ANNUAL REPORT 2017

OFFICE FOR
THE PROTECTION
OF COMPETITION

ÚOHS

ÚOHS ÚŘAD PRO OCHRANU HOSPODÁŘSKÉ SOUTĚŽE
OFFICE FOR THE PROTECTION OF COMPETITION

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FOREWORD

At the beginning of my professional engagement with the Office for the Protection of Competition, I set a goal to fight against cartel agreements, particularly in the field of public procurement. Considering the Office's outcome in 2017, it is clear that we have managed to meet this objective almost 100 per cent. Majority of the Office's decisions concerning prohibited agreements punished bid rigging cartels. Also, most of the two dozen pending cartel proceedings deal with this serious issue, which makes the public and private entities' contracts even more expensive.

However, the summary data also reveals other findings. Although it has been more than a quarter century since the introduction of the competition law into the Czech legal system, in our practice we still encounter undertakings which are unaware of its existence. Primarily, small and medium-sized enterprises are often surprised to discover that their collaboration with competitor can constitute illegal conduct subject to considerable sanctions. Therefore the Office is preparing an informational campaign for the near future targeting small and medium-sized enterprises, which will explain the basic competition rules and, in particular, specify which types of conduct might be considered to be anticompetitive.

I must also mention the significant decrease in the duration of second-instance proceedings regarding public procurement. On average, the second-instance proceedings, filed in 2017, took 52 days from the moment the case file was transmitted to the second instance until the second-instance decision was issued. Thus the Office decides on both the first and second instance within the deadlines set by the Administrative Code. In the field of public procurement review, we have also focused on our own systematic work and verification of frequent contracting authorities' misconduct. We have investigated five dozen IT systems' tenders and have imposed millions in penalties for errors. However, the problem will be eliminated by a more responsible approach of public administration, so that contracting authorities are not dependent on merely one supplier.

Following the amendment of the Act on Significant Market Power, we took advantage of the clearer rules and started a number of proceedings. In three cases, a first-instance decision has already been issued under the new legislation. In its decision-making activities, the Office exercised its sanctioning powers as well as the possibility to conclude the proceedings by accepting the commitments proposed by the party to the proceedings.

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 administration authority, with responsibilities in the sphere of protecting competition, supervising public procurement award procedures, supervising significant market power and coordination and consultancy in the field of State Aid.

The definition of the basic mission, responsibilities and scope of activities of the Office for the Protection of Competition is laid down 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 defined in the Act No. 143/2001 Coll., on the Protection of Competition (hereinafter referred to as "CA" or "Competition Act"). The related responsibilities concerning inter-banking fees were entrusted to the Office in January 2017 by the Act No. 284/2009 Coll., on Payment Systems, which was subsequently replaced by an entirely new Act No. 370/2017 Coll., on Payment Systems.

In the area of public procurement, since October 2016, the basic legal framework has been laid down by the Act No. 134/2016 Coll., on Public Procurement (hereinafter referred to as "PPA"). The Office has only supervisory responsibilities, i.e., supervises the transparent, reasonable, non-discriminatory and equal approach of the contracting authority to tenderers.

The significant market power of retail chains for their food and agricultural suppliers is regulated by the Act No. 395/2009 Coll., on Significant Market Power in the Sale of Agricultural and Food Products and the Abuse thereof.

The area of State Aid is regulated mainly by the legislation of the European Union. At national level it is regulated by the Act No. 215/2004 Coll. Amending Certain Relationships within the area of State Aid and altering the Act on Promotion of Research and Development.

COMPETITION

Responsibility in the field of competition has been entrusted to OPC since 1991 and is currently exercised pursuant to the Act No. 143/2001 Coll., on the Protection of Competition, as amended. The Office may also directly apply Articles 101 and 102 of the Treaty on the Functioning of the European Union.

The main activities for the protection of competition comprise of detecting and sanctioning prohibited agreements, the abuse of dominant position and the control of concentrations between undertakings. A special provision of the Czech competition law includes the possibility to penalise conduct of public authorities favouring certain undertakings.

Legislative Changes

In 2017, two amendments to the Act No. 143/2001 Coll., on the Protection of Competition, as amended, were enacted. In particular, it was an amending act (No. 183/2017 Coll.) related to the adoption of the Act on Liability for Misdemeanours and Related Proceedings, as well as an amendment related to the adoption of the Act No. 262/2017 Coll., on Competition Damages.

In connection with changes of the legislation on administrative penalties, terminology used in CA was modified. The administrative offences of legal entities and natural persons (entrepreneurs) have been renamed to misdemeanours. The general limitation period was set for ten years for misdemeanours involving a breach of seal and for three years for failure to cooperate or provide information. Simultaneously, regarding the specific nature of the administrative proceedings in the matters of competition, a number of exceptions have been laid down according to which the Office does not apply the provisions of the Act on Misdemeanours when dealing with misdemeanours provided by CA.

The Office together with the Ministry of Justice were jointly responsible for drafting of the Act No. 262/2017 Coll., on Competition Damages, through which the Directive 2014/104/EU of the European Parliament and of the Council on 26 November 2014, on certain rules governing actions for damages, under national law, for infringements on the competition law provisions of the Member States and the European Union, has been transposed into the Czech legal system. The purpose of the new legislation is to establish or clarify the rules for the right to compensation of harm caused by the infringement of competition law and to unify the basic principles of its application at the Member State level. Apart from specifying who and how one can apply for compensation, and towards whom damages can be claimed, the new act also introduces ways for the claimant to obtain the necessary evidence. For instance a new type of procedure for evidence disclosure serves this purpose.

In relation to the aforementioned Act, it was also necessary to amend provisions of the Competition Act concerning access to a file. In addition to facilitating access to evidence for potential private claimants, it was necessary to provide sufficient protection for applicants for the leniency programme. Documents related to the application for the leniency will, therefore, be placed outside of the file until the statement of objections is issued, and everyone will be excluded from access to the file except the parties to the proceedings and their attorney. The documents may be made available to public authorities after the administrative decision is in force. The court may verify the nature of these documents.

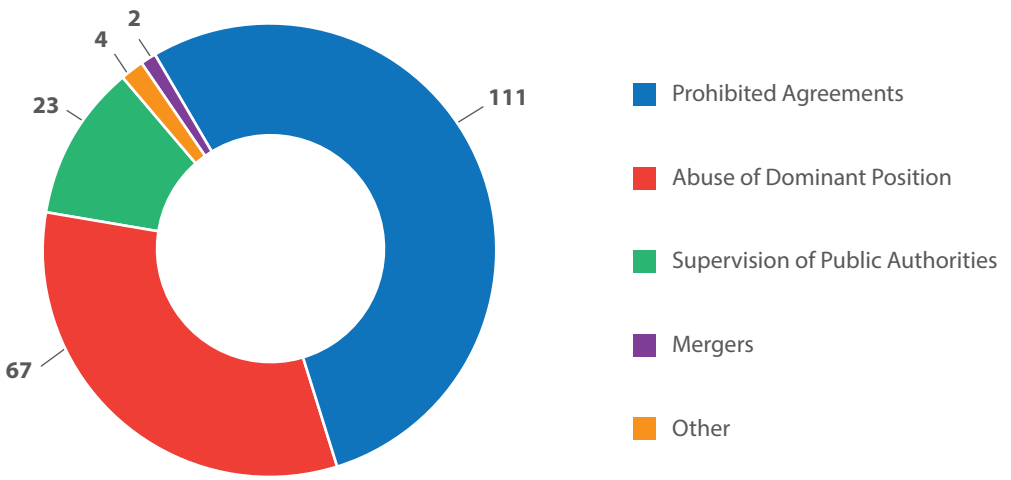
Decision-Making Activities in the Field of Competition in 2017

In 2017, the Office issued a total of 49 first-instance decisions in the field of competition. In eight administrative proceedings fines totalling CZK 382,930,000 were imposed for the detected infringements of the law. Additional 57 administrative proceedings were newly commenced. The other five cases were resolved through competition advocacy without launching administrative proceedings. In order to detect anti-competitive behaviour, the Office carried out 21 unannounced inspections, in which it obtained evidence at the undertakings' premises. Moreover, the Office investigated more than 200 complaints and answered further 115 inquiries concerning competition law.

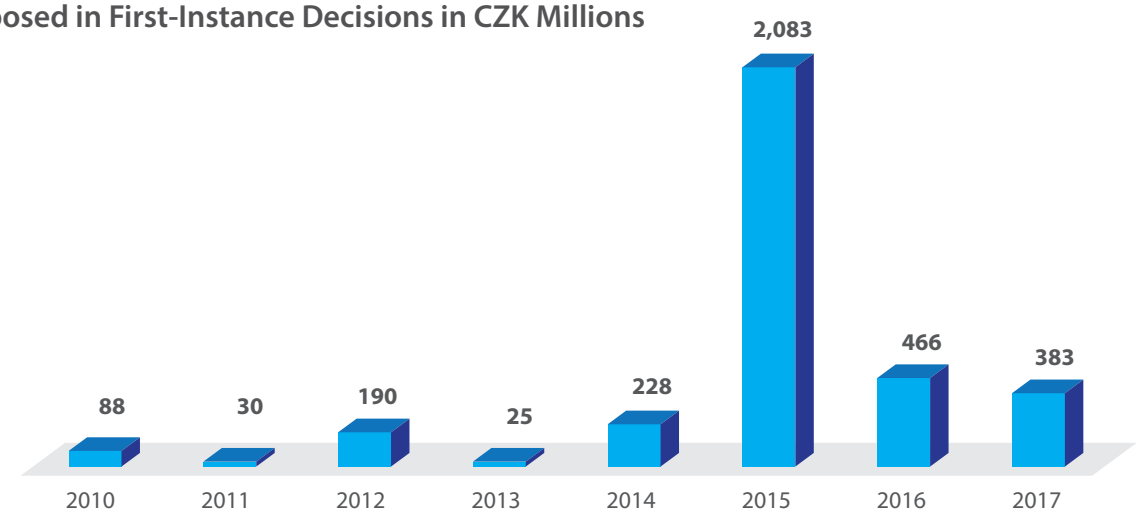
Statistics of Activity in the First Instance

Number of Complaints Received in 2017 Split by Area	
Concentrations of Undertakings	2
Prohibited Agreements	111
Supervision of Public Authorities – Article 19a	23
Abuse of Dominant Position	67
Other	4
Total	**207**
Number of Proceedings Initiated Split by Area	
Concentrations of Undertakings	39
Prohibited Agreements	15
Abuse of Dominant Position	1
Supervision of Public Authorities – Article 19a	2
Total	**57**
Number of Decisions Issued	
Concentrations of Undertakings	38
Prohibited Agreements	7
Abuse of Dominant Position	2
Supervision of Public Authorities – Article 19a	2
Total	**49**
Other	
Sector Inquiry	2
Leniency – Applications Received	4

Complaints Received in 2017 Split by Area



Fines Imposed in First-Instance Decisions in CZK Millions



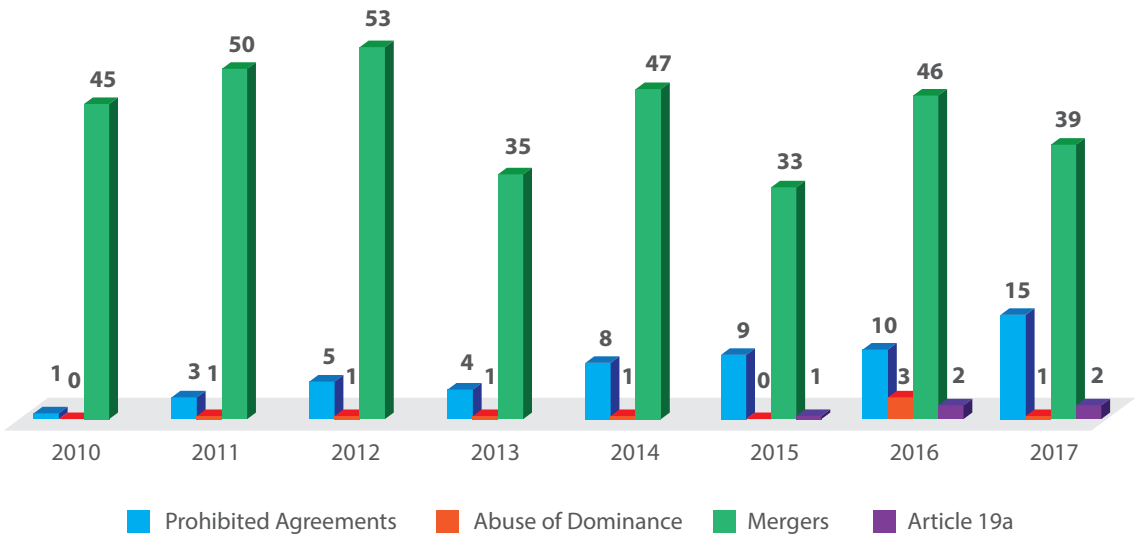
Prohibited Agreements

Seven decisions were issued in the field of prohibited agreements, whereas sanctions were imposed in five cases. Fines in the total amount of CZK 13,892,000 were imposed. The Office is very successful in applying the settlement procedure, which was used in 100 per cent of sanctioned cases. All sanctioned undertakings applied for this procedure, in which a party to the proceedings acknowledges the factual and legal classification of unlawful conduct, and consequently, the fine is reduced by 20 per cent. Subsequently no appeal (so called remonstrance) was lodged against the decisions and the sanctions imposed were, thus, final. Therefore, this institute contributes to the economy of the proceedings, because it significantly saves the resources of the Office.

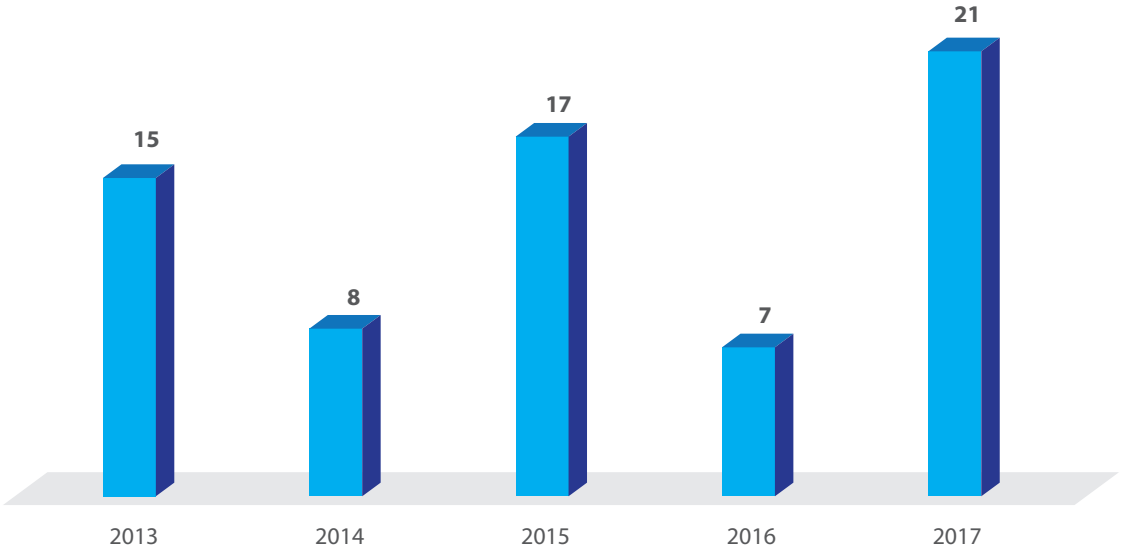
Bid rigging cases, i.e., prohibited agreements between tenderers, remain a clear priority for the Office. Of the seven terminated proceedings, six were related to bid rigging cartels.

The Office initiated 15 new administrative proceedings in the area of prohibited agreements and, as of the end of 2017, it conducted two dozen cartel proceedings. Also, four leniency applications were submitted under the Leniency Program

The Number of Administrative Proceedings Initiated in the Field of Competition



Number of Dawn Raids



SIGNIFICANT CASES

Anticompetitive Conduct of Association of Road and Towing Services

Party to the proceedings: **Association of Road and Towing Services (Asociace silničních a odtahových služeb, z. s.)**
File No.: **S0425/2016**
First-instance fine: **CZK 276,000**
Date of coming into force: **8 November 2017**

In its first-instance decision of 17 October 2017, the Office imposed a fine on Asociace silničních a odtahových služeb, z. s. (the Association of Towing Services), associating natural persons and legal persons, who are direct providers of road and towing services, or have other business links to them.

The Association of Towing Services issued and published on its website the recommended pricelists for the period 2013/2014 and 2015/2016, and the wholesale price list for the period 2016/2017. All of these pricelists set recommended prices for towing service providers' activities for the upcoming period. This conduct was capable of influencing the towing service providers' business decisions.

By its decision, the Office has found that the Association infringed the Competition Act by adopting and implementing a prohibited and void decision by associations of undertakings, which had as its object the distortion of competition in the market for towing services within the territory of the Czech Republic, with effect from 13 September 2013 to 16 June 2016. The administrative proceedings were initiated on the basis of a complaint and following investigation of a possible infringement of law and ensuring the pricelists.

The Association fulfilled all conditions of the settlement procedure, which was applied in the administrative proceedings upon its request and the Office reduced its fine by a statutory 20 per cent. Furthermore, the Office imposed a remedial measure consisting of the obligation to inform members of the Association about the issued decision. The decision was not appealed.

Bid Rigging in the Field of the Car Dealers

Parties to the proceedings: **NH Car, s. r. o., AUTO BÍLEK, s. r. o.**
File No.: **S0302/2016**
First-instance fine: **CZK 4,557,000**
Date of coming into force: **29 June 2017**

In its first-instance decision issued on 12 June 2017, the Office imposed a fine of CZK 4,557 million on NH Car, s. r. o. and AUTO BÍLEK s. r. o. These undertakings infringed the Competition Act by coordinating their participation and bids in three award procedures for the supply of new passenger cars for the public contracting authority the Czech School Inspectorate. Through their conduct, the parties of the proceedings have distorted the competition within the territory of the Czech Republic, in markets of supply of new passenger cars to MPV business class and the lower middle class fleet customers.

The total volume of tenders in question exceeded CZK 11 million, excluding VAT. The most significant one was the public tender "ČŠI PRAHA – Renewal of the 2013 II Autopark" with a total value of less than CZK five million, excluding VAT.

The Office initiated administrative proceedings on the basis of an anonymous complaint, in which it was pointed out to certain actions related to selected public tenders commissioned by the Czech School Inspectorate. On the basis of this complaint, the Office carried out an analysis of the supply contracts for new cars advertised by the Czech School Inspectorate and, in three of them, identified indications of possible coordination between tenderers' bids for the given contract.

Companies NH Car, s. r. o., and AUTO BÍLEK, s. r. o. have fulfilled all conditions of the settlement procedure that were applied on the basis of their applications in the course of the administrative proceedings and, therefore, the Office reduced the fine by 20 per cent. No appeal was filed against the decision.

Market Sharing and Bid Rigging Agreements in the Field of Supply of Bottled Water in Barrels and Bottled Water Dispensers

Parties to the proceedings: **AQUARA, s. r. o.**, **Crystalis, s. r. o.**
File No.: **S0570/2015**
First-instance fine: **CZK 479,000**
Date of coming into force: **28 June 2017**

In the first-instance decision of 7 June 2017, the Office imposed a fine of CZK 479,000 on abovementioned companies for an infringement of the Competition Act. In the proceedings, the Office assessed two administrative offenses committed in the field of supplying bottled water and bottled water dispensers.

At the end of 2014, both companies agreed to restrict mutual competition and not to offer their products and services to other party's customers at more favourable prices. The purpose of the arrangement was to ensure that customers who have already ordered goods from one of them continue to order the goods from that undertaking. The agreement was fulfilled only for a short period of time, as the Office was informed by an employee of one of the companies who was concerned that this conduct was illegal. The Office considered this agreement to be rather more serious one.

During an unannounced inspection, the Office found evidence that the same companies had agreed, in 2008, to submit concerted bids to the award procedure of the Regional Authority of the Central Bohemian Region for delivery of dispensers and bottled water. One of the parties to the proceedings submitted the cover bid upon agreement. For this offense, the Office increased the fine imposed on both companies primarily for the market-sharing agreement.

Both parties to the proceedings took advantage of the settlement procedures and, therefore, the Office reduced the resulting fines by 20 per cent. No appeal was filed against the first-instance decision.

Bid Rigging in the Field of Machinery Equipment

Parties to the proceedings: **HANZAL nářadí-stroje, s. r. o., První hanácká BOW, spol. s r. o.**
File No.: **S0109/2016**
First-instance fine: **CZK 1,833,000**
Date of coming into force: **10 June 2017**

In its first-instance decision of 24 May 2017, the Office imposed fines amounting to CZK 1.833 million on companies HANZAL nářadí-stroje, s.r.o., and První hanácká BOW, spol. s r. o. These undertakings infringed the Competition Act by coordinating their bids in seven award procedures for the supply of machinery for secondary specialised and vocational schools, and for the company FERRCOMP, a. s. The total volume of the contracts in question exceeded CZK 18 million.

The Office initiated administrative proceedings on the basis of a complaint submitted by the Office of the Regional Council of the Central Moravia Cohesion Region, which informed about the two companies' possible concerted conduct regarding the public tender on machinery equipment for practical training workshops at the Secondary Technical School and Uničov Secondary Vocational School with the total value approximately CZK 6.4 million, excluding VAT. After carrying out dawn raids and gathering evidence within the administrative proceedings, it was found that the parties to the proceedings coordinated their bids in six further contracts.

Companies HANZAL nářadí-stroje and První hanácká BOW fulfilled all conditions of the settlement procedure, which was applied in the course of the administrative proceedings, therefore, the Office reduced the fines by 20 per cent. No appeal was filed against the decision.

Bid Rigging in the Field of Construction Equipment

Parties to the proceedings: **Ascendum Stavební stroje Czech, s. r. o., Josef Červenka – HYDRAULIKSERVIS**
File No.: **S0770/2016**
First-instance fine: **CZK 6,747,000**
Date of coming into force: **13 January 2018**

In its first-instance decision of 21 December 2017, the Office imposed a fine of CZK 6,747 million to Ascendum Stavební stroje Czech, s. r. o., and refrained from imposing a fine on natural person, entrepreneur Josef Červenka – HYDRAULIKSERVIS. Both undertakings infringed the Competition Act by concluding and implementing a market-sharing agreement, or more precisely, customers sharing agreement regarding new Volvo construction machinery distribution primarily by coordinating their participation and/ or bids in award procedures in the Czech Republic between 23 July 2012 and 2 September 2015.

The Office initiated the administrative proceedings on the basis of a Leniency application submitted by the natural person, entrepreneur Josef Červenka – HYDRAULIKSERVIS. After carrying out a dawn raid, the undertaking Ascendum Stavební stroje Czech also submitted the leniency application. Since both undertakings fulfilled conditions of the Leniency program, it was refrained from imposing a fine on Josef Červenka – HYDRAULIKSERVIS and the fine imposed on Ascendum Stavební stroje Czech was reduced by 40 per cent.

Both parties to the proceedings also fulfilled all conditions for the settlement procedure that was applied in the course of this administrative proceedings and, therefore, the Office reduced Ascendum Stavební stroje Czech's fine by 20 per cent. No appeal was filed against the decision.

Waste Disposal Contract for the Hypermarket Chain of Globus ČR, k. s., and SUEZ Action for Unlawful Interference

Parties to the proceedings: **FCC Česká republika, s. r. o.**, **AVE CZ odpadové hospodářství, s. r. o.**, **Marius Pedersen, a. s.**, **SUEZ Využití zdrojů, a. s.**
File No.: **S0468/2016**
Outcome: **Administrative proceedings were suspended.**
Date of coming into force: **27 September 2017**

The Office decided to terminate the administrative proceedings initiated against four companies operating in waste management, for possible bid rigging in a tender procedure for comprehensive waste management, i.e., the collection, transport and processing of waste from Globus ČR, k.s., business centres.

The administrative proceedings were initiated by the contracting authority when, from the course of the award procedure and from some of the bids submitted, the Office suspected that the parties to the proceedings could coordinate their conduct during award procedure with each other and enter into a prohibited anti-competitive agreement. Some of the bids showed similar features indicating possible coordination. The resulting price of the winning bid was close to the price at which the services demanded had been provided to the contracting authority so far, and the potential winner of the award procedure had already provided Globus ČR with waste management services. During the administrative proceedings, an unannounced inspection was carried out at the premises of the parties to the proceedings, however, the Office did not find any further evidence or information during the inspection and in subsequent administrative proceedings proving illegal coordination of the parties to the proceedings. The Office verified that subcontracting and negotiating this subcontract between the two parties to the proceedings could cause similarity in their bids. The mutual contacts between some of the parties to the proceedings and the indications that led the Office to initiate the administrative proceedings, and enable the Office to conduct the dawn raid, could be explained rationally and differently than as an unlawful collusion. Therefore, the Office terminated the administrative proceedings.

Throughout the course of the administrative proceedings, SUEZ challenged the unannounced inspection and brought an action against an unlawful interference. However, this legal action was dismissed as the Regional Court (KS) in its ruling[1] found that the dawn raid had met all the criteria set by the European Court of Human Rights. Conducted inspection of the business premises of the parties to the proceedings were found to be legal and pursued legitimate objectives, and at the same time, passed the suitability test. Once again the Regional Court confirmed that the Office had initiated administrative proceedings on the basis of such documents and information indicating that the parties to the proceedings could have committed a specific offense (this was not a "fishing expedition"). Conducted inspection also passed a test of its scope, where the Office did not deviate from the legitimate framework set out in the initiation notice for the administrative proceedings. As far as the length of the inspection is concerned, it took place within a matter of hours and therefore was not excessive.

In regard to the legal action, it can be noted that SUEZ also objected to the illegality of the Office's own procedural steps when the administrative proceedings were initiated. However, the Regional Court pointed out to the case law and confirmed the practice that conducting administrative proceedings does not constitute an unlawful interference and cannot be challenged by injunctive action; the appellant could invoke the judicial review only after the adoption of the decision on merit.

1 Decision of the Regional Court in Brno from 31 March 2017, No. 29A 165/2016-150

Decision of the Office Concerning a Contract for the Supply of De-icing Products

Parties to the proceedings: **HSH Chemie, s. r. o., ČESKÁ CHEMICKÁ, a. s., FILSON, s. r. o.**
File No.: **S0146/2017**
Date of coming into force: **6 January 2018**

On 21 December 2017, the Office issued a decision declaring that evidence did not prove an infringement of the Competition Act or the EU competition law in the course of this administrative proceedings. The Office examined the conduct of companies HSH Chemie, s. r. o., ČESKÁ CHEMICKÁ, a. s. and FILSON, s. r. o., which were thought to coordinate participation in the award procedure for the public tender for defrosting supplies, for the purpose of de-icing airport areas, which was awarded by the contracting authority Letiště Praha, a. s. The value of the contract was about CZK 83.1 million. The indications leading to initiation the administrative proceedings failed to confirm and support the Office's suspicion of an anticompetitive conduct, despite carrying out dawn raids during the administrative proceedings.

Disciplinary Fine for Failure to Provide Information

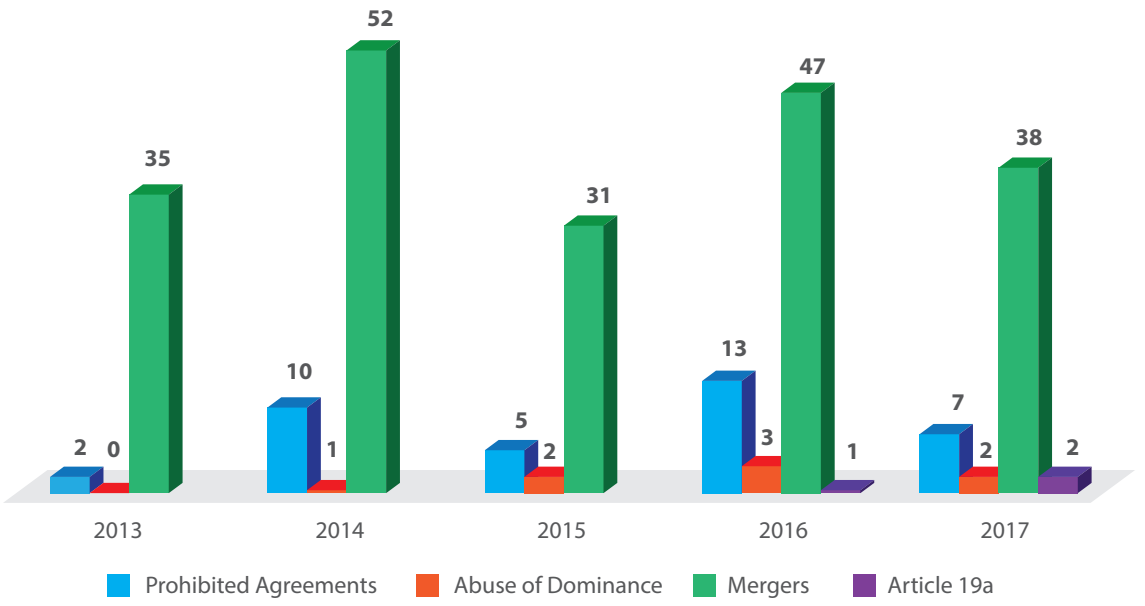
On 18 April 2017, the Office imposed a fine of CZK 100,000 on the company AXA pojišťovna, a. s., for breach of the obligation set out in Article 21e (2) of the Competition Act.

