

# ANNUAL REPORT 2010



OFFICE FOR THE PROTECTION OF COMPETITION

# CONTENT

Introduction by the Chairman.....	3
Competition.....	5
Public Procurement and Concessions.....	13
Significant Market Power .....	23
State Aid .....	25
International Cooperation.....	29
Human Resources and Information Activities .....	33
2011 Agenda .....	39



**OFFICE FOR THE PROTECTION OF COMPETITION**

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## INTRODUCTION BY THE CHAIRMAN

As you are reading this Annual Report, employees of the Office for the Protection of Competition (hereinafter also referred to as "the Office" or "the OPC") will be commemorating an important anniversary. In 2011, it will have been twenty years since the establishment of the Office. The institution, which initially only controlled competition, has undergone a considerable transformation in that period.

Needless to emphasize the objective of the Office for the Protection of Competition is to ensure equal and fair conditions for all competitors in the market. A competitive environment is beneficial for the development of the Czech economy as well as for common consumers: in fact, it benefits each and every citizen.

One of the main competences of the Office is to supervise the public procurement procedures. I do not have to remind you that the purpose of this supervision is to ensure the economical disposal of public funds, i.e. resources coming from tax payers. Thus it is desirable to create conditions for tenderers that are transparent, thereby ensuring that finances from public funds are spent as efficient as possible.

Last year, the Office for the Protection of Competition was active in all areas within its scope of powers. In addition to the control of competition and public procurement and the monitoring of state aid, OPC acquired a new competence in 2010. It now also ensures compliance with the Act on the Abuse of Significant Market Power. Thus it is clear from this list that compared with similar institutions in all other developed countries with market economies, the Czech competition authority enjoys one of the most extensive competences in this field.

The Annual Report you are holding in your hands shows that the Office for the Protection of Competition was not only very active in all areas in 2010, but that as a result of its active approach it also significantly contributed to further enhancement of the business environment. I believe that this trend is set to continue in the anniversary year.

**Petr Rafaj**

Chairman of the Office for the Protection of Competition









**COMPETITION**

### Competition

Throughout its 20-year existence, the Office for the Protection of Competition has been enforcing its primary objective, i.e. the maintenance and furtherance of effective competition in all sectors of the national economy. Effective competition between entities in the market drives economy and brings significant benefits to final consumers in the form of lower prices, better quality and a wider choice of products.

However, fair competition may be unnaturally distorted by illegal conduct of some competitors, be it a cartel agreement between competitors or an abuse of its position by an entity with significant market power. Such illegal conduct may significantly distort and change market parameters, which are subsequently reflected in the growth of prices above the market level or by a restriction of the offer of goods and services.

In addition to the aforementioned traditional forms of violations of the Act on the Protection of Competition, OPC is continuously increasing its focus on one specific type of collusive conduct, i.e. prohibited agreements between tenderers for public contracts, otherwise known as 'bid-rigging'. This type of agreement lies on the border between competition law infringement and public procurement law violation and may significantly affect the disposal of funds from public budgets.

### Legislation

Act No. 143/2001 Coll., on the Protection of Competition, was last amended to a large extent in September 2009. There were no amendments last year. However, the Office prepared supporting documents for the initiation of a new legislative process related to incorporation of the leniency and settlement procedure directly into the Act. There were some changes in the secondary legislation of the European Union, namely in several block exemptions.

The new Commission Regulation (EU) No. 330/2010 on the application of Article 101(3), of the Treaty on the Functioning of the European Union to categories of vertical agreements and concerted practices particularly responds to the rapid development of internet sales and provides detailed regulation of the relations between distributors and consumers in that field. The market share threshold of 30% has been retained; agreements of competitors with a lower share should not be able to significantly distort competition. However a new rule is applied: the limit no longer applies just to the market share of the supplier, but also to the market share of the consumer. The determination of hardcore agreements or the approach to agreements on resale pricing is identical with the previous enactment. The block exemption for categories of vertical agreements and concerted practices in the motor vehicle sector has also been amended (Commission Regulation (EU) No. 461/2010).

The list of new legislation would not be complete without Commission Regulation (EU) No. 1217/2010 on the application of Article 101(3), of the Treaty on the Functioning of the European Union to certain categories of research and development agreements; Commission Regulation (EU) No. 1218/2010 on the application of Article 101(3), of the Treaty on the Functioning of the European Union to certain categories of specialisation agreements and Commission Regulation (EU) No. 267/2010 on the application of Article 101(3), of the Treaty on the Functioning of the European Union to certain categories of agreements, decisions and concerted practices in the insurance sector.

The international activities of the Office also included cooperation in preparation of the Guidelines on the applicability of Article 101 of the Treaty on the Functioning of the European Union to horizontal cooperation agreements. A provision on information exchange between competitors was incorporated on the basis of this initiative.

### More Economic Approach

Cases involving competition are by their nature extremely demanding not only in terms of legal assessment, but increasingly they require more knowledgeable approach in terms of economics. Especially during the judicial review, decisions of the Office are subjected to detailed verification where supporting legal argumentation with hard economic data may have a substantial significance for its defence. Every year the Office is therefore paying increasing attention to a more economic approach in its decision-making process, i.e. using advanced economic and econometric analyses in order to correctly identify the relevant market and evaluate the effects that the assessed conduct has in the market.

## Alternative Solutions to Competition Issues

OPC is able to solve some less serious violations of the competition rules in an alternative way: through competition advocacy. In this case, the Office does not initiate formal administrative proceedings and the potential competition problem is eliminated on the basis of negotiations with an undertaking within the preliminary investigating of the submission. This also includes cases in which administrative proceedings were initiated but the undertaking was able to suspend proceedings by the timely submission of commitments to resolve the market distortion without a penalty being imposed. However, alternative solutions to competition problems may only be used when the violation on the part of the undertaking is not serious enough for the imposition of a fine. In this way, a functional market environment is restored within months and procedural efficiency increases significantly as well. In 2010, the Office solved two cases through competition advocacy outside administrative proceedings.

The settlement procedure is likewise considered as a form of alternative solution of competition cases. The competitor acknowledges its liability for anticompetitive conduct and eliminates it in exchange for a fine decrease.

The Office has applied this alternative in many cases. In 2010, the Office undertook preparatory measures to include the institution of settlement procedure directly into the Act on Protection of Competition. At the same time, the approach to settlement was partially reassessed; the maximum potential decrease in penalties for parties applying for settlement will be 20%. A higher "discount" off the penalty will only be reserved for those undertakings applying for so-called leniency programme.

## Selected Cases

### Contracts on Heat Supply

The Office for the Protection of Competition finished its investigation of Pražská teplotárenská a.s. (hereinafter referred to as "the Pražská teplotárenská") by competition advocacy. The company concluded contracts on heat supply with its consumers which, in the case of a change in the consumer (owner or tenant of the property), bound the original consumer to transfer the rights and obligations arising from the contract to the new consumer. The Office considered this obligation as a potential abuse of dominant position as the new consumer would be limited in their right to a free choice of heat supplier. Three hundred contracts out of a total number of 12,000 included this obligation.

This conduct had only a limited impact on competition and thus it was a less serious infringement. Since Pražská teplotárenská proposed to amend the contracts on heat supply by omitting the contractual provision in question, thereby allowing the possibility for new consumers to choose their supplier of heat freely, there were no reasons for further investigation or initiation of administrative proceedings.

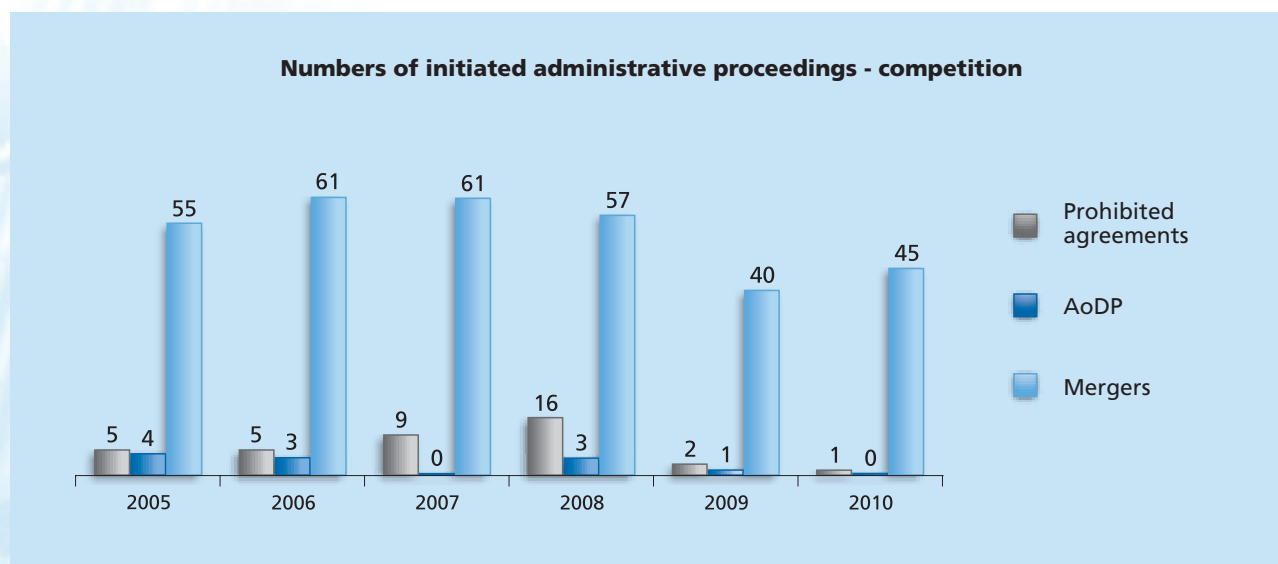
## Prohibited Agreements

One of the essential priorities of the Office is undoubtedly the detection and combat against the cartel agreements. These refer to horizontal agreements between competitors with the objective of price fixing and market division or sharing of supplies or consumers. Cartel agreements have a significant impact on competition and distort seriously free market environment.

Competition authorities use a whole range of methods and tools to detect cartel agreements. One of the most important is the so-called leniency programme. Applying this programme, competition authority may partially or entirely waive the fine imposed on the cartel participant which informs the office of the existence of the prohibited agreement and provides evidence thereof. For instance, no penalty was imposed on company Samsung since it provided information on the cartel in the market for colour picture tubes (CPT) for televisions that was in effect from 1998 to 2004. Other participants to the agreement were fined in the total amount of CZK 51.7 million. OPC received two other joint applications for leniency in 2010.

## COMPETITION

Overall, the Office issued four first instance decisions concerning prohibited agreements, with penalties amounting to almost CZK 82 million. Administrative proceedings concerning bid-rigging in public procurement in the waste management sector were initiated in one case.



### Selected Cases

#### Agreements on the Prohibition on Brown Coal Export

The Office for the Protection of Competition imposed a fine in the amount of CZK 17.283 million on Sokolovská uhelná, právní nástupce, a.s. (hereinafter referred to as "the Sokolovská uhelná"). The party to the proceedings concluded and performed prohibited agreements on export bans from 1997 to 2007 which were aimed to distort competition and could have led to the distortion of competition in the market of pressed brown-coal, brown energy coal and graded coal in the Czech Republic. The consumers of Sokolovská uhelná undertook a commitment to refrain from exporting brown coal and pressed brown-coal outside the territory of the Czech Republic or from trading these products in a way that would allow their export. OPC stated in its decision that the company in question violated the Czech Competition Act as well as Article 81 of the EC Treaty (currently Article 101 of the Treaty on the Functioning of the European Union) as such agreements could affect the trade between EU Member States. The decision was lawfully upheld.

#### Cartel of Media Agencies

OPC imposed a fine in the total amount of CZK 7.778 million on the media agencies OMD Czech, a. s. and MÉDEA, a.s. for the conclusion and performance of an agreement dividing customers in the market of media agency services in the territory of the Czech Republic. The parties to the proceedings concluded and performed an agreement on refraining from conduct aimed at influencing the clients and business partners of the other party. The Office qualified this agreement as an agreement on the sharing of customers in the market for media agency services in the territory of the Czech Republic. The Office stated a violation of the Competition Act and imposed fines in the amount of CZK 5.493 million and CZK 2.285 million and prohibited any future performance of the agreement. The parties to the proceedings also concluded and performed an agreement on a joint procedure in purchasing media space (using, among others, MEDIA VIEW, s. r. o., which was not party to the proceedings, however). Nevertheless, they did not violate the competition rules by the conclusions of this agreement. The subject of the administrative proceedings was not a "price agreement" and it was not found that the participants would conclude an agreement on direct or indirect pricing in any of the markets. No appeal was filed against the decision and thus it is final.



