

ANNUAL REPORT 2007



OFFICE FOR THE PROTECTION OF COMPETITION



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The year 2007 represented a turning point in the existence of the Office for the Protection of Competition. The Office recorded several significant achievements on the international level. It was a great honor for the Office to become the peer-examiner of another country – South Korea. By doing so the Office joined the truly superb and respectful institutions in the global “competition community”. This can be further proved by the fact that the Office was entrusted with the organization of the global “ICN merger workshop” which was one of the most important competition events of the year.

There was another thing that was even more important for the operation of the Office. It opened new headquarters. For the very first time in its history – i.e. sixteen years – the Office for the Protection of Competition has its own address and its own building which I hope is to become the symbol of this important institution and of the public interest it protects.

The year 2007 was a year of big decisions. We imposed the biggest fine ever – in the amount of one billion CZK – for a large-scale cartel in the electric industry. Moreover, many other decisions represented a development of our decision-making powers, leading to a stronger emphasis on the improvement of the market in the Czech Republic.

The most important issue that we want to keep focusing on in the year 2008 is a strict differentiation between malicious and intentional acts on one hand and less significant negligence caused by the lack of knowledge of the subject on the other. While we shall punish the serious intentional acts and law violations as strictly as possible, we shall focus on prevention in the latter case, as well as on mutual agreements and cooperation and support from the Office for the Protection of Competition to the market players.

Martin Pecina

Chairman of the Office for the Protection of Competition

COMPETITION



The Office for the Protection of Competition acts in order to support the maintenance and development of effective competition which does not positively affect just the competition environment as such but also everyday life of the citizens of the Czech Republic. Competition among companies promotes innovation, it lowers production costs and brings many benefits for end users, as the companies that are stimulated by the competition environment often offer products and services that are of better quality and usually also cheaper. The Office helps create healthy competition environment via its decisions as well as within the so-called competition advocacy and via its active and passive legislative actions. The goal of the Office in relation to the protection of competition is to eliminate legislative barriers, to promote the liberalization process on respective markets, to eliminate the already existing cartel agreements, or to prevent new ones from being concluded and to remove other barriers to free effective competition. That said, the goal of the Office is both preventive and repressive action.

LEGISLATION

In December 2007 the Federation of the Food and Drink Industries of the Czech Republic presented a draft law on the significant market power and its abuse that shall contribute to the regulation of activities of the so-called retail chains whose factual market power often enables them to force their contractors into business deals that are advantageous only for them. It is a variation of the legal regulation of economic dependence that has been repeatedly submitted in the Czech Republic since 1999. The Office has repeatedly expressed its opinion in the past that the prohibition of the abuse of the economic dependence has been a standard EU tool for the protection of competition by some competition authorities and thus the Office does not object to this particular proposal in principle. However, the Office shall point out that, especially in relation to the most recent market development the said proposal might affect, a very thorough analysis is necessary prior to the approval of any new legislation that would analyze the impacts, namely in relation to the potential consequences for consumers.

The sixth amendment to the Act on the Protection of Competition (71/2007 Coll.) has renewed the full applicability of the competition law in the sector of electronic communications that had been limited against the provisions of the *acquis communautaire* via the act on electronic communications as of 2005. Upon the adoption of this amendment the European Commission terminated the infringement proceedings with the Czech Republic that had been in progress for the said reason. This amendment also offered a new provision relating to file inspections – parties to the proceeding can make themselves familiar with documents that contain business secret. However they are not entitled to make copies or excerpts.

There exists a significant novelty in terms of the protection of competition: possible criminal liability of individuals in case of participation to cartel agreements. Thanks to the initiative from the Office the appropriate provision has been included in the draft criminal code that has been prepared by the Ministry of Justice. If approved, individuals might be criminally liable if and when they actively participate in the activities that go against free competition. It is the category of subjects that are not subject to penalties imposed by competition authorities (the fines are imposed on companies that are managed by the particular statutory bodies, managers, etc.). The future provisions shall ensure the criminal liability of these managers and other individuals who would take part in cartel agreements: they could be sentenced to prison for 3 years and to the prohibition of activity, or criminal forfeiture or other form of value forfeiture. Experience from the countries in which the principle of the criminal liability of individuals who take part in cartel agreements is used and applied show that the fear of criminal punishment, especially the risk of imprisonment is the most effective deterrent that prevents individuals from committing these crimes. Criminal liability for the participation in activities against free competition in the form of cartel agreements is embodied in the law of many EU members, e.g. Denmark, Estonia, France, Ireland, Cyprus, Luxembourg, Malta, Germany, Romania, Greece, Slovakia, or Slovenia. In case of the United States of America cartel agreement conclusion is considered a felony for which an individual might spend ten years in prison or they can face a one-million dollar fine. The proposed provision relating to the *res gestae* as detailed above shall only apply to horizontal cartels, i.e. agreements distorting competition that are concluded among direct competitors. Hard-core cartels that *res gestae* shall focus on are generally considered the most serious infringements of competition law.

ALTERNATIVE SOLUTIONS OF COMPETITION ISSUES

It is the opinion of the Office that cooperation taking place between the Office and an undertaking in case of which there exists the suspicion that it took part in anticompetitive action can, under certain circumstances, lead to fast and effective remedy of the distorted or endangered competition. When the undertakings are willing to remedy their actions on their own free will the Office is keen to help them in doing so. If the anticompetitive status is remedied the Office is willing to drop or not to press charges or to terminate the proceedings that have already been launched, without the necessity to issue a decision that the action in question had indeed represented administrative offence. According to the opinion of the office "alternative solution" means the remedy of a competition-related problem before the administrative proceeding is launched (*competition advocacy*) and the acceptance of commitments by the parties in the first-instance proceeding. The Office has issued a methodological document on this issue to provide distinction among various degrees of infringements.

The Office sees competition advocacy as a very effective tool leading to faster remedy of competition issues. This tool has been developed since 2005 when Martin Pecina became Chairman of the Office. Since 2005 the number of cases that were settled via competition advocacy instead of in administrative proceeding has risen (there were 17 in 2006 and 13 in 2007). Individual participants to the anticompetitive action do not face any fine or administrative proceeding, provided they respond to the inquiry from the Office promptly.

Another category of the alternative solutions of competition issues is the chance for the participants against whom the administrative proceedings have already been launched to submit a commitment proposal that shall be sufficient in protecting competition and that shall enable the remedy of the detrimental situation, if fulfilled as stated. This method of solution of competition issues has already been legitimized, i.e. stipulated by the Act on the Protection of Competition, both in case of agreements that distort competition and in case of the abuse of dominant position. It is the opinion of the Office that in given legal conditions the proposed commitments shall be accepted not only in relation to less serious infringements but also in relation to more serious infringements in the form of agreements distorting competition that have never been really carried out, or also in case of serious infringements that were terminated, if their effect on the competition was largely limited and did not manifest the signs of hard-core restrictions. Also in case of proposed commitments that the Office finds sufficient in order to protect competition the undertakings might avoid being fined.

Among the issues relating to the competition advocacy is also the so-called passive legislation (the comments of the Office on draft laws), or the cooperation with particular regulatory bodies in applicable sectors of industry. The Office employs this method for example in the negotiations on the issue of gas supply storage, or in relation to the access to underground gas supply storage facilities. This situation is caused by the insufficient capacity of the underground storage facilities in the Czech Republic and by the fact that the majority owner of most of these facilities is only one dominant undertaking – the RWE Group. Most cases of this kind are investigated after complaints that are submitted by companies concerned, from the media or pursuant to the Office's own investigation. In 2007 the Office received 448 complaints relating to possible violation of the competition rules. The Office investigates or monitors some markets pursuant to its own information or pursuant to administrative proceedings that took place in the past. Extra attention is paid to brown coal markets, especially in relation to the vertical arrangement between the exploitation and its subsequent use in power plants or heating power stations within one conglomerate. This is the reason why insufficient volumes of brown coal come to the market (in terms of demand) which makes the bargaining position of the exploitation companies very strong and the prices of this commodity can rise steeply.

SELECTED CASES

VERTICAL CARTEL

Considering the fact that vertical agreements distorting competition are not as serious as horizontal cartel agreements it is possible in some cases to opt for competition advocacy, rather than administrative proceedings. This was the case when the activities of the IMUNO, s.r.o. company were reviewed (hereinafter referred to as IMUNO). The Office found out that the contracts on laboratory tests that the IMUNO company had concluded contained the obligation of exclusive purchase of laboratory test from this company. The Office came to the conclusion that the said obligation – in connection with the unlimited validity of these contracts – represented a prohibited agreement on the purchase of one brand (*branding*). Responding to the inquiry from the Office the IMUNO company declared its readiness to update the contracts and to omit the questionable provision on the exclusivity from its contracts altogether. The Office then came to a conclusion that the IMUNO company has remedied the unfavorable situation promptly and the company itself submitted its proposals in the stage of information verification and it suggested the obligations that shall be newly contained in the concluded agreements. Since the contracts containing the exclusivity clause were concluded only with 3 percent of contractors of the said company, there was the reason to believe that the impact of the aforementioned obligation on fair competition was small. Considering the fact that in this specific case it was the first alleged anticompetitive activity of the IMUNO company the Office accepted the commitment the company had submitted.

INTERVENTION OF THE OFFICE IN SPORTS SECTOR

In February 2007 the Office terminated its investigation relating to the Association of Professional Ice Hockey Clubs (APKLH). The reason for doing so was a change of conditions under which clubs can advance to the Czech Extraliga hockey league that was approved by the APKLH general assembly upon the intervention by the Office. A so-called license fee that the winner of the First League was to pay to APKLH was abolished. This fee in the amount of 25 million Czech crowns was not legitimized in any way and it represented a significant competition entry barrier. This case is an important signal indicating that the Office focuses its attention on the sports sector as well.

