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INTRODUCTION

The Office for the Protection of Competition (hereinafter referred to as "the Office") entered a completely new phase of its history in 2005. Not only significantly restructured and personnel changes were implemented; it is predominantly the new philosophy of the assessment of issues in the competence of the Office that matters most. The review of cases of breach of the Act on Public Procurement is remarkably different; now, we assess the individual cases in a complex manner and we refrain from legal purism where allowed by the law. If it is necessary to impose a penalty to the contracting authority, we mainly stress that the sanction is directed to concrete offenders, and thus the amount of the sanction may be adapted accordingly.

The biggest change in the Office is the new approach to the problem of competition. It is not the priority to impose high penalties, but to solve problems preventively, at the very beginning, through the so called competition advocacy, before damage is caused to the competition environment.

In short, the new philosophy of the Office is characterized by the following motto: Prevention is more effective than repression. This will be our principle also in the year 2006, when we celebrate fifteen years of the existence of competition law in the Czech Republic.

Martin Pecina
Chairman of the Office for the Protection of Competition


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COMPETITION

Competition among business entities is the basic mechanism of market economy. It has a large significance mainly for consumers, because strong competition enables them to choose from a wide range of goods for competitive, and thus lower prices. Competition is a simple, but a very effective guarantee of the optimal state from the viewpoint of quality and price of goods and services. It is effective mainly when the market is composed of independent companies, which are subject to competition pressure. In order that the ability of suppliers to exert such pressure is ensured, the Act on the Protection of Competition defines practices that are capable of restricting competition and with which the Office can intervene. These are prohibited agreements (cartels) and abuse of the dominant or monopoly position. The competition may also be infringed by concentrations of companies, and that is why an antimonopoly institution must first express its opinion of large concentrations.

/ LEGISLATIVE ACTIVITY

In the area of competition, the fourth amendment of the Act on the Protection of Competition (Act No. 361/2005 Coll.) became effective on 1 October 2005. The executing notice to this Act, regulating requisites of the proposal to approve concentration of competitors, was also amended. The fourth amendment responds to the adoption of the Council Regulation (EC) No. 139/2004 on the Control of Concentrations between Undertakings. The regulation specifies conditions of cooperation between competition authorities in the EU member states and the European Commission, including duties which the Czech Republic is obliged to fulfill in order to ensure the effectiveness of such cooperation. The regulation also determines conditions under which the Commission may hand over a certain concentration for review to a national competition authority, and conditions under which a national competition authority may ask the Commission to review a certain concentration. The fourth amendment among others brought a significant change of economic criteria for the determination of the impact of a concentration to the competition. This is an explicit change of the criterion according to which a concentration in question is or is not permitted, whereas the change consists in amending the existing test of domination with a new system, so called SLC Test (Substantial Lessening of Competition). Thanks to this change it is now possible to prohibit a concentration capable of causing negative impact on the competition regardless of the fact whether the impact occurred due to the origination or strengthening of the dominant position of merging competitors. Besides concentrations of competitors, the amendment deals with prohibited agreements. The amendment cancelled

the system of block exemptions published in the Office's decrees and replaced them with a general reference to the European Community block exemptions which in essence have the identical meaning.

The Act on the Protection of Competition was amended in 2005 with Act No. 127/2005 Coll. on Electronic Communication that brought changes also to the Competition Act. This amendment was adopted even despite the clearly declared statement of the Office that the Czech legal regulation of the competition law will contravene the Community law, with which it should be in full accordance.

/ COMPETITION ADVOCACY

The activity of the antimonopoly office is not limited to decision-making on the basis of the Act on the Protection of Competition. A feature leading to the support of the existence of effective competition called competition advocacy is of ever growing importance. This is a summary of all activities aimed at the support of the origination and development of competitive environment, including enhancing general knowledge of the public about the benefits of competition. Consistent advocacy of competition principles contributes to the development of individual industries. The Office makes regular analyses of crucial markets, comments on bills, publishes its opinions and issues decisions. The aims of this activity are to contribute to the improvement of situation in the markets in question, elimination of barriers and assisting competitiveness also outside the administrative procedure. On the basis of active competition advocacy of the Office, the Czech News Agency decided to cancel in its contracts the anticompetitive provision on minimal prices for further sale of its rights in the electronic form. In this way, a detrimental situation was eliminated without the need for administrative procedure.

Within the framework of competition advocacy the Office cooperates with the Czech Consumers Defense Association and sector regulators. An important transition was achieved on the telecommunication market, when by the price decision of the Czech Telecommunication Office (CTO) No. 01/2005 the anticompetitive structure of directly regulated price plans of ČESKÝ TELECOM, a.s. was removed, which had been repeatedly opposed by the Office during dealings with the CTO. Price plans HOME MINI, HOME STANDARD and BUSINESS STANDARD as they were determined by the price decision of CTO No. 01/2002, contained from the viewpoint of competition an inadmissible relation of call credits to the regular monthly flat rate which must be paid by customers to ČESKÝ TELECOM, a.s. for the use of the telephone station.

Another form of competition advocacy is educational activity, for instance the publishing of methodology handbooks. Last year the Office published material Agricultural Policy vs. Act on the Protection of Competition. These instructions should assist producers starting their activities to distinguish whether their activity is or is not in contradiction with competition rules.

In 2005, the Office in the so-called interdepartmental procedure dealt with 595 bills, delegated legislation and materials of non-legislative nature. Altogether 83 comments were applied to these materials, out of which 60 were of recommending nature and 23 were considered particularly important by the Office for its operation. It is necessary to state that competitive environment may also be distorted on the basis of decisions by ministries, administrative bodies and municipalities. However such conduct may not be sanctioned by the Office as the Act on the Protection of Competition does not contain such authorization.

Electrical waste

In September 2005, a new legal regulation in the area of electrical waste disposal was adopted. For a relatively short period of the existence of the decree, the Office received a number of suggestions from producers or suppliers of electrical equipment and other persons otherwise affected by the decree, who expressed their dissatisfaction with its wording. The Office concluded that the adopted legal regulation could lead to the distortion of competition. Even though the Waste Act does not suggest anything in this sense, the decree states that for each group of electrical equipment the joint fulfillment of financing historical electrical equipment disposal is ensured only by one collective system. Producers of electrical equipment are thus deprived of the possibility to agree on the conditions of the system functioning and instead are forced to accept conditions dictated to them by the administrator of the collective system chosen by the relevant ministry. At the same time it is possible to expect, and experiences from abroad support it, that due to the absence of competition on this market, the competitors are forced to bear higher costs related to the liquidation of electrical waste, than it would have been on the competitive market.

Hlubočky municipality

The Office investigated the instigation concerning a lease contract that was concluded by the complainant with the municipality of Hlubočky. According to the amendment to the contract, he was obliged to sell beer of the same grade and amount for the price at least one crown higher than the tenant in the neighboring restaurant in the Cultural Center, which was also rented out by the municipality. The case was solved within the framework of competition advocacy and the Office informed both parties that it may be a prohibited and invalid agreement and called the municipality of Hlubočky to redress. After the anti-competition clause was omitted from the amendment, the investigation was terminated.

/ PROHIBITED AGREEMENTS

The best-known example of such agreements are agreements on the direct price fixing. In such cases, the consumer does not have the possibility to purchase for competitive prices. This usually leads to the increase of prices that would have been lower under the normally functioning competition. Agreements on the division of market are none the less serious. Companies do not compete naturally, the market does not develop and it stagnates. New competitors have problems with establishing themselves on the market. Cartel agreements are concluded between competitors with the aim to restrict competition, divide and gain control over the market. Such agreements should ensure them a regular profit without the risk of a new competitor emerging on the market, who could threaten them by own activity and a better offer of services. Cartel agreements may be very sophisticated and it is rare that the Office employees manage to obtain documents on their conclusion with signatures of all participants.

Building and loan associations

In December 2005, the Office issued a new decision of the first instance in the administrative procedure conducted with six building and loan associations (Hypo, Wüstenrot, Modrá pyramida, Stavební spořitelna České spořitelny, Raiffeisen

and Českomoravská stavební spořitelna). The Office imposed a penalty on these companies in the total amount of CZK 201 million, because it had found out that the companies in question at the meeting of the Working Union of Building and Loan Associations agreed on the contents and structure of statistical surveys which they passed on to each other. Such behavior shows signs of a prohibited agreement on the exchange of information whose fulfillment resulted in the distortion of competition. The Office by its decision abated the procedure in the case of possible breach of the law by the conclusion and fulfillment of agreement or by the behavior in mutual agreement at setting fees for services provided to clients in connection with building savings. Also the procedure in the case of possible abuse of dominant position by charging inclusive interest rates and applying different conditions towards clients at setting fees connected with keeping building savings accounts was abated. The Office did not prove that the participants to the procedure by their behavior accomplished res gestae of distortion of competition. For this reason the original penalty of CZK 484 million in the decision of the first instance in August 2004 was lowered. The decision is not effective; the participants filed an appeal.

