

Annual Report 2015



OFFICE FOR THE PROTECTION OF COMPETITION

Table of Contents

Foreword	3
Protection of Competition	4
Significant Market Power	20
Public Procurement and Concessions	22
State Aid	44
International Cooperation	56
Personnel Agenda	60
Information Activities	64
Agenda 2016	72

OFFICE FOR THE PROTECTION OF COMPETITION

tř. Kpt. Jaroše 7, 604 55 Brno CZECH REPUBLIC

Editorial board: Milena Marešová, Martin Švanda

Photo: Archive of the Office, Michaela Holly, Jef Kratochvíl

Telephone: +420 542 167 111

Fax: +420 542 167 117

E-mail: posta@compet.cz

<https://www.uohs.cz/en>

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Foreword

Although I emphasise, under all circumstances, that the work and purpose of the Office for the Protection of Competition consists mainly in efforts to remedy defective conditions in the market and to eliminate violations of rules in the award procedure and not in the imposition of fines, I cannot start assessing the results of the year 2015 with anything else than a record-high sanction. The highest fine in the history of OPC was imposed last year for a cartel of construction companies. The final fine for the seven members of the cartel eventually amounted to nearly CZK 1.66 billion. This was the result of a three-year investigation, in the course of which we kept detecting more and more contracts that were illegally influenced by prohibited agreements of construction companies. By issuing its final decision, the Office completed its work and I firmly believe that our findings and their legal assessment are sufficiently convincing to be upheld by the Administrative Court, to which actions will be undoubtedly filed.

We recorded great progress in the area of public procurement, where we managed to significantly increase the efficiency of the process of first-instance proceedings in the second half of 2015. Currently, the average period until the issuance of a decision is 22 days. This fact was also noted by the professional community, and I am pleased that the speed of the decision-making process is currently very welcomed unlike in previous years of constant criticism.

Contracting authorities, as well as the Office as the supervisory body, however, will have to deal with a major change in the near future, i.e. with the new act on public procurement. Throughout the last year, we have been working alongside the Ministry for Regional Development on preparing the best possible draft law that would utilise our experience and bring more efficient review of public contracts. The law is currently in the Parliament, and I believe that the final version of the law will allow for simple but transparent procurement.

Significant market power has already been addressed in a revised law, despite the numerous controversies between the addressees of the law. Thanks to that fact, we eventually got the possibility to work with more easily applicable regulation that will benefit the entire food retail sector and reconcile the relations between retailers and their suppliers.

In June 2015, I was proposed by the Government, and subsequently appointed by the President, for a second term of office. I believe that the results of the Office achieved under my leadership will confirm the correctness of this step, especially in the year when the protection of competition in the Czech Republic celebrates its 25th anniversary.



A handwritten signature in blue ink, appearing to read 'Petr Rafaj', written over a light grey rectangular background.

Petr Rafaj

Chairman of the Office for the Protection of Competition

01

Competition

Protection of competition aims to protect the phenomenon of competition, i.e. in particular to oversee compliance with the competition rules and promote the development of competition among individual entities in the market.

All undertakings seek to achieve their business objective, i.e. profit, by offering goods or services under more favourable terms than their competitors. The customer decides on and selects a specific product mainly based on the price and quality of the goods. The efforts of the undertakings to offer products at a higher quality and a lower price than their competitors are the main impulse of the economy as they force companies to rationalise and make production more efficient, and to introduce innovations and technical novelties. However, undertakings must set their business strategies individually and independently of others as only in that case competition can actually work and bring the above mentioned benefits. Similarly, the competitive environment may be distorted if one of the undertakings gains such a strong market position that the presence of competitors does not need to be taken into account.

The responsibility of the competition authorities is to protect the competitive environment, in particular to search for and suppress prohibited agreements among undertakings, to act against the abuse of an existing dominant position of certain undertakings, and to prevent the emergence of dominant positions threatening competition by control of concentration between undertakings. The Czech Act on the Protection of Competition (143/2001 Coll.) then adds the supervision of anticompetitive conduct by public authorities. In addition to national legislation, the Office for the Protection of Competition (hereinafter referred to as "the Office" or "OPC") may, where alleged anticompetitive conduct may influence the markets of multiple EU Member States, apply Articles 101 and 102 of the Treaty on the Functioning of the European Union.

Prohibited Agreements

In terms of competition law, such agreements among undertakings that significantly eliminate or restrict free competition in the market are prohibited. By participating in the agreement, the undertakings give up their free and individual market strategies and do not compete for customers by means of price or quality.

Typical examples of prohibited agreements are cartels, i.e. horizontal agreements among direct competitors operating in the same market. Undertakings enter into these agreements with the aim of reducing the risk resulting from competition and to ensure a stable profit. This is usually done by price fixing, market or customer sharing or by specifying quotas for numbers of products. One of the types of cartel agreements is the prohibited decision of association of undertakings, i.e. restricting competition among members of professional associations and chambers by decision of the management of such associations and, finally, also concerted practices.

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

In recent years, the priority of OPC has been the detection and fight against prohibited bid-rigging agreements, which are cartel agreements among bidders for public contracts. In such cases, bidders illegally cooperate to increase the contract price, to pre-determine the winner of the tender or to split contracts in certain regions. It is estimated that this causes the price of public contracts to increase by an average of 20 percent. This category includes a cartel of construction companies which was punished by a record-high sanction in 2015.

A fundamental investigative tool in detecting cartels is the so-called leniency program. If member of a cartel notifies the competition authority of the existence of a prohibited agreement and provides sufficient evidence to break the cartel and punish its members, it is provided with indemnity. A reduction of fines can be achieved

also by other members of a cartel if they apply for leniency in the course of the investigation and submit evidence with added informative value that helps to prove the cartel.

The settlement procedure can be considered to be a means of procedural economy. If a party to the proceedings applies for settlement, i.e. admits its guilt according to the findings of facts and legal classification of an offence by the Office, the resulting amount of the fine is reduced by 20%. The proceedings can be then quickly concluded, which saves the Office's human and financial resources. These savings are even more significant due to the fact that the party to the settlement proceedings usually does not appeal the decision, thus eliminating the cost related to the second-instance proceedings and subsequent judicial review. While the leniency program is available exclusively to members of cartel agreements, the institute of settlement can be used in virtually any sanction decision in the field of competition.

Abuse of Dominant Position

Competition law also prohibits the abuse of a dominant position. Undertakings are in a dominant position if they have such market power that allows them to act independently of their competitors. The mere existence of a dominant or monopoly position is not prohibited, but it is illegal to abuse this position and stricter rules apply to the dominant businesses in this respect than to regular undertakings. The most typical examples of abuse of dominance include charging unreasonably high prices, inconsistent application of contractual terms to customers, tying the sale of goods and services to the consumption of other products, limiting production or the market and, last but not least, selling at prices below cost to eliminate horizontal competition.

The dominant position is not determined only by the market share while it is generally accepted that undertakings with a share of less than 40 percent do not hold a dominant position. Other factors that the Office takes into account when assessing dominance include, *inter alia*, the economic and financial strength of competitors, legal and economic barriers to market entry, and the interchangeability of the products concerned. We detect dominant aspects mainly among former monopolies, particularly in network industries, namely energy sector, telecommunications and transport.

Concentration between Undertakings

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

In the Czech Republic, all mergers, in which the turnover of all merging companies achieved in the domestic market in the last accounting period exceeds CZK 1.5 billion, and at least two of the merging undertakings achieved a net turnover of more than CZK 250 million each in the last reporting period in the Czech market, or if the net turnover achieved in the last reporting period in the Czech market by at least one of the undertakings founding a joint venture exceeds CZK 1.5 billion and, at the same time, the worldwide net turnover for the last reporting period achieved by another undertaking exceeds CZK 1.5 billion, are subject to the Office's approval.

Anticompetitive Conduct by Public Authorities

The provisions of the Article 19a, pursuant to which public authorities must not favour a certain undertaking through their support or otherwise distort competition, were incorporated into the Act on the Protection of Competition in 2012. Public authorities can be fined up to CZK 10,000,000 for violating this provision. The above mentioned provision is too general and it should be amended in the foreseeable future.

Legislative Developments

In 2015, the Office drafted a detailed, yet in its nature rather technical, amendment to the Act on the Protection of Competition (hereinafter referred to as the "Competition Act"). The basic aim of this amendment is to unify the terminology of the Competition Act with the Act No. 89/2012 Coll., on the Civil Code ("New Civil Code").

Certain other problematic issues arose when applying the current Competition Act, in addition to the aforementioned non-compliance with the new Civil Code. First and foremost, Article 19a on "supervision of public authorities", i.e. the possibility to sanction public authorities for anticompetitive conduct, was newly incorporated into the Competition Act by the last amendment (360/2012 Coll.). However, the Office's competences in proceedings on violations of this provision were not clearly defined. At the same time, this provision was not reflected within the follow-up parts of the Competition Act. The possibility to sanction a public authority existed but, in practice, the provision stipulating this possibility was only barely applicable and enforceable. The amendment will narrow down and refine the actual definition of this offence when it expressly excludes the procedure according to the Administrative and Tax Code and matters concerning state aid.

Other notable changes include a more detailed regulation of the simplified procedure for control of the concentration between undertakings, where the Office previously lacked the possibility to request additional evidence from the parties to the proceedings without losing the benefits of the speed and simplicity of this procedure.

The amendment also intends to resolve the missing possibility of OPC to establish closer international cooperation with other competition authorities, where no parallel investigation pursuant to Articles 101 or 102 of the Treaty on the Functioning of the European Union was conducted. The Office also proceeded to regulate the regime of documents containing trade, banking or similarly protected secrets and other sensitive documents (documents issued in connection with the request to waive an imposed fine or its reduction) in more detail; offences or administrative offences consisting of "providing incomplete, incorrect or false information", or "failure to cooperate with the Office" will no longer be considered disciplinary violations of duties, but, instead, they will be material violations of duties, while only the failure to meet the deadline set by the Office for providing information will remain a disciplinary offence.

The last important area covered by the planned amendment is the possibility to review the Office's practices during the unannounced inspection of the business premises of undertakings in court proceedings for the protection against illegal intervention, instruction or coercion by an administrative authority. This provision reflects the judgement of the European Court of Human Rights dated 2nd October 2014 in the case of Delta pekárny a.s. where it was stated that the national legal system does not provide sufficient guarantees for the review of the legality of the Office's practices during the unannounced inspection of the business premises of undertakings. In the future, the competition law will explicitly stipulate the possibility of judicial defence against the alleged illegality of unannounced inspection.

The amendment should be discussed in the Chamber of Deputies of the Czech Parliament in the first half of 2016.

During 2015, the Office also focused on preparatory work necessary for the proper transposition of Directive 2014/104/EU of the European Parliament and of the Council of 26 November 2014 on certain rules governing actions for damages under national law for infringements of the competition law provisions of the Member States and of the European Union. This Directive aims to significantly facilitate the position of entities harmed by anticompetitive conduct in court proceedings for damages, therefore addressing a problem faced by entities in a number of EU Member States. Across the EU, this problem is implemented in various ways, ranging from separate statutory legislation, through integration into the competition rules, to incorporation into the civil law system.

The Office has been pointing out for a long time that mainly cartel agreements result in price increases by up to tens of percent. Such price increases, based on the illegal conduct of undertakings, represent harm which is transmitted further down the distribution chain, often all the way to the end consumer. Given the complexity of disputes relating to compensation for such damage, the chances of persons, who incurred damages, are very low in a number of EU Member States. Through its involvement in transposition work alongside the Ministry of Justice, the Office is helping to create a legal environment that will allow those persons who incur damages to get compensation more effectively. Within its legislative work, the Office puts emphasis on maintaining the effectiveness of the protection of competition system using public means of competition law so as not to endanger its activities in detecting and investigating anticompetitive conduct. The Office takes into account the preservation of all specific available institutes in a fully functional form, especially leniency applications and settlement procedures. It is also necessary to find a suitable scheme of cooperation with civil courts that will decide on these types of claims.

Decision-Making Activities in the Field of Competition

In 2015, the Office initiated a total of 42 first-instance administrative proceedings in the field of competition. 38 decisions were issued. First-instance sanctions in the total amount of CZK 2,083,204,000 were imposed in eight sanction proceedings. As at 31 December 2015, another 24 administrative proceedings were in progress. The Office also received a total of 10 leniency applications and conducted a total of 17 dawn-raids.

In 2015, a total of 287 complaints were submitted, of which 127 concerned prohibited agreements, 98 concerned abuse of dominant position, 54 concerned surveillance of public administration and 8 concerned concentration between undertakings.

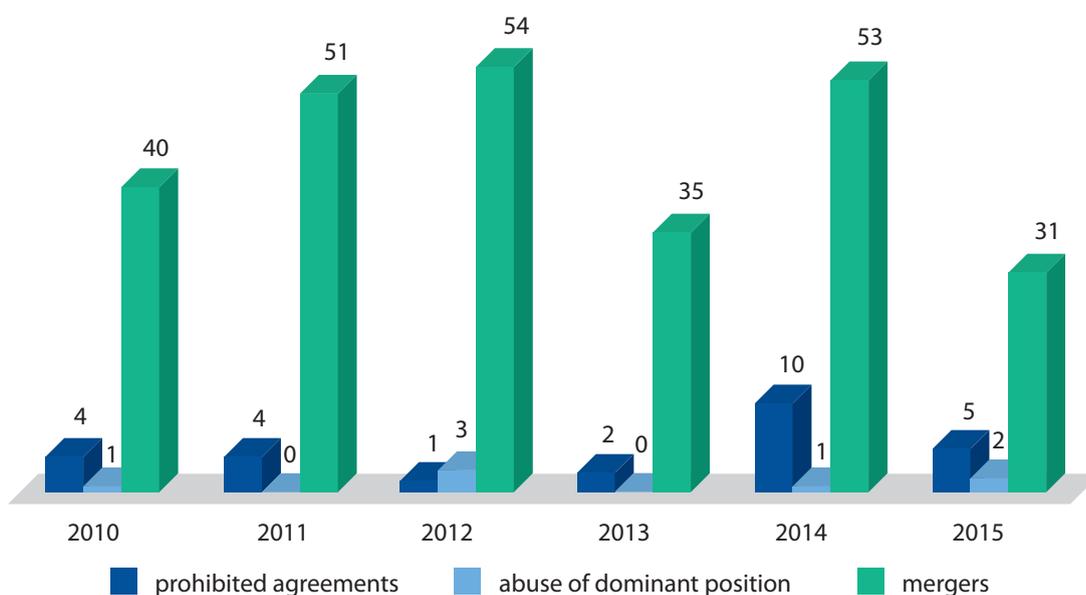
Number of complaints received by area	
Prohibited agreements	127
Abuse of dominant position	98
Concentration between undertakings	8
Supervision of public authorities article 19a	54
Total	287

Number of decisions issued by area	
Prohibited agreements	5
Abuse of dominant position	2
Concentration between undertakings	29+2

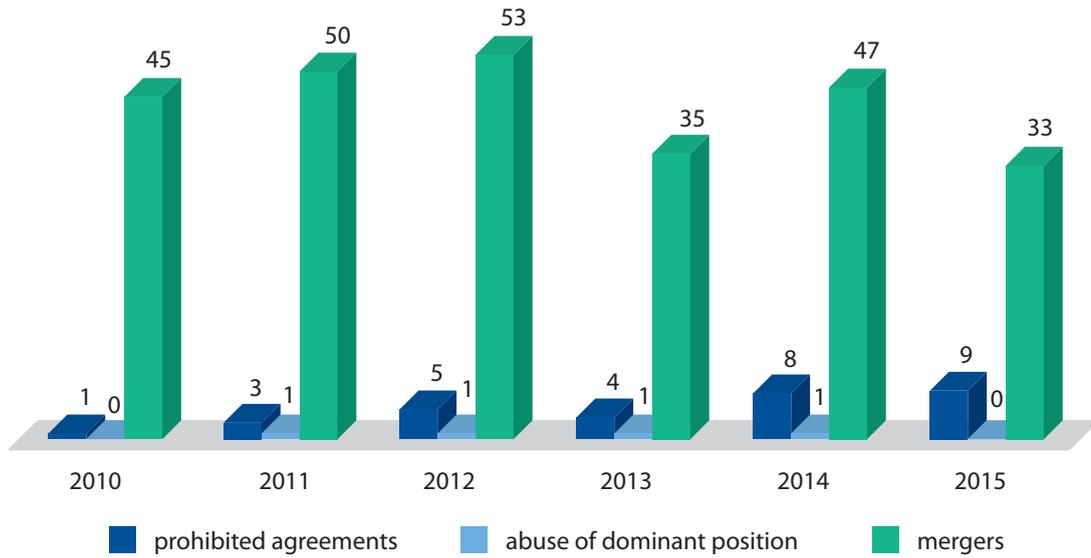
Number of proceedings initiated by area	
Prohibited agreements	9
Abuse of dominant position	0
Concentration between undertakings	33

Total amount of fines imposed in the course of first-instance proceedings	
	CZK
Prohibited agreements	2,071,995,000
Abuse of dominant position	2,199,000
Concentration between undertakings	9,010,000
Total	2,083,204,000

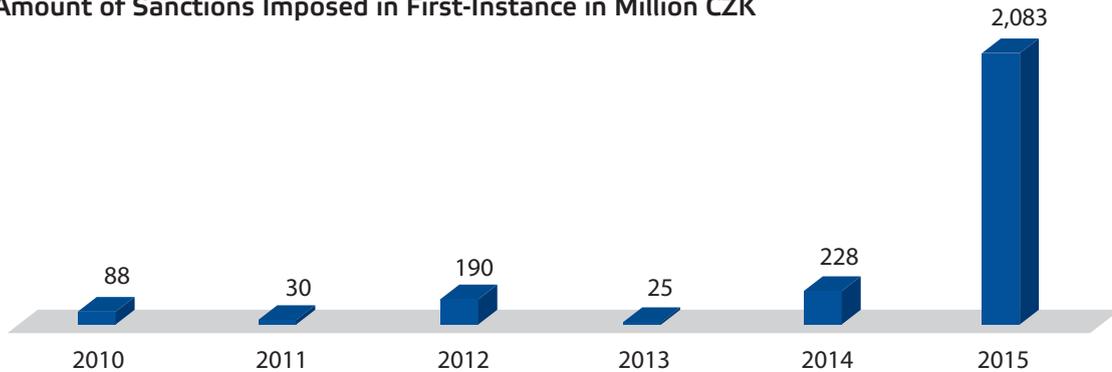
Number of Decisions Issued in the Field of Competition



Number of Administrative Proceedings Initiated in the Field of Competition



Amount of Sanctions Imposed in First-Instance in Million CZK



Prohibited Agreements

In 2015, the Office initiated 9 administrative proceedings in the field of competition; a total of 15 administrative proceedings were in progress at the end of the year. 5 decisions were issued, in 4 of which sanctions for violations of the Act on the Protection of Competition were imposed. The highest ever sanction in the history of the Office, which amounted to CZK 2.039 billion in the first-instance, was imposed for a bid-rigging cartel of construction companies. In addition to decisions on the merits, a decision imposing a disciplinary fine for obstructing the unannounced inspection was also issued.

Record-high Fine for a Cartel in the Construction Industry

Parties: STRABAG a.s., EUROVIA CS, a.s., SWIETELSKY stavební s.r.o., K – BUILDING CB, a.s., SaM silnice a mosty a.s., Stavební firma UNIKO spol. s. r.o. v likvidaci, M – SILNICE a.s., Lesostavby Třeboň a.s., BERGER BOHEMIA a. s., F.Kirchhoff Silnice s.r.o. in liquidation (party to the proceedings until its dissolution by deletion from the Commercial Register on 25 November 2015), Skanska a.s., MANE STAVEBNÍ s.r.o.
File number: S834/2014

First-instance fine: CZK 2,039,420,000 (CZK 1,659,993,000 after appeals decision)

Date of coming into force: 11 February 2016

In its first-instance decision of 6 November 2015, ÚOHS imposed fines totalling CZK 2.039 billion on STRABAG a.s., EUROVIA CS, a.s., SWIETELSKY stavební s.r.o., BERGER BOHEMIA a. s., Skanska a.s., and M – SILNICE a.s. and Lesostavby Třeboň a.s.

These undertakings operating in the construction industry, with the exception of Lesostavby Třeboň a.s., violated the Act on the Protection of Competition by coordinating their participation and bids in the tender for the public contract “R4 Mirovice – Třebkov”.

Parties to the proceedings STRABAG a.s. and Lesostavby Třeboň a.s. also violated the Act on the Protection of Competition by coordinating their participation and bids in the tenders for public contracts “Písek – Reconstruction of the site Bakaláře – Stage I” and “Reconstruction of Jeronýmova street in Třeboň”.

The total volume of these contracts exceeded CZK one billion without VAT, while the most important contract was the public contract “R4 Mirovice – Třebkov” totalling nearly CZK one billion without VAT. The concerted practices of the parties to the proceedings affected the results of the above tenders and led to the distortion of competition in the market of civil engineering in the Czech Republic.

Administrative proceedings regarding a potential violation of the Act on the Protection of Competition consisting in coordinating the participation and/or bids in the tender for the public contract “Revitalization of the Stará Pohůrka Village Square” was suspended by this decision due to the expiry of the time limit for the imposition of a fine.

OPC initiated the administrative proceedings against STRABAG a.s. and EUROVIA CS, a.s. in July 2012 based on the proposal of the Police of the Czech Republic, who forwarded anonymous submissions regarding public contracts announced by the City of Písek, and a possible cartel agreement among the bidders for these contracts, to the Office. The Office analysed contracts for construction work, focusing on civil engineering work contracted by the City of Písek, and found that the constant winner of these contracts was Strabag. Subsequently, the administrative proceedings were extended by another construction company while, in the autumn of 2014, part of the proceedings were separated for an independent decision in the matter of the 4 above-mentioned public contracts.

