agreement in stipulating the sale prices of insemination doses of breeding bulls for customers

Breach of Article 3 par. 1 of the Act was committed by eight horizontal competitors operating in the area of livestock breeding by **concerted practices in setting the sale prices of insemination doses of breeding bulls for their customers –** cattle breeders. Concerted practices were performed by the fact that the competitors mutually in advance informed themselves on the level of their sale prices of the insemination doses of the breeding bulls as well as on their future changes and implemented joint intention not to sell those doses for prices lower than the price set by the owner of the breeding bull and subsequently maintained this intention on the market of the insemination doses of breeding bulls. Within the administrative proceeding it was also proved that three of the mentioned competitors **also concluded written agreement among them** on the intention not to sell the insemination doses of the breeding cattle for prices lower than the price set by the owner of the bull, whereby they also breached Article 3 par. 1 of the Act by entering a prohibited agreement on prices within the meaning of Article 3 par. 2 letter a) of the same Act. By the abovementioned action of the parties to the proceeding a distortion of competition took place on the market of insemination doses of breeding cattle. The administrative proceeding against another party to the proceeding was ceased by the Office, forasmuch on the basis of the facts found within the administrative proceeding (of the ownership and personal relations) the Office came to the conclusion that it was not a competitor to the other parties of the proceeding and therefore if had not been able to be a subject of breach of the Article 3 par. 1 of the Act.

The Office imposed on the eight parties to the proceeding for the breach of the Act a fine in differentiated amount of **CZK 270 000,-** for one party, **CZK 300 000,-** for six parties to the proceeding and **CZK 500 000,-** to one party to the proceeding.

3.2 ABUSE OF DOMINANT POSITION

As regards the matter of abuse of dominant position the Office dealt with several important cases with impact on great number of consumers, where some of the highest fines in history of the Office were imposed. Two of the decision concerned application of different conditions (Eurotel Praha, Radiomobil). In these cases the parties were imposed first instance fine in total amount of **CZK 63 million.**

In its decision making the Office used as subsidiary legal opinion some of the decisions of the European Commission. For instance in the case of abuse of dominant position by two operators on the market of mobile phones the Office **in definition of relevant market used** the decision of the European Commission, which related to the issue of radiotelephony services in Spain.

SELECTED CASE

Abuse of dominant position by two operators in sector of telecommunications

This case concerned **abuse of dominant position** by two operators, **companies Eurotel Praha, spol. s.r.o.** and **RadioMobil a.s.,** which operate on the market of provision of mobile radiotelephony services in the public mobile telecommunication networks.

The Office within two individual administrative proceedings decided that the company Eurotel Praha abused its dominant position on the market of mobile radiotelephony services in mobile telecommunication network GSM and its monopoly position on the market of mobile radiotelephony services in public mobile telecommunication networks NMT and that the company RadioMobil,a.s., abused its dominant position on the market of mobile radiotelephony services in public mobile telecommunication networks GSM by the fact that both of the companies **charged their customers for a minute call to the network of the company Český Mobil, a.s., amount higher than the one charged mutually for calls between their networks.**

By the above mentioned action the parties to the proceeding breached the provision of Article 9 par. 3 of the Act No. 63/1991 Coll., on the protection of competition, as amended, **to the prejudice of the company Český Mobil,** which for the reason of higher prices charged by the companies EuroTel Praha and Radiomobil to their customers for calls to the network of the company Český Mobil did not acquire such a number of new customers as under conditions of fair competition. For the reason of the higher prices lower volume of out coming operation was implemented from the network operated by the parties to the proceeding to the network of the company Český Mobil in comparison with the operation in the converse direction, whereby the company Český Mobil was disadvantaged in competition. The action of the parties to the proceeding resulted also in the prejudice of consumers – the customers of the parties to the proceeding, who paid for a comparable service during the calls to the network of the company Český Mobil telephone charge in some tariffs higher than for the calls to the network of the second party to the proceeding. The Office by its decisions prohibited the parties to carry on the abuse of dominant position and imposed a fine

amounting to **CZK 48 million** on the company Eurotel Praha, spol. s.r.o. and **CZK 15 million** on the company RadioMobil, a.s. In determination of the fine the Office in both cases took regard of the fact that each of the parties to the proceeding had partially remedied its action after initiation of the administrative proceedings. Both companies appealed against the decision of the Office.

3.3 CONCENTRATION OF UNDERTAKINGS

- In 2001 the Office paid increased attention to making the process of approving the concentrations of undertakings more quality, quick and transparent. The Office actively used its competencies and in case of concentration of undertakings leading to creation of strong position on the market with danger of abuse of this position imposed on the concentrated parties conditions, which should have resulted in elimination of negative impacts on competition. **Restriction or conditions were imposed in 6 cases of 140 cases** assessed by the Office in 2001. In one case the Office did not approve the concentration.
- **The highest number of cases** of concentration in 2001 took place in **engineering sector, chemical industry and food production.** The number of concentrations of undertakings in engineering increased since 2000. Strong tendencies to concentrations of undertakings in chemical industry were shown already in 2000 and went on in 2001.
- **The number of concentration of undertakings in comparison with the year 2000 increased from 57 to 140 cases.** Significant increase in the cases of approving the concentrations of undertakings relates to the date of effect of new act No. 143/2001 Coll., which stipulates as one of the conditions for notification achieving the specified amount of either worldwide net turnover (CZK 5 billion) or the specified turnover in the Czech Republic (CZK 550 million), while at least two of the concentrated undertakings must achieve turnover of at least CZK 200 million. For this reason number of concentrations of undertakings abroad, which however have their subsidiaries or commercial representation in the Czech Republic or take part in the competition on the market through imports is notified to the Office.
- Establishment of the new Act No. 143/2001 Coll. resulted in **increasing number of cases,** where the parties to the proceeding ask for granting an exemption from the prohibition of implementation of concentrations **within the meaning of Article 18 par. 3 before the date of legal power of the decision of the Office** while unable to demonstrate in provable manner the rise of possible serious damages or prejudice conditioning awarding an exemption. Accordingly there is an increase in number of cases where **third persons ask for awarding the statute of a party to the proceeding.**
- In 2001 **some of the foreign companies submitted up to 6 – 7 applications for approval of concentration,** while some of them extent their operation on different markets in the Czech Republic.
- Increasing number of notified concentrations was registered where the selling **party is the administrator in bankruptcy**.
- **Within the administrative proceeding on approval of concentration of *Allied Signal Central Europe/Mora Aerospace* where for the reason of factual danger**

there was a threat of limitation or even termination of production of two Czech producers of aeroplane motors and flight technique, one of which employed 240 people. The Office had succeeded during negotiations with the party to the proceeding in establishing that a party to the proceeding voluntarily decided to carry on the relationships of the company Mora with its customers and suppliers within usual market conditions.

SELECTED CASES

Concentration of undertakings Karlovarské minerální vody, a.s. and Poděbradka, s.r.o. and Hanácká kyselka

The Office did not approve concentration of the abovementioned undertakings, which should have taken place on the basis of "Contract on transfer of business share of firm Poděbradka", by which Karlovarské minerální vody, a.s. should have acquired 100% business share of this company and acquire minimum 51% business share in company Hanácká kyselka on the basis of "Agreement on transfer of business share of firm Hanácká kyselka".

Concentration of undertakings Société Générale and Komerční banka, a.s.

Concentration of undertakings **Société Générale S.A.** (hereinafter "SG") and **Komerční banka, a.s.** (hereinafter "KB") took place on the basis of Agreement on purchase of shares between company SG as the purchaser and the National Property Fund as the seller. The object of the transfer is 60% share of the basic assets of KB. The sale of the abovementioned shares was approved by the Government within privatisation, the concentration finished privatisation of banks in the Czech Republic.

