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ÚOHS

ÚŘAD PRO OCHRANU HOSPODÁŘSKÉ SOUTĚŽE
OFFICE FOR THE PROTECTION OF COMPETITION

Contents

Foreword by the Chairman 3
About the Office 5
Competition 6
Legislation 8
Prohibited Agreements 10
Abuse of Dominant Position 15
Concentration of Undertakings 18
Appeals and Judicial Review 23
Public Procurement and Concessions 27
Summary of Changes in Legislation 27
Continuation of Growth Trends in the OPC Activities 28
Appeals and Judicial Review 37
State Aid 42
Legislative Changes 44
Appeals and Judicial Review 47
Significant Market Power 48
International Relations 49
Human Resources 53
Information Activities 57
Approved Budget for 2012 59
Utilization of EU Funds 61
Provision of Information pursuant to the Act No. 106/1999 Coll., on Free Access to Information 64
Agenda 2013 65

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Foreword by the Chairman

The year 2012 not only saw the Office for the Protection of Competition entering its third decade of existence, but also brought a number of fundamental changes, primarily in the field of competition and public tenders.

The long-prepared amendment to the Act on the Protection of Competition, which came into effect in December, represents a substantial step forwards in the fight against cartel agreements. The law provides effective tools to help us detect and investigate cartels, mainly the leniency programme, the use of which will now represent a more attractive prospect for participants in cartels thanks to its incorporation into the legal framework. We believe that, following these changes, the programme will be even more effective than before, particularly in cases where the advantages associated with it underline further concessions for applicants for leniency, these being, chiefly, immunity from prosecution and exemption from the list of companies banned from participating in public tenders.

In the previous year, the leniency programme made a major contribution towards detection of a cartel agreement between tenderers for waste disposal tenders. In this case of bid rigging a fine of nearly 100 million CZK was imposed and it is a prime example of how the Office can utilise its synergy resulting from the concentration of competition protection and public procurement review under a single roof. Bid rigging has been amongst our chief priorities in the past two years and the aforementioned case, too, indicates that we are headed in the right direction. Further evidence of this is the fact that, out of the four administrative proceedings initiated in the fight against cartels, four of these concern cartels in public procurement.

The amendment to the Competition Act granted the Office new powers in the form of the possibility to impose a fine on state administration bodies and local authorities for anticompetitive behaviour. Nonetheless, municipalities and ministries do not need to have immediate fears that we will intervene, as we first need to analyse the situation and consider the various means of asserting our new powers in practice.

An extensive amendment to the Act on Public Procurement was adopted too, effective as of 1 April 2012. Contracting authorities thoroughly prepared for this amendment, mainly by submitting as many bids as possible while the previous wording of the Act was still in force. The non-existence of implementing regulations and the initial diffidence of contracting authorities meant that in the previous year the Office was not required to deal with many cases under the legal framework of the amended Act, and the main wave of proposals and complaints can be anticipated this year. From a staffing point of view, the Office has almost completed preparations for the anticipated increase in cases and I believe that we will be able to cope with the increased workload. Despite the lack of cases assessed pursuant to the amended Act, we again recorded a considerable growth in administrative proceedings initiated and decisions issued.

In the current unsettled economic climate it is more important than ever before to support the competitiveness of Czech companies through the development of a healthy competitive environment and a transparent, fair approach to the awarding of public tenders. In 2012 the Office for the Protection of Competition endeavoured to achieve these goals, of which we take stock in this annual report, and we intend to continue this in the current year.

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 "the OPC") is a central state administration body established by the Act no. 273/1996 Coll., on the Scope of Competence of the Office for the Protection of Competition. The Office exercises its powers in the areas of the protection of competition, monitoring of public procurement and concessions and monitoring of the ban on abuse of significant market power, while fulfilling the function of a consultation, coordination and monitoring body for state aid.

The Office was established in 1991 as the Czech Office for the Protection of Competition and functioned as the Ministry for Competition from 1992–96. The OPC is based in Brno, with the Prague branch being re-opened in 2012.

The Office is headed by the Chairman, who is appointed by the President of the Czech Republic upon the government´s proposal. The Chairman serves a six-year term of office, with a limit of two terms. The role of Chairman is incompatible with membership in a political party or movement. The current Chairman is Petr Rafaj, who has been in office since 9 July 2009.

Basic Legislation Falling within the Competency of the OPC

- Act no. 143/2001 Coll., on the Protection of Competition
- Act no. 137/2006 Coll., on Public Contracts
- Act no. 139/2006 Coll., on Concession Contracts and Concession Procedure
- Act no. 395/2009 Coll., on Significant Market Power in the Sale of Agricultural and Food Products and Abuse thereof
- Act no. 215/2004 Coll., amending certain relationships within the area of state aid and altering the Act on the promotion of research and development

Decision-Making Process

Similarly to other administrative bodies of the Czech Republic, the Office for the Protection of Competition has a two-tiered decision-making process pursuant to the Administrative Procedure Code (Act no. 500/2004 Coll.). An initial decision is made by a first instance body. An appeal to the decision can be submitted to the Chairman of the Office within 15 days of delivery; in this case, the Chairman fulfils the role of a second instance. If no appeal is submitted in the 15 day period, the decision comes into force.

In the case of submission of an appeal, the Chairman reaches a decision with the assistance of his advisory council – the appeals commission – on whether the first instance body acted in accordance with valid legal provisions and assessed the matter correctly. Second instance proceedings may conclude with confirmation of the decision being appealed and rejection of the appeal, or the changing of the first instance decision, for example the reduction of a fine or the overturning and returning of the decision for review to the first instance body. In case the decision is confirmed, it comes into effect on its receipt by participants in the proceedings. Lawsuits against legally effective OPC decisions can be submitted to the relevant administrative court, which is the Regional Court in Brno.

Competition

Healthy competition is, indisputably, one of the chief prerequisites for prosperity and economic growth. It is competition that allows innovative businesses, products and new ideas to enter the market. A competitive environment fosters strong competitors who are able to perform under the difficult conditions of the on-going economic and financial crisis, increasing the efficiency and competitiveness of the Czech economy.

It is the task of the OPC to secure equal conditions for all market players, as the free market functions only when there are clear rules in place to ensure fair competition. It is only under these circumstances that the positive results of the innovation and productivity of entrepreneurs can also be transmitted to the end consumer. In this, the purpose of the OPC is to protect the concept of competition, and not to protect small competitors from larger ones. The main beneficiary of the positive effects of this protection of the economy is the aforementioned consumer, who should see the results of this process in the form of lower prices, better quality and wider range of goods and services.

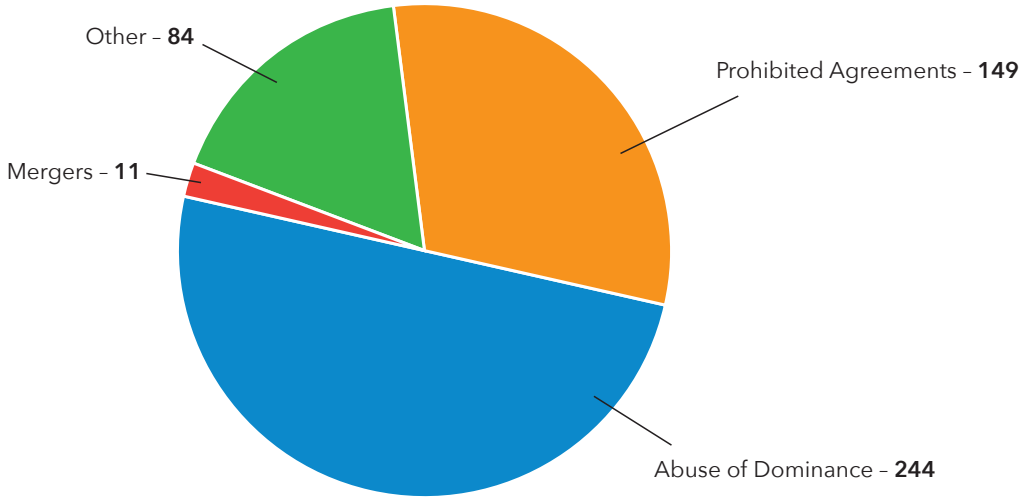
The competition authorities apply ex post regulations, i.e. they only respond to the actions of businesses in the market. The opposite approach is taken by sector regulators most frequently put in place for the telecommunications and energy sectors that set the conditions for the behaviour of market players in advance – ex ante.

In the Czech Republic the protection of competition is governed by the Act no. 143/2001 Coll., on the Protection of Competition. This act distinguishes between three basic areas to which competition regulations apply: prohibited agreements, abuse of a dominant position and merger control.

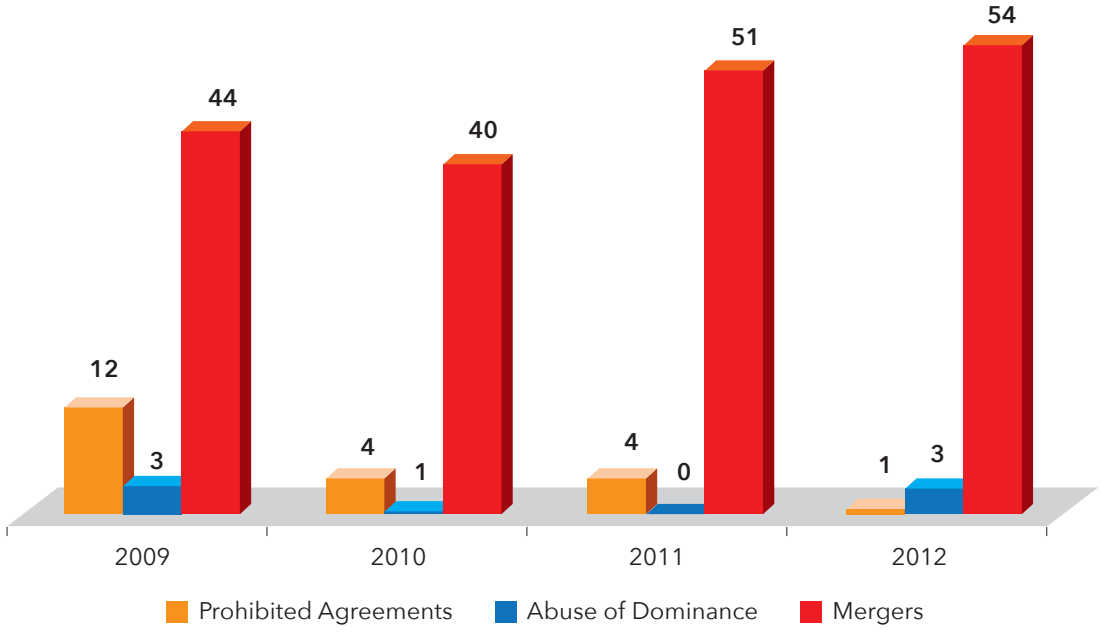
In 2012 the Office received 488 complaints, initiated 59 administrative proceedings and issued 58 first instance decisions in the area of competition. Fines of a total amount 190 million CZK were imposed in two cases of abuse of a dominant position and prohibited agreements. Five cases were resolved by the Office through competition advocacy.

From left: Michal Petr, David Anderson, Petr Zákoucký - St. Martin Conference 2012

Complaints Received according to Area



Number of First Instance Decisions Issued



Legislation

The ninth amendment to the Act on the Protection of Competition (the "Act") came into effect in December 2012, bringing with it a number of changes, mainly the integration of the concepts of leniency and settlement into the Act and also the option of the prioritisation in the investigation of cases and new powers in the form of the penalisation of anticompetitive behaviour by state administration bodies.

While the leniency programme was introduced by the Office more than ten years ago, it took the form of merely a notification of the Office, without explicit legal recourse. The supposedly lower level of legal surety for any applicants for leniency did not represent, in practice, a serious obstacle to its application. However, at the same time, the fact that the programme was not a legal institute complicated the integration of the leniency programme with other laws, mainly the Administrative Procedure Code and Criminal Code. It is for this reason that the Office decided to include it in the Act.

The actual provisions governing the leniency programme are contained in Article 22ba(1) of the Act; part a) lays out the conditions for type I leniency and part b) the conditions for type II leniency. Worthy of note is the fact that it is no longer a condition for the granting of leniency that the applicant did not play a leading role in a cartel, nor did they initiate it, and that the applicant concluded their participation in the cartel immediately following submission of their application.

As far as procedural aspects are concerned, the Act only stipulates that fines may be cancelled or reduced only on the basis of a request (Article 22ba(4) of the Act), which can be submitted, in the case of type I leniency, no later than the statement of objections, and in the case of type II leniency, within 15 days after the statement of objections is issued; applications may be withdrawn no later than within 15 days of the expiry of the deadline for their submission (Article 22ba(5) of the Act).

The Act had, thus far, not contained an exemption for the protection of leniency documents when examining documentation. The new Act thus contains an explicit provision that applications for leniency shall remain outside the administrative file until the statement of objection is issued (Article 21c(3) of the Act), and even afterwards, access is restricted – the application can be viewed only by parties to the proceedings or their representative, and such a process is governed by the provisions concerning documents containing commercial secrets (Article 21c(4) of the Act). The provision makes no distinction between the protection of the actual application for leniency (in European Union terminology 'corporate statement') and other documents and information submitted to the Office in relation to the application.

The new Act further amends the Criminal Code with the insertion of a special provision for effective repentance (Article 248a of the Criminal Code) in relation to cartels (Article 248(2) alinea 1 of the Criminal Code), meaning that applicants for leniency can avoid administrative as well as criminal responsibility.

For the first time, the so-called settlement procedure was included into the legislative framework, whereby the Office reduces by 20% fines imposed on undertakings that confess to the perpetration of an administrative offence (Article 22ba(2) of the Act). Settlement procedure can also include the reduction of the fine at the request of the undertaking alone (Article 22ba(4) of the Act), which can be submitted no later than within 15 days after the statement of objections is issued (Article 22ba(6) of the Act).

Although not explicitly stated in the Act, it is evident from the nature of the issue that an applicant must confess to an offence, that is to an offence in fact, and its legal appraisal as viewed by the Office. If the undertaking 'confesses' to a different matter this will be of no importance to the Office and will not constitute grounds for reducing a fine.

The amendment also brought changes in relation to sanctions. Amongst the most significant of these is the introduction of a completely new sanction for bid-rigging agreements, this being a three-year ban on participation in tender and licensing processes (Article 22a(4) of the Act). The sanction is structured so that a ban is imposed on participation in public tenders, but not licenses, for agreements made in relation to tendering processes, and, similarly, for agreements made in relation to licensing processes a ban is imposed on the fulfilment of licensing contracts, but not on participation in tenders. The register of persons on whom this sanction has been imposed is kept by the Ministry for Regional Development (Article 22a(6) of the Act).

There were also changes to the general provisions on fines. When imposing fines, the Office must take into account not only the severity of the offence, but also the actions of the legal entity in the course of

the proceedings towards the Office and their efforts to eliminate the harmful effects of the administrative offense (Article 22b(2) of the Act). Nonetheless, the Office had already been taking account of these circumstances in the past.

There was a further clarification of provisions through the addition of the failure to comply with conditions attached to the approval of mergers to the list of explicitly named offences pursuant to Article 17(4) of the Act (Article 22(1) e), Article 22a e) of the Act). Apart from the imposition of a fine, it is also possible to re-open the tender pursuant to Article 18(5) of the Act.

Amendments were also made to provisions governing the previous offences of legal entities, who are now no longer required to demonstrate that a successor entity knew or could have known about any criminal behaviour on the part of their predecessor (Article 22b(6) of the Act).

Finally, the deadline for the imposition of procedural fines was abolished (Article 22c of the Act). These are essentially fines imposed for the purpose of achieving the purpose of the proceedings and its imposition is only relevant in the context of the 'main' administrative proceedings.

The Office also received authorisation not to initiate administrative proceedings in matters where proceedings would not be in the public interest due to the low level of harmful effects of actions on competition. When assessing the extent of harmful effects, the nature of actions, means of their execution, significance of the market affected and number of competitors affected will be taken into account (Article 21(2) of the Act).

The option of prioritisation should, in practice, concern only prohibited agreements, due to the very low market share of their participants. In contrast to the de minimis rule, which considers some agreements with a low market share to be not at all prohibited, these are, with regard to prioritisation, prohibited agreements, but will not be dealt with by the Office. Any aggrieved parties are, however, left the option of recourse to the courts through private enforcement. On the other hand the Office does not, in practice, anticipate the application of prioritisation in the case of the abuse of a dominant position and the prohibited implementation of a merger.

As far as the provision of information to the Office is concerned, the Act now stipulates that undertakings must always provide complete, correct and true documentation and information (Article 21e(1) of the Act). The provision of incomplete, incorrect or untrue information shall result in a procedural penalty (Article 22c(1) of the Act). The Act further defines the procedure to be followed by the Office when requesting information in writing (Article 22e(2)), which shall principally be within the scope that currently applies. Nonetheless, the obligation to provide information now also relates to natural persons who are not undertakings (Article 22e(3) of the Act).

As far as dawn-raids are concerned, the Act primarily stipulates that these do not relate to the Act on State Inspections (Article 22b of the Act), which had, however, already been clearly established in judicature. The Act now also defines required information for authorisation to carry out the dawn-raid (Article 22f(5) of the Act) – again within the scope already defined in practice. Inspections will continue to be carried out solely on the basis of the authority of the Chairman of the Office, or those authorised by the Chairman, and not of a court warrant.

During its discussions on the amendment of the Act, the Czech Chamber of Deputies also accepted an amendatory proposal expanding the scope of the Act beyond undertakings to public administration bodies, which are defined as state administration bodies carrying out state administration, local government bodies carrying out local government tasks and the indirect execution of state administration, and special-interest administration bodies indirectly carrying out state administration tasks (Article 1(1) d) of the Act). These bodies are to be prevented from distorting competition through the provision of support that gives an advantage to a certain competitor, or by other means (Article 19a(1) of the Act). The Act therefore, in practice, addresses all cases of the distortion of competition due to the activities of public administration bodies, evidently including deliberative and legislative activities.

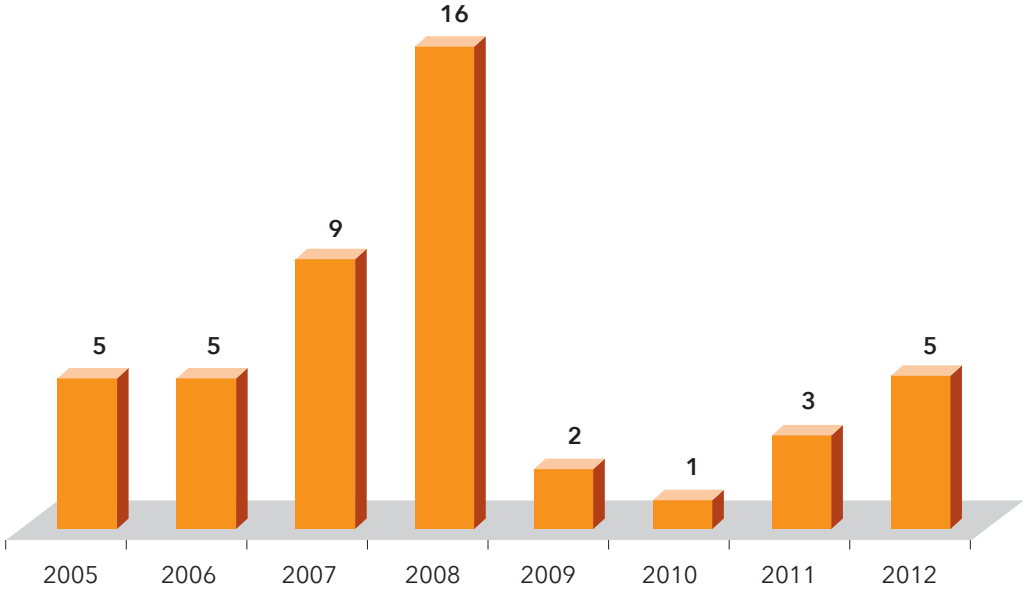
Nonetheless, this is not a revolutionary provision, as the Office was granted similar powers by the original Act on the Protection of Competition from the 1990s. However, this latest amendment to the Act differs from the previous one in at least three key aspects. First of all, it also relates to special-interest administration bodies. Second, the Act anticipates that breaches of the law will entail fines of up to 10 million CZK (Article 22aa of the Act), whereas in the past there would only be a declaration of breach of obligations. Third, the Act also foresees the involvement of other bodies, who should also rectify the situation, i.e. ensure the elimination of provisions that distort competition (Article 19a(3) of the Act). The Office shall, in this regard, declare a 'transitional period' in its applied practices by reserving a certain period to monitor the market, create methodical aids and so on.

Prohibited Agreements

Prohibited agreements are agreements among businesses that result in the elimination of competition and the limiting of a free market strategy and of the actions of individual participants in an agreement. These are chiefly cartel agreements on prices, the division of a market or customers, mutual agreements, prohibited resolutions of associations of undertakings and, last but not least, vertical agreements. The detection and elimination of cartel agreements is the main priority of the OPC, as these agreements have malign effects on competition and thus the state economy and consumers.

In recent years the Office has focused mainly on so-called bid rigging, that is, prohibited agreements among tenderers in a public contract that have negative effects on public finances. In 2012 the Office uncovered three cartels of this type and issued decisions imposing fines amounting to nearly 100 million CZK for cartel activity in a waste management. A total of five administrative proceedings were initiated for prohibited agreements, with one decision being issued. In one case, administrative proceeding was initiated for a vertical agreement. The Office also conducted a total of 18 dawn-raids for the purpose of finding evidence of possible anticompetitive behaviour.