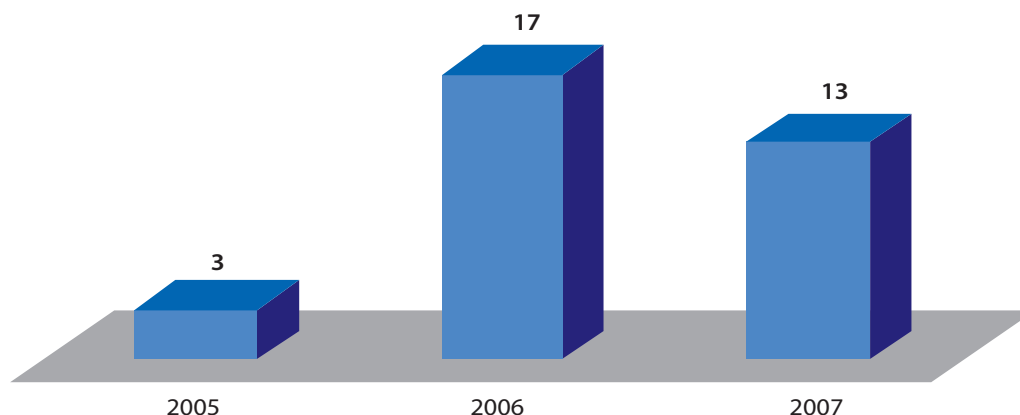
PROVISIONS PROHIBITING EXPORT IN BREWERY CONTRACTS

While investigating an altogether different issue the Office found out that contracts concluded between eight breweries and their customers included provisions according to which these customers were forbidden to export beer abroad. The provisions in question went as follows (examples): "...the purchaser shall not export the goods from the Czech Republic", or "the purchaser undertakes not to realize the subject of the contract in a foreign country in any way". In case of a violation of the obligation on the side of the purchaser the breweries and the purchasers agreed upon contractual penalties in the amount of 100,000 Czech crowns for every such violation. The Office first asked the breweries about the reason why the provisions prohibiting the export of beer (further sales) were included in the contracts in the first place. Among the most frequent reasons were the protection of packing stock, packing and label marking, complaint-related reasons, product quality and trademark-related reasons. The Office informed the breweries that the provisions in question had been verified from the point of view of competition law and the conclusion was that the prohibition of export can be qualified as prohibited agreement. The Office came to a conclusion that the particular reasons the breweries provided did not legitimize the fact that the purchasers were forbidden to export the beer. The Office dealt with the aforementioned incitements via the process of competition advocacy since all eight breweries that had been inquired expressed their willingness to adjust the contracts and to strike the questionable provisions within reasonable period of time. Upon the expiration of the said period of time the Office conducted an inspection to make sure the breweries had indeed realized the corrective measures in full extent.

THE OFFICE ACKNOWLEDGED THE OBLIGATION OF THE ASSOCIATION OF PHARMACY OWNERS

The Office terminated administrative proceedings against the Association of Pharmacy Owners (GML) in the matter of anticompetitive activities after the association had suggested sufficient remedial measures. GML is a professional associa-

Number of cases settled via competition advocacy (cases solved in that particular year)



tion that was founded in order to protect specific interests of pharmacy owners. To this date it has approximately 400 members. The Office instituted administrative proceedings against GML in March 2007 after it had obtained a January 2007 statement from GML based on claims from pharmacy owners. The statement included information on the fact that the wholesale distributor of pharmaceuticals – the PHARMOS a.s. company – had ceased to serve as a contractual supplier for the Dr. MAX pharmacy chain. GML perceived this change as a clear step towards the promotion of the segment of independent pharmacies and it urged its members to take into account this fact within their business transactions.

This invitation de facto represented an appeal on the members of the association and on other pharmacy owners as well to increase the purchase volumes with a company that is neither a supplier nor supporter of pharmacy chains (through other activities). The Office ruled that this action on the side of GML, represented by its effort to coordinate business performance of its members, was in general terms likely to distort competition on the wholesale pharmaceutical market and market with other supplies to be sold in pharmacies. In the course of the administrative proceeding GML suggested corrective measures in the form of the publication of an explanatory advertisement that was to be published in a professional newsletter of Czech pharmacists, while the same text was to be published on the website www.gmlcr.cz. Considering the fact that the said actions did not represent significant distortion of competition the Office acknowledged the proposal since it meant the remedy of the unfavorable conditions on the particular market.

DECREE RESTRICTING COMPETITION

The Office investigated a complaint related to the restriction of competition among the operators of gambling machines in the town of Zlin. The municipality of the town of Zlin had issued a generally binding regulation that strictly defined places where the operation of gambling machines was permitted by naming the specific addresses of the operators. By doing so the generally binding regulation violated the principles that are protected by the Act on the Protection of Competition. This system gave unfair advantages to entities that had already been operating gambling machines on the defined addresses and at the same time it discriminated potential competitors who might have wanted to enter the market. The Office contacted the municipality of the town of Zlin and suggested that the provision on the places defined as places for the operation of gambling machines be changed so that more general criteria are implemented (for example, streets and their parts on which it is possible or impossible to operate gambling machines, or by defining minimum distances from selected buildings or city districts), instead of having specific addresses, which the Lottery Act allows anyway.

PROHIBITED AGREEMENTS

Prohibited agreements are agreements that distort competition, i.e. cartels, in cases when individual actions of individual undertakings on the market are replaced by mutually coordinated actions. This market behavior is very serious, as it often results in the increase of prices for end users (consumers). In many European countries these actions are even subject to criminal prosecution. Individual companies might leave the cartel pursuant to the so-called Leniency program. It was amended in 2007 and to this date it only applies to the so-called horizontal cartels. Companies that admit their involvement might even avoid being sanctioned by the Office. However, there are many very strict conditions that these companies have to fulfil. The advantages of the Leniency program can only be granted to a cartel member who had not initiated the establishment of the cartel, who did not force other members to remain in the cartel or to join it, and who did not have a leading role in this cartel. The Leniency program applicant shall cease their participation in the cartel simultaneously with the submission of the application. Among the significant changes in this regard are the new conditions under which the program application can be submitted. The legal safeguard for the applicant is promoted, as the applicant attempts to avoid significant financial penalties by submitting the application. The issue of the determination of sanctions for the violation of competition rules was a key topic that the Office focused on in 2007. In order to provide for greater transparency of its rulings and decisions the Office had made the principles of imposing fines public. These principles also describe in detail some specific situations that might occur and they include the stratification of severity of individual cases of infringements, as well as mitigating circumstances and aggravating circumstances.

SELECTED CASES

HISTORIC SANCTION FOR A CARTEL ON MARKET DIVISION

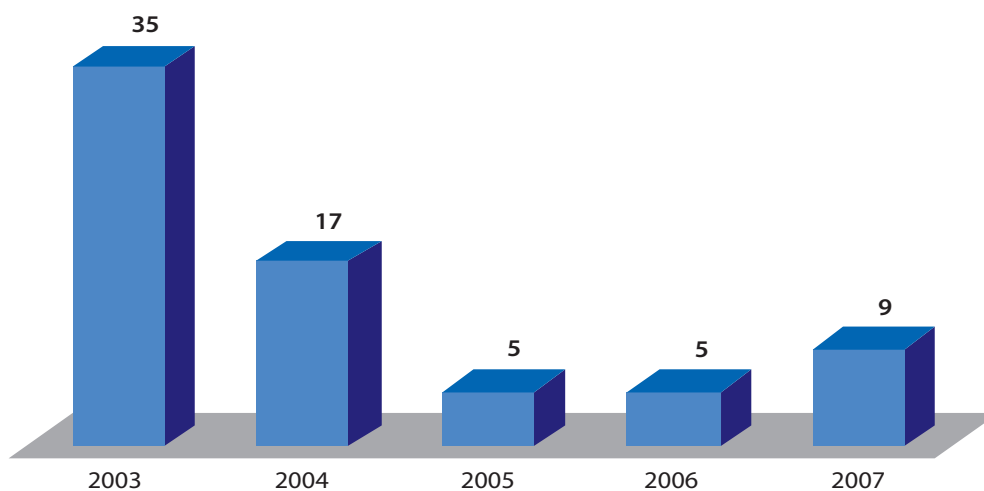
The Office imposed record sanctions on sixteen multi-national machinery companies that had divided the market with gas-insulated switchgear devices. The overall amount of the legitimately imposed sanction was 941,881,000 CZK. The companies of the ABB, ALSTOM, AREVA, Fuji, Hitachi, Mitsubishi, Toshiba and Siemens holdings took part in a cartel agreement: the most sophisticated, largest and longest in terms of duration in the history of the Office. The Office initiated administrative proceedings in August 2006. It was inspired by a previous motion from the ABB company that had admitted its involvement in the cartel and it had submitted evidence thereof. This company avoided financial sanctions within the Leniency program. The interesting aspect of this case is that for the very first time fines were imposed on companies that had no business activities in the Czech Republic and that had no profit from the Czech market with gas-insulated switchgear devices. All companies paid the fines. The companies that paid the sanctions had concluded an agreement among themselves in 1988 based on which they had created a very sophisticated system according to which they took part in tenders for gas-insulated switchgear devices in the sector of electrical energy transmission and distribution in coordinated manner. The companies had split into two groups, European manufacturers and Japanese manufacturers. The contracts have never been signed but the companies were mentioned in appendices under specific codes. These codes were then used in mutual communication, either in fax messages or in e-mails that were sent from free e-mail accounts from public-access servers. One of the cartel members even obtained for others special secured cell phones to make the mutual communication even easier. In order to coordinate their activities the companies that were fined organized regular meetings that took place for example in hotels at international airports. Once a year a general meeting took place at which the cartel members would express their willingness to continue with the cooperation, they defined general strategies and they solved potentially conflicting issues, if any. Every two weeks representatives of the companies would meet in various airport centers and hotels to hold board meetings of European or Japanese manufacturers. The goal of the meetings was to negotiate on the requirements of individual companies, to award particular orders, or to determine bid prices with which the companies would take part in tenders. Each group (European and Japanese manufacturers) was assigned a joint sales quota based on their global agreement. The quota for the European group was 62.5 percent, whereas the quota for the Japanese group

was 37.5. This quota was derived from the market share percentage on the global gas-insulated switchgear market. Moreover, the contract included a mechanism based on which the companies would measure the value of particular projects thanks to which the companies were able to ensure that the projects are divided among individual companies pursuant to the said quota. By doing so the companies secured their market shares and they were certain that they would not be competitors to one another. Via the concluded contracts the companies had been making deals on prices when they communicated and discussed the bid prices in the process of awarding projects to specific companies. Particular price was brought to the attention of the other companies so that they would know what amount (meaning a higher price than the price of the company that won the bid) they were supposed to offer. Moreover the companies discussed and made arrangements in terms of maintaining the lowest bids for cases in which a project was not allocated to a specific company.

FARMERS MAKING DEALS ON PRICES

The Office for the Protection of Competition has issued a first-instance decision (not in force so far) by which it fined seven poultry producers in the amount of 14.208 million CZK for prohibited cartel agreement. On December 13, 2006 the undertakings AGRODRUŽSTVO JEŠOVICE, Zemědělské družstvo (farm) PETŘÍN, Zemědělské družstvo "Roštýn", ZEVA CHLÍSTOVICE, a.s., SUŠÁRNA POHOŘELICE, s.r.o., Karlov, a.s. and AGROPRODUCT concluded an agreement in Ješovice on their joint strategies of determination of sales price for poultry for slaughter as of January 1, 2007. Their goal was to achieve the minimum price of at least 20 CZK per 1 kilogram of live weight in the 1st Quality Class from their most important common purchaser, the Kostecké uzeniny, a.s. company (meat producer). The aforementioned companies also agreed upon joint actions and on joint negotiations on the purchase price increase for poultry for slaughter with the aforementioned purchaser on December 14, 2006 and they proceeded successfully according to that. By doing so the undertakings eliminated the risk of competition on the market where individual undertakings have no knowledge of the intentions of their competitors. It is natural for a normal development of a market that an undertaking must accept less advantageous offer in order to remain on that particular market. Not even persistent disadvantage of the participation in competition justifies anticompetitive actions of participants who are natural competitors in principle. The aforementioned behavior can not be justified even by circumstances that affect poultry production (such as bird flu or higher energy prices) and the subsequent production costs, or by the behavior of other market players. Joint actions of undertakings that are natural competitors in principle shall be deemed as being anticompetitive as every undertaking shall act independently

Number of initiated administrative proceedings – prohibited agreements



and bear the associated risks on their own. Undertakings shall be aware of the fact that their actions might affect prices of poultry, which happened in this case when the prices of poultry for consumers indeed went up. The signed memorandum from Jevišovice is a clear proof of the willingness to intentionally coordinate and unify poultry for slaughter prices in relation to consumers.