Banks

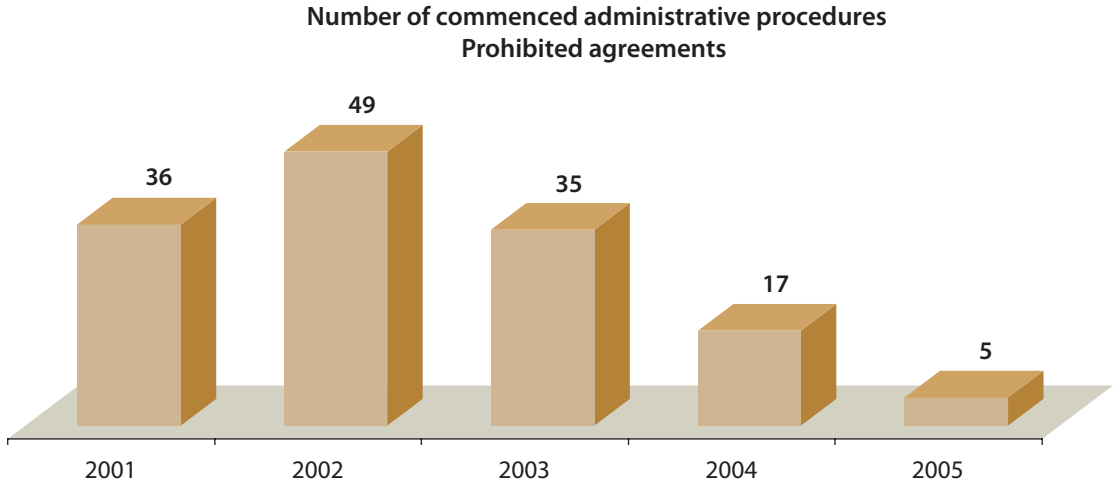
In November 2005, the Office stopped the administrative procedure with three largest banks operating in the Czech Republic. These were Komerční banka, Československá obchodní banka and Česká spořitelna. The administrative procedure was preceded by an investigation concerning the increase of charges for services related to keeping current account provided by banks in the Czech Republic and introducing a charge for canceling a current account. From 2003 till the end of April 2005, the Office received a number of complaints from citizens concerning the amount of prices for banking services and also complaints from the Consumers Defense Association concerning the charge for canceling a current account, which prevents consumers from changing banks. The citizens' complaints were focused not only on the inadequate rise of charges, but also on the insufficient competition between the largest banks and a possible abuse of the dominant position of these subjects. Within the framework of the administrative procedure that commenced on 12 May 2005, it was proved that there have been numerous contacts between the participants to the procedure. However, it was not proved that such contacts were means for the coordination of actions.

Tupperware

The Office concluded that the company Tupperware Czech Republic entered into prohibited agreements with distributors of its goods. These agreements concerned price fixing for further sale and preventing repeated sale and distribution of goods, including preventing export of goods abroad. With view to the fact that such conduct was able to influence trade between member states, the company not only breached the law, but also rules of the European Community. The Office declared this fact in the decision in which it also imposed a penalty of CZK 2,300,000. The company filed an appeal against this decision.

Bakeries' cartel

In May 2005, the Chairman of the Office approved the first instance decision in the matter, in which it was stated that DELTA PEKÁRNY, ODKOLEK and PENAM companies breached the Act on the Protection of Competition by concerted practicies at fixing sales prices of bakery products in the autumn 2003. In the administrative procedure it was proved that all the participants to the procedure had sent their crucial customers amongst chain stores a suggestion to increase



prices of bakery products on the same day, i.e. 26 September 2003, or in a short period after this date. The suggestion for the increase of prices and subsequent behavior of participants to the procedure showed similarities in contents, including timing and the use of coercion in the form of the cessation of supplies. DELTA PEKÁRNY, ODKOLEK and PENAM companies exchanged information to each other on the date of sending the first suggestion for the change of prices to individual customers. During subsequent negotiations with these customers they were in touch and kept each other informed of their progress. It was proved that information on the chosen policy was mutually shared concerning negotiations about the rise of prices of bakery products with the company Ahold, so that the bakeries could reach the increase of prices with this company. In the part defining the imposed penalties the decision of the administrative body of the first instance was canceled and the matter was returned to the new hearing. Subsequently, the penalty was reduced by about a half resulting in the total amount of CZK 66 million. It has not yet been decided on appeals against the new first instance decision on the imposition of penalties.

/ ABUSE OF DOMINANT POSITION

In the Czech Republic as well as in other countries there are markets, on which companies with dominant or monopoly position operate. These are mainly network industries. It is not cost-effective if two parallel networks exist, supplying electric power, gas or heat into a house. Companies with a dominant or even monopoly position have such a market power which enables them to behave to significant extent independently of other suppliers, consumers or other undertakings. However, these companies may not abuse their dominant position.

ČESKÝ TELECOM

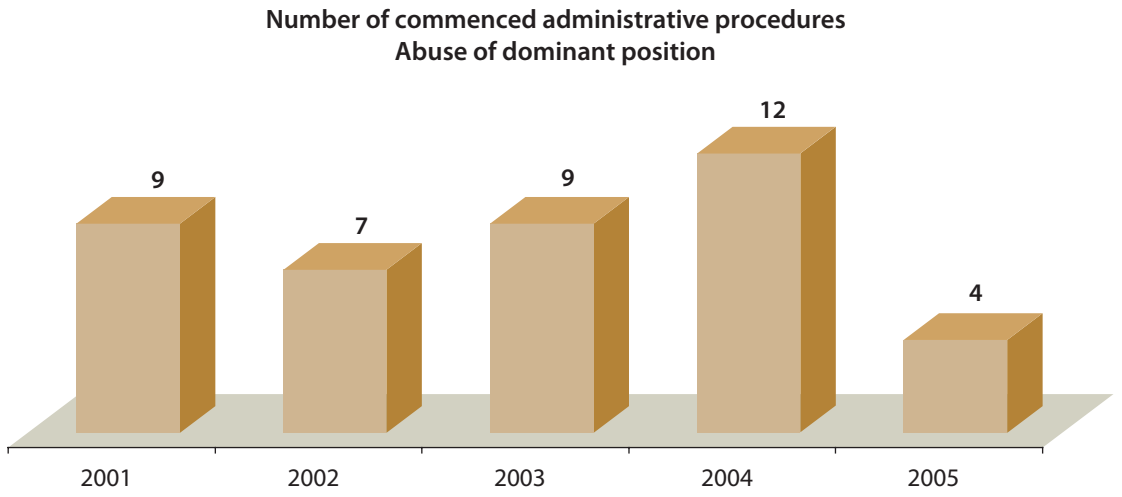
In November 2005, the Chairman of the Office Mr. Martin Pecina, imposed a penalty of CZK 205 million on ČESKÝ TELECOM for the breach of Article 82 of the Treaty Establishing the European Community. This provision prohibits the abuse of the dominant position provided it may affect the trade between member states. Since 2002, ČESKÝ TELECOM had offered price plans intended for households and small entrepreneurs, which contained call credits or free minutes as a part of a monthly lump. By tying together services, ČESKÝ TELECOM prevented the development of competition, progress of existing alternating operators and as a consequence it limited the possibilities of consumers to obtain better services for competitive prices. The breach of competition rules concerned a larger number of price plans. The abuse of the dominant position of the ČESKÝ TELECOM consisted in tying services together, i.e. the monthly lump offered on markets where it has a substantially dominant position and services offered on markets where competitive environment continually develops. ČESKÝ TELECOM thus ensured a fixed minimal part of income from call charges and access to the internet for itself in advance, regardless of the fact whether the customers with the price plans in question really used the services of the participant to the procedure. An important fact is that customers by purchasing a price plan containing a call credit or free minutes obtained certain calls "for free", whereas these price plans were more advantageous for them. In case a customer telephoned less than the call credit or free minutes were, he or she had to pay the full monthly flat rate nonetheless, and the amount of payment did not reflect the fact that the call credit (free minutes) had not been fully used. The structure of the price plans in question did not enable to divide the payment into call charge and lease of the telephone line. Customers were for this reason less willing to call through other operators, because they did not want to lose something they obtained "for free" as part of the monthly flat rate. By this conduct, competition in telecommunication services was restricted. The competition in this market would have been more developed if it had not been for the anticompetitive tying of services.