Number of Initiated Administrative Proceedings - Prohibited Agreements



Bid Rigging

The absolute priority of the Office with regard to the detection of prohibited agreements is the fight against cartel agreements in the form of bid rigging, that is, agreements made among tenderers for public contracts with the aim of influencing the result of the tender. Effective competition between applicants for a tender is the most effective tool for achieving the highest possible quality of desired fulfilment of contract, i.e. goods supplied or services provided, and this for the lowest price possible. Competition between tenderers for contracts benefits all contracting authorities, while the effective management of public contracting authorities benefits society as a whole. The

existence of bid rigging agreements can typically increase the price of a public contract by 10-50%, whereas every tenderer participating in a tender outside such an agreement makes final fulfilment cheaper by up to 5%. Given that hundreds of billions of CZK, representing a considerable percentage of the gross domestic product of the Czech Republic, are invested in public contracts every year, the devastating effects of cartel agreements are obvious.

In 2012 the Office issued an information bulletin entirely dedicated to bid rigging agreements. The opening section describes bid rigging agreements, mentions the intentions of the European Union for dealing with the issue and legislation governing agreements concluded in relation to public contracts, as laid out in the latest revision of the Act on the Protection of Competition. The key part of the information bulletin contains practical instructions for contracting authorities (manual), which is divided into four parts and draws on previous investigations carried out by the Office, the European Commission and documents produced by the Organisation for Economic Cooperation and Development (OECD). The manual deals with different types of bid rigging, describes the consequences and risks associated with it and further outlines the markets and sectors with a tendency towards the creation of these cartel agreements. The closing section gives an overview of possible preventive measures available to contracting authorities to prevent bid rigging. The bulletin also contains practical guidelines for contracting authorities about how to proceed when there is a suspicion of the existence of a cartel amongst tenderers for a public contract, including a practical, point-by-point 'first aid' leaflet, which is included in the bulletin and provides a simple summary of the basic principles outlined in the manual, as well as contact information for the relevant employees of the Cartels Department, who can be contacted for consultation by contracting authorities.

While compiling the aforementioned bulletin/manual for contracting authorities, the aim of the Office was to describe, in as much detail as possible, the issue of bid rigging to contracting authorities, acquaint them with the risks of cartel agreements and offer means of effective resolution. In 2012, this activity was also accompanied by a series of information campaigns for employees of public contracting authorities.

SELECTED CASES

Cartel in waste management

Participants: .A.S. A., spol. s r.o., van Gansewinkel, a.s., SITA CZ a.s., AVE CZ odpadové hospodářství s.r.o.
Reference number: S346/2010
Legally effective fine: 96,579,000 CZK
Date on which fine came into effect: 6 December 2012

In its first instance decision of 19 November 2012, the Office imposed fines of a total amount 96,579,000 CZK on A.S.A., spol. s r.o., van Gansewinkel, a.s., SITA CZ a.s. and AVE CZ odpadové hospodářství s.r.o. ("ASA", "AVE", "SITA" and "van Gansewinkel"). These undertakings, which are active in the waste management market, and some also in road maintenance, divided the market through the manipulation of tender processes, leading to distortion of competition. No appeals were submitted to this decision and the verdict, incorporating a ban on anticompetitive agreements and the aforementioned sanction, has been in a legal force since 6 December 2012.

The Office uncovered the prohibited agreement following its own investigation, and in September 2010 initiated administrative proceedings with ASA, SITA and van Gansewinkel. In 2011 the administrative proceedings were extended to cover AVE. During its investigations the Office found that, between the years 2007 and 2011, the aforementioned undertakings divided customers amongst themselves, using mutual contacts and exchanges of information to help them coordinate their actions in public contracts in the field of waste management and road maintenance.

Agreements were not concluded among all parties to the proceedings simultaneously; instead, six bilateral agreements were made relating to individual award procedures in waste management and, in the case of ASA and AVE, also to road maintenance contracts. During the dawn-raid in the premises of the aforementioned companies, the Office secured evidence showing that contact had occurred between undertakings, slowly evolving into the close coordination of their approach to customers,

i.e. anticompetitive behaviour. This manifested itself primarily in the submission of covering offers to tender processes (the submission of an offer, the intention of which was not to win a contract, but merely to create the impression that there is competition for the contract) or the failure to submit offers and contact customers of competitors requiring waste management services.

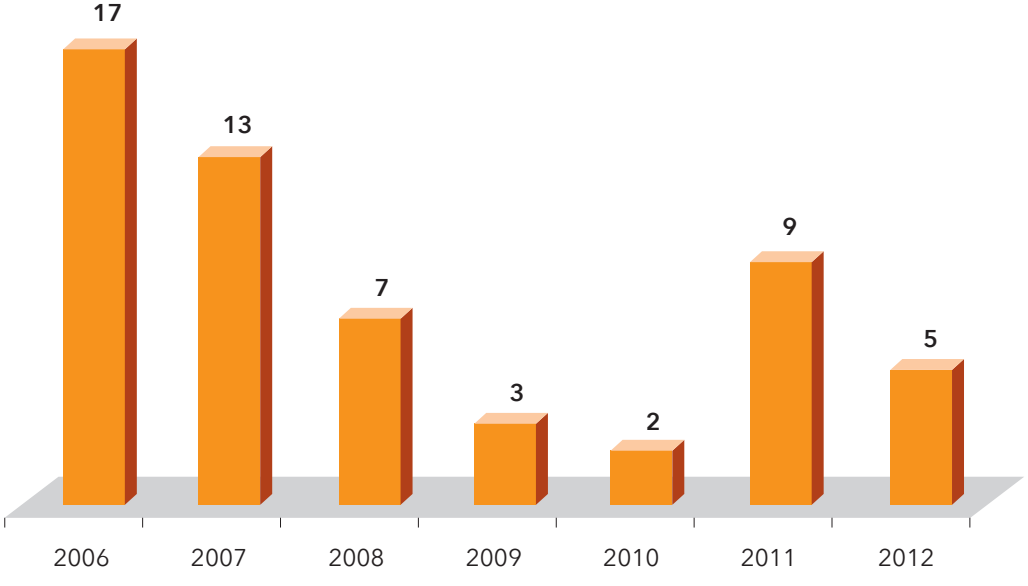
During the course of the proceedings, ASA and AVE applied for the leniency programme. In exchange for the provision of substantial evidence relating to anticompetitive behaviour, their sanctions were reduced by 50 and 30%, respectively. All participants in the proceedings further requested the application of settlement when they confessed to their unlawful behaviour within the terms specified by the Office, resulting in the reduction of their sanctions by 20%. The subsequent sanctions for the individual participants in the cartel were as follows: A.S.A., spol. s r.o. – 24,289,000 CZK, van Gansewinkel, a.s. – 10,870,000 CZK, SITA CZ a.s. – 19,753,000 CZK and AVE CZ odpadové hospodářství s.r.o. – 41,667,000 CZK.

From the point of view of the sum of evidence found, sensitivity of the relevant market of handling of waste for consumers, use of a large number of type II leniency applications and the application of the settlement procedure, this was one of the most significant cases in the history of the Office; the administrative proceedings further led to the collection of fines in the first instance. This was also the first case of purely domestic leniency applications.

Cases of Competition Advocacy

In cases where the OPC suspects that the conduct of an undertaking is not in compliance with the competition law, but these actions can be assessed as less serious due to not having yet been realised or having only a limited effect on competition, the case can be resolved through so-called competition advocacy. The Office does not, therefore, initiate administrative proceedings as long as the undertaking in question voluntarily submits a draft measure that entirely eliminates the impending problem with competition.

Number of Cases Resolved through Competition Advocacy



Association of Petrol Stations

The Office received a query from the Czech Association of Petrol Stations (the 'APS') concerning shortcomings in the submission of information on developments in the fuel market. Starting in January 2012, the APS started to publish analyses of the development of the prices of fuels, consisting of analytical information and its own predictions of price development for the subsequent week. The published analyses were available in APS website.

The Office verified that analyses of the fuel market, consisting of a main, analytical section and a conclusion predicting the development of prices over the subsequent week were publically available on the APS website. The website was operated by the APS, which is a trade association of independent oil companies (operators of petrol stations, distributors of oil-based products, producers of biofuels etc.) active in the Czech market.

The Office stated, in the matter at hand, that the APS is an association of undertakings pursuant to the Act on the Protection of Competition and that the publication on the APS website of analyses containing predictions of developments in the fuel market did, to a high degree of probability, fulfil the conditions for a prohibited resolution of an association of undertakings. The documents were published on the APS website, under the APS logo and had been signed by an APS analyst.

The weekly information on anticipated movements in the fuel market was, in the opinion of the Office, capable of influencing the creation of prices by APS members, as well as by other undertakings (competitors) who were not part of the association, and who could learn the results of the analyses from the APS website. Furthermore, these predictions could create, in the aforementioned undertakings, realistic expectations that other competitors, too, would act on them, further weakening the independent decision-making process of competitors in market competition with regard to one of the most fundamental parameters of competition, the price.

In view of the very brief period for which the aforementioned activity, according to the findings of the Office, took place, and further due to the willingness of the APS to consult and, if required, resolve the issue, the Office accepted a solution that did not require the initiation of administrative proceedings. The APS was invited to stop the publication of prediction of the development of fuel prices and to remove the estimates of price development already published. The Office further requested that the APS inform its members (e.g. via a declaration on the APS website) on the likely breach of the law through this activity. The APS implemented these measures within the deadline set by the Office.

benziny.cz website

The Office received a submission containing a query as to whether the project for the creation of the benziny.cz website is in compliance with the legal provisions of the Czech Republic. The aforementioned website promotes petrol stations and/or their operators on the Internet free of charge. Petrol stations registered on the website can list their name, contact details, overview of services provided, current fuel prices and photos on their profiles.

The Office examined the operation of the website benziny.cz from the point of view of the Act on the Protection of Competition. It primarily examined the issue of whether the option for petrol stations to publish their current fuel prices via the website could lead to the restriction or distortion of competition in the fuel retail market, as the publication of price information could represent a problem for competition, mainly in cases where it is possible for businesses to find out the price strategy of their competitors. The effect of the publication of information on competition is heavily dependent on the properties of the market on which this publication occurs (for example concentration, transparency, symmetry, structure, permanence etc.), as well as the type of information published, which could alter the relevant market by making it more prone to the coordination of undertakings. The lower the existing level of transparency in the market, the greater the value of published information in achieving a secretly agreed result. The Office came to the conclusion that the publication of information on current fuel prices offered by petrol stations via the benziny.cz website does not substantially increase

the existing level of market transparency and therefore cannot lead to the coordination of the actions of undertakings in the market. The reason for this is that, in this sector, undertakings actively monitor the prices offered by their competitors and therefore know current market prices. The Office further took into account the fact that the publication of the current fuel prices of individual petrol stations can directly benefit consumers by reducing the cost of finding the desired vendor and improving their choice. The Office therefore found no elements, either in the activity itself or in the information published by benziny.cz that may be in breach of the law.

Enhancing the competition in certification and training in the gas industry

The Office dealt with a complaint against the activities of certain entities active in the gas industry, primarily the Czech Gas Association (CGA) and the company GAS s.r.o. The Office found that certain actions on the part of the CGA could distort competition.

In view of the lesser degree of seriousness of the influence of the actions in question on competition, the Office accepted a resolution by means of competition advocacy, without initiating administrative proceedings. The Office invited the CGA to implement changes in technical standards TPG 927 02 and TPG 927 03, which contain the requirement that specialist courses pursuant to TPG 920 21 are carried out by entities registered at GAS s.r.o. and cancel the ruling of the CGA Board concerning the set-up of a single certification body.

The CGA subsequently notified and proved to the Office in writing that it had implemented the required remedies. The Board for Specialist Gas Training accepted a resolution in which they registered their awareness that, apart from GAS s.r.o., accreditation for the certification of cathodic protection specialists pursuant to ČSN EN 15257 is also possessed by the Czech Association for Product Welding. The Board further cancelled its ruling from 2011, which stipulated that GAS s.r.o. shall be the sole recognised certification body for the gas industry in the Czech Republic.

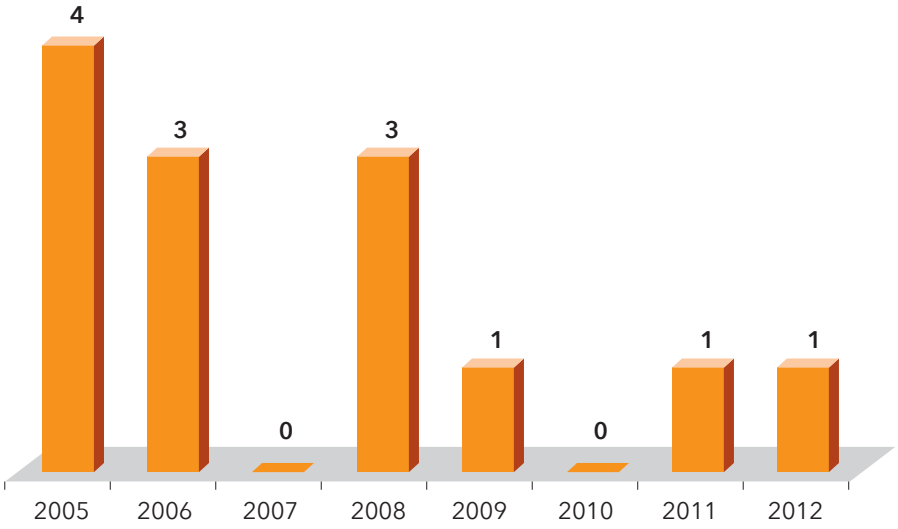
The CGA further submitted the minutes from a meeting of the Technical Approval Commission, at which the Commission approved amendments to TPG 927 02 and 927 03 (valid as of 1 September 2012). The new wording of the technical guidelines no longer contains the requirement that specialist courses will be carried out by entities registered with GAS s.r.o. The course organiser must now be registered in the Specialist Gas Training system. The Office also informed the CGA in writing of the obligations for the association of undertakings from the point of view of the Act on the Protection of Competition.

Abuse of Dominant Position

Abuses of dominant position can be committed by undertakings that have sufficient market power to enable them to act entirely independently of their competitors. As a general rule, undertakings with a market share below 40% are not in a dominant position. A dominant position is not determined solely by the size of market share, but also a number of other factors, for example the economic and financial power of competitors or barriers to market entry. Even monopolies or dominant companies have, naturally, the right to behave in a competitive manner in a market; they are, however, subject to stricter rules than undertakings with smaller market power. The abuse of dominance can manifest itself in a number of ways. The most common of these include the charging of disproportionately high prices, the tying of the purchase of goods and services to the purchase of other products, loyalty discounts or the sale of goods and/or services at dumping prices with the aim of marginalising competitors (so-called predatory pricing).

Last year the Office conducted a total of six administrative proceedings concerning the abuse of a dominant position. Within repeat proceeding involving Telefónica Czech Republic, where the initial decision had been made in 2004, a fine excessing of 93 million CZK was imposed. A further two older proceedings involving Arcelor Mittal were closed. Three administrative proceedings are on-going.

Number of Initiated Administrative Proceedings - Abuse of Dominant Position



SELECTED CASES

Repeat fine for loyalty discounts

Participant: Telefónica Czech Republic, a.s.
Reference number: R316/2012 / S109/2011
Legally effective fine: 91,909,700 CZK

In October 2012 the Office imposed a fine to the amount of 93,108,600 CZK on Telefónica Czech Republic, a.s., (previously ČESKÝ TELECOM, a.s.) during administrative proceeding ref. no. S001/03 (apart from point 1 of the statement confirmed by decision R020/2003), which continued after the judgement of the Regional Court in Brno of April 2011 legally confirmed that the parties to the

proceedings had abused their dominant position in the market for the provision of telephone services intended for business entities via public fixed telecommunications networks. The aforementioned judgement of the Regional Court in Brno thus factually confirmed the conclusions of the Office that abuse of a dominant position had occurred, while cancelling the imposition of a sanction due to insufficient justification of the sanction. In its new decision the Office therefore addressed the calculation of a sanction that took account of the seriousness of the anticompetitive behaviour, duration and repeated breach of the law by the parties to the proceedings.

By his second instance decision of December 2012, the Chairman of the Office decreased the fine imposed on the parties to the proceedings by an amount corresponding to the surcharge for the provision of incorrect and untrue information to the final amount of 91,909,700 CZK, as it did not agree with the fact that the first instance body had included in the fine a penalty for the fact that the parties to the proceedings had, in 2003 and 2012, reported an incorrect turnover amount as the basis for calculating sanctions for anticompetitive behaviour. According to the second instance decision, the provision of incorrect and untrue information ought not to be qualified as an aggravating circumstance in the context of the imposition of a fine for an offence committed, but as a breach of procedural obligations, for which a disciplinary fine shall be payable.

ČESKÝ TELECOM abused its dominant position in 2001 and 2002, when it concluded contracts with nearly three thousand business entities for the provision of price plans. In these contracts, customers undertook to make a minimum stipulated volume of calls every month and were obliged to pay for this even if they did not utilise the entire volume. It was also not possible for customers to terminate these contracts prior to a date stipulated within their contracts and customers were also not permitted to utilise voice services from any provider other than the party to the proceedings. Furthermore, ČESKÝ TELECOM applied individual conditions, differing from those in standard price plans for businesses, to some customers and also imposed the Winback/Retence programmes with the aim of gaining or retaining customers at the expense of its competitors.

ČESKÝ TELECOM distorted competition by the above actions at a time when there was public interest in the liberalisation of the telecommunications sector. To this end it not only created a barrier to the development of competition, but also price discrimination against business entities that did not conclude the above contracts with the party to the proceedings. In the case at hand, individual customers received various discounts and advantages from the undertaking in a dominant position in exchange for the commitment to draw services, or a pre-stipulated quantity of services; this was therefore a case of a de facto prohibited loyalty discount. The commercial policy of ČESKÝ TELECOM therefore led to the distortion of competition, which impeded the market entry of alternative operators. A fine to the amount of 81.7 million CZK for anticompetitive behaviour was imposed by the Office in 2004. The case was then further deliberated by administrative courts, who issued a total of five judgements, for the next eight years.

CASES OF COMPETITION ADVOCACY

Boat transport on the Vranov reservoir

An investigation was initiated following a complaint submitted by OSOBNÍ LODNÍ DOPRAVA (Passenger Ship Transport) s.r.o. ("OLD"). The complainant, an entity interested in the operation of a boat service on the Vranov reservoir, stated that Povodí Moravy, s. p. (hereinafter referred to as "Povodí Moravy") refused to allow OLD to rent land along the shoreline for the purpose of setting up landing facilities for the operation of a passenger boat service on the Vranov reservoir. The complainant believed that these actions constituted a breach of the Act.

For the purposes of investigating the complaint, the Office requested that the owner of the shoreline land in question - Povodí Moravy, s.p. – provide supporting documentation and information. Amongst other things, the investigation found that some land along the shore was, on the basis of a valid and effective lease agreement, utilised by the existing operator of boat services on the Vranov reservoir Lodní doprava Vranov s. r. o. It was further found that along the shoreline of Vranov reservoir are parcels of land, or parts thereof, which are suitable for the long-term installation of landing facilities

for the operation of boat services, and which could be utilised for the operation of boat services by OLD. In relation to the facts learned, a meeting took place with representatives of Povodí Moravy at the Premises of the Office in December 2012.

Following this meeting, on 1 March 2012 Povodí Moravy submitted to OLD a draft agreement for the lease of land on the shore of the reservoir and a draft agreement for the operation of public boat services. Following the addressing of comments made by OLD, the relevant contracts between Povodí Moravy and OLD were concluded on 26 April 2012.

It can be stated that the procedure described above, that is the concluding of the relevant contracts prior to the beginning of the current 'sailing season' on Vranov reservoir prevented any possible distortion of competition, that is, created space for the creation of functioning competition for the operation of passenger boat services on Vranov reservoir.

První novinová společnost (The First Newspaper Company)

The Office for the Protection of Competition investigated a number of complaints received from minor newsagents (stall-holders), who complained against the actions of První novinová společnost a.s. ("PNS"), mainly in relation to the 2010 amendment of the General Terms and Conditions for the Provision of Printed Materials ("GTC"). The complaints focussed on a number of areas.

Some complaints concerned the fixed retail price of goods supplied by PNS. Competition law tolerates the so-called fixed pricing of periodicals (i.e. the obligation to sell periodicals at the price stated in the cover) for the purpose of creating conditions for the continual, blanket supply, combined with the greatest variety possible within the dense retail network. This peculiarity of the press distribution system is regarded as beneficial to the consumer, as it ensures the accessibility of information contained in the printed media. In the case of supplementary goods, however, the setting of a fixed price could be problematic from the point of view of competition, as it could represent the conclusion of a prohibited agreement. The Office therefore recommended that PNS consider a different solution to its current one for the retail price of supplementary goods, one that would not raise competition concerns. Following consultation with the Office, PNS set a maximum limit for the final retail price of supplementary goods, effective as of 1 August 2012. This means of setting the retail price of goods is acceptable in terms of competition law and allows retailers to set their own retail price, while PNS will still have the possibility of preventing stock going unsold in relation to vendors asking an excessively high price for goods.

