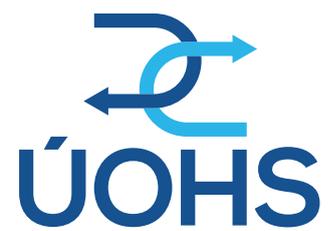


# ANNUAL REPORT 2018

OFFICE FOR  
THE PROTECTION  
OF COMPETITION



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ÚŘAD PRO OCHRANU HOSPODÁŘSKÉ SOUTĚŽE  
OFFICE FOR THE PROTECTION OF COMPETITION

## **Office for the Protection of Competition**

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# FOREWORD

When I look back with the view to assess the year 2018 at the Office for the Protection of Competition, it shall be recognized ongoing precision work of exposing cartel agreements. For example we have been able to prove the existence of two bid rigging cartels in the sector of rail freight and a fining decision in the third similar case is being prepared.

It is obvious that not only billion-dollar companies conclude cartel agreements, also small and medium-sized enterprises can easily infringe the competition law. We try to organize awareness-raising campaign for smaller undertakings to inform them about competition law and possible consequences in case of its infringement. We are going to even intensify this activity in 2019.

Of course I have to mention final victory of the Office in so called "the bakers cartel" case, where the Constitutional Court rejected the constitutional complaint of a party to the proceedings. After long period of 15 years the Constitutional Court concluded a case reviewed many times by the Czech administrative courts, the Constitutional Court or even the European Court for Human Rights in Strasbourg.

In the field of public procurement the Office continued current trend of prompt resolving cases and the decision making process at the first as well as the second instance was significantly faster than statutory provided time limits. Furthermore the Office decides mostly on substance of the merits, while procedural termination of proceedings comes almost exclusively from parties to the proceedings. Generally the Office intervenes already during a tender procedure and via its decision making activity it is able to correct any mistakes of contracting authorities in order to preserve fair competition for a contract. That is why I am concerned about various efforts based on complete ignorance of the current state of decision making activity but still describing the Office as an inefficient institution hampering public procurement.



A handwritten signature in blue ink, appearing to read 'P. Rafaj', written on a white background.

**Petr Rafaj**  
Chairman of the Office  
for the Protection of Competition

# ABOUT THE OFFICE

**Total Number of Employees  
as of 31 December 2018**

**234**

The Office for the Protection of Competition (hereinafter referred to as "the Office") is a central state administration body with responsibilities in the field of protecting competition, supervising public procurement award procedures, supervising significant market power and coordination and advisory in relation to State aid.

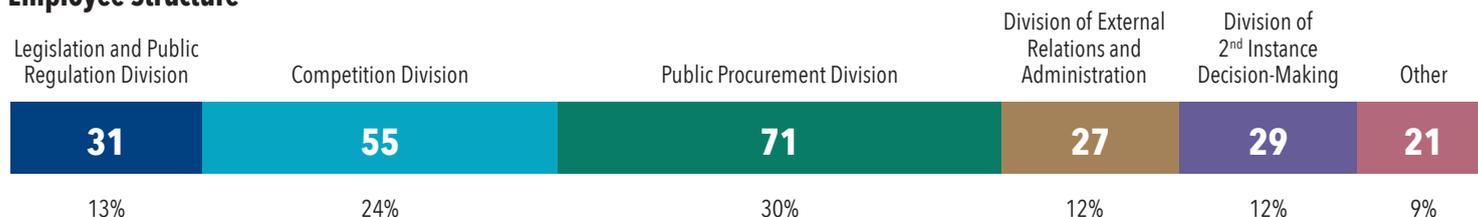
The definition of the main task, responsibilities and scope of powers of the Office is laid down by the Act No. 273/1996 Coll., on the Scope of Competences of the Office for the Protection of Competition.

- The main legal framework in the field of competition is defined in the Act No. 143/2001 Coll., on the Protection of Competition (hereinafter referred to as "Competition Act"). The related competences concerning inter-banking fees were entrusted to the Office in January 2017 by the amendment to the Act No. 284/2009 Coll., on Payment

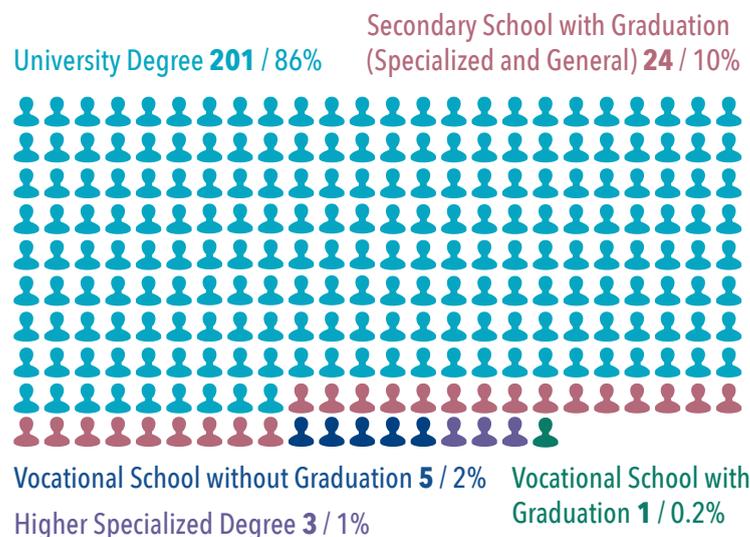
Systems, and thereafter by the new Act No. 370/2017 Coll., on Payment Systems, which replaced the former one with effect from 1 January 2018.

- Regarding the area of public procurement, the main legal framework is represented by the Act No. 134/20016 Coll., on Public Procurement Procedures (hereinafter referred to as "Public Procurement Act"). The Office has only supervisory power, i.e. it supervises the transparent, reasonable, non-discriminatory and fair approach of contracting authorities to tenderers. Some administrative proceedings are conducted pursuant to the old and non-effective Act No. 137/2006 Coll., on Public Procurement.
- The significant market power of retail chains in relation to their food and agricultural suppliers is regulated by the Act No. 395/2009 Coll., on Significant Market Power in the Sale of Agricultural and Food Products and the Abuse thereof (hereinafter referred to as "Act on Significant Market Power").
- The issue of State aid is regulated mainly by the EU legislation, at the national level it is governed by the Act No. 215/2004 Coll., Amending Certain Relationships within the Area of State Aid and altering the Act on Promotion of Research and Development.

## Employee Structure

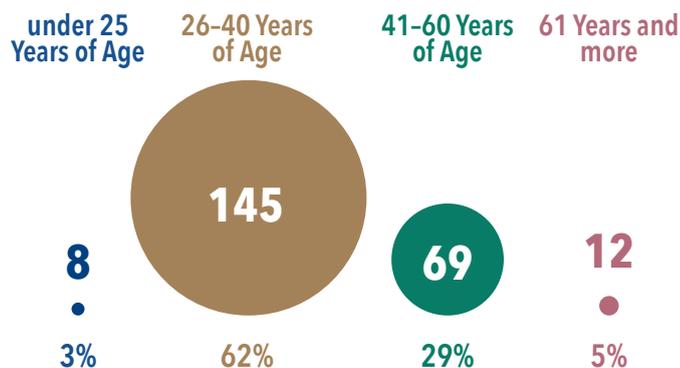


## by Type of Education

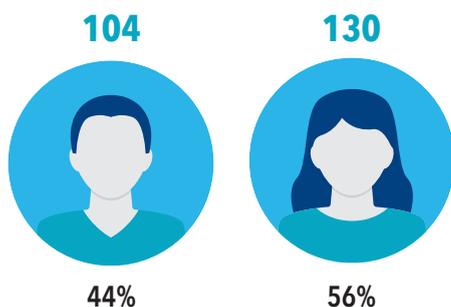


## by Age

average age of employees 38.2 years



### by Gender



### by Civil Service / Employment



\*of which 31 employees were recruited pursuant to Article 178 of the Civil Service Act, i.e. as an employee in an employment relationship at a civil service position

## HALF THE EMPLOYEES WORKS AT THE OFFICE MORE THAN FIVE YEARS

Looking at the structure of employees by the length of employment or civil service relationship we can see that newcomers represent 15% of the total number of 234 employees. The largest group is represented by employees working for the Office more than 1 year but less than 5 years. In 2018 it was 88 employees in total, that is 38%. Almost half of employees work for the Office more than 5 years but less than 10 years and further 15 employees joined the Office between 2003 and 2007. Among most professionally experienced are 32 employees who joined the Office before 2002.

## BUDGET FOR 2018

Indicators of Chapter 353 - Office for the Protection of Competition		CZK
<b>Aggregates</b>		
Total revenue		5,500,000
Total expenditure		237,411,071
<b>Specific indicators - revenue</b>		
Tax revenue <sup>1)</sup>		3,900,000
Non-tax revenues, capital revenues and total transfers received		1,600,000
of which:	revenue from the European Union budget without the common agricultural policy in total	0
	other non-tax revenues, capital revenues and transfers received in total	1,600,000
<b>Specific indicators - expenditure</b>		
Expenditure on securing the fulfilment of the tasks of the Office for the Protection of Competition		237,411,071
<b>Cross-sectional indicators</b>		
Salaries of employees and other payments for work done		136,234,761
Compulsory insurance paid by the employer <sup>2)</sup>		46,319,819
Transfer of the Cultural and Social Needs Fund		2,684,632
Salaries of employees in employment, excluding staff in service positions		18,326,751
Salaries of employees at service positions pursuant to the Civil Service Act		108,593,228
Salaries of employees in terms of employment derived from salaries of constitutional officials		7,311,600
Ensuring preparation for crisis situations pursuant to Act No. 240/2000 Sb.		0
Expenditure entirely or partly co - financed by the European Union budget excluding the common agricultural policy		0
of which:	From state budget	0
	Share of EU budget	0
Expenditures included in EDS / SMVS Program Financing Information System total		31,800,000

1 excluding revenues from compulsory social security contributions and contribution to the state employment policy

2 mandatory social security contributions and a contribution to the state employment policy and public health insurance premiums

# COMPETITION

Free competitive environment constitutes basic prerequisite for functioning market economy. Undertakings compete between themselves, as they are trying to offer goods to their customers under most favourable conditions. Undertakings compete through better prices, higher quality of offered services or products or broader range of products. In order to achieve competitive success, market players are forced to introduce efficiencies and innovations. As a result of their efforts, consumers benefit from the competition as they can get innovative products for better prices or of higher quality.

On the other hand, the competition for customers can be very unpleasant for firms, so they might explore how to eliminate it and how to get profit without risk of competition. Therefore, there are competition authorities, with the aim to prevent:

- prohibited (cartel) agreements between undertakings;
- abuse of dominant position of strong undertakings;
- distortion of competition resulting from concentrations between undertakings.

The competition rules apply on all undertakings, regardless their size – even SMEs should be careful about cooperation with their competitors. Serious fines might be imposed for an infringement of competition rules.

A fine up to **10%**  
of annual turnover  
might be imposed for an  
anticompetitive conduct.

## LEGISLATION

### ECN+ DIRECTIVE

In 2018, there haven't been any changes in the Czech competition legislation. However, the Office has amended its soft law regarding its procedure of setting fines for an anticompetitive conduct as well as the notice on agreements of minor importance which do not appreciably restrict competition. As regards the EU level, the Office took active part in significant legislative process, which was completed in the beginning of 2019 by the adoption of the Directive of the European Parliament and of the Council to empower the competition authorities of the Member States to be more effective enforcers and to ensure the proper functioning of the internal market. The Directive's objective is to ensure more effective enforcement of competition rules by the competition authorities, particularly in the areas of competition authorities' independence, appropriate enforcement tools for detection and punishing anticompetitive conduct, and cross border enforcement of fines. The crucial part of the Directive concerns full harmonisation of leniency programme, with the aim to ensure a common standard within the EU so that undertakings should dispose the same guarantees and procedural tools of leniency programs while infringing both the EU and the national rules.

### WHISTLEBLOWER DIRECTIVE

The Office participated in further cooperation at European level, namely in legislative work on the Directive on the protection of persons reporting on breaches of Union law (Whistleblower Directive). The final goal of the EU in this context is a comprehensive regulation of the protection standards for the whistleblowers, who notify alleged infringements in all legal areas. The Directive should provide such persons with a maximum space to act and also protection from reprisals.

The Office's objectives in this regard were mainly linked to the protection of the functioning of the leniency programme. The Office, together with other competition authorities, has also tried to ensure a possibility for whistleblowers to use not only internal but also external channels for reporting without losing their protection. Experience shows that using only internal channels when reporting serious competition infringements is not effective but it would be likely to result in destroying evidence. The adoption of the Directive can be expected in 2019.

## COMPETITION IN NUMBERS

In 2018, the Office issued 11 decisions on cartel agreements in which it imposed fines totalling more than CZK 168 million. Seven of those cases dealt with bid-rigging. In two cases, decisions of associations of undertakings were prohibited and fined. Four decisions dealt with vertical agreements with the fines exceeding CZK 13 million. Ten new proceedings were initiated.

In the area of abuse of dominant position, one fining decision was issued, the amount of fine exceeded CZK 15.5 million, and two new proceedings were initiated. Two decisions were issued in cases of anticompetitive conduct of public authorities, and a total of seven new proceedings were initiated in this matter.

As regards the area of concentration between undertakings, the Office issued 55 decisions, of which 40 were issued within simplified procedure. On the other hand, one proceeding was passed on to so called second phase, and it was decided within the period "1+4 months".

The Office also intensively applied the settlement procedure – 8 proceedings were concluded by settlement. In one case, an anticompetitive conduct was detected by a leniency application. Moreover, 23 unannounced inspections were carried out.

## CASES / PROHIBITED AGREEMENTS

### Cartel Agreement on Allocating Customers in Area of Rail Freight Transport and Forwarding in Connection to Railway Project Italia Express

Parties to the proceedings: **Rail Cargo Austria AG, AWT Čechofracht, a. s., České dráhy, a. s.**

First-instance fine: CZK 51,674,000

(S0633/2016/KD; date of coming into force: 10/10/2018)

The Office initiated the proceeding on 1 November 2016 on the basis of the leniency application of Rail Cargo Austria (hereinafter referred to as "RCA AG"). In the application, RCA AG informed the Office about a cartel agreement concluded between abovementioned railway companies, which allegedly allocated customers and contracts on freight forwarding in connection to the jointly carried out project on the freight block train *Italia Express*. The Office carried out several inspections at the same time the proceeding was initiated.

The train *Italia Express* was regularly operated on the line from Ostrava to Villach, where the goods were further transported to Italy and also partially to Slovenia. The abovementioned companies concluded the agreement on allocation of their customers in 2006. The objective of this agreement was that costumers, who used services of one of the parties when transporting goods by train *Italia Express*, should continue in using services of that certain company.

Nevertheless, the agreement also had some elements of a price agreement because the companies repeatedly made cover offers with unfavourable prices, which were supposed to motivate customers to use services of certain company. A dedicated online platform (reservation system) was created to exchange information between cartel participants. The agreement was being fulfilled for more than four years (till 9/2010). The relevant market was defined quite narrowly accordingly the relevant train project in the relevant geographical line. Another

## Statistics Regarding Competition as of 2018

Complaints received		183
of which	Prohibited agreements	99
	Abuse of dominant position	57
	Concentrations between undertakings	1
	Anticompetitive conduct of public authorities	19
	Other	7

Proceedings initiated		76
of which	Prohibited agreements	10
	Abuse of dominant position	2
	Concentrations between undertakings	57
	Anticompetitive conduct of public authorities	7

Decisions issued		73
of which	Prohibited agreements	15
	Abuse of dominant position	1
	Concentrations between undertakings	55
	Anticompetitive conduct of public authorities	2

## Inspections Carried Out

2013	15
2014	8
2015	17
2016	7
2017	21
2018	23

leniency application was filed during the proceeding by the company České dráhy.

The Office concluded that by concluding and fulfilling the cartel agreement, the abovementioned companies infringed the Article 3 par (1) of the Competition Act, but also the Article 101 of the Treaty on the Functioning of the European Union (hereinafter referred to as "TFEU"), because the cross border trade between EU member states has been distorted.

The company RCA AG was not fined because of successful application of the type I leniency. The fine imposed on the company České dráhy was reduced by 50% on the basis of successful application of the type II leniency. Moreover, the participants used the settlement procedure, so the fines were reduced by further 20%. The Office imposed fines in the total amount of CZK 51,674,000.

### **Case of Contracts on Railway Transportation Provided to Company Spolchemie**

Parties to the proceedings: **Rail Cargo Logistics - Czech Republic, s. r. o., SPEDICA, s. r. o.**

First-instance fine: CZK 16,980,000

(S0015/2017/KD; date of coming into force: 4/1/2019)

The Office imposed the fine in total amount of CZK 16,980,000 by its first-instance decision of 18 December 2018 on the companies Rail Cargo Logistics - Czech Republic and SPEDICA for a distortion of competition on the market of rail freight forwarding. These companies infringed the Competition Act by coordinating and submitting their bids in the tenders for import of salt and transportation of chemical substances and products for the years 2013 and 2014, which were tendered out on 5 December 2012 and 5 December 2013 by Spolchemie.

