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Office for the Protection of Competition

1 INTRODUCTION BY JOSEF BEDNÁŘ, CHAIRMAN OF THE OFFICE

Protection of competition, supervision over public procurement and assessment of state aid are core part of the competence of the Office for the Protection of Competition. The activities of the Office are aimed at the consistent protection and support of competition on individual markets in favour of the final consumer. In recent years the Office has also concentrated on the fulfilment of the obligations of the Czech Republic in relation to its accession to the European Union. This is also the reason why in the year 2002 the Office devoted greatest efforts to achieving this goal. The Office played a significant role in negotiations with the European Commission regarding the closing of the chapter on Competition Policy where the most complex issue proved to be the granting of state aid in the steel sector and related restructuralization plan for this sector.

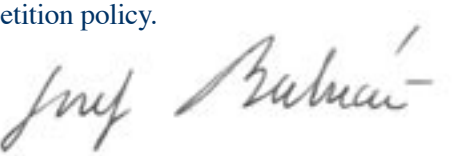
In the year 2002 the Office concentrated on the detection of cartel agreements that belong among the most serious anticompetitive practices with negative consequences for the final consumer. The Office conducted administrative proceedings concerning the alleged cartel agreement of fuel distributors. The proceeding was concluded by a decision that has not yet entered into force which imposed the highest ever sanction in the history of the Office.

In the framework of competition advocacy and in its decision making practice the Office enforced such conditions in the privatization of the energy sector that ensure effective functioning of competition reflecting the latest worldwide experience and the expected liberalizing steps in the European Union. The stipulated conditions should also benefit the final consumer, especially regarding prices.

For eight years the Office has also been the authority responsible for supervision over public procurement. Although the Office's eight-year-long practice in the field has contributed to the development of the field, the Office reached the conclusion that the Act on Public Procurement has been repeatedly seriously breached. This is the reason why the Office currently participates in the preparation of a new act that will be fully harmonized with the legal provisions of the European Union.

In the year 2002 the Office significantly increased its international communication activities, especially due to the creation of the European Competition Network (ECN) of which it has become a part. Considerable attention has been paid to the training of the Office's employees, in particular relating to the exchange of experience. One form of such training is co-operation based on twinning projects.

The Office has the ambition to become a modern institution, capable of applying the latest finding in competition law and especially in analyses concerning the development on individual relevant markets. Therefore it is of key importance for the Office to integrate into the family of competition authorities in the framework of the future functioning of the European Union. Equal importance is attached to the exchange of latest experience in the detection of the most serious anticompetitive practices worldwide, especially by means of active participation in the work of the OECD Competition Committee and by using the know how gained in the USA, the country that has more than a hundred-year tradition of competition policy.



2 LEGISLATIVE ACTIVITY

After the very productive year 2000, which brought the completely new framework of competition regulation (a new act, eight block exemptions and a decree related to a draft of mergers approval) the Office´s legislative work predominantly focused on public procurement. Six amendments were issued and, in co-operation with the Ministry for Regional Development, the Office prepared the new version of the draft of the Public Procurement Act. Relevant problems related to travel agencies insurance against bankruptcy led the Office to preparation of the independent draft of amendments Act No. 159/1999 Coll. on some conditions for undertaking in the field of travel business and Act No. 455/2001 Coll. on trading. In connection with the growing importance of competition advocacy, the importance of the Office´s passive legislation grew last year as well.

PUBLIC PROCUREMENT

AMENDMENTS TO THE ACT

In the course of 2002 the Act No. 199/1994 was amended several times. The first amendment took place on the basis of Act No. 130/2002 Coll. on the aid to research and development from public funds and on the amendments to certain related acts which, in a new way, specified the cases of granting special aids in favour of research and development, which are removed from the scope of the Public Procurement Act application. The second amendment, which was accomplished Act No. 211/2002 Coll. amending Act No. 530/1990 Coll. on obligations and Act No. 214/1992 Coll. on stock exchange, has further extended the negative circumscription of the Act on Public Procurement by cases in which contracts on providing financial services connected with issuing, sale, purchase or other transfer of securities and other financial instruments of the Czech Republic and the Central Bank's services are made. **By Act No. 278/2002 the important amendment of the Act on Public Procurement was achieved because, with the entry into force on 28th of June 2002, the wording according to which the government of the Czech Republic could have decided on direct awarding of a contract on the basis of invitation for bids to one applicant was left out from Article 50 (1)(a) of the Act.** Act No. 320/2002 brought the next amendment in connection with the termination of the activities of regional offices. As a reaction to the floods and deluges in the Czech Republic, Act No. 424/2002 Coll. was passed where lawmakers have defined, also for the future, the contracting authorities´ procedures when eliminating the consequences of natural and other disasters and during the immediately following recovery of destroyed properties. The sixth and the last amendment during the monitored period of 2002 was passed by Act No. 517/2002 Coll. by which some provisions in the central bodies of state administration have been carried out and certain other acts have been amended in relation to the establishment of the Ministry of Informatics.

STATE OF PREPARATION OF A NEW LEGAL ARRANGEMENT

On the basis of the Government's legislative work plan for the period of 2002-2003 the Office, in co-operation with the Ministry for Regional Development, elaborated the **new version of the Act on Public Procurement**, which was continuously consulted in the framework of the twinning project with foreign experts and which was also consulted regarding its compatibility with EC law with the European Commission representatives. The comments from the European Commission were elaborated in standing draft and at the beginning of 2003 the interministerial commentary procedure took place. After the processing of comments and repeated reviewing of the draft by the European Commission, the draft was submitted to the government.

The reason for the necessary adoption of the new act is the need to transpose the relevant European directives and include the Office´s practical experience. The current legal arrangement, even after its amendment, has not removed some ambiguities related to the interpretation of notions what resulted in legal uncertainty during the application of the act and, as a consequence, in an excessive number of applications for review. In this way, the whole process of bid invitation was made longer and more expensive. The new act is to remove these shortcomings.

Many changes relate to the framework of the act, especially provisions concerning public contracts awarded by public authorities in water industry, energy and transport were drafted as special provisions together with the provision on sub limitary public contracts. Changes were enforced in provisions concerning the evaluation committee and the assessment and evaluation of bids, which were developed in detail in connection with the implementation of legal regulation.

BLOCK EXEMPTION FOR CERTAIN CATEGORIES OF MOTOR VEHICLE DISTRIBUTION AND SERVICING AGREEMENTS

In connection with the adoption of the new European Commission Regulation on the application of Article 81(3) of the Treaty to certain categories of vertical agreements and concerted practices in the motor vehicle sector in force since 1 October 2002, in the course of 2002 the Office elaborated a new decree on granting general exemption from the prohibition of agreements distorting competition for **certain categories of motor vehicle distribution and servicing agreements**. The decree introduces stricter rules against the restriction of economic competition and establishes more convenient conditions for effective competition in the sale of new motor vehicles, spare parts for motor vehicles and in the sector of motor vehicles repair and maintenance. The purpose of the new rules for these categories of agreements is to establish more convenient conditions for competition between individual producers, dealers and services providers. Dealers will have, according to the new legal arrangement, greater freedom to open multi-brand dealerships and at the same time they will not be obliged to provide repair and maintenance services. Apart from other things, the decree creates space for additional competition on the market for motor vehicles repair and maintenance services from the side of independent repair companies.

The new decree is fully in compliance with the Czech Republic's obligation to take on the whole system of block exemptions, which are applied within Community law. The establishment of the legal environment consistent with EC law enables domestic competitors to adapt to the European single market conditions of economic competition even before the Czech Republic acceeds into the European Union. The decree was issued on 23 January 2003, and it was published on 3 February 2003 under No. 31/2003 Coll.

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

The Office amended the **Leniency Programme** (the conditions for application of a softer regime while imposing fines for prohibited agreement distorting competition, the meeting of which enables the Office not to impose a fine on the parties to such prohibited agreementsor to decrease the level of the fine in the tosubstantial way). The aim of this innovation is strengthen the motivation of cartel participants to make use of the programme and to inform the Office about cartel agreement operation.

In comparison with the last year, the volume of imposed fines increased. In 2002 the imposed fines in total exceeded the amount of CZK 455 million.

The number of incentives and administrative proceedings, including appeals against decisions issued by the first instance body, and the number of lawsuits filed with the High Court against decisions of the Minister for Competition and the Chairman of the Office on appeals in 1993–2002.

Incentives	**1993**	**1994**	**1995**	**1996**	**1997**	**1998**	**1999**	**2000**	**2001**	**2002**
Totally	312	601	655	527	611	590	548	607	464	492

Administrative Proceeding	**1993**	**1994**	**1995**	**1996**	**1997**	**1998**	**1999**	**2000**	**2001**	**2002**
Agreements distorting competition	9	15	28	30	27	67	54	36	36	49
Abuse of dominant position	20	16	29	24	5	4	13	11	9	7
Concentrations	83	36	51	74	58	57	51	57	140	204
Others (termination, suspension and proc. fine)	13	6	5	15	18	35	70	66	59	61
Administrative proceedings in total	125	73	113	143	108	163	188	170	244	321
Number of appeals	36	31	34	36	37	20	19	16	11	46

Number of actions to the High Court	5	3	10	6	10	5	1	2	3	7
Total amount of fines in 2002 (decisions issued in 2002)						**455. 600. 000 Kč**				

3.1 RESTRICTIVE AGREEMENTS

- The Office has noted an increased number of cases **bringing retail sellers under an obligation to observe recommended sale prices at retail chains**. According to the legal arrangement, a supplier can recommend to his/her customers prices but he must not do it by obligation or any other form of coercion. Provided he/she acted in such a way, then it is a case of retail price maintenance and the law prohibits it.

- The Office intensively kept making **use of tools and methods for effective disclosing of the cartel agreements** in compliance with the new Act on the Protection of Economic Competition and with experience and knowledge acquired by competition authorities in the EU countries. The

Office carried out several dawn raids in competitors' premises without their previous announcement.

- In 2002, the competitors made significantly increased use of **negative clearance institute**. In total, they submitted 19 proposals for determination if their contract fell under prohibition according to Articles 3–6 (for comparison, in 2001 there were only two cases). The new institute introduced by the new act considerably contributes to the larger legal certainty of competitors.

- In 2002, in the field of agreements restricting competition there were imposed fines reached CZK **382.8 mil**.

SELECTED CASES

Prohibited agreement among six fuel distributors

Six fuel distributors – AGIP Praha, a.s., Aral ČR a.s., BENZINA a.s., CONOCO Czech Republic s.r.o., OMV Česká republika, s.r.o. and Shell Czech Republic a.s.- violated, in the period from 28 May 2001 to 30 June 2001, the prohibition stipulated by the provision of the Article 3 (1) of the Competition Act 63/1991 on Protection of Economic Competition in the wording of its later amendments then in force and, in the period lasting from 1 July until at least the end of November 2001, the prohibition stipulated by the provision of Article 3 of the Act by concerted practices in the form of adjusting their prices for car petrol Natural 95 in the period starting on 28 May 2001 and lasting at least until November 2001. Through their concerted practices the parties restricted economic competition on the market for car petrol that is delivered to customers at petrol stations. The Office forbade the parties to the proceedings to continue in concerted practices related to the resale price for car petrol Natural 95 sold at petrol stations and imposed on them fines totalling the amount of 313 million CZK. This has been the highest amount of fines ever imposed by the Office. An appeal was filed against the first stage decision of the Office.