Based on the Chairman’s decision, ref. No. R381, 382, 388, 389, 390, 393, 395/2015-04749/2016/310/JZm, dated 8 February 2016, the decision was amended in the verdict of the sanction where the total amount of the fine imposed on the parties to the proceedings was reduced to CZK 1,659,993. The decision is final.

Bid-rigging of Construction Companies BS Vsetín and Nosta

Parties: **BS Vsetín, s.r.o., NOSTA, s.r.o.**

File number: **S204/2013**

First-instance fine: **CZK 5,878,000**

Date of coming into force: **Appeals filed**

In its first-instance decision of 16 April 2015, OPC imposed fines totalling CZK 5.878 million on BS Vsetín, s.r.o., and NOSTA, s.r.o. These undertakings operating in the construction industry violated the Act on the Protection of Competition by coordinating their participation and bids in tenders within the public contract “Supplier of Construction Work – KKC II. – Regional Directorate of the Police of the Zlín Region CZ.1.06/3.4.00/05.07008”.

The public contract was divided into 5 sub-sections, with the aforementioned undertakings coordinating their actions in two parts of the contract, the volume of which was about CZK 7 million. By their concerted practices, the undertakings distorted competition in the market of civil engineering in the Czech Republic.

OPC initiated the relevant administrative proceedings in April 2013 based on a proposal submitted by the Ministry for Regional Development of the Czech Republic, which started to suspect the practices of the bidders within the above-specified public contract. Specifically, the suspicion related to the coordinated intentional withdrawal of the winning bidders in two parts of the public contract (parts 1.1 “Kroměříž” and 1.5 “Horní Lideč”). When asked to sign the contract for work, Nosta and BS Vsetín (winners of the aforementioned parts of the public contract) refused to cooperate, therefore, in both parts of the public contract, the contracts were concluded with the second best bidders, who, however, were again these companies (“mirror order” of the first two places).

The decision is not yet final because the parties to the proceedings filed an appeal.

Prohibited Vertical Agreements on Resale Price Maintenance of Gorenje and Mora Products

Party: **GORENJE**

File number: **S421/2014**

Fine: **CZK 13,699,000**

Date of coming into force: **28 December 2015**

In its first-instance decision of 7 December 2015, the Office imposed a fine of CZK 13,699,000 on GORENJE for violating the Act on the Protection of Competition and the Treaty on the Functioning of the European Union. Together with the initiation of the administrative proceedings, the Office conducted an unannounced inspection at the business premises of GORENJE and MORA MORAVIA, both belonging to the Gorenje Group. The Office imputed liability for the anticompetitive conduct of the Gorenje Group only to GORENJE, which applied its own pricing policy in the sale of GORENJE and MORA appliances in the Czech and Slovak Republics. The Office proved that, since 8 February 2012, GORENJE concluded, primarily through e-mail communication with its customers, agreements to increase the prices of GORENJE and MORA appliances intended for sale to end consumers to the level of the minimum retail prices set by GORENJE. The prohibited agreements concerned both large and small household appliances, and products intended for heating, where GORENJE had a significant position in the domestic market for some of them.

GORENJE terminated its anticompetitive conduct in the course of the administrative proceedings when it electronically communicated to its customers that the prices of appliances set by GORENJE were only

recommended, non-binding, that GORENJE does not enforce compliance with these prices in any way, and that the customers always determine the prices of appliances for end consumers independently.

Since GORENJE fulfilled all the conditions of the settlement procedure, for which GORENJE applied in the course of the administrative proceedings, the fine was reduced by the statutory 20%. The decision was not appealed.

Alternative Solutions of Competition Issues

In certain cases of anticompetitive conduct that have not yet been implemented and therefore have not yet had any negative impact on the relevant market, the Office may proceed to a so-called alternative solution instead of initiating administrative proceedings and sanctioning the concerned undertaking. The undertaking is then given the opportunity to remove the possible competition-related issue and, if the Office concludes that the corrective measures are sufficient, the case will be closed without the initiation of administrative proceedings.

Collection of Prices of the Czech Guild of Floor Specialists and Floor Technology

On the basis of an anonymous complaint, OPC initiated an investigation into the activities of Guild of Floor Specialists and Floor Technology (hereinafter referred to as the "Guild") concerning the creation of a price list and the subsequent distribution of the Collection of Informative Prices of Flooring Work and Materials (hereinafter referred to as the "Collection") that were capable of affecting members of the Guild in setting the price.

OPC pointed out the anticompetitive nature of price lists created by the Guild in the years 2000 – 2005 and, subsequently, the Collection advertised on the Guild website, along with the prohibition of using dumping (meaning below-cost) prices contained in the internal regulations of the Guild. These activities of the Guild have the nature of determining prices by the association of undertakings, which is demonstrably addressed to its members and is capable of affecting their behaviour in market competition regarding its most important parameter - price.

OPC requested the Guild to make several corrections, to which the Guild consented. Subsequently, links advertising the Collection were removed from the Guild's website and the implementation of the relevant changes to the internal regulations of the Guild was promised. OPC decided not to initiate administrative proceedings in this case, mainly due to the absolutely marginal market share of the members of the Guild with very little actual impact on the conduct on consumers.

RPM Agreements on the Unification of Prices of AEG and Milwaukee

The Office received an e-mail addressed to customers of an undertaking engaged in the sale of hand tools, asking them to unify the prices of products under the brands AEG *and* MILWAUKEE from a specific date, even though the price lists (attached to the e-mail) were marked as recommended. The Office preliminarily assessed the conduct as a proposal to conclude a vertical price agreement that could, if accepted by the customers of the undertaking, meet the constituent elements of a prohibited agreement. Since the agreements were not being fulfilled and their impact on the competition (with regard to the estimated market share of the undertaking) was rather limited, the Office asked the undertaking to present such measures, the implementation of which would result in the removal of the likely competition problem and restoration of effective competition. The undertaking explained that the given situation occurred due to the incorrect and inadequate interpretation of information by its business representative, and that an e-mail was sent to the undertaking's customers

immediately upon receipt of a notice from the Office (before the specified date of unification of product prices). The email contained an explanation that the original communication regarding the request for compliance with prices according to the provided price lists would be against the law and therefore the product prices were for information only and non-binding. The Office reached the conclusion that the measures proposed and immediately implemented by the undertaking fulfilled the condition of sufficiency, i.e. they were of such a nature and intensity that their implementation would be able to justify the abandoning of an authoritative declaration of the unlawfulness of the conduct or the imposition of a sanction.

Abuse of Dominant Position

In the area of abuse of dominance, two decisions were issued in the first-instance, in one of which a sanction of CZK 2,199,000 was imposed, the decision was not final. At the end of 2015, a total of 4 administrative proceedings were in progress in this area.

Abuse of Dominance in the Market of Updated Data on Timetables

Party: **CHAPS spol. s. r.o.**

File number: **S669/2013**

Fine: **CZK 2,199,000**

Date of coming into force: **Appeal filed**

In 2012, the Office received a complaint from Seznam.cz, a.s., on the basis of which it initiated, after a conducted unannounced inspection on 31 October 2013, administrative proceedings against CHAPS spol. s. r.o. (hereinafter referred to as "CHAPS") regarding the possible abuse of a dominant position pursuant to the Article 11 (1) of the Act on the Protection of Competition and Article 102 of the Treaty on the Functioning of the EU. The first-instance decision was issued on 22 December 2015.

In its decision, the Office stated that CHAPS refused to make updated timetables accessible to other undertakings in the format in which they were created and mandatorily provided to it pursuant to legal provisions for the purposes of maintaining the Czech National Timetable Information System, in the period from 11 April 2008 to 31 August 2015, without objectively justifiable reasons. The requesting undertakings intended to provide products, for which these updated timetables were essential inputs. The practices of CHAPS caused harm to other undertakings and consumers and they also potentially affected trade among Member States in those markets. Through its actions, CHAPS abused its dominant position in the market of updated data on timetables submitted by the obliged entities into the Czech National Timetable Information System and distorted competition in the market of automatic transport connection search services with national coverage and the market of information on existing transport connection options in the Czech Republic. CHAPS was fined CZK 2,199,000 for violating the Czech and EU competition law. The decision is not yet final as CHAPS filed an appeal.

Anticompetitive Conduct by Public Authorities

Since 2012, when the last amendment to the Act on the Protection of Competition came into effect, public authorities have not been allowed, pursuant to the provisions of Article 19a of the Competition Act, to distort competition by providing support favouring a certain undertaking or otherwise. In case of violations of this provision, public authorities may face a fine of up to CZK 10 million.

After a sufficiently long transitional period, when the Office provided the time for the addressees of this provision to adjust their activities to the wording of the Competition Act, last year the Office initiated one administrative proceeding for possible violations of Article 19a of the Act on the Protection of Competition due to the alleged anticompetitive nature of a generally binding municipal ordinance regulating lottery activities. The Office decided to initiate the administrative proceedings even though it had previously preferred alternative solutions to competition problems in this area because it has been addressing the issues of generally binding municipal ordinances regulating lottery activities in the long term and, already in 2014, it issued an opinion in which it notified municipalities of possible regulatory issues and asked them to remedy the situation.

Concentration between Undertakings

In 2015, the Mergers Unit initiated a total of 33 administrative proceedings, of which 21 cases were concluded in simplified procedure and 10 in standard proceedings. The two initiated cases concerned a potential violation of the prohibition of concentration between undertakings without authorisation from OPC. A total of 31 first-instance decisions were issued, of which 20 were in the simplified procedure, and 9 were within the standard 30-day period. No proceedings were forwarded to the so-called second phase. First-instance sanctions of CZK 9,010,000 were imposed in two sanction proceedings for the violation of Section 18 (1) of the Act on the Protection of Competition.

Unauthorised Acquisition by the Undertaking GRADIENT GROUP s.r.o.

Party: **GRADIENT GROUP s.r.o.**

File number: **S837/2014**

Final fine: **CZK 1,461,000**

Date of coming into force: **12 January 2015**

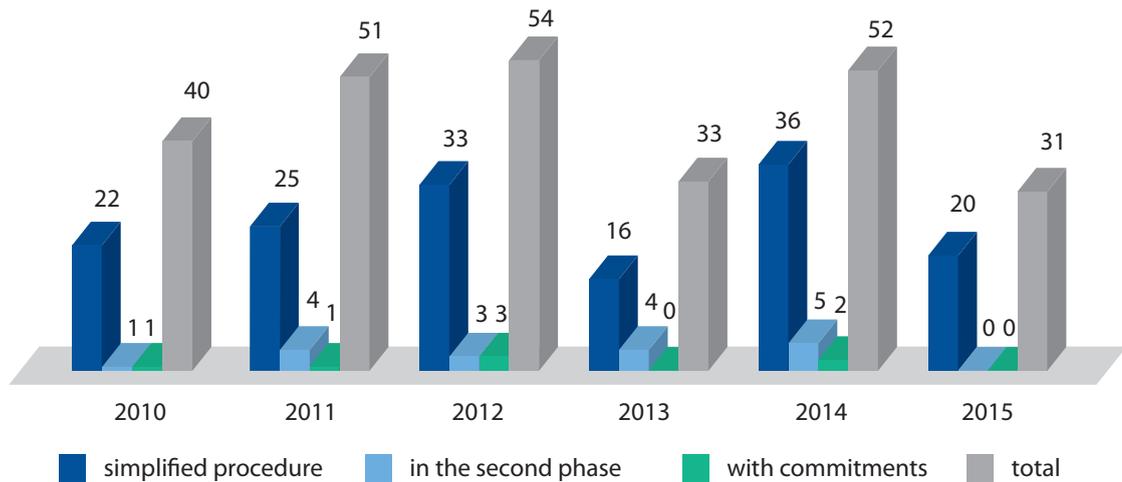
In December 2015, GRADIENT GROUP s.r.o. (hereinafter referred to as "GRADIENT") was fined CZK 1,461,000 by a first-instance decision for concentration with ALFA COMPUTER, a.s. (hereinafter referred to as "ALFA COMPUTER") before submitting the notification to the Office and the issuance of a final decision on the transaction by OPC. The settlement procedure was used in this case, in which the party to the proceedings acknowledged its unlawful conduct in exchange for a reduction of the fine. The decision was not appealed.

In 2014, as part of its monitoring activities, the Office found from publicly available information that, in 2013, GRADIENT obtained shares representing a 100% share in the registered capital of ALFA COMPUTER. Since the relevant transaction was subject to approval by the Office and the merging undertakings did not notify it, in October 2014 the Office initiated administrative proceedings regarding the alleged violation of the prohibition of concentration between undertakings before the notification of the transaction and before the issuance of the final decision by OPC authorising the above merger, which is stipulated in the Article 18 (1) of the Act on the Protection of Competition.

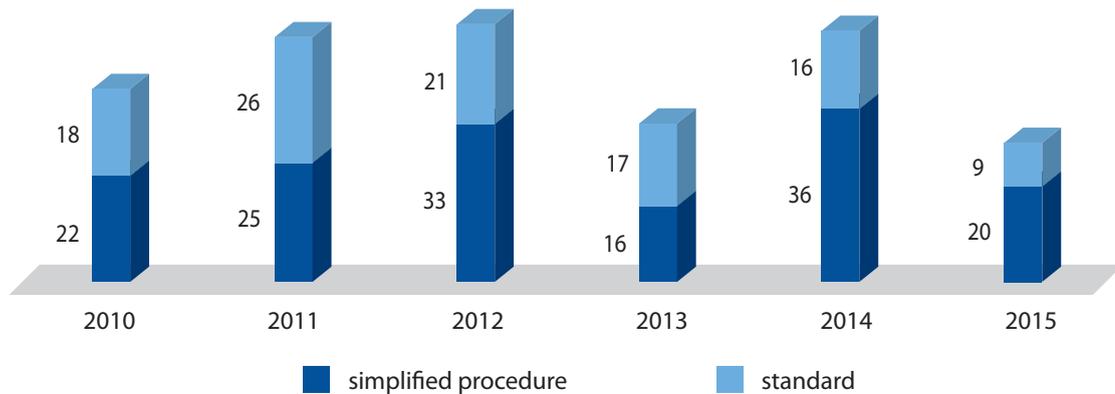
Based on the initiation of administrative proceedings, GRADIENT GROUP s.r.o. additionally notified the acquisition of control of ALFA COMPUTER, a.s. The relevant concentration was subsequently approved in a simplified procedure and the decision on the authorisation of the merger came into force in January 2015.

In the administrative proceedings, OPC found that GRADIENT had already acquired 100% of shares in ALFA COMPUTER in May 2013, and that it subsequently used its voting rights associated with the relevant shares at general meetings of the company for the first time in August 2013. In the present case, GRADIENT acquired the possibility to exclusively control ALFA COMPUTER without the appropriate authorisation by the Office, and this illegal state of facts lasted for approximately one year and five months.

Concentration of Undertakings by Type of Decision



Concentration of Undertakings - Simplified and Standard Proceedings



Appellate Proceedings

An appeal can be filed against the first-instance decision of the Office to the Chairman of OPC within 15 days from the delivery of the decision. On the basis of such an appeal, the Chairman of the Office examines the legality of the first-instance decision in the course of second-instance proceedings.

In 2015, 20 appeals were filed against first-instance decisions and a total of 28 proceedings were initiated (16 prohibited agreements, 10 abuse of dominance, 2 mergers). A total of 22 decisions were issued. Of the 12 decisions based on merits, the first-instance decisions were upheld in 6 cases, and partially upheld in 3 cases. Fines totalling CZK 63,546,000 were imposed in the second-instance in the area of prohibited agreements and CZK 39,778,000 in the area of abuse of dominance, in total amounting to CZK 104,429,000.

Significant Cases

New Sanctions for Prohibited Agreements Between Mobile Operators

Parties: **Vodafone Czech Republic a.s., T-Mobile Czech Republic a.s.**

File number: **S165/03**

First-instance fines: **CZK 11,893,000**

Date of coming into force: **22 December 2015** (upheld in the appellate proceedings)

On 18 November 2015, the Office issued the first-instance decision that the mobile operators Vodafone Czech Republic a.s. and T-Mobile Czech Republic a.s. violated the Act on the Protection of Competition by concluding and fulfilling an agreement on the interconnection of networks in the years 2000–2003. They agreed to connect the calls of their network customers only through direct interconnection of their public mobile telecommunication networks exclusively at specified interconnection points. Therefore, this constituted an exclusive mutual cooperation, through which both companies provided full protection against competing providers, including companies such as ČESKÝ TELECOM, a.s., and BT (Worldwide) Ltd. This form of cooperation then constituted an agreement on market sharing and it also created an entry barrier for other telecommunications operators to the provision of interconnection services to the parties to the proceedings. Vodafone Czech Republic a.s. was fined CZK 2,642,000 and T-Mobile Czech Republic a.s. was fined CZK 9,251,000 for anticompetitive conduct. In the decision of 22 December 2015, the Chairman of the Office upheld the decision of the first instance.

The Office issued its initial decision in this case in 2003, and the final decision was issued a year later. Subsequently, administrative courts were discussing complaints against this decision for nine years. In February 2014, the original decision was canceled by the Supreme Administrative Court, concluding that it was not a horizontal agreement. Instead it was a vertical agreement and the Office had inadequately justified the calculation of the parties' market shares. The Office respected the legal opinion of the courts in the newly issued decision.

Imposition of Disciplinary Fines for Obstructing the Investigations

Party: **CZECH FROST, s.r.o.**

File number: **V45/2015** and **R179/2015**

First-instance fine: **CZK 1,105,000**

Date of coming into force: **18 September 2015** (upheld in the appellate proceedings, challenged by an action filed to administrative courts)

In early 2015, the Office conducted an unannounced inspection at the business premises of CZECH FROST, s.r.o., for the purposes of examining business records and obtaining documentation for the administrative proceedings. The standard procedure of the Office was disturbed by the conduct of the undertaking whose managing director refused to allow the Office's employees to access his computer, located in his office. Although the managing director was repeatedly warned of the possible consequences of his conduct, his computer was not made available to the Office for the purposes of the investigation. The Office subsequently proceeded to impose a disciplinary fine which amounted to CZK 1,105,000 in the first-instance.

In his decision, the Chairman of the Office stated that the Office's employees are permitted to review business records and make copies and extracts. It is quite natural that, when examining individual documents and other data carriers, the Office's employees may encounter various types of information and they may also encounter information of a private nature. In the opinion of the Chairman of the Office, it would be somewhat

meaningless by definition for the undertakings themselves to assess the nature of the records or documents without the Office's employees being also familiar with the relevant information. No procedure can be used to verify the nature of the documents other than the procedure when their nature is assessed, at least *prima facie*, by the personnel conducting the inspection in the relevant case, typically by the subject (designation, title, name) of the relevant message in electronic form.

It should be noted that failure to disclose business records is a serious interference, since unannounced inspection (dawn raid) at the business premises of the undertaking is the Office's strongest power used to secure evidence of anticompetitive conduct. This procedural step can be considered to be unrepeatable as it is very unlikely that evidence of the anticompetitive conduct of the undertaking, which is not secured during the first attempt, would be found during a potential recurrence. The element of surprise is necessary in order for the activities of the Office to be effective. Although business records in paper form were made available to the Office during the inspection, electronic communication, including other possible electronic documents stored in the managing director's computer, was not provided to the Office. This led to partial frustration of the purpose of the inspection, which was made even more serious due to the fact that electronic data can be removed or destroyed faster than data in paper form.

The Chairman of the Office therefore confirmed the high disciplinary fine as the conduct of the undertaking resulted in the final impossibility to obtain relevant electronic data at a time before they were manipulated.

Chairman of the Office Changed the Fine Imposed on a Cartel of Medical Equipment Suppliers

Parties: **HOSPIMED, spol. s. r.o., PURO-KLIMA, a.s.**

File number: **R3,5/2015**

First-instance fine: **CZK 44,097,000**

Date of coming into force: **16 November 2015**

In the second-instance decision of 16 November 2015, the Chairman of the Office partially amended the first-instance decision on a cartel agreement in the area of public contracts for medical equipment committed by HOSPIMED, spol. s. r.o. and PURO-KLIMA, a.s. Although the existence of the cartel was proved, it was necessary to reduce the imposed sanctions to CZK 33,197,000 for HOSPIMED and CZK 10,900,000 for PURO-KLIMA. In the first-instance decision, the Office stated that in 2008 and 2010 both companies concerted their bids or coordinated their actions when participating in the public tenders "Modernization and restoration of instrumentation in the Comprehensive Cardiovascular Centre of Ostrava University Hospital", "UK - First Medical School – MEDICAL TECHNOLOGY FOR THE KATEŘINSKÁ 32 CONSTRUCTION PROJECT" and "Modernization of instrumentation and restoration of technology at KC KN Liberec". The total volume of these contracts amount to nearly CZK 200 million without VAT. Their concerted practices affected the results of the above mentioned award procedures, thereby distorting competition in the market of medical instrumentation in the Czech Republic.

In the appellate proceedings, the Chairman of the Office had to reverse the part concerning the public contract "UK - First Medical School – MEDICAL TECHNOLOGY FOR THE KATEŘINSKÁ 32 CONSTRUCTION PROJECT" because its three-year subjective period for the imposition of a sanction had already expired. Consequently, the fines for both parties to the proceedings were adequately reduced.