UNDERTAKING HAD IGNORED AN INQUIRY FROM THE OFFICE – AND WAS FINED

The Office has imposed a procedural fine in the amount of 100,000 CZK on a Luhačovice-based company, VAVRYS CZ s.r.o. that had repeatedly failed to provide the Office with information and documentation it had been asked to provide. The Office conducted its investigation in the sector of outdoor equipment distribution and it asked the VAVRYS company (repeatedly) to provide information and documentation to facilitate the said investigation that the Office could not obtain otherwise (the investigation was focused on the possible existence of a vertical cartel).

The undertaking did not respond despite the fact that the company had been warned of the investigative authority of the Office and that the company had been informed of its obligation to assist the Office and of the risk of being imposed a procedural fine. The Office initiated administrative proceeding with the VAVRYS company the result of which was that this company intentionally broke the law by not providing the information and documentation it had been told to provide. When determining the amount of the fine the Office considered the severity of that particular offence and the fact that the VAVRYS company acted deliberately, but on the other hand it also considered the company's clean record and the fact that the company pleaded guilty.

ABUSE OF DOMINANT POSITION

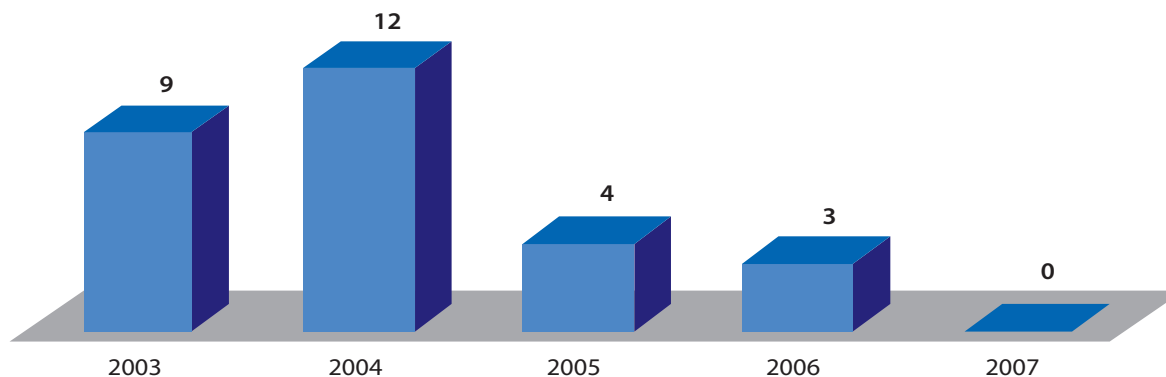
Competition authorities pay extra attention to the activities of companies that are on their particular markets in dominant, or even monopoly, position. Naturally, the Act on the Protection of Competition is stricter in relation to these companies, as compared to other companies. As the detailed examples below prove, the activities of a dominant company might have negative impact not just on the market as such, competitors and customers of the dominant company, but also on the general public.

SELECTED CASES

CASE OF RWE TRANSGAS CONDUCT

The Office issued a second-instance decision by which it imposed a fine in the amount of 240 million Czech crowns on the RWE Transgas, a.s. gas distribution company. Between November 5, 2004 and August 10, 2006 the said company failed to allow the operators of competitive regional distribution networks to conclude agreements under such natural gas purchase conditions which would allow these companies to become competitors to RWE holding companies in the operation of regional distribution networks. The Jihočeská plynárenská (*South Bohemian Gas*) and Pražská plynárenská (*Prague Gas*) companies were disadvantaged in the competition for the so-called eligible customers. Moreover, the RWE company refused to deliver natural gas elsewhere than to the so-called balance zone of the individual regional distributors by which it inhibited and prevented the creation of competitive environment. Under the situation when regional distributors purchase natural gas on the input into their balance zone, the fact of the matter is that they must accept the unilateral conditions that have been set by the party to the proceeding. The Jihočeská plynárenská company was interested in gas supplies outside its balance zone but the RWE Transgas company repeatedly refused. It was the opinion of the Office that the dominant company had been creating artificial entry barriers that prevented new undertakings from entering the market, or barriers that prevented the existing undertakings that were competitors to the company's regional distributors from expansion. The decision of the Office was overruled by the Regional Court in Brno in the middle of the year 2007 with a verdict saying that only one legislation can be applied in one proceeding, either *acquis communautaire* or national legislation. The Office does not agree with the verdict and so it filed a cassation appeal. It is the opinion of the Office, also being supported by the constant judicature of the European Court of Justice, that *acquis communautaire* and the

Number of initiated administrative proceedings – abuse of dominant position



national legislation pursue different goals so their parallel application is indeed possible, especially when there is only one fine for the violation of both of them. In no way did the Office sanction one anti-competitive conduct twice.

FINE TO A PUBLIC TRANSPORTATION AUTHORITY UPHELD

The Chairman of the Office upheld the imposition of a fine via his second-instance decision on the Ústí Region public transportation authority in the amount of 700,000 CZK. The authority ceased to provide its bus transportation services as of August 1, 2006 due to financial problems. More than 2,000 bus connections were halted immediately, most of which had been until then provided as the service of general interest. The authority found itself in such bad a financial situation that it could no longer objectively operate the bus lines which the Office thought had been in accordance with the Act on the Protection of Competition. However, a dominant undertaking that provides long-term and regular services to customers can not cease to provide them without sufficient prior warning that would enable timely reaction and adaptation to a new business strategy of the service provider. Considering the nature of public transportation bus lines and the extent of these lines on which the service was terminated by the authority, a five-day notice that was issued on July 26, 2006 could not be deemed as being sufficient for the Ústí Region. Consumers were affected by the actions of the public transportation authority, i.e. passengers who demand the services of public service bus transportation in the said region who could not adapt to a new situation and seek services of other transportation providers. The extent of the detriment was even intensified by the fact that the transportation services were halted in the whole of the Ústí Region, and also by the fact that it affected the bus lines that passengers need in order to satisfy their basic needs in terms of transportation.

MERGERS

The merger review is the third pillar of the protection of competition. The goal of this kind of activity is to approve only such mergers that do not raise doubts of possible distortion of competition, so that respective markets can be protected from the creation of dominant undertakings or monopolies. Despite the fact that the Office has very extensive legal powers in this regard and it might block some mergers, the Office takes very cautious steps and all proposed mergers were approved last year, similarly to the previous years. Vast majority of these mergers were approved unconditionally. Most administrative proceedings are concluded with official decision within a 30-day period of time. In attempt to provide the smoothest possible merger approval proceeding the Office has issued a document that details the rules and the progress of the pre-notification processes that individual undertakings might apply for.

SELECTED CASES

MERGER THAT DID NOT ADVERSELY AFFECT MARKET ENVIRONMENT

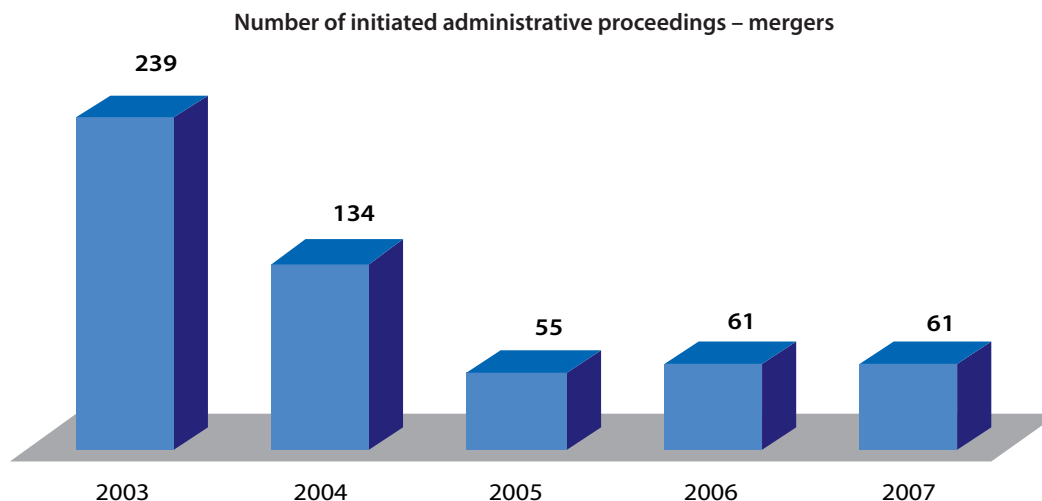
The Office approved the merger of the ICELANDAIR HF company and Travel Service, a.s. company. In this transaction the Icelandic company acquired 100-percent business share in the Travel Service company. Travel Service is a domestic airline carrier that provides airline transportation services, especially charter passenger flights and low-cost regular service under the brand name Smart Wings. In the process of evaluation of this merger the Office considered the fact that the ICELANDAIR HF company had no direct or indirect business activities in the Czech Republic and thus the level of market environment would not be adversely affected. Moreover, there are numerous other leading competitors in the airline transportation market, among them Czech Airlines.

STRENGTHENING OF THE HEINEKEN GROUP POSITION

The Office approved the takeover of the Královský pivovar Krušovice, a.s. company (*Krušovice brewery*) by the Austrian company BRAU-UNION Aktiengesellschaft which is a member of the group of one of the leading beer producers in the world – the Heineken company. Many companies are active in the beer production and distribution sector in the Czech Republic. Plzeňský Prazdroj (*Pilsen brewery*) is the most significant undertaking on the market, followed by Pivovary Staropramen, a.s. Upon the takeover of the Krušovice company the Heineken company gained the third place. As for the situation on the beer production market in the Czech Republic, it can be said that this market is specific thanks to the presence of several economically strong companies and their strength is enhanced by their involvement in global business concerns. The Office approved this merger without conditions, especially in consideration of the fact that the two merging undertakings have a relatively minor role on the market and that there exist other strong competitors. The Office therefore concluded that the merger shall not increase the market power of the two merging undertakings in a way that would cause the creation or promotion of dominant position of the merging undertakings, or either one of them, which would in effect cause a significant distortion of competition.