Imposition of an obligation on operators of restaurants to purchase some minimum amount of beer from a brewery

Investigations carried out by the Office within the administrative proceedings showed that two of the largest domestic breweries – undertakings **Plzeňský Prazdroj, a.s., and Radegast a.s.** – which belong to the same one economic group SAB, obliged operators of restaurants in agreements on advertisement and promotion of products and brewery trade marks to purchase annually determined minimal amounts of beer covering the overwhelming or the total extent of those restaurant's consumption. The Office qualified the obligations enforced into agreements by the above-mentioned undertakings as prohibited and invalid agreements which in their cumulative effect restrict competition on the market of beer delivery for consumption in restaurants. The Office imposed a fine totalling 3.5 million CZK on competitors for anti-competitive agreements. At the same time the Office ordered competitors to inform operators of restaurants about the ban on and invalidity of the obligation to purchase minimal amounts of beer. An appeal was filed against the Office´s decision.

Coordination of purchasing conditions

Two operators of retail chains, the undertakings **BILLA, spol. s r.o. and JULIUS MEINL, a.s.**, agreed on coordination and harmonization of their purchase prices and business conditions

for their suppliers. It is a case of so-called rabat cartels which adjust conditions and the level of price discounts, bonuses and so on relating to the purchase of goods. Rabat cartels belong to the agreements on direct or indirect price fixing, which are in general considered to be very serious restrictions of competition. If such agreements are made between horizontal competitors on the demand side of the market then it adds up to closing/unifying their purchasing conditions concerning their prices. In this way, the participants in the cartel cease to compete in the purchase price of goods and in this way limit the contractual freedom of the suppliers to negotiate on price within the individual relation between demand and supply. The Office qualified this conduct as a prohibited and invalid agreement which led to the restriction of competition on the market of daily consumer goods delivered to retail sellers – that occurred on the demand side of the market with the impact on the supplier of given goods. The Office imposed a fine on competitors totalling **51 million CZK** and at the same time ordered them to inform the concerned suppliers about the decision. An appeal was filed against the Office´s decision.

Recommended prices for medical services

The Czech Medical Chamber elaborated a catalogue for health care outpatient services, which was later supplemented with minimal recommended prices for these services. The catalogue processed in this way was published by the Chamber in July 2001 on its web pages and distributed to its members with a notice that recommended minimal prices ought to be observed by individual members – physicians. Such conduct was assessed by the Office within the administrative proceedings as a prohibited and invalid decision of the association of undertakings, which can result in distortion of economic competition on the market with health care outpatient services. The Office imposed a fine amounting **450,000 CZK** on the Czech Medical Chamber and at the same time obliged its relevant body to cancel the price recommendation and inform its members about this fact. An appeal was filed against the Office's decision, the Chairman of the Office confirmed the fine imposed on the Czech Medical Chamber and the decision entered in force.

Insurance for the case of bankruptcy of travel agencies – request for extention of the individual exemption

Another important case dealt with by the Office in an administrative proceedings was the request of **8 insurance companies associated into a so-called pool** for extension of validity of the exemption from invalidity of agreements distorting competition. When assessing the request for extension of the validity of the exemption the Office proceeded from the fact that in 2000 the Office issued a decision allowing the exemption for a two-year period. The exemption concerned an agreement on common procedure of insurers in relation to providing mandatory contractual insurance for the case of bankruptcy of a travel agency. Within the administrative proceedings it was established that participants of the pool created a situation excluding competition on substantial part of the market for this type of insurance. Despite this situation the Office paid regard to the fact that the possible refusal of extension of the time of exemption could have had a negative impact on the travelling market because it was not ruled out that a number of mainly smaller travel agencies would not have necessarily succeeded in negotiations on the contract for the insurance for the case of bankruptcy. In such a case their further existence would have been endangered.

The Office paid attention also to the fact that despite considering the existence of the pool a restriction of competition, its future existence would imply that most travel agencies would be able to fulfil the obligation of having the contract on the insurance for the case of bankruptcy. It would mean that the final customer would retain a possibility of choice of the most suitable offer among a large amount of travel agencies. In this case, however, it is necessary that the restriction of competition on the market of insurance for the case of bankruptcy was as short as possible. For this reason the Office prolonged the term validity of exemption only until the end of 2003. The participants to the proceedings filed an appeal against the decision and the whole matter was assessed by the Chairman of the Office. In his decision he prolonged the term of exemption also until 31 December 2003 and specified conditions in favour of maintaining effective competition (the pool must not prevent their members from independent provisions of undertakings for the case of travel agency bankruptcy. This condition also concerns the level of premium, which must not be influenced by the pool). The decision entered into force.

In connection with the solution to the issues relating to the field of tourism, the Office, on its own initiative, prepared a draft of a possible amendment to Act No. 159/1999 Coll. in which it outlined a possible solution to the problem of non-existence of other alternatives for ensuring that travel agencies are insured for the case of bankruptcy, than the obligatory contractual insurance.

Agreements on imposing ban on re-import of electricity to the Czech Republic

The Office assessed the behaviour of the undertaking **ČEZ, a.s.**. The undertaking made an agreement in some of its contracts with purchasers of electricity according to which electricity, which is the subject of these contracts, must not be imported back to the Czech Republic. While assessing the agreements, the Office reached a conclusion that these kinds of contracts were prohibited because they led to the distortion of competition on the relevant market even if sanctions were not imposed for not respecting them. Within the assessment, the Office paid attention to the fact that the anti-competitive feature of such agreements was obvious especially in those cases if a supplier of goods assumed a strong dominant position on the market, which is the case of the undertaking ČEZ, and further in cases in which was existed the important difference between the price of goods delivered to the domestic market and a price of goods delivered to foreign markets. In the assessed case this assumption was fulfilled as well. However, the contracts on the ban on re-import result in the fact that the supplier of goods establishes, by means of such an agreement, the situation on the market which leads or may lead to the restriction of competitors´ possibilities to offer purchasers their goods under more favourable conditions which the competitors may obtain precisely through the purchase of the goods from the supplier. The Office imposed on the undertaking ČEZ a fine of 7.5 million CZK. The undertaking ČEZ filed an appeal against the decision.

Český Mobil a.s. – prohibited agreement in contracts on distribution of pre-paid phone cards

In the administrative proceedings with the undertaking **Český Mobil a.s.**, the subject of investigation was whether the undertaking Český Mobil did not make prohibited agreements within the contracts which Český Mobil concluded with distributors of the so called “pre-paid coupons” for mobile phones. The company Český Mobil distributed pre-paid coupons for subscribed service Oskarta via 11 distributors on the basis of concluded contracts. The contracts included an agreement on setting the price for ordered goods on the basis of the Český Mobil´s pricelist while the pricelist should also have included the prices for which the distributor would be obliged to supply goods to its purchasers. The obligation was in some cases strengthened by the Český Mobil´s possibility to withdraw from the contract if the distributor had not respected the price set by Český Mobil. It was established that as the result of the anti-competitive arrangements, which Český Mobil included in the contracts with distributors of pre-paid coupons, it restricted the distributors´ free choice to set a price for the sale of pre-paid coupons for the

subscribed service Oskarta according to their own deliberation practically everywhere where the pre-paid coupons are sold to final consumers. In the final decision the Office declared that the company Český Mobil violated the law. The Office prohibited the fulfilment of the contracts and imposed on the company Český Mobil a fine totalling CZK **6.5 million** and at the same time it imposed the duty to remedy consisting of the removal of prohibited agreements from the contracts on pre-paid phone cards distribution. The company Český Mobil filed an appeal against the decision.

Český Telecom, a.s. – prohibited agreement in contracts on distribution of pre-paid phone cards

In the administrative proceedings with the undertaking **Český Telecom, a.s.**, the subject of assessment was if the contacts made by Český Telecom with distributors of the pre-paid phone cards contained prohibited price agreements. In the course of administrative proceedings the Office found that Český Telecom distributed phone cards via 28 contractual distributors. The investigation found that the undertaking concluded two types of distribution contracts – contract for delivery of so called chip phone cards which are currently replaced by new, flexible multifunctional chip cards called "TRICK", and contracts for distribution of the pre-paid cards "X". It was established that the contracts included pricelists containing the sale prices of the pre-paid phone cards, and it was also established that contracts obliged the distributor to sell the pre-paid phone cards for the prices given in the pricelists. The Office´s investigation showed that in most cases the distributor selling the phone cards of Český Telecom to the final customers demanded the price given in the pricelist. From this finding the Office concluded that even if Český Telecom did not check the adherence to the prices given in the pricelist by the individual distributors, some distributors are so much influenced by information about the price that they consider it to be the only possible one for which it is necessary to sell the phone cards of Český Telecom. The Office established that while concluding the distribution contract for the pre-paid phone cards Český Telecom violated the prohibition stipulated in Article 3(2)(a) of the Act, placed a ban on fulfilling prohibited agreements, imposed a fine on the mentioned undertaking totalling **7.5 milion CZK** and at the same time it imposed an obligation to remedy by removing the prohibited agreements from the distribution contracts for the pre-paid phone cards. The undertaking Český Telecom filed an appeal against the decision.

3.2 ABUSE OF DOMINANT POSITION

- In 2002, the Office initiated seven administrative proceedings relating to abuse of dominant position; especially the cases of abuse of dominant position by the undertakings Středisko cenných papírů (Centre of Securities), Český Telecom a.s. and Linde Technoplyn a.s. were very important, influencing a large number of customers.
- Two administrative proceedings were initiated in the matter of abuse of dominant position already in 2001. They concerned the asserting of different conditions (Eurotel Praha, spol. s r.o. and RadioMobil a.s.). In these cases a fine was imposed on participants totalling 63 milion CZK. In May 2002, the Chairman of the Office confirmed the fines in the second stage decision. Both operators filed a lawsuit against the decision and the cases will be dealt with at the Highest Administrative Court.
- Fines totalling CZK **72.7 million** were imposed in 2002.

SELECTED CASES

Středisko cenných papírů

The Office conducted administrative proceedings relating to the possible violation of the act by the way in which Středisko had introduced charges for its services since 1 August 2001 and adjusted them since 1 January 2002. The Office assessed all the newly introduced pricelist items, as an abuse of dominant position it regarded the way in which **the service "operation of securities on accounts of the owner" had been charged**. For this pricelist item Středisko chose a price calculation that resulted in charging the price only to 1-2 per mil out of the whole number of owners of securities registered at Středisko. The new pricelist of services, in addition, did not change the fact that information services for state authorities were provided free of charge. Středisko covered expenses created in connection with providing these services from revenue from other services which had to be adequately increased. In this way the consumers were harmed as they covered these costs even if they did not ask for the relevant services. On 12 March 2002 the first stage decision was issued declaring abuse of dominant position by Středisko, prohibiting this kind of behaviour and imposing on Středisko the obligation to adopt remedies within 3 months of the decision entering into force as well as a fine of **300,000 CZK**. When setting the amount of the fine the Office took account of the fact that Středisko is an allowance organization, which is obliged, according to the Act on Budget Rules, to keep a balanced budget. A high amount of the fine would have led to price increase for clients of Středisko and would then have had a counterproductive character. Středisko filed an appeal against the first stage decision but the appeal was withdrawn on 2 December 2002. In this way the first stage decision became legally binding.

