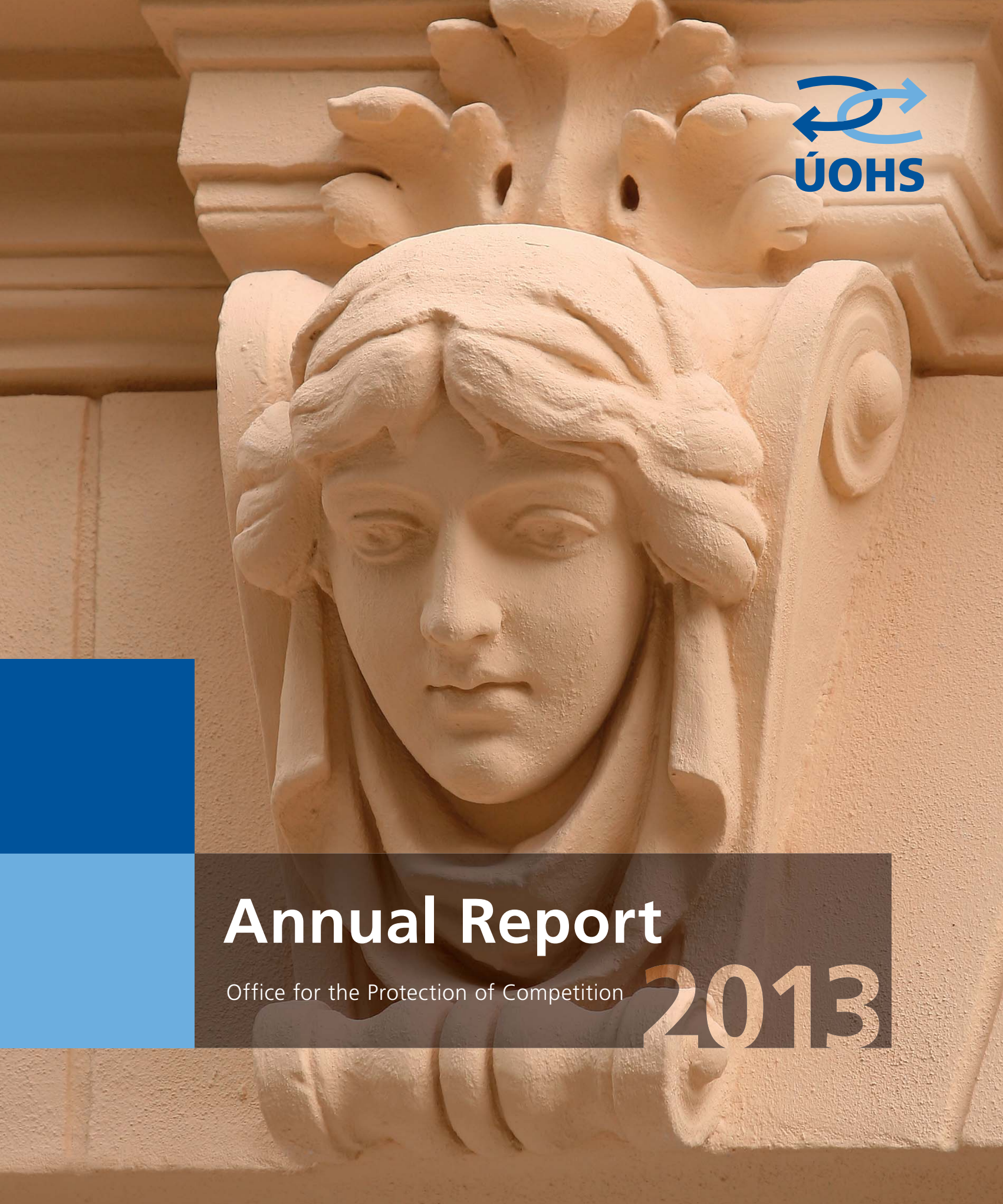

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Annual Report 2013

Office for the Protection of Competition

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Petr Rafaj
Chairman of the Office for the Protection of Competition

Foreword

If I had to use only one word to characterise the year 2013 from the perspective of the Office for the Protection of Competition, I would undoubtedly have to reach for the term 'productive'. This applies particularly to the area of public procurement, where the Office again exceeded the record for initiated administrative proceedings set in the previous year. Nearly 670 initiated first-instance administrative proceedings and 200 appeals is a truly enormous number, and one to which we must add several thousand additional contracts that we investigated on the basis of received complaints.

In terms of public procurement, the clear priority for the Office is to process administrative proceedings as fast as possible, and this has also been supported by a number of measures that we undertook in the year 2013. Most of the newly recruited employees have already undergone basic training and are capable of leading administrative proceedings independently. At the same time, we are taking steps aimed at implementing a new information system that should improve the workflow and ultimately shorten the length of administrative proceedings. Our legislative efforts in the area of public procurement are aimed primarily at reducing so-called 'obstructive proposals', the submission of which we would like to reduce through the improved use of deposits.

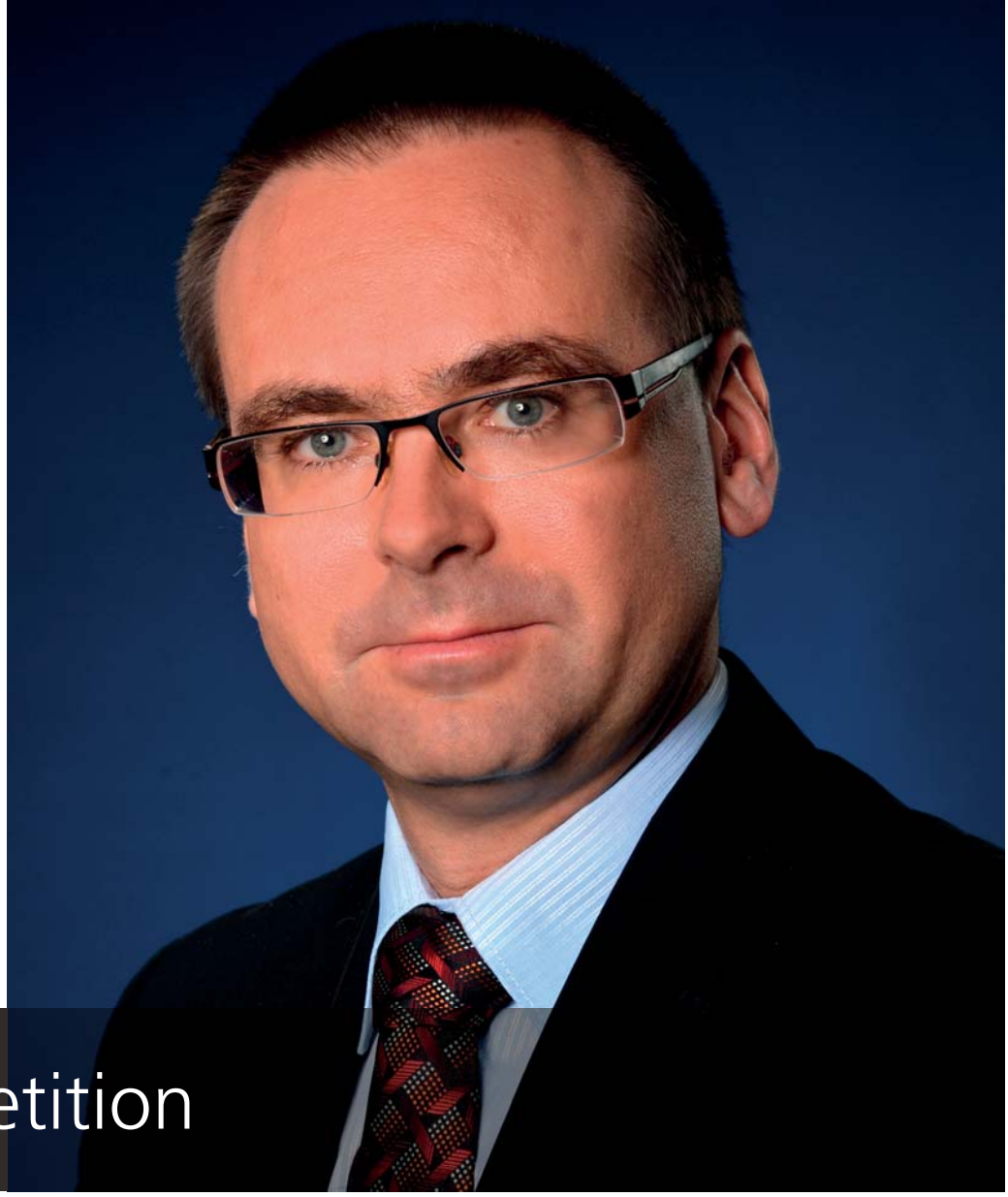
In the area of competition, the Office primarily focused on already initiated cases, or on expanding ongoing proceedings and initiating new ones. Testimony to our activities comes from 15 inspections of undertakings during which evidence of anti-competitive conduct was secured. The results of ten ongoing cartel proceedings, however, will not be available until this year. To achieve greater transparency and legal certainty of undertakings, we also published three methodological documents on prioritisation and alternative solutions of competition problems, the application of leniency and on settlement. Indeed, going forward we regard settlement as an essential tool that we want to use in the maximum number of cases possible.

Without exaggeration, a momentous decision was issued in the area of significant market power. In this decision, not only a considerable sanction was imposed on a retail chain, more importantly the basis was clearly set pursuant to which the Office will assess the abuse of significant market power.

Major changes are also taking place in state aid, where rules regulating this area are being modernised at the European Union level. Representatives of the Office participated in a series of meetings held to formulate these new rules, which will affect the provision of state aid in many sectors of the Czech economy starting in mid-2014.

In terms of ensuring the operation of the Office, I consider it equally important that we managed to successfully complete the reconstruction of another building of the Office in Brno, thanks to which all our employees have suitable conditions for effective and high-quality work.

Petr Rafaj
Chairman of the Office for the Protection of Competition



Michal Petr
Vice-Chairman of the Office in charge of the Competition Section

Competition

Competition is the fundamental principle of the market economy that motivates market participants to offer their services and goods to customers under the most favourable conditions. Competition among undertakings encourages efforts towards innovation and production efficiency and exerts constant pressure to reduce prices. For a business to be effective in terms of competition, it must act independently of its competitors and yet be under competitive pressure at the same time.

The purpose of the protection of competition is to protect the concept of competition itself, not individual undertakings. The benefits arising from a functioning competitive environment are enjoyed primarily by the end consumer in the form of better prices and a higher quality and greater selection of products and services.

In the Czech Republic, competition rules are legislatively governed by Act No. 143/2001 Coll., on the Protection of Competition (the Competition Act or Act). The Act distinguishes four basic thematic areas to which it applies - prohibited agreements, abuse of dominant position, control of concentration between undertakings and since 2012 the Office for the Protection of Competition (hereinafter referred

to as "the Office" or "the OPC") has also been newly in charge of supervising public authorities, who must not distort competition, for example, by favouring a certain undertaking.

In addition, since May 2004, the Office may directly apply EU competition law, specifically Articles 101 and 102 of the Treaty on the Functioning of the European Union. EU law is applied in cases where anti-competitive conduct may affect trade among Member States.

Legislative Changes

In the year 2013, competition law was not amended and no work on its amendment was initiated. The Office was therefore able to concentrate on developing its own methodological documents and guidelines intended to ensure greater legal certainty of undertakings and at the same time enhance the transparency and predictability of its actions. In November 2013, notices were published regarding the leniency programme, the settlement procedure, alternative solutions of competition problems and the postponement of cases. The first two notices above are so fundamental for the Office that they were also printed with an accompanying commentary as an information bulletin, which can also be downloaded in electronic form from the OPC website.

The revision of the leniency programme was carried out in relation to adding the concept of leniency to the Act on the Protection of Competition in December 2012 and at the same time with the aim to align the programme with the Model Leniency Programme of the European Commission. The programme was issued as a Notice of the Office for the Protection of Competition of 4 November 2013 on the Application of Section 22ba (1) of the Act on the Protection of Competition and states in detail the conditions and procedure for filing a leniency application and granting leniency.

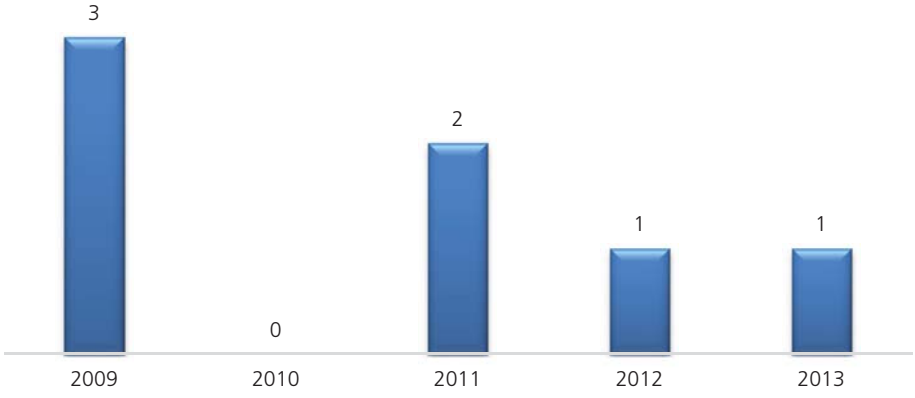
Fundamental changes that occurred in the leniency programme are as follows:

- Specification of conditions for granting Leniency IA
- Specification of time limits for filing various types of leniency applications
- Strengthening the protection of leniency documents in the administrative file
- Clarification of the marker system
- Successful applicants for leniency are not banned from participation in public procurement
- If conditions are met, the criminal liability of a successful applicant for leniency expires under Section 248 (2) of the Criminal Code

A Notice of the Office for the Protection of Competition on the procedure focused on speeding up the administrative procedure using the institute of application for a reduction of a fine under Article 22ba (2) of the Act on the Protection of Competition (settlement procedure) was issued for the first time ever. Settlement has been applied by the Office since 2008, but this instrument was not clearly regulated before its incorporation into the Competition Act. The notice specifies how the settlement procedure is initiated, it regulates the conditions of oral interviews with applicants, as well as the form of objections and decisions in the case issued based on the settlement procedure.

Compared to the previous version, the Notice of the Office on the alternative solution of competition issues and the deferral of cases was amended: changes were made in the section relating to an alternative solution and it was simultaneously expanded with new sections developing a new legal possibility to defer cases without investigation according to Section 21 (2) of the Competition Act.

Number of Cases Resolved through Settlement



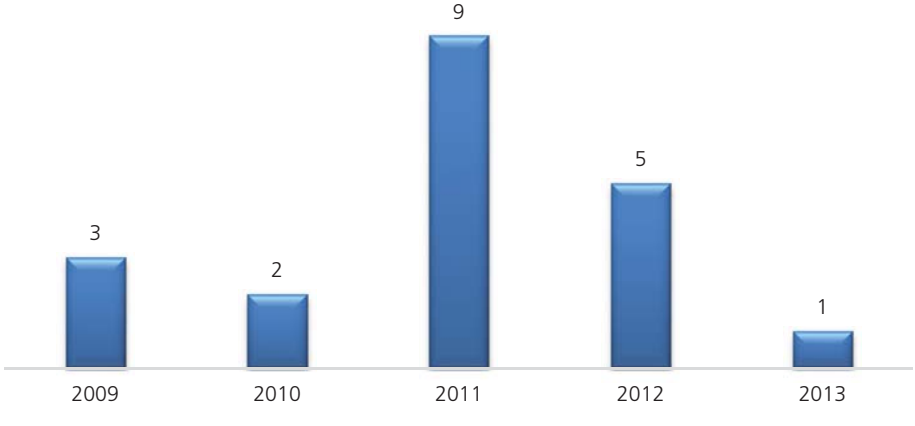
The purpose of the notice is thus to define conditions when the Office:

- in exceptional cases, assessed ad hoc, defers a complaint with no further action without the Office having eliminated the competition problem;
- eliminates a competition problem without initiating proceedings; unlike the previous notice, this procedure is a future possibility in some cases of 'hard' restriction of competition, including RPM;
- accepts commitments in proceedings; no commitments were accepted under the previous notice; a new definition of conditions for their acceptance should lead to restoration of this institute.

In the year 2014, a notice on the methodology of calculating fines should be issued which would bring about a noticeable increase in fines, especially for 'hard' cartels. At the same time, partly due to the need to respond to the new Civil Code, work on an amendment to the Competition Act will be launched.

At the European level, the most important topic of the year 2013 was the prepared directive on private enforcement, through the use of which the European Commission wants to encourage the filing of law suits for damages caused by anti-competitive conduct. Representatives of the Office participated in a series of discussions on the legislative proposal, and helped to shape the opinion of the Czech Republic on this topic.

Number of Cases Resolved by Alternative Solution



Competition Advocacy

Although the core business of the competition authority focuses on decision-making in relation to breaches of the Competition Act, equally important is also the development and cultivation of the competition environment. This environment can be greatly restricted by the state, particularly through legislation or executive measures that may negatively impact competition, e.g. by creating barriers to market entry or introducing excessive regulation. Therefore, the competition authority should, as part of its mandate, proactively participate in the formulation of those economic policies of the state that may influence market mechanisms, the business environment and economic performance. Thus OPC regularly expresses its opinion not only on draft legislation but also comments on certain actions taken by ministries and sector regulators. These activities, which can be collectively called competition advocacy, can have a significant impact on the pro-competitive setting of the legal framework of the relevant state.

Collective Systems

Last year, the Office addressed the issue of waste management, in particular the functioning of so-called 'collective systems'. Given the relevant legislation and the procedure of the Ministry of the Environment, the area is prone to formation of monopoly players in particular markets. The Office repeatedly addresses complaints from the processors of the raw materials (abusive practices, vertical integration) and thus expresses its opinion on future regulations within the legislative process. The Office regards as problematic in particular the set-up of the entire current functioning of the collective administration in waste management, since there is only one operator of a collective system in a certain segment of the electrical industry. The system is also similarly configured in the management of packaging waste (through a single authorised company). The Office also finds problematic the entrepreneurial activities carried out by the operators of collective systems through affiliated companies in downstream markets. The Office repeatedly communicates its comments to the relevant ministry and is also working with the MIT on the future possibility of resolving the issue through a commodity exchange. The desired outcome of the Office is a creation of a competitive environment among individual collective systems so that they might compete effectively with one another; this would benefit both their customers and consumers, because recycling fees are reflected in the price of goods.

Deposits for Distributors

The Office for the Protection of Competition repeatedly commented throughout the legislative process on the amendment to Act No. 311/2006 Coll., on Fuels and Petrol Stations and Amending Certain Laws (Act on Fuels), which was published in the Collection of Laws under No. 234/2013. Despite the disapproval of the Office, this amendment definitively introduced the obligation, effective from 1 November 2013, for distributors of fuels to make a deposit of CZK 20 million as one of the pre-requisites for business activities in the fuel distribution market. According to the Office, this has greatly reduced the level of competition in the relevant market and created a significant new barrier to entry into this market. It may also negatively affect the downstream market for the retail sale of fuel, as the range of suppliers for small operators of petrol stations will be significantly reduced. In its efforts to maintain the existing level of competition in the relevant markets, the Office addressed the concerned ministries, the Chamber of Deputies of the Parliament of the Czech Republic, as well as individual parliamentary groups with its comments on this amendment. It also issued a written statement for a group of senators who filed for the annulment of the deposit with the Constitutional Court. The Office provided a similar opinion in the matter of deposits newly established for distributors of spirits.

Refusing Access to Data on Timetables

The Office investigated a complaint concerning possible abuse of dominant position by an operator of a nationwide transport timetable information system (TTIS) by refusing access to the timetable data which forms the TTIS database.

Since the Office did not manage to remedy the matter and eliminate the anti-competitive conduct of the TTIS operator in preliminary proceedings, despite a series of meetings and a request to eliminate the anti-competitive situation, it initiated administrative proceedings in the relevant matter.