The Office requested AXA pojišťovna for the provision of information and documents, in order to investigate a possible infringement of the Competition Act in the field of towing damaged vehicles on national roads as a result of an accident or vehicle break-down. AXA pojišťovna did not respond to the Office's requests or subsequent urgency, so the Office issued a decision imposing a fine. AXA pojišťovna paid the imposed fine, and provided the Office with requested information and documents.

Abuse of Dominant Position

Regarding the abuse of dominant position, the Office issued two decisions in 2017. In one decision the fine of almost CZK 370 million was imposed and in the second one commitments of a party to the proceedings were accepted. Further 70 complaints regarding the abuse of dominant position was investigated and one new administrative proceedings were initiated. By the end of 2017, the Office conducted three administrative proceedings in this area.

Number of Decisions Issued in the Field of Competition



SIGNIFICANT CASES

The Office Punished Czech Railways for Exclusionary Practices in Long-Distance Passenger Rail Transport

Party to the proceedings: **Czech Railways (České dráhy, a. s.)**
File No.: **S0180/2016**
First-instance fine: **CZK 367,805,000**
Date of coming into force: **Appeal filed**

The Office for the Protection of Competition, in its first-instance decision made of 14 December 2017, imposed on České dráhy, a. s. a fine of CZK 367,805,000 for abusing a dominant position by applying a predatory pricing in order to exclude competitors from the market.

The undertaking České dráhy has abused its dominant position on the market for the provision of long-distance passenger rail transport services in the public service obligation. When concluding public service obligation contracts in public rail passenger transport ensuring the transport needs of the state in relation to the track Plzeň-Most and Pardubice-Liberec the party to the proceedings submitted, without objectively justifiable reasons, a bid with an excessively depressed amount of demonstrable loss expected. Such bid ensured that České dráhy would be the selected contractual provider of these services throughout the timetable for 2006/2007. Moreover, according to the contracting authority's unilateral option conditions, even for the subsequent yearly timetable until the end of the timetable for 2013/2014, and for the entire period services were provided, and in the individual years the mentioned services were provided for the demonstrable losses, together, with its additional expenses from the provision of the services in question did not cover its possible costs of providing them.

Anti-competitive conduct took place with respect to the track Plzeň–Most from 15 November 2005 to 13 December 2014 and at the track Pardubice–Liberec from 26 May 2006 to 13 December 2014.

The conduct of the party to the proceedings caused, in case of both tracks, harm to undertaking VIAMONT, a. s., and regarding the track Pardubice–Liberec also to undertaking Connex Česká Železniční, s.r.o. Such illegal conduct could cause a potential harm to consumers and the trade between Member States in the provision of long distance passenger rail transport services was also potentially affected. Consequently, the undertaking České dráhy infringed both the Competition Act and Article 102 of the Treaty on the Functioning of the European Union.

The Office's in its decision prohibited such conduct of the undertaking České dráhy. When imposing a sanction, it took into account that it was a very serious and long-term exclusionary offense on the liberalised market that could have had an impact on wider group of consumers. The decision is not final yet as the appeal has been filed.

Česká pošta Will Amend the Provisions of the Contracts Relating to Shipments Initially Filed with Another Postal Operator

Party to the proceedings: **Czech Post (Česká pošta, s. p.)**
File No.: **S0330/2016**
Outcome: **Terminated by accepting commitments**
Date of coming into force: **18 May 2017**

The Office has accepted commitments in the administrative proceedings conducted with the state enterprise Česká pošta (hereinafter referred to as "ČP") concerning a possible abuse of a dominant position by enforcing an obligation to inform ČP whether the submitted consignments were originally filed with another postal services provider and which particular shipments this affects. The fulfilment of these obligations was secured in the contracts by contractual penalties for each day of delay and for each consignment, at the delivery of which to ČP the given obligation was not fulfilled.

The Office objected to introducing the information obligation into agreements with contractual customers in cases where that information was not included. However, under sanction in the form of a contractual penalty, the company was forced to find out and to bear its own costs related to the control of individual consignments,

or possibly pass this information obligation to their customers and, thus, be dependent on the evaluation of the given information from these customers and to bear the risk of imposing a contractual penalty.

The party to the proceedings has cooperated with the Office since the initiating of the administrative proceedings and has subsequently proposed commitments in favour of restoring effective competition and remedying the defective situation. The obligations were mainly to reduce the contractual penalties of CZK 100 for each consignment for which the information obligation was not fulfilled, as well as to stipulate the ČP customer's duty to inform only on facts that are known to him (i.e. which of the submitted consignments were taken over, or more precisely, originate from another postal services provider), and the possibility of exempting from the information obligation. The Office found the commitments sufficient and closed the proceedings. The newly established information duty is proportionate to the legitimate objective pursued by the undertaking Česká pošta i.e. the protection of its own infrastructure against its misuse. The decision came into force on 18 May 2017.

Possible Abuse of a Dominant Position in Flat Rentals

The Office terminated the investigation, in which it examined 23 complaints concerning the possible abuse of dominant position by RESIDOMO, s. r. o. (until 1 February 2017 under the name RPG Byty, s. r. o.) in the rental market. Based on the analysis, the Office did not find any objective reasons for considering rent prices to be disproportionately high.

Anticompetitive Conduct of Public Authorities

Regarding an infringement of Article 19a of the Competition Act, the Office issued two first-instance decisions in 2017, both of which concerned generally binding decrees of territorial self-governing entities regulating betting games, lotteries and similar games. Two additional administrative proceedings were launched in this area.

SIGNIFICANT CASES

Děčín Distorted Competition in its Lottery Decree

Party to the proceedings: **Statutory City of Děčín (statutární město Děčín)**
File No.: **S0444/2016**
First-instance fine: **CZK 499,000**
Date of coming into force: **Appeal filed**

The Office for the Protection of Competition imposed, in its first-instance decision, a fine of CZK 499,000 on the Statutory City of Děčín for infringement of Article 19a of the Competition Act, which prohibits public authorities to favour certain undertakings.

By issuing a Decree No. 3/2013 on the Regulation of the Operation of Betting Games, Lotteries and other similar Games, effective from 8 June 2013 until 7 October 2016, the City of Děčín authorised the operation of certain betting games, lotteries and other similar games only in casinos at the addresses mentioned in Annex No. 1 to this Decree, and the operation of four slot gaming machines at the address points listed in Annex 2 to this Decree. The selection of such location and the determination of the maximum number of authorized slot machines were not carried out on the basis of objective, non-discriminatory and transparent criteria.

The City of Děčín, without its objectively justifiable reasons, distorted competition in the market for the operating betting games, lotteries and other similar games and in the market of operating facilities in which betting games, lotteries and other similar games can be operated within the Statutory City Děčín. The competition was distorted by favouring undertakings whose address points of operation were included in Annex No. 1 and Annex No. 2, and because undertakings included in Annex 2 were not allowed to operate different kinds of gaming devices than a maximum of four gaming slots. The decision is not yet final as the appeal has been filed.

Karlovy Vary Violated the Competition Rules by its Lottery Decrees

Party to the proceedings: **Statutory City of Karlovy Vary (statutární město Karlovy Vary)**
File No.: **S0595/2016**
First-instance fine: **CZK 734,000**
Date of coming into force: **Appeal filed**

In its first-instance decision, the Office imposed a fine of CZK 734,000 on the Statutory City of Karlovy Vary for breaching the prohibition of favouring certain undertakings due to the public administration authority's conduct.

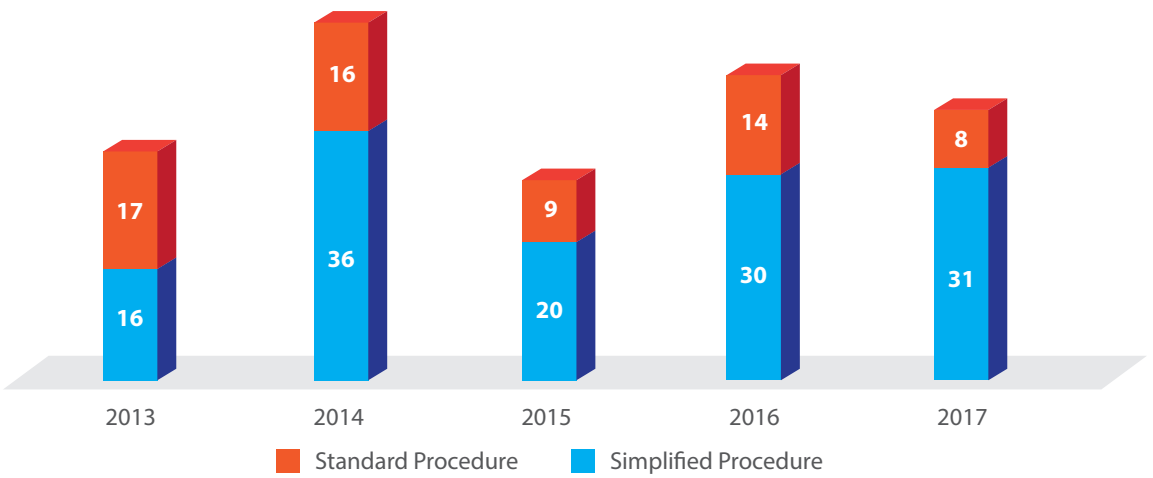
The Statutory City of Karlovy Vary infringed the Article 19a of the Competition Act by allowing its general binding decrees from 2013 and 2015 to determine the places and times in which gambling, lotteries and other similar games could be held, and operating betting games, lotteries and other similar games only at the addresses mentioned in the annex to the decrees, without choosing address points based on objective, non-discriminatory and transparent criteria.

The Statutory City of Karlovy Vary has, thus, distorted competition in the market for operating betting games, lotteries and other similar games from 1 July 2013 until the present day without objectively justifiable reasons, and in the market of operating facilities, in which betting games, lotteries and other similar games will be played. The city has favoured competitors who may continue to run betting games, lotteries and other similar games and establishments for the purpose of running betting games, lotteries and other similar games at address points. The decision is not yet final; appeal has been filed against it.

Concentrations between Undertakings

Considering concentrations between undertakings, the Office issued a total of 38 decisions, of which eight was adopted within a standard procedure and 30 within a simplified procedure. A single decision was adopted after assessing the case within so called second phase of the review. With respect to any concentration examined, OPC did not find any concerns about significant distortion of competition and, therefore, no merger was approved with remedies or not approved at all. A total of 39 administrative proceedings were initiated, whereas three administrative proceedings were conducted at the end of 2017.

Concentrations between Undertakings – Simplified and Standard Procedure



SIGNIFICANT CASES

Concentration Between Undertakings MEDIA MARKETING SERVICES, a. s./REGIE RADIO MUSIC, spol. s r. o./ RADIOHOUSE, s. r. o.

File No.: **S742/2016**
Date of coming into force: **24 July 2017**

In its first-instance decision in 2017, the Office approved the concentration between undertakings MEDIA MARKETING SERVICES, a. s., (hereinafter referred to as "MMS") and REGIE RADIO MUSIC, spol. s r. o. (hereinafter referred to as "RRM") on the one side, and RADIOHOUSE, s. r. o., (hereinafter referred to as "RADIOHOUSE") on the other side, during the second phase of the administrative proceedings, initiated in December 2016. The merger should have consisted on the fact that RADIOHOUSE, which is jointly controlled by applicants, should have fulfilled the criteria of a jointly controlled undertaking, which will, in the long term, perform all functions of single economic entity that it have not done so far.

The company MMS is a part of the Czech media group Media Bohemia, which owns and operates more than 30 regional radio stations in the Czech Republic (including Radio Blanik, Fajn Radio, Hit Radio, Rock Radio, Radio City), further the Media Bohemia group operates media representation or owns its own internet (online) projects. RRM is a part of the French Lagardere Group, which among others operates two national radio stations (Evropa 2 and Frekvence 1) and several regional radio stations in the Czech Republic. The acquired undertaking RADIOHOUSE operated as a joint media agency for MMS and RRM, which took over a part of the services previously provided by these undertakings to their related entities and, marginally, to third parties as well. Consequently, when assessing the impact of the concentration, the Office focused, in particular, on the field of providing advertising space on the radio, online advertising space and radio broadcasting.

In order to assess the concentration's impact on competition, the Office requested information and opinion from both competitors and purchasers of services of the undertakings concerned, analysed the structure and functioning of relevant markets, and identified the economic and financial power of undertakings concerned and potential barriers to entry on relevant markets. In assessing the impact on competition, the Office further considered whether the concentration of undertakings in question could lead to the removal of significant competitive constraints for one or more undertakings in the relevant markets, which could subsequently strengthen their market power without resorting to coordinated behaviour or a change in the nature of competition – that undertakings who previously did not coordinate their conduct would be more likely to coordinate it after completion the merger, with higher likelihood and raise prices or otherwise distort effective competition.

After considering all the circumstances of the case and analysing the potential negative impacts resulting from the horizontal integration of activities of the undertakings concerned, the Office concluded that the assessed concentration does not raise serious competition concerns.

Concentration between Undertakings HP Invest, a. s. / GFP Limited / HP Tronic-prodejny elektro, a. s. / DATART INTERNATIONAL, a. s.

File No.: **S0327/2017**
Date of coming into force: **2 October 2017**

In its first-instance decision, the Office approved the concentration, which resulted in HP Invest, a.s. and GFP Limited acquiring joint control over HP Tronic-prodejny elektro, a. s. and DATART INTERNATIONAL, a. s. The transaction in question was of a horizontal nature when the HP Tronic Group (headed by HP Invest, a. s., which includes HP Tronic- prodejny elektro, a. s., and its subsidiaries) operates within the territory of the Czech Republic, in particular, in the field of retail sales of electronics, both through retail outlets and the Internet, under the brands Euronics, ETA, Kasa or eproton trade names. The undertaking DATART INTERNATIONAL also operates in the Czech Republic in the field of retail electronics through a network of shops and an Internet shop under the Datart brand. The HP Tronic Group is also engaged in wholesale electronics sales.

The Office's investigation of possible impacts of the assessed concentration revealed that the transaction would lead to a strengthening of HP Tronic's position, in particular, by connecting the electronics retail sector concerned.

However, the market share of the the merged entity would be relatively low, when by any definition of the relevant market, it doesn't exceed 25 per cent. Additionally, the HP Tronic Group will continue to be exposed to a number of competitors operating both a network of retail outlets and online stores, some of which have a similar or even stronger position in each of the affected markets. Also, with regard to the vertical integration of the activities of the undertakings concerned in the area of electronics, the Office concluded that the assessed concentration did not raise serious concerns about the significant distortions of competition in the above mentioned relevant markets.

Alternative Solutions of Competition Concerns

Considering cases in which the anticompetitive conduct has not been implemented so far and, therefore, has no negative impact on the relevant market, the Office may, instead of initiating administrative proceedings and sanctioning an undertaking concerned, assess the case within so called alternative solution. This kind of measure allows an undertaking concerned to eliminate potential competition issue by adopting a corrective remedy and, if the Office recognises that the remedial measures are sufficient, it terminates the case without initiating the administrative proceedings.

SIGNIFICANT CASES

Breweries – Export Ban Agreements

In 2015 and 2016, the Office carried out sector inquiry in the market of beer comprising sales for consumption licensed premises to verify, among others, whether the cumulative effect of restrictive agreements would not result in a negative market foreclosure. From an extensive inquiry, based also on the analysis of the agreements concluded by breweries with the customers, the Office found out that some breweries (Lobkowicz, PMS Přerov and Budvar) had concluded export ban agreements, covering not only the above-mentioned market (on-trade beer market) but also beer markets for beer supplies to other distributors or to retail facilities (off-trade beer market).

Regarding the reasons for applying export ban agreements, the breweries concerned mentioned that there were, for example, historical reasons for assessing economic, legislative and business potential risks, further issues related to product labelling, claims, goods quality, product liability and packaging account protection. However, the breweries concerned also stated that they had not exercise control of compliance with the agreements, i.e., they did not enforce it or impose penalties for non-compliance.

In light of the above mentioned argument, and taking into account the market shares of the breweries concerned in the relevant markets, the Office considered that the breweries' alleged conduct could be solved without former proceedings, which some breweries themselves outlined. As a coercive measure, the breweries concerned proposed an amendment to the contractual provisions to completely remove export ban and re-negotiate this provision with their customers. Or, more precisely, they committed themselves to informing their customers about the invalidity of export ban agreements in an appropriate manner.

All of the breweries concerned fulfilled the measures and provided the Office with relevant evidence. In a short period of time, the Office's alleged competition concern was removed, and it was possible to justify the Office's resignation concerning the authoritative declaration of unlawful conduct and the imposition of a sanction.

Natural Cosmetic Products – Price and Export Ban Agreements

The Office received a complaint about the possible anti-competitive conduct seen in concluding prohibited resale price maintanance agreements committed by the undertaking JANIMAREX, spol. s r. o. (hereinafter referred to as "Janimarex"). The Office verified that the given company had published, on its website within the resale terms, a notice in which it informed its purchasers that it could withdraw from the contract or cancel the order if the purchaser offered products at a price below the price advertised in its e-shop, or if the purchaser delivers products to a country other than the Czech Republic and does not inform it about thereof.

First of all, the undertaking Janimarex stated, that it made merely an informative recommendation that is not incorporated into contracts with its purchasers. As to the reasons of publishing the price notification, it stated that its purpose was to highlight the possible issue of predatory pricing, as well as the protection of the brand image of sold products, in particular, because of the fear that a lower price level could give consumers the impression that the products were low quality. The export notification was related to the exclusive representation that Janimarex had agreed to in the Czech Republic with its foreign supplier, but only aimed at active sales of the products concerned abroad.

In the Office's view, although the assessed provisions used by Janimarex could meet the criteria for the considering such conduct to be prohibited vertical agreements, the Office took into account Janimarex's market share, but above all else the fact that the implementation of the agreements was not controlled or enforced, i.e., no sanctions were imposed for non-compliance. Therefore the Office, accepted the commitments proposed by Janimarex, which undertook to remove information on resale restrictions of the products in question from its website completely and without any compensation. At the same time, the Office instructed Janimarex to provide purchasers with suitable information about this step and to demonstrate it to the Office, which it had done. By fulfilling its commitments, the Office considers the potential competition concern eliminated, and therefore the investigation was terminated in this case.

Investigation of the Wholesale Offer of xDSL

In 2017, the Office terminated, by means of a competition advocacy an investigation of the complaints of several entities concerning the possible abuse of dominant position by Česká telekomunikační infrastruktura, a.s. (hereinafter referred to as "CETIN"). The abuse was committed in connection with its new reference offer on the market for broadband access to the Internet through xDSL – Mass Market Offer Technology (hereinafter referred to as "MMO"). Throughout 2015, CETIN increased the setup fee for each newly established xDSL connections from CZK 1 to CZK 1,040, further it introduced a new CZK 350 migration fee and a loyalty discount on the monthly flat rate fee and a set-up fee based on the commitment period (3, 7, 15 years), with this discount being applicable when connected to the MMO Reference Quality Enhancement Programme. A condition for joining the Quality Enhancement Programme made customers subscribe a minimum of 5,000 connections, which was reduced to 1,000 connections in March 2016. CETIN guarantees increasing the quality of services, however, only from original subscription, i.e., 5,000 units. Since October 2016, the migration fee has been reduced from CZK 350 to CZK 119, the possibility of committing for 15 years has been abolished and the amount of discounts from establishing new connections has been changed.

The Czech Telecommunication Office, with which the Office cooperated closely, did not find any incompatibility with the requirements for fulfilling the imposed commitments, and did not impose any obligation upon CETIN to modify this reference offer in any way. However, the Office, fearing the possible negative consequences from setting up the discount scheme for infrastructure competition and foreclosing the market, continued to negotiate with CETIN and discussed the possibilities of modifying the MMO's offer. CETIN has subsequently modified the MMO's offer by re-introducing the exit clause, allowing CETIN's wholesaler partner, who has entered into a seven-year sub-commitment under the Quality Enhancement Programme, to reduce its scope under certain conditions. There are no sanctions associated with this reduction and there is no need to maintain any minimum threshold for the subscribed number of services. CETIN's wholesale partner can also use the MMO's offer to provide retail and wholesale services.

The new version of the MMO offer is available on https://www.cetin.cz/mmo as of 15 August 2017, with effect from the same date, subject to the changes, made by CETIN, in case the contractual partners in the already concluded contracts and partial commitments are interested.

Other Agenda

Sector Inquiry in the Field of Mobile Data and Voice Services to End Customers

The Office conducted a sector inquiry into data and voice services provided through public mobile electronic communications networks to end customers in the Czech Republic. The Office found out that there are separate retail markets – the market for mobile data and voice services provided to non-corporate customers and the market for mobile data and voice services provided to corporate customers. These markets may be further segmented. Their structure is strongly oligopolistic, and no undertaking has a dominant position at either of them and for that reason their transparency is only relative due to non-public offers.

In addition to fully-fledged mobile operators, there are also virtual mobile operators. However, these have not reached a higher market share, so their competitive conduct cannot be considered to be significant. Price competition consisted mainly of non-public bids and competition being intensified, especially, when trying to get new and keep existing customers. Based on outcome of the sector inquiry, there was no suspicion of an infringement of competition rules, not even in the form of prohibited agreement or abuse of dominant position. The Office closely cooperates with the Czech Telecommunication Office on the long-lasting basis.

Consent to the Intergram and OOA-S Collective Administrators' Charges List

The Office received requests from the Intergram and OOA-S Collective Administrators for approval for certain remuneration rates, according to the 2017 price list. The Office assessed these requests in accordance with the relevant provisions of the Copyright Act, in particular, Article II point 8 of the Amendment to the Copyright Act. Then the Office concluded that there was no flat rate increase in remuneration rates, but only a partial increase in certain items resulting from a change in the rate structure. This is slight and, at the same, time compensated by a reduction in rates for other items. Thus, at the turn of 2017/2018, the Office approved the rate proposal from collective administrators' Intergram and OOA-S fees according to the 2017 price list.

Second-Instance Decision Making

In 2017, a total of 11 appeals were filed against first-instance decisions relating to competition; 13 second-instance proceedings were initiated when two cases were referred from the administrative courts. Three decisions on substance and five procedural decisions were issued. Regarding the decisions issued, the operative part of the first-instance decision was confirmed in three cases and once the operative part regarding the guilty was confirmed whereas the operative part regarding the sanction was amended. One sanction of CZK 245,000 was confirmed.

SIGNIFICANT CASES

The Town of Bílina – Infringement of Article 19a of CA by the Public Administration Authority

According to the Office's first-instance decision at the end of 2016, the town of Bílina infringed Article 19a of the CA by authorising the operation of betting games, lotteries and other similar games (hereinafter referred to the "Lottery") on its territory. These were authorised only in four places (address points), set in the generally binding decrees (also referred to as "GBD") issued and maintained in effect from 2013 until the date that the first-instance decision was adopted. According to the Office, the municipality did not select the address points for operating lotteries based on objective, non-discriminatory and transparent criteria, thereby it distorted competition without objectively justifiable reasons in the market for the operation of lotteries and the market for the operation of establishments for the operation of lotteries within the territory of Bílina.

One of the key objections raised during the entire administrative proceedings was that the Office (by applying Article 19a CA), challenged the constitutionally guaranteed right to self-administration, which is enshrined primarily in Article 8 of the Constitution and subsequently elaborated in Chapter seven. In particular, party to the proceedings referred to Article 104 (3) of the Constitution, according to which the municipal council is entitled, within the limits of its competence, to issue GBD. The objection to the second-instance body stated that the given authorisation has its limits, which stem from the generally accepted hierarchy of legal regulations; where subordinate legislation (GBD) undoubtedly belongs and has lower legal force than the Acts and, therefore, can only regulate the rights and obligations of individuals in accordance with the law.

In the case under consideration, the Office's power to act is expressed in Article 19a in conjunction with Article 1 d) CA, in which the legislator established the Office's responsibility to penalize the distortion of competition by public authorities. Interfering with municipality activities is, thus, determined by legislation (CA) and the purpose of the intervention is to uphold the legally protected interest to preserve undistorted competition. The conditions for state intervention (the Office in this case) in the activities of the territorial self-governing unit within Article 101 (4) of the Constitution were, thus, completely fulfilled.

It is also worth mentioning the method of calculating the fine in which the Office had to reflect the specifics of the case – it does not concern an undertaking that generates turnover, and the fine for the public administration authorities may, according to Article 22aa (2) of the Act, amount to a maximum of CZK 10 million. Therefore, the Office could not mechanically rely on its Guidelines on the method of setting fines[2] but considered it a guideline on how to determine the suitable sanction within its administrative discretion.

The Office first assessed the severity of the conduct according to its competition impact, when it set a coefficient of 1.2 within the range of up to a maximum of 3. Furthermore, the Office assessed the extent of the affected territory according to the principles, by taking into account the population of the territorial self-governing entity by a certain coefficient. It was set up so that the highest possible coefficient of 3 was allocated to entities with more than a million inhabitants. The population of Bílina, thus, reached a coefficient of 0.43. The third factor for the calculating the fine was the time coefficient, which was used in the same way as for undertakings.

The specifics of the public authorities' sanctions for the infringements of Article 19a of CA was an entry fee of CZK 10,000, which was imposed by the Office on the grounds that the imposed fines fulfil the preventive and repressive functions, even in the case of municipalities with a small number of inhabitants. Most municipalities in the Czech Republic have less than several thousand inhabitants. According to the Office's calculations, the maximum possible fine of CZK 10 million for the public authority should correspond to the highest possible severity with a coefficient of 3, the largest number of inhabitants with a coefficient of 3 and the maximum duration of the infringement with the coefficient 3, when it is still necessary to add an entry fee of CZK 10 thousand. In other words, the Office set the basic fine amount as CZK 370,000[3], multiplied by the three coefficients mentioned above, and then the entry fee is added.

The second instance confirmed the method of calculating the fine, but in the present case, the fine imposed was slightly reduced. According to the second-instance opinion, it was more appropriate to take into account the fact that it was the Office's first sanctioning decision concerning an infringement of Article 19a of CA, where there is no relevant decision-making practice of the Office or courts on the matter.

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2 Guidelines of the Office for the Protection of Competition on the method of setting fines pursuant to Article 22 (2) of the Act No. 143/2001 Coll., on the Protection of Competition, as amended (hereafter referred to as the "Principles"), published on the Office's website http://www.uohs.cz/cs/legislativa/hospodarska-soutez.html.

3 i.e. 370,000 x 3 x 3 x 3 +10,000 = 10,000,000

Judicial Review

In 2017, five legal actions were brought against the OPC's decisions at the Regional Court in Brno. Nine cassation complaints were filed with the Supreme Administrative Court against the judgments of the Regional Court of Brno. The Regional Court issued 15 decisions, of which it dismissed legal action against the Office's decision or its procedure in 13 cases. The Supreme Administrative Court ruled nine times, of which seven times were in favour of the Office, and once a mistake was found only on the part of the Regional Court. Fourteen court proceedings were finally completed (no cassation complaint or cassation complaint rejection), out of which in 13 cases the decision or procedure by OPC were confirmed. In particular, this concerned REWE merger proceedings rules violation, a prohibited vertical agreement by Candy, two decisions on chicken breeders' cartels, the KIS bid rigging cartel and several judgments on allegedly unlawful interference by the Office (especially in relation to unannounced inspections). Four decisions by the Constitutional Court on cases originally dealt with by the Office also came out positively – Delta pekárny, RWE and Sokolovská uhelná.