Česká rafinérská, a.s.

On the 1 July 2002 the Office opened administrative proceedings with the undertaking **Česká rafinérská, a.s.** Within the performed investigation the Office found that the undertaking, in the course of negotiating conditions on petrochemical raw materials deliveries for the period starting on 1 June 2002, interrupted 31 May 2002, for about 39 hours without any reason the delivery of raw materials to its long-term purchaser, the undertaking CHEMOPETROL a.s., to the detriment of the undertaking and harmed further five competitors who purchase the products from the company CHEMOPETROL. The Office qualified the behaviour as abuse of dominant position. On Česká rafinérská there was lawfully imposed the fine at the level of **six million CZK.**

Linde Technoplyn a.s.

The Office opened in 2002, on its own initiative, the administrative proceedings with the undertaking **Linde Technoplyn a.s.**. According to the Office´s decision of January 2003, the undertaking Linde abused the dominant position on the market of deliveries of bottled technical gases by obliging purchasers in contracts to purchase the whole amount of technical gases mentioned in the contract on bottled technical gases deliveries exclusively from the undertaking Linde. By this behaviour Linde violated the Act to the detriment of its customers by preventing them from the possibility of free choice of supplier of technical gases and also to the detriment of competitors who were prevented from participation in competition for these

customers. The undertaking further enforced on customers who purchased bottled technical gases on the base of written agreement on bottled technical gases deliveries, without any justified reason, considerably different prices for bottled technical gases deliveries under the same or comparable filling. By this behaviour Linde violated the Act to the detriment of the customers who were charged substantially more than other customers under the same or comparable filling. A fine of 12 million CZK was imposed on the company. The participant to the proceedings filed an appeal against the Office's decision.

Český Telecom, a.s.

In April 2002 the Office received complaints from alternative operators against the undertaking **Český Telecom, a.s.** in the matter of access to the services of Internet via ADSL technology while using metallic lines of Český Telecom. The undertaking announced the launch of the service IOL Platinum based on the technology ADSL without making a wholesale offer to alternative operators through which also alternative operators could have offered services based on the ADSL technology to customers. The given issue was also dealt with by the Czech Telekommunications Office (ČTÚ) that in June 2002 opened administrative proceedings with the undertaking Český Telecom. On 25 February 2003 the Office issued the decision in the given case in which it stated that the undertaking Český Telecom, as it, before launching service IOL Platinum (it means in the period before 29 May 2002) and further in the period of operation of the service IOL Platinum (it means in the period from 29 May 2002 until ČTÚ issued the decision on preliminary arrangements on 27 June 2002 which imposed on the undertaking Český Telecom the obligation to terminate the offer and provision of telecommunications services IOL Platinum on the day of the decisioń s delivery) did not make a wholesale offer to other authorized operators of public telecommunication networks, abused the dominant position on the market for arranging access to the Internet services and transfer of data with making use of broadband technologies xDSL (ADSL) by public fixed telecommunication networks to the detriment of other authorized public telecommunication networks operators and to the detriment of final customers. For this behaviour a fine was imposed on Český Telecom amounting **23 million CZK**. The participant to the proceeding filed an appeal against the Office's decision.

3.3 CONCENTRATIONS OF UNDERTAKINGS

- In 2002, there was a continuing **significant increase** in the number of concentrations subjected to an administrative procedure by the Office (from 140 up to 204). This trend was given, on the one hand, by the change of notification criteria stipulated in Article 13 of the Act and, on the other hand, by continuing concentration in some branches as reaction to the progressing process of globalisation.

- In 2002, the Office continued in its effort to increase the quality, speed and transparency of the decision-making process. It used actively its competencies and in the cases where the decision would have led to the creation of a strong position on the market resulting in significant distortion of competition, the Office imposed conditions aiming the elimination of possible negative impacts or accepted relevant obligations from the parties to the merger. Out of 204 decisions on the merits issued in 2002 there were **9 cases in which the Office imposed conditions**. There was an obvious tendency resulting from the decision-making practice of the Office to make more frequent use of so-called **structural conditions** and obligations, which represent a more effective remedy for conditions of competition distorted by merger. In two cases mergers were prohibited.

- The majority of mergers assessed by the Office was carried out in the sectors of **services, engineering and electronics**. The share of mergers in services had grown since 2001; in particular in the case of competitors in the field of consulting services, logistics and services related to real estates. A high

number of mergers was noted, similarly to the year 2001, in the area of chemistry and food industry.

- In 2002, the number of cases where third persons asked for acceptance of status of participant to the proceedings continued to increase.

- In 2002, the Office, for the first time, imposed a sanction for **premature implementation of a merger**, it means for governing or influencing the controlled competitors´ competitive behaviour before the Office's decision on the merger entered into force. Within the administrative proceedings S 97/02 a fine of 100,000 CZK was imposed on the competitor Lasselsberger Holding International GmbH for premature implementation of the merger with the company RAKO, a.s..

- In 2002 concentrative tendencies on some relevant markets, which were before characterized by the diffusiveness of individual competitors continued. This was the case of gradual concentration on the market of operation of pharmacies where the company GEHE through its subsidiary Lékárna Lloyds spol. s r.o. strengthened its position, and in the field of agricultural commodities distribution where two very strong groups had been formed around the companies Agrofert, a.s and Agropol, a.s.

SELECTED CASES

Merger of the undertaking RWE Gas, Transgas, a.s. and eight distribution companies

In May 2002, the Office approved, subject to compliance with **three imposed** conditions, the merger of the company RWE GAS AG (RWE) with the company Transgas, a.s. and eight distribution gas companies. The company RWE must not, directly or indirectly, acquire control of the company Moravské naftové doly, a.s., (MND) and block its decisions related to intentions, which will have an obviously competitive character in relation to the company RWE. In addition, the company RWE must not, until the completion of the process of electricity privatisation, acquire control of shares in electricity distributional and heating distributional companies or build new electricity distributional and heating distributional companies in the Czech Republic, however, for the period of no more than five years. By subjecting companies to fulfilling the conditions given above, the Office set up preconditions for effective competition, in particular in the future, in connection with the expected liberalization of the market. The Office also aimed to prevent consumers from being under pressure of monopoly prices and that the prices paid for gas resulted from competition. RWE Gas sold its share in the company MND and in this way fulfilled the condition imposed by the Office. **Until now, the case of the merger of RWE and Transgas has been the biggest dealt with by the Office in its ten-year history regarding the volume of the transaction.** By this merger the privatisation of the Czech gas industry was completed.

Merger of the undertaking ČEZ, a.s. and five regional distribution companies

The merger was carried out on the basis of the resolution of the Government of the 6 May 2002. The Government issued the resolution on privatisation of governmental assets in the business of regional electricity distributional companies by direct sale to a selected buyer that was the company ČEZ, a.s.. The following distributional companies were concerned: Středočeská energetická a.s., Východočeská energetika a.s., Severočeská energetika a.s., Západočeská energetika a.s., Severomoravská energetika a.s.. It is the merger of vertical character through which an integrated subject will be established with considerable economic and financial strength, which will have a dominant position on the market that could result in substantial distortion of economic competition on the relevant market of electricity supplies to eligible customers and on the market of electricity production. **The merger between ČEZ and REAS was subjected to three conditions in favour of effective competition preservation.** The first condition is the sale of 34% of ČEZ´s share in the company ČEPS, a.s. (the monopoly operator of transmission

network) that ensures complete separation of the transmission network from the dominant producer. The second condition, the sale of ČEZ´s share in Jihomoravská energetika, a.s., Jihočeská energetika, a.s, and Pražská energetika, a.s. guarantees the full independence of those companies – competitors – of the company ČEZ. The sale of one out of five distributional firms to a third person is the minimal structural arrangement which eliminates the existence of a strong dominant position preventing effective operation of economic competition and which will result in the strengthening of the competition environment in favour of the purchases from independent producers and sellers. In the appeal procedure, the Chairman of the Office, on the basis of a special commission's recommendation, extended the term for fulfilment of the conditions.

In compliance with the above-mentioned governmental resolution the Office opened parallel administrative proceedings in the matter of the merger of undertakings **Osinek, a.s. and ČEPS, a.s.**. Apart from this, the Government authorized the transfer of 15% of shares of ČEZ in ČEPS to MPSV ČR and acknowledged the sale of around 51% of shares of ČEZ in ČEPS to the undertaking Osinek, a.s.. As the electricity sektor was logically considered to have created a homogenous whole and the two above described transactions of restructuring were interconnected and constituted one mutually conditioned business transaction, the Office carried out its analysis in complexity. The merger between ČEPS and Osinek was cleared.

Merger between competitors Südzucker Aktiengesellchaft and Saint Luise Sucre, S.A.

The merger should have been carried out on the sugar market. The undertaking Saint Luise Sucre controlled in the Czech Republic, before the merger, the sugar refineries belonging to the group Eastern Sugar. The undertaking Südzucker controlled the sugar refineries of the group Agrana. It was the merger between two out of three important competitors; the subject created by the merger would have become a significantly dominant competitor on the relevant market of household sugar and industrial sugar. On the basis of facts which were established in the course of investigation, for example the significant growth of market share as a result of the merger, a drop in the number of competitors on the market and the fact that market shares of competitors were significantly lower, the Office concluded that, by the merger, the dominant position of the merging companies would have been created and that would have resulted in significant distortion of competition, and for this reason the **merger was prohibited**. An appeal was filed against the decision.

Merger between competitors Agrofert Holding a.s. and Unipetrol a.s.

The merger that resulted from a planned privatisation of the company Unipetrol, a.s. was authorized by the Office subject to obligations. The obligations consisted in continuing supplies of fertilizers for companies outside of the group Agrofert Holding a.s. for the period of five years, maintaining the level playing field related to the conditions of distribution and regular publishing of the anticipated price development for nitrogen fertilizers. The obligations solved the danger referred to by some third parties. The merger was not accomplished in the end as the company Agrofert Holding a.s. withdrew from the contract on purchase and sale of shares, concluded with FNM. Currently the new round of the privatisation of the company Unipetrol, a.s. is under preparation.

Merger between the companies Baring Communications Equity (TES) N.V. and Vision Networks Tsjechie Holding B.V

The merger of the cable television operators was authorized by the Office on 31 December 2002. The merging companies controlled the undertakings TES Media and Intercable CZ. Both the companies operated, with some exceptions, on different geographicaly relevant markets where there market share was not going to increase. The merger led to the strengthening of economic and financial power. However, the strengthening of power was counterbalanced by the economic and financial strength of other telecommunications companies which were or in the medium term should have become competitors due to the gradual implementation of new technologies for the transmission of TV signal.

Merger of competitors LASSELSBERGER Holding-International GmbH and Rako, a.s.

The concentration was realised on the markets of tiling materials and raw materials for their production. The concentration was authorised subject to conditions ensuring effective competition. The conditions related in particular to ensuring access to distributional networks, ban on discrimination of purchasers, continuation of deliveries and preservation of trademarks of all the participating undertakings. The conditions took into account the opinions of the third parties.