ČSAD Liberec

The Office concluded that the company ČSAD Liberec abused its dominant position on the market with services provided by a local bus station. For several months was refusing to provide the local bus station to the company STUDENT AGENCY. Both companies were competitors in the area of operating passenger bus lines. A penalty of CZK 2,500,000 was imposed to ČSAD Liberec. The decision was appealed and the appeal was not decided yet.

TV NOVA

The Office, on the basis of a newspaper article, opened an ex officio investigation concerning contracts concluded between MAG MEDIA and commissioners of commercials on TV NOVA containing provisions which are capable to distort competition, due to the fact that they bind the commissioners to place all the guaranteed volume of commercials for the whole period of the contract validity on TV NOVA. According to the findings by the Office the commissioners are also motivated to increase the guaranteed volume of commercials compared with the preceding period and they are sanctioned by a contractual penalty for not keeping the agreed volume. Also the system of the exercise of conditions is not transparent, as different conditions are exercised to respective commissioners in case of a comparable volume of commercials. After the Office explained anticompetitive impacts of these provisions at the meeting with representatives of CET 21, this company, as the owner of TV NOVA, promised to remove the anti-competitive provisions from the contracts and to submit the Office with the new wording of the contracts.



RWE Transgas

Even though liberalization of the market with gas is in progress, there are still barriers preventing competition. Since 1 January 2005 the so called eligible customers (34 largest companies) have a theoretical possibility to choose their supplier, however these companies are in fact dependent on one company, the dominant producer RWE Transgas. In the second half of 2005, the Office began to deal with the conduct of this company and subsequently commenced the administrative procedure in this matter. Within the framework of this procedure, the participant was notified about the reservations of the Office concerning: 1. Determining different conditions of gas supplies to companies belonging to RWE holding and companies not belonging to the RWE group. By this process, the companies not belonging to RWE group were disadvantaged. 2. According to the Office´s opinion, the RWE Transgas by its contracts with distributors restricts the possibility to sell gas outside the territory which the distributors service, and thus effectively prevents competition. 3. The last reservation concerns not using correction, ensuing from the effect of storing cheap natural gas in underground tanks in 2004, in the price of gas for entitled customers. Another reservation is that RWE Transgas charged amount for the storage of gas for entitled customers, which was set by the Energy Regulatory Office as the maximum amount for the category of protected customers, even if in individual cases the costs were significantly lower. The administrative procedure in this matter has not been terminated yet.

/ MERGERS

The review of concentration of competitors is the third pillar of the protection of competition. Mergers of companies are a common feature in the competition. Bigger players buy smaller ones with the aim to gain a more influential position on the market. That is why antimonopoly offices review only the largest concentrations on the respective markets.

Where it is possible that the distortion of competition may occur as a result of an intended merger, obligations on part of merging companies are adopted. Only then the merger is permitted. It is quite unique that a merger is prohibited. This happens in cases when it leads to a substantial distortion of competition.

Bakers

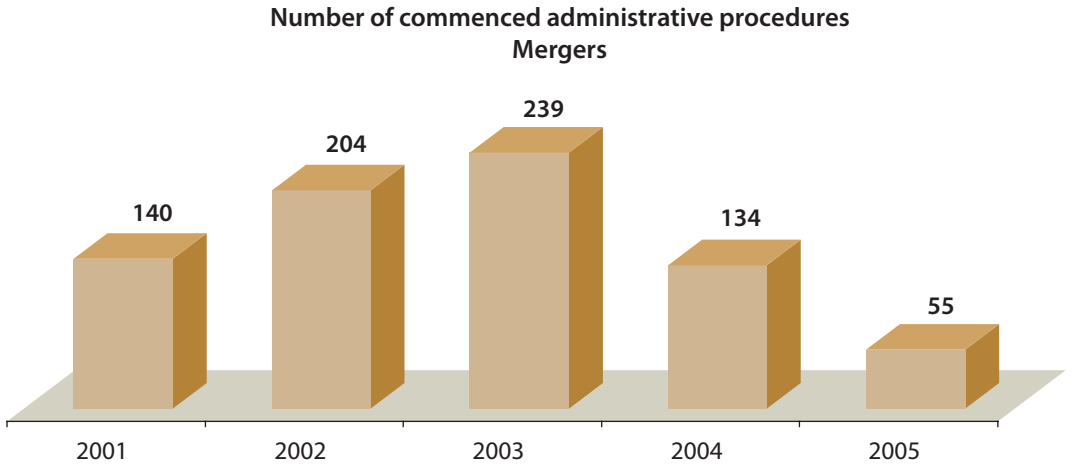
During 2005, the Office conducted two administrative procedures concerning the merger of two largest companies in the area of bakery industry, the companies ODKOLEK and DELTA PEKÁRNY. In February 2005, this merger was not allowed due to the possible distortion of competition. At the end of 2005, the Office obtained a proposal to the permission of the concentration in a modified form. Subsequently, the merger was approved unconditionally. In the renewed procedure the Office in the first place investigated whether and to what extent the relevant markets have changed. An important change was mainly the fact that none of the merging competitors operates on the markets with mill products. In the period before the commencement of the new administrative procedure, the property share in UNIMILLS was transferred to Erste Wiener Walzmühle. The subject established by the concentration will not be independent, unlike its competitors, as to the access to raw materials and it will have to get these materials by deliveries. Another fact is that the merging competitors are not the only ones who are able to supply customers, mainly chain stores, within the territory of the Czech Republic. It is without doubt that the subject established by the merger will gain the leading position in the Czech Republic. However, it will have to deal with competition on part of the other bakery producers whose market shares do not show a considerable distance. Moreover, its market force will be balanced by the growing market and bargaining force of chain stores which increase their proportion of bakery production.

ÚAMK/ABA

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

Ahold/JULIUS MEINL

The concentration in question consisted in the acquisition of part of the enterprise of JULIUS MEINL, representing a retail network of 67 stores (supermarkets) of this company in the territory of the Czech Republic. Activities of both the merging competitors overlapped in the area of retail sale of grocery goods and supplementary range of products of daily consumption to the final consumers through the retail network of supermarkets and hypermarkets. For the purpose of this decision the Office defined the relevant market from the material viewpoint as the market of retail sale of daily consumption goods and from the geographic viewpoint as the territory of the Czech Republic. The Office issued the deci-



sion clearing the concentration in question. In 2005, another important merger occurred on the same market, when the company Tesco acquired Carrefour stores. This concentration had a Community dimension and the case was reviewed by the European Commission.

/ APPEALS AND JUDICIAL REVIEW

The Appeal Committee is an advisory body of the Chairman for the issues of the decisions of the second instance. In 2005 it increased its efficiency when in regular sessions it dealt with 52 appeals, 3 proposals for review outside the appeal procedure and 2 proposals to reopen the case. On the basis of organizational measures taken by the Chairman in the autumn 2005, the number of the members from the area of experts, academics and private sector increased significantly. At present, the Committee has 16 members (as of 15 March 2006).

The success of the decision-making practice of the Office is usually measured by the results of the subsequent judicial review. The Regional Court in Brno and the Supreme Administrative Court issued altogether 16 judgments concerning the decision-making activity of the Office. In nine cases, the filed action was turned down, dismissed or withdrawn. In case of Český Mobil, which was imposed a penalty of CZK 6.5 million for price fixing of credit vouchers Oskarta, the decision of the Office was altered and the penalty was reduced to CZK 3 million. In six cases the plaintiffs succeeded entirely and the decisions of the Office were cancelled. However, five of six of these cases concerned same competition dispute, when in case of the so called interconnection fees between mobile phone operators according to the Regional Court in Brno it was the Czech Telecommunication Office that had the exclusive right to decide, and not the Office. The Office does not agree with these judgments and it filed a cassation complaint to the Supreme Administrative Court. The Office proceeded in a similar way in case of cancellation of a penalty to the company Česká rafinérská.

