





# Introduction



In 2006, the Office for the Protection of Competition commemorated fifteen years of application of competition law in the Czech Republic, as well as fifteen years of its existence. The event of the year, related to the aforesaid anniversary, was a large international conference on competition and competitiveness, held in late November at the seat of the Competition Office, in Brno, and attended by leading competition experts from all over the world. It was the first event of this kind held in this country. It was received extremely well by both domestic and foreign guests, journalists and other participants, thus confirming our belief that despite its relatively brief existence, the Competition Office has won its "place in the sun".

The Office for the Protection of Competition continued to apply its new approach, whereby it prefers prevention to fines, in 2006. That does not mean we do not impose severe penalties on incorrigible delinquents. Quite the contrary: when undertakings or contracting authorities deliberately, sometimes very seriously and blatantly, violate applicable laws, they have to be prepared for strict and uncompromising prosecution by the Competition Office even now. Some of the delinquents experienced that first hand in 2006. It is quite understandable that many of those who were in breach of the Act on the Protection of Competition or the Public Procurement Act and were subsequently prosecuted by the Competition Office have filed motions to have the decisions of the Competition Office overturned. I am pleased to note that the Competition Office won most of the court disputes last year. It is yet another indication that the Competition Office is heading in the right direction over the next fifteen years.

**Martin Pecina**

Chairman of the Office for the Protection of Competition



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# *Competition*

Competition is a principal mechanism of the market economy; however, it can be effective only if the market consists of independent companies exposed to competition pressure. Only competitive pressure may guarantee an optimum situation for the consumer in terms of quality and price of products and services. In order to help protect and develop the individual markets, the Act on the Protection of Competition defines prohibited practices that may adversely affect competition. In the Czech Republic, the enforcement of the Act on the Protection of Competition is entrusted to the Office for the Protection of Competition (the „Competition Office“) in Brno. It imposes sanctions for prohibited agreements (cartels) and abuse of dominance, and conducts merger control.

## LEGISLATIVE ACTIVITIES

In June 2006, the president of the Czech Republic, Václav Klaus, vetoed a parliamentary bill amending the Act on the Protection of Competition. The core of the amendment was in the incorporation of the notion of “economic dependency” into the law. The Competition Office did not support the adoption of the amendment in the form approved by the Chamber of Deputies, and provided the Czech president with a position paper to that effect. The notion of economic dependency provides for an option to regulate the behavior of undertakings that may not have a dominant position on the market but in effect wield a market power enabling them to put forward unilaterally favorable business terms in contractual relations with their business partners. In practice, this is particularly true for chain stores. The behavior of companies abusing the fact that their partners are economically dependent on them may lead to serious distortions of competition; however, such actions do not fall under the province of the Competition Office as the undertakings in question do not have a dominant position on the market. The Competition Office thus supported the original parliamentary bill that was to incorporate the notion of economic dependency into the Act on the Protection of Competition. However, while the bill was discussed by the Chamber of Deputies, the original bill was modified to an extent that would make the provision of law excessively stringent, and would actually create conditions for its abuse. This is true in particular for the provision which penalizes the very *acceptance* (rather than imposition) of more favorable conditions by the economically stronger entity, e.g., the acceptance of a proposed purchase agreement for a price below the seller’s cost. The provision of law made it possible to punish a purchaser who accepts its supplier’s proposal in good faith; moreover, the seller may be selling its goods below cost for legitimate reasons. However, as the purchaser is not able to actually verify the costs of its suppliers, this provision of law could be abused by suppliers who would offer prices below cost in order to expose their customers for prosecution, whatever their reasons may be.

As of November 1, 2006, an amendment to Decree No. 368/2001 Coll., of the Office for the Protection of Competition, stipulating in detail the particulars of applications for merger approval, entered into force. The amendment is related to compliance by the Czech Republic with obligations stemming from its EU membership. It concerns in particular the assessment as to whether a merger has a community dimension and as such falls under the sole competence of the European Commission. The Competition Office now receives from merging undertakings information required by the European Commission by virtue of the said amendment.

## COMPETITION ADVOCACY

The activities of the Competition Office are not restricted solely to decision-making in administrative proceedings. Competition advocacy encompasses a variety of activities designed to support the establishment and development of a competitive environment. The Competition Office believes that competition advocacy is a useful and swift, and as such effective, tool. If a company acting contrary to the law accepts the objections raised by the Competition Office and corrects its ways, there is no longer any need to initiate an administrative proceeding. However, it is possible to undertake obligations to rectify the offending state of affairs even when a proceeding is already pending, which was the case for instance in the 2006 dispute between ČEZ and

Sokolovská uhelná. However, if the party to the proceeding completely refuses to accept the arguments proposed by the Competition Office, the Competition Office has to impose a stringent penalty and seek to have the offending state of affairs rectified by virtue of its decision proper. IN 2006, the Competition Office resolved a total of 17 cases by competition advocacy.

Another important element of competition advocacy is the review of and commenting on legislative proposals of new laws and by-laws, “passive legislation”. In 2006, a total of 426 documents were submitted to the Competition Office for potential comments. Of that, comments were proposed in 47 cases: in 38 cases, the comments had the form of recommendations, in 9 cases, the comments were of fundamental nature.

Of the cases where comments of fundamental nature were proposed, the most important – from a competition perspective – appear to be comments on the act on prevention and remediation of environmental damage. The purpose of the bill is to stipulate with respect to obligors, i.e., natural or artificial person, who perform or manage any business activities, terms on which such persons become obliged to implement preventive or remedial measures in the event that their activities lead to any environmental damage or a direct threat of environmental damage. Should an obligor fail to implement such measures, the body of competent jurisdictions, i.e., the Ministry for the Environment, municipal authorities with broader powers, the Czech Environmental Inspection, or bodies administering national parks and protected reserves, may implement such measures at the cost of the obligor. However, the law granted the bodies of competent jurisdiction not only the right to implement preventive or remedial measures but also the right to decide on restrictions on or suspension of the obligor’s activities, should it discover during an inspection that the obligor’s activities gave rise to a direct threat of environmental damage or aggravation of environmental damage. In its fundamental comment, the Competition Office sought an explanation why administrative bodies needed to have such extensive rights entitling them to interfere with economic activities of undertakings to such a substantial extent. The comment raised by the Competition Office was accepted. In the second review stage, the act on prevention and remediation of environmental damage was substantially modified, and the right of bodies of competent jurisdiction to restrict or suspended the activities of obligors was omitted.

In addition to “passive legislation” and cases resolved by competition advocacy, cooperation with regulators is also important. In 2006, the Competition Office consulted with the Energy Regulatory Office in the matter of the conduct of a dominant undertaking on the gas market, RWE Transgas. Aside from a fine imposed on the company, the Competition Office stipulated remedial measures in order to rectify the offending state of affairs. The Competition Office strove to impose conditions that could objectively be fulfilled, and that would help the gas market function. Given the complexity of the case, when the Competition Office worked on the formulation of the said conditions, it had to consult them with the industry regulator. The Competition Office further continued its cooperation with the Czech Telecommunication Office in 2006, and provided comments on the analyses of 18 relevant markets in the electronic communication market. The objective was to analyze the condition of the competitive environment, and identify an entity boasting significant market power, if any, in order to determine whether *ex ante* regulatory measures were required, or whether the potential problems could be resolved solely by competition law.

### *Selected cases*

#### **Film distributors**

In November 2006, the Competition Office concluded its investigation of contractual relations between film distributors and movie house operators. Indirect price setting was taking place on the market through “minimum ticket price”. This anticompetitive provision was stipulated in general terms and conditions for the provision of sub-license for dissemination of audio-visual works, approved by the association of movie house operators and the union of film distributors, pursuant to which most movie house operators and film distributors concluded their contractual arrangements. The Competition Office asked both associations to rectify the situation by amending the respective provision of the general terms and conditions, however, the proposed amendment sent by the union of film distributors to the Competition Office in early October 2006 was not compliance with the Act on Protection of

Competition, and actually provided for direct price setting. The second proposed amendment to the general terms and conditions was in compliance with comments raised by the Competition Office, i.e., to prevent further violations of competition rules on the market for film distribution to movie house operators. The union of film distributors replaced the “minimum ticket price” with a legally unbinding “recommended ticket price”. In light of this fact, the investigation was subsequently terminated.

#### **The market for computer games**

The Competition Office launched an investigation at its own initiative on the basis of information obtained from webpages of CD Projekt, according to which the said company stopped supplying its computer game Heroes of Might and Magic V to Electro World s.r.o., which wished to sell the game for CZK 499, according to its promotional leaflets, although CD Projekt had set the recommended price at CZK 999. During its subsequent investigation, the Competition Office discovered that CD Projekt did try to make Electro World s.r.o. comply with the recommended price of the game, and subsequently stopped supply the game to the said company. While the Competition Office did not find any anticompetitive provisions in the written agreements between CD Projekt and its customers, end prices were imposed on customers in practice. The Competition Office advised CD Projekt of its wrongdoing, and requested that it mend its ways. CD Projekt subsequently incorporated into its agreements with customers a provision to the effect that the recommended prices were not binding, and published the provisions on its webpages in the section stipulating business terms and conditions, advising the customers that they could set retail end prices at their discretion.

#### **Setting of watch prices**

The Competition Office launched an investigation at its own initiative in the matter of setting of end sales prices of brand watches produced by the Swatch Group, distributed by HIBERNIA in the Czech Republic. The Competition Office found anticompetitive provisions in the supply agreements concluded with HIBERNIA as supplier with its customers. Specifically, the supplier was entitled to modify wholesale and retail prices, and the customer undertook to modify its prices following such change. The Competition Office requested that HIBERNIA change its price policy and rectify the situation. HIBERNIA acknowledged that the contractual provision in question was anticompetitive, and promised to draft new distribution agreements compliant with competition law. The Competition Office received the wording of all agreements terminating the original agreements on December 18, 2006. The investigation was subsequently terminated.

## **PROHIBITED AGREEMENTS**

Cartel agreements are arrangements between companies whereby competitive behavior is replaced by a mutual agreement. Such conduct quite logically distorts competition, and frequently leads to price increases. From that point of view, price agreements appear to be a most serious problem: individual companies jointly set price levels, and thus prevent consumers from taking advantage of competition between suppliers in order to obtain a more favorable offer. Consumers fall victim to the cartel. Market sharing agreements distort competition in a similar fashion. Companies in such situation profit from pre-agreed profits, do not compete and are therefore not motivated to innovate or to reduce manufacturing costs.