Within the investigation of above mentioned complaint, the Office also communicated with the Ministry of Transport of the Czech Republic (the Ministry), which had authorised the company CHAPS to manage the TTIS. Representatives of the Ministry informed the Office that they were aware of the non-availability of timetable data and were trying to address the situation. The means by which publication of timetable data should be achieved is an amendment to the Decree on Public Transport Service Timetables. The Office actively contributed to commenting on the draft amendment to the Decree and made sure it enshrined provisions intended to ensure access to timetable data in a form that will allow the data to be automatically processed for their further commercial use. In the event that the amendment to the Decree on Public Transport Service Timetables is approved in the legislative process, it will come into effect on 1 September 2014.

Auctions for Free Radio Frequencies

Given that the Czech Telecommunication Office (CTO) decided on 8 March 2013 to suspend the ongoing auction for free radio frequencies to provide a public communications network in the 800 MHz, 1800 MHz and 2600 MHz ranges, intended especially for the development of the so-called '4th generation network', and that on 8 April it announced the conditions for a new auction which in some sections showed fundamental changes, the Office also sought to assess these conditions both in terms of the Act on the Protection of Competition, particularly Section 19a under which public authorities may not distort competition by favouring a specific undertaking or other means, as well as in terms of state aid.

The Office commented on the final wording of the conditions of the auction and its comments related mainly to the entry conditions for new operators into the market. Although in terms of competition the creation of conditions for the entry of new operators should be generally welcomed, it should not be achieved by setting conditions that are discriminatory or which could distort the quality of competition in the given market. From this perspective, the Office notified CTO regarding the following issues in particular:

To ensure compliance of the established conditions of the auction with the rules for the protection of competition, it was particularly necessary for CTO to adequately justify why it is necessary to favour operators entering for the first-time by reserving on their behalf part of the spectrum, or by other measures, and why precisely to the proposed extent, and why this advantage will not lead to the distortion of competition.

Furthermore, the Office recommended amending the conditions of the auction so as to ensure the independence of a new entrant, i.e. after the allocation of frequencies, the new and any existing operators will not be able to merge, or to transfer or lease the acquired frequencies.

In terms of state aid, it was recommended to the CTO that they ensure that the effects of the legal act under which radio frequencies are transferred to their new holder come into effect only after

the opinion of the European Commission is received concerning the complaint filed by the complainant regarding prohibited state aid, which the complainant identified in some conditions of the auction.

Subsequently, the Office received several complaints calling for the investigation into possible violation of Section 19a of the Act on the Protection of Competition by the CTO due to setting discriminatory conditions for the auction by unilaterally favouring a potential new operator (in particular, by incorporating the condition to accept the national roaming obligation and wholesale supply in its announcement of the conditions of the auction for free frequencies, and the reservation of part of the spectrum for new operators). The Office closed its investigation into the complaints by concluding that the purpose of Section 19a of the Act on the Protection of Competition is not to penalise public authorities for using the authorisation contained in legal regulations and which proceed in compliance therewith. The Office is not entitled therefore to review the legality of the auction, or the measures of the regulating authority which it is clearly empowered to adopt. Only the administrative court is competent in terms of such review.

Comments on the Analyses of Relevant Markets Conducted by the Czech Telecommunication Office

During the year 2013, the Office commented on the proposals of a following analyses of the relevant markets carried out by the Czech Telecommunication Office: Market 2 - call origination in a public telephone network at a fixed location; Market 3 - call termination in individual public telephone networks at a fixed location; Market 4 - wholesale network infrastructure access at a fixed location; Market 5 - wholesale broadband access in electronic communication networks; Market 7 - termination in individual public mobile networks; and Market 8 - access and origination in public mobile telephone networks. Compared to the previous round of analyses, Market 8 is a newly defined market in which the CTO found grounds to suspect the possible collective dominant position of some operators. However, the situation in the market changed during the year 2013, in part due to the entry of new virtual operators, and CTO is now incorporating these changes into the analysis. Generally, it can be concluded that in its comments the Office recommended considering the unification of cost standards used to calculate prices and the separate accounting of costs and revenues, and it proposed a more detailed breakdown of services under separate records. The Office also repeatedly referred to its earlier comments on the CTO materials regarding the assessment of margin squeeze and cross-financing.

Prohibited Agreements

From the perspective of competition law, agreements among undertakings that significantly exclude or limit free competition in the market are prohibited because by participation in the agreement undertakings waive their free and individual market strategies.

The best-known manifestation of prohibited agreements are cartels, i.e. horizontal agreements among direct competitors operating in the same market. Undertakings enter into these agreements with the aim of reducing the risk resulting from competition and ensuring a stable profit. This is usually done by price fixing, sharing the markets or customers, or by specifying quotas for numbers of products. One type of cartel agreement is the prohibited resolution of association of undertakings, i.e. restricting competition among members of professional associations by decision of the management of such associations, and, finally, also so-called 'concerted practices'.

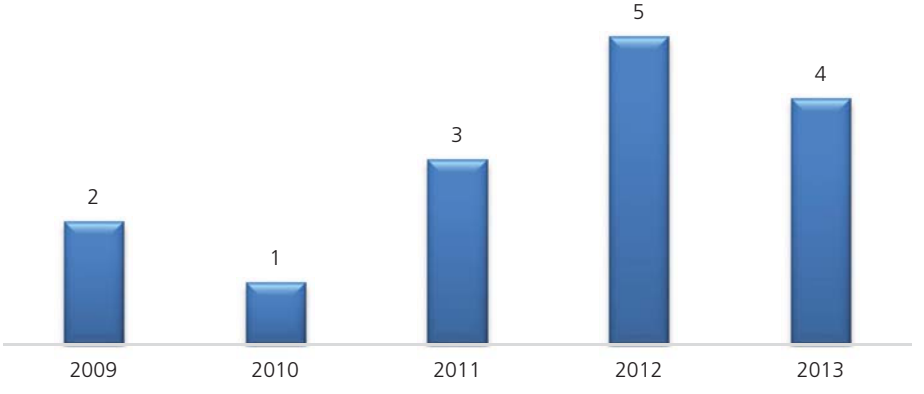
Prohibited agreements also include vertical agreements between a supplier and its customers. These are mainly agreements on resale price maintenance, where the supplier determines the prices at which its distributors should sell the suppliers' products to final consumers or other dealers, and enforces compliance with these prices.

The detection of cartels is an undeniable priority of competition authorities around the world as cartels have a devastating impact on competition in the market and therefore on the economy of a country. Given that prohibited agreements are inherently secret and that their participants often use sophisticated means to prevent their conduct from being revealed, competition authorities rely on an investigative tool called a leniency programme. This programme functions by promising impunity to members of a cartel that notify the competition authority of the existence of a prohibited agreement and provide sufficient evidence to break the cartel and punish its members. A reduction of fines can also be achieved by other members of a cartel if they apply for leniency during the investigation and present evidence with added informative value that better helps to prove the existence of the cartel. OPC introduced the leniency programme in 2001 and it has been used intensively since 2006, since when the Office has annually received several applications for leniency. As mentioned above, the Czech leniency programme was amended in the year 2013 to make it more attractive for cartel members and to offer greater incentives to disclose a cartel.

A specific type of a cartel agreement on which the Office has been mainly focusing in recent years is a prohibited agreement among bidders in public procurement, so-called 'bid rigging'. Tenderers often illegally cooperate to increase the contract price, to pre-determine the winner of the tender or to divide contracts by region. It is estimated that this causes an increase of price of public contracts by an average of 20 percent. When fighting against this type of anti-competitive conduct, the Office may use synergies arising from the fact that it is also a supervisor of public procurement, and in this matter the Public Procurement Section intensively cooperates with the Cartel Department. In addition, the Office has been running an educational and training programme for contracting authorities for two years, based on the manual of the Organisation for Economic Cooperation and Development for fighting bid rigging. Representatives of contracting authorities were therefore trained in how to identify signs of prohibited agreements among bidders, how to report the suspicion to the Office and how to set out the conditions of public contracts to reduce the risk of bid rigging. The programme was completed at the end of the year 2013 and several thousand contracting authorities in all regions of the Czech Republic were trained. The Office sees the results of this initiative primarily in the quality of complaints seeking to alert possible bid rigging. Of the ten cases of prohibited agreements currently being investigated by the Office, six refer specifically to bid rigging.

In the year 2013, the Office initiated a total of four administrative proceeding in the field of prohibited agreements and issued two first-instance decisions. In addition, six administrative proceedings initiated in previous years are still ongoing. Furthermore, 122 complaints concerning possible prohibited agreements have been investigated.

Number of Initiated Administrative Proceedings - Prohibited Agreements



Alternative Solutions of Competition Problems

In some cases of anti-competitive conduct where there has been no negative impact on the relevant market, since such conduct has yet to be implemented, the Office may proceed with a so-called 'alternative solution' instead of initiating administrative proceedings and sanctioning the concerned undertaking. The concerned undertaking is then given an opportunity to eliminate the possible competition problem and, if the Office concludes that the remedy measures are sufficient, the case will be closed without initiating administrative proceedings.

Resale Price Maintenance by Emitex

In the year 2013, the Office eliminated a vertical agreement on pricing for resale (so-called 'resale price maintenance' – RPM) in the case of Emitex products s.r.o. (Emitex) without initiating proceedings. Upon request from its customers, this company incorporated the obligation to adhere to recommended prices into newly drafted contracts. Emitex itself contacted the Office in the matter, subsequently presented new contracts without such obligation, and confirmed that it would not comment on the price policy of its customers or monitor compliance with prices, or penalise its business partners for non-compliance with prices. After receiving from the company other documents and information relevant to the matter, the Office reached a conclusion after their evaluation to accept the measures proposed by Emitex and not to initiate administrative proceedings with the company.

Selected Cases

Cartel Agreement of Fuel Distributors

Parties to the administrative proceeding: Eni Česká republika, s.r.o., BENZINA, s.r.o., OMV Česká republika, s.r.o., LUKOIL Czech Republic s.r.o., Shell Czech Republic a.s.
Reference number: S72/01
Result: no breach of the Competition Act found
Decision came into force on: 4 December 2013

In November 2013, the Office closed administrative proceedings initiated in the year 2001 in which a fine of CZK 313 million was imposed on six fuel distributors in the year 2003. The case was then assessed by the administrative courts for more than 10 years. During this period the primary stumbling block was a question of legal succession - relating to the sale of one of the parties to another undertaking. As a consequence of the lengthy period which had elapsed from the start of the proceedings, the Office was unable to secure additional evidence demanded by the court and decided to close the administrative proceedings.

Vertical Agreements - CANDY

Party to the administrative proceedings: CANDY, spol. s r.o.
Reference number: S461/2011, R66/2013
Legally effective fine: CZK 802,000
Decision came into force on: 16 December 2013

In its first-instance decision from 25 February 2013, OPC imposed a fine of CZK 802,000 on CANDY, spol. s r.o., (CANDY) for a breach of the Act on the Protection of Competition. In November, the Chairman of the Office dismissed the submitted appeal and upheld the decision.

CANDY is a distributor of the dog and cat feed brands NUTRAM, K-9, FELINE and CANDIE´S. It distributes the feed through direct sales to end consumers through its on-line store, through deliveries to retail outlets as well as through wholesalers - its registered distributors.

CANDY breached the Act by concluding prohibited agreements from 25 January 2010 until 27 September 2012 with its registered distributors, and from 13 December 2010 until 27 September 2012 with on-line stores which set out recommended, or minimum resale prices in the markets for dry dog food, dry cat food and treats for dogs and cats.

In the assessed period, the conduct of Candy, whereby registered distributors were obliged to comply with agreements – accepted by distributors - on prices of feed for resale, was found by the OPC to constitute prohibited agreements intended to distort competition in the relevant markets. In addition, CANDY also entered into prohibited price agreements by e-mail with the operators of on-line stores, who also accepted its request regarding an increase in the prices of feed.

CANDY took active steps to ensure the fulfilment of price agreements, for example when it monitored, regularly over an extended period, the prices of supplied feed offered by on-line stores. CANDY also pressured its customers who refused to comply with the set prices.

The conduct of CANDY had an actual negative impact on competition and on end consumers because in the assessed period the prices of feed increased (in some cases by more than 20%) and the number of on-line stores offering feed supplied by CANDY decreased.

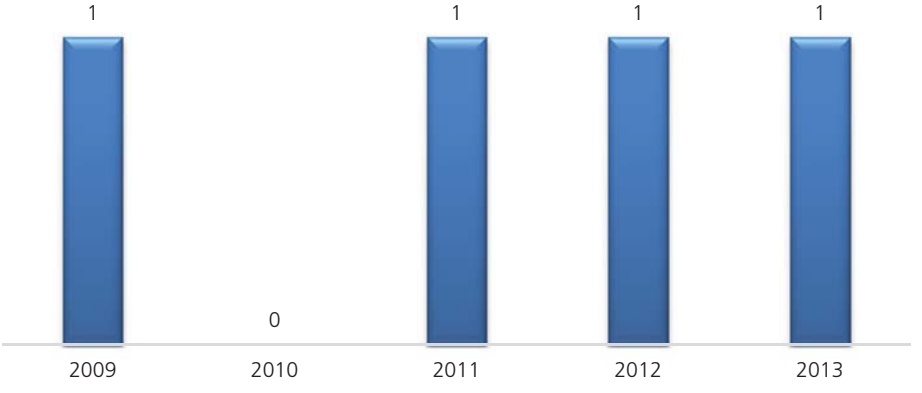
Abuse of Dominant Position

Businesses with sufficient market power who act independently of their competitors are in a dominant position. The mere existence of a dominant or monopoly position is not prohibited, but it is illegal to abuse this position and stricter rules apply to dominant businesses in this respect than to regular undertakings. The most typical examples of abuse of dominance include charging unreasonably high prices, an inconsistent application of contractual terms to customers, tying the sale of goods and services to the consumption of other products, restricting either production or the market and, last but not least, selling at prices below cost to eliminate horizontal competition.

Unlike in the past, dominant position is not solely determined by market share, although it is generally accepted that undertakings with a share of less than 40 percent are not in a dominant position. Other factors that the Office takes into account when assessing dominance include, inter alia, the economic and financial strength of the competitors, legal and economic barriers to market entry, and even the substitutability of the products concerned. These cases of abuse of dominant position are proving to be some of the most complex, ones in which it is often necessary to process advanced econometric analyses and models to prove anticompetitive conduct.

In the Czech Republic we find companies holding dominant positions mainly among the former monopolies, particularly in network industries, namely energy, telecommunications and transport. The Office is working on two demanding administrative proceedings in the above areas, while other administrative proceedings were initiated in 2013 in the matter of possible abuse of dominant position by an operator of a nationwide timetable information system. The Office also handled a total of 124 complaints made against alleged abuse of dominance.

Number of Initiated Administrative Proceedings - Abuse of Dominance



Concentration between Undertakings

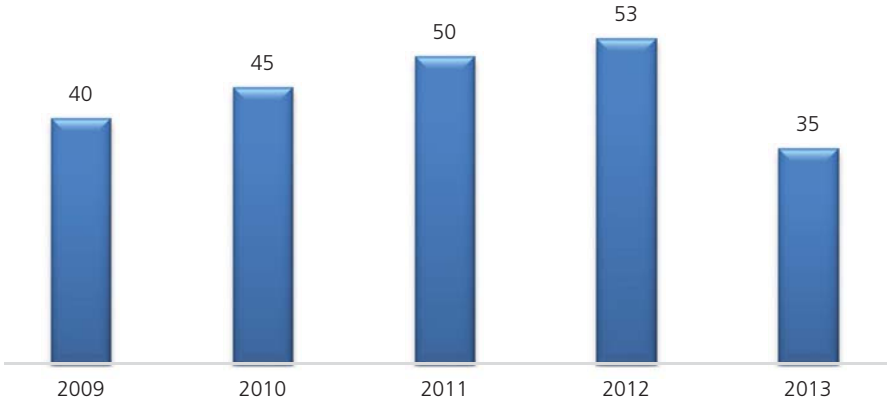
Mergers and acquisitions between undertakings represent some of the most common ways of strengthening a company's market share and acquiring new customers and markets. As a result of a concentration between undertakings, a business with a dominant position may be created whose operation could subsequently distort and weaken competition in the relevant markets. Mergers are therefore subject to scrutiny by competition authorities and no concentration that exceeds the established turnover criteria may take place without an assessment and the approval of the relevant competition authority.

In the Czech Republic, all mergers are subject to approval in which the turnover of all merging companies achieved in the domestic market in the last accounting period exceeds CZK 1.5 billion and at least two of the merging undertakings achieved a net turnover in the Czech market of more than CZK 250 million each for the last reporting period; approval is also required if the net turnover achieved in the last reporting period in the Czech market by at least one of the undertakings establishing a jointly controlled undertaking exceeds CZK 1.5 billion, and at the same time the worldwide net turnover for the last reporting period achieved by another merging undertaking exceeds CZK 1.5 billion.

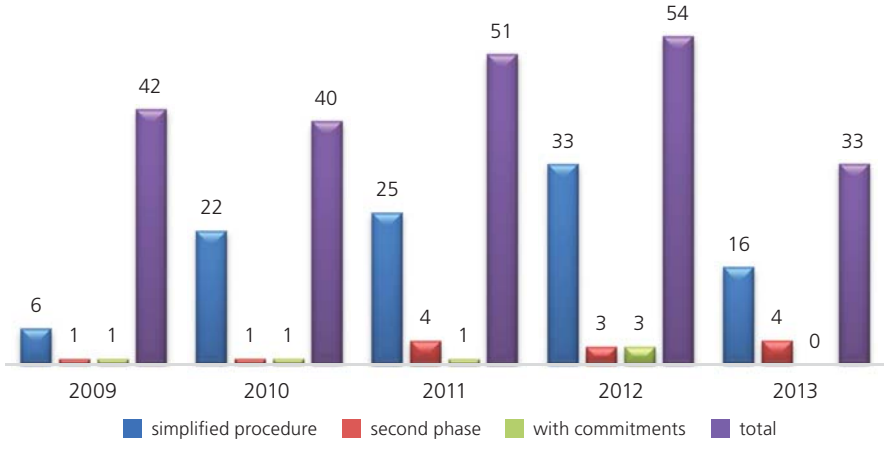
Within administrative proceedings focused on concentration between undertakings, the Office in particular defines the relevant markets, determines any increase in market share and assesses the possible impact of a merger on competition in the relevant markets, particularly changes in concentration of the market, the impact on horizontal competition and on vertical downstream markets or any susceptibility to the conclusion of prohibited agreements. If the Office finds that the merger will not result in substantial distortion of competition, it issues a decision approving such concentration. In simpler cases, it follows a so-called 'simplified procedure' and a decision is issued in 20 days; the standard procedure takes 30 calendar days. If the Office finds during proceedings that the concentration raises serious concerns about significant distortion of competition, it may extend proceedings for another four months. If the suspicion of substantial distortion of competition is confirmed in the course of proceedings, the Office may prohibit the concentration altogether. Parties to the proceedings may propose remedies to the Office consisting, for example, in the sale of part of the business to a third party, whereupon, if OPC finds such remedies sufficient to eliminate the identified competition problems, it will approve the merger providing these commitments are fulfilled.

In the year 2013, the Office issued a total of 33 first-instance decisions concerning concentration between undertakings, of which 17 were in the standard procedure and 16 in the simplified procedure. No merger was blocked or subject to the acceptance of commitments. However, two sanctions with fines totalling CZK 24,420,000 were issued. These fines were imposed for merging without the approval of the Office (KAREL HOLOUBEK – Trade Group a.s.) and for non-compliance with commitments (REWE Zentralfinanz eG). In addition, the Office imposed three disciplinary fines for failure to provide information in administrative proceedings Holcim/Cemex.

