Annual Report 2016

OFFICE
FOR THE PROTECTION
OF COMPETITION

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ÚOHS

25 YEARS PROTECTING COMPETITION

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Foreword

The year 2016 assessed in the present Annual Report was significant to the Office for the Protection of Competition for several reasons.

Firstly, the Office celebrated the 25th anniversary of its foundation, also by organising a commemorative conference in May. At this significant event, a number of eminent personalities from the Czech Republic and abroad congratulated the Office.

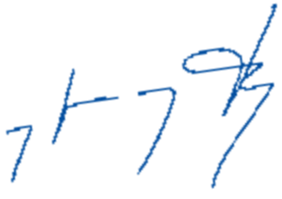
As another noteworthy event could be mentioned the conclusion of investigation of the cartel of construction companies. Regarding the case, the Office conducted three administrative proceedings against construction companies and imposed a total fine exceeding two billion CZK for the infringement of competition rules. It is the largest cartel case the Office has dealt with so far. During the case investigation, the Office carried out 12 inspections of business premises and gathered over 30,000 pages of documentation. After adopting a final decision, parties to the proceedings appealed against it. Now the Office faces the difficult task of defending its decision before the Administrative Court.

However, the cartel of construction companies was not the only case in which the fining decision was adopted. In total, the Office issued ten decisions imposing fines. It could be seen from the abovementioned that the Office continued with successful detection and termination of prohibited agreements, in particular bid rigging, for several years. Fines were also imposed for distortion of competition by vertical agreements.

As for public procurement, the trend of prompt decision-making was successfully maintained. Also, the second instance followed the first instance in this respect over the course of the year. However, since the beginning of October 2016, contracting authorities, tenderers and the Office have to cope with a fundamental change due to the coming into force of a new Act after ten years.

In light of the foregoing, the year 2016 could be called a period of legislative changes, as alongside the new Act on Public Procurement, the Act on the Protection of Competition was also amended, and the Act on Significant Market Power was modified as well.

Finally, it is worth mentioning shifts and changes in the Office's top management. As of March 2016, the First Vice-Chairman Hynek Brom has been put in charge of the Competition Division, while the significant market power and state aid agendas were taken over by the Vice-Chairman Petr Solský. Michael Mikulík became the Head of the Division of 2nd Instance Decision-Making again.



Petr Rafaj
Chairman of the Office for the Protection of Competition

About the Office

The Office for the Protection of Competition (hereinafter referred to as "the Office" or "OPC") is a central state administrative authority responsible for protecting competition, supervision of public procurement procedures, supervision of significant market power and coordination and consultancy in the field of state aid.

The basic mission, powers and competences of the Office for the Protection of Competition are defined by the Act No. 273/1996 Coll., on the Scope of Competence of the Office for the Protection of Competition.

The basic legal framework in the field of competition is laid down in the Act No. 143/2001 Coll., on the Protection of Competition. In January 2017, related competences concerning interchange fees were entrusted to the Office by the Act No. 284/2009 Coll., on the Payment System.

As of October 2016, the basic regulation concerning public procurement is provided by the Act No. 134/2016 Coll., on Public Procurement, which replaced the previous Act No. 137/2006 Coll., on Public Contracts. The former Act was effective for over ten years.

Significant market power of retail chains vis-à-vis their suppliers that are food producers and farmers is regulated by the Act No. 395/2009 Coll., on Significant Market Power in the Sale of Agricultural and Food Products and Abuse thereof.

The field of state aid is regulated primarily by the framework of European Union legislation, and at the national level, it is regulated by the Act No. 215/2014 Coll., amending certain Relationships within the Area of State Aid, and altering the Act on the Promotion of Research and Development.

Competition

A market economy is based on the exchange of goods and services through equalising a principle of supply and demand. An important factor affecting supply is competition between producers modifying the prices and quality of offered products in favour of the customer. Mutual competition is apparent not only at the level of product pricing and quality, but also forces undertakings to introduce more efficient procedures, new technologies and overall rationalisation.

To make competition effective and beneficial to consumers, the market strategy of each undertaking has to be individual and unaffected. For this reason, competition authorities have been established in modern states with the aim of protecting competition since the early 20th century. Currently, competition authorities are operating in 92 countries of the world.

The activity of competition authorities focuses on three basic types of behaviour which may have a negative effect or entirely eliminate competition in a specific market. These include prohibited agreements between undertakings, abuse of a dominant position and concentrations of undertakings.

In the Czech Republic, the protection of competition is regulated by the Act No. 143/2001 Coll., on the Protection of Competition. The Articles 101 and 102 of the Treaty on the Functioning of the European Union are also directly applicable.

Prohibited Agreements

Agreements between undertakings on price fixing, market sharing or restriction are the most harmful form of anticompetitive conduct. Concluding such agreements results in the severe distortion of competition, so while the parties to the cartel have a guaranteed easy profit, consumers bear the consequences of the prohibited agreement through higher prices. As the most harmful form of anticompetitive conduct is considered to be horizontal cooperation between undertakings in the same market; also vertical agreements, generally concluded between a supplier and its customers, are equally unlawful, though less harmful.

Bid rigging, meaning cartels between tenderers for a public contract, constitutes a special category of prohibited agreements. The detection and elimination of these types of agreements is a priority for the Office. For this reason, it launched a project focused on the issue of public contracts and bid rigging in 2016. Its purpose is to increase the awareness of public administration about the issue of prohibited anticompetitive agreements concluded between tenderers in public contract award procedures with the intent of influencing their outcome. The aim of the project is to achieve education and awareness of bid rigging detection and prevention, and to explain the procedures for qualified notifying the Office of any suspected agreements of this type, so as to minimise the risk of potential destruction of evidence while maximising the chances of effectively detecting these prohibited practices. The project resulted in issuing a concise brochure about bid rigging and its characteristic features; in 2017, a series of training programs for public administration employees in this field is planned.

OPC is collaborating with the Faculty of Economics and Administration of the Masaryk University on another project concerning bid rigging. Its aim is to create a system for the automatic detection of collusive conduct in public procurement procedures. The output of the project will be a detection tool for identifying areas of potential prohibited collusion between tenderers for a public contract using specific algorithms based on publicly available data. The project should be finalised and put into practice during the course of 2017.

Abuse of Dominant Position

If an undertaking acquires a position in the market so strong that it may act independently of other undertakings in defining its market strategy, then it is in a dominant position. Its conduct in the market is subsequently subject to higher demands than the conduct of undertakings with a standard position. The mere existence of a dominant position is not prohibited, but it is illegal to abuse this position, for instance through the charging of unreasonably high prices, inconsistent application of contractual terms to customers without objective justification, tying the sale of goods and services to the purchase of other products, limiting production and temporary selling goods at prices below cost to eliminate horizontal competition from the market.

Concentrations between Undertakings

The concentration of undertakings through mergers and acquisitions is a normal course of the market development, and is essentially favourable for competition, because it improves efficiency and rationalises production. However, it may become a threat to competition if such concentration were to create a dominant undertaking in the market, the existence of which could distort competition. For this reason, competition authorities have the power to approve concentrations which fall within their jurisdiction. If the concentration is evaluated as a threat to competition, the competition authority may prohibit it. As a compromise solution the Office may accept commitments proposed by the undertakings concerned to prevent anticompetitive risks. For instance, this may involve the divestment of part of the undertaking or commitments in the form of specific behaviour vis-à-vis customers and other undertakings.

In the Czech Republic, only the most significant concentrations are subject to approval by OPC. Concentrations in which the turnover of all undertakings concerned achieved in the domestic market in the last accounting period exceeds CZK 1.5 billion, and each of at least two of the undertakings concerned achieved a net turnover exceeding CZK 250 million each in the last accounting period in the market of the Czech Republic, or if the net turnover achieved in the last accounting period in the market of the Czech Republic at least by one of the undertakings establishing a jointly controlled undertaking exceeds CZK 1.5 billion and, at the same time, the worldwide net turnover achieved in the last accounting period by another undertaking concerned exceeds CZK 1.5 billion, are subject to notification.

Anticompetitive Conduct by Public Authorities

A specific feature of Czech competition law is the Article 19a of the Act on the Protection of Competition, pursuant to which public authorities shall not favour a certain undertaking by providing support or otherwise distort competition. Public authorities may be fined up to CZK 10,000,000 for violating this provision. This provision was specified and elaborated under the amendment adopted in 2016. The Office imposed the first sanction for its violation on the town of Bílina for issuing a discriminatory decree on lottery.

Legislative Developments

On 19 October 2016, the amended Act on the Protection of Competition bearing the number 293/2016 Coll. came into force. The main reason for adopting the above mentioned amendment was the need to react to the recodification of civil law and to adapt the terminology of the Act on the Protection of Competition to the new regulation, in particular the new Civil Code, to define the cases subject to the Article 19a (supervision of public authorities) and allow its application by adding follow-up provisions, to reword certain provisions so as to make them more comprehensible and accurately reflective of requirements in practice, to amend and update the references in the footnotes, to incorporate the Office's option on requesting additional evidence from parties to the proceedings within simplified proceedings on concentration approval, to add provisions facilitating international cooperation between competition authorities, to define the regime for documentation containing business, bank or similarly classified secrets and other sensitive documents, to move certain provisions on procedural offences into the provisions on administrative infraction or respectively administrative offences, and to cancel the exemption of certain provisions of the Administrative Code precluded from use.

In connection to the changes in the field of concentration of undertakings caused by the aforementioned amendment to the Act on the Protection of Competition, a related implementing regulation was also amended - the Decree Stipulating Details of the Justification of a Concentration Notification and Documents Certifying Facts Decisive for a Concentration. Decree No. 294/2016 Coll. also came into force on 19 October 2016.

In cooperation with the Ministry of Justice of the Czech Republic, the Office also prepared a proposal of the Act on Compensation for Damages in the Field of Competition. Following its approval by the Government of the Czech Republic, the Act proposal is now in the legislative process, specifically the Chamber of Deputies of the Parliament of the Czech Republic deals with it under parliamentary press No. 991.

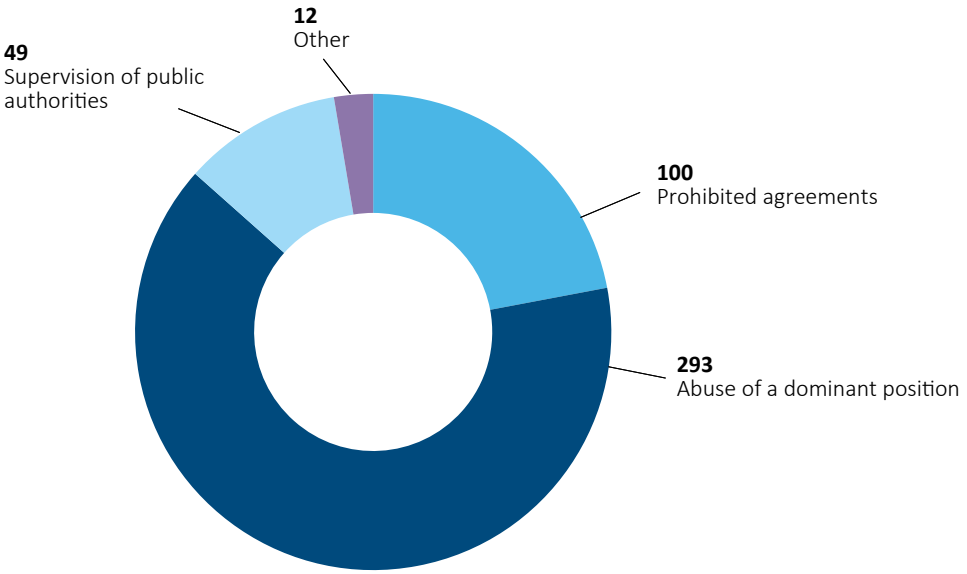
The aim of the Act proposal is to ensure to proper transposition of Directive 2014/104/EU on certain rules governing actions for damages under national law for infringements of the competition law provisions of the Member States and of the European Union, and to eliminate deficiencies in the current legal regulation of the given field at the national level during transposition. The above mentioned Directive has not been fully implemented in the valid legal regulations and it has been therefore impossible for the injured parties to apply duly and effectively their right to compensation before the national court for harm or eventually loss caused by infringements of competition law. An injured party may seek the right to compensation for infringements of competition law only according to legislation covering general rules.

Decision-Making Activities in the Field of Competition

OPC issued a total of 64 first instance decisions in the field of competition. Among these there was the first decision adopted for the infringement of the Article 19a of the Act on the Protection of Competition. Sanctions in the total amount of CZK 466,220,000 were imposed for detected anticompetitive offences. A total of 61 new cases were initiated, with seven dawn-raids conducted in business premises of the undertakings.

In 2016, the Office received 454 complaints submitted by the public. Most of them, almost 300, concerned the potential abuse of a dominant position and prohibited agreements. In addition to handling these complaints, the Office also provided information regarding several dozen inquiries on the issue of competition law.

Complaints received in 2016 split by area



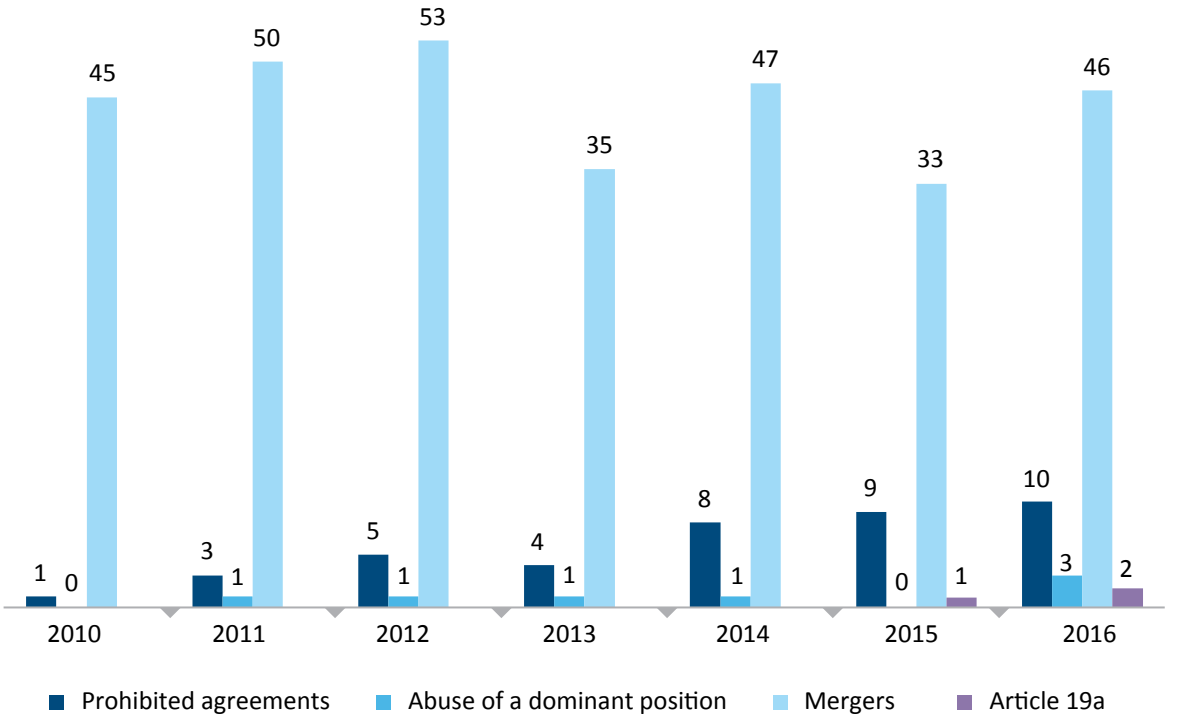
Number of Complaints Received Split by Area	
Abuse of a Dominant Position	293
Prohibited Agreements	100
Supervision of Public Authorities Article 19a	49
Other	12
Total	454

Number of Proceedings Initiated Split by Area	
Prohibited Agreements	10
Abuse of a Dominant Position	3
Supervision of Public Authorities Article 19a	2
Concentrations of Undertakings	46
Total	61

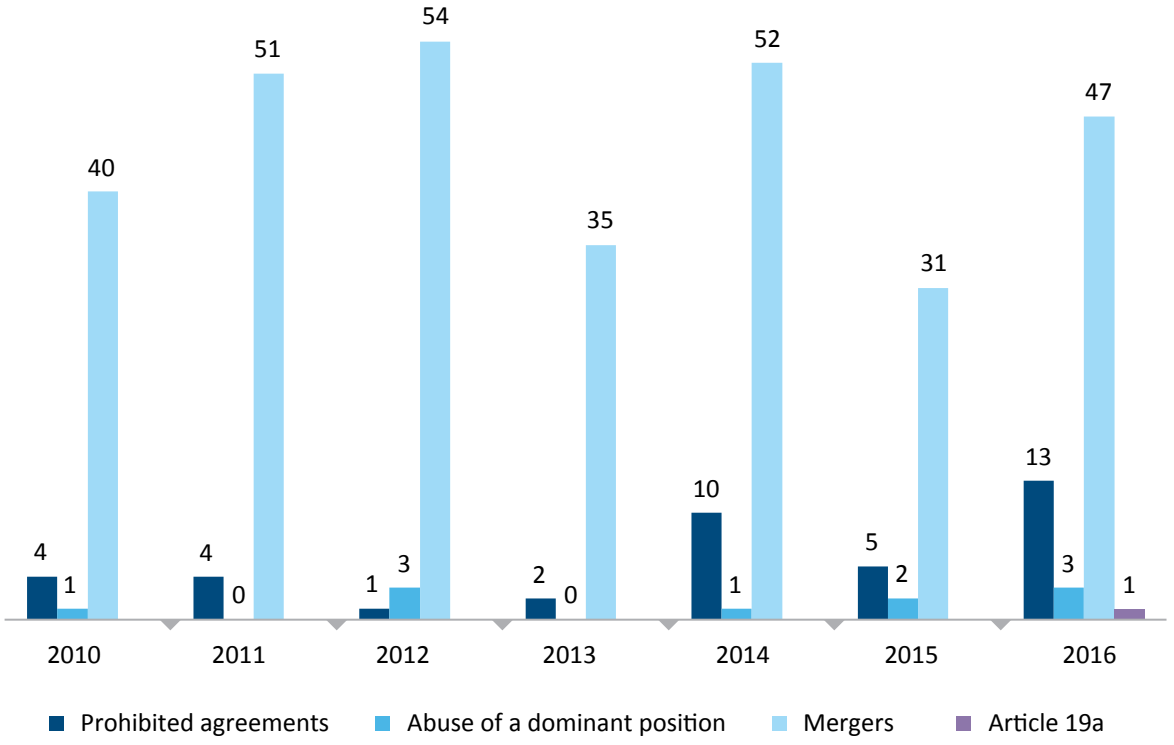
Number of Decisions Issued Split by Area	
Prohibited Agreements	13
Abuse of a Dominant Position	3
Supervision of Public Authorities Article 19a	1
Concentrations of Undertakings	47
Total	64

Total Amount of Fines Imposed Split by Area (CZK)	
Prohibited Agreements	460,562,000
Abuse of a Dominant Position	0
Supervision of Public Authorities Article 19a	275,000
Concentrations of Undertakings	5,383,000
Total	466,220,000

Number of administrative proceedings initiated in the field of competition



Number of decisions issued in the field of competition

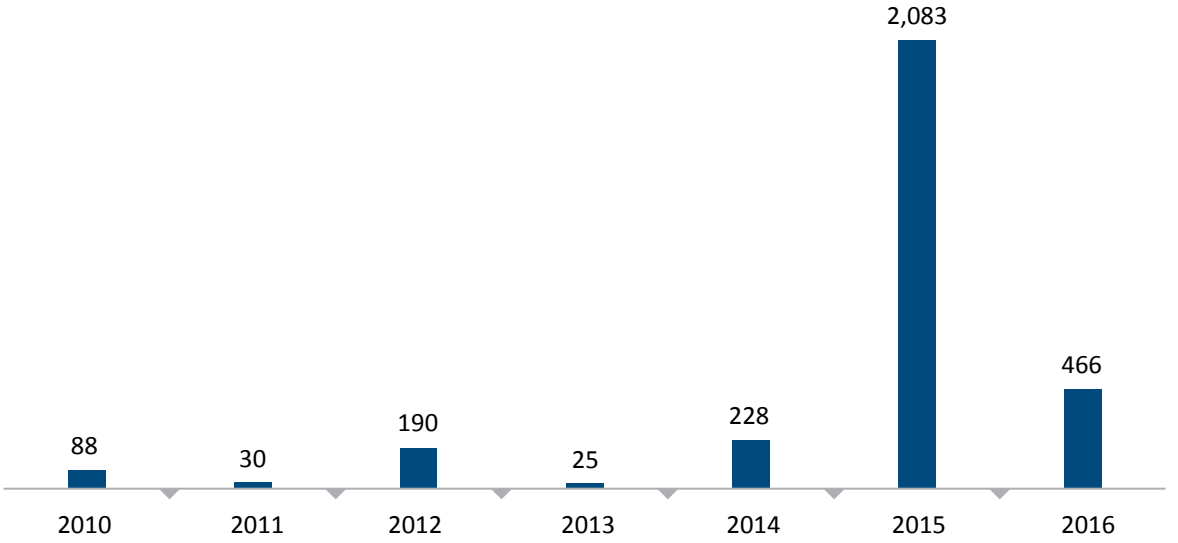


Prohibited Agreements

A total of 10 first-instance decisions on horizontal agreements were issued in the field of prohibited agreements. Six of these were related to concerted practices, while two cases concerned prohibited decisions on association of undertakings. The Office also issued three decisions concerning vertical agreements. First-instance fines in the total amount of CZK 460,562,000 were imposed.

Newly, 10 additional administrative proceedings were initiated. The Office also received 4 leniency applications. As in the previous period, OPC intensively used the settlement procedure, which was applied in nine cases regarding prohibited agreements. When using settlement procedure, the first-instance decision-making body decides about the case, thus the case is not usually appealed and subsequently there are no court disputes. Hence, such procedure contributes significantly to procedural economy and allows for the allocation of human and material resources to investigating a larger number of cases.

Amount of sanctions imposed in first instance in million CZK



Significant Cases

Part of the cartel of construction companies was terminated with the adoption of a settlement decision

Parties: **SWIETELSKY stavební s. r. o., DAICH spol. s r. o., VIALIT SOBĚSLAV spol. s r. o., CHALIŠ spol. s r. o.**
File number: **S0236/2016/KD**
First-instance fine: **CZK 39,840,000**
Date of coming into force: **13 May 2016**

The administrative proceedings were part of a wider investigation into a cartel of construction companies. Considering an extension of the case, the Office conducted 3 administrative proceedings regarding the unlawful conduct in question and imposed final sanctions in the amount of CZK 2 billion. Investigations were initiated on the basis of a complaint transmitted by the Police of the Czech Republic in 2012. Subsequently, the administrative proceedings were extended by more construction companies while, in the autumn of 2014, part of the proceedings was separated for adopting a decision regarding 4 public contracts - the "major construction cartel" administrative proceedings which were finalised with the imposition of a fine of CZK 1.66 billion in February 2016. Another part - the "smaller construction cartel" - was separated into distinct proceedings resulting in an enforceable sanction of CZK 300 million. Detailed information about both cases is provided in the section about second-instance proceedings.

In the remainder of the proceedings concerning 7 public contracts, OPC in its first-instance decision of 22 April 2016 imposed fines totalling CZK 39.840 million on SWIETELSKY stavební, DAICH, VIALIT SOBĚSLAV and CHALIŠ.

These undertakings operating in the construction sector violated the Act on the Protection of Competition by coordinating their participation and bids in public procurement award procedures for construction work in the field of civil engineering in the South Bohemian Region. The administrative proceedings concerned a total of 7 public contracts from 2007 to 2013; the participation of the individual parties to the proceedings in these contracts varied. The total volume of the contracts in questions exceeded CZK 11 million excluding VAT, with the most important public contract entitled Improvement of transport and technical infrastructure and appearance of the municipality of Třebětice called by the municipality of Třebětice in 2009, worth a total of almost CZK 4 million excluding VAT.

All the parties met the conditions for a settlement procedure therefore the Office reduced their fine by 20% as stipulated by the Act on the Protection of Competition.

Bid rigging in the field of medical devices

Parties: **HOSPIMED, spol. s r. o., S-medics, s. r. o.**
File number: **S590/2014**
First-instance fine: **CZK 2,523,000**
Date of coming into force: **30 August 2016**

In its first-instance decision of 11 August 2016, OPC imposed fines for a total of CZK 2.523 million on the undertakings HOSPIMED and S-medics. These undertakings violated the Act on the Protection of Competition by coordinating their participation in three public procurement award procedures for the delivery of medical devices for the General University Hospital in Prague and the Strakonice Hospital.

The total volume of contracts concerned exceeded CZK 8 million excluding VAT, with the most important public contract entitled System for electrophysiological examination of intracardial potentials worth a total of almost CZK 7 million excluding VAT. The public contract was awarded by the contracting authority General University Hospital in Prague.

The Office initiated administrative proceedings on the basis of a complaint submitted by the General University Hospital in Prague in which it was made aware of particularities in this contract that could suggest bid rigging.