### Bid-rigging in the VUSS Litoměřice Contract

A fine in the total amount of CZK 4.906 million was imposed on the companies HOKRA Spedition, s.r.o. (CZK 537,000), INZET, s.r.o. (CZK 384,000), PROMINECON GROUP a.s. (CZK 3,679,000), CBK SHIFT s.r.o. (CZK 57,000) and NATURAL MYSTIC s.r.o. (CZK 249,000) for a coordination of bids in the tender "Operation of Lodgings at the Operating Centres of the Military Accommodation and Construction Administration in Litoměřice" announced in 2006 by the Ministry of Defence of the Czech Republic - Military Accommodation and Construction Administration in Litoměřice. The seized email correspondence of the representatives of the aforementioned companies showed that the selected tenderer - HOKRA Spedition – coordinated the progress of all competitors interested in the contract. Specifically, the cartel initiator sent partially completed cover sheets to the other four applicants, i.e. the forms on which the applicants state, among other items, their quote. These documents had their bidding prices for individual lodgings as well as the total price already filled in. The prices that later appeared in the tender applications exactly corresponded with the prices stated in these forms.

### Abuse of Dominant Position

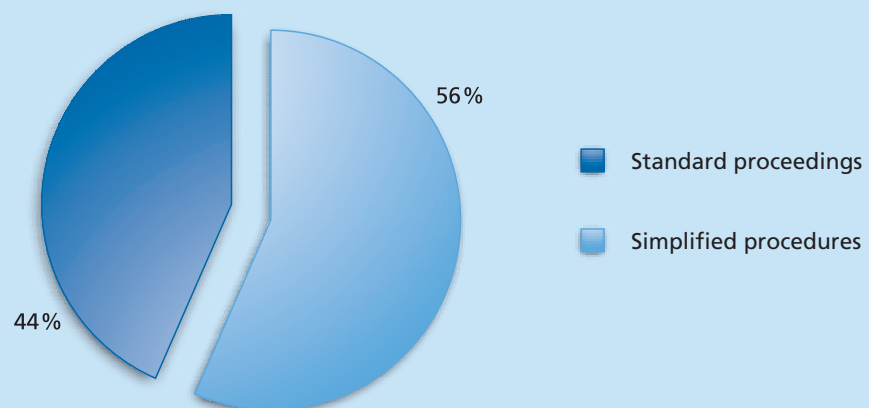
Undertakings whose position is so strong that they can unilaterally change market conditions, i.e. dominant players, are kept under especially strict control by the Office. They also have to observe stricter rules than competitors who are not in a dominant position. Companies with a dominant position are often created from those companies which used to be state-owned monopolies in the past, particularly in so-called network industries. In cases involving a potential abuse of dominant position, the Office always prepares a market analysis aimed at determining whether or not the competitor is truly dominant. This analysis considers the size of the market share as well as a whole range of additional factors, in addition to which a precise definition of the relevant market is no less vital.

In 2010, OPC issued one decision and resolved a total of 153 submissions in the area of abuse of dominant position.

### Concentration of Undertakings

The competence to control concentrations of undertakings included in the portfolio of a competition authority is intended to prevent future mergers to distort competition in the relevant market. Thus, the merging undertakings are obliged, should they meet the turnover criteria determined by law, to inform the Office about the prepared merger. The merger shall not be implemented until the Office issues a decision on the approval of

**The use of simplified procedures in cases of concentrations of undertakings**



## COMPETITION

the merger. Within the investigation of a merger, the Office mainly assesses the impact on the horizontal market as well as vertically related markets. In recent years it has lately been dealing with so-called coordinated effects, i.e. whether or not competitors in the market will be more prone to coordinated conduct due to the merger. If the Office determines that the merger could be problematic from a competition viewpoint, it may withhold its approval of the merger. Alternatively, it might acknowledge that proposal of commitments that would be sufficient to eliminate any competition concerns by the party to the proceeding.

In 2010, OPC received commitments in the case of the assessed merger of Eurovia/Tarmac. In total, OPC initiated 45 administrative proceedings and issued 40 decisions in the field of merger control. Twenty-two cases were assessed in the simplified procedures. The Office also imposed a fine upon one undertaking for prohibited implementation of a concentration.

### Selected Cases

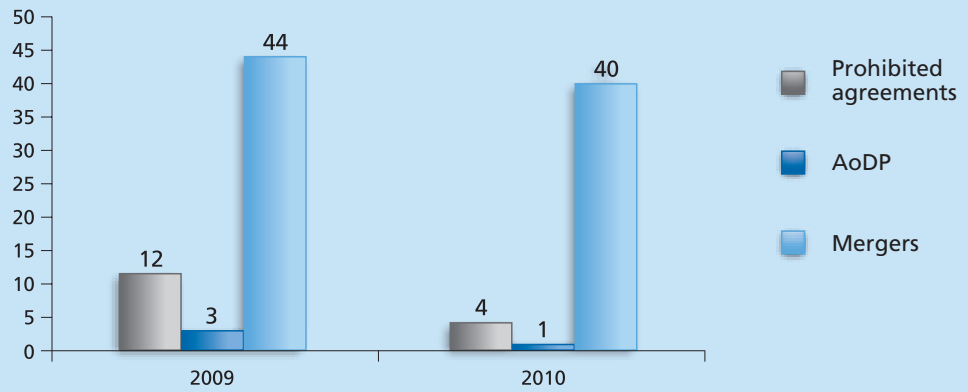
#### **Merger of EUROVIA SA/Tarmac CZ a.s. Approved with Remedies**

The Office for the Protection of Competition approved the merger of the undertakings EUROVIA SA and Tarmac CZ a.s. (hereinafter referred to as "the Eurovia" and "the Tarmac") by its first instance decision. However, since the initial assessment of the merger prompted concern regarding potential distortion of competition in the markets in question, the positive decision was subject to the fulfilment of several structural remedies. The merger took place in the markets for crushed aggregates and mined aggregates, asphalt covered mixtures and in the structural engineering sector within localized markets in central, west, north and east Bohemia. The Office was concerned that there could be a potential violation of competition, particularly due to the fact that after the merger Eurovia would gain sufficient economic power on particular local markets that could restrain or restrict its competitors in the production of covered mixtures and structural engineering from accessing crushed aggregates. Eurovia proposed commitments to meet these concerns, including the sale of several quarries in north and west Bohemia to an independent undertaking. The Office found such commitments sufficient in order to maintain effective competition and approved the proposed merger provided that the obligations would be met.

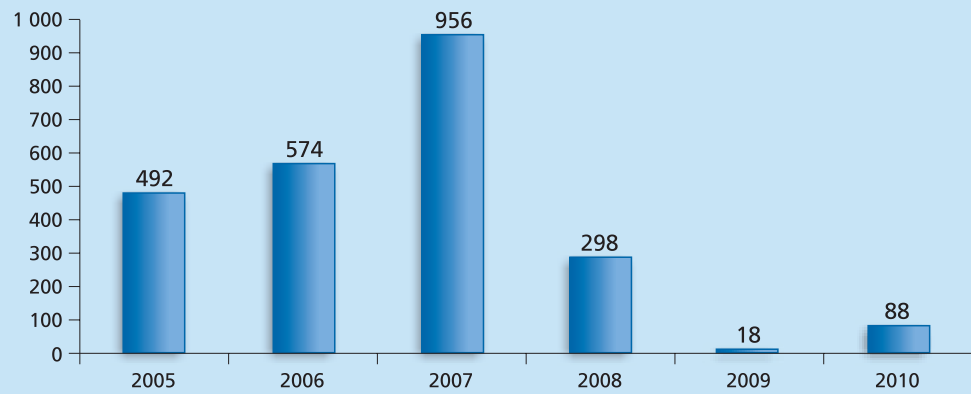
#### **Lumius Controlled ČME before the Merger's Approval**

A fine in the amount of CZK 477 thousand was imposed on Lumius, spol. s r. o., (hereinafter referred to as "the Lumius") for implementing a concentration of undertakings prior to submission of a notification of initiation of proceedings on the approval of the concentration and prior to the legal effect of the decision of the Office approving the concentration. Lumius acquired shares representing 89% of the registered capital and votes in Českomoravská energetická, a. s. (hereinafter referred to as "the ČME") on 20 April 2009 and thus acquired the possibility to directly and exclusively control this company. The Office received the notification of the concentration of undertakings on 13 July 2009 and issued the decision on the approval of the concentration of undertakings on 21 August 2009, which became effective on 11 September 2009. During administrative proceedings, the Office found out that Lumius had been exercising a decisive influence on the activity of ČME in violation of the law, specifically by providing its business manager with a general full power of attorney to execute all legal acts and act in the name of ČME, by using its votes to influence the approval of the regular financial statement and proposal for the distribution of the profit of ČME for 2008, by approving the business plan of ČME for 2009, by removing existing members of the board of directors and the supervisory board of ČME and appointing new members, and other actions before submitting the proposal for the approval of the concentration of undertakings.

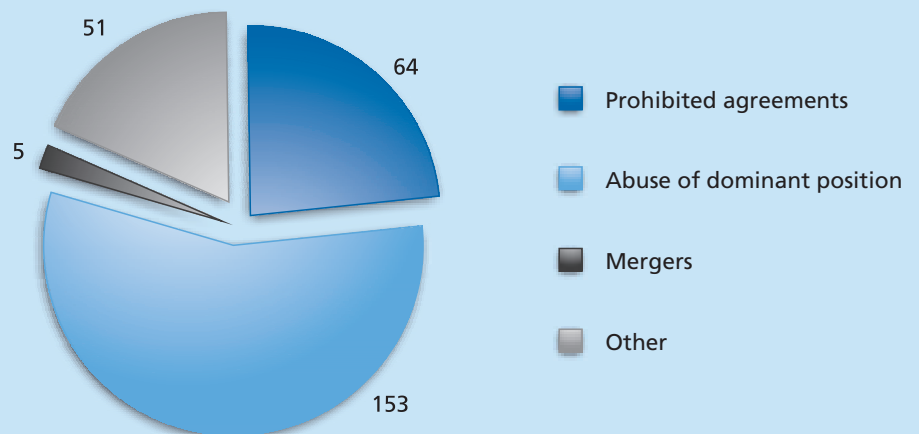
Numbers of issued decisions - competition



Amounts of imposed fines in first instance (CZK million)



Submissions received according to area



**Duration of administrative proceedings - competition (days)**

	2001	2002	2003	2004	2005	2006	2007	2008	2009	2010
1st instance	88	52	90	83	120	272	398	509	353	-*
2nd instance	261	228	260	335	325	185	152	299	383	129

\*none of the administrative proceedings were concluded

**Appeals and Judicial Review**

In 2010, 22 appeals against first-instance decisions were submitted in to the field of competition. The Chairman of the Office issued eleven decisions on appeals that confirmed the first-instance verdict in seven cases, with one appeal being rejected as inadmissible. These also included important decisions confirming the penalties for the cartel of CRT producers, Sokolovská uhelná and Tupperware. In two cases, the appeal was upheld, the first-instance decision was annulled and proceedings were terminated. In one case, the first-instance decision was amended. Non-merit decisions primarily concerned the issues in relation to the access to the files or reopening of the proceedings.

The chairman's decision is final; however, it is possible to file an action with an administrative court. In 2010, a total of three decisions of the Office in the competition cases were challenged. The courts issued a total of 6 final judgments, of which three confirmed the the decision of the Office. Particularly significant was the decision of the Regional Court in Brno upholding the decision on concerted practices among the baking companies of DELTA PEKÁRNÝ, ODKOLEK (now OK REST a.s.) and PENAM.

This case is also related to the resolution of the Constitutional Court, rejecting the complaint concerning the imposition of a disciplinary penalty in the amount of CZK 300,000 on DELTA PEKÁRNÝ for violation of the obligations to undergo an on spot investigation, to make an office laptop accessible in particular. The Court emphasized the difference between the investigation of a natural person in criminal proceedings on one hand and the investigation of a legal entity within the Office's administrative proceedings on the other.