Number of Initiated Administrative Proceedings - Concentration between Undertakings



Concentration between Undertakings by the Type of Decision



Selected Cases

Litvínovská uhelná/Elektrárna Chvaletice

Party to the administrative proceeding: Litvínovská uhelná a.s.
Reference number: S196/2013
Decision: Merger approved
Decision came into force on: 27 May 2013

In May 2013, the Office approved a merger of Litvínovská uhelná a.s. and Elektrárna Chvaletice a.s. by first-instance decision.

The main activity of Litvínovská uhelná is mining and processing of lignite. Litvínovská uhelná operates a lignite opencast mine, Československé armády, and the Pomerania coal preparation plant. The company is also the owner of Důl Kohinoor a.s., which operates the mine Centrum, the last lignite underground mine in the Czech Republic.

Elektrárna Chvaletice a.s. operates the lignite power plant Chvaletice, through which it is active in the manufacture and wholesale supply of electricity, the centralised supply of thermal energy, as well as in the provision of support services for the electricity supply system and energy by-products. Prior to implementation of the assessed transaction, 100% of Elektrárna Chvaletice was owned by ČEZ, which put up for sale all shares of Elektrárny Chvaletice in connection with a need to fulfil its commitments proposed under antitrust proceedings of the European Commission.

In its administrative proceedings, the Office primarily assessed the merger's impact on vertically related markets for the delivery of lignite and the production and supply of electricity, which are rather concentrated. However, after weighing up all the circumstances of the investigated case and analysing the possible negative consequences brought by vertical concentration of the activities of merging undertakings, OPC concluded that the assessed concentration between undertakings did not raise serious concerns about significant distortion of competition in the relevant markets above and approved the merger.

Implementation of an Unauthorised Merger - Karel Holoubek

Party to the administrative proceeding: KAREL HOLOUBEK – Trade Group a.s.
Reference number: S148/2011
Legally effective fine: CZK 530,000
Decision came into force on: 31 January 2013

In January 2013, a fine of CZK 530,000 was imposed on KAREL HOLOUBEK – Trade Group a.s. in a first-instance decision for its merger with Karlovarská teplárenská, a. s. before submission of a merger notification and before any decision in force of the OPC was issued approving the said merger. The settlement procedure was used in this case, whereby the party acknowledges its unlawful conduct in exchange for a reduction of the fine. The decision was not appealed.

In 2010, the Office was assessing the merger of KAREL HOLOUBEK – Trade Group a.s. (KHTG) and Karlovarská teplárenská, a.s. The concentration was authorised on 29 December 2010 and came into force on the same day. During the administrative proceedings, OPC found that KHTG had been controlling 51% of votes of Karlovarská teplárenská since 1 July 2002 based on a share loan agreement. The party demonstrably exercised its voting rights on general meetings during the years 2002-2010.

During the same period, representatives of KHTG participated in meetings of the Board of Karlovarská teplárenská and influenced the conduct.

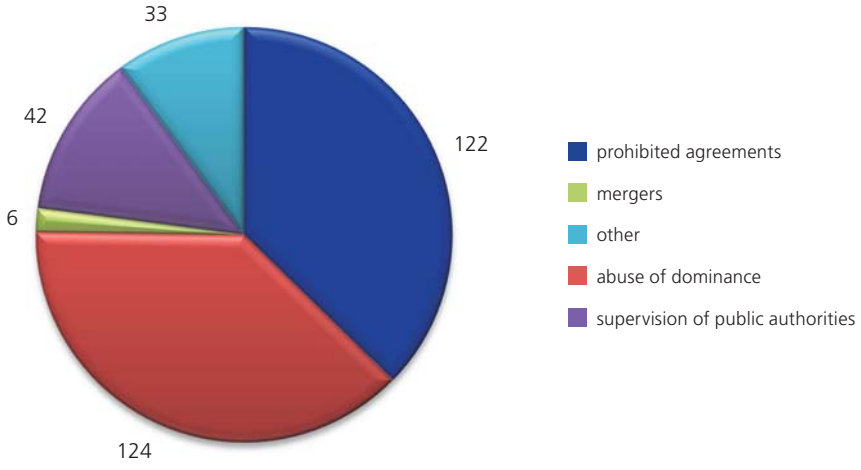
According to the Act on the Protection of Competition, in cases where there is a merger which is subject to the Office's approval, it may not take place until the Office issues a decision approving the merger. In the case being assessed, KHTG obtained the opportunity to exclusively control Karlovarská teplárenská under the Share Loan Agreement. This illegal situation persisted long-term, in fact more than 8.5 years.

Implementing a merger before submitting a merger notification and before any decision of the Office approving such concentration comes into effect, violates the most basic principles of controlling concentrations between undertakings. Uncontrolled concentration between undertakings may distort effective competition and thereby harm consumers. However, no significant negative impact on competition or consumers was found in the investigated case.
While the Office took this fact into account when determining the amount of fine, it had to take into account, on the other hand, the considerable duration of the infringement. The undertaking also used the settlement procedure by acknowledging its responsibility for illegal procedure, as well as the legal qualification and duration of the criticised conduct, due to which the sanction was reduced by 20%.

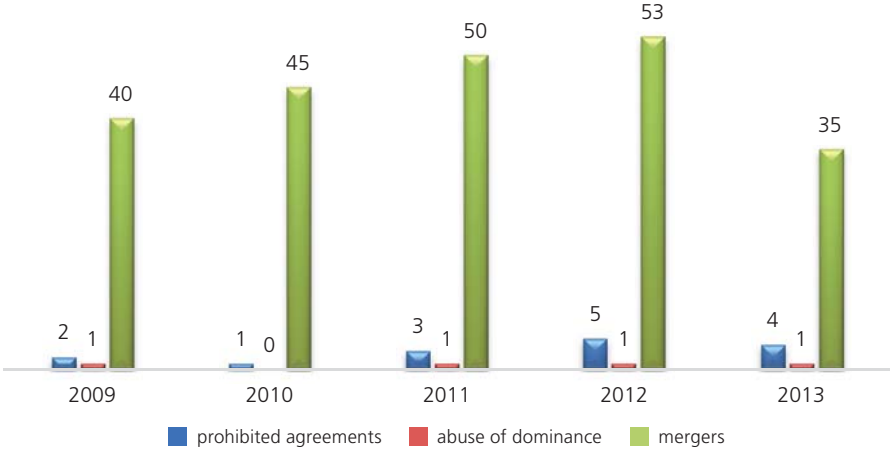
Statistics

Number of complaints received and their division by area	
Prohibited agreements	**122**
Abuse of dominant position	**124**
Concentration between undertakings	**6**
Supervision of public authorities	**42**
Other	**33**
Total	**327**
Number of decisions issued by area	
Prohibited agreements	**4**
Abuse of dominant position	**1**
Concentration between undertakings	**35**
Number of initiated proceedings by area	
Prohibited agreements	**2**
Abuse of dominant position	**0**
Concentration between undertakings	**33+2**
Total amount of fines imposed by first-instance proceedings	**CZK**
Prohibited agreements	802,000
Abuse of dominant position	-
Concentration between undertakings	24,420,000
Other	150,000
Total	**25,372,000**

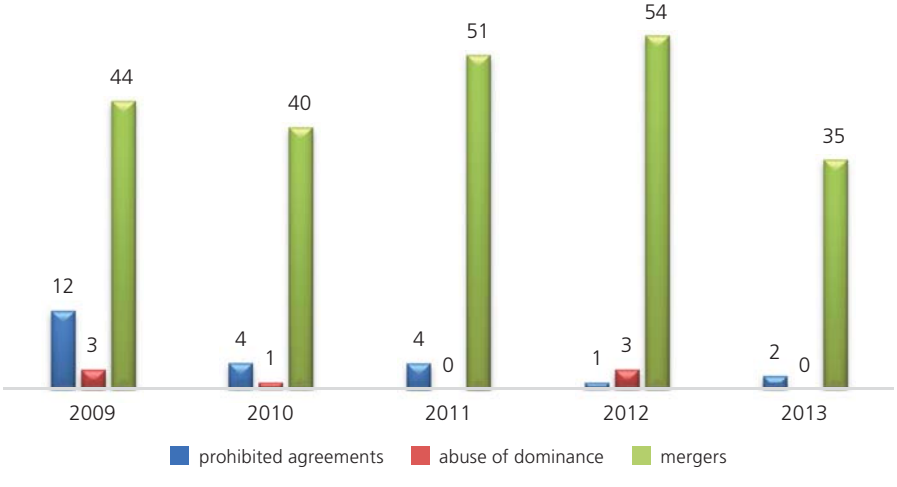
Complaints Received by Area



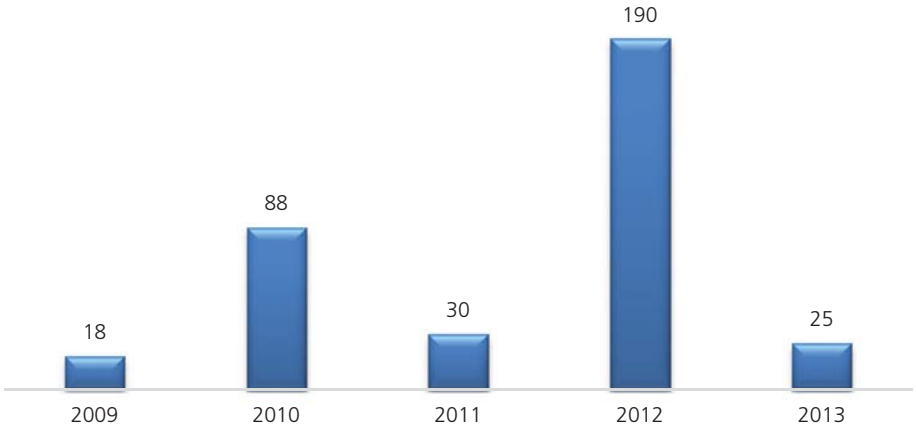
Number of Administrative Proceedings Initiated



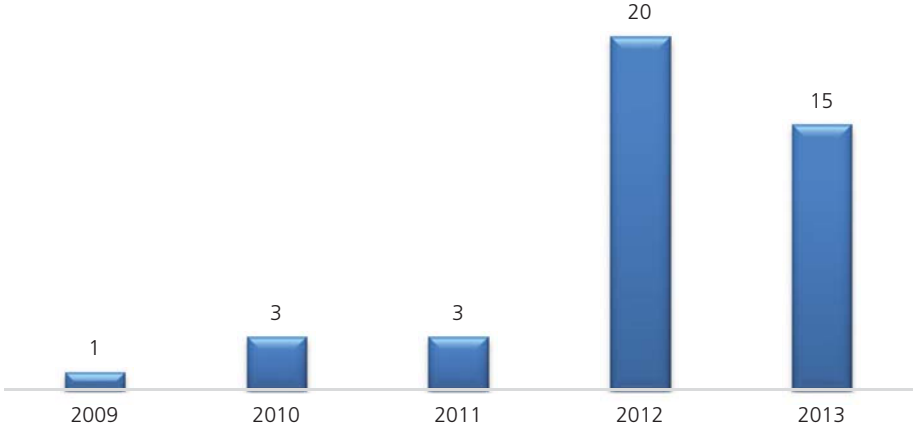
Number of First-Instance Decisions Issued



Amount of Fines Imposed by the First Instance in Millions of CZK



Number of Dawn-Raids



Appeals and Judicial Review

A first-instance decision issued by the Office may be challenged by a party to the proceeding in an appeal submitted to the Chairman of the Office, which represents the second-instance authority. Based on the appeal, the Chairman of the Office assesses the first-instance decision and either upholds it and dismisses the appeal, or - if errors are identified in the decision – it cancels the first-instance verdict and returns the verdict for reconsideration. In his/her decision, the Chairman takes into account the opinion of the appelate commission, an advisory body composed of experts in issues from the academic, public and private sector.

In 2013, a total of 13 appeals against first-instance decisions were filed in the area of competition. Nine decisions were issued, two of which were decided on the merits, namely in the case of non-compliance with commitments by REWE Zentralfinanz eG and for the prohibited vertical agreements of the feed distributor CANDY. Effective fines totalling CZK 24,692,000 were imposed.

Appeals

Number of appeals filed against first-instance proceedings		13
Second-instance administrative proceedings initiated		13
Decisions on appeals adopted		9
	of which • on the merits	2
	• procedural	7
Fines	• number of fines imposed	2
	• amount of fines imposed in CZK	24,692,000

Selected Cases

Failure to Fulfil Commitments Imposed in the Merger by REWE

Party to the administrative proceedings: REWE Zentralfinanz eG
Reference number: S462,463/2010, R33/2013
Legally effective fine: CZK 23,890,000
Decision came into force on: 9 August 2013

In August 2013, Petr Rafaj, Chairman of the Office, upheld the first-instance decision from February of the same year in which a fine of CZK 23.89 million was imposed on REWE Zentralfinanz eG for failure to fulfil the commitments associated with the approval of the merger between REWE and PLUS-DISCOUNT spol. s r.o.

In the year 2008, the Office had to decide on merger notification between REWE and PLUS-DISCOUNT. It was found in the administrative proceedings that this merger, which brought the retail chains Billa and Penny Market together with Plus stores, could distort competition in some local markets. In response to these findings, REWE suggested to the Office a remedy in the form of the sale of four supermarkets in the regions concerned. After evaluating the proposed commitment, OPC concluded that it sufficiently addressed any concerns about the distortion of competition and approved the merger subject to commitments.

Sale of the above supermarkets was supposed to take place within one year of the decision being issued; however, in accordance with the decision, REWE requested a postponement and a reassessment of the commitment several times in the years 2009 and 2010. Although the Office partially acceded, REWE also failed to implement the modified commitments. At the end of the year 2010, administrative proceedings were therefore initiated due to the failure to fulfil commitments.

Within the administrative proceedings, OPC charted the activities of the party to the proceeding in relation to efforts to fulfil the commitments, and in January 2013 the Office concluded in its first-instance decision that REWE had not made sufficient efforts to implement them. The commitment laid down in the decision on the merger REWE/PLUS-DISCOUNT had not been complied with. The Office imposed a fine for the above offence of nearly CZK 24 million, basing its calculation on the sales of the undertaking in the relevant regions.

REWE submitted an appeal against the decision in which it sought to overturn a number of conclusions of the first-instance decision; these related, among others, to the lack of activity towards fulfilling the commitments and a failure to address all potential candidates interested in buying the stores. REWE also appealed against what it claimed was an incorrect legal assessment by OPC and an unreasonable fine. However, Chairman Peter Rafaj rejected its arguments and stated at the same time that REWE must have been clearly aware that it was not fulfilling the obligations imposed by the decision of the Office and had thus committed a very serious competition offence.

Judicial Review

Parties to proceedings may file a lawsuit against a decision in force of OPC to the administrative court, which is the Regional Court in Brno. The court then reviews the correctness of the procedure followed by the Office from both the substantive and procedural points of view. The court may cancel the decision of the Office if it believes that the law was not interpreted correctly or that the Office made a procedural error. The Office is then required to re-investigate the case and decide in accordance with the legal opinion of the court.

The defendant as well as the plaintiff may file an extraordinary appeal, a cassation complaint, with the Supreme Administrative Court against a decision of the Regional Court. The court of higher instance then reviews the conclusions of the Regional Court and may cancel a decision and remand the case for reconsideration, or may cancel the decision of the Office directly. The Regional Court is then also obliged to respect the opinion of the Court of Cassation.

In the year 2013, a total of 8 lawsuits were filed to the Regional Court in Brno and 13 cassation complaints relating to a decision of the Office were filed to the Supreme Administrative Court. The Regional Court in Brno issued decisions in 15 cases, in which it fully upheld the decision of the Office 7 times and partially agreed with the OPC in one case. The Supreme Administrative Court issued 14 decisions, which favoured the decision of the Office in 9 cases.

Nine cases were definitively concluded before the courts. Of these cases the Office won twice before the Regional Court and five times before the Supreme Administrative Court. In two cases, decisions of the Office were cancelled. The Office defended its decision, for example, in cases of bid rigging by VUSS Litoměřice, resale price maintenance by Husky and abuse of dominance by DPÚK a.s.

The Constitutional Court received a complaint filed by Sokolovská uhelná in the matter of alleged unlawful interference, which allegedly consisted in the fact that the Office did not initiate administrative proceedings as proposed by the complainant. The Constitutional Court dismissed the complaint.

Judicial Review

Number of lawsuits filed to the Regional Court in Brno		8
Number of cassation complaints filed to the Supreme Administrative Court		13
Number of completed, legally effective judicial proceedings in both instances		9
	of which • decision of OPC upheld	7
	• decision of OPC cancelled	2

Eva Kubišová
Vice-Chair of the Office
in charge of the Public
Procurement Section

Public Procurement and Concessions

The Office for the Protection of Competition has been exercising supervision over public procurement since January 1995, pursuant to the current Act No. 137/2006 Coll., on Public Contracts, as amended. The scope of supervisory activities is significantly affected by the transposition of directives both in terms of public contracts and concessions as well as supervision with regard to improving the effectiveness of review procedures in the award of public contracts together with improving supervision and transparency in public contracts. Support to these ends has come from so-called 'supervision directives' of the European Parliament and the Council. The request is formulated in so-called 'procurement directives' which state that an independent authority is entrusted with supervision by the state - OPC in the Czech Republic. The current (so-called 'technical') amendment to this Act, implemented by a legal measure of the Senate No. 341/2013, came into effect on 1 January 2014; some sections will come into effect on 1 January 2015. The purpose of the supervisory activities of the Office is to ensure fair, transparent and non-discriminatory competition, which ultimately yields savings to public finances. It is clear that providing a framework for the effective use of the financial resources of contracting authorities in the procurement of supplies, services and construction work can only be achieved by carrying out transparent competition. The Office decides whether a contracting authority proceeded in accordance with law when awarding a public contract, imposes remedial measures and sanctions, discusses administrative offences and performs other tasks set out by the relevant laws. Decisions in force are published in collections of decisions on the website of the Office at www.uohs.cz.

From 1 July 2006, OPC has also overseen concession agreements pursuant to Act No. 139/2006 Coll., on Concession Agreements and Concession Proceedings, and from 1 July 2010 also public service

agreements in passenger transport awarded based on tender proceedings or by direct award pursuant to Act No. 194/2010 Coll., on Public Passenger Transport Services.

In the year 2013, the activities of the Public Procurement Section fully reflected the impact of the amendment to the Act on Public Contracts implemented by Act No. 55/2012 Coll. which resulted, inter alia, in a significant reduction of the lower financial limits for below-the-threshold public contracts.

In the year 2013, the Public Procurement Section continued to actively carry out its preventive role, which it considers very important, in particular through:

- Lecturing and training activities. The mission of educational workshops organised by OPC, also for example within the project titled Education and Transparency of Public Contracting Authorities, is to prevent violations of the Act on Public Contracts by contracting authorities. In the year 2013, more than 2,200 people attended the workshops.
- Initiating the adoption and participating in the creation of general opinions applicable to contracting authorities. For example, in the case of recurring errors on the part of contracting authorities relating to their malfunctioning profiles, based on an initiative of the Office, a solution was discussed with the Ministry of Regional Development, which - as the methodological body - pointed out possible risks to the contracting authorities and operators of the profiles of contracting authorities. This led to a reduction in the number of complaints relating to incorrect publication.
- Adopting and proposing measures in public procurement to facilitate the proper functioning of contracting authorities. Experts from the Public Procurement Section are members of the expert group of the Ministry for Regional Development, which aims to ensure and maintain a uniform interpretation of the Act on Public Contracts. The purpose of this advisory body is to provide initial feedback on proposed measures in the area of public procurement to the Ministry and to mediate the submission of complaints between the coordinator of public contracts and the professional public. The group is a circle of experts assembled as follows: representatives of regulated entities - contracting authorities and suppliers, supervisory bodies, professional organisations in public procurement, non-profit organisations and persons with economic know-how. This guarantees its flexibility, ability to act, and its capacity to effectively assist the Public Procurement Section in preventing violations of the Act on Public Contracts by contracting authorities.