Furthermore, PURO-KLIMA adjusted its reporting period before the first-instance sanction was imposed; the first-instance was not notified in time and could not have taken this fact into account when calculating the sanction. However, it was necessary to remedy this matter in the appellate proceedings. Due to the above change, PURO-KLIMA reported significantly lower sales and the Chairman of the Office had to further reduce its sanction to less than CZK 11 million.

Judicial Review

An action can be filed against a final decision of the Chairman of the Office to the Regional Court in Brno. A remedy action can be subsequently filed against this judgement, which is a cassation complaint to the Supreme Administrative Court.

In 2015, a total of 12 actions were filed to the Regional Court in Brno and 11 cassation complaints to the Supreme Administrative Court. Of the cases that were finally decided by the courts, seven were decided in favour of OPC and two decisions of the Office were cancelled. The courts confirmed the correctness of the Office's decision, for example, in the case of abuse of dominant position of Student Agency in bus transport on the Prague-Brno route, and in the matter of the unauthorised concentration of undertakings Best and Beta. The constitutional complaint of HUSKY against a fine for vertical resale price maintenance agreements was also dismissed.

02

Significant Market Power

Drafting of the text of the amendment to the Act on the Significant Market Power in the Sale of Agricultural and Food Products and Abuse thereof continued in 2015. At first, this included an assessment in inter-ministerial comment procedure and then in the Chamber of Deputies. During the discussion, several deputies suggested certain partial changes or modifications of the submitted draft amendment to the Act, which were addressed, and at the end of the year the draft amendment was approved by the deputies and forwarded to the Senate. Act No. 50/2016 Coll., amending the Act No. 395/2009 Coll., on Significant Market Power in the Sale of Agricultural and Food Products and Abuse thereof was issued on 13 January 2016.

During 2015, representatives of the Control over Market Power unit attended regular meetings of the FOOD working sub-group where the current issues concerning the activities of the European Commission and individual Member States in the food industry were discussed.

Decision-Making in the Area of Significant Market Power

In 2015, the Office received 15 complaints and answered eight questions concerning the interpretation of certain sections of the Act No. 395/2009 Coll., on Significant Market Power in the Sale of Agricultural and Food Products and Abuse thereof (hereinafter referred to as the "Act").

The Control over Market Power Unit initiated three administrative proceedings in 2015. These administrative proceedings were initiated in response to the findings that the Unit gathered in the course of the ongoing administrative proceedings for procedural reasons. In each of the previously initiated administrative proceedings, the Office always assessed several actions by which the party to the respective administrative proceedings violated the law. If the Office only expanded the scope of the administrative proceedings it would postpone the conclusion of the administrative proceedings. After initiating new administrative proceedings, the Office's staff can focus on completing previously initiated administrative proceedings and it can secure the necessary evidence in the standard manner in the newly initiated administrative proceedings.

A second-instance decision overturning a first-instance decision was issued in two administrative proceedings, and the cases were remanded for further investigation and the issuance of a new decision. Actions to secure and supplement evidence were initiated in these two administrative proceedings in accordance with the conclusions of the second-instance decisions.

However, since a party to the administrative proceeding that was finally decided challenged the decision by filing an action to the Regional Court in Brno, the judicial review has not yet been closed.

No fine for violating the Act was imposed in 2015.

Significant Cases

In the course of the administrative proceedings, the Office continuously encounters new cases of conduct where the law could be violated by retail chains. It is not possible to name a single customer – retail chain because similar patterns of conduct towards suppliers were identified by the Office in virtually all major retail chains. In many cases, the conduct is very difficult to prove and a wide range of knowledge of the Office's staff is required. Despite that, there are still cases where the Office must turn to experts to obtain an unbiased answer to difficult questions where the Office does not have the necessary expertise at its disposal.

This is particularly true in administrative proceedings where it was necessary to assess the requirements of the retail chain regarding payments that the suppliers pay for advertising (product photos) published in advertising brochures of one particular retail chain.

03

Public Procurement and Concessions

The Office for the Protection of Competition has been supervising public procurement award procedures since January 1995, currently under the Act No. 137/2006 Coll., on Public Contracts, as amended. The Czech legal framework transposes the provisions of EU directives (Council Directive 92/13/EEC and 89/665/EEC as amended by Directive of the European Parliament and of the Council 2006/97/EC) which regulate the specifics of the review procedure concerning public procurement and strengthen the guarantees of the principles of transparency and non-discrimination in public procurement. Within the supervision of public procurement award procedure, the Office decides whether the contracting authority acted in pursuant to the legal provisions when awarding the public contract, imposes corrective measures and sanctions, discusses administrative offences of contracting authorities and suppliers, and pursuant to the Act No. 273/1996 Coll., on the Scope of Competence of the Office for the Protection of Competition performs other tasks stipulated by the relevant provisions. This includes supervisory activities according to Act No. 139/2006 Coll., on Concession Contracts and Concession Proceedings, and Act No. 194/2010 Coll., on Public Passenger Transport Services. The purpose of the above provisions is to ensure open and free competition between suppliers in public contracts (performance under the concession contract or contracts concluded on the basis of tenders, etc.) and transparent selection of the best bid without discriminating against bidders. The equal, transparent and non-discriminatory competitive environment then ultimately brings savings of public finances.

Summary of Legislative Changes in 2015

The year 2015 was marked by since of future revisions of the legislative framework for public procurement and concessions. New EU directives on public procurement and concessions (Directive of the European Parliament and of the Council 2014/24/EU on Public Procurement, Directive of the European Parliament and of the Council 2014/25/EU on Public Procurement by Entities Operating in Water, Energy, Transport and Postal Services Sectors, and Directive 2014/23/EU on Concessions) were adopted and published at the turn of 2013 and 2014. The Czech Republic is required to transpose their provisions into the Czech legislation by 18 April 2016. Therefore, the Office, as one of the competent authorities, intensively worked with the Ministry for Regional Development on the preparation of the new act on public procurement, and it focused on the part concerning protection against the illegal practices of a contracting authority.

As regards the existing legislation, in early March 2015, one of the last amendments to Act No. 137/2006 Coll., on Public Contracts, the so-called technical amendment implemented by the Act No. 40/2015 Coll., came into effect. In addition to material modifications to the procurement process, the amendment brought about major changes in procedural rules in the area of public procurement award procedures supervision, which were aimed at making the supervisory proceedings more efficient, strengthening the responsibility of the parties to the proceedings for their actions and restricting obstructive conduct. In terms of the Office's proceedings on reviewing a contracting authority's practices the technical amendment introduced the so-called partial concentration of proceedings. It newly modified provisions on deposits, where it also established their partial forfeiture if the complainant withdraws his or her proposal before a decision is issued in the respective case and it extended requirements for the computerization of communication with the Office. The technical amendment also reduced the periods of strict and fault-based liability of legal entities for administrative offences (strict liability has been reduced to five years from the day when the act was committed, and fault-based liability has been reduced to three years from the date when the Office learnt about the act).

Public Procurement Division in 2015

In mid-2015, there was a change in the position of Vice Chairman and the head of the Public Procurement Division. JUDr. Josef Chýle, Ph.D. was appointed to the position on 2nd July 2015. Under the management of the new Vice Chairman the Public Procurement Division has been actively preparing for the adoption of the new act on public procurement. In addition, there is continuous education of Division employees in the form of an ongoing presentation of the current Czech and European case law relating to the issues of public procurement and concessions and an analysis of the complex aspects of the Office's decision-making.

In order to make its decision-making process more efficient, the Office improved the collection of data regarding the details of the Office's administrative proceedings in matters relating to the review of contracting authorities' and suppliers' practices in public procurement. This data is used not only to inform the public about the Office's activities at the national level but they are also very positively perceived by the professional community at the European level.

The impact of the policy measures initiated by the Office was apparent especially in the second half of 2015 as the personnel, system, legislative and other measures led to an increase in the number of decisions issued with a shorter deadline for the issuance of a decision. Compared with the first half of 2015, the duration of the period, in which first-instance administrative decisions are issued by the Office decreased dramatically. In the case of administrative decisions issued in administrative proceedings initiated in the second half of 2015, the average period for the issuance of the decision was reduced to 22 days, representing an increase in efficiency by dozens of percent compared to the previous periods. In the second half of 2015, the Office, in a completely new and efficient manner, used the administrative institute of an order, which is used to decide on the first action in an actual case. The efficiency and correctness of the actions of the Office when introducing this measure is apparent from the fact that from 137 orders issued in the second half of the year only 21 were challenged. This means that as much as 84.7% of issued orders, which become final and enforceable administrative decisions after coming into force, were not challenged by the contracting authorities. Overall, the number of first-instance decisions issued by the Office (Public Procurement Division) increased.

Also the total number of issued decisions in 2015 increased compared to the year 2014 (1,074 in 2015, 1,063 in 2014). Overall, in 2015 there was a significant reduction in the number of administrative proceedings suspended for procedural reasons (about one third), thus increasing the number of decisions in which an error in the awarding of public contracts was found. The total amount of fines imposed for administrative offences was lower in 2015 than in 2014 (CZK 31,790,500 in 2015, CZK 72,421,000 in 2014) but a total of 401 decisions (compared to 273 decisions in 2014) contained the verdict that an offence had been committed. In 13 cases, the deposit was partially forfeited to the state budget, i.e. the proposal was withdrawn before a decision was issued in the case, which is a consequence of one of the novelties introduced by the so-called technical amendment effective since March 2015.

A novelty in the decision-making practice from the second half of 2015, as mentioned above, is the issuance of orders pursuant to the Article 150 of the Administrative Procedure Code in factually clear cases of administrative offences committed by contracting authorities. Since the issuance of orders is the first action in the proceedings, its delivery is a matter of days. The above 85% of orders, against which no objections were made, entered into force within eight days from their issue date, which represents a significant acceleration and increase in the efficiency of the activities of the Office when addressing certain selected activities within the scope of this supervisory authority. Overall, decisions in administrative proceedings initiated in 2015 were issued within an average period of 33 days.

In 2015, the Office received 1,014 complaints to review the practices of contracting authorities. Therefore, compared to 2014, there is again an increase in the number of proposals that challenge the compliance of

contracting authorities' practices with the Act on Public Contracts, the Concession Act, Act No. 194/2010 Coll., and related regulations. It should be noted that one complaint often challenges multiple public contracts at once. For example, a total of 20,490 alleged errors, which were allegedly committed by 4,031 contracting authorities, were challenged in a single complaint. For each of the 20,490 machine-generated errors in the contracting authority's profile, there was an indication of the specific number of usually several, but for some contracting authorities even hundreds of identified errors which in the author's opinion represented an administrative offence pursuant to the Act on Public Contracts. Within the complaint filed in this manner, instead of the 20,490 alleged cases of misconduct, the actual volume of individual challenged cases of misconduct claimed by the complaint's author reached 267,856.

Most Common Mistakes

In terms of the market segments affected in 2015 within public contracts investigated by the Office, these public contracts were mainly in the construction industry and IT. Public contracts in education and health care are also frequently reviewed. Public contracts in administration and audit activities are reviewed less frequently.

As regards the category of contracting authorities, whose public contracts are most frequently subject to review, these most often include other central public administration bodies, cities and municipalities, as well as secondary schools and universities.

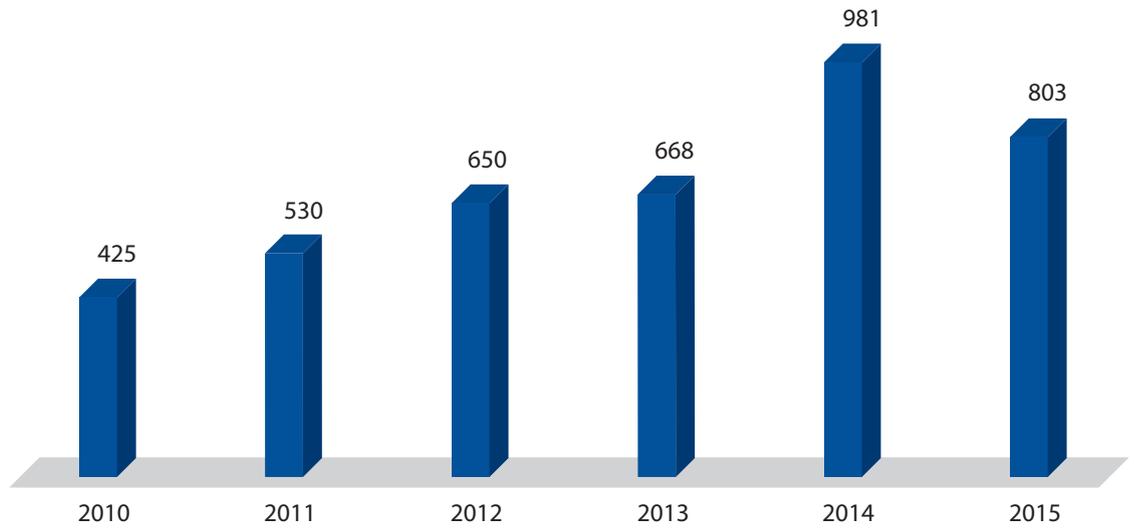
The most common mistakes made by contracting authorities include:

- Inadequate (discriminatory) qualification requirements.
- Unauthorised cancellation of the award procedure by the contracting authority.
- Ambiguous and/or vague specification of tender conditions, or the inadequacy of tender conditions specified by the contracting authority.
- Incorrect assessment and evaluation of bids, in particular in connection with an abnormally low bid price and the determination of subjective evaluation criteria by the contracting authority.
- Incorrect procedure of the contracting authority, where the contracting authority does not exclude a supplier whose bid did not comply with the law or with the contracting authority's requirements, from participating in the award procedure.
- Violation of publication obligations.
- Awarding a public contract completely outside the regime of the Act on Public Contracts (even though the contracting authority was obliged to proceed in accordance with the law).

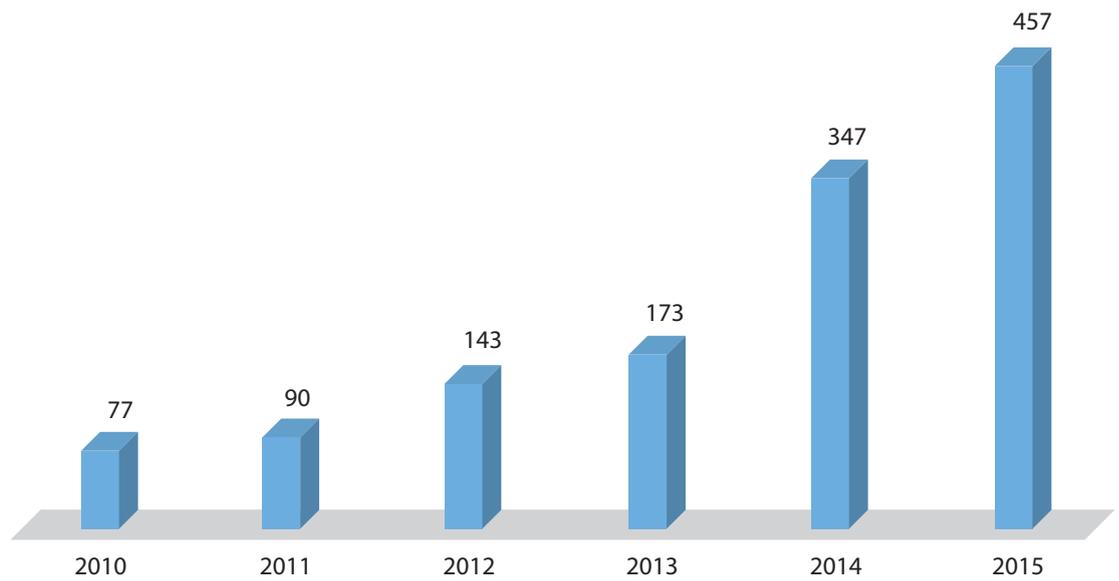
Decision-Making Activities in the Field of Public Procurement

		2015	2014
Administrative proceedings	Total administrative proceedings initiated	803	981
	• Based on a proposal	346	634
	• <i>Ex officio</i>	457	347
Decisions	Total first-instance decisions issued	1,074	1,063
	• Decisions issued on merits	838	826
	Remedy + sanction	494	366
	No misconduct identified	95	98
	Procedural grounds	249	362
	• Interim measures	109	109
	• Interim measures rejected	121	121
	• Cancellation of decisions imposing interim measures	6	7
Fines	Number of fines imposed	401	273
	Total amount of fines imposed	CZK 31,790,500	CZK 72,421,000
Costs of proceedings	Number of cases with costs of proceedings imposed	90	101
	Total amount of costs of proceedings imposed	CZK 2,700,000	CZK 3,067,000
Deposits	Amount of deposits paid	CZK 97,361,995	CZK 130,782,251
	• Deposits forfeited to the state budget	CZK 9,733,949	CZK 6,546,700
Complaints	Number of complaints received	1,014	988

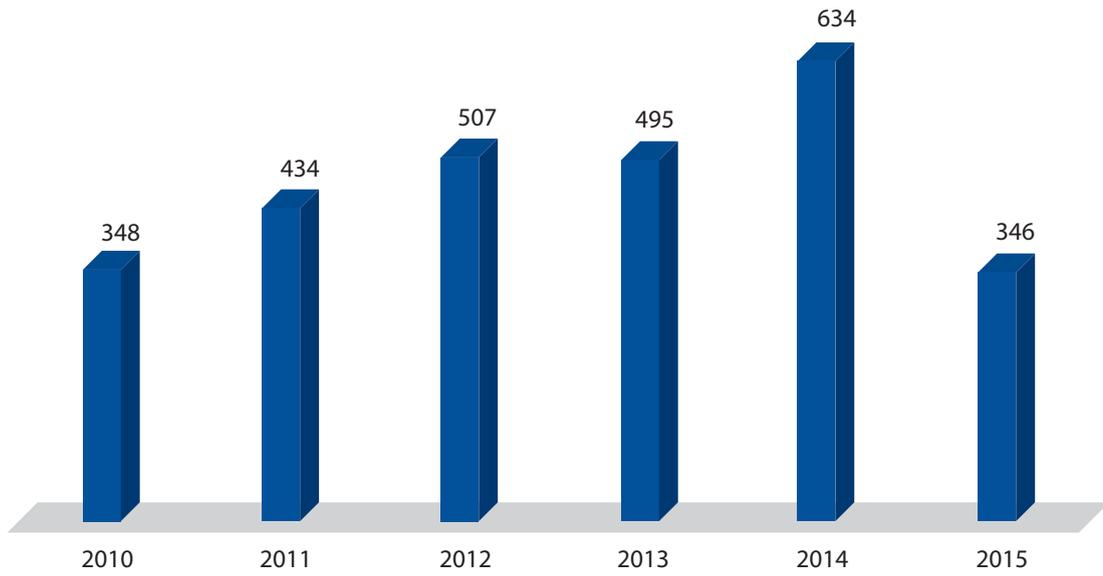
Total Number of First-Instance Proceedings Initiated



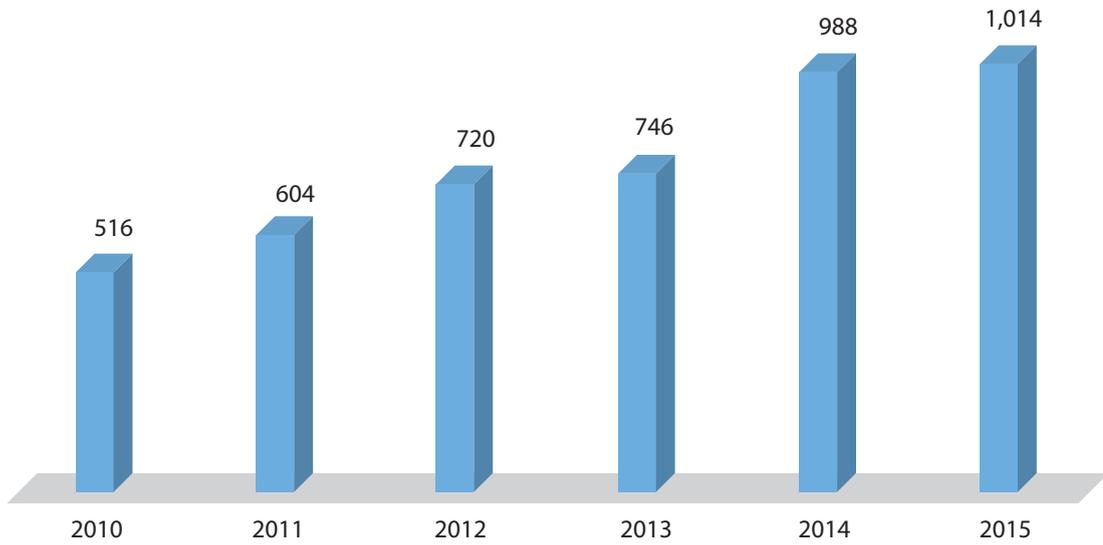
Number of First-Instance Proceedings Initiated Ex Officio



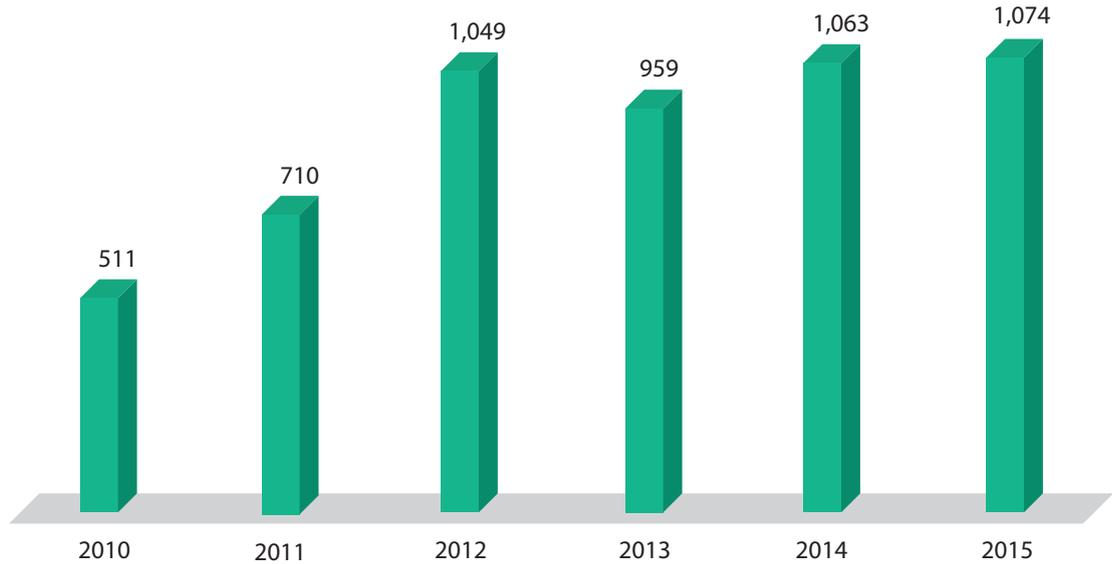
Number of Proposals to Initiate First-Instance Proceedings Delivered



Number of Complaints Received



Number of First-Instance Decisions Issued



Significant Cases

Maintenance of Greenery, Gardening Work and Winter Road Maintenance

Contracting authority: **Statutory City of Plzeň – City District Plzeň 1**

File number: **S0533, 0534, 0535, 0536, 0537/2015**

Final fine: **CZK 150,000**

Date of coming into force: **8 December 2015**

The contracting authority – the Statutory City of Plzeň, City District Plzeň 1 – committed five administrative offences pursuant to the Article 120 (1)(a) of the Act No. 137/2006 Coll., on Public Contracts, as amended, by dividing the scope of five public contracts for winter road maintenance and winter road maintenance in City District Plzeň 1, awarded in the years 2010-2013, in violation of the provisions of Article 13 (3) of the above mentioned Act. A fine of CZK 150,000 was imposed by OPC on the contracting authority.