SG took only marginal part in the competition, on the contrary KB is according to the amount of assets the second biggest bank on the territory of the Czech Republic with extensive network of affiliates. The concentration increased market power of KB. On the basis of analysis of impact of the concentration on competition and assessment of advantages of the concentration the Office came to the conclusion that there would be no establishment or strengthening dominant position of the concentrating undertakings, which would result in substantial restriction of competition and approved the concentration. Except the above mentioned the concentration of undertakings will bring advantages (especially in deepening the aim on the need of clients, higher flexibility in offering the products and their innovation and speedup of development of baking technologies), which will in the final stage also enable participation of consumers.

Concentration of undertakings PRAGUE WATER CGE-AW, Paris, France – Pražské vodovody a kanalizace, a.s., Praha

The concentration of undertakings took place on the basis of the fact that company **PRAGUE WATER CGE-AW** seated in Paris, France (hereinafter "PRAGUE WATER") acquired 66% of shares of company **Pražské vodovody a kanalizace a.s.** (hereinafter "PVK") from the National Property Fund of the Czech Republic (hereinafter "FNM") on the basis of the results of a selection procedure pursuant to Article 8a par. 2 of the Act No. 63/1991 Coll.

Company PRAGUE WATER operates on the market of production and distribution of water, cleaning wastewaters, operation of water-management facilities and advisory activity in the area of environment. Company PVK operates the water mains and sewerages on the territory of the capital Prague and operates on the market of production of drinkable water and utility water.

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

Concentration of undertakings UNIPETROL, a.s. – PARAMO, a.s.

The Office approved concentration of undertakings **UNIPETROL and PARAMO,** which had taken place on the basis of the fact that company UNIPETROL had acquired 70.87% of shares of company PARAMO from the National Property Fund of the Czech Republic in form public tender pursuant to Article 8 par. 2 of the Act No. 63/1993 Coll. Company UNIPETROL, a.s. is the parent company of industrial group UNIPETROL and owns shares of companies undertaking in industries of refinery processing of oil, distribution of oil products, petrol chemistry and agricultural chemistry. Company PARAMO a.s. operates on the field of primary processing oil to petrol chemistry crudes, diesel oil, fuel and crankase oils, asphalts and asphalt products.

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

STATISTICAL DATA

	Year								
	1993	**1994**	**1995**	**1996**	**1997**	**1998**	**1999**	**2000**	**2001**
Concentration of undertakings – number of initiated administrative proceedings	83	36	51	74	58	57	51	57	140

Number, type and advantages of assessed concentrations of undertakings

Number of concentration of undertakings	140
Number of concentrations of undertakings with imposition of conditions and restrictions	6
Prevailing type of concentrations of undertakings	Horizontal
Industries with strong tendency towards concentrations of undertakings	Engineering industry Chemical industry Food processing industry
Industries with weak tendency towards concentration of undertakings	Paper industry Rubber industry a plastic industry Agriculture
Most frequent economic advantages for intended concentrations of undertakings presented by the parties to the proceeding (pursuant to the Act No. 63/1991 Coll., in effect till 1.July 2001)	1. Provision of investments for reconstructions and modernisations of productions for new technologies. Acquirement of direct financial resources for investments (including improvement of financial situation of undertakings, securing financial stability and cohesion of resources, etc.), creation of capital strong structure 2. Improvement of consumer comfort (more quality goods, offer of more complex services, offer of group of products in form of packet 3. Reduction of investments payoff , costs saving, including energy savings 4. Joint research, acquirement of knowledge from technological development, optimisation of technological development 5. Securing know-how in technology

From the analysis of economic advantages presented by the parties to the proceeding in the applications for approval of concentration of undertakings in 2001 no significant changes are apparent in comparison with the advantages presented in 2000. The most frequently presented advantage was **securing the investments for reconstructions and modernisation of productions for new technologies, acquirement of direct financial resources for investments and creation of capital strong structure.** The number of cases increased by realisation of which **the investment payoff was shortened,** including cost and energy savings. Strong accent was also laid on **improvement of consumer comfort** (more quality goods, offer of more complex services, offer of group of products in form of packet), and on **joint research and development.** There was a relative decrease in number of concentrations of undertakings motivated **by the decrease of administrative and overhead costs** and

motivated also by **provision of higher professional level of work.** There was a decrease in importance of **maintaining the level of employment and creation of new jobs including maintenance of current social conditions.**

Some undertakings master significant financial power and operate on many markets. For instance – as presented above –company Tyco International, listed at NYSE, operates in many areas in the Czech Republic through its numerous subsidiaries.

On the basis of the fact that one of the notification conditions for approval of concentration pursuant to new Act No. 143/2001 Coll. is net worldwide turnover or net turnover of the undertakings concentrating in the Czech Republic it was possible to elaborate breakdown of analysed concentrations according to the amount of achieved turnover.

Breakdown of analysed concentrations of undertakings according to net worldwide turnover of concentrating undertakings

Net turnover (in CZK)	Number of concentrations of undertakings
over 1 000 billion	13
500 – 1000 billion	7
100 – 500 billion	19
50 – 100 billion	6
5 – 50 billion	16
under 5 billion	5
Number of analysed concentrations	*66*

Breakdown of analysed concentrations of undertakings according to net turnover of undertakings concentrating in the Czech Republic

Net turnover (in CZK)	Number of concentrations of undertakings
over 10 billion	13
1 – 10 billion	26
550 million – 1 billion	6
200 – 550 million	8
under 200 million	13
Number of analysed concentrations	*66*

3.4 APPELATION PROCEDURE

NUMBER OF DECISION CHALLENGED BY APPEALS IN 2000	16
OF WHICH DECIDED: IN 2001 IN THE PERIOD OF JANUARY – APRIL 2002	 7 1
NUMBER OF DECISIONS CHALLENGED BY APPEALS IN 2001	11
OF WHICH DECIDED: IN 2001	 5

IN THE PERIOD OF JANUARY – APRIL 2002	5
TOTAL NUMBER OF DECISIONS ON APPEALS IN THE PERIOD OF 2001 AND JANUARY TO APRIL 2002	**18**

The overview shows evident ongoing of the positive trend in the decision making of the Chairman of the Office, Josef Bednář. In 1999, 19 decisions were challenged by appeal, in 2000 it was 16 decisions and in 2001 the number decreased to 11 decisions. Accordingly the results of the appellation procedure in 2001 document **that mainly (in app. 75% of the cases) the second stage decision in principle confirmed the breach of the Act by the parties to the proceeding as found in the first stage decision.**

High demands were applied to the decision making practice with accent on applying the Act on the Protection of Competition always in harmony with the Community competition law and with solution of similar particular cases by the European Commission, or the member states of the European Union.

SELECTED CASES

Prohibited vertical agreement on direct price fixing by the customers for resale of goods

*Company **GILETTE CZECH, s.r.o.** breached the provision of Article 3 par. 1 of the Act No. 63/1991 Coll. on the Protection of Competition, as amended (with effect from 1 July 2001 abolished by the Act No. 143/2001 Coll. on the Protection of Competition and on change of several Acts) by including to the agreements with its business partners (customers of goods GILETTE, Astra, Oral-B and Durecell) their obligation to maintain the prices of these goods set by GILETTE CZECH, s.r.o. in the resale.*

The Office after realised substantiation came to the conclusion that such contractual agreements are prohibited and void agreements which distorted competition on the market of the given goods, forasmuch they restricted customers as regards free business decision making concerning prices of goods sold by them. The distortion of competition was strengthened by the fact that company GILETTE CZECH holds dominant position on the relevant market and commands very extensive distribution network. Legal qualification of these agreements was in harmony with Article 81 of the Agreement establishing European Communities in the wording of the Treaty of Amsterdam, other relevant regulations of **community** competition law and the decision making practice of the European Commission.