The coordination of the bids aimed that the company Rail Cargo Logistics - Czech Republic would submit the most advantageous bid, which really happened. The conduct of the abovementioned companies was assessed as a prohibited agreement with the target of distortion of competition on the market of rail freight forwarding, and it affected the results of the abovementioned tenders. The substantial evidence was collected during an inspection. The settlement procedure was used in the proceeding, and the Office reduced the fines by the statutory 20%. No appeals were filed against the decision.

### **Bid Rigging of Companies Supplying Aperture Panels for Building Constructions**

Parties to the proceedings: **DAFE - PLAST Jihlava, s. r. o., OSF 2000, s. r. o., SULKO, s. r. o.**

First-instance fine: CZK 20,841,000

(S0694/2016/KD; date of coming into force: 23/5/2019)

By its first-instance decision of 27 February 2018, the Office fined the companies DAFE - PLAST Jihlava, OSF 2000 and SULKO for coordinating their participation and bidding in the tender for public contract "*replacement of aperture panels in the buildings of the Liberec region, department of education, youth and sports*", which was tendered out by the Liberec Region in 2012. The estimated total value of the tender was CZK 82 million (excluding VAT).

This proceeding was initiated on the basis of evidence forwarded by the Police. The total amount of imposed fines was CZK 20,841,000. Appeals were filed against the decision.

### **Bid Rigging of Construction Companies**

Parties to the proceedings: **ESOX, spol. s r. o., EUROGEMA CZ, a. s., INSTA CZ, s. r. o., Mechanika Prostějov, výrobní družstvo, POZEMSTAV Prostějov, a. s., Prostějovská stavební společnost-PROSTAS, s. r. o., PTÁČEK - pozemní stavby, s. r. o., REALINVEST, s. r. o., Stavební společnost NAVRÁTIL, s. r. o., SYNER Morava, a. s.**

First-instance fine: CZK 48,970,000

(S0008/2017/KD; date of coming into force: 18/3/2019)

The Office imposed fines in the total amount of CZK 48.97 million by its first-instance decision of 15 November 2018 on nine companies active in the building construction sector. All parties to the proceedings were fined, except the company PTÁČEK - pozemní stavby, because in case of this company, an infringement of the Competition Act has not been proven. The Office found infringements in connection to four tenders of 2009 and 2010, tendered out by the public contracting authority - the Municipality of Prostějov. The total volume of these public contracts reached almost CZK 60 million (excluding VAT), the most important one was "*EÚO ZŠ E. Valenty, Prostějov*" with the total value of almost CZK 25 million. The Office concluded that the undertakings ESOX, EUROGEMA CZ, INSTA CZ, POZEMSTAV Prostějov, Prostějovská stavební společnost-PROSTAS, REALINVEST, Stavební společnost NAVRÁTIL a SYNER Morava infringed the competition law by coordinating their participation and bids in tender for this public contract, which subject-matter was realisation of insulation of the building envelope and roof, replacement of closures for openings and other related construction works on the buildings of the elementary school of E. Valenta.

The proceeding was initiated on the basis of several anonymous complaints concerning company Stavební společnost NAVRÁTIL, and on the basis of the analysis performed by the Office, which showed suspicious similarities between bids, mainly between individual items in the bidding budgets.

Company SYNER Morava applied for lowering its fine within settlement procedure, and because it met all necessary criteria, its fine was lowered in the decision by 20%. Other parties to the proceedings except company Mechanika Prostějov filed appeals; nevertheless, the Chairman of the Office confirmed the first-instance decision in early 2019.

## Bid Rigging in Civil Engineering Sector

Parties to the proceedings: **DŘEVOTVAR – ŘEMESLA a STAVBY, s. r. o., HYDRO & KOV, s. r. o., SWIETELSKY stavební, s. r. o., PROTOM Strakonice, s. r. o., AQUEKO, spol. s r. o., I. Kamenická stavební a obchodní firma, s. r. o.**

First-instance fine: CZK 23,462,000

(S0421/2016/KD; date of coming into force: 15/6/ 2018 with the exception of the sixth operative part of the decision, which was appealed by the company PROTOM Strakonice against the amount of the fine – date of coming into force: 7/5/2019)

By its first-instance decision of 29 May 2018, the Office imposed fines in the total amount of CZK 23,462,000 on the abovementioned companies, which infringed the Competition act by coordinating their bids in the public tender within the project “Renovation of ponds near the municipality of Hroby-Nuzbely” awarded by the contracting authority J. V. According to the agreement the company DŘEVOTVAR – ŘEMESLA a STAVBY was supposed to submit the most economically advantageous bid. The other companies submitted cover bids only.

The proceeding was initiated on the basis of an initiative of the Audit authority of the Czech Ministry of Finance, by which the Office was informed about possible illegal activities of the companies concerned in relation to the abovementioned tender.

The Office received requests for lowering the fine from all parties to the proceedings, so the imposed fines were reduced by 20%. The company PROTOM Strakonice filed an appeal against the decision, concerning the amount of the fine that was imposed on this company.

## Cartel Agreements in Renovation of Canteens in Hyundai

Parties to the proceedings: **Wiesner-Hager Project, s. r. o., Artspect, a. s., Iridium, spol. s r. o.**

First-instance fine: CZK 1,549,000

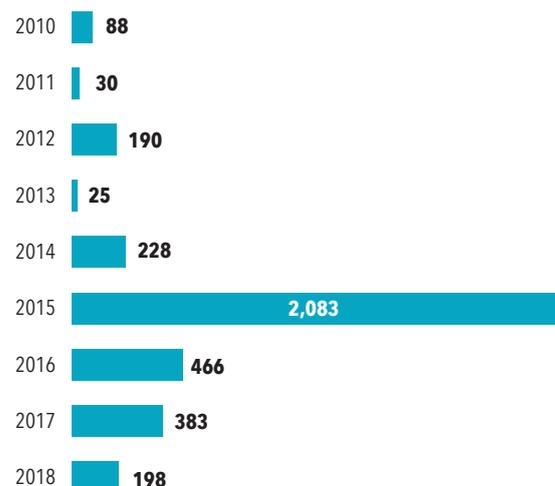
(S0411/2017/KD; date of coming into force: 26/9/18)

The Office imposed fines in the total amount of CZK 1,549,000 on three undertakings that took part in bid rigging cartel agreement concerning tenders for renovation of canteens and supply of furniture for canteens for the company Hyundai Motor Manufacturing Czech.

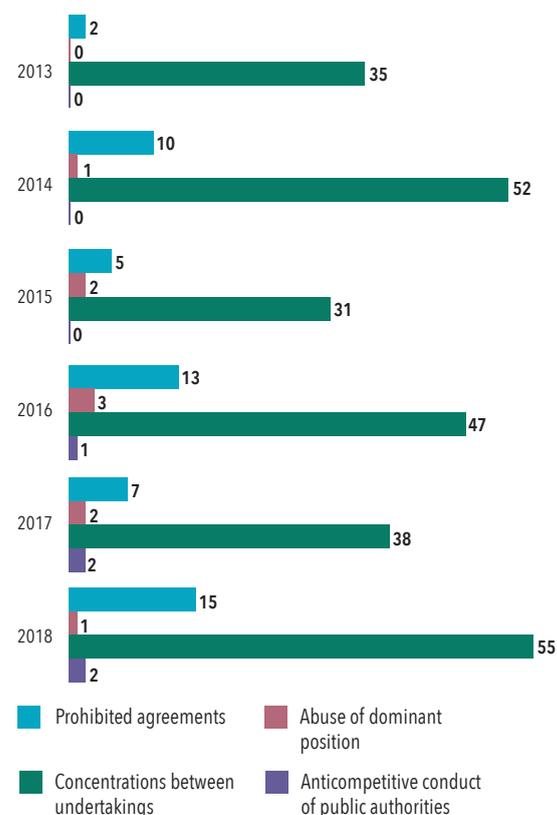
The proceeding was initiated in October 2017 on the basis of the complaint of Hyundai Motor Manufacturing Czech. After the examination of the bids, the Office found out that the bidding prices of involved companies showed high level of similarity; for example, individual items were different in exactly hundreds, or in certain coefficient. Therefore, the Office performed announced inspections within the premises of the three abovementioned companies and seized in there relevant business records.

The Office concluded that companies concerned took part in a prohibited agreement by coordinating their bids in two tenders for renovation of canteens for the company Hyundai Motor Manufacturing Czech. According to the agreement’s objective the company Wiesner-Hager Project was supposed to submit the most advantageous bid. The coordination of bids was performed through an e-mail communication – Wiesner-Hager Project sent to Artspect and Iridium the exact bidding prices, which these companies were supposed to submit, together with further instructions. These two companies followed the instructions and submitted the coordinated bids.

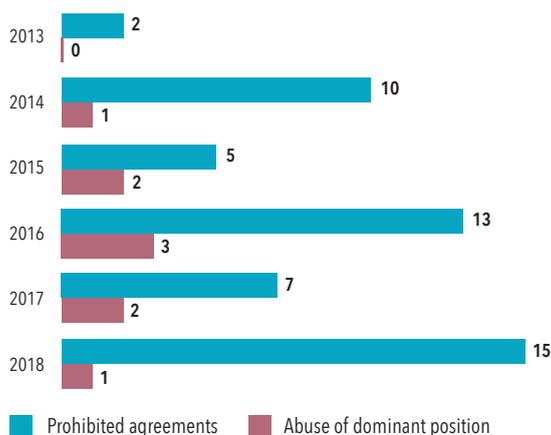
## Amount of Fines Imposed by the First Instance in Millions CZK



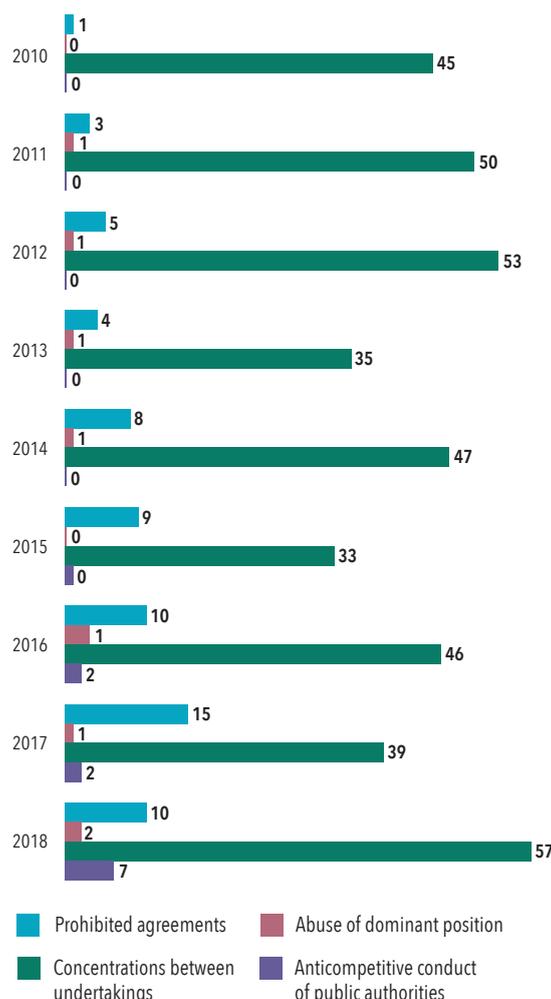
## Number of Decisions Issued within the Area of Competition



### Number of Decisions Issued within the Area of Prohibited Agreements and Abuse of Dominant Position



### Number of Initiated Competition Proceedings



The parties to the proceedings applied for the settlement procedure, so the Office reduced their fines by 20%. No appeals were filed against the decision.

Parties to the proceedings: **LIKOR, s. r. o., GERTABAU, s. r. o., Keraservis Group, a. s., KPI, s. r. o.**

First-instance fine: CZK 993,000

(S0412/2017/KD; date of coming into force: 17/10/2018)

By its first-instance decision, the Office imposed fines in the total amount of CZK 993,000 on three undertakings which took part in bid rigging cartel agreement concerning tenders for renovation of floors in the canteens for the company Hyundai Motor Manufacturing Czech.

The proceeding was initiated in the end of 2017 on the basis of the complaint of Hyundai Motor Manufacturing Czech. After the examination of the bids, the Office found out that the bidding prices of involved companies showed high level of similarity; therefore, the Office performed announced inspections within the premises of the three abovementioned companies and seized relevant business records.

The Office concluded that these four companies took part in a prohibited agreement by coordinating their bids in two tenders for renovation of floors in the canteens for the company Hyundai Motor Manufacturing Czech. According to the agreement's objective the company LIKOR was supposed to submit the most advantageous bid. The coordination of the bids was performed through e-mail communication –LIKOR sent to GERTABAU, Keraservis Group and KPI exact bidding prices, which these companies were supposed to submit, together with further instructions. These two companies followed the instructions and submitted the coordinated bids.

The parties to the proceedings used the settlement procedure, so the Office reduced their fines by 20%. No appeals were filed against the decision.

### Constraint of Accommodation Facilities by Agreements with Booking.com

Party to the proceedings: **Booking.com B.V.**

First-instance fine: CZK 8,336,000

(S0664/2015/KD; an appeal has been filed)

By its first-instance decision, the Office prohibited the anti-competitive conduct of the company Booking.com in the field of online bookings of short-term accommodation and imposed the fine of CZK 8,366,000 on this company. The Office adopted this decision after an extensive investigation, during which hundreds of accommodation facilities has been requested.

For the period from 1 May 2009 to 30 June 2015, the company Booking.com concluded prohibited vertical agreements with providers of short-term accommodation services in the territory of the Czech Republic, which led to distortion of competition on the relevant market of mediation of online reservation of short-term accommodation in the Czech Republic and on the relevant market of provision of short-term accommodation services in the Czech Republic. At the same time, the trade between Member States of the European Union in the field of providing services of online reservation of short-term accommodation was potentially affected by conduct of Booking.com.

Based on these prohibited agreements, the Booking.com’s contractual partners were obliged to comply with the so-called broad price and availability parity. Therefore, the Booking.com has been granted the same or better conditions regarding the price of accommodation and the amount of rooms available for booking than those published on the web sites of the accommodation facility or at other on-line or off-line distribution channel of a contractual accommodation facility.

The administrative proceeding also dealt with a revision of the agreements concluded by Booking.com for the period from 1 July 2015 with the providers of accommodation services, on the basis of which the providers were obliged to comply with the narrow parity clauses on price. It means that a potential customer would be offered better or the same price for accommodation when using the Booking.com platform in comparison to a price published on the website of particular accommodation facility. Such conduct has not been proven to be illegal. Also there has not been proven the existence of anti-competitive agreements concerning availability of minimal number of rooms or issuing recommendations for providers of accommodation to ensure for Booking.com availability of all types of rooms offered by them. The decision is not yet final, because an appeal has been filed against it.

## CASES / ABUSE OF DOMINANT POSITION

### Applying Dissimilar Conditions towards Forwarding Companies as Customers of České dráhy

Party to the proceedings: **České dráhy, a. s.**

First-instance fine: CZK 15,648,000

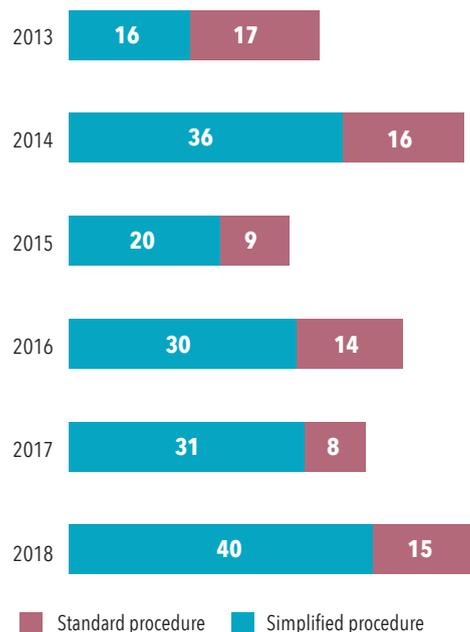
(S0220/2006/DP; date of coming into force: 10/12/2018)

By its first-instance decision of 26 June 2018, the Office concluded that the company České dráhy, former Railway Incumbent, abused its dominant position on the market of rail freight transport of substrates transported in large volumes within the territory of the Czech Republic by applying dissimilar conditions during comparable performances towards forwarding companies, and it imposed a fine of CZK CZK 15,648,000. The Office has adopted the decision in this matter repeatedly after its previous decision of 2008 had been cancelled by the administrative courts.

The anticompetitive conduct between 1 January 2006 and 16 September 2007 targeted two customers of the company České dráhy, i.e. forwarding companies SPEDIT-TRANS and ŠPED-TRANS Levice. The undertaking České dráhy made impossible for them to conclude agreements on customer tariff, it imposed on them obligation to pay 100% deposits on provided services and it terminated contracts with these customers on central clearing of freight fares. The Office concluded that České dráhy without any objective justification disadvantaged the two abovementioned companies in comparison with other customers – freight transport companies and this conduct caused serious harm to them. The abuse of dominant position could also affect the trade between EU member states.

An appeal was filed against the decision. On 10 December 2018, the Chairman of the Office rejected the appeal and confirmed the first-instance decision, so it became final.