Merger between competitors Generali pojišťovna a.s. and Zürich

In September 2002, the Office issued a decision authorizing the merger between competitors by which the undertaking **Generali pojišťovna a.s. acquires part of the undertaking and insurance trunk of the insurance company Zurich**. The concentration was carried out on several insurance markets where the merging companies had only a small market share. The only exception was the market of the guarantee for the case of travel agency bankruptcy. In its decision the Office approved the concentration, however, it imposed an obligation on the undertaking Generali to ensure the provision of insurance for the case of travel agency bankruptcy at least at the level, as far as the volume of concluded insurance contracts and underwritten risk are concerned, of the day when the decision was issued as long as objective facts would not prevent it from doing so, in particular the lack of relevant assurance, and doing this at least until the time when other forms of assurance for clients of travel agencies in bankruptcy would enable by law. This condition eliminated the possible danger of the dominant competitor decreasing its activities on the market that would have affected the conditions of economic competition on the related market of tourism.

STATISTICAL DATA

In 2002, the Office launched 217 administrative proceedings related to the clearance of concentrations. At the same period 238 decisions were issued. 204 decisions were meritory in nature. Out of them, 181 concentrations were cleared without conditions, 9 with condition or obligations, 2 mergers were not allowed to proceed and 13 decisions stated that the assessed transaction was not subject to the Office´s approval. There were 5 decisions on exceptions from prohibition of mergers, one decision related to a concentration contradicting Article 18 (1) of the Act. 19 decisions related to conferring the status of a party to proceedings. 10 appeals were filled, 8 of them because of not conferring the status of a party to the proceedings. It follows from the data related to the Office´s activities in 2002 that the Office imposed conditions in 9 cases that represents 4% of all the 207 issued legally binding decisions. The concentration was not, during the same period, cleared in one case that represents 0.5% of all the investigated cases or 9% of decisions issued in the second stage. The proportion of decisions by which a concentration is cleared conditionally, and the proportion of decisions by which a concentration is prohibited, is fully in line with the decision-making practice of the European Commission within the last four years. **In general, the process of imposing of conditions in favour of the protection of effective competition was positive within the period in question**, because in the above-mentioned cases it was possible to approve the concentration subject to conditions, and thus prevent the utmost solution, i.e. prohibition of concentration.

The number of launched administrative proceedings

	Rok								
	1994	**1995**	**1996**	**1997**	**1998**	**1999**	**2000**	**2001**	**2002**
Concentrations – number of initiated proceedings	36	51	74	58	57	51	57	140	217

3.4 APPEAL PROCEEDINGS

Appeals in 2001	11
Concluded in 2001	5
Appeals in 2002	49
Concluded in 2002	24
from January to April 2003	8
Concluded in 2002 and between January and April 2003	**32**

The special appeal proceedings commission in the area of antitrust considerably intensified its activity during 2002. It handled **57 appeals** in total against 27 first-instance decisions in comparison with 19 appeals against 5 first-instance decisions in 2001. The main cause of this significant increase can be found in particular in discussions about such appealed decisions, which were previously (before the entry into force of the new Act) not subject to discussion, i.e. decisions on determination proceedings and decisions of procedural nature. During the last year the number of issued first-instance decisions of sanctionary nature also increased, what resulted in appeals against these decisions. Thus, the appeal proceedings brought about an increasing number of cases and increasing complexity of appeals. In 2002, the Chairman of the Office conducted several organisational measures with the aim to improve and to speed up the appeal procedure. These measures have already brought very positive results. Prompt decision-making in appeal procedure on merger cases, which significantly strengthens legal certainty of the undertakings concerned, is perceived to be one of the Office's priorities.

SELECTED CASES

Abuse of Dominant Position at the Mobile Telecommunication Market

The breach of the Act consisted in abuse of dominant, respectively of monopoly position on the mobile telecommunication services market in public mobile telecommunication networks GSM (NMT) to the detriment of another undertaking. The undertaking **Eurotel Praha, s.r.o.** charged its customers without justifiable reasons the amount per one minute call to the network of Český Mobil company higher than the amount per one minute call to the network of RadioMobil, a.s. company. The Office came to the conclusion that the higher price for the call to the Český Mobil company network discriminated this undertaking, because it did not allow it to compete for new customers under fair competition conditions. The substance of the conclusion was confirmed in the appeal decision; only minor changes were made as to the period when the abuse of dominant, respectively monopoly position of the undertaking Eurotel Praha took place. Therefore, the Office imposed on the undertaking a fine of CZK 48 million for the breach of the Competition Act. Similarly, for the same anti-competitive conduct the

Office imposed a fine of CZK 15 million on the undertaking RadioMobil.

Prohibition of a Concentration

The undertaking Karlovarské minerální vody appealed against the decision of the Office of 27 September 2001 on disapproval of concentration of undertakings **Karlovarské minerální vody, a.s., Poděbradka, spol. s.r.o. and Hanácká kyselka s.r.o.** The Chairman of the Office has fully supported the opinion of the first-instance body, as the economic advantages of the concentration in question do not outweigh the distortion of competition, which would be caused by the concentration on the Czech market of bottled mineral and table water. The newly created entity would have had an extensive capacity of approved sources, it would have been a owner of a significant number of readily known business brands, and possesed considerable financial power. The significant negotiation power with salesmen would have resulted in an enforcement of own brands, in restriction of consumer choice, and in price increases. These facts would have had negative impacts on the final consumer. The disapproval of concentration allows families to save hundreds of Czech crowns per year, and the access to a variety of waters.

Resale price maintenance

The undertaking **Rigips, a.s.** breached the Act by concluding prohibited and void agreements on indirect resale price maintenance with distributors of its products to the detriment of final consumers. These agreements distorted competition on the Czech plasterboard market. The Office proved the intention of the undertaking to restrict the free will of the distributors with respect to price determination. The Office imposed a fine on the undertaking totalling CZK 500,000.

Price fixing agreement

The Chairman of the Office decided in the appeal proceeding (appeals of 8 undertakings) against the first-instance decision. The undertakings Agro-Měřín, a.s., Plemenáři Brno, a.s. and Chovservis, a.s. concluded a prohibited and void agreement on minimum price of insemination doses of breading bulls, what constitutes an infringement of the Act. Other parties to the proceeding took part in concerted practices with the above-mentioned agreement. From the substantial point of view, the Chairman confirmed the first-instance decision, and he did not comply with the objections of the parties to the proceeding. The Office collected a number of direct and indirect proofs, which evidently indicated that the joint action of undertakings was caused by direct or provided contact. Thus, their conduct was neither an accident nor a logical consequence of economic conditions on the market of insemination doses of breading bulls in the Czech Republic. The concrete proof in this case was found in the price for which the parties to the proceeding sold their products. Furthermore, the price corresponded to the agreed level, and the conduct resulted from mutual coordination or cooperation of the parties to the proceeding. Therefore, the Office imposed a fine on the undertaking totalling CZK 2,570,000, and the Chairman confirmed the fine in the appeal procedure.

4 PUBLIC PROCUREMENT

In the course of the year 2002, the Office reviewed procedures of certain contracting authorities on the basis of Act No. 199/1994 Coll., on Public Procurement, and in accordance with Act No. 552/1991 Coll., on State Control. After preparing an analysis, similary to previous years, a **"Plan of control activity at the contracting authorities"** was approved. In 2002, checks were made at the following contracting authorities: municipal government of the capital of Prague, Ministry of Interior, district authorities - České Budějovice, Karlovy Vary, Plzeň-sever, Pardubice, Hradec Králové, Jihlava, Brno-venkov, Středočeský kraj, statutory city of Teplice, statutory city of Brno, hospital of Blansko, the Office for State Information Systems, the Directorate of Roads and Highways of the Czech Republic, city district of Prague 7.

According to the importance and concrete circumstances of a public contract, the employees of the Office also took part in opening of bid envelopes at contracting authorities´ premises, namely at the Ministry of Defence of the Czech Republic, Military Accommodation and Construction Administration, the district office of Opava, statutory city of Brno - the office of city district Brno-Bystrc, Mendel University of Agriculture and Forestry Brno, Milosrdných Bratří hospital Brno, the city of Břeclav, the Directorate of Roads and Highways of the Czech Republic, and the statutory city of Havířov.

Similary to previous years, the Office continued reviewing the procedures of contracting authorities on the basis of suggestions made by the Supreme Audit Office. Based on requirements of the State Environmental Fund, Financial Directorates of Ostrava, Brno and Hradec Králové, district authorities, or even the contracting authorities themselves, the Office had made, above the framework of its legal duties, checks of procedures of contracting authorities in conducting actions, for which subsidies were consequently required. It was the case of investment activities, the completion of which resulted in improvement of the environment (waste-water treatment facilities, sewerage systems, creation of gas distribution networks in municipalities) or the case of purchases of means of transport for renewal of rolling stock aimed at ensuring transportation services within the region.

A considerable part of activities of the Office involves the provision of guidance to the public on the application of the Act on Public Procurement. During 2002 more than 850 replies to questions concerning practical application of the Act were written. The Public Procurement Section of the Office contributed to the preparation of lectures and seminars for contracting authorities and tenderers organised by the Educational Centre for Public Administration of the Czech Republic.

In 2002, a twinning project has been initiated with the participation of the Officer together with the Ministry of Finance and the Ministry of Regional Development. Within the framework of this project, experts from Germany participated in the creation of future Czech legislation in the area of public procurement, in particular regarding the preparation of the new Act. The twinning program also included expert training and seminars for employees of the Office.

During the year 2002 the Office has prepared together with the Ministry of Regional Development a draft **new Act on Public Procurement**. This draft Act was also consulted with representatives of the European Commission. Adoption of this new Act is needed in order to ensure transposition of the relevant European directives and the implementation of practical experience of the Office. The new Act aims at making the procurement procedure faster and more efficient and thus at saving public funds.