**Selected Cases****Cartel of CRT Producers**

A fine in the total amount of CZK 51.787 million was imposed on six undertakings for a cartel agreement in the CRT market. Between 1998 and 2004, the companies Samsung SDI Co., Ltd., Chunghwa Picture Tubes, Ltd., Koninklijke Philips Electronics N.V., Technicolor S.A., Panasonic Corporation, MT Picture Display Co., Ltd., Toshiba Corporation and LG Electronics, Inc. concluded and performed a cartel agreement in the market for colour picture tubes (CPT) for televisions. The fact that some of the companies were involved in the agreement for a shorter period of time was considered by the Office in its decision. The CRT producers (CDT and CPT) held bilateral and multilateral meetings for several years; the negotiations and contacts started before 1998 and continued approximately until 2006. At the meetings, discussions primarily centred on prices and the exchange of sensitive business information. Price negotiations included determining target and minimum prices, the price range and pricing rules or adherence to agreed fixed prices. The participants subsequently checked that the agreed prices were maintained. The Office began to tackle the cartel based on leniency application, as a result of which the fine imposed on Samsung was remitted and the fine for Chungwa was decreased by 50%. The decision was legally upheld.

**New Fine imposed on Tupperware**

In accordance with the second-instance decision of 21 April 2010, the Chairman of the Office, Petr Rafaj, imposed a fine in the amount of CZK 2.3 million on Tupperware Czech Republic, spol. s r.o. The case was assessed again on the basis of the decisions of the Regional Court in Brno and the Supreme Administrative Court. In the reopened proceedings, the OPC principally assessed the impact of the individual prohibited agreements on competition with regard to determining the amount of fine. The company in question determined a fixed price for the sale of its goods distributed by independent merchants to final consumers in the period from 24 March 1997 to 5 October 2005. This procedure distorted competition in the market for plastic kitchen household utensils through closed presentation. Distributors could only decline fixed prices only on exceptional occasions, but only with the consent of Tupperware (e.g. advertising or promotion).





PUBLIC PROCUREMENT  
and **CONCESSIONS**

### Public Procurement

The purpose of the activity of Office for the Protection of Competition is to ensure equal, transparent and non-discriminatory competition for public procurement, the final result of which leads to savings in the use of public funds. The Office for the Protection of Competition has been monitoring the observance of the Act on Public Procurement since 1995.

Every year, more than eight thousand tenders are announced in the Czech Republic. There are more than fifteen thousand contracting authorities. The public sector expends more than 600 billion Czech crowns on public procurement every year. Tenders announced by sector-based contracting authorities add around another 30 billion. This increases the value of public procurement to about 630 billion Czech crowns per year, i.e. 17.5% of the gross domestic product.

According to data from the Public Procurement Information System administered by the Ministry for Regional Development, contracting authorities paid 30 billion more in 2010 than in the preceding year, but the number of contracts decreased by nearly 90 to 9,049 tenders in 2010. This decreasing trend started three years ago.

The Office has now been fulfilling the role of supervisory body over public procurement for fifteen years. The quality of its decision-making activity is confirmed by the high percentage of successful appeal with the administrative courts. In 2010, the success rate of OPC at these courts was above 70 percent.

### Growth in the Public Procurement Agenda

One of the consequences of the economic and financial crisis is, on the one hand, the decrease in public expenditure and related decrease in the level of public procurement, and on the other hand the intensification of the competitive struggle of bidders for public contracts, which manifests in an increase in the number of petitions and submissions for the commencement of OPC administrative proceedings to investigate the actions of contracting authorities. The Office has been dealing with the increased number of complaints with the same number of employees. In 2010, the Office received 348 petitions, which represents a 126% increase over the year 2008, and 516 submissions representing a 74% increase. The Office initiated 425 administrative proceedings, i.e. 73% more than in 2008, and issued 511 first-instance decisions, which represents two decisions issued every day. The OPC imposed 60 fines in the total amount exceeding CZK 11 million.

The Office plays a leading role in the cultivation of a competitive environment and prioritizes its preventive over its repressive function. The Office furnishes explanatory opinions, either through substantiations of its decisions or by consultation. In spite of the fact that the number and level of imposed fines increased in 2010, real importance, real-life impacts and a pro-competitive character are especially embodied in the annulment of illegal acts of contracting authorities or the termination of whole tenders.

### Legislation

At the beginning of 2010, the amendment to Act No. 417/2009 Coll., on Public Procurement, and the amendment to the Concessions Act became effective. The legislative changes granted the OPC a broader range of competences, among which was the possibility to impose a ban on performance of a contract, especially one awarded without a tender. Furthermore, the possibility to impose a three-year ban on participation in tenders (including small-scale tenders) on companies submitting false information about their qualification was introduced. Once such decision becomes effective, the bidder can be entered into the register of entities banned from tendering for public contracts (i.e. the blacklist), managed by the Ministry for Regional Development. No such case occurred in 2010.

On 15 September, the amendment to Act No. 179/2010 Coll., on Public Procurement, became effective. The amendment contributes to increasing the transparency of procedures for assigning public contracts and introduces changes to some of the rights and obligations of contracting authorities and suppliers, changes which affect, among other areas, the application of negotiation procedures, proving qualification, providing documentation, as well general contracts, bid evaluations or design competitions. One controversial aspect of the amendment is the introduction of new basic qualification requirements for suppliers into Article 53(1), letter k), l) and m). On 26 August 2010, the Office for the Protection of Competition together with the Ministry for Regional Development issued a joint opinion on proving and evaluating the requirements and their formulation was subsequently amended by Act No. 423/2010 Coll., which became effective on 30 December 2010. The website of the Office publishes the relevant legislation as well as guidelines facilitating application of the new provisions.

In 2010, preparations commenced on two further amendments to the Act on Public Procurement. The first transposes European Directive No. 2009/81/EC into the Czech law, regulating the assignment of public contracts in regard to defence and security. The purpose of the Directive is to consider the security and technical specifications in the purchase of weapons, military and other sensitive equipment and services and to contribute to more transparent public procurement in the defence and security sector.

### Key Amendment of the Act on Public Procurement

During the 2010, preparations for a new amendment to the Act on Public Procurement were launched. This professional discussion, lasting several months, also included cooperation with experts from other European countries and the European Commission.

The amendment will contain several fundamental innovations to increase the transparency of public procurement. Contracting authorities will be obliged to publish a more information on the awarded contracts, including their wording, any potential contractual amendments and the actual price paid. The amendment proposes obligatory preliminary announcements of public contracts. The effectiveness of awarding contracts should be reinforced by an obligatory substantiation of the need for public procurement, how the qualifications are determined and method of evaluation. In order to strengthen the competitive environment, it is proposed to include the obligation to identify a sufficient number of suppliers prior to announcement of a tender with the obligation to cancel the tender if there is insufficient number of bids to be assessed.

### Decision-making and Supervisory Activities

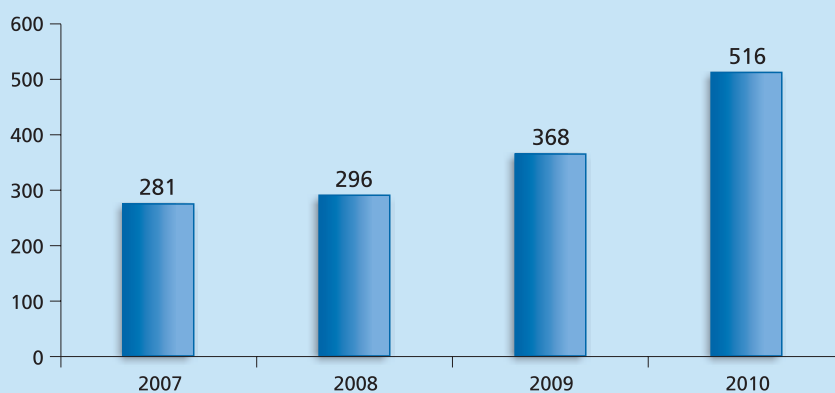
#### Overview of administrative proceedings conducted in 2010

Number of received proposals	348
Number of received submissions	516
Commenced administrative proceedings in total	425
upon proposal	348
ex officio	77
Number of administrative proceedings in progress as of 31/12/2010	106
First-instance decisions issued in total	511
first-instance decisions issued on the merits	322
remedial decisions + penalties	111
suspended administrative proceedings – no violation found	40
suspended administrative proceedings for procedural reasons	171
preliminary rulings	96
dismissed preliminary rulings	93
Number of imposed fines	60
Total amount of imposed fines	CZK 11,240,000
Total amount of imposed administrative fees	CZK 1,898,000
Total amount of deposits paid	CZK 82,962,545
deposits lapsed to state budget	CZK 9,254,300
Number of received appeals	171
Second-instance decisions issued	167

## Most Frequent Violations of the Act on Public Procurement

The most frequent infringements committed by contracting authorities occur as early as in the tender documentation with regard to setting out the terms and conditions of the tender, demarcating the object of the public contract so that its estimated value falls below the financial thresholds determined by the law, incorrect procedure followed in the implementation and due publication of changes in the tender documentation, setting qualification requirements that are discriminatory in nature and in establishing the evaluation criteria in a non-transparent way. Other faults occur during the evaluation of whether bids comply with the terms and conditions of the tender, at which point tenderers are sometimes unjustifiably excluded from the proceedings. In some cases, the evaluation committee underestimated the transparency requirement of the report on the assessment and evaluation of bids and contracting authorities sometimes failed to provide other bidders with access to the report or make copies at their request before concluding the contract with the selected supplier. There is a high occurrence of the illegal cancellation of tenders.

**Number of commenced first-instance proceedings in regard to public procurement**



## Selected Cases

### Dividing up the Object of Public Procurement

The Hradec Králové Region violated the Act on Public Procurement when it announced six tenders for the preparation of project documentation to acquire building permits for projects to build professional educational centres at several secondary schools and technical colleges. The Office imposed a penalty in the amount of CZK 100 thousand in a first-instance decision. All the reviewed tenders were a part of a single business plan of the contracting authority. They all concerned the same services, contracts were concluded within a short period and the subject of the contracts was implemented in properties located within the administrative territory of one region: according to the Office, they all represented one contract. The Hradec Králové Region violated the Act on Public Procurement as it divided the subject of public procurement and assigned it as a sub-limit public contract and small-scale contracts. Thus the Region avoided using the corresponding type of proceedings for over-limit tenders.

### Assignment of Contract without Tender

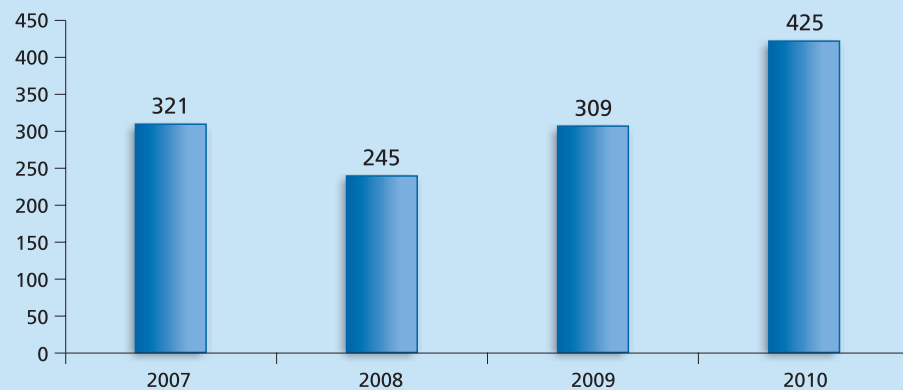
The National Conservation Institute violated the Act on Public Procurement when concluding a contractual amendment to extend a general contract on the provision of mobile telecommunication services by failing to observe the procedure determined under the Act and by failing to carry out tender proceedings, even though the estimated value of the public contract exceeded the financial limit for a small-scale public contract. The Office imposed a fine in the amount of CZK 60 thousand for this breach.



### Selection of Incorrect Type of Tender

The Office for the Protection of Competition imposed a fine in the amount of CZK 90 thousand on the city of Hlinsko for errors in their tender for the extension of a retirement home. The city concluded a contract in 2001 with the chosen supplier Stavitelství KRRO s. r. o., the subject of which was to deliver a new building with a capacity of 60 beds. The contractor was selected on the basis of a commercial public tender. At the end of 2004, the city decided to expand capacity to 94 beds. However, in violation of the Act on Public Procurement, the contracting authority did not announce a new tender for this new contract, rather as part of a negotiation procedure it invited without publication only one company, Stavitelství KRRO, to submit its bid.

**Number of issued first-instance decisions in the field of the public procurement**



### Illegal Procedure in Implementing Changes in the Tender and Their Publication

The Office imposed a fine in the amount of CZK 350 thousand on the city of Turnov for failure to observe the statutory procedure in public procurement for the first phase of the construction of an integrated public transport terminal in the city. The contracting authority violated the basic principles of equal treatment and a ban on discrimination when the evaluation committee provided four tenderers (SaM silnice a mosty, a. s., COLAS CZ a. s., Pražské silniční a vodohospodářské stavby, a. s., and Metrostav a. s.) with an additional period of ten workdays to submit the corresponding bank guarantee, even though the authority rejected the request of BAK stavební společnost, a. s., for an extension to the period for submitting bids in relation to changes in the terms and conditions for the required bank guarantee. The evaluation committee proceeded in violation with the law when it failed to exclude the bids of tenderers who did not meet the authority's requirements in relation to the bank guarantee, but allowed them to supplement their bids. The decision was legally upheld in September 2010.