In its decision in relation to 38 investigated contracts, the Office decided on the cumulative fulfilment of the criteria of the local, temporal and factual context, and concluded that the scope of the 38 investigated public contracts should have been awarded as five public contracts. At the same time, the Office found, in regard to the financial value of individual investigated contracts, that if the performance, in which the above-mentioned contextual aspects were fulfilled, had been awarded within one public contract, it would have been necessary to award each such “larger” contract as an above-threshold public contract for services under the Act on Public Contracts, rather than in the regime of a *de minimis* public contract.

Mobile Telecommunications Services of the Ministry of Finance of the Czech Republic – Round 2

Central contracting authority: **Czech Republic – Ministry of Finance**

File number: **S0434/2015**

Final fine: **CZK 150,000**

Date of coming into force: **21 November 2015**

The central contracting authority – the Ministry of Finance of the Czech Republic - violated the principle of transparency by setting a requirement for the HW budget and a requirement to use the best technology available in the relevant location in the award procedure. According to OPC, these requirements by the contracting authority were so unclear and non-transparent that OPC concluded that the central contracting authority defined the scope of the public contract without such details that are necessary for the processing of a bid and the above practices of the contracting authority could have materially affected the selection of the best bid. Since the contract has not yet been concluded OPC cancelled the entire award procedure.

In its decision, OPC stated that, if the contracting authority requires the possibility to purchase telecommunications equipment (hardware, accessories) from the bidder at discounted prices (at least as advantageous to the contracting authority as offered by the bidder in its price list for large organisations) in a pre-agreed annual volume, it is necessary to define the content of the requirement as accurately as possible because it is an integral part of the scope of performance of the investigated public contract. The requirement was set so that the contracting authority would follow its current needs and base its decisions on the product offerings of individual bidders. The Office noted that a requirement worded in this way is absolutely inadequate in terms of transparency, certainty and clarity. In the Office's opinion, a situation occurred in the investigated case where the contracting authority did not specify the scope of the public contract, i.e. it did not clearly and unambiguously define the telecommunications equipment (hardware and accessories) which it intended to demand from suppliers within the relevant public contract, thus not allowing potential suppliers to actually put together a bid. It is not clear from the tender documentation what specific type of performance the relevant requirement concerns, i.e. whether it is supply of mobile phones or smartphones or replacement batteries, various hands-free sets, connection cables, car phone holders or just protective cases and films. In addition, the contracting authority set a financial limit of CZK 5.8 million for the entire duration of the public contract (i.e. CZK 1.45 million per year) and created a condition where the value of the relevant part of the contract could not be assessed by the suppliers.

The Office stated, regarding the requirement of the best technology available in the relevant location, that if the aim of the contracting authority was to have the best level of technology in the relevant location within the performance of the public contract, it is an obligation of the contracting authority pursuant to the Article 45 (1) of the Act to specify this requirement in adequate quality and with proper expertise so that adequate and mainly mutually comparable bids can be submitted based on this requirement. For this reason, it is necessary that the contracting authority specifies at least those aspects of the relevant services, according to which it is possible to assess and, in particular, to compare different technologies, i.e. to determine variables relevant to the contracting authority to assess "the best technology available". Therefore, it would also be appropriate to mention the original level of technology to prevent any disputes regarding what limit values the contracting authority considers unsatisfactory with regard to its demands.

Methodology of Organisational Procedures and Establishment of the Project Office and Analysis of the Technical Standards Development System

Contracting authority: Czech Republic – Office for Standards, Metrology and Testing

File number: S0603/2015

Final fine: CZK 100,000

Date of coming into force: 23 September 2015

The Office initiated the administrative proceedings *ex officio*. On the basis of a received proposal, the Office assessed the evidence of compliance with economic and financial qualifications and the evidence of technical qualifications presented through a subcontractor for one of the bidders in the public contract “Methodology of the organisational procedures and establishment of the project office of the Office for Standards, Metrology and Testing”, specifically the particulars of the subcontractor agreement.

The Office based its assessment on the judgement of the Regional Court in Brno ref. No. 62 Af 57/2013-90 of 6 October 2014, according to which the subcontractor agreement must specify “the obligation of the subcontractor to provide performance intended for the execution of the public contract by the supplier, or to provide items or rights which the supplier is entitled to use in the performance of the public contract, at least to the extent to which the subcontractor has demonstrated compliance with the qualifications”. The Office concluded that, in the investigated case, the subcontractor agreement did not contain such an obligation of the subcontractor and the contracting authority committed an administrative offence when it failed to disqualify the relevant bidder from participating in the relevant award procedure.

Furthermore, the Office assessed whether the contracting authority proceeded in compliance with the principle of equal treatment when awarding Part A “Analysis of the process of processing and distributing external documents at the level of European and international organisations” and Part B “Analysis of the required processes for creating technical standards using the systems of European and international standardization organisations with regard to the needs and possibilities at the national level” of the public contract “Analysis of the technical standards development system”. Similarly, when assessing the proof of qualifications the contracting authority asked some of the bidders, in both of the above parts of the public contract, to provide written clarification of the information or documents submitted or to submit additional information or documents proving compliance with the qualifications requirement; however, it did not ask one of the bidders to submit additional documents proving compliance with the qualifications and subsequently disqualified the bidder from participating in the award procedure without any further action. Such practices of the contracting authority, where the contracting authority did not treat all bidders equally, violated one of the fundamental principles set out in the Article 6 (1) of the Act, specifically the principle of equal treatment. The Office therefore concluded that, due to its practices, where the contracting authority did not comply with the principle of equal treatment, the contracting authority committed an administrative offence when awarding each of the above parts of the public contract.

Provision of Legal Services – Part 1 (General Legal Agenda), Part 2 (Public Procurement Agenda), Part 3 (Intellectual Property Rights Agenda)

Contracting authority: **Lesy České republiky, s. p.**

Complainant: **Mališ Nevrkla Legal, advokátní kancelář, s. r. o.**

File number: **S0625/2015**

Date of coming into force: **5 December 2015**

The administrative proceedings were initiated upon proposal of the complainant against the tender conditions in a public contract, specifically against the technical qualifications set in all three parts of the public contract, which the complainant considered to be clearly inadequate.

Within the tender conditions, the contracting authority specified the requirement to submit a list of the most important services (reference contracts) to prove technical qualifications in relation to all parts of the public contract and the Office assessed the requirements set by the contracting authority as being contradictory to the principle of non-discrimination.

In Part 1 of the public contract, the Office concluded that the minimum value of reference contracts required by the contracting authority relating to the disposal of property with a value of at least CZK 50 million, representation in civil proceedings with a value of the dispute of CZK 50 million, or representation in insolvency proceedings regarding a claim with a value of at least CZK 2 million, does not guarantee the supplier's increased expertise because the values of property or the scope of the proceedings themselves are not indicative of the particular experience with the service provided and are not a sufficient guarantee for the subsequent proper fulfilment of the scope of the public contract.

In terms of Part 2 of the public contract, in which the contracting authority required the supplier to have experience with the administration of at least five award procedures conducted in the form of an above-threshold open procedure and five award procedures in the form of a simplified below-threshold procedure, the Office concluded that both types of award procedures require similar experience. The supplier's experience with the administration of an above-threshold public contract in an open procedure, which can be considered more complex and formal in a way, in itself guarantees the ability to administer a simplified below-threshold procedure. It is, therefore, not in compliance with the principle of non-discrimination to require the supplier to have experience with the simplified below-threshold procedure.

Finally, in Part 3, the required experience in representation in copyright disputes before Czech courts in at least two cases, in situations where experience with several legal services in the field of copyright protection is also required, was not found adequate because there are no fundamental specifics of court proceedings in copyright disputes and knowledge of the copyright law can be demonstrated by other requirements of the contracting authority.

Given that the Office detected errors on the part of the contracting authority in determining the technical qualifications and that these errors could have affected the selection of the best bid and the contracting authority has not concluded contracts for Parts 1, 2 and 3 of the public contract, the Office imposed a corrective measure consisting of the cancellation of the award procedure for the relevant parts of the public contract.

New Building for the Nursery School in Ondřejov (offence committed by the supplier)

Supplier: **GREEN PLACE s. r. o.**

File number: **S0159/2015**

Final fine: **CZK 300,000 + prohibition to participate in public contracts for three years**

Date of coming into force: **4 June 2015**

The Office initiated the administrative proceedings *ex officio*. Based on the investigation of a proposal that it had received, the Office began to doubt whether the supplier GREEN PLACE s. r. o. failed to submit documents that do not correspond to reality to the contracting authority to prove compliance with the technical qualifications requirement pursuant to the provisions of the Article 56 (3)(a) of the Act in an open award procedure aimed at awarding the public contract “New building for the nursery school in Ondřejov”, thus committing an administrative offence pursuant to the Article 120a (1)(a) of the Act.

As part of its bid, supplier GREEN PLACE s. r. o. submitted a list of four construction projects to the contracting authority to prove compliance with the technical qualifications requirement; however, in the Mladá Boleslav medical facility construction certificate it stated that the work allegedly commenced on 4 April 2012 (on this day, the supplier was also registered in the Commercial Register) and the construction was allegedly handed over on 4 August 2013. In the certificate concerning the remodelling of a store into a restaurant, including kitchen, in Mladá Boleslav, the supplier stated that the work allegedly commenced on 4 April 2012 and the construction was allegedly handed over on 4 June 2012.

However, the statement to the Office by the Statutory City of Mladá Boleslav, received by the Office during the administrative proceedings, revealed that the above construction projects were completed earlier than within the timeframe specified by the supplier in the bid. Based on data from the building approval certificate, the remodelling of a store into a restaurant, including kitchen, in Mladá Boleslav, had already been completed in 2002 and the construction of the medical facility in Mladá Boleslav was completed in 2006, or in 2007 respectively, i.e. at the time when GREEN PLACE s. r. o. did not yet even exist.

In the administrative proceedings, the Office therefore reached the conclusion that to prove compliance with the technical qualifications requirement in the relevant award procedure, GREEN PLACE s. r. o. submitted documents that did not reflect reality to the contracting authority. GREEN PLACE s. r. o. was fined CZK 300,000 by the Office and prohibited from participating in public contracts for three years for committing an administrative offence.

FN Brno – Hybrid Scanner PET/MR

Contracting authority: **University Hospital Brno**

File number: **S0501/2015**

Date of coming into force: **23 October 2015**

The Office cancelled the University Hospital Brno’s award procedure for the purchase of a hybrid scanner PET/MR, including demonstration of the functionality and purchase of consumables necessary for the initial commissioning. The contracting authority set out tender conditions which guaranteed a competitive advantage to certain suppliers and created unjustified barriers to competition. The case was specific in particular due to the fact that, within the administrative proceedings, it was necessary to assess the highly specialised technical conditions required by the contracting authority and challenged by the complainant, and to decide on their adequacy.

In general terms, the Office concluded in its decision that, by setting the technical conditions, the contracting authority must not create an unreasonable advantage or disadvantage for some suppliers, while unreasonably strict technical conditions could lead to the unauthorised favouring of a certain supplier. Determination of unreasonably strict conditions could then be regarded as conduct preventing competition, both in relation to a particular public contract as well as in general, because it excludes from such tender, for no apparent reason, those suppliers who are not able to, for various reasons, meet such prescribed requirements, the fulfilment of which is, however, in the particular case, not necessary for the fulfilment of the scope and purpose of the public contract. In the investigated case, the contracting authority violated the Article 45 (3) of the Act in connection with the Article 6 (1) of the Act when it unjustifiably set out the requirements for a specific technical solution (maximum size of individual elements of crystals and the minimum number of crystal elements) in the technical conditions of the public contract. Their non-fulfilment ultimately made it virtually impossible for the complainant to submit a bid in the award procedure, even though the device offered by the complainant (hybrid scanner PET/MR) meets the other technical conditions fulfilling the performance requirements for the demanded device, which are, in the opinion of the contracting authority, conditional upon the fulfilment of the relevant requirements, better than the selected bidder's device. The manner in which the contracting authority defined the requirements for the specific technical solution in the technical conditions therefore guaranteed unfair competitive advantage to the selected bidder in violation of the law, where the device offered by the bidder reached lower values in some essential performance parameters, also defined by the contracting authority, than the device offered by the complainant; however, it matched the technical solution required by the contracting authority.

Purchase of Orthopaedic Implants for Třebíč Hospital

Contracting authority: **Nemocnice Třebíč, příspěvková organizace (Třebíč Hospital)**

File number: **S0601/2015**

Final fine: **CZK 100,000**

Date of coming into force: **8 December 2015**

Třebíč Hospital was fined CZK 100,000 for committing an administrative offence in connection with the purchase of orthopaedic implants for the Orthopaedics Department. The hospital committed the administrative offence by failing to award the delivery of orthopaedic implants pursuant to the Act on Public Contracts in one of the types of award procedures specified in the Article 21 of the Act, but it divided the scope of the public contract for the deliveries of implants from individual suppliers only on the basis of purchase orders. The contracting authority used the above procedure to purchase orthopaedic implants with a total value of more than CZK 13 million.

In general, the Office stated in its decision that, in the procurement of performance, the contracting authority is obliged to comply with, among other things, the rule on non-division of the scope of a public contract, contained in the Article 13 (3) of the Act, if such action results in a situation when the contracting authority is following less strict rules for awarding the public contract, or does not act in accordance with the law at all. In this context, in determining the estimated value of the public contract, the contracting authority is required to combine the related performances, which it intends to purchase during the reporting period, and use the adequate type of award procedure in connection with the set value. If the purchased performances are of an identical or similar nature, they are performances of the same or comparable type and form the scope of one public contract.

In the investigated case, the Office concluded that the demanded orthopaedic implants showed signs of a local, temporal and, especially, factual context and, as such, they should be procured within a single public contract, not in a manner where the implants were delivered only on the basis of individual partial orders by

the contracting authority from the relevant suppliers. The contracting authority divided the scope of the public contract in a manner where the orthopaedic implants were not purchased in accordance with the law and agreements on the deliveries of implants were concluded with selected suppliers only on the basis of issued purchase orders. At the same time, the Office concluded that these practices of the contracting authority were capable of significantly affecting the selection of the best bid and, by issuing 379 purchase orders for deliveries of orthopaedic implants, it committed an administrative offence for which the contracting authority was fined CZK 100,000.

Project Documentation for the Gardens under Prague Castle - Conservation and Restoration

Contracting authority: **National Heritage Institute**

File number: **S0705/2015**

Final fine: **CZK 10,000**

Date of coming into force: **8 December 2015**

The National Heritage Institute was fined CZK 10,000 by the Office for committing four administrative offences when concluding Amendments 1, 2 and 3 to the work contract, the scope of which was the implementation of the public contract "Project Documentation for the Gardens under Prague Castle - Conservation and Restoration". By concluding the above amendments, the contracting authority allowed illegal substantial changes to the rights and obligations arising from a previously concluded contract firstly by extending the scope of the public contract when (in Amendment 1) it arranged for additional services consisting of the preparation of project documentation for mobile roofing in the Ledeburg Garden, and, secondly, by (through Amendments 1, 2 and 3) extending the deadline for the partial performance of the public contract specified in the work contract.

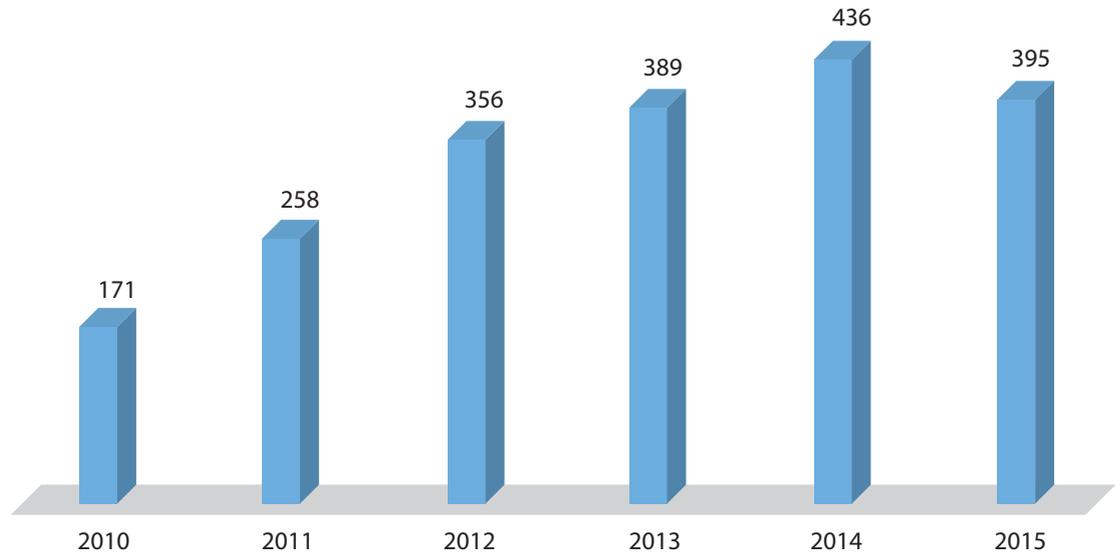
In general, in its decision, the Office concluded that an agreement for the performance of the public contract can be changed only if it is a minor change. In the investigated case, the Office concluded that the contracting authority did not make only formal changes to the agreement, but, instead, it made major changes that extended the scope of the public contract and allowed such a change in the rights and obligations arising from the agreement that would have enabled the participation of other suppliers had they been used in the original award procedure. At the same time, the Office concluded that these practices of the contracting authority were capable of significantly affecting the selection of the best bid and, by concluding Amendments 1, 2 and 3, the contracting authority committed administrative offences, for which the contracting authority was fined CZK 10,000.

Appellate Proceedings

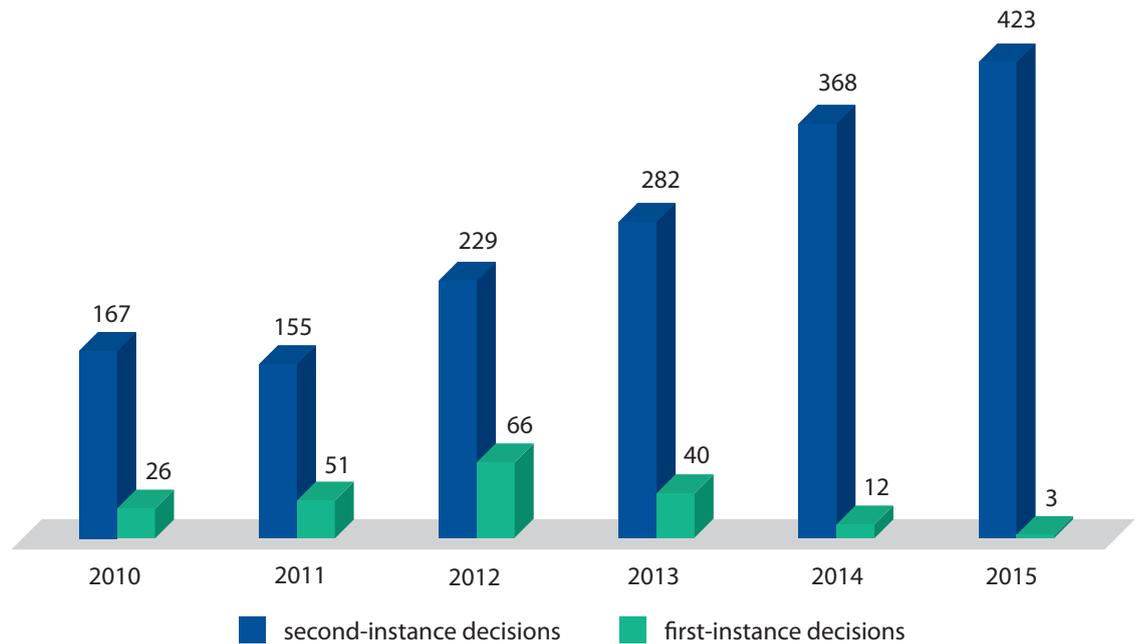
In 2015, the number of appeals filed, which corresponded approximately to those in 2014, slightly decreased (by 10%). The number of second-instance decisions issued in 2015 increased by 15%. The most significant statistical difference compared to 2014 is in the number of cancelled first-instance decisions and the suspensions of the administrative appellate proceedings, where there has been a threefold increase. The number of fines imposed in second-instance administrative proceedings doubled. Their nominal value, however, is half that of the level seen in 2014.