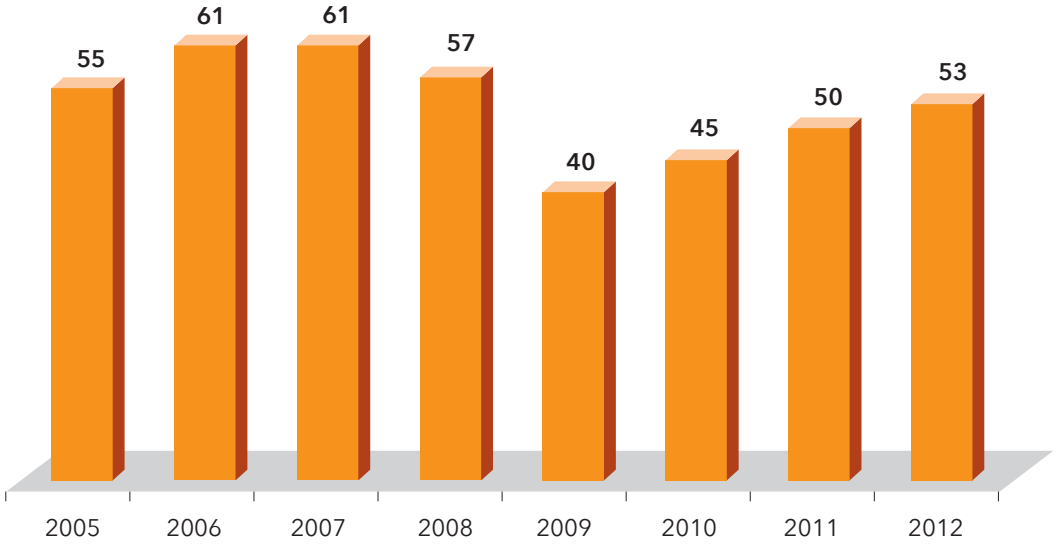
During its investigation, the OPC also addressed the issue of the requirement for the provision of a financial certainty (deposit) by PNS from press vendors. The Office considers the requesting of a deposit (preventing the large-scale default of payment on receivables) to be justifiable in the case in hand, as even dominant undertakings cannot be prevented from protecting its investments. Nonetheless, the Office notified PNS that deposits must be requested from vendors under clearly defined, transparent conditions and in a way that is non-discriminatory. Based on the observations made by the Office, PNS accepted a minor amendment taking account of this issue in the updated terms and conditions valid as of 1 August 2012. The Office verified that these amendments were in accordance with the aforementioned conditions for transparency and non-discrimination.

Concentration of Undertakings

The supervision of the concentration of undertakings is a fundamental tool in the competition regulation, preventing the creation, through concentrations, of entities with a dominant position that could have a negative effect on competition in the relevant markets. Merging undertakings whose turnover exceeds a statutory limit must therefore submit to the Office a notification for approval of the merger. Mergers are evaluated by the Office from the point of view of their potential effects on competition. If the regulator finds that a merger will not have negative effects in the market, it approves the merger. If the opposite is true, the Office can make the granting of approval conditional upon the fulfilment of remedies, for example the sale of parts of the business, or refuse the entire transaction. Mergers cannot take place without the approval of the Office. The standard deadline for the issuing of decision on mergers is 30 days. For less complex cases, undertakings can request assessment of their case through simplified proceedings so that decisions are issued within 20 days. On the other hand, in cases where the Office has reason to suspect that a merger could have negative effects on competition, proceedings can continue into a second phase, which can extend the process by up to four months.

In 2012 the mergers department initiated a total of 53 administrative proceedings. A total of 54 decisions were issued, 33 of these following a simplified procedure. In three cases the Office feared possible distortion of competition and extended proceedings into a second phase. In three cases the OPC only approved mergers after undertakings offered adequate commitments to the Office for the preservation of competition. No merger was blocked in 2012. A total of 5,210,000 CZK was gathered in administrative fees associated with applications for the approval of mergers.

Number of Initiated Administrative Proceedings - Mergers



Concentration of undertakings AGROFERT HOLDING, a.s./EURO BAKERIES HOLDING a.s.

Reference number: S472/2011
Decision took effect on: 1 May 2012
Verdict: approved, subject to conditions

The Office assessed the concentration of the undertakings AGROFERT HOLDING, a.s ("AGROFERT") and EURO BAKERIES HOLDING a.s. ("EBH"), which was planned to occur following the acquisition by AGROFERT of sole control of EBH. AGROFERT is the parent company of the AGROFERT group, which incorporates manufacturing and trading companies, both in the Czech Republic and abroad, mainly engaged in agriculture (primary production involving plants and animals, purchase of crops and their storage, treatment, processing and sale, as well as the production and processing of timber), the food industry (processing of pork, beef and poultry and production of meat products, processing of milk and production of dairy products and production of baked products and confectionary) and the chemicals industry (inorganic and organic chemistry). EBH is a holding company that does not itself engage in manufacturing. Within the Czech Republic it controls primarily UNITED BAKERIES a.s., which is chiefly involved in the production and sale of baked and confectionary products.

Based on an analysis of the relevant markets and the likely effects of the merger on them, supported by the statements of the undertakings concerned, the Office found that the realisation of the merger could result in the significant distortion of competition in the markets affected by the merger, i.e. in the production and supply of baked and confectionary products. Assessment of the merger in question was therefore moved to the so-called second phase. The subsequent, detailed investigation showed that the realisation of the merger in question would result in the significant strengthening of the market power of the resulting entity, as both undertakings participating in the merger were already the most significant entities in the field in question prior to the merger, primarily in the relevant markets for the wholesale trade in fresh bread and bread products and the wholesale trade in fresh rolls.

The Office came to the conclusion that, in the event of the approval of the concentration of undertakings in question without any commitments being imposed could bring with it undesired, unilateral effects, consisting of the creation of a dominant position capable of negatively influencing competition in the aforementioned relevant markets. The Office's chief concern for the distortion of competition was in the possibility of the successful, substantial raising of wholesale prices for baked products, and mainly in the basic, i.e. wholesale, range of bread products, which would, to a considerable extent, manifest itself in prices for end consumers.

In order to eliminate concerns about such distortion of competition, the parties to the proceedings accepted commitments in the interests of preserving healthy competition, which consisted of the sale of several bakeries, and requested that the Office make this a condition of approval of the merger in question. Following consideration of all circumstances surrounding the case, the Office came to the conclusion that, upon condition of fulfilment of the proposed obligations, the proposed merger would no longer raise serious concerns for the substantial distortion of competition in the relevant markets for the wholesale trade in fresh bread and bread products and the wholesale trade in fresh rolls, and approved the merger in question upon condition of fulfilment of the commitments accepted.

Concentration of undertakings: AGROFERT HOLDING, a.s./Loredana Corporation, a.s.

Reference number: S396/2011
Decision took effect on: 6 February 2012
Verdict: approved, subject to conditions

The Office assessed the concentration of the undertakings AGROFERT HOLDING, a.s., and Loredana Corporation, a.s., ("Loredana"), which was intended to occur through the acquisition by AGROFERT of sole control over Loredana.

Loredana is a holding company which, through its subsidiaries, is active on the territory of the Czech Republic primarily in the supply of fuels, agricultural primary production (plant production, provision of agricultural services, animal products) and further in the sale of transport concrete and prefabricated concrete components. It is also active in the retail trade in industrial mineral-based fertilisers, but only on the territory of the Plzeň Region.

An analysis of the relevant markets and possible effects on competition in these markets showed that the realisation of the concentration of undertakings in question would create a situation in the retail trade market for industrial, mineral-based fertilisers in the Plzeň Region, whereby the undertaking created as a result of the merger would achieve a significant market share, one comparable to the market share of its most significant competitor, AGRO Blatná a.s.("AGRO Blatná"). Other competitors would then have significantly lower market shares. Following this finding, administrative proceedings were moved to the second phase, which examined in detail the potential effects of the merger.

The Office subsequently came to the conclusion that the concentration of undertakings in question could lead to the distortion of competition due to the coordination of actions. At the time of submission of the application for approval of the merger, there existed a personnel connection between the AGROFERT group and its major competitor, AGRO Blatná. The Office was concerned that this personnel connection could, for example, allow the AGROFERT group access to the commercial plans of AGRO Blatná, subsequently impeding the efforts of AGRO Blatná to directly compete with the AGROFERT group. Any effort on the part of AGRO Blatná to gain more customers, for example through the setting of lower product prices, would be immediately identified by the AGROFERT group, whose subsequent response (for example lowering its own prices for fertilisers provided to end consumers or increasing the prices of fertilisers supplied to AGRO Blatná) could cancel out any potential economic gains by its major competitor. This would then lower the motivation of AGRO Blatná to engage in competitive behaviour in the future. The aforementioned facts could, in the opinion of the Office, help facilitate the anticompetitive coordination of the actions of the AGROFERT group and AGRO Blatná in the relevant market for the retail trade in industrial, mineral-based fertilisers in the Plzeň Region. In order to rule out concerns over the possible coordination of activities through the merger of an undertaking with its competitor, AGROFERT therefore accepted commitments intended to eliminate the personnel connection found by the Office.

Following the acceptance of commitments intended to eliminate the personnel connection between AGROFERT and its competitor, AGRO Blatná, the Office came to the conclusion that the merger of undertakings under assessment no longer gave rise to serious concerns over the substantial distortion of competition in the relevant market in question, and approved the merger upon condition of fulfilment of the commitments accepted.

Concentration of ČEZ, a.s./Energotrans, a.s.

Reference number: S492/2011
Decision took effect on: 20 June 2012
Verdict: approved

The Office assessed the concentration of the undertakings ČEZ, a.s. (hereinafter referred to as "ČEZ") and Energotrans, a.s. (hereinafter referred to as "Energotrans"), which was supposed to take place following the gaining of sole control over Energotrans by ČEZ.

ČEZ heads a group of companies active on the territory of the Czech Republic, chiefly in the production of electricity, sale of electricity, distribution of electricity, supply of electricity to end customers (consumers) and the provision of support services such as electrical grids, mining of brown coal (including brown coal for power stations), production and supply of thermal energy and the supply of natural gas to end customers (consumers). In the Czech Republic the acquired company, Energotrans, is engaged in the production of thermal energy and electricity, as well as being active in the provision of support services for the electricity grid.

The investigation carried out by the Office in the initial phase of the proceeding showed that the merger in question could distort competition on the territory of the Czech Republic in the market for the production and wholesale trade in electricity, in markets for individual support services for the electricity grid and in the market for brown coal for power stations in the free market, and examined in detail the effects of the merger in these markets in the subsequent, second phase of the proceeding.

As far as the market for the production and wholesale trade in electricity on the territory of the Czech Republic is concerned, the Office came to the conclusion, following its investigation in the second phase of the proceeding, that the merger would not distort competition in this market, mainly due to the fact, while the existing significant market power of the ČEZ group will be strengthened through the acquisition of Energotrans, the increase in market power will not be significant enough to affect the price of electricity in the Czech Republic.

At the same time, and in relation to the markets for individual support services for the electricity grid on the territory of the Czech Republic, following its detailed investigation the Office came to the conclusion that the merger would not result in the distortion of competition, as the undertakings merging are subject to sufficient pressure in these markets from competing providers of services for the electricity grid and there exists a monopoly (ČEPS, a.s.) on the demand side of the market in support services for the electricity grid on the territory of the Czech Republic, which asserts its market power.

Following an examination of the effects of the merger on competition on the demand side of the market in brown coal for power stations, used, for example, in the production of electricity and thermal energy, the Office came to the conclusion that the ČEZ group would not, as a result of its acquisition of Energotrans, gain the opportunity to act independently of suppliers of brown coal for use in power stations.

The concentration of undertakings in question was therefore approved in the second phase of proceeding, without the necessity to accept commitments.

Concentration of undertakings Česká lékárna (Czech Pharmacy), a.s./ Lékárny Lloyds (Lloyds Pharmacy) s.r.o. and Lloyds Holding CZ s.r.o.

Reference number: S544/2012
Decision took effect on: 5 November 2012
Verdict: approved, subject to conditions

The Office approved a concentration of undertakings, consisting of the acquisition by Česká lékárna, a.s. of sole control of Lékárny Lloyds s.r.o. and Lloyds Holding CZ s.r.o. The decision giving approval to the merger was, however, issued upon condition of fulfilment of structural commitments, as during the evaluation of the merger, concerns were raised over the substantial distortion of competition in relation to the relevant markets in the retail trade in medication to end consumers on the territory of the towns Frýdlant nad Ostravicí and Trutnov.

The merger resulted in the horizontal connection of activities of the undertakings in the retail trade in medication and medical products, with Česká lékárna, a.s. operating the Dr. Max network of chemists' and the acquired entities the Lloyds network.

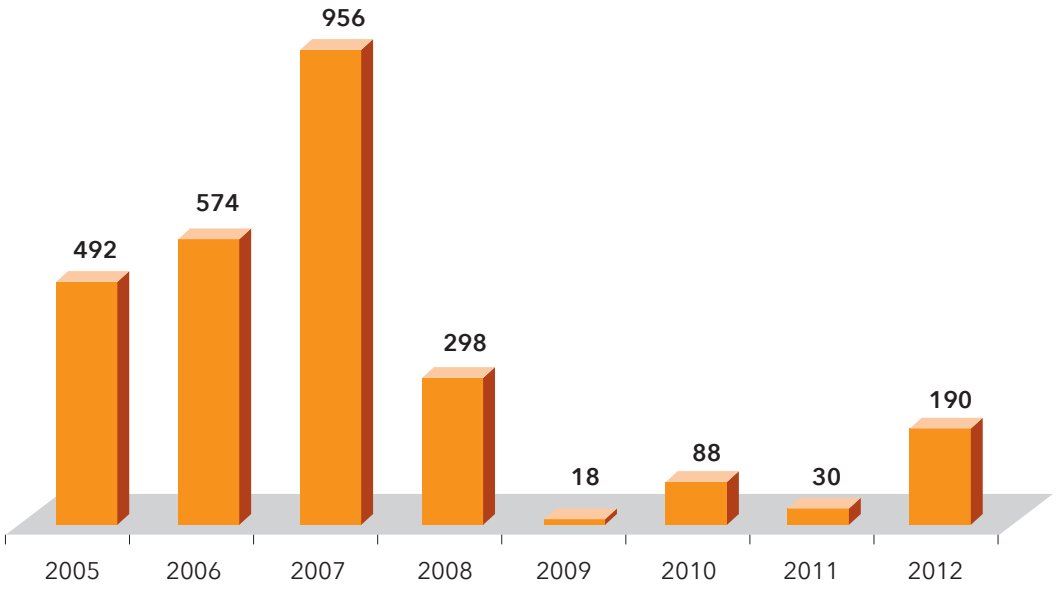
Česká lékárna, a.s. belongs to a group of companies headed by PENTA HOLDING LIMITED. Apart from the retail trade in medication, the PENTA group is also active in, amongst others, the upstream market, i.e. the wholesale trade in medication, through GEHE Pharma Praha, spol. s r.o., which also became part of the PENTA group in 2012.

During the proceeding the Office expressed fears of a possible distortion of competition resulting chiefly from the horizontal connection of the activities of the merging undertakings in the retail sale of medication to end consumers, as well as evaluating the effects of the vertical connection of activities of the merging undertakings.

From the point of view of the retail sale of medication to end consumers nationwide, there would be a slight increase in the market share of the PENTA group, which would have at its disposal around a tenth of the total number of 2,700 existing chemists' in the Czech Republic. In view of the fact that consumers mostly ask for medication or seek an alternative supplier of the goods in question, in a regionally limited territory, the Office investigated the effects of the concentration on a more closely-defined geographical area. It therefore evaluated the effect of the merger on the territory of districts, towns and municipalities in which both undertakings operated stores. In the case of two local markets, these being on the territory of the towns of Trutnov and Frýdlant nad Ostravicí, the Office came to the preliminary conclusion in the first phase of proceeding that the realisation of the merger could lead to some competitors being squeezed out of the market and, in combination with the relatively small number of competing entities in the aforementioned towns, to negative effects on competition.

In order to eliminate the aforementioned concerns of the possible distortion of competition in the retail trade in medication and medical products on the territory of the aforementioned towns, the parties to the proceedings proposed to the Office commitments consisting of the sale of a total of three chemists'. The Office found these commitments to be adequate for the preservation of effective competition and approved the proposed merger upon condition of fulfilment of the commitments. The aforementioned decision was issued by the Office in the first phase of the proceeding.

Amount of Fines Imposed in the First Instance Decisions (in Millions of CZK)



Appeals and Judicial Review

A total of seven appeals against first instance decisions with regard to competition were submitted to the Chairman of the Office in 2012. Nonetheless, only two of these appeals had merit. A total of 21 decisions were issued, of which 13 were of a procedural nature. The decision relating to the abuse of a dominant position by Telefónica Czech Republic, a.s. led to the reduction of the fine imposed in the first instance to 91,909,600 CZK (for details, see the chapter on the 'Abuse of dominant position'). In further repeat proceedings, which were remanded from the court, the company Tupperware was imposed with a fine of 765,000 CZK. The sanction against the company Best, imposed for the unauthorised concentration of undertakings, was raised to 617,000 CZK.

In the previous year, the administrative courts received 24 lawsuits concerning decisions issued by the OPC, which have not yet been discussed. Out of existing cases from previous years, only 7 legal disputes were definitively concluded, that is, a ruling was issued that can no longer be overturned. In cases put before the Regional Court in Brno, the OPC was successful in two cases and unsuccessful in another two. The Supreme Administrative Court issued two final rulings in favour of and one final ruling against the decision of the Office.

SELECTED CASES

Realisation of unapproved merger of Best a.s./BETA

Reference number: R72/2011 / S29/2010
Decision took effect on: 9 March 2012
Legally effective fine: 617,000 CZK

A first instance decision of the OPC declared a breach of the prohibition of the realisation of the concentration of undertakings prior to the submission of a notification for the initiation of proceedings to grant approval for the concentration of undertakings and before the decision of the Office, granting approval for the concentration, took effect. A fine to the amount of 517,000 CZK was imposed on BEST by the first instance body for this breach of the Act on the Protection of Competition. The decision of the Chairman of the Office confirmed the declaration of an offence while increasing the fine.

In 2008, BEST acquired a share representing a 50% stake in the base capital of and voting rights of the company BETA. At the end of 2008 it then started exercise its voting rights at the BETA company general meeting; these rights were connected to the ownership of the share, mainly in the election of members of the board of directors. BEST further exercised a decisive influence on the activities of the competitor it had acquired, in the form of the blocking of some decisions, as well as opposing some key commercial partners in its role as a shareholder. At the time the second share was held by a natural person. BEST later acquired this second share, which also represented a 50% stake in the base capital and voting rights of the company BETA, and continued to exercise its voting rights by altering the make-up of the board of directors and closing some BETA operational capacity. In January 2010, BEST submitted a notification for the initiation of proceedings to grant approval for the merger; this was then approved by a decision of the Office of June 2010, which came into effect on 7 July 2010. In the opinion of the Office, the realisation of the unauthorised merger lasted from the first instance of the exercising of voting rights until the decision on the approval of the merger came into effect.

The opinion of the Chairman of the Office differed from that of the first instance body in the setting of the fine for the administrative offence committed. The Office classified the offence as a serious one. However, the first instance body found a mitigating circumstance in the fact that the party to the proceedings may not have known that the means by which they exercised control is deemed to be the realisation of the concentration of undertakings. The Chairman of the Office did not, however, agree with this opinion, as the exercising of negative control corresponds to the practise and approach of the European Commission in applying European Union law. The matter is therefore publicly known and an undertaking cannot claim that they did not know how it would be assessed by the Office. The offence committed by the party to the proceedings represented deliberate behaviour and should therefore be regarded as an aggravating circumstance. It is for this reason that the Chairman of the Office decided to increase the fine by one hundred thousand CZK.

Judicial Review

Dismissed appeal in the case of cartel of monitor manufacturers

On 23 February 2012, the Regional Court in Brno rejected an appeal against the decision of the Office concerning a cartel agreement between manufacturers of CPT monitors. In 2010, a fine amounting to 52 million CZK was imposed on the companies Samsung SDI Co., Ltd., Chunghwa Picture Tubes, Ltd., Koninklijke Philips Electronics N. V., TechnicolorS. A., Panasonic Corporation, MT Picture Display Co., Ltd., Toshiba Corporation and LG Electronics, Inc. for their participation in a prohibited agreement on the setting of prices between 1998 and 30 April 2004. The European Commission had been investigating the same cartel agreement within the European economic area.

With reference to the Pfleiderer ruling, the court confirmed the approach taken by the Office, which did not permit parties to the proceedings access to official documentation containing documentation relating to the leniency application. The court stated that it would be possible to entirely block access to leniency documentation for a certain period of time; however, this complete prohibition should last no longer than until the issuing of the statement of objections. The court appreciated the fact that, in the case at hand, the statement of objections had been written in a way that was very precise and thorough, providing participants in the proceedings with a considerable amount of information from the part of the documentation containing leniency documents. There was thus no breach of the law.

The Regional Court further rejected a complaint regarding a breach of the ne bis in idem principle, with reference to the ruling of the Court of Justice of the European Union. In the opinion of the Court, the Office was authorised to penalise the cartel for the effects of its activities in the Czech market at the time prior to the entry of the Czech Republic into the European Union. The investigation of the cartel carried out by the European Commission focused on the activities of the cartel within the European Economic Area, meaning that a breach of the aforementioned principle did not occur.

All participants in the cartel agreement were, in the opinion of the court, responsible for the negative effects of the cartel in the Czech market, even though only one of the participants was active in the Czech Republic. The commercial activities of the cartel participants were coordinated on a global level, including the Czech market, in which there was also demand for CPT monitors. Consumers were therefore also harmed in this market.

In spite of minor reservations, the Court confirmed the decision issued by the Office and rejected the appeal. There was a small reduction in the fine imposed on Toshiba Corporation, from 11.726 million CZK to 10.373 million CZK. An appeal for cassation against the judgement was submitted to the Supreme Administrative Court.

Fine for vertical agreements confirmed

In May 2012, the Regional Court in Brno confirmed the fine, to the amount of 2,316,000 CZK that was imposed on Czech outdoor equipment manufacturers Husky CZ. The OPC had imposed this legally effective sanction on the aforementioned company in 2011 for the concluding of prohibited vertical agreements.