### Discriminatory Setting of Qualification Requirements

The Vysočina Region and the city of Přebyslav proceeded contrary to the law as a joint contracting authority for the public procurement of the construction of road II/350, class 2, Přebyslav–Žižkova Street in relation to their determination of the technical qualification requirements, by which they failed to observe the principle of equal treatment.

The contracting authority set out a requirement for proving fulfilment of the technical qualification requirements by submitting a document on the ownership of a mixing plant to deliver coated mixtures or a letter of intent with an owner of such a mixing plant as part of additional information. At the same time, the contracting

authority did not extend the deadline for the submission of bids and failed to meet the principle of equal treatment, as it put tenderers who did not own a mixing plant and had to find a subcontractor in a disadvantaged position. The period for proving the fulfilment of the new qualification requirement was thus five days shorter than that determined by law. Three bids out of 12 were excluded due to the failure to submit a document confirming the availability of a mixing plant. Both contracting authorities – the Vysočina Region and the city of Přebyslav – already concluded a contract for work with the selected supplier in the total value of almost CZK 25 million including VAT. The Office for the Protection of Competition imposed a fine in the amount of CZK 250 thousand on the Vysočina Region and CZK 150 thousand on the city of Přebyslav. An appeal has been filed against the decision.

According to the first-instance decision, the state-owned enterprise Lesy České republiky acted contrary to the Act on Public Procurement in the case of an over-limit public contract for the delivery of office material (general contract). Lesy ČR committed an error in determining the qualification criteria for tenderers when the company required a minimum turnover of an amount that did not correspond with the type, scope or exactingness of the subject of the contract. The Office for the Protection of Competition imposed a fine in the amount of CZK 300 thousand on the contracting authority for violation of the law. The OPC decision is not final; the contracting authority has filed an appeal against the decision.

### **Non-transparent Determination of Individual Evaluation Criteria**

The Office annulled the tender of the State Institute for Drug Control for the communication campaign entitled “Drug Prices and Payments”. The contracting authority determined two separate evaluation criteria (the proposed method of implementation of the individual services and the originality of the solution; the scope of the solution) in a way that obstructed observance of the principle of transparency in evaluating offers. The main reason was that the contracting authority did not determine in advance what facts in the bids of tenderers would be evaluated within those criteria. The decision is final.

### **Error in the Evaluation of Bids**

The municipal district of Prague 13, the contracting authority in the public procurement of subsidy management and related services for selected properties in the territory of the municipal district Prague 13, failed to specify the method of evaluating bids in the evaluation criterion for the quality of the technical plan and services, while on the other hand it evaluated applicants’ references within the specified criterion that did not demonstrate the economic suitability of the bid, but the qualification of the applicant. This procedure could have had a substantial impact on the selection of the most suitable bid and the contracting authority had already signed a contract with the selected applicant. The Office imposed a fine in the amount of CZK 70 thousand on the contracting authority.

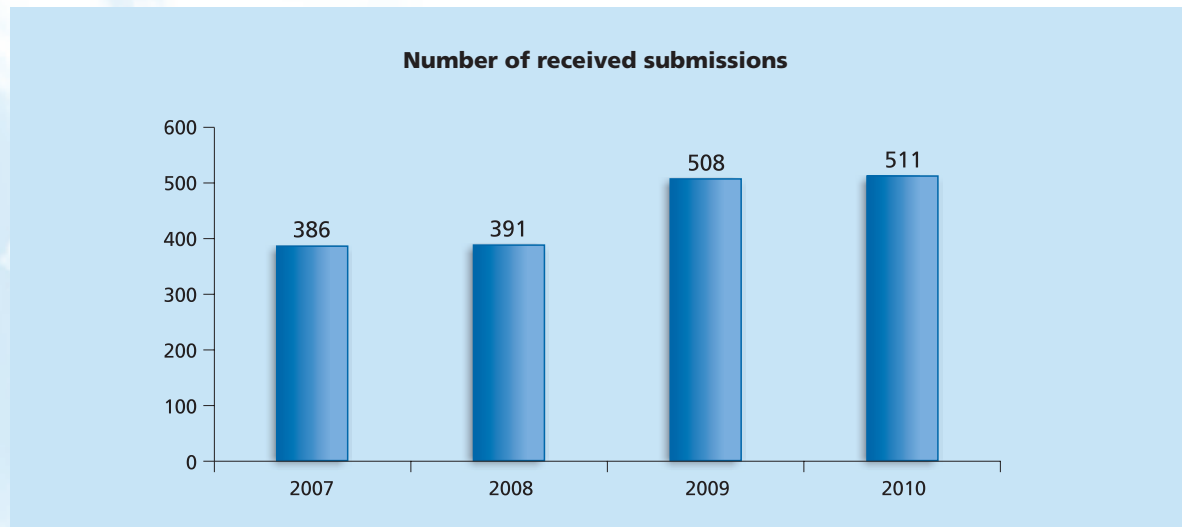
### **Non-transparent Restriction in the Number of Applicants by Drawing Lots**

In re-opened administrative first-instance proceedings, OPC re-examined the conclusions of the inspection of the procedure adopted by the statutory city of Zlín in assigning public contracts and imposed a fine in the amount of CZK 800 thousand for the violation of the Act on Public Procurement in thirteen contracts with a total value exceeding CZK 421 million. Again, OPC stated in its decision that the contracting authority violated the Act on Public Procurement when in thirteen proceedings the restriction in the number of tenderers by the drawing of lots was not executed transparently. The draw for applicants who met the qualification was executed only in the presence of a three-member committee appointed by the contracting authority. There was no public oversight of the draw. Drawing lots is transparent when representatives of all tenderers are present. The contracting authority also committed another violation in its unjustifiable exclusion of one applicant. The contracting authority’s procedure could have affected the selection of the most suitable bid.

The decision was confirmed by Chairman Petr Rafaj on 28 February 2011. The original first-instance decision with a fine in the amount of CZK 3 million from April 2007 was annulled on the basis of the verdicts of the Regional Court in Brno and the Supreme Administrative Court.

### Failure to Archive Public Procurement Documentation

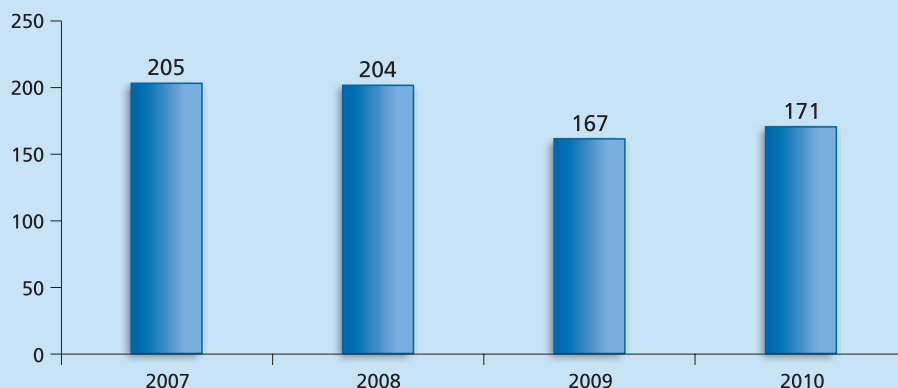
The Office imposed a fine in the amount of CZK 1 million on Lesy České republiky for serious errors in contracts from 2007 concerning computer technology. The contracting authority failed to archive documentation for seven contracts concerning the administration and monitoring of ICT structure and the provision of services related to the maintenance and operation of communication technology. The total volume of public procurement amounted to approximately CZK 35 million without VAT. In addition to the aforementioned breach, OPC stated that the contracting authority had, in at least one supply contract, divided up the subject of fulfilment contrary to the law so that the estimated value of the public procurement contract decreased. The decision became effective in April 2010.



### Appeals and Judicial Review in Public Procurement

A total of 171 appeals were filed against first-instance decisions concerning decision-making activity in public procurement matters in 2010. Twenty-six proceedings were suspended for procedural reasons. The Office issued 167 second-instance decisions, of which 130 upheld the first-instance decisions.

Even though decisions on appeals are final, parties to the proceedings are entitled to file an action according to the Code of Administrative Justice. In 2010, 24 actions of this type were filed. The Regional Court in Brno decides in the first instance. The Supreme Administrative Court then makes decisions concerning any potential cassation complaints. Even though both courts issued decisions mostly in cases from previous years, i.e. actions filed prior to 2010, it can be concluded that the overall success rate of OPC in this area is about 71.5%.

**Number of filed actions against the Office's decisions**

## Selected Cases of Second-instance Proceedings

### Discriminatory Requirements of the Contracting Authority

Chairman of the Office confirmed a first-instance decision that imposed one of the highest fines in the area of public procurement on the city of Liberec. A fine in the amount of CZK 3 million was imposed on the contracting authority for errors in the one-billion-crown tender for the provision of services in the waste management sector. Liberec violated the principle of the ban on discrimination by stipulating a requirement to submit a decision granting of approval from the Liberec Region to operate a scrap yard in the tender documentation. This qualification requirement reduced the number of potential suppliers to three undertakings that had the consent to operate such a facility or that operated such a facility in Liberec. Thus, suppliers who did not have the consent to operate a scrap yard at the time of tender proceedings were initiated were discriminated against; if their offer had been chosen as the most suitable, they could have arranged the consent and set up a scrap yard subsequently, since the contracting authority wanted to commence the implementation of the project one year after the tender announcement. The contracting authority thereby discriminated against suppliers who did not have their own facilities in Liberec at the time of the tender announcement (scrap yard, administrative building) but who would have been able to arrange them in time for fulfilment of the public contract. This procedure could have had a significant impact on the selection of the most suitable bid as it resulted in restricting the competitive environment.

### Illegal Division of the Subject of the Contract

By a first-instance decision, Chairman Petr Rafaj imposed a fine in the amount of CZK 160 thousand on the state-owned enterprise Lesy České republiky for an illegal procedure in its public procurement for the delivery of passenger vehicles. The contracting authority divided up the contract thereby decreasing its price below the legal limits and subsequently awarded it without tender proceedings. In February 2009, Lesy ČR violated the Act on Public Procurement when the company concluded a contract without publication on the basis of a negotiation procedure with Import Volkswagen Group s. r. o. on the delivery of six Audi A4 and A6 vehicles for the total of CZK 5.382 million without VAT and further when the undertaking bought in a small-scale contract an Audi A8 vehicle for CZK 1.651 million without VAT from the same supplier a month later.

### Awarding of Contract without an Open Tender

A second-instance decision confirmed the penalties amounting to CZK 1.8 million imposed on the Ministry of Agriculture of the Czech Republic for violation of the law in two public contracts: one was on the integration web portals (e-AGRI) and



the other involved system centralization within the Ministry. Despite failing to organize open tenders for any of the contracts, the Ministry concluded contracts with Telefónica O2 Czech Republic, and in the case of the e-AGRI portal with T-SOFT spol. s r. o. The contracting authority proceeded on the basis of negotiation procedures without publication, which it justified by its having followed the previously implemented contracts and copyrights of the selected bidder. During the administrative proceedings, OPC reached the conclusion that the submitted expert opinions confirmed the follow-up of the previously implemented contracts but that they did not prove the contract could not be implemented by another supplier. The documentation also did not demonstrate that the contracting authority had carried out any investigation among suppliers to find out what other possibilities existed for implementation of the contract. The conditions for proceeding according to negotiation procedures without publication were therefore not met.

### **Non-transparent Drawing of Lots**

Petr Rafaj, Chairman of the Office, imposed a fine of CZK 300 thousand on the statutory city of Ústí nad Labem in a second-instance decision. The penalty was imposed due to serious violations in assigning public contracts for Phase I of the city centre revitalization. The price of the public contract exceeded CZK 139 million. The contracting authority committed several breaches in selecting the project provider, which turned out to be EURO-VIA CS, a. s. The number of bidders for the contract was restricted by the drawing of lots to six. However, the draw was performed only in the presence of the contracting authority's representatives since the contracting authority did not allow the attendance of representatives from each of the tenderers. The relevant reports did not include a description of how the draw was made. Such method of selecting tenderers is not transparent as any element of public control was completely lacking.

