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# introduction



Martin Pecina,  
Chairman of the Office  
for the Protection  
of Competition

The year 2008 has been the year of stabilization for the Office for the Protection of Competition. We managed to build the new headquarters, to complete the number of employees and have thus become a standard central administrative body with its own modern equipped building and background for our work. The team has stabilized and today we can proclaim daringly that first-rate and dynamic people with sufficient experience work at crucial managing posts.

The Office has dealt with big and important cases during its decision-making practice. Even in the judicial practice of the courts an essential turning point appeared. Several important decisions repealed by the Regional Court in Brno have been finally confirmed by the judgement of the Supreme Administrative Court.

The year 2008 was in the token of preparation for the Czech Presidency of the Council of the European Union. The Office has focused particularly on the preparation for the Competition Day planned for May 2009 in Brno, but also on the preparation of other events in all areas of its scope of activities. Today we can claim that we are prepared insomuch that we will not dishonour our country and will manage all our obligations in area of competition, public procurement and state aid.

It is the issue of state aid that is becoming a very important topic face to face the unfolding economic crisis. The Office for the Protection of Competition will always observe the law and European legislation so that the Czech entrepreneurs will not be anyhow disadvantaged towards their foreign competitors. Even in the year 2009 we will do everything to uphold prosperity of our country, which thus will be a place where the business thrives. I mean to do fair business in business-friendly environment.

# competition

competition





# competition

The term “competition” usually means the simultaneous striving of market players to gain the best profit possible. The competition then influences business activities of the players and creates the possibility of choice for consumers. The Office for the Protection of Competition supervises healthy competition of undertakings. The object of its action is the protection of competition as a phenomenon. This is done especially by decision-making in the area of prohibited agreements, abuse of dominant position and mergers. Key markets are analyzed and the results are published. An example is the biggest sector inquiry so far in motor vehicle distribution and service. Results of this inquiry were published in the Office’s Information Bulletin No. 5/2008. In the course of this inquiry all distributors and authorized repairers of motor vehicles in the Czech Republic had been addressed. The result is quite a representative image of the effectiveness of the so-called block exemption and identification of potential problems which will be dealt with individually. The Office’s position is becoming more and more difficult, as the ways of anticompetitive behavior are becoming more and more sophisticated. In the process of detection of anticompetitive behavior, particularly in the area of prohibited (cartel) agreements, the Office is using all instruments at its disposal. Among these are unannounced local investigations, the so-called dawn raids which the Office carried out seven times in the year 2008. On the whole in the year 2008 the Office’s activity in the investigation of prohibited agreements was high again; 16 administrative proceedings were initiated.

Besides the cases solved in administrative proceedings, the Office’s activity is focused also on the competition advocacy. This means that the Office is trying to solve the anticompetitive behavior outside an administrative proceeding. In less serious infringements of the competition law the Office favors negotiations with the infringer. This leads to faster elimination of anticompetitive conditions without the need to initiate administrative proceedings. The Office’s role is important also during the legislation process, where in the framework of the procedure of comments to bills, it may refer to problematic provisions, which are not in accordance with healthy competition principles. The Office in 2008 also sought other forms of flexible solution of the cases which was for the first time in the history reflected in the application of settlement procedure.

## Legislation

In 2008 the Office prepared an amendment to the Act No. 143/2001 Coll., on the Protection of Competition and on Amendment to Certain Acts (hereinafter referred to as “the Act”). This amendment should come into force in the year 2009. The most important changes concern particularly the area of mergers to which the amendment introduces the so-called simplified proceedings used in the Community law. Simplified proceedings can be used only for mergers which do not raise concerns of significant distortion of competition. First decisive factor will be the share of the merging competitors in the market which may vary for horizontal, vertical and conglomerate merger, and other factor will be the change of joint control to exclusive control. Fundamental differences compared to the existing merger review proceedings are: shortened time for merger assessment to 20 calendar days, simplified form of a questionnaire which is an integral part of every merger notification, electronic announcement of the initiation of proceedings instead of the existing announcement in the Business Bulletin and publishing of a simplified decision. The result is thus a decrease in requirements for merging parties.

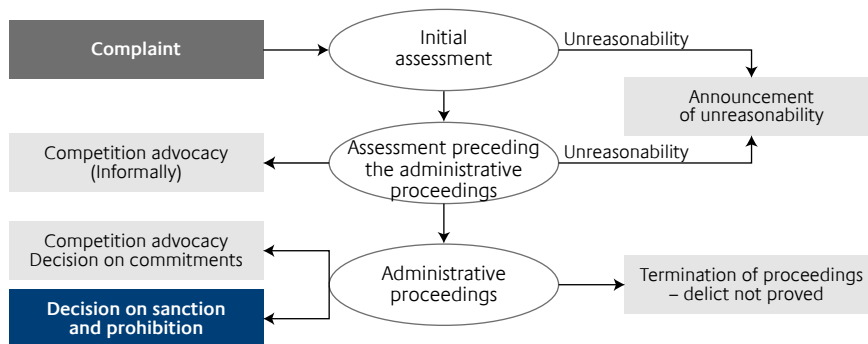
Further, the amendment brings particularly consistent distinction between responsibility for infringements of natural persons and responsibility for other administrative infringements of legal persons and natural persons-entrepreneurs in accordance with governmental conception of administrative punishing; specifies individual provisions of the Act with the aim to prevent the creation of explanatory difficulties, and brings more detailed form of procedural issues. Regulations regarding private enforcement of damages claims for antitrust infringements were eventually removed from the amendment.

The Office has further observed the ongoing legislative efforts to regulate the so-called economic dependence. The latest parliamentary proposal refers only to the behavior of retail chains. The Office drew attention of the presenter to the risks connected with the enforcement of this Act along with increased requirements on the state budget, and increased administrative burden for the undertakings.

At the beginning of the year 2009 the Parliament of the Czech Republic approved a new Criminal Code, which, among others, narrows criminal liability in the area of competition law. Compared to the existing widely defined legal regulation which in fact made any real application impossible, only horizontal cartel agreements are generally regarded as the most serious infringement of competition rules and thus regarded as a crime.

The Office continued in issuing the soft law, methodological documents increasing transparency and predictability of the Office's procedure. Among these was particularly the Notice on the alternative solution of the certain competition issues, in which the Office specified in which cases and under what conditions it was willing to refrain from the administrative proceedings initiation, or to cancel the ongoing administrative proceedings after submission of commitments from the side of the undertaking. Other methodical materials were issued in the area of mergers (Notice on pre-notification contacts with merging parties, Notice on the turnover calculation, Notice on the concept of mergers) and made the course of the administrative proceedings faster and less burdensome.

The strengthening of the decision-making activities did not, however, result in an inhibition of actions leading to prevention, or non-sanction solution of less serious infringements in the year 2008. In 2008 the Office received the total of 433 complaints on the infringement of the Act on the Protection of Competition. A number of justified submissions were solved by commitments before the initiation of or during the administrative proceedings. This happened under the rules issued by the Office in order to secure uniformity and transparency of its proceedings in the form of the Notice on the Alternative Solutions of the Certain Competition Issues in spring 2008.



## Alternative solution of the certain competition issues

The investigation of the Office

Within the framework of competition advocacy the Office assessed the behavior of Andreas STIHL, Ltd., an official importer of garden and forest tools of STIHL and VIKING brands. Concerns about a possible anticompetitive conduct were raised by conditions restricting internet or similar mail-order selling of goods distributed by the STIHL. In order to remove completely the Office's concerns the mentioned company submitted a proposal of an appendix, version of which made it possible for the customers of the STIHL to advertise and offer products distributed by the STIHL via internet. Sale or delivery of the ordered

## Selected Cases

Restriction of internet selling

# competition

goods, was conditioned by physical presence of the parties to the contract. This form of distribution was reasoned by the interest of the STIHL to provide professional fulfillment of technical conditions of sale of goods distributed by the STIHL, particularly reasoned by possible risk to health and life. The Office assessed the proposed version of the appendix modifying conditions of internet selling and came to the conclusion that the text did not excessively constrain free possibility of the consumer of the STIHL to advertize and offer the products distributed by this company via internet.

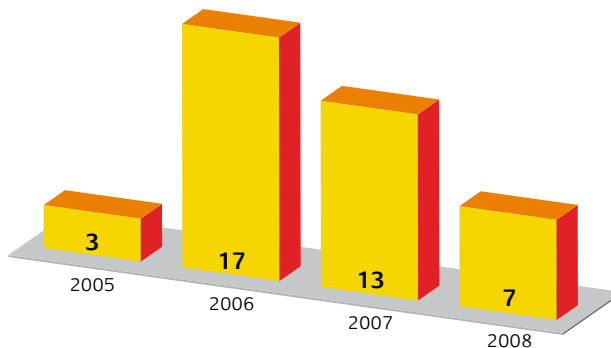
## Intervention in funeral services sector

Within the framework of competition advocacy the Office, among others, concluded a case in the funeral service sector. The inquiry dealt with possible abuse of dominant position by Pohřební služba Kukuczka (Kukuczka Funeral Services). The mentioned company operates civil funeral ceremonial halls in the city of Třinec. It allegedly prevented its competitor Pohřební služba Hajduková (Hajduková Funeral Services) from the use of the funeral ceremonial hall in Třinec – Dolní Lištná. After the Office's intervention Pohřební služba Kukuczka proposed the following remedy measures: to elaborate a pricelist of services provided out of operational reasons to other funeral undertakings, and to elaborate a draft agreement on enabling funeral ceremonies of Pohřební služba Hajduková in the ceremonial hall in Třinec – Dolní Lištná. The proposed measures were implemented and an agreement was concluded between the abovementioned two companies. Thus the anticompetitive situation in the market of providing funeral services in the ceremonial hall in Třinec was remedied.

