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1 INTRODUCTION BY JOSEF BEDNÁŘ, CHAIRMAN OF THE OFFICE

The Office for the Protection of Competition (hereinafter "the Office") is the central authority of state administration responsible for creating conditions that favour and protect competition, supervision over public procurement and control in relation to the provision of state aid. The protection of competition against restriction in the form of anticompetitive practices – cartel agreements or abuse of dominant position or those resulting from concentrations of undertakings – is aimed at preserving an effective competitive environment. This leads not only to significant advantages for final consumers in the form of lower prices, higher quality and a broader range of goods, but also increases the competitiveness of the undertakings.

The activities of the Office in the year 2003 concentrated especially on preparations for the accession of the Czech Republic to the European Union. From 1 May 2004 European Community law on competition and state aid became directly applicable on the territory of the Czech Republic. The Office therefore elaborated an amendment to Act on the Protection of Competition, which enables it to apply national competition law along with community law and thus encourages efficient cooperation with the European Commission and the antimonopoly authorities of the EU member states within the framework of the European Competition Network. In line with community law an act regulating certain relations in the area of state aid was prepared due to the fact that as of the date of the accession to the European Union the decision-making power concerning the approval of exemptions from the prohibition of state aid was transferred to the European Commission. The Office will, however, continue monitoring the provision of this aid. In addition, 1 May 2004 also marked the entry into force of the new act on public procurement, which among others eliminates the discrimination of foreign tenderers and compared to the previous act it regulates in a new way the procedures of the contracting authorities for the award of public contracts.

In respect of its decision-making activities in 2003 the Office focused above all on the speedy and effective elimination of the causes and consequences of the most serious anticompetitive practices and the prevention of the establishment or strengthening of dominant structures. These efforts can be illustrated by the fact that the Office imposed two so far highest fines in its history. Six fuel distributors were fined for their concerted price setting, the fine amounted to 313 million CZK and the company Český Telecom was fined 81.7 million CZK for abusing its dominant position. For the first time, the Office received an agreement distorting competition along with an application for the remission of a fine within the leniency programme, which enables a more lenient regime for treating the undertakings which voluntarily announced a cartel and submitted evidence on its existence.

In the area of state aid the Office, in cooperation with the European Commission, conducted the exceptionally demanding retroactive assessment of state aid provided to Czech banks since 10 December 1994. In its decision-making activities

the Office dealt with a number of complex cases connected with the steel industry.

Within the supervision over public procurement an increase in the overall complexity of negotiated proceedings is evident. This applies especially to the cases of the most serious breaches of law, for which sanctions were imposed in a number of decisions.

A significant change in the relationship between the Office and the European Union resulted from the conclusion of the so-called negotiation process, i.e. the negotiation on the accession of the Czech Republic to the European Union. This change was importantly reflected in enabling Czech representatives to participate in the activities of all the working groups in the structure of the European Commission and the Council of the European Union already in the period between the signing of the Treaty of Accession and 1 May 2004. After this date the Office is bound to ensure the full compliance of its procedures with the European Commission and the competition authorities of the EU member states and also to take the shared responsibility in the adoption of decisions with a Community dimension at the meetings of the advisory committees for restrictive practices and concentrations of undertakings.

In the course of 2003 the representatives of the Office took part in meetings of the OECD Competition Committee and its working groups. One of the priorities set by the Office is cooperation with foreign competition authorities and international organisations in the form of exchanges of experience and the pursuit of convergence in individual activities. The Office endeavours to establish close bilateral relations as well as active cooperation with foreign competition authorities within the framework of multilateral initiatives – especially the International Competition Network and the networks of the European competition authorities.

The Office aspires to be a modern institution that applies the most up to date findings from the area of competition law and actively supports and protects effective competition and the benefits for the final consumer that result from it.

2 LEGISLATIVE ACTIVITY

In 2003, the legislative activities of the Office focused in particular on preparations for the membership of the Czech Republic in the European Union. As of 1 May 2004, the European Community law in the area of competition and state aid became directly applicable on the territory of the Czech Republic and, as of the same date, the relevant public procurement directives had to be fully transposed. The Office prepared a proposal for an extensive amendment to the Act on the Protection of Competition. This amendment No. 340/2004 Coll. entered into force as of the date of its publication on 2 June 2004. Furthermore, the Office prepared a draft of a new act setting some relations in the area of state aid which was adopted as Act No. 215/2004 Coll. and entered into force on 1 May 2004. Moreover, the draft Act on Public Contracts, prepared by the Office together with the Ministry for Regional Development, was adopted and published in the Collection of Laws under No. 40/2004 Coll. with applicability as of 1 May 2004.

COMPETITION AREA

AMENDMENT TO THE ACT

After the accession of the Czech Republic to the European Union, the Community competition law became directly applicable also on its territory, in particular articles 81 (prohibited agreements) and 82 (abuse of dominant position) of the Treaty establishing the European Community and the Council regulations implementing these provisions as well as the Commission regulations providing for block exemptions from the prohibition of so-called cartel agreements. Therefore, the Czech Republic is bound to ensure that the Community competition law will in its full extent be effectively applied on its territory. In connection with the enlargement of the European Union, the EU Council adopted the new Regulation No. 1/2003 relating to prohibited agreements and abuses of dominant position and Regulation No. 139/2004 concerning concentrations of undertakings that also have to be implemented into the Czech legal order. The Office, therefore, prepared a draft amendment to the Act No. 143/2001 Coll., on the Protection of Competition, Act No. 99/1963 Coll., the Code of Civil Procedure and Act No. 368/1992 Coll., on Administrative Fees. This amendment should ensure the effective application of the Czech and Community law after accession of the Czech Republic to the European Union and the further approximation of the Czech competition law to Community law. The authority to apply Community competition law will be divided between the European Commission and the competition authorities of the EU Member States. They will closely co-operate within the so-called ECN network (*European Competition Network*). The adopted amendment thus in the first place ensures that the Office will be able to apply Community law (in parallel with national law) and to co-operate within the ECN network. Community law requires that inspections conducted by the European Commission can take place on the territory of the Czech Republic. These inspections will, in exceptional cases and with prior authorisation by a court, also be possible in other than business premises, for example in the houses of managers of the investigated undertakings.

Apart from dealing with the issues directly required by the regulations, the abovementioned amendment also further enhanced the harmonisation of the Czech and Community competition law. Since the entry into force of the hitherto Act on the Protection of Competition in 2001, several changes at the Community level have been made, the implementation of which into the national law brought Czech law closer to Community legislation. In the area of agreements distorting competition, the main change consists in the elimination of the previous institute of **so-called individual exemptions**. Undertakings will thus not be obliged any more to apply to the Office for approval of an exemption from the prohibition regarding a particular agreement but instead, in case the statutory criteria are fulfilled, such an agreement will be considered valid from the very beginning. At the same time, the threshold values were raised under the so-called *de minimis* rule, exempting from the general prohibition agreements among undertakings the behaviour of which does not represent any serious competitive risk due to

their market share values. These thresholds were raised from 5% market share in case of horizontal agreements and 10% in case of vertical agreements to 10% and 15% respectively. These changes should have a beneficial effect particularly on the development of small and medium-sized businesses.

In case of agreements distorting competition and abuses of dominant position, the **so-called negative clearance procedure** was eliminated, similarly to European Commission procedures. A new legal institute of a **decision that makes binding the commitments proposed by the parties to the proceeding** was introduced, which enables to close the proceeding and eliminate the danger of distortion of competition without the necessary issuance of a decision establishing the infringement of the Act.

Important changes were brought about by the amendment in the area of concentrations of undertakings, **so-called mergers**. **The notification criteria**, determining which concentrations are subject to approval by the Office, were newly defined. Pursuant to the previous provisions, a large number of concentrations had to be notified without having any significant effect on the markets in the Czech Republic. Pursuant to the new legal provisions, only concentrations having a clear local nexus to the national markets will have to be notified. That enables the Office to fully use its resources for the investigations of the most serious cases.

BLOCK EXEMPTION

Taking into account the fact that in 2002 the European Commission adopted a new general (block) exemption for certain categories of vertical agreements in the motor vehicle sector, in January 2003 the Office issued a decree transposing this block exemption. In connection with the conclusion of the Treaty on the Accession to the European Union, this decree was amended in July 2003 and will be fully applicable as of 1 November 2004. The decree introduces stricter rules for competitive restrictions and creates more suitable conditions for effective competition among individual producers, dealers and providers of services in the areas of sale of new motor vehicles and spare parts for motor vehicles and the provision of repair and maintenance services. Pursuant to the new legislation, the dealers will be able to sell motor vehicles of more than only one brand and, at the same time, will not be obliged to provide repair and maintenance services for them. The decree, among others, creates room for further competition of independent repair companies on the market of motor vehicle repair and maintenance services.

AREA OF STATE AID

The issue of state aid was until 30 April 2004 fully regulated by Act No. 59/200 Coll., on state aid. An essential change related to the accession of the Czech Republic to the European Union was brought by the fact that the Community Law

By the end of April 2003 the Prime Minister of the Czech Republic, Vladimír Špidla, visited the Office (see photo on the left). Journalists showed significant interest in the visit. Among the topics discussed during the meeting with the Chairman of the Office, Josef Bednář (see photo on the right), were the issues of new legislation.

of State Aid became directly applicable and the power to decide on the granting of state aid was transferred to the European Commission. For this purpose a new act was prepared and approved, which from 1 May 2004 replaces the previous legal regulation and **created a legal framework for ensuring the fulfilment of the duties of the Czech Republic in relation to the accession to the European Union and the necessary cooperation of the Office with the Commission in the performance of its powers.**

The new act No. 215/2004 Coll., on regulation of relations in the area of state aid specifically stipulates that the Office shall cooperate with the providers of state aid in relation to their notifications to the European Commission and in the course of the proceeding before it, maintain the evidence of state aid provided in the Czech Republic on which it shall submit an annual report to the European Commission. The Act defines the duty of the providers and beneficiaries of state aid to provide the Office with necessary information and the right of the Office to verify the complexity, correctness and truthfulness of the information and possibly impose sanctions as well as the duty of beneficiaries and providers of state aid to fully cooperate with the European Commission in case it carried out an on spot investigation on their premises and defines the rules according to which unlawfully provided or abused aid shall be reclaimed.

AREA OF PUBLIC PROCUREMENT

The Office, together with the Ministry for Regional Development elaborated a draft new Act on Public Procurement, which was approved at the end of the year 2003. The necessity of adopting a new act resulted from the need to ensure **the transposition of the relevant European directives and the practical experience of the Office.** Despite numerous amendments, the hitherto legal regulation has not eliminated certain ambiguities in the interpretation of terms, which resulted in legal uncertainty in the application of the act and an excessive number of applications for review. The whole awarding process was therefore disproportionately extended. The new act should eliminate these insufficiencies. It transposes the directives regulating public procurement in the water, energy and transport sectors. Changes were implemented in the provisions on the evaluative commission, on the assessment and evaluation of bids, which were elaborated in more detail in relation to the implementation of legal regulation. The new act **eliminated the discrimination against foreign tenderers for a public contract.**

The seat of the Office for the Protection of Competition.