### **Non-transparent Determination of Evaluation Criteria**

Petr Rafaj, Chairman of the Office, confirmed the imposition of a fine in the amount of CZK 250 thousand on the city of Sokolov. The fine was imposed due to violations in the public contract for the reconstruction of an ice stadium hall. In violation of the tender terms and conditions for evaluation of the individual criterion for the guarantee on the quality of the work, the contracting authority evaluated data on the guarantee period for deliveries and equipment. The selected tenderer, the association of BAU-STAV and ISSO, offered a 38-month guarantee, even though the sample contract determined a 24-month guarantee. This procedure substantially influenced the selection of the most suitable bid.

### **Incorrect Selection of the Type of Tender**

The Chairman of the Office for the Protection of Competition confirmed a fine in the amount of CZK 1.5 million imposed on the statutory city of Hradec Králové for its procedure in procuring the construction of new parking spaces that was in violation of the Act on Public Procurement. The city signed a concession contract, at the time of the validity of Act No. 40/2004 Coll., on Public Procurement, with the selected bidder, the company ATOL, on the construction, operation and development of a parking system in the territory of the statutory city of Hradec Králové, including the obligation of the concessionaire to create parking technology and new parking spaces. Based on an investigation by the Office, it was stated that the indicators defining a concession were not fulfilled and thus the given case did not involve a concession, but an over-limit public contract for construction works. The contracting authority should have announced a tender for public procurement according to the Act on Public Procurement and published the information both at its central address and in the Official Journal of the European Union, which the contracting authority failed to do. The decision was legally upheld in November 2010.

### **Illegal Annulment of Public Procurement**

Petr Rafaj, Chairman of the Office, confirmed the fine in the amount of CZK 80 thousand imposed on the city

of Poděbrady for illegal annulment of public procurement for the management of waste services for 2009–2012. The city divided the public contract into four parts: the collection of municipal waste, collection of sorted waste, operation and supervision over fixed collection points and the emptying of litter bins. Each part of the contract could be won by a different supplier, which in fact occurred. The city council later annulled the contract as the tender terms and conditions proved to be inefficient for the city and continuation in the tender would have brought unexpected costs. However, the Chairman did not find these reasons to be sufficient for the annulment of a contract. Such reasons were not facts that the contracting authority learned during the tender proceedings and could not be considered as reasons worthy of special consideration.

### **Incorrectly Defined Technical Terms**

Petr Rafaj, Chairman of the Office, confirmed the fine in the amount of CZK 100 thousand for Všeobecná zdravotní pojišťovna (VZP) for a violation in public procurement amounting to almost CZK 11 million for the provision of mobile telecommunication services. VZP gave preferential treatment to one of the contract bidders by incorrectly defining the terms of the tender, including the requirement that the winning supplier should pay over CZK 5.2 million to the existing provider. This obligation arose from a preceding public contract of the same character; namely, it concerned a contractual fine that the contracting authority had to pay due to its failure to observe the period of two-year contracts for subsidized tariffs with the existing operator, T-Mobile. These tariffs were provided under the condition that the service would be used for 24 months. In the case of any premature termination of the service, the client was to pay the operator all remaining monthly standard payments until the end of the contract period. By transferring the obligation to pay the penalty of five million crowns to the tenderer, the contracting authority placed the existing provider of the required services in a considerably advantageous position, since T-Mobile would basically pay the incurred liability to itself and did not have to consider it in its bid.

### **Examples of Courts' Judgements**

The Supreme Administrative Court rejected the cassation complaint of the Ministry of Finance concerning the decision of the Office for the Protection of Competition according to which the Ministry violated the Act on Public Procurement when it annulled tender proceedings for the administration of financial resources to fund flood management measures. Československá obchodní banka, a. s. won the tender. However, the selected bidder later became involved in a lawsuit with the contracting authority in a completely different case and the contracting authority subsequently annulled the tender for administration of financial resources for funding flood management measures. "It is not possible to approve of any circumstances under which a bidder for a public contract would have to forfeit its constitutional rights in another matter in order to be successful," reads the Decision of the Supreme Administrative Court.

The decision of Petr Rafaj, Chairman of the Office, was confirmed by the Supreme Administrative Court also in the case of the statutory city of Karlovy Vary when the Court annulled the cassation complaint of the city in the matter of public procurement for an exhibition, sports, cultural and congress centre. Petr Rafaj, Chairman of the Office, confirmed a fine of CZK 500 thousand imposed on the statutory city of Karlovy Vary for serious breaches in the assignment of this public contract valued in excess of CZK 1 billion. The contracting authority violated the Act on Public Procurement as it did not transparently restrict the number of applicants in restricted proceedings. The Supreme Administrative Court stated that the condition for observing the principle of transparency is fulfilled when tender proceedings are executed in a manner seeming outwardly to be fair and proper. Violation of the principle of transparency occurs independently of the fact whether or not it is possible to prove the violation of any actual statutory obligation. According to the decision of the Supreme Administrative Court, such considerations especially apply in the case of drawing lots, as it is an act that by its very nature resists any investigation.



SIGNIFICANT  
**MARKET POWER**

## Significant Market Power

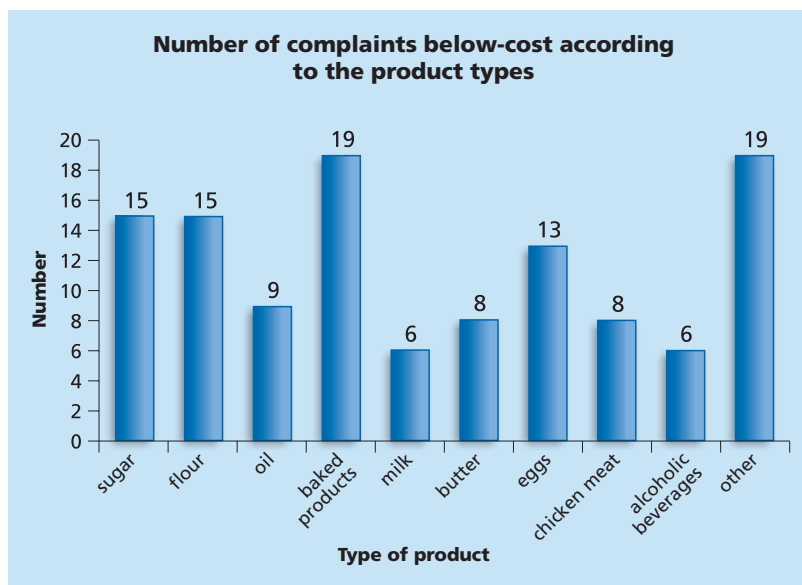
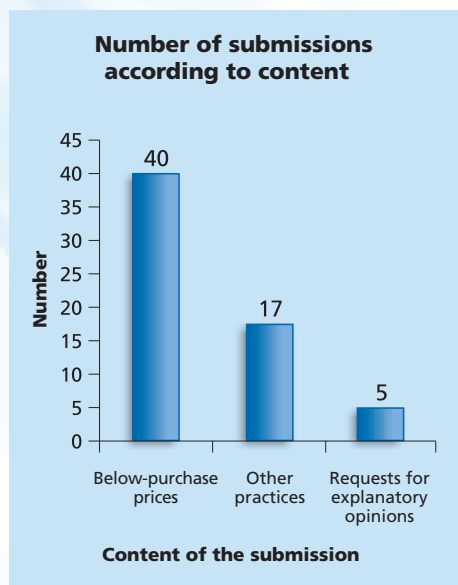
The primary objective of the competition law, both at the national and Community level, is to protect competition as a system, as a phenomenon. The legal instruments that competition authorities have available correspond to such ends. Antimonopoly offices principally ensure that competition is not distorted by coordinated behaviour between undertakings (cartel agreements) or through unilateral conduct of specific companies (abuse of dominant position).

However, the rapid development of retail chains, particularly on the retail market with food products, has ushered in other practices that may have a negative impact on some companies within the supply sector, but which are not regulated by competition law. The Office for the Protection of Competition has been trying to incorporate the abuse of economic dependence into the Act on the Protection of Competition since 1990s, but the proposals have never been included in the final version of the enactment.

In September 2009, the government passed the Act on Significant Market Power in the Sale of Agricultural and Food Products and Abuse thereof. The legal regulation became effective on 1 February 2010 and the Office was commissioned to supervise its observation. A special department was established within the Office and its first step was to carry out an extensive sector investigation of the retail market of agricultural and food products.

The results of the investigation indicated several potentially problematic areas within the supply sector. Most frequent problems included the failure to observe the thirty-day due date of invoices, sale for below-purchase prices, a so-called cash discount (purchaser requires a discount on the goods for earlier payment of the invoice), various fees, special leaflet offers, high contractual penalties and others.

Three administrative proceedings were initiated in May 2010. Two proceedings with the company Kaufland and the other with Ahold group. None of the proceedings were concluded during the year with a first-instance decision. The Office also received and sorted out 41 submissions principally alerting attention to the enforcement of the below-purchase pricing, especially for basic food products such as bread, flour and sugar.



\*Some submissions drew attention to several parallel practices

The Act on the Abuse of Significant Market Power was perceived from the very beginning as discriminatory by some in the business community and its abolition was considered. An inter-institutional group with participation from representatives of the OPC, Ministry of Industry and Trade and others was established in order to evaluate the effectiveness of the Act and to propose potential amendments to the Government of the Czech Republic. This committee recommended the repeal of the Act and the incorporation of certain of its provisions into other acts, such as the Act on the Protection of Competition and the Act on Prices.





# STATE AID

## State Aid

State aid is deemed to be any type of aid in any form provided by the state or from national budget that distorts or may distort competition by providing preferential treatment to specific undertakings or specific manufacturing sectors and by influencing trade between Member States. Aid that meets the aforementioned criteria is incompatible with the internal market and is therefore restricted. Exceptions to the general restriction on the provision of state aid may be permitted on the basis of block exemptions or on the basis of European Commission's decision.

The Office for the Protection of Competition acquired competences in respect to state aid in 2000. The Office also exercised decision-making competence until the accession of the Czech Republic to the European Union in 2004 and played a leading role in aligning the provision of state aid in the Czech Republic with Community rules during the accession negotiations. However, at present, only the European Commission has the exclusive competence to make decisions on the compatibility of state aid. Pursuant to Act No. 215/2004 Coll., Amending Certain Relations within the Area of State Aid, and altering the Act on the Promotion of Research and Development, as amended, the Office fulfils the coordinating, advising, consulting and monitoring activities in all areas except for the sector of agriculture and fisheries.

The basic activities of the Office include consultation with the state aid providers, especially with regard to the correct application of EU rules in the provisions of state aid. The OPC as a national coordinator also cooperates with providers in pre-notifications and notifications of state aid and transfers them to the Directorate General for Competition of the European Commission, which evaluates compatibility with the internal market.

### Statistics from activity in regards to state aid

Opinions on the subject of state aid issued for providers/beneficiaries	652
Pre-notifications, notifications, communications under block exemption	43
Complaints submitted to EC and related agenda	13
Comments on draft legal regulations in the Czech Republic	64
Participation in seminars, working groups concerning state aid issues, consultations	161
Participation in EU advisory committees and European Commission meetings concerning notified cases	19

In terms of state aid, the main topic of 2010 was the opening of the Central Register of de minimis. The register was launched on 1 January 2010 with the purpose to create a comprehensive system for monitoring the de minimis aid. Once completed in 2012, the database will improve the quality of monitoring on behalf of the state aid provider of the provided de minimis aid. The primary benefit will be the acceleration of the administration for the provision of this type of aid as some administrative requirements preceding the provision of de minimis aid to the individual beneficiary will not have to be carried out. The awareness and legal safeguards of the providers and beneficiaries of de minimis aid will also increase significantly.

Registering the data by the given deadline proved to be problematic for many providers, in spite of the fact that the Office had intensively promoted the newly-introduced obligation for incorporation into the register, among other means by letter to all aid providers, two information bulletins devoted to the topic and presentations at several conferences and seminars. Already by the middle of the year, a whole range of errors on the part of aid providers had been detected. These errors threatened the very purpose of the register. More than 800 shortcomings related to delayed registration of aid were found. OPC initiated 45 administrative proceedings in this matter and issued 29 first-instance decisions, of which 23 imposed a fine. Penalties in the total amount of CZK 288,000 were imposed for these errors, of which 16, amounting to CZK 156,000, became effective and were paid.