### *Selected cases*

#### **Cartel of pharmaceutical distributors**

The Competition Office imposed fines in an aggregate amount of CZK 113.064 million on four largest pharmaceutical distributors in the Czech Republic: Alliance UniChem CZ (CZK 23.859 million), GEHE Pharma Praha (CZK 16.831 million), PHARMOS (CZK 18.638 million), and PHOENIX Lékárenský velkoobchod (CZK 53.736 million). The aforesaid companies violated the Competition Act when during the period from January 30, 2006 until February 14, 2006, they coordinated their joint intent to suspend, effective

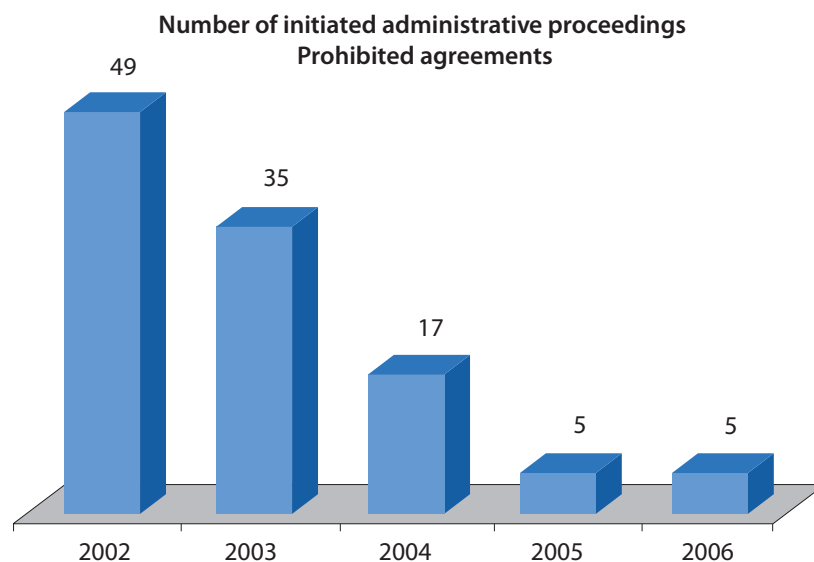
as of February 15, 2006, the supply of the full range of pharmaceuticals to three important teaching hospitals – Thomayerova, Na Bulovce (both in Prague), and Nemocnice u Sv. Anny (in Brno). They implemented their joint intent as of the said day in a coordinated fashion when they began to supply the hospitals concerned only with “vital” pharmaceuticals, with significantly shortened payment maturity periods. The suspension of the supply of pharmaceuticals to the three hospitals, and the shortened payment maturity periods as of February 15, 2006, was announced by the distributors at a joint press conference held on February 14, 2006. They used these anticompetitive steps to accomplish a common goal, i.e., payment of debts by the hospitals concerned. While it is not a problem when distributors seek payment of their receivables, they must not coordinate their activities in the supply of pharmaceuticals, or harmonize their business terms, to that end. During the administrative proceeding, the Competition Office gathered nearly two dozen exhibits evidencing such conduct. This case constituted acting in concert, where undertakings replace the risk of mutual competition by deliberate practical cooperation. The decision is yet to become final.

#### Vertical price agreement

The Competition Office Chairman, Martin Pecina, confirmed the imposition of a fine in the amount of CZK 150 thousand on JELÍNEK výroba nábytku from Valašské Meziříčí. Between March 2004 and early September 2005, the company concluded prohibited price agreements with its distributors. The agreements consisted in resale price maintenance with respect to products manufactured by the company, and lead to a distortion of competition on the market for furniture and mattresses. The discovery conducted during the proceeding indicated that the authorized seller was not entitled to sell goods supplied by JELÍNEK for prices other than those stipulated in a retail pricelist, with a maximum difference of five per cent. Most of the seller approached confirmed that they adhered to the recommended prices. The prohibited agreement thus lead to resale price maintenance, thus preventing competition with respect to the most important aspect - price.

#### Building societies

The Competition Office repeatedly investigated the case of building societies, and issued a new first instance decision in late 2006. The Competition Office imposed fines in the aggregate amount of CZK 55 million on the individual companies (Hypo – CZK 4.6 mil., Wüstenrot CZK 3.9 mil., Modrá pyramida CZK 9 mil., Stavební spořitelna České spořitelny CZK 11.7 mil., Raiffeisen





CZK 5.3 mil., and Českomoravská stavební spořitelna CZK 20.5 mil.). In a decision that is yet to become final, the Competition Office declared, in accordance with a new expert opinion, that when they agreed at a meeting held on December 18, 1997 on the content and structure of statistical overviews shared among themselves, the building societies concluded a prohibited agreement on the exchange of information. Performance of such agreement might have resulted in the distortion of competition. While the conduct of the building societies was found to be anticompetitive, the fines imposed on the individual parties were reduced. The facts reflected in the decision included the fact that it is one of the first decisions in the Czech context that deems an agreement on the exchange of information anticompetitive.

## ABUSE OF DOMINANCE

Holding a dominant or monopoly position on the market does not in itself constitute a violation of the Act on the Protection of Competition. However, dominant companies have to act in such a way so as not to distort competition in the market through their behavior. The law is logically harsher on them than on small and medium sized companies. Abuse of dominance includes for instance a refusal to supply without objective grounds, or disadvantaging certain customers.

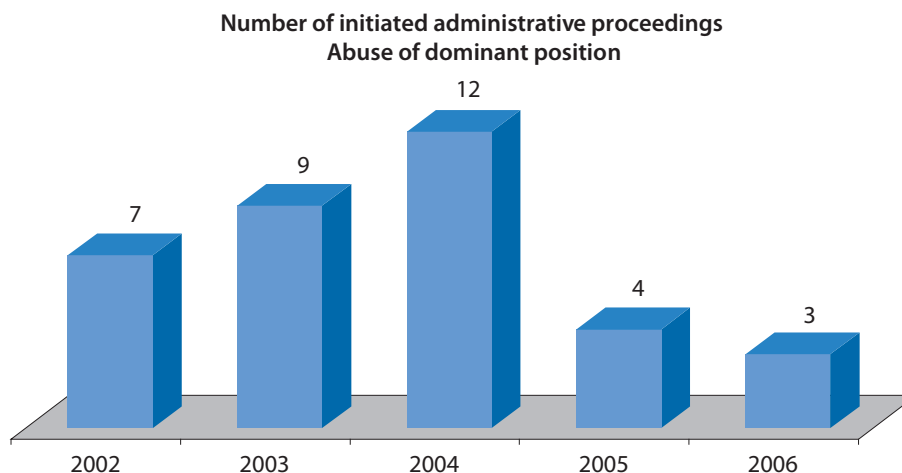
### *Selected cases*

#### **A dominant company prevented market development**

On August 10, 2006, by virtue of a decision which is yet to become final and enforceable, the Competition Office imposed a thus far the highest fine imposed on a single company in a single administrative proceeding: namely, a fine of CZK 370 million imposed on RWE Transgas for abuse of dominance on the gas market. The dominant company had been in violation of the Competition Act and Article 82 of the EC Treaty since November 2004 when it proposed to operators of regional distribution systems outside the RWE holding group contracts for purchase and sale of natural gas containing conditions disadvantaging such operators vis-à-vis their competitors - regional distributors within the RWE Group. According to the decision of the Competition Office, RWE Transgas had further been restricting through its distribution contracts the option of selling gas outside the territories serviced by the distributors since January 1, 2005, thus effectively preventing the development of competition on the gradually liberalized market. The third form of abuse of dominance consists in the setting of the price for gas storage for 2005 with respect to the authorized customer category, which was set at the same level as the price set by the Energy Regulatory Office for protected customers, although the costs for each category of customers are different. In addition to the fine, measures to rectify the situation were imposed, whereby the contracts have to be amended so as not to disadvantage regional gas distributors outside the RWE holding group in the future. The removal of further barriers to competition consists in the condition that gas supplies to the balance zone of any regional distribution system operator be permitted. Measures have to be implemented to allow gas off-takers to choose the supply of this commodity from any supplier regardless of its balance zone.

#### **A transportation company suspended operation**

By its first-instance decision which is yet to enter into force, the Competition Office imposed on Dopravní podnik Ústeckého kraje (DPÚK) a fine of CZK 700 thousand for abuse of dominance. As of August 1, 2006, DPÚK suspended bus transportation in the Ústecký Region for financial reasons, and gave Ústecký Region a mere five-day notice of the suspension. In total, the operation of over 2,000 bus lines operated mainly under the public service obligation was suspended with immediate effect. In the opinion of the Competition Office, the actual suspension of operation is not in conflict with the Competition Act, as DPÚK found itself in a financial situation that objectively prevented it from further operation of the lines. However, a dominant undertaking providing regular long-term services to consumers cannot suspend the provision of such services without giving adequate prior notice of such suspension, so as to allow for a timely adaptation to the new business strategy of the service provider. Given the nature of



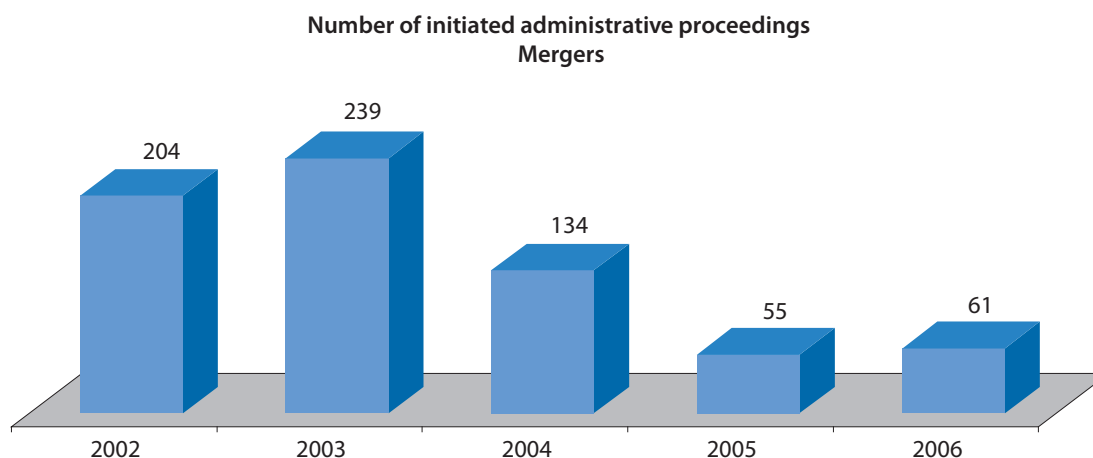
public bus transport and the area serviced by lines discontinued by DPÚK, the merely five-day notice given on July 26, 2006 to the Ústecký Region cannot be deemed to constitute an adequate and timely notice. Through its conduct, the transportation company caused detriment to end consumers, i.e., passengers using public bus transport in the Ústecký Region. The harm was further aggravated by the fact that the suspension affected the entire Ústecký Region, and the fact that the bus lines concerned fulfill basic transportation requirements of the passengers.