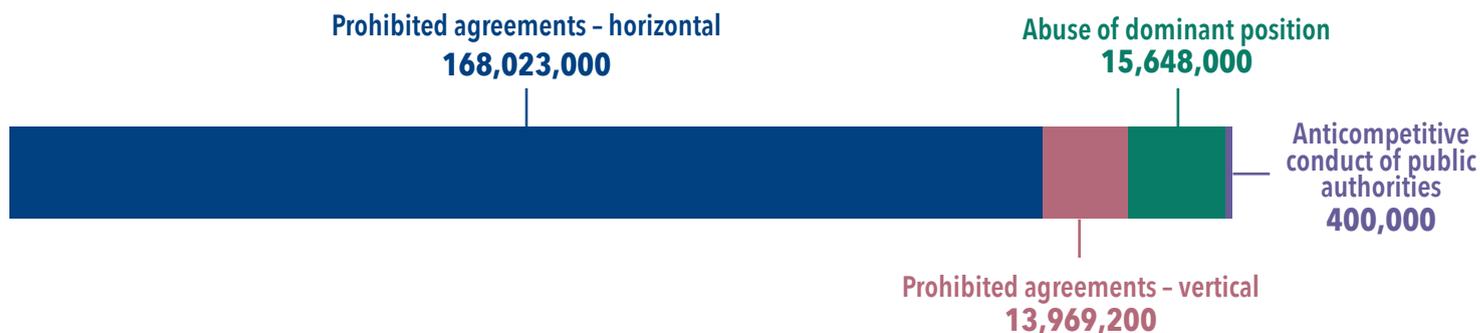
### Concentrations between Undertakings



### Concentrations between Undertakings by the Type of Decision



## Fines Imposed by the Type of Merits of Cases in CZK



### OSA Increased Prices Adequately

The Office has investigated complaints of *Sdružení místních samospráv ČR (Association of Local Governments)* and of several municipalities in the matter of a possibly inadequate increase of royalties for use of recorded music since 1 January 2017 set by the collective rights management organisation *OSA - Ochraný svaz autorský pro práva k dílům hudebním* (hereinafter referred to as "OSA"). It is important to underline that the increase of the OSA royalties was up to 50%.

In this context, the Office assessed if the rates of royalties are adequate compared to economic value of the performance provided by OSA. For this purpose, it compared, in accordance with the case-law of the ECJ, the rates of royalties set by the collective rights management organisation OSA with the rates of the same royalties in the other EU member states. This comparison was performed through specific model cases.

The comparison didn't show that the rates set by OSA would be significantly and permanently above the average rate in other EU member states, which would indicate a possible abuse of dominant position by imposing unreasonably high prices. On the contrary, the investigation showed that despite the recent increase, the rates set by OSA are rather low compared to other European countries, so it can't be considered inadequate. Therefore, the Office terminated the investigation.

## CASES / CONCENTRATION BETWEEN UNDERTAKINGS

### KMV Allowed to Take Control over Part of Pepsi Business, Subject to Commitments

Parties to the proceedings: **KMV BEV CZ, s.r.o. / PEPSICO CZ, s.r.o., PEPSI-COLA SR, s.r.o., and part of the business of the company Fővárosi Ásványvíz - és Üdítőipari Zártkörűen Működő Részvénytársaság**

Decision: approved, subject to commitments

(S0152/2018/KS; date of coming into force: 30/10/2018)

The Office assessed the concentration between the undertakings KMV BEV CZ (hereinafter referred to as "KMV"), PEPSICO CZ, PEPSI-COLA SR and a part of the business of the company Fővárosi Ásványvíz - és Üdítőipari Zártkörűen Működő Részvénytársaság, which was supposed to be realised by KMV acquiring full control over the acquired companies PEPSICO.

The company KMV is a member of the KMV group lead by the company Karlovarské minerální vody, which is active within the Czech territory mainly in the area of production and wholesale of non-alcoholic beverages offered for example under the brands Aquila, Mattoni, Magnesia, Dobrá voda, Poděbradka, Hanácká kyselka, Granini or Schweppes. The acquired companies PEPSICO, mainly the company PEPSICO CZ, produces and/or distributes within the Czech Republic non-alcoholic beverages under the brands Toma, Lipton, Pepsi, 7UP, Mountain Dew, Mirinda, Evervess, Rockstar and Gatorade, chips Lays and savory snack foods Cheetos.

Within this proceeding, the Office assessed mainly the impacts of the concentration on the markets, submarkets and segments in the area of production and wholesale of branded non-alcoholic beverages, distributed in the Czech Republic by both off-trade and on-trade channels. The Office especially assessed if the proposed merger could raise serious competition concerns based on the horizontal overlap of the activities of the merging parties. It also took into account the fact that the product portfolio offered by the KMV group within the territory of the Czech Republic will expand as a result of the proposed transaction.

On the basis of this analysis, the Office found out that a serious distortion of competition might occur as a result of the implementation of the concentration, so it moved the proceedings into second

phase. On the basis of detailed examination performed during the second phase, the Office still found serious competition concerns, mainly based on the extension of KMV group's activities in the areas of the production and wholesale of branded flavoured and unflavoured bottled water and production and wholesale of the branded RTD tea drinks, distributed by off-trade distribution channel in the Czech Republic. On other markets, submarkets and segments of production and wholesale of branded non-alcoholic beverages, the proposed transaction didn't raise competition concerns.

In order to eliminate the Office's competition concerns, the company KMV BEV CZ accepted certain structural commitments. As a result of the commitments, activities of the merging parties will not overlap with regard to the production and wholesale of branded flavoured and unflavoured bottled water. Within the market of the production and wholesale of the branded RTD tea drinks, there will be relatively small increase of market share, whilst the KMV group will offer exactly the same number of brands of such products as it did before.

## CASES / ANTICOMPETITIVE CONDUCT OF PUBLIC AUTHORITIES

### **Municipalities Fined for Distorting Competition by Issuing Decrees on Lotteries**

Party to the proceedings: **Municipality of Nučice**

First-instance fine: CZK 73,000

(S0024/2017; date of coming into force: 20/12/2018)

Party to the proceedings: **Municipality of Varnsdorf**

First-instance fine: CZK 327,000

(S0014/2017; date of coming into force: 12/2/2019)

The Office imposed by its first-instance decision the fine of CZK 73,000 on Municipality of Nučice and the fine of CZK 327,000 on Municipality of Varnsdorf for the infringement of Article 19a of the Competition Act, pursuant to which public authorities shall not prefer certain undertakings and thereby discriminate the others in competition matters.

The abovementioned municipalities authorised the operating of gambling, lotteries and other similar games within their territories at certain locations, which were not selected on the basis of objective, non-discriminatory and transparent criteria. By this conduct, they distorted without objectively justifiable reasons the competition on the market of the operating gambling, lotteries and other similar games and on the market of the operating facilities in which gambling, lotteries and other similar games might be operated.

## CASES SOLVED OUTSIDE ADMINISTRATIVE PROCEEDINGS

The Office solved a total of six cases without initiation of administrative proceedings in 2018. The practice of alternative solution of competition concerns is possible when an anticompetitive conduct has not been implemented yet and therefore, it has no negative impact on a relevant market.

The Office typically dealt with practices of resale price maintenance, when for example the undertakings published on their websites minimal sale prices for their distributors, and threatened them with termination of cooperation in case of non-compliance with these prices. As a consequence of an intervention of the Office, corrective measures were applied by the outdoor equipment seller TRAPPER, and car accessories distributor STUALARM IMPORT.

Similarly, the Office prevented the company SUMIDA Components & Modules from possible enforcement of obligation of exclusive purchasing or restrictions on access of other undertakings into the premises used for providing funeral services in Krnov and Bojkovice.

As regards the possible infringement in relation to the prohibition of anticompetitive conduct of public authorities, the Office dealt with the Directive for recognition of professional qualifications published by the Czech Chamber of Authorized Engineers and Technicians Active in Construction. The Office requested that the Directive should contain clear and objective rules for assessment of temporariness of the activity, and for the verification of knowledge of the Czech language within the verification of the professional qualification. On the basis of a request from the Office, the Chamber changed its Directive, which is now in compliance with competition rules and it contributes to the transparency of the procedure of recognition and verification because the relevant conditions are now clearly defined within the Directive.

## SECOND-INSTANCE PROCEEDINGS

In 2018, 18 appeals against the first-instance decisions were filed and therefore, the same number of second-instance proceedings was initiated. A total of 11 decisions were issued, of which 8 on the merits. In four of those, the first-instance decision was confirmed, one was changed and three cases were returned to the first instance. Fines in the total amount of CZK 18,034,000 were confirmed – in cases of abuse of dominance by the company České dráhy, and anticompetitive conduct of public authorities of the Municipalities of Nučice, Karlovy Vary and Děčín. One decision on fine (CHAPS case) was changed.

### CASES / SECOND INSTANCE OF COMPETITION

#### CHAPS Abused its Dominant Position on Market of Data on Timetables

Party to the proceedings: **CHAPS, spol. s r. o.**

Final fine: CZK 1,080,000

(R12/2016; date of coming into force: 16/1/2018)

The Chairman of the Office changed, by this second-instance decision of 16 January 2018, the decision on the abuse of dominant position by the company CHAPS on the market of data updates on timetables, and it lowered the imposed fine to the final amount of CZK 1,080,000.

According to the second-instance decision, the company CHAPS between 6 December 2010 and 31 August 2015 refused to disclose data updates on timetables to other competitor (company Seznam.cz) without any reasonable justification, and by this conduct, it abused its dominant position. For the company Seznam.cz, these data updates were essential prerequisite for launch of a new service. Therefore, the competition on the market of the automatic search for intrastate public transport connections and on the market of the information on the existing options of public transport connections was distorted. By this conduct, harm was caused to other competitor (Seznam.cz) and to its consumers.

Unlike the first-instance decision, the Chairman of the Office has found only the infringement of the national law and not the infringement of EU law. Consequently, the period of the infringement was shortened as well. As a result of these changes, the amount of the fine imposed was adequately reduced. Other appeal objections of the party to the proceedings were dismissed.

#### Fine for Discriminatory Decree on Lotteries Confirmed

Party to the proceedings: **Municipality of Karlovy Vary**

Final fine: CZK 734,000

(R003/2018; date of coming into force: 1/11/2018)

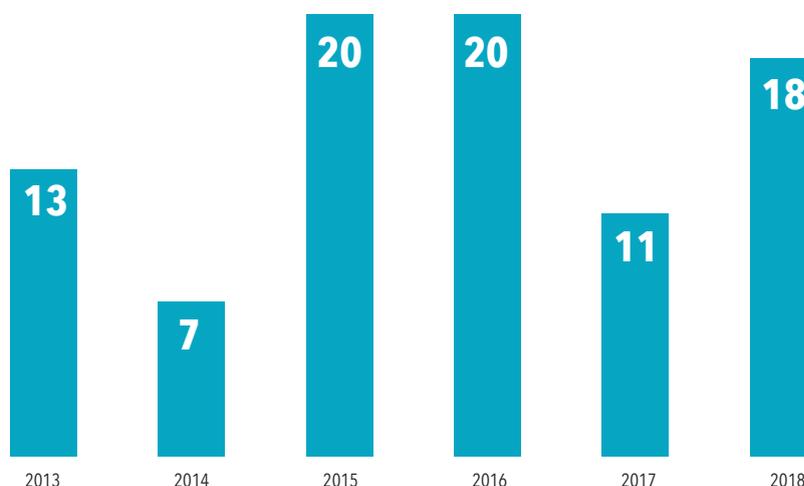
The Chairman of the Office rejected an appeal of the Municipality of Karlovy Vary against the first-instance decision concerning anticompetitive provisions in the decrees on lotteries operated within the city. The imposed fine of CZK 734,000 was confirmed as well.

The Municipality of Karlovy Vary infringed the Article 19a of the Competition Act, because by its decrees of 2013 and 2015, it had authorised the operating of gambling, lotteries and other similar games within their territories at certain locations, which were not selected on the basis of objective, non-discriminatory and transparent criteria.

By this conduct, the Municipality of Karlovy Vary distorted without objectively justifiable reasons the competition on the relevant market of the operating gambling, lotteries and other similar games and on the relevant market of the operating facilities in which gambling, lotteries and other similar games might be operated. As a result, competitors that are allowed to operate gambling, lotteries and other similar games at these specific locations were unjustifiably favoured.

The Chairman of the Office dismissed all the appeal objections as unreasonable. This concerns mainly the argument that the constitutional right of the local government to issue subordinate legislation was infringed, or the argument that the conduct was ineligible to distort the competition.

#### Number of Appeals Filed within the Area of Competition



## JUDICIAL REVIEW

In 2018, the Office achieved significant success when defending its decision within the judicial review before administrative courts. As regards the cases in which the decision of the court is irrevocable, the Office was successful in all of them. This concerns in particular actions against unlawful interference during inspections brought by the undertakings SUEZ Využití zdrojů, UNIPETROL RPA, STRABAG and COLAS CZ. The constitutional court also decided in favour of the Office in the cases of ČD Cargo (case of unlawful interference) and AGRO Jevišovice and Delta Pekárny (prohibited agreements). Six new actions were brought before the Regional court in Brno and nine new cassation complaints were filed to the Supreme Administrative Court.

### Recent Developments in Conclusions of Judicial Review

In relation to the judgement of the European Court of Human Rights in the Delta pekárny case of 2014, there exists a fast development in the case law regarding review of the legality of inspections, carried out by the Office in the business premises of undertakings. Four new judgements on the actions for the protection against unlawful interference consisting of carrying out inspection in business premises were issued;<sup>1</sup> one judgement on the action against decision dealt with the same topic.<sup>2</sup>

Within the review of the legality, the administrative courts mainly focused on the following questions:

- whether the inspection was carried out on the basis of lawful authorisation;
- whether it pursued a legitimate objective;
- whether the realisation of the inspection was proportionate to the legitimate objective.

The last abovementioned proportionality is assessed according to the following criteria:

- **ELIGIBILITY** = the inspection shall be based on the existence of concrete input evidence suggesting that certain anticompetitive conduct could occurred;
- **LENGTH** = the length of the inspection haven't exceeded the time necessary for verification of the previously obtained evidence, and therefore, there was now unreasonably long burden for the party under the inspection;
- **SCOPE** = the scope of the inspection is limited by the preliminary suspicion based on the evidence previously obtained by the administrative body.

Out of these, the scope of the inspection is contested in the appeal objections most frequently because this factor is always unique, and what would fit into the scope limit in one case, might not fit in another one. For the party facing the inspection, the legal grounds and purpose of the inspection, as specified in the written authorization, are the first source of information on the scope of the inspection. Other documents gathered by the Office before carrying out the inspection represent also an important source, because these constitute the framework of suspicion, which shall be verified. If this evidence suggests that a wider and longer anticompetitive conduct might have occurred (which may include wider range of parties), the scope of the inspection might be wider and less specific as well. On the other hand, in case the suspicion is narrow and specific, the delimitation of the subject-matter of the inspection should be adequate.

The written authorisation should include information on the investigated anticompetitive conduct, mainly on its nature, possible legal assessment, and factual description. The case law also mentions need for approximate delimitation of the affected sector or relevant market. It is important to emphasize that this delimitation is only preliminary and it can't be compared to the delimitation of relevant market within the final decision. The suspicion about possible anticompetitive conduct should be always based on reasonable grounds.

Another issue recently dealt with by the administrative courts are the procedures of the Office during inspection in relation the electronic documents. When searching in such documents, the Office is entitled to use key words, which are typical for the specific anticompetitive conduct. The party facing the inspection can raise objections against using some of these key words. These objections will be then recorded. The party can also describe these key words in the action before a court.

During the inspection, the Office is entitled to collect documents containing as a consequence information exceeding the framework of the original suspicion without breaching the legal limitations of the inspection. The Office is not allowed to target such documents, but if they are found accidentally, it can collect their copies and use them in the proceedings.

<sup>1</sup> See judgement of the Regional Court in Brno of 29/6/2018, ref. No. 31 A 57/2018-66, of 17/10/2018, ref. No. 31 A 72/2018-75 and of 27/6/2018, ref. No. 29 A 14/2018-83, and judgement of the Supreme Administrative Court. of 29/3/2018, ref. No. 5 As 119/2017-60.

<sup>2</sup> See judgement of the Regional Court in Brno of 27/3/2018, ref. No. 29 Af 2/2016-212.

# SIGNIFICANT MARKET POWER

Farmers, processors of agricultural products, traders, wholesalers, retailers and consumers are all together part of the food supply chain. However, mostly the smaller operators in the food supply chain have to face unfair trading practices (hereinafter referred to as "UTP") in comparison to the large operators. This occurs due to the weaker bargaining power of smaller operators, and above that, the limited alternatives for getting their products to consumers. For years, there has been a consensus that the UTP can be found within whole food supply chain. Since 2009, the UTP in the field of food production at European markets are supervised by the European Commission. The effort to establish EU harmonised network of enforcement authorities and create a level playing field within the single market was completed in 2018 by the publication of the Proposal for a Directive of the European Parliament and of the Council on unfair trading practices.

## LEGISLATION

Rapid legislative development on the European level - by this statement we can characterize the year 2018 in the field of legal acts relating to the agenda of UTP. One of the most important acts is the Proposal for a Directive on unfair trading practices in business-to-business relationships in the food supply chain, published by Commission on 12 April 2018 under the Bulgarian Presidency. The authority responsible for the transposition of the Directive in the Czech Republic is the Ministry of Agriculture, which works in cooperation with the Office. For the Czech legal system, the Proposal for the Directive does not bring any surprisingly new institutes. Regarding the existence of the regulation of UTP in the Act on Significant Market Power, the Office considers the unification of the regulation within the EU as a great benefit.