**Statistics for administrative proceedings in the matter  
of the de minimis register**

Initiated proceedings	45
First-instance decisions issued	29
Decisions with a fine	23
No violation found	6
Fines imposed in the first instance	CZK 288,000
Fines paid	CZK 156,000

### Selected Cases

#### European Commission Approved Grant for the Reconstruction of Sněžka Cableway

On 29 September 2010, the European Commission decided that the provision of public funds for the reconstruction of the Sněžka cableway did not constitute state aid pursuant to Article 107(1) of the Treaty on the Functioning of EU.

Financial resources from the Northeast Operational Programme are intended for the reconstruction of the cableway connecting the town of Pec pod Sněžkou with the summit of Sněžka. The Regional Council of the North-East Cohesion Region is the provider of the aid.

The European Commission stated in its decision that one of the defining indicators of state aid was not fulfilled, namely the violation of competition. The European Commission reached this opinion on the basis of the fact that the cableway is intended to satisfy general transport needs and represents the only special means of transport whose operation is permitted within the national park where Sněžka is located. Also, it is exempt with respect to the economic, legal and environmental reasons that “a new cableway or other commercially operated means of transport to the top of the mountain could be built and operated on the Czech or Polish side of Sněžka”.

#### Programme for Support of the Film Industry

The European Commission was informed about the Programme for Support of the Film Industry in cooperation with the Ministry of Culture, and the Commission found that the aid provided on its basis is compatible with the internal market. The programme was approved by the decision of the European Commission of 17 June 2010 with the effect until 31 December 2015. The purpose of the Programme for Support of the Film Industry is to promote film production in the Czech Republic and to increase the competitiveness of the Czech industry at the European and global level. The programme guarantees that aid amounting to 20% of eligible costs will not be paid until the “investor – producer” invests their own financial resources into Czech services and goods in the territory of the Czech Republic and subsequently carries out an audit of the costs. The project must pass through a cultural test and meet all the requirements of the Programme to be eligible for the support.







INTERNATIONAL  
**COOPERATION**

### International Relations

International cooperation of the Office for the Protection of Competition is developed both at the EU and global level. The year 2010 witnessed an abundance of international conferences, seminars and meetings at which representatives of the Office represented the Czech Republic.

### European Union

The country currently presiding over the Council of the European Union also regularly hosts European Competition Day. The last European Competition Day took place in October 2010 in Belgium, which was presiding over the Council for the twelfth time. The conference focused on private enforcement of competition law from the viewpoint of jurisdictions in the European Union and USA.

The Spanish Competition Day organized in Madrid in May 2010 focused on raising the awareness of competitors regarding the advantages of functioning competition.

Within the European Competition Network (ECN), the OPC mainly concentrates on participation in working groups and sectoral subgroups, such as those for financial services, energy supply, pharmaceuticals and consumer relations. Individual Member States exchange their experience and knowledge at these meetings and the Office can use the recommendations based on the work of such groups in its application of competition rules or for proposals for legislative changes.

The Office was successful in leading a project within the Working Group for Cooperation Issues, in which it focused on the parallel application of national and European law by competition authorities where one action is assessed from the perspective of two rules of law. The question of parallel application is currently being resolved at the European Court of Justice in the case C-17/10 Toshiba Corporation and others. Similarly, the Regional Court in Brno submitted a preliminary question to the European Court of Justice in the matter of the cartel of producers of gas insulated switchgear (GIS).

The Working Group is currently focusing on due process and carries out comparisons of procedural amendments of the Member States, including the analysis of investigative powers. The Czech, French and Swedish competition authorities are joint leaders of the project.

Based on experience in the case of the cartel of building societies, the OPC concluded that approach towards agreements on exchange of information between competitors in the European Union and in the world is not united. The Office discussed the evaluation of the exchange of information within the Horizontal Agreements Working Group with the Commission and the Member States and asked for an amendment of the provision that evaluates the exchange of information between competitors in the Horizontal Guidelines. The activity of the working group resulted in the publication of three regulations of the European Commission on the application of Article 101(3) of the Treaty on the Functioning of the European Union on certain categories of agreements on research and development, specialization agreements and also some categories of agreements, decisions and concerted practices in the insurance sector. The aforementioned new Horizontal Guidelines were also published.

A fundamental question for cooperation within ECN is potentially the issue of procedural authorizations when executing dawn raids, namely the methods for collecting evidence, since evidence obtained in one Member State and exchanged on the basis of Regulation 1/2003 on the application of competition rules may be later contested by the receiving jurisdiction for a procedural error in a legal review. Michal Petr, Vice-chairman of the OPC, gave a presentation on this topic as one of the main speakers in Szeged, Hungary, in April 2010 at the conference on the anticipated changes in Regulation 1/2003 on the application of competition rules with regard to ECN and the cooperation of national competition authorities in different jurisdictions.

Petr Rafaj, Chairman of the OPC, participated in the meeting in Vienna in June 2010 of the heads of competition authorities, organized by ECA – the European Competition Authorities. The new Director-General for Competition at the European Commission, Alexander Italianer, who acceded to the office in February 2010, informed attendees about his priorities and intentions in regards to competition. For the first time, the Russian antimonopoly authority (FAS) was present – represented by Andrey Tsyganov, its Deputy Head.

As a part of the European Programme of Technical Assistance and Information Exchange (TAIEX), experienced competition authorities send their experts to educational events in support of the application of competition rules. Milan Brouček, Chief Economist at OPC, lectured on the use of quantitative practices for defining relevant markets at a seminar organized in October 2010 for the Albanian competition authority in Tirana.

### **Competition Law at the Global Level**

Within the International Competition Network (ICN) the OPC primarily engages in working groups dealing with cartel agreements, mergers, unilateral conduct or the prioritization and effectiveness of competition authorities. As part of the Unilateral Conduct Working Group, the Office for the Protection of Competition cooperated in a project evaluating legislative changes and the experiences of competition authorities with margin squeeze and predatory pricing.

The representatives of the Office regularly participate in the Global Forums on Competition of the Organisation for Economic Co-operation and Development (OECD) in Paris. Experts from the OPC presented their contributions at the meeting of the Competition Council and its working groups and also at the conference "New Limits of the Protection of Competition" in February 2010 and answered questions from the OECD Secretariat and Member States. Other topics included in the OECD Global Forum on Competition concerned e.g. concentration in the banking sector, the issue of collusive conduct and corruption in public procurement and bid-rigging.

### **World Competition Day**

Delegates at the 6th UN Conference on Competition Policy organized in Geneva in November 2010 decided to introduce World Competition Day, which will be commemorated on 5 December, to mark the date in 1980 when the UN accepted the so-called Set on Competition Policy as the international legislative standard in the economic policy.

### **Bilateral Relations**

In 2010, competition authorities in Italy, Poland and Russia celebrated their 20th anniversaries. Representatives of the OPC also participated in the celebrations. The Italian competition authority (Autorità Garante della Concorrenza e del Mercato) organized a conference in Rome focusing on the influence of the European Union on Italian competition law and its actual impacts on the private sector in October 2010. The Polish Office of Competition and Consumer Protection (Urząd Ochrony Konkurencji i Konsumentów) organized a conference "Competition Law – for or against Competitors?" in Poznan in November 2010. The conference focused on the participation of competitors in anti-trust proceedings, as well as argumentation and responsibility for the violation of competition law. The Federal Antimonopoly Service of the Russian Federation (Федеральная антимонопольная служба – ФАС России) celebrated its anniversary by organizing a Russian Competition Day in Suzdal in June 2010, dedicated to the 20-year history of competition law in Russia.

In January 2010, Theodor Thanner, Director General of the Austrian Competition Authority (Bundeswettbewerbsbehörde), met with Chairman of the OPC Petr Rafaj in Brno to discuss cooperation between the two authorities as well as other authorities in Eastern Europe. They focused on possibilities for exchanging information, cooperating during conferences and establishing a common educational forum. Both heads supported further intensification of the cooperation between the competition authorities.

Traditionally, OPC has enjoyed very good relations with the Slovak Antimonopoly Office and in many respects they deal with identical problems. In December 2010, Danica Paroulková, Chairwoman of the Slovak competition authority, visited the OPC. Both representatives emphasized the efforts to continue close their cooperation. The discussion of the Slovak and Czech delegation focused on the issues of sector inquiries and the possibility of cooperation in the implementation of legislative changes in regard to competition.

## INTERNATIONAL COOPERATION

In February 2010, representatives of the OPC visited the Bulgarian competition authority in Sofia and during the course of negotiations Bulgarians offered to sign a memorandum on cooperation between the two authorities. Currently, the document has yet to be approved by the respective Ministries of Foreign Affairs

Interested in the competences and experience of the OPC were also representatives of the Chinese Price Regulation Authority from Fujian Province, who visited the Office for the Protection of Competition in July 2010.

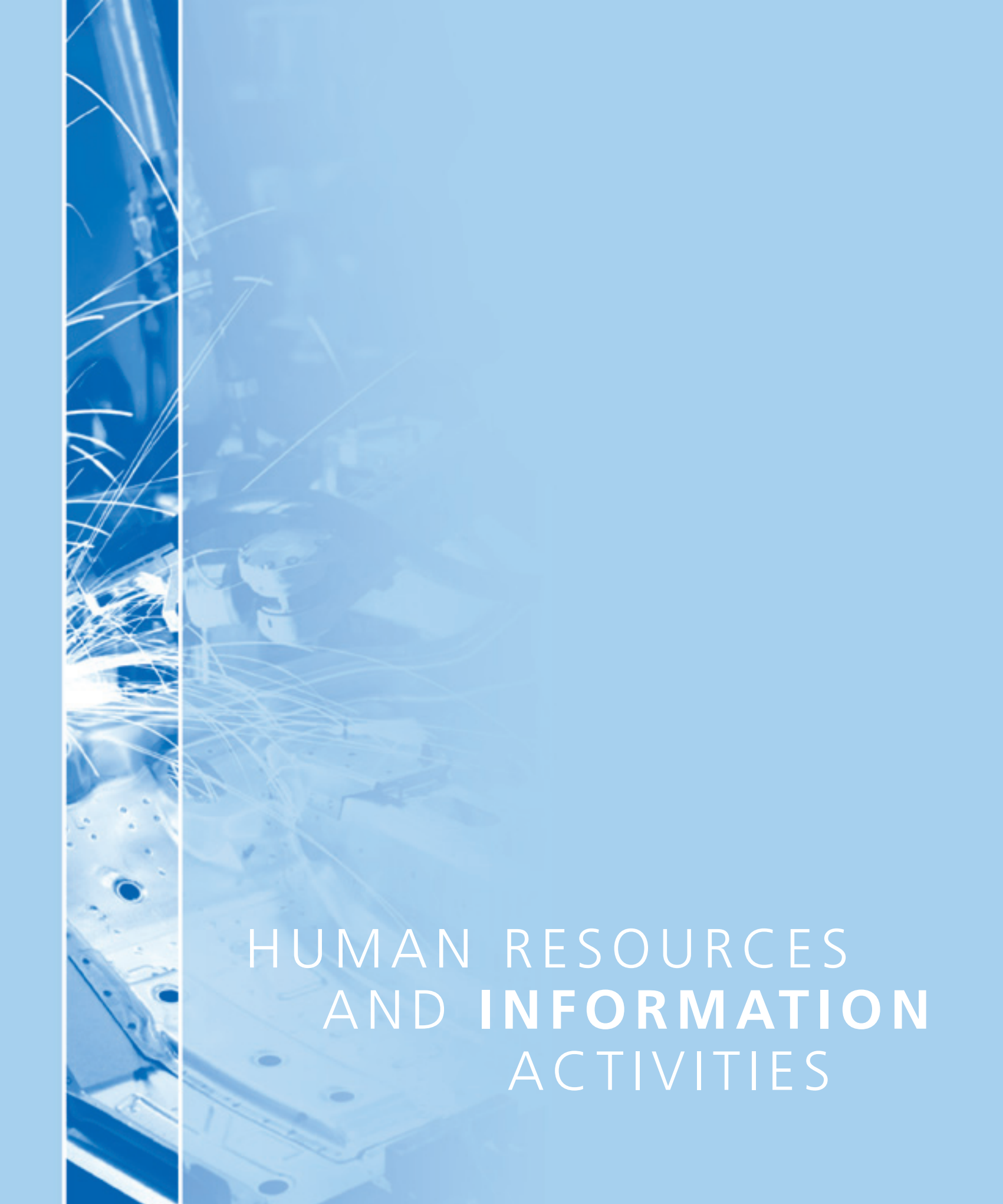
### **International Competition Conferences**

The chairman and the experts of the Office for the Protection of Competition actively participate in international conferences, seminars and discussion forums organized abroad, contributing to discussions about competition law and its application at the national and European level.