Summary of Legislative Changes

The most significant legislative change which occurred in the year 2013 is the legal provision of the Senate No. 341/2013 Coll. (the so-called 'technical amendment'), approved by the Chamber of Deputies of the Czech Republic. The legal provision regulates some institutes of the Act on Public Contracts in connection with evaluating the impact of the so-called 'anti-corruption amendment', Act No. 55/2012 Coll., and also introduces some specific institutes regarding the method of communication of parties to administrative proceedings with the Office, which is very significant for supervisory activities of the Office.

Of all the legislative changes, several stand out:

- The limits for mandatory procedure according to the Act on Public Contracts for public contracts in construction increased from CZK 3 million to CZK 6 million, and for public contracts for supplies and services from CZK 1 million to CZK 2 million, without value-added tax.
- Failure to implement the expected (previously ineffective) limit for small-scale contracts for construction work from CZK 1 million to CZK 6 million without value added tax.
- Cancellation of the institute of a person with special competences.
- Allowing additional proof of compliance with the qualification requirements whereby facts decisive for the fulfilment of the qualification requirements may occur after the expiry of the deadline for the submission of bids.

- Clarification and modification of the procedure for cancelling an award procedure if one bid is left; after meeting certain conditions, it is possible to proceed with a repeat award procedure.
- Adjustment of the professional composition of evaluation committees.
- Extension of the period to 10 calendar days in which a contracting authority is obliged to send its opinion on a received proposal to OPC.
- Mandatory electronic submission of documents to the Office (in selected cases and situations the parties to administrative proceedings are obliged to communicate with the Office in electronic form only).
- Ban on examining the bids of suppliers that are part of the file maintained by the Office (if the bid is not used as evidence in administrative proceedings).
- Correcting errors and apparent misstatements of a technical nature and removing the semantic inaccuracies of the Act on Public Contracts.
- Harmonising the terminology of selected institutes of the Act on Public Contracts with the new Civil Code.

Another significant development occurred in 2013 in the development of a so-called 'package' of directives on public procurement, which resulted in their approval by the European Parliament at the beginning of 2014; they should be discussed by other major EU institutions later this year.

Stabilisation of the Agenda Volume

After the enormous increase in the agenda of the Office in the area of supervision over public procurement in recent years, the annual comparison of statistical data shows a certain degree of stabilisation. In the year 2013, the Office reviewed 2,873 public contracts based on complaints received, and another 668 public contracts based on received petitions. The number of administrative proceedings initiated ex officio grew by 20% compared to the previous year. The Office made use of the options provided by the so-called 'anti-corruption amendment' and tightened up its decision-making. With the same number of imposed fines, the amount of the fines increased by 48.7% in the year 2013.

Most Frequent Violations

The market segments mainly affected in 2013 in terms of public contracts investigated before the Office were information technologies and healthcare.

The most common misconduct of the contracting authorities were:

- Establishing non-transparent and discriminatory tender criteria defining the subject of the public contract, including technical specifications;
- Ambiguous definition of the evaluation method and disproportionate qualification requirements in relation to the complexity, type and scope of public contract;
- Violations in the assessment and evaluation of bids (i.e. lack of transparency in the report on the assessment and evaluation, particularly insufficient description of the evaluation method and performance of evaluation, incorrect procedure in the assessment of an extremely low bid price);
- Placing inadmissible demands on the production of documents from suppliers;
- Incorrect determination of the estimated value of the public contract and the associated incorrect choice of the type of award procedure;
- Use of the negotiated procedure without publication not having met the conditions for its use;
- Incorrect assessment of the fulfilment of the conditions for the cancellation of an award procedure by the contracting authority.

Statistics

Overview of First-Instance Administrative Proceedings Conducted in 2013

Number of proposals received	495
Number of public contracts reviewed based on complaints received	2,873*

Administrative proceedings	Total initiated administrative proceedings	668
	upon proposals	495
	ex officio	173
	administrative proceedings not terminated	142

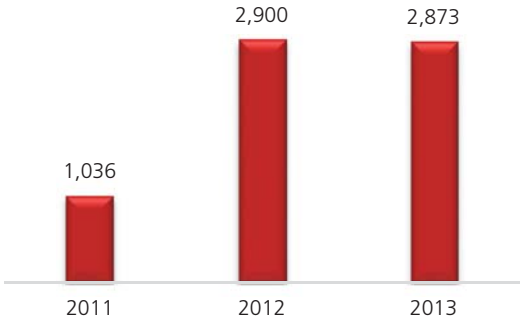
Decisions	Total first-instance decisions issued	959**
	of which • decisions issued on merits	665
	- decision on remedy + sanctions	235
	- administrative proceedings closed - no violation found	113
	- administrative proceedings closed on procedural grounds	317
	• interim measures	179
	• interim measures rejected	109
	• cancellation of decisions imposing interim measures	6
Fines	Number of fines imposed	119
	Total amount of fines imposed	CZK 58,761,000

Costs of proceedings	Number of administrative costs imposed	109
	Total amount of administrative costs imposed	CZK 3,519,672
Deposits	Amount of deposits paid	CZK 90,415,420
	Deposits forfeited to the state budget	CZK 16,349,779

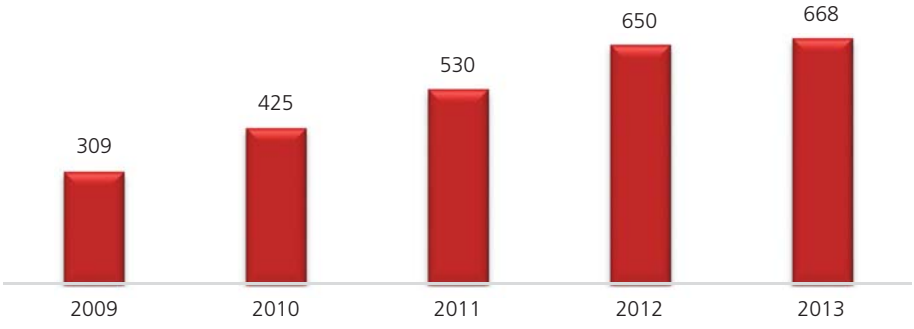
** This information is not final and may increase significantly based on the results of an investigation of several complaints relating to the purchase of medicines.*

*** Decisions in the wider sense, i.e. decisions as well as resolutions, are only issued in administrative proceedings. In the case of complaints that are deemed to be unfounded, the investigation is terminated by a written notice of the investigation outcome to the submitter.*

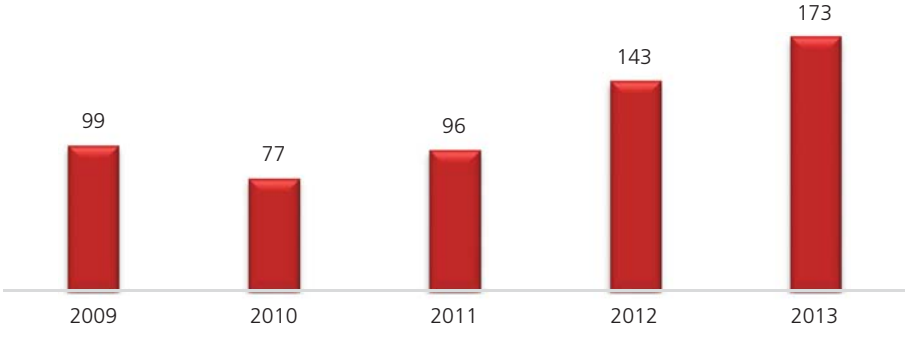
Number of Public Contracts Reviewed Based on Complaints Received



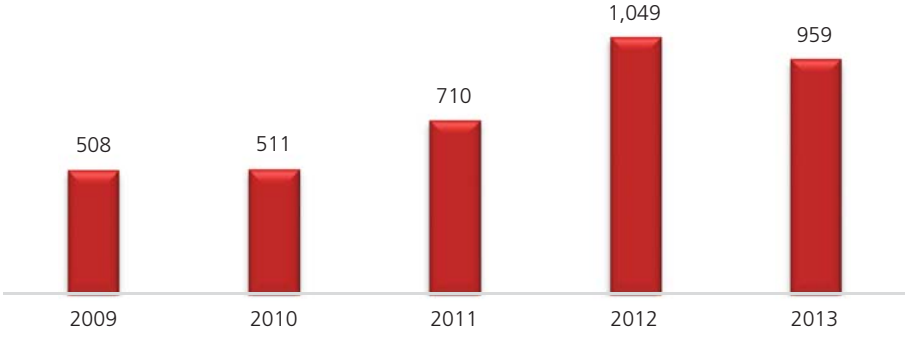
Number of First-Instance Administrative Proceedings Initiated



Number of Administrative Proceedings Initiated Ex Officio



Number of First-Instance Decisions Issued



Overview of the Highest Fines Imposed in 2013

Reference number	Contracting authority	Public contract	Fines in millions CZK	Effective date
S370/2012 S338/2013	České dráhy, a. s.	Delivery of seven Railjet trains	25	Appeal filed (R1/2014)
R47/2013 S441/2012	Armádní Servisní, semi-budgetary organisation	Cleaning and maid services, concierge and outdoor cleaning in AS-SBO facilities	4	31 October 2013
S172/2011	Office of the Government of the Czech Republic	Provision of audio-visual equipment and operation of audio-visual systems and provision of related services necessary to organise events held under the presidency of the Czech Republic in the EU Council in the first half of 2009	1.2	21 June 2013
S153/2013	Ministry of Health	Operation of helicopters for air ambulance service centres	1	Appeal filed (R334/2013)
S114/2013	Regional Administration and Maintenance of Roads Karlovy Vary Region	Reconstruction of the road II/210 - Kraslice through highway	1	Appeal filed (R430/2013)
R212/2013 S177/2011	Královské Vinohrady University Hospital	Amendments to the Agreement on Bundled Electricity Supply Services	1	18 December 2013
S312/2013	Directorate of Roads and Highways of the Czech Republic	R46 'Safety Features' Programme R46 - Replacement of the central crash barriers	0.9	28 March 2014
S615/2012	Ministry of the Interior	Building a centralised services location - NPwP	0.9	Appeal filed (R275/2013)
S244/2013	ČEZ a. s.	Security for selected facilities of the ČEZ Group and related activities	0.9	Appeal filed (R302/2013)

Selected Cases

Outbuilding and Extension of the Central Military Hospital Pharmacy

Party to the administrative proceedings: KHP montáž, s.r.o.
Contracting authority: Central Military Hospital
Reference number: S677/2012
Legally effective fine: CZK 300,000 and ban on public contracts for a period of three years
Decision came into force on: 13 March 2013

The Office for the Protection of Competition added KHP montáž into the register of entities banned from executing public contracts (the so-called 'blacklist') for providing false information in an award procedure for an outbuilding and extension of the Central Military Hospital Pharmacy in Prague. A fine of CZK 300,000 was also imposed on the company. No appeal was filed against the first-instance decision and the decision came into force on 13 March 2013.

In mid-2011, KHP montáž won the above contract when its bid was considered the best in competition with 13 other suppliers. However, due to fundamental breaches of contractual obligations by the supplier, the Central Military Hospital in Prague withdrew from the contract in October 2011. In this context, doubts appeared concerning the authenticity of certificates of reference contracts presented by KHP montáž in the award procedure. In subsequent administrative proceedings, the Office found that the references regarding the implementation of contracts for the reconstruction of the interior of an elementary school in Vyškov and construction of a residential building for eight housing units in Kroměříž did not reflect reality. According to the elementary school in Vyškov, no reconstruction of such extent had been performed. SIVAS, s.r.o., for whom the tenderer KHP montáž allegedly constructed a residential building in Kroměříž, also denied implementing this contract. The above implies that the list of reference contracts submitted by the tenderer KHP montáž in the award procedure was not an actual list of construction works carried out by this tenderer. The list also contained works that the tenderer did not perform and which were substantiated by false client declarations. By this conduct KHP montáž seriously violated the Act on Public Contracts.

Modernisation of the Rokycany - Plzeň Track

Contracting authority: Správa železniční dopravní cesty, státní organizace (Railway Infrastructure Administration)
Reference number: S633/2012 / R127/2013
Decision came into force on: 15 July 2013

In April 2013, the Office issued a first-instance decision according to which the contracting authority did not breach the Act on Public Contracts when it selected the bid of joint stock companies Metrostav and Subterra as the best bids. Subsequently, the Office's decision was also confirmed by the Chairman of the Office in the appeal proceedings.

According to the petitioner SKANSKA, the bid of the selected tenderers - Metrostav and Subterra - did not comply with the requirements set out in the bid invitation documents with regard to the tunnelling projects. According to the company, the evaluation committee incorrectly applied tender criteria when evaluating the winning bid and proceeded in a non-transparent manner when justifying why the winning bid had not been excluded from the award procedure.

In its assessment of the procedure of the contracting authority, the Office relied in particular on the conclusions of an expert opinion which it commissioned in this matter. The Faculty of Civil Engineering of the Technical University in Brno, registered in the list of institutions qualified to provide expert services in the field of construction, compared both versions of the bids submitted by the selected tenderer with the requirements of the contracting authority for the railway tunnel projects. The expert opinion clearly confirmed that the bid was prepared in accordance with the requirements of the contracting authority for bids under the tender criteria of a public contract. Based on the dentified facts, the Office decided that no grounds to impose a remedial measure had been found since the procedure of the evaluation committee corroborated by the opinion of its expert advisers was not in conflict with the law or the principle of transparency.

Supply of Fuel

Contracting authority: Česká pošta, s. p.
Reference number: S529/2012 / R95/2013
Decision came into force on: 30 September 2013

In its first-instance decision, the Office for the Protection of Competition dismissed the petition of the petitioner, CCS Česká společnost pro platební karty, and concluded, based on its own findings, that no grounds to impose a remedial measure had been identified.

The Office stated that if the contracting authority had separated the supply of fuel from the provision of authorisation for fuel purchases and the registration of individual fuel purchases through a single card system, there would have been no effective tool that the contracting authority could have subsequently used to make the fuel supplier, making deliveries of fuel, cooperate with the supplier providing the authorisation and registration of these purchases. In the case of awarding separate contracts for the supply of fuel and a card system, the contracting authority would not have been able to establish tender criteria in a clear manner. If the contracting authority had first, for example, implemented a tender for the supply of fuel, it would have been forced to stipulate the requirement in the tender criteria that the selected tenderer would be obliged to implement individual deliveries of fuel through a card system whose supplier (including the contractual conditions) was, however, not known to the contracting authority at the given moment, whereas it could not be clearly determined when this will be known. A similar problem would have occurred if the contracting authority had first embarked on an award procedure for a public contract to provide authorisation and registration of individual purchases of fuel through a single card system, when it would have had to include an obligation for the future selected tenderer in the tender conditions to implement the contract in petrol stations of a supplier, or suppliers, who would not be, however, known to the contracting authority at the time of defining the bid invitation documents and, once again, it would not be possible to determine at what future point this would be known. It is therefore impossible to separate the supply of fuel from providing the authorisation and registration of individual fuel purchases through a single card system because it is a related activity that takes place simultaneously in the given moment since the system of cashless fuel cards is a method or tool that allows the subject-matter of the contract to take place, i.e. individual purchases of fuel. They are not therefore successive activities, where it would be possible, for example, to first carry out a tender for the construction of a building, then to equip this building with furniture and finally to guard it. The Office found that separating the supply of fuel from the tool used to implement these deliveries would have resulted in separating the liability of the supplier/suppliers for the proper performance of the public contract under the conditions set out in the award procedure. This argument is indirectly confirmed by the petitioner in its petition when, despite operating a card

system for the supply of fuel, it cannot offer the purchase price in the 'composition' to the contracting authority, or in accordance with the requirement as defined by the contracting authority in the tender criteria. The fuel card system which the petitioner is able to provide to the contracting authority is bound to the supply of fuel at a purchase price based on retail market prices reduced by the agreed discount which the petitioner would provide to the contracting authority.

In his second-instance decision, the Chairman of the Office upheld the first-instance decision and rejected the appeal. The Chairman said that the key to assessing whether the contracting authority had proceeded in accordance with the law when defining the subject-matter of the public contract, i.e. whether, for example, it had proceeded in accordance with the principle of non-discrimination in defining the subject-matter of the public contract, was a substantive assessment of the mutual relationship between the deliveries of fuel and the provision of a single card system for fuel purchases. The reasons that prompted the contracting authority to incorporate the obligation of the supplier into the terms and conditions, reasons which are important, for example, for accounting, for the fulfilment of tax obligations and the registration of assets, are certainly important for assessing whether the contracting authority acted with due diligence in property relations. In terms of the legality of the procedure of the contracting authority, the only legally relevant issue is whether the contracting authority complied with the obligations set out in the Act on Public Contracts. If the contracting authority complied with these obligations, no misconduct can be found by the Office in the procedure of the contracting authority. Given that the definition of the subject-matter of the public contract is at the discretion of the contracting authority, the contracting authority is entitled to determine under what conditions the supplier will provide the subject-matter of performance, whereas such conditions must not be contrary to the principle of non-discrimination.

IT Services to Support Computer Programmes for the Payment of Social Benefits

Central contracting authority: Czech Republic - Ministry of Interior
Contracting authority: Czech Republic - Ministry of Labour and Social Affairs
Reference number: S196, 259, 303/2012 / R253, R257, R258, R264/2013
Legally effective fine: CZK 500,000.00
Decision came into force on: 28 December 2013

The central contracting authority and the contracting authority breached the law when they entered into a contract in the form of Amendments 5 and 6 to the Implementation Contract No. 85/2011 between the central contracting authority, the contracting authority and Fujitsu Technology Solutions s.r.o. without any award procedure. This procedure could have significantly influenced the selection of the best bid.

The Office based its decision on the conclusions of an expert opinion, according to which the supporting IT services purchased by the contracting authority under Amendments 5 and 6 are the subject-matter of a performance different from the subject-matter of the performance of the Implementation Contract No. 85/2011, which was tendered in accordance with the law in the past. Therefore, it was not possible to purchase the performance agreed in Amendments 5 and 6 without an award procedure in accordance with the law. In its decision, the Office imposed a remedial measure in the form of a ban on the performance of Amendments 5 and 6. At the same time, it decided that an administrative offence had been committed by the central contracting authority and imposed a fine of CZK 500,000.00 on it. The Chairman of the Office rejected the appeal and upheld the first-instance decision.

Appeals and Judicial Review

In terms of second-instance decision-making, there are also clear signs that the number of administrative proceedings in progress has stabilised. Statistics show an increase in the intensity of second-instance decision-making: although the annual increase in investigated cases decreased to 10 percent, the number of second-instance decisions issued increased by 23 percent.

Statistics in the field of judicial review show 42% increase of number of legally terminated judicial proceedings. Success rate of the Office in judicial review in relation to the total number of decisions issued is 98.7%.