Pursuant to the Explanatory Memorandum to the Act on Significant Market Power, the main aim of the present Directive's proposal is to reduce the occurrence of the UTPs in the food supply chain by introducing minimum common standards of protection across the whole EU. The proposed measures are complementary to measures already existing

in Member States and the Code of Conduct of the Supply Chain Initiative. The Directive is intended to provide minimum protection for farmers and other suppliers of agri-food products. Concerning the scope of the Directive with regard to entities under its protection, or on contrary to entities that are ordered to refrain using UTPs, the proposal is based on so-called dynamic approach, whereby the economic operators belonging to one of the categories (in particular micro, small and medium) are always protected against the economic operators from a higher category. The large economic operators are not protected at all.

Furthermore, the Directive's proposal provides the list of forbidden UTP. Given that the Directive is intended to represent the minimum standard of protection, it is up to the Member States to choose stricter legislation rules. Besides the completely forbidden practices, the Directive lists also the ones that are prohibited only if they have not been negotiated in a clear and unambiguous way in the delivery contract or any other agreement between the supplier and the buyer.

A substantial part of the Directive is devoted to so-called enforcement authorities, which should be designated by Member States to enforce the rules of fighting UTP. Thus, in the Czech Republic, the scope of Office's competence remains the same. However, some changes are related to the new cooperation with the particular enforcement authorities of other Member States, sharing of best practices, sharing of new cases concerning the abuse of the significant position on relevant markets and exchange of information. The Directive also foresees providing the relevant information to the Commission on a regular basis. The Czech Republic will have 24 months to transpose the Directive into the Czech legislation. The specific measures should be applicable no later than 30 months after the entry into force of this Directive.

## CASES / SIGNIFICANT MARKET POWER

### **Successful Application of Commitments Resulting in Termination of Unjustified Obligation to Use Accounting Services Provided by Markant Company**

Party to the proceedings: **Kaufland Česká republika, v. o. s.**

Decision with commitments (S0139/2017/TS; date of coming into force 3/8/2018)

On 31 July 2018, the Office issued a decision on alleged infringement of the Article 4 (1) and (2) b, e of the Act on Significant Market Power, which was committed by the company Kaufland Česká republika. The administrative proceeding was initiated on the basis of the complaint referring to the conduct of aforementioned company. In particular, retail chain Kaufland required from its suppliers signing a contract for pecuniary interests with the company Markant Handeles- und Industriewaren-Vermittlungs AG and the company Markant Česko (hereinafter referred to as "Markant") as a condition for the mutual cooperation.

The Office concluded that Kaufland actually forced its suppliers to sign the contract for pecuniary interest with the company Markant during the period from 2016 to 2017. On the basis of this contract, the suppliers had to use the accounting services of company Markant without demanding such services. If they would not sign this agreement, Kaufland threaten to unilaterally terminate their cooperation. Such conduct was assessed by the Office as the application of a fee prohibited by law, i.e. the fee for an acceptance of food for sale within the network of Kaufland's stores.

Furthermore, the Office found out that the suppliers involved in the Markant system had to pay instead of Kaufland costs associated with Kaufland's participation in the system. This was assessed as obtaining benefits from suppliers without adequate consideration.

Given that only a small group of suppliers was involved in Markant's accounting system, which received at least part of the consideration for the payments made, and also in a view of the relatively small detrimental effect, the Office accepted an alternative solution procedure.

Kaufland proposed commitments in order to eliminate the infringement. Within the thirty days from the issuance of the decision, the company had to reach out its suppliers involved in Markant system, stating that the participation in the Markant system is not a precondition for their deliveries to Kaufland's stores and that the suppliers can terminate their participation in the system without affecting their existing or future relationships. In addition, the party to the proceedings has committed to normalisation of the business relations by returning the fee payments to the addressed suppliers and refraining from the conduct according to which food suppliers could believe that the participation in the Markant system is a precondition for the possibility to supply their product to Kaufland.

The Office considers the proposed commitments as an effort to change the overall business policy of the whole retail chain and a move towards fairer trading. The Office concluded that the proposed commitments would lead to the elimination of the infringement and thus terminated the administrative proceeding in this matter.

### Fine for Failure to Provide Assistance to the Office

Party to the proceedings: **legal entity that holds the position of supplier**

First-instance fine: CZK 50,000

(V0113/2018/PP; an appeal was brought against this decision)

In August 2018, the Office imposed a fine in its first-instance decision pursuant to the Article 10 (1) of the Act on Significant Market Power in line with the preliminary investigation conducted by Office in case of alleged abuse of significant market power by a particular retail chain (buyer) towards its food suppliers. A fine of CZK 50,000 was imposed on a legal entity that held the position of one of the suppliers of the investigated undertaking. The supplier failed to provide the necessary assistance during the investigation, in particular it did not provide the documents and information required by the Office pursuant to the Article 21e (2) of the Competition Act. The Office imposed a fine on the supplier after requiring the information and documents three times in writing. These requests were provably delivered to the supplier. However, the supplier has not responded to any of these requests.

The decision of the Office is not yet final, because an appeal was brought against it.

## SECOND-INSTANCE DECISION MAKING AND JUDICIAL REVIEW

In the area of significant market power, there were lodged three appeals against the first-instance decisions and the Office initiated three administrative proceedings in 2018. The Office also issued three second-instance decisions annulling the first-instance decisions and returning them for new reconsideration. One of the initiated administrative proceedings was not terminated as of 31 December 2018.

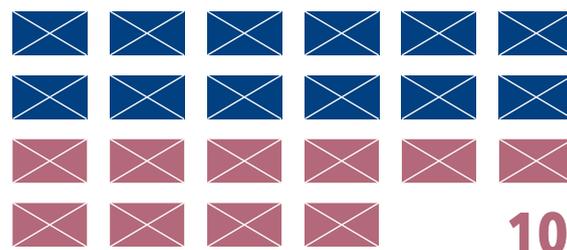
### Statistics Regarding Significant Market Power as of 2018

Complaints received	12
Ex officio investigations	10
Questions on the interpretation of law received	5
Proceedings initiated	3
Proceedings closed	2
Cases solved by advocacy	1
Amount of fines imposed	2
Total fines for anticompetitive conduct on significant market power	CZK 300,000
Amount of procedural fines	CZK 50,000

### Investigations Initiated in 2018

#### Complaints received

12

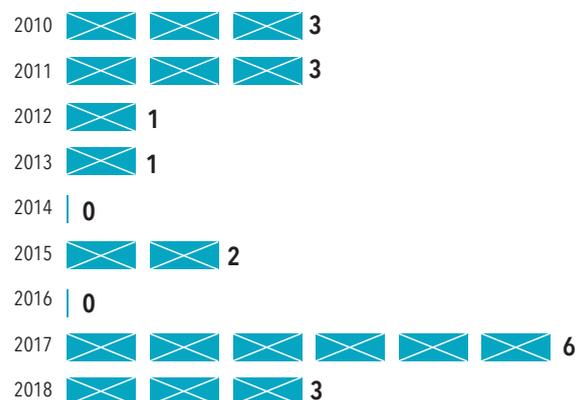


#### Ex officio investigations

10



#### Proceedings Initiated



In 2018, no action against the Office's decision was brought to the Regional Court in Brno, and even no cassation complaint to the Supreme Administrative Court was submitted. The administrative courts did not issued any decisions in the area of significant market power.

# PUBLIC PROCUREMENT

The Office exercises supervision of the public procurement since 1995. Currently, it does so pursuant to the Act No. 134/2016 Coll., on Public Procurement (hereinafter referred to as "the Public Procurement Act"). The Czech legislation on the supervision in this area transposes the provision of the EU Directives (namely the Council Directives 92/13/EEC and 89/665/EEC as amended by the Council Directive 2006/97/EC); these Directives regulate the particularities of the review procedures in the field of public procurement and also enhance the guarantees of transparency and non-discrimination in public procurement. When supervising public procurement, the Office assesses whether contracting authorities awarded contracts (including concessions) in compliance with the

Public Procurement Act. The Office is entitled to impose remedies, investigate misdemeanours of contracting authorities and in such cases can impose fines. The Office also exercises supervision pursuant to the Act No. 194/2010 Coll., on Public Services in Transportation of Passengers, as amended. The objective of the abovementioned Acts is to ensure free and open competition between the suppliers (or carriers applying for awarding public service contracts in the field of passengers transport) and to ensure selection of the best bid in a transparent manner devoid of any discrimination. Equal, transparent and non-discriminatory competitive environment brings also savings in the public budgets as a result.

## LEGISLATION

On 1 January 2018, the remaining part of the Act No. 368/2016 Coll., which amends the Act No. 253/2008 Coll., on selected measures against legitimisation of proceeds of crime and financing of terrorism and other related acts, came into force. This applies also on the Twelfth part of this act, which amends the Public Procurement Act – it clarifies the procedures used by the contracting authority for detection or verification of the beneficial owners of the selected supplier.

The most significant change is undoubtedly the fact that on 18 October 2018, Article 211 (3) of the Public Procurement Act came into force for all categories of contracting authorities. This means that since that day, it is obligatory to use electronic means in the communication between contracting authorities and suppliers (with certain statutory exceptions). On 1 January 2018, the Government Decree No. 172/2016 Coll., on setting financial limits and amounts for the purposes of the Act on Public Procurement was amended, and so was the Decree of the Ministry of Regional Development No. 169/2016 Coll., on the definition of scope of specifications for a public contract regarding construction works and inventory of construction works, supplies and services with a bill of quantities.

On 18 January 2018, the European Commission within its notices on preparedness for the withdrawal of the United Kingdom from the European Union (BREXIT) published the notice in the field of public procurement, which outlines some consequences for the UK undertakings in case the UK becomes third country after the withdrawal. On 15 May 2018, the European Commission published *Guidance on Innovation Procurement*, which summarizes certain basic aspects of innovative procurement.

Currently, a new amending act to the Act on Public Services in Transportation of Passengers is going through the legislative process. This act among other things rectified incorrect references to the Public Procurement Act and introduces single fare.

## IMPORTANT NUMBERS

**507**

decision issued

**100**

remedies imposed

**7.76**

million CZK  
fines imposed

**37**

days  
speed of decision-making

## PUBLIC PROCUREMENT DIVISION'S ACTIVITY

Concerning the decision-making practice of the Public Procurement Division, the year 2018 was the period of gradual prevalence of administrative proceedings under the regime of the new Public Procurement Act. Nevertheless, there are still cases of newly initiated proceedings regarding procedures of contracting authority under the regime of the Act No. 137/2006 Coll., which are, according to the transitional provisions, assessed by the legislation effective at that time.

As a result of a higher number of proceedings pursuant to the Public Procurement Act, the Office issued a higher number of remedies consisting in cancellation of decisions on objections. This new tool was introduced by the amendment to the Public Procurement Act. Its main objective is to clarify the acts at issue of contracting authorities in the tendering procedure. It should motivate contracting authorities to deal with the suppliers' objections more factually and completely. The imposition of the remedy consisting in cancellation of decisions on objections does not have fatal consequences for an award procedure; the contracting authority is allowed to rectify its errors. This remedy constitutes an effective enforcement tool in the area of supervision over public procurement, particularly in connection to the recent average length of administrative proceedings, because it encourages contracting authorities to higher level of responsibility for proper tendering.

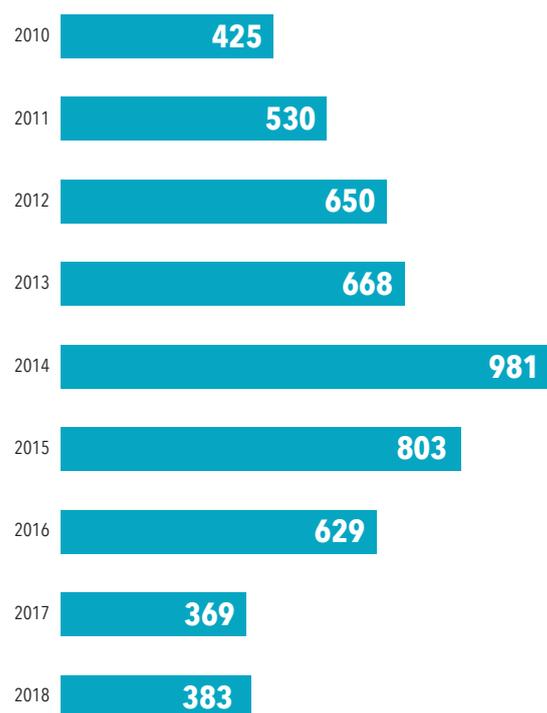
## PUBLIC PROCUREMENT IN NUMBERS

In 2018, the Office initiated a total of 383 new administrative proceedings in the area concerning public procurement, of which 269 were initiated on basis of a complaint filed by supplier. The total number of 507 first-instance decisions was issued. In 100 of those decisions, a remedy was imposed, and a fine was imposed in 89 cases.

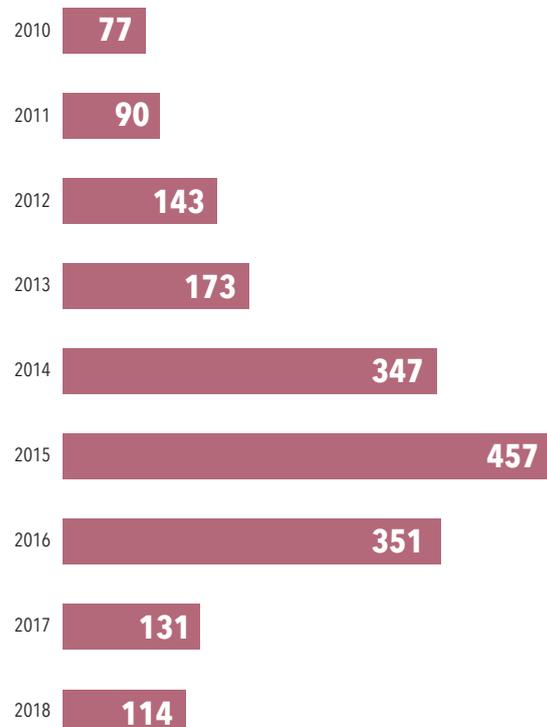
In cases where it is clear, derived from matters of fact, that an activity of a contracting authority constituted an infringement, the Office uses a tool of so called order. This first step in proceedings informs the contracting authority about all important facts and legal arguments and therefore, it speeds up supervising procedure and reduces its costs. The order was used in 36 cases.

An average length of proceedings in the field of public procurement remains significantly below the sixty-day statutory deadline – in first instance, the Office adopted decisions within 38 days in average (37 days when taking into account the orders).

**Total Number of Newly Initiated Administrative Proceedings in First Instance**



**Number of Newly Initiated Administrative Proceedings Ex Officio**



## The First-Instance Decision-Making in Area of Public Procurement

<b>Complaints</b>	Complaints received		<b>254</b>
	<ul style="list-style-type: none"> <li>of which the fee was paid</li> </ul>		98
	Tenders assessed on a basis of complaint received		92
<b>Administrative proceedings</b>	Total number of initiated administrative proceedings		<b>383</b>
	<ul style="list-style-type: none"> <li>of which initiated on basis of a complaint</li> </ul>		269
	<ul style="list-style-type: none"> <li>ex officio</li> </ul>		114
	<ul style="list-style-type: none"> <li>of which on a basis of inspections</li> </ul>		16
	Pending administrative proceedings on 31/12/2018		27
<b>First-instance decisions</b>	Total number of issued first-instance decisions		<b>507</b>
	<ul style="list-style-type: none"> <li>of which decision on the subject matter</li> </ul>		242
	<ul style="list-style-type: none"> <li>orders</li> </ul>		36
	Overview of operative parts of substantive decisions	Remedies	100
		Imposing fine	89
		Termination of proceedings ex officio, because no reason for imposition of remedy was found	2
		Dismissal of an application, because no reason for imposition of remedy was found <sup>1</sup>	49
		Procedural reasons	115
	<ul style="list-style-type: none"> <li>Preliminary measures</li> </ul>		149
	<ul style="list-style-type: none"> <li>Decisions on preliminary measure</li> </ul>		87
	<ul style="list-style-type: none"> <li>Decisions on dismissal of preliminary measure</li> </ul>		53
	<ul style="list-style-type: none"> <li>Decisions on cancelation of preliminary measure</li> </ul>		9
<b>Fines</b>	Number of imposed fines		<b>89</b>
	Total amount of imposed fines		<b>CZK 7,764,500</b>
	<ul style="list-style-type: none"> <li>of which 36 fines imposed by order</li> </ul>		CZK 916,500
	<ul style="list-style-type: none"> <li>23 fines imposed by decision</li> </ul>		CZK 5,540,000
	<ul style="list-style-type: none"> <li>30 fines imposed by decision after objection against order</li> </ul>		CZK 1,308,000
	Fines imposed by final decision (as of 31/12/2018)		76 in the amount of CZK 3,490,000
<b>Costs of proceedings</b>	Number of imposed costs of proceeding		<b>139</b>
	Total amount of imposed costs of proceedings		<b>CZK 3,045,000</b>
	Cost of proceedings imposed by final decision (as of 31/12/2018)		116 in the amount of CZK 2,581,000
<b>Deposits</b>	Total amount of lodged deposits		<b>CZK 152,974,825.69</b>
	<ul style="list-style-type: none"> <li>of which deposits forfeited in favour of the state budget</li> </ul>		CZK 10,677,576.10

<sup>1</sup> The Office shall terminate the proceedings if no reason for imposition of remedy under Art. 263 or imposition of fine under Art. 268 or 269 has been found during ex officio proceedings.