HOSPIMED and S-medics met all conditions for carrying out the settlement procedure, which was initiated on the basis of their applications within the conducted administrative proceedings; therefore the Office reduced the fines by 20% as stipulated by the Act on the Protection of Competition. The decision was not appealed.

Freezing plants rig bids for a public contract

Parties: **MRAZÍRNY PLZEŇ - DÝŠINA a. s.; CZECH FROST s. r. o.**
File number: **S90/2015/KD**
First-instance fine: **CZK 1,007,000**
Date of coming into force: **24 September 2016**

Two undertakings coordinated their bids for a public contract for the takeover and safekeeping of butter for the contracting authority called The Administration of State Material Reserves - Czech Republic. In this case, the Office defined the relevant market as the market of provision of services in the takeover, storage and safekeeping of goods in freezers suitable for long-term storage in the Czech Republic. A large number of undertakings operated in this market, but one of the fined undertakings was not active in the market at all and merely provided the other ones with so called "cover". Therefore, the Office was unable to proceed in the standard manner pursuant to its principles based on the turnover achieved in the relevant market when calculating the sanctions, but instead had to apply an alternative method of calculating the fine for the undertaking concerned. In the given case, the Office primarily considered the need for the imposed sanction to fulfil a preventive and repressive function. The Office took account of the economic performance of the sanctioned undertaking as one of the basic preconditions for ensuring the required effects of the imposed fine, and stipulated the sanction in accordance with its own decision-making practice and with respect to the principles of proportionality and justice, so as to equal minimally 0.5% of the undertaking's net turnover for the last accounting period. The settlement procedure was applied in this case and the total amount of the imposed fines was over CZK 1 million.

Cartel agreement increased costs of furniture for Maldives

Parties: **LACHMAN INTERIER DESIGN, s. r. o.; SOLLUS NÁBYTEK, s. r. o.; AM INTERIÉR, a. s.**
File number: **S0338/2015/KD**
First-instance fine: **CZK 3,663,000**
Date of coming into force: **14 September 2016**

The Office has concluded that in 2013, three companies operating in the field of custom furniture production, including assembly, rigged their bids through mutual contacts when submitting bids to public procurement award procedures for three contracts awarded by an investor with its registered office in the Czech Republic. The subject to these contracts was the production and delivery of furniture to recreational facilities for a tourist resort under construction in the Maldives. The relevant market was defined as the market of production and installation of custom interior furnishings in the Czech Republic. Although the assessed conduct in all the individual public procurement award procedures

fulfilled the characteristics of a prohibited agreement in the meaning of the Act on the Protection of Competition and as the bid rigging by the undertakings in all the public procurement award procedures met the constituent elements of a prohibited agreement, they were carried out in the same manner, were correlated in time, had the same aim and objective, the Office evaluated the conduct in question as a single and continuous offence. The settlement procedure was applied in this case and the Office imposed fines in excess of CZK 3.5 million in total.

Fine imposed on Severočeské doly for an export ban

Party: **Severočeské doly a. s.**
File number: **S337/2014/KD**
Fine: **CZK 30,421,000**
Date of coming into force: **Appeal filed**

In its first-instance decision of 21 December 2016, the Office imposed a fine of CZK 30,421,000 on Severočeské doly (hereinafter referred to as "SD") for an infringement of the Act on the Protection of Competition and the Treaty on the Functioning of the European Union. The Office concluded that the violation of the Act on the Protection of Competition and the Treaty on the Functioning of the European Union consisted in the conclusion of export prohibition agreements included in contracts on the delivery of sorted brown coal concluded between the party to the proceedings and its customers. The object or effect of the alleged conduct of the party to the administrative proceedings was to distort competition in the field of sorted brown coal supplies, and this conduct might affect trade between EU Member States. Based on the conducted investigation, the Office found that the prohibited agreements were concluded and performed continuously from 1994 to the end of 2012. In accordance with recent case law, however, the Office found that the tort liability of SD for conduct carried out in the period from 1 January 1994 to 30 April 2004 has already lapsed, and the Office´s decision stated the violation of the prohibition stipulated in the Article 3(1) of the Act on the Protection of Competition and the prohibition stipulated in the Article 101(1) of the Treaty on the Functioning of the European Union only for the period from 1 May 2004 to 31 December 2012. The decision is not yet final as SD lodged an appeal.

Anticompetitive agreement between mobile operators

Parties: **Vodafone Czech Republic a. s., O2 Czech Republic a. s.**
File number: **S164/03**
Fine: **CZK 99,085,000**
Date of coming into force: **Appeal filed**

In the first-instance decision of 22 December 2016, the Office imposed fines on mobile operators Vodafone Czech Republic and O2 Czech Republic for a total of CZK 99,085,000 for anticompetitive agreements in the Contract on Network Interconnection. The decision is not yet in force as it was appealed within the statutory deadline.

In the Contract on Network Interconnection of 22 March 2001, Vodafone Czech Republic (hereinafter referred to as "Vodafone") and Eurotel Praha, whose legal successor is O2 Czech Republic since 1 July 2006 (hereinafter referred to as "O2") concluded and subsequently performed agreements under which they agreed to interconnect their networks exclusively through direct interconnection, provided this was available and that its capacity was sufficient. The concluded agreements preclude the option of the undertaking concerned regarding interconnections of their networks on the basis of their free decision via transit through the network of a third undertaking at any time. Hence, if the direct interconnection of networks of the parties to the proceedings exists and its capacity is sufficient, neither of the parties was able to use an alternative means of interconnection through a third-party network, although this method would have been more advantageous for it and its customers.

By concluding and subsequently performing the above-mentioned vertical agreements on market division, Vodafone and O2 infringed the Act on the Protection of Competition, as the aim of the agreements was to distort competition and the agreements were capable of distorting competition in the market of operating public telecommunications networks.

The Office prohibited the performance of the agreements in question and imposed a sanction in the amount of CZK 49,579,000 on Vodafone for an administrative offence lasting from 22 March 2001 until the date of the decision´s adoption, and a fine in the amount of CZK 49,506,000 on O2 for an administrative offence lasting from 1 May 2004 until the date of the decision´s adoption.

The Office issued its original decision in this case in 2003, a second-instance decision was adopted one year later, and now following judicial review, the Office deals with the case again. As the parties to the proceedings continued to perform the prohibited agreements throughout the entire period, the imposed sanctions for long-term offence were increased accordingly.

Abuse of Dominant Position

The Office issued a total of 3 decisions in the field of abuse of a dominant position in 2016. In the case concerning the potential abuse of a dominant position by ČEZ, a. s., the proceedings were terminated by the acceptance of commitment proposed by the party to the proceedings; concerning the cases of Flaga and Česká rafinérská, the administrative proceedings were suspended because no infringement of the Act on the Protection of Competition was proven. Three new administrative proceedings were initiated in this field. In total, the Office carried out 4 ongoing administrative proceedings at 31 December 2016, one of them has been temporary suspended.

Significant Cases

Proceedings against ČEZ suspended upon acceptance of commitments

Party: **ČEZ a. s.**
File number: **S594/2014/DP**
Outcome: **a commitment decision**
Date of coming into force: **5 January 2017**

The Office received a complaint from Sokolovská uhelná, právní nástupce, a. s., (hereinafter referred to as "Sokolovská uhelná"), on the basis of which it conducted an inspection on 24 July 2014 and commenced administrative proceedings against ČEZ (hereinafter referred to as "ČEZ") regarding a potential abuse of dominant position pursuant to the Article 11(1) of the Act on the Protection of Competition. The Office found the infringement of the Article 11(1) of the Act on the Protection of Competition in the fact that during the period from at least 1 January 2014, ČEZ has without objectively justifiable reasons been applying different conditions to the same or comparable fulfilment, consisting of the method of stipulating the prices for lignite supplies vis-a-vis its suppliers, in particular vis-a-vis its supplier SU, and also of its refusal without objectively justifiable reasons to negotiate with this supplier on the definition of pricing conditions for the supply of these goods which would be comparable to the pricing conditions applied by ČEZ vis-a-vis its other suppliers. The Office considered that this conduct of ČEZ had been capable of distorting competition in the market of lignite supply. On 2 December 2016, the Office received a letter from ČEZ containing a proposal of a commitment in favour of restoring effective competition. The Office assessed the proposed commitment and found it adequate to remedy the defective competition situation, and on 20 December 2016 it issued a first-instance decision. In this decision, it imposed a commitment on ČEZ to conclude a new purchase contract for lignite supplies with Sokolovská uhelná. The decision came into force on 5 January 2017.

Flaga did not abuse its dominant position

Party: **Flaga s. r. o.**
File number: **S0416/2016/DP**
Outcome: **no violation of the Competition Act found**
Date of coming into force: **21 December 2016**

The Office received a total of 17 complaints referring to the potential abuse of a dominant position by Flaga (hereinafter referred to as "Flaga"), which allegedly refused to grant consent to the filling of its propane-butane bottles with a mass of 5 kg, 10 kg and 33 kg, and bottles labelled with its trademark (hereinafter referred to as "PB bottles") to certain undertakings operating in the field of filling and sale of PB bottles without any objectively justifiable reasons. Following the preliminary investigation of the case, the Office initiated administrative proceedings with Flaga for a potential abuse of dominant position pursuant to the Article 11(1) of the Act on the Protection of Competition on 1 June 2016. When initiating the administrative proceedings, the Office also conducted an inspection of business premises of Flaga. Within the administrative proceedings, the Office issued a decision on 20 December 2016, in which it states that the party to the proceedings did apply a ban on filling its PB bottles vis-a-vis other undertakings, but this ban was applied universally to all undertakings operating in the given area. Investigations also revealed that the party to the proceedings did not grant any undertaking direct or indirect consent to fill Flaga's PB bottles. Hence, based on the gathered facts the Office did not found that the party to the proceedings approached certain undertakings differently than others (and thus fulfilled the constituent elements of the Article 11(1) of the Act on the Protection of Competition). The Office therefore concluded that the party to the proceedings had not infringed the provisions of the Act on the Protection of Competition by its conduct.

Anticompetitive Conduct of Public Authorities

The Office dealt with 50 complaints in the field of anticompetitive conduct of public authorities, which mainly concerned the decrees on lottery issued by cities and municipalities. One first-instance decision was issued, and two other administrative proceedings were initiated.

Decree on lottery adopted by the City of Bílina

Party: **City of Bílina**
File number: **S0538/2015/VS**
Fine: **CZK 275,000**
Date of coming into force: **Appeal filed**

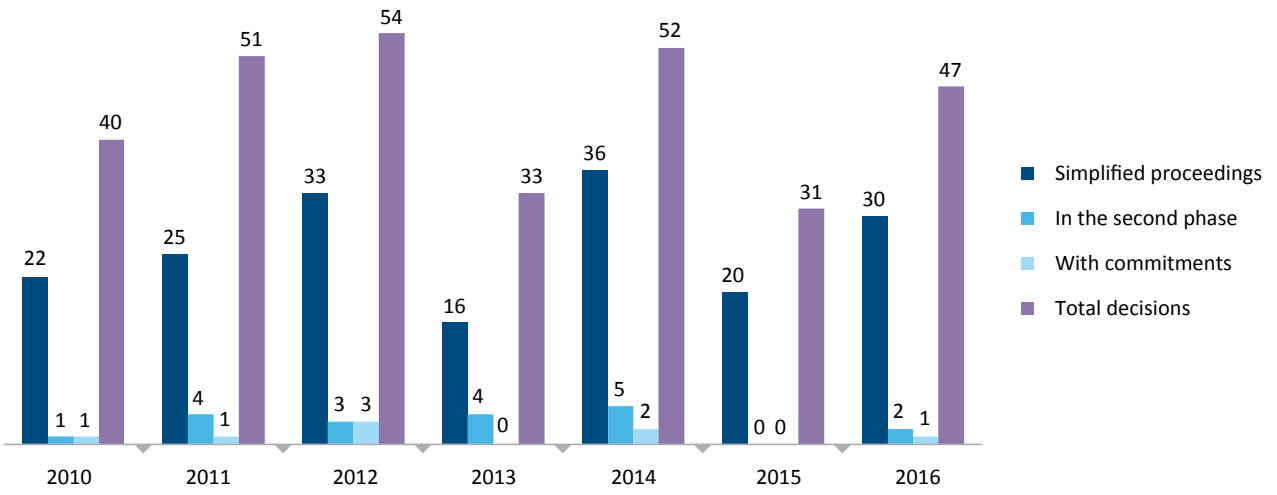
On 20 December 2016, the Office for the Protection of Competition imposed the first sanction in history for the violation of the Article 19a of the Act on the Protection of Competition, pursuant to which public authorities shall not favour a certain undertaking. The fine of CZK 275,000 was imposed for violation of this provision on the City of Bílina in connection to its issued decree on lottery. The decision is not yet in force, as it was appealed by the statutory deadline.

The City of Bílina infringed competition law when it permitted the operation of betting games, lotteries and other similar games on city premises at only 4 specific locations stipulated in binding decrees, which were issued and effective from 2013 until now, without selecting these locations on the basis of objective, non-discriminative and predefined criteria, thereby it distorted competition without justifiable reasons in the market of operating betting games, lotteries and other similar games and in the market of operation of establishments for the purpose of operating betting games, lotteries and other similar games in the City of Bílina. Such conduct gave an advantage to undertakings which could continue to operate the betting games, lotteries and other similar games and establishments for the purpose of operating these games at the permitted addresses.

Concentrations between Undertakings

In 2016 the Office issued a total of 47 decisions in the field of concentrations between undertakings. 14 decisions were issued within the standard 30-day period, including 1 concentration was approved after the parties to the proceedings proposed certain commitments. The simplified procedure was applied in a total of 30 cases. On the contrary, in 2 cases, the Office continued with proceedings in second phase due to their complexity, and decided such cases within a 5-month period. In one case, the Office dealt with violation of the prohibition of concentration of undertakings before issuing of a decision on concentration approval, in which it imposed a sanction of CZK 5,383,000 on BOHEMIA ENERGY entity s.r.o.

Concentrations of undertakings by type of decision



Significant Cases

Concentration between Rockaway Capital SE and Heureka Shopping s. r. o.

File number: **S0013/2016/KS**
Date of coming into force: **20 May 2016**

In its first-instance decision, the Office approved the concentration between Rockaway Capital SE and Heureka Shopping s.r.o. under the condition of fulfilling the commitments proposed by the party to the proceedings to eliminate possible distortion of competition. While the Rockaway Group operates in the Czech Republic primarily in the segment of online retail sale of consumer goods, the acquired company Heureka Shopping mainly operates in the filed of price comparison tools focused on finding, comparing and mediating the sale of consumer goods on the internet, most notably the comparison tool www.heureka.cz.

The Office thus examined the impacts of the concentration on the markets of price comparison tools and retail sale of consumer goods via the internet. In the administrative proceedings, it was found that within its services, Heureka Shopping gathers a range of information about e-shops, some of which is sensitive business information. At the same time, some of the services provided by Heureka are relevant not only to consumers, but also to e-shop operators. Therefore, it was essential to remain the option of using these services at least at the current level after implementing the concentration. In this respect, the Office received a number of complaints expressing concerns about the distortion of competition. In order to eliminate these concerns, the party proposed commitments in the first phase of administrative proceedings, which the Office accepted as sufficient to preserve effective competition in the market. These were behavioural commitments consisting of the public identification of e shops and price comparison tools belonging to the Rockaway Group and the specification of conditions under which Heureka Shopping may offer the "Verified by customers" and "Heureka is selecting reliable shops for you" services on the www.heureka.cz price comparison site.

Concentration between CN Invest a.s. and business of Serafico investment s.r.o. (respectively part of the business of Mladá fronta a. s.)

File number: **S0862/2015**
Date of coming into force: **11 May 2016**

The Office in its first-instance decision in 2016 approved, within the second phase of administrative proceedings commenced in December 2015, the concentration between CN Invest and part of the business of Serafico investment which consists of the former part of the business of Mladá fronta active in the publication of daily newspapers and magazines and sale of advertising therein. While CN Invest, which belongs to the CZECH MEDIA INVEST a. s. group, operates in the area of publishing daily newspapers and magazines in printed and online format (e.g. Blesk, AHA!, Sport, Reflex, ABC etc.), in the area of selling advertising space in this press and in the area of operating newspaper printing shops, the acquired part of the business of Mladá fronta was active in the same areas (except the area of operating newspaper printing shops), e.g. through daily newspapers and magazines in printed and online format such as E 15, Betynka, Mateřídouška, Sluníčko, Computer, Lidé a země.

After considering all the circumstances and analysing the potential impacts arising from the horizontal overlapping of activities of the merging undertakings, the Office concluded that the assessed concentration did not raise major concerns about the substantial distortion of competition.

Concentration between undertakings HALTIXAR LTD and Severní energetická a. s.

File number: **S0884/2015/KS**
Date of coming into force: **12 May 2016**

In 2016 within the so-called second phase of administrative proceedings initiated in December 2015, the Office approved in its first-instance decision the concentration between undertakings HALTIXAR and Severní energetická in consequence of which the undetaking acquires sole control over Severní energetická. HALTIXAR is a member of a business group that also includes companies such as in particular Vršanská uhelná a. s., Czech Coal a. s. and Czech Coal POWER s. r. o., operating primarily in the segment of lignite extraction and sale of electricity trading. In the Czech Republic, Severní energetická operates mainly in the sector of lignite extraction and sale, and the production and sale of electricity and thermal energy.

Within the administrative proceedings, the Office particularly examined the sector of lignite supply, production and wholesale supply of electricity, electricity trading and the production and supply of thermal energy, in which the activities of the merging undertakings overlap or follow-up vertically. After considering all the circumstances of the case and analysing the potential negative impacts that come into consideration as a consequence of both horizontal and vertical concentration of the merging undertakings' activities, the Office came to the conclusion that the assessed concentration of undertakings does not raise major concerns about the substantial distortion of competition in the above-mentioned relevant markets.

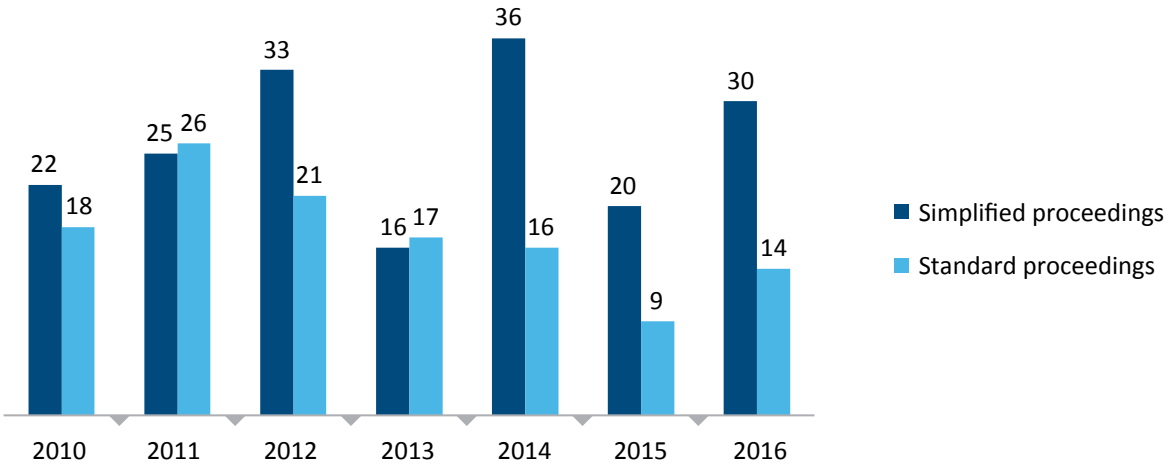
Concentration between undertakings: Rockaway Capital SE/Netretail Holding B.V.

File number: **S0223/2016/KS**
Date of coming into force: **27 June 2016**

In its first-instance decision, the Office approved the concentration between the undertakings Rockaway Capital and Netretail Holding. The respective transaction had a horizontal character, as both merging undertakings operate primarily in the online retail sale of consumer goods, e.g. via the e-shops www.czc.cz (Rockaway Capital) and www.mall.cz (Netretail Holding).

The Office's investigations proved that the merger should indeed strengthen the position of Rockaway Capital in the fields affected by this concentration, but the market share of the undertaking resulting from the concentration will be relatively low; moreover, the Rockaway Capital group should face a number of undertakings who have a similar or even stronger position in the individual affected markets.

Concentrations of undertakings - simplified and standard proceedings



Sanctions for implementing concentrations before their approval

Party: **BOHEMIA ENERGY entity s. r. o.**
File number: **S0104/2016/KS**
Final fine: **CZK 5,383,000**
Date of coming into force: **6 February 2016**

Within the administrative proceedings against BOHEMIA ENERGY entity (hereinafter referred to as "BEE") in 2016, which were commenced in the course of the preceding year, a sanction was imposed on the party to the proceedings in the amount of CZK 5,383,000 for implementation of a concentration with the undertaking České energetické Centrum a. s. (hereinafter referred to as "ČEC") before submitting a concentration notification and before issuing an enforceable decision on concentration approval by the Office.

Based on a complaint from a third party, the Office concluded that in 2013, BEE within the framework of preparations for the concentration of undertakings, which was to consist of the acquisition of ČEC, ensured that employees of BEE would be appointed to the bodies of ČEC (board of directors and supervisory board) even before submitting the concentration notification, whereby BEE acquired control over ČEC. Since the relevant transaction was subject to approval by the Office and the merging undertakings notified it only about three months after implementing the merger, the Office initiated the administrative proceedings in 2015 regarding the alleged violation of the prohibition of concentration of undertakings before submitting the concentration notification and before issuing the final decision by the Office approving the mentioned merger stipulated in the Article 18(1) of the Act on the Protection of Competition.

The administrative proceedings were concluded by a decision issued in early 2016. The settlement procedure was used in this case, in which the party to the proceedings acknowledged its unlawful conduct in exchange for a reduction of the fine. The decision was not appealed.

Alternative Solutions of Competition Issues

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

Hyundai Motor Czech s. r. o.

Based on a complaint from the Association of Authorised Hyundai Automobile Brand Dealers and Repair Shops (hereinafter referred to as the "Association"), the Office investigated the conduct of Hyundai Motor Czech (hereinafter referred to as "HMCZ") consisting inter alia of the fact that HMCZ allegedly prevented its authorised dealers from selling vehicles to foreign customers, which was allegedly most apparent during the special offer "Discover Hyundai Bonus".

The Office informed HMCZ of its suspicion that its conduct could lead to distortion of competition. Therefore, HMCZ proposed to the Office the implementation of the necessary measures to ensure an effective remedy. HMCZ amended its terms of sale in such way that the conditionality of paying the "Discover Hyundai Bonus" with insurance from the UNIQA insurance company does not apply to foreign customers, or more precisely customers who have registered the vehicle outside the Czech Republic. This change is also apparent in offers from HMCZ published on its internet website. The authorised dealers of Hyundai automobiles were informed of these changes in writing.

Prague Airport

The Office dealt with investigating the potential abuse of a dominant position by Letiště Praha, a. s. (hereinafter referred to as "Prague Airport") by discriminating GO parking s. r. o. (hereinafter referred to as "Go parking") in the market of parking services and its exclusion from this market by combining the sale of parking services with the sale of services in the market of airport facilities. On 21 August 2015, GO parking contacted Prague Airport with a request to grant access to the first handling lane in front of Terminals 1 and 2 at Vaclav Havel Airport Prague. Its request was declined for security reasons without any detailed specification thereof.

In order to avoid doubts about the possibility of using the first handling lanes and potential disadvantages to other undertakings, the Prague Airport decided, from 1 July 2016, to move the stops for its vans from the first handling lane in front of Terminal 1 to the premises of the P1 Express parking lot and from the first handling lane in front of Terminal 2 to the premises of the PB Economy parking lot. The PB Economy parking lot is publicly accessible - the new stop is located in the area designated for buses. With respect to the moving of the stops for Prague Airport´s taxi vans described above, the Office considers this adopted measure to be sufficient in terms of a remedy for the potential violation of competition rules.

Prague Building Regulations

The Office received a complaint from the Union of Outdoor Advertising Operators (hereinafter referred to as "the Union") concerning the potential infringement of the Article 19a of the Act on the Protection of Competition by the City of Prague. The complaint referred to a regulation which stipulates the general requirements for the use of land and technical requirements for construction works in the City of Prague (hereinafter referred to as the "Prague Building Regulations"), which also contained a section regulating advertising surfaces and above all a section prohibiting self-standing structures for advertising and self-standing advertising and information equipment of an advertising nature on an area of more than 6 m^2 in the developable areas of the city, and to the Agreement on the Construction, Operation and Advertising Use of City Furniture (hereinafter referred to as the "Agreement") of 1994, which the City of Prague concluded with JCDecaux and which contains the exclusive right to use advertising surfaces with dimensions of 1 m^2 – 9 m^2. According to the Union, the City of Prague violated the Article 19a of the Act on the Protection of Competition by issuing the Prague Building Regulations, which combined with the Agreement restrict competition in the market of outdoor advertising in the City of Prague.

The Prague Building Regulations ceased to be temporarily effective from 16 January 2015 due to a decision adopted by the Ministry of Regional Development. Hence, the Prague Building Regulations were capable of having any legal effects only in the period from 1 October 2014 to 16 January 2015. By resolution of the Prague City Council of 27 May 2016, it was adopted an amendment to the Prague Building Regulations, which no longer contains the prohibition of self-standing advertising equipment and structures for advertising more than 6 m^2 in size throughout the entire developable area of the City of Prague.