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

The efforts to enhance efficiency of proving and sanctioning the most serious distortions of competition were reflected in the changed organisation structure of the Office. The Restrictive Practices Department was established, responsible both for the investigation of agreements distorting competition and for breaches of the Act in the area of abuse of dominant position. Furthermore, the Chief Economist Department was established which prepares economic analyses. Where appropriate, the Office made more frequent use of **the possibility to conduct so-called dawn raids**, which enable it to collect evidence about alleged anticompetitive behaviour more efficiently. **More price cartels** were revealed.

In line with the global trend of stringent fight against price cartels or abuses of dominance in particular in regulated sectors, **higher fines** than in previous years were imposed in cases where such behaviour was found. In total, in its first-instance decisions the Office imposed fines amounting to 445,850,000 CZK. In 2003, in total **595** motions and complaints were investigated in the antitrust area, out of which 569 were made by the public and 26 were launched by the Office on its own initiative. Compared to the year 2002 when the investigation of **257** motions and complaints was initiated, **the number of investigated cases rose by 116%**.

In 2003, a proposal of the so-called **compliance programme** was prepared, aiming at providing guidance to businesses about the legal framework of the Act on the Protection of Competition and contributing to the strengthening of corporate culture. In the last year, the Office received **the first application for immunity from a fine in relation to a restrictive agreement pursuant to the leniency programme** enabling more lenient treatment of undertakings that voluntarily disclose a cartel and submit evidence about its existence.

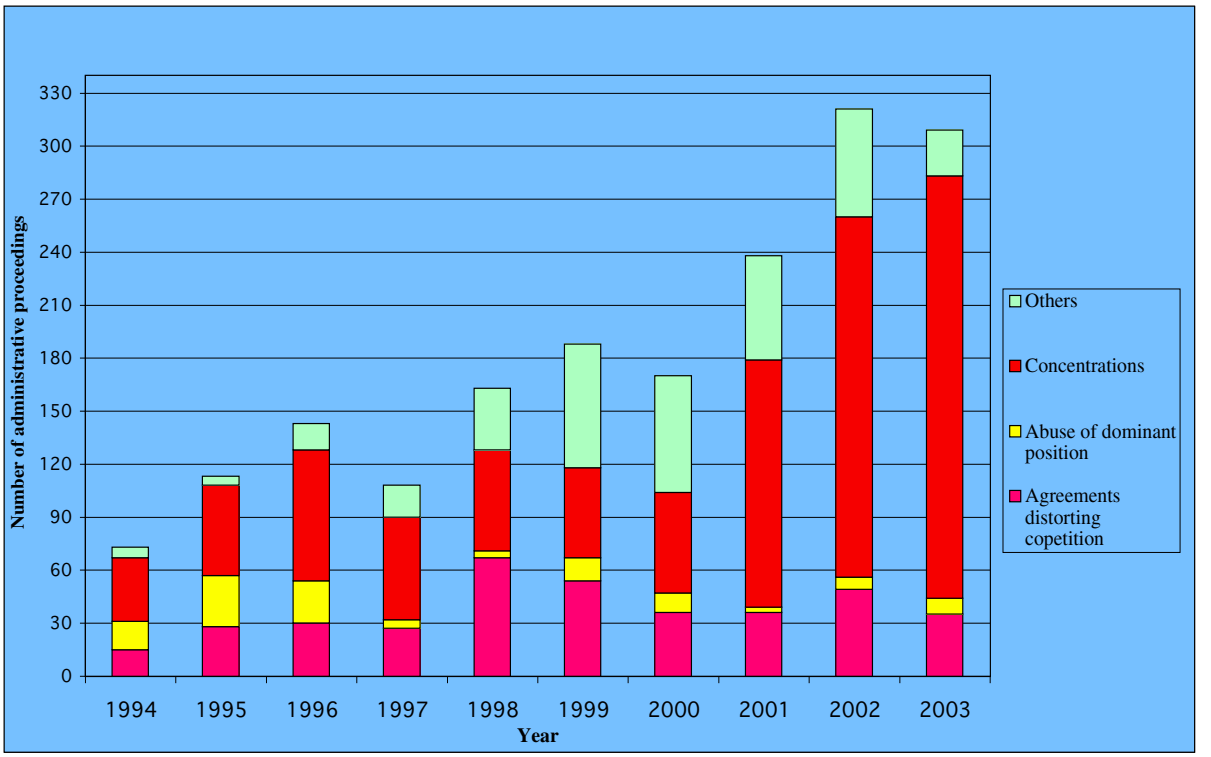
The number of motions and administrative proceedings including appeals against first-instance decisions and the number of petitions filed with the High Court or Regional Court against decisions of the Chairman of the Office in the years 1999-2003.

Motions	**1999**	**2000**	**2001**	**2002**	**2003**
Total	548	607	464	492	821

Administrative Proceedings	**1999**	**2000**	**2001**	**2002**	**2003**
Agreements distorting competition	54	36	36	49	35
Abuse of dominant position	13	11	9	7	9
Concentrations	51	57	140	204	239
Other (termination, suspension and procedural fines)	70	66	59	61	26
Administrative proceedings in total	188	170	244	321	309
Number of appeals	19	16	11	46	32
Number of actions to the High Court or Regional Court	1	2	3	7	8

Total amount of fines imposed in 2003 (based on first-instance decisions issued)	**445,850,000 CZK**

Administrative procceedings of the Office in 1994 - 2003



3.1 RESTRICTIVE AGREEMENTS

- **35 administrative proceedings were initiated** in this area, out of them 13 sanction proceedings, 11 negative clearance proceedings and 11 proceedings concerning individual exemption from the prohibition of agreements distorting competition. **32 decisions were issued**, out of them 12 sanction decisions, 10 negative clearance decisions and 10 individual exemption decisions.
- The most frequent distortions of competition occurred in the **telecommunications** sector and in connection with **decisions taken by associations of undertakings**. In the second half of the year 2003 infringements in the area of **foodstuffs production were disclosed**.
- In 2003, fines of almost **326 million CZK** in total were imposed in the area of agreements distorting competition.
- The Office investigated a number of distortions of competition caused by the **activities of chambers and associations** of undertakings, in particular relating to prices.

SELECTED CASES

Prohibited agreements of mobile phone operators

The Office found, within the framework of a negative clearance proceeding, that the Agreement on the Interconnection of Telecommunications Equipment and Networks (hereinafter referred to as "Agreement"), concluded between the companies **Český Mobil, a.s. and Eurotel Praha, spol. s r.o.**, contains provisions covered by the prohibition of agreements distorting competition. The prohibition concerned in particular provisions by which the parties to the proceeding agreed to realize the interconnection of their networks exclusively

via interconnection points listed in the Annex to the Agreement. Furthermore, they agreed that they will provide interconnection services by means of transit via a third party network only for the period when there is no direct interconnection between their networks or when the capacity of this direct interconnection is insufficient. The Agreement also contains a provision stipulating that each contractual party would charge for services provided to the other party interconnection prices listed in the Annex to the Agreement, disregarding whether the interconnection of their networks was realised by means of a transit or by a direct interconnection. On 27 October 2003, the Office issued a decision establishing that the parties to the proceeding had infringed the Act by concluding prohibited agreements setting indirectly business conditions. **Fines were imposed amounting to 5.5 million CZK in case of the company Český Mobil and 22 million CZK in case of the company Eurotel Praha**. The Office at the same time ordered the parties to the proceeding to take, within three months of the entry into force of the decision, necessary measures ensuring that they would not be limited in their right to direct, at their free discretion, their traffic into the network of the other contractual party via another telecommunications network, including the freedom to set prices for such interconnection. **Both these companies have lodged an appeal against this decision**.

In October 2003, the Office imposed, for the same infringement of the Act, fines amounting to 4.5 million CZK on the company Český Mobil and 12 million CZK on the company T-Mobile Czech Republic, a.s. The parties to the proceeding have lodged an appeal against this decision.

Insurance companies pool

The Office received an application of insurance companies associated into a so-called pool for the extension of the duration of exemption from the prohibition of agreements distorting competition. In its assessment of the application the Office based its considerations on the fact that in 2000 it had issued a decision granting an exemption from the prohibition of agreements distorting competition for a period of two years. This exemption had related to an agreement on a common practice of insurers in providing obligatory contractual insurance of a guarantee for the case of bankruptcy of a travel agency. In 2002, the Office had issued a second-instance decision extending the duration of the exemption for the agreement on the common practice of insurers in providing insurance of a guarantee for the case of bankruptcy of a travel agency **up to 31 December 2003. Approval of this exemption had been made subject to several conditions**. Within the framework of the proceeding on the extension of the exemption duration it was established that outside the pool there was only one insurance company, Union pojišťovna, a.s. active on the market, which nevertheless was under forced administration at the time. As far as future developments were concerned, there were some insurance companies – Pojišťovna České spořitelny, a.s., Česká podnikatelská pojišťovna, a.s., Česká pojišťovna, a.s. and UNIQA pojišťovna a.s. – showing interest in providing the insurance of guarantee. Furthermore, it was established that the existence of the pool led to the elimination of competition in a substantial part of the market of the guarantee insurance and that **the pool members still continued the practice of using single insurance premiums schedule**. The proceeding also revealed that the insurance companies associated within the pool had, for the whole duration of the exemption, i.e. from 2000 till the issuance of the decision, **taken no measures that would have increased the chances of a single insurance company to acquire individually a necessary reinsurance.** Therefore, one of the conditions set by the second-instance decision extending the duration of the exemption had not been fulfilled. It was decided that the cumulative conditions set by the Act were not fulfilled and **the duration of the exemption was thus not extended. According to a media information of May 2004, the insurance companies insured more than 800 travel agencies against bankruptcy, i.e. more than three fifths of their total number.** The available information also revealed that due to the action by the Office this market was "cleared up".

Distribution of press

On the basis of a motion filed by the company Mediaprint & Kapa Pressegrosso, spol. s r.o. (hereinafter referred to as "MPK"), the Office initiated an administrative proceeding with companies RINGIER ČR, a.s., MAFRA, a.s.,

VLTAVA-LABE-PRESS, a.s. (hereinafter referred to as "VLP"), Československý sport, s.r.o. (hereinafter referred to as "ČS"), ASTROSAT, spol. s r.o. and BORGIS, a.s. in relation to an alleged infringement of the Act in the form of **co-ordinated behaviour during cancellations of supplies** of daily periodical press a/or other periodical press issued by these companies to the company MPK. Reasons for the cancellation of contracts with the company MPK given by these companies differed and included attempts to ensure distribution of

their periodicals on their own or disagreements with the company MPK concerning changes in existing contractual terms. In some cases there were no reasons given for the cancellation of contracts. And in the case of the company VLP, the reason given for the cancellation of contracts concluded with the company MPK consisted in the unilateral reduction of the number of copies of VLP titles taken by the company MPK. The Office in its administrative proceeding focused on proving whether this case involved co-ordinated behaviour of the above-mentioned undertakings by means of their either direct or mediated contacts or whether their behaviour was only coincidental or constituted a logical consequence of economic conditions on the given market. After examining all evidence and facts obtained within the administrative proceeding, the Office came to the conclusion that no infringement of the Act by the companies RINGIER, MAFRA, VLP, ASTROSAT, ČS and BORGIS was proved, and therefore decided **to terminate the administrative proceeding**. The company MPK lodged an appeal against the first-instance decision. This appeal was dismissed by the second-instance decision confirming the first-instance decision of 24 March 2003.