ANALYSIS OF ERRORS MADE IN THE PROCESS OF PUBLIC PROCUREMENT

Act No. 199/1994 Coll., on Public Procurement entered into force as of 1 January 1995. Since then, eight years have already passed which seems to be a sufficiently long period

for contracting authorities to get thoroughly acquainted with the wording of the Act and its practical application, even when taking into account the fact that this Act has been **amended twelve times** during this period. Nevertheless, even though there are guidance opinions available to the expert public in the form of decisions published at the Office's Internet site and even though seminars organised with participation of selected employees of the Office are available, there are still some errors, often of a formal character, made by the contracting authorities or tenderers in the practical application of the Act in the process of public procurement due to misunderstanding or incorrect interpretation of the Act.

a) Most common errors made by contracting authorities in making invitations to bids:

- **Contract is deliberately divided** into several parts so that a contracting authority does not have to use a more difficult method of bid invitation;
- **Contracting authority uses an exceptional form of bid invitation by inviting only one tenderer**, even though the conditions for this method of invitation stipulated by law are not fulfilled;
- **Unclear conditions** are set in bidsinvitations allowing in many instances a number of interpretations so that it is unclear for the tenderers how to elaborate their bids in order to comply with the conditions of invitation or reflect appropriately the evaluation criteria;
- In some cases, **the earlier amendments to the Act are still not taken into account**, these set in more detail how the qualification prerequisites of tenderers are to be proved, in particular as regards the necessary registration or absence of arrears towards the state in public health insurance, social insurance and contribution to state employment policy;
- **Selection of the most suitable bid is not transparent** as there is not due attention paid to the choice of criteria for a bid evaluation with regard to the object of public procurement, the criteria are frequently general, for example overall benefits of the contract, and it is not possible for tenderers to identify what exactly the contracting authority is going to evaluate within such criteria and as a consequence the bids are processed in a way that does not allow their objective comparison;
- **Conditions of an invitation include discriminatory elements**, when for example, special conditions for procurement execution are used in a way favourable to tenderers from the region where the seat of the contracting authority is situated.

b) Most common errors made by contracting authorities in evaluation of bids and selection of the most suitable bid:

In the process of evaluation of bids there are still errors breaching the basic principles valid for public procurement, namely transparency of the procedure used by the contracting authority, non-discrimination of tenderers and possibility for review of the decision of the contracting authority as regards selection of the most suitable bid. The evaluation of bids is made either according to the bidding price or according to the so-called economic suitability of bids in line with the criteria set in the conditions of the public tender. When evaluating the economic suitability of bids, the basic element is the choice of appropriate evaluation criteria, taking into account the subject matter of the public tender. During its reviewing and supervisory activities the Office found that contracting authorities make errors at the very beginning of the public tendering process by choosing inappropriate criteria, such as "fulfilment of qualifying prerequisites", "meeting the deadline for initiation of execution", "overall benefits of the contract", "complexity of the bid", "benefits of the contract on works" etc. that do not allow the tenderers to identify what is more beneficial and thus preferable for the contracting authority. Submitted bids are then difficult to evaluate and in some cases it is even completely impossible to compare them.

In cases where more evaluation criteria are used, it is in many instances impossible to review the evaluation of bids itself as the report on assessment and evaluation of bids

does not contain any description of the method of evaluation, which should be particularly thorough in the case of evaluation criteria difficult to measure objectively.

Other most common errors in the process of assessment and evaluation of bids are the following:

- **The assessment of fulfilment of qualifying prerequisites or public tender conditions is made incorrectly**, when some tenderers are excluded while others are not excluded even though the same lapse on their side is involved;

- **Degree of significance of individual criteria of bid evaluation is not distinguished**, when the bids only receive points for individual criteria without weighting the final sum by the relative weight of the individual criteria;

- **Bids are even evaluated according to other criteria than those given in conditions** of bid invitation or the contracting authority divides the basic criterion into sub-criteria that however do not correspond by their content (the object of evaluation) to the basic criterion;

- The report on the assessment and evaluation of **bids lacks explicit substantiation of selection of the most suitable bid**, i.e. on the basis of what facts the commission or the contracting authority reached the decision;

- **Certificates proving fulfilment** of qualifying prerequisites stipulated by law are not requested before signing a contract with the selected bidder;

- Instruction on the possibility **to submit a proposal for starting proceedings before by the supervisory authority is lacking in a decision on objections;**

- **All documents drawn** up in connection with the selection of the best bid including the submitted bids themselves are not archived, what makes it objectively impossible to review the correctness of the contracting authority's proceedings.

c) Tenderers' errors related to the submission of bids, objections or proposals for review of the contracting authority's decision on objections:

- **Incomplete statutory** declarations on the fulfilment of qualifying prerequisites are submitted in bids or reference is made to laws (partial amendments) other than Act No. 199/1994 Coll. in the legally binding wording;

- Documents proving fulfilment of qualifying criteria are **submitted in non-certified copies**or they are obsolete and do not correspond to legal requirements;

- In many cases tenderers **do not in their bids take into account in their bids** the amendments to the Act that already entered into force;

- Tenderers provide in their bids only unit prices **instead of the total price** for the execution of the public contract as a whole, which is often caused by unclear conditions in the invitation of bids;

- Bids are not elaborated in compliance with conditions in the invitation of bids (documents or data demanded by the

contracting authority are missing, bids are not safeguarded against unjustifiable manipulation and so on);

- Objections or proposals for review of the contracting authority's decision on objections are submitted with delay and, in the case of proposals, they are not at the same time submitted also to the contracting authority;

- Objections or proposals do not include relevant information required by the Act, tenderers complain about contracting authorities violating the provisions of the Act that the contracting authority is not obliged to observe given the selected method of invitation of bids.

SELECTED CASES

Municipal government of the capital of Prague

The Antimonopoly Office in June 2002 **made a check on contracts** at the contracting authority the capital of Prague. The Office reviewed 66 contracts in total and with 47 of them initiated administrative proceedings. In most cases a breach of the Act was found and a fine was imposed, amounting in total to CZK **715,000** (the highest individual sanction imposed amounted in two cases to CZK 50,000 – breach of the Act concerning the public contracts "Construction 0130 Tylova čtvrť – Hotel area" and "Public contract, construction no. 0079 ŠEJCHAR – PELC, Tyrolka - exploratory audit"). The contracting authority paid these fines and did not submit an appeal against any of these decisions of the Office. The serious breaches of the Act found consisted in particular in failure to check the certificates providing the fulfilment of the qualifying prerequisites before signing a contract and in 39 cases the contracting authority made errors when evaluating bids.

Ministry of Justice, Municipal Court in Prague

The Municipal Court in Prague announced a public tender on the preparation of complex project documentation for "Reconstruction and completion of the premises Na Míčánkách" for judicial institutions. With the tenderer that submitted the most suitable bid, the contracting authority signed a contract for work with the financial obligation amounting to CZK 11,900,000. This contract was then during its execution of supplemented by amendments No. 1, No. 2 and No. 4, while the object of the contract was extended by CZK 1,000,015 in the case of Amendment No. 1, by CZK 14,820,000 in the case of Amendment No. 2 and by CZK 9,632,000 in the case of Amendment No. 4. In all these three public contracts covered by the amendments the objects were works extending the object of the former public contract due to changes of the substantive extent of the construction that were not included in the object of the former public contract as described by the provided invitation documentation. Therefore, it was not a case of an increase in price of the former public contract but these amendments constituted new public contracts. The contracting authority was thus obliged to award these public contracts in line with the requirements of the Act. With regard to the fact that the works according to the amendments No. 1, 2 and 4 were already performed and it was not possible to order the contracting authority to remedy the situation or cancel the award of the public contract, the Office imposed a fine of CZK 127,000 as the Act has been seriously breached by the contracting authority in question.

Transgas, a.s., realisation of "Construction No. 7016 – Modernization of PZP"

The contracting authority, the gas company Transgas, awarded a public contract on the provision of "Construction No. 7016 – Modernization of PZP" by means of a public tender according to Part II of the Act. In the conditions of the invitation of bids the contracting authority required fulfilment of another prerequisite for execution of the public contract – "an authorisation from the manufacturer to assemble and put into operation some key equipment (armatures, measuring and regulation, controlling systems – AUMA, MOKVELD, DEEUTSCHE AUDCO, PIETRO FIORENTINI, FISHER ROUSEMONT, MSA, TARTARINI...)". In the bid invitation

documentation the Office found that in the conditions of the invitation the contracting authority reserved some rights which if used would breach the provisions of the Act on Public Procurement. These were the right of the contracting authority to request the tenderer to clarify the bid before the evaluation of bids is finished or the right to limit or extend the object of the public tender during the effective period of the bids that is following the submission of bids. The contracting authority in this case also requested the submission of authorisation from the manufacturer, what means that other documents or documents from entities other than manufacturers of the relevant products were not considered as sufficient for fulfilling the requirement for the execution of the contract. By using this procedure, the contracting authority discriminated against tenderers whom the manufacturer of the armatures did not authorize to assemble. In its decision the Office did not take into account a subsequent argument of the contracting authority that it would consider as sufficient also authorisation from other entities. The conditions of the bid invitation must always be stipulated precisely and unambiguously and must take into account all possible situations connected with a certain condition. The Office decided to cancel the contract, as according to its conclusions the contracting authority did not set unambiguous requirements for proving other requirements in the conditions of the bid invitation including the provision of a clearly-defined method of their fulfilment.

STATISTICAL DATA

Overview of conducted administrative proceedings in the area of supervision over public procurement according to the Act in 2002

	Total
Number of submissions received (proposals + instigations)	700
Initiated administrative proceedings	379
Issued decisions on the merits	224
Concluded administrative proceedings	111
Number of proposals dismissed by decision	80
Number of imposed fines	65
The amount of fines imposed in the first-instance decisions in thousands CZK	2 809
The amount of fines in cases where the decisions came into force in 2002 in thousands CZK	1 757
Other decisions issued within the administrative proceedings (for example interim measures)	21
Administrative fees in 2002 in thousands CZK	3 053

APPEAL PROCEDURE

The number of appeals lodged against first-instance decisions issued by the relevant public procurement departments is as follows:

Year 2002 ……...……	in total 97 appeals
Year 2001 ……...……	in total 110 appeals

The change in the number of appeals heard is given by the extent of the cases heard and by their growing complexity. From the practical activities of both appeal commissions it follows that despite the extent and complexity of the Act, the number of appeals lodged against the decisions of the Office is slightly decreasing. This trend is caused by the increased awareness of the public of the decisions issued by the Office that are published at its web site. Many appeals are lodged only in relation to one part of the decision, in particular regarding the imposition of a fine, or the appeals are aimed at the reduction of the fine imposed. The contracting authorities generally accept that they made errors in the process of awarding a public contract.

5 STATE AID

State aid surveillance is an important area in the framework of incorporation of the Czech Republic into the European Union. The year 2002 was the **third** year of the Office's activities as a monitoring institution in the area of state aid. **The negotiation chapter Competition Policy was provisionally closed on 24 October 2002**. A network of contact persons at particular bodies, who participated at the Office's seminar, has been created with the aim of exploring state aid issues and of improving submitted applications on approval of exemption. The Office was continuously organising seminars with representatives of towns and communities, by which it contributed to the reduction of illegally granted state aids.

In 2002 a twinning project for competition and state aid, which is financed from Phare budget, was opened. A pre-accession advisor (a German expert in the area of state aid) has been present in the State Aid Department of the Office. The target of the twinning project is to deepen the employees' knowledge, in particular by means of short-term expert visits (banking and steel industry sectors).

ACTIVITIES IN THE AREA OF METHODOLOGY

Transparency during the state aid assessment is one of the main requirements of the European Union. Therefore, European legal acts have been translated to the Czech language. Furthermore, methodological guidelines, which are subject to amendment pursuant to the new European rules, have been processed. These **methodological guidelines**, which stipulate block exemptions from the prohibition of providing state aid, concern the area of small and medium-sized enterprises, re-qualification and employment. In the short term experts have prepared within the twinning project proposals of amendments, optionally of systematic division of some methodological guidelines with respect to their practical experience, opinions and statements of the European Commission. These proposals should serve as a basis for the better comprehension of state aid issues. Furthermore, the reference interest rate for 2002 has been determined. This rate allows to conduct the enumeration of state aid, or to determine, whether state aid is in question or not. The reference interest rate is determined on the basis of a calculation based on European Commission methodology. The Office has also prepared concrete solutions relating to the assessment of state aid in the form of penalty remission.