## Overview of the Highest Fines Imposed

	Case No.	Contracting Authority	Public Tender	Amount of fine in CZK	Coming into force
1	S0220, 0221/2018	Vojenské lesy a statky ČR, s. p.	Renovation of forest roads 2013 and 2014	1,200,000	Decision cancelled and case remitted for re-examination (R0141/2018)
2	S0438/2018	Všeobecná zdravotní pojišťovna České republiky	Provision of complex supply and distribution of medicinal products containing vaccines for routine vaccinations in 2018-2021	600,000	19/3/2019
3	S0314/2018	Municipality of Brno, District Brno-North	Reconstruction of building Cejl 68 in Brno	330,000	1/4/2019

## MOST FREQUENT MISCONDUCTS

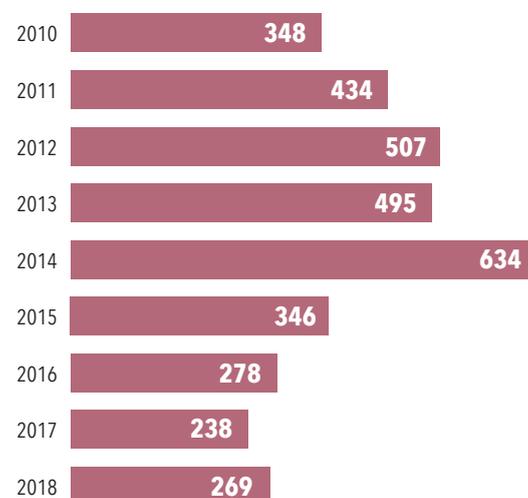
Regarding proportional representation, in 2018 the most frequently reviewed public tenders came from the sectors of construction, health and IT, and less frequently from the sectors of transportation vehicles' supply or tenders for providing transport services.

As regards the categories of contracting authorities whose awarded procedures are most often the subject of review, the most frequent ones are municipalities, ministries and entities active in the field of transport and construction of transport infrastructure.

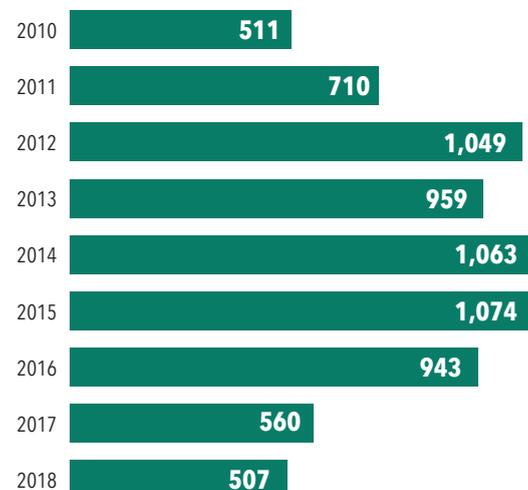
The most frequent contracting authorities' misconduct comprise of:

- Excessive (discriminatory) qualification prerequisites;
- Indefinite and/or ambiguous definition of tender specifications, or the excessiveness of the reference terms defined by the contracting authority;
- Missing decision on objections or incomplete dealing with objections of the supplier;
- Illegal use of negotiated procedures without publication;
- Illegal division of a public tender;
- Award of a public procurement entirely outside the scope of the Act on Public Procurement (although the contracting authority was obliged to follow the Act on Public Procurement).

### Number of Complaints Requesting to Initiate Proceeding



### Number of Decision Issued in First Instance



### Case of Tender for Toll System

During 2018 the Office dealt with extremely complicated case concerning award procedure of the Ministry of transport called "Electronic toll system". The Office conducted joint proceedings in this matter, integrating ex officio proceedings and a total of five proceedings initiated on basis of a complaint of the supplier Kapsch Telematic Services. On 9 May 2018, the Office issued first-instance decision, in which it stated, among other things, that the contracting authority infringed the principle of transparency when awarding the tender, because when providing suppliers with the tender documentation it did not ensure such technical solution that would give a possibility to unambiguously determine and verify that the content of the data carrier was handed over to individual suppliers. As a consequence of these actions of contracting authority, the Office was unable to review if all suppliers received the same information on data carriers. However, this first-instance decision was cancelled in the following appeal proceedings by the Chairman of the Office on the basis of the recommendation of the Remonstrance Committee by the decision of 23 August 2019.

The Office decided by the new first-instance decision of 20 September 2019 in the part of the proceedings initiated ex officio that it shall be terminated. In the parts of the proceedings that were initiated on the basis of complaint, the Office partially terminated the proceedings and partially dismissed the application, because the complaint had not contained claim on actual or potential damage to the interests of the complainant, or the Office did not found reasons for imposition of remedies. Immediately after the adoption of the decision, the contracting authority waived its right of appeal and concluded the contract with the selected supplier. In the following decision on the appeal, the Chairman of the Office only stated that the operative parts of the decision challenged by the appeal shall be cancelled and the proceedings shall be terminated, because the contract in question had been already concluded.

In the following administrative proceeding, the Office decided about the application of Kapsch for imposition prohibition of the execution of the contract, based on the claim that the contract was allegedly concluded despite the prohibition imposed by the preliminary measure issued by the Office. The Office dismissed this application by its decision of 10 December 2018, stating that the preliminary measure ceased to be valid, when the contracting authority waived its right of appeal and the operative part in question came into force. This result was confirmed by the Chairman of the Office in its decision on appeal in February 2019.

Decisions in the case of electronic toll system: R0093/2018 – came into force on 23 August 2018; S0406,0429,0504/2017, 0016,0092/2018; R0163/2018 – came into force on 20 September 2018, 14 December 2018. Decisions on the motion to prohibit fulfilment of the contract: S0386/2018; R0218/2018 – came into force on 25 February 2019.

### Provision of Complex Supply and Distribution of Medicinal Products Containing Vaccines for Routine Vaccinations in 2018-2021

Contracting authorities: **Všeobecná zdravotní pojišťovna České republiky, Česká průmyslová zdravotní pojišťovna, Oborová zdravotní pojišťovna zaměstnanců bank, pojišťoven a stavebnictví, Revírní bratrská pokladna, zdravotní pojišťovna, Vojenská zdravotní pojišťovna České republiky, Zdravotní pojišťovna ministerstva vnitra České republiky, Zaměstnanecká pojišťovna Škoda.**

Final fines in total: CZK 1,790,000

(S00438/2018; date of coming into force: 19/3/2019)

The Office dealt with suspicion of committing administrative offences, because the contracts with the selected suppliers had been already concluded. According to the findings of the Office, the health insurance companies, which awarded the contract together, committed offences when setting minimal level of compliance with the requirement for technical qualification, which was not set adequately with respect to complexity and scope of the public contract's object. They required the proof of realisation of at least two reference contracts with the total value of minimum CZK 300 million excluding VAT, while at least one of these contracts had to be of value minimum CZK 25 million excluding VAT. However, the references were limited only to contracts concerning direct distribution of medical products to general practitioners and other health services providers carrying out regular vaccination.

By this discriminatory delimitation, the contracting authorities excluded from the award procedure all potential suppliers, which had performed such contract already but only for example within providing supplies and distribution of medicinal products to hospitals or pharmacies. This conduct led to significant distortion of competition, provided that the contracting authorities didn't prove during the proceeding that their requirement for technical qualification would be legitimate, because suppliers with experience of supplies/distribution of medicinal products for other places of performance could be also qualified to properly perform the contract, i. e. to provide complex supply and distribution of medicinal products also to healthcare services providers.

The appeals filed against the decision were dismissed by the Chairman of the Office.

Parties to the proceedings	Fines in CZK
Všeobecná zdravotní pojišťovna České republiky	600,000
Česká průmyslová zdravotní pojišťovna	300,000
Oborová zdravotní pojišťovna zaměstnanců bank, pojišťoven a stavebnictví	210,000
Revírní bratrská pokladna, zdravotní pojišťovna	150,000
Vojenská zdravotní pojišťovna České republiky	180,000
Zdravotní pojišťovna ministerstva vnitra České republiky	250,000
Zaměstnanecká pojišťovna Škoda	100,000
<b>In total</b>	<b>1,790,000</b>

## Procurement of Ammunition 2017/I - Assault Hand Grenades 2

Contracting authority: **Czech Republic - Ministry of Defence**

Remedy: Imposing prohibition of contract's performance

(S0038/2018/NZ; date of coming into force: 8/9/2018 – confirmed by R0086,0087,0088/2018)

The administrative proceeding was initiated on basis of a complaint. The complainant claimed imposition of prohibition of public contract's performance "The procurement of ammunition 2017/I - assault hand grenades 2", which had been concluded between the contracting authority and a selected supplier. This contract is subject within the field of Defence and Security and therefore, it was necessary to assess whether consequences of potential prohibition of contract's performance would seriously compromised the existence of broader defence or security program, which is essential for the security interests of the Czech Republic, and also, if there are reasons worthy of specific consideration connected with the public interest in fulfilment of the contract.

The Office concluded that although there are reasons for the imposition of prohibition public contract's performance, because of its concluding despite statutory prohibition, there are also reasons worthy of specific consideration connected with the public interest in dismissal of imposition of the prohibition. Therefore, the performance of the contract is being prohibited by expiry of seven-month period after the decision came into force.

## Provision of Healthcare Services in the Health Facility of Hospital Litoměřice, and Provision of Related Activities

Contracting authority: **Hospital Litoměřice**

Remedy: Cancellation of award procedure

(S0217/2018/NZ; date of coming into force: 26/11/2018 – confirmed by R0147/2018)

The Office concluded in this proceeding initiated *ex officio* that the contracting authority did not followed the procedure rules set for simplified awarding of a concession pursuant to Article 99 (2) of the Public Procurement Act, because it had changed the tender specifications concerning requirements to demonstrate economic and technical qualifications. By the change in the tender documentation, it changed qualification criteria, and consequently, it did not adequately prolong the period for the submission of bids.

In this case, the Office dealt with the specificities of the simplified procurement regime, which is alongside to below threshold and above threshold procurement characterized by the lowest level of regulation and highest level of discretion when setting the tender specifications and award procedures. The Office stated that although the contracting authority is allowed in this regime to change tender specifications even in a course of award procedure subject to fundamental principles, the Article 9 of the Public Procurement Act applies entirely. The Office concluded that the abovementioned procedure of the contracting authority could deter certain suppliers interested in the contract, and thus cancelled the award procedure.

## Surgical Microscope for Ophthalmological Surgery - Microscopic System for Intraocular Surgery

Contracting authority: **University Hospital Ostrava**

Remedy: Cancellation of decision excluding tenderer

(S0088/2018/NZ; date of coming into force: 16/8/2018)

Proceeding was initiated on the basis of a complaint. The complainant claimed that his exclusion from the tender based on a failure to meet technical conditions was illegal and unjustified; to

support his assertion he argued that the technical solution he offered (RESIGHT 700) is at least adequate to the tender specifications.

The Office decided to have an expert opinion carried out, which compared the offered microscope containing RESIGHT 700 system with the technical specifications in the tender documentation. The expert opinion showed that the offered microscope containing RESIGHT 700 system is indeed at least adequate to the specification for the requested use and application. Therefore the Office decided that the contracting authority infringed the rule set by the Article 48 (2) letter a) of the Public Procurement Act by excluding the tenderer, although solution offered by him was equivalent to the technical specifications requested by the contracting authority. As a remedy for the illegal procedure of the contracting authority, the Office cancelled the decision excluding tenderer as well as all following acts of the contracting authority.

## IDM - Identity Management

Contracting authority: **Správa železniční dopravní cesty, státní organizace (i.e. Management of Railway Transport Network)**

Remedy: Cancellation of decision excluding tenderer

(S0088/2018/NZ; date of coming into force: 11/5/2018)

In this case, the Office assessed the decision of the contracting authority excluding tenderer from the award procedure on the grounds of failure to prove compliance with the technical qualification pursuant to Article 79 (2) letter b), c) and d) of the Public Procurement Act. The Office decided that the findings of the contracting authority are unsubstantiated.

The reason for the exclusion of the complainant was the fact that he had not proved the compliance with the technical qualification by reference contracts related to an independent identity management system or that he had not submitted a certificate for an independent information system.

The Office concluded that the requirement according to which the reference contract should be "independent identity management system" (and consequently, it can't be part of a broader IT system) was not laid out by the tender specifications. Therefore the contracting authority infringed the rules provided by Article 48 (1) and 48 (2) letter a) of the Public Procurement Act and it also violated the principle of transparency provided by Article 6 (1) of the same act.

## Supply of Information System to the Moravian-Silesian Region

Contracting authority: **Moravian-Silesian Region**

Remedy: Cancellation of award procedure

(S0158/2018/VZ; date of coming into force: 16/11/2018 – confirmed by R0149/2018)

In this case the Office concluded that the contracting authority laid down the specifications of this public procurement contrary to the principle of non-discrimination because it had defined the performance of the public contract so broadly, that the number of potential suppliers might have been limited.

The contracting authority requested in its tender documentation a supply of hardware including system according to technical specifications and supply of personnel administration as well as payroll application software. By this request, the contracting authority joined two different subject-matters of the contract with its nature and characteristics incompatible with typical commercial practices into one public tender. In this case, a limited number of supplies were able to submit bids, compared to the situation when these performances would be awarded separately.

## Flow Cytometers

Contracting authority: **Faculty of Chemistry of Brno University of Technology**

Remedy: Cancellation of award procedure

(S0341/2018/VZ; date of coming into force: 6/11/2018)

The contracting authority infringed Article 245 (1) of the Public Procurement Act by not deciding on the objections of the complainant within the time limit set by the abovementioned provision of the Public Procurement Act. The contracting authority decided on the objections actually twice – first, by its decision of 17 August 2018, which was cancelled by its further decision of 24 September 2018 and secondly the contracting authority decided on the objections by its decision of 9 October 2018. The Office concluded that the period for dealing with objections shall be considered unique and unrepeatable, and it can't be reactivated outside the scope of the Article 263 (5) of the Public Procurement Act (when the decision on objections is cancelled by the Office as a remedy). Therefore, the contracting authority's procedure was contrary to the law and it can't be applied or remedied after the expiration of the time limit set by Article 245 (1) of the Public Procurement Act.

## SECOND-INSTANCE PROCEEDINGS

A total of 188 appeals were filed in 2018, which means a decent decrease in comparison with 2017. Almost every third decision was appealed on average. A total of 209 second instance decisions were issued and in 66.5% of cases a first-instance decision was confirmed and an appeal dismissed. In 38 cases, imposed fines were confirmed in the total amount of CZK 4,285 million.

The average length of the administrative proceedings in the second instance was shortened already in the last year, and this trend continues. During 2018 the Office issued its appeal decisions in 57 days on average. As of 31 December 2018, the second instance conducted only 40 ongoing proceedings, all of those were initiated in the last two months of 2018.

### Second-Instance Decision-Making in Area of Public Procurement

Number of appeals filed against first-instance decisions		<b>188</b>
Initiated second-instance administrative proceedings		<b>188</b>
Reopened administrative proceedings because of cancelling judgements of administrative courts		<b>14</b>
Second-instance administrative proceedings pending as of 31/12/2018		<b>40</b>
Issued decisions on appeals	Total	<b>209</b>
	of which	
	• decision of the first instance confirmed and appeal dismissed	139
	• decision of the first instance cancelled and returned for re-examination	31
	• decision of the first instance cancelled and the proceedings terminated	21
	• appeal dismissed for inadmissibility	3
	• decision of the first instance changed	1
	• resolution of the Chairman on termination of proceedings after withdrawal of appeal	9
	• decision of first instance cancelled	5
Number of appeals solved in the first instance (autoremedy)		<b>0</b>
Procedural resolutions of the Chairman of the Office		<b>42</b>
Decision of the Chairman of the Office on imposition preliminary measures		<b>5</b>
Correcting decision of the Chairman of the Office		<b>1</b>
Fines	Number of imposed fines	<b>38</b>
	Total amount of imposed fines	<b>CZK 4,285,000</b>

## IMPORTANT NUMBERS

**209**  
decisions issued

**57**  
days – speed of decision-making

## CASES / SECOND INSTANCE PUBLIC PROCUREMENT

### Manufacture and Supply of Lattice Full-Screwed Pylon Constructions for Outdoor Lines of 400kV

Contracting authority: **ČEPS, a. s.**

Decision cancelled and returned for reconsideration

(R0153/2018/VZ; date of coming into force: 7/11/2018)

The subject matter of this case concerned the use of exemptions in relation to a reference to specific product. According to Article 89 (5) of the Public Procurement Act, the contracting authority may use such reference with the aim to advantage or disadvantage certain suppliers only in case such action is reasoned by the subject matter of the public contract. This first exemption applies especially on the situation when the contracting authority specifies through references its current equipment, with which the subject matter of the public contract must be compatible.