Null and void decision of a chamber

The Czech Chamber of Authorised Engineers and Technicians Active in Construction Industry at a meeting of its board of directors agreed on the content and publication of a so-called Performance and Fees Code specifying hourly fees for individual performances, data concerning percentage points for calculation of the fees and data on the fixed part of the fee. The Office considered the adoption of this Performance and Fees Code a prohibited and null and void decision of an association of undertakings that may lead to the distortion of competition on the market of services provided by authorised engineers and technicians active in the construction industry. The first-instance decision of the Office prohibited this behaviour and at the same time imposed on the Chamber a fine amounting to **500,000 CZK** and an obligation to inform its members about the decision of the Office. The party to proceeding has lodged an appeal against this decision.

Fine imposed on bakery companies

The Office imposed fines on the companies DELTA PEKÁRNY, a.s., ODKOLEK, a.s. and PENAM, a.s. totalling **120 million CZK** for breaching the Act on the Protection of Competition. These companies engaged, from 26 September to at least 12 November 2003, in concerted practices relating to the setting of their sales prices for bakery products. This behaviour led to the distortion of competition on the market of fresh standard bakery products and bread and on the market of fresh confectionary products. Behaviour of the companies ODKOLEK and PENAM also distorted competition in the market of durable sweet bakery products. **The parties to the proceeding have lodged an appeal against the decision of the Office**.

Fine imposed on eggs producers

In November 2003 the Office initiated an administrative proceeding with eleven eggs producers. In a first-instance decision of March 2004, fines amounting in total to **11 million CZK** were imposed on ten companies

for breaching the Act. The proceeding in relation to one party was terminated. The fined companies infringed the Act on the Protection of Competition by adopting a collective decision in July 2003 not to sell, as of 1 August 2003, hens' eggs to their customers for prices below the level of their own costs. They thus concluded a prohibited agreement indirectly fixing sales prices of hens' eggs that led to the distortion of competition on this market. **The companies fined have lodged an appeal against the first-instance decision of the Office**.

3.2 ABUSE OF DOMINANT POSITION

- In 2003, the Office **initiated 9 administrative proceedings** in this area, of these 6 sanction proceedings and 3 negative clearance proceedings. The Office **issued 7 decisions in total**, out of them 4 sanction decisions.

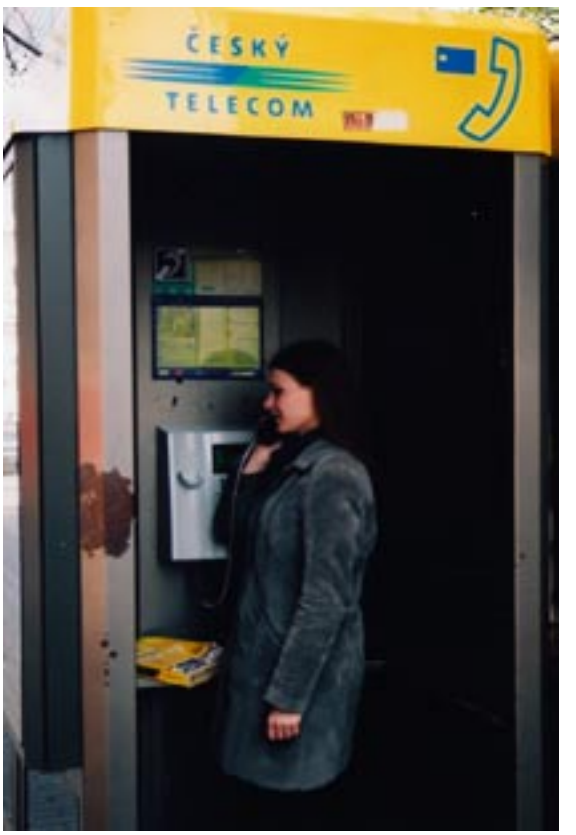
- In 2003, several cases of abuse of dominant position were investigated, these involved the form of **individual fidelity rebates** or **aggregated rebates**, aimed in particular at attractive or prospectively important customers or at regaining customers that switched to competitors. These rebates were given in exchange for a **commitment on the part of customers to purchase products or services on a long-term and exclusive basis only from the provider of the rebates**. Such an approach was applied for example by the company **ČESKÝ TELECOM, a.s.** and in 2004 for this behaviour the Office imposed a final fine amounting to **81.7 million CZK**. In another case investigated by the Office in 2003, a supplier in a dominant position provided individual fidelity rebates in the range from 40 up to 90% of the listed prices subject to the condition that a purchasing agreement would last for a period of five years. **These practices may be interpreted also as attempts of these undertakings to strengthen their market position before accession to the EU**.

- In 2003, fines amounting in total to **119.5 million CZK** were imposed for abuses of dominant position.

SELECTED CASES

ČESKÝ TELECOM

In Autumn 2002, the Office received several complaints in relation to a possible breach of the Act by the company **ČESKÝ TELECOM, a.s.** (hereinafter referred to as "ČTc") connected with offers of preferential tariff programmes. Within the framework of the administrative proceeding, it was established that the above mentioned company concludes with businesses contracts on the provision of tariff plans or



supplements to these contracts in the wording of the General Conditions for Provision of Tariff Plans in which it commits the customers **to making a monthly fixed minimum amount of telephone calls - a so-called contractual telephone charge.** This commitment was defined in such a way that in case the amount of actual outgoing telephone calls is lower than the contractual telephone charge fixed by the relevant contract on the provision of a tariff plan or a supplement to the contract on the provision of a tariff plan, thecustomer is charged not only the price of the

actual telephone calls but also the difference between the amount of the contractual telephone charge and the price of the actual calls. Furthermore, it was established in the administrative proceeding that some contracts concluded by ČTc with its customers, in the wording of the above mentioned business conditions, contained a commitment that the given contract on provision of a tariff plan or a supplement to this contract **would not be cancelled by any of the contractual parties before a fixed date** or that **customers would use exclusively the services of the company ČTc for voice telephone traffic from all their fixed lines**. Apart from the abovementioned facts, it was also established within the framework of the administrative proceeding that ČTc applied, when concluding the relevant contracts, individual conditions different from the conditions contained in the abovementioned business conditions or that it created programmes applied with the aim to gain or maintain a customer to the detriment of competitors, on the basis of which it adjusts the conditions for concluding contracts to a particular customer's individual needs. Due to the above-described practices, the **company ČTc created a barrier to the development of competition on the market** of provision of public telephone services to businesses via fixed telecommunications networks. It thus abused its dominant position on the market, for which it was sanctioned by the Office that imposed a **fine amounting to 81.7 million CZK** and it was ordered to eliminate from the relevant contracts the provisions committing customers to using the full amount of the contractual telephone charge, provisions limiting the possibility to cancel the contract on provision of a tariff plan before a fixed date and provisions committing the customer to using only the services of ČTc for all fixed lines. Apart from this, ČTc was also ordered to cease preferential tariff plans and define conditions for the provision of preferential tariff plans so that it is not possible to provide these tariff plans pursuant to individual conditions. **This decision has already come into force**.

SKIAREÁL Špindlerův Mlýn

During the year 2002, the company SKIAREÁL Špindlerův Mlýn presented to some legal and natural persons proposals for contracts on the commercial use of downhill courses that contained, without objectively justified reasons, **dissimilar conditions in relation to comparable services provided** in comparison with the Contract on Co-operation concluded between the company SKIAREÁL Špindlerův Mlýn, a.s. and the company SKOL MAX Ski School, a.s.. These dissimilar conditions consisted in this case in the **absence of reserved areas for training beginners and moderately advanced skiers**, the absence of transferable time tickets for trainers, the absence of preferential access for clients accompanied by a trainer to some transportation facilities and in a commitment to paying a lump sum payment for commercial use of downhill courses. The Office found that this behaviour constituted an abuse of dominant position by the company SKIAREÁL Špindlerův Mlýn, as it aggravated the conditions for activities of other competitors – entities offering winter sports training in the Špindlerův Mlýn ski resort – and thus handicapped them in competition. The decision of the Office ordered the company SKIAREÁL Špindlerův Mlýn to take measures remedying the situation and to pay a fine amounting to **2,800,000 CZK. The decision of the Office has not come into force yet and it is subject to an appeal proceeding**.

3.3 CONCENTRATIONS OF UNDERTAKINGS

- In 2003 **the number of concentrations** subjected to an administrative procedure by the Office continued to increase. This trend was caused on the one hand by a change in notification criteria stipulated by the Act and on the other hand by the continuing concentration in some branches as a response to the progressing process of globalisation.

- With regard to the Czech Republic's accession to the EU and in the pursuit of maximum harmonization of procedures related to the application of rules for merger assessment by the European Commission, in 2003 special emphasis was put on the further **increase in quality, speed and transparency of the decision-making process**. Where a merger

would have led to a serious distortion of competition, the Office imposed above all structural remedies in order to eliminate negative impacts on economic competition. **In one case a merger was prohibited**.

- The majority of mergers assessed by the Office was carried out in the sector of **engineering and pharmaceutical industry. A large number of mergers in services remains**. A great number of mergers was realised, similarly to 2002, in the sectors of chemistry, food industry and network industries.

- In 2003, **concentration tendencies** continued on some relevant markets which were previously characterised by diffused competitors. This gradual process has occurred for example on **the market of pharmacies**, where the undertaking Alpha Union Invest through its daughter company Europharm has increased its market power, and in the field of agricultural supplies, where two strong holdings have been formed, the undertakings Agrofert and Agropol Group.

- The failure to fulfil obligations resulting from the Office's decision in force blocking the merger of the undertakings **Karlovarské minerální vody** (KMV) and Poděbradka was a reason for opening a further administrative proceeding. In 2004, the decision was issued, ordering KMV to restore the original state of affairs, and at the same time a **fine in the amount of 10 million CZK was imposed. It was the first case that an undertaking did not respect the Office's decision in force**. Meanwhile the Supreme Administrative Court rejected a lawsuit filed by KMV against the Office's second instance decision of 2002, blocking the merger of KMV and Poděbradka, and in this way the Court confirmed the appropriateness of the Office's decision. In this context it is possible to refer to the fact that the Prague Municipal Court had entered the mentioned merger into the Business Register in contradiction with the Act on Protection of Competition before the Office's second instance decision blocking the merger came into force.

- In 2003, the Office provided, in compliance with the Act, an exemption, enabling the undertaking **Milkagro** to carry out a merger before issuing a decision in force, as the mentioned undertaking, while being in bankruptcy proceeding, was threatened by serious damage and the necessity to dismiss 600 employees in the Ostrava region.

SELECTED CASES

Merger of the undertakings Südzucker and Saint Louise Sucre

The assessed merger should have been carried out on the sugar market. Before the merger, the undertaking Saint Louise Sucre had controlled sugar refineries of the group Eastern Sugar. The undertaking Südzucker controlled sugar refineries of the group Agrana. This was the case of a merger of two out of the three most important competitors on the market. The subject created by the merger would

have become a considerably dominant undertaking on the relevant markets of sugar consumed by household and industrial sugar. On the basis of the facts acquired throughout the investigation, on 6 February 2003 the Office's decision stated that the merger would have led to a creation of a dominant position of the merging companies that would have resulted in significant distortion of competition, and for this reason **the merger had been blocked**. An appeal was filed against the decision, which was rejected by the Chairman, who thus confirmed the first instance decision. The merger was assessed on the basis of all the relevant facts, it means regarding financial and economic strength, the position

of the parties in the surrounding regions, portfolio strength, possible benefits from economies of scale, the level of market share and probable barriers of entry for possible competitors entering the Czech market due to the merging companies' significant or dominant position in the surrounding regions and the consequent possibility of importing surplus sugar from those regions and the possible price impacts on purchasers. **The rejection of merger brings advantages favouring especially the final consumers**.