The Office believes that the Prague Building Regulations were amended to a version which cannot be considered problematic in terms of the Act on the Protection of Competition, even under the concurrent existence of the Agreement. The dimensions of self-standing structures for advertising and advertising equipment are not generally limited outside of areas under special regulation; hence there is no exclusion of other undertakings in the market, because even large-format structures for advertising or advertising equipment can be installed, provided that the stipulated spacing is observed. The amendment to the Prague Building Regulations still contains restrictions on other types of advertising, e.g. those installed on the facades of buildings or on fences. These restrictions do not appear to be problematic in terms of the Act on the Protection of Competition.

Municipal services

The Office received a complaint to investigate the pricing conditions for the sale of products and provision of services to end customers stipulated by UNIKONT GROUP, s. r. o. (hereinafter referred to as "Unikont") in relation to its contractual partners (independent retailers) selling Multicar and CityMaster brand vehicles. Investigations revealted that Unikont concluded an Agreement on Business Cooperation (hereinafter referred to as the "Agreement") with four of its dealers, whereas sales are handled individually with the remaining 4 dealers. The Agreements concluded with 2 dealers contained a provision stating: "Without prior written consent from the DISTRIBUTOR, the DEALER shall not offer Multicar vehicles with a discount of more than 6% compared to the recommended pricelist price." and a provision that: "Without prior written consent from the DISTRIBUTOR, the DEALER shall not offer CityMaster vehicles with a discount

of more than 20% compared to the recommended pricelist price." The Agreements with the remaining contractual partners were concluded later in time and do not contain the above-mentioned or similar provisions.

Because the above-mentioned provisions have the anticompetitive character of resale price maintenance, the Office requested the dealers to provide additional information regarding the manner in which the final retail price of Multicar and CityMaster municipal vehicles was stipulated and whether Unikont controlled its fulfilment. Both addressed companies confirmed to the Office that they may stipulate the retail price of the specified brands of municipal vehicles at their own discretion, and hence do not apply these provisions of the Agreement in practice. Although the problematic provisions appear in only 2 Agreements and are not followed in practice, the Office requested Unikont to remove these provisions from the Agreements and prove such modification of them, which Unikont did. Based on the foregoing, the Office considers that the potential competition issue was eliminated, and has therefore terminated investigations in this case.

Česká televize (Czech Television) programmes for rebroadcasters

The Office received a complaint to investigate the rightfulness of requesting financial consideration for allowing the broadcasting of Česká televize programmes for television rebroadcasters.

Pursuant to the Article 54(2) of the Act No. 231/2001 Coll., on Radio and Television Broadcasting, as amended (hereinafter referred to as "the Broadcasting Act"), a cable system rebroadcaster is obliged to include the broadcasting of statutory broadcasters (the statutory broadcasters are Česká televize and Český rozhlas) with their consent in their minimum programme range; furthermore, pursuant to the Article 54(3) of the Broadcasting Act, statutory broadcasters are obliged to provide the above-mentioned programmes to cable rebroadcasters free of charge, and rebroadcasters are obliged to include these programmes in their minimum programme range also free of charge, i.e. they cannot request any compensation for this inclusion from the statutory broadcasters.

The complainant, a satellite rebroadcaster, pointed out that with regard to the principle of non-discrimination, objectivity, technological neutrality, transparency and proportionality, Česká televize should also provide the broadcasting of its programmes free of charge to satellite rebroadcasters.

In order to clarify the definition of the term "cable system" and the provision of the Article 54(2) and (3) of the Broadcasting Act, the Office contacted the Council for Radio and Television Broadcasting, which stated that the obligation of cable rebroadcasters stipulated in the Article 54(2) of the Broadcasting Act does not apply to satellite rebroadcasters and rebroadcasters using special transmission systems (internet). Nevertheless, in the course of the Office's investigations an agreement on the settlement of contested rights and obligations was reached between the parties concerned; furthermore, Česká televize stated that with regard to the expected changes in terrestrial broadcasting, it is preparing a change in the comprehensive strategy for broadcasting its programmes, including a strategy for cable, satellite and potentially internet rebroadcasting. The new concept will include all the rebroadcasters, with the application of equal conditions for the same or comparable performance. At the same time, it shall give rebroadcasters time to submit comments or counter-proposals concerning the technical parameters and transferring/broadcasting signal.

Second-Instance Proceedings

In 2016, a total of 20 appeals against first-instance decisions were filed. A total of 24 second-instance proceedings were initiated (3 proceedings were initiated following annulment of the previous decision by the court; 1 case was initiated based on a complaint). 11 second-instance decisions were issued, of which 5 were substantive. In these decisions, sanctions totalling CZK 1,971,324,000 were imposed, of which CZK 1,966,418,000 in the field of prohibited agreements and CZK 4,906,000 in the field of concentration of undertakings.

Particularly noteworthy were 2 decisions regarding the cartel of construction companies, in which the Office decided on a total of 11, or more precisely 7 appeals. Three first-instance decisions were upheld, with 1 involving the partial upheld and partial amendment to the operative part of the decision. Procedural decisions concerned requests to access to files (4); including one case concerned a decision on a request to suspend proceedings and one concerned review proceedings.

Significant Cases

The fine for the "major construction cartel" amounts to CZK 1.66 billion

Parties: **STRABAG a. s., EUROVIA CS, a. s., SWIETELSKY stavební s. r. o., M – SILNICE, a. s., Lesostavby Třeboň a. s., BERGER BOHEMIA a. s., Skanska a. s.**
File number: **S834/2014/KD, R381,382,388,389,390,393,395/2015**
Final fine: **CZK 1,659,993,000**
Date of coming into force: **11 February 2016**

On 8 February 2016, the Chairman of the Office decided on the appeals against the first-instance decision regarding the so-called major construction cartel. The Chairman of the Office upheld the fining decision, but proceeded to modify the value of the imposed fines due to the insufficient individualisation of sanctions (assessment of the specific severity of impacts of the offence between the individual parties to the proceedings). Final fines totalling CZK 1,659,993,000 were imposed for distortion of competition in the market of civil engineering in the Czech Republic.

The members of the cartel violated the Act on the Protection of Competition by using their mutual contacts to coordinate their participation and bids in tenders for public contracts "R4 Mirotice – Třebkov" (except for the party Lesostavby), "Písek – Reconstruction of the site Bakaláře – Stage I" (only the parties Strabag and Lesostavby) and "Reconstruction of Jeronýmova street in Třeboň" (only the parties Strabag and Lesostavby).

The Office gathered information about their anticompetitive conduct during 12 unannounced inspections, conducted over the course of more than 2 years of investigation. The gathered evidence testifies that the cartel members arranged and prepared so-called cover offers for the mentioned public contracts, some of which were deliberately incomplete or overpriced. In this manner, the cartel members entirely eliminated the element of competition in the tenders and the company previously designated by the cartel was the winner.

The Chairman of the Office increased sanctions for the "smaller construction cartel"

Parties: **SWIETELSKY stavební s. r. o., Lesostavby Třeboň a. s., Radouňská vodohospodářská společnost, a. s., OHL ŽS, a. s., VIDOX s. r. o., DAICH spol. s r. o., VIALIT SOBĚSLAV spol. s r. o., AVE CZ odpadové hospodářství s. r. o., KOSTKA JH s. r. o., COLAS CZ, a. s., HOCHTIEF CZ a. s., STRABAG a. s.**
File number: **S426/2012/KD, R131, 147, 148, 149, 150, 151, 152, 156, 158, 159, 169/2016**
Final fine: **CZK 300,683,000**
Date of coming into force: **25 July 2016 and 1 August 2016**

In the decision of 22 July 2016, the Chairman of OPC upheld the first-instance decisions concerning the smaller construction cartel in substantive terms. However, the operative part of the decision imposing fine was amended, so that sanctions totalling CZK 300,683,000 were imposed on the parties SWIETELSKY stavební, Lesostavby Třeboň, Radouňská vodohospodářská společnost, OHL ŽS, VIDOX, DAICH, VIALIT SOBĚSLAV, AVE CZ odpadové hospodářství, KOSTKA JH, COLAS CZ, HOCHTIEF CZ, STRABAG.

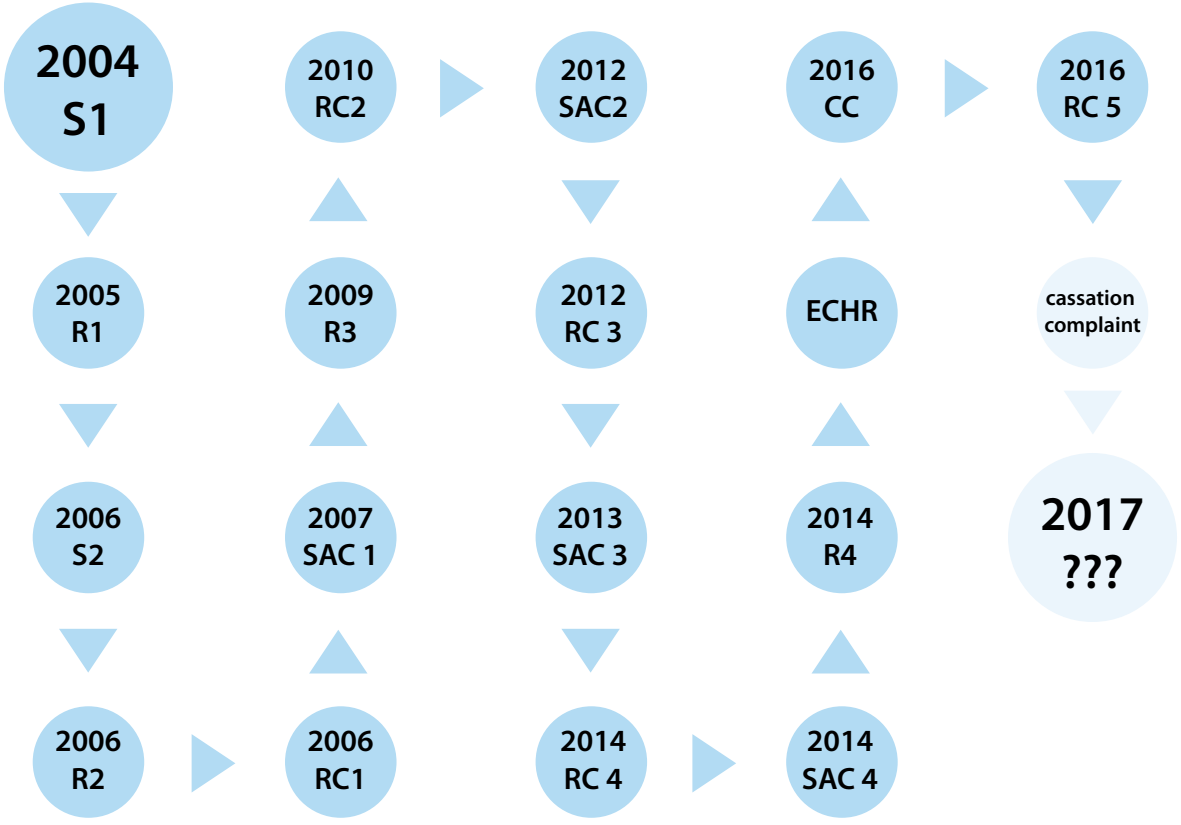
These undertakings operating in the construction sector violated the Act on the Protection of Competition by coordinating their participation and bids in tenders for construction work in the field of civil engineering in the South Bohemian Region and a part of the Vysočina Region. A total of 11 cartel agreements from the years 2006 to 2009 were detected, where various groups of undertakings participated in the individual agreements; SWIETELSKY stavební, Lesostavby Třeboň, Radouňská vodohospodářská společnost, DAICH and VIALIT SOBĚSLAV participated in multiple agreements, while the other undertakings were only party to 1 agreement. The total volume of affected tenders exceeded CZK 79 million excluding VAT.

The concerted practices of the parties to the proceedings may affect or in most cases affected the results of the relevant tenders and led to the distortion of competition in the market of civil engineering in the Czech Republic.

Judicial Review

A total of 19 actions were brought before the Regional Court in Brno. The court issued judgements in 11 cases, upholding the Office´s decision in 8 of these. The Supreme Administrative Court received a total of 9 cassation complaints and issued 9 decisions, of which 4 were in favour of the Office and 1 found fault with the part of the lower-instance court´s decision. Worth mentioning among the substantive decisions is the definite confirmation of the correctness of the Office's procedure regarding an implementation of concentration between the undertakings BEST/BETA before the Office´s approval. The Constitutional Court also decided about OPC decisions 3 times, rejecting inter alia the complaints on infringement of constitutional rights in the case of Student Agency and a cartel of CRT monitor manufacturers.

An example of the complicated development of some court proceedings is the case of bakery cartels, in which 16 decisions and judgements covering hundreds of pages of legal argumentation have already been issued up until 2017. The proceedings initiated before 2004 were conducted by the Office for less than 3 years; the remaining time was spent on judicial review. This is a burning issue, given that in the past 15 years, the demands on conducting administrative proceedings and processing judgements have increased considerably. Hence, decisions issued entirely in accordance with standards at that time may now be annulled due to formal deficiencies or simple changes in the opinions of the courts. Infringement of competition law was upheld by each judgement in the administrative review.



Explanatory notes:
S – first-instance decision, R – second-instance decision, RC – Regional Court in Brno, SAC – Supreme Administrative Court, CC – Constitutional Court, ECHR – European Court of Human Rights

The case is relevant because of the judgement of the Regional Court of 2016, which again confirmed the correctness of the Office's conclusions. It is notable that this judgment followed a reversal in the form of a judgement of the European Court of Human Rights, which found the Czech Republic to be at fault in the case. Nevertheless, the explanation and overall context revealed that this fault consisted of the administrative courts' insufficient dealing with the issue of legality of the conducted unannounced inspections. This flaw was corrected by the current judgement of the Regional Court in Brno, which found the Office's procedure for conducting unannounced investigations to be fully legal. A cassation complaint is now dealt in the case.

Significant Market Power

Interest in the issue of prohibited trading practices in the supplier-customer food chain was heightened in 2016 primarily in connection to the amendment to the Act No. 395/2009 Coll., on Significant Market Power in the Sale of Agricultural and Food Products and Abuse thereof (hereinafter referred to as "the Act on Significant Market Power" or "the Act"). The Act No. 50/2016 Coll. amending the previous Act was announced in the Collection of Laws on 5 February 2016 and subsequently came into force on 6 March 2016. The issue of unfair trading practices in relation to retail chains and their suppliers has been a subject of interest not only in the Czech Republic, but also in other Member States and in the European Union itself. In 2013, a Green Paper was published on the issue of retail chains, which identifies the most common prohibited trading practices as well as the methods and options of solving this issue in the individual European Union Member States and proposals for a potential unified solution to this matter. This activity was followed by a discussion of the issue in question at the European Parliament level and regular meetings organised by the European Commission through DG Growth and DG Competition. In June, the European Parliament adopted a resolution in which it expressed the conviction that in order to ensure the proper functioning of the common market, it is essential to adopt measures that solve the issue of unfair trading practices in the food supply chain.

Amendment to the Act on Significant Market Power

The amendment to the Act led to a number of changes in the concept of the Act. After amendment, the Act impacts not only on the regulation of significant market power in relation to the purchase and sale of food; the wording of the Act now newly incorporates services related to the purchase and sale of food. According to the new legislation, both offences committed in the Czech Republic whose effects are apparent in the territory of the Czech Republic, and offences committed abroad with effects occurred in the territory of the Czech Republic will be judged.

The amendment to the Act further specified certain notions (such as food, a supplier, a buyer), and introduced some new ones (e.g. a purchasing alliance). Even after its amendment, the Act on Significant Market Power applies only to buyers who meet the criteria of so-called „significant market power". Market power is wielded by a buyer who may without justifiable cause gain a contractual advantage within its business transactions. The amendment to the Act has preserved the refutable presumption that a buyer whose turnover for the sale of food and related services in the territory of the Czech Republic exceeds CZK 5 billion in the last accounting period of 12 months has significant market power. On the contrary, the Act eliminated other criteria used to prove market power, namely the characteristic of continuous infringement and the need to prove whether the objective or effect of such infringement was the significant distortion of competition in the relevant market.

A significant change compared to the original version of the Act on Significant Market Power is the abolition of the case-by-case annexes listing prohibited trading practices. Following the amendment, the Act states in Article 4 that abuse of significant market power is prohibited, and in subsection (2) exemplifies some prohibited trading practices.

The amendment to the Act has newly established obligations in negotiating contracts for the sale and purchase of food and related services. The contract between a buyer with significant market power and the supplier shall be negotiated in writing and in addition to the essential parts it shall also contain specific requirements pursuant to Article 3a(a) through (e) of the Act on Significant Market Power.

The amendment to the Act has brought about interpretative ambiguities. After all, the most problematic issue proved to be Article 3a of the Act governing the obligation to negotiate the contract between the buyer and the supplier in writing and stipulating the mandatory terms of this contract. Therefore, the Office presented its first interpretative opinions in the spring of 2016, summarising its expert conclusions on the interpretation of certain less comprehensible provisions of the Act in its Information Bulletin issued in August 2016. The Office elaborated in detail what it means to negotiate the contract in writing and which forms of written representation of the contract may be accepted as compliant with the requirement for written form, especially as concerns ensuring the authenticity and integrity of a written expression of the will. Another problematic issue dealt with in detail in the Information Bulletin is the interpretation of the notion of "payment" and, in particular, the statutory cash limit, which shall not exceed 3% of the supplier's annual net turnover for sales for the last completed accounting period of 12 months for food delivered to individual buyers in the year in which the financial payment occurred was provided.

The Office's methodological activity, consisting in the provision of interpretative opinions, continues either in writing, in having contributions at the St. Martin's Conference or in the form of personal negotiations with various entities affected by the law.

Impact of Court Proceedings on the Office's Activity

In the course of 2016, the Office had to deal with 2 important decisions of the administrative courts. In the Kaufland case, the Regional Court in Brno undertook the Office to apply the Act in a more lenient manner (for the party to the proceedings). This more lenient manner, according to the Regional Court in Brno, means the interpretation of the Act based on the relative concept of the term significant market power. Were the Office to continue applying the Act before the amendment, it would have to reconsider the relationship between economic dependence of each individual supplier and its buyers. Such interpretation of the Act overturns existing practice in the application of the Act by the Office, which regarded the concept of market power as a systemic means of protection for suppliers against unfair practices by retail chains (the absolute concept of the term). Court proceedings are still underway before the Supreme Administrative Court.

Another fundamental decision was the judgment of the Regional Court in Brno regarding a sectoral inquiry launched by the Office in May 2016, the purpose of which was to ascertain the impacts of the amendment to the Act on buyer-supplier relations. The entire sectoral inquiry was delayed owing to the action of one of the investigated chains; however, the outcome of the court proceedings is favourable to the Office and the Office is entitled to conduct sectoral inquiries through requests for information and documents. The court proceedings are still underway before the Supreme Administrative Court.

The amended Act on Significant Market Power was challenged in the autumn of 2016 by a constitutional complaint from a group of senators with a motion to initiate proceedings for the annulment of this Act. Despite the disagreement of a part of the professional public with the existence of the Act, the Office upholds the opinion of legitimacy and necessity of public regulation of relations in the supplier-buyer chain. The reason for using public law correction was the abuse of the stronger negotiating position by one side of the business relationship. Given the specific nature of supplier-buyer relations in the sector, the situation in the area of the sale and purchase of agricultural and food products was not resolvable through competition rules within the framework of protecting competition, and private law corrections were likewise insufficient. Therefore, the state's response was to secure a certain level of justice in the given area through public law, namely through the protection of the weaker party, by adopting the Act on Significant Market Power. The proceedings before the Constitutional Court are still ongoing.

Amendment to the Act in Practice

Another important part of the Office's activities is the supervision of compliance with the Act. The Office may conduct investigations in order to determine compliance with obligations arising from the Act. In May 2016, the Office launched a comprehensive inquiry to determine the impact of the amendment to the Act on buyer-supplier relations. The Office considered it necessary to clarify whether and how the new provisions of the Act on Significant Market Power are reflected in contracts, i.e. the form of contracts concluded between suppliers and buyers of food products following the amendment.

The Office processed a set of questions addressed to the largest retail chains. The questions concerned several areas. The Office first inquired about the contracts concluded by retail chains for 2016. In this regard, the Office ascertained whether and how the changes brought by the amendment to the Act on Significant Market Power were reflected in contracts (both newly concluded and concluded before the amendment).

All chains conclude framework contracts for the supply of food (mostly as annual framework contracts), as well as contracts for the provision of marketing services, contracts on special purchase prices for discounts, contracts on food purchase prices, contracts for services provided by the retail chain to the supplier. In all cases, these are standard contracts that the retail chains submit to their suppliers, given that in most cases it is not possible to modify these contracts according to the suppliers' requirements. In most cases, the Office found that the statutory requirement for written form of the contracts (both framework contracts and contracts for services from the buyer or services provided by the supplier to the buyer) is fulfilled.

The most problematic interpretation issue of the Act is connected with the Article 3a(a) of the Act, that is why part of the set of questions was directed towards the application of this provision. The inquiry showed that retail chains use several methods to include this new obligation into the contract. Some chains used the simplest form - they included the exact wording of the provision of Article 3a(a) into the text of the contract between the supplier and the buyer. In other cases, the contract contains a provision under which the sum of all of the supplier's cash payments provided to the buyer on the basis of the services provided by the buyer shall not exceed 3 percent of the supplier's annual net turnover for sales for 2015.

Some chains opted for a more specific definition of the statutory three-percent limit and included all financial amounts invoiced by the buyer to suppliers in the contracts, or directly specified which services are not directly related to the purchase and sale of food, or specified what does not fall within the three-percent limit. On the contrary, other contracts directly define the supplier's cash payments which do fall within the three-percent limit.

Under the new provision of Article 3a(c) of the Act on Significant Market Power, a necessary requirement when the buyer accepts and provides services related to the purchase and sale of food, is the definition of means of cooperation during such acceptance and provision in terms of the subject, scope, method and time of performance, the value of the price or method of its determination. According to the Office's findings, the most common service contracts concluded between buyers and suppliers are marketing service contracts. These are marketing services in the form of leaflets, online advertising, poster and television advertising, secondary display of goods, etc.

The marketing services contracts include the means of collaboration in organising marketing events, the scope of services provided, i.e. leaflets, display of promoted goods, naming of products included in the promotional campaign, the time of payment and the value of the price, agreements on the arrange of product tastings, etc. The prices for marketing services are determined differently. Either the price for individual services and its further details are determined by prior agreement of the parties, or contracts providing the conditions for granting discounts from the purchase price are concluded, whereas the annexes to these contracts specify the discounts and pricelists for individual services, including a description of their subject.

Another round of inquiries related to the method of negotiating the standard invoice price for the period after the amendment came into force. There are likewise several models: the so-called net-net price (the price on which all discounts are already included), or the price stipulated by specifying a percentage discount that is linked to the supplier's official pricelist. Another method of determining the invoice price is based on the supplier's standard price list, and these prices are then reflected in the agreed discounts. Another chain refers to the supplier's pricelist with the whole range of products when stipulating the invoice price, followed by negotiations of the scope of listed items and the contractual price.

The answers regarding discount specials provided the Office with interesting findings. The Office was interested in the method of negotiating special purchase prices. The approach of the individual chains to special prices varies; some chains prefer to negotiate short-term net-net prices, while others mention the percentage discounts linked to the supplier's pricelist. Some chains stated that they do not negotiate quantity or other discounts and bonuses, and instead only negotiate net-net prices. Others negotiate quantity discounts depending on the achieved turnover.

Within the framework of this inquiry, the Office obtained a general idea of the response of the buyer-supplier food chain to the amendment to the Act on Significant Market Power and basic knowledge about the means of negotiating the contractual terms for the supply of products to retail chains. The Office considers the effort to bring contracts into line with the current Act to be positive; in most cases the requirement of the Act that the contract concluded between the buyer and supplier shall be made in writing was fulfilled. On the other hand, a lasting problem is that draft contracts are being submitted by the chains and suppliers have only a minimal possibility to modify the contract and its relevant provisions; this is evidenced by the fact that the contractual conditions are not quite equal. The Office continues to investigate individual contractual arrangements and compliance with the Act on Significant Market Power.

Control over Market Power Unit

The head of Control over Market Power Unit was replaced following the change in the position of the Vice-Chairman of the Office responsible for the managing the Legislation and Public Regulation Division in mid-2016. Under the new management, the unit has been more actively involved in providing interpretative opinions on the amendment to the Act on Significant Market Power. In August 2016, the unit issued an Information Bulletin, the content of which is available on the Office website. In addition to written opinions, the unit provided an interpretation of the problematic provisions of the Act to representatives of both buyers and suppliers.