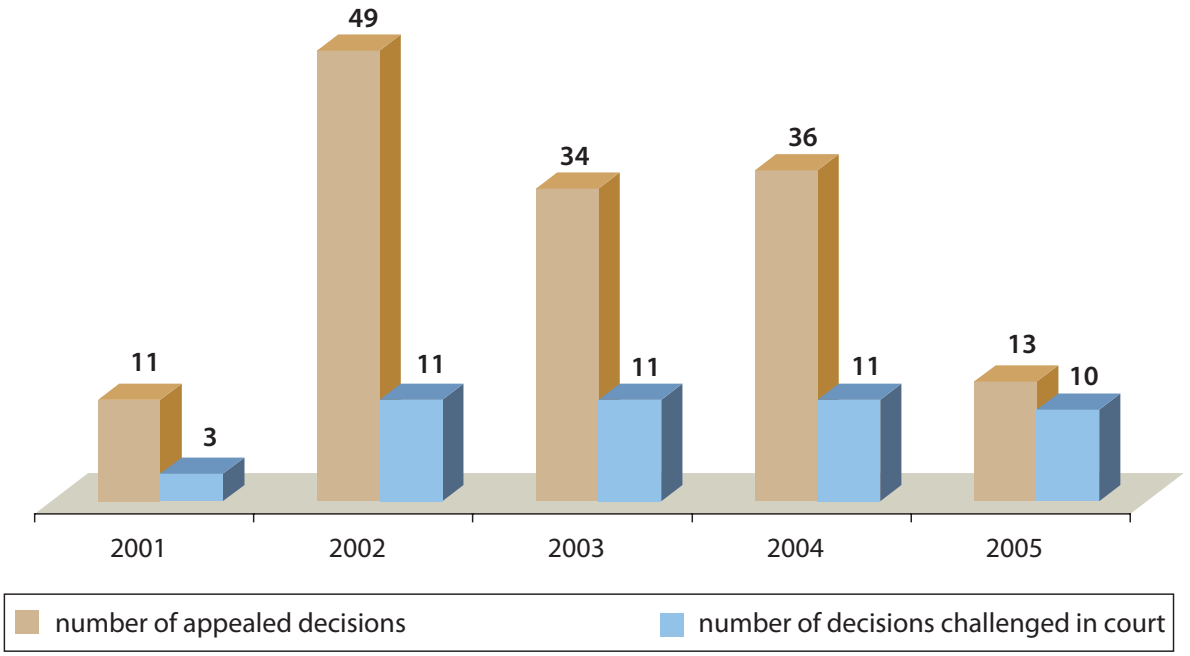
STATISTICS

Average length of administrative procedures commenced in relevant years (in days)

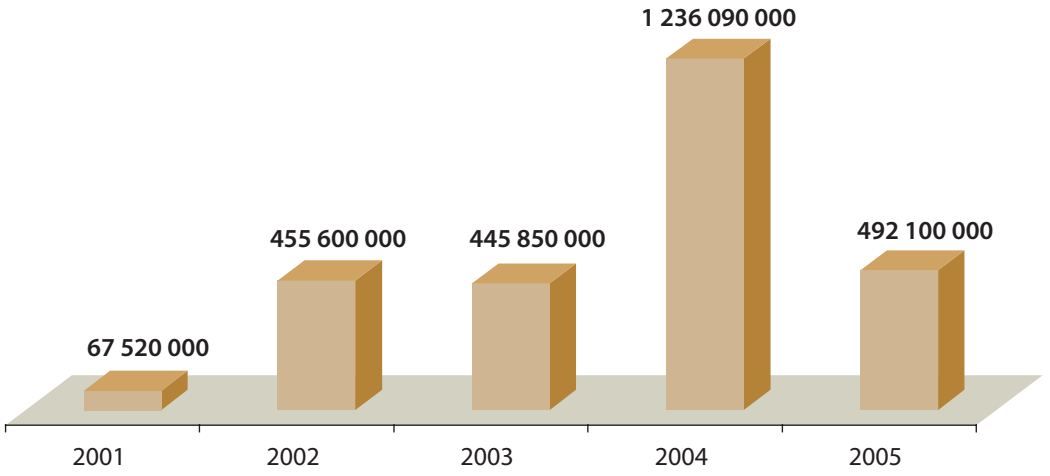
Year	Antitrust (abuse of dominant position, prohibited agreements)	Mergers	Second instance
2001	88	30	261
2002	52	37	228
2003	90	34	260
2004	83	35	397*
2005	120	30	243*

** only the already terminated procedures are included, in case of second instance procedures there are only 3 in 2005*

Situation as of 20 February 2006



Total amount of non-enforceable penalties imposed by the Office



In 2002–2004 including the penalty of CZK 313 million for distributors of fuels

On the contrary, there are important cases in which the Office succeeded at judicial review, e.g. unsuccessful actions of companies involved in the cartel of breeders, the case of Czech Medical Chamber or the Chamber of Veterinary Surgeons.

In 2005 effective penalties were paid in the total amount of CZK 56.4 million and administrative charges in the amount of CZK 5.3 million (approval of concentrations of competitors).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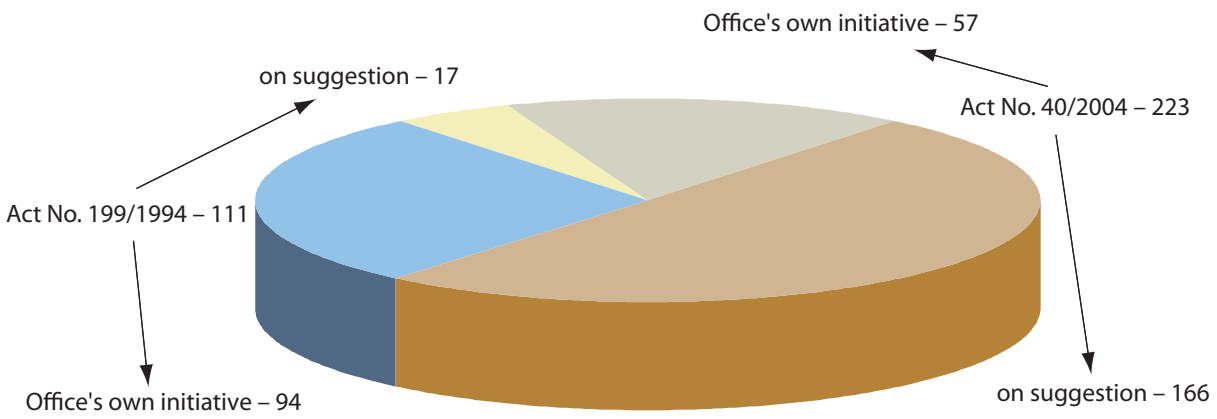
PUBLIC PROCUREMENT

The aim of supervision over public procurement that has been performed by the Office since 1995 is to ensure the effectiveness of using public funds while respecting rules of competition. Public procurement is a highly observed area, because a large amount of public funds is spent here. The aim of the Office is to attain such practice that would ensure free competition between tenderers and at the same time selection of the most suitable bid transparently without any discrimination against candidates. The final aim is the economy of public funds. Contracting authorities should approach tenders in a responsible manner and the cases when the Act on Public Procurement is obviously evaded should be eliminated. These are mainly situations when a contracting authority, deliberately or negligently, awards a public contract in the volume of several million crowns without a tender to a company, without using the benefit of a competitive environment and competitive bids. Basic features of a tender which the contracting authority is obliged to ensure, are transparency of the selection procedure and equality and nondiscrimination against individual tenderers. In case the Office finds out breach of the law before the conclusion of the contract, it may choose the so called remedial measures, that is to return any of the unjustly excluded candidates into the competition or cancel the whole awarding of the public contract. If the contract has been already implemented when the Office obtains evidence of the breach of the law, it may not impose corrective measures; it may impose only penalties.

Commenced procedures in 2005



Situation as of 13 February 2006

LEGISLATIVE ACTIVITY

Even though the Act No. 40/2004 Coll. on Public Procurement has been valid since the accession of the Czech Republic to the European Union (since 1 May 2004), in 2005 a considerable number of administrative procedures was conducted according to the original Act on Public Procurement No. 199/2004. This is almost a third of the total number of commenced administrative procedures.

NUMBER OF ADMINISTRATIVE PROCEEDINGS CONDUCTED IN 2005

No. of received submissions (suggestions+initiatives)	539 (183+356)
Commenced admin. procedures in total	334
Commenced admin. procedures on suggestion	183
Commenced admin. procedures ex officio	151
No. of admin. procedures not terminated	2
Issued decisions of first instance (procedures commenced in 2005)	332
from that Issued decisions of this matter	228
from that Terminated procedures + turned down for procedural reasons	104

No. of imposed fines	64
No. of effective penalties in 2005	CZK 2.349.000
No. of penalties payable in 2005 acc. to extract of Czech National Bank	CZK 2.569.000

Amount of admin. charges payable in 2005	CZK 3.038.000
Amount of bails given in 2005	CZK 34.376.484
Amount of bails forfeited to the state budget in 2005	CZK 4.708.940

Situation as of 8 February 2006

A certain drawback affecting individual contracting authorities is the fact that the legislature valid in the Czech Republic is often amended. The parliament has already begun to debate further legislative changes connected with new directives of the European Communities governing awarding public procurement.

The new act with the effectiveness from 1 July 2006 does not change the nature of the existing legal regulations. The effort to maintain the contents, structure as well as terminology of the two-year-old act is apparent. Basic novelties include public contracts extent, larger flexibility and new procedures: competitive dialogue, simplified below-the-limit procedure, central awarding, general agreements for all contracting authorities, establishment of assessment committees, and possibility of a fully electronic procedure.