Merger of the undertakings ČESKÝ TELECOM and Eurotel Praha

As a result of the concentration, which **was conditionally approved**, the undertaking ČESKÝ TELECOM became the only partner to the undertaking Eurotel and in this way it acquired the possibility of exclusive control over this company. The Office's definition of a relevant market resulted from the analysis of services provided by the merging companies and their substitutability and it took also into account the European Commission's decisions in this field. The concentration was predominantly of a conglomerate nature because the activities of the merging companies did not overlap and a vertical integration was created on some markets, which resulted in strengthening position of the merging companies. Such a vertical integration could, under certain circumstances, possibly cause the discrimination of other undertakings, for example if a price paid for calling from a fixed line to the mobile net of Eurotel Praha was cheaper than any offer of other operators for calling from a fixed line to a mobile net. While assessing the merger, the fact that potential displays of abuse of a dominant position would be punishable according to Articles 10 and 11 of the Act was taken into account. In the decision the Office imposed an obligation in order to minimise the risk that undertakings and final consumers would be deprived of beneficial effects resulting from market liberalization as a result of anticompetitive practices.

Merger of undertakings ZENTIVA and S.L. Pharma Holdings

A merger carried out in the field of pharmacy was **cleared in June 2003 under commitments** adopted by the merging undertakings. Before the merger, the undertaking ZENTIVA had exercised control over the undertaking Léčiva and Pharma Holdings had controlled Slovakofarma. This is the case of the merger of two important drug producers, specialising in particular in the production and sale of generic (non-original) drugs fur human use. The Office defined a large number of relevant product markets in compliance with the international classification ATC-3, which is used also by the EC Commission as a starting point for the definition of relevant product markets in cases of mergers in the field of pharmacy. The merging companies jointly acquired a high market share in some markets. In assessing the merger the Office took account of particularities of the drug market, especially of its strong regulation, the large importance of research and development and the system of health care in the Czech Republic. The necessity of a registration at the State Institute for Drugs Control, the existence of traditional trademarks and the system of reimbursement from the system of public insurance are the main barriers to entry the market. The abovementioned facts weaken the competitive environment on the drug market. In its decision the Office stated that the assessed concentration would lead to an increase in financial and portfolio power which would be manifested in the supply of a wide choice of familiar products, larger price flexibility and a rise in negotiation strength of the subject created by the merger with buyers. These facts could have led to the distortion of

competition. The Office stated that on several relevant markets the dominant position of merging undertakings would be created or strength-

ened that would result in a significant distortion of competition. The Office conditioned clearing the concentration by imposing commitments on the participants to proceedings, which were adopted by the undertaking ZENTIVA. **They consisted in a package of restrictions, which were connected with the transfer of all the activities related to the production and trade in selected drugs to the third persons.** All the imposed commitments aimed at eliminating significant competition concerns.

Merger of the undertakings PPF (CYPRUS) and NOVA HOLDING

The subjects, controlled by the undertaking NOVA HOLDING, focus on service activity for the undertaking CET 21 which is, in compliance with the licence issued by the Council for Radio and Television Broadcasting, an operator of television NOVA broadcasting. Activities of most other undertakings, controlled by NOVA HOLDING, are also directly or indirectly connected with this broadcaster's nationwide broadcasting. The markets concerned were the market of television broadcasting and the market of television advertising. The broadcaster NOVA has an important position on both markets. Competition concerns related to the vertical integration of production, distribution, licensing of audiovisual works and provision of television broadcasting. The assessed merger would result in interlocking the undertakings Krátký film Praha and Studio animovaného filmu. Krátký film Praha is an owner of original film carriers and a subject entitled to exercise property rights on audiovisual works from a movie library. The Office expressed the concern that the undertaking Krátký film could apply discriminatory conditions against towards other television broadcasters as far as using rights to audiovisual works in its library is concerned and in this way prevent competition between TV broadcasters. Also Česká televize confirmed this concern in its comments related to the assessed merger. **The Office conditioned clearing the merger** by obliging the undertaking Krátký film Praha to provide its services to all purchasers under free and equal access.

Number of launched administrative proceedings

	Year								
	1995	**1996**	**1997**	**1998**	**1999**	**2000**	**2001**	**2002**	**2003**
Mergers - Number of initiated administrative proceedings	51	74	58	57	51	57	140	217	239

In 2003, the Office initiated **239** administrative proceedings related to the clearance of concentrations. At the same period the Office issued **225 decisions**, **213** decisions were on the merits of the case. Out of them, **178 decisions** were cleared without conditions, **7 with conditions or obligations** and in addition **27 decisions** were issued stating that an assessed transaction was not subject to the Office's approval (either because a transaction does not constitute a merger or it does not fulfil turnover criteria for notification) and **one merger was prohibited.** Within the monitored period one decision on exemption from prohibition of a merger was issued, four decisions related to conferring the status of a party to proceedings, four appeals were filed, one of them because of not conferring the status of participant to proceedings.

Conditions and prohibitions in decisions of the European Commission and the Office

	Prohibitions in II instance from the total number of all the issued decisions (%)	Conditions in II instance from the total number of decisions issued in II instance (%)	Prohibitions in II instance from the total number of decisions issued in II instance (%)
European Commission – in average	0.7%	67.9%	17.9%
European Commission – 2003	0%	75%	0%
The Office – between 1.1. 2003 – 31.12.2003	0.5%	57%	14%

3.4 APPEAL PROCEEDINGS

Appealed decisions in 2002	49
Of those decisions issued in 2002	24
Decisions appealed in 2003	**33**
Of those decisions issued in 2003	**10**

The Appeal Commission for Competition, which is an advisory body to the Chairman of the Office and whose members are also external experts from the academic and legal fields, in 2003 dealt with **43 appeals** against 33 first instance decisions. To ensure more efficient decision-making in appeal procedures, the Chairman of the Office conducted organizational measures with the aim to improve and speed up the appeal procedure in the field of competition. For example, the Appeal Commission was strengthened and its sessions have been held regularly every week. Also the time period for conducting proceedings in the second instance was shortened, especially in relation to proposals of concentrations.

The difficulty of the discussed cases increased and it has been manifested in both the increased complexity of submitted appeals, containing sometimes also expert analysis, and in the time span needed for their thorough study, discussion and elaboration of draft decisions. The cases represent those of the gravest distortion of competition like price agreements and significant cases of concentrations, which demand high expert knowledge of the staff in order to be able to refute submitted objections. In 2003, **the Office imposed fines totalling 67,200,000 CZK in the second instance decisions**. 44,200,000 CZK have been paid of that total amount. As far as the unpaid 23-million-fine is concerned, it was imposed on the undertaking JULIUS MEINL and the undertaking asked for payment in instalments.

SELECTED CASES

Cartel agreement on prices

The undertakings **BILLA, spol. s r.o., and JULIUS MEINL, a.s.**, infringed the Act by agreeing **to coordinate and unify their purchase prices for goods and their commercial terms** (bonus discounts etc. connected with purchases) **vis-à-vis their suppliers**. They concluded a prohibited and void price agreement which resulted in distortion of competition on the market for daily consumption goods for retail sale. The proceeding uncovered that the undertakings BILLA and JULIUS MEINL exchanged information about their purchase prices and bonus and discount systems (covered by suppliers), they compared them and required the suppliers to accommodate their existing financial terms for the purchase of goods to the level of those of the other party to the proceeding if they were more favourable. Furthermore, the undertakings required financial compensation from suppliers to balance their different purchase conditions. A requirement by both undertakings of another payment, a so called alliance bonus, was illegal as well and it was justified in fact only by the possibility to supply the same range of goods to both retail networks and, moreover, in case of suppliers' **disagreement with demanded purchasing conditions, a threat of the termination of the purchase of goods was used in concrete cases as a coercion.** The objective of the undertakings was to achieve higher profits and

enhance their competitiveness on the market, however, not by way of fair competition but by means of conclusion of a prohibited agreement. The negative impact of the practices of the undertakings BILLA and JULIUS MEINL on individual suppliers limited their possibilities to supply their goods to the existing number of buyers under competitive conditions. The suppliers who did not accept the conditions set by the undertakings BILLA and JULIUS MEINL would have felt the threat of supplies termination as considerable if they had not been able to sell without problems the comparable volume of goods usually delivered to retail networks of both undertakings to another retail network or through another distribution channel. **For this infringement of the Act, the Office imposed a total fine amounting to 51 million CZK on the undertakings BILLA and JULIUS MEINL.**

Concentration of undertaking ČEZ and five distribution companies

The Office for the Protection of Competition **approved** in its decision, subject to three conditions, the concentration of the undertaking **ČEZ and regional distributors of electricity**. In 2003, the Chairman of the Office **confirmed**, in a second instance decision, the first instance decision of last December. The party to the proceedings is obliged to divest its shares representing 34% of the basic assets of the undertaking ČEPS (Czech Transmission System). Furthermore, the undertaking ČEZ is obliged to divest all its shares in the distributing companies Pražská energetika, Jihočeská energetika and Jihomoravská energetika which it acquired in the concentration. The third condition sets an obligation to divest shares in one of the regional electricity distribution companies, which was acquired by ČEZ in the concentration. As a matter of fact, the second instance decision confirmed the first instance decision of 10 December 2002. Only the deadlines for fulfilling structural conditions set by the decision were prolonged. **By imposing the conditions, the Office minimized the risk that both entrepreneurs and final consumers might be deprived of benefits resulting from sound competition as a consequence of liberalization in the field of energy production. It is justifiable to assume that benefits created by safeguarding competition contribute to ensuring industrial undertakings' competitiveness because the energy price constitutes a considerable part of product costs.**

Prohibited resale price maintenance agreement

As a matter of fact, the Office, in its second instance decision confirmed the first instance decision declaring that the undertaking **ČESKÝ TELECOM** concluded prohibited resale price maintenance agreements, which led to distortion of competition on the prepaid X cards market and might lead to the distortion of competition on the payphone cards market. The undertaking obliged distributors in its distribution agreements to sell and distribute prepaid X cards for a given nominal price, and also in the framework contracts concluded with phone cards distributors the undertaking indicated information related to the retail price or the nominal value of phone cards. By fixing the end price for other distributors, the sale outlets of ČESKÝ TELECOM, which sells prepaid X cards and payphone cards also in its own distribution channel, did not need to face any competition because the price, as the only competitive criterion, was set on the same level for all the sellers. **As a result of infringement of the Act, the Office imposed a fine of 6.5 million CZK on ČESKÝ TELECOM.**

Cartel agreement of distributors of fuels

In May 2004, the Office concluded administrative proceeding launched in the second half of 2001 against the six most important undertakings operating petrol stations in the Czech Republic. It has been the most difficult case investigated by the Office so far, the case file includes several thousand pages. In his second

instance decision, the Chairman of the Office **confirmed** the highest fine ever imposed. Fines amounting in total to **313 million CZK** were imposed on undertakings Agip Praha, a.s. (20 mil.), Aral ČR, a.s. (40 mil.), BENZINA a.s. (98 mil.) ConocoPhillips Czech Republic s.r.o. (22 mil.), OMV Česká republika, s.r.o. (68 mil.) and Shell Czech Republic a.s. (65 mil.). The above mentioned undertakings violated the Act on the Protection of Competition by entering into concerted practices aimed at fixing the sale price for car petrol Natural 95 sold by their petrol stations in the period beginning 28 May 2001 and ending 30 November 2001. In this way competition was restricted on the market of car petrol delivered to consumers. Concerted practice means a certain form of co-operation or coordination of competitors' activities, which replaces their independent behaviour. The substance of this by law prohibited conduct consists in a horizontal price agreement that constitutes one of the most serious anticompetitive offences because it leads to an increase in prices above competitive level and consequently to a decrease in competitive pressure on enhanced cost efficiency and innovation.