The largest and most important part of the unit's work is the investigation of complaints. The unit continuously investigates several complaints concerning prohibited trading practices. Some retail chain practices occur independently of the amendment to the Act and may therefore continue to be investigated. However, new retail chain practices have emerged in the context of the amendment to the Act. In this context, the Office has started investigating complaints concerning so-called net-net prices (a pressure to reduce food prices), overuse of corrective tax documents during invoicing, complaints about certain unfair practices in the provision of logistics services, etc. Prohibited trading practices occur across the individual chains, including domestic chains with Czech ownership interest.

The Control of Market Power Unit did not initiate any new administrative proceedings in 2016. The Office's aim was to give the stakeholders affected by the comprehensively amended Act on Significant Market Power enough time to adapt to the new regulation, to provide interpretative opinions, to answer questions about the application of the Act and, if necessary, to address specific issues related to the amendment to the Act.

Public Procurement and Concessions

The Office for the Protection of Competition has been supervising public procurement award procedures since January 1995, currently pursuant to the Act No. 134/2016 Coll., on Public Procurement. The legal framework of supervision activity transposes the provisions of European review directives (Council Directive 92/13/EEC and 89/665/EEC as amended by Directive of the European Parliament and of the Council 2006/97/EC), which regulate the specifics of the review procedure concerning public procurement and strengthen the guarantees of the principles of transparency and non-discrimination in public procurement. Within the supervision of public procurement award procedure, the Office decides whether the contracting authority followed the legal provisions when awarding the public contract, granting a concession or during special procedures pursuant to the Act on Public Procurement, imposes corrective measures and sanctions, deals with administrative offences of contracting authorities, and performs other tasks stipulated by the relevant provisions pursuant to the Act No. 273/1996 Coll., on the Scope of Competence of the Office for the Protection of Competition. This includes supervisory activities pursuant to the Act No. 194/2010 Coll., on Public Passenger Transport Services. The purpose of the above provisions is to ensure open and free competition between suppliers of public contracts (performance under the concession contract or contracts concluded on the basis of award procedures, etc.) and transparent selection of the most suitable tender without discriminating against tenderers. The equal, transparent and non-discriminatory competitive environment then ultimately brings savings of public finances.

Summary of Legislative Changes in 2016

Towards the end of 2015 (with effect from 1 January 2016) the latest amendment to the existing Act No. 137/2006 Coll., on Public Contracts, as amended, was adopted following the adoption of the Act on Recovery and Resolution in the Financial Market. The change consisted of supplementing the new basic qualification requirement [only a supplier against whom temporary receivership or crisis management measures pursuant to the law governing the recovery procedures and crisis management in the financial market has not been imposed in the last three years will qualify], which may be considered technical.

The real breakthrough, however, was the adoption and entry into force of a completely new act governing the awarding of public contracts in 2016. Act No. 134/2016 Coll., on Public Procurement, was published in the Collection of Laws on 29 April 2016, and on 1 October 2016, when it came into effect, it replaced in its entirety (for newly initiated award procedures) the existing legislation contained in the Act on Public Contracts.

To address the changes brought by the new Act in a comprehensive manner would far exceed the possibilities of both this contribution and the entire Annual Report. Therefore, only some basic information may be provided, given that at the end of September 2016, the Office devoted a separate information bulletin to certain aspects of the new legal regulation, in which it informed about selected fundamental novelties contained in the new Act. The Office intends to continue publishing information bulletins about the new Act on Public Procurement in the future.

One of the fundamental conceptual changes in the legal regulation is the fact that the new Act also includes regulations on the awarding of concessions, contained to date in the Act No. 139/2006 Coll., on Concession Contracts and Concession Procedure, as amended; it thus unifies the legislation and eliminates certain redundancies in relation to these two areas.

While the existing regulation of public procurement was considered to be binding, rigid and administratively demanding, the new Act represents a significant shift in this direction. Its essential feature is to provide contracting authorities with a very wide choice of various procedures; in other words, it puts very little procedural constraint on the contracting authority. However, greater freedom for contracting authorities goes hand in hand with greater responsibility. The contracting authority is still obliged to observe the basic principles of transparency, non-discrimination, equal treatment and, now also expressly, proportionality. If the new Act does not regulate certain processes in detail, this does not mean that the contracting authority may proceed arbitrarily. On the contrary, it shall choose a procedure that will fulfil the above-mentioned principles.

Therefore, with the new legislation in force, the main task of the Office shall be to supervise that the contracting authorities handle the legislation, respectively its flexibility, in a deliberated and responsible manner, so that the aim with which the new Act was adopted, that is to abrogate contracting authorities from the administrative burden and allow them to requisition performance flexibly with respect to their real needs, is fulfilled without jeopardising the fundamental purpose of the legislation in question, which is to protect the economical use of public funds.

A significant, but not revolutionary, shift in the context of the new legislation may also be seen in the regulation of supplier protection against the illegal conduct of the contracting authority (i.e. amendment to the concept of objections and supervisory activity of the Office). The Office actively participated in creating this part of the Act, in doing so the adjustments were made with the aim of achieving the effective dispute resolution between the contracting authority and the suppliers.

The main point of the new regulation is the significant reinforcement (sometimes referred to literally as „resuscitation") of the concept of objections. This concept is based on the belief that every dispute that arises during the award procedure shall primarily be addressed where it arises, meaning with the contracting authority, which is the "master of the award procedure" (as it defines the tender conditions and acts in the award procedure) and which shall be capable of justifying its every action (meaning the definition of specific tender conditions, exclusion of a tenderer from the award procedure, evaluation of tenders, etc.) in a meaningful and comprehensible manner (i.e. a manner that may be reviewed retrospectively). These ideas coincide with new legislation and their most important expressions is the Office's ability to annul an unreviewable decision on objections, where the consequence of such decision of the Office is the contracting authority's obligation to decide about them again.

Another conceptual change is the new definition of the procedure for imposing a prohibition on contract performance, which abandons the existing and notably ineffective, time consuming and interpretation problem-causing binding of this proposal proceedings with the proceedings on administrative offences (where the requirement for complying with the proposal to impose a prohibition on contract performance was a decision on commission of an administrative offence, which could be made only in proceedings initiated ex officio), and stipulates clear hypotheses, upon the fulfilment of which the proposal will be complied with.

As a safeguard against unjustified delays in proceedings, the Office is empowered to set aside the award procedure or action under review, if the contracting authority does not submit the complete documentation about the award procedure to the Office even by an additionally stipulated deadline (i.e. in situations where the Office has no factual subject for substantive review).

Other significant changes include a change in the time limit for submitting objections to tender conditions (newly only until the end of the deadline for submitting tenders); adjustment of the period during which the contracting authority cannot award a public contract if administrative proceedings are initiated before the Office (60 calendar days, whereas the special provisions for interim measures were omitted from the Act); clarification of the Office's competences in relation to supervision of small-scale public contract (competence not given) and in relation to the contracting authority's procedure outside the award procedure (the Office is given the competence to review, based on a proposal, whether the contracting authority requesting performance outside an award procedure is violating the law); or a definitive catalogue of reasons to terminate administrative proceedings (finally eliminating some earlier interpretative ambiguities).

Before the end of the year, the first amendment to the Act on Public Procurement was published in the Collection of Laws on 14 November 2016, namely the Act No. 368/2016 Coll. amending the Act No. 253/2008 Coll., on Selected Measures against Legitimisation of Proceeds of Crime and Financing of Terrorism, as amended, and other related Acts. Under this Act, respectively its Part Twelve with effect from 1 January 2018, the method of identifying the real owners of legal persons, in respect of which records will be kept, will be amended as a result of the establishment of records of data about the real owners (the contracting authority will obtain the information directly from these records).

At least one further amendment may be expected in 2017 in connection with the pending amendment of the Act on Administrative Offences, which will change selected provisions of the Act on Public Procurement in addition to a number of other legal regulations. It is precisely in order to familiarise the general public with these changes to the Act and to clarify the transparent procedure of the Office in misdemeanour proceedings that the Office is planning a training event (see the Public Procurement Agenda 2017).

Public Procurement Division in 2016

For the Public Procurement Division, 2016 was both a consolidation period for the procedures newly introduced from mid-2015 and a period associated with the arrival of novelties, the foremost of which was the new Act on Public Procurement. It only came into force in October 2016, but the Division's staff had been preparing for its application for some time.

In an effort to streamline its decision-making activities, the Office continues to collect comprehensive data on the details of administrative proceedings conducted before the Office in matters of reviewing contracting authorities' actions in public procurement award procedures. These data serve not only to better inform the public about the Office's activity at the national level, but are also warmly welcomed by the professional public at the European level.

The legislative changes in the field of public procurement have also influenced the decision-making activities of the Office. In 2016, the Office issued 943 decisions, which is slightly less than in previous years (1,074 in 2015, 1,063 in 2014), but the rising trend in the number of decisions on the substance has been confirmed, as opposed to the termination of administrative proceedings for procedural grounds (23.6% of terminated proceedings in 2016 compared to 30% in 2015). It should be noted that the termination of administrative proceedings for procedural grounds occurs even in situations of misconduct on the part of the petitioner (for example, failure to pay the statutory deposit, submission of proposals without the statutory requirements). The proceedings are also terminated by law if the contracting authority itself cancels the acts challenged in the proposal after the proposal has been submitted, meaning that there

is no case to decide (the Office cannot impose a corrective measure which the contracting authority itself has accepted). The Office continues to use the administrative and legal concept of an order in factually clear cases of administrative offences, having issued a total of 244 in 2016. It should be noted that in terms of complexity, the creation of an order is subject to the same demands under the Administrative Code as the creation of a standard decision. The Office also uses orders in legally complex cases which are considered in the matter of fact to be sufficiently well clarified. Since the issuance of orders is the first action in the proceedings, it is usually issued within several days. The continuing efficiency and success rate of orders demonstrates that for the most part, they are not challenged by appeal (so-called "protests") and after entering into force within 8 days from their date of issue, they become final administrative decisions (the figures for 2016 show that it is dealt with more than 80% of orders in this way). Orders represent a significant increase in the speed and efficiency of the Office's activity in solving certain selected activities within its competencies.

As for "standard" decisions (not orders) regarding the issued first-instance decisions on the substance of the case, almost 36% were contested by an appeal in 2016, i.e. approximately 64% of the decisions on the substance of the case entered into force after their adoption by the first-instance decision-making body (the deadline for filing an appeal against some decisions was still ongoing at the turn of 2015 and 2016). Approximately 8% of the mentioned volume of first-instance decisions was annulled on the grounds that the second-instance body did not uphold the legal conclusions contained therein (remaining apart from the statistics of annulled first-instance decisions are, in particular, decisions which were affected by the second-instance conclusions, but do not concern an assessment of the regularity of the first-instance authority's procedure; for instance situations when the contracting authority, after the issuance of the first-instance decision on the substance of the case and after filing an appeal, sets aside the award procedure itself, wherefore the second-instance body does not assess the regularity of the contracting authority's procedure and does not comment on the merits of the first-instance).

Overall, decisions in administrative proceedings initiated in 2016 were issued in an average period of 31 days (if included the duration of administrative proceedings terminated upon issuing an order, this average period for issuing decisions is even 19 days). The Office's increasing efficiency and speed of decision-making is also apparent from the figures pertaining to the end of the year; at the end of 2016 there were 46 ongoing first-instance administrative proceedings, in which it may be said that all of them were condected fully within the time limit for issuing a decision (e.g. situations when the proposal was received in mid-December 2016, or proceedings suspended by law for reasons where the Office requested for an expert opinion).

In 2016, a total amount of fines imposed for committing administrative offences was higher than in the previous year (CZK 34,441,000 in 2016 and CZK 31,790,500 in 2015), although a total of 387 decisions contained an operative part stating that an administrative offence was committed (compared to 401 decisions in 2015).

In 2016, the Office received 1,305 complaints to review the contracting authority's procedures. Compared to previously, there was another increase in the number of complaints contesting the compliance of the contracting authority's procedure with the Act on Public Procurement, Concession Act, Act No. 194/2010 Coll. and related regulations. In this regard, it must be emphasised that one complaint often contests several public contracts at once, or several mistakes within one public contract. In 2016, the Office also dealt with a "mass" complaint, referring to a total of 267,856 alleged mistakes.

Since the coming into force of the Act No. 134/2016 Coll., on Public Procurement, new regulations concerning the handling of complaints have been in effect, containing a provision on imposing a non-refundable fee of CZK 10,000 for handling of the complaint by the Office. By the end of 2016, 78 complaints had been filed for which the statutory fee was not paid.

In addition to the Office's decision-making activity, it is also necessary to mention its interpretation activity. Although the Office is not obliged by law to respond to inquiries from the contracting authorities or suppliers, nor may it replace the role of the contracting authority in addressing specific issues in the public procurement process, or even approve or determine in advance the procedures of the contracting authorities or suppliers outside the administrative proceedings, the Office does publish its general opinions concerning the problematic provisions of the Act and answers questions pertaining to the review of public procurement within the framework of preventing the violation of laws regulating public procurement, concessions and contracts in public transportation. In 2016, the Office either alone or in collaboration with the Ministry of Regional Development issued 6 interpretative opinions. In its communication with the professional public, the Office answered almost 350 requests for the provision of expert assistance and information, not only in connection to the old legislation, but also requests for interpretative assistance with the new Act on Public Procurement.

Just 6 days after the new Act on Public Procurement came into force, the Office organised a conference called Supervision of Public Procurement in the Czech Republic. The conference met with a significant interest amongst professional public; among the more than 150 attendees there was a delegation from the Slovak Office for Public Procurement, a number of leading domestic experts dealing with public procurement, as well as the representatives of numerous contracting authorities. The topic of the conference was the general presentation of interpretative opinions on the new Act and new regulation on protection against the irregular practises of contracting authorities, as well as contributions devoted to specific aspects concerning qualifications, subjective evaluation criteria or the newly introduced institute of innovation partnership or life cycle costs. Not least, the change in European regulation on public passenger transport services was discussed, and there was a practical demonstration of the National Electronic Instrument ("NEN").

Most Common Mistakes

In terms of the market segments affected in 2016 within public contracts investigated by the Office, these public contracts concerned mainly (and traditionally) the field of the construction and IT. Public contracts for education and health care are also frequently reviewed. Public contracts regarding administration and audit activities are reviewed less frequently.

As regards the category of contracting authorities, whose public contracts are most frequently subject to review, these are most often cities and municipalities, healthcare organisations and ministries.

The most common mistakes made by contracting authorities include:[1)]

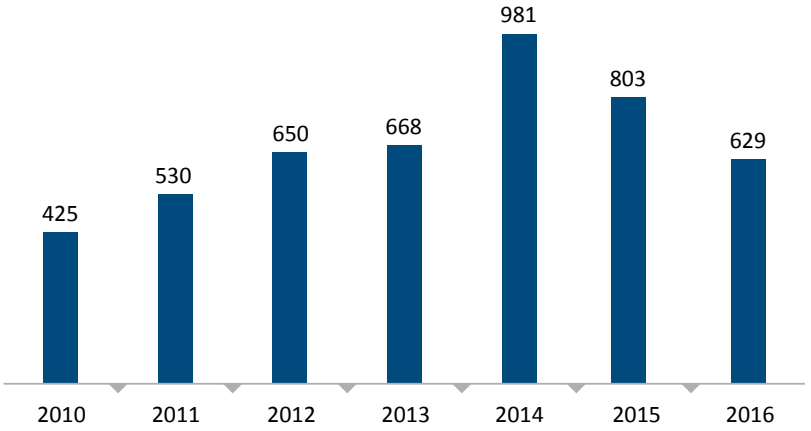
- Disproportional (discriminatory) qualification requirements.
- Unjustified setting aside of the award procedure by the contracting authority.
- Ambiguous and/or vague specification of tender conditions, or the disproportionate tender conditions specified by the contracting authority.
- Incorrect assessment and evaluation of tenders, in particular in connection with an abnormally low bid price and the determination of subjective evaluation criteria by the contracting authority.
- Irregular practises of the contracting authority consisting in not excluding a supplier whose tender did not comply with the law or with the contracting authority's requirements, from participating in the award procedure.
- Violation of publication obligations.
- Awarding a public contract completely outside the regime of the Act on Public Procurement (even though the contracting authority was obliged to proceed in accordance with the Act).

Decision-Making Activities in the Field of Public Procurement

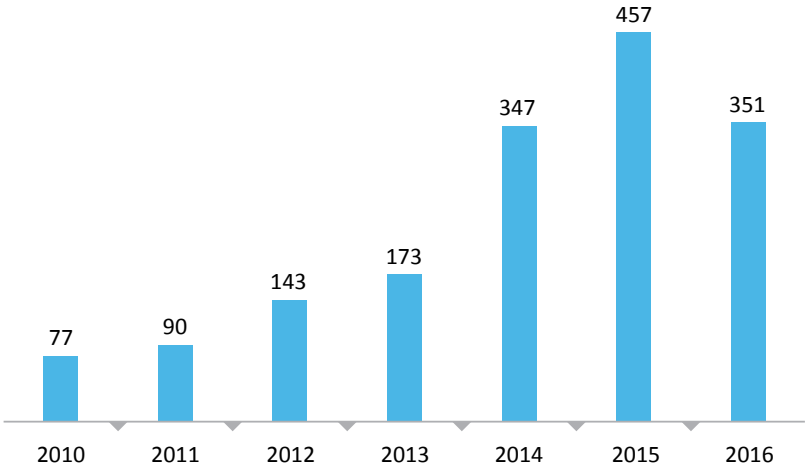
Year		2016
Administrative proceedings	Total administrative proceedings initiated	629
	▪ based on a proposal	278
	▪ Ex officio	351
Decisions	Total first-instance decisions issued	943
	▪ Decisions issued on merits	719
	Remedy + sanction	469
	No infringement of law identified	80
	Procedural grounds	170
	▪ Interim measures	107
	▪ Interim measures rejected	104
	▪ Annulment of decisions imposing interim measures	13
Fines	Number of fines imposed	387
	Total amount of fines imposed	CZK 34,441,000
Costs of Proceedings	Number of cases with costs of proceedings imposed	78
	Total amount of costs of proceedings imposed	CZK 2,340,000
Deposits	Amount of deposits paid	CZK 88,861,692
	▪ Deposits forfeited to the state budget	CZK 11,566,371
Complaints	Number of complaints received	1305

1) The order of the mistakes does not correspond to the frequency of their occurrence.

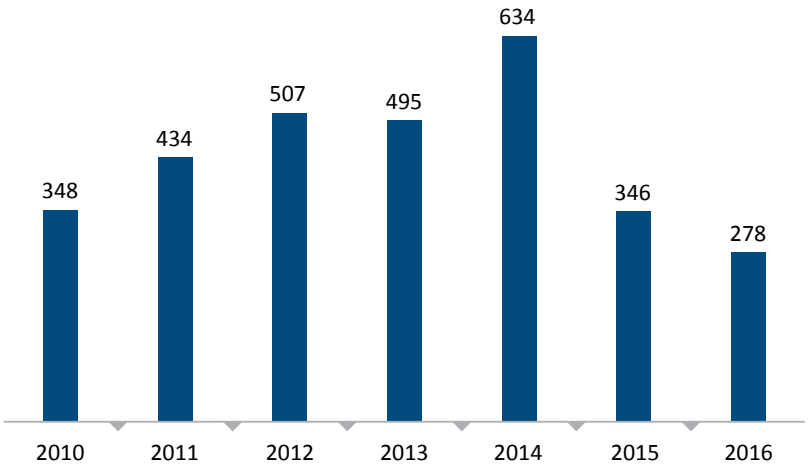
Total number of first-instance proceedings initiated



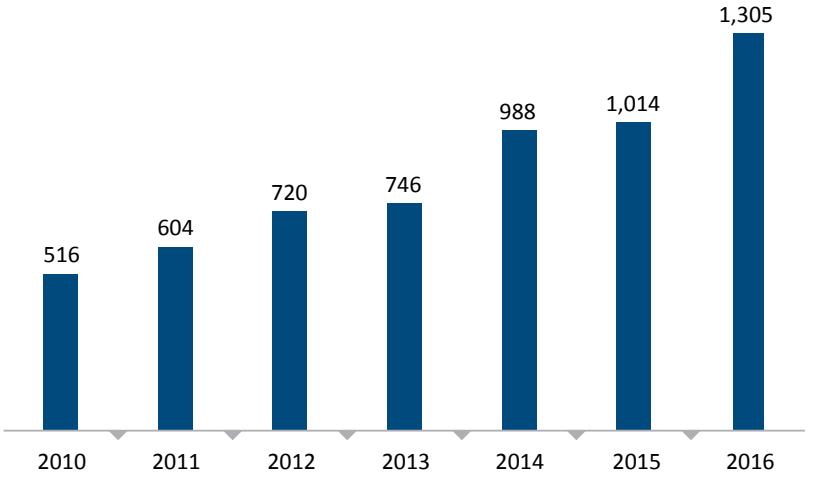
Number of first-instance proceedings initiated ex officio



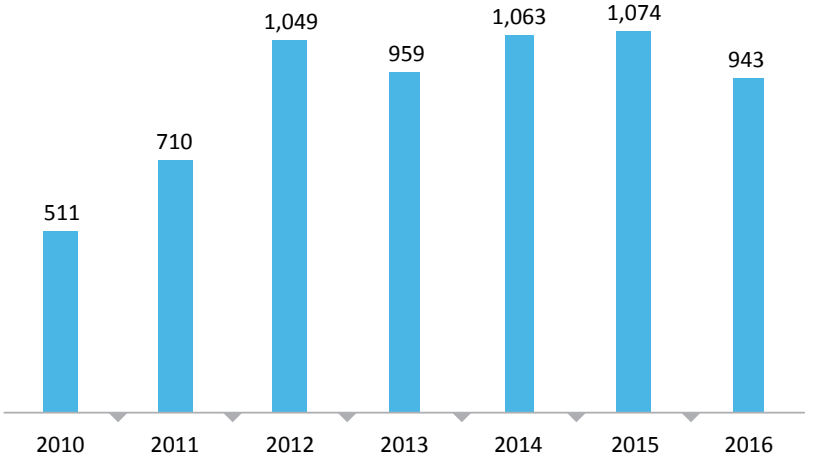
Number of proposals to initiate first-instance proceedings delivered



Number of complaints received



Number of first-instance decisions issued



Overview of the ten highest fines imposed

	Contracting authority	Public contract	Fine in CZK	In force
1.	City of Prague	„Troja Bridge“	11,000,000	16 March 2017
2.	Dopravní podnik hlavního města Prahy, a. s. (Prague Public Transport Company)	Extension of metro line A	8,500,000	2 September 2016
3.	Statutory City of Havířov	Replacement of windows in residential buildings owned by the City of Havířov II.	1,500,000	30 September 2016
4.	General Financial Directorate	TaxTest – Maintenance and supplementation of the database in 2011	1,300,000	29 September 2016
5.	České dráhy, a. s. (Czech Railways)	Purchase of TAURUS locomotives	1,200,000	30 January 2016
6.	Dopravní podnik hlavního města Prahy, a. s. (Prague Public Transport Company)	Conclusion of contracts on lease of space for advertising activity	1,000,000	25 November 2016
7.	Ministry of Transport	Assurance of Electronic Toll System operation after 2016	1,000,000	10 November 2016
8.	České dráhy, a. s. (Czech Railways)	Reduced repairs of passenger wagons with chassis SGP 300 series I Reduced repairs of passenger wagons with chassis SGP 300 series II	800,000	8 September 2016
9.	Service Facilities of the Ministry of Interior	Assurance of demolition work at the garage facility in the compound of the Automobile Repair Shops, Veleslavín, Praha 6, José Martího house No. 385	800,000	15 August 2016
10.	City of Nejdek	Municipal and technical services of the city of Nejdek	750,000	19 April 2016

Significant Cases

Although the new Act on Public Procurement has been in force since October 2016 and the Office has already issued several decisions under this Act, the cases below are decided on the basis of the now ineffective Act No. 137/2006 Coll., on Public Procurement, according to which the contracting authorities initiated and are still conducting a number of award procedures.

TaxTest – maintenance and supplementation of the database in 2011 and Update of the full-text - hypertext KONZULTANT library until 31 December 2011

Contracting authority: **General Financial Directorate**
File number: **S0906,0907,0908,0909,0910,0911,0912,0913,0914,0915,0916,0917,0918,0919/2015**
Date of coming into force: **29 September 2016 (confirmed by R0067/2016)**
Fine: **CZK 1,300,000**

In a total of 14 administrative proceedings combined to one joint proceedings, the Office assessed the contracting authority's procedure in awarding public contracts for concluding contracts related to the development and updating of the "TaxTest" software program for teaching and testing employees and the "KONZULTANT" software library.

The contracting authority awarded all the assessed public contracts in a negotiated procedure without publication pursuant to the Article 23(4)(a) of the Act on Public Procurement, having claimed that these were public contracts which could only be carried out by a single supplier due to the protection of exclusive rights. According to the contracting authority, this was a situation in which the contracting authority requested modifications to the previously delivered performance, which is a copyrighted work in the meaning of the Copyright Act and which presumes copyright infringement. According to the contracting authority, KONZULTA executes all property rights to this information system based on the provisions of the Article 58 of the Copyright Act, and any modification of the information system without the consent of the owner of the property rights is, in the opinion of the contracting authority, a violation of the Copyright Act.