#### **Differential conditions in ČEZ agreements**

The Competition Office conducted an administrative proceeding against ČEZ (the dominant energy company), in which the Competition Office opted for rectification by the party to the proceeding instead of imposing a fine. The power company set differential conditions in lignite supply contracts applicable as of January 1, 2006. Without any justifiable grounds for such approach, the company applied a different price formula to determine prices of lignite supplied to ČEZ. Specifically, Sokolovská uhelná was discriminated against. Its contracts stipulated minimum and capped increases of prices for which it supplies the raw material to ČEZ. Sokolovská uhelná was the only supplier whose contract (for 2005 through 2009) did not reflect the impact of year-on-year changes in the prices of electricity. Due to that fact, Sokolovská uhelná was discriminated against as compared to its competitors, such as Severočeské doly or Mostecká uhelná. In the administrative proceeding, ČEZ proposed obligations accepted by the Competition Office as adequate and leading to rectification of the offending situation. The same now contain an amendment to the contract modifying prices for the benefit of Sokolovská uhelná. Moreover, ČEZ undertook to enter into a long-term purchase contract with Sokolovská uhelná, to apply until the mines are completely depleted.

## **MERGERS**

In addition to cartel agreements and abuse of dominance, the Competition Office further reviews merger applications. Larger companies are obliged to notify their plan to merge to the Competition Office. The Competition Office then assesses the application to determine whether it can be approved. In cases where the intended merger could lead to distortion of competition, undertakings on the part of the merging undertakings are accepted, and only subsequently can the merger be permitted. In exceptional cases, a proposed merger may be prohibited.



#### **Mergers approved subject to obligations**

In a total of three cases reviewed in 2006, the Competition Office found that there was a risk of distortion of competition. The mergers were eventually approved with obligations attached. One of the cases concerned the takeover of Poděbradka by Karlovarské minerální vody (KMV). The Competition Office did not approve the merger in 2001, and its decision was subsequently upheld as correct by all the higher court instances, including the Constitutional Court. The new decision reflected changes on the relevant markets for the benefit of KMV. The merger was approved subject to fulfillment of the following undertakings:

- to procure preservation of the current trade marks of Poděbradka products for a period of five years from entry into force of the decision,
- to procure that even after the merger, for a period of five years, Poděbradka would negotiate its business and delivery terms with customers (chain stores) procuring “modern” distribution separately from Karlovarské minerální vody,
- to procure, for a period of five years, unbundling of prices produced by the merging undertakings, whereby the current share of cheaper beverages would not be reduced.

The Competition Office adopted a similar approach to the merger of the number one and number two undertakings on the cable TV market. UPC became able to control its competitor, Karneval Media, only after it proposed five undertakings that concern the maintenance of programming, no price increases, programmer protection, address concerns over cross-financing of services, and, last but not least, guarantee access to the programs of the transferee, UPC, to other TV network operators. The third case of merger approval subject to obligations was the acquisition effected by a German publishing group, Verlagsgruppe Passau, which acquired several printing works in the Czech Republic.

#### **Mergers approved with no conditions attached**

The Competition Office approved for instance the takeover of eBanka by the Austrian company Raiffeisen International Bank-Holding AG. It involved the approval of transfer of all shares in the company, i.e., a change of sole control in eBanka. Prior to the merger, eBanka was a part of the PPF group, as is for instance Česká pojišťovna who acted as the seller in the transaction. In the Czech Republic, eBanka offers a comprehensive range of retail and corporate banking services with a stress on direct banking.

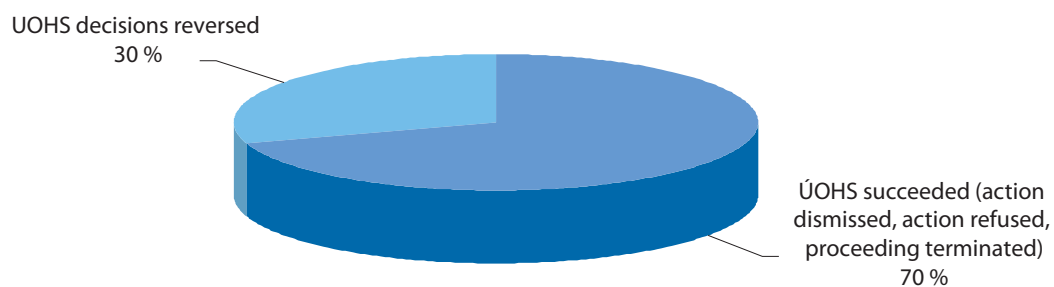
The bank's target segment is natural persons and small and medium sized businesses. As at the end of last year, eBanka had 165 sales points, and operated a network of 45 ATM machines. The activities of the merging undertakings overlap in the areas of retail and corporate banking, and, to a smaller extent, in the area of provision of financial services. Given the low market shares and the presence of important competitors in the relevant sector, the approval of the merger cannot strengthen or establish a dominant position. The important competitors of the Raiffeisen group continue to include ČSOB, Česká spořitelna, Komerční banka, HVB Bank and Citibank.

## APPEALS AND JUDICIAL REVIEW

In 2006, there was a further decline in the number of appeals filed due to a change in the strategy pursued by the Competition Office. This involves in particular an effort to resolve cases more frequently by means of competition advocacy, outside an administrative proceeding. Moreover, only decisions imposing fines tend to be appealed. In 2006, a total of 6 appeals was filed, which is less than a half of the number of appeals filed in the preceding year. The Competition Office Chairman issued a total of 16 second-instance decisions in 2006. In seven cases, he quashed the first instance decisions and referred the cases back for a new review. In nine cases, the original decisions of the Competition Office were amended, although the amendments were not substantial. Fines were usually upheld, or partly reduced in some cases.

A total of 10 court actions were filed against second instance decisions of the Competition Office in 2006. The Regional Court in Brno issued a total of 20 rulings pertaining to competition in 2006. Once again, this confirms that the decision-making practice of the Competition Office is highly successful because only 6 rulings – less than one third - were not in favor of the Competition Office. Of the important cases of judicial review won by the Competition Office, we can mention in particular the confirmation of fines of CZK 205 million and CZK 81.7 million, imposed on Telefónica O2 (formerly ČESKÝ TELECOM – in the former case, the court dismissed over one hundred objections raised by the claimant), a decision on the existence of a cartel of Billa/Julius Meinl chain stores was upheld, as was the imposition of CZK 7.5 million fine on ČEZ for applying a prohibition of re-imports of electricity. The Competition Office lost in some cases: for instance, the rulings of the Regional Court in Brno concerning a purported cartel of fuel distributors, or bakers' cartel quashing the decisions of the Competition Office. In those cases, the Competition Office filed cassation claims with the Supreme Administrative Court.

Success rate of judicial review of ÚOHS's decisions in the area of competition in 2006



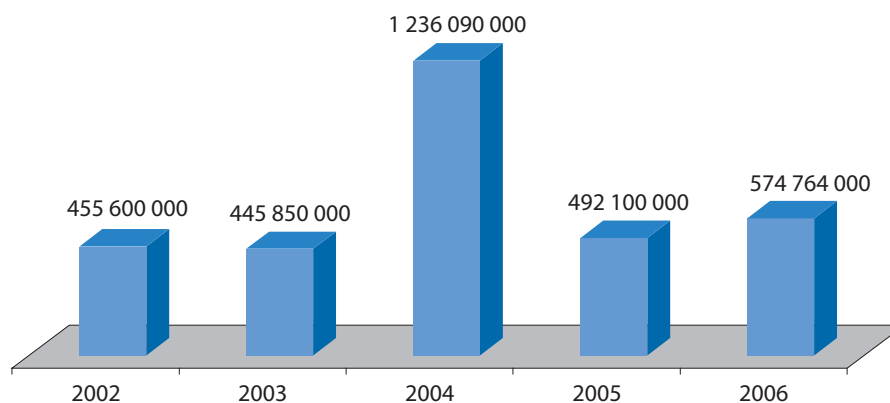
## STATISTICS

Average duration of administrative proceedings commenced in the respective years (in days)

Year	Antitrust (abuse of dominance, prohibited agreements)	Mergers	Second instance
2001	88	30	261
2002	52	37	228
2003	90	34	260
2004	83	35	335
2005	120	30	325
2006	118*	33*	117*

\* only administrative proceedings completed

Total amount of fines imposed by the Competition Office in the first instance



in 2002–2004 are reflected, including a CZK 313 million for fuel distributors



## *Public procurement*

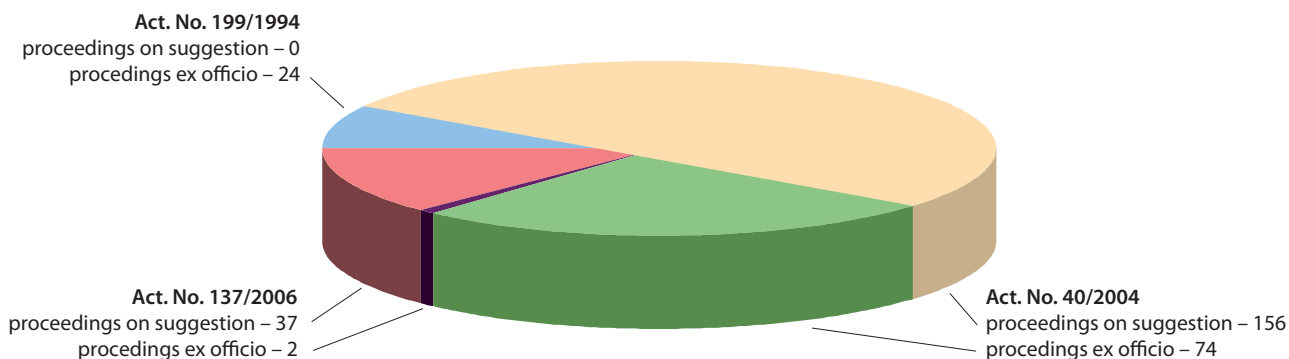
In 2006, the Competition Office supervised public procurement pursuant to Act No. 199/1994 Coll., on Public Contracts, as amended, Act No. 40/2004 Coll., on Public Procurement, as amended, and Act No. 137/2006 Coll., as amended. Although the last mentioned act entered into force on July 1, 2006, public contracts awarded pursuant to prior laws were reviewed. This goes to show the complexity of review. The Competition Office supervises compliance with the law, examining the lawfulness of acts taken by contracting authorities in the awarding of public contracts.

Supervision of the awarding of public contracts is a closely monitored area due to the fact that a fairly large quantity of public funds is redistributed in the process. The Competition Office thus supervises this area to ascertain whether competition is respected in the process, and whether rules of transparency, equal treatment and non-discrimination of individual bidders are observed. If the Competition Office finds a violation of the law, and the public contract is yet to be implemented, remedial measures are chosen. These include ordering a new selection or cancelling the tender procedure. Where no other remedy is available, fines are imposed, and may amount up to 5 per cent of the value of the public contract, or CZK 10 million in cases stipulated by law. Where the law is violated repeatedly, the fine may be increased up to double the original amount. In addition to fines, the Competition Office further collects administrative fees and bonds. In 2006, the amount of bonds forfeited for the benefit of the state treasury was nearly CZK 11 million. A bond which may amount up to CZK 2 million is forfeited in the event that it is deposited by a party initiating proceedings without grounds as the contracting authority did not violate the law. This measure is designed to reduce the number of frivolous claims which cause unnecessary delays in the awarding process.