## Case solved in the administrative proceedings

At the beginning of October 2008 the Office concluded administrative proceedings with Dveře Praha, Ltd. This company had been concluding prohibited agreements on direct price fixing with its consumers of doors and doorframes. From February 24, 2006 to January 24, 2008 the party to the proceedings had concluded agreements including provisions on an obligation of the purchaser to offer the goods to the final consumers for prices fixed in the pricelist of doors and doorframes, and including a mechanism enabling an immediate withdrawal from the contract, among others, in case of violation of this obligation. The agreements in question were concluded mainly between Dveře Praha, Ltd. and construction companies whose main part of sales did not consist of doors and doorframes. The price of doors, doorframes and door fittings was included in the total value of their construction works whereas it was the final customer who decided whether the doors would be purchased from the given supplier or not. Particularly with regard to the classification of consumers of the party to the proceedings, the Office confirmed in the course of the administrative proceedings that the resale price maintenance agreements were not fulfilled, not even from the side of the party to the proceedings. The Office has thus accepted the commitments proposed by the party to the proceedings to remove

The number of cases solved by the competition advocacy – outside administrative proceedings (concluded in the year)



the anticompetitive conduct in accordance with provisions published in the Office's Notice on the Alternative Solutions of the Certain Competition Issues (cf. Information Bulletin No. 2/2008). Dvěře Praha, Ltd. has not been fined.

Combating cartels is the priority of every competition authority. In 2007 the Office adopted the new Leniency programme and established an individual department, dealing exclusively with detection and proving of prohibited horizontal cooperation among competitors. Although in 2008 no decision was issued on a "genuine" horizontal cartel, except several prohibitions of anticompetitive conduct of associations of undertakings, at least good starting position was introduced to change this statistics. New Leniency programme starts to be paying off. In the last period the Office has received five requests for immunity and all these cases are under investigation. The Office uses actively so-called marker which enables the undertakings, which decide to cease their participation in the cartel, to submit even an incomplete request and to complete it in a short time, keeping their position in the prospective row of applicants for reduction of fine.

In 2008 the Office was active in the area of vertical agreements on resale price maintainance. For a certain period of time the Office had relied on prevention and had presupposed that companies informed about the illegal nature of such conduct would withdraw from these serious forms of collusion themselves. However, in fact such behavior remained present in several sectors. Limited intrabrand competition caused by this practice may be, however, one of the reasons for the relatively high retail prices in the Czech Republic, compared to the situation in the neighbouring countries. This was also the reason for which the Office had decided to highlight the existence of such prohibition by investigating several important cases in the markets of selective cosmetics, outdoor equipment, distribution of books and non-alcoholic beverages. Among cases concluded with a final decision is the Kofola case which is important also because of the fact that the Office applied settlement procedure for the first time in this case.

In the middle of the year 2008 the Office concluded the proceedings with companies belonging to the Czech part of the Kofola group. In the course of the administrative proceedings initiated in November 2007 was proven that the companies belonging to this group concluded in the years 2001 – 2008 prohibited vertical agreements on resale price maintainance with their customers. The agreements had been concluded with several wholesale customers from different parts of the Czech Republic. The customers were obliged to apply unified resale prices. The mentioned agreements restricted competition among customers and thus decreased advantages resulting from undistorted competition for final consumers in the market with non-alcoholic beverages. In the given proceedings the Office used for the first time in its history the direct settlement procedure. This procedure is applied in investigation of anticompetitive behaviour by many competition authorities and recently also by the European Commission. In the Czech case, it enabled fast conclusion of the administrative proceedings which resulted into saving of time, human and material resources, which the Office could use to detect and prove other anticompetitive behaviour. Since the time when it had been clear that the Office had enough evidence to prove the anticompetitive behaviour the companies from the Kofola group fully cooperated with the Office. Confirming the existence of the criticized conduct and its duration; they also recognized the legal qualification of their action. The result of the direct settlement was not only significant decrease in the duration of the administrative proceedings, but also significant decrease in the fine imposed on the Kofola Holding Company. This company was obliged to pay for the anticompetitive behaviour the fine of CZK 13.552 million. However, this is less than a half of the fine which it would have paid if it had not cooperated with the Office in the course of the administrative proceedings and if it had not pleaded guilty. The decision has already become effective.

## Prohibited Agreements

## Selected Cases

First case of direct settlement



# competition

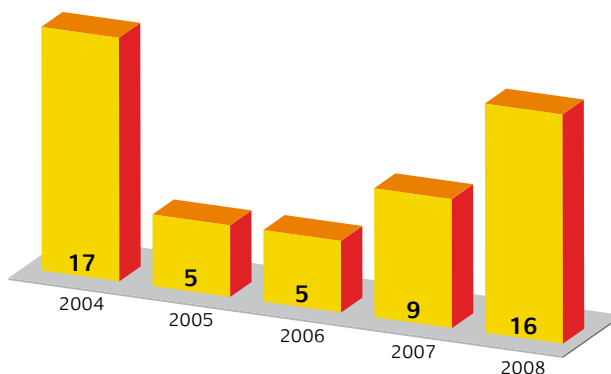
## Vertical agreements in the cosmetics sector

The Office imposed fines on the suppliers of selective cosmetics, namely to DELLUX company (CZK 1.089 million) and Estée Lauder CZ (CZK 818 000). The companies had been concluding prohibited agreements on resale price maintenance with their customers (authorized retailers), which had led to distortion of competition in the market of distribution of selective cosmetics. According to the concluded agreements the customers were obliged to maintain retail prices fixed by the DELLUX and Estée Lauder CZ. However, the possible fixing of recommended prices must not deprive the customers of the possibility to set the retail price for the final consumer according to their own consideration. In other words the retailer must always have the possibility to set the final price even below the level of the recommended price of the supplier. Recommended prices must not be connected to other, although only oral, directions or instructions, or other bidding measures enforcing a hidden interest of the retailer or producer in maintaining of resale prices by their customers. Further, recommended prices must not be connected with direct negative impacts on those who would not respect them.

## Prohibited agreements of the Albatros Publishers

The Office imposed the fine of CZK 313 000 on the Albatros company. The Office started to deal with its conduct at the beginning of the year 2008 in connection with the distribution of the last volume of Czech printing of Harry Potter. The administrative proceedings were related not only to this book, but generally to vertical agreements among Albatros and its customers. The proceedings proved that Albatros had been concluding and fulfilling prohibited agreements on the customer sale restriction (limitation of persons to which the customer is entitled to resale the goods). These agreements had been concluded since 2001, however, majority of them had not had any significant impact on the market. The most serious had been the prohibited agreements in connection with publishing of Harry Potter and the Deathly Hallows, aim of which had been to prevent the distribution of this book to the hypermarkets and thus to prevent the price competition among hypermarkets and specialized bookstores. Experience proves that hypermarkets offer reduction in price for consumers but the traditional bookstores usually observe the recommended retail prices. Thus in the period of the biggest interest in the Harry Potter volume the consumers have been restricted in the possibility to buy the volume with a significant reduction in price. Moreover, the observance of agreements to the customers sale restriction (limitation of persons to which the customer is entitled to resale the goods) had been monitored in the mentioned case by the party to the proceedings and a sanction had been claimed in case of the commitment violation. Albatros had further concluded several agreements including an agreement on resale price maintenance. During the administrative proceedings the party to the proceedings cooperated with the Office, agreed on its findings and declared that it was prepared to change the agreements in question so that they would correspond with

The number of initiated administrative proceedings – prohibited agreements



the competition rules. Albatros has by recognition of its responsibility for the anticompetitive behaviour, by cooperating with the Office, by providing all requested information, and by starting to remedy the anticompetitive situation, fulfilled condition for application of the direct settlement procedure and decrease in the final fine by almost 50 per cent.

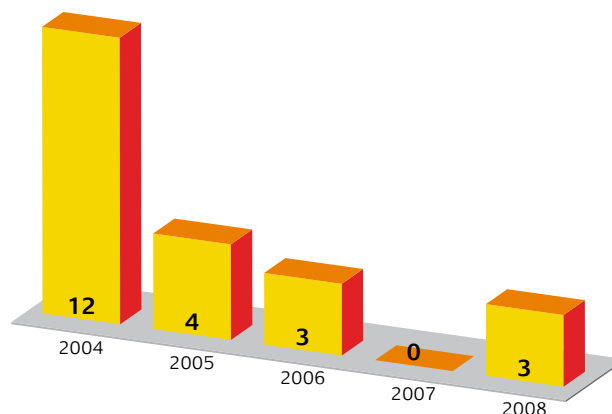
In the area of abuse of dominant position the Office initiated 3 administrative proceedings in 2008. In the first instance the proceeding with České dráhy was concluded. The company has been fined of CZK 270 million. These proceedings had been evidence-intensive, which affected also its duration (the proceeding was initiated in 2006). In its decision the Office stated that both the Czech and European competition law had been infringed.