Husky CZ had made verbal agreements with online vendors of its goods on mandatory compliance with recommended retail prices. During the subsequent administrative proceeding it was demonstrated that the company had monitored compliance with agreements on recommended prices for resale by its buyers. It then enforced compliance with these agreements under threat of the suspension of the supply of goods or other sanctions. E-mail communication served as the primary evidence in the proceeding. Pursuant to the Act on the Protection of Competition, a supplier may not oblige its buyers to adhere to a minimum retail price. The forced compliance of buyers with recommended minimum prices by the supplier is also considered resale price maintenance, which is a prohibited activity.

Although Husky CZ contested the making of prohibited agreements, in its judgement the Regional Court in Brno confirmed the decision issued by the OPC. The court even passed as admissible the telephone recording made by one online vendor, and used as evidence by the Office, proving that retail prices were being dictated by the supplier.

Petrol cartel

The administrative courts rescinded a decision, according to which several fuel distributors acted in tandem from 28 May 2001 until the end of November 2001, which was a distortion of competition in the market for automobile petrol supplied to consumers via petrol stations. A fine of 313 million CZK was imposed at the time.

The principle reason for the rescinding of the decision was the judgement of procedural succession. During the administrative proceedings, or following the realisation of the actions under investigation, several companies (then parties to the proceedings) ceased to exist (changed), with their commercial assets being taken over by other undertakings. The Office subsequently assigned responsibility for offences committed to these legal successors, which it also penalised by the imposition of fines, despite the fact that the valid wording of the law at the time did not allow for the transfer of responsibility for offences.

During the judicial review, firstly the Regional Court in Brno deduced that the Office was authorised to declare the conclusion of a prohibited agreement with regard to these legal successors, but was not, however, authorised to also rule on the imposition of a sanction on these successors. The conclusions of the Regional Court were later amended by the Supreme Administrative Court to the effect that it is possible to punish the legal successor of an entity that is in breach of the law only when, in thus ceasing to exist, this entity is attempting to circumvent competition law. The matter was therefore remanded to the Office for further investigation.

The Chairman of the OPC subsequently quashed the first instance decision and returned the matter to the first instance body in order that it revise its judgement to conform with the legal opinion of the administrative courts by demonstrating whether those entities ceased to exist and were succeeded by other entities for the purpose of avoiding punishment for the offences committed, and therefore whether these actions can therefore be deemed a breach of law for which the successor entities can be punished.

Oskarta – services of general economic interest

The administrative courts also remanded to the Office the case of the sale of top-up vouchers for the prepaid 'Oskarta' service. In his decision of 2004, the Chairman of the Office declared that the company Vodafone (previously Oskar Mobil) concluded prohibited, invalid agreements with its Oskarta distributors for the direct setting of prices by obligating these distributors to maintain the retail prices set in its price-list. For these actions a fine of 6.5 million CZK, later reduced to 3 million CZK by the Regional Court in Brno, was imposed on the company.

Nonetheless, during the cassation proceedings, the Supreme Administrative Court ("SAC") came to the conclusion that the sale of top-up vouchers did not represent an independent market (goods for which there is a demand from consumers), but forms part of the market in telecommunications services, as the consumer, in the opinion of the SAC, is requesting a telecommunications service paid for (prepaid) via top-up vouchers; these vouchers do not have any other purpose and their price therefore influences the price of telecommunications services. The SAC further highlighted the provisions contained in the Telecommunications Act, according to which telecommunications services must be offered solely and exclusively for published prices announced prior to these services becoming available. From this the SAC concluded that the price of a top-up voucher therefore must be under the control of the service provider so that they can meet their legal obligations. The party to the proceedings therefore provided, on the basis of the Telecommunications Act, telecommunications services constituting services of general economic significance. The distribution of prepaid top-up

cards in a fully competitive environment for prices not set and announced in advance would therefore prevent the provision of telecommunications services according to the conditions laid out in the Telecommunications Act, and for this reason the Act on the Protection of Competition (prohibition of agreements pursuant to Article 3(1)) did not apply to the agreements reached by the party to proceedings, justified by the Court with reference to Article 1(3) of the Act.

As the administrative courts clearly declared that the prohibition on agreements does not apply to the agreements under examination, with reference to their exemption from the scope of the Act, the first instance decision stating a breach of the law was quashed and the administrative proceedings stopped. The decision of the Chairman of the Office, described, is beneficial to Office practice in that it summarises the legal opinion of the administrative courts on the evaluation of services of general economic interest in mobile telephony.

Preliminary query to the Court of Justice in Luxembourg

In the mid-February 2012 the Court of Justice of the European Union, based in Luxembourg, released its judgement in the matter of the international cartel of sixteen companies fined a record sum of 941,881,000 CZK by the Office for the Protection of Competition in 2007. In its preliminary enquiry proceedings the Court of Justice of the European Union vindicated the OPC, stating that it was authorised to fine the participants in the cartel agreement for the period prior to the accession of the Czech Republic to the European Union, even though these participants were also punished by the European Commission for the same cartel on the territory of the Union. This was a case of so-called bid rigging by manufacturers of gas-insulated switchgear, where the parties to the proceedings made agreements amongst themselves about who would offer what price for these products to ensure that contracts were awarded to a predetermined companies, as well as which companies would apply for contracts in the first place. The highest fine at the time was imposed on Siemens AG (126,588,000 CZK). The case was subsequently returned to the Regional Court in Brno, which submitted the preliminary query to the Court of Justice. While the Regional Court then definitively confirmed the existence of a cartel and its unlawful activities in the market in the Czech Republic, it quashed the decision made by the OPC on the grounds of inadequate justification of the responsibility of the companies within individual groups. A cassation complaint against the judgement was submitted to the Supreme Administrative Court.

Court judgements are published (in Czech) on the Office's website:

https://www.uohs.cz/cs/hospodarska-soutez/soudni-prezkum-rozhodnuti.html

Public Procurement and Concessions

Since January 1995, the Office for the Protection of Competition has supervised the public procurement process, the aim of which is to ensure equal, transparent and non-discriminatory competition, which, in the final reckoning, brings savings for public funds. The Office decides whether the contracting authority has acted in accordance with the law during the public procurement process, imposes corrective measures and sanctions, deals with administrative offences and carries out further tasks stipulated by the relevant laws. The OPC publishes its decisions in its collections of decisions on its website at www.uohs.cz. The section entitled Soudní přezkum rozhodnutí (Judicial Review of Decisions – Czech version only) contains the judgements issued for particular cases.

As of 1 July 2006, the Office has also been supervising conclusions of concession agreements pursuant to the Concession Act and, as of 1 July 2010, also conclusions of public services contracts for passenger transport on the basis of tendering procedure or direct awarding pursuant to the Act on Public Services for Passenger Transport.

Summary of Changes in Legislation

The key event of the previous year in the field of public procurement was the coming into effect of an amendment to the Act on Public Contracts (no. 55/2012 Coll.) as of 1 April 2012.

The key changes introduced in this amendment include:

- reduction of lower financial thresholds for below-the-threshold public contracts from six or two million CZK to three and one million CZK, respectively,
- significant restriction of economic and financial qualifications – economic qualification replaced by a declaration by the contractor of economic and financial fitness to fulfil a public contract,
- restriction of technical qualifications – contracting authority will be able to request only references as a technical qualification (and no longer ISO or other certificates),
- expansion of mandatory publication – the contracting authority shall now be obliged to publish the textual part of tender documentation, contracts worth upwards of 0.5 million CZK, the price actually paid for an entire contract and also subcontractors who have been paid more than 10% or 5% by the main contractor for the fulfilment of subcontracts in the case of significant public contracts,
- mandatory setting aside of public procurement process in case of small number of tenders evaluated – contracting authority must cancel procurement process if there are less than two tenders available for evaluation,
- revision of restricted procedure and negotiated procedure with publication – removal of possibility to restrict the number of participants due to better qualifications or draw,
- tightening of sanctions – all sanctions imposed by the Office for the Protection of Competition can now be up to double the previous amount,
- mandatory electronic auction – contracting authority will be obliged to evaluate contracts defined by implementing regulations by means of an electronic auction.

In instances where the Office considered it appropriate to submit an explanatory opinion of certain provisions of the amendment, it issued a general opinion, such as the explanatory opinion on the issue of the demonstration of qualifications in simplified below-the-threshold procedure after 1 April 2012.

Continuation of Growth Trends in the OPC Activities

One obvious trend is the long-term growth in the number of cases resolved by the Office for the Protection of Competition as a supervisory body for public procurement procedures. There has been a continuous growth in the number of proposals for the initiation of proceedings pursuant to the Act on Public Contracts and the number of complaints leading to the initiation of administrative proceedings pursuant to the Administrative Code, with a significant growth in 2012 of the number of administrative proceedings initiated ex officio.

The coming into effect of amendment no. 55/2012 Coll. as of 1 April 2012 brought with it a further growth in Office's activities, chiefly due to the significant reduction of the lower financial limits for below-the-threshold public contracts. However, the OPC anticipates that the effects of amendment no. 55/2012 Coll. shall not fully manifest themselves until 2013. The Office is led to this conclusion by the fact that a large number of contracting authorities awarded public contracts before 31 December 2012, i.e. while the old wording of the Act was still in force, and also the fact that the implementing legal regulations for the amendment to the Act did not take effect until 1 September 2012. A further reason is also the fact that public contracts will be submitted to the Office, as the supervisory body, only after a certain interval once the amendment has come into effect. It will only be possible to make a qualified evaluation of the administrative impact of the amendment on contracting authorities, as well as the growth in the number of submissions leading to the initiation of administrative proceedings ex officio, as well as proposals for the review of practices of contracting authorities, at the end of 2013.

Despite the above, in 2012 the number of proposals filed to the Office for the initiation of administrative proceedings increased by 16.8% compared to 2011. This represents a more than threefold rise compared to 2008. There was a significant rise in the number of public contracts reviewed following complaints. While in 2011 there was an average ratio of less than two public contracts per complaint and the OPC investigated 1,036 public contracts on the basis of submissions, in 2012 there were nearly three public contracts per complaint by the time amendment no. 55/2012 came into effect, and from 1 April 2012 there were an average 4.6 public contracts per complaint. The volume of public contracts investigated thus significantly exceeds the number of complaints received, reaching a value of 2,900 public contracts investigated on the basis of complaints received. The number of administrative proceedings initiated ex officio increased by 49% in 2012, demonstrating the increased activity of the Office in the supervision of public procurement.

The decision-making activities of the Office show that in 2012, a breach of the Public Procurement Act (the Office imposed corrective measure or fine) was found in 33.5% of administrative proceedings carried out. More than 50% of administrative proceedings were terminated for a variety of procedural reasons. There was a year-on-year increase of 34% on the number of fines imposed, with a 37% rise in the total sum of fines, which reached nearly 40 million CZK.

Most Frequent Violations of Public Procurement Rules

From the point of view of the areas of the market most commonly affected by cases investigated by the Office in 2012, these were, most frequently, the construction industry, goods and services in the information technology sector and healthcare. Here there was no significant increase as against 2011.

The violations most frequently contested by contracting authorities were:

- violations in the assessment and evaluation of tenders (i.e. inadequate transparency in report on the assessment and evaluation of tenders, mainly inadequate descriptions of the means and execution of evaluations, incorrect procedures in the assessment of abnormally low tender prices),

- setting of non-transparent, discriminatory tender conditions defining the subject-matter of the public contract, including technical conditions,
- requesting of documents unrelated to the subject-matter of the public contract, disproportionate qualification requirements in relation to complexity, type and scope of public contract.

There was no significant movement in this area compared to 2011.

In view of the fact that the Office has thus far not had the opportunity to decide on a large number of cases that would deal with any questions of disputed interpretations of amendment no. 55/2012 Coll., it cannot be said, from the point of view of the practical decision-making of the Office, that there could be, for example, significant changes in the frequency of specific violations.

Increase in Administrative Capacity of the Office

In relation to the adoption of amendment no. 55/2012 Coll., and the related, planned and significant expansion of its agenda, a key task of the Office was to ensure the conditions were in place to cope with these changes on an organisational level.

Within a very short period of time, the Office succeeded in ensuring the recruitment of new, high-quality, qualified and responsible employees, as well as their training and integration into the organisational structure of the Office so that they were capable of properly applying the Act on Public Contracts. Towards the end of 2012, the public procurement department had 77 employees, an increase of 70%, and the number of employees of the department for the second instance decision-making on public procurement had been doubled. The public procurement section now has three divisions, one of which is based in the Prague branch of the OPC. Tasks related to the priorities of the Office in the investigation of prohibited agreements between tenderers for public contracts are fulfilled by the Department for the Monitoring of Public Procurement and Bid-Rigging.

The intake of new employees also led to the expansion of the Office's premises through the transfer to the Office, at no cost, of the building of the Military Housing Administration adjacent to the Office. The year 2012 saw the completion of the renovation of the interior of the building and the construction of high-quality office space.

Education and Transparency of Contracting Authorities Project

The Education and Transparency of Contracting Authorities Project, co-financed from European Union structural funds, focuses on raising the awareness of public administration employees in the field of public procurement and bid rigging, that is, prohibited agreements between contractors for public contracts. In 2012, the Office held a series of two-day workshops in the South Bohemia, Moravia-Silesia, Karlovy Vary, Plzeň and Vysočina Regions. A further three workshops, aimed at any interested public administration employees, were realised at Office headquarters. The project website, www.otvez.cz, provides continually updated information related to the issues of public procurement and bid rigging, for example judicature of the OPC, Czech courts and the Court of Justice of the European Union, and gives users the option to send queries or comments related to this issue to OPC specialists.

In 2012, the OPC published a booklet for public administration employees, entitles Public Procurement and Prohibited Agreements between Contractors, which contained a glossary of basic terminology encountered by contracting authorities when applying the Act on Public Contracts, as well as an explanation of basic approaches used in award procedures. A further publication, entitled Decision-making Practice in Public Procurement and Bid Rigging, contains extracts from OPC decisions and decisions of national courts and the Court of Justice of the European Union addressing problematic aspects of public procurement and bid rigging and clarifying the interpretation of some terms and instruments contained in the Act on Public Contracts.

Another major component of the Education and Transparency of Contracting Authorities Project are the activities of the Department for the Monitoring of Public Procurement and Bid Rigging. Monitoring takes the form of analyses of complaints received from natural or legal persons. The department cooperates closely with other OPC departments. For example, following analyses the Cartels Department of the Competition section initiates investigations of cases where there is doubt over the accordance with the relevant legal regulations of procedures followed by contractors.

Overview of First Instance Administrative Proceedings Carried Out in 2012

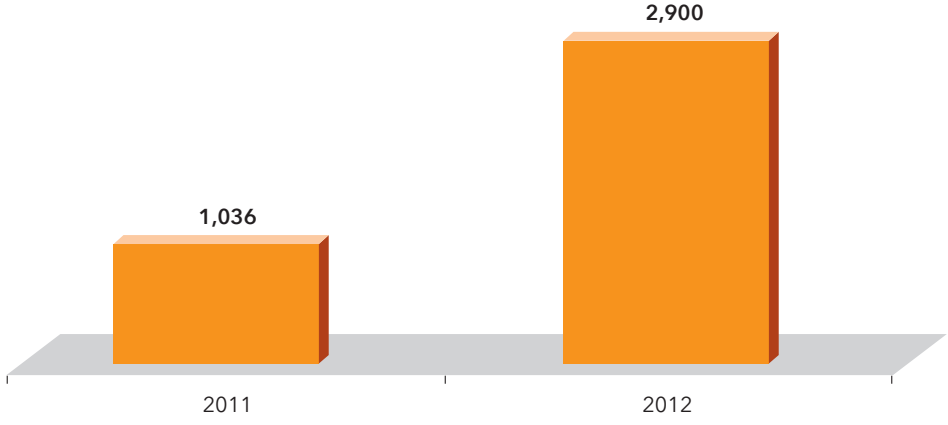
Number of proposals received		507
Number of public contracts reviewed based on complaints received		2,900
Administrative Proceedings	initiated administrative proceedings in total	650
	upon proposal	507
	ex officio	143
	incomplete administrative proceedings	155
Issued Decisions	total number of first instance decisions issued	1,049*
	of which: • decisions issued on the merits	695
	○ remedial decisions + sanction	233
	○ admin. proceedings suspended – no violation found	113
	○ admin. proceedings suspended for procedural reasons	349
	• interim measures	205
	• rejected interim measures	121
	• quashed decision on imposition of interim measures	28
Fines	number of fines imposed	119
	total amount of fines imposed	39,511,000 CZK
Administrative Costs	number of administrative costs imposed	114
	total amount of administrative costs imposed	3,420,000 CZK
Deposits	amount of deposits paid	134,019,777 CZK
	deposits lapsed to state budget	5,688,881 CZK

** Decisions are issued only in administrative proceedings. If complaints are found to be without merit, investigations are terminated by notifying the submitter in writing of the results of the investigation.*

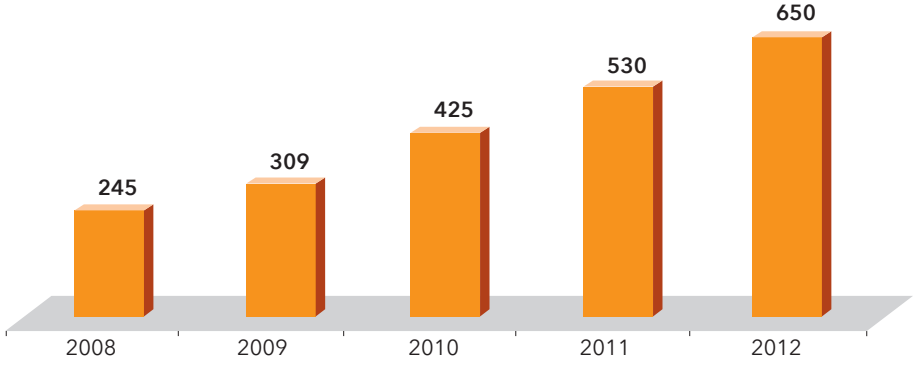
Highest Fines Imposed in 2012

Ref. no.	Contracting authority	Public contract	Amount of fine in million CZK
S 364/2011	City of Prague	Unified economic system (UES)	5
S 446/2012	Severočeská vodárenská společnost a. s. (North Bohemian Water Management Company)	Increase of capacity of Meziboří water treatment plant	5
S 593/2011	Statutory City of České Budějovice	Outsourcing of server farm	1.3
S 338/2012	Lesy ČR (Forestry Service of the Czech Republic)	Supply of equipment for personal protection at work (framework agreement)	1
S 169/2011	Centrum služeb pro silniční dopravu, s.p.o. (Centre of Road Transport Services)	several contracts	1

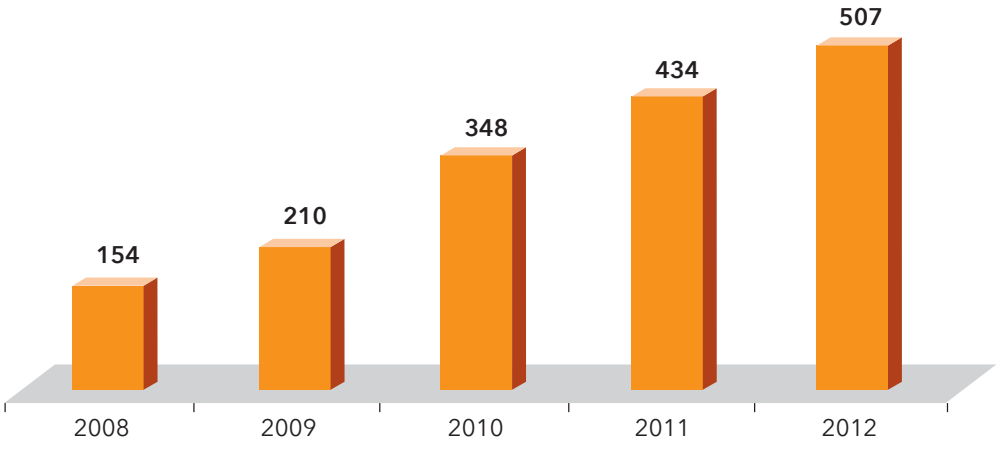
Increase in the Number of Public Contracts Investigated upon Complaints



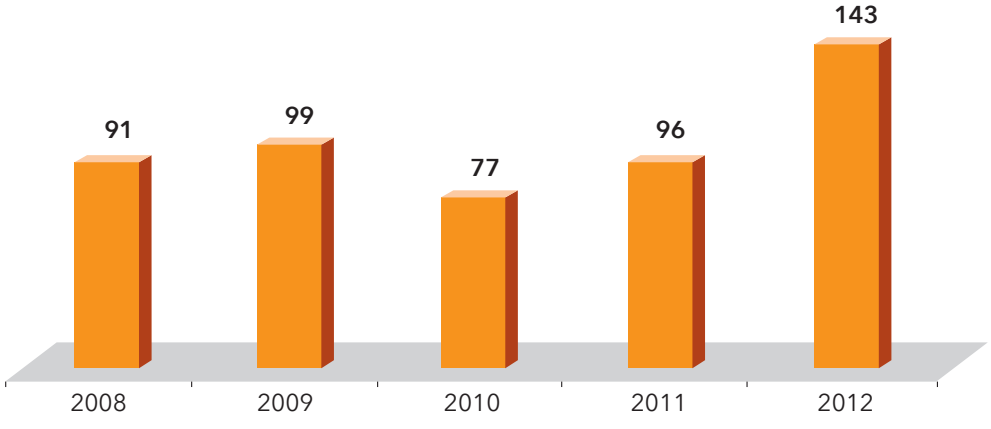
Number of First Instance Administrative Proceedings Initiated



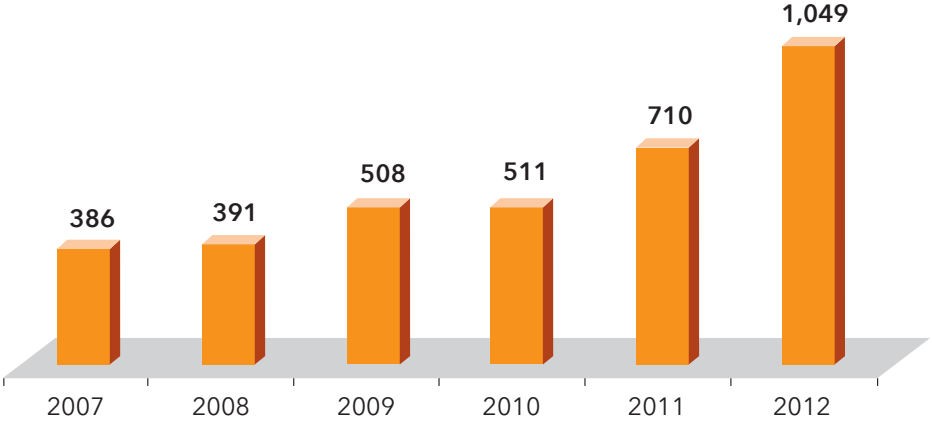
Number of Proposals Received



Number of Administrative Proceedings Initiated Ex Officio



Number of First Instance Decisions Issued



Road bridge across Labe River in Poděbrady

Contracting authority: Ředitelství vodních cest České republiky (Waterways Directorate of the Czech Republic)
Reference number: S304/2011
Legally effective fine: 300,000 CZK
Ex officio
Decision came into force on: 21 February 2012

The Waterways Directorate of the Czech Republic committed an administrative offence through the awarding of public contract for a road bridge across the Labe River in Poděbrady in a negotiated procedure without publication, without fulfilling the conditions laid out in law. The contracting authority concluded annex no. 1 to the contract for work for the fulfilment of this public contract with the selected tenderer. The procedure followed by the contracting authority could have substantially affected the selection of the most suitable tender. The Office imposed a fine to the amount of 300 thousand CZK on the contracting authority.