New basic institutions include for instance a dynamic purchase system, electronic auction, general agreement and central contracting authority. Dynamic purchase system is a fully electronic system for the registration of regular public procurement, which is limited in time and open to all tenderers who fulfill entry requirements for the whole period of duration. Electronic auction is an electronic system of the assessment of offers, which enables submitting new offers and

updating the order of their listing on the basis of automatic methods of assessment. The institution of a general agreement enables to conclude an agreement regulating conditions of individual partial fulfillments with one or more procurers for a limited period. And finally there is an institution of the central contracting authority that is a subject awarding public contracts on account of other contracting authorities or it directly gets procurements, services or construction work for them.

/ DECISION-MAKING AND INSPECTION ACTIVITY

More than a half of the 334 administrative procedures commenced in 2005 were started on the basis of the proposal to review the decision of a contracting authority, filed by one of the unsuccessful candidate for a public contract.

As in past years, the Office commenced several administrative procedures based on the results of its inspection activity. The largest inspection in 2005 was implemented in the Czech Association of Physical Training (CAPT). This was continuation of preceding inspections concerning reconstruction of sports centers at Sports Clubs in Zlín and Uherské Hradiště. In case of Czech Association of Physical Training such contracts were chosen for inspection, which received subsidies in the minimal amount of CZK 10 million. These were contracts from 2002–2004 in the total volume of CZK 700 million. In the course of the inspection, 17 contracts were reviewed altogether and 12 administrative procedures were commenced. Penalties in the total amount of CZK 274,000 were imposed. The CAPT breached the law in most cases by transferring decision-making powers to individual sports clubs, although such powers belong exclusively to the contracting authority.

Besides the CAPT the Office implemented inspection also with the city of Orlová.

/ IMPERFECTIONS AT THE APPLICATION OF LAW

Contracting authorities often choose criteria for the assessment of offers that do not contain the economic advantage of an offer, but the qualification of a candidate. Defaults could be found already in the thirst phase of the awarding process. Contracting authorities choose unsuitable criteria that do not allow the candidates to find out what is the most advantageous for the contracting authority. Contracting authorities also determine requirements of the qualification of candidates, which are not related to the subject of a public contract and irrelevantly and unreasonably limit the circle of potential candidates, who otherwise would have been able to fulfill the assignment in question. The final consequence is the ineffective spending of public funds. Contracting authorities often err when they proceed in the form of proceedings without publishing, whilst there are no conditions set by law for this simplified procedure.

A special chapter are cases when contracting authorities do not proceed according to the Act on Public Procurement at all. As an example may serve contracts for forestry activities awarded by the state enterprise Lesy ČR. The subject of the procedure conducted by the Office at the end of 2005 was to determine whether the company in question was a public contracting authority or not. Similarly to the opinion of the European Commission, the Office concluded that Lesy ČR is a public contracting authority, because it fulfills all the legal conditions. The law states that a public contracting authority is among others a legal entity established by law or on the basis of law for the purpose of satisfying public

interest needs and is predominantly financed by public contracting authorities or is governed by public contracting authorities or public contracting authorities nominate more than a half of members in its administrative, control or review bodies.

The period of duration of second instance procedures has been continually decreasing. Average duration of procedures commenced in 2005 and terminated by the middle of March 2006 was 100 days. In September 2005, Chairman Pecina strengthened his appeal committees, which are his advisory bodies (both have 11 members as of 16 March 2006), which resulted in the speeding up of the second instance procedures. The terminated appeal procedures commenced after 2 September 2005 last in average 80 days. Most procedures in the first instance are terminated by the issue of a decision within a 30-day period.

In the area of public procurement the Regional Court in Brno decided in 15 cases altogether in 2005. The Office was successful in eleven cases out of these fifteen.

/ SELECTED CASES

Toll

In December 2005 the Office started to deal with system for setting the toll for using czech highways. The administrative procedure was commenced on the basis of a suggestion of two unsuccessful candidates. In case of the procedure commenced on the basis of the proposal of Sdružení MYTIA (DAMOVO, Fela Management, ASCOM, ABD Group) the Office did not find any breach of law on part of the contracting authority. On the other hand the Ministry of Transport erred because it did not send a written notification to the Italian company AUTOSTRADE on the processing of complaints within ten days after their receipt. However, this matter did not influence the setting of order of the bids. The contract for toll was awarded to the association of companies lead by the company KAPSCH in November 2005. Its volume is CZK 20 billion and it is the so far largest contract executed out of public funds (with the exception of army contracts which are not executed under the Act on Public Procurement).

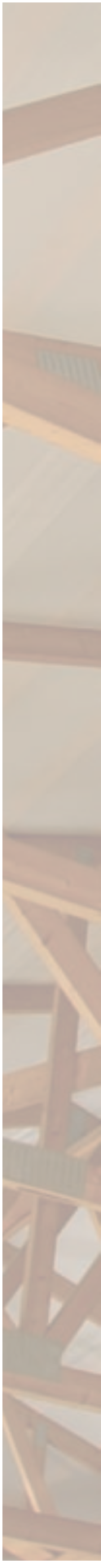
Trolleybuses for Zlín

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

of action. However, if a simultaneous use of vehicles of various makes by public transport companies brought inadequate difficulties with maintenance, none of the companies in charge of public transport in the Czech Republic and in Europe would be able to operate vehicles of different makes. However, such conclusion, in the Office's view, is not in accordance with the facts. The price of the public contract in the investigated case was CZK 77.8 million.

City of Uherské Hradiště

The Office imposed a penalty of CZK 200,000 to the city of Uherské Hradiště for the breach of the Act on Public Procurement. The contracting authority divided the construction of a sport centre (northern stands, southern stands, main entrances and reinforced surfaces, volleyball courts) into partial contracts, which it awarded through a simplified form of invitations of bids to several candidates, even if the total amount of the monetary obligation was CZK 70 million. In such case the city was obliged to invite a public tender which would have ensured higher transparency and better competition conditions in the awarding process. The investigated public tenders consisted in the fulfillment of a same or comparable kind, as they were investment projects prepared at the same time and in the same place.

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STATE AID

The enforcement of legal rules for providing state aid aims at minimizing unreasonable preferential treatment of market participants or production areas in the competition at the expense of other subjects. This process maintains or sets healthy market conditions and effective competition. Individual preferential treatment of companies does not lead to a long-term prosperity and economic growth; as a result it may happen that competitors who did not obtain state aid get into insurmountable difficulties and have to leave the market. For this reason a general prohibition of state aid exists, and its providing is limited to extraordinary events.

One of the examples of situation where the antimonopoly office may by its decision contribute to the income of the state budget was an unauthorized aid in the case of OKD privatization. The government of the Czech Republic decided to sell its share in this company to KARBON INVEST for CZK 2.25 billion. The Office however did not permit this action because it would have been an unauthorized state aid. The market value of the above mentioned share proportion was, as it proved later, almost by two billion Czech crowns higher.

The Office had been deciding on the compatibility of state aid provided by the Czech Republic with the Community law for four years, until 1 May 2004. Since the accession of the Czech Republic to the European Union, the decision-making power was transferred to the European Commission. The Office since then operates as a monitoring, coordinating and advisory body. The activity of the Office in this area consists in the cooperation with providers before the notification of state aid to the Commission, cooperation with the Commission and providers during the proceedings before the Commission and keeping records of provided state aid in the territory of the Czech Republic. The Office further submits annual reports to the European Commission, supervises the fulfillment of effective decisions on the state aid issued according to legal regulations valid before the effectiveness of the new State Aid Act, and decides on imposing penalties under this Act.

At present the rules for providing state aid in the European Union are under reform whose main points the European Commission declared in the middle of 2005 in the so called State Aid Action Plan. The reform should firstly bring about smaller but better focused aid that will distort competition in a lesser extent. At the same time it supposes simpler and more effective procedures, higher predictability and better transparency of providing aid. The Office, entrusted with the coordination of the consultation procedure of the Action Plan in the Czech Republic, drew up its own comments and gathered opinions from respective industries in question. The Office supported mainly these ambitions: creation of an unified framework for research, development and innovation, more aid for innovation, more so called economic attitude, extension of block exemptions to other areas of aid or increasing the limit of de minimis aid.

LEGISLATION

The area of state aid is at present regulated by Act No. 215/2004 Coll. on the Regulation of Certain Relations in the Area of State Aid and on the Amendment of the Act on the Promotion of the Aid for Research and Development. As of 1 June 2005 the Decree No. 207/2005 Coll. on the Form and Extent of the Fulfillment of Information Duty Concerning the Provided State Aid became effective, which execute provisions of Section 9 of this Act. The Decree determines the form and contents of the fulfillment of information duty of the state aid providers. According to this Decree, the provider of state aid submits to the Office for the Protection of Competition data on the provided state aid in the previous calendar year electronically according to a form that is an annex to this Decree.