CONDITIONAL MERGER

The Office approved the merger of undertakings Telefónica O2 Czech Republic, a.s. (hereinafter also referred to as “Telefónica”) and DELTAX Systems a.s. (hereinafter also referred to as “Deltax”) under the condition of fulfillment of a commitment proposed by the parties to the proceeding in order to maintain effective competition. The Office investigated this merger in the



so-called second phase proceeding as there existed the fear of distortion of competition. Telefónica promptly proposed a commitment that the Office evaluated as sufficient and it helped conclude the administrative proceedings quickly, otherwise it might have taken as long as 5 months. The other undertaking, Deltax, must – according to this commitment – withdraw from a public contract concerning an information system for the maintenance of interactive forms (IS ASDM) for the Czech Telecommunication Office. It was the opinion of the Office that there had existed the risk that upon the merger the new entity would get access to secret data on its competitors that it could use in competition. Therefore Telefónica would have gained unfair advantage to other undertakings on the market. This fact was brought to the attention of the Office in the course of administrative proceeding by one of Telefónica’s competitors. The said public contract was transferred onto independent entity.

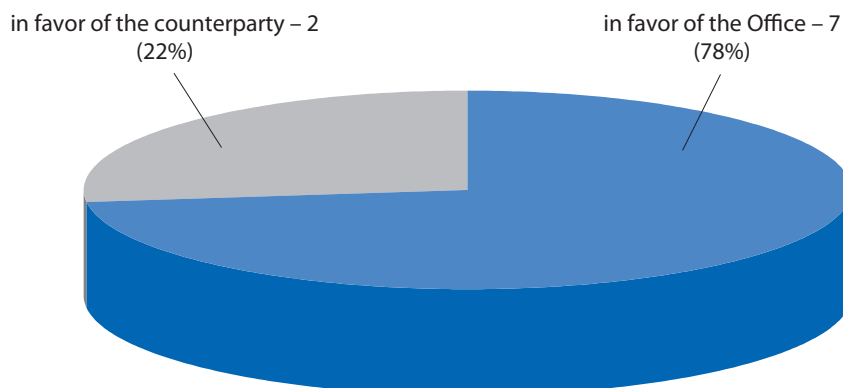
APPEALS AND JUDICIAL REVIEW

The number of appeals lodged with the Chairman of the Office increased dramatically in 2007: there were 46 of them. Eleven second-instance decisions were issued in proceedings in which there were more participants: in four cases the first-instance decision was upheld; the decision was changed five times; in one case the first-instance decision was annulled and remanded; and in one case the administrative proceeding was terminated altogether. Six lawful second-instance decisions imposed fines in the overall amount of 1,393,995,000 CZK.

As for the judicial review of individual decisions of the Office, the Office has been successful in two-thirds of cases, continuing in the same trend as in previous years. Out of the total number of 30 verdicts of all kinds of judicial instances (which is to include the Constitutional Court) the court found in favor of the Office 21 times, the other party succeeded 8 times. One case was remanded by the Supreme Administrative Court to the Regional Court in Brno, thus the court had not ruled on the merits and found partially in favor of both parts.

The immediate review instance for the decisions of the Office is the Regional Court in Brno. The court overruled several key decisions of the Office in 2007, namely the case of the abuse of dominant position by the RWE company which was imposed a significant fine. This decision was overruled due to procedural issues, as the Office had applied (just like it had done

Final court verdicts relating to competition in 2007 – balance of the Office



According to the verdicts of courts received prior to January 31, 2008

in similar cases before) both Czech national legislation and *acquis communautaire*. However, according to the standpoint of the Office parallel application of both national legislation and *acquis communautaire*, when some activity is evaluated from the point of view of two legal systems, is normal and it has been practiced in vast majority of EU member states and it is being foreseen by *acquis communautaire*. This is the reason why the Office has filed a cassation appeal in this case (just like in many other cases for other reasons) to the Supreme Administrative Court. The Supreme Administrative Court overruled 8 verdicts of the Regional Court in Brno relating to the protection of competition in 2007.

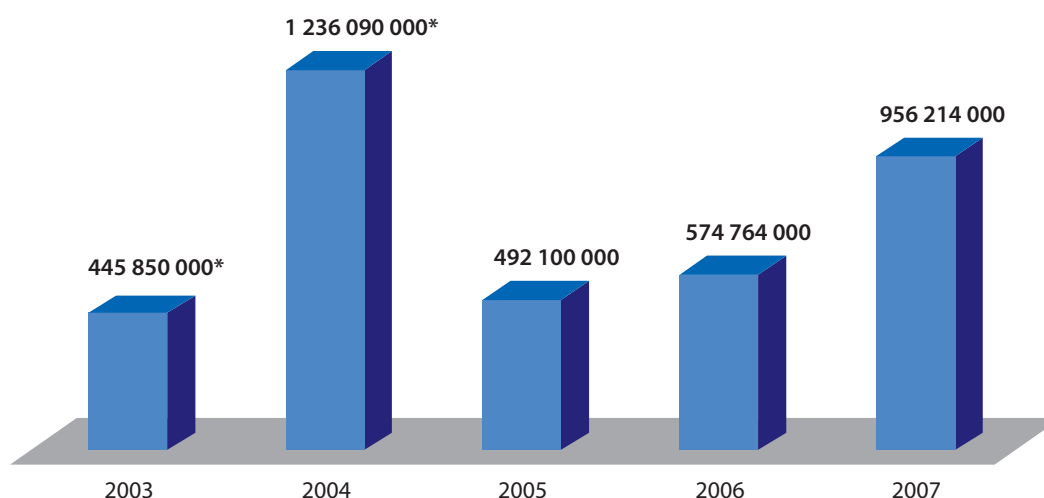
That said, it is obvious that the current activity statement relating to the successes of the Office in judicial reviews is always relative in the particular year and individual verdicts might still change. This is why the pie chart below includes only verdicts that are final (verdicts of the Constitutional Court, final verdicts of the Regional Court in Brno and the Supreme Administrative Court).

Average length of administrative proceedings that were initiated in individual 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	335
2005	120	30	325
2006	252	33	185
2007	*	32	119

*) only one administrative proceeding was completed in 183 days

Overall amount of fines imposed by the Office in its first-instance decisions (in CZK)



* the 2003–2004 figures include the fine in the amount of 313 million CZK for fuel distributors

In 2007 fines in force in the overall amount of 941,906,000 CZK were paid.

PUBLIC PROCUREMENT



Public procurement is an issue to which great attention is paid since large amounts of public funds are allocated through them. The Office institutes the supervision over the activities of contracting authorities in the process of public procurement since 1995. For the supervision in administrative proceedings the Office applies already the third legal norm in a row, which is the act number 137/2006 Coll. – the Act on Public Procurement, as amended.

The administrative proceeding instituted by the Office relating to the activities of a contracting authority can be launched on a written complaint from a claimant. In order to prevent unreasonable claims from being submitted, the claimants shall provide deposit along with the submission of their claims, usually in the amount of one percent of the claimants' bidding price. If the Office finds out that the contracting authority failed to adhere to the rules of procedure that had been defined for the purposes of public procurement, and if his actions affected or could have affected the selection of the best bid significantly, and if a contract has not yet been signed, the Office shall institute corrective measures and actions and it cancels awarding of the public contract, or just an individual transaction of the contracting authority and the deposit is then returned to the claimant. If no violation of the law is found the administrative proceeding is terminated and the deposit that the claimant provided becomes income of the state budget. The overall amount of deposits provided in 2007 was 46,976,148 CZK, out of which 14,697,951 CZK was in the benefit of the state budget.

The Office continues to reveal law violations that affected or could have affected the selection of the most advantageous bid; and if remedy can not be provided otherwise, i.e. a contract with the selected undertaking has already been signed, the Office imposes fines, the purpose of which is not just repression but also prevention. A fine for administrative offence shall not only sanction the contracting authority for its illegal actions but also prevent it from illegal actions in the future, or to force it to act according to the law. Generally speaking the Office focuses especially on prevention in its decision-making activities. However, fines are just as important aspect of the supervision.

The actions of the contracting authority can also be reviewed in administrative proceeding *ex officio*, the outcome of which might be both corrective measure and a fine, or the proceeding can be terminated provided that no violation of law is found. In 2007 the Office received 281 complaints and the *ex officio* administrative proceeding was initiated in 70 cases.

LEGISLATION

According to the current legal status the contracting authorities, while awarding public contracts, shall adhere to the act number 137/2006 Coll. (Act on Public Procurement), as amended. This legislative framework reflects valid EU directives and it is a reliable legal norm that provides for effective and transparent spending of public funds. As it is the case with any other legal norm, this act requires amendments the need for which is revealed by the law application and practice. To this date some confusing aspects of the act are being explained via the guidelines and judicature of the Office in the form of its decisions in force. However, some conflicts of individual provisions or their logical inaccuracies still do exist. In the course of its activities the Office has been collecting information and experience that it shall use in the process of amendment to the applicable legislation on which the Office shall cooperate with the Ministry for Regional Development that guarantees the legislation in the sector of public procurement. Among the confusing issues is the submission of bids from a contractor who can not be the subcontractor for another contractor; or the formalistic provision of Article 71, Sec. 8 Par. b) on the obligation to adhere to the condition of one's bid, etc. A key part of the amendment is the inclusion of the new European directive on the increase of the efficiency of review proceeding in public procurement that has been adopted by the European Parliament. In 2007 the Czech Parliament dealt with the issue of "technical" amendment to the law that includes, among other things, the provision relating to the detaching of financial limits that apply to public procurement into a separate legal norm so that it is not necessary to amend the entire law as such everytime there is the need to update these limits. Therefore, these financial limits shall be defined by a government decree issued under the mandate given in the act. Moreover, an obvious error in the act shall be remedied in relation to the procedural part of the law, specifically Article 111, Sec. 2 in which reference is made to Article 113, Sec. 3, instead of Sec. 2. The issue of public

procurement is closely tied with the issue of concessions, as governed by the act number 139/2006 Coll. Only one proceeding was initiated pursuant to this law in 2007.