SIGNIFICANT CASES

Bakers' Cartel

This "saga", of which the Office reported in the annual report for 2016, including a graphical representation of the complex developments with 16 Office decisions, or more precisely, the court judgments, continued in 2017 with the cassation complaint proceedings against the last judgment of the Regional Court in Brno. In its judgment, file No. 62 Af 39/2016 – 115, dated 14 October 2016, in operative part I, dismissed the parties' legal actions against the Chairman's decision, file No. UOHS-R20,21,22/2004-1249/2009/310/ADr of 2 February 2009. All parties to the proceedings lodged a cassation complaint against this statement. However, the Regional Court, together with the operative part II of the contested judgment annulled the Chairman's decision, file No. UOHS -R20,21,22/2004-22410/2014/311/JZm of 22 October 2014 and returned the case to further proceedings, because, at that moment, thanks to the complex procedural development, it was the second fine imposed in the same case. The Office filed a cassation complaint against that judgment on procedural prudence (if the Supreme Court overturned the original sentence on the fine from 2009, so as to "replace" it with the fine from 2014).

The aforementioned cassation complaints were decided by the Supreme Administrative Court, by judgment file No. 5 As 256/2016 – 231 of 21 December 2017 (delivered to the Office as late as mid-January 2018) by rejecting the cassation complaints of both parties. Thus, the Office has finally defended its decision on the guilt and punishment of 2009 file No. UOHS-R20,21,22/2004-1249/ 2009/310/ADr. This final decision required the party to the proceedings DELTA PEKÁRNY, a. s. to pay a fine of CZK 24,800,000, a party to the proceedings OK REST, a. s., to pay a fine of CZK 14,800,000 and party to the proceedings PENAM, a.s. to pay a fine of CZK 13,200,000.

The victory is even more significant because the European Court of Human Rights in Strasbourg also decided on the case and criticised the Czech Republic for not providing to undertakings sufficient effective guarantees for reviewing the legality of these unannounced inspections.

Abuse of Dominance by RWE

RWE was fined CZK 39,778,000 in the summer of 2015 for the abuse of a dominant position since 5 November 2004. It committed this abuse when it did not allow regional distribution system operators, not belonging to the RWE Group, to enter into gas purchase and sale agreements in order to enable them to compete effectively with regional distributors belonging to the RWE holding. In February 2017, the Office's sanctioning decision was upheld by the Regional Court in Brno, which also rejected the objection based on the long period of time between committing the offense in question and the imposition of a final sanction. The Regional Court's judgment was subsequently confirmed by the Supreme Administrative Court in June of that year. The Office has finally defended the case before the administrative courts.

SIGNIFICANT MARKET POWER

The food chain covers all subjects and activities from primary agricultural production to food processing, distribution, retail and consumption. Activities within the food chain affect consumers daily and food expenditure represents a large share of the average budget of Czech households. For years, there has been evidence that the material value in the food chain is not evenly spread across all its levels. This is due to the different amounts of bargaining power between smaller and more vulnerable subjects and their more powerful and highly concentrated business counterparts. Since 2010, the Office investigated unfair trade practices in the food chain. However, in 2017 the European Union became more active in this topic. New uniform European rules may be made to combat unfair trade practices.

Legislative Development

Throughout 2017, several amendments were made to Act No. 395/2009 Coll., on Significant Market Power in the Sale of Agricultural and Food Products and its Misuse, as amended (hereinafter referred to as the "Act on Significant Market Power" or "SMPA"). All these changes have been effective since 1 July 2017.

Amendments made by Act No. 104/2017 Coll., amending Act No. 365/2000 Coll., on Public Administration Information Systems and on Amendments to Certain Other Acts, as amended, Act No. 181/2014 Coll., on Cyber Security and Amendment of Related Laws, and some other laws, inserted a new provision of Article 5a to the Act on Significant Market Power, which establishes the Office's authority to conduct sector inquiries. It principally concerns a similar authorisation as contained in Article 20 (2) of Act No. 143/2001 Coll., on the Protection of Competition and on Amendments to Certain Acts, while the new provision of Article 5a (2) refers precisely to the relevant passages of the Act on the Protection of Competition.

The Office's authority to acquire the information necessary for performing its activities from the public administration information systems has also expanded considerably. The newly inserted provision in Article 7a allows the Office to use data from the basic register of inhabitants, data from the population registry information system and from the information system of foreigners.

Substantial amendments to the Act on Significant Market Power were also made by amendment No. 183/2017 Coll., which amends some acts in connection with the adoption of the Act on Liability for Misdemeanours and the Proceedings and the Act on Certain Misdemeanours (hereinafter referred to as the "Amending Act"). Some changes were inspired by the Act on the Protection of Competition, in particular, when it concerns provision of the prioritisation or settlement mechanism; the rest concerns changes closely related to the significant market power agenda.

A fundamental change was brought by paragraph 4 of the provisions in Article 9 of SMPA, according to which current suppliers, providing the Office with confidential information and evidence of misdemeanours, may file an application for concealing their identity. This new SMPA Institute is intended to bring more confidence to suppliers who point to abusive buyers' behaviour in that their instigation to investigate such behaviour will not result in a possible "scrubbing" of their merchandise and termination of cooperation with the chain.

It is also worth mentioning the new limitation period regulation, which now stands for ten years, with a maximum limitation period of fourteen years in the event of its interruption. The limitation period for misdemeanours pursuant to Article 8 (2) a), b) SMPA, shall be three years, for a maximum of five years.

Due to the complexity of all these amendments, the Department of Methodology and Market Power Control issued in December 2017 an Information Bulletin, which deals with all legislative amendments in detail. This publication can also be found on the Office's website.

Alternative Procedural Steps in the Significant Market Power Agenda

The Office's supervisory authority exercised in the area of significant market power leads to the detection and subsequent penalizing of unfair trade practices in the consumer-supply chain. The Office's activity has a form of *ex post* supervision – the Office assesses whether the inspected entity's conduct (purchaser or purchasing alliance concerning SMPA) did not violate the Act on Significant Market Power, either by failing to comply with legal requirements regarding the terms of the contract between the buyer and the supplier, or by applying unfair trade practices.

If the Office considers that the Act on Significant Market Power has been infringed, it follows the formal procedure set up under the SMPA. In such cases, the legislation anticipates that administrative proceedings will be initiated, the necessary evidence gathered and the existence of a misdemeanour declared and, where appropriate, a fine or remedial measures imposed.

The purpose of the Office's task of supervising compliance with the Act on Significant Market Power is to pursue the public interest by protecting the weaker contracting party and the settlement of trade relations between food customers and suppliers. In order to achieve this goal, it is necessary, not only to detect unfair trade practices, but also to effectively punish detected infringements within the administrative proceedings. In certain cases, it is also necessary to use an alternative procedure, which contributes to a faster and more effective illegal conduct remedy for business chains. In practice, it primarily concerns the possibility of the inspected entities (purchasers or purchasing alliances within the meaning of SMPA) to take part in their own initiative to remedy the unlawful situation before the Office decides on misdemeanour and imposes a fine on these entities.

The cooperation between the Office and entities suspected of committing a misdemeanour under the Act on Significant Market Power may, under certain conditions, lead to a prompt and effective remedy for the disruption or threat to the supplier-customer relationship. In cases where purchasers (or more precisely purchasing alliances) are willing to correct their unlawful conduct on their own, the Office is prepared to proceed with an alternative procedure – if the unlawful situation is remedied, the Office does not initiate the administrative proceedings.

A partnership approach between the Office and parties concerned can, thus, in many cases lead to a more effective (faster and more secure) removal of the unlawful situation and the settlement of the supplier-customer relationship. The speed of this solution relates to a less rigid alternative process; the greater certainty comes from the assumption that the entities will internally identify themselves with the measures they will take, albeit after the formal steps have been taken by the Office, rather than the sanction that is always granted against the will of its addressee.

Legislation regulating the area of significant market power has undergone significant changes in 2017. The legislative amendments now allow the Office to use some new procedural steps. Apart from the already established institute of accepting commitments in the framework of the administrative proceedings, there is a possibility of settlement, i.e., a reduction in the fine by up to 20 per cent, provided that all legal conditions are met. In addition to this regulation, the Office proceeded with the introducing the settlement procedure.

The settlement procedure results in further procedural efficiencies and simplifying some of the administrative proceedings. Within the framework of a successful settlement procedure, the accused entities admit committing misdemeanours, for which the administrative proceedings are conducted. As a result of the settlement procedure thus set, the Office issues only a brief statement of reservations and a brief decision. Using the settlement procedure, the positive procedural impacts of the settlement institute are maximised.

The last procedural deflection from the "classic" run of the preliminary investigation and the follow-up administrative proceedings allows the Office not to initiate the administrative proceedings at all and instead of it to take measures eliminating the illegal situation. The Office proceeds in this way by assessing the facts established in the preliminary investigation, justifying the suspicion of a breach of the Act on Significant Market Power. It shall assess in advance the conduct in question's seriousness, the nature of the conduct, the manner in which it is executed and the number of entities concerned, including the possibility of abolishing the unlawful situation by the purchasers or purchasing alliances (i.e., originators of defective conditions). If the Office deems the proposed measures to be sufficient, it shall refrain from initiating the administrative proceedings and defer the case by resolution.

All alternative procedural steps are described in detail and discussed in the Offices' December 2017 Information Bulletin.

International Cooperation in the Field of Unfair Trade Practices

At present, the issue of unfair practices in customer-supplier relations is dealt with only by national legislation, namely Act No. 395/2009 Coll., on Significant Market Power in Sale of Agricultural and Food Products and its Abuse, as amended. At the European Union level, the issue has been long discussed (both within the Commission and the European Parliament).

Many years ago, the Czech Republic opted for a legislative solution and, through the above-mentioned Act on Significant Market Power, proceeded to fight unfair trade practices in the supply chain. However, the absence of a single European regulation is perceived by the Office as an issue, including in the area of procedural matters and lack of administrative cooperation.

Unlike competition law, there is no European forum in the field of unfair trade practices in the supply chain, which would involve the mutual cooperation of Member State authorities dealing with the issue.[4] The absence of a single European framework makes it difficult to demonstrate the application of unfair trade practices to entities whose suppliers are established in a Member State other than the one in which the administrative proceedings is conducted. The need for effective administrative cooperation is particularly relevant in situations where it is necessary to take administrative action in the territory of another Member State.

The absence of a single European framework in the control of market power control agenda causes considerable fragmentation of national regulations, divergent approaches to the issue and unnecessary complexity in gaining mutual experience and information. In each of the Member States (if dealing with unfair trade practices at the legislative level), different public authority is responsible for controlling market power or conducting the administrative procedure to prevent unfair trade practices. In some countries, this agenda is subordinated to the national competition authority (Germany), in others the agenda is dealt with, for example, by the Ministry of Agriculture (Slovakia), etc.

Therefore, the Office for the Protection of Competition perceives the need for a single European framework very intensively, not only as a tool for unifying the basic principles of fair trade relations or enumerating the most problematic unfair trade practices and preventing speculative choice of jurisdiction, but also as an instrument of administrative cooperation between national authorities dealing with the issue. Therefore, the Office perceived intensifying public debates on the possibility of a unified European harmonisation of unfair trade practices by the end of 2017 very positively.

However, the cooperation with individual European countries and mutual transfer of experience already exist. In April 2017, the Department of Control over Market Power welcomed colleagues from Poland. The purpose of this several-day working visit was to provide training and job shadowing in the market power agenda by the Office's employees. Poland is another European country that is very much aware of the need to regulate unfair trade practices. Legislative developments in this area resulted in an act entering into force in Poland in July 2017. Due to the similarity between Czech and Polish legislation, sharing mutual of experience can be expected.

The Office's representatives participated in regular FOOD subgroup meetings within the European Competition Network (ECN) in the food sector during 2017. During meetings of FOOD subgroup Office's representatives presented the results of the Office's work in the market power control agenda.

4 As part of its market power control agenda, the Office is participating in the FOOD subgroup of the European Commission (ECN) dealing with the food sector.

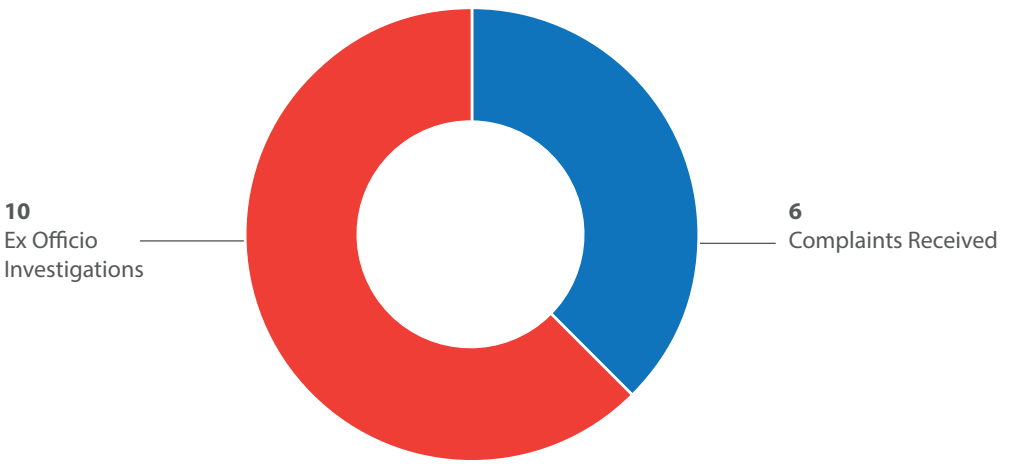
The Office's Decision-Making Activities in the Area of Significant Market Power in 2017

Statistics of Activity in the First Instance

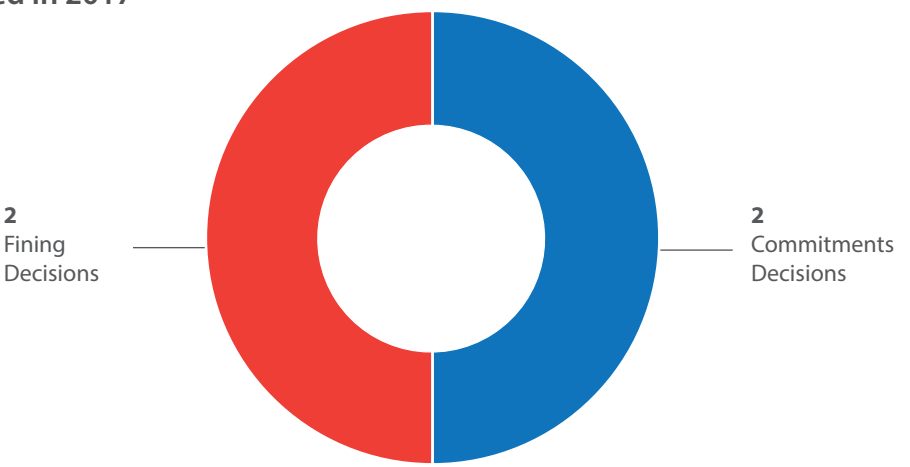
Complaints Received	6 (+ 1 passed onto SZPI*)
Complaints Investigated on Office's Initiative	10
Queries on the Interpretation of Law	12
Administrative Proceedings Initiated	6
Administrative Proceedings Closed	4
Competition Advocacy Cases	2
First-Instance Fines Imposed	2
Total Amount of First-Instance Fines Imposed	CZK 190,187,559

* Agriculture and Food Inspection Authority

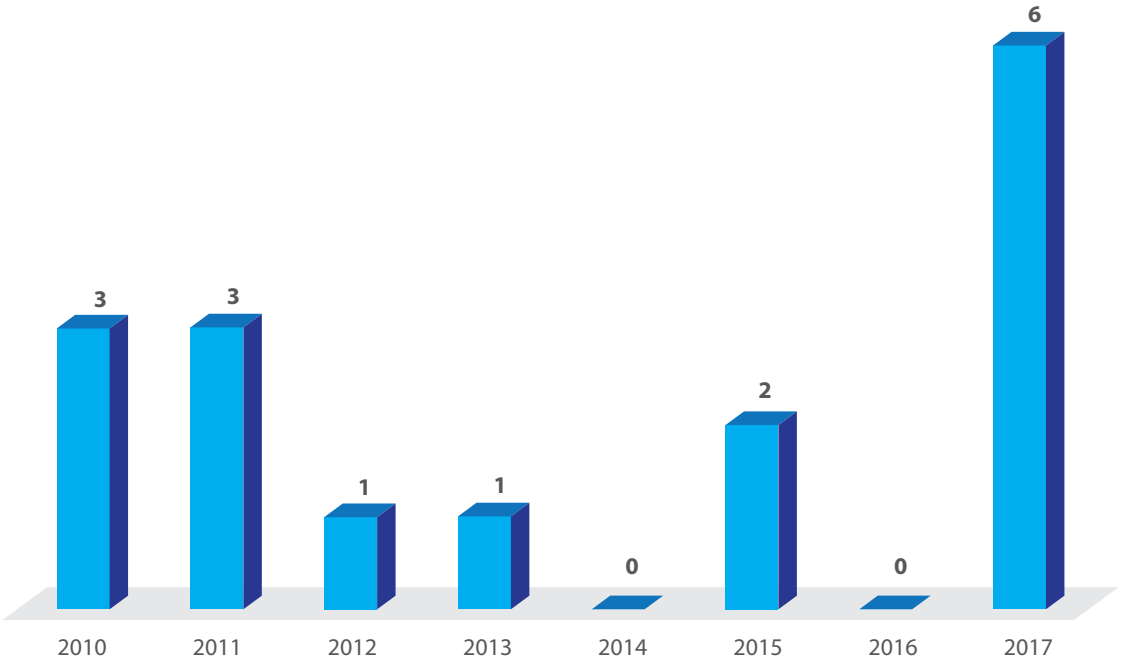
Number of Investigations Initiated in 2017



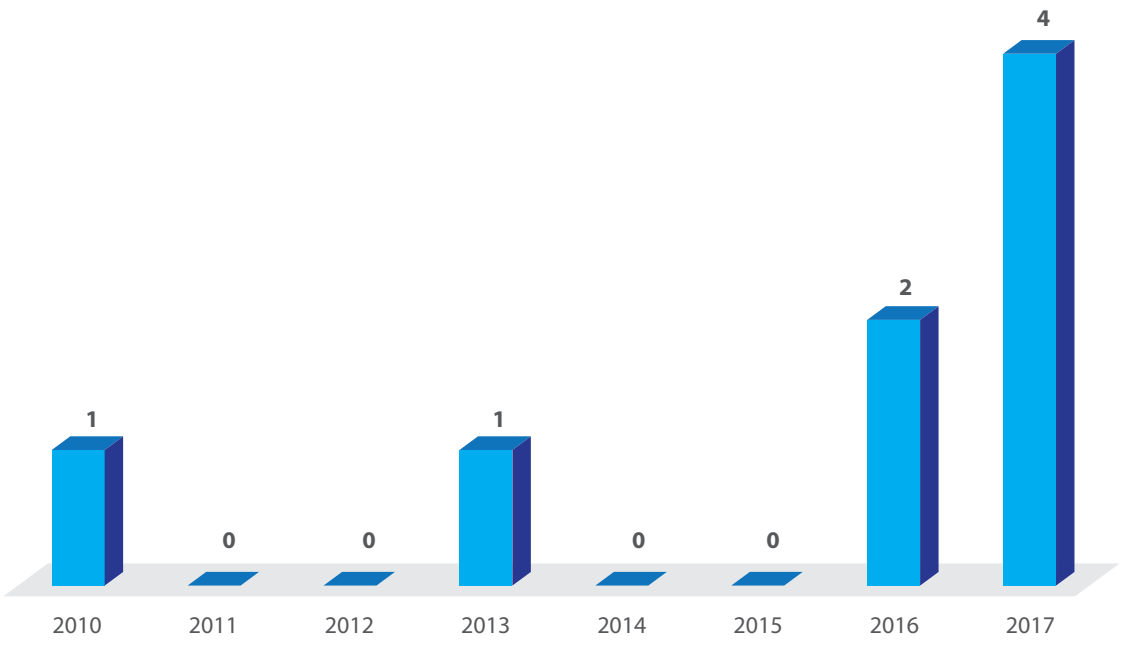
Decisions Issued in 2017



Administrative Proceedings Initiated in 2010–2017



Decisions Issued between 2010 and 2017*



* Concerning final decisions adopted between 2010 and 2016.

SIGNIFICANT CASES

The Fine for the Globus Business Chain for Unwanted Accounting Services

Party to the proceedings: **Globus ČR, k. s.**
File No.: **S138/2017**
First-instance fine: **CZK 183,187,559**
Date of coming into force: **Appeal filed**

In mid-December 2017, the Office for the Protection of Competition issued a first-instance decision in the area of significant market power, punishing the Globus ČR retail chain for infringing the Act on Significant Market Power through exploitative practices against some food suppliers.

At the centre of the Office's interest, there were two administrative offenses of abuse of significant market power within Article 4 (2) (b) and (e) of the Act on Significant Market Power. According these provisions, the customer with significant market power is forbidden to negotiate or obtain any payment or other performance for which no service or other consideration has been provided or is disproportionate to the value of the performance actually provided, as well as the negotiation or application of payments or other consideration for the acceptance of foodstuffs for sale.

The documents contained in the file show that Globus, from 6 March 2016 to 30 June 2017, had mutual business cooperation with some food suppliers conditional on the conclusion of a contract for payment, which led to the involvement of suppliers in the Markant system. Under this system, suppliers were provided with accounting services they would not request on their own. However, if suppliers did not participate in the system, Globus threatened to unilaterally terminate their cooperation. The pressure to pay certain fees for participation in the scheme has been identified by the Office as applying the illegal and thus prohibited filing fee, that is to say, the fee for accepting foodstuffs within the Globus network of business premises.

However, the suppliers concerned, according to the Office's findings as a part of Markant's involvement, also paid the cost of Globus' participation in the system. The retail chain has thus utilised Markant's accounting and marketing services for free. Specific contractors were charged with an additional fee that Markant applied to cover the services used by the "member company" in the system. The Office has identified the conduct as obtaining benefits from contracting suppliers without any consideration.

In view of the gravity of the conduct in question, the Office imposed a fine of CZK 183,187,559 on Globus chain. In addition, the Office has prohibited Globus, for the future, to abuse its significant market power vis-à-vis the suppliers concerned. This accompanying measure, in the Office's opinion, should remedy the defective situation in supplier-customer relationships, thus restoring a fair-trade partnership between Globus and the affected suppliers.

Globus filed an appeal against the Office's decision within the statutory time limit.

The Imbalance of Contractual Conditions in the Hruška Chain

Party to the proceedings: **Hruška, spol. s r. o.**
File No.: **S128/2017**
Outcome: **Decision with commitments issued**
Date of coming into force: **16 August 2017**

Administrative proceedings file No. S128/2017/TS were conducted with HRUŠKA, spol. s.r.o. concerning possible infringement of the provision of Articles 3a and 4 (1, 2) of the Act on Significant Market Power. The illegality of Hruška's conduct was considered by the Office in failing to observe the statutory conditions for the mandatory requirements of the contracts, further in the failure to observe the statutory written requirement for contract and, finally, the unfair trade practices that consisted in negotiating purchase contracts for 2016 with suppliers active in the food market in the Czech Republic. These contracts included a provision according to which the supplier was entitled to unilaterally set off his claim against the purchaser, to assign it to a third party, to pledge it or, if necessary, to encumber it, but only with the prior written approval of the purchaser. Whereas, in case of breach of the said provision, the contracts stated that legal acts made in conflict with this provision are invalid. In a situation

where this provision was breached, a contractual penalty of 30 per cent of the unilaterally set-off, assigned, settled or otherwise burdened claim has been set in the contracts.

In response to the alleged inconsistencies, Hruška proposed commitments to remedy the defective situation. These commitments consisted of refraining from the alleged conduct in the future and in adjusting the alleged aspects of supplier-customer relationships so that these relations were in line with the nature of the Act on Significant Market Power.

Given that the administrative proceedings in question was the first one within the agenda of significant market power, where following the amendment No. 50/2016 Coll. the institute of commitments began to be used, the Office dealt with some essential questions. First of all, it concluded that the possibility to propose commitments also applies to a type of minor infringements of the Act on Significant Market Power (in this case, the failure to observe the written contract requirement and the legal requirements of the contract between the customer with significant market power and the supplier according to Article 3a of the Act on Significant Market Power).

In the aforementioned decision, the Office further investigated whether the conditions were fulfilled for accepting conditions pursuant to Article 6 (2) of the Act on Significant Market Power and, in particular, assessed how to deal with gravity.

Within the administrative proceedings, the Office concluded that the contested contractual clauses were negotiated in the framework of the supplier-purchaser relations, but they were not applied in practice. For this reason, the Office did not classify a potential breach of the Act on Significant Market power as serious.

Given that the proposed commitments applied to all practices that were the subject of the administrative proceedings, and in their entirety, the Office concluded that the proposed commitments were capable of remedying the defective situation and terminated the administrative proceedings.

Fine for the Hruška Chain for Delivering the Report on Obligation Fulfilment Late

Party to the proceedings: **Hruška, spol. s r. o.**
File No.: **S487/2017**
First-instance fine: **CZK 7,000,000**
Date of coming into force: **Appeal filed**

In December 2017, the Office imposed a sanction in the amount of CZK seven million on the basis of a first-instance decision to HRUŠKA, spol. s r.o. (hereinafter referred to as "Hruška"), as it did not inform the Office about the fulfilment of its obligations imposed by the final decision described above. In particular, it did not inform the Office about the adjustments made to the contractual clauses relating to the commitments entered into, thereby committing a misdemeanour for non-compliance with another obligation laid down by the Office's decision. The decision is not yet final, because Hruška has appealed it.

Christmas Letter from COOP Centrum družstvo – An Example of the Successful Application of the Commitments in Order to Eliminate Illegal Situation

Party to the proceedings: **COOP Centrum družstvo**
File No.: **S161/2017**
Outcome: **Decision with commitments issued**
Date of legal force: **19 August 2017**

During 2017, the institute of commitments was successfully used also in case of the administrative offense of the legal entity COOP Centrum družstvo (hereinafter referred to as "Coop"). The Coop began to be investigated at the turn of 2016 and 2017 after the anonymous filing was delivered to the Office on the day before Christmas, accompanied by a letter with Coop letterhead, in which Coop requested its two business partners (i.e. contractors) decrease the prices of traded products by 2 per cent. In the event of disagreement with the proposal, the contractor should have sent to Coop a list of traded products reduced by 30 per cent and, moreover, also monitored prices of the remaining traded product range in the Czech Republic.

Following a preliminary investigation that did not dispel the Office's suspicion of a infringement of the Act of Significant Market Force, the Coop started administrative proceedings at the beginning of May 2017. In these proceedings, the Office found out that, with respect to at least twelve suppliers (out of more than two hundred to whom the note was sent), the Coop was successful with its proposal for global lowering of base prices.

The Office considered Coop's conduct to be an abuse of significant market power within the meaning of the Article 4 (2) b) of the Act of Significant Market Power prohibiting customers with significant market power from negotiating or obtaining any payment or other performance, for which no service or other consideration has been provided or is disproportionate to the value of the consideration actually provided. In spite of this provision, the Coop enforced a discount, under the threat of shredding a part of the assortment was concluding, and from some suppliers, who also obtain a reduction in the purchase price of goods performance without consideration. It requested a free service in the form of creating price monitoring for the remaining products from suppliers who did not accept the letter. Simultaneously it also infringed the Article 3a of the Act on Significant Market Power, whereby a customer with significant market power is required, in case of accepting and providing services related to the purchase or sale of foodstuffs, to negotiate an agreement in writing governing the way to cooperate when accepting and providing services relating to the subject, extent, manner and timing of the performance, the amount of the price or the method of its determination.

With regard to the fact that the abuse of significant market power cannot be considered particularly serious in this case (for example, because the losing suppliers reported losses of CZK tens of thousands of at most), the Office in its statement of objections informed Coop about the possibility to propose commitments to eliminate the defective situation on the relevant market. Coop responded promptly and proposed the following four commitments:

- Coop will refrain from further steps towards suppliers related to the letter in question;
- Coop will not in any way favour suppliers who have come forward with its proposal to reduce the purchase prices;
- Coop will initiate negotiations for compensation with those suppliers which show financial loss in connection with the letter;
- Coop will enter into a written agreement on this service, including a reasonable consideration clause for the provided service, with those suppliers which provide price monitoring.