Already in 2004 the Office in cooperation with the Ministry of Finance of the Czech Republic and the Office of the Czech Republic Government drew up a bill on certain measures for the better transparency of financial relations in the area of state aid. This bill ensues from the necessity of the transposition of the Community law regulating this problem. The submitted bill ensures that the Czech Republic has sufficiently detailed information of the internal financial and organizational structure of public enterprises. The contemporary valid legal regulation does not provide sufficient prerequisites enabling the transparent and systematic monitoring of financial flows coming from the state or other persons executing public power in the state territory. There is no administrative body, which would communicate in the matter of the Decree with the Commission, nor there is a power to ask necessary information from the obliged subjects. These issues are resolved in the bill on the financial transparency.

ADVISORY AND CONSULTATION ACTIVITY IN THE AREA OF STATE AID

The Office, as an advisory and consultation body for the area of state aid, sent 30 notifications of state aid to the European Commission in 2005. In two cases the Commission has already decided about the compatibility of the aid, in one case the proceedings were abated, in seven cases the notification was taken back and two proposals for state aid fall under block exemptions according to the Commission. The remaining 18 notifications are still being dealt with.

Notification of state aid at the European Commission

compatible state aid	2
abated	1
taken back	7
block exemption	2
not yet decided	18
Total	30

Situation as of 31 December 2005

The Office further presented 86 opinions on investment incentives suggested by the Ministry of Industry and Trade of the Czech Republic (MIT) and in outright majority of cases it recommended their providing. In six exceptions the Office expressed certain comments to the suggested incentives or it recommended changes in the form of reduction of the planned state aid. In three cases the Office on the basis of submitted information did not recommend the provision of aid.

Opinion of the Office on investment incentives suggested by the MIT

without comments	77
recommended with comments	6
not recommended	3
Total	86

Situation as of 31 December 2005

/ SELECTED CASES

Internet for free

The Office drew up its opinion concerning the providing of the internet for free by the city district Prague 5 and intention to establish the high-speed internet by the Authorities of the capital city of Prague. The Office dealt with the case on the basis of an initiative of the Association of local internet providers, as it concluded that in this case there is a high probability of the presence of state aid that should be notified by its provider to the European Commission. The reason is mainly the fact that in the area in question the existing internet services available from other operators would have been duplicated by the implementation of the above mentioned projects. Establishing the internet moreover concerns areas which do not belong to the category of village and remote places where the European Commission maintains a more favorable attitude (because these areas are not attractive for commercial operators). It generally holds true that the aid of the so called passive infrastructure (i.e. infrastructure transmitting data), should be without problems provided that it is built in a place where there is no operator providing high-speed internet and provided that it falls into the category of basic facilities for citizens. In regions where the internet is accessible, but there is only one operator, the state aid will be most probably approved by the European Commission, because it enables the development of competitive environment.

Privatization of municipal residential property

During 2005, the Office intensely worked on the problem of state aid in the privatization of municipal residential property. After several negotiations with the European Commission it presented basic information and potential pitfalls of this privatization to cities and municipalities in the Czech Republic. Subsequently, a number of responses and questions appeared on the part of cities and municipalities concerning details of individual transactions and a problem of state aid in the area of sale of public property in general. For this reason another negotiations with the European Commission

was initiated. The Office then recommended the local administrative bodies several ways of privatization, which are not problematic from the view of state aid control. This is mainly the sale of individual apartments to natural entities, sale of apartment buildings to co-operatives and legal entities for the market price, sale of apartment buildings to co-operatives and legal entities with de minimis aid and sale of apartment buildings to co-operatives that have been founded by tenants only to mediate the sale. The Office pointed out that particularly the sale of a whole apartment building or its part to a legal or natural entity for the purpose of business activity is problematic, as the European Commission considers a business subject on the housing market also a legal entity founded by entitled tenants (co-operative).

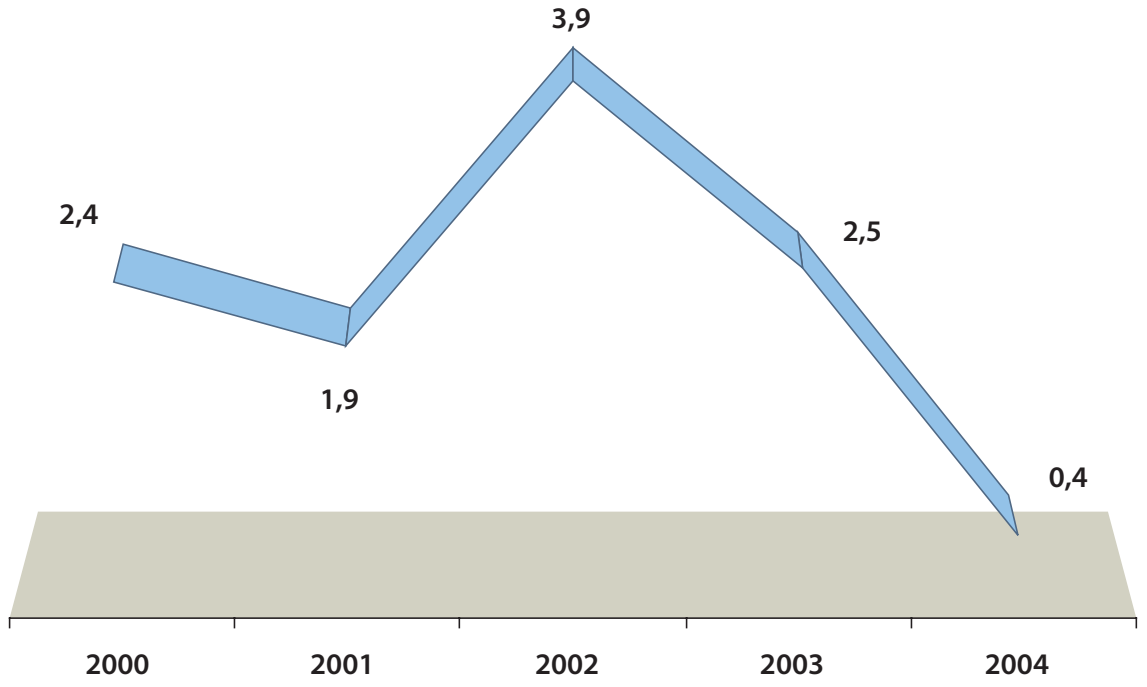
PANEL Program

In June 2005 the State Fund for the Development of Housing notified the program of state aid of the renovation of prefabricated housing estates entitled "PANEL" to the European Commission, only to obtain legal certainty of the fact that it is not a form of prohibited state aid. In the second half of the year, the European Commission sent several requests for additional information, which were promptly replied by the provider. From these requests and further negotiations it followed that aid provided to owners of prefabricated buildings within the framework of the PANEL Program represent prohibited state aid and this aid will be declared compatible with the common market only to the amount which is enabled by the so called regional map of state aid. By the beginning of April 2006, the European Commission has not issued a decision in this matter.

Investment aid for Lignit Hodonín

The Office cooperated on the notification of state aid for the company Lignit Hodonín, both at creating the notification form and at the formulation of replies to the Commission. On 20 July 2005, the European Commission decided that regional investment aid of the company Lignit Hodonín, the operator of the last lignite mine in the Czech Republic, is in accordance with EU regulations on state aid. Assistance in the amount of CZK 155.5 million covers investments for the opening of new lignite deposits that will create 350 direct and 150 indirect jobs. After the assessment of the aid, the Commission found out that the aid will positively influence the economic development of the region in ensuring employment and investments into new mining technology. Because of the exhaustion of the existing lignite deposits, Lignit Hodonín should have been closed down by the end of 2004, whereby 392 jobs would have been lost. However, the company created a new business plan for the opening of new lignite deposits based on the investment of CZK 324 million. As the company was not able to gain sufficient sources on financial markets, the Czech Republic agreed to support this investment in connection with the Development Program of the South Moravia region and Hodonín district, focused mainly on the aid of employment opportunities and enhancement of economic structure.

Relation of state aid and GDP in the Czech Republic in respective years (%)



In the figure for 2004, the aid for agriculture, fishing and transport is calculated. Without the aid in these areas the relation of state aid to GDP would be 0.2% for this year. The European Commission publishes the data always in the second half of the following year.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AGENDA 2006

For the first time ever, the Office publishes in its annual report the basic survey of areas that will be in the center of its attention in the future. The chapter Agenda 2006 is intended for consumers, lawyers, economists and politicians and it serves for the identification of markets and areas where competitive barriers could exist. The aim is to identify problems and subsequently make sure that the relevant markets work better in the future.