## LEGISLATION

As of July 1, 2006, the new Public Procurement Act, Act No. 137/2006 Coll., entered into force. The new act does not modify the essence of the prior provision of law in any way. The main novelties include public contracts of a smaller size, greater flexibility, new proceedings – competitive dialogue, simplified sub-limit proceeding, central procurement, master contracts for all contracting authorities, establishment of evaluation committees, provisions for fully electronic proceedings, etc. New principal institutes include: a dynamic purchasing system, electronic auction, master contract and central contracting authority. The dynamic purchasing system is a fully electronic system for common public contracts, limited in duration and open to all suppliers who meet the entry conditions for its entire duration.

Administrative proceedings initiated in 2006



Electronic auction is an electronic system for the evaluation of bids which makes it possible to submit new bid amounts and to compile up-to-date bid ranking using automatic evaluation methods. The master contract institute makes it possible to conclude a contract with one or three or more contractors for a definite term, which contract stipulates the terms and conditions applicable to individual deliveries. Last but not least, central contracting authority is newly defined as an entity awarding public contracts for the account of other contracting authorities, or procuring deliveries, services or construction works for such contracting authorities.

Together with the Public Procurement Act, the new Act No. 139/2006 Coll., Licensing Act, entered into force. It stipulates terms and conditions and procedures to be followed by a contracting authority in the conclusion of license agreements in the area of cooperation between contracting authorities and other entities. The Competition Office was also entrusted with supervision of the compliance with this law.

## DECISION-MAKING AND INSPECTIONS

Similarly to previous years, the Competition Office issued over 300 decisions concerning public procurement. Most of the administrative proceedings were initiated upon motions filed by the individual bidders. The Competition Office instigated 100 proceedings at its own initiative. The complexity of review of the procedures followed by the contracting authorities is demonstrated by the fact that the Competition Office reviews their actions with a view to three different laws. In 77 cases, fines were imposed for various violations in 2006. The Competition Office monitors the frequency of violations on the part of individual contracting authorities very carefully, and updates its statistics regularly. The outcome may trigger an unannounced inspection whereby several dozen contracts are selected and reviewed. In 2006, the inspection of the statutory city of Zlín in its capacity as contracting authority was initiated on the grounds of repeated violations of the law, and even a failure to respect certain decisions issued by the Competition Office. The contracting authority continued to violate the law in case of one of its contracts even after this fact was brought to its attention by virtue of a final and enforceable decision of the Competition office. During its inspection, the Competition Office examined a total of 71 public contracts and initiated 18 administrative proceedings. Fines were imposed in a number of cases. In 2006, the Competition Office further carried out an inspection concerning the statutory city of Ústí nad Labem. The inspection focused on 88 capital expenditure projects of the contracting authority.

## SHORTCOMINGS IN THE APPLICATION OF THE LAW

The same shortcomings and defects as those encountered in past years prevailed in 2006. For the evaluation of bids, contracting authorities frequently select criteria that do not include the economic benefits of the bid but rather the bidder's qualification. Errors are frequently found at the very beginning of the awarding procedure. The contracting authorities choose inappropriate criteria, thus preventing the bidders from finding out what is most advantageous to the contracting authority. Further, qualification requirements are stipulated that are not relevant to the subject of the public contract, which restricts the range of bidders able to meet the requirements unreasonably and unnecessarily. Another frequent violation is a situation where the contracting authority opts for a negotiation procedure without publication, without fulfilling the conditions stipulated by law with respect to such simplified procedure. In 2006, the Competition Office encountered a case where the contracting authority held one and the same tender three times, making mistakes at every stage. The most serious defect occurred at the last stage when the contract was awarded directly to a particular company without justification for such simplified procedure. In such cases, fairly high fines had to be imposed. Cases where the contracting authorities completely disregard the Public Procurement Act constitute a special category. A further serious violation of the law involves an incorrect subdivision of the public contract into several smaller contracts so as to be able to apply the simplified procedure.



## OVERVIEW OF ADMINISTRATIVE PROCEEDINGS

<b>Number of filings received (motions + notices)</b>	<b>566 (193+373)</b>
<b>Total number of administrative proceedings initiated</b>	<b>293</b>
Administrative proceedings initiated upon a motion	193
Administrative proceedings initiated ex offa - 64 upon notice, 10 under terminated proceedings, 26 as a result of inspections + other	100
Number of administrative proceedings pending as of January 31, 2007	31
<b>Total number of first instance decisions rendered</b>	<b>303</b>
Preliminary injunctions + dismissal of motion for preliminary injunction	37 + 18
<b>Decisions on merit rendered</b>	<b>195</b>
Terminated administrative proceedings – no violations found – 33 decisions on remedy + penalties – 162	
Proceedings terminated on procedural grounds	108

Number of fines imposed	77
Final and enforceable fines in 2006	CZK 3.467.000
Fines payable in 2006 according to a statement from CNB	CZK 3.447.000

Administrative fees payable in 2006	CZK 2.835.000
Bonds deposited in 2006	CZK 22.062.633
Bonds forfeited for the benefit of the state treasury in 2006	CZK 10.859.150

### *Selected cases*

#### **Toll system**

This was the largest public contract reviewed by the Competition Office thus far. The Competition Office examined the case upon motions filed by two unsuccessful bidders, MYTIA consortium and AUTOSTRADA, still in the late 2005. While certain shortcomings were found in the procedure followed by the contracting authority, the Ministry of Transport, the same did not impact the ranking of the bids. The decision of the Competition Office was subsequently upheld by the Regional Court in Brno in the fall of 2006. The Competition Office returned to the toll system contract at the end of 2006 when it reviewed an amendment to the contract, concluded between the ministry and the winning bidder, Kapsch.

**Absence of tender**

The Competition Office imposed a CZK 500,000 fine on the Ministry of Labor and Social Affairs. It is thus far the highest fine imposed on a ministry in a single case. The ministry erred in January 2006 when it concluded an agreement for the operation of its communication system in 2006-2008 directly with ANECT; however, in the case on hand, the contract value exceeded half a billion Czech crowns. The ministry argued during the administrative proceeding that the public contract in question could be implemented only by the company approached by the ministry because of the protection of rights and intellectual and industrial property. This argumentation, however, is not supported by the fact that the contracting authority originally attempted to award the contract in an open tender, and received two bids compliant with the terms of the tender. However, the contracting authority canceled the open tender because of objections raised by the bidder who came second, ČESKÝ TELECOM. The ministry subsequently concluded the contract directly with ANECT when it used a negotiation procedure without publication, and argued that it urgently needed to award the contract. However, the type of proceeding chosen may be used only in urgent cases in crisis situations. The ministry did not file an appeal against the fine.

**Aquapark without a tender**

The Competition Office Chairman confirmed a fine of CZK 500,000, imposed on the city of Prostějov. When awarding a contract for the construction of a municipal recreation and sports center worth more than CZK 200 million, the contracting authority paid absolutely no heed to the Public Procurement Act. The case represents a very serious violation of the law: had the contract been awarded in an open or restricted tender, bids offering more favorable terms of execution than the selected bid may well have been submitted.

**Armored vehicles contract**

The Competition Office terminated an administrative proceeding involving the Ministry of Defense and pertaining to a contract for new armored vehicles for the Czech army. The administrative proceeding was initiated by operation of law upon a motion filed by an unsuccessful bidder, the Finnish company Patria, who contended that there were defects in the formulation of terms and conditions of the tender and the procedure followed by the evaluation committee. The Competition Office terminated the proceeding because the Public Procurement Act does not apply to procurement related to the manufacturing, purchase or repair of weapons, arms systems, ammunition and procurement of other military materials required for the defense or security of the state. The claimant moreover became aware of the fact that the tender would not be conducted pursuant to the Public Procurement Act as early as April 2005, or earlier, but made no objections to that fact. Patria filed an appeal against the decision of the Competition Office, and the Chairman dismissed same in June 2006. The case was subsequently dismissed by the European Commission, and the decisions of the Competition Office upheld by the Regional Court in Brno.

**Health status cards in violation of the law**

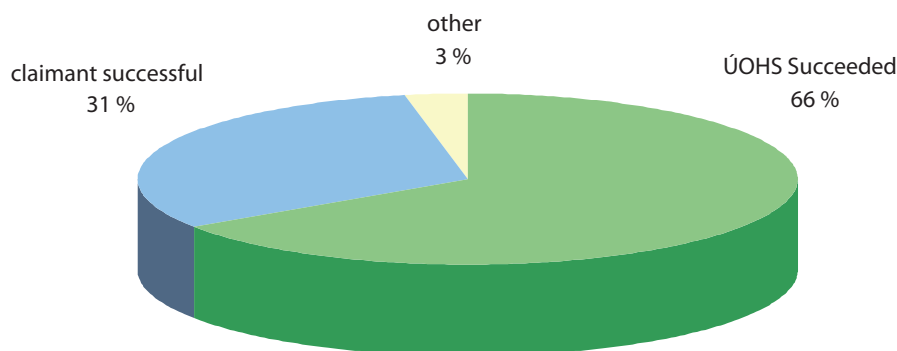
In two administrative proceedings, the Competition Office imposed fines of CZK 800,000 in aggregate on Všeobecná zdravotní pojišťovna (VZP – health insurance company) by virtue of decisions as yet not final and enforceable. The offences concern the project of “internet health status card”. The Competition Office initiated the proceeding in March 2006 upon a request from an investigation committee of the Chamber of Deputies to the effect that the Competition Office ought to look into the economic activities of VZP. The Competition Office concluded that in the selection of the entity implementing the project, VZP did not proceed in accordance with the Public Procurement Act, and concluded agreements directly with IZIP, spol. s r. o. VZP thus completely eliminated competition for the contract when it prevented other potential contractors from taking part in the tender and perhaps offering more favorable conditions than IZIP.

## APPEALS AND JUDICIAL REVIEW

The number of appeals filed in the area of public procurement increased by roughly one half as compared to the previous year, from 105 to 159. This growth trend is substantially due also to the new Administrative Code (Act No. 500/2004 Coll.) pursuant to which appeals may be filed even against decisions (resolutions) of a procedural nature, such as resolutions setting deadlines for responses. The parties avail themselves frequently of this new option.

The rise in the number of appeals was accompanied by a rise in the number of court actions filed, from 17 to 31. In the area of public procurement, the Regional Court in Brno decided in a total of 32 cases in 2006, while one decision was rendered by the Supreme Administrative Court. The Competition Office was successful in 21 cases, the counterparty in 10 cases, and one case was referred back to the Competition Office for a decision which has been rendered since then. An important decision in which the Regional Court in Brno confirmed the prior opinion of the Competition Office was the aforesaid case of a tolling system for Czech highways. It was at the same time the most closely watched and largest public contract awarded in the Czech Republic in 2006.