The Office considered the proposed commitments as capable of remedying the illegal situation and accepted the proposed commitments and terminated the administrative proceedings. The supplier-customer relations were corrected within a very short period of several months.

Second-Instance Decision Making

In the area of significant market power, only one second-instance administrative proceedings were initiated in 2017 and no second-instance decisions were issued.

Judicial Review

In the area of significant market power, the Supreme Administrative Court issued an important judgement at the end of 2017, which concerned the Office's investigative powers in matters of significant market power. The Supreme Administrative Court upheld the previous regional courts' judgement, which dismissed the action of one retail chain for unlawful interference in sector inquiry management. The administrative courts have inferred that, although in the original version of Act on Significant Market Power, the Office did not explicitly have the right to conduct sector inquiries, there was no doubt about its authority to carry out supervisory procedures in the field of protection of competition before initiating the administrative proceedings and to use the instruments included in the Competition Act, specifically requesting information and documentation, and to carry out inspections in the commercial premises or in other than commercial premises. Thus, if the Office used the tools in question during the inspection, it was entitled to do so by law according to administrative courts, notwithstanding the fact that the Office introduced the procedure in its invitation to cooperate when announcing that this was a sector inquiry.

In addition, the Supreme Administrative Court's judgment in the Kaufland case was issued in the course of the year, which annulled the Regional Court's judgment from 2016, which was unfavourable for the Office. Subsequently, the case was referred back to that court for new hearing. The Office must, therefore, wait for the final resolution of several conceptual issues concerning the wording of the Act on Significant Market Power prior to the amendment.

PUBLIC PROCUREMENT AND CONCESSIONS

The Office has supervised the public procurement award procedures since January 1995, currently according the Act No. 134/2016 Coll., on Public Procurement (hereinafter referred to as "PPA"). The legal framework for such supervision transposes the provisions of the European review directives (Council Directives 92/13/EEC and 89/665/EEC, as amended by Directive 2006/97/EC of the European Parliament and of the Council). These Directives regulate the specificities of the public procurement review procedures and strengthen the guarantees of the principles of transparency and non-discrimination in awarding public contracts. In the supervision framework over awarding public contracts, the Office decides whether the contracting authority has proceeded in accordance with the law in awarding public contract (including concession) or special procedures under the Act on Public Procurement, imposes remedial measures, deals with contracting authorities' misdemeanours and imposes fines. The Office also carries out oversight activities pursuant to Act No. 194/2010 Coll., on Public Passenger Transport Services. The purpose of the abovementioned laws is to ensure free competition between public contracts (or contracts concluded on the basis of bid proceedings) suppliers and, at the same time, to select the most suitable bid in a transparent manner without discrimination of tenderers. An equitable, transparent and non-discriminatory competitive environment ultimately results in saving public finances.

Legislative Changes

As of 1 July 2017, the Office's activity in the area of supervising the award of public contracts was also newly regulated by Act No. 250/2016 Coll., on Liability for Misdemeanours and Proceedings in respect of Misdemeanours (hereinafter the "Act on Misdemeanours"). The adoption of this Act shall ensure, above all, the uniformity and complexity of the foundations of administrative liability of natural persons, legal entities and natural persons or entrepreneurs (the legal regulation of punishment for administrative offenses is included in the case of supervising the award of public contracts mainly in the PPA and Act No. 500/2004 Coll. the Administrative Code, hereinafter referred to as the "Administrative Code", was considered to be incomplete). In addition to the change in terminology, the Act on Misdemeanours, in particular, unified the punishment regime for misdemeanours and other administrative offenses. Moreover, in the field of supervision of public procurement explicitly enshrined the institutes, which have been so far taken over by more general legislation. In practice, however, this has not changed much for the parties to the proceedings and for the Office itself, as much of the new features are based on the existing, even fragmented, legal regulation or court decision-making practice. PPA also contains a number of exceptions that exclude the scope of some provisions of the Act on Misdemeanours in relation to the Office's activities.

Concerning the fundamental elements of the new legislation for punishing misdemeanours in awarding public contracts, the law formally newly (but with regard to the Office and administrative courts' existing decision-making practice it is more a continuation of the previous concept of punishment of administrative offenses), presumes that an act which is formally classified as misdemeanour under PPA is harmful for public. Thus, in the future, it is clear that social harm is, in case of misdemeanours under PPA, given by the actual fulfilment of the elements of the misdemeanour.

The existing concept of objective liability of natural persons and legal entities (different from the general regulation in the Act on Misdemeanours) is preserved, as well as the possibility of liberation for all these persons. The general regulation modification has been made, in particular, so as not to jeopardize the enforceability of law in a sensitive area, such as awarding public tenders. For these reasons, the provisions on the lack of sanity and the factual and legal mistakes that would undermine the objective responsibility principle were also excluded.

The statute of limitation concerning misdemeanours has also been amended. The general regulation on the misdemeanour law, which provides for a different limitation period depending on the amount of the fine, does not apply here for practical reasons.

In addition, the area of reimbursement of the proceedings costs is newly adjusted where the Office's obligation to impose proceedings costs to a contracting authority if a decision imposes a remedial measure or a prohibition on performance of the contract is complemented by the Office's obligation to impose a reimbursement for costs to the contracting authority found guilty for committing misdemeanour.

In view of characteristics of the administrative proceedings on the examination of the contracting authority's conduct and the necessity to dispose of expertise in different fields (construction, information technology, law,

economics, etc.), the requirements for education of the authorised officials involved in misdemeanour proceedings, were set differently from the general legal regulation.

The Act on Misdemeanours application is explicitly ruled out in case proceedings are initiated under the PPA. Thus, the notification of the misdemeanour is settled pursuant to the Code of Administrative Procedure, including the obligation to pay a fee of CZK 10,000 together when filing the complaint. In the supervision framework over the award of public tenders, the provisions of the Act on Misdemeanours application, in waiving the imposition of administrative punishment, some types of punishment, damages, time limits for issuing the decision or the oral hearing and the interrogation of the accused is excluded.

Regarding other legislative changes, a reference to a European standard containing the European electronic invoice standard in the Official Journal of the European Union was published on 17 October 2017. The publication of the reference is subject to the effect of the provisions of the Article 221 of the PPA. This standard regulates the format of the electronic invoices, which the contracting entities pursuant to the Article 4 (1) a) PPA, i.e., the Czech Republic and its organisational units and the Czech National Bank, from 18 April 2019 (or in the case of the remaining contracting entities, from 18 April 2020), must accept. By establishing a single format, cross-border interoperability, cross-sectoral interoperability and interoperability in national trade should be achieved.

At the end of the year, Government Decree No. 471/2017 Coll., amending Government Decree No. 172/2016 Coll., on setting Financial Limits and Amounts for the purposes of the Public Procurement Act, was published in the Collection of Laws. This regulation has modified (in most cases increased) the financial limits that are decisive for determining the public procurement regime. From 1 January 2018, therefore, contracting authorities are required to operate with new financial values in determining whether a particular case concerns over-the-threshold or under-the-threshold public procurement.

On 24 December 2017, Regulation (EU) 2016/2338 of the European Parliament and of the Council of 14 December 2016 amending Regulation (EC) No. 1370/2007 concerning opening the market for domestic passenger transport services by rail entered into force. Adoption of this regulation is a part of the 4th railway package, which aims to remove the remaining obstacles to creating a single European railway area. In practice, this amendment will, in particular, bring about an increase in the railway sector's competitiveness by allowing the reduction of costs and administration associated with rail transport operations across the European Union's Member States, improving the quality of rail passenger services and more efficiently using costs, through increased competitive pressure between service providers as a result of opening the rail market within the European Union. Details of the changes adopted were published in the Office's Information Bulletin *the Public Procurement Law in the ICT Field and Other Topical Issues* issued in September 2017.

Activity of the Public Procurement Division in 2017

For the public procurement sector, 2017 marked a year of work with the new Public Procurement Act (Act No. 134/2016 Coll.), which came into force in the autumn of 2016. However, the Office still conducted a number of review proceedings concerning public tenders initiated when the old law was still in effect and therefore the Office considered the legality of the contracting authority's procedure under the old legal regulation.

The new Public Procurement Act contains a different public procurement regulation and its review. In particular, the last-mentioned changes took place in 2017 and still have major implications for the Office's decision-making activities. Compared to the old Act on Public Contracts, the new Act also includes, among others, the rationalisation of the misdemeanour characteristics Contracts by the Office, for example in the area of contracting authorities' disclosure obligations. The new Public Procurement Act also brings charging of incentives to initiate the administrative proceedings ex offo in the field of public procurement.

In 2017, the Office issued 560 decisions, which is less than in previous years. However, it can be said that the administrative proceedings completion rate for procedural reasons is kept low compared to the number of decisions on merits (procedural decisions represent about one-quarter of all decisions). Keep in mind that administrative proceedings are also suspended for procedural reasons even in situations where the wrongful act is on the part of the petitioner (for example, failure to submit statutory amount of money as a security deposit, submitting proposal without legal requirements). The proceedings are terminated even when the contracting

authority itself repeals the acts, which have been contested in the petition, so that there is no matter to decide on (the Office cannot impose a remedy, which the contracting authority itself has accepted).

In clear cases of administrative offenses (misdemeanours) committed by the contracting authorities, the Office continues to use the administrative institute of order – it issued a total of 44 of those in 2017. Issuing the order is the first act in the proceedings and it is issued in the matter of days (as to the complexity, the same requirements are placed on its creation for a standard decision); the orders, therefore, represent a significant acceleration and efficiency of the Office's activities in solving certain selected cases within its scope. As for the "success" of the orders, they are not appealed (by so-called "administrative objection") and become legally enforceable after eight days since their issuance (for the year 2017 it concerns 64 per cent of orders). Regarding "standard" decisions (not orders), from the issued first-instance decisions, by which the matter ends, in 2017 nearly 46 per cent of the decisions were appealed, i.e., approximately 54 per cent of the decisions became final at first instance.

More than 40 per cent (exactly 172) of the decisions issued in 2017 were adopted in administrative proceedings already conducted under the Act on Public Procurement.

Overall, in the administrative proceedings initiated in 2017, the decisions were issued in an average of 32.8 days (when adding the length of administrative proceedings terminated by issuing an order, the average decision-making time is 28.6 days).

For administrative offenses, or more precisely misdemeanours, fines amounting to CZK 24,735,000 were issued in 2017. The verdict on committing administrative offenses, or more precisely, misdemeanours included a total of 130 decisions. In 2017, average fines increased more than twice compared to 2016 or 2015.

The Act on Public Procurement also brought about a new way to handle complaints, which associates handling complaint by the Office by paying a non-refundable fee of CZK 10,000 for each public contract against which an error is claimed. In 2017, such complaints were filed in 93 cases; in some complaints, claimed errors were made in several public contracts.

In addition to the Office's decision-making activities, it is necessary to also mention interpretation activities. Although the Office is not legally obliged to respond to inquiries from contracting authorities or suppliers, nor can it replace the contracting authority's role in addressing specific problems in the procurement process or even outside the administrative proceedings, approve or determine the contracting authorities' procedures and suppliers in the prevention framework for public procurement law infringements and concluding public service contracts in passenger transport, the Office has answered and continues to answer questions relating to public procurement review. Within communication with the professional and non-professional public, the Office responded, in 2017, to 355 inquiries and requests for providing expert assistance and information in connection with the old and new legislation on public procurement. The Office has also issued a communication on current public procurement issues in the field of transport services, taking into account social aspects.

In connection with the most frequent questions, the Office issued an Information Bulletin in the autumn of 2017, containing, among others, practical experience with the application of some new institutes, based on the first final decisions in these matters. An important part of the bulletin is devoted to the current issue of IT procurement, especially selected issues related to copyright protection, licenses or data migration.

Public tenders in the field of IT awarded outside of the award procedure constituted a major part of the Office's supervisory agenda in 2017. The Office initiated a total of 39 administrative proceedings, i.e. over 10 per cent of all proceedings initiated in that year, the purpose of which was to review the contracting authority's procedure when awarding a public IT tender in the form of a negotiated procedure without publication. Most of these administrative proceedings were initiated ex officio, whereas in total ex officio procedures initiated in IT procurement cases awarded in the negotiated procedure without publication comprised more than a quarter of all proceedings initiated ex officio in 2017. In 34 cases, the Office legally found that the contracting authority acted illegally. For these errors, the Office imposed fines totalling CZK 12,227,000. Given the number and volume of fines imposed and the number of public contracts under review, the Office perceives IT public procurement without any competition between the suppliers as a serious problem, and in this decision-making and awareness-raising activity it has clearly signalled that the contracting authorities' actions awarding the public tenders in negotiated proceedings without publication, without complying with all legal conditions, is legally unacceptable.

The Most Frequent Misconducts

From the viewpoint of the market sectors affected during 2017, within public tenders investigated by the Office, it concerned, most often, public procurement in the field of construction, health and IT. Often, public tenders for local road maintenance have been also reviewed. Public tenders concerning the elaboration of expert studies, spatial plans and project documentation were reviewed less frequently.

As far as the category of contracting authorities whose awarded procedures are most often the subject of review, the most frequent ones are ministries and entities operating in the field of transport and transport infrastructure construction.

The most frequent contracting authorities' misconduct still comprise of:

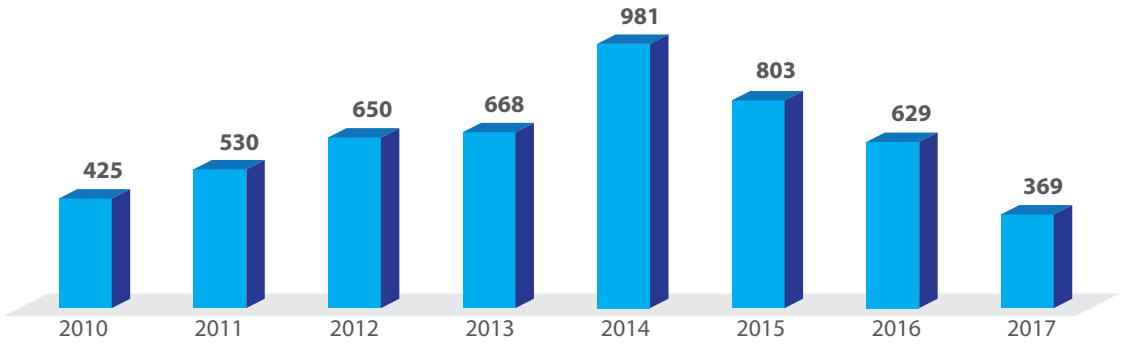
- Excessive (discriminatory) qualification prerequisites;
- Indefinite and/or ambiguous definition of tender specifications, or the excessiveness of the reference terms defined by the contracting authority;
- Incorrect procedure by the contracting entity, which does not exclude suppliers from participation in the award procedure whose offer was not in accordance with the law or the contracting authority's requirements;
- Illegal use of the negotiated procedures without publication;
- Division of public tenders;
- Award of a public procurement entirely outside the scope of the Act on Public Procurement (although the contracting authority was obliged to follow the Act on Public Procurement).

Decision-Making in the Field of Public Procurement in 2017

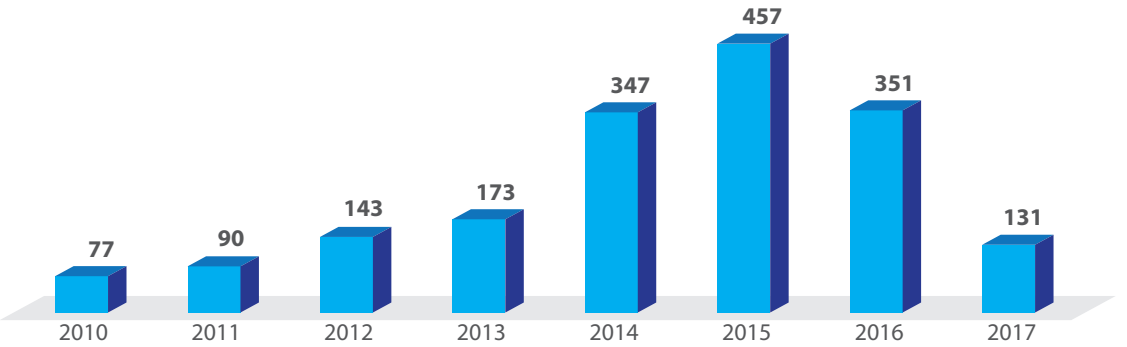
Statistics of Activity in the First Instance

Administrative Proceedings	Initiated Administrative Proceedings in Total		369
	• Upon Proposal		238
	• Ex Officio		131
Decision	Issued First-Instance Decisions in Total		560
	• Decisions Issued in the Matter		403
		Remedy + Sanction	229
		No Misconduct	63
		Procedural Reasons	111
	• Preliminary Measures		74
	• Dismissal of Preliminary Measures		66
	• Cancellation of Decision on Preliminary Measures		17
Fines	Number of Fines Imposed		130
	Total Amount of Fines Imposed		CZK 24,735,000
Costs of Proceedings	Number of Imposed Costs of Proceedings		114
	Total Amount of Imposed Costs of Proceedings		CZK 3,014,000
Deposits	Amount of Imposed Deposits		CZK 96,027,436
	• Deposits Forfeited in Favour of the State Budget		CZK 9,318,388
Complaints	Number of Complaints Received, where the Fee Was Paid		93

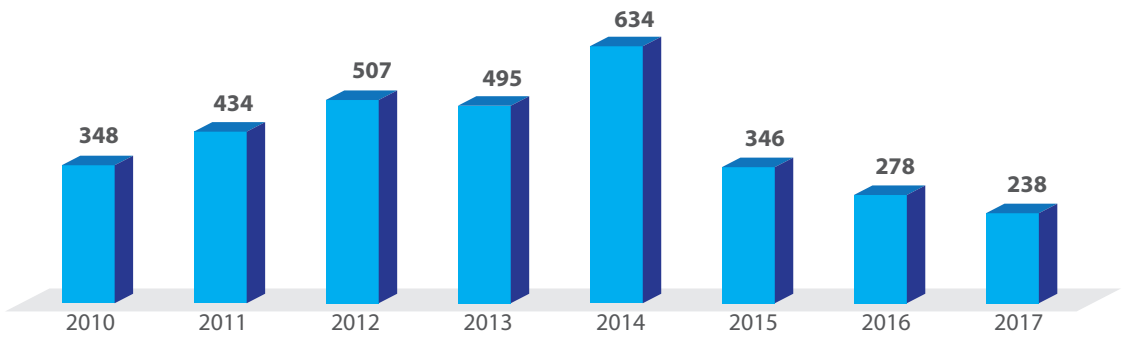
Total Number of First-Instance Administrative Proceedings Initiated



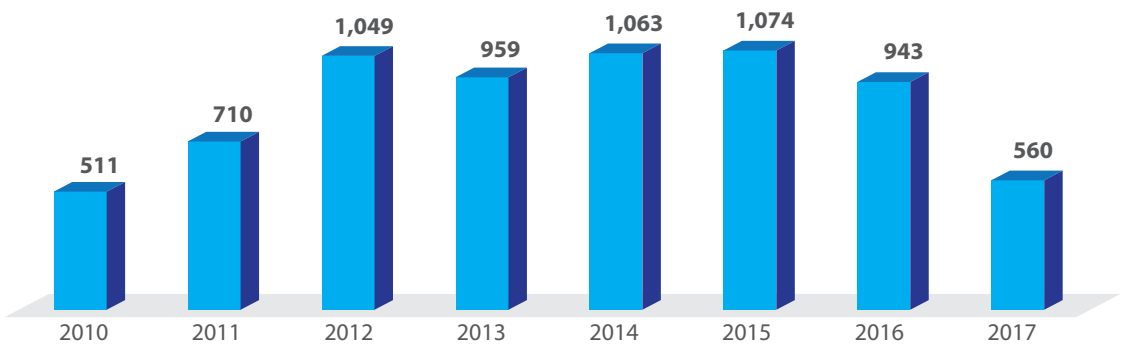
Number of Administrative Proceedings Initiated Ex Officio



Number of Delivered Proposals to Initiate the Administrative Proceedings



Number of First-Instance Decisions Issued



Overview of 10 Highest Fines Imposed

	Contracting Authority	Public Tender	Fine in CZK	Legal Force
1.	Ministry of Health	Operation of helicopters for air rescue service	3,750,000 (by second-instance decision decreased to CZK 1,250,000)	29 May 2017
2.	the Town of Třebíč	Carrier selection for the concluding a contract for the provision of public passenger transport services by public bus service to ensure the transport service of the city of Třebíč and selected surrounding communities	1,500,000	24 March 2017
3.	Military Health Insurance Company of the Czech Republic (Vojenská zdravotní pojišťovna České republiky)	Recruitment of insured persons of the Military Health Insurance Company (contracts for non-exclusive commercial representation)	1,350,000	25 September 2017
4.	General Financial Directorate	Technical support AVIS ME 2016–2017	1,200,000	22 December 2017
5.	Ministry of the Interior	Technical support and ensuring the development of application NS-SIS II between 2016–2018	1,000,000	15 December 2017
6.	Ministry of the Interior	Framework agreement on the provision of technical support and development of application software NS-VIS	1,000,000	12 December 2017
7.	General Financial Directorate	Evaluation of ADIS within the post-warranty service in 2016	1,000,000	22 December 2017
8.	Ministry of Finance	Provide support for the operation of the integrated information system of the State Treasury (IISSP) after the 1st quarter of 2014	820,000	22 December 2017
9.	Ministry of Defence	Maintenance of APV a DZ GINIS	750,000	22 December 2017
10.	General Financial Directorate	Technical support of IS VEMA 2016	750,000	22 December 2017

SIGNIFICANT CASES

Although the new Act on Public Procurement is in effect and the Office has already issued many decisions under this Act, the cases below have often been decided on the basis of the ineffective Act No. 137/2006 Coll. on Public Contracts (hereinafter referred to as "PCA"). However conclusions contained therein can be also applied to the contracting authority's procedure under the new Act on Public Procurement. In the overview below, there is always stated the exact act which was applied.

ČVUT – Development of Project Documentation for the Reconstruction of Building B, Thákurova 7, Prague 6

Contracting authority: **Czech Technical University in Prague (České vysoké učení technické v Praze)**
File No.: **S0323/2017**
Date of coming into force: **2 February 2017 (confirmed by decision File No. R0206/2017)**
Remedy: **Cancellation of contracting authority's actions associated with the evaluation of bids**
Decided pursuant to the Act No. 134/2016 Sb., on Public Procurement

The administrative proceedings were initiated upon proposal. The claimant has objected to numerous mistakes made by the contracting authority in assessing and evaluating bids. The Office found certain parts of the claimant's assertions to be justified.

In the administrative proceedings, the Office therefore decided, inter alia, that the contracting authority failed to observe the transparency principle laid down in Article 6 (1) of the PPA in conjunction with Article 119 (1) of the PPA by not awarding the claimant bid on the grounds that that bid is incomplete when it does not include a member of a team – budget expert – although the above tenderer was not excluded, which could have influenced selecting a supplier.

The Office further ruled that the contracting authority failed to comply with the rule for the award of a public tender set out in Article 119 (2) (d) points 1 and 2 of the PPA in conjunction with the transparency principle laid down in Article 6 (1) of the PPA by failing to provide, in the document *"Report on assessing and evaluating bids"* a description of the evaluation from which the assessed data from the bids corresponding to the evaluation criteria and description bid data would ensue.

As the contracting authority's abovementioned actions could have influenced choosing the supplier and the contract was not yet concluded, the Office imposed, inter alia, a remedial measure in the form by cancelling the supplier's actions associated with evaluation of bids recorded in the report on assessing and evaluating bids and, at the same time, the following contracting authority's actions, including the choice of supplier.

Technical Support for ŠIS Operation – Application Software Equipment

Contracting authority: **Czech Republic – Ministry of Defence (Česká republika - Ministerstvo obrany)**
File No.: **S0274/2017**
Date of coming into force: **14 February 2017 (confirmed R0174/2017)**
Fine: **CZK 700,000**
Decided pursuant to the Act No. 137/2006 Coll., on Public Contracts

Within the administrative proceedings initiated by the Office, the Office concluded that the contracting authority committed a misdemeanour pursuant to Article 120 (1) (a) PCA, by failing to comply with the procedure laid down in Article 21 (2) of PCA, when awarding the public tender in question in a negotiated procedure without publication, pursuant to Article 23 (4) a) PCA, without fulfilling the statutory conditions. The accused has failed to demonstrate that only the successful tenderer could, because of the protection of the exclusive rights, execute public tender concerned, although for that reason, he awarded the public tender in question to the successful tenderer. According to the Office, the abovementioned procedure could have a significant effect on selection of the most suitable bid. The Office stated that the contracting authority failed to bear the burden of proof regarding the existence of exceptional conditions, justifying the use of the negotiated procedure without publication for the sake of the protection of exclusive rights, since it merely claimed the alleged existence of those rights without substantiating it anyhow. In this case, it is the contracting authority that bears the burden of proof. In assessing the case, the Office took into account that the contracting authority had and could have been aware that, in the future, there will be a need for further system development and for the award of further public tenders. Thus, in the present case, it does not apply. It did not concern modifications which could reasonably be expected not to occur at the time the original contract was prepared. The accused should have, already at the time of concluding the original contract, assuming the long-term use of the information system (IS), thought of this future need and adapted the IS acquisition. The Office imposed a fine of CZK 700,000 on the contracting authority for the misdemeanour committed.

Temporary Provision of Public Transport Services to the Liberec Region by Public Line Passenger Transport – Area North

Contracting authority: **Liberec Region (Liberecký kraj)**
File No.: **S0271/2017**
Date of coming into force: **17 October 2017 (confirmed R0132/2017)**
Remedy: **Cancelling decision to cancel award procedure**
Decided pursuant to the Act No. 134/2016 Coll., on Public Procurement

In the administrative proceedings initiated ex officio, the Office assessed the decision to cancel the negotiated procedure without publication, which was justified by the contracting authority since the bid tenderers' prices are considerably higher than the anticipated impacts of Government Regulation No. 567/2006 Coll., on Minimum Wage, the Lowest Levels of Guaranteed Wage, Definition of "Extraordinary Working Conditions", and the Level of Compensation for Work in such Conditions, as amended, and the Government Regulation No. 589/2006 Coll., Laying down a Derogation for the Working Hours and Rest Periods of Employees in Transport, as amended. The contracting authority has set the maximum bid price, in the terms of award procedure, which none of the bids has exceeded (i.e. all bids in this section have fulfilled the specifications of the contracting authority).

In its decision, the Office expressed its opinion for cancelling the negotiated procedure without publication. It stated that the grounds for the cancelling the negotiated procedure without publication under Article 127 (3) of the PPA must be of a certain "quality" in order to comply with the basic public procurement principles. This quality must first be understood as its transparency, in particular, that the reason given appears, in light of specific facts, as a real reason, not a substitute, contrary to the terms of reference established by the contracting authority itself or obviously absurd.

In view of the above conclusion, the Office stated that the contracting authority had infringed on the transparency principle when deciding to cancel the award procedure for the above-mentioned reason, since it was only after receiving the bids submitted by the tenderers and getting acquainted with the bid amounts of the individual tenderers. In fact, after acquaintance with the outcome of the award procedure, when it stated that the bid prices are higher than he expected, i.e., significantly higher than the expected impacts of the above mentioned Government Regulation No. 567/2006 Coll. and No. 589/2006 Coll., the Office concluded that the contracting authority's procedure, when cancelling the award procedure (when as a reason for cancellation the bid price was presented implicitly stated as admissible under the award terms) became illegible, as it clearly did not correspond to the current course of the award procedure and raises doubts about the actual reasons for the contracting authority's conduct.

Metro Station Cleaning

Contracting authority: **The Prague Public Transit Company (Dopravní podnik hlavního města Prahy, akciová společnost)**
File No.: **S0768/2016**
Date of coming into force: **10 March 2017**
Remedy: **Cancelling of the award procedure by the Office**
Decided pursuant to the Act No. 137/2006 Coll., on Public Contracts

The contracting authority infringed Article 44 (1) of PCA, because it did not specify the subject of the public contract in the tender specification details necessary for processing the bid. Indeed, the contracting authority referred to its own internal rules in the tender specifications, without making it available to tenderers in so far as it referred to them. However, the contracting authority, with additional information on the tender specifications, stated that the tender documentation contained the basic information from the internal directives and regulations but also marked these provisions as confidential. Whereas, they were provided only to the selected tenderer at the time the public procurement were concluded. In the draft contract on services, which is part of the tender specifications, the contracting authority stated that the provider was acquainted with the clients' regulations and directives, which was to be confirmed by signing the contract.