By its first instance (not final) decision the Office imposed a fine of CZK 270 million on České dráhy, Ltd. for abuse of dominant position in the market of railway freight transport of substrates transported in large volumes in the area of the Czech Republic. Concretely, České dráhy had infringed the Act by the fact that in the period from January 1, 2003 to November 30, 2007 it charged its customers (without objectively justifiable reasons) different prices for services in railway freight transport with comparable calculation parameters, and it also applied different profit margins. České dráhy thus disadvantaged some of its customers for whom significantly higher prices were set in comparison with other customers in similar or comparable conditions. České dráhy caused material damage to those customers with whom it dealt under less favorable conditions, and indirectly also to end consumers. Moreover, the possibility for other freight transporters to establish themselves on the market was restricted. České dráhy provided better conditions to those consumers who had been offered transport services by its competitors. The competitors of České dráhy were not able to react accordingly to such price policy. Further, from January 1, 2005 to November 30, 2007, České dráhy without objectively justifiable reasons applied different conditions towards its customers regarding provision of so-called level prices (different volumes of transported goods necessary for quantity rebates, and different rebates when achieving the defined volumes of the transported goods). Thus some of their customers, to whom were applied significantly less advantageous condition and applied level prices, were disadvantaged. The aim of České dráhy was to ensure the loyalty of consumers in case of a bid offer by other competitors. Moreover, in 2006 and part of the year 2007 České dráhy (without objectively justifiable reasons) made it impossible for the companies SPEDIT-TRANS, Ltd. and ŠPED-TRANS Levice, Ltd. to conclude contracts on customer tariff and thus to obtain discount from the public pricelist, and it also took measures obliging the two companies to deposit 100 % of the price for the rail freight transport

## Abuse of dominant position

### Selected Cases

Fine for České dráhy



The number of initiated administrative proceedings – abuse of dominant position

# competition

services in advance On January 5, 2006 České dráhy terminated the Agreement on central clearing of transport charges with the above mentioned undertakings and thus placed them at competitive disadvantage. České dráhy adopted these steps in reaction to a highly competitive activities of both the companies and the result of these steps was an actual refusal to deal with these companies. As a result these companies were excluded, or largely constrained, from further operating in the market.

## Mergers

In 2008 the Office dealt with approximately the same number of mergers as in the recent years. Pre-notification proceeding has become a routine. This proceeding facilitates the discussion between the Office and the merging parties about the issues of conception and fulfillment of notification obligation before the proceeding is initiated. Experience proves that these proceedings significantly contribute to simplification and acceleration of the whole administrative proceedings and the Office recommends its use to all undertakings. In the year 2008 the Office approved only two mergers with commitments, the rest was cleared without conditions. In both the cases (Rewe/Plus Discount and Agrofert/První žatecká) the commitments had a nature of structural remedies (transfer of assets) which in practice confirmed the Office's determination to prefer in the future such commitments to previously prevailing, but less effective, behavioural commitments. In the previous year for the first time the Office took over and successfully solved a case which was originally notified to the European Commission (Rewe/Plus Discount).

## Selected Cases

### Retail Sale

Rewe/Plus Discount merger has been approved under the condition of fulfillment of commitments which the party to the proceedings accepted in the course of the administrative proceedings to the benefit of maintenance and development of effective competition. Prior to the merger, group REWE had been present in the Czech Republic through the network of retail stores BILLA and Delvita (total of 181 stores) and network of discount retail stores Penny (the total of 171 stores). The acquired company PLUS which prior to the merger belonged to the Tengelmann group had in the Czech Republic operated in a network of discount retail stores Plus (total of 146 stores). The entity created by the concentration became the second strongest competitor in the national market of retail sale of goods of daily use after Schwarz group and ahead of Ahold and Tesco. The Office carried out analysis of local markets. The investigation concluded that the assessed merger would lead to high concentration in local retail markets in the area of four regions. Such a strong position would enable REWE group to behave in a significant extent independently on other undertakings or customers. In order to eliminate the concerns about the distortion of competition, the party to the proceeding submitted proposal of structural remedies. According to the proposal, the REWE group was obliged to sell one store from its portfolio on each of the problematic markets. In other local markets the concerns about the distortion of competition did not arise.

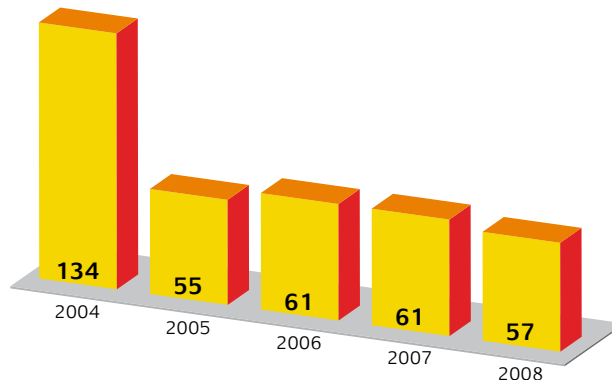
### Merger with commitments in the agricultural sector

The Office approved the merger of AGROFERT HOLDING and PRVNÍ ŽATECKÁ with commitments to the benefit of maintenance effective competition on the affected markets. The Office identified possible distortion of competition in the retail market of industrial fertilizers in Ústecký and Středočeský region, on the retail market of chemicals for plant protection in Ústecký region, on the market of storage of plant commodities in Ústecký and Středočeský region, and on the retail market of feeding mixtures in Ústecký region. In order to maintain the effective competition the Office proposed structural remedies and restrictions which the party to the proceedings accepted and fulfillment of which was stated by the Office as a condition of the merger approval. To be specific, the acquirer,

AGROFERT HOLDING, was obliged to divest several parts of PRVNÍ ŽATECKÁ company to an independent third party that would be qualified to operate such assets; this resulted into the removal of concerns about the distortion of competition on the mentioned markets in Středočeský and Ústecký region.

The Office approved the concentration of undertakings Královský pivovar Krušovice, Inc. and Drinks Union, Inc. on the market of beer. Breweries of the Drinks Union have thus been incorporated into the Heineken group. With regard to the high level of concentration on the market of beer, the Office was assessing the affect of the merger not only on the whole market of beer in the Czech Republic, but also in more detail on the so-called on-trade and off-trade distribution channel. None of mergering parties exceed 15 % of market share as a reason of merger and thus it remained deeply under the 25% level, under which the merger is not considered as distortion of competition. With regard to the relatively low market share of the merging undertakings and to the existence of strong competitors the Office came to a conclusion that the assessed merger would not result into significant distortion of competition.

Strengthening the position of Heineken group



Number of initiated administrative proceedings - mergers

In 2008 total of 24 appeals were lodged, 14 of which were not dealing with declaration of an administrative infringement but for example with interest on fine, etc. The Chairman of the Office issued 20 second instance decisions. 10 of the decisions dealt with the mentioned repayment of fine. From the meritorious decisions the following were confirmed: abuse of dominant position of Linde Gas, prohibited agreements of the poultry producers and one case of a prohibited agreement by an association of undertakings (Česká lékárnická komora – Czech Pharmaceutical Chamber).

21 appeals were filed against the Office's decisions, 11 of them challenged the decision on other administrative infringement (interest). The courts ruled in the total of 23 cases. Majority of these decisions were in favor of the Office. Among the cases were for example SAZKA, UPC or A.S.A. TS Prostějov. The first appellate instance is the Regional Court in Brno. However, this court often rules in a different manner from the subsequent appellate instance, the Supreme Administrative Court. This was confirmed in the RWE Transgas case, which was the most significant judicial event in 2008. The court dealt with the case in which the fine of CZK 240 million was imposed for the abuse of dominant position in the wholesale market of gas supplies. The Regional Court in Brno overruled the decision of the Office with the reasoning that in accordance with the ne bis in idem principle (prohibition of parallel prosecution or sanctioning in the same case) it is not possible to impose the fine for violation of both the European and the Czech law. The Supreme Administrative Court did not agree with this opinion

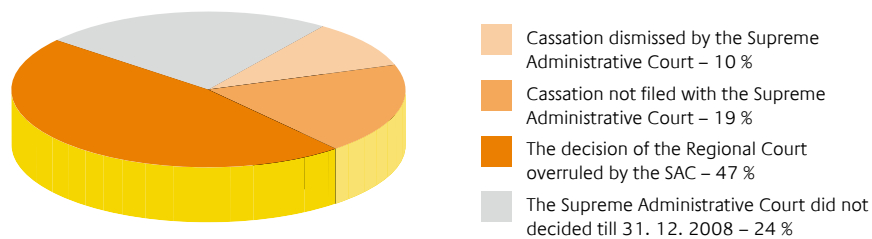
Appeals and judicial review

# competition

and overruled the decision of the Regional Court. According to the Supreme Administrative Court the Office is entitled to impose a fine for violation of both the Community (European) and the Czech law at the same time on any undertaking restricting competition by concluding prohibited agreements or abusing dominance. "Parallel prosecution... of Community and national administrative infringements is possible, because interests protected by the merits of the Treaty establishing the European Communities and the merits of the Act on the Protection of Competition are different". This is, among others, stated in the decision of the Supreme Administrative Court. In addition, to impose a fine for both the infringements is in accordance with the judicial practice of the Court of Justice of the European Communities.

Judicial review of the Office's decisions from 1. 1. 2005–31.12.2008

The decisions of the Office overruled by the Regional Court	21
Cassation not filed with the Supreme Administrative Court	4
Cassation dismissed by the Supreme Administrative Court	2
The decision of the Regional Court overruled by the SAC	10
The Supreme Administrative Court has not decided yet	5



The average duration of administrative proceedings in antitrust in days (excluding mergers)

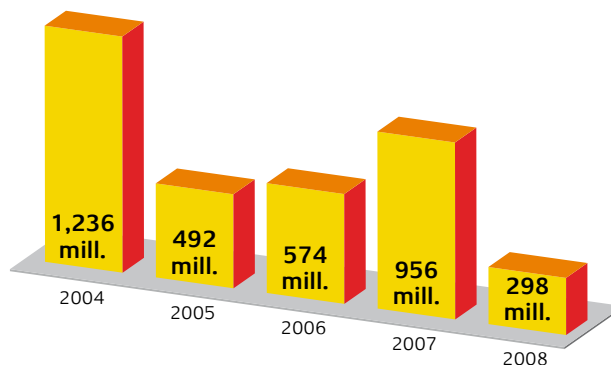
	2001	2002	2003	2004	2005	2006	2007	2008
First Instance	88	52	90	83	120	272	309	256*
Second Instance	261	228	260	335	325	185	190	97**

\* only 2 administrative proceedings were concluded until January 31, 2009 out of proceedings initiated in the given year

\*\*only 5 concluded administrative proceedings

The duration of the administrative proceeding in the area of mergers has been on a long-term basis 30 days.