Success rate of judicial review of ÚOHS's decisions in the area of public procurement by the Regional Court in 2006





## *State aid*

Article 87 of the EC Treaty prohibits state aid distorting competition within the communities. Favorable treatment of certain companies or products at the expense of other undertakings or products seriously distorts the usual forces of competition. However, in some cases, exemptions provided for in the treaty and reflecting the favorable impact of the aid system within the EU are applied. There are certain types of aid which can be deemed beneficial. These include for instance aid contributing to the development in economically distressed regions, or aid in support of activities in the general interest of all member states. Restructuring aid is permitted only in those cases where the aid measure is accompanied by a restructuring plan designed to revitalize the company. Over the last two years, the European Commission has been striving to reform the state aid system ("state aid action plan"); this ought to result in a reduction in the amount of state aid and in directing them more precisely at important areas (in support of research, development and innovation, etc.).

As of May 1, 2004, the European Commission has all the decision-making powers in the area of state aid. The Office for the Protection of Competition acts as an advisory, monitoring and coordinating body in this area. It takes part in the preparation of notification of state aid to Brussels. In 2006, the Competition Office helped prepare 18 notifications. The Czech Republic is generally very successful in the notification of state aid to the European Commission: thus far, none of the decisions issued by the European Commission had been negative. The Competition Office further renders opinions on investment incentives granted by the Ministry of Industry and Trade, and, last but not least, provides consultations in state aid matters, and brings attention to potential issues in this area.

## LEGISLATION

The Competition Office played a pro-active role before the European Commission in connection with the increase of the de minimis limit to EUR 200,000, twice the original limit; this was instrumental for instance with respect to the issue of privatization of municipal housing on favorable terms. The Competition Office proposed that the de minimis limit be increased up to EUR 300,000 (approx. CZK 8.4 million) which would make it possible to resolve more state aid cases at national level.

### Transparency Act

Since 2005, the Competition Office took part in the drafting of an act to ensure greater transparency in financial relations between the public power and public companies, so as to make it clear what public companies receive public funds and how such public funds are applied. The act providing for certain measures to make financial relations in the area of public procurement more transparent was enacted in 2006 and published under No. 319/2006 Coll. It regulates the rights and obligations of parties controlled by bodies of state administration, as well as parties granted special or exclusive rights by a body of state administration (self-accounting persons). Such companies are obliged to keep records of state aid and other funding received from bodies of state administration, and to provide the office with further information. The financial statements must be structured so as to show activities pursued by virtue of special or exclusive rights, as opposed to other activities not related to the exercise of such rights. The Competition Office will review compliance with obligations imposed by the said act, and may impose fines if need be.

## CHANGES IN STATE AID RULES

The Competition Office has prepared for the European Commission the notification of a new regional state aid map for 2007 through 2013 which was subsequently approved by the European Commission. According to the map, all the regions in the Czech Republic, except for Prague, will be eligible for regional aid to the maximum extent of 30 to 40 % of eligible cost. The Prague region will be eligible for regional aid in 2007 and 2008 to the maximum extent of 10 % of eligible cost. Further, the Competition Office helped put together a working group consisting of the ministries concerned; the working group discussed the specific content of the map and its practical application.

### Map of regional state aid for 2007 through 2013

Region NUTS II	Maximum regional investment aid (for large businesses)	
	1. 1. 2007–31. 12. 2010	1. 1. 2011–31. 12. 2013
<b>Regions eligible for aid pursuant to Article 87 (3)(a) of EC Treaty</b>		
Central Bohemia	40 %	40 %
Southwest	36 %	30 %
Northwest	40 %	40 %
Northeast	40 %	40 %
Southeast	40 %	40 %
Central Moravia	40 %	40 %
Moravia and Silesia	40 %	40 %
<b>Regions eligible for aid in the transitory period of 1. 1. 2007–31. 12. 2008, which regions will lose the status of a region pursuant to Article 87 (3)(c) of the EC Treaty</b>		
Prague	10 %	

### *Selected cases*

#### **Třinecké železářny**

In November 2006, the European Commission upheld a decision of the Competition Office of April 2004 pertaining to three measures of the Czech government for the benefit of Třinecké železářny (TŽ). The Commission commenced a detailed investigation in December 2004 in order to verify whether the measures in question did not constitute aid for the restructuring of Třinecké železářny, prohibited prior to the accession under Protocol No. 2 of the Accession Treaty. After nearly two years of consultations and provision of additional information by the Competition office, the Commission concluded that the aid was compliant with EC Treaty, that none of the measures constituted unlawful aid, and the Czech Republic thus did not violate Protocol No. 2. Specifically, the Commission concluded that the most extensive measure, specifically, the purchase of shares in Ispat Nová huť held by Třinecké železářny by the Czech government for CZK 1.6 billion did not constitute state aid granted to the company as the price

paid by the government was identical with price that would have been paid by a market investor. The Commission further found that the second measure, i.e., aid towards training at Třinecké železářny, in the amount of CZK 44 million, was in compliance with the applicable EU rules and as such constituted compatible aid. The third measure, a direct grant in the amount of CZK 4 million, in support of closure of capacities of a part of the manufacturing activities, was not implemented in the end.

#### **UMTS License**

In December 2006, the European Commission issued a decision in which it noted that no unlawful state aid was granted in connection with the award of the third UMTS license in the Czech Republic. UMTS licenses were offered in 2001 by way of an open auction, and were acquired by Eurotel (currently Telefónica O2) and T-Mobile for the opening bid. Oskar (currently Vodafone) did not make a bid due to the excessively high price. In 2004, the third license was offered in a tender, and was acquired in February 2005 by Oskar for CZK 2 billion. The holders of the two licenses subsequently complained before the European Commission that the difference between the prices they had paid for their licenses, and the price of the third license was discriminatory, and constituted state aid. However, the European Commission concluded that when the Czech Republic granted the third UMTS license, it proceeded in a similar way as in the first award process, both in terms of the procedure employed to grant the license, and the method used to calculate the fee.

#### **Aid to carriers on the Elbe River**

Following extensive consultations and provision of additional information, the European Commission permitted the Czech Republic to compensate Elbe river carriers for their losses. The Competition Office took part in the approval process as an advisory, monitoring and coordinating body. The aim of the approved measure is to compensate carriers (domestic and foreign) engaged in domestic transportation by boat for losses sustained in consequence of low water level in the Elbe river, and subsequently encourage carriers to ship goods even under less favorable conditions, the objective being to transport as much goods as possible by boat, rather than by road. The state aid program is to run for several years up until the completion of the channel in Děčín in 2010. The maximum extent of the state aid is the equivalent of 60 % of the losses sustained in consequence of low water level, i.e., during periods when the water level in the river is less than 2 meters (in 1999–2000, 2003 and 2004, transportation by boat was not profitable in all cases for nearly 6 months in every year). At the same time, the state aid to be provided by the Ministry of Transport in the form of a direct subsidy shall not exceed 30 % of the transportation cost. It is estimated that it would amount to approximately EUR 3 million per annum. The state aid will not be provided in the event that the goods fill more than 75 % of the volume of the vessel, and in case of transportation of good with an agreed high transportation rate (CZK 850 per ton). The state aid is of temporary nature and will be provided only in years in which the water level of the river is unsatisfactory for transportation for more than 20 days. The aid is to compensate undertakings for losses sustained in consequence of events that cannot be prevented and that do not affect competing transportation methods but solely undertakings conducting their activities on the Elbe river.

#### **Solnice-Kvasiny**

Pursuant to the decision of the European Commission, the city of Solnice may provide state aid in the form of a favorable sale of land in the industrial zone of Solnice-Kvasiny. The Competition Office cooperated on the preparation of notification of this regional program, and responded to related queries raised by the European Commission. All types of companies from the processing industry (with the exception of distressed companies) that will make an initial investment in the industrial zone and whose contribution to the financing of the investment will be a minimum of 25 % may take advantage of the program. The total budget of the aid program up until its end as of December 31, 2006 is estimated at approximately CZK 5 million. The European Commission deems the state aid compatible with community rules as it is limited to initial investment and its scope is in accordance with the Czech Republic's regional aid map. The maximum aid available thus must not exceed CZK 5 million or 48 % of eligible investment cost; in case of small and medium-sized companies, it may be increased up to 63 %. The investment subject to aid must be

maintained for a period of 5 years. Approval of the program for a further period may be applied for to the European Commission in accordance with new rules applicable as of January 1, 2007.

#### **Aid for the development of Pardubice city center**

In harmony with a prior position of the Competition Office, the European Commission approved state aid for the benefit of BOHEMIA-SEN which won a tender for the development of Masarykovo náměstí in Pardubice. The Competition Office took part in the state aid approval process as an advisory, monitoring and coordinating body.

BOHEMIA-SEN is an investment company affiliated with the Israeli company Africa Izrael International Properties. The total value of the project to be implemented in Pardubice is EUR 31 million. The construction is to take place in three stages: 1. commercial and entertainment center, 2. residential center (housing), 3. hotel, and perhaps also a congress center.

The City of Pardubice is to provide state aid to the project in the form of a favorable purchase of land. The proposed land price is CZK 300 per square meter, although the market value is substantially higher (CZK 2,400 per square meter). The gross state aid thus amounts to a minimum of CZK 52.5 million.

In the case at hand, the aid is in support of initial investment. The project will have a positive impact on regional development in terms of employment (the creation of 500 new direct jobs). It will further liven up the city center which is now a dead zone. It will improve the competitive environment and improve the quality of goods and services for the inhabitants of Pardubice.