Number of appeals filed against first-instance decisions		395
Second-instance administrative proceedings initiated		395
Second-instance administrative proceedings not completed in 2014		310
Decisions on appeals issued	Total	423
	of which	
	• First-instance decisions upheld and appeal dismissed	270
	• First-instance decisions overturned and returned to the Office	46
	• First-instance decisions overturned and administrative appellate proceedings suspended	90
	• Appeals dismissed for lateness/inadmissibility	12
	• First-instance decisions changed	1
	• Decisions of the Chairman overturned in review procedure	2
	• Decisions of the Chairman on interim measures	1
	• Appellate decisions of the Chairman	1
Procedural decisions (resolutions) of the Chairman of the Office		59
Number of appeals handled in the first instance		3
Fines	Number of fines imposed	114
	Amount of fines imposed	CZK 19,357,000

Number of Appeals Filed Against First-Instance Decisions



Number of Appeals Handled in Appellate Proceedings

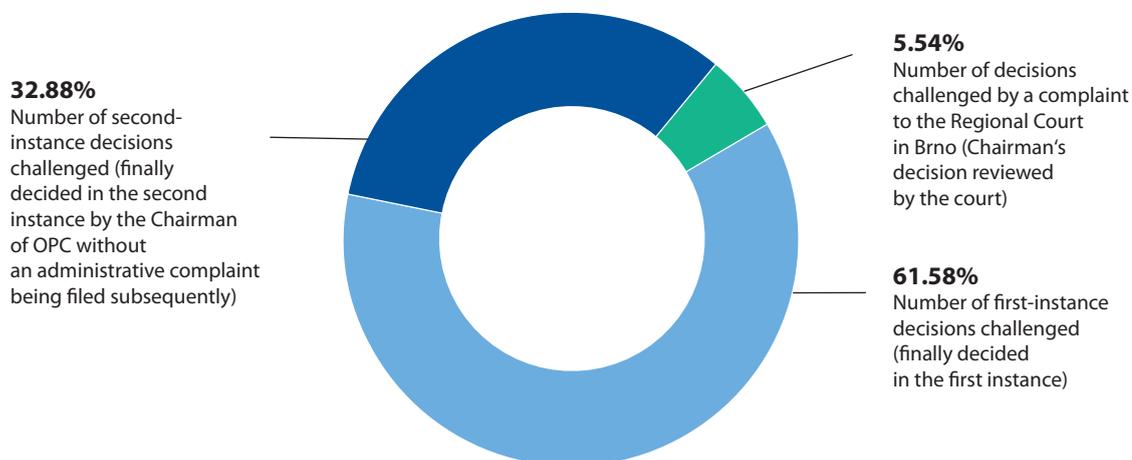


Judicial Review

The number of actions filed by complainants to the Regional Court in Brno increased by 45%, while the number of cassation complaints filed to the Supreme Administrative Court declined slightly (by 4%). Given the total number of first and second-instance decisions issued by the Office in public procurement in 2015, 5.5% of cases handled by OPC in 2015 were appealed to the Regional Court in Brno. In relation to the total number of first and second-instance decisions issued, the success rate of OPC decisions before administrative courts in 2015 was 98%.

Number of actions filed to the Regional Court in Brno		61
Number of cassation complaints filed to the Supreme Administrative Court		25 (13 filed by OPC – 12 by complainants)
Number of finally concluded judicial proceedings in both instances	Regional Court in Brno	46
	Supreme Administrative Court	29
of which Decision of OPC upheld	Regional Court in Brno	28
	Supreme Administrative Court	19
Decision of the Office cancelled	Regional Court in Brno	18
	Supreme Administrative Court	10
Success rate of OPC decisions in relation to the total number of first and second-instance decisions issued (i.e. 1,496 decisions)		98.1%

Success Rate of OPC Decisions in Public Procurement



Significant Cases

Water Supply Line

Contracting authority: **Technické služby Rudná a.s.**

File number: **R268/2014**

Fine: **CZK 150,000**

Date of coming into force: **18 November 2015**

The decision of the Office's Chairman was challenged.

The Chairman of the Office dismissed the appeal filed by the contracting authority and upheld the first-instance decision, in which the Office fined the contracting authority CZK 150,000 for the administrative offence which it committed by failing to award the performance in Amendment 1 to the contract for work in the water supply line tender in one of the types of award procedures laid down by the Act on Public Contracts.

The contracting authority performed the original public contract outside the regime of Act, in connection with the performance of the relevant activity in the water sector. Under Article 2 (7) of the Act, as applicable at the time of the tender (i.e. before the coming into effect of Act No. 55/2012 Coll., amending Act No. 137/2006 Coll., on Public Contracts, as amended / transparent amendment/), it was subject to the provisions of the Act relating to a sector contracting authority. And, since in this case it was a below-threshold public contract, the contracting authority was required to proceed with its implementation within the regime of the Act. On 15 February 2012, the contracting authority concluded an agreement for the performance of the public contract, the scope of which was mainly the construction of a water supply line, with the selected bidder.

On 28 December 2012, the contracting authority concluded Amendment 1 to the original agreement with the selected bidder. Amendment 1 contained, in particular, an extension of the water mains, including the construction of related technical equipment, removal of the waste dump preventing the proper execution of the work, a change in the deadline for the proper completion of part of the originally ordered work, and an increase in the original price by about 40%. In the opinion of the Office, Amendment 1 resulted in a substantial change to the agreement (cf. Judgement of the Court of Justice of the European Union of 19 June 2008, ref. No. C-454/06, in the case of *Presstext*) and, therefore, in awarding a new contract. That should have been done within the regime of the Act in the wording of the transparent amendment in one of the award procedures pursuant to the Article 21 of the Act. The Act, in the amended wording, did not permit contracting authorities to proceed in the case of a public contract relating to the relevant activities in the water sector in accordance with the provisions of the Act applicable to sector contracting authorities (Article 2 (7) of the Act), and it also prohibited the contracting authorities from allowing a substantial change in the rights and obligations arising from the agreement concluded with the selected bidder (Article 82 (7) of the Act).

Study of the Overall Reconstruction of Public Lighting in the City of Břeclav, Including the Poštorná and Charvátská Nová Ves Sites

Contracting authority: **City of Břeclav**

File number: **R398/2014**

Final fine: **CZK 1,000,000**

Date of coming into force: **23 February 2015**

The decision of the Office's Chairman was challenged.

The Chairman of the Office for the Protection of Competition dismissed the appeal of the contracting authority and upheld the first-instance decision in which the contracting authority was fined CZK 1,000,000 for failure to retain documents for the for the design contest for the study of the overall reconstruction of public lighting in the city of Břeclav, including the Poštorná and Charvátská Nová Ves sites.

The Act on Public Contracts, as applicable on the date of initiation of the investigated design contest, requires the contracting authority to retain documentation on the public contract for a period of five years from the conclusion of the agreement, its amendment, or from the cancellation of the award procedure, and this obligation similarly applies to design contests, even in the event that this contest is not followed by a tender.

In the present case, the contracting authority repeatedly refused to submit the required documentation with reference to the general criminal law privilege against self-incrimination, even though it claimed that it had retained documentation concerning the design contest in accordance with the law. Given the fact that the contracting authority did not submit documentation concerning the design contest to the Office, the Office concluded that the contracting authority did not store the relevant documentation because it failed to prove its retention in the administrative proceedings.

The Chairman of the Office confirmed the application of the so-called negative evidence theory in relation to proving non-existent facts by the Office because the Office took into account the fact that an undesirable and absurd situation cannot occur where the repeated obstruction of administrative proceedings by the contracting authority and failure to comply with the obligation pursuant to the Article 50 (2) of the Administrative Procedure Code would be beneficial to the contracting authority. Since the contracting authority refused to release the relevant documentation to the Office, even though it claimed that it was in its possession and nothing was preventing it from its release, the Chairman of the Office concluded that it would be appropriate for the Office to close the case as it would not have been possible for the Office to prove with direct evidence that documentation concerning the design contest did not exist, since it was not repeatedly submitted, even though the contracting authority was duly instructed about the consequences of failure to comply with this obligation, and its existence was substantiated only by the claims of the contracting authority. Furthermore, the Chairman of the Office referred to the relevant case law, from which it follows that the Office may, with reference to the protection of competition, request all materials and documents necessary for administrative proceedings that exist at the time of the request and are (or should be by law) available to the parties to the proceedings, even if they could be used to prove the anticompetitive conduct of these parties. In other words, any request by the Office for the submission of existing documents and the corresponding response from the party in the form of submission of such materials is not a “confession” and, therefore, does not force them to self-incriminate.

Provision of Services KIVS 2013–2017

Contracting authority: **Czech Republic – Ministry of the Interior**

Complainant: **ha-vel internet s.r.o.**

File number: **R418/2014**

Date of coming into force: **18 November 2015**

The decision of the Office’s Chairman was not challenged.

The Office overturned the decision of the contracting authority to disqualify the complainant from the dynamic procurement system in 13 public contracts since the complainant was disqualified due to its failure to fulfil the tender conditions for an electronic auction, and the contracting authority did not have any grounds for the disqualification in the tender conditions.

After an electronic auction, it is no longer possible to assess the fulfilment of the tender conditions beyond the data that typically changes as a result of the use of this means to assess bids. Therefore, the assessment of bids in terms of fulfilment of the tender conditions has two separate levels in the case of the standard progress of an electronic auction which, however, cannot be combined or freely interchanged. The primary level is an assessment of compliance of the offered scope of performance or related formal elements specified by the contracting authority with the requirements of the law and the tender documentation. The secondary level is the assessment of only such data that changed during the electronic auction, i.e. typically assessment of compliance of new auction values and again any related formal elements with the requirements of the tender documentation. In the investigated case, it was only possible to carry out a secondary assessment of the modified request form in compliance with the permissible interpretation of the law; moreover, only to the extent of three aspects specified by the contracting authority, i.e. (i) the timeliness of their delivery, (ii) compliance with the rules specified in Article 4 of the Call, and (iii) compliance with the prohibition of increasing individual service prices contained therein compared to individual service prices listed in the request forms.

Based on the principle of reciprocity of specificity requirements, it can be stated that the complainant was at least as specific regarding the quality and availability of the services offered in its bid as the contracting authority was specific in its requirements regarding these aspects. In addition, the bidders were supposed to primarily offer service quality and availability as the objective, and not specific technology as a means to achieve this objective. It is, therefore, not essential whose claims regarding the properties and use of controversial technology are true.

Sewer System in the Agglomeration Zdice – Chodouň

Contracting authority: **Litavka Microregion**

File number: **R451/2014**

Date of coming into force: **7 October 2015**

The decision of the Office's Chairman was challenged.

The Chairman of the Office dismissed the appeal of the Litavka Microregion and upheld the first-instance decision of the Office concerning the public contract "Sewer System in the Agglomeration Zdice-Chodouň". The Litavka Microregion was fined CZK 200,000 for committing an administrative offence.

The Office concluded that the Litavka Microregion violated the law when it did not allow the renumbering of bidders, despite it has been asked to do so by one of the bidders, prior to the commencement of the draw through an electronic device that allegedly restricted the number of bidders for the contract. Yet, renumbering was one of the few ways of ensuring and controlling the transparency of the draw.

By its nature, the method of drawing using electronic equipment is not reviewable retrospectively since it virtually eliminates any control of bidders conducted immediately before or during the draw. Renumbering prior to the commencement of the actual draw could have, therefore, eliminated any doubts about the legality of the contracting authority's practices associated with the possibility of manipulating the electronic drawing equipment by influencing its software.

Refusing to renumber the bidders then raises doubts about the legality of the contracting authority's practices because there is a suspicion that the drawing mechanism was set up to select pre-selected bidders. The contracting authority's practices were not transparent and could have influenced the selection of the best bid.

In the appeal filed, the contracting authority claimed a number of procedural errors on the part of the first-instance authority and challenged the Office's conclusions regarding the merits of the case.

However, the Chairman of the Office dismissed the objections in the appeal and upheld the legality of the procedure in the first-instance.

Tender for Educational Services

Contracting authority: **District Chamber of Commerce in Jablonec nad Nisou**

File number: **R152/2014**

Date of coming into force: **22 December 2015**

The Chairman of the Office dismissed the appeal of the District Chamber of Commerce in Jablonec nad Nisou and upheld the first-instance decision of the Office in the case of the public contract "Tender for Educational Services". The District Chamber of Commerce in Jablonec nad Nisou was fined CZK 20,000 for committing an administrative offence.

The Office focused mainly on whether the District Chamber of Commerce in Jablonec nad Nisou actually fulfilled the definition of a contracting authority in the relevant case. The Office concluded that two conditions must be met to fulfill the definition of a public authority within the meaning of the Act on Public Contracts. Firstly, the entity must be established or founded for the purposes of meeting the needs of the public interest that are not of an industrial or commercial nature (and it must also perform such activity), and, secondly, it must have a certain relationship (in the form of financing, control or appointment of bodies) to the state or another "classic" contracting authority.

The Office concluded that the District Chamber of Commerce in Jablonec nad Nisou meets both conditions since it issues certificates of facts relevant in legal relations that arise in international trade, thus performing an activity that meets the needs of the public interest of no industrial or commercial nature. Moreover in 2010 and 2011 it received grant funds in excess of 50% of its income from the state or another public authority, thus fulfilling the requirement of predominant funding.

The Office therefore concluded that the District Chamber of Commerce committed an administrative offence when it did not award the investigated below-threshold contract in any of the types of award procedure under the Act on Public Contracts.

Eight Contracts in the Sector of Information Technology

Contracting authority: **Investment and Business Development Agency CzechInvest**

File number: **R453/2014**

Date of coming into force: **4 November 2015**

The Chairman of the Office dismissed the appeal of the Investment and Business Development Agency CzechInvest and upheld the first-instance decision of the Office in the case of committing administrative offences when awarding eight contracts in the sector of information technology. The Investment and Business Development Agency CzechInvest was fined CZK 100,000 for committing three administrative offences.

In two contracts, the Office found a violation of the law had been committed in that the Investment and Business Development Agency CzechInvest failed to comply with the obligation to retain documentation relating to such contracts. The Office concluded that, in terms of the state of facts of this offence, it is not relevant whether the Agency retained the complete documentation for a certain time period which was, however, shorter than the period required by law (shorter than five years after the conclusion of agreements within the relevant public contract). This circumstance could have become apparent only when determining the amount of a fine for committing an administrative offence.

In six other contracts, the Office concluded that the Agency erred when it commissioned these contracts separately, even though they formed one tender. In the Office's opinion, this reduced the estimated value to below the financial limits set by the Act on Public Contracts and five contracts were commissioned in a simplified below-threshold procedure and one contract outside the regime of the Act. For these contracts, the contracting authority failed to choose the appropriate type of award procedure under the Act on Public Contracts.

04

State Aid

In the area of state aid, the Office for the Protection of Competition is the coordinating body performing central coordination, advisory, consulting and monitoring activities in all areas, except agriculture and fisheries, which fall under the scope of competence of the Ministry of Agriculture. The Office primarily cooperates with providers in the preparation of notices of state aid measures to the European Commission, cooperates with the European Commission and the provider in proceedings before the European Commission, both in proceedings relating to the notice of state aid as well as in cases of unlawful state aid, misuse of state aid, existing state aid schemes, and also when the European Commission performs unannounced inspection in the Czech Republic. The Office submits an annual report on state aid granted in the preceding calendar year in the Czech Republic to the European Commission in accordance with the relevant regulations of the European Union. In terms of legislation, the Office represents the Czech Republic in the negotiation and preparation of EU legislation in the area of state aid. Finally, the Office, along with the Ministry of Agriculture, is the administrator of the central register of *de minimis* aid.

In terms of the rules for state aid, the year of 2015 was focused on the interpretation of rules resulting from the modernization of state aid, which began at the EU level in 2012. After discussing a number of draft regulations, these regulations were adopted, with the exception of the Commission Communication on the concept of state aid, which was not adopted in 2015 and is still in draft form. The objective of the reformed state aid rules is not only to stimulate the economic growth and competitiveness of the EU internal market, but also to rationalize legislation and accelerate decision-making processes concerning state aid.

In connection to the modernized rules for state aid establishing the obligation of Member States to create a central website, where mandatory data on state aid provided in the territory of each Member State will be recorded, the Office continued to address the so-called transparency obligation, which will apply from 1st July 2016. The principle of state aid transparency is specified, *inter alia*, in the provisions of Commission Regulation (EU) No. 651/2014 dated 17 June 2014, declaring, pursuant to Articles 107 and 108 of the Treaty, certain categories of aid compatible with the internal market (hereinafter referred to as "Commission Regulation No. 651/2014"). The obligation of transparency is also enshrined in other EU regulations governing the issue of state aid, including regulations of an advisory nature.

The European Commission states that the transparency of state aid is essential to the correct application of the rules of the Treaty on the Functioning of the European Union and leads to better compliance, greater responsibility, mutual assessment and, ultimately, to more effective use of public funds. The European Commission therefore requires Member States to set up a comprehensive website focusing on state aid at the regional or national level and to publish information on aid schemes and individual aid, the amount of which exceeds the limits laid down in regulations governing state aid and information about its beneficiaries. Member States must fulfil this obligation within two years from the entry of Commission Regulation No. 651/2014 into force, i.e. before 1st July 2016. Annex III of Commission Regulation No. 651/2014 specifies data on each granting of individual aid. A system created by the European Commission for data collection and its publication and retention will be used for this purpose in the Czech Republic. This obligation is one of the conditions of compatibility of individual aid with the internal market. In the Czech Republic, the obligation to record the required data will apply to providers since they have the required data to be recorded.

During 2015, the Office analysed the possibility of fulfilling the transparency obligation, taking into account the use of existing systems or the creation of a new system. The best solution would be to use the European Commission's system offered to Member States. At the end of 2015, a methodical working group for state aid was formed. The group focuses mainly on issues relating to the entry of the required data into the European Commission's system and on the development of methodological materials that should facilitate the fulfilment of the transparency obligation for the providers. The Office addressed the Ministry of Agriculture, the Ministry for Regional Development, and the Ministry of Finance for the purposes of participating in the working group.

In the new programming period 2014+, the European Commission has placed a high priority on ensuring compliance with the utilization of funds from the European Structural and Investment (ESI) Funds with rules on state aid. In order to ensure compliance with the relevant European Union legislation, representatives of the governing bodies consulted proposals for programmes in terms of state aid and their regulation from the perspective of the rules on state aid with the Office in this period.

Within the so-called ex-post-monitoring, the European Commission regularly inspects compliance with the rules on state aid, the number of which is rising. In 2015, the inspections covered five programmes in the Czech Republic.

Commission Regulation No. 651/2014, which came into effect on 1st July 2014, was adopted as part of the modernization process. The European Commission published a guide on the legislation to the above regulation. The guide should provide some interpretive guidance to Articles 1 - 35 of Commission Regulation No. 651/2014 and it aims to facilitate their application. In the document, the European Commission warned that it is a working material that is not binding on the European Commission and was created partly as a compilation of questions that it received in connection with the implementation of the above regulation.

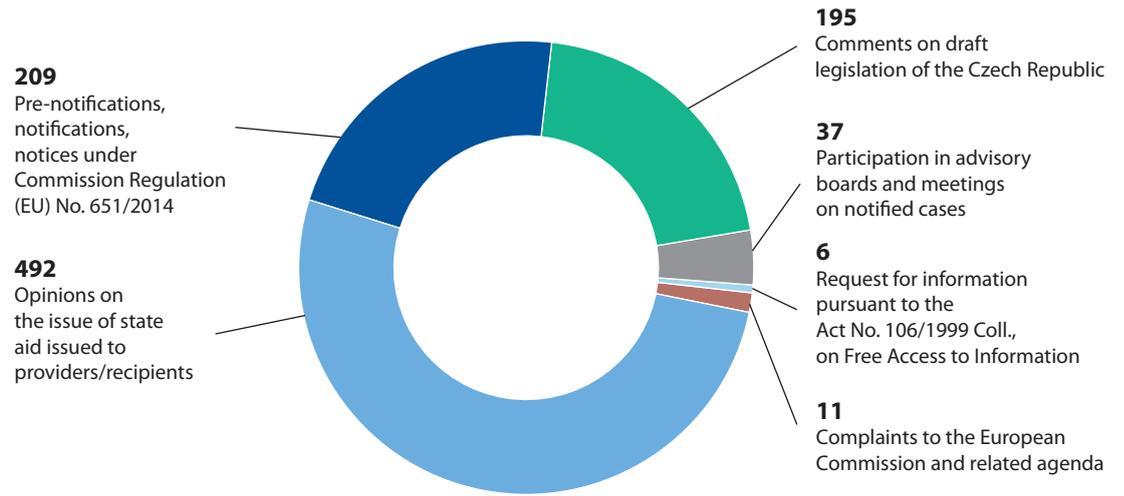
In 2015, the European Commission also focused on the regulation of partial questions in which it was necessary to take into account the newly adopted rules. It published new analytical forms for the application of state aid rules on the financing of infrastructure projects. These forms represent guidance documents helping public fund providers, financing infrastructure projects in various sectors, to correctly regulate state aid rules. They indicate the properties that a project must have so that it can be financed entirely outside the scope of state aid, under what conditions exemptions for the provision of state aid can apply and what types of projects should not be financed at all. This includes the following areas for which analytical forms have been issued: broadband network infrastructure, airport infrastructure construction, port infrastructure construction, research, development and innovation infrastructure, cultural infrastructure construction, sport and multi-purpose recreational infrastructure construction, energy infrastructure construction, waste management infrastructure, and rail and local transport infrastructure. New analytical forms replace the previous versions from 2012 (with the exception of the form for funding water management infrastructure which still remains active) and reflect the current decision-making practice of the European Commission and modernized state aid legislation. After issuing the Communication on the concept of state aid, the forms will be further flexibly updated by the European Commission.