In the case at hand the contracting authority did not fulfil one of the essential conditions for the application of a negotiated procedure without publication, as the total scope of follow-up construction work or supplementary services exceeded 20% of the price of the original public contract. In its decision, the Office stated that the price was not relevant in the evaluation of the material content of the disputed items. Although it can be conceded that the assembly of the bearing structure of the bridge with two different technologies fulfils the same purpose, i.e. the installation and/or insertion of the bridge structure, it cannot at the same time be stated that this would represent the same material fulfilment of contracts, as inferred by the contracting authority. In situations where two differing technologies are used for the same purpose, these two technologies cannot be considered, in the opinion of the Office, to be materially identical. The Office stated that, for the purpose of calculating the price of extra work in the case under investigation, it is essential to include an item for technology for the insertion of the bridge structure in the calculations for overall extra work to the full amount, as this item was not included in the subject-matter of the original public contract.

Equipment for the sorting of postal packages

Contracting authority: Česká pošta, s. p. (Czech Post)
Reference number: S009/2012
Decision came into force on: 23 February 2012

When awarding of public contract for sorting equipment for postal packages, Česká pošta did not comply with the procedure stipulated by law, when it did not deliver supplementary information on tender conditions to the Italian company Elsag Datamat, which was an interested party in the aforementioned negotiated procedure with publication. The procedure followed by the contracting authority could have substantially influenced the selection of the most suitable tender. The Office for the Protection of Competition imposed corrective measures for this unlawful procedure and cancelled the award procedure in question, as no contract had yet been concluded.

When providing clarification on tender conditions, the contracting authority must take care to ensure thorough compliance with the principle of equal treatment in the award procedure and deliver supplementary information together with the precise wording of the request to all contractors who have requested the provision of, or have already been provided with, tender documentation. The fact that the contracting authority failed to provide supplementary information to Elsag Datamat, complied with neither the procedure stipulated by law, nor the principle of equal treatment in the award procedure, as the other tenderers who had received tender documentation did receive this supplementary information from the contracting authority. Elsag Datamat did not submit a tender to the award procedure and it cannot be ruled out that this tender may have been more economical than the tenders that were received.

Franciscan monastery in Hostinné

Party to administrative proceeding: RESA – sanace a rekonstrukce (Rehabilitation and Reconstruction), spol. s r. o.
Reference number: S306/2011
Legally effective fine: 300,000 CZK + a ban to perform public contracts for period of three years
Contracting authority: Town of Hostinné
Decision came into force on: 8 September 2012

The company RESA – sanace a rekonstrukce, spol. s r.o. committed an administrative offence when it, as a tenderer for a public contract, submitted a falsified reference for the proper completion of construction work for the purpose of demonstrating its technical qualifications. This document could have influenced the evaluation of the qualifications of the tenderer in the award procedure. The Office imposed a fine to the amount of 300 thousand CZK and a ban to perform public contracts for period of three years on RESA – sanace a rekonstrukce, spol s r.o..

The contracting authority requested, as evidence of technical qualifications, the submission of a list of at least three construction projects of a similar nature and with a minimum financial value of 30 million CZK excluding VAT and at least two construction projects with a value of 10 million CZK excluding VAT on buildings registered in the list of heritage sites of the Ministry of Culture of the Czech Republic. The tenderer, RESA, submitted references from the company WINRO, s. r. o. on the fulfilment of a public contract for the renovation of the facade and interiors of the White Castle in Hradec nad Moravicí, including the structural securing of the building, to a value of 30.8 million CZK including VAT. Following a query by the contracting authority, RESA then specified that the sum did not include VAT. The contracting authority then consulted WINRO directly for clarification of the reference and it was found that it had not issued the reference in question. The tenderer, RESA, finally confessed that the falsified reference had been created, without the knowledge of company management, by a company employee and the company director had overlooked it when signing on the tender. In its decision, the Office stated that RESA had committed an administrative offence that could have influenced the evaluation of the company's qualifications. Despite the fact that the reference had appeared in the tender documents, in the words of the tenderer, without their knowledge, the tender had been signed by the director, who bears full responsibility for the contents of the tender. The Office viewed this fact as a mitigating circumstance when imposing sanctions.

Data centre services

Party to administrative proceeding: UPC Česká republika (Czech Republic), s. r. o.
Reference number: S437/2012
Legally effective fine: 400,000 CZK + a ban to perform public contracts for period of three years
Contracting authority: NET4GAS, s. r. o.
Decision came into force on: 8 November 2012

As a tenderer for a public contract for the provision of data centre services to NET4GAS, s.r.o., the company UPC Česká republika submitted information on references for the purpose of demonstrating its technical qualifications. Two out of the three contracts realised did not correspond to reality, while being key to the evaluation of qualifications. In the contract realised for Nodus Technologies, an incorrect contract volume was stated per year, and services were provided from only one, rather than two, data centres. In the contract realised for SuperNetwork, the tenderer stated an incorrect length of contractual relationship and contractual volume, even though no contractual relationship existed between the two entities. Based on an internal investigation, UPC Česká republika confirmed the submission of information not corresponding to reality in the award procedure at hand, stating that it was the fault of an individual and the subsequent failure of company internal control.

The Office for the Protection of Competition imposed a fine to the amount of 400 thousand CZK and a ban to perform public contracts for period of three years on UPC Česká republika, s.r.o. for the breach of the Act on Public Contracts.

Petr Rafaj
Chairman of the OPC

Press services for Czech Television

Contracting authority: Česká televize (Czech Television)
Reference number: S205/2012
Decision came into force on: 22 November 2012

The tender documentation for press services for Česká televize contained a request and reference to a specific brand of goods, without justifying this reference by the subject-matter of the public contract and without the contracting authority permitting the use of other solutions of similar quality and technology for the fulfilment of the public contract. The approach taken by the contracting authority could have influenced the selection of the most suitable tender; however, no contract was concluded. The Office set aside the award procedure as a corrective measure.

In its decision, the OPC stated that contracting authorities cannot be denied the option of setting technical terms and conditions according to their needs. At the same time, however, it stated that the technical specifications of the subject-matter of a public contract, the Original Adobe PostScript programming language, must not be discriminatory and must always allow suppliers to provide technically and qualitatively similar solutions. In the public contract at hand, the contracting authority's requirement specifications for programming languages were defined too narrowly and, in some cases of the subject-matter of the public contract, did not even allow the option to utilise a similar technical solution. It cannot be ruled out that, if these narrowly-defined tender conditions did not exist, they would have received more tenders from potential tenderers, leading to the selection of a more suitable tender under the given criteria.

Waste management in Břeclav

Contracting authority: City of Břeclav
Reference number: S318/2012
Decision came into force on: 8 December 2012

The City of Břeclav did not act in accordance with the principle of transparency when, in its tender documentation for waste management services in Břeclav, it requested the submission of two variant solutions with different timeframes, but without defining the means of evaluating tenders for these variant solutions. At the same time the contracting authority stated in its tender conditions that 'variant tenders are not accepted'. The approach taken by the contracting authority could have substantially influenced the selection of the most suitable tender; however, no contract was concluded. The Office set aside the award procedure as a corrective measure.

The contracting authority requested that tenderers submit two sub-tenders, differing in duration, which would, together, constitute a single, overall tender. If the contracting authority intended to select the best-priced tender in relation to duration, by which they would admit that they considered the two sub-tenders to be independent, then these would be variant tenders. In such a case the contracting authority would, however, have to permit variant tenders and evaluate them on the basis of the evaluation criterion of economic advantageousness of the tender (or individual criteria expressing the relationship between utility value and price). However, at the same time the contracting authority stated in the tender documentation that 'variant tenders are not accepted' and evaluated tenders according to the basic criterion of lowest tender price.

In the opinion of the Office, the tender documentation evidently contradicted itself when the contracting authority first did not permit variant tenders, which it then required, and further did not define the means of evaluating these tenders. The Office stated that tender documentation must contain requirements and technical conditions to the extent that they are complete, correct and, at the same time, clear, comprehensible, specific and sufficiently detailed so that, once they have read the tender documentation, potential contractors can form an idea of what the subject-matter of public contract is, what the evaluation criteria are and any parameters of required fulfilment of the contract. Tender documentation must exclude the possibility of the dual interpretation of the technical conditions and requirements of the contracting authority. However, in the case under investigation, tenderers could not determine the decisive criteria in the evaluation of tenders from the tender documentation. In the interests of maintaining transparency, the means of evaluating tenders must always be clear.

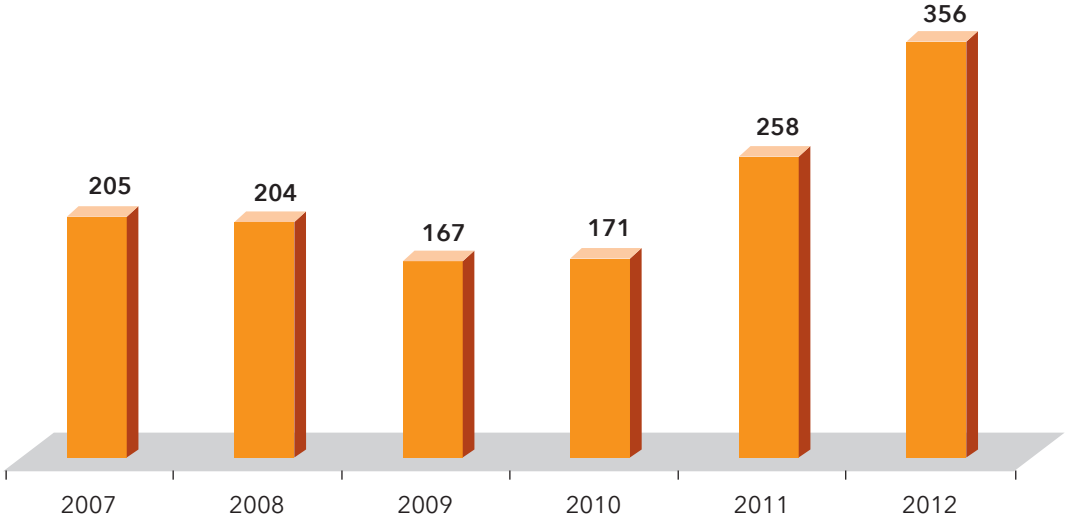
Appeals and Judicial Review

The year 2012 saw a continuation in the growth in the number of appeals filed against first instance decisions. The OPC received 356 appeals and initiated the same number of second instance administrative proceedings. This represented a 38% increase in appeals submitted compared to the previous year.

In 2012 the Office issued a total of 229 second instance decisions. In nearly 74% of cases, Chairman Petr Rafaj upheld the Office's first instance decisions, in 46 decisions the Chairman recognised the objections stated in the appeal and dismissed the first instance decisions. 5 appeals were rejected due to late submission and 9 (procedural) decisions were issued by the Chairman of the OPC.

In 2012, 44 fines to a total amount exceeding 22 million CZK were imposed on the basis of second instance decisions. The highest fine, to the amount of 9 million CZK, was imposed on the company Vodovody a kanalizace Pardubice (Water and Wastwater Company Pardubice). The second highest fine (5 million CZK) was imposed on the Statutory City of Liberec.

Number of Appeals Filed



As far as judicial review is concerned, statistics for the year 2012 show a more than twofold increase in the total number of lawsuits and cassation complaints and a 36% increase in judgements issued by the Regional Court in Brno and the Supreme Administrative Court in the field of public contracts. The statistics for completed, legally effective legal proceedings show a 50% success rate for the OPC in judicial reviews in the year 2012.

Overview of Second Instance Administrative Proceedings and Judicial Review Carried Out in 2012

Appeals		
Appeals filed against first instance decisions		356
Second instance admin. proceedings initiated in 2012		356
Second instance adm. proceedings not completed in 2012		145
Decisions on appeals issued in 2012	total	229
	of which first instance decision upheld	169
	first instance decision dismissed	46
	appeals rejected due to late submission	5
	procedural decisions of the Chairman	9
Fines	number of fines imposed	44
	amount of fines imposed	22,085,000 CZK

Judicial Review		
Number of lawsuits submitted to Regional Court in Brno in 2012		52
Number of cassation complaints submitted to Supreme Administrative Court in 2012		25
Number of legal proceedings finished by Administrative Courts in 2012		24
	of which OPC decision upheld	12
	OPC decision dismissed	12
Success rate of OPC in judicial reviews in 2012		50%

Court judgements are published (in Czech) on the Office's website at:

https://www.uohs.cz/cs/verejne-zakazky/soudni-prezkum-rozhodnuti.html

Cleaning of Prague underground (metro) stations

Contracting authority: Dopravní podnik hlavního města Prahy (Prague Public Transport Company), a. s.
Reference number: R22,23/2011 / S267/2008
Legally effective fine: 800,000 CZK
Decision came into force on: 26 March 2012

The Chairman of the OPC rejected the appeal of the contracting authority and confirmed a fine to the amount of 800 thousand CZK, which was imposed for an administrative offence in the award procedure for a public contract to clean Prague underground (metro) stations, consisting of an unauthorised restriction in the number of participants in the tender by opening the contract only to companies who had previously provided cleaning services for underground (metro) stations. The tender was open only to tenderers whose average turnover for carrying out similar activities within the last three years had not fallen below the limit of 20 million crowns. The public transport company also requested proof that parties interested in the public contract had, in the past, already provided services for the complex, non-stop cleaning of subterranean public transport stations, for a minimum period of 12 months and in a minimum six stations. During the course of the administrative proceedings, the contracting authority insisted that the cleaning of underground (metro) stations was a specific, unique activity, barely comparable to the cleaning of any other premises.

The tender was announced by the public transport company in 2008. The tender process was, however, cancelled after the evaluation committee disqualified the tenders of all three tenderers. The Prague public transport company then concluded a contract with one of the tenderers, an association of the companies CDV služby, s. r. o. and V-Trade, s. r. o.

Zlín Congress Centre – amendments to contract on work

Contracting authority: Statutory City of Zlín
Reference number: R75/2012 / S301/2011
Legally effective fine: 100,000 CZK
Decision came into force on: 24 July 2012

The contracting authority committed an administrative offence, consisting of concluding three amendments to a contract for work for a public contract for the Zlín Congress Centre with the selected tenderer on the basis of the unauthorised use of three negotiated procedures without publication. The Chairman rejected the contracting authority's appeal and confirmed the fine to the amount of 100 thousand CZK, which had been imposed in the first instance decision.

The contracting authority contacted only contractors from the original public contract – an association of the companies PSG-International and Metrostav – to submit a tender for the realisation of supplementary construction work. The stated reason for this was that, for the purposes of a positive outcome to the building approval process, it was necessary to implement changes and amendments to the tender documentation based on amendments to some Czech technical norms and regulations, primarily with regard to structural burdening through snow. These circumstances did, however, occur prior to the start of the original award procedure and in the opinion of the Office cannot, therefore, be considered to be objectively unforeseeable and it was not, therefore, possible to utilise a negotiated process without publication. The contracting authority should have been aware of the validity of the new norms and possible consequences of failure to fulfil these. Even if the contracting authority had entrusted another entity with the preparation or realisation of the award procedure, they would still bear full responsibility for the correctness and completeness of the tender documentation. Failure to comply with the award procedure, as stipulated by law, could substantially influence the selection of the most suitable tender.

Modernisation of biological waste water treatment works in Pardubice-Semtín

Contracting authority: Vodovody a kanalizace Pardubice (Water and Wastwater Company Pardubice)
Reference number: R11/2012 / S214/2011
Legally effective fine: 9,000,000 CZK
Decision came into force on: 26 July 2012

The Chairman of the OPC rejected the appeal submitted by Vodovody a kanalizace Pardubice, upholding the fine to the amount of nine million crowns. The sanction had been imposed due to errors in a tender worth 300 million CZK for the modernisation of the biological waste water treatment works in the Pardubice suburb of Semtín. The water treatment company was in error when it did not state in the report on assessment and evaluation of tenders the means by which it reached the results of the evaluation of the justification of the abnormally low tender prices of tenderers and the explanations of their tenders. The procedure followed by the contracting authority was thus inscrutable and non-transparent.

Following the opening of tenders, Vodovody a kanalizace Pardubice asked four of the tenderers to justify their abnormally low tender prices. Both the minutes of the session of evaluation committee and the report on assessment and evaluation of tenders merely noted that the evaluation committee discussed the question of the justification of abnormally low tender prices and accepted them. There was no more detailed statement on the results of the evaluation and it was not apparent which information convinced the contracting authority of the fact that the tender price was normally available in the market at the given place and time or that all prescribed or normally recommended production and technological processes shall be complied with during production of the item in question. The contracting authority acted in a similarly non-transparent manner when evaluating the clarifications of some ambiguities that were requested from three tenderers. Here, too, there was no concrete explanation of why it considered the clarifications to be adequate.

Military uniform 95, military uniform 95 summer-R

Contracting authority: Ministry of Defence of the Czech Republic
Reference number: R207/2012 / S181/2012
Decision came into force on: 26 November 2012

When awarding a public contract, divided into two parts for uniform 95 and uniform 95 summer-R, the Ministry of Defence did not comply with the procedure laid out in the Public Procurement Act through its failure to send additional information to all tenderers who requested the provision of tender documentation, or to whom these had been provided. The procedure followed by the ministry could have substantially influenced the selection of the most suitable tender; however, no contract was concluded. The Office cancelled the award procedure as a corrective measure. The appeal submitted by STV Group a.s. was rejected by the Chairman of the OPC, who upheld the Office's first instance decision.

The tender was worth around 80 million CZK for the purchase of 50 thousand shirts and 42 thousand pairs of trousers. According to other conclusions reached by the OPC, the specifications for this contract, concerning templates and design of printed elements on uniforms, were also inadequate. The army had opened the award procedure in October 2011, with six companies applying for the two-part tender. The ministry selected the tender of BLAŽEK PRAHA a.s. for the first part, and STV GROUP a.s. for the second.

Jurkovič watchtower

Contracting authority: City of Rožnov pod Radhoštěm
Reference number: R96/2012 / S169/2012
Legally effective fine: 40,000 CZK
Decision came into force on: 10 December 2012

Rožnov pod Radhoštěm committed an administrative offence by failing to send to the Office for the Protection of Competition original documentation for the public contract for the Jurkovič watchtower,

which seriously hindered the Office in carrying out this administrative proceeding. The Chairman of the OPC confirmed the disciplinary fine to the amount of 40 thousand CZK, which had been imposed on the town in the first instance proceeding for failure to follow the instructions of a public official.

In the matter at hand the Office emphasised that, in order to facilitate the proper, objective review of the procedure followed by the contracting authority, it is essential that the Office has at its disposal the entire original documentation used in award procedures. Materials and documents provided as evidence must be precise, complete and original in order to evaluate them in their wider context. Failure to deliver original documentation on the public contract under investigation led to a breach of several fundamental principles of administrative proceedings (material truth, free evaluation of evidence, speed and economy of administrative proceedings) and, further, the fact that failure to follow the instructions of a public official had a crucial effect on the ability of the Office to review the procedure followed by the contracting authority in this administrative proceeding.

Time exhibition

Contracting authority: City of Šternberk
Reference number: R218/2012 / S159/2012
Legally effective fine: 100,000 CZK
Decision came into force on: 14 December 2012

The Chairman of the OPC rejected the appeal of the contracting authority and upheld the fine to the amount of 100 thousand CZK that was imposed on the city of Šternberk for the award of a public contract for the Time exhibition in a negotiated procedure without publication without fulfilling the conditions for this according to the Public Procurement Act. This could have substantially influenced the selection of the most suitable tender. The town had already concluded a contract with the selected tenderer.

The decision describes the conditions that must be fulfilled if a contracting authority is to award a public contract by a negotiated procedure without the publication, in relation to the design contest carried out. The subject matter of a public contract awarded in this manner must be services corresponding to the subject-matter of a design contest. According to the Office's established practice, the subject of the contract must consist of the completion of the design chosen as the most suitable in the preceding design contest. The subject of the award procedure realised through a negotiated procedure without publication was not exclusively a contract consisting of the elaboration or completion of original ideas or creative solutions laid out in the selected design and it cannot be stated that the subsequent completion of the winning design could have been realised only by the author of the design. In view of the nature of the activities related to the subject-matter of the public contract, it was not, in the opinion of the Office, essential that the realisation was carried out only by the submitter of the winning design. The contracting authority was not, therefore, authorised to start an award procedure for this contract as a negotiated procedure without publication.