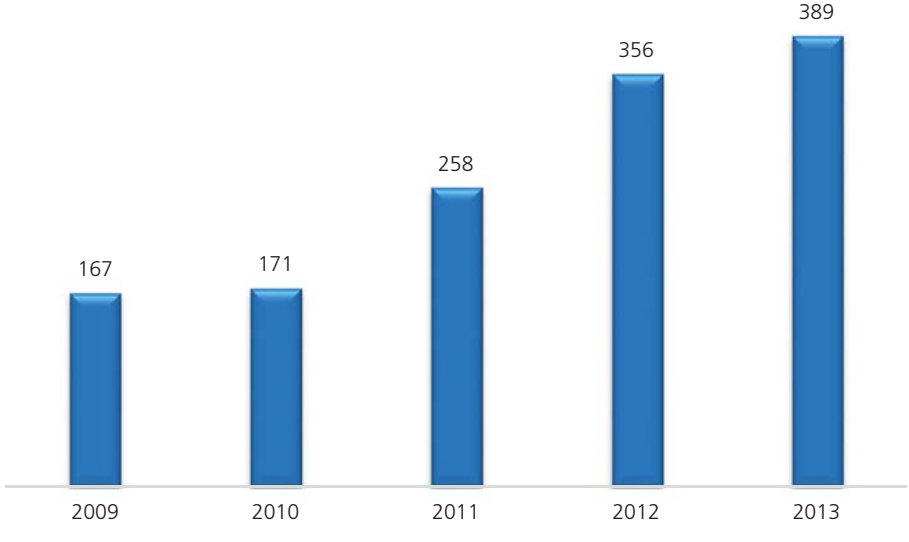
Overview of Second-Instance Administrative Proceedings and Judicial Reviews Conducted in 2013

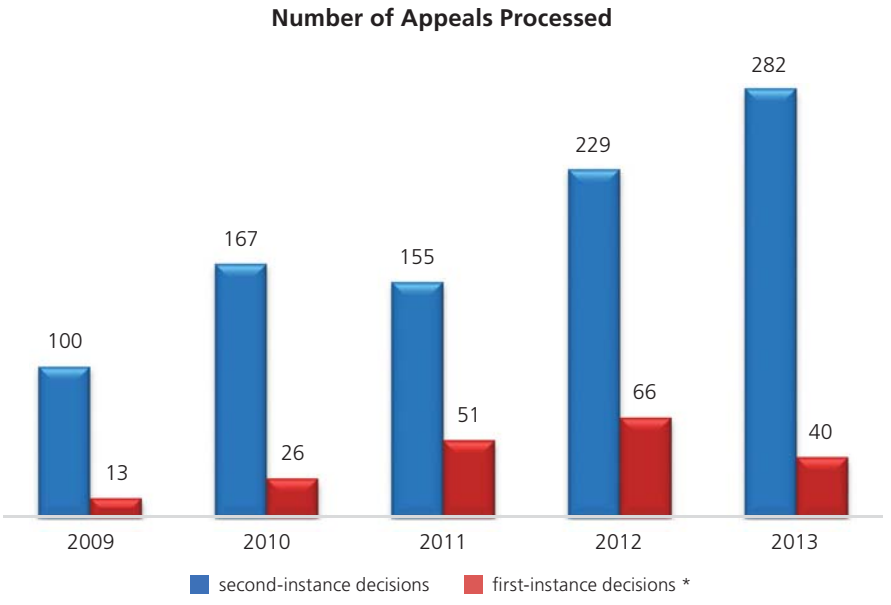
Remonstrance proceedings		
Number of appeals filed against first-instance decisions		389
Second-instance administrative proceedings initiated		389
Second-instance administrative proceedings not terminated in 2013		246
Decisions on appeals	Total	282
	of which • first-instance decisions upheld and appeal rejected	189
	• first-instance decisions cancelled and returned for reassessment	44
	• first-instance decisions cancelled and administrative proceedings suspended	25
	• appeal rejected due to late submission	3
	• procedural decision of the Chairman	21
Fines	Number of fines imposed	63
	Amount of fines imposed	CZK 28,555,000

Judicial review		
Number of lawsuits filed to the Regional Court in Brno		56
Number of cassation complaints filed to the Supreme Administrative Court		20
Number of legally terminated judicial proceedings in both instances		34
	of which OPC decisions upheld	18
	OPC decisions cancelled	16
Success rate of the Office in judicial review in relation to the total number of decisions issued		98.7 %

The judgements are published on the website of the Office:
https://www.uohs.cz/cs/verejne-zakazky/soudni-prezkum-rozhodnuti.html

Number of Appeals Filed





* appeals suspended due to withdrawal, lack of objective reasons or reconsideration

Selected Cases

Non-Transparent Narrowing of the Number of Bidders Using an Electronic Draw Device

Contracting authorities: Svijany, Cítov, Povodí Vltavy, s. p., South Bohemian Region, Kostelec nad Labem, Šternberk, Administration of Roads of the Olomouc Region
Reference numbers: R301/2012 (Svijany), R304/2012 (Cítov), R309/2012 (Povodí Vltavy, s. p.), R310/2012 (South Bohemian Region), R319/2012 (Kostelec nad Labem), R320/2012 (Šternberk), R333/2012 (Administration of Roads of the Olomouc Region)
Legally effective fine: Svijany CZK 75,000.00, Cítov CZK 90,000.00, Povodí Vltavy, s. p. CZK 230,000.00, South Bohemian Region CZK 100,000.00, Kostelec nad Labem CZK 100,000.00, Šternberk CZK 160,000.00, Administration of Roads of the Olomouc Region CZK 100,000.00.
Decision came into force on: 11 December 2013 (Svijany, Cítov, Administration of Roads of the Olomouc Region), 10 December 2013 (Povodí Vltavy, s. p., South Bohemian Region, Šternberk), 13 December 2013 (Kostelec nad Labem)

The Chairman upheld eight first-instance decisions in which the Office found a violation of the law consisting in the non-transparent narrowing of the number of bidders using an electronic draw device. In some cases, the Chairman reduced the fines imposed on contracting authorities to proportionally correspond to the circumstances of all these cases.

The Office initiated administrative proceedings at the initiative of the Police of the Czech Republic, who drew its attention to possible manipulation in the limiting of the number of bidders through an electronic draw. In most cases, KLERIS CZ a.s. and Inženýrské služby Hradec Králové, s.r.o. were hired to carry out the draw. A laptop with a draw programme running in the UNIFACE environment was used for the draw.

However, according to the expert opinion acquired by the Police of the Czech Republic, the draw device was not secured against any manipulation of the draw results. In fact, it was deliberately created in a manner allowing results to be influenced. Organisers of the draw were able to determine which bidders the system would draw using a pre-set file with the identification numbers of individual entities. The laptop was modified to allow an unmanipulated demonstration draw that was supposed to show tenderers the fairness of the entire process. After the draw, the pre-set file, based on which the results were displayed, deleted automatically. The expert opinion thus clearly indicated that the draw device was specifically designed to manipulate and influence the results of the draw so as to prevent random selection.

With their procedure, the contracting authorities breached one of the main principles of public procurement, namely the principle of transparency in an award procedure, which could have significantly affected the selection of the best bid.

Park Reconstruction in the Psychiatric Hospital Opařany

Contracting authority: Children's Psychiatric Hospital Opařany, semi-budgetary organisation
Reference number: R24/2013
Decision came into force on: 12 November 2013

Due to an unjustified extremely low bid price, the contracting authority excluded a bidder from the award procedure and failed to instruct the bidder either on the possibility to file for the initiation of proceedings to review the contracting authority's actions with the Office, or on the obligation to deliver a copy of the petition to the contracting authority within the same deadline. The Chairman of the Office rejected the appeal and upheld the first-instance decision in which the Office decided that the contracting authority failed to comply with the procedure stipulated by law when it considered the bid prices of all bidders extremely low and requested their written justification. At the same time, the contracting authority erred by failing to appoint a different evaluation committee for the new assessment and evaluation of the tenders. These procedures significantly affected the selection of the best bid. As a measure to rectify the illegal procedure of the contracting authority, and given that no contract was concluded, the Office revoked all actions of the contracting authority related to the assessment and evaluation of tenders recorded in the report on the assessment and evaluation of tenders, the decision to exclude tenderers from further participation in the award procedure, including the petitioner, and the decision on the selection of the best bid.

In practice, it may happen that a bid price does not reach the predetermined amount for the expected value. The responsibility for assessing the suitability of a bid price is passed onto the evaluation committee, who are familiar not only with the subject-matter of the public contract and the methods of its implementation, but especially with the bid prices of all tenderers. Only after all data are assessed and it has been properly evaluated whether the expected value of the public contract compared to the submitted bids corresponds to the actual price of the public contract may the evaluation committee become suspicious of an extremely low bid price.

Provision of Engineering Activities in the Reconstruction of a Railway Bridge in Kolín

Contracting authority: Czech Republic - Directorate of Waterways of the Czech Republic
Reference number: R361/2012
Legally effective fine: CZK 100,000
Decision came into force on: 18 July 2013

The contracting authority committed an administrative offence when it awarded a public contract in a negotiated procedure without publication without having met the conditions for use of such procedure. This procedure could have significantly affected the selection of the best bid and the contracting authority has already entered into contract with the selected tenderer.

The complexity of the construction and its functional integration with construction of the passage through the Kolín railway junction as well as the efforts to ensure the safety of rail operation, minimise costs of both construction work, and to coordinate their implementation cannot be sufficient reason for applying an exemption and awarding the public contract in a negotiated procedure without publication, especially since the contracting authority did not prove and failed to substantiate that the requirements could only be fulfilled by one entity in the market - the selected tenderer.

The participation of private capital in the form of sub-contracts meant that not all those conditions were met whose cumulative fulfilment is a prerequisite for being able to conclude that this constituted horizontal cooperation between contracting authorities which was not subject to the law. The marginal amount to which private capital contributed to the subject-matter of the public contract was already correctly assessed by the Office in the contested decision as a mitigating circumstance, and the Office included it in its considerations when determining the specific amount of fine, but it is not in the OPC's jurisdiction to modify or moderate in favour of the contracting authority the three conditions of horizontal cooperation set out in the Working Document of the Commission.

Providing Legal Consulting Services in the Implementation of the ELI Project

Contracting authority: Fyzikální ústav AV ČR, v. v. i.
Reference number: R260/2012
Decision came into force on: 7 June 2013

The Chairman of the Office upheld the first-instance decision, in the first part of the statement the Office concluded that the contracting authority had failed to comply with the procedure under Section 80 (1) in connection with Section 6 of the Act when awarding the public contract because it failed to specify in the report on the assessment and evaluation of tenders how it had reached the results of its assessment, or how it explained and justified the extremely low bid prices (ELBPs) of tenderers. As a result, its procedure became unreviewable and non-transparent and at the same time such procedure of the contracting authority could have significantly affected the selection of the best bid and no contract has been concluded so far. In the second part of the statement, as part of its remedial measures, the Office revoked the decision of the contracting authority on the selection of the best bid of the selected tenderer, the assessment and evaluation of tenders, and all related actions of the contracting authority in the relevant award procedure in accordance with Section 118 (1) of the Act.

To comply with the principles of transparency and non-discrimination, it is necessary that the evaluation committee properly justifies the result of its assessment of the justification of an ELBP, based on which it accepted or did not accept the justification from the tenderer for an ELBP, either in the report on the assessment and evaluation of tenders or in minutes of the meeting of the evaluation committee, because only such a procedure of the evaluation committee can be considered reviewable and compliant with the principle of transparency. The evaluation committee acknowledged the explanation of both tenderers as justified. Nonetheless, it is not clear from the report on the assessment and evaluation of tenders how the evaluation committee concluded that the explanations for the ELBPs of these tenderers were justified. This conclusion of the evaluation committee was not drawn from the minutes of evaluation committee meetings or from any other document produced by the contracting authority. Therefore, the procedure of the contracting authority must be considered unreviewable and non-transparent, i.e. a procedure that could have affected the selection of the best bid.

Intensification of the Water Treatment Plant in Meziboří

Contracting authority: Severočeská vodárenská společnost a. s.
Reference number: R369/2012
Effective date: 13 August 2013

The Chairman of the Office canceled a decision of the Office imposing a fine of CZK 5,000,000 on the contracting authority for committing an administrative offence by stating a reference to a company and type of new drainage system that would be fitted after the removal of the current system in the bid invitation documents for the public contract. The not yet legally effective fine of CZK 5,000,000 was one of the highest fines imposed by the Office in 2012.

Severočeská vodárenská společnost a.s. filed an appeal against the first-instance decision in which it sought the revocation of this decision, including the imposed fine. One of the main reasons leading to the revocation of the first-instance decision was the violation of the right of Severočeská vodárenská společnost a.s. for a due process in the first-instance proceedings.

After reviewing the legality and correctness of the first-instance decision, the Chairman of the Office concluded that in the present case the Office failed to apply the constitutional principle of 'the later law applies if it is more favourable to the offender' in the administrative punishment. The Chairman of the Office found that between the time of committing the administrative offence and the time of issuing the first-instance decision, Act No. 55/2012 Coll. had amended the provisions applied by the Office in the first instance. However, the Office failed to take the later law into account in the first instance. According to the findings of the Constitutional Court, the failure of an administrative authority to consider whether new legislation is or is not more favourable for the party is interference with a party's right to a due process. Therefore, the Chairman of the Office canceled the first-instance decision in its entirety and ordered the Office to apply this constitutional principle in its future decision.

Hynek Brom
1st Vice-Chairman
of the Office in charge
of the Public Regulation
and Administration
Section

State Aid

The Office is the coordination body in the area of state aid, performing central coordination, counselling, consulting and monitoring activities in all sectors except agriculture and fisheries. The Office works primarily with providers in preparing notifications of state aid measures to the European Commission (the Commission), it cooperates with the Commission and the provider in proceedings before the Commission, both in proceedings relating to pre-notified state aid as well as in cases of unlawfully provided state aid, misuse of state aid, existing state aid systems and also in cases when the Commission performs on-site investigations in the Czech Republic. In accordance with the relevant European Union regulations, the Office submits an annual report on state aid granted in the Czech Republic in the preceding calendar year to the Commission. As far as legislation is concerned, the Office represents the Czech Republic in the negotiation and preparation of European Union legal provisions in the area of state aid. Last but not least, the Office administers the Central Register of de minimis Aid.

The central theme of 2013 was the modernisation of rules applicable to state aid, which had already started in 2012 with the document entitled The Modernisation of State Aid in the European Union. The Commission specified three objectives within the modernisation, namely:

- To redirect state aid towards initiatives that efficiently and effectively support the achievement of pro-growth targets contained in the Europe 2020 Strategy;
- To focus on the ex ante control of state aid measures that are potentially the most damaging to the internal market; and
- To rationalise and simplify the rules and to accelerate decision-making in matters of state aid.

As part of the modernising agenda, strategic meetings took place at the highest level between the Commission and representatives of Member States, as did a number of meetings in Brussels in 2013 of the Working Group of the Council of the European Union for competition with regard to the revision of the procedural and enabling regulation. In order to discuss the suggestions of the Commission for specific regulations, advisory committees were convened with the participation of representatives of Member States and the Commission, specifically for example regarding the proposal of a new regulation for de minimis aid, the revision of rules for regional aid, the revision of the Commission's Communication on State Aid for Films and other Audiovisual Works or the revision of the General Block Exemption Regulation. The process of modernising the rules has not been completed, and revision of the rules in the area of state aid will continue in 2014, when the adoption of the final version of the rules is expected.

In the year 2013, the Office and the Ministry of Regional Development established a Working Group for State Aid whose members are all entities involved in the implementation of individual operational programmes. These entities include not only governing bodies, but also the payment certification authority and auditing body. The Working Group for State Aid should serve as the base platform for addressing all issues relating to the rules of state aid in the creation and implementation of individual operational programmes, including focusing on the ex-ante conditionality stipulated by the European Union in the area of state aid regarding the use of structural and investment funds.

In the context of preparations for the new programming period 2014-2020, in the year 2013 the Office commented on the draft operational programmes. In order to ensure compliance with the relevant legislation of the European Union, and in response to the direct invitation from the European Commission addressed to the Member States to ensure the compliance of funding from European funds with state aid rules, it was necessary to assess the draft programmes in terms of state aid and to recommend their design so as to comply with state aid rules. As part of intensive cooperation with the Ministry for Regional Development, the Office pointed out areas of support in the proposed operational programmes that are relevant in terms of state aid.

In its advisory role, the Office together with the Ministry for Regional Development published a Manual of Services of General Economic Interest, which is supposed to be helpful in the application of state aid rules to the provision of services of general economic interest. The manual includes, among other things, case studies enabling, in terms of practice, easier application of the rules for providing the above type of services. During the year, the Office participated as lecturer in many workshops, training sessions and conferences aimed at expanding knowledge in the area of state aid rules. The customary conference on state aid, this year focused on the modernisation the state aid rules, also took place.

Statistics

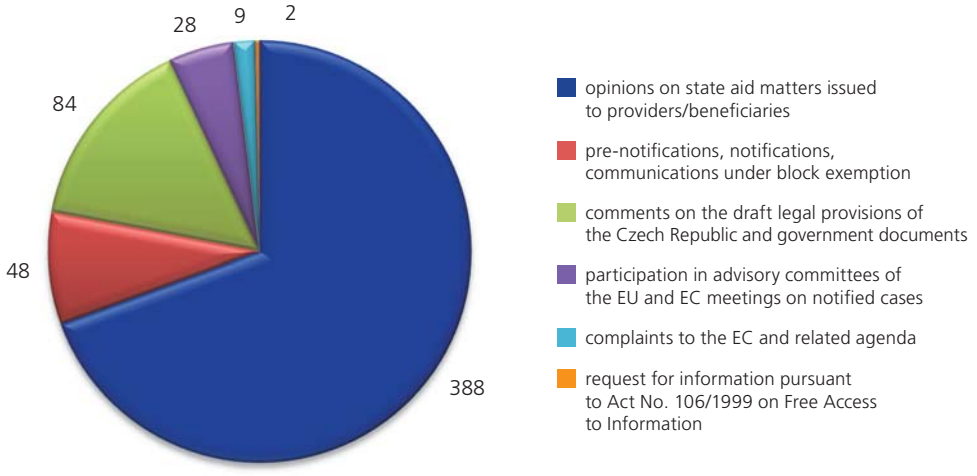
Selected Statistical Data on State Aid for 2013

Opinions on state aid matters issued to providers/beneficiaries	388
Pre-notifications, notifications, communications under block exemption	48
Comments on the draft legal provisions of the Czech Republic and government documents	84
Participation in EU advisory committees and EC meetings on notified cases	28
Complaints to the EC and related agenda	9
Request for information pursuant to Act No. 106/1999 on Free Access to Information	2

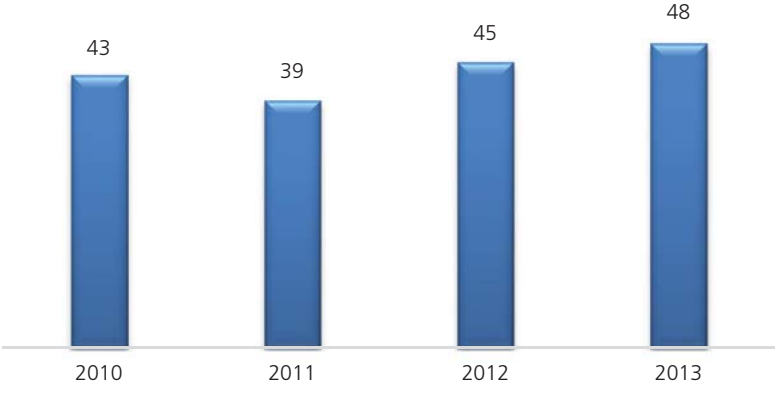
[1] Council Regulation (EC) No. 659/1999 of 22 March 1999 laying down implementing rules to Article 93 of the EC Treaty, published in the Official Journal of the EU on 27 March 1999, L 83, p. 1

[2] Council Regulation (EC) No. 994/98 of 7 May 1998 on the application of Articles 92 and 93 of the Treaty establishing the European Community to certain categories of horizontal state aid published in the Official Journal of the EU on 14 May 1998, L 142, p. 1

Selected Statistical Data on State Aid



Pre-notifications, Notifications and Communications under Block Exemption over Time



De Minimis Aid

In the area of state aid, the Office conducts administrative proceedings against providers in respect of violations of the provisions of Section 3a (4) of Act No. 215/2004 Coll. The relevant provision concerns recording small-scale (de minimis) aid in the Central Register of de minimis Aid within the statutory time limit and also indicating the name of the legal provision in the legislative act on state aid under which the de minimis aid was granted. De minimis aid is widely used in the Czech Republic, mainly because of its easy application without any need to request the approval of the European Commission to grant it. In the year 2013, a total of 36 administrative proceedings were initiated, 32 administrative decisions were issued and 22 fines in the total amount of CZK 276,100 were imposed.