Competition

The Office will monitor the market with beer, where a number of competition issues arose in the past. This particularly concerns relations between suppliers and customers, namely breweries and restaurant proprietors, who have been bound to sell beer of one make only. The Office is going to pay special attention to the so-called network markets, where the risk of abusing of dominant position is high. In the past a minimum of investigations were carried out on the market with heat. The aim will be to ensure the state of competitive environment in respective regions. As in the past years, the subject of monitoring will be telecommunication market, where the Office repeatedly acknowledged the existence of anticompetitive practices in its decisions. Increase in the number of cases resolved through competition advocacy instead of administrative procedures is to be expected. The Office considers a substantial amendment of the Act on the Protection of Competition. The aim is to introduce special procedural rules for administrative procedures before the Office, which would guarantee full procedural rights to their participants and third parties. In all the areas of the Office's activity, shortening of the duration of administrative procedures is a priority. In the area of increasing transparency of the Office's activity and education the number of published methodic materials for the general public (e.g. on the assessment of vertical agreements by the competition authority) and holding seminars are expected.

Public procurement

The Office will focus mainly on educational activity concerning the new Act on Public Procurement. The training will be provided particularly for contracting authorities. It is expected that their number and range will significantly increase. The new act will regulate also public contracts of small extent. The Office will continue in its inspection activity aimed at contracting authorities, as it is their procedures that are subjects of repeated complaints and initiatives submitted to the Office. Imposing significant penalties can be envisaged in cases of the wrong use of simplified assignments or in cases when contracting authorities do not observe law at all.

State aid

In the area of state aid the Office will organize training and will advocate the strengthening of legal awareness provided that there is new or amended legislation. This will concern particularly these topics: aid for science, research and innovation, de minimis aid, block exemptions, multisectoral framework for the aid of large investment projects, regulations in coal-mining industry. The Office will advocate the amendment of the Act No. 215/2004 Coll. (Act on the Regulation of Certain Relations in the Area of State Aid) and the creation of the register of small extent aid. Among other priorities it is also strengthening of transparency in the area of the aid to general economic services (mainly transport services) or the monitoring of final restructuring of Czech steel industry. Generally, the Office will strive for the reduction of state aid and the substantial increase of its efficiency.


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INTERNATIONAL RELATIONS

The Office participates in a number of competition and economic organizations and associations. We may stress membership in the International Competition Network – ICN, European Competition Network – ECN and European Competition Authorities – ECA. Besides, the Office develops activities within the framework of the OECD Competition Committee and Global Forum, World Trade Organization – WTO, Central European Competition Initiative – CECI and European Public Procurement Network – PPN.

Within the framework of the updating of European competition law the European Competition Network was established composed of the European Commission and competition authorities in the EU member states. This network aims at the ensuring of cooperation necessary for the effective decentralized application of Community competition rules including the exchange of information and mutual consultations. The ECN provides effective mechanisms for the notification of cases and their potential transfer or allocation between the Commission and competition authorities of respective member states. By means of the ECN Interactive network, the competition authorities and the Commission inform each other about the commencement of cases, their interruption and about requests for the application of the so called Leniency Program. To make the whole process easier, the Commission and national competition authorities may share information obtained during the investigation of a case. In 2005, the Office sent six notifications of cases through ECN Interactive, which could affect markets of several member states, and in four cases it commenced administrative procedure according to the Community law.

Since 2001, the European Competition Authorities association has been operating as a platform for informal discussion between competition authorities in the European Economic Area. Its aim is to enhance cooperation between member competition authorities and to contribute to effective enforcement of national and Community competition law. ECA member authorities inform each other e.g. on notifications of concentrations of competitors, which are subject to approval in several EU states. In 2005, the Office received information on 209 cases of such multijurisdictional concentrations of competitors.

One of the most important platforms for sharing experience with practical application of competition law and unique source of theoretical outcomes is the Competition Committee and the Global Forum of the Organization for Economic Cooperation and Development – OECD. The Office's representatives regularly participate in the sessions of both the Global Forum OECD for competition and the Competition Committee OECD and its work groups, which are a platform for the exchange of experience in the area of competition law and politics.


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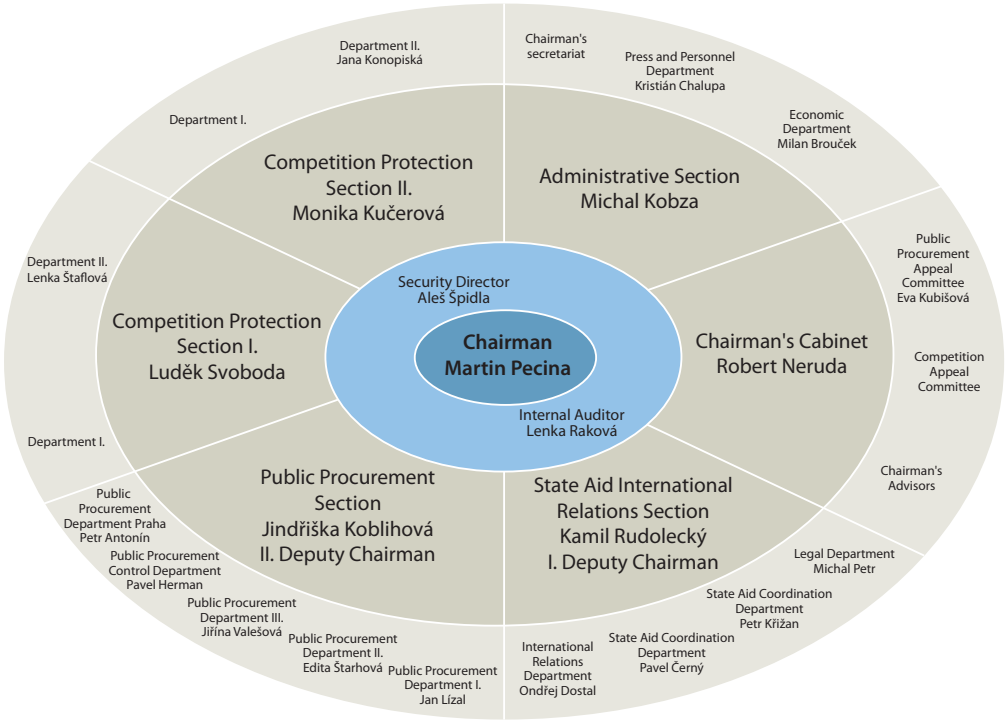
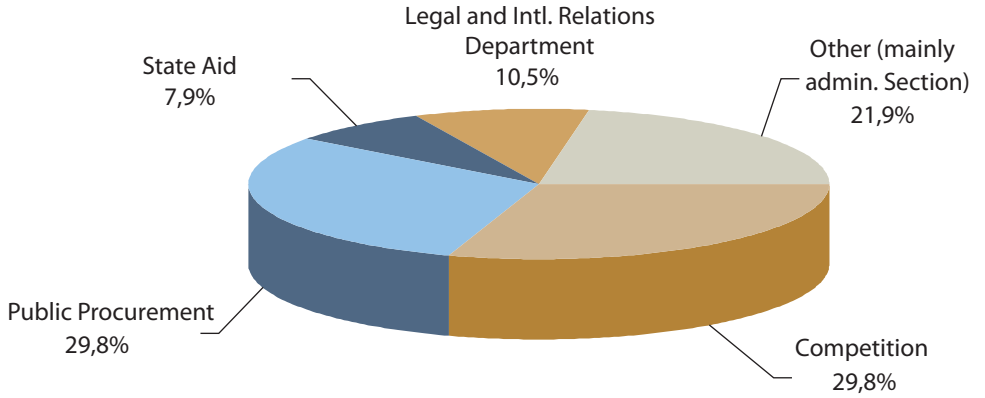
HUMAN RESOURCES AND EDUCATIONAL ACTIVITY

The most important event in 2005 was a change in the position of the Chairman of the Office. On 2 September 2005, Josef Bednář, whose six-year term of office ended, was replaced by Mr. Martin Pecina. The new Chairman was introduced into the office by the President of the republic Mr. Václav Klaus. According to the President, the Office had established itself on the Czech economic scene and it is laudable that it does not fear to act, and on the other hand that it does not try to be a demiurg, who knows exactly what the structure of our market should look like and who wants to dictate or draw market relations. At his inauguration as well as in numerous interviews for the media in the following weeks, Mr. Martin Pecina stressed that he will particularly apply prevention instead of sanctioning companies with large penalties.

With the new management, some important changes in the administration of the Office were implemented. No employees left; however, a substantial overhaul of the organizational structure was carried out (five new sections and the Chairman's Cabinet were established) and a modern way of management was introduced. Tasks, responsibilities and powers of individual departments and their managers were redefined. Complex cases and investigations are solved and discussed in teams with clear management.