The Office assessed the contracting authority's aforementioned reason for using a negotiated procedure without publication in the light of the facts found in the individual contractual documents and also in the light of the decision-making practice of the Czech courts and the Court of Justice of the European Union, concluding that the reason given by the contracting authority for the use of the negotiated procedure without publication cannot be upheld. In the decision, it found that the contracting authority had failed to bear the burden of proof because it did not demonstrate or prove that the subject of the given public contracts could be performed by only one supplier. The contracting authority did not provide any technical reasons or relevant objective evidence in terms of KONZULTA's exclusive rights to prove the reason for applying the exception granted by the legislature. If applying a negotiated procedure without publication, it is the contracting authority which must clearly demonstrate that there are reasons for its use.

The Office further stated that the defective state of exclusivity of KONZULTA was caused by the contracting entity's predecessor, but with reference to economic benefits, the contracting authority should not have relied on this contractual commitment of the original contracting authority and instead should have examined whether the legally foreseen conditions for using a negotiated procedure without publication have been met in each individual case of awarding the public contract in a negotiated procedure without publication.

Delivery of attire for the Prague City Police

Contracting authority: **City of Prague**
File number: **S0476/2016**
Date of coming into force: **3 January 2017 (confirmed by R0246/2016)**
Fine: **CZK 500,000**

The administrative proceedings were initiated ex officio, following a complaint. The Office investigated whether the contracting authority defined a transparent method of evaluating the bids based on the evaluation criteria in the tender documentation for part A "Standard uniform articles and uniform accessories for work performance by Prague City Police officers" of the public contract "Delivery of attire for the Prague City Police", the subject of which was the delivery of uniforms for members of the Prague City Police.

In the administrative proceedings, the Office concluded that the contracting authority committed an administrative offence pursuant to the Article 120(1)(a) of the Act on Public Procurement, by failing to define a transparent manner in the tender documentation of the method of evaluating the bids according to the sub-criterion "weight of goods" and the evaluation sub-criterion "comfort and tailoring of goods" within the partial evaluation criterion "quality of offered goods". The Office found that the contracting authority did not stipulate adequately clear rules for assigning point scores for these sub-criteria and thus did not enable tenderers to get a clear idea before drafting their bids as to how the contracting authority will assess discrepancies from the recommended grammage of the goods, its preferences in terms of the appearance and functionality of the uniform articles and the specific parameters to actually be assessed in the tailoring of the goods. The contracting authority's procedure could significantly influence the selection of the best bid, since had the contracting authority better defined the evaluation of bids within the given sub-criteria, the tenderers could have better adapted their bids to the contracting authority's preferences and achieved better evaluation. Moreover, the contracting authority's procedure could have dissuaded other suppliers from submitting bids.

In the administrative proceedings, initiated ex officio, the Office in its decision concluded, that the contracting authority committed an administrative offence pursuant to the Article 120(1)(f) of the Act on Public Procurement, failing to submit the complete documentation for the public contract to the Office within the deadline stipulated by the Act (within 10 days from delivery of the Office's request). Yet the timely submission of complete documentation about the public contract is an essential condition for reviewing the contracting authority's procedure by the Office and concluding the administrative proceedings by the statutory deadlines.

Reconstruction of the transport terminal in Žatec

Contracting authority: **City of Žatec**
File number: **S0046/2016**
Date of coming into force: **7 November 2016 (confirmed by R0164/2016)**
Fine: **CZK 200,000**

In an administrative proceedings initiated ex officio, the Office considered the possible discriminatory setting of qualification requirements for participation in the public procurement for the construction of a bus station. The contracting authority stipulated reference contracts as one of the qualification conditions, and the tenderer had to prove that it had performed the construction of a building with a circular ground plan with a monolithic reinforced concrete wall construction system based on reinforced concrete pilot. At the same time the potential supplier had to prove as a reference building the construction of a covered platform or other construction work of a similar character (e.g. tribunes), for which it had to prove that the construction was based on pilots and the roofing was at least 200 m^2 for each contract.

The Office's suspicion of an administrative offence was based on the combination of a particular ground plan for a building and a particular type of construction along with a certain type of foundation, which unreasonably combines the requirements for several different construction activities into a single reference without the linking of these activities being justified by the specific and correlated nature of these activities. According to the Office, this could constitute covert discrimination, where potential tenderers who were able to perform the individual tasks required but had never implemented them within a single construction were excluded from participation in the award procedure.

The Office had verified the aforementioned suspicion by an expert institute - the Brno University of Technology, Faculty of Civil Engineering, branches of expert activities: Geodesy and Cartography and Construction. The expert opinion confirmed the Office's original suspicion that it is generally unjustified to define the requirements for reference contracts within the qualification requirements not on the basis of specific activities (for example, experience with pilot foundations), but on the basis of the specific form of a construction, as did the contracting authority (i.e. a circular construction based on pilots). Taking into account the conclusions of the expert opinion, which confirmed that the method of founding the building does not have any significant influence on the above-ground construction, the Office assessed the contracting authority's requirement for performance of contract for a reference construction with a circular ground plan and a reference construction of a similar type as a construction performed on the basis of reinforced concrete pilots, to be an expression of covert discrimination.

Given that the excessive specification of requirements for reference construction, albeit only in selected characteristics, leads to the unjustified narrowing of the award procedure and unacceptable discrimination, the use of specific characteristics for reference constructions and their excessive accumulation and combination limits the range of undertakings not to those who are qualified to perform the subject of the public contract, but instead to those who have had an opportunity to provide such specific performance in the past. The performance of a construction that shows the specific performance required in the partial characteristics, does not demonstrate the greater ability of a supplier than the abilities of suppliers who did not have the opportunity to perform such construction, but have performed constructions of a similar type and of comparable difficulty.

Delivery of 31 two-carriage engine units

Contracting authority: **České dráhy, a. s. (Czech Railways)**
File number: **S0694/2015**
Date of coming into force: **7 December 2016 (confirmed by R0412/2015)**
Fine: **CZK 200,000**

The subject of the Office's investigation in this case was the issue of whether, by amending the purchase contract under amendment No. 4, which concerned contractual penalties, the contracting authority permitted a fundamental change in the rights and obligations arising from the purchase contract in contradiction of the Act, and thus breached the rules under which concluded contracts may be amended as formulated in the Article 82(7) of the Act on Public Procurement. It is a reflection of the rules previously defined in the judgement of the Court of Justice of the European Union the case of Pressetext Nachrichtenagentur GmbH vs. Austria, C-454/06 of 19 June 2008.

In its decision, the Office concluded that the contracting authority committed an administrative offence by adopting amendment No. 4 on 17 September 2012 to the purchase contract concluded on 17 March 2011 with the selected tenderer for the public contract. The Article IV of the purchase contract dated 17 March 2011 was extended to include new provisions concerning contractual penalties, in the sense that the contracting authority will not be entitled to demand a contractual penalty from the selected tenderer for delays in delivery of the individual engine units for the period during which this unit is being used by the contracting authority in trial operation with passengers. In other words, the contracting authority allowed a fundamental change in the rights and obligations arising from the respective purchase contract, because such change, had it been applied in the original award procedure, could have allowed the participation of other suppliers. Based on this, it would have been sufficient to deliver the engine units to the contracting authority and run them in trail operation, instead of due handover for live operation, the non-compliance with which was originally subject to contractual sanctions.

Bridge reg. No. 12418-2 over the creek in front of the Zadní Lomná municipality

Contracting authority: **South Bohemian Region Roads Management and Maintenance Company**
File number: **S0253/2016**
Date of coming into force: **25 November 2016**
Corrective measure: **cancellation of the contracting authority's decision on cancellation of the award procedure**

The Office observed that the contracting authority did not follow the procedure stipulated in the Article 84(2)(c) of the Act on Public Procurement, in conjunction with the Article 6(1) of the Act on Public Procurement, because it decided to cancel the award procedure for a public contract due to the selected tenderer's failure to provide anassistance pursuant to the Article 82(4) of the Act on Public Procurement. The contracting authority did so despite the fact that it had invited the second successful tenderer to conclude a contract in the meaning of Article 82(4) of the Act on Public Procurement. The contracting authority thus decided to cancel the award procedure before the expiry of the deadline in which the second successful tenderer had to provide cooperation before the conclusion of the contract. In this situation, when it was not yet certain that the tenderer which had previously asked to provide cooperation before the conclusion of the contract and had actually not provided this cooperation, the principle of transparency of the award procedure had not been fulfilled, since mentioned procedure significantly influenced the selection of the best bid.

In this case, the contracting authority decided, after the selected tenderer failed to provide cooperation, not to cancel the award procedure. Instead of this, the selected tenderer took steps aimed at concluding the contract with the second successful tenderer, having called on this tenderer to submit the originals or officially certified copies of the documents proving the fulfilment of the qualification requirements, and to conclude the contract (the contracting authority awarded the relevant public contract in simplified below-the-threshold procedure). However, before expiration of the deadline for providing assistance by this tenderer, the contracting authority decided to cancel the respective award procedure with the justification that the selected tenderer did not provide assistance to conclude the contract. The Office stated that an award procedure can be cancelled pursuant to the Article 84(2)(c) of the Act on Public Procurement with the given justification without undue delay only in a situation when the selected tenderer does not provide assistance to the contracting authority, and the contracting authority does not consequently invite the second successful tenderer. If the contracting authority decides to pursue the process aimed at concluding the contract by inviting the second successful tenderer to duly cooperate in concluding the contract, the relevant provision of the Act with the respective justification can no longer be applied (until the contracting authority is again denied providing assistance by the second successful tenderer) in order to preserve the transparency of the award procedure.

Part 3 "Public Investment law, IT and ICT law" of the public contract "Provision of Legal Services"

Contracting authority: **General Directorate for National Roads and Motorways**
File number: **S0529/2016**
Date of coming into force: **11 October 2016**

In the present case, the Office assessed the justification of excluding a tenderer from participation in the award procedure for a public contract, the subject of which was the provision of legal consultancy in the field of public investment. The tenderer proved the fulfilment of the qualification criteria required by the contracting authority, consisting of the provision of legal consultancy in drafting tender conditions for public contracts awarded in the form of a restricted procedure, by means of a reference contract consisting of the drafting of tender conditions for a public contract awarded in the form of a negotiated procedure with publication. In the contrary, the contracting authority did not recognise this proof of qualification requirements and excluded the tenderer.

In the given case, the Office deduced through a detailed analysis of the specified types of award procedure, that the initial phase of drafting the tender conditions, proof of which was required by the contracting authority, does not show any systemic differences in the case of a restricted procedure and negotiated procedure with publication. Precisely, the drafting of tender conditions for a negotiated procedure with publication in fact immanently absorbs the drafting of tender conditions for a restricted procedure. Hence, the tender conditions for a negotiated procedure with publication do not show any substantive differences compared to the tender conditions for a restricted procedure, except that they must additionally contain the relevant information pertaining to the phase of negotiating the bids. Therefore, the Office concluded that the contracting authority, failed to assess the substantive aspects of the submitted documents by not taking account of the possible absorption of the experience required by the contracting authority, which followed from the reference submitted by the tenderer.

In the grounds of the decision, the Office emphasized that in the given case, it did not assess the complexity of the individual types of award procedures, but rather the assumption of mutual absorption of their individual elements.

Šumava operation system

Contracting authority: **South Bohemian Region**
File number: **S0203/2015**
Date of coming into force: **15 July 2015 (the operative part of the decision No. II, III and IV confirmed by R0337/2015) and 30 March 2016 (the operative part of the decision No. I confirmed by R0031/2016)**
File number: **S0590/2015**
Date of coming into force: **17 June 2016 (confirmed by R0045/2016)**

Within the administrative proceedings S0203/2015, the Office assessed whether the tender conditions contested by the petitioner were in compliance with the Act, as well as whether the contradictory nature of these tender conditions became apparent only during the award procedure. At the same time, the Office considered whether the contracting authority (ordering party) proceeded in accordance with applicable legal regulations in assessing the extremely low remuneration (price) of the selected carrier.

In the operative part of the decision No. I. the Office rejected the parts of the proposal contesting the tender conditions, or more precisely the contract award conditions, without a reference to the specific provision of the relevant legal regulation. Neither the Act on Public Procurement nor the Act No. 194/2010 Coll., on Public Passenger Transport Services and on the amendment to other regulations, provide support for their application, i.e. they do not contain provisions according to which the proposal can be rejected. However, in the course of legal assessment, the Office in relation to the contested tender conditions referred to the fact that these were conditions which were known in advance to the suppliers, and therefore also to the petitioner, meaning that their potential illegality would not have become obvious in the course of the tendering procedure. Objections against the tender conditions contested by the petitioner should therefore have been duly applied by the deadline for submission of objections against the tender conditions. In the decision, the Office de facto concluded that in these parts, the complaint was filed by an unauthorised party, because the complaint was not preceded by duly and punctually filed objections. The petitioner filed an appeal against the operative part of the decision No. I. By decision of the Chairman of the Office R0205/2015, the operative part of the decision No. I. was annuled and the case was reffered to the Office for renewed consideration, where the first instance authority was bound to ensure that the the operative part of the decision of the decision contain a specific provision of a legal regulation, according to which the decision was made, or to leave to consideration whether it is possible to apply the institute of analogy in the given case due to the "loophole In regulation". The Office, bound by the legal conclusions of the second-instance decision, then issued a new decision, in which it rejected the petitioner's complaint in the parts directed against the tender conditions of the award procedure pursuant to the Article 118(5)(c) of the Act on Public Procurement per analogiam, because it was not filed by an authorised party. Hence, it is evident from the foregoing that even in the case of a complaint pursuant to the Act No. 194/2010 Coll., it is necessary for the complaint to be preceded by the due and timely filing of objections. In situations when this is not the case, the complaint is filed by an unauthorised party and is rejected for this reason without substantive review. The conclusions on the timeliness of filed objections were not contested in the second-instance decision, and in this regard the arguments of the first instance authority remained identical in the substantive part of the assessment. This conclusion, meaning the application of the Article 118(5)(c) of the Act on Public Procurement to the award procedure per analogiam, was subsequently confirmed by the decision of the Chairman of the Office R0031/2016. The original decision S0203/2015 also contained the legal conclusions concerning the contracting authority's procedure in assessing the extremely low bid price (extremely low remuneration) of the selected supplier, where the Office in the operative part of the decision No. II observed the illegality of the contracting authority's procedure in its assessment. Thus the contracting authority's procedure in this regard was not entirely transparent and was limited merely to a concise statement that an extremely low bid price was not identified in any of the bids, although the petitioner has already submitted indications in the objections that may have suggested the occurrence of an extremely low bid price from the selected supplier. According to the operative part No. III of the original decision, the Office annuled the contracting authority's actions related to assessing the extremely low bid price (remuneration) and selection of the best bid.

The administrative proceedings ref. No. S0203/2015 related to the issue of the extremely low bid price (remuneration) were followed up with administrative proceedings ref. No. S0590/2015. The petitioner's complaint was directed against the new, or more precisely repeated assessment of the extremely low bid price of the selected carrier by the ordering party (because the "original" assessment was cancelled by the Office according to the operative part No. III of decision S0203/2015). The Office rejected the petitioner's complaint pursuant to the Article 31(2) of the Act No. 194/2010 Coll., on Public Passenger Transport Services and on the amendment to other acts, because no reasons were found to impose a corrective measure pursuant to the Article 31(1) of the cited act. In the relevant case, the Office in its assessment primarily reflected the manner in which the contracting authority in the course of the award procedure handled the fact that it had no doubts about the occurrence of an extremely low bid price (extremely low remuneration). In an annex to the report on assessment and evaluation of bids, the contracting authority conducted an analysis of the price bid offered by the selected carrier, which it subjected to a detailed review from several points of view, whereas the analysis in question contained 5 parts in this sense, namely:

- assessment of the significance of the difference between the estimated value of the public contract and the price offered for performance of the public contract;
- assessment of the value of remuneration offered by the selected carrier in terms of the significance of the difference between this remuneration and the remuneration provided to other transport undertakings or on other regional lines;

- assessment of the value of remuneration offered by the selected carrier in terms considering all the costs associated with performing the public contract, in particular in terms of considering the costs for service facilitation;
- assessment of the value of the variable remuneration component offered by the selected carrier in view of the exceptionally low price;
- assessment of the value of the unit and variable part of remuneration offered by the selected carrier in comparison with the bids of other tenderers - comparability of bids.

Based on the contracting authority's conclusions, in particular in the present analysis, the Office concluded that the contracting authority's procedure in assessing the extremely low bid price does not show elements of illegality, and decided as previously stated above, i.e. to reject the petitioner's complaint. The Office's concerned decision was confirmed by decision of the Chairman in case ref. No. R0045/2016.

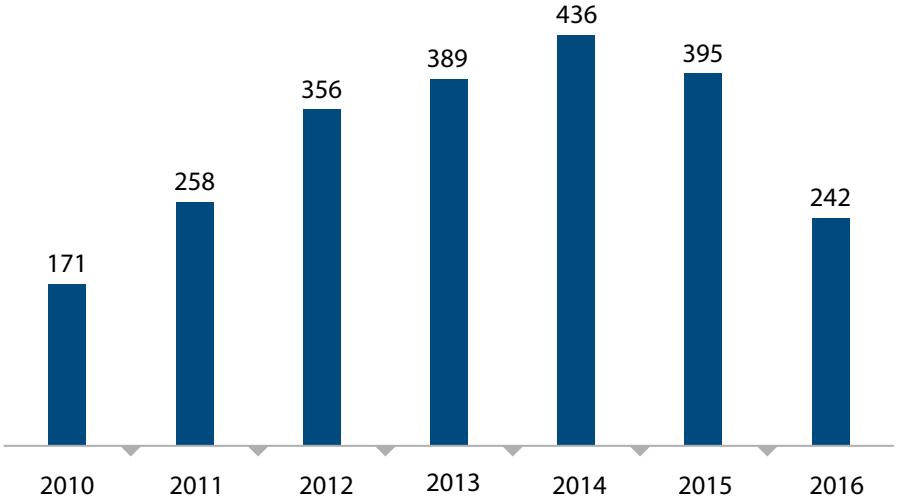
Appellation Proceedings

Number of appeals handled in appellation proceedings has increased for the sixth consecutive year. In 2016, the Office issued 480 decisions of the Chairman, which is a 13.5% increase compared to 2015. On the contrary, the number of appeals filed against the Office's first instance decisions declined for the second year running, decreasing about one third in 2016 compared to the previous year and thus reaching the values of 2011.

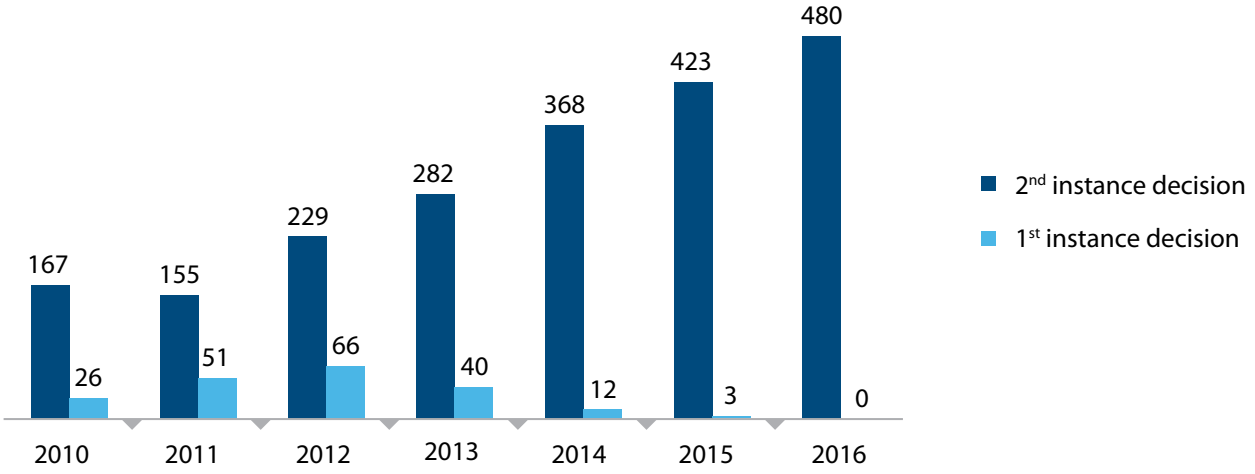
The effectiveness of second-instance decision-making proceedings of the Office was manifested in the number of unfinished administrative proceedings as at 31 December 2016, which decreased to one quarter of the value of the previous year. On the contrary, the value of imposed sanctions increased by about one quarter year-on-year.

Appellation Proceedings		
Number of appeals filed against first-instance decisions		242
Second-instance administrative proceedings initiated		242
Second-instance administrative proceedings not completed by 31 December 2016		80
Decisions on appeals issued	Total	480
	of which ▪ First-instance decisions upheld and appeal dismissed	317
	▪ First-instance decisions overturned and remanded to the Office	31
	▪ First-instance decisions overturned and administrative appellate proceedings suspended	113
	▪ Appeals dismissed for lateness	7
	▪ Appeals dismissed for inadmissibility	1
	▪ First-instance decisions changed	1
	▪ Decided by the Chairman of the Office in review procedure	1
	▪ Decisions of the Chairman overturned	3
	▪ Decisions of the Chairman on suspension of appellate proceeding	6
Procedural decisions (resolutions) of the Chairman of the Office		51
Number of appeals handled in the first instance		0
Fines	Number of fines imposed	132
	Amount of fines imposed	CZK 26,717,000

Number of appeals filed against first instance decisions



Number of appeals handled in appellate proceedings



Significant Cases

Extension of metro line A

Contracting authority: **Dopravní podnik hlavního města Prahy, a. s. (The Prague Public Transport Company)**
File number: **R297/2015**
Fine: **CZK 8,500,000**
Date of coming into force of the Office's decision: **2 September 2016**
The decision of the Office´s Chairman was challenged.

The Chairman of the Office confirmed the fine of CZK 8,500,000 imposed on the Prague Public Transport Company for an administrative offence committed in relation to the public contract for the extension of metro line A. The contracting authority did not follow the procedure laid down by the Act on Public Procurement when it failed to specify transparently in the bid evaluation documents the manner of evaluating the bids according to the partial evaluation criterion „construction organisation plan".

By stipulating the method of evaluating bids according to the partial evaluation criterion "construction organisation plan", the contracting authority failed to provide adequately detailed data that would enable a prior understanding of the evaluation method pursuant to this partial evaluation criterion. Hence, individual tenderers did not have specific, accurate and comprehensible information within the partial evaluation criterion, as to which of their solutions would be considered the most advantageous for the contracting authority. The contracting authority thus failed to fulfil the principle of transparency and its procedure could influence the selection of the best bid. The contracting authority concluded an agreement on performance of the public contract with the stakeholders of the Metro V. A Consortium (Dejvická–Motol), which comprises Metrostav a. s. and Hochtief CZ a. s.

The evaluation criteria are a key part of the tender documentation, because they are used for evaluation of the bids from the individual tenderers. Therefore, they have to be accurately specified and transparently stipulated, because the performed evaluation of bids based on the evaluation criteria must be reviewable. The evaluation of bids is conducted according to the evaluation criteria defined in the tender documentation for the public contract, and this is one of the most important phases of the entire public procurement procedure with a direct impact on selecting the best bid.

The Chairman of the Office rejected all of the petitioner's objections specified in the appeal, when inter alia he confirmed that the first instance authority did not restricted the procedural rights of the party to the proceedings, that the evaluation of evidence complied with the the operative part of the decision, and that an assessment of the legality of the defined evaluation criteria did not require expertise in the field of construction.

When imposing the fine, the Office took into consideration the severity of the committed administrative offence, and with regard to the maximum possible value of this fine it imposed the highest fine enforceable measured out in 2016.

Advertising space

Contracting authority: **Dopravní podnik hlavního města Prahy, a. s. (The Prague Public Transport Company)**
File number: **R240/2016**
Fine: **CZK 1,000,000**
Date of coming into force of the Office's decision: **25 November 2016**
The decision of the Office's Chairman was not challenged.

The Chairman of the Office rejected the appeal lodged by the petitioner and upheld the first instance decision, in which the Office concluded that the contracting authority committed an administrative offence pursuant to the Article 27(1)(a) of the Concession Act, by failing to observe the procedure stipulated in the Article 5(1) of the Concession Act. The Prague Public Transport Company and the concessionaire concluded an amendment to the agreement, which is a concession agreement pursuant to the Article 16(1) and (2) of the Concession Act, with an expected income for the concessionaire of more than CZK 20 million, without having selected this concessionaire in a concession procedure, whereas this procedure could significantly influence the selection of the best bid.

On 31 January 1997, Dopravní podnik hlavního města Prahy and the concessionaire concluded an agreement on the operating advertising by the concessionaire using advertising space owned by Dopravní podnik hlavního města Prahy; subsequently on 30 October 2013, Dopravní podnik hlavního města Prahy and the concessionaire concluded an amendment to this agreement, which newly regulated their mutual rights and obligations, in particular to ensure the future development of digital advertising and the promotion of digital advertising in the Prague public transit system. In the administrative proceedings, the Office assessed that the contracting authority breached the Concession Act and committed an administrative offence when it concluded the said amendment to the concession agreement with the concessionaire, without having chosen this concessionaire in a concession procedure, whereas this procedure could have significantly influenced the selection of the best bid, and imposed on a fine equal to CZK 1 million on Dopravní podnik hlavního města Prahy. Dopravní podnik hlavního města Prahy admitted its mistake, but did not agree with the value of the imposed fine and filed an appeal against the the operative part of the decision on the fine, which the Chairman of the Office rejected and confirmed the value of the imposed fine, because there were no grounds for its reduction.