The second exemption from the prohibition of using references, that advantage or disadvantage certain suppliers or products, is set up by Article 89 (6) of the Public Procurement Act. This exemption applies in situations, when the subject matter of the public contract can be defined sufficiently and comprehensively only through technical requirements according to Article 89 (1) of the Public Procurement Act. In this case, it is possible to use reference to certain supplier or product, although the contracting authority is obliged to admit possibility to offer equivalent solution.

Both these exemptions shall be interpreted strictly (very rigorously) and the contracting authority shall be able to justify its actions when using such reference.

### Cleaning Services for Faculty of Electrical Engineering

Contracting authority: **Faculty of Electrical Engineering of Brno University of Technology**

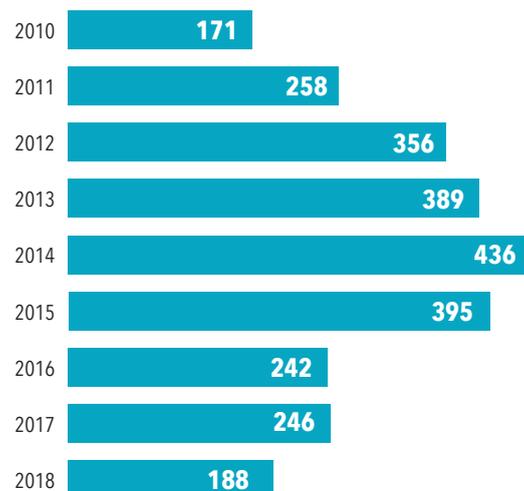
Appeal dismissed

(R0211/2017/VZ; date of coming into force: 12/2/2018)

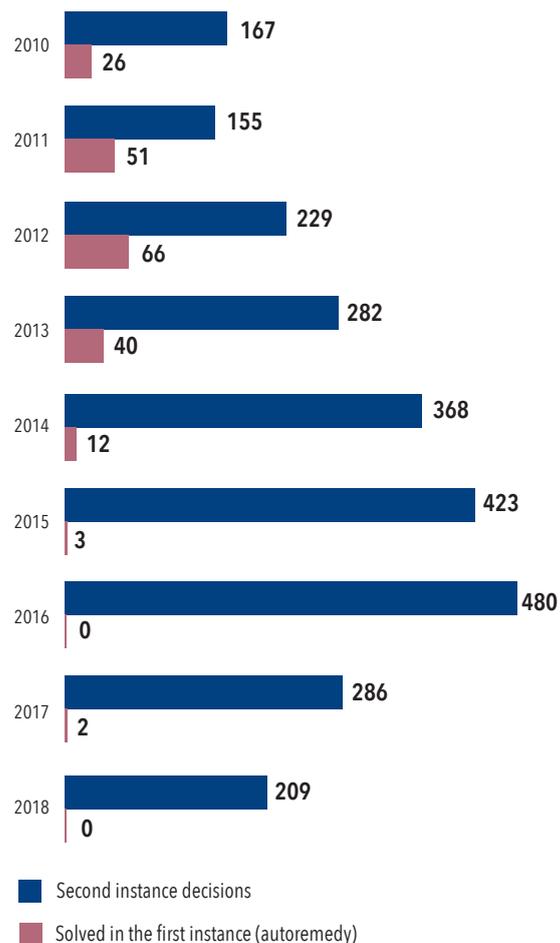
In this case, the Office assessed the procedure of the contracting authority, by which it reacted to concept of "self-cleaning" used by the excluded tenderer. The Office concluded that there may be circumstances under which the applied measure could be considered as sufficient, so the contracting authority is obliged to accept such measure in compliance with the transparency principle. In such case, the tenderer renews his participation in the award procedure.

In this case, the tenderer was excluded from the award procedure because his managing director had been during the last five years convicted of committing a crime, which is listed in the annex 3 to the Public Procurement Act. This fact created an obstacle to fulfilling basic competence within the meaning of Article 74 of Public Procurement Act. The tenderer responded by accepting of a corrective measure and changed his managing director – the new one had no criminal record. This corrective measure applied by the tenderer led to full revalidation of tenderer's competence to participate in award procedure for the public contract in question.

### Number of Appeals Filed against First-Instance Decisions



### Number of Appeals Solved within Appeal Proceedings



## Reconstruction and Intensification of WTP Mokošín

Contracting authority: **Vodovody a kanalizace Pardubice, a. s. (Water and Sewerage Services Pardubice)**

Appeal dismissed

(R0053/2018/VZ; date of coming into force: 1/6/2018)

Within the proceeding initiated ex officio the Office imposed a fine for illegal contracting authority's procedure when dealing with tenderers' objections. The decision of the Office followed the first-instance decision file No. ÚOHSS0098/2017/VZ-12065/2017/523/ASo, by which it had imposed remedy Cancellation of a decision on objections. In the appeal, the contracting authority objected that for one infringement (in this particular case insufficient dealing with objections) it is not possible to impose both remedy and, in the following procedure, fine as well. The Chairman confirmed the decision, concluding that both these measures (remedy and fine) have different objectives and they can be generally used together in the administrative proceeding. Consequently, the principle *ne bis in idem* was not breached, because remedy and fine can be considered compatible.

## Breeding Establishment for Elephants

Contracting authority: **ZOO a zámek Zlín-Lešná, příspěvková organizace**

Decision cancelled and returned for reconsideration

(R0152/2018/VZ; date of coming into force: 15/11/2018)

In this decision, the Chairman of the Office commented on requirements for details in the decision of contracting authority on selection of supplier within the simplified under-threshold procedure. Article 123 of the Public Procurement Act does not apply in such procedure and there are no other statutory requirements, it is clear that in the simplified under-threshold procedure, the requirements for notice on the selection of supplier are less strict

## IMPORTANT NUMBER

# 96.8%

Success rate of the decision-making of the Office in the field of public procurement

## JUDICIAL REVIEW

Regarding the judicial review, a clear decrease can be seen both in number of actions brought before the Regional Court in Brno (by 40%) and in number of cassation complaints brought before the Supreme Administrative Court (by 43%). On average, every fourth second-instance decision was challenged by action. The Regional Court in Brno issued a total of 76 judgements in the last year and it represents an increase by almost 12%. In six of those, the second-instance decision of the Office was cancelled because of later legislation more favourable for the complainant. Amendments to legislation were introduced always after the decision of the Chairman of the Office became final. The Supreme Administrative Court issued 46 judgement, that means increase by 24% compared to the previous year.

### Statistics of Judicial Review

Number of administrative actions brought before Regional Court in Brno		<b>52</b>
Number of cassation complaints brought before Supreme Administrative Court		<b>29 (14 of those brought by Office, 15 by party)</b>
Number of issued judgements	Regional Court in Brno	<b>76</b>
	Supreme Administrative Court	<b>46</b>
Of which in favour of the Office	Regional Court in Brno	<b>54</b>
	Supreme Administrative Court	<b>23</b>
In favour of a party	Regional Court in Brno	<b>22</b>
	Supreme Administrative Court	<b>23</b>
Decision on imposition of a preliminary measure (prohibition of concluding contract) by Regional Court in Brno		<b>1</b>
Percentage of success of decision of Office with respect to total number of decisions issued by first and second instance in 2018 (i.e. 716 decisions)		<b>96.8%</b>

### Success Rate of the Decision-Making of the Office in Field of Public Procurement in 2018

#### Number of decisions issued in first and second instance challenged by an action (including orders in force)

# 664

Number of decisions of the Office challenged by action before the Regional Court in Brno (not including decisions irrevocably cancelled)

# 29

Number of decisions of the Office irrevocably cancelled by administrative courts

# 23

### Renovation of Vzlet Cinema

Contracting authority: **Municipality of Prague 10 District**

Action refused by Regional Court in Brno

(R0070/2016/VZ; 62 Af 29/2017)

In this case the contracting authority and a chosen candidate originally concluded a lease contract and at the same time a contract, pursuant to which a tenderer committed itself to renovate the building of Vzlet cinema. Renovation works should be paid in form of a discount on rent and reimbursement of costs. The contracts have been partially performed. Consequently the parties concluded an agreement on the lease termination and on a settlement. The contracting authority obliged itself to pay constructor's costs related to construction work done. Both parties de facto concluded contract for pecuniary interest related to the tender consisting of execution of construction renovations of the building of Vzlet cinema. Such renovation fell within the scope of public tender but no award procedure has happened.

The contracting authority brought an action against the decision of the Office's Chairman before the Regional Court in Brno. The Court found that although the settlement agreement followed the previous obligation, the settlement gives rise of a new obligation. Former obligation extinguished and *actus reus* of the administrative offence was charged at the moment of the settlement agreement conclusion. The contracting authority has infringed the law although at that moment there wasn't possibility to demand constructing works in new award procedure. The contracting authority had got stuck in the situation by its own fault related to its previous actions. It is not reasonable excuse for the infringement.

### Provision of Secure Communication Services for Prisoners

Contracting authority: **Vězeňská služba České republiky** (Prison Service of the Czech Republic)

Action refused by Regional Court in Brno

(R0161,R0163/2017/VZ; 30 Af 23/2018)

The contracting authority committed an administrative offence pursuant to Art. 27 (1) letter c) of the Concession Act, when awarded the contract within a small scale concession procedure without publication of a contract notice. The contracting authority has failed to prove that presumed income of the concession holder fixed on the day of the opening of concession procedure should not exceed the limit provided by the Concession Act. The contracting authority should award a contract within a standard concession procedure. Should the contracting authority used an exemption to general rule, it had to bear the burden of proof in relation to presumed income of the concession holder which shall not exceed the limit of CZK 20 million provided by Art. 5 (2) of the Concession Act. In order to prove it the contracting authority shall conduct an expert and a reasonable estimation of the presumed income of the concession holder. However in this case the analysis of the contracting authority had not been supported by any factual evidence.

The Regional Court in Brno had not agreed with the objections of the plaintiff and concluded that it is necessary to assume the value of presumed income of the contracting authority in its whole complexity and take into account all relevant circumstances.

### Renovation of Infusion Equipment

Contracting authority: **University Hospital Hradec Králové**

Action refused by Regional Court in Brno

(R0062/2018/VZ; 62 Af 76/2018)

The Office has not found an infringement in relation to the tender documentation. Contracting authority's request on providing of compatibility of demanded devices with consumable materials of 4 different producers together with contractual penalty fulfilled a legitimate aim of the contracting authority. At the same time the tender specifications were designed sufficiently and transparently. The appeal was dismissed.

Within the judicial review the Court didn't find the contractual terms to be illegal and concluded that these terms were justifiable in relation to needs of the contracting authority having in mind that it had tried to ensure future effective competition between suppliers of consumable material for demanded devices. According to complainant the procedure constituted "the new form of discrimination" consisting in the request to ensure compatibility of devices for certain period after its delivery because such request is capable to deter some suppliers because of risks and a significant level of discretion on the contracting authority's side. In this regard the Court concluded that the Office has to examine apparent excessiveness of contractual terms constituting the infringement and not the fact whether these terms comply with tenderers' expectations within the private-law relationship constituted by concluding a contract. According to the Court's findings the Office had no reason to examine the facts given by the contracting authority or to conduct a market survey in case the complainant hadn't plead these facts during the administrative proceeding.

# STATE AID

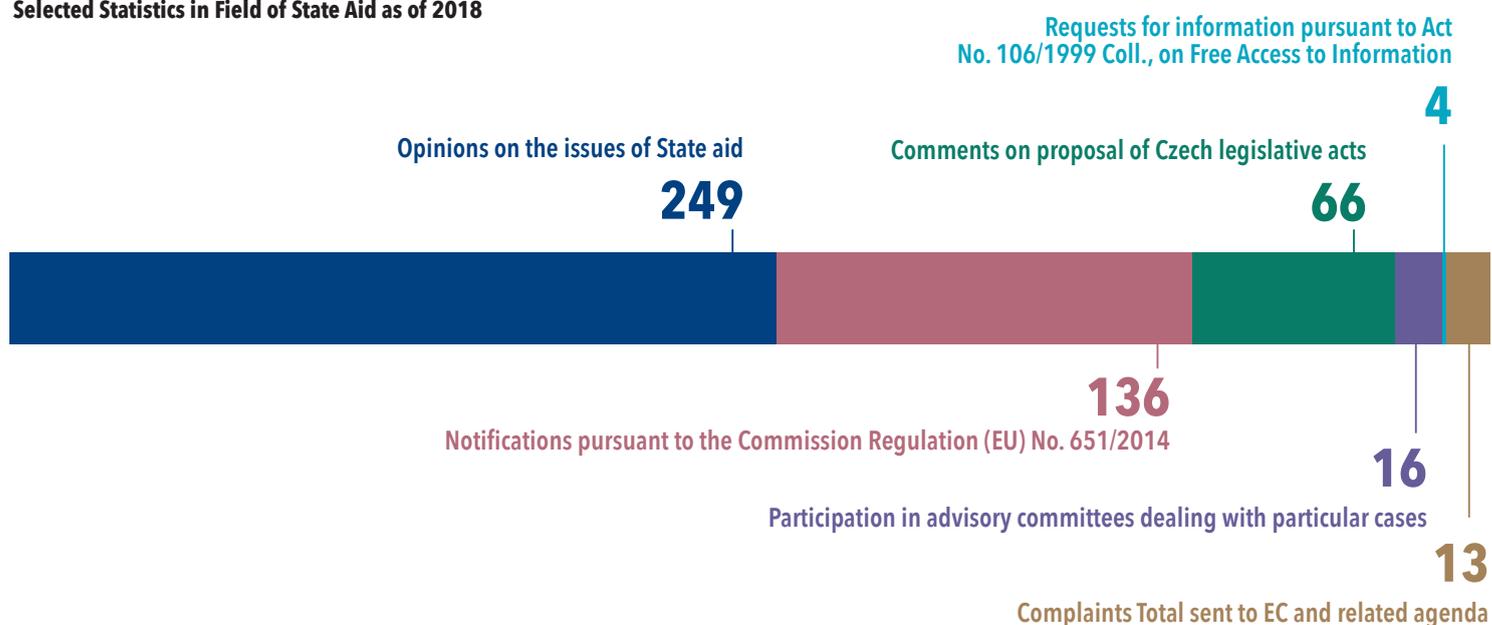
The Office actively participates also in the field of State aid. It represents a coordinating body performing central coordinating, advisory, consultancy and monitoring activities in all areas, with the exception of agriculture and fisheries where the Ministry of Agriculture is competent authority. The Office's role in the field of State aid consists primarily in the cooperation with the providers on preparing the notification about State aid measures for the European Commission. Moreover, the Office cooperates with the European Commission and the providers in the proceedings before the Commission, both in the proceedings concerning the notified State aid and in cases of unlawful State aid, abuse of State aid, existing State aid schemes, or where the Commission carries out an investigation in the Czech Republic. The Office provides expert advices and consultancy to providers already at a preparation of programs stage or ad hoc State aid. Besides that, the Office is the administrator of the *Central register of de minimis aid* and from 2016 the national coordinator of the *Transparency Award Module* (the information system of the European Commission „TAM“).

Even in 2018 the Office organized two-day international conference on State Aid Law with more than 150 participants (for more information see chapter Public Relations). During the autumn, the workshop for *de minimis* aid providers was held twice in a row at the headquarters of the Office. The workshop presented the rules for providing *de minimis* aid and during its practical part participants were trying to solve model examples and analyse model cases. As a part of State aid providers' awareness-raising, the Office organized training courses on the topic of *de minimis* aid and its records into the central register for employees of the General Health Care Insurance Company and training courses dedicated to State aid in health sector for employees of the Supreme Audit Office.

The Office in cooperation with the Ministries, regional authorities and the majority of municipalities prepared the regular report on the implementation of the Commission Decision on the application of Article 106 (2) of the Treaty on the Functioning of the European Union to State aid in the form of public service compensation granted to certain undertakings entrusted with the operation of services of general economic interest. The text of the report will be published on the European Commission's website which already contains the reports summarizing the implementation of the above mentioned decision in previous years.

In 2018, the Office cooperated with State aid providers, inter alia, in cases of monitoring carried out by the European Commission. It was a case of research and development monitoring and film industry monitoring. In none of these cases, the Commission has found any infringement of the General Block Exemption Regulation (hereinafter referred to as "GBER"). The Office had also participated in drawing up the mid-term review of the investment incentive scheme evaluation, which was presented to European Commission in December 2018.

## Selected Statistics in Field of State Aid as of 2018



During 2018, the working group for State aid transparency organized a meeting in Brussels addressed to representatives from the Member States and the European Commission. This meeting was focused on the agenda of exchange of best practices within the area of State aid monitoring. Commission presented the current form of the transparency rule and attached its findings and insights resulting from the first checks of compliance with these rules carried out in March and April 2018. Then it was emphasised that similar checks with broader extent will be carried out in early 2019. European Commission also updated the definition of "single aid" in relation to fulfilment of the transparency obligations. Although the transparency requires in principle the cumulation and publication of the State aid on projects, formal checks will be mainly focused on compliance with minimal requirements provided in Article 8 of the GBER. Last but not least, system TAM was supplemented by the provider's possibility to record State aid granted to cross-border projects, new large-scale State aid recording and the system's duplication control function.