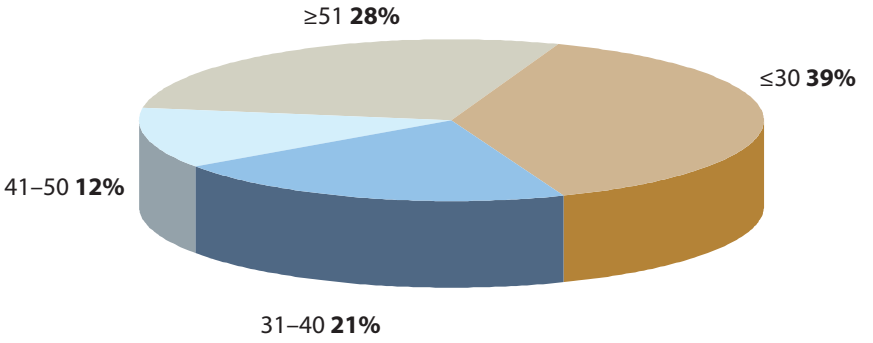


The Office's employees according to divisions



Situation as of 1 March 2006

Age structure of the Office's employees



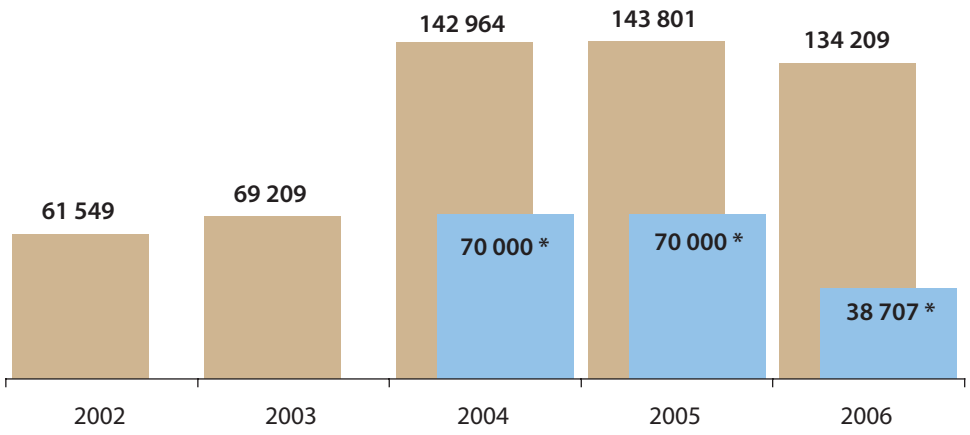
Situation as of 1 March 2006

The Office strives to be a dynamic and communicative institution, helpful to business people and citizens in resolving their problems. It does not reject different opinions of expert and lay public, because such discussion and necessary feedback may help the Office in formulating priorities for next years. Yet, independence remains the pillar of the Office's activity, and experience from other countries proves that the plurality of expert opinions does not exclude independent action of competition authorities.

The atmosphere in this institution remarkably changed in the latter half of 2005. This was evidenced among others by the cessation of fluctuation after the start of the new Chairman's capacity, which had been a serious problem of the Office before. In 2005, the average number of employees was 111. Their average monthly salary was CZK 26,610. Out of the total number of 114 employees (as of 1 March 2006), 55% of women and 45% of men work at the Office.

Within the framework of increasing the qualification of employees, preparation for foreign language courses was started in 2005. The courses themselves started in January 2006. At the end of 2005, preparations for training courses in

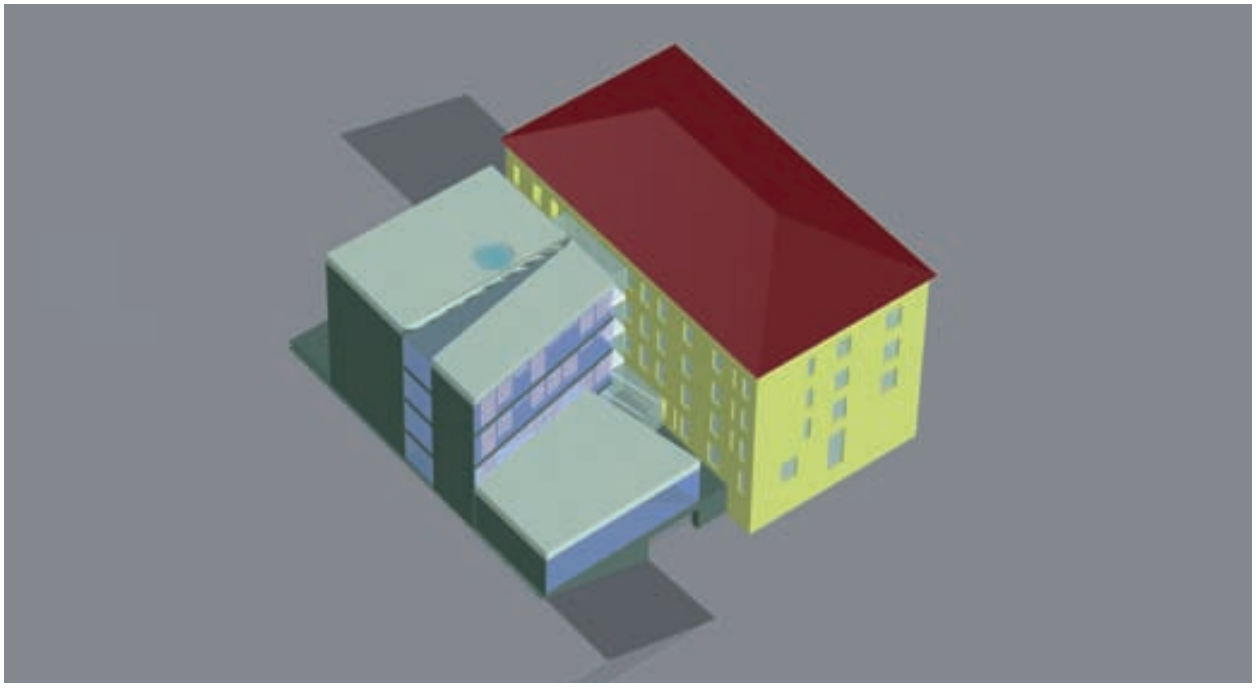
Approved budget of the Office (in thousands CZK)



** out of this the amount for the new seat*

communication and managerial abilities began. Short meeting of employees with the Chairman, held on the first Mondays in the month, have become popular. During these meetings, everyone has the opportunity to express their view or ask anything concerning the work of the Office.

The new Chairman made steps to acquire a new building into the Office's property for its new seat. After almost fifteen years of the existence of the antimonopoly office in the Czech Republic, this has come true. The Office will have its new seat in the restored building of the former Military Administration in Kapitána Jaroše Street in Brno.



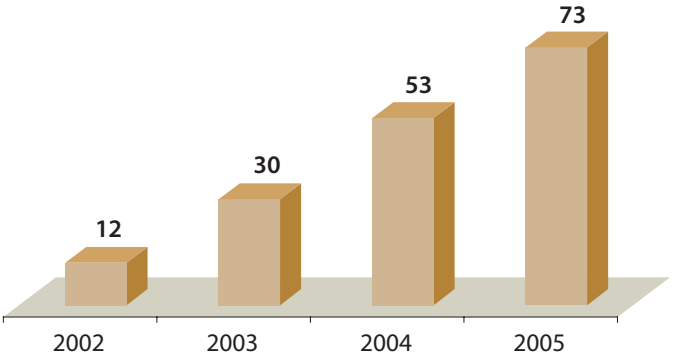
The project of the new seat of the Office.

INFORMATION ACTIVITY

The information activity does not involve only press conferences and information provided to various mass media or common citizens. Important elements of the information activity are also consultations, seminars and lectures. In October 2005, the Office organized the first seminar focusing on the topic of public procurement. The Office prepared the schedule of lectures and seminars for 2006 in the area of competition, state aid and mainly public procurement. In November 2005, representatives of the Office and the Consumers Defense Association signed a memorandum on mutual cooperation. The key idea of this document is mutual exchange of information, which should contribute to the better competitive environment and thus to the satisfaction of consumers.

In 2005, media paid great attention to the administrative procedures with banks, telecommunication market and building and loan associations. The interest of media was also drawn by the change on the post of the Chairman of the Office. After the new Chairman assumed office, the average number of articles on the Office has continuously grown. This is also evidenced by a large number of interviews and statements, which the new Chairman provided to the press. More than 5000 contributions were published in various mass media in 2005 (almost half of them from September to December), which is by about seven hundred more than in the previous year.

Numbers of press releases in 2002–2005



Number of articles in media on the Office's activity in 2000–2005