Ensuring of administration and development of the Basic Register of Persons (ROS) information system

Filing of a petition to the Office by a subcontractor
Contracting authority: **Czech Republic – Czech Statistical Office**
File number: **R309/2015**
Corrective measure: **proposal rejected**
Date of coming into force of the Office's decision: **16 June 2016**
The decision of the Office's Chairman was not challenged.

The Chairman of the Office rejected the appeal lodged by the petitioner and upheld the first instance decision in which the Office decided that the petitioner's proposal is rejected, because it was not filed by an authorised party.

The Office, or more precisely the Chairman of the Office, concluded that the petitioner is not a supplier in the meaning of the Article 17(a) of the Act, and since the petitioner is a subcontractor to the tenderer ADASTRA, it does not have an interest in winning the public contract, which only the supplier submitting a bid, or more precisely seeking to submit a bid, does have. According to the Office, the subcontractor is not interested in winning the public contract "for itself", but merely in concluding a contract for performance of the subcontract with the supplier, who has a potential chance of winning the public contract. According to the Chairman of the Office, the subcontractor has no liability as a supplier vis-a-vis the contracting authority in the award procedure, which also applies during subsequent performance of the public contract. A legal relationship is established only on the basis of the agreement between the contracting authority and supplier arising from the award procedure (i.e. selected tenderer).

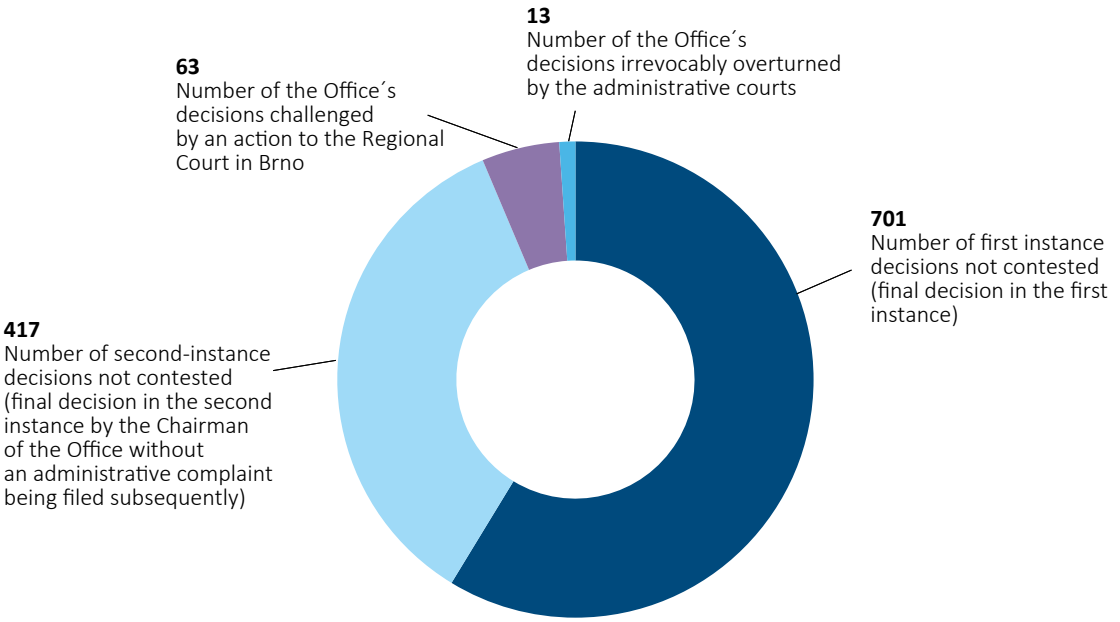
After the submission of bids, the petitioner has no longer competed for the public contract by itself, nor could it. Hence, it cannot be deduced that after submission of the bids, the subcontractor has any "interest in winning the public contract" which should be interpreted as an interest in winning the contract "for itself". Given the factual circumstances of the case, the petitioner could not win the public contract even hypothetically; only the supplier could have won it. Hence, there was no cumulative fulfilment of 2 conditions for active legitimacy of the petitioner to submit objections pursuant to the Article 110(1) of the Act and in conjunction with this a petition pursuant to the Article 114(1)(a) of the Act.

Judicial Review

In the field of public procurement, the number of actions brought by complainants to the Regional Court in Brno was consistent compared to the previous year, but the number of cassation complaints increased by 60%, both by the Office (46% increase) and by the complainants (75% increase). In 2016, the administrative courts irrevocably overturned 13 decisions of the Office. Compared to the total number of first and second-instance decisions issued, the success rate of the Office's decision-making process in the field of public procurement was almost 98% in 2016.

Judicial Review		
Number of actions brought before the Regional Court in Brno		63
Number of cassation complaints filed brought before the Supreme Administrative Court		40 (of which 19 filed by OPC and 21 by complainants)
Number of decisions issued	Regional Court in Brno	63
	Supreme Administrative Court	33
of which in favour of the Office	Regional Court in Brno	41
	Supreme Administrative Court	22
in favour of the complainant	Regional Court in Brno	22
	Supreme Administrative Court	11
Success rate percentage of the decisionsof the Office with respect to total number of 1st and 2nd instance decisions issued (i.e. 1,423 decisions)		98%

Success rate of OPC decisions in public procurement in 2016



Significant Cases

Šumava operation system

Contracting authority: **South Bohemian Region**
File number: **R31/2016 (Judgement of the Regional Court in Brno ref. No. 62 Af 52/2016-221 of 4 November 2016)**
Corrective measure: **proposal rejected**
Date of coming into force of the Office's decision: **24 March 2016**

The Chairman of the Office rejcted the appeal lodged by the petitioner (České dráhy, a.s.) and upheld the first instance decision according to which the Office decided to reject the petitioner's proposal pursuant to the Article 118(5)(c) of the Act per analogiam, because the proposal was not filed by an authorised entity.

The Office decided to reject the part of the petitioner's proposal pursuant to the Act on Public Procurement per analogiam, because the proposal was not filed by an authorised entity. This case concerns a situation in which the Act on Public Passenger Transport Services refers to the Act on Public Procurement not only in relation to objections, and therefore the individual provisions of the Act on Public Procurement concerning the procedure of the Office in performing supervision over the award procedures can be considered, in terms of their nature and purpose, to be the closest regulation of the Office's procedure pursuant to the Act on Public Passenger Transport Services. Although the agreement on public passenger transport services has features which would rather classify it as a concession agreement, it is evident that even the Concessions Act refers to the Act on Public Procurement, and that this Act is considerably more complex in regulating the Office's procedure than the Concessions Act. Hence, the Regional Court confirmed that if the Office came to the conclusion that the complainant's objections were directed against the tender specifications, and where therefore submitted late and if they were applied only after the passing the time limit for the submission of objections to the tender specifications, it proceeded correctly when applying the Act on Public Procurement per analogiam (so called anologie iuris) → as it had to interpret and apply imperfect legislation.

Within the court proceedings under ref. No. 62 Af 52/2016, the Regional Court in Brno upheld the Office's decision and rejected the complainant's action.

Conclusion of contracts for delivery of a license for the parking card application (Opencard)

Contracting authority: **City of Prague**
File number: **R97,102/2012 (Judgement of the Supreme Administrative Court ref. No. 1 As 256/2015-95 of 12 May 2016)**
Fine: **CZK 600,000**
Date of coming into force of the Office's decision: **27 September 2013**

The Chairman of the Office rejected the appeal filed by the contracting authority and upheld the first instance decision according to which the Office decided that the contracting authority committed an administrative offences pursuant to the Article 120(1)(a) of the Act by failing to comply with the procedure set out in the Article 21(2) of the Act. The Office concluded the relevant contracts for delivery of a license for the parking card application in a negotiated procedure without publication of a notice, without having met the conditions stipulated in the Article 23(4)(a) of the Act, whereas this procedure on the part of the contracting authority could significantly influence the selection of the most suitable bid.

In 2007, the City of Prague concluded a contract with HAGUESS, a. s. on the development of solution specifications for a card service centre (Opencard), in which it agreed with licensing conditions under which both the City of Prague and Dopravní podnik hlavního města Prahy (Prague Public Transit Company) would conclude all subsequent contracts in negotiated procedures without publication of a notice, i.e. without a tender. The Regional Court in Brno first upheld the Office's decision in relation to the contracting authority (City of Prague), i.e. that the contracting authority's procedure was contrary to the Act because it caused the state of exclusivity. However, it deemed that Dopravní podnik hlavního města Prahy could not be liable for the offence, the conditions of which ensued from the licensing conditions caused by the City of Prague. Based on a cassation complaint from the Office, the Supreme Administrative Court concluded that Dopravní podnik is a joint-stock company, of which the City of Prague is the founder and sole shareholder. According to the Supreme Administrative Court, it would truly be a denial of the meaning and purpose of the laws on public procurement assuming the conduct of the City of Prague was illegal while the same conduct of Dopravní podnik hlavního města Prahy was legal, merely because the latter as an entity controlled by the City of Prague was bound by the licensing conditions agreed by the former. Hence, the Regional Court based on abovementioned judgement of the Supreme Administrative Court subsequently rejected the action filed by Dopravní podnik hlavního města Prahy.

State Aid

In the field of state aid, the Office performs the functions of the coordinating body, consisting of central coordination, advisory and consultancy activities and monitoring activities in all areas except agriculture and fishing. The Office primarily cooperates with providers in the preparation of notices of state aid measures to the European Commission (hereinafter referred to as the "Commission"), with the Commission and with the provider within proceedings before the Commission, inter alia proceedings relating to notified state aid, in cases of unlawful state aid, misuse of state aid, existing state aid schemes, and when the Commission performs unannounced inspections within the territory of the Czech Republic. The Office submits an annual report on state aid granted in the preceding calendar year in the Czech Republic to the Commission in accordance with the relevant regulations of the European Union. In terms of legislation, the Office represents the Czech Republic during the negotiation and preparation of EU legislation in the area of state aid. Not least, the Office is the administrator of the central register for small-scale aid, and since 2016 has also been the national coordinator of the European Commission Transparency Award Module system (hereinafter referred to as the "European Commission TAM system").

The central theme for 2016 was the finalisation of the work related to the newly implemented obligation for providers to register certain data about aid schemes and individual aid exceeding the limits stipulated in the modernised rules on state aid on the summary website as of 1 July 2016, and the related development of this website. The European Commission TAM system serves these purposes as of the given date. The provider must register every individual state aid provided since 1 July 2016 (including aid based on an aid scheme whose duration began before 1 July 2016) into the European Commission TAM system based on the regulations setting the rules for the providing of state aid and which exceed the stipulated limit.

In this context, the Office in cooperation with the Ministry of Agriculture compiled a **Methodology for Fulfilling the Transparency Obligation** (hereinafter referred to as the "Methodology") intended for state aid providers, which sets forth how to cope with the mandatory requirements for transparency of state aid under European Union law when using the European Commission TAM system. The state aid provider's obligation to disclose data follows from European regulations on state aid, which are directly applicable, and from the individual decisions of the European Commission in specific cases which are directly binding for the parties involved. The Methodology is based on the relevant EU regulations, the methodological guidelines of the European Commission and consultations of this issue with the European Commission. The Office trained a whole range of aid providers on the subject of the transparency obligation in 2016, in order to facilitate due fulfilment of the new obligation since 1 July 2016.

As a part of its coordination, advisory and educational activities, the Office updated the document **Instructions for Administration of State Aid pursuant to Commission Regulation** (EU) No. 651/2014, i.e. the General Block Exemption Regulation (hereinafter referred to as the "General Regulation" or "GBER"), which is available on the Office's website. The document is a practical guide for providers who apply the General Regulation to specific aid measures, highlighting the aspects to be taken into account when assessing the suitability of application of the General Regulation, or the correct definition of a specific aid measure in terms of complying with the relevant conditions of the GBER. It also contains recommendations for the most appropriate procedure when completing the notification form and subsequent communication with the Office when finalising the notification under the GBER so that the correctly completed notification form can be submitted to the European Commission within stipulated 20-day deadline from entry into force of the notified measure. The guideline was amended with the latest findings from the Office's practice related to the application and notification of aid measures under the General Regulation and clearly extended by additional obligations arising from other legislation. The document also includes a specimen complete notification form pursuant to the GBER.

The information material concerning the recommended procedure for providers in the event of notification of the aid measures to the European Commission was also updated, and included a recommendation for providers to contact the Office in advance of the notification in order to prepare the best possible documentation for the notification. Among other things, this information material contains a brief overview of possible procedures for assessing the notified measure by the European Commission.

After a two-year period of applying the modernised state aid rules, the Office issued an information bulletin titled State Aid Two Years After Modernisation, in which it focused on the practical experience of application practice in relation to the new rules for state aid and the current decisions of the European Commission in this area. The information bulletin also describes the content and status of the revision process of the General Block Exemption Regulation, the conclusion of which is expected in the first half of 2017. Other continuously updated documents and up-to-date information are available on the Office's website under section state aid.

Ultimately, the Office's educational and advisory activities last year were also conducted through a series of training events, seminars and conferences. In the first half of 2016, the Office implemented an educational campaign addressed primarily to providers from the ranks of regions, cities and municipalities. A series of lectures held in the individual regions of the Czech Republic were focused in particular on the application of the General Block Exemption Regulation as the most authoritative regulation permitting the granting of state aid without

requiring assessment by the European Commission. Attention has been paid to services of general economic interest, which are or better "may be" a practical solution to state aid for regions and municipalities. The new transparency obligation of state aid was also a key topic. Based on the information submitted by state aid providers within the framework of services of general economic interest, the Office processed and submitted to the European Commission a report on the implementation of the decision of 20 December 2011 on the application of the Article 106(2) of the Treaty on the Functioning of the European Union on state aid in the form of compensation payment for the public service obligation granted to certain undertakings entrusted with the provision of services of general economic interest. The report is compiled at regular two-year intervals and this year it was sent to the European Commission at the end of June 2016.

Participation in Seminars and Working Groups

During 2016, representatives of the Office attended working group meetings at both national and European levels. Cooperation between the Office and the Ministry of Regional Development continued at the national level within the Working Group for State Aid, whose members are entities involved in the implementation of individual operational programmes, which includes not only the managing authorities but also the payment certification authority and the auditing authority. The Working Group for State Aid mainly addressed issues related to the emergence of the new European Commission TAM system and the obligation of transparency of state aid.

Advisory committee meetings with the participation of representatives of the Member States and the European Commission were also held to discuss the European Commission's proposals for specific regulations, for instance on the issue of the European Commission TAM system and revision of the General Block Exemption Regulation.

In 2016, the Office organised a meeting of the working group for the implementation of rules for state aid. This group is a platform of representatives from the coordination units for state aid of the individual European Union Member States and representatives of the European Commission, set up in June 2014 following the modernisation of state aid rules. The platform is intended to exchange views and experience among stakeholders in applying modernised rules, aimed towards the more effective application of these rules. The working group meeting took place in Prague, and has served as preparation for the high-level June meeting of the working group of representatives from the European Union Member States and European Commission, which took place in Brussels.

In addition to standard procedures for notified state aid measures, the Office also coordinated a number of formal and informal meetings between providers and the European Commission within pre-notification or consultation procedures. For instance, important meetings concerned the field of financial instruments, state property management, audiovisual issues, financing of infrastructure projects and research, development and innovations. As for the other individual cases handled by the Office last year (the solving of many of them will continue in 2017), it can be stated that the Office recorded an increased number of complaints submitted to the European Commission by interested parties last year compared to the previous years. In the matter of complaints filed with the European Commission, the Office cooperates with the providers of alleged unlawful state aid contested by complainants, especially during the expert evaluation or assessment of the facts concerning state aid alleged by the complainant.

In 2016, the Office also participated in the international seminar in Berlin, where it presented a contribution on the practical application of the General Block Exemption Regulation (GBER).

Legislative Changes

In the first half of 2016, the European Commission published a long-awaited document within the framework of the modernisation of state aid rules, namely the **Commission Communication on the notion of State aid pursuant the Article 107(1) of the Treaty on the Functioning of the European Union**. The Communication serves as a useful guideline not only for providers when evaluating whether a specific measure does or does not constitute a state aid. It outlines in detail all four defining features of state aid, including an explanation of the basic interpretative principles and references to the relevant case law of the Court of Justice of the European Union and the Commission's decision-making practice. Space is also devoted to the issue of aid for infrastructure projects.

In 2016, two public consultations on the revision of the General Block Exemption Regulation were conducted. During these consultations, the European Commission submitted a proposal to extend the General Regulation to new categories of aid concerning investment

support for certain categories of airports and the construction or modernisation of maritime and inland port infrastructure. Within the public consultations, the Office addressed the members of the sectoral coordination group for state aid with a request for comments on the Commission's proposal, and prepared a summary statement for the Czech Republic regarding the submitted proposal. The Czech Republic thus made a number of comments through the Office and presented its own proposals or requirements for changes that would be appropriate in the revised General Regulation. In spite of these comments, the Czech Republic expressed general support for the Commission's proposal, because the more state aid categories are included in the General Regulation, the sooner the individual aid schemes and the measures will be implemented. In addition to the introduction of the new categories of state aid, the Commission also proposed other amendments and additions to the General Regulation, which were of a more technical nature and primarily concerned the general provisions contained in Chapter I. The final version of the extended General Regulation should be effective in the first half of 2017.

In consequence of the legislative change on state aid ensuing from the modernisation of state aid rules and the common principles applied by the Commission in assessing the compatibility of state aid, the European Commission also updated the notification forms used to provide the Commission with information for this assessment in 2016. New forms are contained in Commission Regulation (EU) 2015/2282 of 27 November 2015 amending Regulation (EC) No. 794/2004.

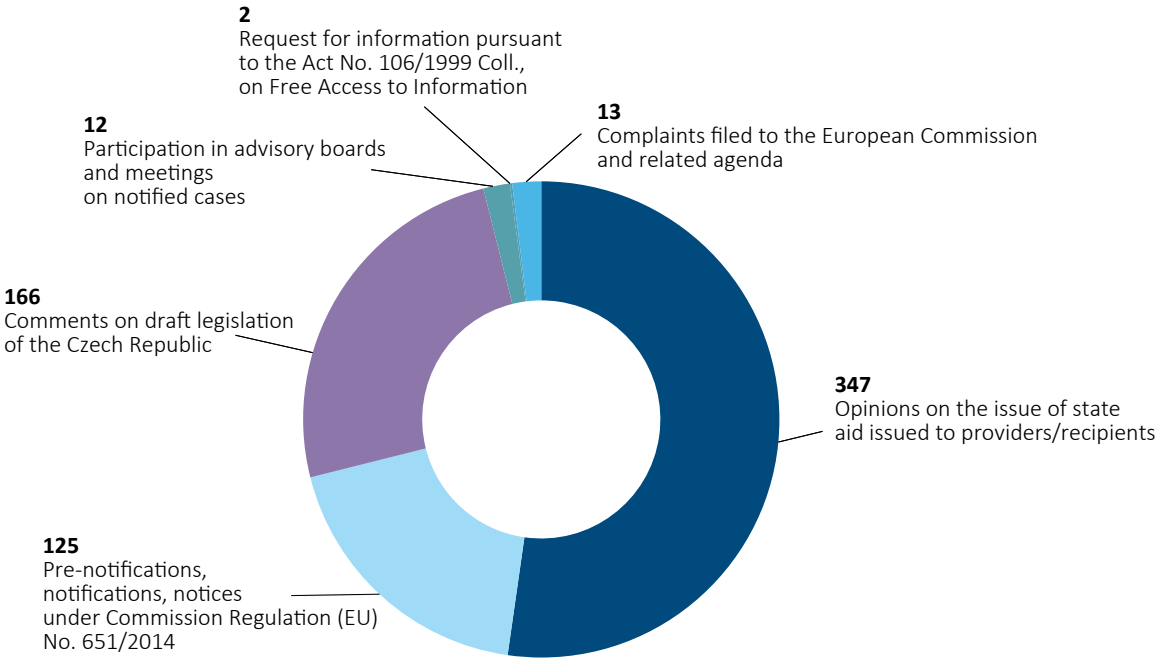
In 2016, the European Commission also finalised the Practical Guide to the General Block Exemption Regulation. The Guide provides interpretive guidelines for the Articles 1 through 58 of the given regulation and facilitates its application.

Another document published last year is the Commission Communication titled **Steel: Preserving sustainable jobs and growth in Europe**, in which the European Commission presented the tools to tackle economic problems in the European Union steel industry resulting from its deteriorating global competitiveness. Among other things, the document presents possibilities for the Member States to use the modernised rules on state aid and provide support for research and development investment in this sector, or to support producers by offsetting the indirect costs for or emissions trading.

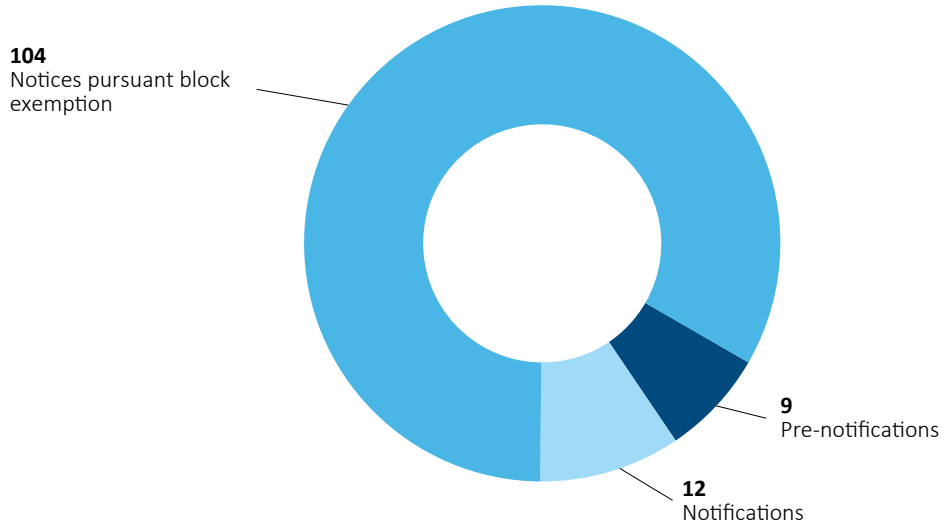
Towards the end of the year, the European Commission updated the documents on assessing the presence of state aid and its appropriate treatment in the public financing of infrastructure projects in selected sectors. These are guiding documents that demonstrate which features a project must have in order to be financeable entirely outside the scope of state aid, and under what conditions the respective exemptions for state aid can be applied. All of these documents are available on the Office's website.

Selected Statistical Data on State Aid for 2016	
Opinions on state aid issues issued to providers/beneficiaries	347
Pre-notifications	9
Notifications	12
Notices under Commission Regulation (EU) No. 651/2014	104
Comments on the draft legislation of the Czech Republic and government materials	166
Participation in European Union advisory boards and European Commission meetings on reported cases	12
Complaints to the European Commission and related agenda	13
Request for information pursuant to the Act No. 106/1999 Coll., on Free Access to Information	2

Selected statistical data on state aid for 2016



Notifications, pre-notifications, notices under Commission Regulation (EU) No. 651/2014 for 2016



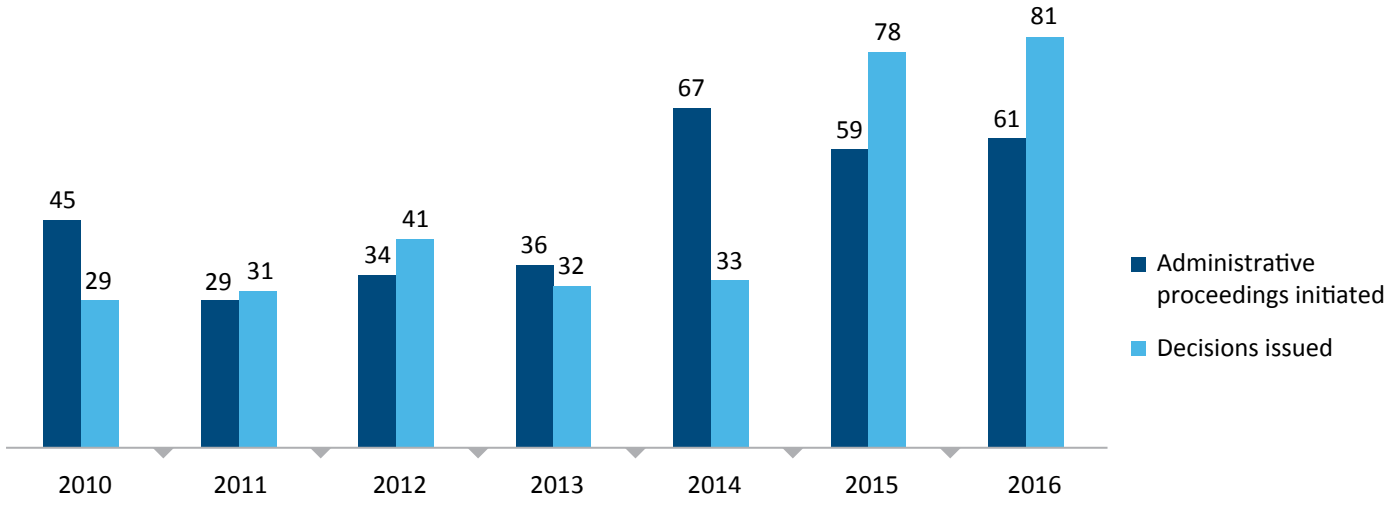
Small-Scale Aid

In the field of providing small-scale aid, the Office compiled the **Simplified Guidelines for the provision of de minimis aid and its registration in the central register**. The purpose of the guideline is to clearly define the appropriate steps to be taken by the provider when providing public funds within the de minimis system. Attention is called on the process of registering in the central register and providing guidance in cases where the aid that has already been granted and registered in the central register is to be altered, be it by reduction or increase (which means granting new aid). The submitted simplified guideline does not replace the valid regulations on state aid law, but serves for informational purposes only.