## **STATISTICS**

### **2006 decisions of the European Commission pertaining to notifications of the Czech Republic**

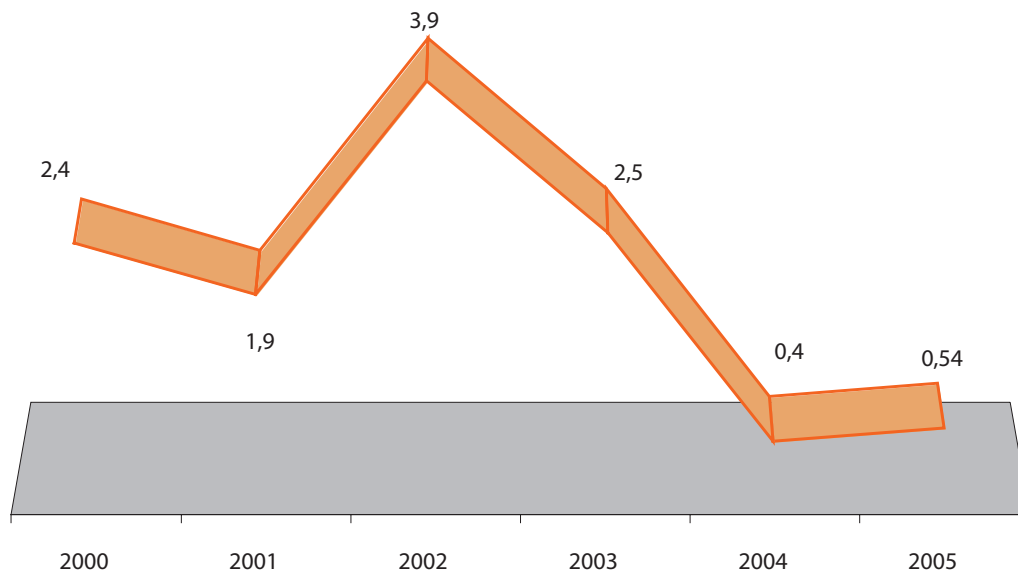
State aid is compatible	5
Dismissed	0
Withdrawn	2
Block exemption	5
Decision still pending	20

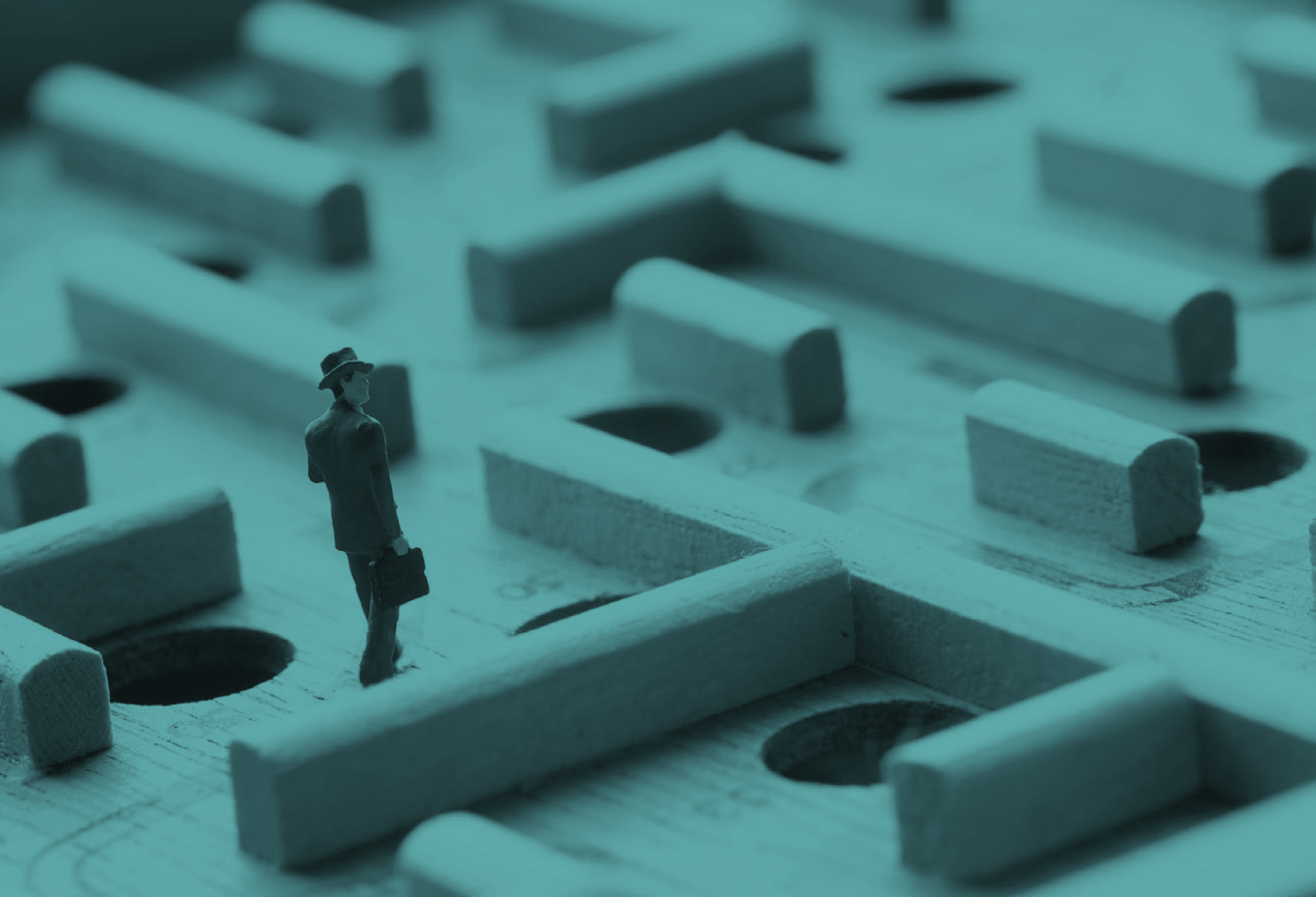
### **Opinions of the Competition Office on investment incentives proposed by the Ministry of Industry and Trade**

Notification	3
No comments	79
Delivered with comments	6



Ratio of state aid to GDP in the Czech Republic in individual years (in %)





## *International relations*

The activities of the Competition Office in the area of international relations in 2006 focused on the strengthening the office's involvement in international groupings engaged in the protection of competition and antitrust authorities both in Europe and elsewhere in the world. The Competition Office created a new system of responses to the activities of international organization and outside presentation of its activities. This facilitates the transfer of latest world trends and findings in the area of protection of competition into the practice of the Competition Office, as well as transfer of the findings of the Competition Office outside. The Competition Office is better equipped to compare its tools and approaches with those of its foreign counterparts. The results of the activities and own initiative of the Competition Office met with appreciation at the most important world competition forums.

## 1. COOPERATION WITHIN THE EUROPEAN UNION

The most important platform for cooperation between national competition authorities of the European Union is the European Competition Network (ECN). Fundamental issues related to the working mechanics of the ECN and other topical issues of competition policy were debated in September 2006 at the meeting of heads of national competition authorities of EU member states and EFTA member states, attended by the Chairman of the Czech Competition Office. The meeting addressed in particular the initiative of the European Commission towards the harmonization of the leniency programs, as well as a reconsideration of the community policy in the area of abuse of dominance. At the said meeting, the Chairman of the Czech Competition Office advised his counterparts from the EEA with the initiative of the Czech Competition Office designed to prevent potential negative impact of the system for the trading of emission quotas on competition. It is apparent from equal conditions and efficient functioning of competition that the heretofore system for the trading of CO<sub>2</sub> emission quotas, based on the applicable EU directive, makes it possible to obtain a competitive edge not available to all undertakings. Favored undertakings receive emission quotas free of charge which could be viewed as state aid *sui generis*. Such undertakings are thus enjoying an unjustified competitive edge over undertakings who do not receive such quotas. From a competition perspective, such system thus may distort fair competition. Experience with the mechanics of the emission quota trading system and its impact on prices of electricity for consumers further shows that the price of emission quotas is reflected in energy prices much more than was anticipated, which eventually resulted in an increase wholesale prices as well.

During 2006, three plenary sessions of ECN were held; they focused on practical aspects of cooperation between competition offices within the network, and draft legislation related to Government Decree No. 1/2003. At those sessions, the Competition Office presented comments and proposals on the documents tables in order to ensure maximum efficiency of ECN's activities and the application of EU competition rules. In 2006, the Competition Office significantly increased its involvement in the activities of the individual working groups within ECN, as well as "sector" groups focusing on the resolution of competition issued in specific industries. The ECN working groups considered a priority by the Competition Office in 2006 included working groups for banking, energy and the pharmaceutical industry.

The Competition Office further participated in the meetings of advisory committees of the European Commission which serve as a form for achieving consensus between experts from EU member states on specific cases of application of the competition law and policy. In the case of the Competition Office, it involved in particular the meetings of the advisory committee for restrictive practices and dominant position, advisory committee for concentrations, advisory committee for state aid and advisory committee for public procurement.

The Competition Office was actively involved in the work conducted by the association of European competition authorities, ECA, specifically, its working groups for air transport and retail banking; the latter focuses in particular on competition issues related to the creation of the single payment area.

In the spring of 2006, staff members of the Competition Office took part in an investigation conducted by the European Commission for the very first time when they assisted representatives of the European Commission during a surprise in situ investigation conducted on the premises of one of the largest Czech companies.

## 2. COOPERATION IN INTERNATIONAL ORGANIZATIONS (OECD, ICN, UNCTAD)

A top event in the world of competition policy is the annual conference of the International Competition Network, a meeting of the most important experts in the area of protection of competition. It was held in early May 2006 in Cape Town, South Africa. The Office for the Protection of Competition was represented at the three-day meeting by a delegation of five headed by the Chairman, Martin Pecina. The nearly 300 hundred representatives of 70 competition authorities, as well as other competition experts, accomplished significant results in their exchange of experience: first and foremost, they have completed the Merger Guidelines Workbook; further, a new working group to focus on abuse of dominance, unilateral conduct group, was formed. The Chairman of the Czech Competition Office, Martin Pecina, presented the Czech Republic in Cape Town during a panel discussion on implementation as a model example of successful implementation of a number of ICN recommendations, e.g., increase of turnover thresholds for notification, and placing a greater emphasis on the local nexus of a merger, which tendency freed up a substantial amount of funds which could be allocated to the investigation of most serious cases of anticompetitive behavior.

Representatives of the Competition Office continued to take part in the activities of OECD Global Forum on Competition, OECD Competition Committee and its working groups. The forum serves as a platform for the exchange of experience in the area of competition law and policy between a broad spectrum of national delegations from both OECD members and many developing and transforming countries. The Competition Office prepared and made many presentations at the individual meetings. The Chairman of the Competition Office further presented the annual report on the development of competition law and policy in the Czech Republic at the OECD. The capabilities of the Competition Office received an important appreciation when it was appointed as examiner to examine the development of competition law and policy in South Korea.

In September 2006, the Competition Office provided organizational capacities and expertise and helped organize an OECD seminar on abuse of dominance for South and Southeastern European countries. The seminar participants discussed for instance the most appropriate approaches and tools for combatting abuses of dominance. Experts of the Czech Competition Office focused in their presentation on the sharing of their experience with the resolution of cases in the telecommunications sector and the production of passenger cars where the Czech Competition Office as one of the few competition authorities successfully applied the qualification of abuse of dominance in the form of "Quiet life".

Last but not least, we need to mention that the Czech Competition Office takes part in the sessions of UNCTAD in Geneva. The Chairman of the Competition Office delivered a lecture on the "Relationship between Competition Authorities and Sector Regulators" at a session of UNCTAD competition section. The Competition Office further took part in the examination of competition developments in Tunisia.

### 3. COOPERATION WITH FOREIGN COMPETITION AUTHORITIES

In 2006, informal communication with foreign competition authorities was strengthened to an unprecedented degree. More intensive relations were developed through bilateral talks with counterparts in Slovakia, Portugal, Luxembourg, Germany, Italy, Hungary, Great Britain and Ireland. The topics discussed included in particular experience with the working of the European Competition Network and enforcement of competition law in key sectors of the economy, e.g., the energy sector, banking or retail trade conducted through supermarkets.