ACTIVITIES IN THE AREA OF DECISION-MAKING

The Czech Republic is further dealing with the restructuralization process of the economic sector. Thus, state aid in the period in question aimed at the viability of existing undertakings. In 2002, **160** proceedings were started in total and **127** proceedings were concluded. The number of proceedings became stable. The prevalent part of the concluded proceedings concerns the investment incentives. The large amount of investment incentives assessment is a cause of an inadequate burden for the Office. The solution has been found in the approval of the investment incentive provision programme, which would contain all conditions ensuring the compatibility with European law. The amendment of the Investment Incentives Act, which should ensure the compatibility with the European rules, is currently under preparation. In 2002, 3 proceedings were opened due to the Office's own initiative.

The average duration of a proceeding was 45 days, while in 2001 the average duration was 48 days, and that means an improvement. The proceeding of state aid for restructuralization of failing companies' consumes most time, because a large amount of information has to be submitted and assessed. Stress is put on accelerating the procedure; however, the rights of the parties concerned must be fully respected. First of all, sufficient number of background materials and information allowing issuing a decision must be collected in an early stage of the proceeding. Delays in proceedings were caused by non-provision of information or by provision of insufficient information. With respect to similar circumstances the European Commission considers the division of the

proceeding into two phases; the information collecting phase and the decision making phase. The information provided after the expiry of the first phase would not be taken into account.

In 2002, negotiations with the European Commission on approval of the exemption from the prohibition of state aid in the area of **steel industry** were successfully continuing. After a long and difficult negotiation process, the exemption was approved by the European Community, and that retroactively since 1997. In this respect the Office has already approved under certain conditions state aid for the undertaking Nová Huť, a.s., and aid for steel industry undertakings will follow. Both the Office and the European Commission announced vigorous control of the fulfilment of the stipulated conditions at irregular meetings and by submission of regular monitoring reports.

Numerous consultations concerning the **banking sector** with the European Commission took place, and they contributed to the clarification of the European Commission's attitude to particular cases. This concerns in particular state aid provided to banking institutions before the entry to submission force of the Act on State Aid. The sending of the survey on state aid in the banking sector since 1997 achieved transparency of state aid towards the European Commission. However, the Office will be assessing particular cases also during 2003. In 2002, state aid providers in the banking sector prepared and collected, in close cooperation with the Office's representatives, information, which will be completed during this year. On the basis of this information, the Office will assess the compatibility of state aid.

ACTIVITIES IN THE AREA OF MONITORING

An essential part of the monitoring activity was aimed at the processing and regular completion of the existing aid list, which was discussed with the European Commission at the end of the last year. The result of this activity is the list of existing aid, which will form an annex to the Accession Treaty. This list will be quarterly supplemented by other state aids fully compatible with the obligations resulting from the European Agreement until the date of accession of the Czech Republic to the European Union. Furthermore, the surveys of provided aid within the state aid inventory were processed. This also serves for the purposes of the so called State Aid Register and the Scoreboard, which is published at the web site of the European Commission, and which allows the comparison of particular candidate countries in the area of state aid. The Office also submitted to the European Commission already the third Annual Report on State Aid provided in the Czech Republic.

The results of the supervisory activity indicate that in the majority of cases the conduct is in line with the conditions stated in the Office's decisions, and an illegal use of state aid was not found. However, the undertaking **Flextronics International s.r.o.** did not fulfil the conditions of the decision, and therefore, the proceeding on the cancellation of state aid was initiated. Some divergences from initially intended economic indicators of restructuralization plan were found at the Spolana, a.s. undertaking. However, these were dully justified by the impact of floods.

PARTICULAR CASES

In December 2002 the Office approved the exemption from the prohibition of state aid for the undertaking **Škodaexport, a.s.** State aid consists in remission of the obligation resulting from the adjustment of currency assets and liabilities in the amount of CZK 29.5 million and in capitalisation of receivables of the Ministry of Finance in the amount of CZK 4.41 billion by the share to the registered capital of Škodaexport, a.s.. The Office approved the above-mentioned state aid under the following conditions: the Ministry of Finance must submit within six months the report on the fulfilment of the approved Škodaexport restructuralization plan to the Office. The report shall be renewed every six months, and after the restructure the final evaluating report on process shall be submitted. The restructuralization plan shall be completed by the end of 2004, and the Ministry of Finance shall ensure its full implementation for the years 2002–2004.

The Office approved the exemption consisting in the provision of a guarantee by the Czech

Consolidation Agency to the undertaking **Škoda jaderné strojírentství (Škoda JS)** in favour of the undertaking Komerční banka. This bank will consequently issue a payment on account guarantee for funding of the project "Renewal of the Dukovany nuclear power station control system" in the amount of CZK 401 million. The failure to provide the guarantee would result in the interruption of the project, which would have negative impacts on Škoda JS, possibly resulting in bankruptcy. The Office approved state aid for six months, and it stated two conditions in its decision. The Ministry of Finance, as a provider, has to submit within six months either a restructuralization or the bankruptcy plan of Škoda JS, or to prove that the guarantee expired. If the provider submits within the six months after the decision comes into force the restructuralization plan of the undertaking, the Office will be allowed to approve the extension of the period for state aid provision.

The Office also approved the exemption from the prohibition of state aid in favour of the undertaking **Škoda TS** in the form of capitalisation of receivables of the Czech Consolidation Agency up to the amount of CZK 130 million and of capitalisation of receivables of Škoda holding up to the amount of CZK 63 million. One of the conditions consists in the submission of the report on the fulfilment of the approved restructuralization plan for the undertaking Škoda TS in the form of mid-term plan for years 2002-2006 by the Ministry of Finance to the Office within six months after the decision enters into force. The sale of the undertaking to a strategic investor shall be completed by the end of 2003.

In December 2002 the Office approved the exemption from the prohibition of state aid in favour of the undertaking **Nová Huť, a.s. (NH)**. This exemption concerns the operational loan of the Consolidation Agency Prague totalling CZK 750 million, the cession of loan receivables of the Czech Consolidation Agency against the undertaking NH in the nominal amount of CZK 3.8 billion to the undertaking LNM Holdings N.V. for USD 10.86 million, payment of the NH obligation resulting from emitted debentures in the amount of CZK 1.254 billion by the Czech Consolidation Agency, remission of the VAT penalty by the Ministry of Finance, what constitutes the state aid in the amount of CZK 93.779743 million, and the partially remission of execution expenses in the amount of CZK 3 million out of the total amount of CZK 14.152110 million by the Ministry of Finance, which constitutes the state aid in the amount of CZK 3 million. **In the past it was impossible to approve state aid in the area of steel industry due to the non-existence of the exemption of the European Commission for the Czech steel sector.** The state aid providers (the Ministry of Finance and the Ministry of Industry and Trade) must ensure in compliance

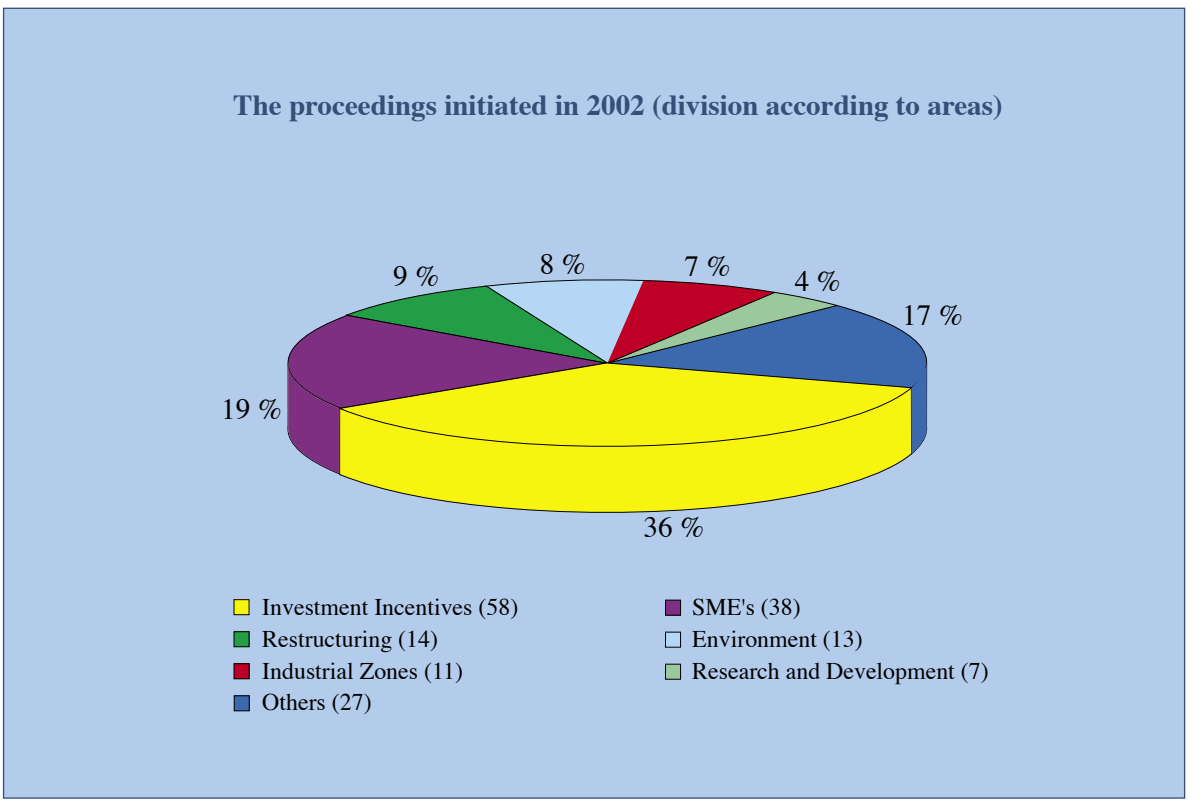
with the decision, that the state aid provision will be fully in line with the conditions stated in the EU Common Position of 22 October 2002. An implementation schedule of NH restructuralization programme will be processed (including the capacity inhibition plan), and this document will be, after approval of the European Commission, similarly as the modified entrepreneurial plan of the company, submitted to the Office by the end of the next year. The Office shall also obtain with respect to the stipulated conditions by the end of 2003 the evaluation report on the restructuralization procedure. This report will be amended every six months up to the 1 March 2007. The last condition of the decision states that the access of experts empowered by the European Commission and the Office must be allowed at the premises of Nová Huť, and they must be allowed to consult the account books and other business records, take abstracts, and ask for explanations on the spot.

STATISTICAL DATA

The Number of Decisions issued in 2002

	Proceedings initiated in 2001	**Proceedings initiated in 2002**	**Totally**
Decisions issued	32	126	**158**
- approvals	2	3	**5**
- approvals with conditions	15	76	**91**
- disapprovals	3	1	**4**
- termination of the proceeding	11	32	**43**
- part. approved with cond., part.non-approved	1	14	**15**

In 2002 the Office initiated 160 proceedings in the area of state aid.