In the field of state aid, the Office conducts administrative proceedings against providers in cases concerning the breach of the Article 3a(4) of the Act No. 215/2004 Coll. The relevant provision concerns the registration of small-scale aid in the central register of small-scale aid within the statutory time limit, as well as the indication of the name of the legal regulation in the legal act of the provision of state aid, based on which the small-scale aid was granted. Small-scale aid is widely used in the Czech Republic mainly due to its easy application without the need to request approval from the European Commission for the granting of de minimis aid. In 2016, a total of 61 administrative proceedings were initiated, 81 administrative decisions were issued and 58 fines in the total amount of CZK 462,800 were imposed.

First-Instance Administrative Proceedings in the Matter of Entry into the De Minimis Central Register for 2016	
Administrative proceedings initiated	61
Uncompleted administrative proceedings	10
Decisions issued	81
Number of fines imposed	58 (of which 52 were final)
Amount of fines imposed	CZK 462,800 (of which CZK 224,300 final)

Number of administrative proceedings initiated and decisions issued



Appeal Procedure and Judicial Review

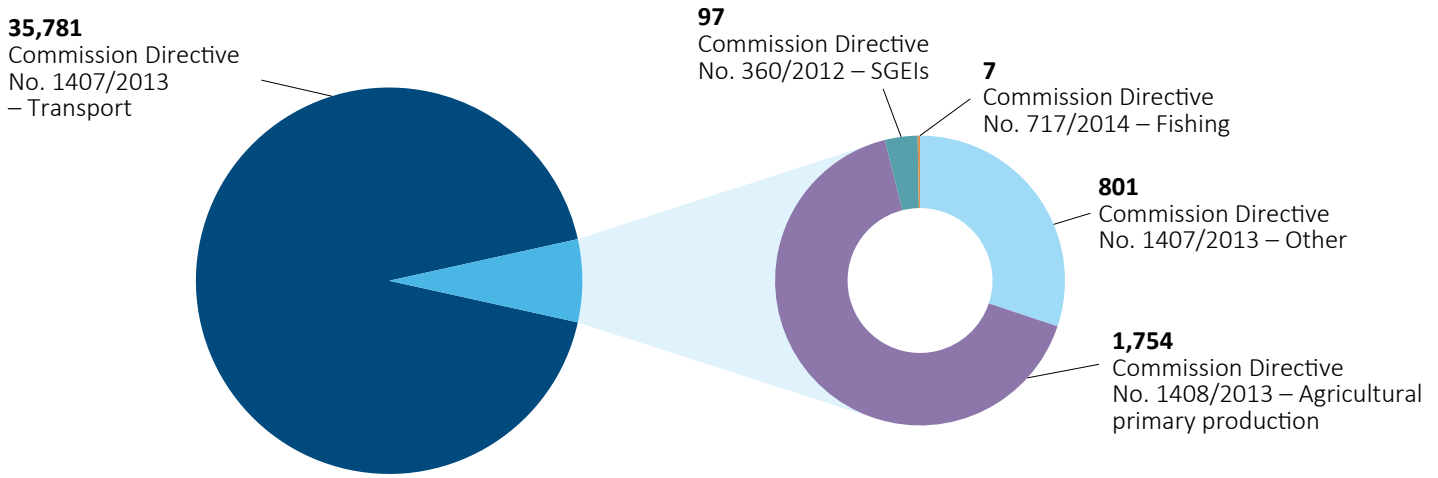
In 2016, the Office received 7 appeals against first-instance decisions in connection with the breach of obligations stipulated for the granting of a small-scale aid, and initiated 8 second-instance administrative proceedings (1 case was remanded referred back by the Administrative Court). 8 second-instance decisions were issued in this field, whereas the first instance decision was fully confirmed in 4 cases, and in 4 cases the first-instance decision was partly confirmed and partly remanded referred back for revision.

No actions or cassation complaints in the field of state aid were brought to the administrative courts in 2016. The Supreme Administrative Court issued one judgement, in which it rejected a cassation complaint from the Office.

Statistics on Small-Scale Aid Provided in the Czech Republic in 2016

Area	Quantity	Amount in CZK	Amount in EUR
Commission Directive No. 1408/2013 – Agricultural primary production	1,754	373,315,434.20	13,810,065.850
Commission Directive No. 360/2012 – SGEIs	97	434,450,556.24	16,074,566.260
Commission Directive No. 717/2014 – Fishing	7	977,566.00	36,155.280
Commission Directive No. 1407/2013 – Other	35,781	3,554,436,808.69	131,476,814.920
Commission Directive No. 1407/2013 – Transport	801	43,037,107.43	1,591,876.070
Total	38,440	4,406,217,472.56	162,989,478.380

Statistics of de minimis aid in provided 2016 pursuant to regulations



Significant Cases

Aid scheme to modernise vessels for inland water cargo transport

By a decision dated to 17 May 2016, the European Commission approved a state aid scheme for the modernization of inland water cargo transport vessels in the Czech Republic that would last until the end of 2021 (hereinafter referred to as the "new scheme"). A similarly focused aid scheme, which was extended until the end of 2015, was previously assessed by the European Commission and approved in May 2008. Compared to the previous scheme, the new scheme has undergone several changes, the most fundamental of which could be considered the increase of aid intensity to up to 85% (compared to the maximum intensity of 49% under the previous scheme). The new scheme includes three sub-schemes focused on: 1) reducing the environmental impact of water transport, 2) modernising vessels in order to increase multimodality in cargo transport, and 3) modernising vessels in order to improve the safety of inland navigation.

The Ministry of Transport, as the aid provider, reported the scheme to the Commission via so-called proper notification through the Office on 11 September 2015. Potential beneficiaries may be the owners or operators of vessels registered in the Czech Republic. The expected volume of aid in 2016 to 2021 should be CZK 420 million, whereas resources from the Cohesion Funds shall be involved in financing. The investment projects must not be commenced prior to the provision of aid. An assessment of the compatibility of sub-scheme 1 was conducted pursuant to the instructions for state aid in the energy and environmental sectors. Among other things, the European Commission observed that the aid is limited to investment support for enterprises to increase the level of environmental protection, and is therefore compatible. Sub-schemes 2 and 3 were assessed based on the Article 93 of the Treaty on the Functioning of the European Union, which declares aid schemes meeting the need to coordinate transportation to be compatible. According to the Commission, this term also includes aid schemes which contribute to the moving of cargo transport from the road to inland waterways, i.e. planned within sub-schemes 2 and 3. The European Commission likewise noted their compatibility. Aid within the scheme to modernise inland water cargo transport vessels can thus be provided in the Czech Republic until the end of 2021.

Granting of film incentives

In 2016 the Audiovisual Act was amended, based on which film incentives are granted in the Czech Republic. The European Commission was notified of the given act, respectively its amendment. During the notification procedures, it was concluded that the General Block Exemption Regulation, specifically the Article 54 thereof, can be newly applied to the given scheme.

The Article 54 of the General Block Exemption Regulation is designated for support schemes for audiovisual works, whereas aid must be directed towards products in the field of culture. Under the given article, aid can be provided for the production of audiovisual works, for production preparation and for distribution. Aid must not be limited to a specific production activity or an individual part of the production value chain. Aid for film studio infrastructure is not eligible under this article.

In order to streamline the scheme of granting incentives by the State Cinematography Fund, the amendment to the Audiovisual Act introduced procedural changes aimed at better reflecting the real demand for film incentives. The essence of the change lies in the possibility of filing applications for registration and subsequently registering at any time during the fiscal year. The current system of one call at the beginning of the year did not allow applicants to submit an application at any time, i.e. when the project was ready for implementation.

Supported energy sources

During the course of the year, the European Commission issued 3 decisions in which it declared, in the context of certain commitments of the Czech Republic, a large part of the operational aid for energy sources in the Czech Republic to be compatible with the internal market of the European Union. In August, it approved the provision of aid to small hydroelectric plants and biogas stations put into operation from 2016, and in November it approved an aid scheme for renewable energy sources put into operation between 2006 and 2012.

International Cooperation

Cooperation with foreign partners is an integral part of the activities of the Office for the Protection of Competition. Protection of competition exceeds the borders of the Czech Republic and mutual cooperation with other competition authorities or international economic and competition organisations may be beneficial for propper defining of the competition policy and undisturbed development of the Czech competition environment. Therefore, the Office is active on many levels of international cooperation.

Like the competition authorities of all the other European Union Member States, the Office is primarily involved in the activities of the European Competition Network (ECN). Furthermore, it is an active member of global competition platforms such as the International Competition Network (ICN), Organization for Economic Co-operation and Development (OECD) and Public Procurement Network (PPN).

European Union

In terms of the Czech Republic's membership in the European Union and the ensuing obligations, the European Commission, or more precisely its Directorate-General for Competition which is responsible for the competition agenda, is the most important partner for the Office's international involvement. In this context, Office's representatives participate in the regular meetings of superior representatives of the European Union Member States' competition authorities and Commission representatives, headed by Johannes Laitenberger, Director General of DG Competition since 2015. Within the framework of cooperation with the European Commission, the Office has been actively involved in public consultations announced on the topic of strengthening the role of national competition authorities and evaluating the procedural and competence aspects of merger control in the European Union last year. In particular as a result of the first of these consultations, legislative steps can be expected, aimed at strengthening the competences and independence of the Member States' national competition authorities in the application of EU competition law. The representatives of the Office also participated in DG Competition meetings discussing on issues concerning the provision of state aid, such as the financing of the data box information system operated by Czech Post, or the purchase of locomotives by České dráhy.

An important legislative task stemming from the Czech Republic's membership in the European Union was the transposition of the Directive No. 2014/104/EU of the European Parliament and of the Council into the Czech legal order. The first and foremost purpose of this Directive is to lay down uniform rules for civil court proceedings on compensation for damages caused by the infringement of competition rules. Inconsistent regulations concerning enforcement of damages claims in the European Union Member States have in the past created considerable legal uncertainty for undertakings and more important, have led to unequal conditions in the claims for compensation. The author of the draft bill for the special transposition act is the Office in cooperation with the Ministry of Justice of the Czech Republic.

European Competition Network

The European Competition Network ECN is a unique platform for sharing information and experience between national competition authorities and the European Commission with the aim of increasing the effectiveness of competition rules enforcement and deepening competition law convergence across the entire European Union. Therefore, cooperation within the ECN represents the most significant volume of the Office's work in the field of international relations. Within the ECN, informal cooperation with other national competition authorities leads to the continuous exchange of recent expertise and experience in the field of competition law and competition policy. In 2016, the Office within the Request for Information platform responded to 69 RFI questionnaires focused primarily on the issue of combating prohibited agreements among undertakings and abuse of dominant position.

The Office's representatives are also actively involved in the work of individual expert working groups within the ECN. The working group for mergers, which participated in preparing partial amendments to the legislation concerning control over concentrations between undertakings in 2016, is consistently one of the most active. The working group for dominance and vertical restraints primarily had to deal with the issue of potential sharing of information among individual members of the working group in cases that are being investigated in the territory of several Member States.

The continued convergence of individual leniency programs, methods and admissibility of evidence or performance of unannounced inspections were the major topics of the working group for cartels in 2016. The working group for the food industry focused on the continuing concentration of the market of individual food producers in some Member States, while the working groups for state aid and infrastructure have consistently been addressing the modernisation of rules for state aid and infrastructure financing.

International Competition Network

The cartel working group of the International Competition Network (ICN) was particularly active in 2016. Its international workshop was devoted to suitable investigative strategies and procedures. The 2016 ICN annual conference was attended by more than 500 participants from 75 countries. Its central theme comprised the current topics of the global competition environment, such as the importance of so-called disruptive innovations, the objectives and instruments of the global economy, the supervision of unilateral conduct of dominant undertakings, etc. A methodological handbook on corrective measures in the field of mergers, a catalogue of the investigative powers of competition authorities and a scheme for sharing non-confidential information between Member States were also adopted at the conference.

Organization for Economic Co-operation and Development

The intergovernmental Organization for Economic Co-operation and Development (OECD) plays an important role in the process of progressive approximation of competition law through its active approach. Representatives of the Office regularly attend meetings of the Competition Committee and the OECD Global Forum on Competition, where they actively contribute to the search for optimal solutions to identified topics. In 2016, Office representatives in the OECD presented inter alia their expert contributions on issues related to the independence of competition authorities and sanctions in antitrust cases.

Bilateral Relations

In addition to activities within international organisations and platforms, the Office does not neglect the development of bilateral relations with other competition authorities. In this area, it cannot be omitted the intensification of long-term co-operation with the Slovak competition authority, whose representatives meet with their colleagues of the Office on a regular basis several times a year. In 2016, the Office also welcomed the study visits by representatives of the Georgian competition authority and the Russian competition authority, with whom the Office representatives shared their experience in the field of competition. Towards the end of the year, a meeting was held with representatives of the Ministry of Commerce and the Price Regulator's Office from the People's Republic of China.

Within the framework of bilateral relations with other competition authorities, the Office representatives participated in several international conferences. In 2016, the Office representatives in the role of lecturers attended conferences organised by competition authorities, for instance in Albania, Moldova and Ukraine.

Visit of the Georgian delegation, 24 November 2016
(Michal Petr, Petr Rafaj, Nika Sergia, Nino Isakadze, Medea Akolashvili and Daniel Stankov)

Visit of the Russian competition authority, 14 December 2016
(Igor Pavlov, Hynek Brom and Dmitri Chuklinov)

Personnel Agenda

In 2016 there were no fundamental changes in the organisational structure of the Office, which is continuously distributed into divisions based on individual competences (Competition, Public Procurement and Legislation and Public Regulation Divisions) and decision-making instances (Division of 2nd Instance Decision-Making), completed by the supportive division (Division of External Relations and Administration). Changes occured in the top management of the Office, with 1st Vice-Chairman Hynek Brom moving to the position of a head of the Competition Division, new Vice-Chairman Petr Solský taking over the Legislation and Public Regulation Division, and Michael Mikulík returning to the position of a Head of the Division of 2nd Instance Decision-Making.

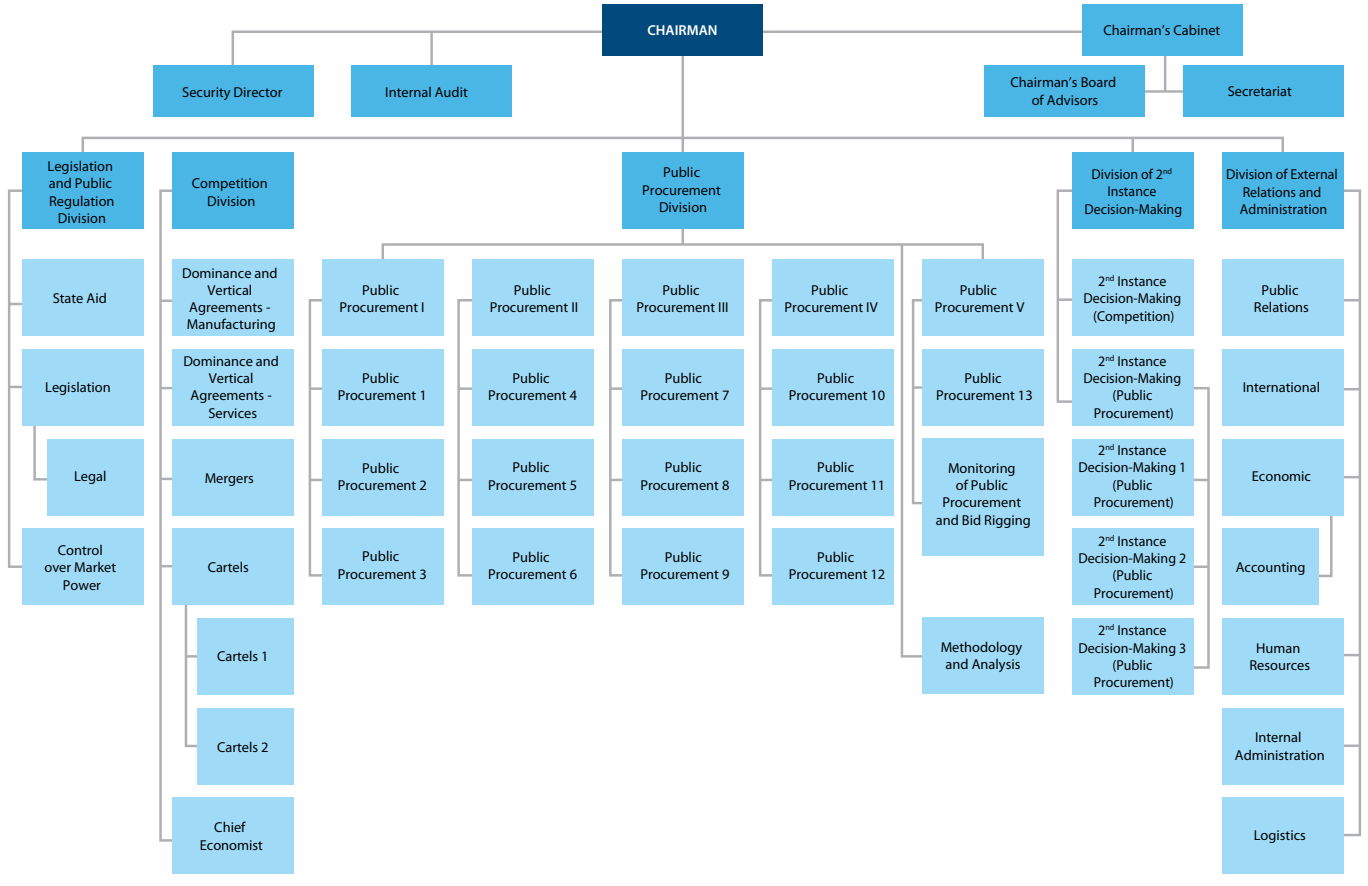
Over the course of the year, the Office continued to meet the long-term staff plan, particularly in the stabilisation of expert employees and their professional development, as well as the further adaptation of HR processes to the requirements of the Civil Service Act.

The main task in the field of statutory obligations arising from the Civil Service Act was the "pre-tendering" of management civil service positions, including civil service positions ranging from department heads to division directors. Concurrently, additional recruitment tenders were conducted for management or officer positions across all the Office divisions.

The year 2016 also saw the continued conducting of officer exams. The aim was to ensure to passing of officer exams for state employees in the field of competition, supervision of public procurement and concessions and supervision of the provision of state aid, who are obliged to take this exam by law. Hence, the HR department held 4 rounds of officer exams at the Office headquarters, 2 of which also included the special part of the exam. A total of 71 employees passed the officer test successfully.

As in previous years, the HR Department ensured the sustainability of project outcomes and the ongoing evaluation of selected activities in projects financed from EU structural funds focused on the management, education and development of employees. This included, especially, the creation and subsequent implementation of the Office Employee Training Plan for 2016, the continuous review of professiograms and, in addition, the regular assessment and self-assessment of employees in an employment relationship was conducted, including the assesment of work and development objectives for 2017.

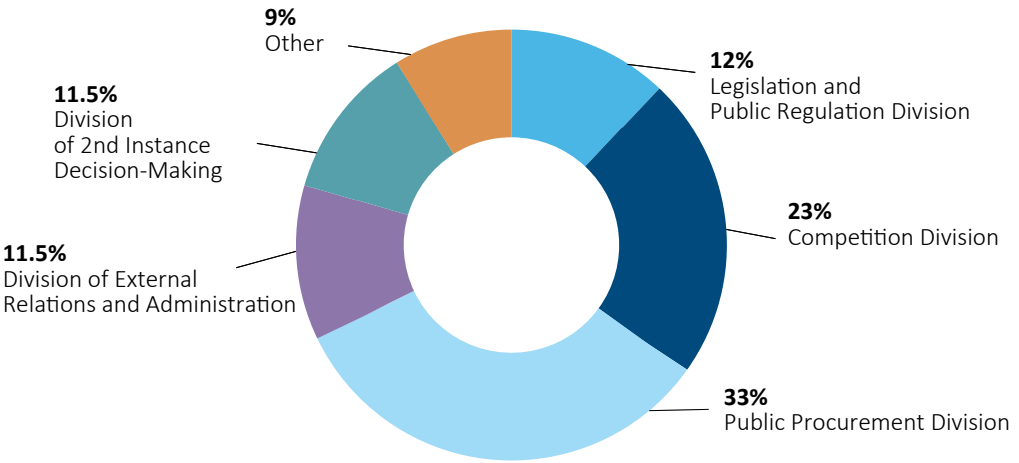
Organisation structure as at 31 December 2016



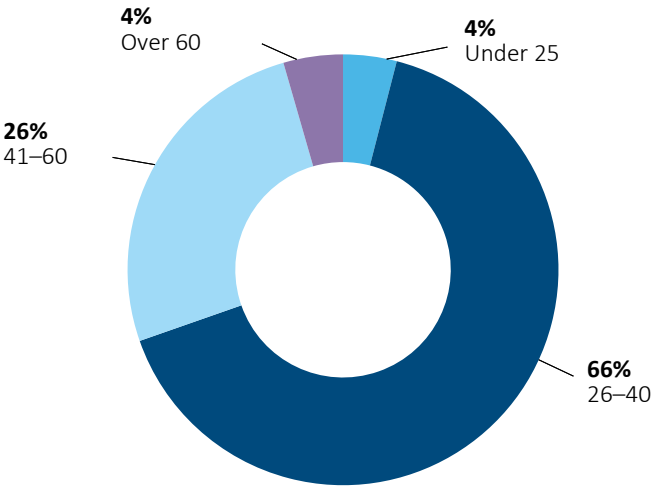
Employee Structure

The total number of employees as at 31 December 2016 was 244 (+ Chairman of the Office)

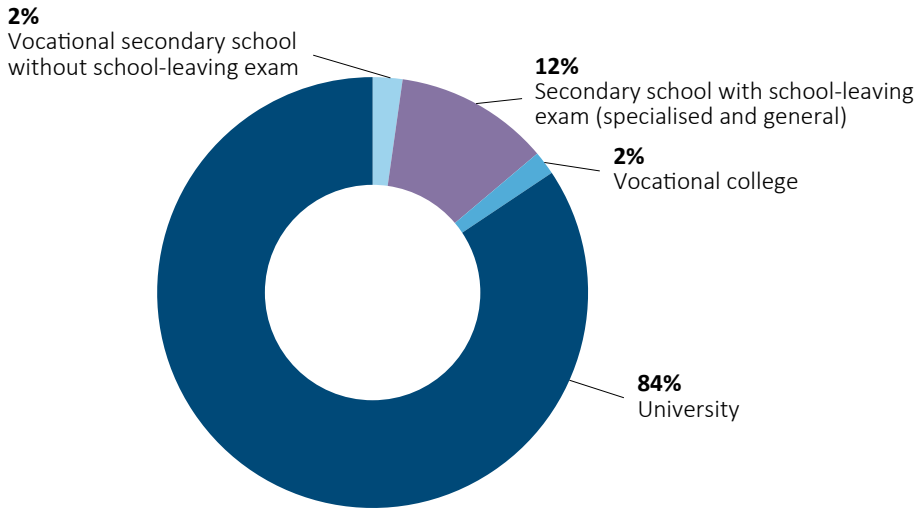
- by division



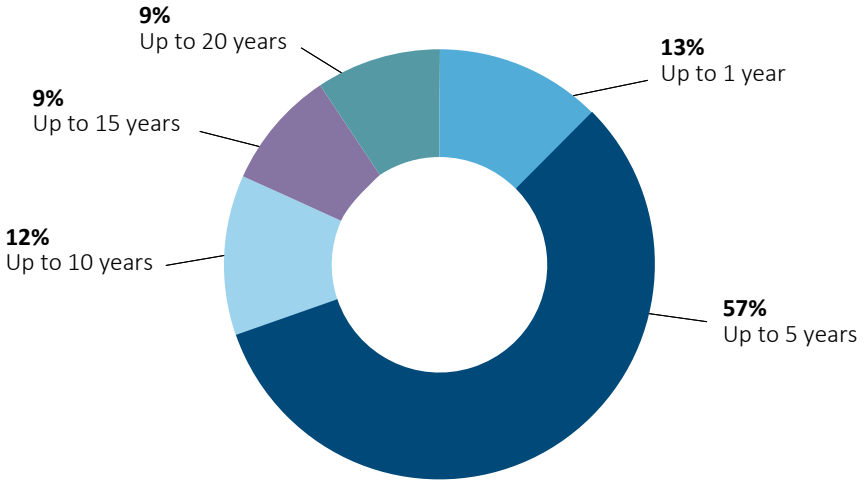
- by age (the average age of employees is 37.6 years)



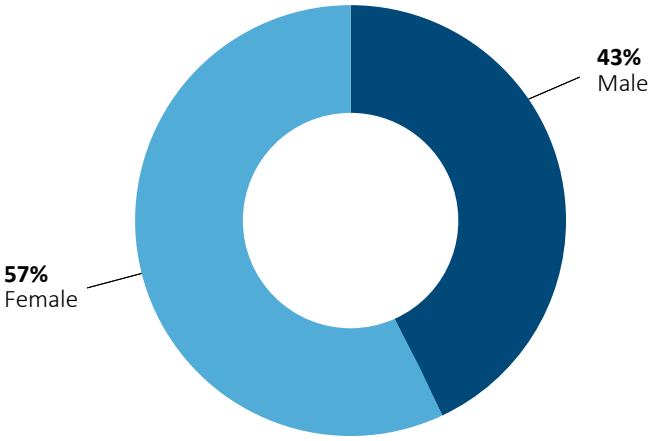
- by highest level of education



- by duration of employment



- by gender



Information Activities

In 2016, the Office celebrated its 25th anniversary, which it commemorated on May 26th with a celebratory conference dedicated to the quarter-century history of the introduction of competition law in the Czech Republic. Petr Rafaj, Chairman of the Office, welcomed a number of distinguished guests at the conference, including e.g. the President of the Constitutional Court Pavel Rychetský, Minister of Regional Development Karla Šlechtová, Rector of Charles University Tomáš Zima and Supreme Public Prosecutor Pavel Zeman. Among the foreign guests speaking at the conference contributed the Director General of the Austrian Competition Authority Theodor Thanner, Chair of the Slovak Office for Public Procurement Zita Táborská, Vice-Chair of the Antimonopoly Office of the Slovak Republic Boris Gregor, and representative of the Organisation for Economic Co-operation and Development Antonio Capobianco. The audience included former Office Chairmen Martin Pecina and Josef Bednář, as well as the representatives of law firms and academic experts who cooperate with the Office.