Prohibited vertical agreement on direct price fixing by customers for resale of goods

*Company **Adidas ČR, s.r.o.,** breached the provision of Article 3 par. 1 of the Act No. 63/1991Coll. on the Protection of Competition, as amended by the fact that it embedded in the agreements with their business partners (customers of high price and quality sporting shoes and sporting wear for leisure time) provision that a failure to maintain recommended price of these goods by the customer gives it, as the supplier, the right to withdraw immediately from the contract.*

The Office, following substantiation implemented similarly to the case of company GILETTE CZECH, came to the conclusion that such contractual agreements were prohibited and void agreements, which **distorted competition** on relevant markets, forasmuch it had restricted the

customers as regards free business decision making on prices of goods sold by them. In the legal qualification of these agreements pursuant to the Act on the Protection of Competition the Office, alike in the case of company GILETTE CZECH, used the grounds of Article 81 (1) of the Treaty, regulations coherent to it and the decision making practice of the European Commission.

Abuse of dominant position on the market of mobile radiotelephony services in public telecommunication services

*Company **Eurotel Praha, s.r.o.,** breached the provision of Article 9, par. 3 of the Act No. 63/1991 Coll. on the Protection of Competition, as amended by abusing its dominant position on the market of mobile radiotelephony services in public telecommunication networks forasmuch it had charged their customers for a minute call to the network operated by company Český Mobil, a.s .an amount higher than for a minute call to the network operated by company RadioMobil, a.s.*

Similarly to the above described situation dominant position was abused by the second dominant competitor on this market, company **RadioMobil** which also for a minute call to the network of company Český Mobil charged their customers amount higher than for a minute call to the company Eurotel Praha, spol. s. r. o. The Office in the proceeding did not find objectively justifiable reasons for the behaviour of both the dominant competitors.

Non-approval of concentration of undertakings Karlovarské minerální vody, a.s. and Poděbradka, spol. s.r.o.

The Office did not approve concentration of companies Karlovarské minerální vody and Poděbradka which was intended to take place by acquiring control by company Karlovarské minerální vody, a.s. over the above mentioned company on the basis of transfer of business shares of its associates in favour of company Karlovarské minerální vody in order to acquire majority in company Poděbradka.

Concentrating producers of mineral waters command extensive capacities of licensed sources of mineral waters, which despite its partial use are able to master substantial part of the market. Their strong negotiation position against supermarkets and hypermarkets and credit of their trade marks will enable them to offer much better conditions for customers, which will lead to suppressed availability of other trade marks and to increase of prices of mineral waters to the prejudice of final consumer. Non-approval of the concentration will enable 1.5 to 2 million families to save CZK 310 up to 850 annually and will enable the consumers to alternate the basic types of mineral waters needed for human organism. The Office in its decision paid great attention to the argumentation for the non-approval of the concentration, which was among others supported by number of decisions and procedures of the European Commission and decisions of member states of the European Union in similar cases (e-g- Michelin-Case 322/81 NV, Nederlandische Baden –Industrie Michelin vs Commission, 1983, ECR 3461; Case 85/76 Hoffman – La Roche, 1979 – and others, decision of German Bundeskartellamt of 20 September 1999 concerning concentration of undertakings Henkel KgaA and Luhns GmbH – and others), and also by the decision making practice of American law in the area of monopolisation of market.

4 PUBLIC PROCUREMENT

ASSESSMENT OF ACTIVITY OF THE OFFICE

In 2001 the Office implemented control over proceedings of contracting authorities in the field of public procurement on the basis of the Act No. 199/1994 Coll., on Public Procurement, in force, in compliance with the Act No. 552/1991 Coll., on State Control, in force. The following contracting authorities were controlled: the town Žďár nad Sázavou, the town Rosice u Brna, the statutory town Ostrava – district Ostrava-Poruba, the town Kašperské Hory, the statutory town Brno- district Brno Centre, the State Memorial Institute in Pardubice, the Hospital in Břeclav, the town Kroměříž. According to importance and particular circumstances of a contract the representatives of the Office participated in opening of envelopes with bids. They participated in this operation in case of České dráhy (the Czech Railways), the Mental Hospital in Brno, the Transport Undertakings in Brno, the town Polná u Jihlavy, the statutory town Brno (repeatedly), the Czech Republic Policy – Administration of South Moravian Region, the Faculty Hospital Brno-St. Anna, the Faculty Hospital Olomouc;

- Comparing with 2000 there was a great increase in a number of investigations based on the High Control Office's impulses;
- The Office made, beyond its obligations resulting from the Act on Public Procurement, evaluation of contracting authority's proceedings related to investment intentions realization for which the grants were asked for. The Office implemented its

evaluation on the basis of State Environment Fund's request or a request of contracting authority itself in the case of investment actions the realization of which aimed at improvement of environment;

- Significant activity of the Public Procurement Surveillance Department is making public (both contracting authorities and candidates to a public contract) familiar with interpretation of the Act on Public Procurement. In 2001 the representatives of the Office answered 800 inquiries related to the Act on Public Procurement;

ANALYSIS OF ERRORS OCCURING IN THE PROCESS OF PUBLIC PROCUREMENT

In spite of six years existence of the Act on Public Procurement, i.e. a period long enough for both contracting authorities and candidates to a public contract to acquaint themselves with the wording and application of the Act in practice, and in spite of permanent training and seminars there are henceforth both on the part of contracting authorities and on the part of candidates to a public contract errors, mostly formal, the reason of which is usually a misunderstanding or wrong interpretation of the law.

a) The most frequent errors of contracting authorities

- Setting unclear conditions for bids invitation, respectively conditions that allow quite a few explanations so it is unclear for the tenderers how should they elaborate their bids so that it complied with conditions of invitation and best fitted to criteria of evaluation at the same time;
- In many cases the amendments to the Act which entered into force at the moment of bid invitation and which have fundamental importance, for example for right qualification prerequisites establishment, are not taken in account;
- If a bid invitation is made by a form of invitation to more candidates to a public contract, contracting authorities invite smaller number of subjects than stipulated by law;
- All conditions given by law are not required, for example setting of payment conditions in case of which contracting authorities on the contrary often demand tenderers to put them forward in a bid, respectively the payment conditions are presented as one of the criteria for a bid evaluation;
- Contracting authorities do not pay due attention to the selection of criteria for a bid evaluation with regard to the subject of public procurement (criteria are frequently general – for example overall benefit of bid – it is not possible to discover impartially from them what the contracting authority is going to evaluate on the basis of criteria set by this way. Evaluation based on criterion formulated in vague way is not transparent);
- Contracting authority in the invitation does not set a demand concerning the way in which the tenderer shall manifest fulfilling the criterion in a bid;
- Conditions of an invitation include discriminatory elements, for example special conditions for procurement realization are used in a way favourable to some tenderers;

- Contracting authority set “very strict conditions” even beyond the framework of the Act, while in the course of bids evaluation it finds out that the bids, which are not complying with conditions determined in such a way are more acceptable (sometimes even favourable) for it;
- Contract is deliberately divided so that a contracting authority did not have to use more difficult proceedings of bid invitation;
- Contracting authority uses an extraordinary way of bid invitation, it gives invitation only to one tenderer, even though the conditions for this method of invitation given by the law are not fulfilled;

b) The most frequent errors of Contracting authority during evaluation and selection of the most suitable bid

Showing little respect for basic principles, which are in operation in the field of public procurement, during evaluation of bids, has been a common failure of a contracting authority. The basic principles are transparency of proceedings, non-discrimination of any tenderer and the possibility of assessing the decision of contracting authority on best bid selection. The evaluation of bids is done according to the amount of bid price or according to economic suitability of a bid in compliance with criteria set in conditions of a bid invitation (§6 of the Act). Provided that a tenderer decides to accept the form of evaluation based on the economic suitability of bids, selection of relevant criteria by subject of public contract fulfilling, which are to lead to the choice of really best bid, is very important step in the process of invitation. There is a lasting drawback in the fact that tenderers choice unsuitable criteria, as for example “meeting qualification prerequisites”, “keeping with term of starting fulfilment of contracted activities” and so on. The criteria as “Overall favourable bid”, “Complexity of the bid”, “Favourable contract for supply of works” and so on are completely vague. The criteria do not enable to find out what is more favourable for contracting authority, what the contracting authority prefers.