The national reporter of the International Federation for European Law (FIDE – Fédération internationale de droit européen) for the Czech Republic is Michal Petr, Vice-chairman of the OPC, who presented the national report at the 24th FIDE congress in Madrid in November 2010.

In addition, the OPC experts participated in the following events: the prestigious conference Global Competition Review (GCR) focusing on the theme of Dominance and Unilateral Conduct held in Brussels in February 2010, the annual competition conference of IBA – the International Bar Association in Florence in September 2010, the 6th Seoul International Competition Forum in September 2010 and the international conference entitled Industry versus Competition or Annual Conference on the European Competition Law organized by the Austrian competition authority in Trier, Germany.



The background of the slide is a blue-tinted industrial scene. On the left side, there is a vertical strip showing a close-up of a welding process, with bright sparks and molten metal. The rest of the background is a blurred, high-angle view of a factory floor with various pieces of machinery, including what appears to be a robotic arm or a large industrial machine. The overall color palette is a range of blues, from light sky blue to a darker, almost black blue in the shadows of the machinery.

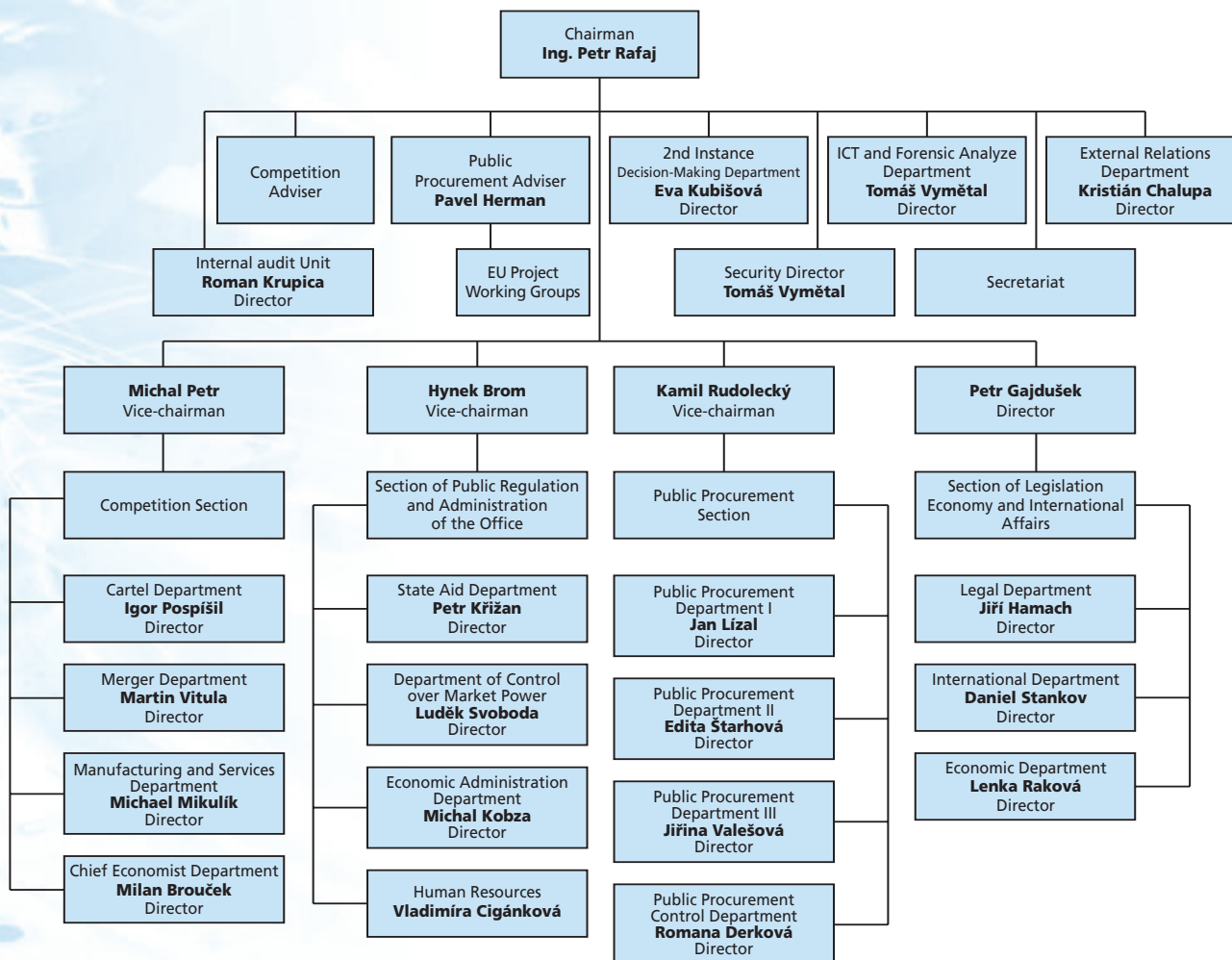
# HUMAN RESOURCES AND **INFORMATION** ACTIVITIES

### Human Resources and Information Activities

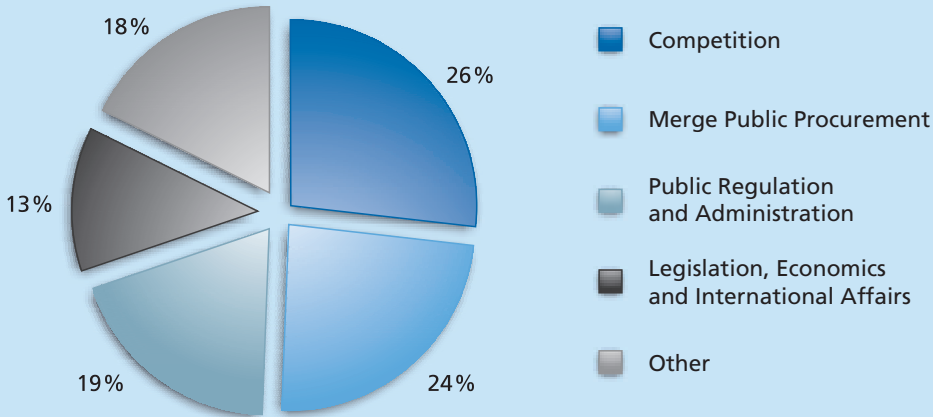
High-quality and stable human resources are an essential requirement for conceptual activity in any entity, whether in the private or public sector. The Office for the Protection of Competition therefore pays special attention to the issue of human resources and the education of employees. The OPC's limit of 126 employees remained unchanged in spite of the fact that the authority's agenda increased due to a significant growth in the number of assessed public contracts or as a result of new competences arising from the Act on the Abuse of Significant Market Power. The Office has succeeded to maintain a stable workforce as the employee turnover is below 10%. Half of the employees have been working at the Office for more than five years and 2/3 of employees are in the age category below 40.

Pursuant to Act No. 273/1996 Coll., on the Scope of Competence of the Office for the Protection of Competition, the Office is managed by its chairperson, who is appointed by the President upon the proposal of the Government for a six-year term of office. In 2009, Mr. Petr Rafaj was appointed Chairman of the Office. Mr. Hynek Brom is First Vice-chairman, managing the Public Regulation and Administration Section. Mr. Kamil Rudolecký is a Vice-chairman responsible for Public Procurement Section. The Competition Section is led by Mr. Michal Petr, who became a Vice-chairman in November 2010. Mr. Petr Gajdušek was appointed the Director of the Section of Legislation, Economics and International Affairs.

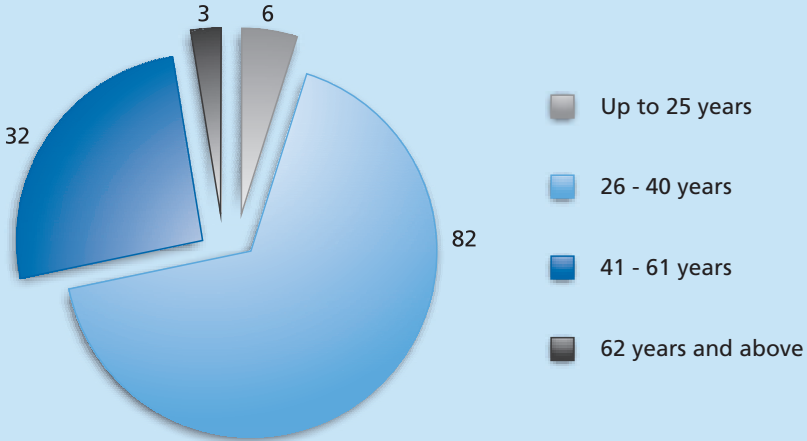
#### Organizational Structure as of 31 December 2010



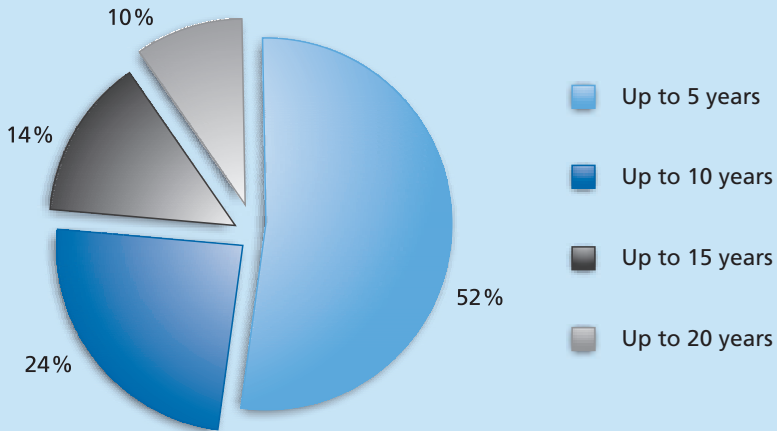
Division of employees according to section