First-Instance Administrative Proceedings in the Registry De Minimis in 2013

Administrative proceedings initiated	36
Administrative proceedings not terminated	14
Decisions issued	32
Number of fines imposed	22
Amount of fines imposed	CZK 276,100

Statistics on De Minimis Aid Provided in the Czech Republic in 2013

Area	Number of measures	Amount in CZK	Amount in EUR
NK 1535/2007 - agricultural production	623	35,641,141.08	1,360,520.820
NK 360/2012 - services of general economic interest	195	61,088,454.00	2,378,823.050
NK 875/2007 - fisheries	6	494,495.00	18,000.040
NK 1998/2006 - other	47870	9,859,084,129.63	377,680,653.195
NK 1998/2006 - transport	735	65,435,122.83	2,504,095.050
Total	49429	10,021,743,342.54	383,942,092.155

Legislative Changes

European Union

The year 2013 followed the pattern set last year when the modernisation of state aid rules was commenced, and was rich on numerous discussed revised legal provisions for which a number of public consultations were initiated during the year. Representatives of the Office, whose area of responsibilities includes discussing and preparing European Union legislation concerning state aid issues, attended a series of multilateral negotiations between Member States and the Commission on the revised rules.

As part of modernisation, the following legislation on state aid was adopted in the year 2013:

- Guidelines for the use of state aid rules in relation to the rapid implementation of broadband networks
- Guidelines on regional state aid for 2014-2020 (effective from 1 July 2014)
- Council Regulation (EC) No. 659/1999 of 22 March 1999 laying down detailed rules for the application of Article 93 of the EC Treaty (Procedural Regulation)
- Council Regulation (EC) No. 994/98 of 7 May 1998 on the application of Articles 92 and 93 of the Treaty establishing the European Community to certain categories of horizontal state aid (Enabling Regulation)
- Communication on state aid for films and other audiovisual works
- Regulation on de minimis aid (applicability to the Czech Republic from 1 July 2014)

In the year 2013, a number of public consultations on pending legislation were initiated. Revision of the General Block Exemption Regulation is considered crucial. Application of the General Regulation

allows the granting of aid within a measure compliant with all conditions laid down in the Regulation without the need for any prior decision of the Commission. Other important rules, for which public consultations were initiated in the year 2013, are the Community Guidelines on State Aid for Environmental Protection, the Community Framework for State Aid for Research, Development and Innovation, Guidelines on Financing of Airports and Guidelines on State Aid for Rescuing and Restructuring Non-Financial Businesses in Difficulties. In the context of the reform package for European Union regulations in the area of state aid, the European Commission also prepared the draft Methodology for Evaluation of Measures in State Aid. This methodology concerns the evaluation of the method by which aid programmes have achieved their purpose and the impact of the aid programmes on the relevant markets and competition. According to the European Commission, the evaluation of large-scale aid programmes is an important element in the modernisation of the state aid rules, intended to achieve more efficient and effective use of public resources.

In the area of European Structural and Investment Funds (ESI Funds), the European Commission also focused on more effective application of state aid rules and established preliminary conditions in this area, i.e. criteria for allowing the use of ESI funds, namely:

1. Measures for the effective application of state aid rules;
2. Measures for professional training and dissemination of information for employees working in the area of structural funds;
3. Measures to ensure administrative capacity for the implementation and application of EU state aid rules.

In terms of state aid rules, the European Commission considers the proper setting of the utilisation of ESI funds in the new programming period 2014-2020 to be crucial.

Selected Cases

Aid for Libraries

The European Commission clarified its position on aid granted to libraries providing public library and information services with reference to the Library Act (No. 257/2001 Coll.).

The objective of the notification of aid for libraries to the European Commission was to obtain legal certainty about the presence or disqualification of state aid, and potentially to assess its compatibility with newly introduced subsidies intended for libraries and financed from public resources. The review process at the European Commission specifically concerned the proposed amendment to the Government Decree governing the rules for providing subsidies to support libraries. The change included not only extending the scope of library funds designated for the subsidised digitisation, but also allowing public funding for the community activities of the relevant libraries.

In its decision, the Commission assessed in particular whether the aid is directed at the economic activities of libraries. It focused on the conditions under which libraries are required by the Library Act to provide services defined by the Act (free of charge and non-profit) and on the function of libraries in the educational, cultural and social area. In its decision, the Commission declared that public libraries in the above areas contribute to the fulfilment of the role of the state in relation to citizens, which it demonstrated specifically using the example of linking public libraries to the national educational system. In the cultural and social areas, the European Commission took into account the link between the activity and the location in which the library operates, which is crucial for determining the local impact of aid. It was clarified that the aid provider will not ‘provide subsidies such as for organising

a series of symphonic concerts or large exhibitions of famous painters, since other institutions are in charge of implementing such projects.'

The European Commission thus concluded that Czech public libraries cannot be regarded as undertakings within the meaning of Article 107 (1) of the Treaty on the Functioning of the European Union, and their funding from public sources cannot be considered state aid.

Aid for the Development of Tourism Infrastructure

In early 2013, the European Commission initiated the process of assessing measures of the Regional Council of the Cohesion Region Southeast, the objective of which was to finance four categories of projects involving the renovation and development of cultural landmarks, the reconstruction of access roads, the construction of a parking lot, nature trails, footpaths and cycle paths, and recreational, educational and leisure centres. Mainly based on estimates and studies of the impact of the aid on attendance at the supported projects, the European Commission concluded it had not resulted in any increase in the inflow of foreign tourists and the aid concerned projects that have no importance for the European Union, also taking into account the nature of the beneficiaries (usually non-profit or public entities) and the amount of aid. The Commission thus concluded that the notified measure did not constitute state aid.

Housing and Social Programme for Problem Areas

The European Commission issued a positive decision on the amendment and extension of the aid scheme under intervention 5.2 Improving the Environment on Problem Housing Estates of the Integrated Operational Programme (the IOP), which is a national programme co-funded by the European Regional Development Fund. The aim of the programme is to provide financial support for the regeneration of existing residential buildings in selected most problematic urban areas with more than 20,000 residents, located in regions covered by the Convergence objective in the Czech Republic.

The main objective of the aid scheme is to improve the quality of life of residents in problem areas through the regeneration of residential buildings. This regeneration mainly involves improving the technical condition of buildings and reducing energy consumption. The beneficiaries of the relevant aid are the owners of residential buildings, regardless of their legal form. Aid within this programme is provided in the form of soft loans.

The provision of soft loans under the relevant programme is implemented through the financial engineering instrument JESSICA (Joint Support for Sustainable Investment in City Areas Initiative) as a pilot project in IOP. The JESSICA mechanism is supposed to enable the investment of public resources in a returnable manner, i.e. to use them repeatedly and make them available for future investment in urban development projects. JESSICA is therefore an alternative mechanism to the traditional use of structural funds as one-off non-repayable grants, one which is supposed to distort competition to a lesser extent compared to one-off grants, which was a point reiterated by the European Commission in the corresponding decision.

Aid for Cultural Heritage and Contemporary Art

The aim of the aid is to preserve cultural heritage for future generations, to make cultural heritage available to the public and also to strengthen the Czech Republic's bilateral relations with Norway, Liechtenstein and Iceland. Aid will be provided from funds of the European Economic Area. The programme is divided into two areas, namely Area 16, where the aid will be directed at projects related to museum collections, written cultural heritage, film heritage and the restoration of historic

buildings within the Heritage Fund, and Area 17, which relates to the extension of cultural dialogue and European identity through understanding cultural diversity, focusing on the live arts - theatre, exhibitions, music events, etc. One of the beneficiaries in the project Digitisation of Czech Films is supposed to be the National Film Archive. UNESCO landmarks will not be excluded from the possibility of receiving aid. The Ministry of Finance is responsible for providing subsidies. The total budget for the period 2014-2017 will amount to nearly CZK 500 million. In its decision, the Commission stated that the measure represents state aid compatible on the basis of Article 107, paragraph 3, item d) of the Treaty on the Functioning of the EU with the internal market, since it promotes culture and the preservation of cultural heritage.

Aid for Czech Cinematography

The aim of the scheme is to promote culture and heritage conservation through funding projects related to audiovisual works (cinematography). The scheme is divided into two sub-programmes - support for cinematography and film incentives. The sub-programme for the support of cinematography includes, inter alia, the development, production, distribution and promotion of Czech cinematographic works, film festivals, and modernisation of cinemas. The sub-programme for film incentives is already in force and was adopted by the European Commission in 2010 as a separate scheme for the support of the film industry by a decision in the case N 98/2010 of 17 June 2010, effective until 31 December 2015. The purpose of the notification was to incorporate this sub-programme into a single framework, established by Act No. 496/2012 Coll., on Audiovisual Works and Support for Cinematography (the Audiovisual Act) and to establish the legal basis of the whole scheme. The approved scheme will continue to run until 31 December 2018. In the case of both sub-programmes, the provider of aid financed through direct subsidies is the Czech Cinematography Fund. In its decision, the European Commission stated that with the possible exception of support for certain activities (areas of preserving and making available the national film heritage, education and training in cinematography and the area of film festivals and shows in cinematography), this scheme represents state aid within the meaning of Article 107 (1) of the Treaty on the Functioning of the EU. The European Commission stated that the aid is compatible with the internal market under Article 107, paragraph 3, item d) of the Treaty on the Functioning of the EU that allows the European Commission to approve aid intended to promote culture and preserve cultural heritage.

Approval of Five Major Projects for Dedusting Steel Production in the Moravian-Silesian Region

During 2013, the Office participated in five individual notifications of support for major investments to reduce the dust from the smelting plants of Arcelor Mittal Ostrava and Třinecké železárny. Three of the five notified projects were approved by the European Commission in its decision of 20 June and implementation of the remaining two (dedusting of sintering South AMO and dedusting of sintering No. 2 TŽ) was approved by the Commission on 18 September. An important question in the proceedings was the interpretation of the term EU standards and its relation to reference pollution limits for so-called 'best available techniques' (BAT). The projects are financed from the Operational Programme Environment under a scheme aimed at increasing the intensity of environmental support for the Moravian-Silesian Region. They will enable installation of fabric filters in the operation of production units, which will significantly reduce emissions of dust particles and other pollutants into the air by 11-70%, depending on the type of project.

Extension of the Validity of the Regional Aid Map for the Period 2007-2013 until 30 June 2014

In connection with the adoption of the Guidelines on Regional State Aid for 2014-2020, the validity of the Guidelines on regional State aid for 2007-2013 was extended until 30 June 2014, and Member States were asked to report the extension of the validity of the regional aid map approved for 2007-2013 to the period from 1 January 2014 until 30 June 2014. In the notification of the extension of the validity of the regional aid map submitted by the Office to the Commission, the Czech Republic

confirmed that besides the extension of the validity of the map until 30 June 2014, no other conditions or obligations contained in the relevant decision of the Commission, by which the regional aid map for 2007-2013 was approved, had been modified. In its decision, the European Commission stated that the notified extension of the regional aid map for the period 2007-2013 to 30 June 2014 meets the criteria for compatibility with the Treaty on the Functioning of the European Union, since it meets both the relevant conditions as set out in the Guidelines on Regional Aid for 2007-2013 as well as the appropriate conditions according to the Guidelines on Regional State aid for 2014-2020, and it confirmed the extension of the regional aid map for the period 2007-2013 to 30 June 2014.

Notification of Regional Aid Map 2014-2020

In the second half of the year, the Office notified the Commission of the draft regional aid map for the Czech Republic for the period from 1 July 2014 until 31 December 2020. The draft map counts upon the provision of regional aid in all NUTS II regions eligible for regional investment aid under Article 107, paragraph 3, item a) of the Treaty on the Functioning of the EU, which means all NUTS II regions in the Czech Republic with the exception of the NUTS II Prague region. The latter region should not be eligible for regional aid. The proposed regional aid rate for eligible NUTS II regions is 25% of eligible costs. Bonuses are proposed for small and medium-sized businesses of 10 and 20%, depending on the size of the company. A decision of the European Commission on the matter is expected in early 2014.

Appeals and Judicial Review

In 2013, the Office for the Protection of Competition received two appeals against first-instance decisions in the area of state aid. Based on the appeals, the Chairman of the Office initiated second-instance administrative proceedings and issued two decisions in which it rejected the appeals and upheld the decisions of the lower instance. The total amount of fines confirmed in the second instance reached CZK 97,900.

Two lawsuits in the area of state aid were filed to the Regional Court in Brno, which issued one judgement in which it canceled the decision of the Office. In this matter, the Office has filed a cassation complaint to the Supreme Administrative Court. No judgement has been issued yet.

Hynek Brom
1st Vice-Chairman of the Office in charge of the Public Regulation and Administration Section

Significant Market Power

The Office for the Protection of Competition has been in charge of supervision of compliance with Act No. 395/2009 Coll., on Significant Market Power in the Sale of Agricultural and Food Products and Abuse thereof since 1 February 2010. The Act aims to protect competition in the specific environment of supplier-customer relations of non-dominant undertakings in the food processing sector.

The issue of relations between suppliers and customers of agricultural and food products is not only of interest in the Czech Republic. In early 2013, the European Commission prepared a document entitled Green Paper on unfair trading practices in the business-to-business food and non-food supply chain in Europe. This document contains a list of unfair practices occurring in supplier-customer relationships in the supply of goods for retail sale. The Office participated in the development of this document by providing materials on its own supervision and decision-making activities.

Experts from the Office have been participating in regular meetings of the FOOD working group. At these meetings, current issues concerning the activities of the European Commission and individual Member States in the food sector are discussed.

Statistics

In the year 2013, the Department for Control Over Market Power received 10 complaints and 7 queries regarding the interpretation of certain passages of the Act on Significant Market Power in the Sale of Agricultural and Food Products and Abuse thereof; it handled a total of 7 requests for information under the Act on Free Access to Information, as amended, and initiated one administrative proceedings for possible breach of Act No. 395/2009 Coll., which was subsequently merged with the ongoing administrative proceedings S304/2010.

In the year 2013, the Department simultaneously conducted five administrative proceedings, of which

one, initiated in 2010, was concluded and legally effective. The remaining four administrative proceedings have not been concluded yet. Of these proceedings, one was initiated in the year 2010 and three in 2011. In the year 2013, one fine was imposed of the amount CZK 22,130,000.

Major Case

Kaufland

Party to the administrative proceedings: Kaufland Česká republika v. o. s.
Reference number: R146/2013 / S160/2010
Legally effective fine: CZK 22,130,000
Decision came into force on: 23 October 2013

The decision in the matter of Kaufland is the first sanction decision in force concerning significant market power approved by a second-instance decision. The decision of the Chairman of the Office is of major importance for the future activity of the Department for Control over Market Power because it confirms the approach of first-instance authority in the application of the Act based on the so-called 'absolute concept' of the perception of market forces. The absolute concept is based on the fact that once it is proven in administrative proceedings that the party (buyer) has significant market power, it has such power in respect of all suppliers, without exception, and the Office is not required to assess each individual contractual relationship between a supplier and the buyer.

The Office dealt with several offences in these administrative proceedings: negotiating and applying a payment period of more than thirty days, negotiating a fee of 4% of the value of a receivable in the event that the supplier assigned the receivable to a third party, and negotiating a discount of 0.5% of the value of a receivable paid early for each commenced week of its early payment.

In the year 2010 and 2011, Kaufland negotiated and implemented a payment period of more than thirty days with more than 50% of its suppliers and thereby breached the provision of the Act that establishes periods of no more than 30 days for the payment of receivables. Failure to comply with statutory payment period was assessed by the Office as an offence, with suppliers bearing the brunt of its negative impact. Suppliers whose payment periods were not adhered to had to expend more funds to support their cash flow compared to suppliers whose payment periods complied with the law, and thus were at a competitive disadvantage. In this regard the Office calculated the aggregate amount of losses for suppliers of Kaufland at tens of millions of Czech koruna annually.

Another offence addressed in this administrative proceeding was the negotiating of a fee for assigning receivables to a third party, including requesting the reimbursement of expenses for such assignment, which Kaufland negotiated with the vast majority of its suppliers. This fee itself had a deterrent effect on suppliers, because it limited their opportunity to exercise their right to assign a receivable and to manage their cash flow as needed without sanctions. In a few cases the fee was also charged. Its deterrent effect was enhanced by being set disproportionately high; it significantly exceeded the expenses that the supplier would incur in the event of the actual assignment of a receivable, for which it would, however, receive services consisting in the early provision of funds.

Kaufland simultaneously entered into a contractual provision with most suppliers on payment of a discount in the amount of 0.5% from each commenced week of early payment of the receivable which was made at the supplier's request. The Office concluded that such a method of calculation could lead and in some cases did lead to a disproportionate amount of discount. If the provision on the fee for assignment of the receivable were not simultaneously agreed with the suppliers, it would be up to the supplier whether it would use Kaufland's offer for the early payment of the receivable.

As a result of the obligation to pay a fee for the assignment of receivables, however, suppliers were restricted in deciding whether to use the services of other financial companies for the early payment of a receivable, and in the case of necessary early repayment of a receivable they did not have any option other than to accept the offer of Kaufland. The Office assessed both actions, i.e. the fee for the assignment of receivables and the discount, as a single offence violating the Act on Significant Market Power, consisting in the imposition of contractual terms that influenced the future conduct of suppliers in favour of Kaufland but to the detriment of themselves. The Office also determined that this practice could lead to negative effects on competition in markets where companies operate that offer the purchase and administration of receivables, because it restricted their ability to find potential clients among suppliers of Kaufland.

A fine of CZK 22,130,000 was imposed on Kaufland for the above infringements. Following a legal action filed by Kaufland, the case has now gone to the Regional Court in Brno.

Legislation

During the year 2013, preparations of an amendment to the Act on Significant Market Power continued and also drafting of entirely new law that should replace the existing Act was commenced. In the case of the amendment to the Act, the idea to include some passages of the Act into the Act on the Protection of Competition and the Act on Prices was abandoned in favour of modifying the existing Act to make it more understandable and more applicable.

Appeals and Judicial Review

In the year 2013, the Office for the Protection of Competition received four appeals against first-instance decisions in the area of significant market power. The Chairman of the Office reviewed the appeals and in two of them it upheld the decisions of the first instance. The total amount of fines confirmed in the second instance reached CZK 22,130,000.

The Regional Court in Brno received one legal action in the area of significant market power; no judgement was issued. The Supreme Administrative Court did not receive any cassation complaint regarding significant market power and did not issue any judgements.

International Cooperation

One of the Office's key long-term priorities is to develop relationships with institutions and platforms concerned with the protection of competition and competition policy abroad, both within and outside the European Union. The most important partners are the European Commission and the national competition authorities of the EU Member States – brought together in the European Competition Network (ECN), followed by, the Organisation for Economic Co-operation and Development (OECD) and the International Competition Network (ICN).

European Competition Network

In the year 2013 the Office once again actively participated in a number of meetings within the European Competition Network, whose activities are focused mainly on the exchange of information and experience between competition authorities in order to increase efficiency of the enforcement of competition rules and to deepen the convergence of competition law in the European Union. The Office uses the findings of the ECN, both in its decision-making practice as well as in the preparation of new legislation.