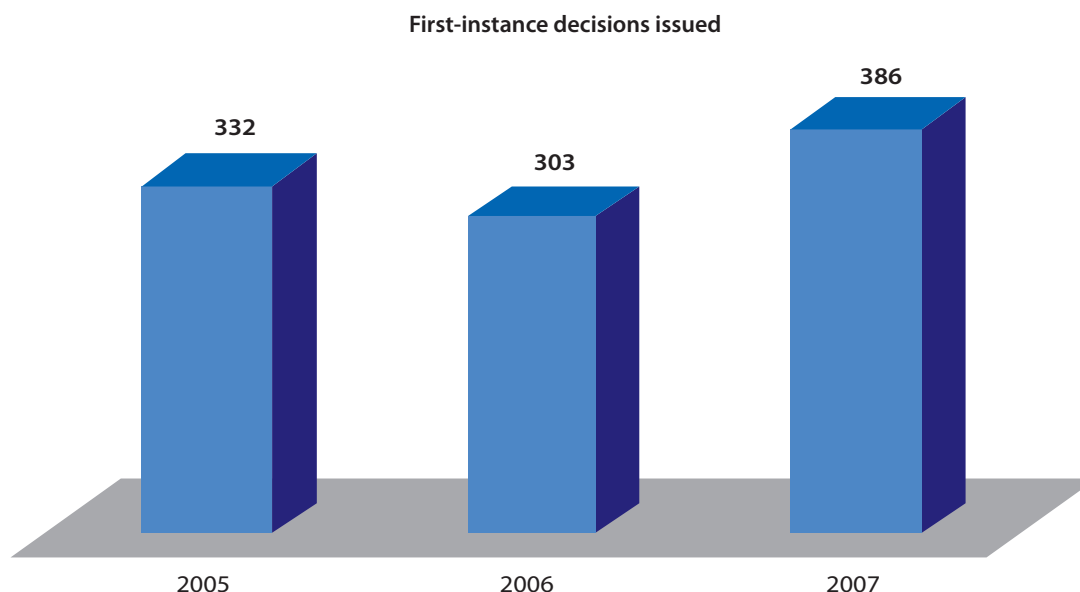
DECISION-MAKING AND SUPERVISORY ACTIVITIES

In 2007 the Office issued 386 first-instance decisions, which represents a significant increase if compared to previous time periods. Most administrative proceedings were initiated upon request from particular bidders. Fines were imposed in 83 cases in the overall amount of 11 million CZK. The overall amount of deposits that became state budget income increased, just like it did in 2006 (amounting for 14.7 million CZK). As for the supervision by the Office a large-scale inspection was concluded in relation to public procurement in the municipality of Zlín. This inspection was launched in 2006 and the total number of 71 public contracts was subject to the review. Eighteen administrative proceedings were concluded with a decision by the end of the first quarter of the year 2007, five cases were appealed (in three of which the fine was cancelled due to expiration of the three-year period during which sanction can be imposed, and in two of which the appeal was dismissed). Pursuant to the results of the inspection the municipality of Zlín was imposed a fine in the total sum of 3,071,000 CZK in administrative proceedings. Inspection at the Ministry of Defense was completed, the result of which were two administrative proceedings that involved sanctions. Inspection at the municipality of Ústí nad Labem that started in 2006 is almost completed. In 2007 a new inspection at the Czech Rail company was launched. This inspection is focused on the activities of the company in the process of realization of the project of railroad station building renovation named "Živá nádraží" (*Live Stations*).

Number of complaints received (proposals + incitements)	506 (225+281)
Number of administrative proceedings initiated	321
of which	
– following the complaint	225
– ex officio (from complaints – 70; from termin. adm. proc. – 18; from inspections – 0; other – 8)	96
Number of administrative proceedings still in progress as of December 31, 2007	111
Total number of first-instance decisions	386
Interlocutory rulings + dismissal of interlocutory rulings	64 + 59
Decisions issued on the merits	284
of which	
– terminated administrative proceedings (no law violation found)	48
– remedy decision + sanction	236
Administrative proceeding terminated due to procedural reasons	102

Number of fines imposed	
Total amount of fines in force in 2007	10,802,500 CZK
Total amount of fines due in 2007 pursuant to Czech National Bank statement	9,881,500 CZK

Total amount of administrative fees due in 2007	182,500 CZK
Total amount of deposits in 2007	46,976,148 CZK
Total amount of deposits that became state budget income	14,697,951,75 CZK



SHORTCOMINGS IN THE APPLICATION OF THE ACT

The most serious violation of the act occurs when a contracting authority fails to adhere to the act altogether, or when only one bidder is invited and the transparent competitive environment is thus not created. It is logical that when there are more bidders the contracting authority can take advantage of lower prices that are the result of competition of bids. However there are situations when a contracting authority chooses to proceed in a simplified manner of procedure without prior public tender notice. In such cases a severe penalty from the Office usually follows, as it is a flagrant violation of law. One of the examples might be the activities of the Moravské naftové doly s.p. company in 2007. Moreover, among the other serious forms of law violation is the unlawful division of a contract into several smaller ones in order to avoid the mandatory limits for public procurement. A recurring problem that the Office deals with is the definition of requirements or reference to companies, business names or first names and last names, or specific names of goods or services that apply to a specific person or entity directly in the bid invitation documentation. Furthermore, among the shortcomings is also the fact that the evaluation of individual bids does not take place pursuant to the defined criteria, tenderers are being excluded from the award procedures for formal defects (wrong page numbering), or the contracting authorities demand that the tenderers fulfill qualification conditions that are in no way related to the subject of the public contract.

SELECTED CASES

MORAVSKÉ NAFTOVÉ DOLY, s.p.

The Office imposed the biggest sanction in force in the amount of five million Czech crowns on the state enterprise Moravské naftové doly (*in liquidation*). The reason for the fine was that the company had awarded a public contract for the settlement of environmental damages – liquidation of oil-gas wells and exploring wells without public tender notice, i.e. under

non-transparent competition conditions. The overall amount of the contract exceeded 4 billion Czech crowns. Former liquidator of the state enterprise was found responsible and she was recalled in mid-July 2007 (the contract with the selected tenderer, the Purum s.r.o. company was concluded on June 25, 2007). The newly appointed liquidator issued a statement in administrative proceeding in which he admitted that in this specific case the conditions of the law that allow the awarding of a contract without prior public tender notice had not been fulfilled. The contracting authority failed to prove that this specific case had represented highly urgent situation.

NON-TRANSPARENT BALLOT

Based on information found on the Internet the Office started to investigate non-transparent ballot in the process of public procurement by a contracting authority which was the municipality of Karlovy Vary. This authority was later fined in the amount of 500,000 CZK. Among the reasons for the fine were significant malpractices in the process of public procurement for the "Exhibition, sports, cultural and congress center" the overall amount of which was to exceed 1 billion CZK. The contracting authority broke the law (the Act on Public Procurement) when it did not narrow down the number of tenderers in a transparent manner. The contracting authority proceeded as follows: it entrusted the STORMEN s.r.o. company with awarding the contract. Then, this company for no legitimate reason entrusted the company Stone Block a.s. with the ballot. The number of tenderers for the public contract was narrowed down by a company that differed from the one that was entrusted with awarding the contract and that was different from the contracting authority. Moreover the Stone Block company was approved ex post. Even this activity is suspicious enough to raise doubts as to whether the activities are transparent on the side of the contracting authority. The Office reviewed a footage of the ballot that is publicly accessible. It is obvious that the person who made the draw manipulated with ballot cards in the ballot box. Ballot during which any person manipulates with the cards inside the box can not be deemed as being transparent, whatever the reason might be. The draw of the first three companies took significantly shorter time than the draw of the last two. The last tenderer to be drawn was the association of companies SYNER-BAU-STAV-METROSTAV that eventually won the contract. The discrepancies related to the duration of the ballot were explained by "cards stuck together". The Office did not accept this explanation as being credible, especially due to the fact that after the remaining cards were shaken out from the box they were not stuck together. The review of the cards themselves was not possible since the contracting authority claimed not to have them at its disposal in the process of administrative proceeding. Also the municipality of Zlín was fined for non-transparent narrow down of tenderers – in the amount of 3 million CZK. This type of sanction came in force overall in 13 cases of public contracts. Ballots in these cases took place only in presence of committee members appointed by the contracting authority, i.e. with no public control (provided by notary public or individual tenderers).

CONTRACT WITHOUT PRIOR TENDER

The Office imposed a fine in the amount of 100,000 CZK on Fakultní nemocnice Olomouc (*Olomouc University Hospital*). In 2003 the hospital announced a public supply contract for the provision of a computer system. The IBM Česká republika company won the contract. One year later the very same company was invited to provide 500 personal computers, 500 monitors and managerial information system. This procedure, however, represented violation of the Act on Public Procurement as the contract had been signed without prior public tender. In this specific case the contracting authority was supposed to adhere to the act by providing for an open or narrowed tender procedure. It is possible that the contracting authority might have received a more advantageous bid than the one the invited company (IBM) had offered.

THE MINISTRY RESTRICTED THE PARTICIPATION OF BIDDERS IN A TENDER

The Office imposed a fine in the amount of 100,000 CZK on the Ministry of Justice. The wrongdoing in question is related to a public contract on the realization of register of insolvents. The ICZ a.s. company was selected as the provider of the register of bankrupt companies. The ministry wrongly evaluated the minimum level of qualification prerequisites, as it demanded that basic capital of tenderers be at least 5 million CZK. However, basic capital of tenderers in a public contract is only a book value

and the company is entitled to make use of the initial deposit in its business activities. In order to establish a company the basic capital is not indicia for the current economical and financial condition of the company. Such qualification prerequisite can not correspond to the nature, extent and complexity of the subject of public contract. Moreover, the ministry erred when it demanded that the technicians be fulltime employees of the contractor or subcontractor. This represents yet another illegitimate restriction for the tenderers as the law stipulates that the contracting authority might require a list of technicians but with no respect to their employment relationship (employment contract, or other).

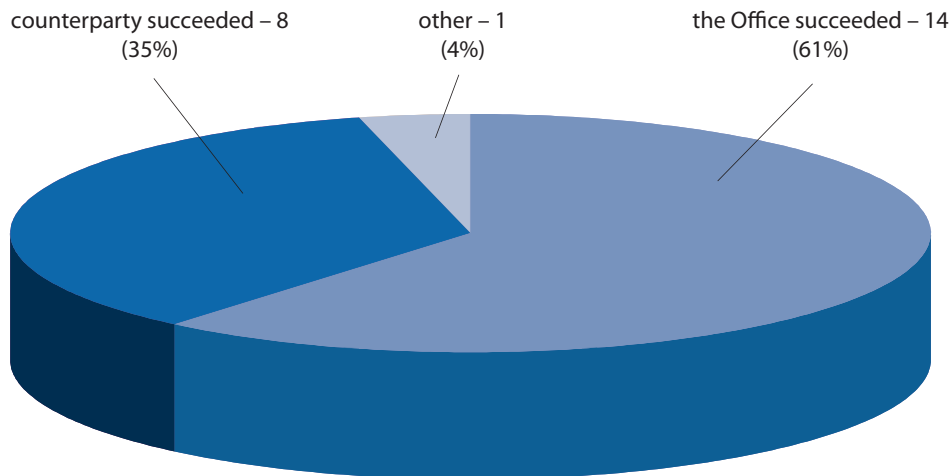
APPEALS AND JUDICIAL REVIEW

In relation to public procurement constant increase in the number of lodged appeals can be seen. In 2005 the Chairman of the Office dealt with 105 appeals; in 2006 there were 159; and finally in 2007 there were 205 appeals altogether. The number of lodged appeals is of course closely tied with the increasing number of appeals that are brought to courts.

Out of 37 verdicts of respective courts in 2007, the court found in favor of the Office 20 times. Among the successes of the Office was the case of the review of the biggest public procurement in the history of the Czech Republic for the contract of motorway toll system by the Supreme Administrative Court.

Considering the fact that different verdicts of different courts of various instances are often contradictory the actual balance of successes of the Office might vary. This is the reason why the pie chart below includes only verdicts that conclude the specific cases (final verdicts of the Regional Court in Brno, or of the Supreme Administrative Court).