The Office provided information on the above documents of the European Commission and other matters at a number of educational events organised by the Office in 2015, primarily to familiarise aid providers and the professional community with the changes that occurred in individual areas.

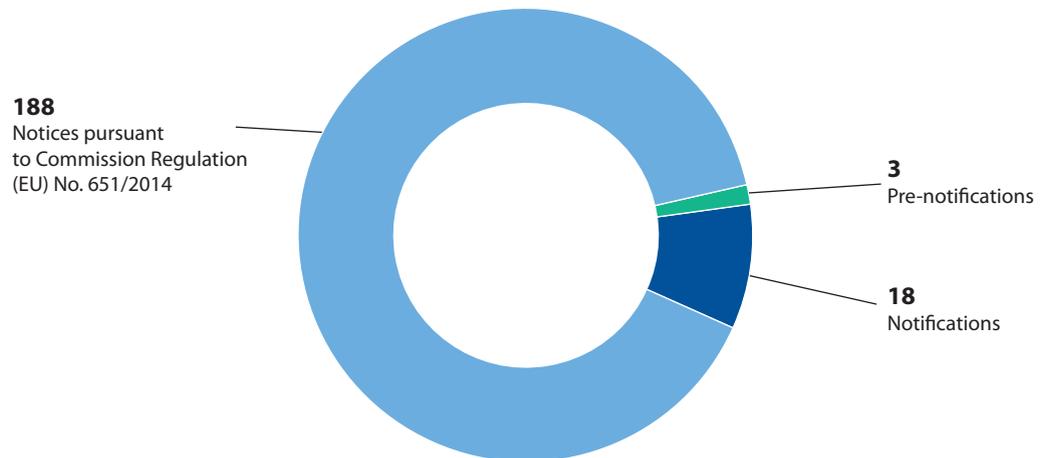
Selected Statistical Data on State Aid for 2015

Opinions on state aid issues issued to providers/beneficiaries	492
Pre-notifications, notifications, notices by block exception	209
Comments on the draft legislation of the Czech Republic and government materials	195
Participation in European Union advisory boards and European Commission meetings on reported cases	37
Complaints to the European Commission and related agenda	11

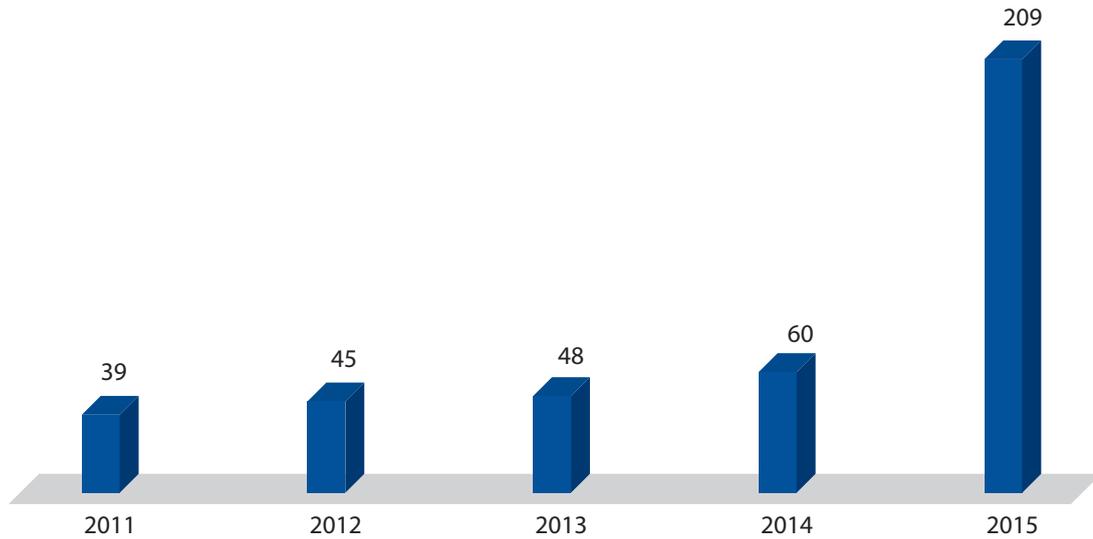
Selected Statistical Data on State Aid



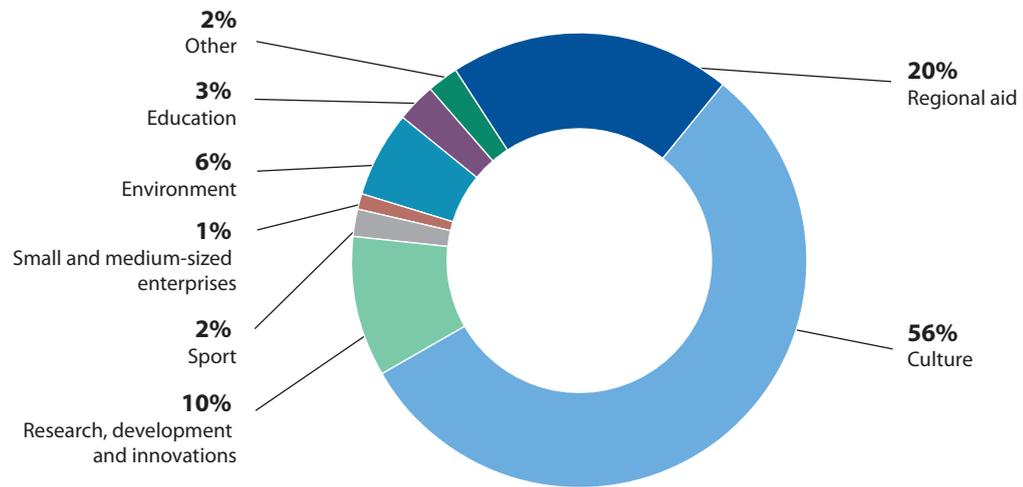
Notifications, Pre-notifications and Notices Pursuant to Commission Regulation (EU) No. 651/2014



Increase in the Number of Notifications to the European Commission (Notifications, Pre-notifications, Block exemptions)



Application of Commission Regulation (EU) No. 651/2014 by Individual Aid Category



De Minimis Aid

In the area of state aid, the Office conducts administrative proceedings against providers in the case of violations of the Article 3a (4) of the Act No. 215/2004 Coll., on the regulation of certain relations within the area of state aid and altering the Act on Promotion of Research and Development. The relevant provision concerns the recording of *de minimis* aid in the central register of *de minimis* aid within the statutory time limit and the indication of the name of the legal regulation in the legal act of the provision of state aid, based on which the *de minimis* aid was granted. From the statistics mentioned below follows that *de minimis* aid is widely used in the Czech Republic mainly due to its easy application without the need to request approval from the European Commission for the granting of *de minimis* aid. In 2015, a total of 59 administrative proceedings were initiated, 78 administrative decisions were issued and 60 fines in the total amount of CZK 438,800 were imposed due to late entry in the register.

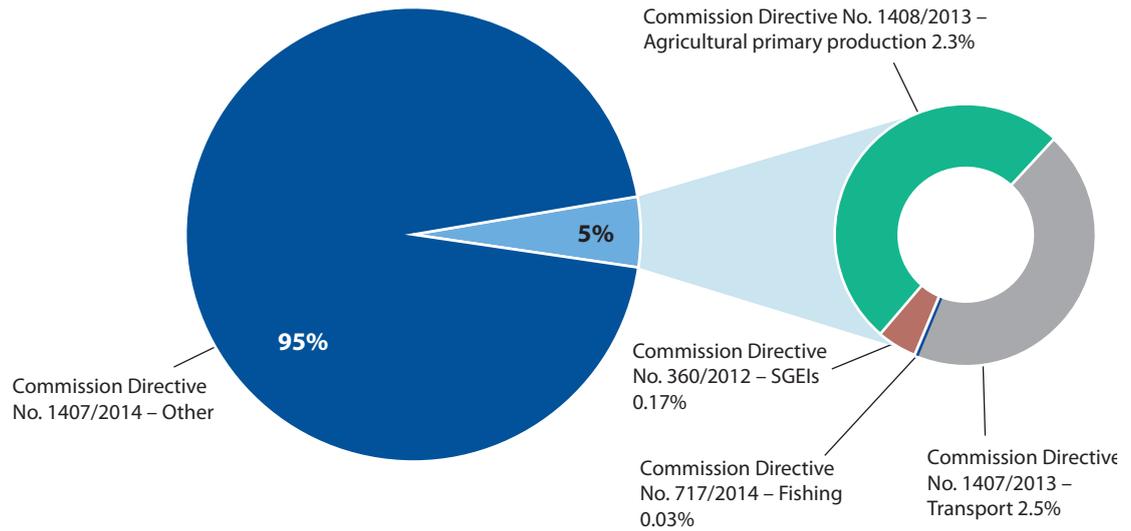
First-Instance Administrative Proceedings in the *De Minimis* Registry in 2015

Administrative proceedings initiated	59
Uncompleted administrative proceedings	26
Decisions issued	78
Number of fines imposed	Total of 60, of which 53 were final
Amount of fines imposed	CZK 438,800 of which CZK 341,200 was final

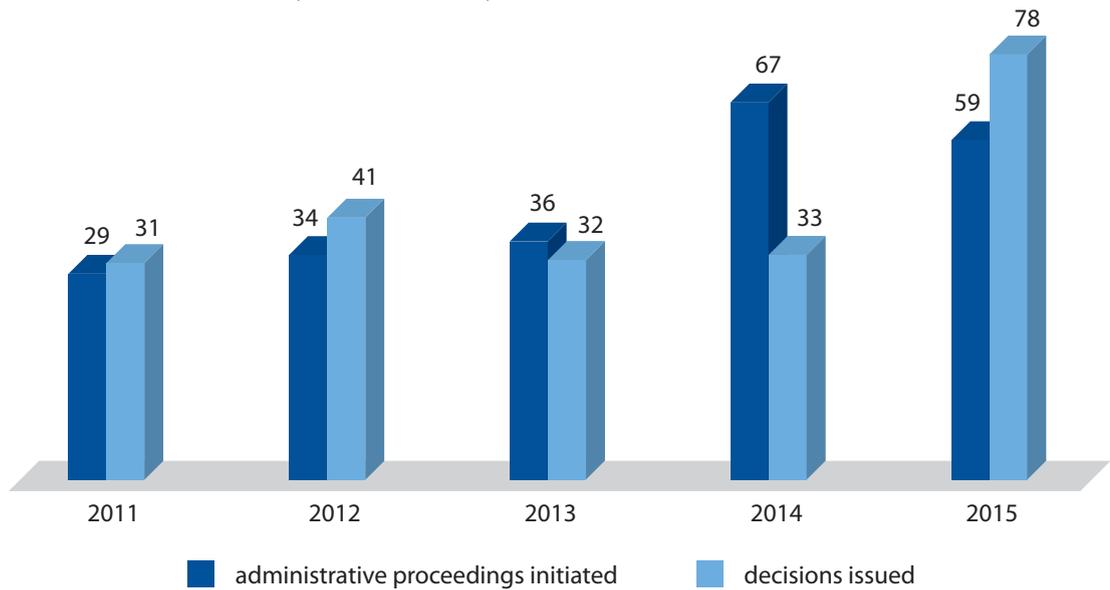
Statistics on *De Minimis* Aid Provided in the Czech Republic in 2015

Area	Quantity	Amount in CZK	Amount in EUR
Commission Directive No. 1408/2013 – Agricultural primary production	1,143	122,030,613.58	4,477,425.650
Commission Directive No. 360/2012 – SGEIs	83	127,786,199.22	4,703,464.000
Commission Directive No. 717/2014 – Fishing	9	760,746.00	28,118.900
Commission Directive No. 1407/2013 – Other	47,482	8,215,086,508.25	301,490,603.598
Commission Directive No. 1407/2013 – Transport	1,234	75,136,697.29	2,745,573.250
Total	49,951	8,540,800,764.34	313,445,185.398

De Minimis Aid by Area



Number of Administrative Proceedings Initiated and Decisions Issued in the Years 2011–2015 (*De Minimis Aid*)



Appellate Proceedings and Judicial Review

In 2015, the Office received five appeals against first-instance decisions in connection with the breach of obligations established for the provision of *de minimis* aid. One second-instance decision in the appellate proceedings was issued in 2015. In this decision, the Chairman of the Office revised the Office's first-instance decision and reduced the fine imposed in the first-instance from the original CZK 11,500 to CZK 8,050. The remaining four appellate proceedings were not concluded in 2015. One judgement of the Regional Court in Brno, which upheld the second-instance decision of the Office, and one judgement, by which the court overturned one decision of the Office, were issued in 2015. The Office filed a cassation complaint against the latter, and the cassation complaint was not decided by the court in 2015.

Legislative Changes

European Union

Given the substantial, previously made revisions of the so-called enabling regulation of the Council No. 994/1998 and the so-called procedure regulation of the Council No. 659/1999, the Council of the European Union decided to codify the above regulations in the interest of comprehensibility and clarity.

On 14 November 2015, Regulation (EU) 2015/1589 of 13 July 2015, laying down detailed rules for the application of Article 108 of the Treaty on the Functioning of the European Union (codified version) (hereinafter referred to as "Council Regulation (EU) 2015/1589") came into force and replaced Council Regulation (EC) No. 659/1999 of 22 March 1999, enacting detailed rules for the application of Article 108 of the Treaty on the Functioning of the European Union.

On the same day, Council Regulation (EU) 2015/1588 of 13 July 2015 on the application of Articles 107 and 108 of the Treaty on the Functioning of the European Union to certain categories of horizontal state aid (codified version) came into force and replaced Council Regulation (EC) No. 994/98 on the application of Articles 107 and 108 of the Treaty Establishing the European Community to certain categories of horizontal state aid.

A number of changes in provisions regulating this area occurred in the process of modernizing state aid rules. As a result of these revisions it was necessary to update notification forms, through which information for assessing the compatibility of the measures with the internal market is provided to the European Commission. New forms are included in Commission Regulation (EU) 2015/2282 of 27 November 2015, amending Regulation (EC) No. 794/2004 regarding the forms for notification of state aid and information sheets, which came into effect on 30 December 2014 and since that date notifications must be given through updated forms.

Within the modernization process a major regulation was adopted, specifically Commission Regulation No. 651/2014 which entered into effect on 1 July 2014. This regulation has brought about extended possibilities for providing state aid to new areas, e.g. culture, sports, local infrastructure etc. At the same time, it increased most intensities and absolute amounts of aid in the areas covered in previous legislation enshrined in Commission Regulation (EC) No. 800/2008. In compliance with the conditions of Commission Regulation No. 651/2014, it is possible to provide aid without the need of prior assessment by the European Commission. Thanks to the modernized regulation the European Commission expects that the block exemption scheme will be, in the future, used within the European Union for up to 90% of all state aid measures. Steps to achieve this objective could already be seen in 2015 when there was an increase in notifications submitted in the Czech Republic pursuant to Commission Regulation No. 651/2014 by 376% compared to 2014. This increase was caused by

the inclusion of new aid categories to the above regulation, in particular the use of the category of the block exemption for culture.

Work on an amendment to Act No. 215/2004 Coll., on the Regulation of Certain Relations within the area of State Aid and Amending the Act on the Promotion of Research and Development began in 2015. The central motif of the amendment was the new obligation of transparency. The amendment was supposed to address, among other things, the regulation of some existing concepts. During the discussions the amendment was withdrawn from the legislative process with regard to the persisting conflicts when handling comments.

Participation in Seminars and Working Groups

During 2015, representatives of the Office attended working group meetings at both national and European levels. Cooperation between the Office and the Ministry of Regional Development continued at the national level within the working group for state aid, whose members are all entities involved in the implementation of individual operational programmes, which includes not only the managing authorities but also the payment certification authority and the auditing authority. The working group for state aid addressed issues relating to state aid rules in the creation and implementation of individual operational programmes, including focus on the ex-ante conditionality stipulated by the European Union in the area of state aid in relation to the use of structural and investment funds.

At the national level, the Office was represented in working groups dealing with the setup of the so-called operational programmes, among other things, to ensure compliance with state aid rules. Thanks to this involvement, numerous consultations on measures containing elements of state aid, which resulted in a notification in some cases, were held with the European Commission.

Together with the State Housing Development Fund, the Office formed a working group dealing with state aid issues in the area of housing. Its purpose is to address current issues concerning state aid in programmes of the above mentioned fund. For example, possible solutions to aid the construction of rental housing were discussed.

Several working groups comprised of representatives of the European Commission and its Member States met at the European level to discuss partial questions arising from newly adopted regulations and to set up their correct application. Working groups formed already in 2014 include the Working Group of Member States to Implement the Modernization of State Aid Rules and the Working Group for the Implementation of the Guidelines on State Aid for Environmental Protection and Energy for the period 2014-2020. In connection with the transparency obligation, there were several meetings of the Steering Committee for Transparency. Meetings of representatives of Member States and the European Commission at a high level are held at regular intervals. Issues across all areas of state aid, including conclusions from individual groups, are addressed at these meetings.

In 2015, representatives of the Office participated in two European Commission workshops dealing with the issues of assessing state aid. The aim of the workshops was to facilitate the sharing of practices among Member States and to discuss ways to improve future practices in the assessment of large aid schemes granted under Commission Regulation No. 651/2014. From the Office's perspective, the meeting was beneficial due to the ongoing assessment of aid (the approved evaluation plan in the case of State Aid SA.38751 (2014/N) – Czech Republic - Plan for the evaluation of a large aid scheme subject to the block exemption "Investment Incentives Act"), in which Office employees are also involved.

Working Group for New Energy Aid Rules

A total of five meetings of the working group of the European Commission and its Member States, regarding the application and interpretation of new guidelines on state aid for environmental protection and energy for the period 2014–2020, were held during the year. The meetings focused on the most fundamental categories of rules, to which the concerned Member States must adapt in the future; in particular, the new concept of support for renewable energy sources, including biofuels, and a new category of rules for ensuring the adequacy of electricity production. The Czech Republic was always represented at these meetings by a representative of the Office together with representatives of the Ministry of Industry and Trade or the Ministry of Agriculture. Based on the outcomes of the meetings, the European Commission should issue a more detailed interpretation document for the guidelines.

Working Group for Infrastructure Aid Rules

Three meetings of the working group of the European Commission and Member States on the issues of state aid and infrastructure financing were held in 2015. Aid for investing in infrastructure, which is one of the European Union's priorities, previously suffered from interpretative ambiguities in terms of state aid rules. The above meetings were held for this reason, resulting in the update and supplementation of an interpretive aid for providers supporting infrastructure projects in various economic sectors, so-called analytical forms for the application of state aid rules on the financing of infrastructure projects.

Significant Cases

Complaint Against the Financing of Hospitals Owned by the Hradec Králové Region

The proceeding was initiated based on a complaint filed by Česko-německá horská nemocnice Krkonoše s. r. o. to the European Commission on 30 September 2012 and forwarded to the Czech Republic on 5 June 2014. In the opinion of the Czech Republic, the primary objective of the five supported hospitals owned by the Hradec Králové Region (in Trutnov, Jičín, Náchod, Dvůr Králové nad Labem, and Rychnov nad Kněžnou) is not to generate profit, but to provide affordable health care in all fields necessary for residents of these areas. In the opinion of the Czech Republic, public financing of these hospitals does not affect trade among Member States and therefore does not constitute state aid.

In its previous decision-making practice, the European Commission concluded that aid to public hospitals may affect trade among Member States when it comes to hospitals with an international reputation providing highly specialised medical services or when it comes to hospitals located in border regions with frequent patient mobility between Member States. In this case, however, the European Commission concluded that none of the five hospitals is a specialised hospital with an international reputation. The European Commission also concluded that the share of patients residing outside the Czech Republic is only a negligible value of 0.001% of the total number of patients (only three patients out of 267,049 patients in 2013). There is no evidence of cross-border investments in hospitals in the region. The European Commission therefore concluded that the allocation of public funds to public hospitals in the region cannot affect trade among Member States and therefore does not constitute state aid.

Programme to Support the Modernization and Construction of Combined Transshipment Points

In its decision of 12 August 2015, the European Commission approved a program to support the modernization and construction of combined transshipment points in the Czech Republic.