Often it is not possible to review the evaluation of bids by more criteria, because a Report on evaluation and assessment of bids does not include a brief description of a method of evaluation that was used. The description should be especially detailed as regards objectively non-measurable criteria of evaluation. Another most frequent errors in the process of evaluation and assessment of bids are

- Violating the principle of equality of all tenderers. For example a contract is concluded with a tenderer that should have been excluded from participation in public invitation because had not established its qualification prerequisites or had not fulfil conditions of bid invitation;
- Decision on the best bid selection (or on excluding of tenderer), that must be done pursuant to law by contracting authority, is made by the person charged with execution of contracting activities;
- Establishment of qualification prerequisites or conditions of invitation fulfilling is assessed incorrectly;
- Absence or insufficient reasoning of contracting authority’s consideration used in the course of decision-making what is or what is not extraordinary low bid price;
- Degree of significance of individual criteria of bids evaluation is not distinguished;

- Bids are evaluated according to different criteria than those given in conditions of public invitation or contracting authority divides basic criterion into sub-criteria some of which do not correspond by its content (subject of evaluation) to the basic criterion;
- Members of Commission for evaluation and assessment of bids evaluate bids individually. The average evaluation is based on their opinions (in some cases even through voting) what can lead to faulty choice of the best bid;
- Verbal reasoning for the selection of best bid is lacking in a Report on evaluation and assessment of bids;
- Certificates for qualification prerequisites establishment determined by the law are not requested before making a contract with selected bidder
- Contracting authority's decision on the selection of the best bid or following decision on the objections are not sent to tenderers by registered post. It makes it impossible for the contracting authorities to follow objectively the course of the term for submitting objections or the course of the term for submitting proposal for examination of contracting authority's decision on objections;
- Instruction on the possibility to submit proposal for starting proceedings in surveillance authority is lacking in a decision on objections;
- All papers drawn up in connection with the selection of the best bid including submitted bids are not archived. It makes it objectively impossible to implement control over correctness of contracting authority's proceedings;

c) Tenderers' errors related to submitting of bids or objections or proposals for examination of contracting authority's decision on objections

- Tenderers give in their bids only unit prices instead of the total price for public procurement performance as a whole. Unclear conditions of invitation are often the reason of this fault;
- Non-complete statutory declarations on qualifications prerequisites are submitted in bids or there is referred to different laws (partial amendments) than the Act No 199/1994 Coll. in valid wording;
- Papers establishing qualification criteria fulfilling are submitted in non-legalized copies or they are obsolete and do not correspond to legal demand;
- In many cases tenderers do not take into account the amendments to the Act, which entered into force, in their bids;
- Bids are not elaborated in compliance with conditions of invitation (Papers or data demanded by contracting authority are missing, bids are not safeguarded against unjustifiable manipulation and so on);
- Objections or proposals for examination of contracting authority's decision on objections are submitted with delay, in the case of the proposals, they are not submitted also to the contracting authority;

- Objections or proposals do not include relevant information demanded by the law, tenderers reproach contracting authorities for violating the provisions of law which contracting authority is not obliged to observe in the chosen form of invitation;

SELECTED CASES

The Office for State Information System – Establishment and operation of monitoring centre for solution of problems of Y2K in connection with national emergency plan and establishment and operation of a call centre for answering inquiries

The Office implemented control over contracting authority's procedure aimed at concluding contracts on "Establishment and operation of monitoring centre for solution of problems of Y2K in connection with national emergency plan" and on "Establishment and operation of a call centre for answering inquiries related to Y2K". The Office's examination was based on control action over treatment of state property and funds of state budget at the Office for State Information System realised by the High Control Office. The Office found out that in the case of the first bid invitation the contracting authority had invited only the undertaking T-SOFT Ltd. to submit a bid in the sense of Article 50 of the Act on Public Procurement and then concluded the contract for work with it in the value of 24.000.000 CZK including VAT. In the administrative proceedings the contracting authority did not prove fulfilment of legal conditions under which it is possible to apply this exceptional way of bid invitation. Due to the level of future financial obligations the contracting authority was obliged to announce a public tender. The Office fined the contracting authority CZK 100.000 for serious violation of the Act. In the case of the second bid invitation for establishment and operation of a call centre for answering inquiries related to the issue of Y2K the contracting authority invited six undertakings to submit a bid in the sense of Article 49 (1) of the Act on Public Procurement. Following the mentioned bid invitation, which included print and distribution of methodological leaflets with the same content and form and their publication in the form of paid advertisements in dailies, the contracting authority selected the supplier and then concluded three agreements for works. Due to the fact that the total sum of all pecuniary obligations from all public procurements of the same or comparable kind in the fiscal year is decisive for method of bid invitation determination, the contracting authority was also obliged to announce a public tender. The Office imposed the fine on the contracting authority for serious violation of the Act in the amount of CZK 50.000.

Ministry of Transport and Communications – Production of driving tests for driving licence examination

Contracting authority The Czech Republic – Ministry of Transport and Communications awarded a public contract for production of driving tests for motor vehicles driving licence examination to the entrepreneur Mr. Stanislav Sypták whom it had already awarded the contract on 24 November and this contract was considered to be still valid. The representative of the contracting authority said in the administrative proceedings that the producer was able to print very sophisticated printed forms as far as covering elements, used material and technology are concerned. The production plant is safeguarded against leakage of any produced printed forms. The plant produces very good quality products in terms that are without competition and at lower prices than those charged by producers in bigger towns. Due to the lack of time that contracting authority had for preparation of production of the new printed forms at disposal, given by transfer of the competencies from the Interior Ministry and the Police of the Czech Republic to the Ministry of Transport and Communications and

district administrative offices, it was necessary to take arrangements so that the performance of state administration duties was not endangered. The Office for the Protection of Competition said in its decision that the contracting authority had not been able to award the contract through amendment to the previous contract because the object of the former had been quite different work – production of printed forms to papers on technical qualifications. The contracting authority was obliged, with regard to a pecuniary obligation from invitation, to announce a public tender. The contracting authority violated the Act seriously by awarding the contract without announcement of a public tender and for this reason the Office levied on it the fine totalling CZK 100.000. Determining the level of the fine the Office took into account the fact that the contracting authority had had to accept an arrangement very quickly so that the performance of state administration in the field of transport administration, connected with transfer of competencies from the Interior Ministry and the Czech Republic Police to the Ministry of Transport and Communications, had not been endangered.

The Transport Company of the Capital, Prague, Ltd. – Safety Services for the Transport Company of the Capital, Prague, Ltd., The Transport Company – Buses, Subsidiary, Prague 10

The Transport Company of the Capital Prague, Ltd. announced according to the second part of the Act on Public Procurement a public tender for safety services supplying. The contracting authority did not set clear criteria for evaluation of bids in the bid invitation. The contracting authority established "The most favourable bid as a whole" as the first criterion with the highest degree of importance. The contracting authority mentioned neither in conditions of competition nor in bid invitation documents any other information related to the facts which will be assessed in the frame of the set criterion. The bid shall be deemed to mean according to the Article 2 (g) of the Act on Public Procurement, a proposal for concluding a contract supported by papers demanded in the bid invitation. The bid in this sense is not only a draft contract on works but also all the data given in the bid including the bid price, substantiation of other tenderer's prerequisites and so on. To make the evaluation of bids by objective criterion compliant with the Act, the contracting authority would have to evaluate in the frame of this criterion theoretically and practically the complete bid as a whole because this bid is a proposal for conclusion of the contract (Article 2(g) of the Act). In the frame of a whole complex of criteria chosen by contracting authority not even this procedure would be in compliance with the Act because some criteria, as bid price and so on, would be evaluated twice. It would lead by this way to changing the degree of importance of the individual criteria in the evaluated case. Due to the fact that the contracting authority had not make clear which facts would be evaluated in the frame of criterion "The most favourable bid as a whole" the tenderers were not able to submit the comparable bids as they even did not know what a bid is to look like in order to fit the best not clearly formulated criterion. By this way the contracting authority did not comply with one of the basic principle of bid invitation procedure - transparency. On the basis of the above-mentioned faults, committed in the very bid invitation, the Office cancelled the contracting authority's decision on the selection of the most favourable bid and at the same time it cancelled awarding of the contract.