In the area of international cooperation, the Competition Office focuses in particular on EU countries. However, the Competition Office establishes relations with institutions in other countries as well: for instance, it has an extensive bilateral cooperation with the Russian Federal Antimonopoly Services (FAS). As a result of such contacts, in 2006, two seminars on competition rules in the two countries were held for Czech and Russian businesses active in the Czech Republic or Russia.

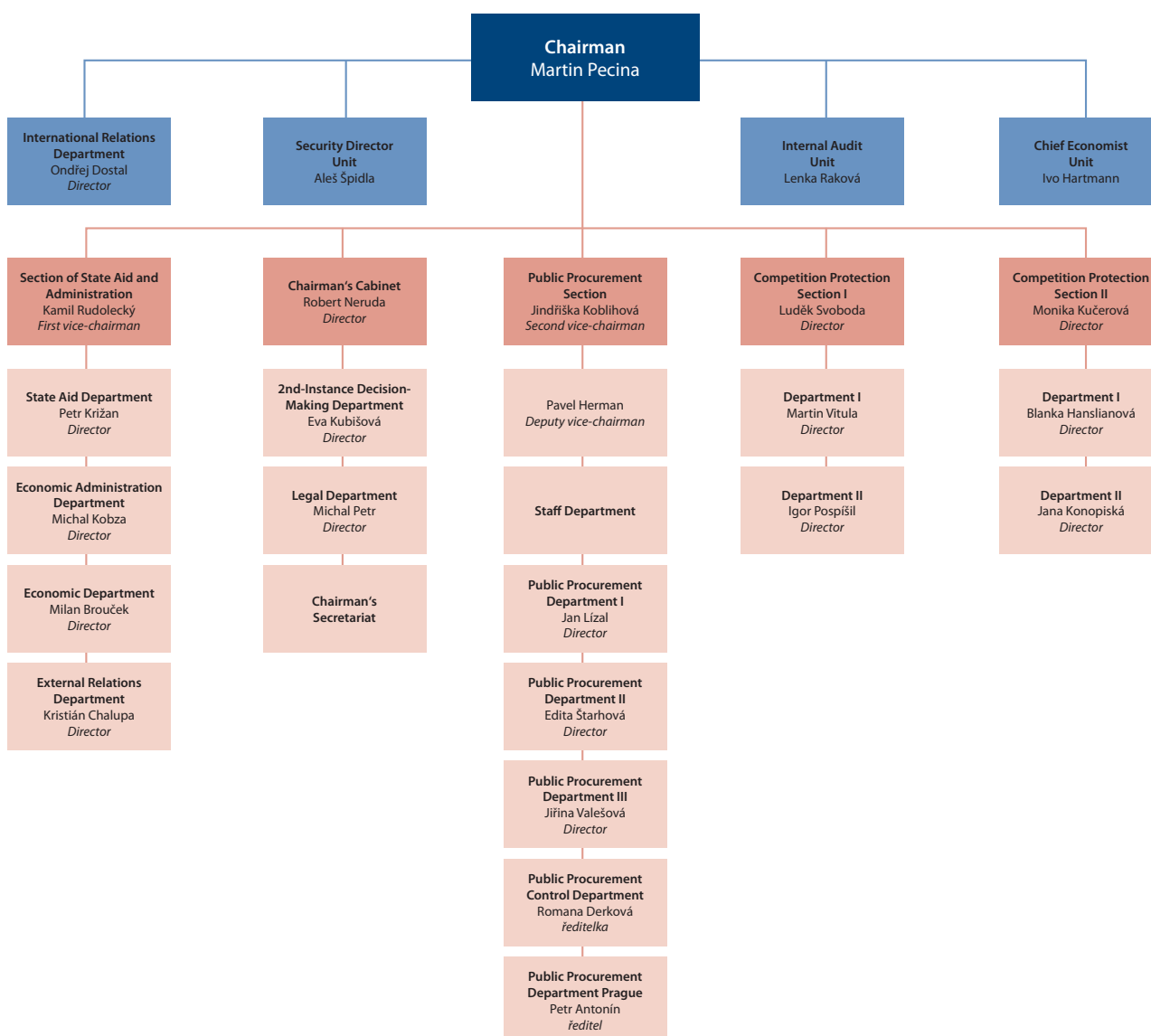


## *Human resources and public education*

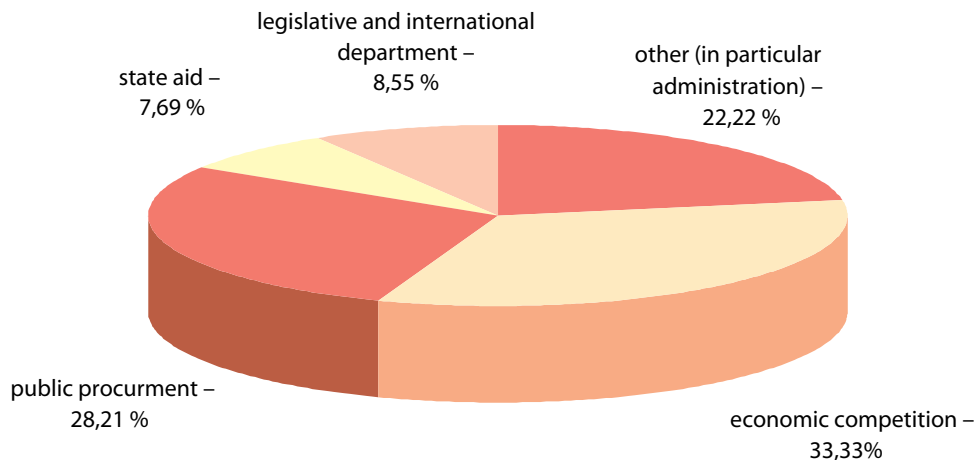
In 2006, the Competition Office stabilized the number of its staff. Turnover of labor, a negative phenomenon from the past, virtually ceased during this period. As part of qualification improvement of the staff, foreign language lessons took place at the office. Lawyers attended an economic course at the Faculty of Economic and Administration of Masaryk University, while economists were able to further their knowledge of law.

As of January 1, 2007, the individual sections were reorganized: there are now five of them. The Competition Office has two deputy chairs: Kamil Rudolecký who heads the state aid and office administration section is the first deputy chairman while Jindřiška Koblíhová, the head of the public procurement section, is the second deputy chairwoman. An important element in the new organization scheme is the creation of a chief economist section which is to emphasize the importance of the economic analysis of key decisions, and serve to evaluate individual markets requiring intervention by the Competition Office.

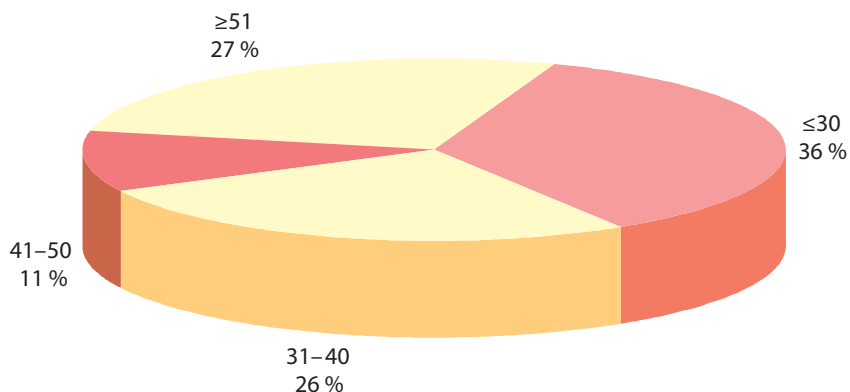
Organogram of the Competition Office as of January 1, 2007



Staff members by areas of activity



Age structure of the Office's employees



## NEW SEAT

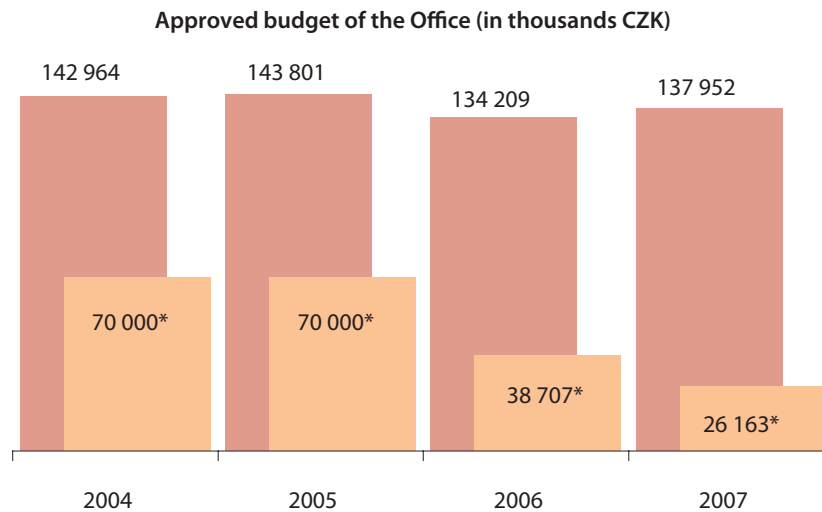
During its entire existence of more than 15 years, the Competition Office has been striving to resolve the problems with its seat. Since 1991, it has been using the building of the Constitutional Court in Brno.

However, because of the number of staff, those premises are unsatisfactory. Shortly after Martin Pecina became Chairman of the Competition Office in September 2005, it was decided that instead of purchasing a plot of land for approximately CZK 7 million and constructing a new building in a "greenfield" fashion, the Competition Office would acquire, without consideration, a former army building at třída Kpt. Jaroše No. 7 in Brno. In early February 2006, the lengthy administrative process of transfer of the building of the Municipal Military Administration was completed. The Competition Office obtained the building dating back to 1895 together with a plot of land.

The planned reconstruction and construction is divided into two stages. First, the existing historical building will be reconstructed extensively. The second stage includes the construction of a modern annex so that the building could accommodate all



of the Brno employees of the Competition Office (approx. 110), and create appropriate tangible conditions for their activities. The designer and general contractor were selected pursuant to the Public Procurement Act. In early March 2006, following a single-criterion open tender procedure, a contract for the preparation of the complete project documentation and building supervision was signed with MORAVIA CONSULT Olomouc (the lowest bid price – CZK 3.5 million). Half a year later, the building permit for the first stage of construction came into force. In late September, following a single-criterion open tender procedure, a contract was signed with the main contractor for the first stage of construction, KALÁB (the lowest bid price – CZK 77.9 mil. ). Construction was commenced on September 25th, and is planned to be completed by March 16, 2007. The staff members are expected to relocate to the new premises in early April. The Competition Office will thus move its seat after many years, and leave the premises in the building of the Constitutional Court at Joštova it has been using so far. The specific date when facades will be completed will depend on the weather; however, the overall reconstruction is expected to be completed by May 31, 2007. Construction of the annex is to be commenced in mid-2007 and completed in early 2008. All the staff members working at other locations around Brno will be moving to the new seat then, and the long-term problem of inadequate and unsatisfactory premises will finally be resolved.