6 COMPETITION ADVOCACY

The activities of the Office in individual areas are aimed at **positively influencing the economy** of the Czech Republic, as they enhance efficiencies and increase effectiveness both at the microeconomic and macroeconomic level of the national economy. In this respect, apart from the decision-making of the Office, an important activity is also the so-called **competition advocacy**, defined as a complex of all activities focused on supporting the creation and development of a competition environment by other than decision-making mechanisms, in particular by using relations of the competition authority with other state bodies and public institutions and by enhancing a general awareness of the benefits of competition.

In addition to its decision-making, the Office monitors in the long term the situation on individual markets with regard to the quality of competition. In some instances, the Office found that certain practices and phenomena, which are subject to repeated complaints, **might be caused by inappropriate regulation. Of particular concern in this regard is the situation in the area of water supply industry**. In the Czech Republic, a progressive concentration of operators of the public water and sewerage systems on a national level continues. At the same time, these operators are not constrained by any competition. **In case there is no pressure on reduction of costs by entities in a monopoly position and the justification of the costs incurred is not controlled, it leads to an uncontrollable increase in prices**. The Office, therefore, recommends considering **the establishment of an independent authority** that would, apart from other things, prepare the relevant cost analyses and on their basis provide recommendations on setting prices to the body responsible for the determination of prices.

Within the framework of its decision-making practice, the Office also investigated issues concerning compulsory contractual insurance of travel agencies. Its findings have shown the necessity of legislative action, as the current situation does not contribute to the development of effective competition and protection of consumers. The present legal regulation of business conditions according to Act No. 159/1999 Coll. creates barriers to the functioning of free competition in the area of tourism. In particular, the only possible form of security for a travel agency in the case of bankruptcy is the so-called compulsory contractual insurance, as the Act does not allow any other alternative solution. At the same time, the majority of insurance companies does not provide this type of insurance, because the Act does not impose such an obligation on them, or they provide this insurance only in association with other insurance companies in a so-called pool. As a consequence, on this market there is practically no competition and a certain asymmetry between supply and demand is created. Therefore, the Office on its own initiative prepared a proposal for a possible amendment to Act No. 159/1999 Coll.. When preparing this proposal, the Office focused on ensuring consistency of the legal regulation with the principles of protection of competition and protection of consumers. The basic difference from the current legislation is the introduction of the concept of compulsory guarantees for the case of bankruptcy of a travel agency. This concept is then divided into two categories. The first category is contractual insurance, which, however, loses its exclusivity existing under the current framework. The other provisions governing contractual insurance then correspond to the current legislation. The second category of compulsory guarantees includes so-called other guarantees of travel agencies for the case of their bankruptcy that may be provided, for example, by a bank or another financial institution. The Office has also succeeded in having accepted its principal comment to the Civil Code and into the governmental proposal of this Act an explicit provision stipulating that the conduct of insurers may not be in breach of the competition rules was incorporated.

The Office has also succeeded in other instances when its principal comments have been accepted. This concerned, for example, a draft act on compulsory health insurance of children of foreigners, a draft act on the co-ordination of security and health protection during construction works or an amendment to the decree implementing the act on road transport.

CO-OPERATION WITH REGULATORS

In 2002, the co-operation with the Czech Telecommunications Office (CTO) continued on the basis of Memorandum on Co-operation between the Office and CTO signed on the initiative of the Chairman of the Office for the Protection of Competition. The Office initiated consultations, for example, in the case of complaints of customers concerning new **tariff programmes** setting maximum prices for services of the telecommunications operator ČESKÝ TELECOM, a.s.. The subject of these consultations was the tariff programme **HOME MINI**, which did not allow the use of a carrier selection function, and also other tariff programmes containing free credits bound to the lump sum. The Office is of the view that the use of these free credit decreases the motivation of consumers to use services of other operators and thus hampers the development of a competitive environment. These consultations have led to the introduction of new tariff programmes HOME ZERO and BUSINESS ZERO that enable the use of carrier selection and do not contain free credit any more. However, in comparison, for example, with the tariff programmes STANDARD, these ZERO programmes are not attractive to the final customers, as the amount of the monthly lump sum has not been reduced by the amount corresponding to the free credit. The Office, therefore, urges CTO to issue a new price decision that would remove these anti-competitive aspects.

The Office also requested to incorporate the provision of **cable television services** in the substantial intent of the act on **telecommunications** so that this field is regulated in a similar way as it is proposed for the provision of services via the fixed telecommunication network. The Office based its request on the fact that **the sectoral regulator does not regulate this area, as according to its opinion cable television services do not belong among telecommunications services.** The findings of the Office show that in the provision of cable television services there is a fundamental imperfection in the regulatory mechanism arrangements. These **comments were not accepted** by the body submitting the new legislation. The standpoint of the Ministry of Transport and Communications made it clear that the concept of "telecommunications services" covers also the services of transmission of television signal via terrestrial transmitters, cable networks and satellites and that these activities are subject to regulation by CTO. Therefore, the implementation of the sectoral regulation is according to the Ministry of Transport and Communications, which prepares the new legislation, a question of correct application of the Act by the sectoral regulator. As this dispute concerning the scope of activities continues, there is in fact no regulation being applied. **The Office thus proposes the introduction of temporary price regulation**.

In 2002, the Office investigated a dispute between alternative telecommunications operators and the company ČESKÝ TELECOM, a.s. concerning access to the Internet using ADSL technology. The Office suspended its proceeding till the proceeding before CTO was closed and in February 2003 issued a first-instance decision confirming abuse of dominant position. A fine totalling CZK 23 million was imposed on the company ČESKÝ TELECOM. This decision has not entered into force yet.

The Office also co-operates with the **Energy Regulatory Office** (ERO) in the areas of electricity, gas and heat generation and distribution. The Office co-operated with ERO during preparations of some decrees, promoting the principles of competition. While assessing the impact of the concentration of RWE/ Transgas/distribution companies, the Office asked ERO for an opinion.

This concerned in particular the issues stipulated by the Act on Energy, such as negotiation of access to the transmission system, regulated access to the distribution networks etc. When assessing the impact of the concentration of ČEZ/5 distribution companies, the Office consulted ERO on expert issues concerning possible effects of the concentration on regulation in the electricity sector, access to the network, issues connected with imports and exports etc. The opinion of the regulator contributed to the determination of an objective situation in the market and evaluation of the possible impact of the concentration on this market.

7 LEGAL ACTIONS FILED WITH THE HIGH COURT AGAINST THE DECISIONS OF THE OFFICE

COMPETITION

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

Number of legal actions taken in 2001	**3**
Out of that judicial decisions	**3**
Number of legal actions taken in 2002	**7**
Out of that judicial decisions	**2**

In total, in 2002 decisions were made about two legal actions against the decisions of the Office in the field of economic competition and the High Court overruled both of them.

b) The most important legal opinions expressed in the judicial decisions of the High Court in Olomouc relating to the Office´s future decision-making practice

In its decision, the High Court in Olomouc overruled the legal action taken by the undertaking **Adidas CR s.r.o.** against the decision of the Chairman of the Office of the 9 November 2001. The violation of the Act identified by the Office consisted in the fact that starting at the beginning of 2000 and existing until 2 November 2000, the plaintiff had been closing with the customers – dealers of the goods of the brand Adidas via „The framework contract on co-operation in 2000 – ČR“. The contract included an arrangement according to which the purchaser's non-compliance with the recommended level of retail prices, including maximum discounts from these prices, during post-seasonal sales and short-term promotional actions is one of the reasons which gives the plaintiff the right immediately to withdraw from the contract. After reviewing the decision made by the Court concluded that the legal action is not well grounded. From the justification of the verdict it follows that it was impossible to agree with the plaintiff that he/she had been deprived of the right to proper justification of the administrative decision as the administrative body dealt in a sufficient way on almost 20 pages with everything that was necessary for proving a cartel agreement and with all the plaintiff's substantial objections so that it was able to conclude the ruling on the violation of law and justify the adopted sanction. **The High Court turned down the legal action at all the points on all grounds.**

PUBLIC PROCUREMENT

a) Actions filed with the High Court in Olomouc against the decisions by the Chairman of the Office in the field of public procurement

Number of legal actions filed in 2001	**14**
Out of that judicial decisions	**10**
Number of legal actions filed in 2002	**9**
Out of that judicial decisions	**3**

b) The most important legal opinion expressed in the judicial decisions and rulings relating to the Office´s decision-making practice

Interpretation for the procedure related to the assessment of gravity of the individual violations of the law. According to the Decision No. 6A 47/2000 of the High Court in Prague the Office imposes the fine according to the Article 62(1) of the act if it finds out that contracting authority gravely and repeatedly breached a stipulation of the act. Lawmaker does not connect the imposition of the fine with any violation of the act but only with such a kind of violation, which was committed by the contracting authority repeatedly or which reached the certain intensity. Consequently, according to the opinion of the Court, the act does not consider certain forms of illegal behaviour to be the grave violation but, as the violation of whichever of obligations may

achieve various intensity and the Office can sanction only these which achieve the intensity of grave violation, it is necessary to gather background information manifesting not only the fact that the act had been breached but also the fact that the violation had achieved such intensity so that legal condition for grave violation had been met. It is not possible to review the decisions in which the reasons supporting the ruling are lacking.

The seat of the Office for the Protection of Competition.

8 INTERNATIONAL CO-OPERATION

THE EUROPEAN UNION

At the final stage of the negotiations on the Czech Republic's accession to the European Union, the Office's priority was to meet the obligations resulting from the European Agreement and in this way making it possible to **close the negotiation Chapter „Economic Competition"**. The most important issues, which were necessary to resolve before the Chapter could have been closed were in the first place the issue of state aid, granted to the banking sector, and state aid connected with steel industry restructuralization in the Czech Republic.

In connection with state aid granted to the **banking sector**, the Office prepared, in cooperation primarily with the Ministry of Finance and the Czech National Bank, in order to keep the European Commission informed, a number of detailed reports and analyses. The aim of providing this information was to describe the situation in the sector regarding granted state aid and to demonstrate the quality of the Office´s decision-making process in relation to those arrangements which were made after 1 May 2000 and were therefore the subject of assessment by the Office following from the Act on State Aid. On this issue, a number of negotiations was held between the representatives of the Office and other concerned departments, on the one hand, and representatives of the European Commission, on the other, that, in the end, contributed to clarifying the issue and to an agreement regarding the future procedure of its solution.

In the **steel sector** the Office kept fulfilling the obligations resulting for the Czech Republic from the European Agreement and co-operated with the Ministry of Industry and Trade that was responsible for the preparation of a complex project of the Czech steel industry restructuralization. The restructuralization plan was the European Commission's condition for extending the validity of the exemption from prohibition of state aid in the steel industry. Submission of the restructuralization programme, which also included the list of granted state aid, made it possible to extend the exemption and in this way removed the last

In January 2002, the top EU negotiator Mr. Rutger Wissels (right) visited the Office. One of the topics discussed with the Chairman, Mr. Josef Bednář, was also state aid for steel industry.

obstacle on the way to the **successful closure of the Economic Competition negotiation chapter on 24 October 2002**.