In the period from 28 May to 31 May 2001, the parties to the proceeding agreed on a considerable increase in the sale price for petrol Natural 95 by almost the same amount of 1 CZK per litre practically at all their petrol stations. However, there was no factual reason for this rise in Natural 95 sale price on the market, as the purchase cost of this product had shown a descending tendency since approximately 16 May 2001. The parties to the proceeding maintained the high level of Natural 95 sale price until the end of November 2001 despite the continuing trend of a considerable decrease in purchase prices.

4 PUBLIC PROCUREMENT

In 2003, the Office, jointly with the Ministry for Regional Development, submitted a draft bill on public procurement that was continuously consulted with experts from the European Commission in respect of its compatibility with the law of the European Communities. The new Act on Public Contracts No. 40/2004 was issued in the Collection of Laws on 5 February 2004 and it came into effect on 1 May 2004.

Within the framework of carrying out the non-legislative tasks following from the Office's authority, increased attention was paid to the speed of processing motions, announcements and proposals for launching administrative proceedings in compliance with the Act on Public Procurement. Great attention was paid to the suggestions made by the Supreme Audit Office. The Office has also continued informing contracting authorities and tenderers in public contracts about the Act and **in 2003 answered about 900 written questions related to the interpretation of the Act**. Despite the Office's activities, it is impossible to say that the contracting authorities significantly improved their contracting activities, which is proved by the number of investigations carried out by the Office upon demand from authorities active in criminal proceedings or motions from other supervisory authorities or citizens.

In the course of 2003, the Office carried out a continuous supervision of the contracting authorities´ procedures. According to the "Plan of control activity" based on the Office's capacities, in the first half of 2003 **controls of procedures by contracting authorities continued**– the Directorate of Roads and Highways of the Czech Republic, the Capital of Prague, the District Authority of Prague 4 and the Ministry of Foreign Affairs – which had been launched already in 2002. In December 2003, the Statutory City of Liberec and the Capital of Prague - the District Authority of Prague 1 were informed about the initiation of control. Last year, the places for controls were determined following the assessment of received motions.

In addition, the Office carried out, beyond **the framework of its legal duties, assessments of procedures of contracting authorities in the implementation of actions**, for which subsidies from public means were required. On the basis of a requirement from the organisational unit of **the Police of the Czech Republic**, the Office carried out an investigation of public contracts made by the cities of Hradec Králové, Mohelnice, Prachatice and the municipalities of Slatinice and Česká Ves. In general, it is possible to conclude that the Office received **considerably more requirements from the Police of the Czech Republic, namely in connection with investigation of suspected corruption, abuse of public authority's power, bid rigging etc. In 2003, there was also an increase in the number of questions related to various cases raised by the National Security Office.**

ANALYSIS OF IRREGULARITIES OCCURING IN THE PROCESS OF PUBLIC PROCUREMENT

Nine years have already passed since the adoption of the Act on Public Procurement No. 199/1994 Coll. (effective as of 1 January 1995), 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 its existence. Even though there are guidance opinions available to the expert public in the form of decisions published on the Office's Internet pages and expert seminars are organised, there are still 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 the misunderstanding or incorrect interpretation of the Act.

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

- **Unclear conditions** are set for the evaluation of bids, for example "overall benefits of the contract",

- **The Amendment to the Act** (Act No. 142/ 2001 Coll.), which decreased the percentage level (from 50% to 20%) of additional or repeated bids invited according to Article 50 (1) of the Act, **is not respected**,

- Continuously **due attention is not paid to the choice of possible candidates to a public contract,**

- **Bid invitation is not transparent** and as a consequence bids are processed in a way that does not allow their objective comparison,

- Often the invitation does not specify **requirements related to the fulfilment of a criterion in a bid or other prerequisites for the public contract that are to be proved,**

- When assigning other prerequisites for public contracts references are often made **to already void provisions of other generally valid legal regulations,**

- **Conditions of an invitation include discriminatory elements**, when, for example, special conditions for procurement execution are used in a way that favour tenderers from the region where the seat of the contracting authority is situated,

- In public contracts involving predominantly construction work such **bid invitation documents are submitted** to tenderers in a public contract that do not **include the exact enumeration of demanded works and operations** and thus non-comparable bids are submitted,

- **A contract is deliberately split** so that a contracting authority does not have to use a more difficult procedural method of a bid invitation.

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

In the bid evaluation process the contracting authorities do not abide by the basic principles valid for a public procurement, namely transparency, the non-discrimination of tenderers and a possibility for review of the decision of the contracting authority as regards the selection of the most suitable bid. When evaluating the economic suitability of the bids, the basic and principal step on the part of contracting authorities is the choice of appropriate evaluation criteria, taking into account the subject matter of the public tender. In its reviewing and supervisory activities the Office found that **contracting authorities had made errors at the very beginning of the public tendering process by choosing inappropriate criteria** such as "fulfilment of qualifying prerequisites", "overall benefits of the contract", "complexity of the bid", "benefits of the contract for works", etc. that **did not allow the tenderers to identify what was more beneficial and thus preferable for the contracting authority**. Then, tenderers, in processing their bids, might only guess what their bids should have looked like to have been most favourable for a contracting authority. Submitted bids were then difficult to evaluate and in some extreme cases it was even completely impossible to compare them. **In cases where more evaluation criteria were used, it was in many instances impossible to review the evaluation of bids itself** as the report on the assessment and evaluation of bids, carried out by the contracting authority or a commission for the assessment and evaluation of bids, did not contain any description of the method of evaluation, which should be particularly thorough in the case of those evaluation criteria which were difficult to measure objectively. Precisely in the cases of objectively immeasurable criteria it is important to state in the report which facts were

evaluated in the individual bids and why this or that bid seems to be, as far as a certain criterion is concerned, the most favourable. Further, the most common drawbacks within the process of assessment and evaluation of bids are the following:

- **Contracting authorities conclude a contract on the subject matter of a public tender with a tenderer who, in fact, should have been excluded from further participation** in the public tender because it had not proved qualifying prerequisites stipulated by law before signing a contract,
- **The principle of non-discrimination is not respected in relation to all tenderers**
- **There is insufficient or no substantiation related to the contracting authority's decision making** on what is or is not an extraordinarily low bid price,
- **The significance of individual criteria of a bid evaluation is not distinguished**
- The report on the assessment and evaluation of bids **lacks explicit substantiation of the selection of the most suitable bid,** i.e. on the basis of which facts the commission or the contracting authority reached the decision,
- Not all documents drawn up in connection with the selection of the best bid including the submitted bids **are archived** – it makes it objectively impossible to review the correctness of the contracting authority's proceedings

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

- Incomplete statutory declarations on the fulfilment of qualifying prerequisites continue to be submitted,
- Documents proving the fulfilment of qualifying criteria are submitted in non-certified copies or they are obsolete and do not comply with legal requirements,
- In their bids tenderers provide only unit prices instead of the total price for the execution of the public contract as a whole,
- Objections or proposals for the review of the contracting authority's decision on objections are submitted with delay and, in the case of proposals, they are not simultaneously submitted to the contracting authority
- In submitting objections against exclusion from the procedure, tenderers demand the cancellation of the bid invitation
- Objections or proposals do not include relevant information required by the Act including the certificate on re-deposition of the released tender security, tenderers complain about contracting authorities violating the provisions of the Act, which the contracting authority is not obliged to observe in the selected method of bids invitation

SELECTED CASES

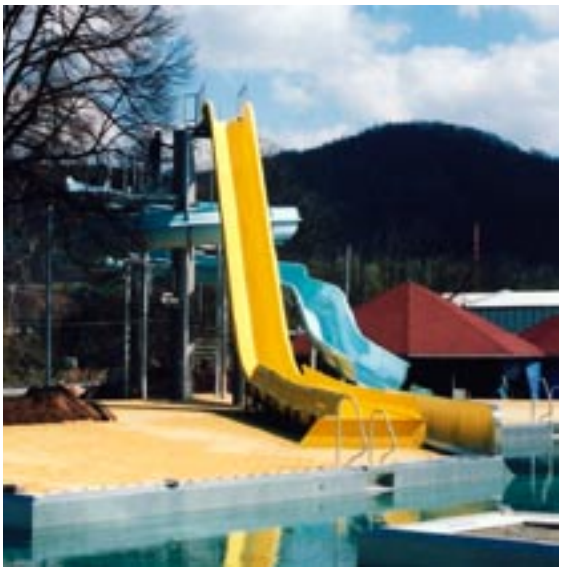
Ministry of Finance – delivery of stationery and chemist products

The Ministry of Finance awarded a contract by a method of a bid invitation to more tenderers. In the invitation the contracting authority stated that the subject matter of the contract was the delivery of stationery and cleaning products according to a specification annexed in an appendix, which contained about 170 items and subitems without stating the number of pieces. The contracting authority demanded the execution of the contract over an indeterminate period up to the amount of 7,500,000 CZK without VAT. It is quite obvious from the bid invitation that the object of the public contract was defined insufficiently. The bid invitation documents are a sum of data and information necessary for processing a bid. It must also contain an unambiguous specification of the amount and the kind of demanded works, deliveries or services. The contracting authority defined neither in the bid invitation nor in the bid invitation documents the amount of requested deliveries. Thus they made it impossible to evaluate bids according to the criterion of the level of a bid price and

for this reason the **Office cancelled the contracting authority's decision on the most suitable bid selection and on awarding the contract.**

The town of Moravská Třebová - reconstruction of a swimming pool

The town of Moravská Třebová awarded a contract by the method of a bid invitation to more tenderers. In the terms and conditions of the public tender, the contracting authority demanded that tenderers do not include the price of steel construction and staircase for a water chute that was, among others, a subject matter of a contract, in the price of the contract. The Act stipulates that bid invitation documents have to determine unambiguously the amount and the kind of demanded works, deliveries or services and a contracting authority is responsible for the correctness of data provided in the documents. The Office found that if the contracting authority had specified the demand for all the contracted objects including a bearing steel construction, as it was prescribed the law, they would have obviously, with regard to the level of a total financial obligation for all the contracted objects, had to select a public tender instead of a bid invitation to more tenderers. By its procedure the contracting authority de facto restricted competition to only invited tenderers while in a public tender, bids could have been submitted by an unlimited circle of candidates. **The Office opted for invalidating the contract** because it could not impose another remedial



arrangement as the contracting authority violated the Act from the very beginning and it was impossible to make a remedy in a different way than invalidating the bid invitation.