Total amount of fines imposed by the Office in the first instance (in CZK)



The total amount of final fines in force collected in 2008 was CZK 102.425 million. The total amount of administrative fees collected from the parties to the proceedings was CZK 5.702 million (majority of cases were mergers – the administrative fee is CZK 100,000).



# public procurement and concessions

public procurement  
and concessions



# public procurement and concessions

The surveillance over observation of legal regulations on public procurement has been in the Office's competence since 1995. Since this time the third legal norm has come in force, which is the Act No. 137/2006 Coll., on Public Procurement. The Office reviews the procedures of contracting authorities in public procurement with the aim to ensure the maintainance of the following principles: transparency, prohibition of discrimination and equal treatment. Only fair competition and healthy competitive environment can result into benefits for contracting authorities, and thus for the citizens, in the form of the best bid.

The administrative proceeding before the Office relating to the review of activities of a contracting authority can be launched on a base of written complaint from a claimant. In order to prevent unreasonable claims from being submitted, the claimants shall provide deposit with the submission of their claims, usually in the amount of one percent of the claimants' bidding price. If the Office finds out that the contracting authority failed to act in accordance with the rules of procedure that had been defined for the purposes of public procurement, and if his actions affected or could have affected the selection of the best bid significantly, and if a contract has not yet been signed, the Office shall impose remedial measures by which cancel the public contract, or just an individual transaction of the contracting authority, and the deposit is then returned to the claimant. If no violation of law is found the administrative proceeding is terminated. In such case the deposit becomes an income of the state budget. In 2008 the amount of the deposits exceeded CZK 22 million, 16 million of which lapsed to the state budget.

The Office continues to reveal law violations that affected or could have affected the selection of the most advantageous bid; and if remedy can not be provided otherwise, i.e. a contract with the selected undertaking has already been signed, the Office imposes fines, the purpose is not just repression but also prevention. A fine for administrative offence shall not only sanction the contracting authority for its illegal actions but also prevent it from illegal actions in the future, or to force it to act according to the law. Generally speaking the Office in its decision-making activities focuses mainly on prevention. However, fines are also important aspect of the supervision.

The actions of the contracting authority can also be reviewed in administrative proceeding ex officio, the outcome might be both remedial measure and a fine, or the proceeding can be terminated if no violation of law was found.

In the area of concessions the Office has dealt only with a small number of cases so far. By the concession contract the concessionaire is obliged to provide services or to execute work and the contracting authority undertakes, instead of payment as is the case of common public procurement, to gain benefits from the provision of such services or use of the executed work (e.g. to collect charges from the users of a building or for provided services). Typical for the concession contract is also the fact that a significant part of risks connected with benefits resulting from provision of services or from the use of the executed work is on the concessionaire. The contracting authority is obliged to select a concessionaire in the concession procedure in case if the estimated income of the concessionaire amounts exceed CZK 20 million, free of VAT.

## Legislation

The year 2008 did not bring any significant legislative changes, neither in the concession area, nor in the public procurement. The current legislative framework mirrors valid norms of the European Communities, however, as it is true with majority of relatively new legal regulations, also the current act needs legislative changes resulting form its practical application. At present some of the ambiguities are solved by the explanatory position of the Office in its final decisions. However, certain incoherence of individual provisions of the Act or their logical discrepancy still do exists. The Office gathers experience in its surveillance practice which is a basis for material

# public procurement and concessions

amendment of the Act, on which cooperates with the Ministry for Regional Development. This ministry is responsible for the legislation in the sector of public procurement.

The aims of proposed amendment are higher transparency of the awarding procedure (e.g. the duty to read the values of numerically expressed criteria during the opening of envelopes); simplification of procedure in some types of proceedings; specification of provisions stipulating compliance with the qualification requirements; reduction of formalized approach of the Act on public procurement (e.g. removal the duty to sign the bid on two places, or bigger emphasis on real economic advantage of the used assessment criterion); more detailed and specified regulation of the specific institutes (framework agreements, right of option). Significant changes also concern higher efficiency of the review procedure, which result from the transposition of the Directive of the European Parliament and the Council 2007/66/EC of December 2007, on the basis of which the possibility for the Office to impose in serious cases the prohibition of fulfillment of an agreement concluded on public procurement will be introduced in the act.

In 2008 the Office issued in total 391 first instance decisions, 230 were decisions on the merits, the rest concerned approval or dismissal of preliminary rulings. 245 of administrative proceedings were initiated, mostly upon the proposal of a bidder. Fines were imposed in 66 cases in amount of CZK 3 million.

The revision of the procedure of České dráhy, Inc. (Czech Railways) in realization of the project called “Živá nádraží” (Live Stations) was concluded. The revision started in the middle of 2007. At that time 14 out of 42 initiated awarding procedures were finished. České dráhy has chosen three forms of the project realization. In the case of revitalization in connection with private capital the Office came into a conclusion that the performed awarding procedures and the following contractual relations fulfilled the characteristics of a concession, whereas all awarding procedures were initiated under the Act No. 139/2006 Coll. (since the middle of the year 2006) realized contrary to this Act, because České dráhy has chosen the contractual partner outside the legal regime of this Act. In autumn 2008 the reviewed subject was given a two-month period for submission of a written statement on removal of identified deficiencies. České dráhy noted that it fulfilled the definition of the contracting entity and stated in the answer that it would not conclude contracts fulfilling notional characteristics of a concession without preceding concession procedure in the future. In the case of the current contractual relations concluded contrary to the concession law the reviewed subject will initiate a negotiation in order to remedy the situation and will at the same time inform the Office about the results of the negotiation. The initiated proceedings still in progress will be terminated. The Office will further monitor the procedure of this contracting entity. Also the assessment of the surveillance of the city of Ústí nad Labem was concluded. In the course of the surveillance the total of 88 investment projects of the contracting authority from the years 1997–2005 were examined. The investment projects should have formed the total of 22 public contracts with regard to the subject-matter and the selected suppliers. The City Council of Ústí nad Labem cooperated with the Office and in all disputable cases terminated the existing agreements. On the public procurement in question new awarding procedures were initiated in accordance with the law at the beginning of June 2008. The surveillance was thus finished with the achievement of remedial measures from the side of the contracting authority. In the first half of 2008 the Office initiated a surveillance action focused on the observance of the duty of contracting authorities to publish the notifications on the awarding procedure in the Public Procurement Information System (PPIS). The surveillance was focused on such cases in which the contracting authority published the notification on public procurement awarding in the PPIS (i. e. the termination of the awarding procedure) without the notification on public procurement (i. e. commencing of the awarding procedure) corresponding to such notification according to the evidence number of the public

## Decision-making and supervisory activities

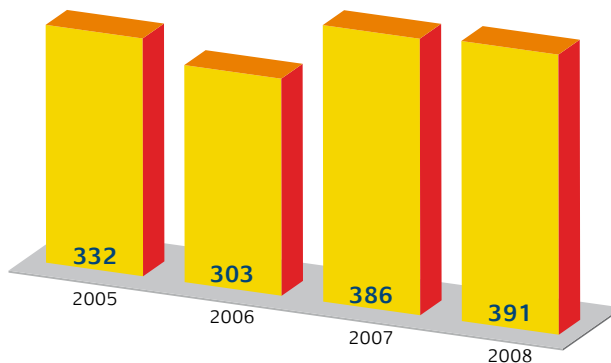
# public procurement and concessions

procurement. All cases with the estimated value of the contract exceeding CZK 20 million were reviewed and 150 contracting authorities were summoned. In the majority of cases it was found that the contracting authorities fulfilled their notification duty, however, they had sent the relevant form to the PPIS under a different evidence number of the public procurement. The second part of the surveillance is focused on the opposite cases, i. e. the situations when the contracting authority published the notification on commencing of awarding procedure; however, the results of the awarding procedure were not found in PPIS. This part of the surveillance is excessively larger and is dealing with hundreds of contracting authorities. In majority of the cases the non-fulfillment of the duty to publish the result of the awarding procedure is confirmed. The contracting authorities react to this with an additional publication.

The summary of the administrative proceedings

Number of received submissions (proposals + incitements)	459 (154+305)
Total number of initiated administrative proceedings	245
Administrative proceedings initiated upon proposal	154
Administrative proceedings initiated ex officio	91
(68 from incitements, 10 from terminated admin. proceedings, 0 from inspections + 13 other	
The number of administrative proceedings in progress to the date December 31, 2008	58
Total number of first-instance decisions	391
Preliminary rulings + dismissed preliminary rulings	63 + 26
Issued decisions on the merits	230
Terminated administrative proceedings – no violation found	32
Remedial decisions + sanctions	197
Administrative proceedings terminated out of procedural reasons	161
Number of imposed fines	66
Amount of fines in force in 2008	CZK 3 006 500
Amount of fines due in 2007 pursuant to Czech National Bank statement	CZK 3 055 500
Amount of deposits paid in 2008	CZK 22 567 040,93
Amount of deposits which lapsed to the state budget in 2008	CZK 16 187 602 Kč

Issued first instance decisions



## Shortcomings in the application of the Act

Contracting authorities are obliged to proceed towards the bidders in a non-discriminate and transparent manner. The most serious violation of these rules thus occurs when a contracting authority fails to adhere to the rules altogether and concludes a contract directly with a selected company. Another serious violation is represented by using simplified procedure, thus unreasonably restricting competitive environment. However, also other violations happen repeatedly which for example give preferential treatment to some producers or suppliers. The Act on Public Procurement is rather complex legal instrument, so there are

# public procurement and concessions

also cases questioning whether a particular subject is obliged to act according to this Act or not (e. g. health insurance companies).