STATISTICAL DATA

Overview of conducted administrative proceedings in the area of public procurement surveillance according to the Act in 2001

	TOTAL
Number of received submissions (proposals + instigations)	758
Initiated administrative proceedings	446
Issued decisions	**286**
Ceased administrative proceedings	**97**
Number of proposals dismissed by decision	80
Number of imposed fines	84
The amount of fines imposed in the first instance decision in thousands CZK	2 094
The amount of fines in cases where the decisions came into force in 2001 in thousands CZK	1 692
Other decisions issued within the administrative proceedings (for example preliminary arrangement)	55
Administrative payments in 2001 in thousands CZK	3 908

5 STATE AID

The state aid is an important area for **closing the chapter "Competition"** and therefore also for the process of integration of the Czech Republic into the EU. In spite of positive assessment of the state aid part in the European Commission's "Regular Report" it is necessary to ensure more effective co-operation especially with the Ministry of Industry and Trade (Steel industry) and the Ministry of Finance (Banking). The year 2001 was the second year in which the Office for Protection of Competition worked as the monitoring institution for state aids. In that year the Office progressed towards the preliminary conclusion of the "Economic Competition" negotiation chapter.

METHODOLOGICAL ACTIVITIES

The transparency in state aids assessment is one of the basic EU requirements. The European legislation related to the state aids was for this reason translated into the Czech language and the Office worked out the **methodological guideline for each kind of state aid**. The guidelines are amended in compliance with the legislative development in the EU. **Reference interest rate** was set and on this basis it is possible to make quantification of state aid or to determine if the given case establishes a form of state aid or not. On the basis of the Government Regulation No. 389 the activity of Intraministerial Working Group continued. The Group elaborated, with active participation of the Office's experts, the **proposal of the Regional Map for 2001 and Regional Maps for 2002-2006 with regard to the economic development of the individual regions**. There were consultations with the EU expert during the Maps elaboration and the Maps are now in compliance with the EU requirements. The Regional Maps set maximum permissible rate of state aids in the individual regions.

DECISION MAKING ACTIVITIES

The Office initiated in 2001 143 administrative proceedings and closed 137 administrative proceedings. From its own impulse the Office initiated 3 administrative proceedings. Major part of the number of closed administrative proceedings related to **investment incentives.** The

Office continued to deal with the problem of state aid to steel industry undertakings (Vítkovice, a.s., Nová Huť, a.s., Válcovny plechu Frýdek Místek). In this field, without extending of the exemption from the European Commission, only the state aid for protection of environment, research and development and activities in context with decreasing of production is allowed. The European Commission extends the exemption from the prohibition of state aid only on condition that the plan of restructuring the steel industry of the Czech Republic will be elaborated. In this context three negotiations with the representatives of the European Commission were initiated, the representatives of the Office participated in these discussions. Due to the fact that extension of the exemption was not achieved, the Office reopened interrupted proceedings in the case of Vítkovice, a.s., and Nová Huť,a.s.. In the latter case proceedings were initiated on abolishment of granted state aid.

MONITORING ACTIVITIES

Installation of "Informational system for state aids" was completed for the reason of due monitoring process. The Office sent in December 2001 the second **Annual Report** on State Aids in 2000 to the European Commission. The European Commission appreciated that the Report was prepared in compliance with the European Commission methodology and positively assessed the detailed information and structuring of Report by regions. The area of agriculture was defined for the purposes of the State Aid Act on the basis of the Annex to the EC Treaty and with use of the Branch Classification of Economic Activities.

The list of provided state aids, including those granting of which was initiated and not finished after the State Aid Act had come in force, was worked out on the basis of the Article 12 of the State Aid Act. The list, so called "Inventory", that includes state aids and programmes of state aids approved by the Office in the period covering the time from the point of the State Aid Act coming in force to March 2001, was sent to the European Commission.

The Government's Resolution often precedes particular restructuring arrangement in the form of state aid. Even only the approval of the state aid by this Resolution is considered to be a state aid, on the basis of the Czech Republic's obligations resulting from the European Agreement. Not only the provision of the opinion of the Office but also its acceptance is essential to be ensured in advance of the government meeting. This procedure is necessary to ensure the compliance with the State Aid Act and the due monitoring of all the state aids granted.

THE CONTACTS AND CO-OPERATION WITH THE EUROPEAN COMMISSION

The representatives of the Office participated in the negotiations with the partners in the European Commission. The negotiations were held both in he premises of the Office in Brno and the European Commission in Brussels. The questions related to the process of closing the chapter of negotiations "Competition", to the issue of investment incentives, the position of "Českomoravská záruční a rozvojová banka" from the competition point of view and the assessment of the state aids in the fields of banking and steel industry were dealt with. The European Commission pays attention, with regard to closing the negotiating chapter "Competition", to the enforcement of State Aid Act in practice, especially in the fields of banking and steel industry. The European Commission carefully observes the application of the competition rules by the Office.

The VII. Annual Competition Conference of the Candidate Countries arranged by the European Commission was held in June 2001. The representatives of the Office submitted the contribution aimed at control over state aids granted in the form of investment incentives.

SELECTED CASES AND STATISTICAL DATA

The decision of non-approval of the exemption from prohibition of the state aid for the company **Nová Huť, a.s.,** provided in the form of the operational credit granted by Konsolidační banka Praha,a.s., in the total amount of 750 mil. CZK, was issued by the Office on 17 December 2001. The fact that the principle of private investor was not shown and the grant therefore established state aid was the reason for prohibition. The state aid for steel industry can't be provided until the extension of exemption by the European Commission. The granting of state aid in the form, amount, for the purpose and under the conditions described in submitted request are not compatible with the obligations resulting from the European Agreement and with the law. There was a threat of distorting competition because the provision of state aid would enable that the state aid beneficiary maintained the production and finally it could lead to increasing of its market share on the market with steel products.

On 7th of November 2001 the exemption from state aid prohibition was not granted for the benefit of the undertaking **Válcovny plechu,a.s.,** in the form of capitalisation of receivables of Česká konsolidační agentura's and its subsidiary Konpo, s.r.o., totalling CZK 291.760.000 by the deposit of this sum into the fixed assets Válcovny's plechu, a.s.. The intended capitalization of receivables was considered by the Office to establish state aid because the principle of private investor was not shown. At the same time there is no exemption for the steel industry from the part of the European Commission.

The administrative proceedings on granting exemption from prohibition of state aid in form of the guarantee specified in the "Agreement on Guarantee" of 29 December 2000 between the undertakings Konsolidační banka Praha, s.p.ú, and Komerční banka,a.s., was ceased by the Decision of 20 September 2001. Due to the fact that the selection procedure was in compliance with the conditions required by the European Commission the steps undertaken by state organs and companies under the direct or indirect state control are possible to be considered a behaviour corresponding to the standard market principles. The Office thus established that the mentioned arrangements did not include state aid.

On 7 March 2001 the Office issued the administrative decision through which it granted exemption from the prohibition of the state aid for the benefit of the undertaking **Spolana, a.s**., in the form of Konsolidační banka's Praha,s.p.ú, capitalization of receivables totalling CZK 2.260 mil. by the deposit of this sum into the fixed assets of undertaking Spolana. The decision was made under the condition that the Ministry of Finance would submit to the Office, within six months since the decision had come into force, the report on performance of approved restructuring plan in the form of middle term plan for the period of 2001-2004 for the undertaking Spolana,a.s., which would be updated every following six months. The Ministry shall also submit a final assessment report on the course of restructuring after finishing of it.