STATISTICAL DATA

Overview of conducted administrative proceedings in the area of supervision over public procurement in 2003

	Total
Number of submissions received (proposals + motions)	583
Initiated administrative proceedings	334
Issued decisions on the merits	275
Terminated administrative proceedings	30
Number of proposals dismissed by decision	73
Number of imposed fines	90
The amount of fines imposed in the first instance – decision in thousands CZK	943
The amount of fines in cases where the decisions came into force in 2003 in thousands CZK*	2625
Other decisions issued within the administrative proceedings (for example preliminary measures)	11
Administrative fees in 2003 in thousands CZK	4056

* included sanctions imposed by decisions in 2002, which entered into force in 2003

APPEAL PROCEDURE

The number of appeals lodged against first instance decisions:

Decisions appealed in 2003	79
- out of them decided and issued in 2003	64
Decisions appealed in 2002	87
- out of them decided and issued - in 2002	79
- in 2003	17

In the field of public procurement, in 2003 79 appeals were submitted to the Office (comparing with 87 appeals in 2002). The difficulty of the discussed cases has increased as manifested in the increased complexity of submitted appeals and in time demanded for their thorough study, assessment and elaboration of decisions. This involves some of the most serious violations of the Act on Public Procurement for which sanctions were imposed in many cases. Generally speaking, the level of sanctions imposed by the department of surveillance, was relatively low and amounted to around a third of a maximum possible amount, nevertheless, contracting authorities appeal even in the case of such low fines. However, they mostly **do not provide any new facts in their appeals**. Such procedures then make the award procedure longer and they do not contribute to the legal certainty of parties to proceedings. **Also the time for conducting appeal proceedings was significantly shortened** and it took in average 2 months since the launch of an appeal.

SELECTED CASES

Ministry of Informatics – reconstruction of a building

The Office imposed a fine of **33,000 CZK** on the contracting authority in the first instance decision for a serious violation of the Act committed by **awarding contracts for the reconstruction of the 5th floor of an administrative building in the form of the direct conclusion of nine independent contracts on individual partial subject matters.** The contracting authority appealed against the decision and objected that the nine contracts had not concerned the same or comparable subject matters and thus they could have divided the contract into independent partial subject matters. At the same time they raised the objection that some cases had related to specialised public contracts and in addition they had been dealt with under time pressure because there had been a deadline for finishing works and moving in of the Ministry. **The Chairman of the Office confirmed the appealed decision** and turned down the appeal because the contracting authority had, in the preparatory phase of the tender, a whole public contract project processed and they also knew that it had been a single works contract. Usual building works were the subject matter of the contract, even in the case of low-voltage safety systems installation, where a contractor was required to get tested by the National Security Authority because, as it resulted from submitted documents, the contracting authority even in the case of these systems addressed at least two subjects and thus it was possible that other subjects with the relevant certification also existed. The time pressure caused by the contracting authority's subjective decision could not be regarded as an objective reason of urgent need.

Czech Railways

In the public tender for the elaboration of a project and carrying out the construction of "ČD DDC, **Pilot Project GSM-R** in the track section Děčín, state border - Ústí on Labe - Prague - Kolín", a contracting authority decided on the selection of the most suitable bid by using a possibility given by the Act and did not accept a recommendation provided by the commission for the assessment and evaluation of bids and **decided on a different ranking of tenderers**. Despite the commission's recommendation the contracting authority decided that the most suitable bid is the one of the undertaking KAPSCH (the commission recommended the undertaking Siemens). On 26 August 2003 the Office, after reviewing the proposal and all the filed documents, issued a decision establishing the violation of the Act by the contracting authority because, while deciding on the selection of the most suitable bid, the contracting authority did not prove that they had selected the bid best fulfilling the criteria defined in the conditions of the public tender. The contracting authority and the undertaking Siemens lodged an appeal against the Office's decision (Siemens only against its reasoning) and the Office confirmed the appealed decision in the second instance decision.

The fact that the **assessment had not been carried out unambiguously and in a transparent way** was the reason for invalidating the contracting authority's decision on the selection of the most suitable bid and ordering it to make a new selection. The contracting authority did not make the assessment according to all the announced sub-criteria, attributed by them to the announced criteria, and they did not prove the selection of the most suitable bid, when they did not defined any evaluation method, and in reasoning the choice they used ambiguous wording. The assessment carried out in this way, using a term not more precisely specified and defined by a contracting authority, is not possible to examine and it is non-transparent and non-examinable. In a new selection of the most suitable bid the contracting authority decided that the most suitable bid was the one of the undertaking KAPSCH. Based on the Siemens's proposal, the Office examined also this contracting authority's decision and on 20 May 2004, the Chairman of the Office issued a decision confirming the contracting authority's decision on the most suitable bid, when he did not find an infringement of the law in the contracting authority's procedure.

Statutory City of Brno

In a first instance decision the Office assessed in total 17 cases of public contracts which did not relate to each other in merit but only by means of the legal entity of the contracting authority. In twelve cases the Office established a significant violation of the Act and it imposed fines totalling **520,284 CZK**. The proceedings were terminated in five cases. The contracting authority appealed against only several points in the decisions. In one of these cases –the public tender for **"the reconstruction of the building of Janáček's theatre in Brno"– the Office found** a serious infringement of the Act because in the submitted documents papers proving the compliance with qualification requirements by a selected tenderer before signing a contract were not provided. The contracting authority stated in the appeal that they verified the meeting of qualification requirements in another public tender, which was under way at the same time, however, this argumentation could not be accepted because the Act did not make it possible to prove qualification requirements en bloc by one original of the papers in more public tenders. Further, the Office established a serious infringement of the Act in the decision because the contracting authority had not chosen the way of contract partner selection adequately to the level of the future financial obligation and subsequently concluded amendments to the original contract in the form of a bid invitation to one tenderer without meeting legal requirements for the use of this exceptional way of bid invitation. The contracting authority argued in a lodged appeal that the necessity to conclude the amendments emerged on the basis of more works that could not have been expected before starting execution of the public contract because they arose only in the course of the reconstruction itself. The contracting authority's argumentation was impossible to accept because the object of the above mentioned amendments consisted, in a big part, of works, which resulted not from unexpected developments but from additional requirements posed by the user of the building (for example the requirement for a change in the width of aisles to be in compliance with a norm, etc.), and the user must have known the requirements and thus they could have included them in the bid invitation. **The Office's second instance decision maintained the fine imposed in the first instance at the original level of 300,000 CZK. In total, the fine imposed on the contracting authority amounted to 480,284 CZK.**

5 STATE AID

State aid monitoring and assessment of its compatibility with competition rules belong to the main pillars of the protection of competition. The Office has been involved in this field since 2000. In general, after the accession of the Czech Republic to the EU, the position of the Office in the field of state aid has changed **from a primarily decision-making function to a function of a central, consultative, monitoring, coordinating, educational and advisory authority**. The activities of the Office were adapted to its new position in 2003. The Office provided information and consultations focused specifically on ensuring transparency and legal certainty for domestic state aid providers and beneficiaries in the period after the Czech Republic's EU accession.

ACTIVITIES IN THE AREA OF METHODOLOGY AND LEGISLATION

In co-operation with twinning partners the new **amended versions of methodological guidelines** were completed which respond to continuous changes in EU legislation and which serve as an up-to-date guideline for an assessment of single state aid cases. Also the assessment of the regional contribution of the investment projects has been improved. Further, in 2003 a **draft act** on carrying out monitoring in the field of state aid was elaborated, approved by the Parliament and issued in the Collection of Laws under No. 215/2004 Coll. replacing since 1 May 2004 the previous Act No. 59/2000 Coll. on State Aid. The new act defines the coordinating, educational and advisory role of the Office. The compliance with conditions stipulated in the Office's decisions issued before the Czech Republic's accession to the EU and the imposition of related sanctions continue following the Act No. 59/2000 Coll.

Within the framework of the **twinning project implementation**, in co-operation with German experts the Office held 14 seminars on almost all the fields of state aid whose primary purpose was to make state aid providers aware of detailed principles of state aid assessment. The seminars were also held at regional level. The exchange of experience with German colleagues helped in amending the Act on Investment Incentives and in launching the transposition of the directive on the transparency of financial relations between the Member States and public undertakings into the Czech legal code.

ACTIVITIES IN THE AREA OF DECISION-MAKING

In 2003, **170** administrative proceedings were initiated and **161** administrative proceedings were concluded by the end of the year. In 2002, 160 proceedings were initiated and 127 were concluded. As it follows from these numbers, the number of proceedings slightly increased. **The prevalent part of the administrative proceedings again related to investment incentives**. The large amount of investment incentives assessment was a large burden for the Office also in 2003. However, the amendment of the Investment Incentives Act, as a state aid scheme compatible with *acquis*, has already been approved and after the Czech Republic's accession to the EU there is a possibility to provide investment incentives without individual notification to a monitoring authority.

The year 2003 was characterised by preparation for the **assessment of compatibility of state aid to individual banks** within the so-called interim procedure. Numerous consultations on individual cases were held with the European Commission. The Office assessed individual cases and sent its conclusions including additional information to the European Commission. The European Commission has already issued 14 decisions within the frame of the interim procedure in the case of assessment of state aid granted to banks, in which it said that it did not have the authority to assess the given cases. This fact constitutes an important component of legal certainty.

In the field of **steel industry** the European Commission monitored state aid grants and compliance with the conditions for their provision. Within this activity representatives of the Office co-operated with the company Eurostrategy,

which was designated by the European Commission as an independent expert for the Czech steel industry monitoring. In its annual report for the European Commission the company said that **all the steel undertakings, which had received an exemption from state aid prohibition, fulfilled their obligations.**

In February 2004, the Office sent a notice to all state aid providers that after the Czech Republic's accession to the EU the European Commission will assess state aid compatibility in administrative proceeding. Making an effort to assess the cases of requests for exemption from a state aid prohibition before the date of accession, the Office had to set **the latest deadline** by which state aid providers could submit their notifications likely to be still decided by the Office on their merits without these cases being taken over by the European Commission. **The Office set 31 March 2004 as the latest deadline. However, the deadline was not respected by the providers and even after its termination the Office received a number of new submissions.** In this context it is necessary to refer to the fact that in April 2004 the Office issued **90 decisions** concerning state aid. **Apart from others, the Office did not approve the exemption from state aid prohibition in favour of the undertaking KARBON INVEST relating to the privatisation of the company OKD. This way, in this single case alone the Office saved 1 billion CZK from the state budget.**

ACTIVITIES IN THE AREA OF MONITORING

An essential part of the monitoring activity still aimed at the processing and regular completion of the existing state aid list. The result of this activity is the list of 120 cases of existing aid approved by the European Commission, which forms an annex to the Accession Treaty and the approval of 85 (situation up to 18 June 2004) more cases within the framework of interim procedure.