**Final verdicts of the Regional Court in Brno and Supreme Administrative Court related to public procurement in 2007
(balance of the Office)**



According to the verdicts of courts received prior to January 31, 2008



STATE AID

State aid is a measure granted through state resources, favouring certain undertakings or production of certain goods, and is selective; distorts or threatens to distort competition and affects trade between EU member states. State resources are all resources from the state budget, resources provided by local authorities (municipalities, regions) or by subjects that are founded by the state, or by subjects which the state controls or in which the state has decisive influence.

It is a preferred policy of the European Union to promote the competitiveness of regional economies, in which state aid plays a significant role. Any funds that are provided from the state-operated financial sources tend to grant advantages to certain undertakings or industry sectors by which competition can be distorted. This is the reason why state aid is prohibited by the EU legislation in general terms; there are some circumstances, though, under which exemptions from this rule can be granted.

Pursuant to the Treaty establishing the European Community, among the reasons for granting above mentioned exemptions can be the aid to promote of regional development in regions where standard of living is abnormally low or where there is serious underemployment; or the aid to facilitate the development of certain economic activities or of certain economic areas, where such aid does not adversely affect competition. There are three main categories of state aid – regional aid, horizontal aid (small and medium-sized enterprises, research and development, environmental aid, rescue and restructuring firms in difficulty, services of general economical interest) and sector-specific aid (to agriculture, fishing and forestry, transport).

The Office for the Protection of Competition had decision-making powers in relation to state aid in the Czech Republic during the years 2000–2004. The Office had been granting exemptions from state aid prohibition and it had been approving state aid schemes. Since the Czech Republic's EU accession in 2004 these decision-making powers have been taken over by the European Commission. State aid providers shall notify the EC of any new state aid that they are planning to provide, or of any change to the already existing aid, via the Office. State aid in the sector of agriculture (pursuant to the definition of "agriculture" in Appendix I of the Treaty establishing the European Community) shall be notified via the Ministry of Agriculture. State aid provider is entitled to provide the aid only after its approval in Brussels.

ACTIVITIES OF THE OFFICE

Since the Czech Republic's EU accession and in terms of state aid the Office coordinates and monitors state aid and it serves as a counseling institution, as well. In this regard the Office issued 100 recommending statements in 2007 relating to investment incentives, 1,098 statements were issued upon request from providers or beneficiaries of state aid, and 124 comments to Czech draft laws were submitted by the Office.

Pursuant to the act number 72/2000 Coll. on investment incentives, as amended prior to the effectiveness of the amendment to the act number 159/2007 Coll., the Office received a total number of 94 applications for investment incentives. In 81 cases the Office found that the proposed intensity and amount of state aid were compatible with valid EC legislation relating to state aid and that the investment would be beneficial for the particular region. In 6 cases the Office recommended that the amount of state aid be lower, especially in consideration of the current situation on that particular market, as higher amount of state aid could have distorted competition more significantly. In two cases the Office dismissed the application for state aid. It was in the case of investment plans that were to be realized in the so-called "sensitive sectors" in which regional state aid, that the investment incentives represent, is forbidden. In two cases it was recommended that the EC be notified of the intention to grant state aid, as the relevant thresholds for calculation of state aid were exceeded and in such cases the EC stipulates obligation for individual notification of state aid.

CHANGES TO LEGISLATION

As of July 2, 2007 when the act number 159/2007 Coll. became effective that amends the act number 72/2000 Coll. on investment incentives, the power to participate in the revision of investment incentives was no longer granted to the Office. Investment plans that were submitted after this date are not subject to comments by the Office.

In 2007 the Office took part in the preparation of new EC legislation relating to state aid, specifically in terms of environment, risk capital and state guarantees. The Office also participated in the negotiations on the future form of the so-called "super" block exemption. This exemption shall simplify and guarantee a greater degree of transparency of the conditions under which state aid is provided that is not subject to notification obligation in relation to EC. To this date there are five block exemptions that exempt the provider of state aid from the notification obligation, provided that certain conditions are fulfilled: aid to small and medium-sized enterprises, aid for research and development for the benefit of small and medium-sized enterprises, aid for employment, aid for training and regional aid. The European Commission suggests that all the aforementioned exemptions be concentrated into one and that this one exemption be extended to cover environmental aid, risk capital aid, and research and development aid for big companies. The EC expects the adoption of the final version of the regulation on block exemptions before mid-2008. Furthermore, the Office also participated in the adjustment of the existing interactive system for state aid notification and on the amendments to procedural rules.

SELECTED CASES

In 2007 the European Commission received several complaints from claimants relating to the review of state aid granted in the Czech Republic and the Office actively cooperated in the settlement of the claims. Moreover, the Office sent 46 notifications pursuant to block exemptions to the EC. It should be noted that all notified cases of state aid in the Czech Republic were approved in Brussels as being compatible with the common market.

This was also true in May 2007 in case of significant state aid for the Korean Hyundai Motor Company that invests in the new Nošovice car manufacturing plant. The European Commission issued a decision by which it approved direct grant and the sale of land at reduced price in total amount of 111 million euro. Besides that, the Hyundai company shall be granted state aid pursuant to the act on investment incentives in the form of income tax relief, job creation aid and training aid. Overall amount of the aforementioned aid measures might reach up to 194.49 million euro. Implementation of the investment must promote regional development, for example in the form of the creation of new jobs and new opportunities for subcontractors from the region.

The process of restructuring of steel industry was completed successfully as well. In June 2007 the European Commission approved the changes that Czech Republic had suggested in relation to the process of restructuring of the Válcovny plechu Frýdek-Místek company. The Commission approved the change to the investment plan especially because it shall not represent excessive state aid. The important issue is that the amount of state aid was even lowered. The company had to return 24.88 million CZK to the state budget. This amount of state aid was closely tied to investment that had not been implemented.

In February 2007 was approved state aid for the compensation of damages caused by 2006 floods on the property of companies that operate public ports and domestic waterway transport. The goal of this initiative was to restore the original extent of the activities operated by public ports and operators of domestic waterway transport who were affected by the spring 2006 floods. The overall approved budget was 47,388,000 CZK and the measure was planned to end at the end of 2007.

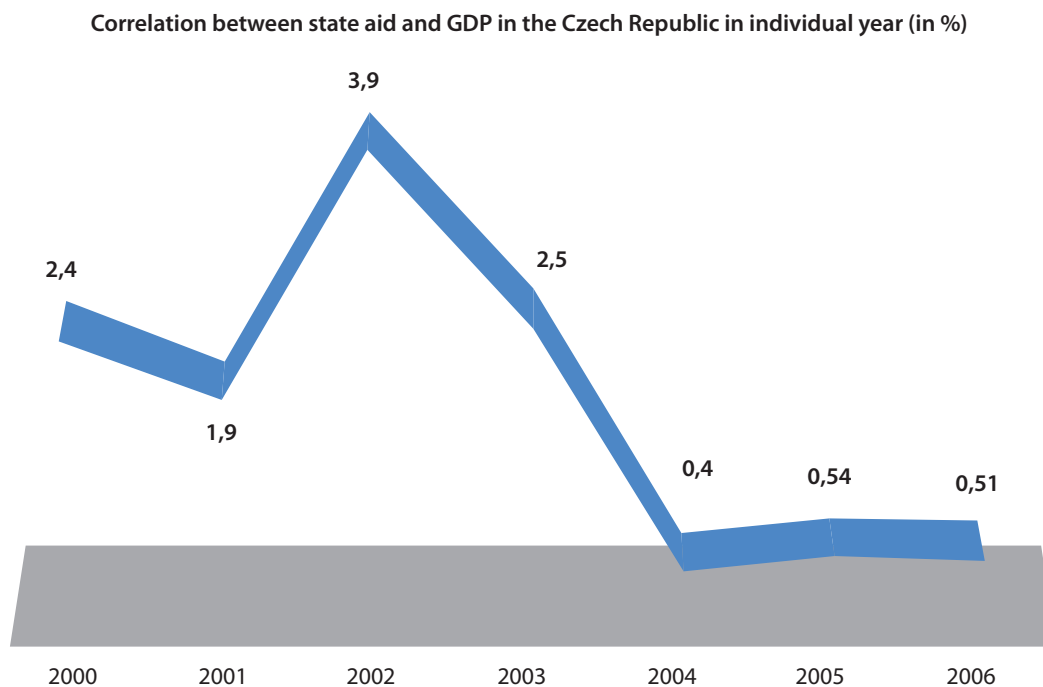
In September 2007 the Commission concluded a formal investigation relating to the remaining part of the state aid scheme for combined transport for the years 2006 to 2010. The Czech Republic managed to convince the European Commission that the aid for the purchase and modernization of vehicles for the combined transportation is indeed in accordance with *acquis communautaire*. The expected budget for the whole project during 2006–2010 shall be 1.58 billion CZK.

In May 2007 the European Commission also approved the state aid in the form of state guarantees for the purpose of financing of the purchase of railroad vehicles for the Czech Rail company. This measure was related to the financial backing for a loan security of the EUROFIMA company. This guarantee was a new aid measure, but in principle it was identical to the guarantees that the Czech Republic had granted to the Czech Rail company before, in 2005 and 2006.

Opinions of the Office in relation to investment incentives for the Ministry of Industry and Trade in 2007

Number of applications for investment incentives (total)	94
of which	
recommended	81
recommended to reduce intensity of state aid	6
not recommended	2
notification necessary	2
application for investment incentive withdrawn	1
recommendation not issued prior to December 31, 2007	2

Data as of December 31, 2007



INTERNATIONAL COOPERATION



1. COOPERATION WITHIN THE EUROPEAN UNION

The main platform on which the cooperation among the competition authorities of EU members takes place is the European Competition Network (ECN). The most important issues relating to the activities of ECN, along with other key topics of the protection of competition, were negotiated during the meeting of top representatives of national competition authorities in Brussels in November 2007. Chairman of the Office Martin Pecina attended the meeting as well. The summaries of sector inquiries in the sectors of energy and banking were presented there. Among other key topics was the issue of private enforcement of competition law, the modernization of the approaches towards the abuse of dominant position (reform of Article 82) and the issues of optimization of proceedings before the European Commission.

Several ECN plenary sessions took place at which representatives of the Office participated. Among the key issues to be dealt with was the extension of cooperation among European competition authorities, the preparation of an agreement on cooperation in competition policy with South Korea or private enforcement of competition law. Last year the Office focused within the ECN network especially on the participation in workgroups that dealt with the issues of abuse of dominant position, leniency and cooperation issues, or in sectoral subgroups dealing with banking, energy sector, motor vehicles and liberal professions. In the framework of the workgroups experience and knowledge is exchanged amongst the representatives of individual member states. The most recent activities of the leniency workgroup was the adoption of the so-called ECN model leniency program. This program was used by the Office in the process of formulation of its own new leniency program (the program for imposing less stringent fines for cartel agreements). In the scope of broad activities of the liberal professions workgroup initiated the review of legal norms and documents of European associations and unions of particular liberal professions. The Office has initiated a similar review in the Czech Republic. Representatives of the Office also took part at meetings of advisory committees of the European Commission at which specific cases of the application of competition rules are discussed, in order to reach general consensus.