By its second instance decision the Office imposed a fine of CZK 100 000 to Vojenský opravárenský podnik (thereinafter the VOP 026 Šternberk). This state-owned company was in August 2006 entitled by the Ministry of Defense to ensure an ecologic liquidation of ammunition. However, the VOP 026 Šternberk did not announce a public tender and concluded the contract directly with ZEVETA AMMUNITION. Thus the selection of the supplier was not preceded by a transparent awarding procedure which would objectively prove that the bid of the selected company was the most advantageous for the contracting authority, while the value of the contract exceeded the limit for service tenders and was not covered by the exemption of the law (it was not a strategic military procurement). The value of the contract was almost CZK 7 million, the highest possible fine was thus almost CZK 350 000. In the course of the appellate proceedings the contracting authority argued, among others, that in 2006 the given services were provided only by one company in the Czech Republic – ZEVETA. However, as it is possible to learn from the Commercial Register, for example a Prague company STV Group, Inc. has in its scope of business also “the development, production, repairs, modification, transport, purchase, retail, loan, storage, devaluation and destruction of ammunition”. This is identical with the scope of business of the selected undertaking. Moreover, it is necessary to state that the fact the public procurement has to be carried out in the Czech Republic does not give reason for disqualification of suppliers performing their activities outside the area of the Czech Republic. The given procurement should have been published in the Official Journal of the European Union.

The Office imposed a fine of CZK 30.000 on the City of Břeclav. The city did not call the awarding a contract in the case of a public contract on services connected with the real estate business. The contracts concluded by the contracting authority with the chosen real estate agencies prove that the contracting authority requested to ensure activities connected to the real estate sales in its ownership, including the provision of information services to people interested in the purchase and elaboration of contracts and proposals for registration in the Land Registry. In the investigated case the subject of the case was the fulfillment of services provided upon payment, although this payment should have been finally paid by other people (purchasers). The presupposed value of the public procurement was in the given case circa CZK 14 million (4 % from the price of the sold real estates). It is thus an over-limit public procurement. The contracting authority was thus obliged to act according to the law. The Ministry of Defense and České dráhy violated the law in a similar way during auctions in the same year.

For the first time in its decision-making practice the Office stated that health insurance companies have the legal status of a public contracting authority. Health insurance company is a legal person established or found with the aim to meet the needs of public interest which do not have industry or business character, because it provides public health insurance. Funding of health insurance companies is not strictly separated from the state, because the health insurance company may not treat the income from the public health insurance at will. From the structure of health insurance in the Czech Republic it results that it is not a voluntary, but a mandatory payment, which the health insurance company is obliged to treat in accordance with the Act on insurance and other procedures stipulated by the state. These main features thus fulfill the definition of a public contracting authority in the case of health insurance companies. The given administrative proceedings dealt with the supply of vitamin products for children insured at Hutnická zaměstnanecká pojišťovna.

## Selected cases

VOP 026 Šternberk

City of Břeclav

Health Insurance  
Companies are  
contracting authorities



# public procurement and concessions

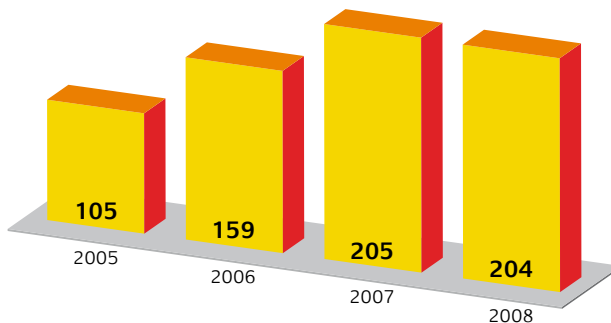
## The first fine for concessions

The Office imposed its first sanction in the concession area – the fine of CZK 100,000 – on the municipality of Zdiby by a second instance decision. The municipality did not take concession proceedings when selecting the concessionaire entrusted with operation of a sewer system and sewerage plant, and addressed only one interested undertaking. The Concession Act of 2006 stipulates conditions and procedures of public contracting authorities in the case of conclusion of concession contracts in the framework of cooperation between contracting authorities and other (business) subjects. The contracting authority thus may, as in this case, design the operation of a sewer system and sewerage plant, including finalization of a part of the sewer network, providing that the payment for a concessionaire is in the form of collecting sewerage fees from producers of wastewater, i.e. the users of sewer network. However, even in the area of concessions, the contracting authority is obliged to select the concessionaire in concession proceedings whose estimated income is CZK 20 million or more. However, in the given case concession proceedings were not initiated, although the estimated income of the concessionaire (BMTO GROUP) would exceed the limit of CZK 20 million. The municipality of Zdiby was fined because it had concluded the contract after negotiation with one applicant only. Thus competition had been eliminated.

## Appeals and judicial review

In the area of public procurement an increase in the number of submitted appeals against first instance decisions of the Office has been noted in recent years. For this reason, the Chairman of the Office decided to reinforce the staff of the Second Instance Decision-making Department in 2008. In 2008 the Office received the total of 204 appeals and issued a second-instance decision in 206 cases. In the majority of them, the previous decision of the Office was upheld. Overall in 175 cases.

The number of submitted appeals in individual years



Until the end of 2008 the Office was notified about 44 appeals against the Office's decision lodged with the Regional Court in Brno. The court, according to judgements available on January 20, 2009 decided 25 cases in 2008. 17 of them were decided to the benefit of the Office (the appeal was dismissed, refused or withdrawn, etc.).

state  
aid

state aid



The third area in the scope of action of the Office for the Protection of Competition is the area of state aid. Since the accession of the Czech Republic to the European Union the European Commission, concretely the Directorate General for Competition, has been the only body with the power to take decisions in the area of state aid. The Office has an equally important advisory, coordinating, monitoring and consulting role, particularly in relation to providers of state aid.

State aid is any aid granted through state resources, selectively favouring certain undertakings or production of certain goods, which distorts, or may distort, competition and affect trade between EU Member States. Aid fulfilling the above mentioned criteria is not compatible with the Common Market and is thus prohibited.

Exemption from the prohibition of state aid must be approved by the European Commission. The main reasons for granting the exemption are aid to promote development of regions with abnormally low standard of living or lack of labour force, or subsidies to certain economic activities or areas which do not have negative impact on competition. The current trend promoted by the European Commission in its State Aid Action Plan has been the provision of less but better targeted state aid.

The issues of state aid are increasingly important particularly in connection with the ongoing financial and economic crisis. In response to the crisis the Office established a special website where information about measures aimed at the reduction of impacts of the crisis can be found. The European Commission reacted to the crisis by adopting a temporary framework for state aid to support subjects affected by restricted access to credit resources. It enables the Member States, upon an approval of the scheme by the European Commission, to provide state aid in the form of subsidized loans, loan guarantees, reduction of the annual premium, risk capital for small and medium-sized enterprises or cash grant up to EUR 500.000. The temporary framework is valid until the end of 2010.

The temporary scepticism towards financial markets and institutions should be moderated by the "Communication from the Commission on the Application of State aid rules to measures taken in relation to financial institutions in the context of the current global financial crisis" and the "Communication from the Commission on the Recapitalisation of financial institutions". Both the Communications may be used for system solutions of the crisis and for system-significant ad hoc cases.

As for the legislation area the Office has prepared an amendment to the Act No. 215/2004 Coll., stipulating certain relationships within the area of state aid, which should mainly integrate agricultural sector in this legal regulation. Also the jurisdictions of the Office and of the Ministry of Agriculture are explicitly defined, as the agriculture and fisheries sector falls under the jurisdiction of the Ministry.

At the end of 2008 the Office submitted to the European Commission the report on implementation of decision 2005/842/EC on services of general economic interest and provision of public transport services. Individual providers were asked to provide the Office with an overview of services they were compensated for in their sphere of action on the basis of the mentioned decision. In the context of elaboration of the report the Office carried out broad information campaign both via its website and via expert press, and because of the numerous requests for information, a special telephone line was established by the Office.

Seminar: Current trends  
in the area of state aid

With regard to its role the Office holds regular seminars and trainings at which the interested subject can find out how to proceed in individual cases. They can also learn about news that took place in the area of state aid. One of such events was the seminar held in cooperation with the Regional Chamber of Commerce Brno (Regionální hospodářská komora Brno) called

“Current Trends in the Area of State Aid” which was held in November 2008. On the basis of the contacts established during the frequent consultations and negotiations with the European Commission specialists from the EC were also addressed. They accepted the invitation and together with the Office’s employees acquainted the audience with the current situation in the area of state aid. The participants of this seminar learned about the legislation developments in state aid sector, and also with practical experience from its application. The issues of state aid for traffic infrastructure, environmental protection and general block exemption were presented. The seminar on state aid was also the first expert seminar held in the new conference room of the Office.

In November 2008 the European Commission terminated a three-year investigation of the complaint submitted by ČAS – SERVICE, Inc. against the Czech Republic for an alleged state aid, which should have been provided to the competitors of the complainant from 2003 to 2005. The Office cooperated with the authorities of South Moravia Region and the Ministry of Transport when elaborating the answers to the questions submitted by the Commission in the course of the proceedings. The Office also took part in preparation of the required argumentation of the case and coordinated the overall correspondence with the Permanent Representation in Brussels, case handlers of the Commission, the Ministry of Transport and the authorities of South Moravia Region. The Commission, on the basis of the detailed assessment of the case and other argumentation provided to it by the Czech Republic in the three-year period, declared that the conduct of South Moravia Region was in conflict with the Article 88, paragraph 3 of the Treaty establishing the European Communities. However, the intensity of state aid provided to the transporters did not lead to overcompensation of transporters, and thus it was eventually possible to declare it as compatible. Therefore, it was not prohibited state aid.