**Notification and Prenotification pursuant to Commission Regulation (EU) No. 651/2014 as of 2018**

**Block exemption notification**



**Notification**



**Prenotification**



**LEGISLATION**

From February to May 2018, a public consultation on the review of the small and medium-sized enterprises definition was in progress (SME definition). The consultation was announced by the European Commission bearing in mind that the Commission Recommendation 2003/361/EC of 6 May 2003 concerning the definition of micro, small and medium-sized enterprises no longer reflects the current situation, in particular from an economic perspective (market situation, unemployment, etc.). The definition is not even in line with the legislative framework and evolving practice of the European Court of Justice and its decision T-675/13 and T-587/14. Within the scope of the public consultation the Office has taken the opportunity to make observations related to this issue.

With the effect from 31 December 2018, the European Commission extended for two years the applicability of Commission Regulation (EU) No. 360/2012, on the application of Articles 107 and 108 of the Treaty on the Functioning of the European Union to *de minimis* aid granted to undertakings providing services of general economic interest. Therefore, the Commission Regulation No. 360/2012 will be applicable until the 31 December 2020.

Council Regulation amending Council Regulation (EU) 2015/1588 of 13 July 2015 on the application of Article 107 and 108 of the Treaty on the Functioning of the European Union to certain categories of horizontal State aid (Enabling Regulation), effective from 27 December 2018, aims to improve the interplay of horizontal and sectorial EU funding programmes with State aid rules.

The amendments to the adopted Enabling Regulation added into the Regulation two new categories: 1) *Member States' financing channelled through or supported by EU financial instruments or budgetary guarantees managed centrally by the Commission*, 2) *Aid for European Territorial Cooperation*. These categories mainly relate to the areas of: National financing combined with InvestEU Fund's instruments; Research, development and innovation; European Territorial Cooperation.

Concerning the national financing combined with InvestEU instrument, it will be appropriate to enable the Commission on the basis of amendment to the Regulation No. 2015/1588 to adopt block exemptions on State aid granted by Member State through financing, which is further provided on the basis of the EU financial instruments managed centrally by the Commission.

In the context of research, development and innovation aid, the Commission justified its proposal to amend Regulation No. 2015/1588 by the possibility to grant seal of excellence to some SME research projects under the Horizon Europe programme.

According to the European Commission, the support of the European Territorial Cooperation has been the main priority of the EU Cohesion Policy for many years. The current rules on State aid allow supporting projects of European Territorial Cooperation by public funds. The current GBER rules are also applied on State aid on costs incurred by participating of SMEs at the projects of European Territorial Cooperation. The Commission thus gained valuable experience in the field of State aid on the measures promoting the European Territorial Cooperation projects. For this reason, the Commission believes that it is possible through the Enabling Regulation justify that the block exemptions should be applicable on funding provided to support these projects.

In July 2018, the European Commission approved the Code of Best Practices for the conduct of State aid control procedures describing procedures and cooperation between Member States and the European Commission to address the State aid measures. The Code modifies the procedure of the preliminary examination of notified measures, dealing with complaints or newly introduces the so-called streamlined procedure in straightforward cases. During the streamlined procedure, the Commission within 25 days from the date of notification will endeavour to adopt a short-form decision finding that the notified measure does not constitute State aid. Also the provisions describing the Commission's procedures during the ex-post monitoring of notified State aid measures are newly incorporated into this Code.

On 18 December 2018, the European Commission adopted a Communication regulating the timetable established by Communication from the Commission on Guidelines on State aid to airports and airlines. The December's Communication extended the special regime for airports with an annual passenger traffic up to 700 000 until 3 April 2024. The Communication also gives the example of a calculation, which involves changes extending the above mentioned regime. Furthermore, on the basis of the newly adopted Communication, the re-evaluation of the special regimes applicable to the small airports is postponed. The new figures will be carried out as a part of the overall evaluation of the guidelines, i.e. by 4 April 2020.

### School Catering

On 4 July 2018, the European Commission issued a decision on State Aid SA. 38651 (2017/NN) - The provision of catering services in schools in the Czech Republic. The European Commission thus responded to the complaint concerning the financing of catering services at primary and secondary schools in the Czech Republic, alleging that it constitutes State aid within the meaning of Article 107(1) of the TFEU. In its decision the Commission has concluded, that financing of catering services provided by schools (public and private) from the state budget does not constitute a State aid. The provision of school's catering services for students in the Czech Republic does not represent economic activity, as it is a part of the Czech education system and fulfils an educational purpose. The European Commission further decided that even if the financing of these catering services provided to students by outsourced private catering providers (school facilities whose main activity is the provision of school catering) from the state budget constitutes State aid, it is still compatible with the internal market pursuant to the Quality Framework for Services of General Interest<sup>1</sup> and Article 106 (2) of the TFEU. The European Commission also noted that the catering services provided to general public by public and private schools and private providers of catering services as part of their complementary activities are not financed by public funds and therefore it does not constitute a State aid.

### Czech Post

At the beginning of 2018, the European Commission approved two State aid measures in favour of Czech Post. Namely, it was an aid on financing and operating of the Data Mailbox Information System within the period of 2018–2022, and aid on the financing of so-called universal postal service within the period of 2013–2017.

The issuance of both these decisions was preceded by relatively long-term cooperation between the Office and the European Commission. The first contact with the representative of the European Commission in this case was established already in 2015. On the Czech side, the communication with the European Commission was coordinated by the Office in cooperation with the representatives from the Czech Telecommunication Office, the Ministry of the Interior, the Ministry of Industry and Trade, and Czech Post. In particular, the duration of the administrative proceeding in these cases was affected by the existence of two complaints related to similar measures and the fact that the European Commission had to deal with them in parallel. Moreover, in a second case, there was a complication in a form of a facility for financing universal postal service, which was originally introduced for the period 2013–2014. Due to serious doubts of the European Commission about the facility applicability on current situation indicating a significant delay in whole process, the Czech authorities decided without any delay to initiate a process related to the amendment to the Postal Act, and as a result of which the relevant provision containing the provision in question has not been applied.

The volume of aid in both cases is amounted to billions CZK. Over the two billion CZK should be spent on the operation of Data Mailbox Information System within the five-year period, 2018–2022. Ensuring of the universal postal service for the entire period 2013–2017 will impose a burden on the state budget in amount of CZK 2.6 billion.

<sup>1</sup> Communication from the Commission on European Union Framework for State aid in the form of public service compensation, Official Journal of the European Union of 11 June 2012, C 8, page 15

## DE MINIMIS AID

In the area of State aid the Office conducts administrative proceedings against *de minimis* aid providers for the infringement of Article 3a (4) of the Act No. 2015/2004 Coll. The provision in question governs recording the *de minimis* aid data within the statutory deadlines into the Central register of *de minimis* aid and indicating reference to the legal instrument's name in the legal act granting the *de minimis* aid under which the aid was granted. In addition to the above mentioned proceedings, the Office also performs consultancy and advisory activities in the field of *de minimis* aid and prepares methodological documents related to the entry into the Central register of *de minimis* aid in cooperation with Ministry of agriculture. In 2018, the methodological guidelines to the *de minimis* register was amended in order to reflect the update of the applicant's solemn declaration for *de minimis* aid and the changes in the procedure of submitting the application for *de minimis* register access.

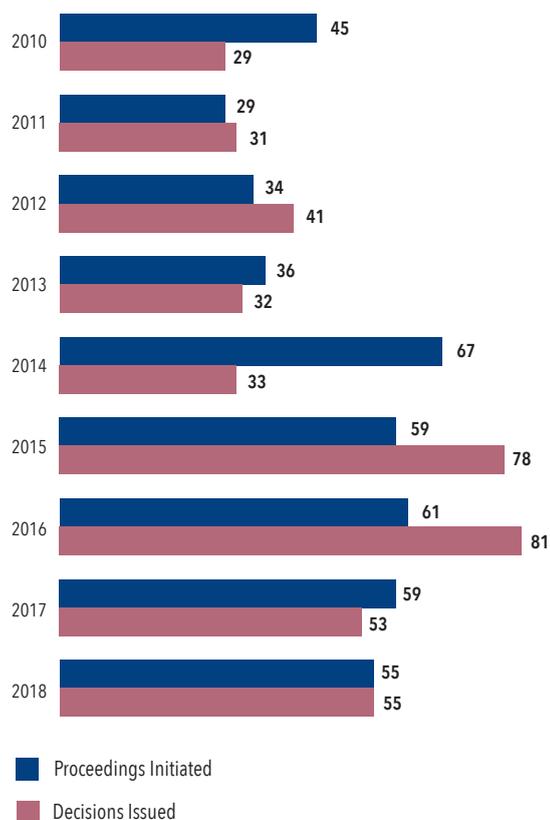
## SECOND-INSTANCE DECISION MAKING AND JUDICIAL REVIEW

During administrative proceeding conducted by the Office concerning the registration into the Central register, the Office received one appeal against first-instance decision in 2018, one second-instance administrative proceeding was initiated and four second-instance decisions were issued. In one case, the first-instance decision was annulled and returned for further consideration. In three remaining cases, the first-instance decisions were confirmed. On the basis of second-instance decisions in the field of State aid there were imposed fines in a total amount of CZK 28,600. In 2018, one administrative action was brought against a second-instance decision related to provision and registration of *de minimis* aid and no judgements has been issued.

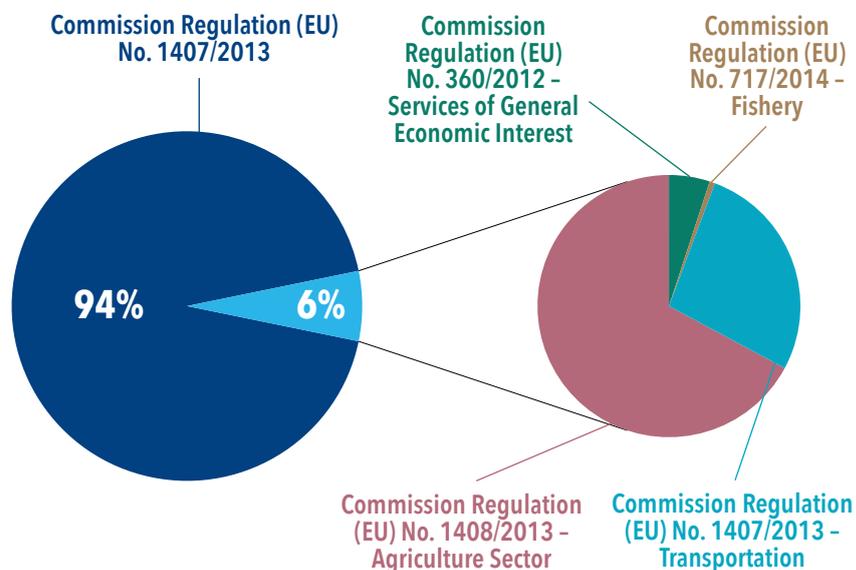
### Requests for Access to the Central Register of De Minimis Aid



### Initiated Administrative Proceedings and Decisions Made



### Statistics of Provided De Minimis Aid as of 2018 pursuant to the Particular Regulations



# INTERNATIONAL COOPERATION

An integral part of the Office's activities represents the cooperation with the foreign institutions involved in the establishment and enforcement of competition laws, both at the European and global level.

Even in 2018, the Office was active within a lot of international organisations and platforms, such as European Competition Network – ECN, bringing together competition authorities of the Member States of European Union or International Competition Network – ICN, bringing together the competition authorities across the globe. The trio of major international organisations dealing with the competition issues is completed by the Organisation for Economic Cooperation and Development – OECD.

## EUROPEAN COMPETITION NETWORK – ECN

In particular, the Office's employees are actively involved in variety of the ECN's working groups focusing on partial aspects of competition law. The most active working groups are dealing with cartels, mergers, cooperation issues, food and retail chains or digital investigation. Within the ECN, there is also an intensive exchange of information shared between the national competition authorities in the form of request for information (hereinafter referred to as "RFI"). In 2018, the Office responded to 75 RFI concerning a wide range of aspects and competition law issues, such as regulatory practice in various sectors of the Czech economy or specific issues concerning individual competition cases. At the same time, the Office sent two requests of this type to other competition authorities in 2018.

The other form of cooperation within the competition authorities is represented by request on assistance pursuant to the Article 22 of the Regulation No. 1/2003 Coll. The Office obtained three requests pursuant Article

22 and two times send this kind of request to other competition authority within the ECN. One of these requests aiming on the level of royalties imposed by collective managers was addressed to seven competition authorities of the Member States of the European Union.

In 2018, the Office actively participated in the EU legislative process within the ECN+ project when the representatives of the Office joined the EU Council's drafting process on Directive of the European Parliament and of the Council to empower the competition authorities of the Member States to be more effective enforcers and to ensure the proper functioning of the internal market. The Directive which was approved at the end of 2018 and published in the Official Journal of the European Union on 14 January 2019, shall ensure the national competition authorities have the power to effectively enforce the competition rules of the EU so they can make unbiased decisions and that they have the human, financial and technical resources necessary for the effective performance of their duties. The Office will be involved in transposition process into the national law which is planned for the next two years.

## INTERNATIONAL COMPETITION NETWORK – ICN

With relation to the International Competition Network, in 2018 the representatives of the Office participated in an annual conference held in March in New Delhi. Another important event was an international workshop for members of working group dealing with mergers, which was held in November in Tokyo. As the technical innovations and capabilities of the large amount of Member States evolves, the share of participation of the ICN members and, hence, the Office in the online "ICN webinars" is gradually increasing, making it easy to discuss the current competition issues with the worldwide experts and save money for travel reimbursements.

## ORGANISATION FOR ECONOMIC COOPERATION AND DEVELOPMENT – OECD

The Organisation for Economic Cooperation and Development has been for a long time addressing the new trends and innovations moving competition law and also it deals with the economies of developing countries and aims to associate the new Member States, which can benefit from the membership in this organisation and to exchange experience with the colleagues from developed countries. At the June and November's OECD Competition Committee meetings, the most discussed topics concerned the challenges and co-ordination of leniency programmes, excessive pricing in pharmaceuticals or gun jumping and suspensory effects of merger notifications. On this occasion, the Office's representatives provided contribution within the discussion about the last mentioned issue.

## WORLD COMPETITION DAY 2018

Even in 2018, the Office supported the idea of the World Competition Day, and joined the thirty competition agencies promoting this initiative. The date of 5 December was carefully chosen to correspond to a date of 5 December 1980, which is the day of the adoption of the United Nations Set of Multilaterally Agreed Equitable Principles and Rules for the Control of Restrictive Business Practices, commonly known as the United Nations Set of Principles and Rules on Competition. This set has guided a large number of developing countries in developing and enacting their competition laws. The main topic of the World Competition Day 2018 was dedicated to the digital economy and relation between innovation and competition.

## BILATERAL RELATIONS

In addition to regular meetings with other Member States representatives within the international conferences and platforms, the Office is also developing the bilateral relations with partner competition authorities from the entire world.

In January 2018, the Office concluded the Memorandum of Cooperation with the Slovak Office for Public Procurement (Úrad pre verejné obstarávanie), which has been entrusted with the power to supervise the public procurement in the Slovak Republic. The Memorandum was signed by Mr. Petr Rafaj, the Chairman of the Czech Office, and Mr. Miroslav Hlivák, the Chairman of the Slovak Office for Public Procurement. The purpose of the Memorandum is to strengthen bilateral cooperation within the two above mentioned institutions, in particular through regular consultations and mutual exchange of experience and information on legislation, methodology and case law. Bilateral cooperation in this field is all the more important given that there is no common platform for public procurement at European level to serve as an equivalent to the European Competition Network. A practical demonstration of this established partnership was, for example, the autumn participation of the Czech Chairman at an educational event at one of the primary schools in Bratislava, where the representatives of both offices explained to young scholars in an entertaining way how the public procurement works.

During 2018, the Office welcomed a delegation from the Georgian Competition Authority represented by its Chairman, Mr. Nodar Khaduri. The representatives from the Office shared their experiences in the field of competition law enforcement and presented the Office's



(from left) Hynek Brom, Nodar Khaduri (25/7/2018)

functioning and the core powers with an emphasis on analysis of interesting competition cases. This visit followed the previous meeting of representatives of both authorities in Georgia in 2017, which was attended by several Czech competition law experts who lectured the local professional public in order to raise the awareness of the enforcement of national and EU competition law.

During the St. Martins Conference held on 14-15 November 2018, the Chairman of the Office signed a Memorandum of Cooperation with the Chairman of the Honduran Competition Authority, Mr. Alberto Lozano Ferrera, in order to build a partnership with the competition authorities from the non-European states. By this agreement, both competition authorities primarily agreed on mutual cooperation in a form of exchange of knowledge and experience.



(from left) Alberto Lozano Ferrera, Petr Rafaj (14/11/2018)



(from left) Miroslav Hlivák, Petr Rafaj (26/1/2018)

# PUBLIC RELATIONS

## OFFICE ON TWITTER



In summer 2018, the Office joined the Twitter through its official account @UOHS\_CZ and within just a few months gained more than 550 regular followers.