It follows from the survey of approved aid carried out by the Office that the volume of **state aid in 2002, compared with 2001, almost doubled and it reached the level of 4.66% of GDP.**

SUPERVISORY ACTIVITIES

Supervisory activities **focused on compliance with conditions** stipulated in approved restructuring schemes and the time schedule for carrying out the arrangements of financial and operational restructuring including planned economic results reached by the undertakings. In one case the undertaking did not fulfil the conditions of the decision because the beneficiary did not achieve a positive economic result. In this case a new administrative proceeding was launched. In another case the part of arrangements related to internal restructuring was postponed for objective reasons till the following year. In the remaining cases the Office found that conditions stipulated in its decision were fulfilled.

SELECTED CASES

Restructuring of banking

Until the end of 2003 the European Commission received notification of state aid provided to Česká spořitelna, Komerční banka, IPB/ČSOB and Agrobanka/GE Capital Bank including arrangements favouring the following banks participating in the scheme of stabilization and consolidation: Universal banka, e-Banka, J&T Banka, Bankovní dům Scala/Union banka, Moravia banka, Banka Haná, Fores banka, Evrobanka, Ekoagrobanka, Coop banka, Pragobanka. In the cases of IPB/ČSOB and Agrobanka/GE Capital

bank a decision has not been made yet, in other cases the **European Commission said that state aid did not have a Community dimension and it was not illegal.**

At the end of 2003 the Office decided, within the framework of a reopened proceeding, **on an exemption from state aid prohibition** in connection with the sale of Investiční a poštovní banka to Československá obchodní banka because state aid was provided in compliance with the State Aid Act.

Válcovny plechu

In this case the exemption was approved in the form of capitalisation of receivables of the Czech Consolidation Agency and its subsidiary **Konpo, s.r.o.** totalling 291,760,000 CZK by acquiring the basic assets of the company VÁLCOVNY PLECHU, a.s. Providing restructuring state aid, which is generally prohibited, was enabled by including the undertaking into the programme of the Czech steel industry restructuring and in particular by the adoption of the EU Council decision on fulfilling conditions of

Article 3 of Protocol No.2. The Council's decision extended the term for the possible provision of restructuring state aid for the period of 8 years or to the day of the Czech Republic's accession to the EU with retroactive effect since 1 January 1997 onward.

The Office conditioned its decision by the fulfilment of the conditions defined in the document Common Position, by the restriction of the production of the undertaking VÁLCOVNY PLECHU, a.s., compliance with the approved restructuring plan and submission of regular monitoring reports. The Office and the European Commission monitor the fulfilling of the conditions of the decision and the restructuring plan (at the latest until the end of 2006).

Třinecké železárny

At the end of November 2003, an administrative proceeding was launched in the matter of granting exemption from state aid prohibition for the undertaking Třinecké železárny, a.s. Due to consultations with the European Commission, the administrative proceeding was interrupted in compliance with the Act on State Aid and a government resolution. The interruption was in existence for the duration of consultations with the European Commission. In April 2004, the Office decided that the fact that the Czech Consolidation Agency purchased the shares of Ispat Nová Huť owned by Třinecké železárny did not constitute state aid.

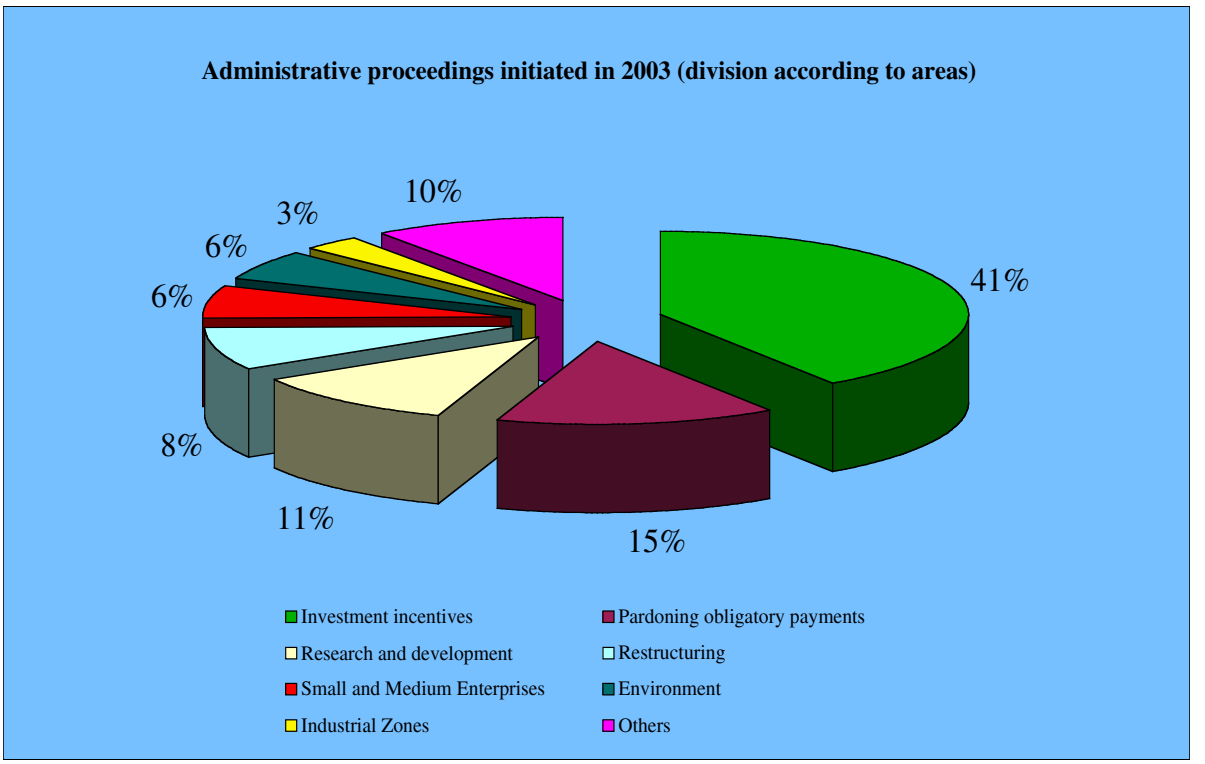
The part of the aid related to the transfer of 10 thousand obligations owned by the Czech Consolidation Agency to their issuer Třinecké železárny was approved with numerous restricting conditions. It is a transaction which was decided about in a government resolution. The transfer is to be carried out for a purchasing price corresponding to the nominal price of obligations reduced by permitted state aid: 1. for educational projects and payments to employees who will be made redundant as a consequence of shutting down a part of the furnace, 2. for research and development projects, 3. for environmental projects.

Total number of closed administrative proceedings and issued decisions in 2003

	Administrative proceedings initiated in 2002	Administrative proceedings initiated in 2003	Total
Number of closed administrative proceedings	30	131	**161**
Decisions issued	28	130*	**158**
- approvals	1	3	**4**
- approvals with conditions	17	75	**92**
- disapprovals	1	4	**5**
- termination of the proceedings	9	30	**39**
- partly approved with conditions, partly disapproved	-	18	**18**
Cases closed by a letter (not concerning state aid)	2	4	6

* Within one administrative proceeding (VP/S69/03-160) 4 decisions were issued

In 2003 the Office initiated 170 administrative proceedings in the field of state aid.



6 COMPETITION ADVOCACY

Competition advocacy is a complex of all activities focused on supporting the **creation and development of a competitive environment** including enhancing general public awareness of the benefits of competition. Consistent enforcement of competition principles contributes to the development of a given branch of economy. In compliance with European law, the Office, in the course of the energy industry restructuring, in the long term enforced the exclusion of vertical integration between a dominant electricity producer, a transmission network and distributors. The Office's standpoint was taken into account in deciding on an approval of the concentration between a producer of electricity and distributors and consequently it contributed to beneficial effects in favour of competition in the energy sector and to ensuring the wider supply and lower prices for consumers.

Entrance to the seat of the Office for the Protection of Competition

In addition to its decision-making activities, the Office in the long term **monitors the situation on individual markets** regarding the quality of the competition environment. In some instances the Office found that certain practices and phenomena, which are subject to repeated complaints, might be caused by non-existent or inappropriate regulation. Of particular concern in this regard is the situation on **the water supply market**. Currently there is no effective supervision over the water rate. The Office stated several times that the branch was not effectively regulated and **proposed the introduction of a regulator**. The regulator could give price recommendations with regard to the actual costs and in this way exercise control over price development.

In 2003, the Office also submitted several **fundamental comments** concerning draft acts. We may take as examples a proposal for a change of the Act on General Health Insurance Company of the Czech Republic, a draft Act on Insurance Policy, a draft Act on Pedagogical Workers or a proposal for an amendment to the Energy Act.

CO-OPERATION WITH REGULATORS

The relations between the Office, on the one hand, and regulatory authorities, on the other, are transparent and supported by detailed legal arrangements eliminating **the threat of power conflict**. The fact that the Office has, as far as regulated branches are concerned, always assessed only the "competition concerns" confirms, for example, the decision No. 2A 10/2000 (ČESKÝ TELECOM, a.s.) by Olomouc High Court, which **did not find any unlawfulness in the Office's procedure and confirmed the Office's decision**. The correctness of the Office's procedure is still more noticeably declared in the decision of the same court No. 2A 6/97 related to a different part of sectoral regulation. In an action filed by an **energy company** against the Office's decision in the matter of abuse of a dominant position the **company challenged the impact of the Act's legal force on distributors of electric energy and stated** that in their case the competition was replaced by the regulatory regime. **The High Court turned down this argument** and in the judgement stated that **the fact that a competitor was subject to the supervision of a regulator did not deprive the Office of its duty**

to protect the competitive environment from such activities of monopoly undertaking, which are incorrect according to the Act on the Protection of Competition.

With regard to the importance of the field of telecommunications, the Chairman of the Office for Protection of Competition initiated the

signing of the Memorandum on Co-Operation between the Office and the Czech Telecommunications Office (ČTÚ) in 2001. Bearing in mind that in 2003 preparations for the adoption of a new act on electronic telecommunications culminated, the Office initiated the introduction of a new form of mutual co-operation in the shape of regular monthly meetings of telecommunications experts.

In January 2002, ČTÚ issued a price decision fixing maximum prices and other conditions in regulated price programmes of the undertaking ČESKÝ TELECOM, a.s., namely HOME MINI, HOME STANDARD and BUSINESS STANDARD. In respect of competition, these price programmes contain an inadmissible linkage between credits for calling and the monthly lump sum for fixed line usage. Customers of ČESKÝ TELECOM are, on the basis of this commitment, bound by the company's services at least up to drawing all the call credits in the regulated price programmes and they are not motivated to use the services of other telecommunications operators. Due to the significant impacts of the regulation, the Office, within the framework of its competition advocacy, repeatedly drew ČTÚ´s attention to the negative impacts of the price programmes on competition, however, a decision resolving the situation has not been issued and a barrier impeding the development of competition in this field still continues to exist.

The Office also co-operates with the Energy Regulation Authority (ERÚ) in the areas of electricity, gas and heat generation industry including consultations related to administrative proceedings. The Office co-operated with ERÚ during the preparation of some decrees, where the Office promoted principles of competition. In the course of 2003 the Office addressed ERÚ in writing in five cases, namely when complaints received by the Office pointed to such practice whose assessment belongs to the authority of ERÚ. The complaints referred to the procedures of competitors in energy industries in connection with pricing for energy deliveries.