On 10 April 2001 the Office issued the administrative decision through which it granted exemption from the prohibition of state aid in the form of investment incentive for the benefit of the undertaking **Bosch Diesel s r.o**., by means of discount from the corporate income tax according to the Article 35 (b) of the Act No. 586/192 Coll., on Income Taxes. The Office

issued the decision under the condition that the total sum of the state aid would not exceed 31,25% of total value of the investment costs which are suitable for granting of aid and relating to the investment project listed in the Ministry's of Industry and Trade documents. The costs available for granting state aids consist of the costs for purchase of real estate and development of building space, the costs for purchase of buildings and machinery. At the same time the total amount of the state aid in the form of tax discount must not exceed the amount of CZK 1.620,3 mil. The investment has to be maintained for the period of at least 5 years since the decision on inspection of the construction of the first building, which investment incentive is related to, or the part of it, was issued.

The number of decisions issued in 2001

	Total
Decisions issued:	137
- Approved	6
- Approved under conditions	75
- Not approved	4
- Proceedings ceased	48
- Part approved under conditions, part not approved	4

The seat building of the Office for the Protection of Competition is situated at 8 Joštova Street

6 Competition Advocacy

One of the main Office's priorities is the **protection and support of the competition as a phenomenon** in the widest sense, i.e. not only in the privatisation and restructuring process. For example, the Office has actively pursued the **competition advocacy** in the electricity sector, which it considers to be a strategic sector for the whole economy due to millions of citizens of our republic affected. The Office has warned of negative impacts of the vertical

integration, especially as concerns the difficult regulation of vertically integrated company and a danger of abuse of dominant position.

The Office has focused on the co-operation with the newly established regulators in dynamically developing markets. For this reason, the Chairman of the Office, Mr. Josef Bednář, supported the conclusion of the **Memorandum on Co-operation** between the Office for the Protection of Competition and the Czech Telecommunication Office. Already in the course of 2001, provisions of the Memorandum were concretely fulfilled. The joint consultations with the Energy Regulatory Office have been also launched. The co-operation with other institutions of the state administration can be positively assessed, even though there still remain areas where a further improvement of the co-operation is necessary. Particularly, it is the case of the state aid and cases of the privatisation and the restructuring of steel industry, metallurgy and electricity sector.

At present, the development of the telecommunications and fully functioning competition in this sector is of a great importance for the development of the economy. The Office thus pays high attention to the promotion and support of the competition environment in this high innovative industry. Due to the necessity to accelerate the advancement of the competition in the market of provision of telecommunications services through the public fixed telephone network, the Office requested its participation in the drafting of an amendment to the **Telecommunications Act** in force. The Office received dozens of complaints from costumers concerning the substantial increase of prices for the provision of cable TV services and realised that providers are not exposed to regular competition that would lead to objective prices. With regard to the fact that in the near future cable TV's will not be exposed to competition pressure, the Office requested negotiations with the Czech Telecommunication Office and the Ministry of Finance aimed at finding of solution of this issue with the benefit for consumers.

According to the present state of drafting of the Telecommunications Act amendment, the area of cable TV will be included in this Act. **The comment from the Office has been accepted** which will definitely lead to enhancement of effective competition conditions in this market.

The Office also **successfully applied** its "substantial comment" to the draft decree on the conditions of connection and transportation of electricity in electrification system, where it requested detailed clarification of the term "effective technological development" of the transmission and distribution system for the fact that applicants for access to these systems contribute to cover of eligible costs of system operators. The Office's comment to the draft new Act on the Road Communications was accepted as well, which led to the compliance of this Act with the Public Procurement Act.

The Office was successful in other cases, too, and its **substantial comments were accepted**. It was the case, e.g., of the draft Act on the Standardisation of Selected Public Services, the draft Act on Patent Representatives or the draft Act on Packages.

7 ACTIONS FILED AGAINST THE DECISIONS OF THE OFFICE WITH THE SUPREME COURT AND CONSTITUTIONAL COMPLAINTS

Competition

a) Actions filed with the Supreme Court in Olomouc against decision of the Chairman of the Office on the appeals filed against the decisions issued pursuant to the Act No. 63/1991 Coll., on the Protection of Competition, as amended

Number of actions filed in 2001	**3**
Judgements issued on the actions	**3**
Number of judgements on the actions filed before 2001	**2**

Overall 5 decisions on the actions were issued in 2001, the Supreme Court dismissed all the 5 actions.

It also results from the overview that the Office in the last period achieved **100% success in judicial review of the decisions challenged by an action** (including the constitutional complaints concerning the procedure of the Office mentioned in point b), rejected by he Constitutional Court). This undoubtedly positive result proves increasing quality of the decision making activity of the Office, when each appeal filed against first instance decision is judged no only according to the Czech legal order, especially the Act on the Protection of Competition and the Administrative Code, but the procedure of the first instance authority is assessed consistently also form the view of legal regulations of community competition law and its application in the European Communities.

b) Most important legal opinions included in the decisions of the Supreme Court in Olomouc for further decision making practice of the Office:

Breach of the special Act which regulates the object of the activity of undertaking in monopoly or dominant position

Pursuant to a decision of the Supreme Court in Olomouc ref. No. 2 A 8/2000-47 of 1 February 2001 in the case of **Jihomoravská plynárenská,a.s.** (JMP) the abuse of monopoly or dominant position may consist in action, by which the monopoly undertaking permanently **breaches the Act regulating implementation of the object of its activity** (in this case it was the Act on energetics with relevant implementation regulations), if it causes by the abovementioned action a prejudice to the consumers, from which the undertaking requires charge for certain operations related to the supply of its goods **exceeding the framework of this special Act.** JOM abused its monopoly position on the market of gas supplies to the prejudice of consumers by unjustified collecting fees for installation of gasometer from its customers whereby, exceeding the framework of the Act on energetics. The abovementioned case shall be regarded as important from two points of view. It confirmed, that the competition rules exist in order to ensure benefit for the consumers. As a result of the action of the Office in this case, 65 000 final consumers got back their money collected without authorisation and such a fee will not be charged anymore. The decision, confirmed by the Supreme Court, contributed also to the cultivation of competition climate. The press presented

information that the director of the gas company apologized in a personal letter to all the affected consumers.

Abuse of dominant position on the side of purchase of given goods by non-balanced reduction of agreed supplies towards individual long-term suppliers in extraordinary situation on the market

Pursuant to the judgement of the Supreme Court in Olomouc of 23 October 2001 the undertaking with dominant position in purchase of coal for production of electric power must not proceed in order to transfer intentionally the reduction of agreed coal off-takes in case of significant decrease of demand for electric power to only one of its long-term suppliers. From the view of competition the dominant undertaking was not criticized for the reduction of the off-takes volume, which may have had objective reasons, but for the unequal approach towards its consumers during solution of its situation on the market.

Abuse of dominant position by refusal to accept an agreement with the competitor

The Supreme Court in Olomouc by its order ref. No. 2 A 11/2001-70 of 25 February 2002 dismissed the action of **ČESKÝ TELECOM, a.s.,** filed against the Office for the review of the decision of the Chairman of the Office of 20July 2001, pursuant to which ČESKÝ TELECOM abused its dominant position on the market of operation of unified telecommunication network (hereinafter "JTS") in UTO 02 Praha by a refusal to accept an agreement with its competitor on such conditions of the interconnection of both parts of JTS, which would enable its competitor to acquire proportional part of incomes from incoming operation in the network operated by company ČESKÝ TELECOM also in case of so called internet calls between networks whereby causing an economic disadvantage to the competitor. Fine amounting to CZK 1.800.000 was imposed on ČESKÝ TELECOM for the above mentioned action. The Supreme Court considered the amount of fine adequate and substantiated by the defendant with regard to the seriousness of the action of the plaintiff, as proved, and with regard to the possible top limitation of the rate stipulated by the Act, therefore it dismissed the action in its entire extent.