On Twitter, the Office shares the recent press releases on decisions made, forthcoming conferences and seminars or other activities that undertakes in the area of competition, public procurement, significant market power and State aid. However, a large part of the published content is represented by shared contributions describing activities of the European Commission and foreign competition authorities or judgements of the Court of Justice of the European Union. Regular observers should therefore be informed about all significant decisions related to competition across Europe. The last part of contributions consists of links on journalistic and professional texts, which deal with the current topics and trends in the field of competition.

By the above described composition of contributions, the Office intends to change its twitter account into a useful information source for all those who are closely interested in the broader context of competition issues.

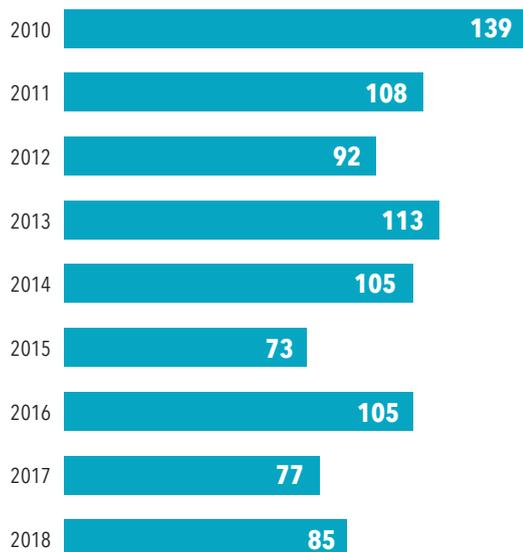


Informing the professional as well as the general public about its activities is one of the priorities of the Office. This is done mainly through the Office's website ([www.uohs.cz](http://www.uohs.cz)), which includes, except the latest press releases and news, also collection of final decisions, judicial review on decisions, overview of annual reports and information bulletins issued by the Office on particular topics, information on conferences organised by the Office, the Czech and the European legislation and other information regarding all competences and powers of the Office in the field of competition, public procurement, State aid and significant market power. In 2018, the Office issued the Annual report describing activities within the year 2017 and two information bulletins named the State aid and Office - Effective supervision over public procurement and competition regulation.

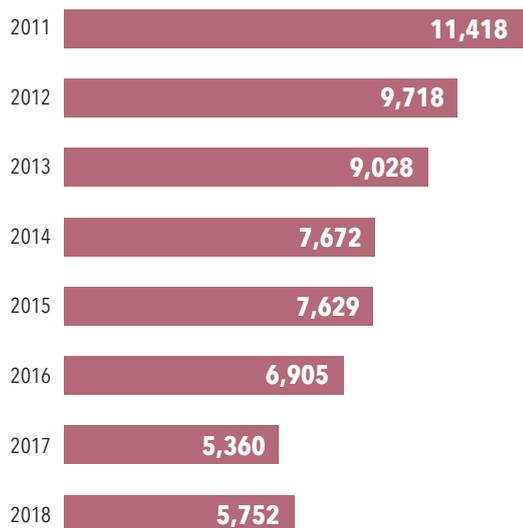
Relations with media form a key component of the Office's public relations. In 2018, the Office provided the media with the 85 press releases and hundreds of answers to questions from journalists and representatives of various non-profit organisations and agencies. The media partner of both international conferences organised by the Office in 2018, namely St. Martin's Conference and conference on State Aid Law, was Ekonomický deník, which brought detailed on-line reports from these events. The media published 5,752 articles mentioning activities of the Office. According to a media analysis of the company Newton Media, the daily MF Dnes was the one with the largest amount of these articles, followed by the daily Právo and daily Hospodářské noviny. From audiovisual media, the most active channels dealing with competition issues were ČT1 and ČT24. The Office has been cooperating also with other media, such as Český rozhlas, zdopravy.cz, TV Nova or Prima. The media informed the public about the activity of the Office with the neutral connotations in 89% of its contributions, ambivalent tone had 10% of them. Almost two thirds (62.9%) of the contributions have been focused on the agenda of public procurement in the field of transportation and 24% dealt with the construction. Among the journalists, who mentioned the Office very often in their articles, we can name Jan Sůra (zdopravy.cz), Tomáš Cafourek (MF Dnes), Michal Pavec (Lidové noviny) and Adam Váchal (Hospodářské noviny).



### Amount of Issued Press Releases



### Amount of Articles Mentioning Office within Monitoring of Media



## ST. MARTIN'S CONFERENCE 2018

A traditional introductory overview of current trends and developments in competition law in the Czech and European legal areas at the twelfth edition of the two-day St. Martin's Conference, held by the Office on 14-15 November, was enriched by the speech of Mr. Alberto Lozano Ferrera, Commissioner President of the Honduran Commission for the Defense and Promotion of Competition, who introduced the competition protection system in this Central American Republic. Following the introductory speeches, the one of the most significant European experts on the competition law Mr. Frederic Jenny, the Chairman of the OECD Competition Committee, summarized in his presentation five areas where he sees the greatest challenges to which the competition authorities are facing nowadays. Namely, he mentioned cooperation between competition authorities, access to excessive prices, the necessity of competition neutrality in relation to provided State aid, assessment and the importance of the innovations during the authorization of mergers and the consideration of fairness aspects in decision-making process of the competition authorities concerning for example the impacts on the labor market, as it is often the victim of the competition efficiency.



Hynek Brom, Alberto Lozano Ferrera, Boris Gregor, Frédéric Jenny



Hynek Brom, Alberto Lozano Ferrera



**Michael Mikulík, Michal Výtisk, Jiří Kindl, Anita Lukaschek, Doris Hildebrand, Hans-Petter H. Hanson**

As part of the discussion on selected issues of private enforcement of competition law, Mr. Michael Mikulík, the Head of the Division of 2<sup>nd</sup> Instance Decision-Making, compared the requirements for the role of competition authorities provided by the European Directive (2014/104/EU) with the requirements imposed on the Office pursuant to the Act on Competition Damages and on amendment of the Act No. 143/2001 Coll., on the Protection of Competition and on amendment of Certain Acts (Act No. 262/2017 Coll.). In comparison to the Czech judicial practice, which has not yet used the assistance of economic experts to calculate the damage caused by an infringement of the competition rules, around 500 to 600 of the proceedings dealing with the quantification of damage in competition law based on the economic experts opinions have already been proceed in front of the civil courts in Germany, said professor Doris Hildebrand (EE&MC). Damage claims that originate in the Czech Republic are also brought before the German courts because the Czech courts do not have enough experience with this issue. The current practice in this manner in the Austria was presented by Ms. Anita Lukaschek from the Vienna office of Baker & McKenzie. The second panel was concluded by Mr. Hans-Petter H. Hanson from DG Competition, who described a new methodology for national courts to address the issues related to the passing-on price increase.

Another topic of conference was focused on the competition in the heavily regulated area of the healthcare sector. The



**Petr Solský, Jeroen Capiou, Jindřich Fialka, Jacek Marczak**



Hynek Brom, Hassan Qaqaya, Daniela Lukáčová, Barbora Dubanská

specifics of the healthcare sector in the Czech Republic presented the attorney at law, Ms. Barbora Dubanská. Namely she focused on insufficient evaluation and benchmarking systems creating the inability to properly reward the quality healthcare facilities.

Within the panel named as Significant Market Power – Harmonisation of the Fight against Unfair Trade Practices within EU, the Vice-Chairman of the Office Mr. Petr Solský, spoke about the situation in the Czech Republic. Mr. Jeroen Capiou from the DG Competition described a draft of the European Directive on unfair trading practices in business-to-business relationships in the agricultural and food supply chain, which was presented to EU Council in April 2018. The main aim of the Directive is to establish minimum common standards of protection for small and medium-sized enterprises and suppliers in the food chain against the unfair trading practices across the whole EU.

Parallel workshops were dedicated to the topics of settlement, excessive prices and significant market power. In the final panel devoted to bid rigging was performing Mr. Alexandros Papanikolaou from DG Competition and he summarized the European Commission’s approach to public procurement cartels.

For more information see: <https://www.uohs.cz/en/information-centre/conferences-and-workshops/past-events/st-martins-conference-2018.html>



(from left) Kamil Nejezchleb, Alexandros Papanikolaou, Petr Zákoucký, Michal Fiala

## CONFERENCE ON STATE AID 2018

The Office organized two-day international conference on State Aid Law from 30–31 May 2018, which presented the latest development in State aid to the representatives of providers and recipients of State aid. It was focused mainly on the financing of infrastructure projects and the issue of State aid for research, development and innovations. The opening speech was given by Mr. Petr Solský, the Vice-Chairman of the Office, who presented the recent Office's activities in the area of State aid. Mr. Ondřej Landa, the Deputy Minister of Finance, spoke about the state involvement in companies in terms of State aid, particularly he mentioned granting loans and capital raising. Afterwards Ms. Libuše Bílá, the head of the Office's State Aid Unit, focused on the amendment of the General Block Exemption Regulation and regional investment aid. Mr. Martin Fott from the DG Comp devoted his speech to revision of the Code of Best Practices for the conduct of State aid control procedures. The amendment to this methodological document should be an imaginary accomplishment of the already implemented reform of procedural rules.



(from left) Petr Solský, Ondřej Landa, Libuše Bílá, Martin Fott



Sibylle Summer, Bernhard von Wendland

The panel dealing with State aid for research, development and innovation launched a fruitful discussion of several panellists. At the beginning Mr. Bernhard von Wendland, the representative of the European Commission, spoke about knowledge transfer, research organisations and university education. Then Ms. Sibylle Summer from Austrian's Federal Ministry for Digital and Economic Affairs described the research organisation and their funding. Her speech was followed by Mr. Martin Bunčák from the Technology Agency of the Czech Republic, who explained the research, development and innovation aid from the provider's point of view. This section was concluded by Mr. Milan Bumbálek from the Ministry of Education, Youth and Sports of the Czech Republic presenting selected issues connected with the Operational Program Science, Research and Education.

In the next part of the conference, Mr. Michael Kincl from the Supreme Court of the Czech Republic summarized the recent case law developments of the European Commission and EU courts.

The conference participants received practical advice and learned useful information as well as experience based on the European case law, which are essential especially for providers of State aid in the field of infrastructure projects. The representative of DG COMP, Ms. Lida-Konstantina Balta, contributed to the discussion with the insights related to funding of the water infrastructure and waste management.

For more information see: <https://www.uohs.cz/en/information-centre/conferences-and-workshops/past-events/conference-on-state-aid-law-2018.html>

# PROVIDING INFORMATION PURSUANT TO ACT NO. 106/1999 COLL., ON FREE ACCESS TO INFORMATION, DURING 2018

## 1) Amount of received requests for information pursuant to Act No. 106/1999 Coll., and the amount of decisions refusing requests:

Field	Amount of Requests	Amount of Issued Decisions
Competition	46	23
Public Procurement	50	13
State Aid	4	2
Significant Market Power	1	1
Legislative/Legal Requests	1	0
Other	13	2
<b>In total</b>	<b>109</b>	<b>41</b>

## 2) Amount of appeals against Office's decisions pursuant to Act No. 106/1999 Coll.:

10 appeals

## 3) Amount of complaints on application procedure when assessing the requests pursuant to Act No. 106/1999 Coll.:

3 complaints

## 4) Court judgements concerning the Office's competences in field of providing information:

- 29 A 167/2015-33 – Judgement of the Regional Court in Brno of 11 December 2017, the decision of the Chairman is annulled;
- 29 A 219/2017-45 – Judgement of the Regional Court in Brno of 13 July 2018, the decision of the Chairman is annulled;
- 5 As 47/2017-38 – Judgement of the Supreme Administrative Court of 31 January 2018, the cassation complaint of the Office is dismissed;
- 1 As 417/2017-39 – Judgement of the Supreme Administrative Court of 14 March 2018, the cassation complaint of the Office is dismissed;
- 9 As 178/2017-34 – Judgement of the Supreme Administrative Court of 12 September 2018, the cassation complaint of the Office is dismissed.

## 5) Results of proceedings on sanctions for not compliance with Act No. 106/1999 Coll.:

- confirmation of the reimbursement pursuant to the Article 17 of the Act No. 106/1999 Coll.
- order to reassume the request,
- confirmation of the correct procedure of the Office in rejecting the request.

## 6) List of exclusive licenses granted:

No exclusive licence was granted by the Office.

# AGENDA 2019

## COMPETITION

Three fields of interest are crucial for 2019 in the area of competition.

First one is the continuation in the trend of detection and investigation of prohibited conduct both in the areas of prohibited agreements and abuse of dominant position. To achieve this goal, the Office will enhance its already strong cooperation with the law enforcement authorities, not only at the level of statutory information exchanges, but also by educational means oriented towards other public authorities. Further, the Office plans to intensify the use of collecting evidence on-line by new methods, including algorithms allowing faster and more precise enforcement in the cases of possible distortion of competition. Based on recent experience of the Office, it is clear that many anticompetitive practices are now taking place in cyberspace. It is Office's duty to react to this fact and to adjust its enforcement methods.

Second task for 2019 is raising awareness of competition issues not only within the professional community, but for the common citizens as well, because for them, the concept of competition law is often still just a nebulous idea. To do so, a new dedicated website will be launched, containing illustrative examples, educative videos and explanations targeting wide business community. Through this activity, the Office shall contribute to more open and better defined role of the public authorities in modern-day society.

Third field of interest for 2019 is implementation of the Directive of the European Parliament and of the Council 1/2019 (ECN+ Directive) into the Czech legal system. In this process, the main purpose of the Directive, i. e. more effective enforcement of the competition rules while ensuring proper functioning of the EU internal market, shall be preserved. Even though the Directive ensures a higher level of independence for the Office, it does not exempt it from responsible and effective exercise of the powers conferred on it.

## SIGNIFICANT MARKET POWER

The most important moment in the legislative area in the year 2019 will be the launch of legislative work on Amendment to the Act on Significant Market Power following the approval of Directive on unfair trading practices in business-to-business relationships in the food supply chain.

The priority of the Office in the upcoming period remains supervision of the compliance with the Act on Significant Market Power and to sanction the UTP in business-to-business relationships in the food supply chain. In the past few years, the Office applied several alternative solution procedures in order to streamline repairing relations between retail chains and their suppliers. Moreover in 2019, the Constitutional Court of the Czech Republic should finally adopt its opinion on whether the national legislation is in line with constitutional standards.

In 2019, the Office also intends to conclude the sector inquiry initiated in 2018. The main purpose of this inquiry is to find the most comprehensive answer to current issues that the Office has recently faced. In particular, it concerns the effects of the Amendment to the Act on Significant Market Power, application of certain provisions of this amendment in practice, the Office's competence in the area of prices, etc. The Office will use its findings in preparation work of the next amendment to the above mentioned Act.

In order to improve business-to-business relations, the Office will continue to cooperate with other central administrative bodies and trade union associations. Also a part of the agenda of St. Martin's Conference will again be devoted to the current issues in the field of UTP.

## PUBLIC PROCUREMENT

In line with the increasing degree of digitalization of public procurement and public administration, the Office has taken a further step towards the digitalization of its administrative proceedings so the files newly created in 2019 are kept only in electronic form. In accordance with the change of the form of documents, there is also a change in a method of administrative file's inspection, which is now being carried out at the Office's headquarters in electronic form.

## STATE AID

The European Commission announced its intention to extend the application of seven State aid regulations concerning the State aid, which would otherwise expire at the end of 2020. At the same time, the Commission started the process of evaluation of these and other regulations, which will be followed by the decision on possible updates of these regulations or the extension of their validity even after 2022. The regulations concerned are:

- Commission Regulation (EU) No. 651/2014 of 17 June 2014 declaring certain categories of aid compatible with the internal market in application of Articles 107 and 108 of the Treaty, so-called General Block Exemption Regulation (GBER);
- Commission Regulation (EU) No. 1407/2013 of 18 December 2013 on the application of Articles 107 and 108 of the Treaty on the Functioning of the European Union to *de minimis* aid;
- EU guidelines for regional aid for 2014 to 2020;
- Communication from the Commission on Guidelines on State aid to promote risk finance investments;
- Communication from the Commission on Guidelines on State aid for environmental protection and energy 2014–2020;
- Communication from the Commission on Guidelines on State aid for rescuing and restructuring non-financial undertakings in difficulty;
- Communication from the Commission on Criteria for the analysis of the compatibility with the internal market of State aid to promote the execution of important project of common European interest.

Moreover, works on the revision of the SME definition should continue and the Commission should propose a new wording of this definition. This will be followed by the public consultation on the Notice on the recovery of unlawful and incompatible State aid.

As of 30 April 2019, all public State aid providers are obliged to provide the Office with the information on the amount of (i.e. paid) State aid granted for the calendar year 2018. This duty to provide requested information does not concern the measures granted under the *de minimis* scheme or under the rules governing providing the services of general economic interest.

Also the negotiation with the European Commission on (pre) notified measures and complaints on alleged unlawful aid will continue. To address these cases, the Office actively cooperates with the European Commission and relevant public State aid providers.

## INTERNATIONAL COOPERATION

In 2019, the Office will endeavour to reach a consensus with the Slovak competition authority on the conclusion of an international cooperation agreement pursuant to Article 20 (5) of the Competition Act, aiming to strengthen the mutual cooperation and exchange of information beyond the EU regulation. The power of the Office to conclude such agreement is directly provided by the Competition Act.

# ORGANISATIONAL STRUCTURE