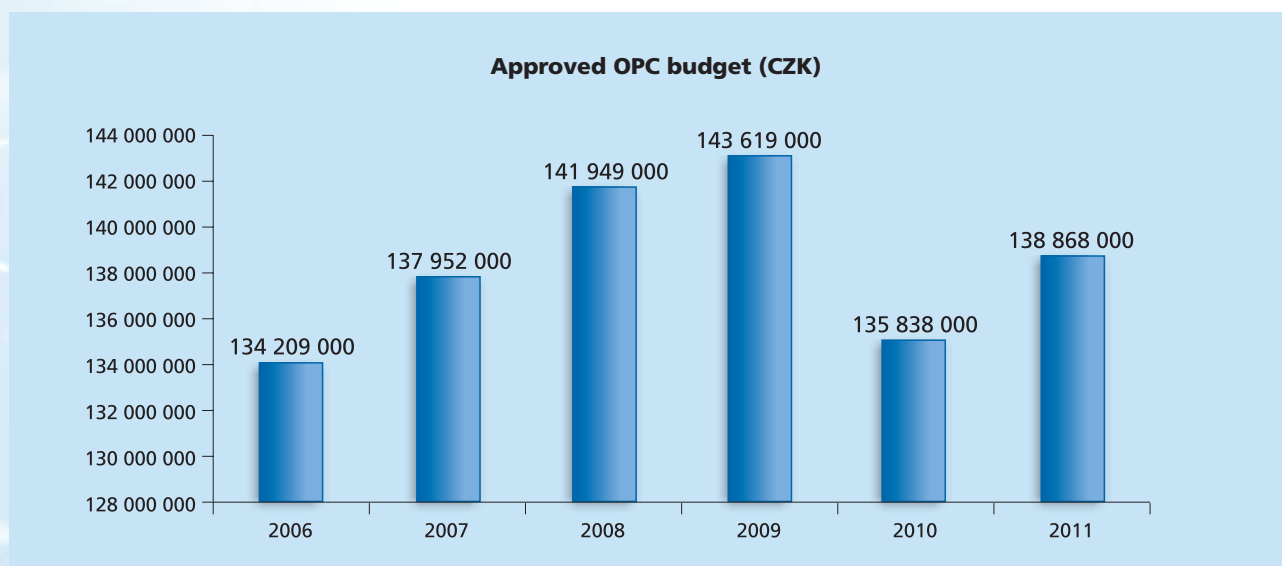


Division of employees according to age



Division according to duration of employment

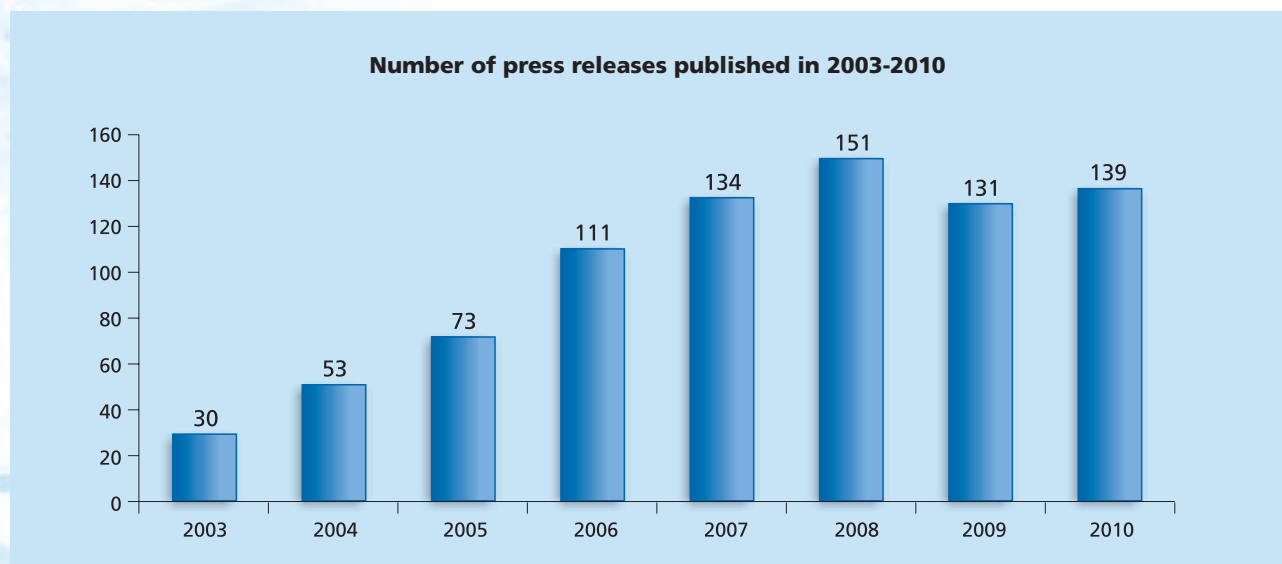




### Information Activities

One of the long-term priorities of the Office is intensive communication with both general and expert public, whether directly or through news media. Information on the cases that the OPC deals with is available at [www.compet.cz](http://www.compet.cz); the website is updated daily. The media are informed about the latest news through press releases or press conferences and individual inquiries from journalists are also answered. OPC organizes conferences and seminars for professional audiences several times a year.

In 2010, the Office issued 139 press releases, of which 42 concerned issues relating to competition, 68 concerned public procurement, 14 concerned state aid and 15 dealt with general issues. Press conferences were organized with regard to significant cases such as the CRT cartel and the bid-rigging of VUSS Litoměřice, at which Petr Rafaj provided detailed information to journalists present regarding the contents of the decision. The Chairman of the Office also appeared several times on Czech Television and gave interviews to the daily newspapers such as *Hospodářské noviny*, *Právo*, *E15* or the *Czech Press Agency*.





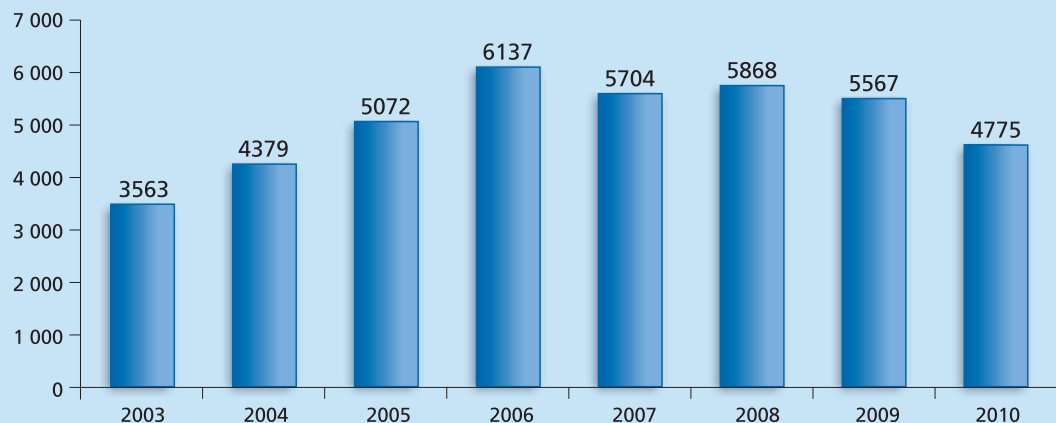
The Office publishes on some important topics of a more professional character in an information bulletin issued six times a year. In 2010, these publications were devoted to the de minimis register, the Conference on Enforcing Competition Law in Newly Acceded EU Countries, the issue of concentration of undertakings, relations between OPC and the public, as well as international relations. The last information bulletin summarized the important events of 2010.

The External Relations Department continued its cooperation with several periodicals that regularly publish a selection of the latest decisions or information on activities at the Office. Partners include the following magazines: *Parlament, vláda, samospráva, Prosperita and Moravské hospodářství*, as well as *Parlamentní magazín* more recently.

The Office has been using daily media monitoring for a long time in order to generate feedback on the presentation of its decisions and their perception in the mass media and by the general public. Last year, 4,775 reports concerning the activity of the OPC were published in the monitored media.

In 2010, the Office also organized several expert conferences on all the areas of its activity. Competition was the subject of the conference on Enforcing Competition Law in Newly Acceded EU Countries in April and of the well-established 2010 Saint Martin Conference. Public procurement was presented in January and October and state aid at the Saint Catherine Conference at the end of November. In November, another conference was held at the OPC focusing on the Act on the Abuse of Significant Market Power.

**Number of articles on the OPC's activities in the monitored media**







AGENDA  
2011

## Agenda 2011

The year 2011 will be significant for the Office for the Protection of Competition as it marks the twentieth anniversary of the authority's foundation. OPC commenced its activity on 1 July 1991 with Chairman Stanislav Bělehrádek at the helm. In 1992–1996, it was transformed into the Ministry for Competition. In 1994, in addition to the protection of competition, the Office acquired competences in public procurement surveillance, with subsequent portfolios for state aid in 2000 and significant market power in 2010. The Office has decided to commemorate these events and other landmarks in the organization's history with the domestic and international public at a conference to take place in Brno, November 2011, and at several accompanying events.

## Competition

The clear priority of the Office is to continue detecting cartels, with special regard to cases of bid-rigging. The more economic approach should be applied in cases of unilateral conduct and concentration controls. Great attention will also be paid to the issues of due process, as procedural questions have lately been at the centre of judicial review.

In 2011, there should also be a sector investigation of the energy sector conducted. In the vast majority of EU countries, including the Czech Republic, the energy sector is an area where the imperfect functioning of competition causes the greatest problems.

The amendment to the Act on the Protection of Competition will also be prepared. It should legally incorporate the leniency programme, which is currently regulated only by the Office's Notice, and it should also determine the rules for so-called settlement, i.e. a procedure enabling significant decrease of the fines imposed on parties to the proceedings provided they accept the assessment of the Office that they violated competition law and abandon their anti-competitive conduct. Unlike the former procedure, when a "discount" on a fine could rise to 70%, the anticipated reduction would amount to 20%.

With regard to concentration of undertakings, OPC will focus more on controlling the observance of the provisions of Article 18(1) of the Act on the Protection of Competition, i.e. supervising whether or not competitors implemented the merger prior to the submission of the proposal for approval of the concentration, or prior to the effective date of the decision of the Office approving the concentration in question. The Office is also planning to review some of its guidelines in this area (in particular Notice of the Office on Calculation of the Turnover and Notice on the Concept of Concentration of Undertakings).

A new code of practice will also be published with regard to the agricultural and food retail sector, particularly in regard to the activities of purchase and selling alliances. The Office will also focus on the conduct of associations of undertakings, especially those chambers and associations that are obligatory, and it will also continue analysing the telecommunications sector, specifically the market for broadband access to electronic communication networks. Furthermore, the Office will continue to extend application of more economic approach in its decision-making process; guidelines for this area are also under preparation.

## Significant Market Power

The Department of Control over Market Power will focus on relations between suppliers and purchasers of agricultural and food products in 2011. The Department will focus on the actual terms and conditions of the deliveries of agricultural and food products negotiated by chain stores with their suppliers, with the main focus of attention on the various fees that suppliers pay to chain stores.

The Department will continue evaluating information obtained from sector investigations into the market for the sale of agricultural and food products. It will also continue in discussion with all major stakeholders in the market for the supply of agricultural and food products. However, the Act on Abuse of Significant Market Power is most likely to be abolished during the year and some of its provisions will be incorporated into the Act on the Protection of Competition and the Act on Prices.



## Public Procurement

In 2011, the Office will continue its long-term applied strategy of prioritizing prevention over repression. This is the fundamental postulate applied in the form of recommendations and the acceptance of rectification of a tender process by the contracting authority prior to any intervention by the Office. Publishing on the internet all the final decisions of the Office in regard to public procurement as well as the overall concept of the so-called 'open' Office which closely cooperates with the public and private sector are also significant preventive measures.

We can also expect increase in the penalties imposed in particular cases, especially for serious violations of the Act, recidivism or in the case of financially extensive contracts. Many cases have been observed in which neither the repressive nor the preventive effect of the imposed penalties was satisfactorily fulfilled.

The Office realizes the importance of timing in the decision-making process. One of the most important priorities is thus a speeding up the decision-making process, while maintaining quality and the possibility to review individual decisions. Time plays a crucial role especially in cases of contracts co-financed from European funds due to the necessity for use of these funds in set intervals.

In 2011, preparations already commenced in legislation will be completed. Work on the amendment in the defence and security sector will continue in order that the binding deadline for implementation of the new rules (21 August 2011) is met. This large amendment, now ready, should make tender proceedings significantly more transparent. For instance, important public contracts assigned by the state up to an amount of CZK three hundred million will be obligatorily submitted to the central public administration authorities for approval, the so-called panel of experts for participation on evaluating committees. A similar principle would then apply to significant contracts assigned by the regions or municipalities that would have to be approved by the local council. Tenders will have to be announced for contracts starting at the level of CZK one million, even for construction works where today's limit is six million. The limit for small-scale tenders should be reduced to one million in all types of public procurement procedures. Some changes have to be supported by further additional legal regulations and measures. Preparations are likewise underway on the amendment to the Act on the Protection of Competition, which will impose a three-year ban on the performance of public procurement and concessions on tenderers who have been convicted of having participated in a tendering cartel (bid-rigging).

The Office for the Protection of Competition will be monitoring preparation of the amendment as each tightening of the method for awarding public contracts triggers more submissions to be investigated. The planned reduction in the limits for small-scale tenders will have a fundamental effect on the activity of the Office. This will significantly increase the number of public contracts for which it will be possible to submit a petition to the Office for a review of the contracting authority's procedure. It will be necessary to augment OPC's staffing levels and to increase its budget so that it can continue to exercise the powers with which it has been entrusted and to ensure that nothing impedes its capacity to act.

The new measures also propose possibility of the increase of penalties that the OPC may impose. The current basic rate for a substantial infringement of the Act on Public Procurement will increase from 5% of the tendering price to 10% or from CZK 10 to 20 million. It will thus be possible to impose stricter penalties on contracting authorities for serious violations. The fine will be doubled for any recidivism of the same administrative offence. Some procedural rules will also be amended; rules for the calculation of deposits will be specified, the possibility to provide submissions by claimants who are able to submit a petition in the same matter will be limited. The amendment should lead to the use of proper corrective measures and to a reduction in malicious submissions.

## State aid

At the national level, the Office will endeavour to amend Act No. 215/2004 Coll., amending certain relationships within the area of state aid, and on altering the Act on the Promotion of Research and Development. The amendment should specify the linguistic terms relating to the de minimis register as well as define the competences in regard to collecting outstanding fines. There will be a spring and autumn conference on topical issues and on

developments in state aid law. The State Aid Department will continue disseminating information on state aid at seminars and conferences, as well as through publishing activity or creating codes of practice.

At the EU level, consultations concerning the new rules for the provision of regional state aid will be undertaken. The new rules will be used for the provision of regional aid after the current rules – the Guidelines on National Regional Aid for 2007-2013 – expire. In January, employees of the State Aid Department will participate in the first working group for preparation of the new regional rules.

Another planned review in the field of state aid will involve the so-called Altmark Package, which determines the rules for state aid in relation to the compensation provided for services of general economic interest. If the review proves that there is a need for a new amendment, the current enactment may be changed. Finally, preliminary work will be launched on the review of the rules for state aid for rescue and restructuring.