The aid scheme of the provider Regionální rada soudržnosti Střední Čechy for the period 2009–2014 which should help to improve the infrastructure of public transport by the construction of filling facilities for alternative fuels (CNG and LPG gas) for transport companies operating passenger public transportation in the Central Bohemia Region, was approved by the European Commission in October 2008. The total costs of this scheme will be CZK 124.16 million for the period of 6 years. At first, the European Commission could not exclude the incompatibility of the aid aimed at construction of the filling facilities. Its argumentation for fulfillment of the fourth condition – “distortion of competition and effect on trade” was unconvincing to a certain measure, but in its decision the Commission came to a conclusion that it could not exclude this condition with certainty. In the course of assessment the Commission first declared the measure to be state aid. However, it consequently proclaimed that it was a compatible measure as it should enhance the development of certain economic areas and not adversely affect trading conditions to an extent contrary to the common interest.

The European Commission with the help of the mediating role of the Office’s State Aid Department approved four state aid schemes in the environmental sector in the course of June and July 2008. The schemes in question are as follows: regime of decrease in nitrogen-oxide emissions from combustion machineries, the regime of investment aid for decrease in organic volatiles emissions, the aid regime for decrease in industrial emissions to the water, and the regime of investment aid for decrease in nitrogen-oxide emissions and dust elements from non-combustion sources. In all the four cases the Office in cooperation with the Ministry of Environment, as a provider of the aid, held the opinion that the given aid schemes did not distort competition in the internal market of the European Union and were compatible with

## Selected cases

Compensations for services in general interest for transport undertakings in South Moravia Region

Public funding of infrastructure projects for ecologic transportation

Compatible state aid in the environmental sector

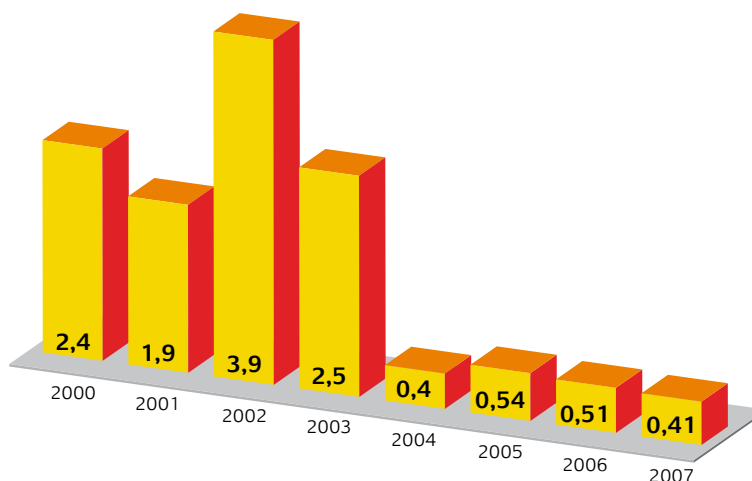
# state aid

the European Commission legislation for this sector – Community Guidelines on State aid for environmental protection. The regime of the mentioned aids will be open to all enterprises in the Czech Republic, regardless their size, in the framework of the Operational Programme Environment. The number of recipients is expected to be between 100 and 500 for each designated area. The aid intensity is up to 50 per cent of the eligible costs. The intensity can be increased in case of aid for small and medium-sized enterprises.

## Alleged state aid for the benefit of SETUZA, Inc. and ČESKÝ OLEJ, Inc.

The investigation of alleged state aid for the benefit of SETUZA, Inc. and ČESKÝ OLEJ, Inc. was initiated at the beginning of September 2006. It dealt with the alleged aid to SETUZA in connection with the sale of the state's share (concretely PGRLE, Inc. – Podpůrný a garanční rolnický a lesnický fond) in SETUZA, and in connection with a disputable claim recovery of PGRLE in SETUZA, or in connection with the concluded settlement agreement between the Czech Republic and SETUZA (including ČESKÝ OLEJ and CAMPASPOL HOLDING). In the framework of the mentioned case the Office cooperated with the Ministry of Agriculture, particularly in the elaboration of answers to the questions of the European Commission, preparation of negotiation strategy of the Czech Republic with the European Commission, including recommendations on how to act in the case. The Czech Republic managed to vindicate that the mentioned settlement does not constitute state aid for SETUZA, because the state acted according to the private investor principle. The main pillar of the settlement is that SETUZA pays for the claim and other less significant disputable claims circa CZK 1 billion to PGRLE, and PGRLE then makes a proposal for cessation of execution imposed to recover the disputable claims in SETUZA. In June 2006 the European Commission informed that there were no further reasons to continue the proceedings.

Correlation between state aid and GDP in the Czech Republic in individual years (in %)





# international cooperation



international  
cooperation



# international cooperation

## Cooperation within the European Union

Within the European Union, lively debate and exchange of information among European Competition Authorities and EU Institutions takes place practically on a day-to-day basis. Within the EU, above all, it is the European Competition Network (ECN) that ensures cooperation in the area of competition and also formalizes mutual relations of Competition Authorities and the European Commission. Representatives of the Office take part in the activities of ECN actively, namely in numerous working groups and advisory committees (for example cooperation issues, banking, pharmaceuticals, motor vehicles, block exemptions). Not only the area of competition is concerned – representatives of the Office represent the Czech Republic in discussions with the European Commission and the Council also in the area of state aid and public procurement. The Office's staff also took part in ECN Plenary meetings in Brussels, which dealt with preparations of a report on the Regulation 1/2003, discussion about White Paper on Damages Actions for Breach of the EC antitrust rules, and questions on the future cooperation within ECN.

Final part of preparations for the upcoming Czech presidency in the Council of the EU in the first half of 2009 formed a separate category. Representatives of the Office took part in the meetings on topics that will be dealt with during Czech presidency. In September 2008, implementation was initiated of common competition priorities within the current presidency trio – France, Sweden and the Czech Republic. Possible conclusion of the so-called first generation agreement between the EC and South Korea on cooperation in investigating of anticompetitive practices; possible conclusion of an agreement between the EC and Canada on cooperation and exchange of information in investigation of anticompetitive practices on second generation level as well as the issue of private enforcement of competition law were concerned. Representatives of the Office closely cooperated with the Permanent Representation of the Czech Republic in the EU, General Secretariat of the Council of the EU and representatives of the European Commission in preparation of agenda and documents for the dealings.

During the French Presidency in the second half of 2008, representatives of the Office headed by the Chairman, Martin Pecina, attended the French Competition Day which represents a top meeting of competition authorities' heads, representatives of European Institutions and professionals in competition law and policy.

## Cooperation within International Organizations (OECD, ICN, UNCTAD)

Also in 2008, the Office continued its active participation in meetings of the Organization for Economic Co-operation and Development (OECD). Representatives of the Office, headed by the Chairman Martin Pecina, participated in the meetings of the OECD Competition Committee in Paris, which took place in February, June and November, and they presented contributions of the Office to individual topics that covered current development of competition law, for example in the area of competition impacts on the real estate market, economic methods in competition proceedings and the relation of competition and consumer policy. In June, results of detailed review of competition law and policy (the so-called peer review) in the Czech Republic were presented in the premises of the OECD. Examiners from the OECD Secretariat, Mexico and Belgium agreed that the development of competition law in the Czech Republic presented significant progress since the last review in 2001 and that protection of competition can be compared with the most developed countries of the OECD. In March 2008, the Office, in cooperation with the Antimonopoly Office of the Slovak Republic, successfully hosted in Brno a two-day merger workshop of the International Competition Network (ICN). More than 120 delegates of Competition Authorities and non-governmental experts – competition lawyers and economists – from more than 40 countries, who cooperate with Competition authorities within ICN, took part in the workshop. The content of the workshop was formed by a discussion on notification criteria setting and discussion on the extent of information

# international cooperation

submitted for notification by merging parties, content and terms of merger review itself and also setting of the right commitments and measures for the benefit of maintaining effective competition after implementation of disputable mergers. The workshop emphasized the necessity of interactive exchange of information and experience, therefore most of it was held in small working groups led by the most experienced experts of ICN. Results of the Brno workshop were presented during the annual conference of ICN in Kyoto in May 2008, where Czech delegation actively participated in panel discussions as well.

The Office also participated in the meeting of United Nations Conference on Trade and Development (UNCTAD) in Genève, with regard to promotion of competition law in less developed economies and contributed to the Final Report from IX. Intergovernmental Expert Conference UNCTAD by its expert papers.

The Office took up again in 2008 to successful development of bilateral relations that are ranked among its priorities in a long term. Representatives of the Office participated in many meetings with representatives of European and Non-European Competition Authorities. Within deepening of cooperation with the countries of Middle and East Europe, it prepared a week-long training for representatives of Competition Authorities from Russia, Serbia and Croatia. The Chairman of the Office officially visited among others Competition Authorities in Lithuania, South Korea and Taiwan and contributed to the improvement of cooperation with these institutions and to raising the awareness of the Office's activities in the world.

Together with its Austrian colleagues, in summer 2008, the Office organized a meeting of several Competition Authorities above all from Middle and East Europe, called Marchfeld forum, that set basis for further active cooperation among countries which due to similar size or history solve comparable economic and competition issues.