Furthermore, the contracting authority requested in the tender documentation that the bid price should include all costs necessary for the due, complete and high-quality performance of the subject of the public tender,

including all risks and effects related to the performance. From the contracting authority's references to its internal regulations and the basic information provided, it can be inferred that access to railroad tracks, freight elevator operators and issues related to safety, fire risks and the foreign organisation activities in the subway are regulated, without however fully explaining how. Thus, the contracting authority has prevented potential suppliers from assessing the impact of the non-disclosed parts of the internal rules on the nature and complexity of the subject matter of the public tender or, where appropriate, setting the bid price, and has therefore failed to observe the principle of transparency. At the same time, the contracting authority's procedure could significantly influence selecting the most suitable tender, because the contract had not yet been concluded and the Office, therefore, cancelled the award procedure.

Architectural Competition for Exhibition, Exhibition Premises and Visitors' Flow in the Historical and New Buildings of the National Museum

Contracting authority: **National Museum, contributory organization (Národní muzeum, příspěvková organizace)**
File No.: **S0572/2016,S0118/2017**
Date of coming into force: **31 May 2017**
Remedy: **Cancellation of bid competition**
Decided pursuant to the Act No. 137/2006 Coll., on Public Contracts

In the case in question, the Office found that the contracting authority had failed in the design contest by defining a rule in the tender conditions permitting not exclusion of a bid from the design contest in question, in case it does not meet the mandatory tender conditions, when the Selection Board decides to leave this proposal in the tender. The Office concluded that such a tender condition is not in accordance with the law, as it trivialised the effect foreseen by law in the case mandatory conditions were not fulfilled, namely the exclusion of the proposal.

The Office concluded that, from the point of view of the law, it is not possible to consider the fulfilment of the reservation requirements, the fulfilment of most requirements, or possibly the fulfilment of the contracting authority's key requirements. It is not possible to assess the "degree of fulfilment of mandatory requirements", even in the design contest. Referring to the findings of the Office Chairman's decision in this case (R0279/2016), the Office has rightly stated that in the bid assessment stage it is necessary to arrive at a binary technique to determine whether a particular design meets or fails to meet the contracting authority's requirements. It does not concern the assessment of the "suitability" of meeting individual conditions.

In the case under consideration, the Office did not favour to the contracting authority's argument that the contested competition condition is a precise reflection of a similar provision of the Rules of Competition of the Czech Chamber of Architects, and that this professional organisation considers this condition to be correct. In this context, the Office noted that this professional organisation does not enjoy public procurement or design contests, or any specific autonomous status that would, in effect, allow it to depart from clear rules in the law.

Framework Agreement on the Provision of Technical Support and Development of Application Software NS-VIS

Contracting authority: **Czech Republic – Ministry of the Interior (Česká republika – Ministerstvo vnitra)**
File No.: **S0298/2017**
Date of coming into force: **12 December 2017 (confirmed R0162/2017)**
Fine: **CZK 1,000,000**
Decided pursuant to the Act No. 137/2006 Coll., on Public Contracts

In administrative proceedings, initiated ex officio, the Office decided that the contracting authority committed a misdemeanour by concluding a contract for the provision of technical support and developing a visa information system in a negotiated procedure without publication, and without the conditions for the procedure in the least formal type of award procedure being met.

Referring to an established case law from the administrative courts, the Office reminded that the use of this type of award procedure cannot be taken into account, when the contracting authority itself, by its own conduct, based the exclusivity of an existing IT system supplier, as a result of which only that supplier may perform the public

contract. The Office noted that the contracting authority already, at the time of concluding the original agreement, by which it created exclusivity for a particular supplier, had to assume that the core system in the area of visa policy would have to be maintained and further developed, in particular with regard to the obligations arising, inter alia, from the European Council regulation. According to the Office, the contracting authority could and should have a demonstrable awareness for the need for future updates in such a robust system.

The Office further stressed that the contracting authority cannot rely on the future use of the negotiated procedure without disclosure of the expected activities in the provision s, in particular, the services related to the operation, maintenance or subsequent development of the system, if this system will in future appear as "satisfactory" or "verified in practice".

The Office also addressed the contracting authority's argument that referred to the conduct of "good managerial care" to defend its steps. Referring to the case law, the Office recalled that the principle of economy cannot have application priority over the transparency principle. For completeness, the Office also made clear that the total value of the original contract was CZK 125.8 million and the value of the public contract negotiated in the procedure without publication was CZK 165 million. This leads to the undeniable conclusion that approximately CZK 290 million were spent from the state budget, more than half of which was without any open competition.

Reconstruction and Intensification of ÚV Mokošín

Contracting authority: **Water Supply and Sewerage in Pardubice (Vodovody a kanalizace Pardubice, a. s.)**
File No.: **S0098/2017**
Date of coming into force: **27 April 2017**
Remedy: **Cancellation of the contracting authority's decision on the complainant's objections**
Decided pursuant to the Act No. 134/2016 Coll., on Public Procurement

In this case, the Office first took advantage of the possibilities provided by the Act on Public Procurement and imposed a remedial measure consisting cancelling the contracting authority's decision on the complainant's objections for its non-reviewability.

In the public procurement under review, the contracting authority received objections to the tender specifications, namely that the technical qualification requirements were set up in a discriminatory way. The complainant was not satisfied with how the objections were handled and filed a petition to review the contracting authority's actions. In this administrative proceedings, the Office issued a decision in which it dealt with the very purpose of the institute of objections and, at the same time, with the contracting authority's obligations, if it receives objections. In particular, the Office noted that if the complainant files objections to the contracting authority, the contracting authority must handle them with due care, as by means of a decision on objections, the contracting authority acquaints the complainant with its views on the arguments raised by the complainant, which may be of a crucial significance for the complainant's decision to proceed further, whether or not it would oppose the contracting authority's procedure that rejected its objections by petition with the Office.

The philosophy of the possibility of imposing a remedial measure consisting cancelling the contracting authority's decision on the complainant's objections lies in the fact that the "problems" should be dealt primarily where it is the fastest and most meaningful, i.e. with the contracting authority, and any subsequent administrative proceedings regarding the review of the contracting authority's acts will be guided by maintaining the adversarial nature about clearly and specifically expressed arguments and submissions from the parties to the proceedings. It is, therefore, up to the contracting authority to deal with the objections in a detailed and comprehensible manner, and if it considers that the procedure is justified, it should be able to defend its steps, not only by making general phrases but also in a transparent and verifiable way.

In the case described, the contracting authority solved the objections only partially; only in a very general way and did not even express any opinion on some of the objections. The Office itself took into account the actual statement of objections when it concluded that their possible higher degree of generality may, to a certain extent, determine the scope and detail of the decision on the objections, but even in generally objecting the inadequacy of certain requirements, the contracting authority should be able to state, the relevant considerations when determining the requirements in question.

Modernisation of the České Budějovice Airport, 2nd Phase – Saving Version – Phase II

Contracting authority**: South Bohemian Region (Jihočeský kraj)**
File No.: **S0140/2017**
Date of coming into force: **8 August 2017 (confirmed R0099/2017)**
Remedy: **Cancellation of specific actions of a contracting authority**
Decided pursuant to the Act No. 137/2006 Coll., on Public Contracts

The subject of the Office's investigation was, in this case, the question of whether the contracting authority acted in accordance with Article 59 (4) of the Act, in relation to Article 6 (1) of PCA, by not allowing the applicant to clarify in writing the submitted information or documents, or to provide further information or documents proving the technical qualification prerequisite under Article 56 (3) a) PCA were fulfilled and consequently excluded it from participating in the award procedure in accordance with Article 60 (1) PCA.

The Office found out from public tender documentation that the contracting authority received a total of 10 applications for participation during the deadline for submitting applications. In the qualification assessment framework, nine tenderers, other than the petitioner, were requested by the contracting authority pursuant to Article 59 (4) of PCA to clarify in writing the submitted information or documents, or to submit further information or documents proving that the qualification was fulfilled. In relation to the petitioner, the contracting authority stated that it had fulfilled the qualification to the required extent. However, on the basis of the information ascertained, the contracting authority concluded that the applicant did not prove that the technical qualification prerequisite under Article 56 (3) a) PCA was fulfilled and, therefore, excluded it from further participation in the award procedure.

In the decision, the Office found that the contracting authority had breached the principle of equal treatment by selectively applying the procedure under Article 59 (4) of the PCA in respect of the tenderers, since nine candidates, at the time of the qualification assessment, allowed to "remedy" the shortcomings in their qualifications. Some of them were asked for clarification or replenishment of the qualifications repeatedly, whereas the remaining candidate (applicant) in situations where the contracting authority had doubts about proving whether remaining bidder's qualification was fulfilled in its entirety, the contracting authority didn't apply Article 59 (4) of the PCA and thus excluded the bidder from the award procedure right away.

Analysis, Updating NEN Technical Specifications and Implementing the Act on Public Procurement in IS NEN – Negotiated Procedure with Publication Pursuant to Article 22 (2)

Contracting authority: **Czech Republic – Ministry of Regional Development (Česká republika – Ministerstvo pro místní rozvoj)**
File No.: **S0453,S0658/2016**
Date of coming into force: **15 November 2017 (confirmed R0301/2016)**
Remedy: **Imposing ban on fulfilment of contract**
Fine: **CZK 500,000**
Decided according to the Act No. 137/2006 Coll., on Public Contracts

In the matter regarding assigning the subject of performance (National Electronic Instrument system modification, hereinafter referred to as "NEN") the contracting authority has implemented two award procedures:

1. Analysis, updating of NEN technical specifications and implementation of the Act on Public Procurement in IS NEN; open procedure. On 1 April 2016, the tender was cancelled because the contracting authority received a single bid which did not fulfil the tender specifications.
2. Analysis, updating of the NEN technical specification and implementation of the Act on Public Procurement to IS NEN – negotiated procedure with publication pursuant to Article 22 (2) PCA; the negotiated procedure with publication (materially, however, it concerned a negotiated procedure without publication since Article 22 (2) of PCA permits to send only the invitation to tenderers who participated in the original open procedure, therefore, no announcement was made about opening this tender procedure to a wider range of tenderers), contract was concluded on 4 May 2016.

The contracting authority sought the subject of performance of the public contract under investigation initially in the context of an open procedure, which was cancelled on the grounds of having received one bid, which did not meet the tender specifications. For the subsequent award of the tender in the negotiated procedure with publication, the contracting authority used the same tender documentation that was used in the open procedure. During the open procedure, the contracting authority received objections from three different suppliers who claimed that the tender specification was set illegally (in a discriminatory and non-transparent way) and, therefore, they were unable to bid. The contracting authority failed to comply with the objections (in this case two proposals were submitted to the Office, which challenged the tender specification of the open procedure, however, the administrative proceedings in these cases could not be terminated by meritorious decisions for procedural reasons). Therefore, the contracting authority had to have doubts about the legality of the tender specifications during an open procedure. The cancellation of the award procedure, however, was due to the fact that the only bid received by the contracting authority did not meet the tender specifications. Following the cancellation of the open procedure, the contracting authority sent a call for negotiations to the one tenderer who had participated in the previous open procedure and awarded the tender to that bidder.

In the administrative proceedings in question, the Office concluded that the tender specifications of the public tender awarded in the negotiated procedure with publication were unlawful because they were set up in a non-transparent and discriminatory way (the contracting authority did not provide sufficient information to prepare a bid, as confirmed by the expert's report the Office ordered to be prepared). The tender specifications of the previous open procedure were also set unlawfully, since the tender documentation for both proceedings was identical. From that, the Office inferred that the contracting authority was not entitled to subsequently award a public tender in a negotiated procedure with publication. Formal fulfilment of the conditions stipulated by the law does not always mean that the contracting authority's procedure, in a particular type of award procedure, will be in accordance with the law. The purpose and meaning of the negotiated procedure with publication, without publication of an initiation notice pursuant to Article 22 (2) of the PCA is to allow a simpler process and the implementation speed of the public tender in question, which the legislator enables only on the assumption that proper and effective competition for public tender happened already in the previous open procedure. However, in the case under review, the Office found that there was no proper tender contest in the original open procedure. Therefore, the contracting authority was not entitled to proceed with the negotiated procedure with publication, without publication of a notice of its commencement pursuant to Article 22 (2) of the PCA and was obliged to publish a notice of commencement of the award procedure in question. As it did not do so, the Office stated that it had committed an administrative offense under Article 120 (1) c) PCA. In such a case, the Office is entitled to impose a ban on the performance of the contract. As the Office did not find any reasons of public interest that would indicate the need to continue to perform the contract (NEN is not the only procurement system and there is no way that contracts in the Czech Republic could not be awarded), it imposed a ban on performance of the contract.

GŘ OL – Provision of Secure Communication Services for Prisoners

Contracting authority: **Prison Service of the Czech Republic (Česká republika – Vězeňská služba České republiky)**
File No.: **S0726,S0753/2016**
Date of coming into force: **5 January 2018 (confirmed R0161,R0163/2017)**
Remedy: **Imposition of ban on fulfilling agreement with postponement of enforceability for 12 months**
Fine: **CZK 100,000**
Decided pursuant to the Act No. 139/2006 Coll., on Concession Agreements and Concession Procedure

On 26 January 2017, the Office issued a first-instance decision that was cancelled by the Chairman of the Office and returned for reconsideration. Within the scope of the Chairman's decision, the Office reassessed the case and made an assessment as to whether the contracting authority, in determining the presumed income of the concessionaire within Article 4 of the Concession Act, proceeded in accordance with the Concession Act, whether the submitted bids confirm the accuracy of the initial assumption and whether the contracting authority was authorised to enter into the short-scale concession agreement without publishing an initiation notice about the concession procedure.

In the commented decision, the Office concluded that the contracting authority committed an administrative offense by concluding a concession contract on the basis of a tender conducted with reference to Article 5 (2) of

the Concession Act, without publishing an initiation notice of concession contract without the legal prerequisites being met, since the presumed income of the concessionaire in the present case exceeded CZK 20 million.

In calculating the concessionaire's estimated income, the Office stated that the contracting authority is obliged to reflect all possible anticipated revenues that the future concessionaire may incur from the realising the subject of the concession contract. The contracting authority must take into account within its calculation, in particular, the nature of the subject of the concession contract. In the case under investigation, when the subject of the concession contract comprises the provision of secure communication services for prisoners, it was necessary to calculate the concessionaire's estimated income with the expected volume of called minutes, or possibly seconds for the duration of the concession contract in question, and with the expected price charged for the "called" time unit.

The Office concluded that, in the case under investigation, the most significant fact was not the anticipated volume of calls, but the cost of the call. In the Office's view, the contracting authority has forfeited the responsibility to duly and carefully substantiate its legitimate reasoning with regard to the expected cost of calls so that it is transparent and subsequently subject to review by the Office. Qualified, objective and proper discovery of the expected cost of calls for the calculation of the concessionaire's total anticipated income by the contracting authority prior to the concession procedure was, in the present case, absolutely essential when the contracting authority could not, even alternatively, rely on concessions of the same or similar kind, as they probably did not exist, or the contracting authority did not know them. Contracts that the contracting authority took as a basis for the price of the calls could not be considered, pursuant to Article 13 (2) of the Act, which, in the Chairman of the Office's view, can be reasonably applied also for determining the concessionaire's anticipated income, as data and information on contracts of the same or similar subject of performance. The contracting authority did not conduct a market survey nor provided the Office with any other information from which it could ensue; the contracting authority has not shown that it has conducted an economic analysis in the matter, as it claimed.

In view of the above-mentioned, the Office found out that, in the case in question, when determining the concessionaire's anticipated income in accordance with Article 4 of the Concession Act, the contracting authority did not proceed in accordance with the Concession Act, when the foreseeable concessionaire' income was not based on sufficiently qualified estimates and surveys. The correctness of the contracting authority's initial presumption was not confirmed even by bids submitted in the concession procedure, because in two of the submitted bids, the expected beneficiary's income would exceed CZK 20 million. The only bid submitted for which the expected concession income could be less than CZK 20 million cannot mean that the concessionaire's foreseeable income was established correctly.

In the present case, there was a significant restriction on competition because if the contracting authority proceeded in accordance with the Concession Act and carried out the concession procedure initiated by the publication of its notice under Article 31 (4) of the Concession Act, it cannot be ruled out that it would also receive bids from other suppliers who could offer economically more advantageous offers than the selected tenderer.

A prohibition on the performance of the *Concession contract on the provision of secure electronic communications services to prisoners* concluded with the selected tenderer has been imposed on the contracting authority. Prohibition of the contract's performance was imposed and deferred by 12 months after the decision coming into force, taking into account the possibility of the contracting authority to implement a new concession procedure in accordance with the law.

Public Service Agreement for the Carriage of Passengers in Ostrov by Direct Award

Contracting authority: **The Town of Ostrov (město Ostrov)**
File No.: **S0370/2017**
Date of coming into force: **8 December 2017**
Fine: **CZK 26,000**
Decided pursuant to the Act No. 194/2010 Coll., on Public Services in Public Passenger Transport

On the basis of the complaint, the Office started having doubts as to whether the accused had acted in accordance with Act No. 194/2010 Coll., on Public Services in Public Passenger Transport and on the Amendment of other Laws

(hereinafter referred to as the "Transport Act"), when with the carrier Dopravní podnik Ostrov, s.r.o. entered into a contract for public passenger transport services by direct assignment, with reference to the occurrence of an extraordinary situation caused by the interruption in the provision of the transport service.

In the misdemeanour proceedings, the Office dealt in detail with interpreting term "extraordinary situation" and "discontinuance of provision" in the sense of Article 18 (b) and Article 22 of the Transport Act in relation to the provision of Article 5 (5) of Regulation (EC) No. 1370/2007 of the European Parliament and of the Council on public passenger transport services by rail and by road and repealing Council Regulation No. 1191/69 and No. 1107/70.

The Office concluded by interpreting the above standards, stating that the existence of a "discontinuance" of public passenger transport services or the imminent threat of such an interruption is a prerequisite for the existence of a public passenger transport contract concluded between the customer and the carrier, emergency interrupted (for example, bus burning due to fire on the carrier).

In the offense proceedings, the Office decided that the accused had committed an offense under Article 33 f) of the Transport Act by concluding, with the carrier, a contract for public passenger transport services by direct assignment with reference to an emergency situation, consisting in the interruption of the public services provision without meeting the conditions for the procedure under Article 18 letter b) pursuant to Article 22 letter a) of the Transport Act, because there was no emergency service disruption in the given case. The accused concluded the contract at a time when he was not contracted to provide public passenger transport services. The contract with the previous carrier was concluded for a definite period of time and its effectiveness ceased to exist at the expiry of the agreed time. The conclusion of a new contract for the alleged existence of conditions under Article 22 of the Transport Act occurred only on the eleventh day after the expiry of the previous contract. Thus, the provision of public passenger transport services was not interrupted or threatened, as there was no obligation to provide such services on the date of the conclusion of the new contract, the interruption or threat of which (in an emergency situation).

Purchase of Printers for the Customs' Administration

Contracting authority: **Customs Administration of the Czech Republic (Česká republika – Generální ředitelství cel)**
File No.: **S0296/2017**
Date of coming into force: **4 October 2017**
Remedy: **Cancellation of contracting authority's actions associated with the evaluation of the bid**
Decided pursuant to the Act No. 137/2006 Coll., on Public Contracts

In the case investigated, the Office dealt with the question of evaluation and clarifying data contained in the bids of individual bidders. The Office assessed whether the contracting authority was entitled to exclude a tenderer on the grounds of the data contained in the publicly available product datasheet of the offered equipment even though from the tenderer's bid, not-fulfilment of the tender specifications didn't follow. The objection to the exclusion decision was filed by the participant, including the manufacturer's statement that the device offered after software modification and firmware update meets the requirements of the contracting authority. However, the contracting authority concluded after the examining the objections that it doesn't consider the manufacturer's declaration as a reliable factual ground and it did not comply with the objections.

In its decision, the Office stated that, from the point of view of observance of the principle of transparency, it will stand by only assessment of bids resulting in a clearly verifiable conclusion on whether or not the bid meets the statutory requirements and requirements of the contracting authority. Therefore after submission of bids the contracting authority must assess bids with certainty whether bids meet tender specification. . The Office concluded that the publicly available product datasheet cannot be immediately considered as a reliable factual ground for possible exclusion, especially when ICT equipment is subject to development and innovation not only before placing on the market, but also during subsequent product support period, and therefore, the data contained in these publicly available product data sheets may not always be up to date.

Further, the Office concluded that although the institute of a written explanation of the bid is an option rather than the contracting authority's obligation, there may be situations where the use of the institute of written explanation of the bid is the only way the contracting authority can have a reliable factual ground for its unambiguous conclusion that the bid fulfils or not tender specification. Thus, the contracting authority could in the case in question instruct the bidder to indicate which documents necessary to meet the tender specification should be delivered and thus avoid a situation where it stated only after the exclusion, that it did not consider the manufacturer's statement as a reliable factual ground.

Public Lighting Maintenance in Prague

Contracting authority: **The Capital City of Prague (hlavní město Praha)**
File No.: **S0076/2017**
Date of coming into force: **10 July 2017 (confirmed by R0077, 0078/2017)**
Remedy: **Prohibition of performance of the contract**
Decided pursuant to the Act No. 134/2016 Coll., on Public Procurement

In the proceedings initiated on the basis of a proposal to prohibit the performance of the contract, the Office dealt with the review of the procedure of the Capital City of Prague in concluding a contract for the provision of services to ensure the functioning of public lighting. That contract was concluded by the contracting authority for an indefinite period with PREdistribuce, a. s., following the negotiated procedure without publication, which the contracting authority could not foresee and it did not cause them.

In its decision, the Office came out above all from the nature of the negotiated procedure without publication as an exceptional procedure, which restricts the competition, and from the meaning of that institute. The Office concluded that, on the basis of a negotiated procedure without publication resulting from extreme urgency, a contract for an indefinite period cannot be concluded without a reasonable set-off condition being established at the same time. The performance can only be ensured through the negotiated procedure without publication for the necessary time, i.e. during the time of extreme urgency, or if the contracting authority is able to ensure otherwise the subject matter of the transaction in accordance with the law. In the Office's view, it is clear from the very substance that this extreme urgency cannot last indefinitely. The Office prohibited the performance of the contract in question, but because of the public interest in ensuring the functioning of public lighting in Prague, the effectiveness of that prohibition was postponed by six months from the date on which the decision came into force.

Cleaning Services for FEEC

Contracting authority: **Brno University of Technology, Faculty of Electrical Engineering and Communication (Vysoké učení technické v Brně, Fakulta elektrotechniky a komunikačních technologií)**
File No.: **S0361/2017**
Date of coming into force: **12 February 2018 (confirmed by R0211/2017)**
Remedy: **Cancellation of contracting authority's actions**
Decided pursuant to the Act No. 134/2016 Coll., on Public Procurement

In the decision in question, the Office first expressed its opinion on the application of the self-cleaning institute, specifically on the question about the mandatory acceptance of the re-qualification of the tenderer.

The Office also noted that the contracting authority did not proceed in accordance with the law when it considered the remedy adopted by the appellant as insufficient to re-establish the applicant's eligibility to participate in the procurement procedure, even though the appellant had demonstrated, in opposition to the decision to exclude the renewal of his competence. The petitioner has demonstrated that the original director (the only member of the statutory body) who did not fulfil the condition under Article 74 a) PPA, replaced with the new director with the new (the only member of the statutory body), who met required basic qualification. In this situation, the contracting authority should conclude that the petitioner's capacity had been restored and it should cancel the previous decision on the exclusion of the petitioner.

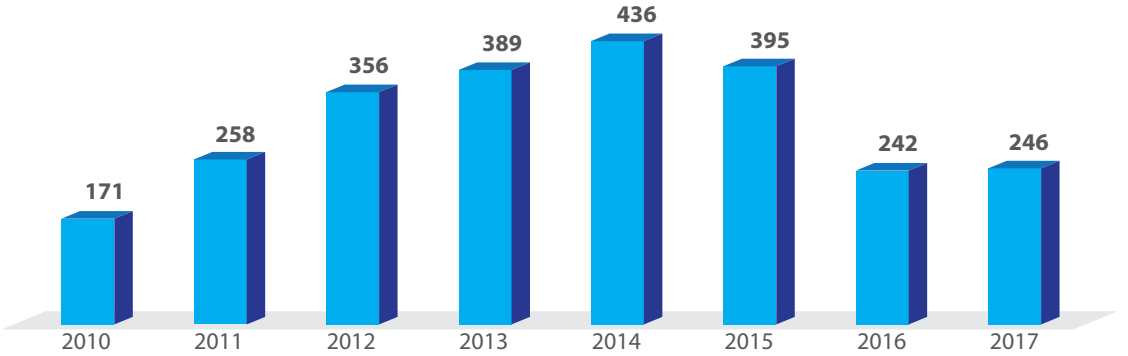
Second-Instance Decision Making

In the area of second instance decision making, the number of submitted cases slightly increased to 246. A total of 286 second-instance decisions were issued, with nearly 60 per cent of cases confirming the contested decision and dismissing the appeal. In 73 fining decisions the first-instance sanctions were confirmed in total amount exceeding CZK 32 million. These fines are the state budget's revenue.

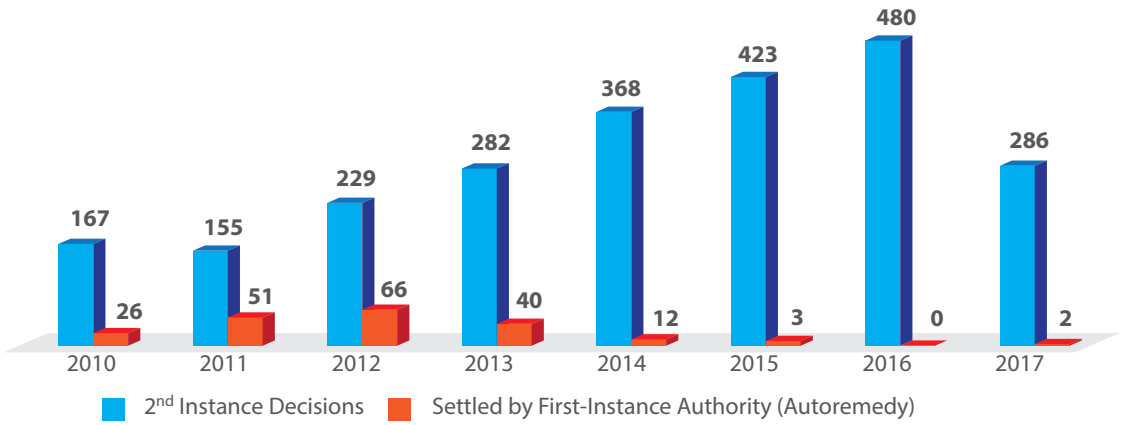
The second-instance body focused, in particular, on shortening of the length of the administrative proceedings, so in average it took 52 days to issue a second-instance decision on appeal lodged in 2017 calculated from referring the case file by the first-instance until the decision was adopted by the Chairman of the Office. As of 31 December 2017, the second instance recorded only 54 unfinished cases in the area of public procurement. These were only the administrative proceedings initiated upon appeals lo dged within the last two months of 2017, which were therefore decided at the beginning of the following year.