The Czech Republic announced the scheme on 14 November 2014. The scheme aims to increase the capacity of combined transshipment points, particularly for the purposes of continental combined transport, and thereby move freight traffic from roads to railways or waterways. The scheme is intended to create incentives for private investment in transshipment capacity increases. In the opinion of the Czech authorities, operators are not sufficiently motivated to invest in increasing the capacity, because there is a risk that the capacity will not be utilised immediately. Another factor is strong competition from road transport.

The aid beneficiary may be the owner of the existing or future transshipment point or its operator. Aid should be provided by the Ministry of Transport in the form of direct non-repayable grants in the period 2015–2020. The upper limit of the budget is CZK 2.5 billion. The aid intensity shall not exceed 49% of eligible costs.

After assessing the scheme, the European Commission decided not to raise an objection against it. The aid was found compatible with the internal market under Article 93 of the Treaty on the Functioning of the European Union. The Commission also concluded that the aid will be necessary to move traffic from roads to railways or inland waterways and it will motivate the recipients to further investment.

Nexen

In 2015, the notification proceedings before the European Commission in the case of the investment incentive for Nexen Tire Corporation Czech s. r. o. was successfully completed. The outcome of the proceedings was the decision of the European Commission on the compatibility of state aid with the internal market of the European Union pursuant to the Article 107(3a) of the Treaty on the Functioning of the European Union, due to which it is possible to provide aid to this company for the construction of a new tire production plant in the industrial zone in Žatec, creating at least one thousand new jobs.

Aid to Mitigate the Social Impact of the Closure of the Paskov Mine

In February 2015, the European Commission approved state aid of CZK 600 million for OKD, a. s. to facilitate the process of closing the unviable Paskov coal mine. The state aid should cover some of the social costs payable to dismissed employees by law after the expected closure of the mine at the end of 2017. In its decision, the European Commission concluded that the aid complies with the terms of Council Decision No. 2010/787/EU on state aid to facilitate the closure of uncompetitive coal mines and is therefore compatible with the internal market of the European Union.

Multi-year Program to Promote Biofuels in Transport for the Period 2015–2020

In August 2015, after proceedings that lasted about ten months, the European Commission gave the green light for further promotion of the use of biofuels in transport by 2020. It is a program of aid in the form of exemptions from excise tax on clean and high-percentage biofuels marketed in the fuel market in the Czech Republic, which builds on the original multi-year program from 2008. The new program was approved in accordance with the Guidelines on State Aid for Environmental Protection and Energy from 2014 which do not allow aid for biofuels that must be obligatorily added to conventional fuels. This restriction was the main topic of the proceedings, based on which legislative changes were adopted effective from 2016.

Social Housing in the Czech Republic

The European Commission has closed its investigation of aid that falls within the scope of competence of the decision on services of general economic interest from 2012 regarding social housing in the Czech Republic. The European Commission stated that the monitored aid scheme is *prima facie* in accordance with the provisions of the decision on services of general economic interest from 2012. According to the European Commission, the monitored aid scheme may, however, be subject to later inspections.

05

International Cooperation

Cooperation with foreign institutions entrusted with similar powers plays a major role in the Office's activities as it contributes to obtaining new knowledge and information and allows the mutual sharing of experiences and thus provides a valuable contribution to the Office's decision-making activities. The most significant partner at the international level is the European Commission and then the individual national competition authorities of EU Member States. The Office actively participates in the activities of the European Competition Network that coordinates the cooperation of individual competition authorities of the European Union with the European Commission. Just like every year, the Office was active during the regular sessions of the Competition Committee and related working groups of the Organization for Economic Co-operation and Development and it also participated in important events organised within the worldwide International Competition Network. In addition to activities resulting from its membership in the above international working groups and platforms, last year the Office actively contributed to the deepening of bilateral relations with partner competition authorities with similar priorities within the competition enforcement.

European Competition Network (ECN)

In addition to broader opportunities for Czech undertakings, the membership of the Czech Republic in the European Union brings an increased risk of exceeding EU competition rules. For this reason, the greatest volume of the Office's activities in the field of international cooperation is taken up by activities within the European Competition Network. The ECN is a unique platform for sharing information and experience between competition authorities and the European Commission with the aim of increasing the effectiveness of competition rules enforcement and deepening competition law convergence in the European Union.

The Office uses the findings of the ECN both in its decision-making practice as well as in the preparation of new legislation. The Office's activities within the ECN include, primarily, active involvement in individual working groups and sub-groups that each addresses a particular economic sector or section of competition law. In 2015, the most active working groups were the ones focusing on the issues of cartels, mergers, concentrations between undertakings, transport, telecommunications, imposition of sanctions or professional services. A current topic that occurred across all groups is the issue of information exchange related mainly to the issue of processing large volumes of data and disclosing personal data.

Within the ECN, the Office also actively participates in the electronic information exchange platform – the so-called Request for Information (RFI). In 2015, it processed 54 questionnaires from different areas covered by EU Member States' competition authorities.

International Competition Network (ICN)

The International Competition Network, which currently associates 109 competition authorities from 92 jurisdictions, is a worldwide, though still informal, platform focusing on cooperation in the field of competition law.

The annual ICN meeting was held in April. The issues of international cooperation among network members in the detection of international cartels and the implementation of leniency programs were addressed by the discussion panels. The participants focused on the persistent existence of bid rigging in public procurement, competition advocacy and protection of competition in the rapidly evolving on-line market.

At the ICN workshop held in September and focused on mergers, most attention was paid to the issue of applying commitments in individual cases of concentrations between undertakings and improving international

cooperation in assessing concentrations between undertakings. The participants of the workshop also evaluated the ten-year existence of the manual of recommended practices for notification of concentrations between undertakings.

The ICN cartel workshop held in October 2015 focused on the various means of detecting cartel agreements. In addition to the usual use of the leniency program and settlement procedure, representatives of the competition authorities also focused on international cooperation in the detection of cartels and investigative methods, their alternatives and innovations.

Organization for Economic Co-operation and Development (OECD)

As every year, Office representatives participated in meetings of the OECD Competition Committee, related working groups and the OECD Global Forum on Competition.

At the June meeting, the delegates assessed the impact of selected major innovations on consumers (disruptive innovation). New phenomena in the financial sector, which also received attention, include, for example, peer-to-peer lending, crowd-funding and the usage of digital currency (bitcoin, etc.). In other panels, participants discussed the issue of competitive neutrality and its concept in the application of competition law and the issue of institutional design.

As part of the October meeting of the Competition Committee and the Global Forum, representatives of the competition authorities returned to assessing activities in competition rules enforcement. The OECD Secretariat introduced the final version of the Handbook on Ex-Post Evaluation of Competition Authorities' Decisions.

One of the panels focused on cartel agreements concerning intermediate goods; the discussion focused not only on detection and prevention, but also on potential enforcement measures in national legislation. Another topic was agreements concluded between suppliers and retailers (cross platform parity agreements) which either specify the relative relationship between prices of competing products or represent the relationship between the prices charged by competing sellers. Delegates dealt primarily with the question of how such agreements are regulated in individual national jurisdictions and they jointly assessed the impact of these types of agreements on competition.

The final panel focused on the issue of market studies; the delegates also addressed the issue of whether the protection of competition may play a role in creating or, conversely, limiting new jobs. OPC was one of the authors of the written contributions on this topic.

Competition and Consumer Day

One of the most important European conferences on competition law organised regularly by the country that currently holds the Presidency of the Council of the European Union is the Competition and Consumer Day. The conference is attended by top representatives of the European competition policy and competition law, representatives of the European Commission and national competition authorities. Representatives of OPC also attended the conference, which was held in September 2015 and hosted by Luxembourg. Current topics discussed were mainly preparations for the creation of the so-called Digital Single Market and the phenomenon of so-called geo-blocking, which gained importance with the onset of e-commerce, as the question of on-line platforms and risks associated with the identification of emerging markets arose along with this issue.



Visiting delegation from the Ukrainian competition authority (14/10/2015)

Bilateral Relations

In addition to multinational cooperation within international organisations and platforms, the Office maintains close bilateral relations with foreign partner competition authorities. Long-term cooperation is maintained with the Antimonopoly Office of the Slovak Republic, particularly through regular meetings of the chairmen and vice-chairmen of both institutions. Reciprocal participation in organized conferences is also usual. In February, at a conference in Bratislava, representatives of OPC agreed with their Slovak, Polish and Hungarian colleagues on the possibility of restoring the intensified cooperation within the competition initiative of the Visegrad Four.

A study visit of experts from the Ukrainian competition authority and the Ministry of Economy and Trade of Ukraine was held at the headquarters of OPC in October 2015 and the visitors shared their experience mainly in public procurement with representatives of the Office. During the two-day meeting, representatives of OPC first presented the actual activities of the Public Procurement Division, then they focused on the analysis of domestic legislation concerning public procurement and practical specifics of the Czech Republic and the practice of OPC in detecting and combating bid rigging.

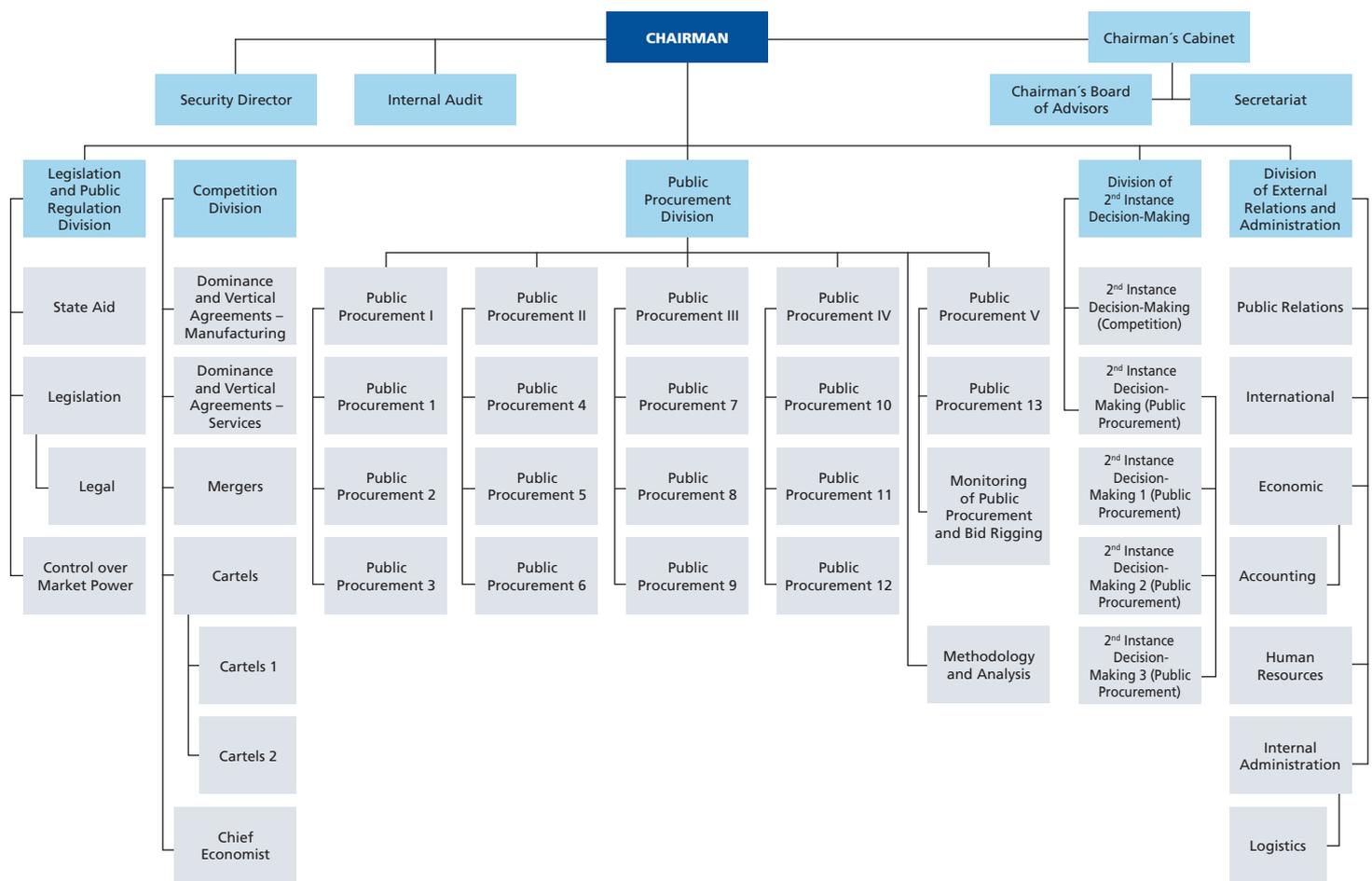
06

Personnel Agenda

In 2015, the Office for the Protection of Competition continued to meet the long-term staff plan, particularly in the stabilisation of specialised employees and their professional development.

The year 2015 was marked particularly by the Civil Service Act, where personnel-related activities in the first half of the year consisted mainly in commenting on government documents, discussions at methodological meetings, creation of the first systematisation of OPC and overall preparations for the implementation of the Civil Service Act into the practices of the Office. In the second half of the year, after the Civil Service Act became effective, the smooth transition of most employees under the Civil Service Act became the priority of the Human Resources unit. This objective focuses mainly on administrative activities associated with issuing decisions on recruitment for service and assignment to a service position and, subsequently, with ensuring the gradual completion of officer promises. In the last months of the year, attention focused on the execution of an officer exam at OPC in the field of service, competition, supervision of public procurement and concessions and supervision of the provision of state aid. The actual implementation was preceded by setting up processes and issuing internal documents pursuant to the Civil Service Act and related implementing legislation. The first-ever officer exam was conducted at OPC in December.

Organisational Structure 31 December 2015

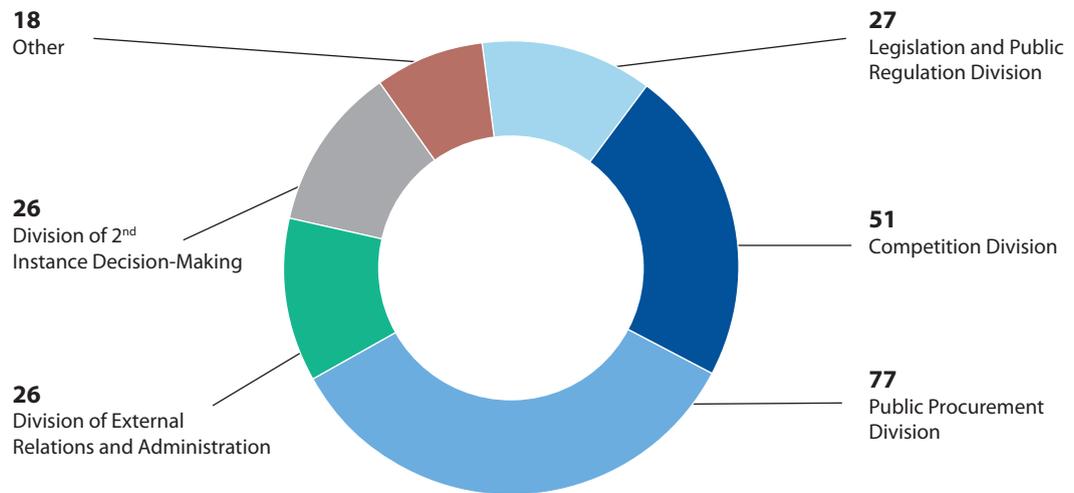


In the area of projects financed from EU structural funds focused on the management, education and development of employees, the HR Department ensured the sustainability of project outcomes and the ongoing evaluation of selected activities. This included, especially, the creation and subsequent implementation of the OPC Employee Training Plan for 2015, the continuous review of professionaliograms and, in addition, the regular assessment and self-assessment of employees in an employment relationship was conducted, including the determination of work and development objectives for 2016.

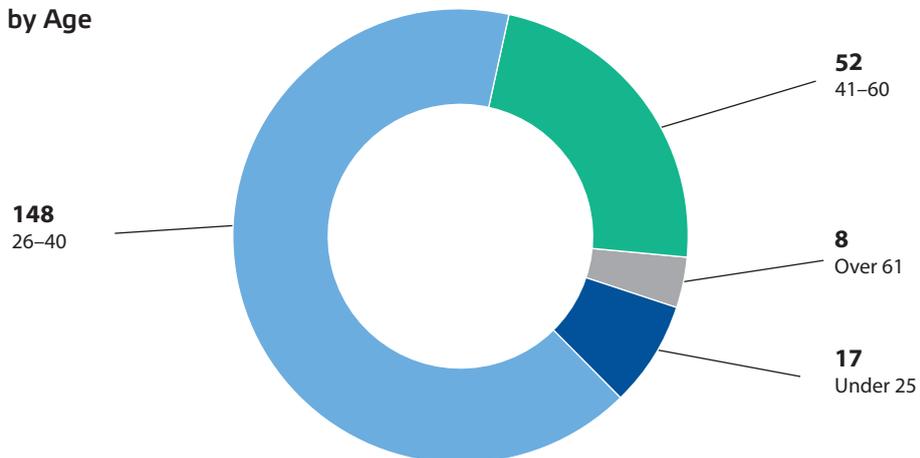
As at 31 December 2015, the Office for the Protection of Competition had a total of 225 employees.

Employee Structure

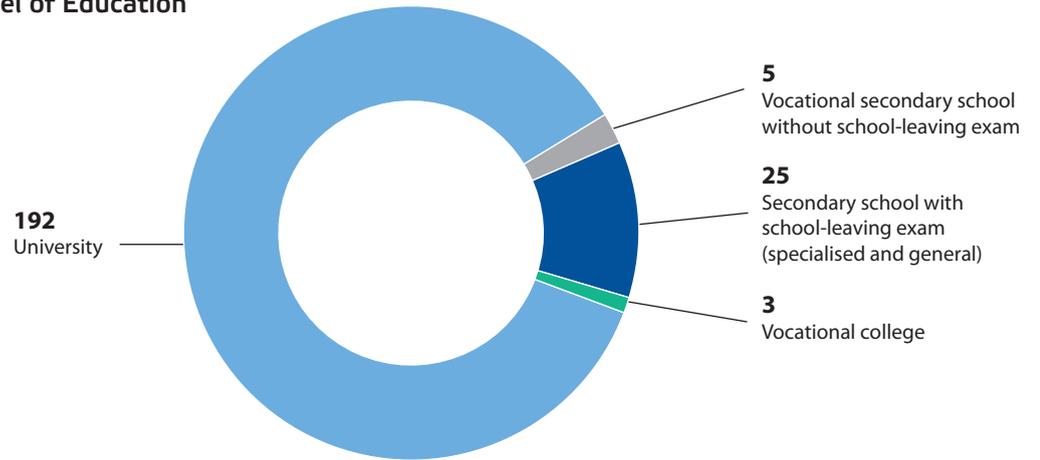
Employee Structure by Division



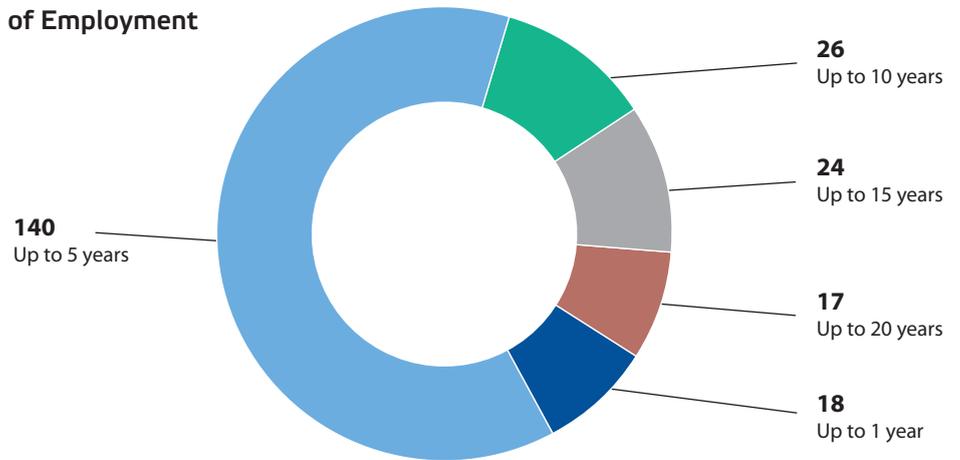
Employee Structure by Age



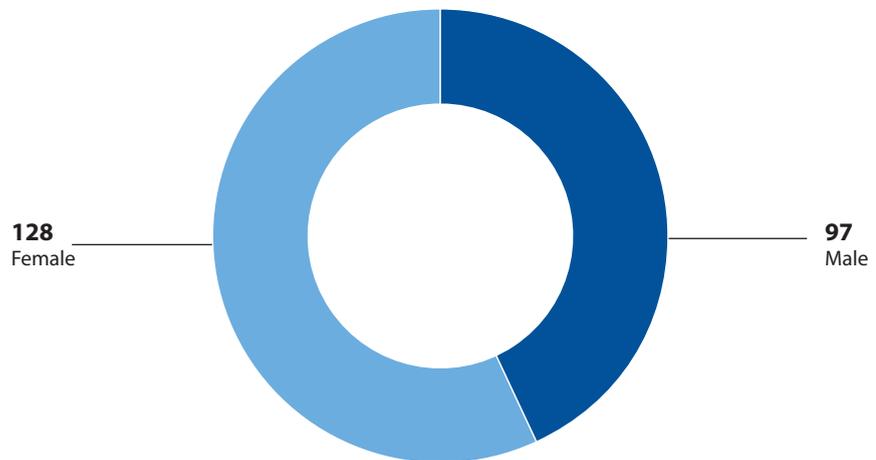
Employee Structure by Highest Level of Education