ECN works on the basis of individual working groups. These invariably deal with a certain economic sector or area of competition law. In the year 2013, some of the most active working groups were those focused on cooperation issues and due process, cartels, concentration between undertakings, imposition of sanctions and forensic investigative techniques. Some of the most active sector-based

groups were those focused on food, pharmaceuticals and energy. Among the most important current working group projects are recommendations to competition authorities based on completed analyses of investigative and decision-making powers; furthermore, there is the ECN Modus Operandi Project, which is supposed to help new ECN members to navigate within the system of this network; preparation of the revision of Regulation No. 139/2004 on the control of concentrations between undertakings; further convergence in leniency programmes; greater uniformity in rules for the imposition of fines; and a comparison of the procedure in individual Member States for adopting decisions on commitments.

One of the main topics discussed during the year at plenary sessions of the ECN and at the Directors General Meetings was the preparation of a directive on the actions for damages caused by anticompetitive conduct. Compared to the United States, private enforcement is very seldom used in Europe and the European Commission is trying through legislative amendments to make it easier and more accessible to European consumers and undertakings harmed by anticompetitive conduct. Private enforcement should become an important complement to public enforcement of the competition rules.

ICN

The International Competition Network (ICN) is a global platform focused on the development of competition law. The ICN Annual Conference was organised by the Polish competition authority in Warsaw and was attended by an OPC delegation led by Chairman of the Office Petr Rafaj. The main topic of the conference was the relationship between competition authorities, courts and judges, namely the differences between the judicial review of competition cases in the legal regimes of individual states and possible problem points in communication between competition authorities and courts. In other panels, the main topics were the tools and transparency of the investigation process, the promotion of competition in the developing countries of Southern and Eastern Europe and the Caucasus, and international cooperation and information sharing in cartel investigations.

In September, an ICN workshop focusing on the assessment of exclusive agreements concluded by dominant firms was held in Stockholm, Sweden. The main objective was to promote the application of the procedures recommended in the ICN's analyses of dominance/significant market power. In particular, the workshop enabled comparisons to be drawn from specific case studies of the approaches taken by individual jurisdictions to enforcing competition law and the general approach to the issue.

The cartel workshop held in October in Cape Town introduced various tools for detecting cartel agreements. In addition to the usual use of a leniency programme or ex officio investigations, attendees were impressed by a South Korean computer system able to evaluate possible collusive practices in public procurement. The panel on alternative solutions of cartel infringements was led by the Vice-Chairman of the Office Michal Petr.

OECD

Representatives of the Office regularly participate in the work of the OECD Competition Committee and the OECD Global Forum on Competition. In the year 2013, the Office was primarily getting ready for the deployment of the Competition Assessment Toolkit, which is a set of methodologies and tools used to identify possible obstacles to development of the market and a pro-competitive environment, and it also allows for the adoption of alternative, less restrictive measures that would, however, continue to fulfil political objectives in the sector. The project focuses on laws and regulations that unnecessarily restrict competition in the market and on eliminating barriers and protectionist measures that go beyond what is necessary to achieve the regulatory objective.

The project titled Indicators of Competition Law and Policy was implemented with the participation of the Office. Its objective was to create a system for comparing the competition policies of individual

states and to evaluate the impact of these policies on the economic growth of the relevant countries. Preliminary results of the project were also presented at the February meeting of the Competition Committee in Paris. At this event, representatives of the Office attended all meetings of the Committee and working groups, and upon request of the OECD Secretariat they also presented both their papers - Vertical Restriction in On-Line Sales and Competition and Reducing Poverty. In the first presentation two cases of RPM agreements resolved by the Czech competition authority were mentioned and in the other instance the Office presented the partial results of a paper that pointed out the negative effects of competition on poor consumers in the area of regulated rents.

At the June meeting of the Competition Committee, Vice-Chairman of the Office Michal Petr and the Director of the Department of International and External Relations Daniel Stankov presented an annual overview of developments in competition law in the Czech Republic and submitted papers on competition in the railway sector, in particular examining the issues of liberalisation and unbundling, and the definition of transactions from the perspective of concentrations between undertakings.

Other papers were also presented by the Office at the October meeting of the Competition Committee, when Vice-Chairman Michal Petr drew attention in the panel on Services in Waste Management to the negative impact of the planned construction of a fourth incinerator in the Czech Republic on local undertakings engaged in the transport of waste to landfills and sorting plants. The Office sent a paper with a summary of the development since the 1990s of the Czech retail food market to the panel Competition in the Food Supply Chain, describing the impact of the entry of foreign retail chains on the Czech market and its concentration. The documents central contents, however, were dedicated to the Act on Significant Market Power and administrative proceedings conducted by the Office in this area.

OECD experts visited the Office during the year 2013 as part of a fact-finding mission, which was one aspect of a wider OECD project intended to evaluate the condition and development of the Czech economy. The six-member delegation was officially welcomed by the Chairman of the Office Petr Rafaj and then Vice-Chairman Michal Petr answered detailed questions aimed at determining the results and level of competition regulation in the Czech Republic. Foreign analysts were interested in, inter alia, regulated industries, setting fines, bid rigging and the success rate of judicial reviews of competition-related decisions. The visit was concluded by a short workshop for the staff of OPC, during which a member of the delegation Antonio Capobianco introduced several ongoing OECD projects concerning competition, particularly projects intended to fight bid rigging, assess the competitive impacts of adopted legislation or evaluate the activities of competition authorities.

European Competition Day

One of the most important international conferences on competition law - the European Competition Day - is held once or twice a year and is hosted by countries that hold the Presidency of the Council of the European Union. The conference is regularly attended by top representatives of the European competition policy, representatives of the European Commission and national competition authorities. In the year 2013, the European Competition Day was held in October in Vilnius, Lithuania, where the independence of competition authorities, private enforcement of competition law and abuse of dominant position through excessive prices were discussed. The conference was opened by the Competition Commissioner Joaquín Almunia.

Bilateral Relations

In addition to participation in international organisations and platforms, the Office also maintains bilateral contacts with foreign partner authorities.

Long-term cooperation has been conducted especially with the Antimonopoly Office of the Slovak

Republic, in particular through regular meetings of the chairmen and vice-chairmen of both institutions. Reciprocal participation at conferences is also a commonplace. One of the speakers at the 2013 St. Martin's Conference in Brno was the Vice-Chairman of the Slovak Antimonopoly Office Radoslav Tóth, who expanded the regular panel about competition law news in the Czech Republic and EU with information from the Slovak environment. In return, representatives of the Office attended a conference for the Antimonopoly Office's anniversary in Bratislava. Intensive cooperation between the Office and its Slovak partner should be confirmed in a memorandum of cooperation, which was prepared during the year 2013.

In March 2013, the Office was visited by a delegation from the Taipei Economic and Cultural Office in Prague. The Vice-Chairman of the Office Michal Petr and Director of the Department of International and External Relations Daniel Stankov welcomed a representative of the Economic Division of the office Christine Mei-Yu Hsueh, Director of the Economic Division Ben Jian-Bong Wu and Secretary of the Economic Division Dominica Ta-Ming Chen. Guests from Taiwan listened to a presentation on the activities of the Office and then showed keen interest in the activities of the Office within the Organisation for Economic Cooperation and Development (OECD).

In June 2013, as part of a twinning programme on state aid, the Office hosted visitors from the Macedonian Competition Committee. A workshop organised for the Macedonian delegation mainly focused on the system of granting state aid in the European Union and the Czech Republic, although it did however touch on other areas of the Office's competence.

In November 2013, the Office had the honour of welcoming representatives of the Competition Authority of the Russian Federation (Federal Antimonopoly Service - FAS) Roman Krivoruchko and Ruslan Biktimirov. The focus of the two-member delegation from the Russian Federation was primarily the main activities of the Office and its involvement in international platforms, which was presented by the Director of the Department of International and External Relations, Daniel Stankov. Other points of discussion centred on cases in the pharmaceutical industry and, last but not least, also cartel investigations and the leniency programme.

Delegation from the Taipei Economic and Cultural Office in Prague (March 2013)

Personnel Agenda

After the year 2012, which brought about many changes within the Office for the Protection of Competition, the year 2013 was mostly a period of stabilisation, both in terms of organisation and personnel. During this year were tested newly established procedures from projects which have been implemented by the Office since 2010 and which are focused on setting a new system of work with employees.

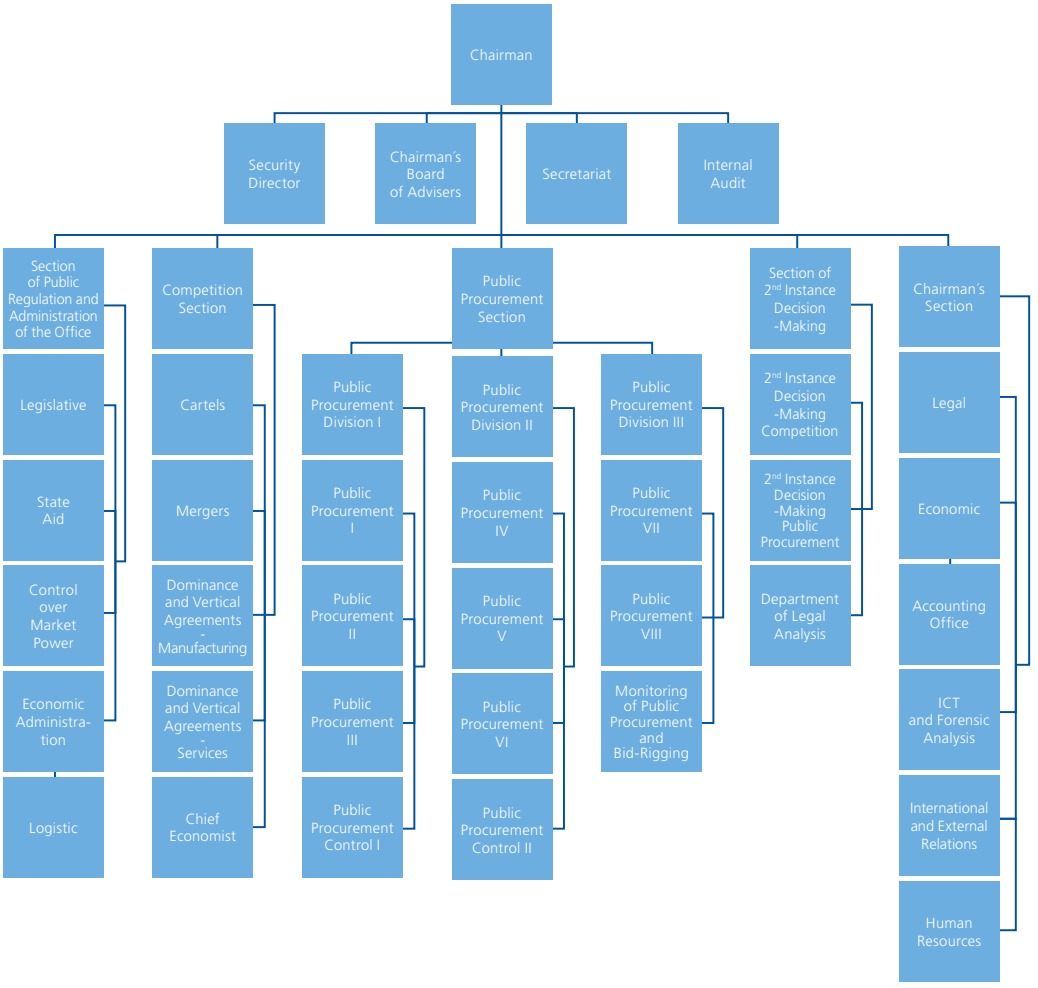
The most important new procedure concerned employee assessment. At the beginning of the year 2013, employees of the Office, in cooperation with their superiors, established work and development objectives that became the basis for future assessment. In the autumn of 2013, the first assessment interviews took place, whereby the assessed areas included not only fulfilment of the employee's work tasks and conduct in the way tasks were carried out, but also the fulfilment of these set objectives. A directive with a methodology was issued for employee assessment and evaluators attended training sessions during which they were familiarised with the principles of a proper assessment interview. Employee assessment became the basis for future planning of education and development at OPC.

Moreover, in 2013 new job descriptions, so-called 'professiograms', were introduced. They have been created to reflect the current systematisation of the Office. During the year, the professiograms became the basis for decisions in various HR areas, mainly in the selection of employees, which could thus become simpler and more effective. The simultaneous introduction of a system of regular employee

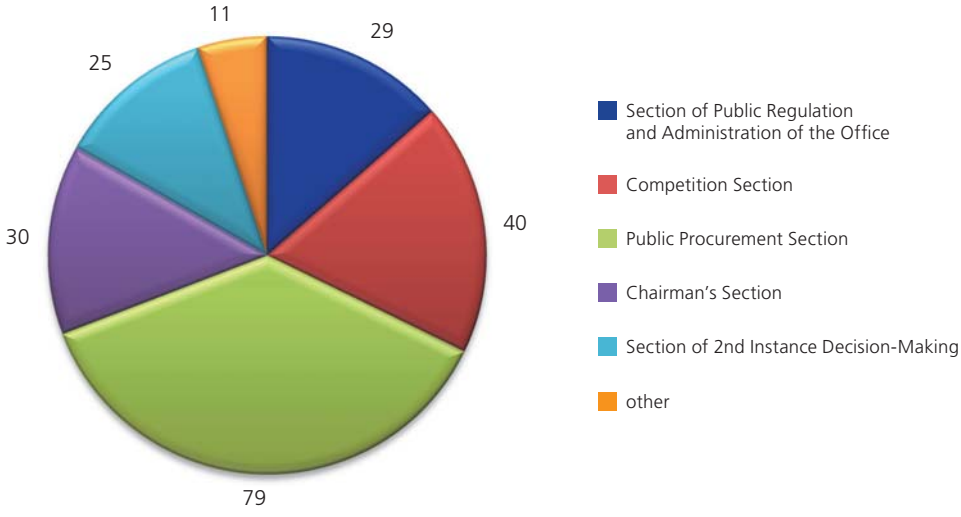
assessment, the establishment of new training planning and the modification of job descriptions could together lead to stronger links between individual areas of personnel management.

In the year 2013, the Office underwent several significant changes. One such was the creation of a new section, which includes not only both second-instance decision-making departments but also the newly created Department of Legal Analysis. The objective of this department is mainly to handle major legal interpretations concerning the policy areas of competition, state aid, significant market power and the supervision of public procurement. By monitoring and analysing decision-making activities in the first and second instances of administrative proceedings, the Department of Legal Analysis is able to recommend measures to improve and unify the decision-making process.

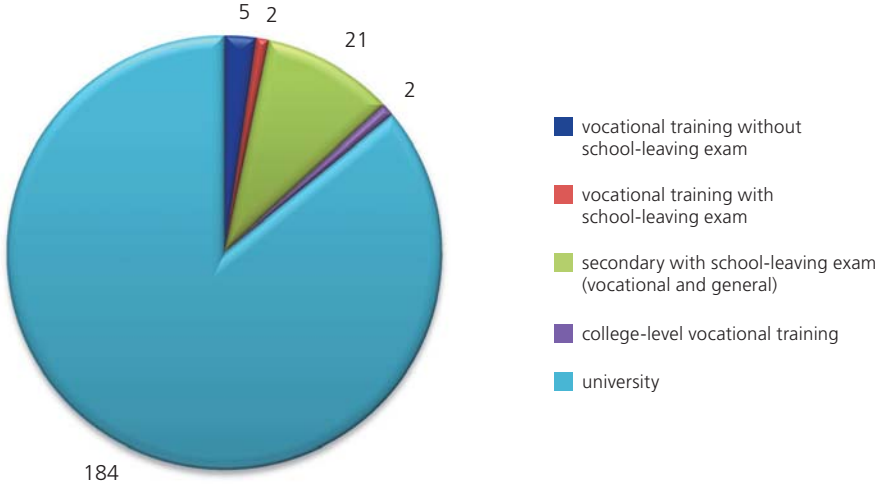
Organizational Structure of the OPC as of 31 December 2013



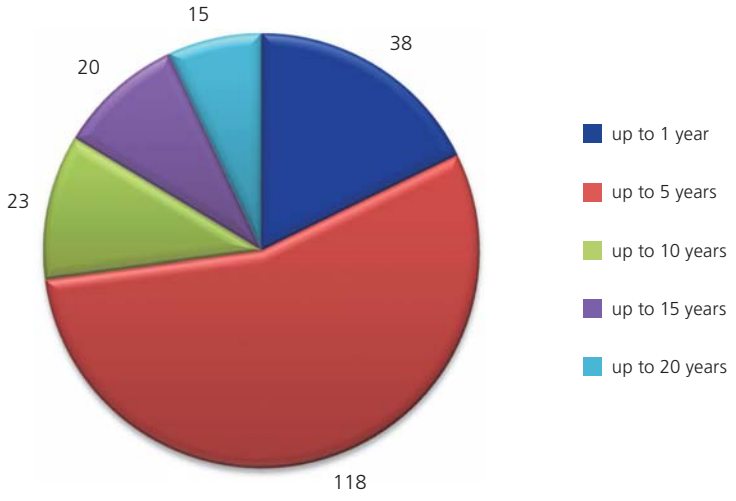
Distribution of Employees by Section



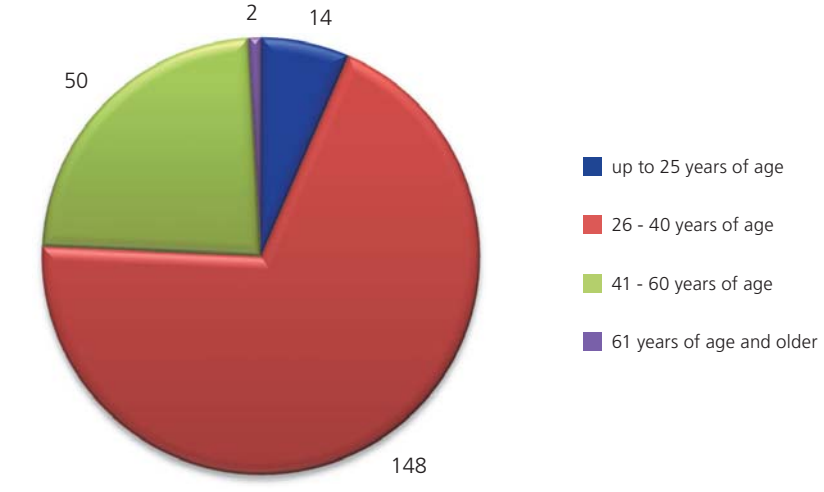
Structure of Employees by Highest Level of Education



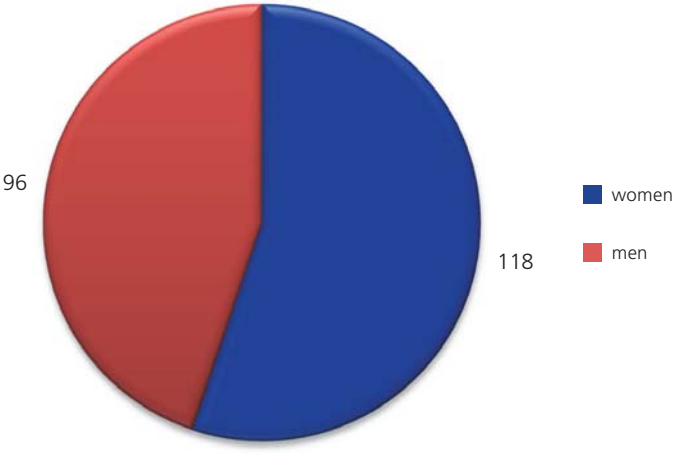
Duration of Employment



Distribution of Employees by Age



Distribution of Employees by Gender

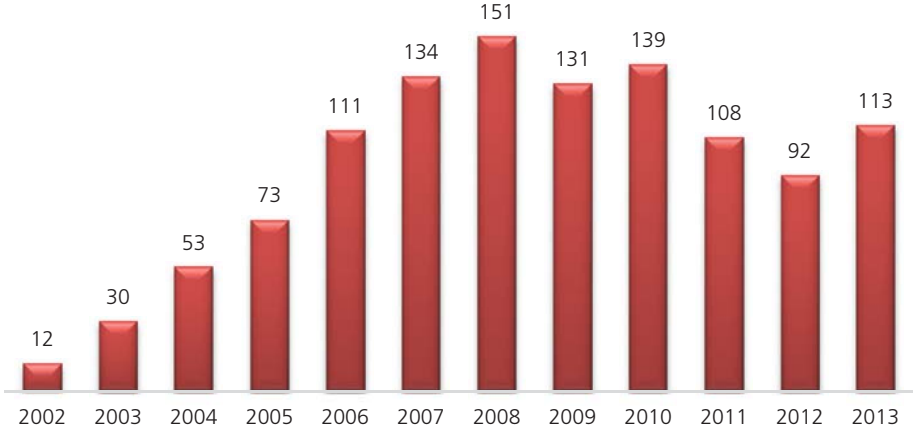


Information Activities

Transparency is one of the most important priorities of the Office. The Office communicates with the professional and general public primarily by publishing information at www.uohs.cz and through the media, to whom it regularly provides press releases about the OPC's decision-making and other activities. In the year 2013, the Office issued 113 press releases, of which 38 concerned competition, 49 involved public procurement and 26 state aid.