State Aid

The Office for the Protection of Competition performs central coordinating, advisory, consultation and monitoring activities in the field of state aid in all branches of industry, with the exception of agriculture and fishing. The Office works primarily with providers of state aid in the preparation of notifications to the European Commission (the "Commission") on the provision of state aid, works with the Commission and providers in proceedings taking place before the Commission, both in proceedings concerning pre-notified state aid and cases of unlawfully provided state aid, the misuse of state aid, existing systems of state aid, as well as in cases where the Commission performs on-site investigations on the territory of the Czech Republic. In accordance with the relevant European Union regulations, the Office submits to the Commission an annual report on state aid provided on the territory of the Czech Republic during the previous calendar year. As far as legislation is concerned, the Office represents the Czech Republic in the negotiation and preparation of legal regulations of the European Union in the field of state aid. Last but not least, the Office administers the Central Register of de minimis aid.

A central theme of the year 2012 was the initiation of the process of modernisation of the rules applicable to state aid. On 8 May 2012 the Commission published a document entitled The Modernisation of State Aid in the European Union, in which it outlined the chief goals of modernisation, which are:

- redirection of state aid to initiatives that effectively support the achievement of pro-growth targets contained in the Europa 2020 strategy document;
- prioritisation of those types of state aid that could potentially cause the most damage to the internal market;
- rationalisation and simplification of rules and acceleration of proceedings in matters of state aid.

Hynek Brom
First Vice-Chairman of the OPC

During the year three strategic meetings took place in Brussels between the Commission and member states for the purpose of modernising the rules. Representatives of the Office for the Protection of Competition also participated in these meetings. For the purposes of discussing Commission proposals on specific regulations, Office representatives further participated in advisory committees organised by the Commission and member states and which dealt with e.g. the new draft Regulation on *de minimis* state aid for undertakings providing services of general economic interest ("SGEI"), the revision of rules for regional aid and the draft of Commission Directive on state aid for films and other audio visual works. The modernisation and revision of rules in the field of state aid will continue in 2013, when the adoption of the final version of the remaining revised rules is anticipated.

The Office organised a number of seminars in 2012 as part of its educational activities in the field of state aid. In the first half of the year it completed an educational campaign in the field of legal issues surrounding state aid, aimed at towns and municipalities, which had started in 2011. The educational campaign chiefly addressed *de minimis* aid, including the issue of entries in the Central Register of *de minimis* Aid (the "Central Register") and services of general economic interest. Representatives of towns and municipalities were also acquainted with the practical application of rules for state aid in areas within their scope of authority. The year 2012 also saw the holding of the traditional Spring Conference on State Aid, which was devoted to the newly approved European Union regulations for the provision of services of general economic interest.

At the start of the year the Commission issued a press release stating the necessity of addressing the rules for state aid in the financing of professional football clubs using public funds. At the same time, it carried out an investigation concerning the construction of sports infrastructure in Germany, Sweden and Denmark. The Commission focused its attention on this area of sport primarily due to the increased number of complaints received from entities from several member states on alleged measures conforming to the description of state aid and discriminating in favour of professional football clubs, and also in view of the small number of notifications of measures taken in the field of

sport thus far submitted to the European Commission. In the second half of the year the European Commission requested that the member states of the European Union provide information on the means by which professional football is financed in their countries.

With regard to the functioning of the Central Register, a key event in 2012 was the approval of a new directive on *de minimis* aid for undertakings providing services of general economic interest. The Central Register was established in order to monitor *de minimis* aid provided on the territory of the Czech Republic and was expanded in 2012 to include the aforementioned directive. A further significant change in the field of *de minimis* concerns the abolition of the obligation of the provider to request from beneficiaries a statutory declaration on *de minimis* aid received, as the Central Register already contains complete data for the stipulation of options for the receipt of *de minimis* aid.

On 1 August 2012, the amendment to Act no. 215/2004 Coll., amending certain relationships within the area of state aid, and altering the Act on the promotion of research and development, as amended ("Act no. 215/2004 Coll.") came into effect. This amendment brought substantial changes for providers of *de minimis* aid. A more detailed description of changes introduced in the amended Act is contained in the Legislative Changes chapter.

Statistical Data for State Aid in 2012

Opinions on the subject of state aid issued to providers/beneficiaries	448
Pre-notifications, notifications and communications under block exemption	45
Comments on draft legal regulations in the Czech Republic and government documents	75
Participation in EU advisory committees and European Commission meetings concerning notified cases	30
Complaints submitted to EC and related agenda	15

First instance administrative proceedings in the matter of the de minimis register

Administrative proceedings initiated	34
Incomplete administrative proceedings	10
Decisions issued	41
Number of fines imposed	26
Amount of fines imposed	472,400 CZK
Fines paid according to Czech National Bank statement	464,500 CZK

The agenda of the Central Register is also connected to the conducting of administrative proceedings against providers who have committed administrative offences as defined in Article 8a) (2b) of Act no. 215/2004 Coll. In 2012, as many as 600 violations were found, consisting of the failure to record data on de minimis aid in the Central Register within the legally stipulated timeframe. 34 administrative proceedings were initiated, with 41 decisions being issued and 26 fines to a total amount of 472,400 CZK imposed.

Legislative Changes

Czech Republic

On 1 August 2012, the amendment to Act no. 215/2004 Coll., amending certain relationships within the area of state aid, and altering the Act on the promotion of research and development, as amended in Act no. 109/2009 Coll., came into effect. The amended Act introduced new, and re-defined some existing, terms, such as e.g. state aid, de minimis aid and the day of its provision. The amended Act also introduced a new obligation of the provider of de minimis aid to state the name of the directly applicable EU regulation, according to which de minimis aid was provided, when carrying out the legal transaction of the provision of de minimis aid. According to the amendment, failure to state the name of the relevant EU regulation constitutes an administrative offence. Based on the amendment to the Act, the Office can now impose on the provider corrective measures, these being to subsequently designate aid provided as de minimis aid, or to record this in the Central Register.

The amendment further extended the authority of coordinating bodies, these being the Office for the Protection for Competition and, in the fields of agriculture and fishing, the Ministry of Agriculture, to issue opinions on de minimis aid before its provision. Providers of de minimis aid thus have the option of requesting an opinion from a coordinating body as to whether aid provided is, in specific cases, really de minimis aid and whether the conditions for its provision have been fulfilled.

European Union

With regard to the application of the rules for state aid, 2012 saw a key breakthrough in the attitude of the European Commission towards the evaluation of the financing of infrastructure construction, based on the judgement of the Tribunal in the Leipzig/Halle case of 2011, according to which not only the operation of an airport or airport infrastructure, but also the construction of infrastructure can be designated as economic activity, as long as this is to be used for economic activities in the future. In the context of the aforementioned judgement, therefore, state aid can also be used in the construction of stadia and multifunctional arenas, waste processing infrastructure, cable-cars and ski-lifts, shopping centres, infrastructure intended for research and development, broadband networks, energy networks etc. The European Commission drew up analytical forms for the purposes of easing the identification of state aid in the financing of infrastructure projects; these were published by the Office on its website.

On 31 January 2012, regulations governing the provision of compensation granted for the provision of services of general economic interest came into effect, these being the EU Framework for state aid in the form of public service compensation, the EC resolution on the application of EU rules for state aid for compensation paid for the provision of services of general economic interest and Commission 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 granted to certain undertakings entrusted with the provision of services of general economic interest. The decision can be applied in cases where not all criteria stipulated in the Altmark judgement are adhered to, while fulfilling all criteria for the definition of state aid. Public service compensation for the provision of services of general economic interest is state aid which can be designated as compatible with the internal market, so long as it fulfils the conditions contained in this decision. In relation to the financing of services of general economic interest, April further saw the passing of EC Regulation no. 360/2012 on the application of Articles 107 and 108 of the Treaty on the Functioning of the European Union to de minimis aid granted to undertakings providing services of general economic interest. According to the aforementioned regulation, an undertaking entrusted in writing with the provision of services of general economic interest can claim de minimis aid up to a maximum amount of 500 thousand Euros within any three-year period.

During the year the EC Guidelines on certain State aid measures in the context of the greenhouse gas emission allowance trading scheme post-2012 also came into effect, and the EU Guidelines on the application of the rules for State aid in relation to the rapid deployment of broadband networks and Commission Communication to the Member States on the application of Articles 107 and 108 of the Treaty on the Functioning of the European Union to short-term export-credit insurance.

IMPORTANT CASES

Support for culture in the Zlín Region and Ostrava

In the second half of the year the European Commission issued two decisions approving measures taken by the Zlín Region and Ostrava to support culture. The exemption approved by the European Commission for both programmes covers all branches of culture, with the exception of audio-visual art, which is not given any support at all in the Zlín Region, and only at de minimis level in Ostrava. Both measures allow the support of undertaking activities in the fields of, for example, music and scenic art, literature and publishing, the visual arts and architecture and cultural education. Of particular note was the speed with which the European Commission approved the measure of the Statutory City of Ostrava, of which it was notified in April 2012. This speed can be explained mainly by its similarity to the measure evaluated and approved by the Commission in 2010, the grants system of the City of Prague.

Measures concerning risk capital

In its decisions of 14 December 2012, the European Commission approved the early-stage capital aid scheme of the Czech Development, closed-end Investment Fund and the Programme for the provision of expansion capital without aid through the Czech Development, closed-end Investment Fund. Aid in the provision of risk capital to target undertakings will take place via the closed fund, i.e. the Czech Development, closed-end Investment Fund (the "CDCIF"), which is yet to be established. These measures shall last for twelve years.

The CDCIF shall serve as a conduit for the transfer of funds to target undertakings. All commercial activities of the CDCIF shall be managed by an independent, professional investment company (the "CDCIF administrator"), which shall be selected in an open, transparent and non-discriminatory public procurement process. Measures are aimed at SMEs in the early phases of development or in the expansion phase.

In the early phase of every individual investment, private investors will provide at least 30% of capital. The CDCIF administrator shall select private investors on the basis of market principles and in accordance with the goals of the fund. As it cannot be ruled out that private investors and the targeted SMEs will not be participants in trade within the European Union and will not compete with undertakings in other member states, it cannot be ruled out any effects on competition and trade. The measure affecting the early phase therefore represents state aid pursuant to Art. 107(1) of the Treaty on the Functioning of the European Union (the "TFEU") on the level of private investors and the targeted SMEs in which investments are made. Verification of the compatibility of the aid programme in the form of capital at the early phase through CDCIF with the internal market pursuant to Art. 107(3) of the TFEU was evaluated according to the EC Guidelines on State aid to support risk capital investments in SMEs. The European Commission considers the measure to be compatible with the internal market pursuant to Article 107(3) c) of the TFEU.

The programme for the provision of capital for expansion without state aid through CDCIF shall allow its investment in target undertakings together with the corresponding private co-investments, based on the equality principle. In this case, individual investors shall provide at least 50% of capital for every individual investment, in accordance with the shared investment agreement. Investments into target undertakings as part of the measure at hand must be made strictly according to the equality principle and private investors must not be given any advantages, i.e. the CDCIF fund and private investors shall share exactly the same level of risk of up and down fluctuations and shall have the same level of

seniority. The European Commission is of the opinion that no advantage, and therefore no state aid pursuant to Article 107(1) of the TFEU, should exist at the investor level. The European Commission found that financing on the basis of the programme for the provision of expansion capital without state aid through CDCIF fulfils the conditions for the legal assumption of the non-existence of state aid as stipulated in section 3.2 of the EC Guidelines on State aid to support risk capital investments in SMEs and does not deem this measure to constitute state aid.

Decision in the matter of ČSA (Czech Airlines)

In 2012, the European Commission passed two decisions concerning possible state aid for the company České aerolinie, a. s. (ČSA). In March 2012, the Commission came to the conclusion that a loan from the company Osinek, a. s. to ČSA did not include state aid as it had been provided under conditions that would be required by an investor in the market economy. The Commission further stated that, even if this loan contained elements of state aid, it would be compatible with the internal market.

In September 2012, the Commission decided that a measure consisting of the capitalisation of a receivable from the loan to ČSA would represent state aid which is, as a restructuring measure, compatible with the internal market, as it was provided in accordance with the provisions of the EC Guidelines for State aid for rescuing and restructuring firms in difficulty. The Commission recognised that ČSA was, at the decisive period, an eligible firm in difficulty and judged that ČSA was capable of recreating its long-term viability within the stipulated restructuring period of five years. The Commission recognised that the proposed restriction on the reduction of capacity, relinquishing of flight slots at European airports and sale of assets would prevent the excessive disruption of competition. Furthermore, ČSA will contribute its own, adequate share of restructuring costs, for example in the form of the sale of subsidiaries, aircraft and other assets.

Schedule for free allocation of greenhouse gas emission allowances for the purpose of modernising power stations in the Czech Republic

At the end of the year, the European Commission approved a system for the temporary free allocation of year-on-year reduced volumes of allowances for the emission of CO_2 from 2013–2019 for power stations in the Czech Republic, which will, in exchange for the allowances, invest in decarbonisation technology.

The amended EU directive on the European Trading System for emission allowances (EU ETS) abolishes, from 2013, the option for member states to allocate a certain number of allowances gratis and introduces a general obligation for companies to purchase allowances solely from their own funds. However, as some of the biggest producers of CO2 involved in the EU ETS are fossil-fuel power stations, the increased costs of allowances due to these changes would be reflected in a jump in the price of electricity. The EU therefore introduced an exemption for states with a higher degree of dependency on electricity generated from fossil fuels (including the Czech Republic), giving them the option to provide a certain quantity of allowances to power stations 'gratis' on condition that companies receiving such concessions invest a corresponding level of funds into clean, modern technologies and infrastructure in their facilities on the basis of the National Investment Plan in place. The Czech Republic took advantage of this option and drew up a plan for the provision of 'derogation' allowances, the quantity of which will gradually fall from 83.6 million in 2013 to zero in 2020. According to the Commission, the market value of the total volume of allowances granted will reach 1.878 billion Euros, while the total value of planned investments in the power stations affected is many times greater.

Appeals and Judicial Review

In 2012, the Office for the Protection of Competition received three appeals against first instance decisions in the field of state aid, initiated three second instance administrative proceedings and issued four decisions. In all cases the Chairman upheld the first instance decision. The total amount of fines imposed on the basis of first instance decisions and upheld by second instance decisions in the field of state aid was 150,900 CZK.

One lawsuit in the field of state aid was filed to the Regional Court in Brno in 2012. The courts did not issue any judgements in the field of state aid in 2012.

Significant Market Power

Since 2010 the OPC has also supervised compliance with Act no. 395/2009 Coll., on Significant Market Power in the Sale of Agricultural and Food Products, and Abuse thereof. The aim of this act is to balance out the unequal relationships between large retail chains and their suppliers from agriculture and the food industry. Due to their significant market power, buyers could, in many cases, determine the conditions of their relations with suppliers, in many cases almost without restriction, and it was not possible to prosecute their actions based on the rules of competition. However, the act on significant market power that was passed suffers from a number of shortcomings that greatly restrict and impede its application.

Almost since the act came into effect, it has been the subject of intensive discussions on its amendment or replacement. An interdepartmental working group, composed of representatives of the OPC, the Ministry of Industry and Trade of the Czech Republic, the Ministry of Agriculture of the Czech Republic and the Ministry of Finance of the Czech Republic, assessed their experiences with the practical application of the act and proposed a number of solutions; however, none of these was accepted. Out of the options considered, these being either the complete repeal of the act on significant market power and the transfer of some of its provisions to the Act on the Protection of Competition, or the amendment of the Act on Significant Market Power, recent discussion has focused more on the second option. The existing law therefore remains unamended.

Nevertheless, despite the aforementioned shortcomings, the act in place succeeded to a certain extent, to keep more control over the retail of foodstuffs. This chiefly involved the setting in practice of a maximum thirty-day due date for invoices, which started to be implemented across the board by retail chains.

In 2012, the Department for the Monitoring of Significant Market Power received 23 complaints and carried out a total of 5 administrative proceedings for possible breaches of the Act on Significant Market Power. However, no decision has come into force. Administrative proceedings involving Kaufland had been initiated in 2010. In this case, a first instance decision had been issued. However, this was appealed and the second instance decision quashed this decision and the matter was returned for further discussion.

The remaining proceedings were initiated in 2011. None of these has yet been completed through the issuing of a first instance decision. This is due to the fact that all cases require relatively wide-ranging investigations where the gathering of evidence is a complicated process, mainly due to the number of entities from whom the Department must gather and verify information. Every individual case involves hundreds of entities.

In 2012, no new administrative proceedings were initiated, nor were sanctions imposed for breaches of the law.

Important Cases

As can be seen from the above, each administrative proceeding is significant, primarily in view of the scope of information that the Department must gather, verify and evaluate. Nonetheless, mention must primarily be made of the administrative proceeding involving TESCO, which was initiated with an on-site investigation at the company headquarters, which found a large quantity of documents and information stored on CDs. These documents and information were subsequently examined with the aim of eliminating those not relating to the subject of the administrative proceedings initiated. Due to the scope of information gathered, three such examinations took place during 2012, with information and documents stored on CDs examined at the headquarters of Office in the presence of representatives of TESCO.

International Relations

In the year just passed, the OPC represented the Czech Republic in all areas of its competency, both within the European Union and beyond its borders. Representatives of the OPC regularly participate in events concerning competition, public procurement and state aid, be it in the role of specialist participant or organiser. For reasons of the economical management of resources, including human resources, and from the point of view of time, personal participation in meetings was replaced, to the maximum extent possible, by so-called conference calls. The year just passed also saw a number of interesting bilateral meetings with the aim of strengthening existing and creating new relations with the parties involved.

EUROPEAN UNION

European Competition Network – ECN

The most significant component of international activities undertaken by the OPC are its relations with the European Commission and national competition authorities of member states of the European Union through the European Competition Network. In 2012, as in previous years, a number of meetings of working groups took place, for example in the fields of cartel agreements, banking, transport, mergers, etc. At meetings of working groups, representatives of individual member states share their experiences and findings and the outcomes of the working groups which can be utilised by the Office in the application of the rules of competition or proposals for changes in legislation. 2012 saw the publication of documents that were, at the initial stage, created for purely internal use within the individual working groups, for example three documents that were created with the direct contribution of representatives of the OPC.

Amongst the active working groups was the one addressing issues surrounding the food industry. The outcome of the activities of this group was a wide-ranging report summarising the activities of member states of the ECN in this sector (Report on competition law enforcement and market monitoring activities by European competition authorities in the food sector), which was published on 24 May 2012 on the website of the European Commission. The conclusions contained in the report are intended primarily as a tool for advocacy in the resolution of issues in the food industry.

Further documents that indisputably contribute to improved awareness in the propagation of competition in member states of the ECN are the comprehensive reports which give a clear overview and comparison of the investigative and decision-making powers of individual ECN member states, including the OPC (Investigative Powers Report and Decision-making Powers Report). These reports are based on information provided by a total of 28 jurisdictions and describe the situation as of 31 October 2012. The objective of both projects was to create a foundation for the further discussion of the future convergence of competition regulations in member states of the European Union.

Aside from the information contained in the aforementioned documents, the public abroad could also find up-to-date information from the OPC in the ECN Brief bulletin, which is published regularly (five times per year) on the European Commission website. This bulletin chiefly contains news on cases from the field of competition that are investigated according to EU law (Articles 101 and 102 TFEU) by the European Commission and national competition bodies of member states, as well as conferences that are in preparation or have already taken place and other items of interest that fall within the competency of the individual European competition bodies and are not subject to confidentiality.

All documents published by the ECN, both last year and before, and many others, are available to the public at: http://ec.europa.eu/competition/ecn/documents.html.

The OPC also successfully discharged the role of reporter (rapporteur) whose responsibility is to acquaint participants in an advisory committee of the European Commission with a particular case.

Delegation from Zhejiang Province (China)

Maria Pia Kothbauer, Ambassador of the Principality of Liechtenstein, and Daniel Stankov, Director of International and External Relations Department

The committee then makes a formal decision. Advisory committees prepare new and revise existing EU regulations and deal with specific cases or the exchange of information and experience.

European Competition Days

Presidency of the Council of Europe fell to Denmark in the first half of the year, followed by Cyprus. Apart from its other obligations, the presiding country traditionally also organises major conferences on competition, known as European Competition Days. The conference in Copenhagen, in which OPC Chairman Petr Rafaj also participated, represented, as always, one of the Office's best opportunities to acquaint itself with current developments in competition policy and, primarily, the priorities of the presiding country in question. During its European Competition Day, Cyprus focused on how to increase awareness of competition amongst consumers and expert public.

COOPERATION AND EXCHANGE OF INFORMATION BEYOND THE BORDERS OF THE EUROPEAN UNION

International Competition Network (ICN)

The regular annual conference of the International Competition Network (the "ICN"), bringing together representatives of competition authorities, specialists, academic communities and non-governmental organisations, took place in Rio de Janeiro. The discussion panel on cooperation between competition authorities and courts and judges also included OPC Vice-Chairman Michal Petr. Participation in events of this nature is of great importance to the OPC as they represent an opportunity to view a cross-section of the outcomes of ICN working groups (e.g. in the concentration of undertakings or cartels of which they are members), their working plan and results achieved in the previous year. The event further allowed the Office to forge contacts with leading international experts in competition law. This form of the exchange of information and experience is indispensable in the development of the expert knowledge of OPC representatives and can be judged one of the most significant events every year, with considerable benefit to the Czech competition authority.