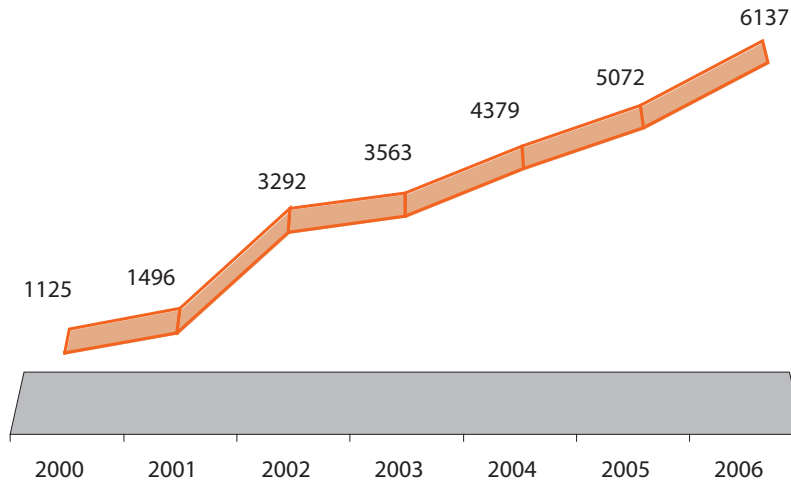
*\*z toho částka na nové sídlo*

## INFORMATION ACTIVITY

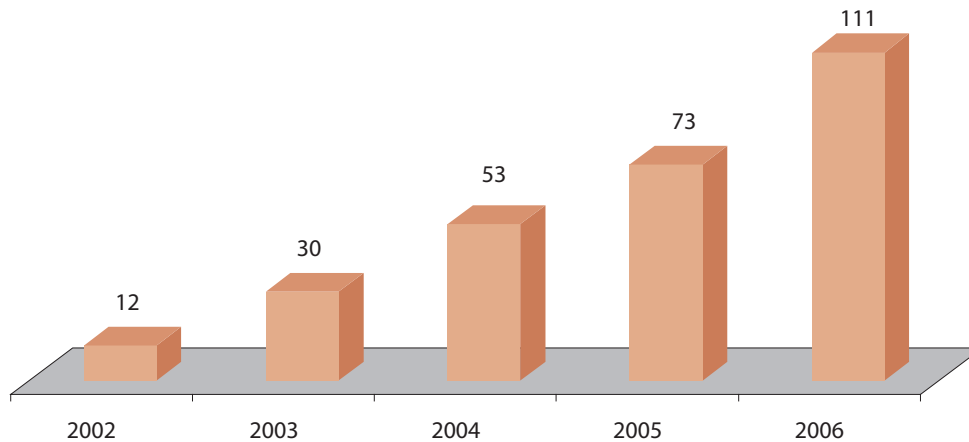
The activities of the Competition Office enjoy a growing deal of media attention. The Chairman of the Competition Office gave dozens of interviews to daily newspapers and magazines in 2006 (Euro, Profit, Hospodářské noviny, to mention only a few). Equally important was the increase in the number of reports on the activities of the Competition Office, broadcast on the main news programs the Czech TV, TV Nova and Prima (nearly 100). The general public is thus informed about the work and content of the activities of the Competition Office.

Information activities include press conferences and information provided to mass media or ordinary citizens. Various consultations, seminars or lectures are also an important source of information. During 2006, several seminars focusing on all three areas of the activities of the Competition Office were held: on the protection of competition, supervision of public procurement

Number of articles in media on the Office's activity in 2000–2006



Numbers of press releases in 2002–2006



and supervision of state aid. A truly important event took place in November 2006 in Brno on the occasion of the 15th anniversary of the application of competition law in the Czech Republic – an international conference entitled Competition and Competitiveness. At the said conference, a multimedia presentation using the motif of chess to show the importance of protection of competition was shown for the first time. This spot of approximately 15 minutes was received with great appreciation. Another important step which simplifies the contact between the Competition Office and the general public was the launch of new webpages of the Competition Office ([www.compet.cz](http://www.compet.cz), [www.uohs.eu](http://www.uohs.eu)) in a more user friendly environment.

## EVENT OF THE YEAR

The Office for the Protection of Competition commemorated the fifteenth anniversary of competition law application in the Czech Republic in 2006. The event of the year thus was an international conference, Competition and Competitiveness, held on November 28th and 29th at the Brno trade fair grounds. This important meeting of competition law experts was organized by the Brno Chamber of Commerce. One of the main objectives of the conference was to contribute to the general awareness of competition policy.

In his introductory speech, the Competition Office Chairman, Martin Pecina, therefore decided to initiate the promotion of competition law in the Czech Republic. This is necessary because the awareness of the Czech public as to what is and what is not allowed in terms of competition is still relatively low. As an example, we can mention vertical cartels as certain companies in the Czech Republic are not even aware just how serious such conduct is. The Competition Office plans to crack down on cartels with greater intensity in the future, and companies will be threatened with higher fines than at present.

The amount of fines was one of the main topics of the conference and was subsequently presented in the media, one of the reasons being the new methodology of the European Commission. It was presented in Brno by Kris Dekeyser of the EC Directorate General for Competition. A company entering a cartel can now calculate that the fine amount would depend on its turnover on the market in question and on the duration of its participation in the cartel. The geographic area where the cartel takes place will also be taken into account. A 3-month cartel at European level may thus cost the company up to 40 % of its annual turnover. The EC methodology sends out a clear signal – do not form cartels, if you have already done so, withdraw as quickly as possible, and if you had been in a cartel in the past, do not repeat that mistake. The importance of this approach was symbolically underscored by a decision of the European Commission, published on the second day of the Brno conference. The European Commission imposed a fine in the aggregate amount of approximately EUR 519 million on an international cartel of synthetic rubber producers. Notably, the cartel included the Czech company Unipetrol.

Aside from the general theme expressed in its title, the Competition and Competitiveness conference included three panel discussions: Competition and Regulation, Crime and Punishment, and Protection of Competition in the International Context. More than thirty speakers had the opportunity to speak in Brno. The main speakers included for instance the chairman of the German Bundeskartellamt and chairman of the international network of competition authorities, ICN, Ulf Böge, the chairman of OECD Competition Committee, Frédéric Jenny, the acting deputy General Director of EU DG Competition, Emil Paulis, or the chairman of the UK competition appeals tribunal, Sir Christopher Bellamy.

The Crime and Punishment panel discussion ended with an interesting conclusion: that the possibility of criminal prosecution probably represents the greatest threat to cartel participants. In the cradle of Antitrust, the United States, it is possible to impose prison sentences of up to ten years. There is an apparent tendency to shift prosecution for competition law violations towards criminal prosecution. Criminal liability is an option even in the Czech Republic, even though it is not enforced in practice, similarly to claims for compensation for damages caused by anticompetitive conduct.



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## *2007 agenda*

The Competition Office publishes, for the second time, a basic overview of areas it intends to focus on in the near future. The agenda for 2007 contains in particular legislative amendments in process in the area of competition; however, it further serves to identify markets and areas where barriers to competition could exist.

## COMPETITION

### Legislative amendments

The scope of operation of competition law in the telecommunications area was limited in the past pursuant to Act No. 127/2005 Coll., on Electronic Communications. This restriction could further impact the ability of the Competition Office to apply community competition law. The European Commission thus initiated the infringement procedure against the Czech Republic. Although the Office repeatedly filed motions for the removal of the offending provisions, it only won the support from other government agencies when the European Commission took the said step. An amendment abrogating the provisions restricting the scope of application of competition law was prepared by the Competition Office and submitted to the government in the fall of 2006; it is expected to be approved by the Czech Parliament in the course of year 2007.

The Competition Office will further begin working on an amendment to the Competition Act that is to re-codify procedural provisions governing proceedings before the Office. The new Rules of Administrative Procedure which apply to administrative proceedings before all bodies of the state administration are not conceived for proceedings concerning offences. Moreover, proceedings before the Competition Office are so specific that they frequently require a completely separate provision of law. Legislative work is to result in a draft amendment providing a comprehensive provision of law for the rules of proceedings before the Competition Office, largely independently on the Rules of Administrative Procedure.

With a view to the intent of the European Commission to significantly modify the leniency program, i.e., a program defining conditions on which the Office may refrain from imposing a fine (or reduce a fine) on a party to a prohibited agreement who enables the Competition Office to prove the existence of such agreement, it will be necessary to revise the statement of the Competition Office referring to the leniency program. The scope of such revision and its timing depend on the activities of the European Commission but are expected to take place in the course of 2007.

### Market monitoring

As in previous years, the Competition Office will continue to monitor the telecommunications market, in particular the transition from analogue towards digital TV broadcasting, together with the market for TV commercials, as well as railway transport and charge cards. Investigation of the prohibition of cross-border sales stipulated in contracts of many domestic breweries will be initiated. The Competition Office will further focus on internal regulations of individual professional associations and chambers which in its past experience contained many anticompetitive provisions. The procedure employed by Lesy ČR (a forestry company) in the conclusion of contracts with lumberjacking companies will be reviewed. Even after the administrative proceedings with ČEZ, or rather RWE Transgas are terminated, the Competition Office will continue to closely monitor the developments in the gas and electrical power sectors. The investigation of contractual relations of Mostecká uhelná and its customers will be completed.

## PUBLIC PROCUREMENT

The Competition Office will focus its educational activities on the new Public Procurement Act – Act No. 137/2006, which entered into force in mid-2006. The act introduces certain new procurement institutes and significantly expands the category of contracting authorities because it applies also to small-scale public contracts. In 2007, the Competition Office will continue to strive to expedite administrative proceedings as much as possible. As regards the imposition of fines, contracting authorities

have to be prepared for higher fines in cases of flagrant violations of the law. This applies in particular to contracts where the contracting authorities circumvent the law or act without sufficient transparency. The Competition Office further intends to hold an international conference on public procurement in 2007.

## STATE AID

### Drafting of an amendment to the State Aid Act

In the course of 2007, an amendment to Act No. 215/2004 Coll. regulating certain relations in the area of state aid, and amending the act on aid to research and development, as drafted by the Competition Office, is to be enacted. The objective of such amendment is in particular to extend the scope of application of the law to agriculture and fishery sectors, as they are not directly regulated by same at present. Powers related to state aid are to be exercised by a *coordinating body* – the Ministry of Agriculture in the area of agriculture and fisheries, and the Competition Office in other areas. The proposed provision of law aims to rectify insufficiencies discovered through the heretofore practical application of the law, and to make the recording and control of de minimis aid more efficient. For that reason, it newly introduces stronger powers of coordinating bodies in terms of record keeping and application of block exemptions in the area of state aid, and to that end, it also introduces certain

In this context, the amendment envisages the establishment and operation of a central registry of small-scale aid, another novelty are fines for non-compliance by the provider with the obligation to recover unlawful state aid, and the obligation to enter the provision of small-scale aid into the electronic registry.