In 2007 also continued the participation of representatives of the Office in the workgroups of ECA (European Competition Authorities), especially in the workgroups dealing with financial services and sanctions.

Currently the Office deals with the most recent issue, which is the preparation of the Office for the presidency of the Czech Republic in the Council of the EU in the first half of the year 2009. During this period of time the Office shall focus on four key issues: the promotion of private enforcement of competition law, harmonization of leniency programs throughout the member states, amendment of the Council directive on mergers; and procedural aspects of state aid. The Office serves as a member of the Competitiveness Council. Priority issues for the EU presidency have been discussed by the Office with representatives of French and Swedish competition authorities, i.e. countries that will preside before and after the Czech Republic. In relation to the presidency employees of the Office received extensive training during 2007.

2. COOPERATION WITHIN INTERNATIONAL ORGANIZATIONS (OECD, ICN, UNCTAD)

One of the most significant events in the world of competition policies are annual conferences of the International Competition Network (ICN). In 2007 this conference took place in Moscow and representatives of more than one hundred competition authorities and other experts took part. As for the successes that were achieved within the framework of the cooperation of ICN member countries in the previous year, a detailed report was presented during the conference that dealt with the issue of the abuse of dominant position (unilateral conduct), as was another part of the so-called manual on the fight against cartels or the recommended practices for merger control. Moreover, negotiations on further intensification of the fight against cartels took place. A delegation led by the Chairman represented the Office at this three-day conference. The Chairman moderated a panel discussion that focused on competition issues in state-created monopolies and during one plenary session he presented the achievements of the Czech competition office concerning the implementation of the ICN recommended practices on merger notification. In 2007 representatives of the Office participated in the activities of individual ICN workgroups, especially those dealing with the issue of unilateral conduct, cartels and mergers. Moreover, representatives of the Office took part in workshops on mergers and cartels in 2007. At the end of 2007 preparation for the Merger Workshop began, as the workshop on behalf of ICN shall be hosted by the Office in March 2008.

In 2007 the Office was to a large extent once again involved in the activities of the OECD competition committee and its working parties. The Office prepared several contributions to the sessions of the competition committee that meets three times a year. Representatives of the Office led by its Chairman also presented these contributions during the sessions. Last year the Office also played a significant role in the preparation of the economic review of the Czech Republic by OECD that shall be made public in spring of 2008. The Office also prepared a statement relating to competition policies in Israel in relation to Israel's planned OECD accession. At the end of the year 2007 the so-called peer review of the Czech Republic's competition law and policy was commenced. It is a complete evaluation of the competition policies of the Czech Republic by OECD experts. The outcome of the peer review is the formulation of recommendations and measures the purpose of which is to improve the quality of competition law and enforcement.

A delegation of the Office attended the session of the permanent United Nations Conference on Trade and Development (UNCTAD) that meets every year in Geneva. At the meeting of the competition section the Chairman of the Office gave a speech on the intensification of global competition and fighting poverty in developing countries. Also on the program was competition on the energy market, competition related to intellectual property rights and the evaluation of effectiveness of competition authorities.

3. COOPERATION WITH FOREIGN COMPETITION AUTHORITIES

Intensification of the relations with competition authorities abroad has been one of the long-term goals of the Office. The Office attempts to intensify contacts that were established in the past, as well as to establish new ones. Participation of the Office at international forums is an important method of the development of effective cooperation.

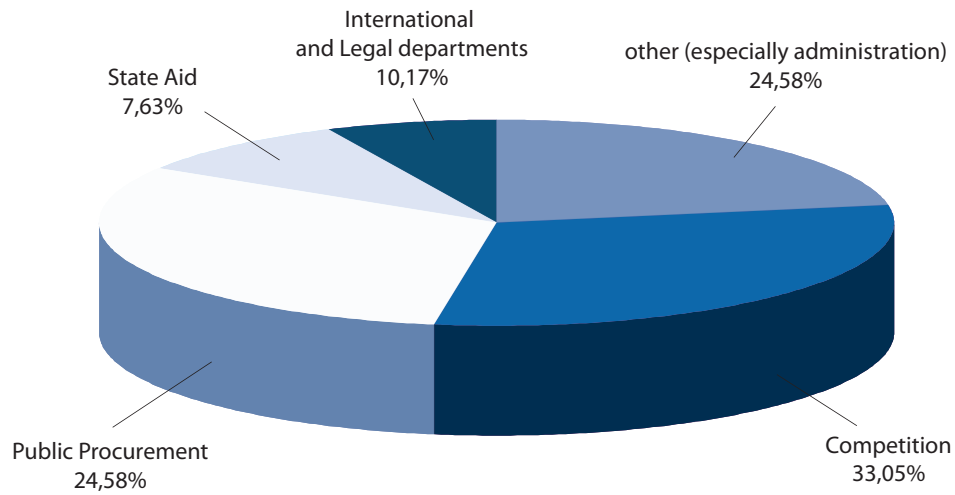
A delegation from the Office led by its Chairman visited, among others, the Austrian and Dutch competition authorities in 2007. They discussed especially the issue of competition law enforcement in key sectors of economy, such as the energy sector, retail business and banking, as well as the cooperation between the authorities within the European Competition Network.

The Office also cooperated significantly with competition authorities outside the European Union: both within international conferences and seminars *and* on bilateral levels. Last year a delegation from the newly established Moldovan competition authority visited the Office to discuss the development of competition policies in Moldova. Pursuant to Memorandum on Cooperation with the Federal Antimonopoly Service of the Russian Federation an exchange internship program between the two offices was realized.

HUMAN RESOURCES AND PUBLIC EDUCATION

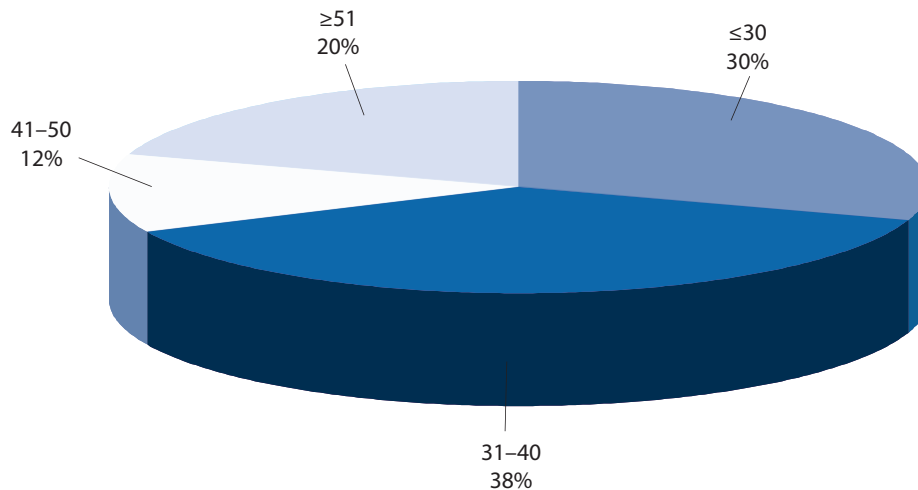


Employees of the Office by the area of activity



as of January 10, 2008

Age structure of the Office's employees



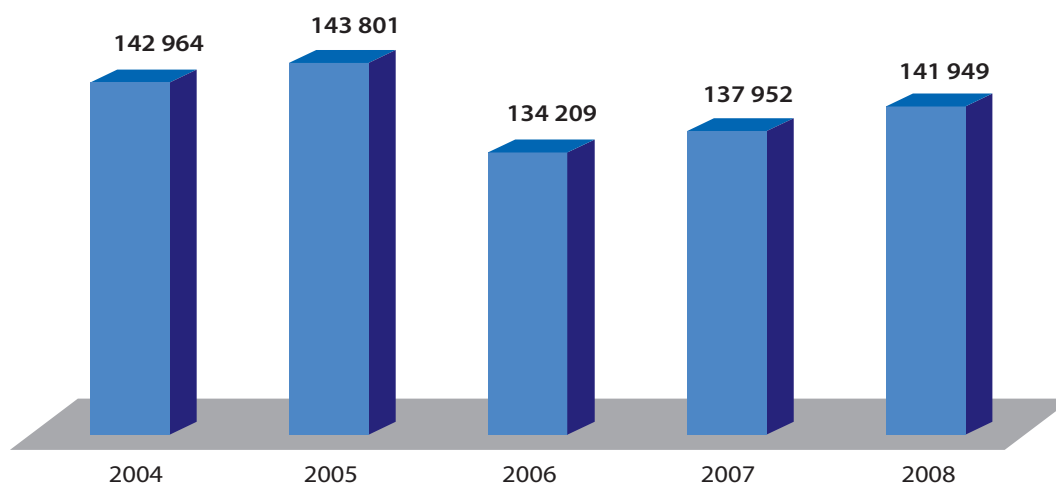
as of January 10, 2008

NEW SEAT OF THE OFFICE

The year 2007 saw the solution of the problem the Office had with its official seat. In spring 2007 most employees of the Office moved from rented offices into a renovated Neo-renaissance building at the address tř. Kpt. Jaroše 7 in Brno. The building used to serve as a boarding school for girls; it was built in 1904 and the KALÁB company was the main contractor for the renovation the price of which did not exceed 80 million CZK. The reconstruction of the Office (especially the facade) was very successful. It can be proved by the fact that the building was nominated as one of 15 most beautifully renovated landmarks in the South Moravian Region in 2007.

Aside from necessary finishing works that have been taking place on the open area in front of the historical building, in August 2007 construction works on a new extension fully started, the contractor of which is the TCHAS s.r.o. company from Ostrava that had submitted the best bid in the tender. A contract for work was signed with this company in the second half of July 2007 and the company took over the site on July 24, 2007. The binding completion date was set for 290 days from contract signature. In May 2008 the remaining employees of the Public Procurement Section of the Office shall move into the new building, as these employees still sit in rented offices. The building extension shall cost approximately 90 million CZK and it shall also include a conference hall for 150 people.