ÚOHS

25 YEARS PROTECTING COMPETITION

Pavel Rychetský recalled the creation of the first competition act, authored by attorney Jindřiška Munková. He also stated that the work of the Office is "obviously very successful, because looking at the case law of the Constitutional Court, I have found that virtually no successful complaints to made their way to us. This means that your decisions are good and I hope it stays that way." Charles University Rector Tomáš Zima recalled the role of universities in the education of experts dealing with competition law and the importance of the Office's openness for their education. Supreme Public Prosecutor Pavel Zeman praised the cooperation between the Office and bodies conducting the criminal proceedings, which takes place mainly in the field of mutual training and consultations. Theodor Thanner, Director General of the Austrian Federal Competition Authority, recalled the general principles of competition law and the independence of competition authorities, and also outlined some of the challenges and priorities facing competition authorities in the near future - in particular digital markets, big data, private law enforcement and the growing market concentration. The other guests focused on the cooperation of their institution with the Office in their presentations. The Vice-Chairs of the Office Hynek Brom, Josef Chýle and Petr Solský also delivered their speeches at the conference.

Petr Rafaj, Pavel Rychetský, Theodor Thanner, Jiří Zmatlík, Tomáš Zima

Petr Rafaj

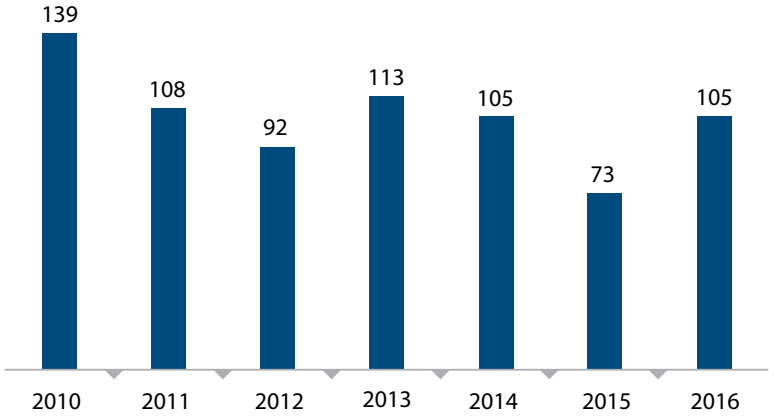
Daniel Stankov, Josef Chýle, Karla Šlechtová, Pavel Zeman, Zita Táborská

Martin Pecina, Josef Bednář

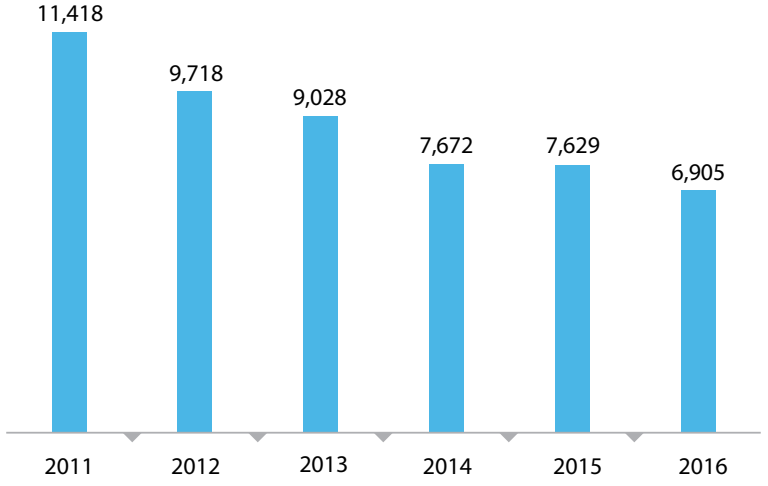
The Office for the Protection of Competition informs the professional and general public through its website www.uohs.cz, where in addition to news, it also publishes first and second-instance final decisions of the Office in the Collection of Decisions, both in the field of competition and in the field of public procurement and significant market power. The judgments of administrative courts related to the judicial review of cases investigated by the Office and information provided pursuant to the Act No. 106/1999 Coll., on Free Access to Information, are also published there.

In 2016, the Office issued 105 press releases and collected 6 905 contributions related to the Office's work from media monitoring. According to an analysis prepared by the media monitoring provider, neutral publicity (93%) prevailed, while negative publicity was in the range of 6 percent (the contributions mainly concerned the responses of the Ministry of Transport and the companies involved in the construction cartel to the fines imposed by the Office), and positive publicity reached 1 percent (articles concerning the acceleration of administrative proceedings in the field of public procurement). The Office was mentioned most often by daily newspapers MF Dnes, primarily by journalist Jan Sůra. The other printed media according to the frequency of contributions about the Office are Lidové noviny (Kateřina Surmanová) and Právo (Jiří Novotný). The most common topic in the media was administrative proceedings concerning public procurement. Positive publicity mainly concerned the tender for provision of bus services in the Hradec Králové Region, while negative publicity concerned the selection of the toll system operator. The media were also interested in mergers, cartels and abuse of dominant position. In addition to those mentioned above, the cases which garnered the most media attention include the award procedures for the air rescue service and public contracts from Lesy ČR, prohibited agreements among mobile operators from the years 2000 to 2003, the Opencard affair, the initiation of administrative proceedings with Czech Post for the alleged abuse of dominant position, and alleged gas supplier cartels.

Number of press releases issued



Number of posts in monitored media



Publication Activities

In addition to the 2015 Annual Report, the Office for the Protection of Competition also issued five information bulletins on current topics in 2016. The first information bulletin, titled 25 Years Protecting Competition, maps the quarter-century history of the Office linked with the introduction of competition law in the Czech Republic. The publication extensively follows the development of legislation on the individual fields of the Office competence, which in addition to competition also includes the supervision of public procurement, supervision of abuse of significant market power and state aid.

The information bulletin Significant Market Power after the Amendment to the Act summarises the significant changes brought into the original legislation of the Act No. 395/2009 Coll., on Significant Market Power in the Sale of Agricultural and Food Products and Abuse thereof by the long-discussed amendment (Act No. 50/2016 Coll.), which came into force in early March 2016. The information bulletin provides an explanation how the Office intends to interpret these changes in its decision-making practice. Specifically, this concerns, among other things, the stipulation of limits for financial fulfilment for services provided by the customer, quantity discounts, contractual terms and more.

One day before the new regulation of public procurement came into force as the Act No. 134/2016 Coll. on Public Procurement (1 October 2016), the Office for the Protection of Competition, as the law enforcement supervisor, published an information bulletin titled The New Face of Public Procurement. The information bulletin contains an overview of the most important changes compared to the previous legal regulation, as well as detailed descriptions of some newly modified institutes, such as exceptions for legal services, preliminary consultation, use of options, in-house procurement and innovation partnerships.

The information bulletin State Aid - Two Years After Modernisation summarises the revised rules and experience with their functioning during the 2-year period of gradual application of state aid rules modernised by the European Commission. The information bulletin provides an interpretation of the revision of the general block exemption regulation (GBER), the transparency obligation for state aid, the localisation of aid impact, the principle of market investor and de minimis aid. It also acquaints readers with significant cases dealt with by the Office over the past 2 years and with current statistics, which also offer a comparison of some statistical data for the period of 2011 to 2016.

The information bulletin Bid Rigging briefly and comprehensively characterises a contract cartel, specifies the typical indicators that help to identify a cartel, and advises contracting authorities on how to behave if they have suspicions.

Conferences

In addition to the above-mentioned conference 25 Years of Competition Law in the Czech Republic, held in May 2016, the Office organised 4 other conferences in all of its scope of powers: competition, significant market power, public procurement and state aid.

St. Martin's Conference

The 10th year of the St. Martin's Conference held on 9 and 10 November 2016 presented the latest events in the field of competition policy in the Czech Republic, Slovakia and the European Union in the traditional form of a discussion with the professional public. The First Vice-Chair of the Office, Hynek Brom, presented the results of the Office's activities in the field of competition. The outcomes of the Slovak competition authority were presented by its Vice-Chair Boris Gregor. Petr Zákoucký (law practitioner at Clifford Chance) presented the most important European Union case law. In his keynote presentation, attorney David Anderson focused on the impact of private enforcement on the effectiveness of leniency programs, the possible change in limits for notifying mergers, and the recognition of so-called compliance programs when imposing fines for anticompetitive conduct. The rest of the agenda was dedicated to the private enforcement of competition law, digital economy and significant market power. The conference also included 3 parallel workshops on imposing fines, the anticompetitive conduct of public authorities pursuant to the Article 19a of the Act on the Protection of Competition, and a workshop on significant market power. A number of important panellists and guests both Czech and foreign attended the conference.

Hynek Brom, Boris Gregor, Petr Zákoucký

David Anderson, Daniel Stankov

Petr Solský, Markéta Chýlková, Petr Kadlec, Marta Nováková, Ivan Višňovský

Supervision of Public Procurement in the Czech Republic

Six days after the new Act on Public Procurement came into force, the Office for the Protection of Competition organised a conference titled Supervision of Public Procurement in the Czech Republic (6 October 2016). The new Act on Public Procurement attracted more than 150 conference participants to the Office, including a delegation from the Slovak Office for Public Procurement, a number of leading national experts on the relevant subject, as well as the representatives of numerous contracting authorities. After the introduction, Vice-Chair of the Office Josef Chýle and Department Director Mojmír Florian devoted the first segment of the conference to the prevention of irregular practices of contracting entity under the new Act and the strengthening of the supplier's position, the institute of objections rehabilitated under the new Act, and the strengthening of the contracting authority's protection by restricting the bullying proposals and initiatives. Advisor to the Minister of Regional Development, Pavel Herman, also spoke about the methodologies issued by the Ministry with reference to the new Act and the joint opinions issued in cooperation with the Office. Law practitioner Tomáš Machurek, Jaroslav Kračún, currently working at the European Commission's DG GROW, Jan Korytárová, Head of the Faculty of Structural Economics and Management at the BUT Faculty of Civil Engineering, Michal Fiala of the Supreme Public Prosecutor's Office and Marek Stavinoha of the European Commission's DG MOVE also gived presentations at the conference. The conference was followed by parallel workshops. The round table discussion with Josef Chýle and Pavel Herman addressed the roles and tasks of the Office and the Ministry of Regional Development in the contract awarding process and its supervision, with emphasis on contracting authorities' rights and obligations. Round table discussion about the role of the Office in the process of overseeing the fulfilment of the Act on Public Procurement, with emphasis on contracting authorities' rights and obligations

Tomáš Machurek, Josef Chýle, Mojmír Florian, Pavel Herman, Jan Havlíček, Petr Milas, Jana Korytářová, Michal Fiala, Marek Stavinoha

The round table discussion about the roles and tasks of the Office in the process of supervision of public procurement, with emphasis on contracting authorities' rights and obligations

Spring and Autumn Conference on State Aid

The spring conference on state aid (18 May 2016) was focused mainly on introducing providers with the new obligation to publish information on individual state aid exceeding EUR 500,000 and awarded after 1 July 2016 on the comprehensive website, and on providing practical advice and recommendations for the administration of aid granted under the de minimis aid scheme, including the issue of de minimis registration. Vice-Chair Petr Solský, responsible for the management of the Legislation and Public Regulation Division to which the issue of state aid belongs, presented the Office's current agenda in the field of state aid. Libuše Bílá introduced the latest information about the general block exemption regulation (GBER) revision. Guests at the conference were the Director of the Audit Authority of the Ministry of Finance Stanislav Bureš, Martin Fott from the Permanent Representation of the Czech Republic to the European Union, and Michael Kincl from the Supreme Court of the Czech Republic.

The autumn conference on state aid (23 November 2016) was opened with two interactive seminars on administrative procedure for the provision of de minimis aid and registration in the de minimis register, and on the process of granting aid pursuant to the general block exemption. Petr Solský, Vice-Chair of the Office, presented the opinions issued by the Office on specific issues of state aid providers, mentioned the high number of administrative proceedings concerning incorrect entries in the de minimis aid register, and informed about the seminars organised by the Office this year in most regions, which were focused among other things on the new obligation of aid providers concerning the transparency of providing state aid. Libuše Bílá presented significant news from the field of state aid, particularly pointing out the changes planned by the European Commission and extension of GBER on investment aid for airports and ports, as well as changes in regional operational support for the outermost regions, the amendment to certain definitions or the increase in the notification limit of aid for culture and cultural heritage, and reiterated the new obligation to enter certain types of aid into the respective Transparency Award Module (TAM) system, and the Notice on the notion of state aid published in the Official Journal (EU), which serves as a guideline for identifying the individual characteristics of state aid. Michael Kincl of the Supreme Court of the Czech Republic dealt with the decisions of the European Union authorities active in the field of state aid. Eliška Mamdaniová from the State Aid for Transport section of the European Commission's Directorate-General for Competition focused on state aid policy of the European Union in the area of air transport. Martin Fott from the Permanent Representation of the Czech Republic to the European Union presented the new focus of the European Commission on the notion of selectivity in the field of state aid, in light of the European Commission's procedure against certain tax decisions.

Petr Solský, Libuše Bílá, Stanislav Bureš, Gabriela Kinclová, Jakub Šram

Petr Solský

Petr Solský, Eliška Mamdaniová, Martin Fott

Indicators of Chapter 353 of the Statute Budget - Office for the Protection of Competition for 2016

		in CZK
Aggregates		
Total revenue		5,500,000
Total expenditure		242,431,117
Specific indicators - revenue		
Tax revenue[1)]		4,000,000
Non-tax revenues, capital revenues and transfers received total		1,500,000
of which:	income from the budget of the European Union without a common agricultural policy in total	0
	Other non-tax revenues, capital revenues and transfers received total	1,500,000
Specific indicators - expenditure		
Expenditure for performing the tasks of the Office for the Protection of Competition		242,431,117
Cross-sectional indicators		
Salaries and other payments for work performed		115,519,383
Mandatory employer-paid insurance[2)]		39,276,590
Transfer of cultural and social needs fund		1,702,743
Salaries of employees in employment, except employees in service positions		16,162,234
Salaries of employees in civil service positions according to the Civil Service Act		91,019,167
Salaries of employees in employment derived from the salaries of constitutional officials		6,334,800
Training for crisis situations pursuant to the Act No. 240/2000 Coll.		0
Expenditure co-financed in full or in part from the budget of the European Union without a common agricultural policy in total		0
of which:	from the state budget	0
	share of the budget of the European Union	0
Expenditures recorded in the information system of the EDS/SMVS programme financing total		39,000,000

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

Provision of Information pursuant to the Act No. 106/1999 Coll., on Free Access to Information for 2016

1. **Number of requests for information pursuant to the Act No. 106/1999 Coll. filed, and number of decisions to dismiss requests issued:**

Area	Number of requests filed	Number of decisions issued
Competition	52	27
Public procurement	49	20
State aid	2	2
Significant Market Power	5	2
Legislation and Public Regulation	5	0
General	10	1
Total	124	52

2. **Number of appeals filed against decisions of the Office pursuant to the Act No. 106/1999 Coll.:** 6 appeals

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

4. **Judgements of the court in relation to the Office in providing information**:
   - Judgement of the Regional Court in Brno of 17 August 2016, ref. No. 62 Af 61/2015-48 – Decision of the Chairman of the Office and Decision of the Office overturned and case remanded to the Office for further procedure;
   - Judgement of the Regional Court in Brno of 7 April 2016, ref. No. 30 Af 70/2014-55 – Decision of the Chairman of the Office overturned and case remanded to the Office for further procedure; the Office filed a cassation complaint which was dismissed by the judgement of the Supreme Administrative Court of 24 August 2016, ref. No. 2 As 125/2016-34;
   - Judgement of the Regional Court in Brno of 31 March 2016, ref. No. 30 Af 85/2014 – Decision of the Chairman of the Office overturned and case remanded to the Office for further procedure; the Office filed a cassation complaint which was dismissed by the judgement of the Supreme Administrative Court of 5 August 2016, ref. No. 4 As 96/2016-36;
   - Judgement of the Regional Court in Brno of 20 April 2016, ref. No. 62 Af 80/2013-281 – Decision of the Chairman of the Office overturned and case remanded to the Office for further procedure; the Office filed a cassation complaint which was dismissed by the judgement of the Supreme Administrative Court of 24 November 2016, ref. No. 9 As 100/2016-167;
   - Judgement of the Supreme Administrative Court of 24 March 2016, ref. No. 9 As 155/2015-195 – Decision of the Regional Court in Brno of 17 Juni, ref. No. 62 Af 80/2013-223, overturned and case remanded to the Regional Court in Brno for further procedure;
   - Judgement of Regional Court in Brno of 27 July 2016, ref. No. 29 A 147/2015-35, proceedings suspended due to reconcilement of the applicant;
   - Judgement of Regional Court in Brno of 5 May 2016, ref. No. 30 Af 17/2015-50 – Decision of the Chairman of the Office overturned and case remanded to the Office for further procedure. The Office filed a cassation complaint which was dismissed by the judgement of the Supreme Administrative Court of 6 September 2016, ref. No. 2 As 126/2016-32;
   - Judgement of the Supreme Administrative Court of 1 April 2016, ref. No. 3 As 66/2015-30 – cassation complaint of Office was dismissed.

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

6. **Number of exclusive licenses granted**: No exclusive licenses were granted.

Agenda 2017

Competition

In 2017, the Office will work primarily on dealing with prohibited agreements such as bid rigging. Starting from February, regular training will be organised for the employees of contracting authorities, starting with representatives of central government bodies, which invest the largest volume of public funds in this manner. For this purpose, the Office has issued a comprehensive information brochure as a simple tool for the day-to-day orientation of public administration employees in this area. At the same time, the Cartels department will continue to conduct sanctioning administrative proceedings concerning the prohibited practices of undertakings in connection with participation in award procedures with contracting authorities, including contracts not paid from public budgets. The Office also actively cooperates with the Faculty of Economics and Administration of Masaryk University in Brno on new methods of detecting bid rigging.

The aim of the Office is not to impose the highest possible sanctions for prohibited agreements, but to expedite its cases quickly and efficiently, often using the settlement procedure, so that the limited human resources can be used to address other challenges in national competition. A completely new area, which falls under the Cartels department as of 2017, will be the supervision of certain entities involved in interbank card transactions, as follows from the amended Act on Payment Systems, which has thus incorporated the relevant European Union legislation into the Czech legal code.

The areas of the national economy that will receive increased attention in terms of competition include construction, information and telecommunication technologies and services, transport, waste management and machinery production. The Office will continue to focus on so-called unregulated professions and areas where one of the parties to the transaction is the end consumer. It will also continue to address cases of anticompetitive conduct of public authorities.

Significant Market Power

In the legislative area, the most important objective of the Office will be to complete the legislative process concerning the forthcoming amendment to the Act on Significant Market Power, prepared in the context of the so-called amending act (an act amending certain laws in connection with the adoption of the Act on Liability for Misdemeanours and Related Proceedings and the Act on Certain Misdemeanours). The new Act No. 250/2016 Coll., on Liability for Misdemeanours and Related Proceedings is expected to come into force in July 2017.

In the forthcoming period, another priority for the Office will be to supervise the fulfilment of the Act on Significant Market Power and in particular to prosecute unfair trading practices in the customer-supplier chain. In 2017, the Office intends to focus on the more efficient detection of unfair conduct and subsequent effective prosecution of illegal practices. The outcome of the court dispute in the Kaufland case may also be expected in 2017. The conclusions of the administrative courts will also lay the grounds for the Office's further procedure in ongoing administrative proceedings.

Within the framework of its supervisory authority, the Office will also continue to co-operate with other state administrative bodies and professional unions or associations. It is in the Office's interest to contribute to the cultivation of customer-supplier relations within its activities. A part of the agenda during the St. Martin's Conference will again be devoted to the issue of significant market power.

In the field of international relations, the Office will offer more active support to initiating the creation of a single European framework to unify the basic principles of fair trade and administrative cooperation.

Public Procurement and Concessions

For the Public Procurement Section, 2017 will be a year of intensive work on the new Act on Public Procurement, but also a year which will be affected by the planned legislative changes in areas related to the supervision of public procurement. Hence, it will be a year full of new challenges not only for contracting authorities and suppliers, but also for the Public Procurement Section. In autumn 2017, a conference is scheduled to summarise the findings and practices of one year of application of the Act on Public Procurement.

Through this and other events, the Office also intends to contribute to public awareness of the rules applied in by the Public Procurement Section and prepares an educational event linked to completely new rules on misdemeanour proceedings.

In the field of public procurement, the Office intends to fully exercise the competences entrusted to it by the Act in 2017; in particular, the full application of its controlling authority and the implementation of inspections pursuant to the Inspection Code. The findings from the inspections carried out will thus serve as additional reference, based on which the Office will be able to initiate administrative proceedings ex officio, or otherwise evaluate the application of the new Act on Public Procurement.

State Aid

The Office will continue to focus intensively on interpretation and methodological work in relation to the modernised European Union regulations. In the context of the providers' new obligation to register specific aid into the European Commission's TAM system, it will continue to work closely with the European Commission and aid providers to ensure due fulfilment of this obligation. Considering that state aid is one of the so-called pre-conditions for financing from ESI Funds (EU), it will provide maximum cooperation to the governing authorities when applying and interpreting rules for state aid. It shall continue to collaborate with governing bodies within the framework of the working group meetings set up for this purpose. It shall also take an active part in other working groups on the European Union level, dealing above all with the interpretation and harmonisation of the application of new regulations in the European Union Member States and created once the modernization of state aid (during which all the important regulations on state aid were revised in 2012 - 2014) is finalised. In 2017, great attention will be paid to the notified conclusion of revisions of the General block exemption regulation and its subsequent application in practice, which will be linked to the provision of cooperation to aid providers in interpreting the new provisions. As part of pre-notification and notification procedures conducted before the European Commission, the Office will continue actively to cooperate with providers and will endeavour to complete these procedures successfully. Attention will also need to be focused on dealing with relatively complex cases in connection with the conducting of administrative proceedings concerning registrations in the central register of de minimis aid.

Based on the information obligation on the value of state aid paid over the past calendar year, which aid providers are obliged to meet vis-a-vis the Office always by 30 April, the Office will compile and submit an annual report to the European Commission. Following the modernisation of state aid rules and, above all, the expansion of the areas to which the general block exemption applies, the range of providers to which the obligation applies has grown, as has the number of grants provided under the general block exemption regulation.

As for awareness-raising activities, contrary to current practice only one conference on state aid issues is planned for 2017, however it will cover two days. Representatives of the European Commission and national institutions will be invited to the conference, and the Office representatives will be among the speakers. Thanks to its broad focus, the conference is designed not only for representatives from the ranks of public fund providers (ministries, regions, towns, municipalities or other state institutions), but also for the professional public (be it from the ranks of beneficiaries, academics or lawyers). In 2017, the Office will also carry out its advisory and consultancy role through a number of other training events, focusing in particular on the new obligation of transparency for state aid and other current issues.

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