Media monitoring reported 9,028 articles and reports on the Office last year. Media coverage of the Office is strongly linked to investigated cases (99% of articles), which is the reason why publicity is mostly neutral in tone (97%). Publicity was strongest in March, specifically in connection with the investigation of the public contract of ČEZ for the completion of the Temelín nuclear power plant. However, most reports and the most powerful media impact were associated with the case of the payment system for social benefits, which garnered publicity throughout the year. In terms of the thematic structure of publicity, the media mainly focused on administrative activities associated with public procurement and concentration between undertakings. The most publicised mergers involved the acquisition of several companies by Agrofert. Media outlets most active in reporting the Office were Mladá fronta Dnes in the press, ČT1 and ČT2 among TV broadcasters, and the most active radio station was ČRo Radiožurnál.

Number of Published Press Releases



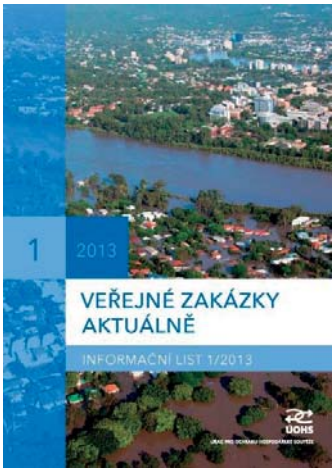
Publication Activities

In the year 2013, the Office for the Protection of Competition issued three information bulletins. The first issue, entitled Public Procurement News, topically responded to the crisis of 900 municipalities affected by floods by setting out its interpretation of the procedure under the law when awarding public contracts for removal of flood and other damage. Other chapters focused on current legislation and some proposed amendments, specifically, for example, the work of the Office on the technical amendment to the law enabling the faster review of public contracts. The statistics on Office reviews of public contracts, information on the review of proposals submitted to the provider of European subsidies, and news about the award of tenders in the European Union were also included.

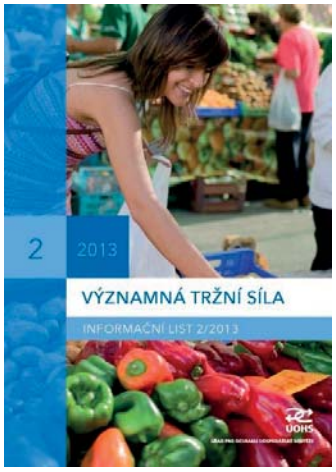
The second information bulletin was dedicated to the topic of significant market power. The central part of the publication provides a detailed analysis of the Office's approach to the concept of significant market power and summarises all completed and ongoing administrative proceedings in this area. It also deals with the procedural and constitutional issues encountered by Office in its administrative practice, as well as with contemplated amendments to the Act on Significant Market Power. The publication additionally provides a broader view of the regulation of supplier-customer relations in a number of European countries and monitors the activity of the European Commission in this sector.

The third information bulletin issued by the Office for the Protection of Competition in 2013 focuses on current issues around the concepts of leniency and settlement. It was also published in English. In addition to the full texts of both notifications, the publication also provides a detailed description of leniency and settlement, whose legal definition newly appeared in the recent amendment to the Act on the Protection of Competition from December 2012. The notifications are intended to contribute to the greater clarity, transparency and predictability of the Office's procedure in the application of both institutes.

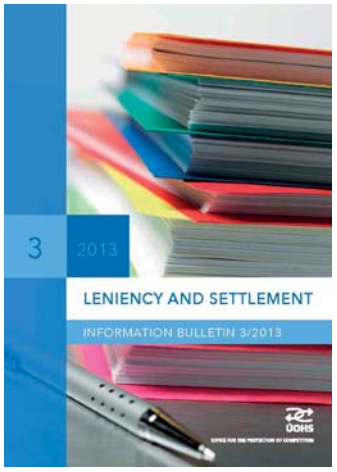
Information bulletins are available for download on the website of the Office:
http://www.uohs.cz/cs/informacni-centrum/informacni-listy.html



Public Procurement News 1/2013



Significant Market Power 2/2013



Leniency and Settlement 3/2013

St. Martin Conference 2013

The 7th annual St. Martin Conference (12-13 November 2013) confirmed its reputation as the largest domestic event in the field of competition law. Over a hundred leading experts from academia and legal practice from the Czech Republic and abroad were introduced to the latest global trends and developments in competition law during two days of six panels. Individual panels focused on a more economic approach to the control of concentrations, private enforcement and recodification, resale price maintenance (RPM), the retail sale of fuel and bid rigging.

More information, including presentations, can be found here:
http://www.uohs.cz/cs/informacni-centrum/konference-a-seminare/uskutecnene-akce/svatomartinska-konference-2013.html

(from left) Michal Petr, Jiří Kindl, Rainer Lindberg, David Anderson

(from left) Petr Rafaj, Michal Petr, Radoslav Tóth, Petr Zákoucký

Conference on State Aid

The main topic of the conference on state aid (16 October 2013) was a summary of information on the current progress in the modernisation of the state aid rules pending at the level of the European Commission. A change in the rules will have an effect on virtually every area of public administration. Other topics of the conference were block exemptions - their background, objectives, timelines and proposed changes, and the modernisation of rules on aid for environmental protection and research and development. The final part of the conference was dedicated to innovations in the decision-making practice of the European Commission and the courts, state aid in the programming period 2014-2020, and major incidents of the Czech Republic in the area of state aid..

Libuše Bílá

(from left) Hynek Brom, Milan Bumbálek, Václav Hromada

Conference on the Act on Significant Market Power

'The Act on Significant Market Power was criticised from the beginning but it survived and following some upcoming changes it will deserve its firm place in the Czech legal system,' said Vice-Chairman Hynek Brom at the beginning of the Conference on the Act on Significant Market Power (17 October 2013), adding that the forthcoming technical amendment should bring clarification to certain terms and introduce new ones, such as a general concept of food, entrepreneur, significant market power and a new concept for administrative offences. Under certain conditions, an obliged entity may also be a contractor, and the intention is also to reduce the current specific list of several dozen administrative offences to nine generally defined offences. However, in addition to the above, new comprehensive legislation is in preparation.

The conference programme also addressed other topics, such as constitutional overlaps of the Act on Significant Market Power, the experience of suppliers with unfair trade practices, the possibility of extending the scope of the Act beyond the food sector, and the application of competition rules in the agricultural sector from the perspective of the European Commission, specifically the most recent developments in the area of collective price negotiation.

Jana Pattynová, Hynek Brom, Luděk Svoboda, Miroslav Koberna

Implementation of Projects from the Funds of the European Union

In past years, the Office for the Protection of Competition also used funds from the Structural Funds of the European Union to improve its services. Last year in 2013, two projects co-financed from the European Social Fund - Operational Programme Human Resources and Employment and the state budget of the Czech Republic were successfully completed, and one project was completed in early 2014.

The first of the successfully completed projects in 2013 at the Office for the Protection of Competition was the project titled Setting the Information Security and Communications System at the OPC (Reg. No. CZ.1.04/4.1.00/59.00001), the implementation of which was completed on 31 January 2013. Given that the Office for the Protection of Competition works with a large amount of important information, ensuring its security is a priority for the management of the institution. For this reason, the project focused on improving and optimising processes in the field of information security and on implementing the Information Security Management System (ISMS) in connection with improving the security of information and communication. Sub-objectives of the project included the following key activities: a security risk analysis, a follow-up proposal to optimise activities in the field of information security, implementation of measures aimed at optimising information security, while the last phase was training all employees of the Office in ISMS. The outputs of the project have been implemented in the organisational standards and internal regulations; safety documentation was created and the information strategy was revised. By taking these steps we have ensured that the project will also continue after funding from European subsidies has ended.

The second successfully completed project was the project titled Streamlining Processes at OPC (Reg. No. CZ.1.04/4.1.00/48.00007), the implementation of which was completed on 28 February 2013. Project activities were focused on three key areas, namely, the optimisation of selected areas of OPC processes, the implementation of process management and employee training, enhancement of the image and communications of the Office and the integration of a system of financial analysis into the Office's management structure.

The condition of selected process areas was mapped and analysed within the implementation of process management. The newly created model contained 26 process areas broken down into 334 sub-processes. Based on the outputs, some internal processes were reconfigured to simplify, streamline and improve them.

In the Office's public relations, activities focused on implementing a feedback system with users of OPC services and on enhancing the image of the Office. Methodologies and manuals were created whose implementation is improving communication outwards to clients and inside the Office itself. The feedback obtained from the results of a survey examining external and internal communication helped ensure that the PR strategy and communication of the Office is targeted with greater precision. Thanks to the project, a new internet portal of the Office was designed and all employees attended specialised seminars focused on practical communication skills.

The third activity, which focused on integrating a system for financial analysis into the structure of the Office's activity management, facilitated the production of methodological guidelines for more consistent involvement of economic and econometric approaches in individual investigations of the Office. Employees are trained and have appropriate statistical software as well as seven guidance documents for specific areas of economic assessment and evaluation; these documents are in full compliance with the procedures of the European Commission and conform to current trends in the field of competition economics.

Even after completion of the project, the Office continues to build on its outcomes, which are additionally elaborated as needed. The process model of the Office is being extended to other areas, work is constantly performed to improve communication both inside and outside the Office, and other documents for the application of a more economic approach are in progress.

The last project, the implementation of which ends on 31 January 2014, is the project titled Education and Transparency of Public Contracting Authorities (Reg. No. CZ.1.04/4.1.00/62.00001). The primary objective of this project is to increase awareness through education and direct support of local government employees regarding the major issues of public procurement and bid rigging that are important for proper decision-making. The actual implementation of the project takes place simultaneously in two key areas, through an information campaign and education in the areas of public procurement and bid rigging, partly in the form of a regional 'roadshow' and partly through training at the Office itself in the form of seminars; the other key area is the establishment of the Monitoring of Public Procurement and Bid Rigging Department.

Within the educational activities of the project, a total of 1,800 employees of public contracting authorities were trained in 2013. These employees were also provided with consulting services, including publicity materials entitled Public Procurement and Prohibited Agreements of Suppliers, and Decision-Making Practice in Public Procurement and Bid Rigging.

Another key activity of the project is the website (www.otvez.cz), which is focused on the issue of public procurement and bid rigging and is a source of information concerning current as well as planned educational activities.

OPC Budget for 2013

Indicators of Chapter 353 Office for the Protection of Competition for 2013

in thousands of CZK

	Approved budget	Budget after changes
Combined indicators		
Total revenue	10,298	10,298
Total expenditure	230,187	230,187
Specific indicators - revenue		
Tax revenue [1)]	4,500	4,500
Non-tax revenue, capital revenue and transfers received total	5,798	5,789
of which: income from EU budget, excl. Common Agricultural Policy - total	4,798	4,798
Other non-tax revenue, capital revenue and transfers received - total	1,000	1,000
Specific indicators - expenditure		
Expenditure to ensure fulfilment of the duties of the Office for the Protection of Competition	230,187	230,187
Cross-sectional indicators		
Payroll and other payments for work performed	95,299	96,309
Mandatory employer-paid insurance [2)]	32,402	32,745.4
Transfer of cultural and social needs fund	935	945.1
Employee payroll	88,090	89,100
Employee payroll deducted from the pay of institutional officers	5,394	5,394
Training for crisis situations pursuant to Act No. 240/2000 Coll.	100	100
Expenditure co-financed from the budget of the European Union, excl. Common Agricultural Policy - total	5,645	5,645
of which: from state budget	847	847
contribution from EU budget	4,798	4,798
Expenditure listed in information system for EDS/SMVS programme financing - total	33,000	36,300

[1)] minus revenues from mandatory contributions to social security and the state employment policy

[2)] mandatory contributions to social security, the state employment policy and public health insurance

Provision of Information pursuant to Act No. 106/1999 Coll., on Free Access to Information for 2013

1. Number of Requests for Information Submitted Pursuant to Act No. 106/1999 Coll. and Number of Issued Decisions to Reject the Request

Area	Number of requests submitted	Number of decisions issued
Competition	18	9
Public Contracts	39	20
State Aid	2	0
Significant Market Power	7	0
General	22	8
Total	**88**	**37**

2. Number of Appeals and Complaints Filed against Decisions under Act No. 106/1999 Coll.:

20 appeals + 1 complaint

3. Judgements of the Court in Relation to the Office in Providing Information:

1 resolution to terminate proceedings

4. Results of Sanction Proceedings for Non-Compliance with Act No. 106/1999 Coll.:

No proceedings were conducted.

Agenda 2014

Competition

For the Competition Section, the year 2014 should be primarily characterised by completion of a large number of unfinished administrative proceedings from previous years. Several proceedings relating to professional associations as well as cases of bid rigging agreements will certainly be terminated. Despite the considerable demands, it could also be possible to complete several of the proceedings on abuse of dominant position by the end of the year.

The Office intends to continue to focus mainly on the detection and elimination of horizontal cartel agreements, especially bid rigging. Priority sectors, which will be closely monitored by the Office, include energy, telecommunications, transport and construction.

In the legislative area, preparations of further amendments to the Act on the Protection of Competition will begin. Possible amendments currently being considered concern changes in the legislation on disciplinary fines and administrative offences for procedural breach of the Act, and a clearer wording of Section 19a of the Competition Act.

The Office will also continue to issue guidance documents. The notification on the calculation of fines for competition infringements is due for rewriting. The revised version will take into account the Office's experience with existing methodologies, as well as findings from the practice of the European Commission and national competition authorities associated within ECN. A notification regarding punishment for anti-competitive conduct of public administration authorities is also currently in progress.

Another important systematic step will be the attempt of the Office to apply the Competition Assessment Toolkit in the Czech environment. This should help identify and replace legislation that hinders the development of competition.

In the international arena, a Memorandum of Cooperation will be concluded with the Antimonopoly Office of the Slovak Republic, which should support even closer collaboration with our Slovak colleagues.

Public Procurement

In terms of legislative work, the legislature will tackle the initial stages towards approving a package of directives on public procurement. During 2014, the effects of statutory measure No. 341/2013 Coll. will begin to show in the administrative activities of the Office.

The Public Procurement Section adopted several internal measures at the turn of 2012 and 2013, the effect of which is expected in 2014. These include strengthening human resources in the department, training new employees and as a consequence, accelerating administrative proceedings.

In terms of developing the supervisory activities of the Office, the year 2014 can expect to see further intensification of preparations for the gradual computerisation of administrative procedures in the register of public contracts maintained by the Office, and a gradual increase in the comfort of parties to administrative proceedings in terms of meeting their procedural rights (including the possibility to access the file remotely).

State Aid

In the year 2014, the modernisation of state aid rules should be completed. In the first half of the year, the revision of key regulations governing state aid will continue. The final wording of most of the revised regulations should be adopted in the first half of the year, so that they can be put into practise from 1 July 2014. These mainly include the following legal regulations:

- General Block Exemption Regulation (GBER);
- Framework for State Aid for Research, Development and Innovation;
- Guidelines on Aid for Maritime Transport;
- Guidelines on Financing Airports;
- Guidelines on Aid for Venture Capital for Small and Medium-Sized Businesses;
- Guidelines on Aid for Environmental Protection;
- Guidelines on State Aid for Rescuing and Restructuring Non-Financial Businesses in Difficulties.

Other key documents whose adoption is expected in 2014 are the Methodology for Evaluation of Measures in State Aid, which will contribute to the efficient provision of public resources, and the Notification to Define the Concept of State Aid, whose aim is to provide additional clarification of key concepts in relation to state aid enshrined in Article 107(1) of the Treaty on the Functioning of the EU. On the Czech side, all activities in connection with the negotiation and adoption of the new EU legislation will be coordinated by the Office, whose experts will also participate in meetings of Member States with the European Commission in Brussels and draw up the final position of the Czech Republic on various Commission proposals.

With regard to the entry into force of a number of new regulations during 2014, it is necessary to familiarise the provider of aid with the forthcoming changes in individual areas. At the same time, it will be necessary to modify some measures already approved by the Commission to bring them into compliance with newly adopted regulations. This requirement results from the appropriate measures proposed by the Commission that are part of some modernised regulations (e.g. Guidelines on regional State aid for 2014-2020 or the Guidelines on State aid to promote risk finance investments).

Fairly extensive changes were brought about by the entry into force of the General Block Exemption Regulation, which among other things, significantly expands the categories of aid exempted from the notification obligation pursuant to Article 108 (8) of the Treaty on the Functioning of the European Union.

As we have come to expect, the conference on state aid rules, designed for both providers of state aid as well as the professional public, will take place in 2014. The central topic of the conference will be acquainting participants with the newly adopted regulations on state aid. The Office will also be performing its advisory and consulting role in 2014 through a variety of other educational activities topically focused on new rules for state aid.

Based on the obligation to notify the amount of state aid paid for the previous calendar year, which providers of aid always have to fulfil towards the Office by 30 April, the Office shall compile an annual report to be presented to the European Commission. In 2014, providers will be required to meet their information obligation towards the Office regarding the provision of state aid in the form of compensation for the obligation of public service compensation.

In the forthcoming programming period 2014+, the European Commission puts a high priority on ensuring compliance between the utilisation of funds from structural and investment funds of the European Funds with the rules on state aid. In the year 2014, therefore, it will be necessary to increase efforts and pay increased attention to this issue. With regard to the expected finalisation of individual operational programmes, the Office will, inter alia, contribute to their adoption and provide recommendations to managing authorities to ensure compliance between the provision of funds from European funds with state aid rules. Programmes within which state aid will be identified and in which it will not be possible to use de minimis aid or the concept of services of general economic interest, or whose use will not be sufficient in terms of the established conditions or the amount of utilised public funds, will have to be additionally notified to the European Commission, either based on the General Block Exemption Regulation or based on a proper notification within the meaning of Article 108 (3) of the Treaty on the Functioning of the European Union.

Significant Market Power

Given that the need for an amendment or the drafting of a new law is still ongoing, the main objective for the year 2014 is to continue to work on the preparation of amendments to the current law as well as drafting a new wording of the law.

Personnel Agenda

In the year 2014, set outputs from completed personnel projects will continue to be modified further. An employee satisfaction survey will be conducted, the results of which will allow modifications in individual areas so that the personnel management of the OPC continues to be enhanced and more effective. Any organisational and personnel changes in 2014 will also depend on the status of the prepared amendment to the Civil Service Act, which would significantly affect the engagement of employees in government institutions, including the Office.

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