Award of position of a party to the proceeding on approval of concentration of undertakings

The Supreme Court in Olomouc by its order ref. No. 2A 5/2001-42 of 6 December 2001 ceased the proceeding in the case of draft action of **Association of water consumers,** by which the citizen association established for the purpose of protection of consumer pursuant to the Act No. 634/1992 Coll. on the Protection of Consumer, claimed abolition of the decision of the Office on approval of concentration of undertakings operating in the area of water supply engineering and sewerage for the reason, that it had not been awarded a position of a party to the proceeding. The Court in its order among others expressed a legal opinion that the Act on the Protection of Competition constructs such a concept of a party to the proceeding pursuant to which a party is only the person whose exclusively objective rights and duties should be discussed, i.e. on the claims resulting from the objective right and not on the interests protected by the objective right. A party to the proceeding may not be the person, who

does not command objectively defined right in the given procedure or is not under positively defined obligation, if it is just these particular subjective rights and duties on which the decision within the proceeding should be issued.

c) Constitutional complaint

Several undertakings operating on the market of agriculture commodities, which in 2001 claimed an action by the Office in case of their supposed prejudice, which allegedly had taken place by non-provision of state financial support, pursuant to the regulation of the government No. 420/2000 Coll., for mitigation of consequences caused to the vegetation by the drought in 2000, filed with the Constitutional Court a complaint concerning the procedure of the Office. The constitutional complaint criticised the Office for inactivity allegedly caused by relegating the case to the disposal of the competent authority of the Ministry of Agriculture of the Czech Republic. The Constitutional Court rejected the complaint while articulating an opinion, that the procedure by the Office had been constitutionally conform, and had not breach the constitutionally guaranteed right of the complainant pursuant to the Article 36. par. 1 of the Declaration of Fundamental Rights and Freedoms.

PUBLIC PROCUREMENT

The actions filed with the Supreme Court in Olomouc against the decision of the Chairman of the Office for the Protection of Competition on the appeals submitted against decisions issued pursuant to the Act No. 199/1994 Coll. on Public Procurement, as amended.

Number of actions filed in 2001 (**8** in 2000)	**14**
Of which were judgements	**7**

Overall 6 decisions on actions were issued in 2001, from which in case of 2 actions the Court issued an order on cessation of the proceeding, complied with 3 actions and dismissed one action.

The most important legal opinion included in the judgements and orders concerning the decision making practice of the Office

Interpretation of the question whether the person authorised in the sense of Article 69 of the Act is a party to the proceeding. Pursuant to the judgement ref. No. 2A 2/2001 the definition of the sphere of the parties to the proceeding in connection with the review of the decision of the contracting authority on the objections against the selection of the most suitable offer in public tender implemented by the Article 58 of the Act and depends on its decision. The definition itself gradually excludes other subjects than stipulated by the Act from the participation in the proceeding. The legal regulation excludes from the award of a position to the proceeding the person, whose rights, legally protected interests or duties may be affected by the decision or even the person, who only claims that he may be directly affected by a decision as regards his rights, legally protected interests or duties until proven

otherwise. Contrary interpretation would deny the sense of definition of a party to the proceeding in the Act on Public Procurement, which is a special Act.

8 International co-operation

EUROPEAN UNION

In connection with the continuation of the accession negotiations on the entry of the Czech Republic into the European Union the priority was to fulfil the obligations under the Europe Agreement and contribute thus by the activities of the Office to the successful accession of the Czech Republic to the EU. The Office, therefore, places emphasis on international co-operation with the European Union, in particular with the European Commission's Directorate-General for Competition and Internal Market Directorate-General dealing among others with public procurement.

During 2001 the **communication between the Office and the European Commission** has been further intensified and within the framework of this communication the Office provided a substantial amount of information on progress achieved in the Czech Republic in the areas of competition and state aid. At the request of the European Commission, the Office elaborated in February 2001 detailed surveys of decisions in the fields of competition and state aid in the year 2000. At the same time the European Commission was provided with detailed information on important cases in both fields. In line with the Article 12 of the Act No. 59/2000 Coll., on State Aid, a list of state aid provided and state aid schemes (so called state aid inventory) was elaborated and submitted to the European Commission in April 2001. In November 2001 the Annual Report on State Aid in the Czech Republic in 2000 was finished and the European Commission appreciated its quality in particular with regard to compliance of the methodology used with the methodology used in the European Union. The Office provided the European Commission also with information on changes in the Czech competition legislation in connection with the entry into force of the Act No. 143/2000 Coll., on the Protection of Competition and eight decrees of the Office transposing the European system of block exemptions, which have ensured the compatibility with the legislation of the European Communities. In relation to the current negotiations within the framework of the "Competition Policy" chapter, the Office replied to a number of other questions of the European Commission concerning in particular the decision-making practice of the Office in the area of state aid.

The legislative changes and decision-making practice of the Office in the fields of competition and state aid were subject of a one-day **meeting of the representatives of the Office with the representatives of the European Commission**, which took place in May 2001 in Brno. The representatives of the Office participated also in the delegation of the Czech Republic at the meetings with the representatives of the European Commission in connection with the restructuring of the Czech steel industry, provision of state aid to the banking sector or issues connected with investment incentives.

The negotiations with the European Union took place in 2001 also within the framework of the joint institutions monitoring fulfilment of obligations under the Europe Agreement. It was in particular the meeting of **the European Union – Czech Republic Association Committee** organised in July 2001 in Brussels. The representatives of the Office made a presentation at this meeting of legislative changes in the area of competition and the progress achieved in the enforcement of the Act on State Aid.

In June 2001 in Ljubljana there took place the **7th Competition Conference between the candidate countries and the European Commission**, which was organised by the European Commission together with the Slovenian Competition Authority and was focused in particular on issues concerning proper enforcement of the competition law including the state aid rules. During this event, the Chairman of the Office Josef Bednář met with the Director-General for Competition Alexander Schaub and their meeting concentrated among others on experience with the enforcement of the competition law and further building-up of the competition culture. The agenda of the conference included also a number of seminars dealing with concrete issues connected with the competition and state aid rules with focus on their practical enforcement. The Office presented at the conference a written contribution on the control of granting of investment incentives in the Czech Republic from the point of view of the state aid rules. The contribution was highly appreciated by the representatives of the European Commission as a model for other candidate countries how to ensure assessment of the investment incentives in line with the state aid *acquis*.

The **2001 Regular Report of the European Commission on the Czech Republic's Progress towards Accession** (the Regular Report) was published in November 2001. This Regular Report assesses positively the progress achieved in the field of competition in connection with the entry into force of the Act on the Protection of Competition and the system of general (block) exemptions. The Regular Report states that the competition legislation of the Czech Republic is now largely in line with the *acquis* and appreciates the reasonably good enforcement record of the Office. Further harmonisation is expected only in connection with new Community legislation. In the field of state aid the Regular Report appreciates the progress made in connection with the ensuring the compatibility of the existing state aid, submission of the state aid inventory and elaboration of the draft regional aid map for the year 2001, which has been approved by the European Commission in July 2001. In the area of public procurement the Regular Report indicates that further progress is necessary in connection with the preparation of the new act on public procurement and on surveillance over public procurement. The Office in this respect assists the Ministry of Regional Development in the preparation of the new draft act and provides the expert knowledge of the employees of the Office gained during the surveillance of the public procurement.

OECD AND WTO

Review of the Regulator Reform in the Czech Republic: Chapter 3 – "The Role of Competition Policy in Regulatory Reform" at the meeting of the OECD Committee on Competition Law and Policy

The most important event in connection with the OECD in 2001 was the Regulatory Reform Review of the Czech Republic, important part of which was **the review of the chapter "The Role of Competition Policy in Regulatory Reform" on 14 February 2001 at the meeting of the OECD Committee on Competition Law and Policy in Paris**. The result of the regulatory reform review is a detailed report including the above-mentioned chapter falling within the competence of the Office. The Office has realized since the beginning of this project its significance for the Czech Republic and that is why a large delegation including six representatives of the Office took part in the review of 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 the OECD.

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's activities on the harmonization of competition law with the EC legislation and the ability to decide and proceed in accordance with this law. Furthermore, the Chairman spoke about the **standpoints of the Czech Republic to the recommendations included in the proposal of Chapter 3**, accepting many of these recommendations, stating at the same time which steps the Office took or is taking in order to fulfil them (e.g. the recommendation to enforce pro-competitive principles in the process of restructuring and privatisation, 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 introduction of a "leniency" program, which means reduction or complete elimination of fines for those participants of a cartel agreement who inform the Office about the existence of such an agreement and submit the evidence for it).