At the beginning of 2012, a workshop took place in Bogota, Colombia under the auspices of the ICN on the topic of quantitative economic evidence for the evaluation of the concentration of undertakings. The agenda included information on the gathering of economic evidence that can help individual competition authorities to better understand specific aspects of the market, to formulate a coherent economic theory of harm or provide tools for the definition of a market when investigating cases.

At the end of 2012 an ICN workshop also took place in Panama, focusing on cartel agreements. Participants discussed the strengthening of the global fight against cartel agreements, primarily the comparison of different systems for fighting cartel agreements, the efficiency of investigations on business premises and relations and cooperation with lawyers. The panel discussing relations between competition authorities and lawyers featured a talk given by Kamil Nejezchleb from the Cartels Department of the OPC, who also chaired the discussion.

Organisation for Economic Co-operation and Development (OECD)

In 2012, representatives of the Office again participated in all meetings organised by the Competition Committee of the OECD, the Global Competition Forum and related working groups. The February meeting addressed the following topics: competition in the field of hospital services and the unilateral disclosure of information with anti-competitive effects. The June meeting then discussed the concentration of undertakings and bid rigging.

A further major event in which representatives of the Office took part in order to strengthen relations with global competition bodies, and which took place in Bratislava, was the Eastern European Competition Workshop. This was the fifth meeting with this title to be organised by the Federal Trade Commission (FTC) of the United States of America. The OPC had already hosted a similar event, on the topic of economic issues in competition law, in June 2011. The meeting in Bratislava took the form of a two-day seminar on the proving of the existence of cartels without direct evidence and the abuse of a dominant position. The agenda was based primarily on US competition law, with brief digressions for comparison with regulations in Europe and other parts of the world (e.g. India and South Africa), which allowed the representatives of the OPC to compare them with those of the European Union.

BILATERAL RELATIONS

Court of Justice of the European Union

In June 2012, representatives of the OPC participated in a two-day visit to the Court of Justice of the European Union in Luxembourg. OPC employees had the opportunity to meet Irena Pelikánová, Ján Mazák and Jiří Malenovský in person, which allowed them to discuss a number of issues. During their visit they also got the opportunity to directly observe a case underway on the Court´s premises.

Irena Pelikánová acquainted all those present with information concerning the powers of individual judicial instances and court work, from the assignment of cases to their procedural completion by the court, also mentioning Tribunal statistics. Ján Mazák described the work of general advocates, their independence in the provision of expert opinions for the court (despite the fact that they are nominated by the government – in the case of Ján Mazák, the government of the Slovak Republic). In his slot, the Court´s judge for the Czech Republic, Jiří Malenovský, discussed the dichotomy between the 'Strasbourg' and 'Luxembourg' models for the application of EU law on the national level, his analysis of these models focusing mainly on a comparison of the negative effects of their application. Last but not least, the visit also included a highly interesting meeting with the advisor to the cabinet of Jiří Malenovský, Mr. David Petrlík, who in his speech addressed, amongst other things, the Court´s approach to the issue of public procurement.

Maria Pia Kothbauer, Ambassador of the Principality of Liechtenstein

On 2 May 2012, Maria Pia Kothbauer, Ambassador of the Principality of Liechtenstein with jurisdiction over the Czech Republic, visited the South Moravia Region. The Ambassador was also received by

the Chairman of the OPC, Petr Rafaj. Maria Pia Kothbauer expressed great interest in the activities of the OPC and emphasised that a healthy, competitive environment is, at the current time, one of the most important motors for small, economically developed countries, such as Liechtenstein. The OPC Chairman gave a brief description of the basic powers of the Czech competition authority and addressed the issue of cross-border controls of the concentration of undertakings, which is of considerable relevance to small countries, as well as the risk of cartel agreements in the construction and transport sectors. The Ambassador mentioned several cases where it was found that public contracts for which entities from several countries had applied had been substantially overpriced and state administration was now considering stricter controls for award procedures in Liechtenstein. At the end of the meeting, both parties agreed that, despite the continuing economic recession in Europe, it was essential that competition laws were adhered to and enforced, and only this path can lead to the gradual recovery of the economy in the European Union.

Commission for the Review of Public Procurement (Slovenia)

On 11 May 2012, the Vice-Chair for Public Procurement, Dr. Eva Kubišová, met with the Chairwoman of the Slovenian National Commission for the Review of Public Procurement, Miriam Ravnikar Šurk, in Ljubljana. The meeting was part of the process for forging bilateral contact and discussions on legislative developments at a European level. The visit also included an exchange of information on initiatives being prepared by the European Commission and the clarification of further steps in cooperation, the exchange of information and best practices.

Office for the Regulation of Prices of Zhejiang Province (China)

On 12 July 2012, a delegation from China, headed by the Director of the Office for the Regulation of Prices of Zhejiang Province, Liuou Ping, visited Brno. Other members of the delegation included researcher Li Ruicheng, Deputy Director of Monitoring Su Yihu, researcher for resources and the environment Wang Jinzhang, Director Liu Wenshi and Deputy Director Zhang Weiping. The Chinese experts were primarily interested in the functioning of the control of market mechanisms by the Office, as they themselves represented an institution that (in contrast to the OPC) directly regulates prices.

Commission for the Protection of Competition (Macedonia)

On 9 October 2012, OPC Chairman Petr Rafaj hosted a delegation from the Macedonian Commission for the Protection of Competition, headed by the Chairman of the Commission, Blagoj Churlinov and the Chairman of the sanctioning committee, Chedomir Kraljevski, in Brno. The event took place as part of the twinning programme in the field of state aid, which takes place under the auspices of the British Ministry for Trade and Innovation. The objective of the visit was primarily to increase awareness of providers of aid and improve the quality of the planning and monitoring of aid in Macedonia. The representatives of the OPC made a series of presentations and lectures to the delegation focusing on detailed information on the system and mechanisms for the provision and control of state aid in the Czech Republic, as well as giving a general overview of further areas of competency of the OPC.

Federal Antimonopoly Authority (Russia)

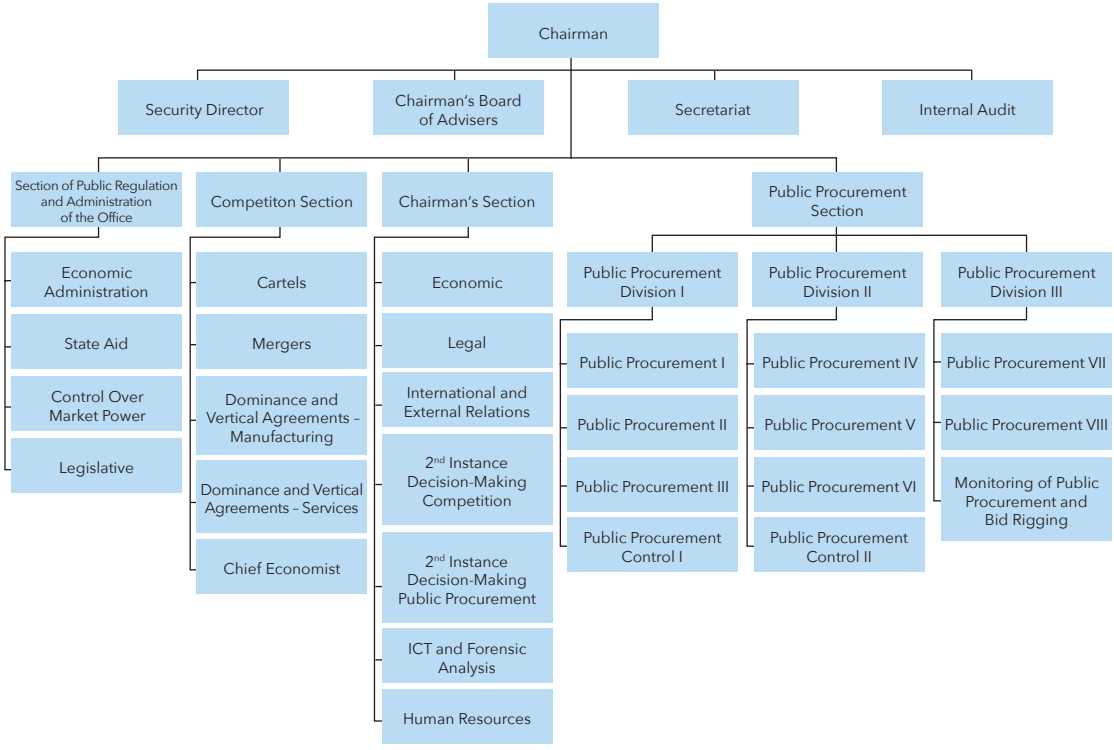
In November the OPC also received a visit from the Russian competition authority, in the form of delegations from the authority's headquarters in Moscow and from its branch office in the Ulyanovsk region, Anna Matyevich and Alexandra Zubova, who were primarily interested in the involvement of the OPC in the ECN and, generally, in the functioning of this form of cooperation between member and non-member states of the EU since 2004. On their request, the representative of the OPC Public Procurement Department then acquainted both delegates with the issue of public procurement, describing legal regulations for public procurement in both the Czech Republic and the European Union.

Human Resources

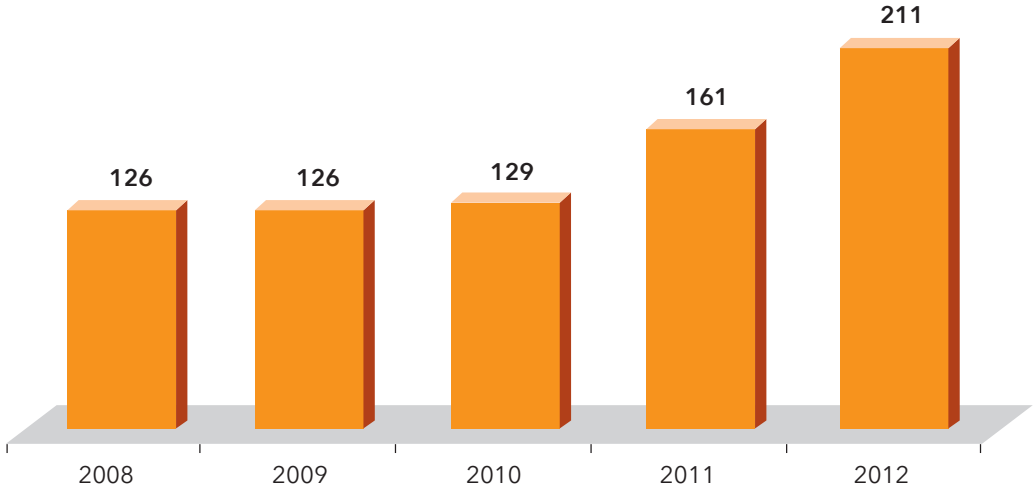
The year 2012 was a highly significant one for the Office for the Protection of Competition, one that brought with it many changes. These changes primarily affected organisation and personnel. In relation to the long-term increase in the number of employees required by the amended Act on Public Procurement, the OPC recruited 50 new employees in 2012. The new employees were primarily recruited to the Department for Public Procurement and departments for second instance decisions, which form part of the Section of the Chairman of the Office. This major expansion was also reflected in the OPC organisational structure. In the Prague branch, a new Department for Public Procurement was established; this department has 13 employees and is currently based at the Ministry for Regional Development. Reorganisation also affected the Brno offices, where some employees were moved to the newly refurbished premises at třída Kpt. Jaroše 7a. This move, due to employee numbers, was not only necessary, but also allowed individual departments to be housed in the same space, leading to the more efficient use of existing premises. The filling of vacated offices in the original OPC building will continue into 2013.

The year 2012 saw the completion of some projects financed by EU structural funds. These projects have been in the process of realisation since 2010 and focused on the establishment of new systems for working with employees. The outcomes of the employee training and development were successfully implemented over the course of the year; amongst the measures introduced were a new training schedule, regular employee appraisal and self-appraisal system and a revised catalogue of positions reflecting the current structure of the OPC. The goal of all the aforementioned changes is to invest in the long-term development of employees, the provision of support and the planning of their individual training and careers. A number of new internal regulations were also put in place in connection with this project. These regulations focused on, amongst other things, rules for proper telephone and written communication, the introduction of a dress code and a new code of ethics for OPC employees.

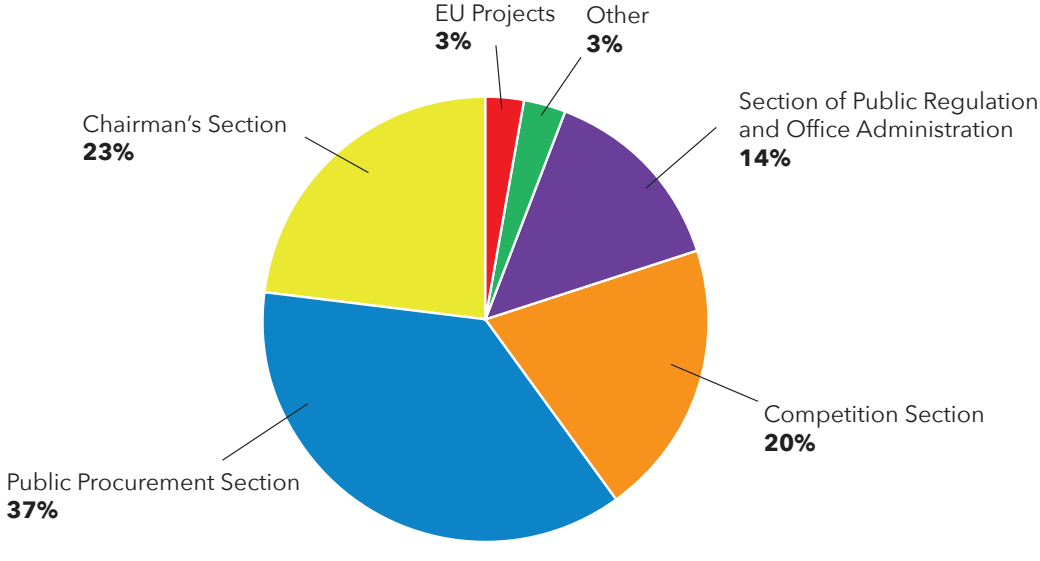
Organisational Structure of the OPC as of 31 December 2012



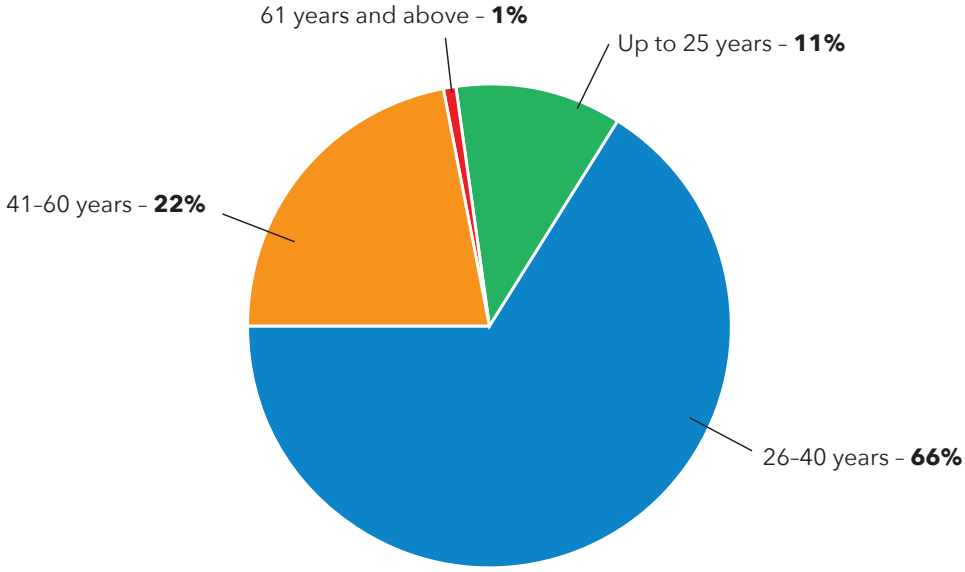
Number of Employees by Year



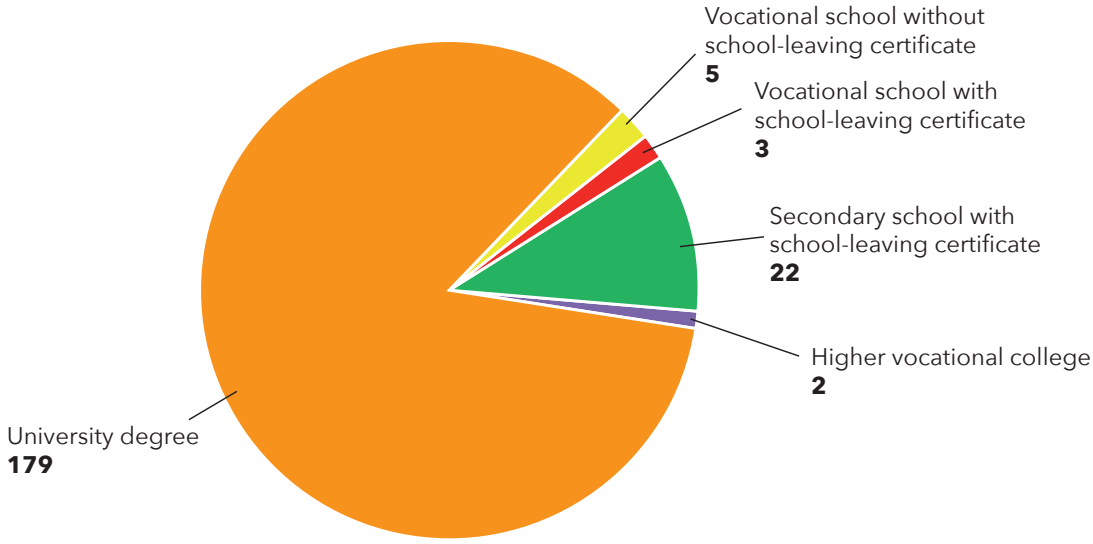
Employees by Section



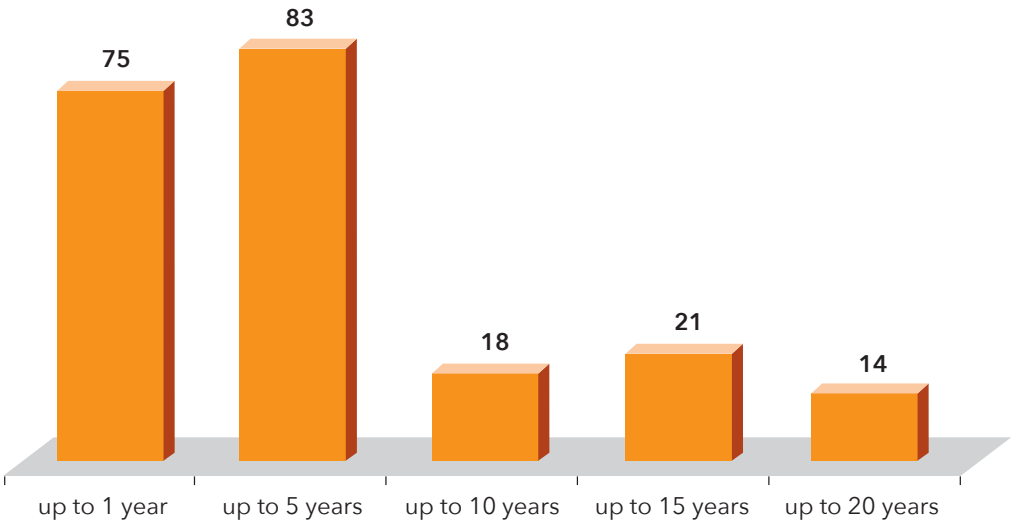
Employees by Age Group



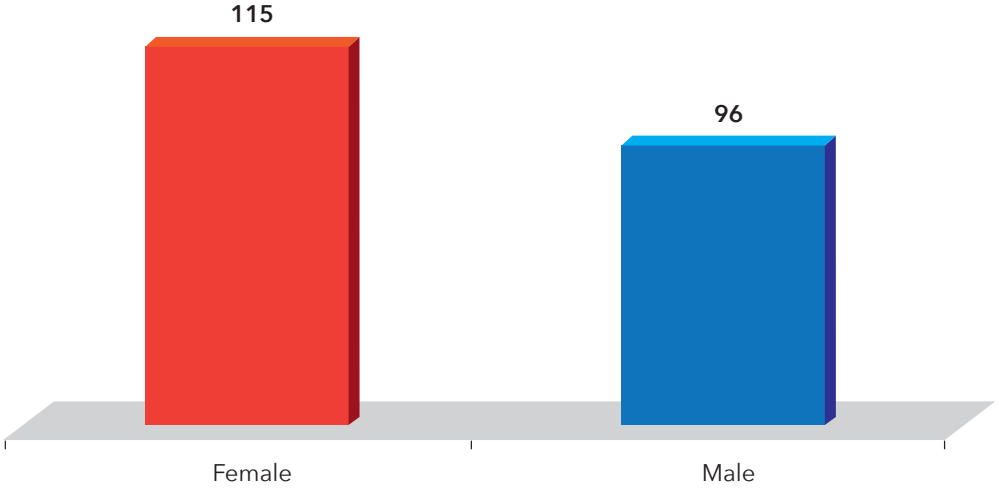
Employees by Level of Education Achieved



Duration of Employment



Number of Employees by Gender



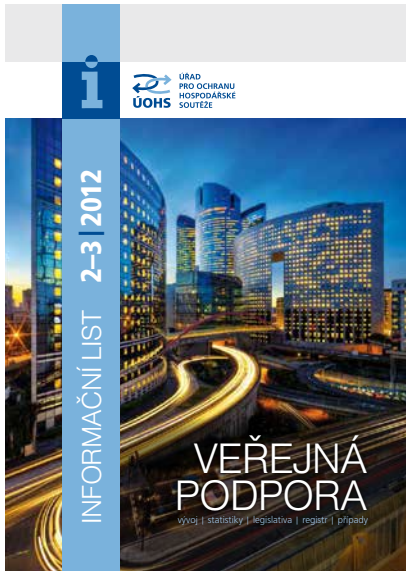
Information Activities

The Office for the Protection of Competition places great emphasis on the efficient provision of information to and communication with both specialists and the general public, who gather information mainly from the media. During 2012 the new OPC website, www.uohs.cz, was launched, with an improved, modern graphic design to give users a better overview and help them to better orient themselves when searching for information. The website is constantly updated and provides users with press releases, also giving them the option to subscribe to the automatic mailing-list, legally effective decisions, judgements of the Regional Court and the Supreme Administrative Court related to cases being dealt with by the OPC, an overview of valid legislation in all areas under the scope of competence of the Office: competition, public procurement, significant market power and state aid. Information is also provided on seminars and conferences organised by the Office.