Number of Appeals Filed Against First-Instance Decisions		246
Second-Instance Administrative Proceedings Initiated		246
Administrative Proceedings Reopened Due to the Abrogative Judgments of Administrative Courts		16
Second-Instance Administrative Proceedings not Completed by 31 December 2017		54
Appeal Decisions issued	Total	286
	of which • First-Instance Decisions Upheld and Appeal Dismissed	163
	• First-Instance Decisions Annulled and Remanded to the Office	32
	• First-Instance Decisions Annulled and Appeal Proceedings Terminated	69
	• Appeal Dismissed for Lateness	3
	• Appeal Dismissed for Inadmissibility	1
	• First-Instance Decisions Changed	2
	• Decision of the Chairman on Termination of Appeal Proceedings	16
Number of Appeal Dealt with by First Instance		2
Procedural Decisions of the Chairman of the Office		51
Decisions Adopted in the Review Procedure		3
Decision of the Chairman of the Office on Interim Measures		4
Decisions of the Chairman of the Office on Revision		1
Fines	Number of Fines Imposed	73
	Amount of Fines Imposed	CZK 32,608,000

Number of Appeals Filed against First-Instance Decisions



Number of Appeals Settled in Second-Instance Proceedings



SIGNIFICANT CASES

Troja Bridge (Trojský Most)

Contracting authority: **The Capital City of Prague (hlavní město Praha)**
File No.: **R0005/2017**
Date of coming into force: **16 March 2017**
Fine: **CZK 11,000,000**
Decided pursuant to the Act No. 137/2006 Coll., on Public Contracts
An administrative action has been brought against the decision of the Chairman of the Office

The Chairman of the Office confirmed a fine of CZK 11 million for the City of Prague for an administrative offense committed in connection with a substantial extension of the subject of a public contract for the realisation of the Troja Bridge, which was a completely different construction not only visually but also by its parameters and also the price from its originally agreed subject in a works contract.

The Chairman of the Office stated in a confirmatory decision that, in a situation where the contracting authority proceeds completely outside the procurement procedure and does not legally modify the changes of the previously entered obligation, it maintains the unlawful state it caused when it changed the originally withdrawn part of the public contract so that the original Troja Bridge had to be replaced completely differently. Following the judgment of the Court of Justice in Pressetext case, and in particular following the content of Article 82 (7) of the Public Procurement Act, the contracting authority's presumption that *"the new Troja Bridge was different from the initial tender documentation was a mere specification of the construction work following the works contract"* and that *"these changes were not of such a magnitude as to make it possible for other entities to participate in the original*

procurement procedure" was proved false. Substantially extension of the subject of a public contract from the original Troja Bridge to a new Troja Bridge with a price more than doubled could have influenced the choice of the most suitable bid and by failing to undertake a proper procurement procedure by the contracting authority made impossible attendance of more potential suppliers, who could offer more favourable terms and a lower contract price.

The Chairman of the Office found the amount of the fine of CZK 11 million crowns to be fully adequate because imaginary upper limit of the fine imposed could be much higher due to the exceptionally high amount actually invested to this public contract.

Selecting the Carrier to Ensure the Transport Service of the Town of Třebíč and Selected Surrounding Municipalities

Contracting authority: **The Town of Třebíč (město Třebíč)**
File No.: **R0016/2017/VZ**
Date of coming into force: **24 March 2017**
Fine: **CZK 1,500,000**
Decided pursuant to the Act No. 137/2006 Coll., on Public Contracts

The Office officially examined the contracting authority's procedure in the administrative proceedings initiated ex officio in connection with received suggestions following the contracting authority's procedure for the award of the above-mentioned public contract. The contract was called *"Selection of the Carrier for concluding a contract for the provision of public passenger transport services by public bus transport to ensure the transport services of the town of Třebíč and selected surrounding municipalities"*. In this context, the Office has dealt, in particular, with the question whether the carrier's obligation to provide a covered parking space for all vehicles used throughout the duration of the contract, as laid down in point 5.8 of the draft binding contract, is justified and not discriminatory in light of the circumstances of the procurement procedure. In its own assessment of the case, the Office took into account, in particular, a short time lag between the envisaged termination of the procurement procedure and the scheduled date of commencement of the public contract, the survey among other carriers on the market, as well as the regularity and justifiability of the covered parking space requirement concerned. It concluded that the contracting authority committed an administrative offense by imposing the terms of reference by failing to observe the principle of non-discrimination in accordance with Article 6 (1) of the Act, which could have a significant effect on the selection of the most appropriate bid.

The contracting authority has violated the law in the form of hidden discrimination because the requirement for covered parking spaces is not legitimate or proportionate and at the same time it discriminates against those carriers who do not have covered parking spaces in sufficient amount (and in advance), i. e. basically all potential carriers with the exception of the existing service provider which, as the only one, submitted the bid and became the successful tenderer with whom the public service contract was concluded. The Office justified the amount of the imposed fine of CZK 1.5 million especially with regard to the type of seriousness of the administrative offense and the preventive function of administrative punishment, since the fine was, despite its significant absolute amount, imposed on the contracting authority at the lower limit of the statutory rate.

Presentation of the Ministry of Agriculture at International Trade Fairs and Exhibitions Abroad in 2017

Contracting authority: **The Ministry of Agriculture of the Czech Republic (Česká republika – Ministerstvo zemědělství)**
File No.: **R0048/2017**
Date of coming into force: **12 May 2017**
Fine: **CZK 90,000**
Decided pursuant to the Act No. 137/2006 Coll., on Public Contracts

In the case under consideration, one of the bidders made two mistakes in the offer, namely in the draft contracts for the international trade fairs of Internationale Grüne Woche 2017, Biofach 2017, ANUGA 2017, and in the budget

for the provision of the Internationale Grüne Woche 2017. The contracting authority set two partial evaluation criteria in the framework of the economic advantage of the offer, namely the total offer price in CZK including VAT with a weight of 70 per cent as a mathematical criterion and an architectural proposal for the realisation of a fair of the Ministry of Agriculture with a weight of 30 per cent as a subjective criterion.

The Office considered that if the tender price is an assessment criterion, then the procedure under Article 76 (3) of the Act cannot lead to any data corrections contained in the items of the statement of merit that would lead to a change in the overall bid price. However, the Office concluded that although the offer contained several errors, this concerned errors in sub-items, which did not affect the amount of the overall bid or the obscurity at first glance, they were obvious and easily identifiable and at the same time highly likely to be easily explained. These uncertainties did not, therefore, lead to a change in the total bid price, including VAT, as a valued price. In line with the courts' decision-making practice, where the explanation of the tender concept is not to be interpreted too formalistically, on the other hand, the bid can't be complemented by clarifying the uncertainties in the offer, the Office concluded that in the present case the Institute of Explanation of Offer Article 76 (3) of the Act. If the contracting authority used the Institute to clarify the tender under Article 76 (3) of the Act and did not exclude a tenderer who made easily identifiable mistakes in the tender, the latter could be the winning tenderer as the contracting authority did not award the full number of points for the subjective evaluation criterion and the bid was not evaluated at this stage of the award procedure under the subjective evaluation criterion.

Provide Technical Support for Products Used in IS NEN

Contracting authority: **The Ministry of Regional Development of the Czech Republic (Česká republika – Ministerstvo pro místní rozvoj)**
File No.: **R0147/2017**
Date of coming into force: **4 December 2017**
Remedy: **No reasons to impose fine found**
Decided pursuant to the Act No. 134/2016 Coll., on Public Procurement

In the administrative proceedings initiated on the proposal, the Office investigated whether the tender terms of the public contract were non-discriminatory and unequal. The contracting authority requested in the award procedure, the support and licenses for the products of Tesco SW a.s. According to the petitioner, these were products of the company, which largely built the information system of the National Electronic Instrument and realized the IS NEN's dependence on the products of this company. According to the petitioner, Tesco SW and its partners, which were able to influence their own range of tenderers and the amount of their bid prices, preferred Tesco SW. In order to prepare the offer, potential suppliers were forced to reach out to the relevant technology makers and, in the course of business negotiations, they had to ensure and offer in the tender, not only the relevant documents from the SW producers required to bid at all but, above all, the respective suppliers must prepare the tender documents for the purpose of the performance.

The Office assessed the reference terms and concluded that these did not disadvantage potential tenderers and were neither discriminatory nor unequal. It follows from the Office's conclusion that contractors who are not the authors of individual parts of the information system can also carry out a public contract. Thus, there is no limitation on the scope of potential contractors, as the proposer states. In its decision, the Authority also took into account the fact that the contracting authority opted for an open procedure, which presumes the highest degree of preservation of the openness of competition.

The Office, thus, concluded that the contracting authority acted correctly and lawfully in the preparation of the terms and conditions and rejected the proposal.

New Transport System of the Prague Public Transit

Contracting authority: **The Prague Public Transit Company (Dopravní podnik hlavního města Prahy, akciová společnost)**
File No.: **R118/2017**
Date of coming into force: **22 September 2017**
Fine: **CZK 50,000**
An administrative action has been brought against the decision of the Chairman of the Office.

The Chairman of the Office dismissed the appeal of the contracting authority and upheld the decision of the first-instance in which the Office imposed on the contracting authority a fine of CZK 50,000 for an administrative offense committed by the contracting authority by failing to resolve the objections against the public procurement procedure and to award it outside the award procedure contradiction with the PPA.

The contracting authority's reasoning was based on the premise that if the contracting authority is awarding a public contract outside the procurement procedure (in the case under consideration, because the public contract is, according to the contracting authority's claim, a subliminal sectoral public procurement), rules on submission of objections contained in the PPA does not apply and therefore the contracting authority is not subject to the obligation to resolve objections. However pursuant to Article 241 (2) (c) objections can be raised against a public procurement regime, as well as against the contracting authority's tendering procedure which aims for awarding the public contract outside the procurement procedure in contravention of the PPA. Therefore, the Office did not have to deal in this administrative proceedings with the question whether the public procurement was under-threshold or above-limit, and whether the contracting authority was right to use the exception provided for in Article 158 (1) of the PPA, since the offense is the failure to resolve the objections under Article 245 of the PPA itself. The Article 241 (2) c) of the PPA directly recalls the situation where the contracting authority awards the public contract outside the procurement procedure. As a result of the contracting authority interpretation, it would mean that the commented PPA provision could never be applied. Then it would be a question of why the legislator would incorporate this provision into the PPA. Even though it is generally accepted that the objections can't be raised outside the "classic" procurement procedure, which implies that there is no obligation on the contracting authority to resolve any objections in these cases, by incorporating the provisions of Article 241 (2) c), respectively Article 250, (1) (f) the legislature intended to modify a specific case differently, namely when the objections are directed against the fact that the contracting authority is proceeding outside the procurement procedure, although according to the complainant it should award a public contract in one of the procurement procedures governed by the PPA. Objections to the contracting process outside the award procedure are the only exception where the contracting authority must respond to objections, even though it does not carry out the procurement procedure according to the law.

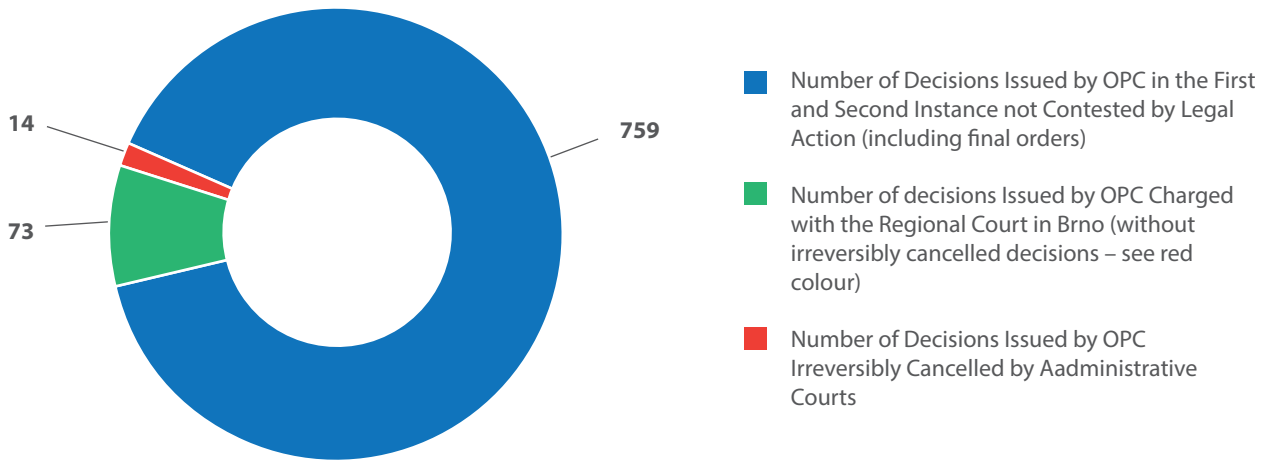
Judicial Review

In the area of judicial review of the Office's decision on public procurement, a substantial increase in the number of actions brought to the Regional Court in Brno was recorded, by a total of 38 per cent. The actions were filed in a total of 87 cases, so approximately every third second-instance decision is challenged. There was more than a 27 per cent increase of the number of cassation complaints filed with the Supreme Administrative Court. Thus, the Office's agenda related to the defence of claims and legal representation has considerably increased.

Statistics of the Judicial Review

Number of Administrative Actions Brought Before the Regional Court in Brno		87
Number of Cassation Complaints Brought Before the Supreme Administrative Court		51 (of which 26 filed by the Office and 25 by parties to the proceedings)
Number of Decisions Adopted	Regional Court in Brno	68
	Supreme Administrative Court	37
in Favour of the Office	Regional Court in Brno	40
	Supreme Administrative Court	23
in Favour of Parties to the Proceedings	Regional Court in Brno	28
	Supreme Administrative Court	14
Percentage of Success of the Decision of the Office with Respect to the Total Number of Decisions issued by 1st and 2nd instance in 2017 (i.e. 846 Decisions)		98.35%

Success Rate of OPC Decisions in the Field of Public Procurement in 2017



SIGNIFICANT CASES

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

Contracting authority: **The Town of Břeclav (město Břeclav)**
File No.: **R398/2014**, **29 Af 37/2015**
Date of coming into force: **23 February 2015**
Fine: **CZK 1,000,000**
Decided pursuant to the Act No. 137/2006 Coll., on Public Contracts
An action has been brought against the decision of the Chairman of the Office, but it was dismissed by the Regional Court in Brno.

The Chairman of the Office dismissed the appeal lodged by the contracting authority and upheld the first-instance decision of the in which the Office imposed a fine of CZK 1 million for the administrative offense committed by the contracting authority by not retaining the tender dossier.

The Act provided the obligation of a contracting authority to keep the tender dossier for five years from the conclusion of the contract. In the present case, the contracting authority repeatedly refused to submit the requested dossier, referring to the principle of prohibition of self-blaming. As the contracting authority did not submit the documentation to the Office, the Office concluded that the contracting authority had not kept the documentation. The Chairman of the Office took into account the fact that there can be no undesirable and absurd situation where the repeal of the administrative proceedings by the contracting authority and the non-fulfilment of the obligations under the Administrative Code would benefit him. The Chairman of the Office thus refused to regard the request for the submission of already existing documents for the compulsion of the party to the proceedings for self-blaming.

The decision of the Chairman of the Office was challenged by the contracting authority which brought an administrative action before Regional Court. It contested against the fact that he was officially obliged as a party to the proceedings to submit to the Office documentation on the design contest, since such an obligation is only imposed in the case of a procedure initiated on a proposal. However the Regional Court pointed out that the Public Procurement Act required the Office to supervise the procedure of the selected entities, from which it can be inferred that at least the Office could request the contracting authority to send the dossier. Further, the court referred to the Code of Administrative Procedure, according to which the administrative authorities are obliged to find out the state of the case of which no reasonable doubts arise even without a proposal. To the complainant's alleged prohibition of self-blaming, the court stated that the supervisory authority is entitled to oblige the party to the proceedings to provide all the necessary information and, where appropriate, to transmit to him the relevant documents, even if they can serve as evidence of an infringement against him. Granting an absolute right of silence would constitute an unjustified barrier to the exercise of supervisory powers. The obligation to respond to purely factual questions and to comply with requests by the authorities for the submission of previously existing documents cannot lead to a violation of the prohibition of self-blaming. The right not to contribute to the accusation is primarily concerned with respecting the will of the accused and does not include the use of things that exist independently of his will, such as, inter alia, documents obtained on the basis of an order. The Court, therefore, confirmed the conclusions of the Office and its Chairman and dismissed the claim of the contracting authority.

Trutnov Community Centre for Culture and Leisure – Supply of Interior Equipment

Contracting authority: **The Town of Trutnov (město Trutnov)**
File No.: **R53/2014, 62 Af 44/2015, 9 As 189/2016**
Date of coming into force: **12 February 2015**
Fine: **CZK 50,000**
Decided pursuant to the Act No. 137/2006 Coll., on Public Contracts
An action has been brought against the decision of the Chairman of the Office, but it was dismissed by the Regional Court in Brno.

The Chairman of the Office dismissed the contracting authority's appeal and upheld the first-instance decision by which the contracting authority was found guilty by not excluding the selected tenderer from further participation in the procurement procedure, although his bid did not meet the contracting authority's request.

The Office stated that, in general, the tenderer, whose tender contains additional data, must be excluded from further participation in the award procedure, while the explanation of the tender requested by the procedure under Article 76 (3) of the Act may be accepted by the Evaluation Committee only if it does not to actually change the offer. Otherwise, the contracting authority would not comply with the principles of equal treatment and the transparency principle in relation to other tenderers. Thus, it is clear from Article 76 (3) of the Act that it is not possible to "explain" errors concerning the bid price, valuation of the items that form the basis for calculating the bid price, and these errors are then "corrected" by a change in the bid price.

The Regional Court, in agreement with the Office, stated that, in order to explain the offer in accordance with Article 76 (3) of the Act, the evaluation committee may invite only if it does not lead to a change in the bid. If the bid price is an evaluation criterion, then such a procedure cannot lead to any data corrections contained in the itemised budgets that would lead to a change in the bid price, even if the initial data included in the bid were

the result of the erroneous transaction number of the bidder. Therefore, a change in the values that are the subject of any of the evaluation criteria should be considered as an inadmissible change of bid during the effective period of the award procedure.

The contracting authority filed a cassation complaint against the judgment of the regional court. The Supreme Administrative Court in its judgment agreed with the regional court's conclusion that the procedure chosen by the contracting authority was not possible. The Article 43 of the Act shows that tenderers are bound by their bids for the duration of the award period and the contracting authority's corresponding obligation to conclude the contract in accordance with the draft contract contained in the bid of the selected bidder pursuant to Article 82 of the Act. In the case under consideration, the bid was changed in favour of the contracting authority, which cannot be entirely ruled out in general terms, but such a change is completely ruled out if it has an impact on the evaluation of the bids, which was unambiguous. Only the total bid price was the key bid value, and not the sub-prices listed in the budget.

Drugs Distributor for Krajská zdravotní, a. s.

Contracting authority: **Regional Health Company (Krajská zdravotní, a. s.)**
File No.: **R252/2014**, **62 Af 21/2016**
Date of coming into force: **11 December 2015**
Fine: **CZK 500,000**
Decided pursuant to the Act No. 137/2006 Coll., on Public Contracts
An action has been brought against the decision of the Chairman of the Office, but it was dismissed.

The Chairman of the Office dismissed the contracting authority's appeal and upheld the first-instance decision in which the Office imposed a fine of CZK 500,000 on the contracting authority for administrative offenses consisting in the fact that the contracting authority did not limit the scope of the required qualification pursuant to Article 50 (3) of the Act only to the information and documents directly related to the subject of the public contract, provided an inappropriate minimum level of the technical qualification requirements pursuant to Article 56, (7) c) PCA did not establish the evaluation criterion "proposal of the method of distribution services of medicinal products and medical devices" in a sufficiently precise and comprehensible manner and the sub-criterion "price-amount of the distribution surcharge to the actually paid price" did not reflect the relationship of utility value and price pursuant to Article 78 (4) PCA.

The Regional Court sees the matter in the same respect as the Office in the contested decision and in its previous decision. On the first administrative offense, the regional court summarised that the requirement to provide commercial margins is not directly related to performing the public contract and does not give the contracting authority the real possibility of realising the supplier's ability to perform the transaction. Information on margins is not normally available in business circles, and suppliers, as entrepreneurs, may have a legitimate interest in not providing the margin. Thus, if the contracting authority illegally required suppliers to provide information on the specific amount of the margin of the individual medicines, this requirement could discourage suppliers from participating in the award procedure.

In the case of the second administrative offense, the Court in the same respect as the Office found that the requirements to prove compliance with the technical qualification assumptions in the form of the values of the previously distributed medicines were set too high and the contractor could not hypothetically compete for the contract, who would otherwise be able to apply for the contract without these requirements.

It also confirmed the Office's findings in relation to the third administrative offense when it found that it was not clear from the tender documentation how the evaluation committee would make the tender order from the most suitable to the least appropriate. However, it is generally stated that the most appropriate bid will receive 100 points and each subsequent offer will be assigned a point rating that expresses the satisfaction of the sub criterion in relation to the most appropriate offer.

STATE AID

The Office for the Protection of Competition is active also in the field of State Aid. It is a coordinating body performing central coordination, advisory, consultancy and monitoring activities in all areas, with the exception of agriculture and fisheries where the Ministry of Agriculture is competent authority. The role of the Office in the field of State Aid lies primarily in cooperating with providers in preparing the notification about State Aid measures to the European Commission. Moreover, the Office cooperates with the European Commission and the providers in the proceedings before the Commission, both in the proceedings concerning the notified state aid and in cases of unlawful state aid, abuse of state aid, existing state aid schemes, or where the Commission carries out an on-site investigation in the Czech Republic. The Office submits to the Commission, in accordance with the relevant European Union regulations, an annual report on public aid granted in the previous calendar year in the territory of the Czech Republic. In the area of legislation, the Office represents the Czech Republic in discussions and preparing European Union legislation on state aid. The Office is also the Central Administrator of the Register of *de minimis* Aid and from 2016, the Transparency Award Module (the information system of the European Commission). As part of so called ex-post monitoring, the European Commission, through the Office, regularly checks compliance with the State Aid rules under the notified support programs. In 2017, the control related to aid schemes provided within regional investment aid.

From the point of view of the State Aid rules, 2017 was characterized by the refinement of the interpretative tools and regulations arising from the modernising State Aid rules. The European Commission in its current approach focused on investigating difficult cases, leaving standard State Aid measures (implemented by block exemptions) to Member States. It extended and modified the scope of Commission Regulation No. 651/2014 of 17 June 2014 declaring certain categories of aid compatible with the internal market in accordance with Article 107 and 108 of the Treaty (hereinafter referred to as the General Block Exemption Regulation or GBER). The European Commission has also updated analytical forms for the State Aid rules application to finance selected areas of infrastructure projects.

2017 was also devoted to the first assessment of the transparency obligation of aid by the European Commission. The transparency obligation was established on 1 July 2016 and on the basis of this obligation, providers have record the prescribed data on aid schemes and on individual aids, exceeding their levels set in the relevant public aid rules in the European Commission's TAM electronic system. The Czech Republic comes fourth among the Member States with the highest amount of recorded data. In total, 1 511 records were published as of 31 December 2017 (in 2016 – 635 records, in 2017 – 876 records). A compliance assessment with the transparency obligation was also carried out at the end of the year by the Advisory Committee, in which the European Commission presented the first evaluation of the system. Since the start of the obligation to record the aid, the aid providers registered in the Czech Republic into the aid system amounting to almost EUR 1.5 billion and, from the viewpoint of the time, they recorded all data into the system in accordance with the legal regulations. The European Commission has announced that also in 2018 it will be examining the transparency obligation and any technical improvements to the European Commission's TAM system.

Within the methodological management of State Aid providers[5] the Office together with the Ministry of Agriculture has prepared an update of the handbook on the application of the concept of "one enterprise" from the point of view of de minimis rules. Based on the current interpretation of the European Commission, it is necessary to assess the interconnectedness of businesses across Member States when assessing the definition of "one enterprise". Therefore, in the affidavit, the beneficiaries should also inform about their links to foreign companies. The provider then checks only in the central de minimis support register in the same way as if the group of undertakings did not exceeded de minimis limit. Otherwise, the aid provider once again only controls the aid limit recorded in the Czech Small Aid Register registered by de minimis aid providers from the Czech Republic. De minimis aid granted by other Member States of the European Union does not have an effect on the de minimis aid limit granted by Czech suppliers and, therefore, there is no need to monitor them. Entities through which enterprises are affiliated under the de minimis rules do not have to reside only in the European Union. For example, if a parent company located outside the European Union owns entities in the EU, this whole structure is considered as one undertaking for the purpose of determining the de minimis aid limit.

5 http://www.uohs.cz/cs/verejna-podpora/manualy-metodiky-a-dalsi-dokumenty.html

In order to better focus on the issue of merged and divided businesses with regard to previously provided small-scale support, the Office for the Protection of Competition, in cooperation with the Ministry of Agriculture, developed the *"Methodological Manual on the divided and mergeed undertakings from the point of view of de minimis rules and recording the data in the Central de minimis register"*. The de minimis aid regulation provides that when determining the free de minimis aid limit, account must be taken of whether the aid beneficiary has arisen through the merged or divided companies, which have previously received small-scale aid. The Central de minimis registry contains the functions to take into account business transformations. Thus, the de minimis aid provider in the central register may, for example, transfer the support of the merging companies to the newly created company or, respectively, the division of undertakings to the legal successor of divided companies.

In addition, selected methodological documents were updated during the year. In particular, it was a document "Brief Guide to State Aid Issues" explaining the basic principles of EU and national law in this field, *"Guidelines for the Administration of State Aid provided under Commission Regulation (EU) No. 651/2014 (General Block Exemption Regulation – GBE"*, and a part of the Office's website regarding the outstanding recovery orders. The completely new section of the Office's website was also created, introducing the providers of State Aid with the obligation to review whether the applicant is not "a firm in difficulty", including a description of individual criteria and recommended practices.

Legislative Changes

The new rules were adopted in the framework of a change to the current GBER (general block exemption regulation). Under this regulation, aid for ports and airports can be newly provided. Concerning airports, Member States may newly provide investment aid to regional airports with a volume of transport of up to three million passengers per year. The revised regulation also allows public authorities to provide operating aid to small airports, i.e. with a transport volume of up to 200,000 passengers per year. While small airports represent almost half of all airports, they represent only 0.75 per cent of total air traffic. These airports are important for the connectivity of the regions, nevertheless aid provided to them does not lead to distortion of competition within the single market of European Union. Member States may also provide investment aid up to EUR 150 million to seaports and up to EUR 50 million to inland ports. The Regulation allows public authorities to contribute to the costs of dredging in ports and access to waterways. At the same time, the introduction of new aid categories has changed the conditions of the existing categories, namely the area of culture and regional support. In particular, the thresholds for cultural and cultural heritage support and for multi-purpose sports facilities have been raised. In the area of regional aid, following the creation of a new substantive condition in Article 14 (16) of the GBER on the non-implementation of relocation, it was necessary to re-notify all regional aid schemes under which the aid would be granted after the end of the transitional six-month period, i.e. after 10 January 2018.

Other legislative acts of the European Commission in 2017 include the revision of Regulation (EC) No. 1370/2007 of the European Parliament and of the Council, which entered into force on 24 December 2017 in the form of Regulation (EC) No. 2016/2338. Regulation No. 1370/2007 imposes binding conditions for public aid granted as compensation under a public service contract for the carriage of passengers by rail and road. The above revision has resulted in an amendment to the Regulation as regards the opening of the market for domestic passenger services by rail. The amendments concern in particular the content of public service obligations, the process of concluding public service contracts and the de minimis thresholds for directly concluded contracts. The new regulation also regulates the possibilities for the authorities of the Member States to provide access to suitable rolling stock needed for the performance of public service contracts.

The European Commission has continued to update the existing analytical forms for the application of State Aid rules to finance infrastructure projects. These forms are guiding documents for public funds providers, financing infrastructure projects in different areas and for proper treatment of the given measures according to the rules of State Aid. In 2017, they were amended – aligned with the Commission Communication on the concept

of State Aid[6] Analytical forms in the following areas: port infrastructure, cultural infrastructure, broadband infrastructure, airport infrastructure, development infrastructure, research and innovation, sports and recreational multifunctional infrastructure, infrastructure of waste services. After the amendment, the Analytical Forms now have a comprehensive structure that deals with the possibilities to exclude individual features of State Aid, or summarises which regulations apply to each type of infrastructure. All Analytical Forms reflect the developments in the European Commission's decision-making practice and contain references to the relevant Commission decision. Analytical forms are available in English on the Office website.

As of 1 July 2017, the amendment to Act No. 215/2004 Coll., on the regulation of some relations in the field of State Aid and on the amendment of the law on support of research and development came into effect. The amendment reflects the changes concerning the public administration information systems introduced by Act No. 104/2017 Coll., which amends the Act on Public Administration Information Systems and the newly defined area of the Infringement Act in the scope of Act No. 183/2017 Coll., which amends some laws in connection with the adoption of the Law on Liability for Offenses and the Proceedings Act and the Act on Certain Misconduct.