Employee Structure by Duration of Employment



Employee Structure by Gender



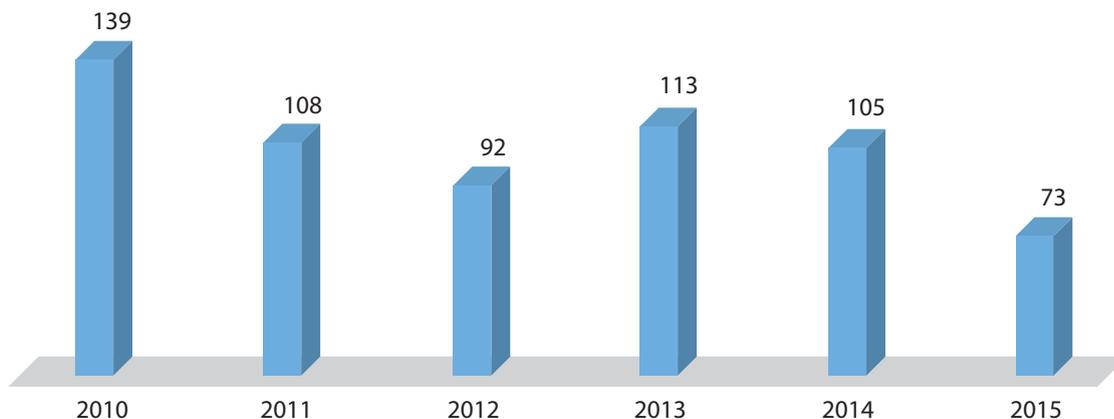
07

Information Activities

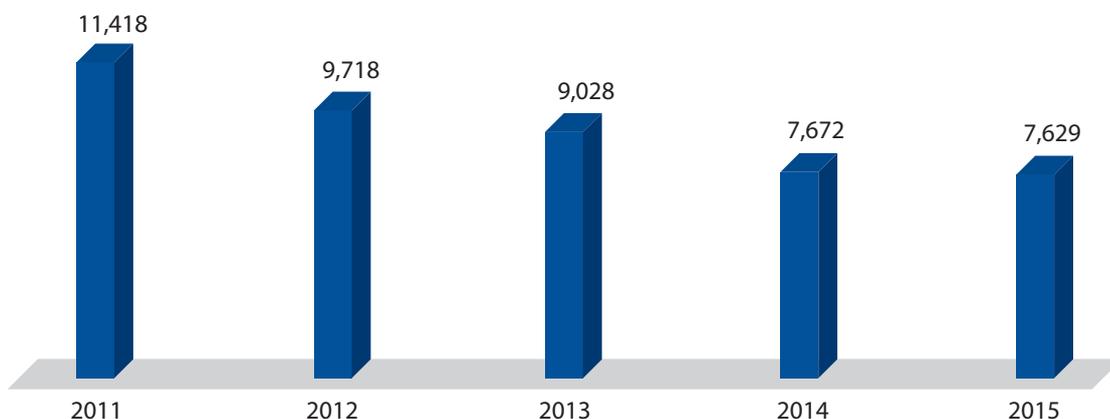
The Office for the Protection of Competition transparently informs the professional and general public about its activities primarily through its website (www.uohs.cz), issuing press releases and newsletters, publishing final decisions of the Office in collections of decisions on the website, as well as judgements related to judicial review of the Office's decisions, publications and educational activities. In 2015, the Office provided information in 127 requests pursuant to the Act No. 106/1999 Coll., on Free Access to Information and issued 68 decisions in this field.

In 2015, the Office published 73 press releases and recorded 7,629 posts in monitored media. According to the analysis of the media coverage of OPC prepared by Newton Media, monitoring a selection of the most important Czech media (national newspapers, television and radio stations), the media coverage in such media grew by 58% in 2015. Media posts concerning the Office were mostly neutral (90% of posts), mainly reporting on the re-appointment of the Chairman Petr Rafaj, and the resolution of the contract for the reconstruction of the National Museum, the cartel of construction companies and the amendment to the Act on Public Contracts.

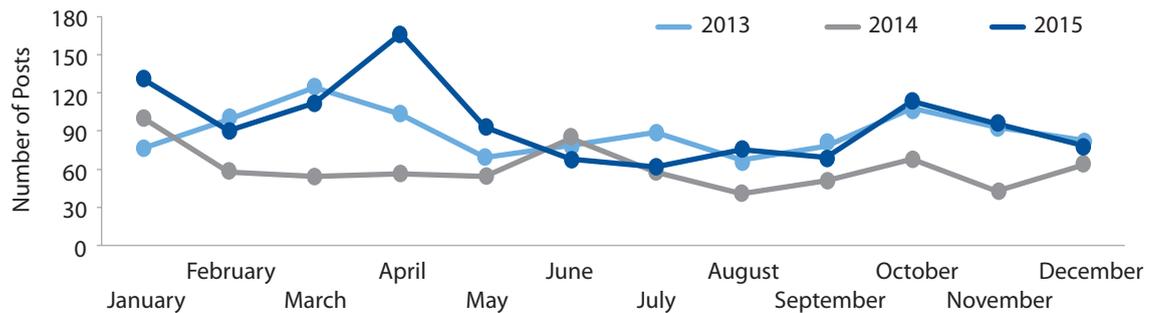
Number of Press Releases Issued



Number of Posts in Monitored Media



Development of OPC Publicity in 2013, 2014, and 2015 by Month



The representative of OPC most frequently mentioned in the media was the Chairman Petr Rafaj, who was mentioned in twice as many posts compared to in 2014. Authorial articles and interviews with the Chairman were published, for example, by MF Dnes and Lidové noviny.

In terms of media, MF DNES was mostly interested in the activities of the Office with predominantly neutral publicity. Other newspapers that followed were Právo, Hospodářské noviny and Lidové noviny. In terms of TV stations, it was ČT 24 and ČT 1, and in terms of radio stations, ČRo Radiožurnál and ČRo Plus. In terms of journalists, most reports on the Office were written by Jan Šůra (MF Dnes), Jan Šindelář (E 15) and Tomáš Tománek (Lidové noviny).

Publication Activities

In addition to the regular annual report, the Office for the Protection of Competition also issued two information bulletins last year. The first information bulletin focuses on changes in the supervision of compliance with the Act on Public Contracts pursuant to the so-called technical amendment to the Act No. 137/2006 Coll., on Public Contracts, of February 2015. The information material summarises and explains changes brought about by the amendment in terms of compliance with the law to contracting authorities and bidders in public procurement. The second publication from last year was the Interpretative Dictionary of Key Terms, which provides the interpretation and English translation of basic professional terms in all four areas of OPC competences: competition, significant market power, public procurement and state aid.





On 10 June 2015, President Miloš Zeman appointed Petr Rafaj the Chairman of OPC for his second term of office (photo by Hana Brožková)



Prime Minister Bohuslav Sobotka and the Chairman of OPC Petr Rafaj (17/06/2015)

Appointment of Mr. Petr Rafaj for the Second Term of Office

In May 2015, Mr. Petr Rafaj was selected and proposed by the Government of the Czech Republic to the position of the Chairman of the Office for the second 6 year term of office. On 10 June 2015, Mr. Rafaj was appointed to the position by the President of the Czech Republic, Mr. Miloš Zeman with the effect from 9 July 2015. Since the term of the first Chairman of the Office, Mr. Stanislav Bělehrádek, who was alternately also the Minister, Mr. Rafaj has been the only Chairman appointed to the position twice. Shortly after his appointment the Prime Minister, Mr. Bohuslav Sobotka visited the Office and discussed with Mr. Rafaj recent developments and future priorities of the Office in the area of the protection of competition and public procurement.

St. Martin's Conference 2015

The ninth annual St. Martin's Conference on changes in competition law was held on 11 - 12 November 2015 in Brno at the Office headquarters and more than 150 Czech and foreign experts in competition law attended. The opening panel of the conference has traditionally focused on the most important events in competition for the past year in the Czech Republic, Slovakia and the European Union. Presenters in this block included Michal Petr, who headed the Competition Division of OPC until September, the Vice-Chairman of the Slovak competition authority Radoslav Tóth and Petr Zákoucký (AK Clifford Chance), who analysed a number of European Court judgements with particular regard to violations of Article 101 TFEU. Professor Peter Behrens of Hamburg University named his lecture Ordoliberalism and its Significance for Today's Competition Policy. The second panel of the conference focused on the trend of introducing advanced econometric methods into competition policy, especially in relevant market definition. Daniel Donath (CRA), Alexis Walckiers from the Belgian competition authority, Tony Curzon Price from the British competition authority and Milan Brouček from the Directorate General for Competition of the European Commission presented in this panel. Christoph



Peter Behrens, Michal Petr, Radoslav Tóth and Petr Zákoucký



Michael Mikulík, Michal Petr, Radoslav Tóth



Daniel Donath, Alexis Walckiers, Tony Curzon Price, Milan Brouček



Baert (Master Card), Tomáš Kubeša (OPC), Thomas Mehler (Bundeskartellamt) and Nikodem Szadkowski (Polish competition authority) discussed the credit card transaction interchange fees issue in another panel discussion.

The second day of the conference started with three parallel workshops. The seminar focusing on prioritization and the "*de minimis*" rule was led by Kamil Nejezchleb of the OPC Cartel Unit and lectures were held by Josef Bejček from Masaryk University and Jiří Kindl from AK Weil, Gotshal & Manges. During a workshop on the settlement procedure, the Director of the Cartel Unit, Igor Pospíšil, introduced all attendees to OPC's opinion of practice, Martin Nedelka from law firm AK Nedelka Kubač advokáti added information about EU practice and Pavel Dejl from law firm AK Kocián Šolc Balaščík (KŠB) contributed with a reflection on the situation in which the client should agree to the settlement proposed by the Office. The third parallel workshop was led by the Vice-Chairman of the Office, Hynek Brom, and he talked about significant market power, especially the ongoing legislative process of the amendment to the Act on Significant Market Power and changes that the amendment will bring, if approved.

Another panel discussion headed by the Chairman of the Lithuanian competition authority, Šarūnas Keserauskas, focused on restrictions of competition by public authorities. Vice-Chairman of OPC, Michael Mikulík discussed Czech practice, the situation in Slovakia was briefly summarised by Michaela Nosa from the Slovak competition authority and Johan Jonzon from the Swedish competition authority talked about the situation in Sweden.

The conference was closed with a panel on significant market power led by the first Vice-Chairman of OPC, Hynek Brom. An overview of legislation on significant market power in Central and Eastern Europe was presented by Barbora Dubanská from CMS Cameron McKenna and then space was given to representatives of retailers and food producers who presented mainly their differing views on the planned amendment to the Act on Significant Market Power and the existence of the law itself: Marta Nováková (Czech Confederation of Commerce and Tourism), Miroslav Koberna (Federation of the Food and Drink Industries) and Jaroslav Froulík (Association of Traditional Czech Trade).

Conference on State Aid

In 2015, similarly as in 2014, there were two conferences with an emphasis on modernized state aid rules. The first conference, which was held on 17 June 2015, focused on the current developments in state aid, with an evaluation of the application of Commission Regulation No. 651/2014 and warning about the obligation of transparency. A separate presentation focused on Commission Regulation No. 651/2014 and it aimed at issues related to its application. Space was also given to state aid in agriculture and the impact of new regulations in practice, as well as new rules on state aid for rescuing and restructuring non-financial businesses in trouble, as well as to the new level of cooperation between the Czech Republic and the Directorate General for Competition of the European Commission in state aid. There were also examples of decisions of the competent authorities of the European Union.

One of the key topics of the second annual conference, which took place on 25 November 2015, was the planned amendment to Act No. 215/2004 Coll., on the Regulation of Certain Relations in State Aid, and amending the Act on the Promotion of Research and Development. Other topics included the latest information on state aid, particularly updated Analytical Tables that serve as a guide for dealing with state aid when financing infrastructure projects, information on ex-post monitoring conducted by the European Commission, issues of public aid in the area of financial instruments or the principles and process of repaying state aid. Finally, space was given to the interpretation of the rules of individual articles of Commission Regulation No. 651/2014.

The speakers at the conferences included representatives of the European Commission, the Permanent Representation of the Czech Republic to the European Union in Brussels, the Ministry of Agriculture and the Ministry for Regional Development. Both conferences enjoyed great interest from providers and the professional community.



Hynek Brom, Václav Hromada, Libuše Bílá and Radana Dejlová (17/06/2015)

Budget of OPC for 2015

Indicators of Chapter 353 Office for the Protection of Competition for 2015 In thousands of CZK

	Approved Budget	Budget after changes
Aggregates		
Total revenue	5,500.00	5,500.00
Total expenditure	237,335.43	238,020.19
Specific indicators – revenue		
Tax revenue ¹⁾	4,000.00	4,000.00
Non-tax revenues, capital revenues and transfers received total	1,500.00	1,500.00
of which: income from the budget of the European Union without a common agricultural policy in total	0.00	0.00
Other non-tax revenues, capital revenues and transfers received total	1,500.00	1,500.00
Specific indicators – expenditure		
Expenditure for performing the tasks of the Office for the Protection of Competition	237,335.43	238,020.19
Cross-sectional indicators		
Salaries and other payments for work performed	108,838.42	109,345.65
Mandatory employer-paid insurance ²⁾	37,005.06	37,177.52
Transfer of cultural and social needs fund	1,068.94	1,074.01
Salaries of employees in employment, except employees in service positions	57,354.46	61,845.71
Salaries of employees in service positions according to the Civil Service Act	44,091.02	40,107.00
Salaries of employees in employment derived from the salaries of constitutional officials	5,448.10	5,448.10
Training for crisis situations pursuant to Act No. 240/2000 Coll.	100.00	100.00
Expenditure co-financed from the budget of the European Union without a common agricultural policy in total	0.00	0.00
of which: from the state budget	0.00	0.00
share of the budget of the European Union	0.00	0.00
Expenditures recorded in the information system of the EDS/SMVS programme financing total	34,820.00	34,820.00

1) without revenues from mandatory social security insurance and contribution to the state employment policy

2) compulsory social security insurance and contribution to the state employment policy and public health insurance

Provision of Information pursuant to Act No. 106/1999 Coll., on Free Access to Information for 2015

1. Number of Requests for Information pursuant to Act No. 106/1999 Coll. Filed, and Number of Decisions to Dismiss Requests Issued:

Area	Number of requests filed	Number of decisions issued
Competition	23	15
Public procurement	62	33
State aid	7	4
Significant market power	7	3
Legislative and legal	0	0
General	28	13
Total	127	68

2. Number of appeals filed against decisions of the Office pursuant to Act No. 106/1999 Coll.:

24 appeals

3. Number of complaints filed against the procedure in processing requests under Act No. 106/1999 Coll.:

5 complaints

4. Judgements of the court in relation to the Office in providing information:

- Judgement of the Regional Court in Brno of 19 December 2014, ref. No. 29 A 37/2013-71 – Decision of the Chairman of the Office overturned and case remanded to the Office for further procedure; the Office filed a cassation complaint which was dismissed by the judgement of the Supreme Administrative Court of 25 March 2015, ref. No. 8 As 12/2015-46;
- Judgement of the Regional Court in Brno of 30 May 2014, ref. No. 62 Af 103/2012-133 – Decision of the Chairman of the Office overturned and case remanded to the Office for further procedure; the Office filed a cassation complaint which was dismissed by the judgement of the Supreme Administrative Court of 7 April 2015, ref. No. 6 As 136/2014-41;
- Judgement of the Regional Court in Brno of 6 May 2015, ref. No. 30 Af 38/2013-59 – Decision of the Chairman of the Office overturned and case remanded to the Office for further procedure; the Office filed a cassation complaint which was dismissed by the judgement of the Supreme Administrative Court of 8 October 2015, ref. No. 10 As 126/2015-33;
- Judgement of the Regional Court in Brno of 19 December 2014, ref. No. 29 A 55/2013-50 – Decision of the Chairman of the Office overturned and case remanded to the Office for further procedure; the Office filed a cassation complaint which has not yet been decided by the Supreme Administrative Court.

5. Results of sanction proceedings for non-compliance with Act No. 106/1999 Coll.:

No proceedings were conducted.

6. Number of exclusive licenses granted:

No exclusive licenses were granted.

08

Agenda 2016

25 Years Protecting Competition

In 2016 the Office for the Protection of Competition is celebrating its 25th anniversary. The Czech Office for Competition was established by the act of the Czech National Board No. 173/1991 Coll., of 26 April 1991 and initiated its activities on 1st July 1991. After a short period 1992–1996 the Office was renamed to the Ministry for Competition. Currently the protection of competition in the Czech Republic is entrusted to the Office for the Protection of Competition seated in Brno. Under this form the Office began to operate on 1st November 1996. The scope of competence of the Office is defined by the Act No. 273/1996 Coll., as amended by the Act No. 187/1999 Coll. The Office creates conditions for the support and the protection of competition, supervises the public procurement award procedures and in the course of its existence the competences of the Office has been extended by the area of state aid and the issue of significant market power and the abuse thereof.



Competition

In the upcoming period, the priority of the Office will primarily be sanctioning such practices where it is obvious, or it can be expected, that they have a significant effect on fair competition. In addition to completing previously initiated proceedings, the Office intends to focus on the detection and elimination of horizontal cartel agreements in 2016, in particular on bid rigging cases. The most important sectors that will be monitored in detail will include energy, transport, telecommunications and construction.

In the legislative area, this will include the completion of the technical amendment to the Act on the Protection of Competition, which is currently in the Chamber of Deputies of the Czech Republic; it mainly clarifies the possible sanctioning of public authorities, regulates changes in disciplinary offences for violations of procedural obligations and allows for broader cooperation of the Office with the competition authorities of Member States. The Competition Division is further initiating a revision of the Act on the Protection of Competition, which will reflect some of the institutes contained in the directive regulating private enforcement of competition law. The division will also actively participate in the implementation of this Directive in a special legal provision.

The Office will continue to issue and update guidance documents. The notification of the calculation of fines for competition offences will be mainly revised so that the updated notification reflects case law, current competition trends and the Office's decision-making activities.

On the international level, the Office will more actively enter into agreements with its partners from other EU Member States that will allow the Office to cooperate in the enforcement of national competition rules.

Significant Market Power

After the amendment to the Act enters into force and effect, the Office will pay attention particularly to the application of the Act under new conditions. Given that the amendment to the Act reflects the knowledge and experience that the Office gained in investigations under the existing law, the approval of the amendment will create new conditions for easier application of the law, and, thus, the possibility to better punish the practices of customers showing signs of potential violation of the law.

Part of the agenda at the St. Martin's Conference will again focus on the issues of significant market power and it is expected that the main topic will be information about the Office's experience gained during investigations conducted under the amended Act.

In addition, Office employees will participate in meetings of the FOOD working subgroup and apply the knowledge gained from these meetings in its enforcement activities.

Public Procurement and Concessions

The year 2016 will be marked by major changes that will bring the new Public Procurement Act and its implementing regulations, not only for the Office but for all actors in public procurement. The forthcoming Public Procurement Act implements the provisions of European directives from 2014 on public procurement and concessions into Czech legislation and it will bring about changes in the supervision of public procurement, even though no revisions of the review procedure occurred at the European level in 2014. The aim of the new law is to set fair rules for the selection of suppliers in public procurements and concessions that will bring more flexibility into the procurement process and reduce the bureaucratic burden. The aim of the supervisory regulations is to establish such procedural rules that will allow for a fast, efficient and modern approach to assessing the compliance of the contracting authority's practices with the above law.

Not only for this reason, however, the Public Procurement Division plans to organise an annual conference on public procurement at the headquarters of the Office, which will aim at discussing the issue of proper public procurement according to the new rules, no later than in the second half of this year when the law should already be being used in practice.

State Aid

From the perspective of state aid, the year 2016 should be focused on the implementation of modernised rules. This is closely related to the fulfilment of the obligation of transparency using the European Commission's electronic system. In the first half of 2016, it will be therefore necessary to discuss issues associated with registration in the European Commission's system so that this obligation can be fulfilled from 1 July 2016. It will be necessary to methodologically regulate issues associated with registration in the above system. This will be addressed by the created methodological working group for state aid, consisting of representatives of the Office, the Ministry of Agriculture, the Ministry for Regional Development and the Ministry of Finance, whose first meeting will take place in early 2016. The main outcome should be a methodological guideline intended for providers of state aid. The group may also address other issues related to state aid. In this context, it will also be important to make the providers familiar with the transparency obligation.

The peak of the modernization process should be the adoption of the Commission Communication on the concept of state aid pursuant to the Article 107 (1) of the Treaty on the Functioning of the EU. The above communication should serve as a practical guide for state aid, the aim of which will be to provide further clarification of the key concepts in relation to state aid enshrined in Article 107 (1) of the Treaty on the Functioning of the EU, and contribute to simpler, more transparent and consistent application of the concept of state aid. The European Commission has also announced a revision of the Regulation of the Commission No. 651/2014. The potential extension of block exemptions with new aid categories, e.g. ports or airports, should be discussed within the revision.

The Office will process and submit to the European Commission a report on the implementation of the decision of 20 December 2011 on the application of Article 106 (2) of the Treaty on the Functioning of the European Union on state aid in the form of compensation payment for the public service obligation granted to certain undertakings entrusted with the provision of services of general economic interest. The report is made regularly in two-year intervals and providers of state aid in the Czech Republic, in particular regions, cities and municipalities contribute to its preparation.

Representatives of the Office will attend meetings of working groups that were established in connection with the modernization of rules for state aid. It is expected that, in the second half of 2016, the Czech Republic will be hosting a meeting of the Working Group of EU Member States on the implementation of the modernization of state aid rules, which is regularly attended by representatives of all Member States and the European Commission.