7 LEGAL ACTIONS FILED AGAINST DECISIONS OF THE OFFICE

Legal actions filed in 2002 that were not ruled upon by the High Court in Olomouc by 1 January 2003 were, as of the day of entry into force of Act No. 150/202 Coll., Administrative Court Proceedings Code, taken over by the Supreme Administrative Court. Legal actions filed after 1 January 2003 fall into the jurisdiction of the Regional Court in Brno.

COMPETITION

Number of legal actions filed in 2002	11
Number of court judgements on these legal actions	2
Number of legal actions filed in 2003	**8**
Number of court judgements on these legal actions	**0**

In April 2004, the Supreme Administrative Court in Brno **dismissed** a legal action filed by the company **Karlovarské minerální vody, a.s.** against the decision of the Office for the Protection of Competition of 6 March 2002 that disapproves the concentration of the companies Karlovarské minerální vody, a.s. and Poděbradka, a.s. and thus **confirmed the correctness of the decision of the Office.** The judgement among others states that *... the rules governing the decision-making of the Office may be based on various concepts, out of which the closest one to our view of the market is the theory of efficient competition and of freedom of competition. ...The approach of the Office was consistent not only with the national legal provisions but also with the European legal environment. ...The defendant collected sufficient evidence in order to be able, on their basis, to responsibly arrive at the conclusion considered by it the most appropriate as regards the protection of a competitive environment. ...The Office defined*

correctly the relevant market in all its segments. ...Extensive justification of the decision issued by the defendant can hardly be considered impossible to review with regard to its reasons.

PUBLIC PROCUREMENT

Number of legal actions filed in 2002	9
Number of court judgements on these legal actions	7
Number of legal actions filed in 2003	**2**
Number of court judgements on these legal actions	**0**

8 INTERNATIONAL CO-OPERATION

THE EUROPEAN UNION

The conclusion of the negotiation process (negotiations on the Czech Republic's accession to the European Union) has brought about a change in the relationship between the Office and the European Union. As an important manifestation of this the representatives of the Office were able to participate in the discussions of all the working groups within the European Commission and the Council structure even **in the period between the signing of the Accession Treaty and the very accession to the EU.** In connection with the Czech Republic's accession to the EU and with the adoption of Council Regulation 1/2003 on the implementation of the rules on competition laid down in Articles 81 and 82 of the Treaty and Council Regulation 139/2004 on the control of concentrations between undertakings, the co-operation between the Office and competition authorities in the Member States assumes an increasing importance. The new Community legislation creates, within the framework of modernization of competition rules, the so-called European Competition Network (hereinafter "ECN"). It should serve as a body for the effective and consistent application of the Community competition rules.

In 2003, the most important questions related to the operation of the ECN and other topical issues of competition policy were discussed at two meetings of the EU Member States, Candidate Countries and EFTA **national competition offices top representatives including the Chairman of the Office**. For the June meeting, the Office prepared, apart from others, a contribution summarising the current state of the implementation of Council Regulation No. 1/2003 in the Czech Republic and a standpoint on the operation of the Advisory Committee for Concentrations. The November top representatives meeting was held jointly with the representatives of national authorities responsible for consumer protection. The Office, in this context, elaborated a contribution describing interactions and synergies between competitionpolicy and consumer protection policy and, furthermore, a contribution dealing with the topic of liberal professions and competition. In the course of 2003, **six ECN plenary meetings** were held, concentrating on practical questions of competition authorities' co-operation within the Network and on the proposals for new legislation related to Council Regulation No. 1/2003. In addition to these meetings, the Office's experts participated actively in the activities of the ECN sub-group for leniency programmes of which the Office is a member. Within the framework of the EU Council Working Party on Competition mainly the amended Council Regulation on the control of concentrations was discussed, and its final text was agreed on at the November meeting of the EU Competitiveness Council.

In summer 2003, the head of the Delegation and Ambassador of the European Commission in the Czech Republic, Mr. Ramiro Cibrian (on the right) concluded his mission in our country. His last visit to Brno in his diplomatic position led to the Office where he spoke appreciatively about the high quality co-operation with the Office and its Chairman.

In November 2003, the European Commission's Comprehensive Monitoring Report on the Czech Republic's preparations for membership was published. The Monitoring Report stated that the necessary implementation structure was available in the Czech Republic and also evaluated the Office's activities in a **positive** way. All the partial shortcomings mentioned in the Monitoring Report were either fully removed (for example through the adoption of the amendment to the Act on In-

vestment Incentives) or are being continuously dealt with. In the competition chapter, the Monitoring Report stated that the specialised training of judges in economic and competition issues was still not sufficient. To remove this shortcoming the Office sent a letter to top representatives of the judiciary offering them training in the abovementioned sense. Training for judges in the field of competition was arranged within the framework of the twinning project.

In 2003, the **twinning project in the area of competition,** consisting of an antitrust part and a state aid part, continued. The twinning project, which continues until the end of August 2004 and has an advisor for each of its parts, is financed by PHARE funds. In 2003, the implementation of the twinning project focused especially on strengthening the Office's readiness for the proper application of *acquis communautaire* in the field of competition after the Czech Republic's accession to the EU.

OECD, WTO

OECD Competition Committee and OECD Global Forum on Competition

In 2003 the representatives of the Office continued their active participation in meetings of the **OECD Competition Committee and** its **working groups**. Its February session dealt with, among others, merger control procedural rules and the relationship between competition and trade policy in connection with the World Trade Organisation (WTO) negotiations. For the May meeting of the Competition Committee the Office prepared the Annual Report on the Competition Policy Developments in the Czech Republic in 2002. For the same meeting the Office also prepared a contribution to the topic of concentrations of undertakings in the media sector, which was presented at the Competition Committee meeting in Paris by the Chairman of the Office. For the October meeting contributions were prepared for discussions in two round tables focused on merger remedies and on the issue of universal service obligations in the regulated sectors with respect to their gradual liberalisation. The agenda of this session contained also a joint meeting of the Competition Committee with the OECD Consumer Policy Committee, for which the Office, in co-operation with the Ministry of Industry and Trade, prepared a contribution summarising the mutual relationship of competition and consumer protection policy in the Czech Republic.

In February 2003, the delegation of the Office participated in the third meeting of the **OECD Global Forum on Competition joined with** the Competition Committee meeting. This forum is a platform for an exchange of experience from the competition law and policy area among a large range of national delegations from both OECD member countries and developing or transition countries. For this meeting the Office prepared a contribution to the discussion on the objectives of competition policy and the optimum position and structure of a competition authority.

WTO

In 2003 the Czech Republic signed the Treaty on the Accession to the EU, on the basis of which its representatives are able to participate in meetings of the relevant EU bodies in relation to preparations for the WTO meetings. The principal responsibility in relation to the WTO rests with the Ministry of Industry and Trade. The Office in this relation provides its standpoints concerning competition law and policy issues.

In line with the position of the European Union and its Member States, the Office supported efforts to create a WTO framework by negotiating a multilateral agreement on certain issues relating to the protection of competition. The adoption of such a framework would enable a better co-operation of competition authorities in promoting the most important principles of the protection of competition, and in particular protection against negative effects of the most serious anticompetitive practices, such as cartel agreements.

CO-OPERATION WITH FOREIGN COMPETITION AUTHORITIES

As a consequence of economic globalisation, an increasing number of competition problems extend beyond the borders of individual countries. The effective investigation of all these cases often requires intensive co-operation between competition authorities in various countries. For this reason, the Office considers close co-operation with competition authorities abroad to be one of its priorities and strives both to establish close bilateral relations and to co-operate actively with competition authorities abroad within the framework of multilateral initiatives – in the first place within the **International Competition Network (ICN)**. ICN associates competition authorities from more than seventy countries from all over the world. In June 2003, the second ICN annual conference was held in Mérida in Mexico, among its most important topics were a supplemented version of the ICN Recommended Practices for Merger Notification Procedures, which were used by the Office in the preparations of the amendment to the Act on the Protection of Competition.

In order to further enhance the co-operation in competition law enforcement between the competition authorities of the Czech Republic, Slovakia, Hungary, Poland and Slovenia, the **Central European Competition Initiative** (**CECI**, also known as **La Gare initiative**) was established on 1 April 2003. In June a representative of the Office participated in the first thematic seminar organised by the CECI that focused on the exchange of experience on the relationships between competition, professional associations and self-regulation. The Office presented a case concerning fixing the price charged for the analysis of X-ray photographs by the veterinary chamber was presented at this seminar. Another of the Office's cases was also discussed, relating to the establishment of an obligation for veterinary surgeons not to accept a customer that is a debtor to another veterinary surgeon. This case led to a very lively discussion at the CECI meeting, its conclusion was that such practice indeed constitutes a distortion of competition. Therefore, the correctness of the Office's decision was confirmed by this conclusion.

In August 2003, the Chairman of the Office, Mr. Josef Bednář, met with the Japanese competition commissioner, Ms. Aiko Shibata. It was the first visit of a representative of the Japanese antimonopoly authorities at the Office.

An important form of the Office's international co-operation in 2003 was **informal co-operation with experts from foreign competition authorities during investigations of particular cases of distortions of competition**. The aim was to ensure maximum efficiency of the monitoring of competitiveness on individual markets, in particular with regard to the identification of indications of cartel agreements.

9 COMMUNICATION ACTIVITIES OF THE OFFICE

In order to ensure as extensive transparency and communication of the Office with the public and media as possible **the Department of Press and Information was established**. The staff of the Department answers each month hundreds of questions related to the activities of the Office. On the basis of Act No. 106/1999 Coll., **on Freedom of Access to Information**, the Office received more than 150 queries in 2003. The implementation of an **electronic registry (posta@compet.cz)** contributed to about a 30% rise in the number of these queries in comparison with the previous year. More than half of the queries related to the antitrust area.

Both the media and the public are often referred to the Office's **web site (www.compet.cz)**, where final decisions, expert articles, answers to frequently asked questions, Information Bulletins, press releases, recent news etc are available. This Internet site is being updated on a **daily** basis and was **substantially reconstructed** in 2003. The benefits it brought include its **better readability** and a **substantial increase in published information** including articles, the Chairman's speeches and interviews published in media.

Information from the Department of Press and Information is intended for a wide range of recipients. The Department co-operates, among others, with both national and foreign **expert legal and economic journals**. The general public is informed about the activities of the Office in daily newspapers. In 2003, an increase in the attention of foreign media was recorded. An extensive interview with the Chairman of the Office, Mr. Josef Bednář, was for example, published in the Austrian daily newspaper Die Presse.

In particular the expert public and journalists are the target audience of the **Information Bulletins**, which in 2003 focused, among others, on the following topics: public procurement, distribution and servicing of motor vehicles, the issue of so-called bid rigging, legislative changes, competition and professional associations.

The public is increasingly more interested in the activities of the Office. This fact is demonstrated by an almost 10% **increase** in the number of press articles on and references to the activities of the Office as compared with the previous year. The weekly average in 2003 amounted to more than 70 articles about the activities of the Office published in the monitored media, constituting more than 3, 500 articles per year. National and foreign monitored media published dozens of the Chairman's articles, interviews and opinions. The Office organises press briefings in connection with its important cases where the journalists are also provided with relevant press releases.

The Office also administers a **Cartel Register** recording data on agreements in relation to which the Office granted, extended or revoked an exemption from their prohibition and on agreements in relation to which the Office issued a negative clearance decision. The Cartel Register is publicly accessible and available in electronic form on the web site www.compet.cz.

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