After the introductory speech, the Chairman of the Office responded to a number of **expert questions from the examiners – the representatives of Poland and Spain**, and then the from other OECD member state representatives. 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 significantly favourable conclusions for the Czech Republic and the review may be deemed very successful.**

Meetings of the OECD Committee on Competition Law and Policy and Global Forum on Competition

During the year 2001 the representatives of the Office have continued with the active participation in the meetings of the **OECD Committee on Competition Law and Policy** and its working groups. For the meeting in February 2001 the Office prepared a written contribution for the discussion within the framework of the roundtable on the relationship between the competition policy and provision of state aid. For the spring meeting in May/June 2001 the Office elaborated the Annual Report on Competition Policy in 2000 and three written contributions for the roundtables on price transparency and its impact on competition, on training of the staff of the competition authorities and on competition and regulatory issues in the telecommunications sector. For the October 2001 meeting of the Committee on Competition Law and Policy the Office prepared a written contribution on tools used for investigation of cartel agreements and in co-operation with the Czech Telecommunications Office a contribution on the issues relating to the setting the network access prices in the telecommunications sector.

In October 2001 the first meeting of the OECD Global Forum on Competition took place. The Chairman of the Office led the delegation of the Czech Republic at the Forum. The meeting, attended besides the representatives of 30 Member States of the OECD and 5 observers also by 21 non-member countries, concentrated on the issues of international co-operation of the competition authorities, basic tools and principles of the competition policy and the investigation of hard-core cartels and transnational mergers. The Chairman of the Office presented in his presentations views on a number of these topics.

World Trade Organisation

Within the framework of the **World Trade Organisation** (WTO) the meetings of the Working Group on Interaction between the Trade and Competition Policy continued in 2001. The representative of the Office participated in the March 2001 meeting of the Working Group and presented a written contribution dealing with the issues of international co-operation in the field of protection of competition and of basic principles of possible multilateral agreement on competition rules. The Office holds the view that with respect to ensuring comparable conditions for undertakings worldwide it is useful to negotiate a multilateral agreement on the rules of fair competition based on the principles of non-discrimination, transparency and co-operation between individual competition authorities. The results of the 4th WTO Ministerial Conference in Doha in November 2001 confirmed the importance of such a multilateral framework, whereas the negotiations in this field should take place after the 5th Ministerial Conference. In the period until the 5th Conference, further work of the Working Group on the Interaction between the Trade and Competition Policy will focus on clarification of the basic principles of this framework and modalities for future negotiations.

CO-OPERATION WITH OTHER COMPETITION AUTHORITIES

Due to the globalisation of the economies, there rises a growing number of competition problems crossing the borders of individual countries: international cartels, concentrations of undertakings active on a global scale or anti-competitive practices in the areas that are by their very nature international or affect markets in many countries. Effective investigation of all these cases usually necessitates intensive co-operation between the competition authorities in different countries. The Office therefore considers the close co-operation with foreign competition authorities as one of its priorities.

As part of the endeavour to build up close relationships with the competition authorities of the Member States of the EU the Office organised in June 2001 in Brno a **seminar in co-operation with the Danish and Italian competition authorities**, with organisational and technical assistance of European Commission's TAIEX. The seminar was focused on the issues connected with the investigations of cartel agreements and exchange of experience from the decision-making practice of the competition authorities concerned. With the aim to share the experience with the implementation and enforcement of the competition law in the Czech Republic a representative of the Office participated in November 2001 as member of an expert panel in seminar organised by the OECD and the Slovenian Competition Authority for the representatives of the competition authorities from the countries of South-East Europe.

An important form of international co-operation of the Office in 2001 was an informal co-operation with the experts of foreign competition authorities during investigation of individual cases. Subject of these consultations was in particular experience of the foreign competition authorities with cases on the fuel market, with setting of inter-bank fees for the use of ATMs, with the assessment of the concentrations of undertakings on the technical gases markets or on the tiles market. A number of foreign competition authorities was consulted in connection with the preparation of a survey of important horizontal cartel agreements disclosed abroad, the aim of which was to analyse the methodologies of investigation and the evidence used for proving the existence of the cartel agreement. In the year 2001 such consultations took place in particular with respect to the competition authorities of Germany, United Kingdom, France, Finland, Norway, Italy, Poland and Hungary.

In 2001 the Office has become a member of the newly established **International Competition Network (ICN)**. The task of this organisation is to provide for the member states a special and informal forum for regular meetings and discussions on practical issues of the competition policy. ICN, which already at present comprises competition authorities from more than 50 countries, endeavours to become the only global institution focused solely on the competition issues. The Office participates actively in the preparation of the first annual conference that is to take place in Italy in autumn 2002, particularly in two initial projects focused on the process of control of concentrations in the multi-jurisdictional context and on the competition advocacy. The result of the work of these working groups and the annual conference will be publication of the best practices available to all competition authorities for use in their every-day practical activities.

The Office maintains close contact with the Slovak antimonopoly office as a matter of course. The picture shows the Chairwoman, Danica Paroulková and the Vice-Chairman, Jaroslav Košťálik of the latter mentioned office debating with the Chairman Josef Bednář.

9 INFORMATION ACTIVITY OF THE OFFICE

In the framework of ensuring as high **transparency** as possible and improved **communication of the Office with public,** media and correspondent agencies the Office operates the Department of Press and Information. Employees of the department respond to hundreds of inquiries, concerning not only the area of competition, but also the area of state aid and public procurement. In the last year the number of inquiries from the journalist, concerning the activity of the Office continuously increased. The number of articles in the media concerning the Office increased in comparison with 2000 by a third. The Department ensures also the appearance of the Chairman of the Office and the employees of the Office in the media, informs on the foreign business trips of the employees of the Office, on participation on conferences, meetings of the Committee for Competition Law of the OECD, on negotiations with the representatives of the Directorate General for Competition in Brussels etc. In the area of informing other subjects the importance of Commercial Bulletin

increased. Active communication of the Office with public **contributes to cultivation of the business climate.**

On the basis of the Act No. 106/1999 Coll. on free access to information of 11 May 1999 a duty accrued for the Office, as the body of the state, to provide the applicants from the sphere of natural and legal persons free access to information, with effect from 1 January 2000. Internal organisational measures, adopted by the Chairman of the Office, ensure the implementation of this legal duty. Provision of information pursuant to this part of the Report on the activity shall be deemed to mean elaboration of responses to the inquiries of the subjects for provision of information, submitted within the meaning of the Act No. 106/1999 Coll.

10 THE EVENT OF THE YEAR

The event of the year 2001 was the visit of the president of the Czech Republic, Václav Havel, at the Office for the Protection of Competition. It was the first visit of the head of the state at the Office. The meeting, which took place on 11 December, was preceded by negotiations of the Chairman of the Office, Josef Bednář, with president Václav Havel in the chateau of Lány. The meeting in Brno lasted longer than originally expected. President of the Czech Republic showed his interest in the activity of the antimonopoly office and also in the position of the Office towards the issue of privatisation of energetics.

„I was pleased by the fact, that Mister President assessed the activity of the antimonopoly office very positively. I perceive it as a good acknowledgement of our work. It is absolutely natural that during his journey to the independent institutions such as Constitutional and Supreme Courts he visited also the Office for the Protection of Competition," pronounced the Chairman of the Office, Josef Bednář, after the meeting. The president as the first important guest signed the newly established memorial book of the Office.

President of the Czech Republic, Václav Havel, debates with the Chairman of the Office, Josef Bednář, during his December visit at the antimonopoly office.

Office for the Protection of Competition

Joštova 8, 60156 Brno

Czech Republic

telefon: **420-5-42161111**

fax: **420-5-42212766**

e-mail: info@compet.cz

http:\\www.compet.cz