Amongst the major events organised in 2012 was the sixth edition of the traditional St. Martin's Conference, with the traditional theme of 'What's New in Competition', giving an overview of recent trends and developments in competition law in the Czech Republic, EU and USA. Speakers in individual discussion panels also addressed the frequently discussed issue of the supervision of public administration bodies as a possible new area of competency for the OPC, an economic approach to network sectors, undertakings as economic units, competition in healthcare and new procedural concepts in competition law.

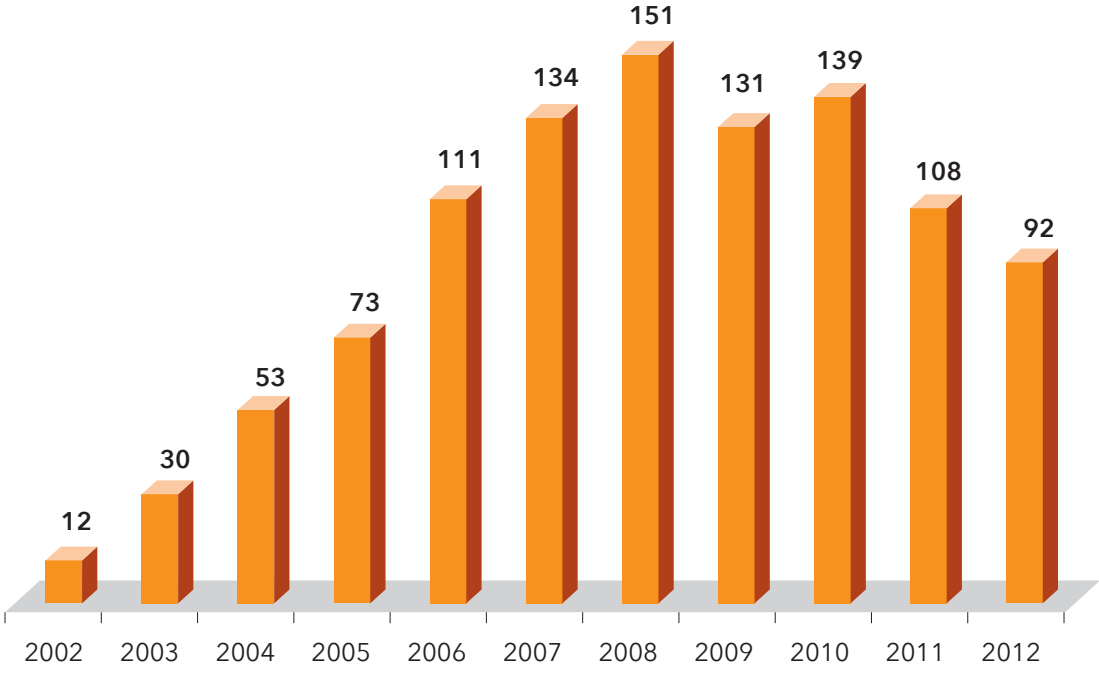
The objective of the OPC Spring Conference on State Aid was to provide, on the basis of the current passing of a package of regulations for the provision of services of general economic interest, an overview of provisions giving a legal basis facilitating the financing of services of general economic interest and also provide information on changes that must be taken into account by providers, and others, when making settlement payments for the provision of services of general economic interest.

In 2012 the Office issued a total of 92 press releases, 37 of which were in the field of competition, 30 in public procurement, 23 in state aid and two in international cooperation. In the year just passed, media monitoring registered 9,718 reports on Office activities, the vast majority of which were on



the topic of public procurement. An analysis of the media image of the Office for the Protection of Competition showed that the media take an almost exclusively neutral attitude towards the Office, as demonstrated in the overwhelming majority of neutral articles, offset only by two negative and six ambivalent references. The OPC was more frequently publicised by nationwide daily newspapers than by radio or television. A major role was played by regional supplements, most frequently those provided with Mladá fronta Dnes, as well as regional news programmes of the ČT 1 television channel. This state of affairs was related to a number of cases of regional significance dealt with by the OPC. Readers, or viewers or listeners, most frequently identified the antitrust authority with the figure of its Chairman, Petr Rafaj, who represented the Office in the media in the majority of cases. The media monitored in 2012 presented the Office as an institution of indisputable significance in a number of cases at regional and national level.

Number of Press Releases Issued



Apart from its annual report, in 2012 the Office for the Protection of Competition also issued the following information bulletins: Bid Rigging and Indicators Helping to Detect Cartels, a double edition of State Aid and a general summary entitled Major Events of 2012. All of these publications can be downloaded from the OPC website at: https://www.uohs.cz/cs/informacni-centrum/informacni-listy.html.

In an effort to improve its communication, the Office consulted the relevant target groups through a survey, which provided valuable information on the needs of specialists in relation to information and services provided by the OPC.

Approved Budget for 2012

Indicators of chapter 353 Office for the Protection of Competition 2012

	thousand CZK
Total indicators	
Total revenue	24,481
Total expenses	146,516
Specific indicators – income	
Tax revenue [2]	4,600
Non-tax revenue, capital revenue and transfers received - total	19,881
of which: revenue from EU budget, excl. Common Agricultural Policy – total	18,981
other non-tax revenue, capital revenue and transfers received – total	900
Specific indicators – expenses	
Expenses to ensure the fulfilment of the duties of the Office for the Protection of Competition	146,516
Cross-section indicators	
Payroll and other payments for work carried out	59,831
Mandatory insurance paid by the employer [1]	20,343
Transfer of cultural and social fund	580
Employee payroll	52,622
Employee payroll deducted from pay of institutional officers	5,394
Preparation of crisis fund pursuant to Act no. 240/2000 Coll.	100
Costs co-financed from EU budget excl. Common Agricultural Policy – total	22,331
of which: from state budget	3,350
contribution from EU budget	18,981
Expenses listed in information system for EDS/SMVS programme financing – total	16,589

[1] mandatory contributions to state health and social insurance

[2] minus revenue from mandatory contributions to state health and social insurance

Indicators of chapter 353 Office for the Protection of Competition

Budget following changes as of 31 December 2012

	thousand CZK
Total indicators	
Total revenue	24,481
Total expenses	265,199
Specific indicators – revenue	
Tax revenue [2]	4,600
Non-tax revenue, capital revenue and transfers received - total	19,881
of which: revenue from EU budget, excl. Common Agricultural Policy – total	18,981
other non-tax revenue, capital revenue and transfers received – total	900
Specific indicators – expenses	
Expenses to ensure the fulfilment of the duties of the Office for the Protection of Competition	265,199
Cross-section indicators	
Payroll and other payments for work carried out	89,012
Mandatory insurance paid by the employer [1]	30,265
Transfer of cultural and social fund	873
Employee payroll	81,803
Employee payroll deducted from pay of institutional officers	5,394
Preparation of crisis fund pursuant to Act no. 240/2000 Coll.	100
Costs co-financed from EU budget excl. Common Agricultural Policy - total	22,331
of which: from state budget	3,350
contribution from EU budget	18,981
Expenses listed in information system for EDS/SMVS programme financing – total	57,770

[1] mandatory contributions to state health and social insurance

[2] minus revenue from mandatory contributions to state health and social insurance

Utilization of EU Funds

The Office for the Protection of Competition utilizes finances from EU structural funds in order to improve the quality of services provided to the public, primarily improved process management, employment of a more economic approach to investigations, definition of management and planning strategies, improvement of the human resources agenda and so on. The Office utilized the Human Resources and Employment and Integrated Operational Program from the European Social Fund to initiate a total of six projects, three of which were successfully completed. The three projects financed from the Human Resources and Employment operational program are in the process of realization.

Projects Completed in 2012

The first of the projects to be successfully completed was the Establishment of a Strategic Management and Planning System project, including the drawing-up of a strategy for the management and development of human resources, the realization of which was completed as of 30 April 2012. The chief objective of this project was to support the systemization of OPC development activities through the creation and implementation of two fundamental strategic documents (OPC Development Strategy and Personnel Strategy).

The chief objective was divided into two key activities. The first of these – the creation and implementation of a personnel strategy – led to the establishment of an efficient system for the management of human resources development in relation to the current needs of the Office. The overall outcome of the realization of this activity was the OPC Personnel Strategy document, which contained proposed changes, including changes to the schedule and means of their implementation. The individual steps in the realization of this part of the project included an analysis of the structure of the organization, identification of the requirements for typical positions, an analysis of the potential of existing personnel and, last but not least, an analysis of the training requirements of the Offices´ employees.

The second key activity of the project was the creation and implementation of strategic management and planning, the aim of which was to set the strategic direction for the organization with the aim of identifying possible paths for development in the short-, medium and long-term. The overall outcome of the realization of this part of the project is the OPC Strategic Development document, which contains proposals for the development of all of the Office's areas of competency, including a draft action plan leading to the achievement of the development goals set. The realization of this component activity included a SWOT analysis and analysis of the Office's development potential, as well as determining the latest trends relating to the Office's areas of competency. Realization of the project lasted 24 months.

The second successfully completed project in the previous year was the project for the Implementation of an Efficient System for the Management and Development of OPC Human Resources (completed on 30 September 2012), which was realized for the purpose of supporting a systematic approach to human resources management and was based on a preliminary analysis focusing on the optimization of personnel processes realized as part of the Setting a System for Strategic Management and

Planning, including the Development of a Strategy for the Management and Development of Human Resources. These activities were primarily related to the realization of measures directly related to the Office's personnel strategy.

In relation to the outcomes of the aforementioned project, a training plan for OPC employees was created in December 2012. This plan forms an essential part of the organization's overall development strategy and the setting of a new system for working with employees and their motivation. The plan focuses on the identification of the training needs of employees in the relation to the performing of their function, competencies and position. Preparation of the training plan was divided into three basic steps. Apart from the identification of current problems and the drawing-up of a plan of training required for the efficient functioning of the organization, a systematic concept was also drawn up, consisting of a training schedule, including relevant methods and related activities. Apart from an improved approach to the professional training of OPC employees, the training framework as a whole will allow the Office to optimize the costs arising from the need to train employees. This project, together with the anticipated permanent training of employees, will help the OPC to function more smoothly.

Projects in the Process of Realization

The third project, the realization of which concludes on 31 January 2013, is the Setting of an OPC Information and Communications Security System. This project consists of the implementation of an Information Security Management System (ISMS). This project is largely being realized by a contractor, F.S.C. BEZPEČNOSTNÍ PORADENSTVÍ.

At the start of the project, a thorough analysis was carried out, part of which was a definition of risks in the fields of physical security, administrative security, staff security, ICT security and risks related to confidential information pursuant to Act no. 412/2005 Coll. Draft measures were subsequently formulated and implemented on the basis of this analysis, thus fulfilling the chief goal of the project,

which was the introduction and control of effective measures for information security management. The project also included the training of all OPC employees in ISMS issues.

The project was initiated on 1 February 2011.

The fourth project is the Making OPC Process Management More Efficient project. The chief objectives of the project are to increase the efficiency of activities carried out by the Office, bringing the Office closer to its clients and thoroughly mapping processes taking place within the OPC. This project, in connection with the goals set, encompasses three key activities: the implementation of process management, including the training of selected employees; the implementation of a feedback system for users of Office services, the image of the OPC; and the integration of a system of financial, economic and econometric analyses into the Office's activity management structure.

The implementation of process management focussed on the simplification and increased efficiency of activities related to the management of selected processes via their anchoring in the system and the introduction of a unified information system for their management and monitoring. The goal of the implementation of the feedback system for users of OPC services was primarily to ensure optimal conditions for communication between the Office and other entities involved in its activities. The third area – the integration of a financial analysis system into the OPC activities management system – is increasing the efficiency of Office activities through the more thorough application of an effect-based approach for the economic evaluation of practices with negative effects on competition and to the benefit or otherwise of consumers. This approach is connected to the application of economic and econometric analyses and analytic methods, tests and approaches built on the high-quality gathering, processing and analysis of data. This activity also included the training of Office employees intended to provide a specialist support service during the process of introducing the system.

Realisation of the project was spread over a period of 36 months from 1 March 2010 to 28 February 2013.

The last of the projects realised is the Education and Transparency of Public Contracting Authorities project, which focused on increasing the awareness of public administration employees in the field of award procedures and of issues surrounding prohibited agreements between tenderers for public contracts (known as bid rigging). The project encompasses a number of specialist seminars for public administration employees, taking place between 2011 and 2014, both in the Office's premises and in individual regions of the Czech Republic.

As part of the Education and Transparency of Public Contracting Authorities project a website – www.otvez.cz – was launched for the gradual publication, over the duration of the project, of information related to issues surrounding public contracts and bid rigging, chiefly being the current judicature of the Office for the Protection of Competition, and that of Czech courts and the EU Court of Justice, if applicable. The project also includes online consultation in the form of the submission of queries or comments on the issues of public contracts and bid rigging. A publication entitled Decision-Making Practice in Public Procurement and Bid Rigging was also issued as part of the project. This publication included excerpts from decisions issued by the Office for the Protection of Competition, decisions of domestic courts and of the EU Court of Justice (previously the European Court of Justice) addressing problematic aspects of the awarding of public contracts and bid rigging, giving a more precise interpretation of some terms or legal structures contained on the Act on Public Procurement. The aforementioned publication serves as supplementary training material for the purposes of training activities carried out as part of this project.

A major component of the Education and Transparency of Public Contracting Authorities project was also the creation of the OPC Department for the Monitoring of Public Procurement and Bid Rigging. Monitoring takes the form of analyses of complaints received from natural persons or legal entities. Of great importance, too, is the cooperation between this department and the Public Procurement Section and Competition Section (Cartels Department); in the event of doubts over the accordance of procedures followed by contracting authorities or buyers with the relevant legal regulations, the Department for the Monitoring of Public Procurement and Bid Rigging passes cases on to these departments for further processing.

Realisation of the project started on 1 February 2011 and is anticipated to continue until 31 January 2014.

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

1. Number of Requests for Information Submitted pursuant to the Act No. 106/1999 Coll. and Number of Decisions on Rejection Issued

Area	number of requests submitted	number of decisions issued
Competition	9	5
Public Procurement	13	1
State Aid	1	0
Significant Market Power	3	1
Legislative and Legal	12	4
General	1	0
Total	**39**	**11**

2. Number of Appeals and Complaints against Decisions pursuant to Act No. 106/1999 Coll.:

11 appeals + 2 complaints

3. Court Judgments in Relation to the Office in the Field of the Provision of Information:

0

4. Results of Proceedings on Sanctions for Failure to Comply with Act No. 106/1999 Coll.:

No proceedings were carried out.

Agenda 2013

Competition

The chief priority for the Competition division in 2013 will continue to be the fight against bid rigging. Similarly to in previous years, the Office anticipates that in 2013, several proceedings will be initiated in this field, too. This process should be assisted by the Office's own investigative activities, as well as its cooperation with public contracting authorities, which should, thanks to the Office's education programs, be more closely acquainted with the issue of bid rigging. It is also anticipated that several cases initiated in previous years will be concluded.

The Office will further be required to issue an opinion on the application of the new provisions contained in the Act on the Protection of Competition, pursuant to which it will have to monitor the activities of public administration bodies and prevent the distortion of competition through their activities. As no explanatory report has been produced for this amendment, it may not be clear to public administration bodies which rules apply to them and how they will be interpreted by the Office. Furthermore, the provisions came into effect immediately after the passing of the Act, and entities subject to them did not have an opportunity to adjust their actions to the new rules. In the first few months of its new competencies the Office is, therefore, being restrained; however, activity in this area can be anticipated following the publication of the rules of interpretation currently in preparation.

The Office intends to publish new (modernized) rules of interpretation in other areas, too, on the one hand in relation to the evaluation of concentrations, and on the other in relation to specific procedural tools such as the leniency program or settlement procedure.

Public Procurement and Concessions

Further amendments on the horizon?

We expect that discussion amongst experts and the public on the future direction of legal regulations governing public procurement will continue into this year, too, as the field of public procurement has become a phenomenon followed across the whole of society. The Office will hope to take an active role in these discussions and will support any solutions that assure tenderers for contracts the conditions for a fair, transparent procedure for the awarding of public contracts, while at the same time creating a functioning, comprehensible environment, where the rule of law applies, for the selection of the most suitable tender. The Office will not, on the other hand, support legislative steps that increase the administrative burden placed on contracting authorities or tenderers, or which reduce the level of transparency of award procedures, without good reason.

Package of modernizing EU guidelines

Discussions on the form of rules for public procurement will be on the agenda not only in the Czech Republic, but also in the European Union, as the reform of public procurement legislation at a European Union level is one of the twelve priorities listed in the Single Market Act, approved in April 2011. Discussions are now underway on the form to be taken by new European Parliament and Public Procurement Commission guidelines and guidelines related to sector contracting authorities in the European Parliament. At the same time, consideration is also being given at the EU level to the introduction of new rules for concessions, which had hitherto been regulated to only a limited extent by EU law. According to the original EU schedule, EU bodies were supposed to accept a revised, modernized legal framework for public procurement before the end of 2012, making public procurement more flexible, allowing public procurement to be better applied in support of other policies. However, discussions on the final form of the text are still ongoing and the completion of the approval process is now anticipated for the second half of 2013. If proposals are approved in

their current form it can be expected that the principal change will be in the requirement for award procedures to be carried out in electronic form.

State Aid

In relation to the approval of the so-called modernization package, the objective of which is the complex reform of the rules governing state aid, the revision of key regulations governing the provision of state aid will continue into 2013. The amended regulations should be approved by the end of 2013 so that they can be applied from 1 January 2014 onwards. Rules for regional aid, on the basis of which the Office shall submit a new map of regional aid for the period 2014-2020 to the European Commission for notification purposes, should be approved by the middle of the year.

Based on consultation initiated, the European Commission will, in the course of the year, submit concrete proposals for amendments to individual regulations, e.g. the new, draft Community Framework for State aid for research and development and innovation, the general block exemption regulation[1], regulation on de minimis aid[2] and the procedural regulation[3]. All activities in relation to the negotiation and approval of the new EU regulations are coordinated on behalf of the Czech Republic by the OPC, which also participates in meetings of the member states with the European Commission in Brussels and prepares the final opinion of the Czech Republic on individual Commission proposals.

2013 is the final year for the current program period; in the context of preparations for the new program period from 2014 onwards, the Office's efforts will also be directed towards the preparation of new operational programs. In order to ensure compliance with the relevant EU legal regulations, as well as on the basis of the notice of the European Commission to member states to ensure the compliance of the provision of finance from European funds with the rules of state aid, it will be necessary to frame operational programs so that they comply with all of these rules. It will be necessary to notify the European Commission of programs designed to identify state aid, either on the basis of a block exemption or through proper notification.

In 2013, the Office will also focus on increasing the awareness and knowledge of providers of state aid and other specialists of the new approach taken by the European Commission in the assessment of the financing of infrastructure projects from the point of view of the presence of state aid in light of the aforementioned Tribunal judgment in the Leipzig/Halle case.

In connection with new EU regulations governing state aid provided in the form of settlement payments for the provision of services of general economic interest, (SGEI), which came into effect in 2012, and thanks to the support of the Ministry for Regional Development, a new methodological manual is currently in preparation to aid applicants and suppliers of these services in providing SGEI in the legislative context of the Czech Republic in a manner that also complies with EU rules. SGEI includes a wide range of local services, e.g. healthcare, social services, operation of public amenities, etc., with these services typically being ordered by regions, towns and municipalities. The manual intended for these entities will describe concrete procedures in the selection of suppliers, their vetting, calculation of settlement payments and other obligations of the ordering party. The manual will show examples of the most frequent types of SGEI and should be available by the middle of 2013.

1 Commission Regulation (EC) no. 800/2008, declaring certain categories of aid compatible with the common market in application of Articles 87 and 88 of the Treaty (General block exemption Regulation)
2 Commission Regulation (EC) no. 1998/2006, on the application of Articles 87 and 88 of the Treaty to *de minimis* aid
3 Commission Regulation (EC) no. 659/1999, laying down rules for the application of Article 93 of the EC Treaty

Significant Market Power

Due to the fact that the need for the amendment or drawing-up of a new draft act is still current, the main goal for 2013 will be to prepare a draft amendment of the Act. Work on this was started at the end of 2012 and will continue in 2013 so that the draft is ready by the end of the year.

HR Policy

The year 2012 was a dynamic one, a year in which the Office succeeded in realizing a number of long-prepared changes, from an increase in the number of permanent employees to the expansion of the Office's premises to the new systemization of the OPC. Some long-term projects were brought to a successful conclusion and their outcomes became part of OPC personnel policy. A number of new organizational guidelines came into being together with the introduction of new procedures. The goal for 2013 will therefore primarily be stabilization of both the organization and personnel. The newly introduced procedures will be tested and further adjusted according to the Office's needs so as to achieve the best results possible in the field of human resources.

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ÚŘAD PRO OCHRANU HOSPODÁŘSKÉ SOUTĚŽE
OFFICE FOR THE PROTECTION OF COMPETITION