In 2002, very intensive communication took place between the Office and the European Commission relating not only to the above-mentioned issues but also to other questions connected with the preparation of the Czech Republic‘s accession to the European Union. Out of the large amount of information elaborated for the European Commission in 2002 it is possible to give as an example detailed summaries related to the Office´s decision-making activities in the field of state aid and protection of competition in 2001. In connection with the European Commission queries, the Office informed in detail about some important cases, for example, about the approval of a merger in the gas industry or about an assessment of electricity restructuralization.

Following the initial preparation of the Agreement on the Czech Republic‘s accession to the EU, the Office commenced compiling a list of state aid the granting of which should continue also after joining the EU and which should after the accession be considered existing state aid without any need for being once more assessed by the European Commission. The Office submitted the first version of the list in February 2002 and continued working on its updating and completing by more detailed data requested at selected cases by the European Commission. The next wide-ranging update of the list was submitted to the European Commission in September 2002. In the first half of 2002 further consultations with the European Commission were under way when drafting the state aid regional map for the period of 2002–2006 that, in compliance with EC rules, determines the highest possible intensity of state aid provided in the individual regions of the CR depending on their economic achievements. The draft of the regional map was, after some adjustments, supported by the European Commission in June 2002 and became the basis for the assessment of regional state aid by the Office.

In order to bring the Czech Republic’s accession to the EU closer, the Office also paid attention to newly adopted competition legislation and, for instance, in the case of a draft of the Regulation on Application of Articles 87 and 88 of the EC Treaty on State Aid for Employment, the Office was actively involved in its preparation by submitting comments to the draft. The Office also made a more detailed analysis of new tasks resulting from the future membership in the EU taking into consideration important changes in the Community competition law under preparation.

The communication between the Office and the European Commission proceeded also by means of notifications of investigated cases in compliance with implementing rules for the application of competition provisions applicable to undertakings provided for in Article 64 of the European Agreement between the EC and the Czech Republic. The European Commission noted the ongoing investigation of a future anti-competitive agreement within the airlines alliance Skyteam. On the other hand, the Office´s notification related to the investigation of anti-competitive agreement on cooperation at the purchase between two multinational retail chains and further to the complaint that the Office had received in connection with so called Passenger Agency Program of the International Airlines Treaty Associations (IATA).

In June 2002, the eighth competition conference was held between the candidate countries and the European Commission, which focused in the first place on the issue of the proper enforcement of competition law including state aid rules. On this occasion, the Chairman of the Office met the Director General for Competition Mr. Alexander Schaub. They discussed the topical issues related to the protection of competition and surveillance over granting of state aid in the Czech Republic.

In October 2002, **the European Commission Regular Report** on the Czech Republic‘s progress towards accession was published. The Regular Report evaluates in positive way the adoption of the decree of the Office relating to merger notification with an attached standard form for merger notification and amendment to the Leniency Programme of July 2001 in accordance with the new programme of the European Commission of February 2002

aiming at supporting the announcement of cartel agreements by their participants. The consistent enforcement of competition law by the Office is also positively evaluated by the European Commission. In the field of state aid, the Regular Report makes a remark about the draft regional map for state aid that was submitted and subsequently approved by the Committee on Accession. In the field of public procurement, the Regular Report welcomes the adoption of the amendment to the Act on Public Procurement of May 2002 that significantly limited the possibility of making the use of so-called accelerated procedure. However, according to the European Commission, the legislation in the field of public procurement is still not in compliance with *acquis communautaire* and it is necessary to devote considerable effort to adopting a new Act. The Office closely co-operates in this field with the Ministry for Regional Development that is responsible for submitting the new act. The new act on public procurement should be dealt with in the course of 2003 so that it will enter in force at the latest on the day of the Czech Republic's accession to the EU.

In September 2002, the **twinning project** in the field of economic competition, consisting of two parts, the one for antitrust and the other for state aid, was opened. The project, which will be running until the end of August 2004 and under the framework of which there is a pre-accession adviser for each field (for antitrust from Italy and for state aid from Germany), is financed from the Phare Fund. The twinning programme is aiming at the achievement of transparency and application capacity of the Office and works with qualified experts so that the Office is able to apply *acquis* in its full extent at the moment of accession and to enforce rules of economic competition and state aid in compliance with it.

The Chairman of the Office, Mr. Josef Bednář, welcomes the Ambassador of Italy to the Czech Republic, Mr. Paolo Faiola (left), before the ceremonial opening of the Phare Twinning Project.

OECD, WTO AND OTHER INTERNATIONAL ORGANISATIONS

Negotiations within the OECD's Competition Committee and in the Global Forum for Economic Competition

The representatives of the Office continued active participation in the OECD Competition Committee and its working groups' meetings. For the meeting in June, the Office prepared the annual report on its activities in 2001, which was presented at the meeting in Paris by the Chairman himself. For this meeting, the Office also prepared comprehensive information about its procedure of supervision over mergers in the Czech Republic, which, together with contributions from other member states, formed background information for an extensive discussion about individual issues related to mergers. For the meeting in October the Office prepared contributions for round table discussions concerning substantive criteria for merger assessment and for the Office´s communication with the media. In February 2002 the second meeting of the OECD Global Forum for Economic Competition was held in which also the representatives of the Office participated. The subject of the meeting, which was attended apart from the 30 OECD member countries and 5 observers also by 21 non-members, included the issues of international co-operation in the investigation of cartel agreements and multinational mergers, relation between economic competition and economic growth, possible impacts of cartels on developing countries and technical assistance in the field of economic competition.

World Trade Organization

Under the terms of the World Trade Organization (WTO) there continued in 2002 negotiations within Working Group on the Interaction between Trade and Competition Policy. The negotiations in this group were in compliance with the conclusions of the 4th session of the Ministerial Conference in Doha in November 2001 aimed at clarifying the basic principles for a possible multilateral WTO framework for economic competition and assessment of possibilities for future discussions about the framework, the opening of which should be decided in September 2003 on the fifth session of the WTO Ministerial Conference in Cancun. The Office maintains a position that it is worth, in order to ensure comparable conditions for undertaking worldwide, to strive to enforce this kind of multilateral agreement. The Office promotes the agreement based on the principles of non-discrimination, transparency, flexibility and procedural correctness that would enable more effective co-operation between competition authorities and would stipulate the rules in the first place for prosecution of most serious anti-competitive practices such as cartel agreements. The representatives of the Office participated in two meetings of the Working Group for the Interaction between trade and Competition Policy and submitted in total three written contributions for the meetings.

The Office also contributed entries for discussion, on the one hand about the issue of balance between supervision over mergers and the ability of domestic competitors to compete on world markets and, on the other hand, about the issue of mutual interaction between a competition office and a sectoral regulatory authority, to the negotiations of the UNCTAD's Intergovernmental Group of Experts on Competition Law and Policy held in Geneva in July 2002.

CO-OPERATION WITH FOREIGN COMPETITION AUTHORITIES

As a consequence of globalisation of economies, more and more competition problems extend beyond the borders of individual countries. The effective investigation of all these cases mostly demands intensive co-operation between competition offices in various countries. For this reason the Office considers the close co-operation with competition offices abroad to be one of its priorities and strives both to establish close bilateral relations and to co-operate actively with competition offices abroad in the frame of multilateral initiatives – in the first place within the newly established International Competition Network (ICN). In connection with establishing bilateral relations with competition offices abroad, in 2002, the representatives of the Office

headed, by the Chairman, visited the Tribunal for Protection of Competition in Spain.

An important form of the Office´s international co-operation in 2002 was informal co-operation with experts from competition offices abroad in the investigation of individual cases. The experience of foreign competition offices with the cases of anticompetitive behaviour of cable televisions, issues of assessment of mergers on the sugar market, competition aspects within the sector of electricity and gas industry or anticompetitive practices in the field of fuel sale may serve as an example. To ensure the effective monitoring of the competition environment on individual markets, especially regarding identification of indicators of cartel agreement existence, the Office approached a number of competition authorities abroad with questions about their experience with these activities. The Office consulted the competition authorities of the European Union member states about preparing the analysis of tasks expected in connection with the Czech Republic‘s accession to the European Union and the proposed creation of the so-called European Competition Network.

At the end of 2001 the Office became a member of the newly established International Competition Network, which at present unites competition authorities from more than 60 countries. The aim of the organization is to provide member offices with a special and informal platform for regular meetings and dealing with practical issues of economic competition. The representatives of the Office participated in the first annual ICN conference in Naples.

In co-operation with competition authorities in Hungary, Slovenia and Poland the Office also initiated the preparation for establishing the so-called Central European Competition Initiative which should serve as a platform for the exchange of experience with competition law enforcement among competition authorities from participating Central European countries.

In connection with the expected accession of the Czech Republic to the EU, the co-operation between individual competition authorities is of growing importance. The new community legislation establishes, apart from the modernization of competition rules, also the so-called European Competition Network (ECN), that should be an effective body for the distribution of individual cases between competition authorities of the member states and the European Commission and for collaboration during their investigation. The Office is at present a member of the Network and its staff is actively involved in the work of the individual working groups which currently concentrate on four basic areas: allocation of cases, exchange of information, common investigations and leniency programmes.

9 COMMUNICATION ACTIVITIES OF THE OFFICE

To ensure as extensive transparency as possible and to improve the Office´s communication with the public, media and press agencies, there is a Department of Press and Information at the Office. Staff of the department answer hundreds of questions, related to the scope of responsibilities of the Office and its activities. Based on Act No. 106/1999, in 2002 the Office received 82 queries by electronic mail. More than half of the received queries related to providing further information from the field of public procurement, other questions concerned the field of economic competition and granting exemption in the field of state aid.

Both the media and the public are often referred to the Office‘s web site where the Office’s regular decisions are available as well as, answers to frequently asked questions or recent events. Information from the Department of Public Relations is intended for a wide range of recipients. The department co-operates, apart from others, with both domestic and foreign expert legal and economic journals (Euro, Ekonom, Profit, Wirtschaft und Wettbewerb). The general public is informed about the activities of the Office in daily newspapers.

In 2002, the Office started making use of the internet browsing service Newton IT that offered access to texts from less accessible media, for example, from the regional press. Through the service the staff of the department searched for problems concerning economic competition and public procurement to be solved by the Office. This activity has led to the increase in the number of investigations on the Office‘s own initiative. The effectivity of the communications activities has been daily evaluated by the method of active monitoring of news both from dailies and expert press (domestic and foreign) and from the Internet.

The public is more and more interested in the Office´s activities. It is evident from the number of entries related to the Office´s activities in the press that increased by 20% compared with the year before. The weekly average was already over 50 articles about the work of the Office in the monitored media, that was more than 2,500 articles per year. Domestic and foreign monitored media in 2002 published more than 470 articles quoting the Office´s Chairman, more than 40 interviews and several articles written by the Chairman in which he expressed opinions about topical issues and about individual important cases from the field of the Office´s sphere of activity dealt with in 2002.

The Office communicates with the public on the basis of a methodology, which was processed with respect to foreign experience, and which is constantly developing. The Office continues in issuing Information Lists, which are, similarly to press releases and the cartel register, published on the Office’s web pages **www.compet.cz**.

Office for the Protection of Competition
Joštova 8, 60156 Brno
Czech Republic

phone: +420 542 161 111
fax: +420 542 210 023
mail: info@compet.cz
http:\\www.compet.cz