## Cooperation with Foreign Competition Authorities

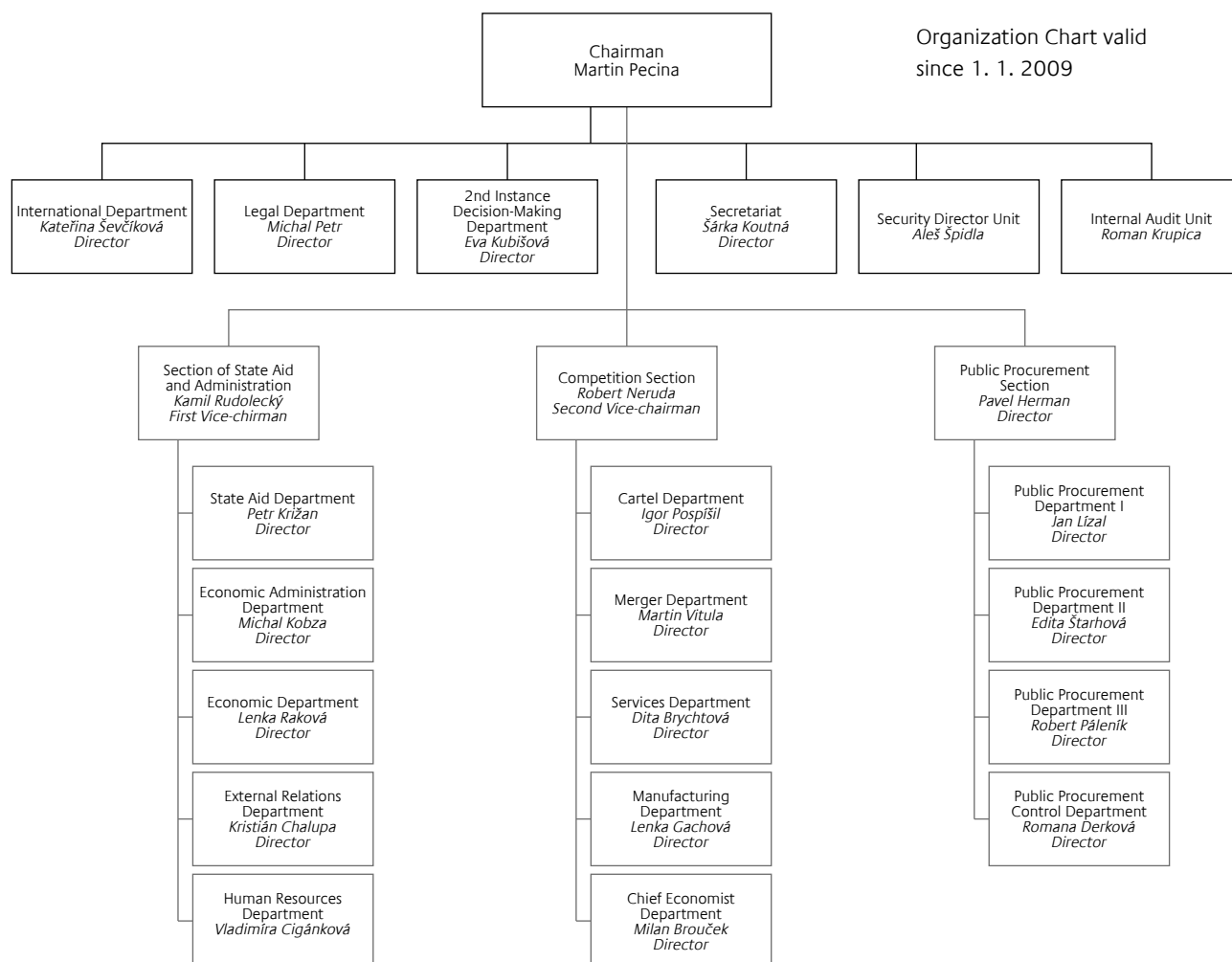
# human resources and public education



human resources and  
public education

# human resources and public education

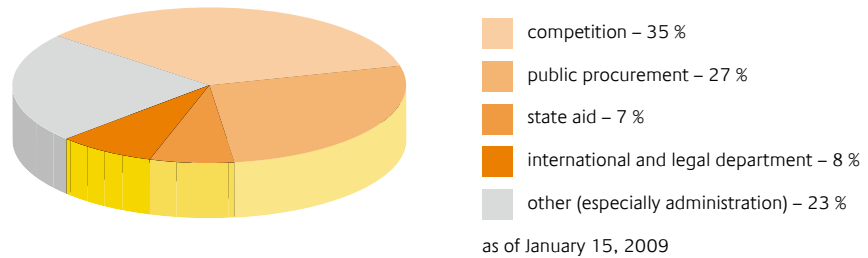
In terms of human resources, the Office is a stabilized institution with low fluctuation, in which staff of age group 31-40 prevails. Majority of the staff have economic or legal education. The staff number limit has increased from 124 to 126 in 2008, in relation to preparations of the Czech Republic for the EU presidency. This number was reached before 1.1.2009. The most important change in leading positions of the Office took place in September 2008 when Mr Robert Neruda became a new Vice-chairman of the Office for the Protection of Competition, replacing Ms Jindriska Koblíhova. Mr Pavel Herman became a new director of the Section of Public Procurement. Further partial changes occurred in the Section of Competition from 1.1.2009. Higher number of staff was allocated to fight against cartels; number of departments was reduced from six to five; newly, emphasis should be placed on more sophisticated procedures in analyses of cases and application of economic analyses.



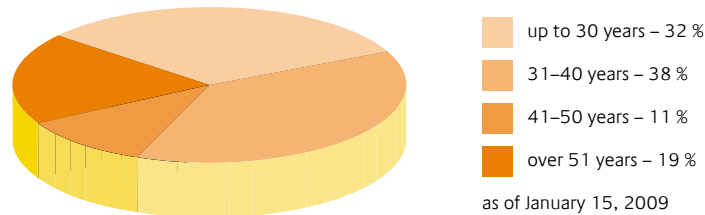


# human resources and public education

Employees of the Office by the area of activity



Age structure of the Office's employees



In 2008, inspection of the National Security Authority (NBU) took place in the Office focusing on the issues of secret information protection both in the personnel area and property security. This inspection was concluded without reservations on the part of NBU.

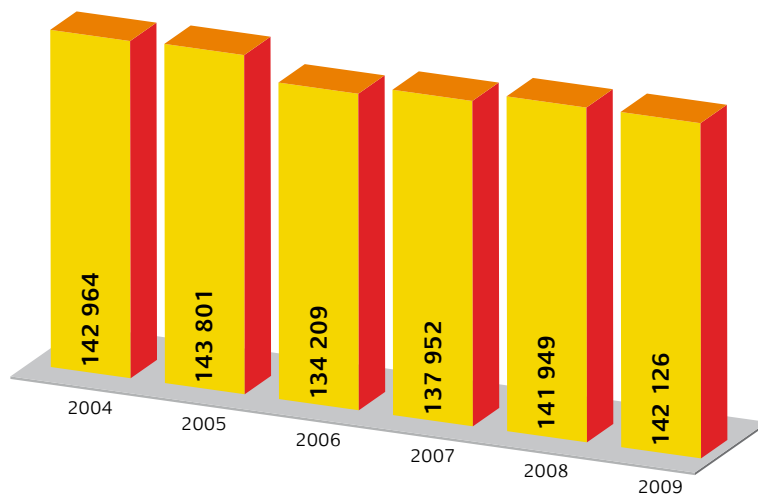
## New seat of the Office and its finalization

In 2008, the issue of a new seat of the Office was finally solved. After moving to the new building in trida Kpt. Jarose 7 in Brno in the previous year, finishing of an adjacent building took place in 2008. Tender for the adjacent administrative building was won by TCHAS spol. s r.o. that started to build in July 2007. Total cost of construction of the new seat of the Office, including furnishing, reached the amount of CZK 182.9 million. For the whole project, CZK 226.3 million was allocated from the state budget. The Office managed through economical and effective organizing of the building to save more than CZK 43 million. These financial resources, saved by the Office during the construction, were repaid to the state budget. The new seat is an important and positive change not only for the Office's staff but also for the public. From this point of view, especially new facilities such as a meeting room and assembly rooms, where the Office organizes and holds educational seminars and conferences that are intended to raise awareness of the issues the Office deals with, are an undeniable improvement. In the autumn 2008, for example, two-day international seminars relating to the topical issues of state aid and competition law took place here, in which participated more than two hundred interested persons from the expert public.

## Information activities

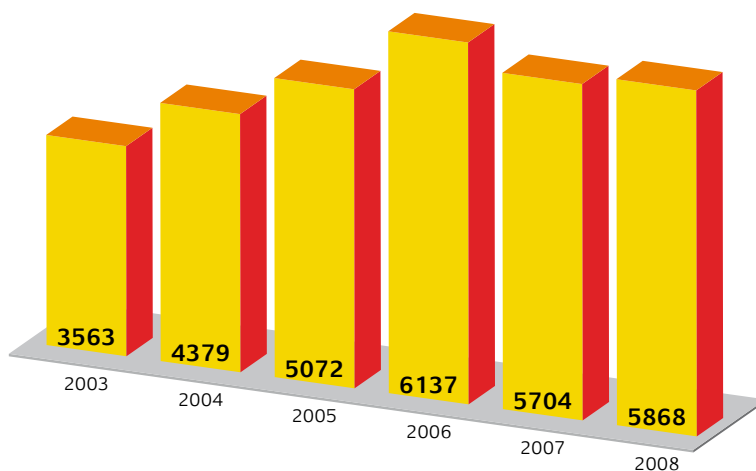
The Office places significant emphasis on the cooperation with the public and media. In 2008, the so-far highest number of press releases was published which are the basic communication means in relation to journalists and the public. There were in total 151 press releases released. Most of the published communications were focused on the area of competition protection – 84. Out of this number, 44 related to the area of mergers, the rest to other first-instance decisions, competition advocacy, or general information on competition. 37 press releases (above all on second-instance decisions) were published about the cases in the area of public procurement, 24 press releases were issued on state aid (above all decisions of the European Commission). Press releases are published on user-friendly website of the Office – [www.compet.cz](http://www.compet.cz). Also other more extensive documents are available on the website – especially