Participation in Workshops and Working Groups

The State Aid Unit members regularly attend the meeting of the Working Group for Modernised State Aid Rules, which is composed of representatives of EU Member States and representatives of the European Commission from DG Competition. The Czech Republic, with experts from other Member States and European Commission representatives, discusses some of the State Aid rules that cause interpretative difficulties in practice. Regularly, current issues related to State Aid issues are discussed and the sharing of experience with the application of State aid rules in individual Member States and information acquisition on the institutional arrangements and competencies of the competent authorities in the area of State Aid in the Member States of the European Union are also significant.

The Office also had its representatives at the State Aid Evaluation workshop held in May 2017 at the European Commission headquarters, DG Competition. At this workshop both European Commission and Member States representatives evaluated and discussed the issue of evaluated regimes in individual Member States, especially with regard to the deadline set for the preparation of mid-term evaluation reports in 2018. The Czech Republic has yet approved one evaluation plan from the European Commission, namely to the system of investment incentives. Representatives of the Office also attended another workshop organised by the European Commission on Public Broadband Infrastructure Support. The participants of the seminar were more widely acquainted with the issue of State Aid rules in the field of broadband infrastructure. Also, interactive workshops that dealt with the major problem areas, such as geographic mapping and public consultation were also of significant benefit.

Workshops organised in the Czech Republic resonated, in particular, with the issue of funding of regional/urban technical service facilities responsible for the management and maintenance of transport infrastructure (i.e., road maintenance and maintenance organizations). With this agenda, the Department of State Aid of the Office will intensively deal with its methodological activity also in 2018, when the topic will be devoted to the May International Conference on State Aid organised by the Office.

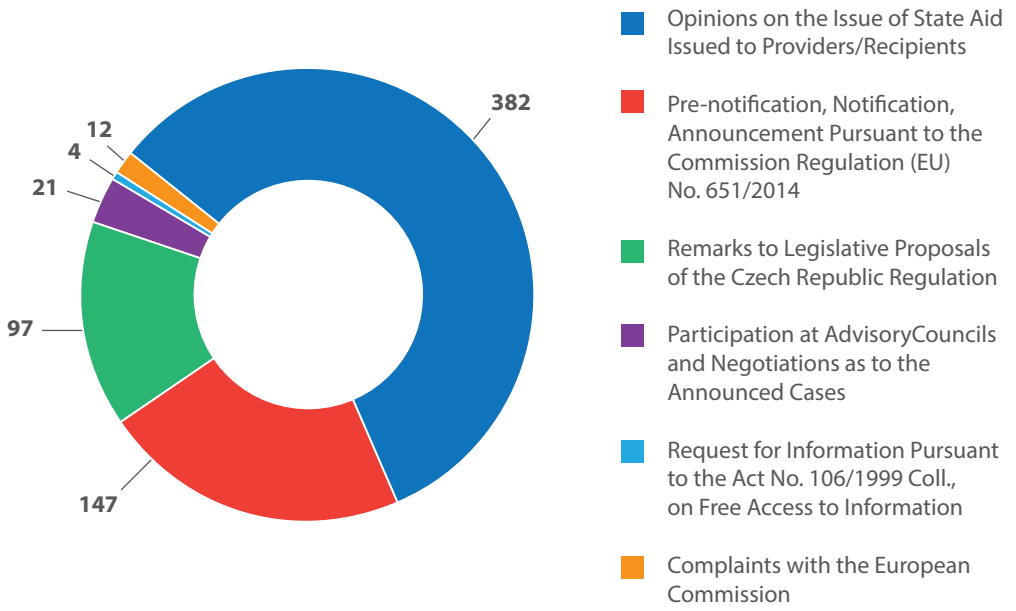
During the year, representatives of the Office participated in the working groups of the Ministry of Industry and Trade on the forthcoming amendment to the Act on Supported Energy Sources and on the transition of terrestrial digital broadcasting to the new DVB-T2 standard.

6 Commission Notice on the notion of State aid as referred to in Article 107(1) of the Treaty on the Functioning of the European Union, OJ C 262, 19 July 2016, p. 1.

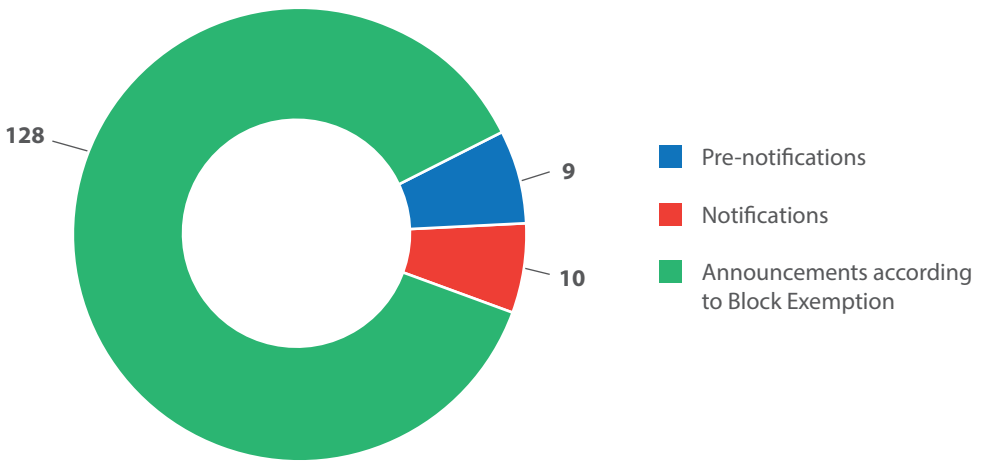
Statistical Data in the Field of State Aid for 2017

Selected Statistical Data from the Field of State Aid for 2017	
Opinions on State Aid Matters Issued by Providers / Beneficiaries	382
Pre-notifications, Notifications and Other Procedures, Block Exemption Notifications	147
Comments on Draft Legislation of the Czech Republic and Government Material	97
Participation in the Advisory Committees of the European Union and Negotiations with the European Commission on Solved Cases	21
Complaints with the European Commission	12
Requests for Information Pursuant to the Act No. 106/1999 Coll., on Free Access to Information	4

Statistical Data in the Field of State Aid for 2017



Notification, Pre-notification, Notifications under Commission Regulation (EU) No. 651/2014 for 2017



De Minimis Aid

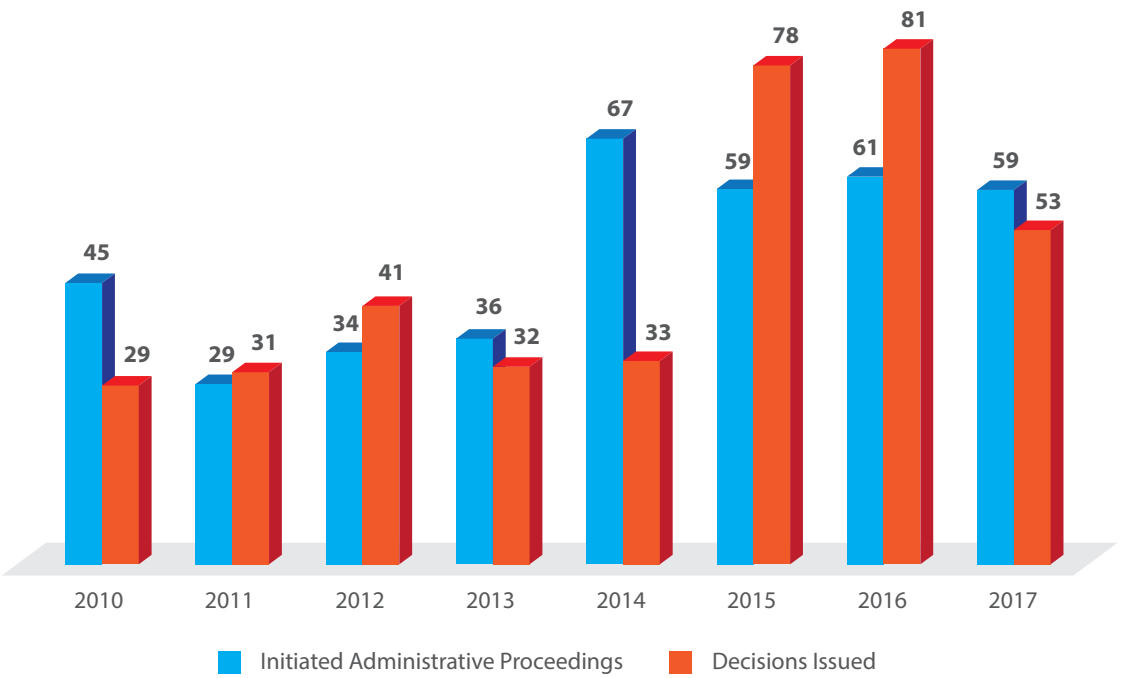
The Office in the area of State Aid conducts administrative proceedings against de minimis aid providers, in breach of Article 3a (4) of Act No. 215/2004 Coll. The provision in question concerns recording de minimis aid data within the statutory time-limit in the Central de minimis register and the reference to the legal instrument's name in the legal act granting the de minimis aid under which the aid was granted.

The de minimis aid regulation states, inter alia, that the determination of the de minimis aid ceiling must take into account whether the beneficiary of the aid is the result of a merger or a division of undertakings. Therefore, in 2017, the Central de minimis aid registry was updated so that these conversions could be recorded directly in the central registry.

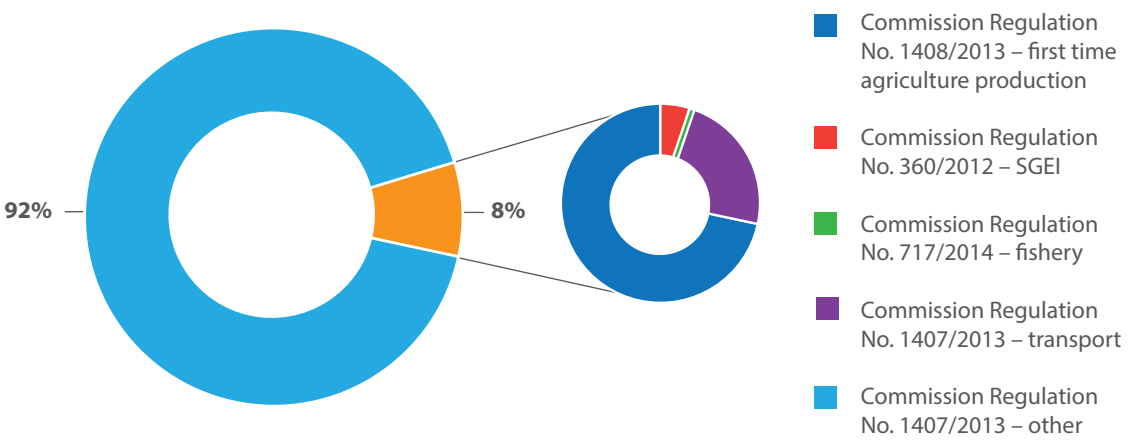
First-Instance Administrative Proceedings Concerning Registration in the Central De Minimis Register for 2017

Administrative Proceedings Initiated	59
Pending Administrative Proceedings	15
Decisions Issued	53
Number of Fines Imposed	40
Amount of Fines Imposed	CZK 256,400

The Administrative Proceedings Initiated and the Decisions Issued in the Period 2010–2017



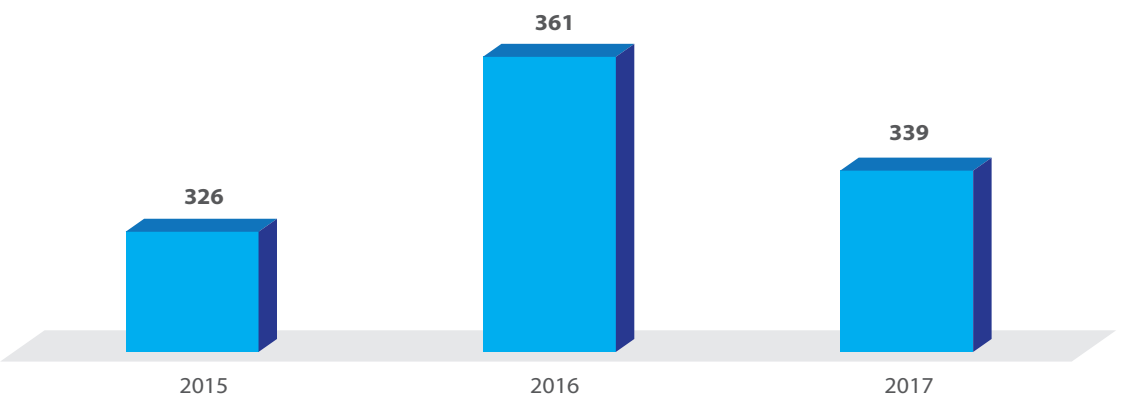
The Statistics Provided for De Minimis Aid for 2017 Pursuant the Regulations



Statistics on De Minimis Aid Provided in the Czech Republic for the Year 2017

Area	Number	Amount in CZK	Amount in €
Commission Regulation No. 1408/2013 – agriculture production	2,317	471,114,451.00	17,862,084.70
Commission Regulation No. 360/2012 – SGEI	183	833,037,993.60	31,948,862.21
Commission Regulation No. 717/2014 – fishery	13	2,172,454.00	82,054.04
Commission Regulation No. 1407/2013 – transport	758	76,046,451.09	2,884,893.73
Commission Regulation No. 1407/2013 – other	39,116	7,849,407,610.00	297,978,477.50
Total	42,387	9,231,778,960.00	350,756,372.20

Number of Requests for Access to the De Minimis Register



Second-Instance Decision Making

Throughout 2017, in the context of the breach of the obligations laid down for granting small-scale aid, the Office accepted three appeals against first-instance decisions and three second-instance administrative proceedings were launched. Five second-instance decisions were issued in this area. In one case the first-instance decision was annuled and returned for redrafting. In the remaining cases, most of the statements were confirmed and none of these decisions were returned to the first stage for the new assessment.

Judicial Review

To the administrative courts, no actions or cassation complaints were filed in the area of state aid in 2017 and the administrative courts did not issue any decisions in this area in 2017.

Significant Cases and Events in 2017

At the turn of the summer and autumn of 2017, the European Commission concluded two State Aid proceedings in the field of transport. First, Aid for the ensuring of interoperability in rail transport was approved, while it has been approved by the European Commission in small changes since 2008. A unique measure is to support the introduction of publicly available refuelling and filling stations for alternative fuel vehicles based on the mandatory requirements of European law the deployment of an alternative fuel infrastructure. The procedure for such support to the European Commission lasted more than a year and was completed by the European Commission's decision on the compatibility with the European Union's internal market, i.e. the approval of the aid. The support program aims to establish a national charging and filling station infrastructure network to meet the national targets set by the European Union Directive on the deployment of alternative fuel infrastructure. The program is divided into four sub-programs: charging stations, compressed natural gas (CNG) filling stations and LNG and hydrogen filling stations. The total budget of the scheme is over 44.5 million euro and the support is to be provided through direct grants. The support will be co-financed from the 2014–2020 Operational Program.

At the end of the year, the European Commission issued a long-awaited decision to support the cogeneration of electricity and heat in the plants put into operation between 2013–2015 and the promotion of heat production from renewable sources, which has been provided in the Czech Republic since 2013 under Act No. 165/2012 Coll., on supported energy sources. The European Commission noted that both types of aid and the Czech Republic's commitments regarding future adjustments are compatible with the European Union's internal market. Brussels has, thus, approved another group of operating aids for power plants in the Czech Republic.

INTERNATIONAL COOPERATION

The year 2017 was marked by several traditional activities and events, but it also brought new challenges and updates. Even in 2017, the International Unit was primarily an active platform for establishing new and developing existing relations of the Office in the field of international cooperation.

The Office is involved in several international organisations that have been engaged in protection of competition in a long term and at both European and global level. The European Competition Network (ECN) brings together the competition authorities of the Member States of the European Union. An organisation that brings together competition authorities around the world is the International Competition Network (ICN). The trio of major organisations dealing with competition issues is completed by the Organisation for Economic Cooperation and Development (OECD).

European Competition Network – ECN

In particular, the Office's employees are actively involved in the ECN's working groups, focusing on partial aspects of competition law. The most active working subgroups include cartels, mergers, cooperation issues, food and trade chains. One of the newly created working subgroups is dedicated to digital markets, as digitisation growth affects a wide range of sectors and activities not only in the economic sphere.

Within the ECN, there is also an intensive exchange of information shared by national competition authorities in the form of RFI (Request for Information). In 2017, the Office responded to 55 requests for information concerning a wide range of aspects and issues of competition law, varying from regulatory practice in various sectors of the Czech economy to specific issues concerning individual competition cases. At the same time, the Office also raised several inquiries of this type.

The Office took an active part in the EU legislative process in 2017. As part of the ECN+ project, representatives of the Office joined the comments on the proposal for a Directive of the European Parliament and of the Council to empower the competition authorities of the Member States to be more effective enforcers and to ensure the proper functioning of the internal market. The Directive should enable Member States' competition authorities to enforce the EU competition rules more effectively in order to be able to make decisions in full independence, have sufficient human, financial and technical resources and have effective tools to stop the infringement imposing sanctions for breaches of applicable competition laws. This legislative process should be completed by the end of 2018.

International Competition Network – ICN

Within the International Competition Network, in 2017, the Merger Working Group was active, its international workshop in February focused on the harmonisation of methods for analysing the impacts of mergers between undertakings on competition. The conference also dealt with the detailed planning and follow-up of the impact assessment of notified mergers.

Organisation for Economic Cooperation and Development – OECD

The international Organisation for Economic Cooperation and Development has long been addressing not only new trends and innovations that move the competition law, but at the same time it also deals with the economies of developing countries, and aims to associate the new member states, which can then benefit from membership to this organisation and to exchange experience with colleagues from foreign offices of advanced states. The Office can, therefore, share and compare its experiences at annual meetings with not only European partners but also with emerging economies. At the June and December OECD Competition Committee meetings, the most discussed topics concerned algorithms for prohibited agreements, competitive issues in "aftermarkets" or judicial aspects of competition law.

World Competition Day – 5 December 2017

The Office supports the idea of the World Competition Day, and at the end of 2017, it joined the thirty other countries around the world, recalling the global importance of competition on 5 December. Efforts to set up a World Competition Day aim to bring the issue of competition to the general public, to highlight the importance and benefits of complying with competition law rules and to cultivate a competition for the public and consumers.

Bilateral Relations

In addition to regular meetings with other member states within international organisations and platforms, the Office is also involved in developing bilateral relations with partner competition authorities from Europe, as well as other countries from geographically more remote parts of the world.

The experience and knowledge of its activities is passed on to foreign delegations from predominantly public law institutions interested both in the practice of the Office and in aspects of competition law in the Czech Republic. In May, a visit from colleagues from the Polish competition authority took place at the headquarters of the Office, whose interest was to get acquainted with the practical aspects of the domestic legislation in the area of significant market power before the law regulating identical matter in Poland entered into force.

Visit from the Bar Association of Oman (Daniel Stankov, Petr Solský, Hamed Hamdan, Mohamed Ibrahim – 20 September 2017)

In September, the Office hosted a visit of representatives of the Oman Bar Association, by which representatives of the Office provided insight into the Czech and the European competition law and competition policy.

In October, the Office hosted a study visit of representatives of the Chinese Institute of Market and Price Research. The visit focused on mutual exchange of experiences in the field of competition economy and the topic of the discussion was, among other things, modern statistical and econometric tools for the detection of cartels.

Within the framework of bilateral relations, representatives of the Office participate in conferences organised by foreign competition authorities and institutions as lecturers as well. At the Leniency Conference in Vienna, a representative from the Office presented a paper on that in the application practice of the Czech competition authority. Contributions by Czech experts to competition law and economics also took place at international conferences in Tirana (Albania), Tbilisi (Georgia), or Kiev (Ukraine).

Visit from the Chinese Institute of Market and Price Research (Zeng Zheng, Roman Pliska, Zang Yueru, Daniel Stankov, Liu Quanhong, Guo Liyan, Wang Dan, Liu Zhicheng – 17 October 2017)

Agreements on Cooperation

In 2017, the Chairman of the Office for the Protection of Competition Petr Rafaj signed Memorandum of Cooperation with the Competition Office of Georgia and with the Competition Office of the Republic of Moldova with the aim of building good relations with the competition authorities of non-EU countries. Although these are not candidate countries of the European Union, cooperation with these countries is considered equally important. One of the provisions of both documents is the engagement of the Office to transfer experience to colleagues from relatively young competition authorities. In connection with the memorandum, the Office last year sent several competition law experts to Georgia to carry out the training of the professional public as part of their lectures and at the same time handed over their experience with the promotion of national and EU competition law to Georgian experts on competition protection. In 2018 the OPC plans to develop friendly relationships with the two above-mentioned competition authorities, again by organising several lectures on competition law.

For 2018, the Office also plans to conclude an international cooperation agreement with the Slovak Competition Authority, aimed at enhancing mutual co-operation and exchange of information beyond the Union's rules. In order to conclude such an agreement, the Office is directly authorised by the Competition Act.

Signing of a Memorandum with the Moldovan Competition Authority (Petr Rafaj, Viorica Cărare – 16 March 2017)

PERSONNEL AGENDA

In 2017, there was a change in the organisational structure of the Office, when it was necessary to increase the personnel resources of the Office accordingly with regard to ensuring the proper performance of activities in connection with the new competence of the Office – supervising payment cards. Since March 2017, the Payments Services Unit was established and it organisationally falls under the Cartel Department within the Competition Division. In the middle of the year, there was also a change in the Legislation and Public Regulation Division, which reinforced the control of significant market power by increasing the number of posts. The Methodology and Control over Market Power Department was created with a total of 17 positions, which are divided into 3 units. The Office had a total of 234 employees as of 31 December 2017.

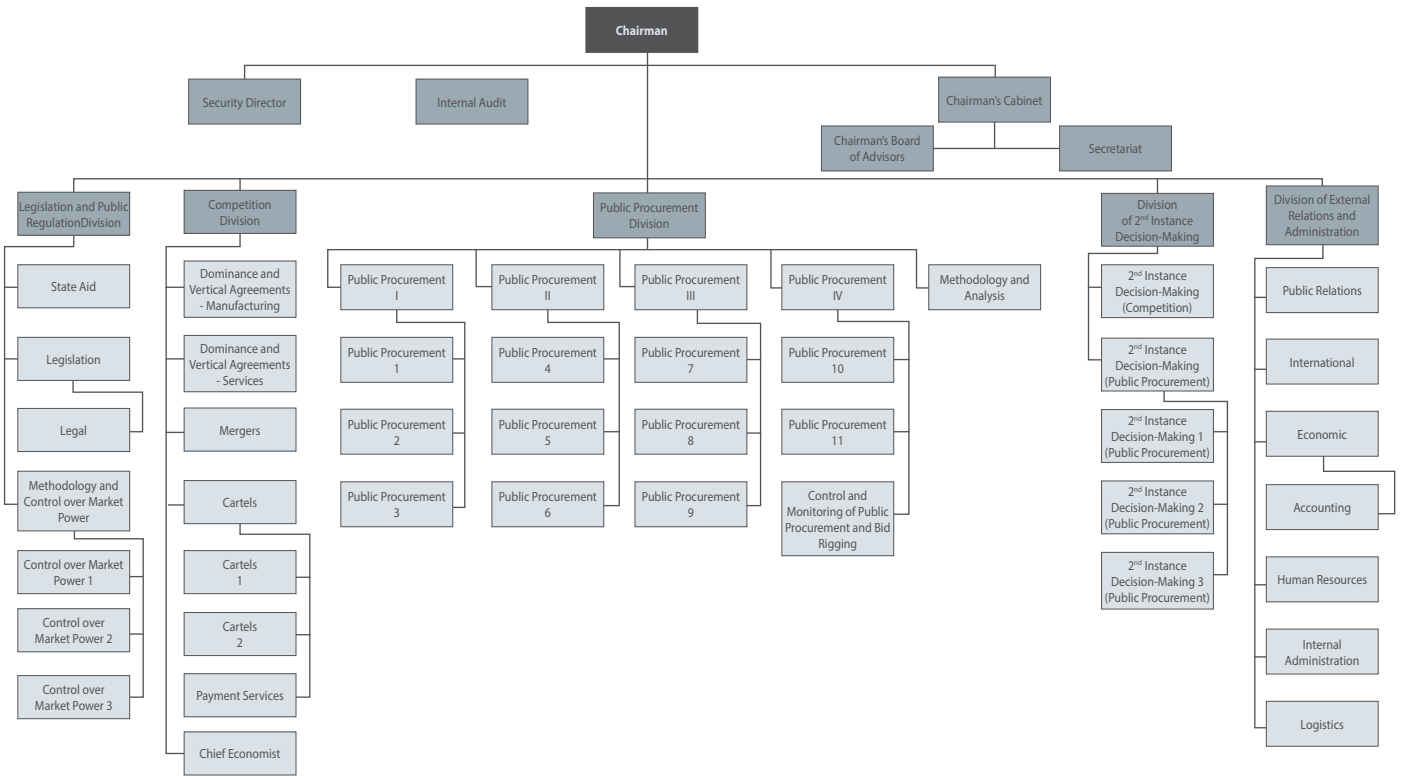
As a result of the above mentioned changes, as well as the change in salary rates from November 2017, the new systemization was developed in the second half of 2017. Subsequently, the systemization for 2018 was also elaborated, which already included the changes brought by the amendment of the catalogue of administrative activities within civil service and the catalogue of works in public services and administration.

The year 2017 was also marked by the fulfilment of the long-term personnel goal, consisting in the full occupancy of the systemization's positions, the stabilisation of the professional staff and their professional development. Therefore, during the year, a considerable number of tenders, clerical examinations, employee training and, last but not least, the adaptation of personnel processes to the amendment to the Civil Service Act came into force in June 2017.

The Office also continuously ensured the sustainability of project outputs and the ongoing evaluation of selected activities for projects funded by the European Union Structural Funds for management, training and staff development. The Office continues to fulfil some recommendations of those projects whose sustainability has already passed.

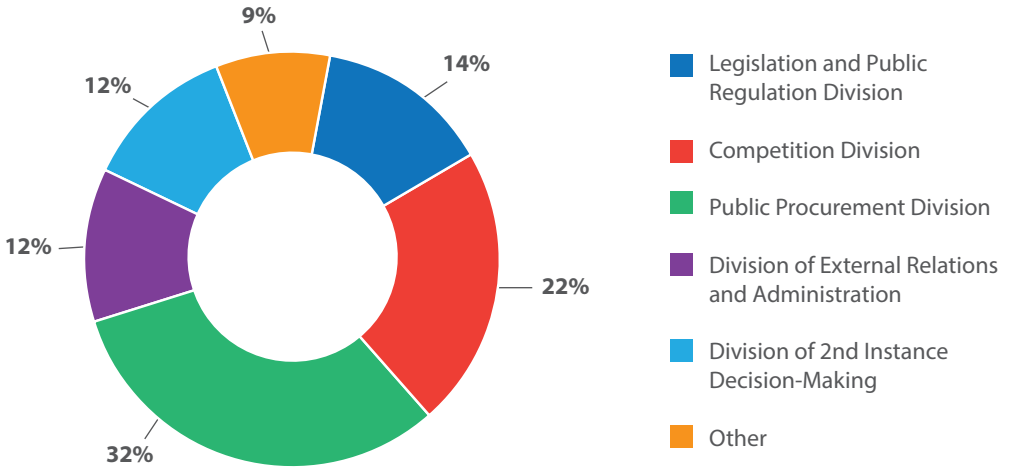
The challenges for 2018 are linked to the effectiveness of GDPR, respectively with the new law on processing personal data, and with the introduction of quality management principles in the service offices on the basis of the Government Resolution on the update of the Strategic Framework for Development of the Public Administration of the Czech Republic for 2014–2020 and finally, with the amendment to the Civil Service Act, including its implementing legislation.