Approved budget of the Office (in thousands CZK)

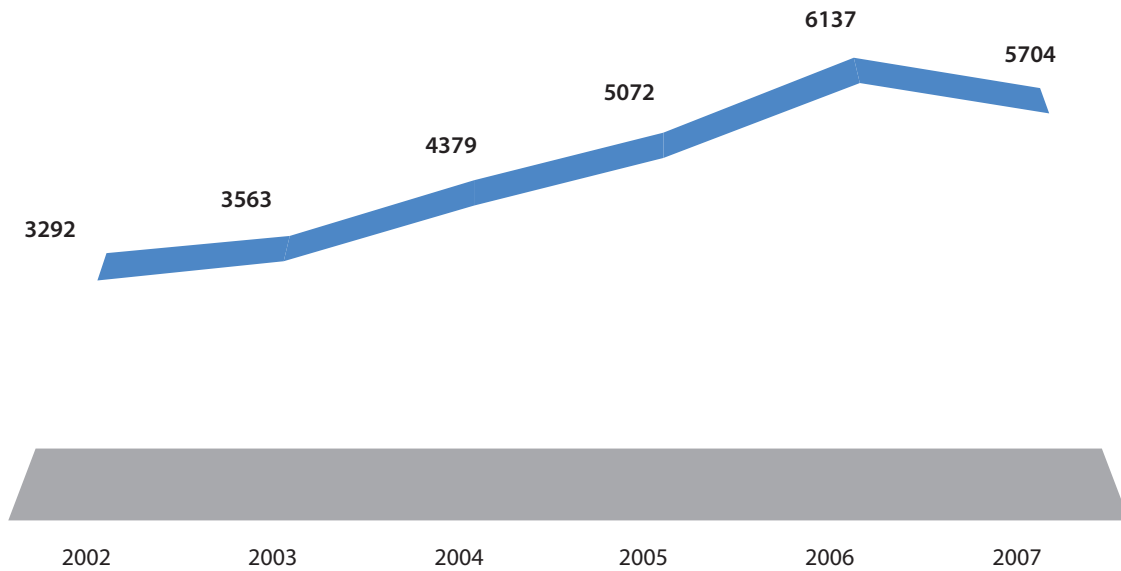


At the end of the year 2007 the Ministry of Finance conducted an inspection at the Office in order to find out whether the funds the Office was being granted from the state budget during the years 2004 to 2006 had been used accordingly and effectively. Also the effectiveness of the financial inspection system was checked. Subject to the inspection was especially the budget chapter relating to asset management, effectiveness of the internal auditing system, vehicle fleet operation and official mobile phone use. The inspection included circa 10 thousand pages of all kinds of documents (invoices, bank statements, contracts, etc.). The report from the inspection says that the accounting of the Office is truthful and accurate, and that the Office provided for the realization of the law on financial inspection and that the implemented internal auditing system had proved sufficient and effective. Similarly, the Brno branch of the Social Security Administration did not find any inaccuracies relating to health insurance, insurance deduction obligations or in relation to health insurance benefit disbursements.

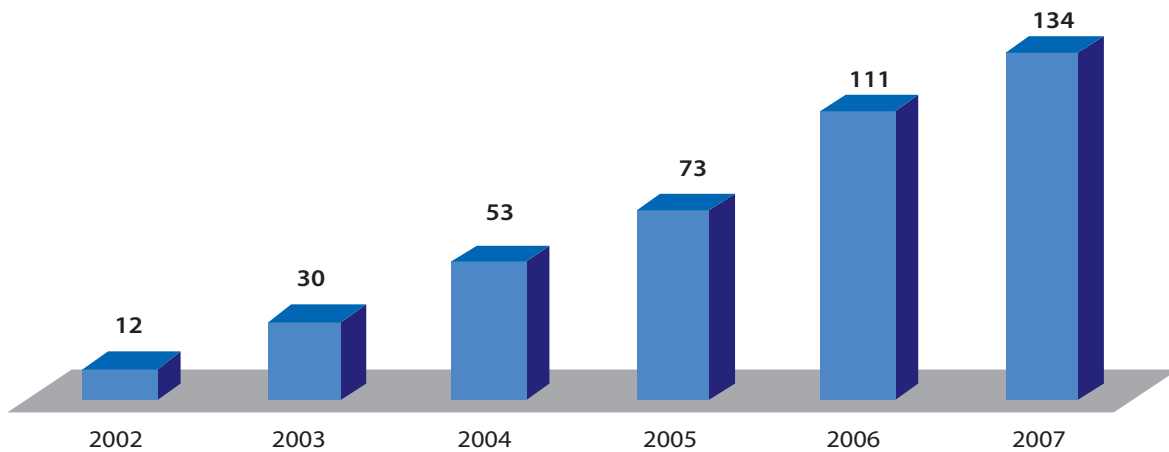
INFORMATION ACTIVITIES

Providing information to media and the general public has been one of the priorities in the activities of the Office. The External Relations Department that is in charge of this scope of activities issued the biggest number of press releases so far – 134. Of this number, 75 were related to the protection of competition, 49 were related to public procurement, and 10 were related to state aid issues. The most important topics and issues were presented at press conferences with the Chairman, or directors of the respective sections.

Number of articles on the activities of the Office during the years 2002–2007 in selected media



Number of press releases released during the years 2002–2007



Most media pay great attention to the activities of the Office. This is indicated by the fact that the press conference on the fine imposed on poultry producers cartel was broadcasted live on channel ČT24, or that a live interview with the Chairman of the Office on the fine for the “Czech ballot” in Karlovy Vary was broadcasted in the main evening news program Události. Moreover the Office organized several campaigns in 2007 the goal of which was to inform the general public of significant topics and issues. Among them was the new methodology on setting of fines, the new leniency program, beer market analysis etc. Information leaflets were issued for these topics. Other information leaflets were related to the relation between competition and sports and the issue of public procurement. On the occasion of the opening of the new seat of the Office the External Relations Department issued a new brochure that provides details on the history of the building that used to serve as a boarding house for educational association named Brünnner Frauenerwerb-Verein. Articles and references on the activities of the Office appeared in the selected media more than 5,700 times.

EVENT OF THE YEAR

Aside from the reconstruction of the new seat of the Office, the biggest event of the year was an international conference on public procurement. The Europlatform civic association and the Regional Chamber of Commerce took part in the organization of this unique event. The conference took place at the BVV Exhibition Center and representatives of nine European countries and many Czech experts spoke there. More than 300 delegates heard their contributions.

Public contract awarding is a very specific legal sector which is why such events are very important especially for experts. As the Chairman of the Office Martin Pecina noted it is a rather complicated set of issues as the third legal norm is applied in the Czech Republic as to this date. Each of the acts on public procurement was amended several times.

His words were further emphasized by Petr Wagner from the Internal Market and Services Directorate-General of the European Commission who pointed out the existence of a new directive on public procurement that has recently been adopted by the European Parliament. This directive was introduced to broader Czech audience for the first time in the Rotunda of the A Hall of the Exhibition Center in Brno. The meeting of experts on public procurement was concluded by two panel discussions named “Enforceability of decisions on the review of institutions and ex post review” and “Powers of reviewing institutions and their organization”. During the latter the discussion proved the significance of the review of objections from the contracting authority. Most delegates spoke positively about the conference, its program, agenda and the information that was presented.

The background of the entire page is a complex, abstract pattern of glowing blue and white lines. These lines vary in thickness and brightness, creating a sense of depth and movement. Some lines are sharp and bright, while others are faint and blurry. The overall effect is reminiscent of a neural network, a complex web of connections, or perhaps a microscopic view of biological tissue. The colors range from deep, dark blues to bright, almost white highlights.

AGENDA 2008

This is the third time the Office on the Protection of Competition includes the Agenda chapter in its annual report. It includes the details on the particular markets the Office shall focus on in the nearest future, or the expected changes to legislation relating to specific spheres of activities of the Office.

COMPETITION

Among other things the Office shall make sure that competition rules are not violated in the process of analog-to-digital transfer in public broadcasting. In consideration of the new regulatory framework in the sector of electronic communication it shall also be expected that some part of the agenda that was (until now) subject to regulation from the Czech Telecommunication Office will most definitely be annulled. The Office shall further observe the situation in railroad cargo transport and especially the effects of the separation of ČD Cargo from the Czech Rail company in this sector.

In 2008 the Office is about to get involved with the services in the sector of graphical design due to the suspicion that a prohibited agreement of undertakings was concluded in relation to business conditions and prices for graphical works. A whole-specter investigation of distribution channels shall take place as well, in attempt to monitor the issues of positive and negative discrimination of, for example, regular and internet stores. The waste management market will also be monitored, as will the brown coal market. The Office will also focus on the situation in the veterinary services market. The Office strives for the separation of veterinarian service provision from the sale of medication(s) in order to promote competition in this regard. Moreover, it shall deal with a rather problematic issue of the impossibility for livestock farmers to employ veterinarians. And last but not least the Office shall pay extra attention to draft amendment to the act on pharmaceuticals, where the Office finds very positive that the adopted legal norm allows for the provision of pharmaceuticals for livestock directly from distributors.

The Office shall evaluate the Commission Regulation (EC) No. 1400/2002 of July 31, 2002 on the application of Article 81 (3) of the Treaty to categories of vertical agreements and concerted practices in the motor vehicle sector. In case non-conformity with the regulation is discovered the Office will demand that the representatives of car manufacturers restore the lawful conditions. The acquired knowledge shall also contribute to a more qualified standpoint of the Office for the eventual sessions of EC working group dealing both with the evaluation of effectiveness of the regulation and with the eventual preparation of new regulations in the motor vehicle sector.

As for the issue of mergers it is the intention of the Office to further cooperate with potentially merging parties and to increase transparency of the activities of the Office in the process of evaluation of impacts of individual mergers, especially with the use of methodological materials that provide more details on the issue.

PUBLIC PROCUREMENT

Directives dealing with the review process were amended on the European level in 2007. EU members shall implement the amendment into their legal system within the next 24 months. The Czech Republic will have to work on some changes to its legislation on public procurement. There are two aspects to the revision of the existing directives. One: the improvement of the effectiveness of legal remedies that were submitted prior to the conclusion of the contract by the introduction of suspensive term between the decision of the contracting authority and the conclusion of the contract in question. Two: a more effective fight with direct public contract awarding. The new directive stipulates that a contract be declared invalid if it was concluded via direct public contract award.

In cooperation with the Ministry for Regional Development the Office is about to resolve some unclear issues relating to the valid Public Procurement Act. The law shall be clarified and its amendment shall be passed to the Chamber of Deputies of the Czech Parliament during the third quarter of 2008. Legislative changes in terms of trade certificates are also expected.

STATE AID

In 2008 the Office shall strive for the adoption of the amendment to the act number 215/2004 Coll. on the regulation of certain relationships within the area of state aid and altering the act on the aid to research and development. Related to this are also the final works on the register of *de minimis* aid, whereas the input of the first data on the provided *de minimis* aid shall commence in 2010. As of January 1, 2008 the new act number 319/2006 Coll. on some measures leading to higher level of transparency of financial relations in the area of state aid, and on the amendment of the act number 235/2004 Coll. on value added tax, shall be put into effect via the inspection of information provided by obligors as per the said law. During this period of time the Office shall focus on methodological leadership of a broader group of state aid providers, especially municipalities. It is the priority of the Office to focus on the obtaining of financial resources from structural funds and on the explanation of the rules on the provision of compensations for the services of general economic interest.

INTERNATIONAL COOPERATION

Among the most important events of the year is the ICN Merger Workshop that the Office organizes in cooperation with its Slovak counterpart and with the Regional Chamber of Commerce in Brno. The Office shall also take part in the 7th annual conference of ICN in Kyoto in April 2008. During the session of the OECD Competition Committee in June 2008 the representatives of the Office will undergo the examination of the results of the peer review of the Czech Republic's competition law and policy that has been in progress since November 2007 and shall continue until mid-2008. The Office shall also actively prepare for the Czech Republic's presidency of the Council of the EU during the first half of 2009.

An internship program for employees of the Federal Antimonopoly Service of the Russian Federation and other East European competition offices is planned for June 2008.



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