# human resources and public education



Approved budget of the Office  
(in thousands of CZK)

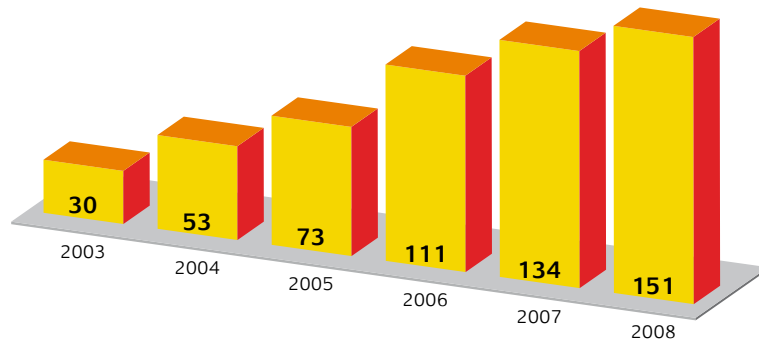
information bulletins that are published six times a year and are monothematic. Individual issues of 2008 dealt with agriculture, competition advocacy, public procurement, private enforcement of competition law, sector inquiry in the automobile sector and important events of the year. Besides the information bulletins, a representative book was published on the occasion of the opening of the new seat of the Office, named *The Office for the Protection of Competition: History, Facts and Testimony*. This publication contained, along with opinions of a range of experts, for example an extensive history of Czech competition law. The External Relations Department of the Office cooperates with several periodicals in which it has regular sections. These are above all magazines *Prosperita*, *Parlament, vláda, samospráva*, *Moravské hospodářství* or *Veřejné zakázky*. In 2008, we registered 5868 references to the activity of the Office in news media. Extensive interviews with the Chairman of the Office and other staff of the Office were published for example in *Hospodářské noviny*, *Právo* and *Profit*. In the spring 2008, the Office received an award for quality communication from Westminster Company and Association of Communication Agencies.



Number of articles on the  
activities of the Office during the  
years 2003–2008 in selected  
media

# human resources and public education

Number of press releases released during the years 2003–2008



## Education

Together with publishing a range of press materials, the Office actively promotes and contributes to domestic and international expert discussion on competition law, state aid and public procurement. Expert seminars are one of the forms, held since the second half of 2008 directly in the seat of the Office, in the new conference room.

# agenda 2009



agenda  
2009



# agenda 2009

## Competition

Change of the fundamental act in the competition area, the Act No. 143/2001 Coll. On the Protection of Competition and on Amendment to Certain Acts (The Act on the Protection of Competition), as amended (hereinafter referred to as "The Competition Act") should take place in 2009. Introduction of the so-called simplified procedure of merger review should be one of the most important news. Thus proceedings should be sped up in case of such categories of mergers in which the probability of negative impact on competition is low. The changes also relate to specification of the Competition Act operation in the area of agriculture; specific and with the Community law incompatible rules should be eliminated, that had been embedded into the Competition Act in 2005, and replaced by general exemption for the area of agriculture, same as is applied in the European law. Procedural and sanction provisions should be newly specified. However, this is not the case of introduction of new legal institutes but rather specification of diction of current provisions. Imposition of sanctions on associations of undertakings would be the only important exception, the amount of which would be newly determined with respect to the turnover of its members, while the members would guarantee the payment of the imposed sanction.

In 2009, the Office plans to focus more actively on fight with cartels and exclusionary abuses of dominance. Several investigations will be carried out that should lead to identification of competition problems and their solutions through further activity of the Office or through proposal of change in regulation. In the future, the Office will create further soft law instruments and deepen its expertise in the area of economics and econometrics. Within exercise of its supervision, the Office will focus on the process of transition from analogue to digital broadcasting, ensuring the competition rules are not violated. With regard to ongoing new analyses of relevant markets in the sector of electronic communications, it is necessary to take into account the fact that a part of the agenda which has been so far covered by the regulation carried out by ČTÚ (Czech Telecommunication Office) can be exempted from this regulation. High attention will be given to these markets.

## Public Procurement and Concessions

Within exercise of its supervision over public procurement and concessions, the Office for the Protection of Competition will, in the future, strive for increasing of standard of the main contents of its activity that is, in this area, review of contracting authorities' procedures within administrative proceedings and complaints. High attention will be given to supervision activity with specializing on detection of possible system errors with contracting authorities, analogically to, for example, an inspection of České dráhy, a.s. when it was discovered that České dráhy, a.s. repeatedly didn't proceed in compliance with the Concessions Act which was caused by the fact that the contracting authority wasn't aware of the fact that some of the contracts concluded by it come under the regime of the Concessions Act. As remedial measures, the contracting authority promised to proceed in compliance with the regime of the Concessions Act for the given type of contractual relations. Also, development of methodical activity including participation in conferences and trainings as well as organizing of trainings of the Office is taken into account.

Successful completing of legislative process relating to changes in legal rules governing public procurement and concessions is an important intention of the Office for the Protection of Competition in cooperation with the Ministry for Regional Development in 2009. The Act No. 137/2006 Coll., on Public Contracts, as amended, and the Act No. 139/2006 on Concession Contracts and Concession Procedures, as amended (Concessions Act), correspond with their content to tender and sectoral directive that relatively comprehensively regulated the issue of



public procurement and approving concessions on the Community law level. The main reason for the prepared amendments is transposition of the Directive of the European Parliament and the Council 2007/66/ES of 11 December 2007 that amends the Directive of the Council 89/65/EHS and 92/13/EHS as far as increased efficiency of review proceedings in public procurement is concerned. On the basis of this directive, transposition of which has to be completed by December 2009, the authority of the Office for the Protection of Competition will be reinforced above all by the possibility to pronounce, under certain circumstances, prohibition of fulfillment of a contract that was concluded in gross discrepancy with the Act on Public Contracts or the Concessions Act.

The Act No. 137/2006 Coll., on Public Contracts, as amended, has been in force for two years, thus with relation to its application in practice drawbacks can be identified that complicate its implementation in practice. Therefore amendment bill on public contracts reflects the need of partial amendments of the law, however, changes, in a radical way, neither material nor procedural aspect of the law.

In terms of content, especially following changes are concerned:

- Increasing of award procedures transparency (for example obligation to read values of criteria expressed numerically when opening the envelopes);
- Simplifying of procedure in some types of proceedings;
- Specification of provisions governing qualification requirements;
- Reducing of formalistic approach of the Act on Public Contracts (for example elimination of obligation to sign an offer in two places or higher emphasis on actual economic usefulness of used evaluation criteria);
- More detailed and specified regulation of certain institutes (general contracts, right of option);
- Further partial adjustments leading to better specification and simplification of the Act on Public Contracts.

Present experience with applicability of current wording of the Act No. 139/2006 Coll., on Concession Contracts and Concession Procedures, as amended (Concessions Act), and mainly the need to establish a really functional environment in which contracting authorities could use maximally the potential of private sector for securing provision of services, and requirement for transparency increase in concluding concession contracts, invoked higher range of changes, therefore it is considered, for higher transparency, to submit brand new Concessions act.

Prepared legislative changes in this area relate to division of competences in the first place. The Act No. 215/2004 Coll., Amending Certain Relationships Within the Area of State Aid, and Altering the Act on the Promotion of Research and Development (hereinafter referred to as “the Act on State Aid”), stipulates that the Office fulfills the role of a central coordination, counseling and monitoring authority in the area of state aid, though except for the area of agriculture and fisheries. Partial and non-complex regulation of state aid in this area is now contained in the Act No. 252/1997 Coll., on Agriculture, as amended. This fragmentation of legal regulations is highly undesirable; the amendment should therefore create a compact system of competence with clear definition of scope of powers of the Office and the Ministry of Agriculture. The proposed legal regulations extend competence of the Act on State Aid also to the area of agriculture and fisheries, and establish competence of the Ministry of Agriculture for this area, whereas the Office’s scope of powers remains the same for all the other areas.

## State Aid

# agenda 2009

## International Cooperation

Competence of coordinating authorities in the area of record and control of use of de-minimis aid (aid under EUR 200.000) that is allowed in general but not enough recorded yet, should be newly regulated. It is proposed to establish a central register of de minimis aid.

The first half of 2009 is connected with the Czech Presidency in the Council of the EU. The Office will therefore focus especially on such priorities in this period that result for the Czech Republic from the Presidency in the area of state aid. Especially the following is concerned: revision of the Notice on Enforcement of State Aid by National Courts, revision of Best Practices Code and revision of the Notice on Simplified Procedure for the treatment of certain types of state aid.

The Office will develop closer cooperation with the European Commission which was started in the end of 2008. The cooperation consists inter alia in close bilateral cooperation between the Office and the European Commission: that is especially using of pre-notification instruments, informal consultations and cooperation with case handler of the notified case and provision of linking communication between aid provider and case-handler.

The most important event, which will influence the activities of the Office on the international scene, is undoubtedly going to be the Presidency of the Czech Republic in the Council of the EU. The Office will organize several events connected with the Presidency. Above all, the European Competition Day which will take place in Brno on 13 and 14 May and in which high representatives of competition area on national as well as European level, including the European Commissioner for Competition, will participate. Conference dedicated to the issue of state aid, which has become more important lately, is prepared as well. The Office will also take part in preparations for informal meeting of the Council Working Group on Competition together with prepared Plenary meeting of the European Competition Network (ECN) that will also take place in Brno. In the second half of the year, the Office plans to organize an international seminar focused on latest developments in competition law which will thematically follow events of similar format that have already taken place.



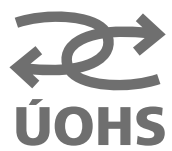


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