Organisational Structure as of 31 December 2017

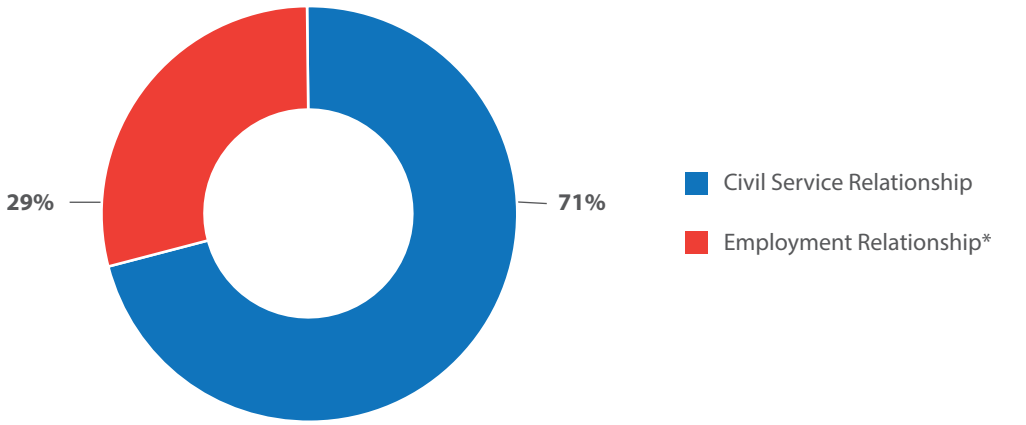


Employee Structure

by Divisions

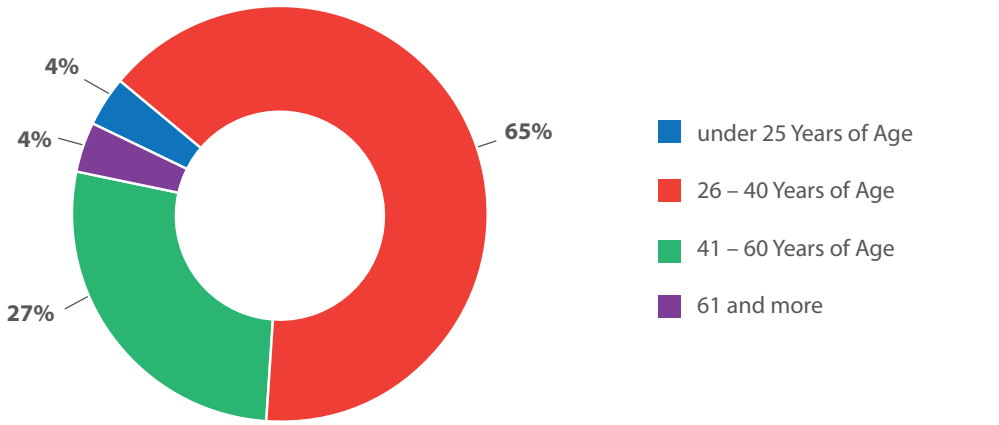


by Civil Service and Employment

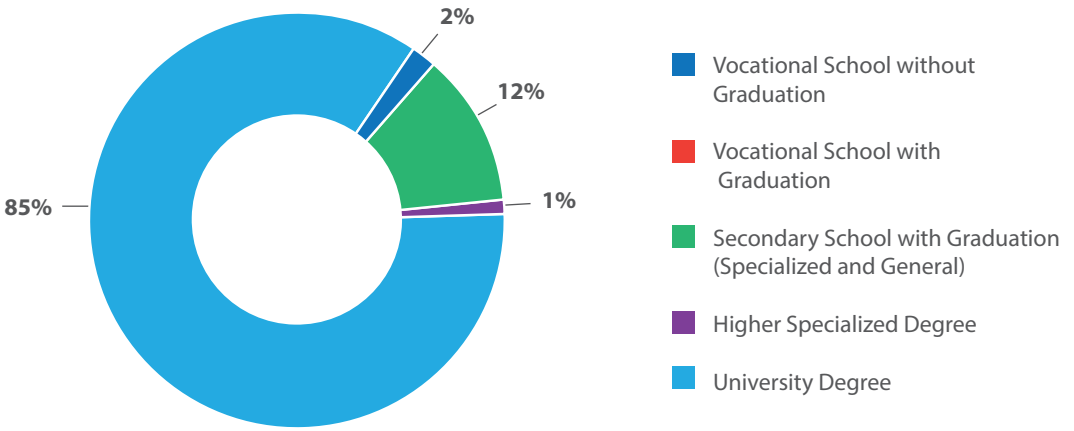


* of which one third of employees were recruited under Article 178 of the Civil Service Act, as an employee in an employment relationship at a civil service position

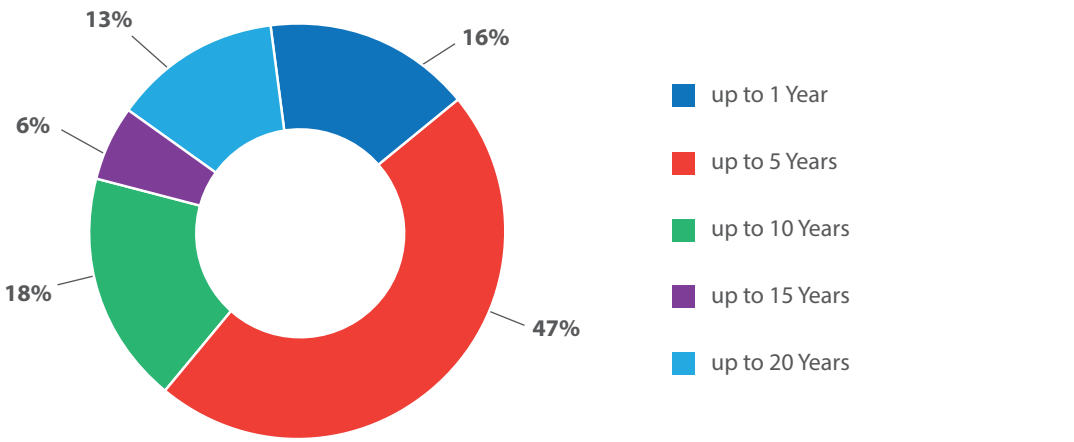
by Age (the average age of employees is 37.7 years)



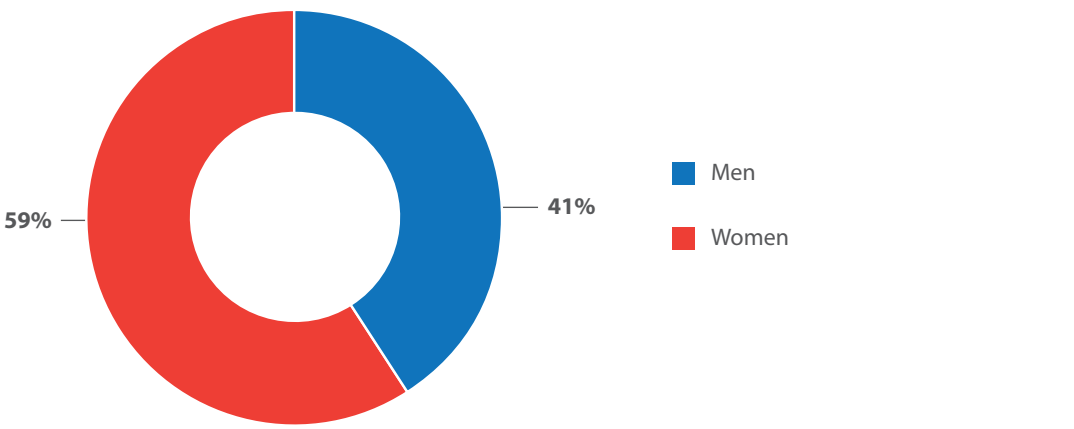
by Highest Level of Education



by Duration of Employment



by Gender



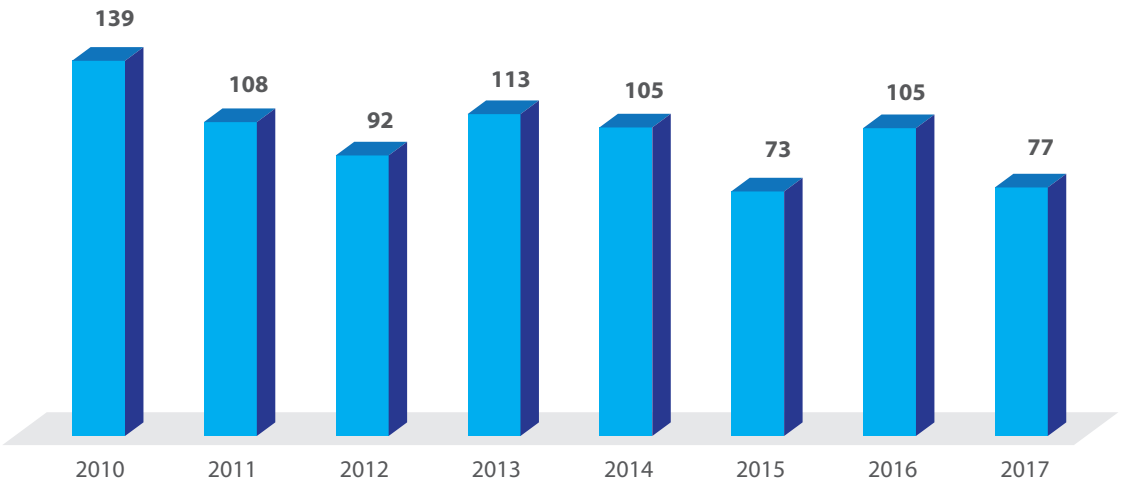
INFORMATION ACTIVITIES

Informing the professional and wider public about the Office's activities and trends in the field of competition, public procurement and State Aid in the European Union and around the world belongs to the Office's priorities. As a means of communication, the Office uses its own websites, press releases, annual reports, thematic information sheets and expert conferences.

On its website, the Office provides up-to-date information from all areas of its competence, publishes the first- and second-instance decisions in the decision-making body, as well as administrative court judgments related to cases investigated by the Office and information provided under Act No. 106/1999 Coll. on Free Access to Information.

In 2017, the Office issued 77 press releases and 5 360 contributions in media monitoring. The reason for the decrease in the contribution of the Office's activities in the media was the problems on the part of the supplier of daily media monitoring, which resulted in the Office's withdrawal from the contract with this supplier and the selection of a new one. According to the annual analysis of the Office's media image in selected media processed on the basis of a data from the new supplier of media monitoring, the total number of contributions was slightly increased by approximately three per cent compared to 2015.

Number of Issued Press Releases



According to media analyses prepared by an external contractor, the vast majority of contributions (95 per cent) were neutral, general information on the Office's work was reported. There was a positive interview with Petr Rafaj, Chairman of the Office, in Lidové noviny (31 March 2017). There was a negative one per cent of the contributions of the watched titles (Lidové noviny only), the remaining contributions were ambivalent and related mainly to the cancellation of the fine granted by the Building Companies Authority (May 2017). The culmination point of the media was March, when the Office launched its own market investigation of mobile operators.

The media most frequently reported on the activities of the Office in the area of public procurement, whereas it was most devoted to transport and construction, which also belonged to the most frequently solved areas of the markets affected during 2017 as part of public procurement investigations before the Office. Most of the Office was informed by the national daily Mladá fronta Dnes and Právo. Jan Sůra, who focuses on the field of transport, also wrote the most frequently. The second journalist who most frequently writes about the activities of the Office was Jiří Novotný from the journal Právo, which focuses mainly on the area of telecommunications. Negative contributions to the Office were written in 2017 exclusively by Lidové noviny.

The Office also established media cooperation with the Economic Diary website, which subsequently informed extensively about, for example, St. Martin's Conference 2017.

Publication Activities

In addition to the annual report summarizing the Office's work in 2016, the Office for the Protection of Competition also issued in 2017 four information sheets on the subject of public procurement, competition and significant market power.

The first issue of information sheets 2017 titled *"The Public Procurement law in ICT and Other Topical Issues"* was devoted to the practical experience gained after the year of application of the new Public Procurement Act (No. 134/2016 Coll.). In the first round of final decisions, the application of some new institutes is documented. A significant part of the info list focuses on current IT procurement issues, in particular on selected issues related to copyright protection, licenses, or data migration. The final chapter includes an explanation of the major changes to the fourth railway package and its implications for public service contracts in passenger transport.

Another two information sheets are focused on the area of competition law. *"The private Enforcement of Competition Law"* summarises the novelties and changes that brought into the Czech legal framework the transposition of a European directive facilitating private lawsuits in cases of damages caused by breaches of competition rules. The third information sheet *"Dawn Raids and Bid Rigging"* introduces readers to Office's guidelines on dawn raids and new way of bid rigging detection.

"The Procedural News in the Area of Significant Market Power" summarises the amendments to Act No. 395/2009 Coll., on significant market power in the sale of agricultural and food products and its abuse, which were adopted in the year 2017 and which are effective from 1 July 2017. Changes include not only refinement and aligning terminology in connection with the reform of administrative criminal law, but also takeover of some of the institutes and instruments used in competition law, in particular the possibility to conduct sector inquiries, to use the settlement procedure or to protect the identity of the contractor.

Conferences

St. Martin's Conference 2017

The eleventh edition of the St. Martin's Conference introducing novelties in competition law in the Czech Republic and abroad was focused on the issue of the digital economy. The traditional forum is held annually with the participation of experts in competition law and related economic areas from public regulators, advocacy and academia. The introductory panel traditionally focused on main events in the competition policy over the past year. Rainer Becker from European Commission DG COMP, has focused on two current trends: protecting of innovation

(from left) Rainer Becker, Theodor Thanner, Hynek Brom, Boris Gregor

(from left) Sandro Gleave, Hynek Brom, Kateřina Schenková, Pauline Le More

(from left) Michael Mikulík, Elizabeth Gachuiri, Bogdan M. Chiriţoiu, Jiří Kindl, Pavel Ralaus

as a goal or benefit of competition, and promoting fairness for fair consumer access. Austrian Theodor Thanner, chairman of the Austrian competition authority, addressed the amendment to the Austrian Competition Law, which allowed local authorities to access cloud data during dawn raids as well as to fine refusal to access to electronic data. The Austrian authority is, thus, able to respond to the rapid rise of digital markets. In the field of mergers, there has been an adjustment in the context of digital markets, which also requires notification of mergers that do not meet the turnover criteria, but the acquiring company is actively active in Austria. The Slovak Competition Authority, according to Vice-Chair Boris Gregor, also wants to devote more attention to e-commerce, which still accounts for only 4 per cent of the market in Slovakia, but its growth is expected in the future. A special lecture on digital platforms was provided by Renato Nazzini, a professor at King's College in London, who concluded that the competition policy does not need to create new tools, but that those used so far should be more sophisticated when assessing digital platforms so as to really find out how a particular digital market works. Other panels have been devoted to the distortion of competition by public authorities, on-line platforms, significant market power, in particular the issue of shopping alliances, and unannounced inspections. Parallel workshops developed topics

(from left) Petr Solský, Josef Bejček, Barbora Dubanská, Zdeněk Juračka

(from left) Igor Pospíšil, Zuzana Šabová, Veronika Benešová, Karel Šimka, Tomáš Tyll

of significant market power, possible changes in the notification criteria for mergers, and the theme of compliance between programmes and competition law.

Public Procurement

In autumn of 2017, the Office organised a traditional conference on public procurement, entitled Year of Experience with the New Public Procurement Act. The purpose of the conference was to inform contracting authorities, suppliers and other public procurement stakeholders with the experience of reviewing the contracting authority's actions in applying the new Public Procurement Act and explaining new procedures and institutes. Emphasis was placed on topics that pose the greatest challenges in the area of public procurement, whether due to their legal or technical complexity (such as IT contracts) or because they are issues that arise in the application of modern procedures for public procurement. Thematic round table discussion was also a part of the conference. In addition to the conference held at the Office's premises, representatives of the Public Procurement Division participated in several conferences and seminars organized by external entities in 2017.

(from left) Petr Rafaj, Mojmír Florian, Markéta Dlouhá, Tomáš Machurek, Isabel Maria da Rosa, Jaroslav Krčún, Michal Kobza, Josef Chýle, Pavel Herman

State Aid

As part of its educational role, the Office organised a two-day international conference on State Aid in May 2017. The conference was attended by more than 150 experts from the Czech Republic and abroad, among the lecturers, there were representatives of the European Commission and the Hungarian, Slovak and Danish competition authorities. The conference focused on summaries of progress in the modernisation of State Aid rules and foreign experience with the management of the State Aid agenda.

(from left) Hynek Brom, Petr Solský

(from left) Petra Tabery, Graça da Costa

(from left) Simeona Zikmundová, Petr Solský

(from left) Libuše Bílá, Vojtěch Horsák

(from left) Soňa Dubová, Petr Solský, Martin Fott, Preben Sandberg Pettersson, Eszter Hargita

Indicators of Chapter 353 of the State Budget for 2017 – Office for the Protection of Competition

Agregates			CZK
	Total Revenue		5,500,000
	Total Expenditure		253,766,753
Specific Indicators – Revenue			
	Tax Revenue[1)]		3,900,000
	Non-tax Revenues, Capital Revenues and Total Transfers Received		1,600,000
	of which:	Revenue from the European Union Budget Without the Common Agricultural Policy in Total	0
		other Non-tax Revenues, Capital Revenues and Transfers Received in Total	1,600,000
Specific Indicators – Expenditure			
	Expenditure on Securing the Fulfilment of the Tasks of the Office for the Protection of Competition		253,766,753
Cross-Sectional Indicators			
	Salaries of Employees and Other Payments for Work Done		125,279,930
	Compulsory Insurance Paid by the Employer [2)]		42,595,176
	Transfer of the Cultural and Social Needs Fund		2,465,535
	Salaries of Employees in Employment, Excluding Staff in Service Positions		16,813,533
	Salaries of Employees at Service Positions Pursuant to the Civil Service Act		99,626,815
	Salaries of Employees in Terms of Employment Derived from Salaries of Constitutional Officials		6,836,400
	Ensuring Preparation for Crisis Situations Pursuant to Act No. 240/2000 Coll.		0
	Expenditure Entirely or Partly Co-Financed by the European Union Budget Excluding the Common Agricultural Policy		0
	of which:	from State Budget	0
		Share of EU Budget	0
	Expenditures Included in EDS / SMVS Program Financing Information System Total		37,000,000

[1)] excluding revenues from compulsory social security contributions and contribution to the state employment policy
[2)] mandatory social security contributions and a contribution to the state employment policy and public health insurance premiums

Provision of Information pursuant to the Act No. 106/1999 Coll., on Free Access to Information for 2017

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 Request Filed	Number of Decisions Issued
Competition	58	26
Public Procurement	50	14
State Aid	1	1
Significant Market Power	7	7
Legislative-Legal	2	0
General	14	4
Total	131*	52

* The number of applications submitted is lower than the sum of the applications in each area, since one application contained two questions, both in the field of competition and public procurement.

2. **Number of appeals filed against decisions of the Office pursuant to the Act No. 106/1999 Coll.:** 10 appeals
3. **Number of complaints filed against the procedure in processing requests pursuant to the Act No. 106/1999 Coll.:** 5 complaints
4. **Judgements of the court in relation to the Office in providing information:**
   - 30 Af 16/2015-47 – Judgement of the Regional Court in Brno of 19 January 2017– Decision of the Chairman of the Office overturned and case remanded to the Office for further procedure.
   - 31 Af 44/2015-45 – Judgement of the Regional Court in Brno of 16 February 2017– Decision of the Chairman of the Office overturned and provision of the informacion is ordered.
   - 62 Af 3/2016-191 – Judgement of the Regional Court in Brno of 8 June 2017 – The operative part I of the decision of the Chairman of the Office overturned and case remanded to the Office for further procedure.
   - 62 Af 95/2016-68 – Judgement of the Regional Court in Brno of 9 November 2017 – Decision of the Chairman of the Office overturned and case remanded to the Office for further procedure.
   - 62 A 36/2016-72 – Judgement of the Regional Court in Brno of 2 June 2017 – Decision of the Chairman of the Office overturned, case remanded to the Office for further procedure and provision of the informacion is ordered.
   - 1 As 120/2017-37 – Judgement of the Supreme Administrative Court of 20 April 2017 – Cassation complaint of the Office is dismissed.
   - 9 As 230/2016-37 – Judgement of the Supreme Administrative Court of 20 September 2017 – Cassation complaint of the Office is dismissed.
   - IV. ÚS 227/17 – Resolution of the Constitutional Court of 31 October 2017 – Constitutional complaint of the complainer and attached proposals are denied.
5. **Results of sanction proceedings for non-compliance with the Act No. 106/1999 Coll.:** We have no records about sanction proceedings for non-compliance with the Act No. 106/1999 Coll.
6. **Number of exclusive licenses granted:** No exclusive licenses were granted.

AGENDA 2018

Competition

The year 2018, from the perspective of competition law, will be marked by the continuation of the consistent detection and punishment of anti-competitive behaviour. The objective is to maintain the current trend in detecting and penalising prohibited agreements, and overseeing those entities that are traditionally or newly dominant in the relevant market.

The Office intends to focus on overseeing the new phenomena of competition law stemming from the evolving digitization across all business sectors. This is mainly reflected in the form of digital platforms of all kinds that make or change the current view of the functioning of today's economic relations. A big challenge will be the evaluation of the functioning and behaviour of digital algorithms that have the capacity for autonomous learning and, in some sectors, to replace people's decision-making. This raises a number of questions, for example, who is responsible for a possible breach of competition law, whether the user of the algorithm or its manufacturer, or how to evaluate an agreement that conflicts with the competition law principles between two or more algorithms. The interest of the Office will also be focused on digital sales issues, whether of a particular type of production or services, or on internet price comparators.

In order to meet the above objectives, the Office will continue to develop and use new search and benchmarking methods that enable it to be "online" in the provision of evidence so as to ensure that all legitimate conditions of the fair process are met.

Competition Compliance of Small and Medium-Size Enterprises

The Office, as the central state authority responsible for promoting and protecting fair competition on the market, has more than a quarter of a century of activity. Since 2004, it has also been an active member of the European Competition Network, led by the European Commission as the central competition authority of the European Union. In addition to criminal and fiscal standards, the competition rules have been included amongst the basic public law lobbies of business entities in Europe.

The Office has extensive experience in the area of supervision of compliance with the obligations of undertakings in the markets in the Czech Republic. In competition matters, it conducted dozens of administrative proceedings for breach of competition rules, the parties of which were undertakings of different sizes with different levels of market power. This extensive administrative practice, as well as the conclusions of a number of domestic and foreign professional conferences and other activities, enable the Office to further analyse the degree of identification and awareness of domestic entrepreneurs in the field of competition law. While large and multinational corporations usually have their own in-house lawyers, they are linked to sophisticated law firms, and are equipped with comprehensive internal compliance rules, and SMEs have a degree of legal certainty about their progress on the market lagging behind.

In particular, small entrepreneurs, who essentially devote their core business to their main business and cannot afford the services of an in-house lawyer or regular lawyer consultations, are very often in breach of the competition law and are subject to noticeable fines due to lack of knowledge of competition rules. In general, small and medium-sized businesses in the Czech Republic do not have more detailed compliance programs aimed at addressing competition issues, and their managers and owners are not sufficiently aware of the rules and risks arising from competition rules.

For this reason, and in line with the principles of good governance, the Office has decided to create a toolkit for SMEs to help them focus on competition law, to strengthen their own confidence in the process of market competition and to avoid often very sensitive sanctions imposed by antitrust authorities as typical anticompetitive offenses. The goal of the Office is to create a more favourable environment on its website, where it will gradually publish lessons and presentations for small and medium-sized enterprises in less formal language, often on the basis of practical examples and short spots, including e-learning, as well as publishing small and middle entrepreneurs through active presentations of key competition themes and in the field – in cooperation with clubs and other entities that bring together and oversee small and medium-sized businesses.

In two years, at the beginning of 2020, the Office plans to reverse this program to verify the extent to which knowledge of SME competition rules has increased, including comparing the results of its own supervisory and sanctioning activities.

Significant Market Power

2018 will be the year of stabilisation and intensive application of the amended law on significant market power for the Methodology and Market Power Division. After the hectic year (2017), characterised by a great deal of legislative change and new approaches to agenda management, 2018 will be a period of full focus on the use of all legitimate options to combat unfair trade practices. The Office's possibilities to proceed with the most efficient settlement of distorted supply and consumer relations have widened as a result of introducing various alternative procedures, either in the preliminary investigation phase or in the administrative phase. However serious infringements of the law will be strictly sanctioned by the Office.

In 2018, the Office intends to launch a sector inquiry into the market power control agenda. The aim of this survey is to find the most comprehensive answer to the current topics with which the Office has recently been confronted. This is mainly the effect of the amendment to Act No. 50/2016 Coll., functioning of some provisions of this amendment in practice, the Office's competence in the field of prices, etc. Its findings will be published by the Office in its final report, including any recommendations for good practice.

In 2018, the Office will also focus on international cooperation. It will continue to work with some of the surrounding countries of Central Europe and share mutual knowledge. Due to the intensification of legislative efforts to create a unified framework for unfair trade practices in the European Union at the end of 2017, the Office will support these activities in 2018.

Public Procurement and Concessions

Even in 2018, the Public Procurement Division will take care of the effectiveness and quality of decision-making and exercise other powers conferred on it by relevant legislation. A gradual decrease in the number of proceedings under the old Public Procurement Act can be expected and, on the contrary, a significant increase in the number of proposals and complaints directed against contracting authorities' procedures under the new Public Procurement Act. Therefore, it will be necessary to work increasingly with newly established procedures and institutes, which will no longer be assessed in mere case series but will become a regular activity of the Office. For this reason, it is in the Office's interest to continue the organising the autumn conference on public procurement so that contracting authorities, suppliers and other public procurement entities are introduced to current decision-making practice and trends in decision-making. Likewise, the Office is interested in contributing to public awareness of the applied public procurement rules and through other forms of communication, so the Office's participation in educational events and professional conferences can be expected, as well as maintaining the Office's current approach to responding to public inquiries.

At the same time, it is possible to expect full implementation of the Office's control powers in 2018 to initiate inspections according to the control rules. The findings resulting from the inspections carried out will become other documents on the basis of which the Office will be able to initiate the administrative proceedings from its own power, or otherwise evaluate the application of the new Public Procurement Act.

State Aid

Even in 2018, the European Commission intends to focus on "big" cases that may have a real and detrimental effect on competition between Member States of the European Union and leave simpler assessment cases to the Member States themselves, which have in particular the GBER procedure. According to the European Commission estimates, up to 90 per cent of measures can be implemented through block exemptions, which makes it easier and faster to provide resources to final recipients.

The overview of the support provided by the Member States for 2017 confirms this trend as more than 97 per cent of the newly adopted aid measures were granted under the GBER. This figure represents an increase of about 25 per cent compared to 2013 (i.e. before the current version of GBER was adopted). A large increase in the number of support measures provided was recorded mainly in the area of broadband and multifunctional recreational infrastructures, as well as research, development and innovation, cultural and cultural heritage preservation, and support for small and medium-sized enterprises, including risk financing. A similar trend can be expected in 2018.

More complex cases include the continuation of the European Commission's tax investigation in selected Member States to ensure that businesses, irrespective of their size or supranationality, pay a fair share of taxes at their place of business.

By mid–2017, the European Commission has endorsed the creation of a new working group of the European Commission and the Member States on international grants to seek practical solutions to harmonize the rules on subsidy policy internationally and State Aid rules, the established instruments of the World Trade Organisation and the Organisation for Economic Cooperation and Development. The initiative of DG Competition and DG Trade Policy of the European Commission was launched within the framework of the "High Level Forum" platform for the application of State Aid law in response to the significant economic effects of third country subsidies, in particular China, on the internal market of the European Union. Representatives of the Office, along with experts from the Ministry of Industry and Trade for third country trade policy, will be involved in this group during 2018.

On the basis of information submitted by public service providers in the SGEI, the Office will process and report to the European Commission in 2018 on the implementation of the Decision of 20 December 2011 on the application of Article 106 (2) of the Treaty on the Functioning of the European Union to State aid in the form of public service compensation for certain undertakings entrusted with the operation of services of general economic interest. The report is produced at regular two-year intervals.

As of 30 April 2018, all State aid providers are required to provide the Office with information on the amount of aid granted (i.e. disbursed) for the calendar year 2017. The relevant information obligation does not concern measures provided under the de minimis scheme or under the rules governing services of general economic interest. The Office will, therefore, prepare aggregated information on the amount of State Aid paid under the notified measures and will submit this information in the form of an annual report to the European Commission.

As in the previous year, even in 2017, the Office noted an increase in the number of complaints submitted by the interested parties to the European Commission over the previous years, and the Office will, therefore, cooperate with providers of alleged illegal public aids complained of by the complainants in 2018, complainant of the alleged facts concerning State Aid.