

ANNUAL REPORT 2019



OFFICE FOR
THE PROTECTION
OF COMPETITION

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ÚŘAD PRO OCHRANU HOSPODÁŘSKÉ SOUTĚŽE
OFFICE FOR THE PROTECTION OF COMPETITION

Office for the Protection of Competition

tř. Kpt. Jaroše 7, 604 55 Brno, Czech Republic

Editorial Board: Milena Marešová, Martin Švanda

Photo: Archives of the Office, Michaela Holly, Jef Kratochvíl

Telephone: +420 542 167 111

E-mail: posta@uohs.cz

<https://www.uohs.cz/en>

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FOREWORD



The year 2019 was undoubtedly one of the most difficult in the history of the Office for the Protection of Competition. First of all, I therefore consider it necessary to open the Annual Report on the Office's activities by thanking all employees who responsibly fulfilled their duties and independently decided cases in the areas of competition, public procurement as well as significant market power and dealt with State aid issues, notwithstanding the difficult conditions and the unfavourable media climate.

In the area of public procurement supervision, which was most exposed to public interest, the Office has already been active for a quarter of a century, and despite changes in legislation, it has built a consistent decision-making practice based on abundant case law and it has a team with unique know-how, which is able to quickly and effectively deal with one of the most difficult subjects in the whole state administration. Despite the difficult conditions outlined above, the Office issued almost 1,700 substantive and procedural decisions within 353 proceedings as part of the first-instance review of public procurement during 2019. The cases were decided in the shortest time limit in the history of the Office, when it took 30 days on average to conclude the administrative proceedings in the first instance, and the second instance decided within 54 days.

In the field of competition, the Office's long-term focus on prohibited bid rigging agreements, i.e. cartels in public procurement, pays off. In the analysis published by one of the foreign news agencies dealing with competition issues, the Office was assessed as the second most active competition authority in detecting bid rigging within the Member States of the European Union. Even in 2019, the Office did not reduce its efforts, conducting 20 dawn raids, resulting in 9 issued cartel decisions majority of which dealt with bid rigging cases. However, the Office was not idle in other areas of protection of competition, and final fines in amount of almost CZK 340 million were imposed in the second instance.

Considerable success was achieved in protection against the abuse of significant market power, when the Office reached a settlement agreement with the REWE Group resulting not only in the immediate correction of illegal conduct, but also in a payment of a fine of CZK 164 million. Similarly, a fine exceeding CZK 46 million was imposed on retail chain MAKRO Cash & Carry ČR, and companies GLOBUS and Albert accepted commitments. The Office therefore effectively enforced compliance with the Significant Market Power Act in order to achieve balanced supplier-buyer relations in food retail sector.

The standard level was maintained in the area of State aid activities, in which the Office has acted as a coordinator in negotiations with the European Commission for the authorisation of specific State aid, while providing guidance and consultation to State aid providers.

I do believe that the outcome of the Office's work presented in this Annual Report is the best way how to prove the necessity of the competition authority concerning efforts to increase the competitiveness of the Czech economy. At the same time, I do believe that the next year will be less turbulent for the Office, so it will be able to fully focus on its work again.

A handwritten signature in blue ink, appearing to read 'P. Rafaj', written over a light grey background.

Petr Rafaj
Chairman of the Office
for the Protection of Competition

ABOUT THE OFFICE

SCOPE OF COMPETENCE

The Office for the Protection of Competition (hereinafter referred to as "the Office") is a central state administration body with competences in the fields of protecting competition, supervision of public procurement, control of significant market power and coordination and guidance in relation to the State aid.

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

- The main legal framework in the field of competition is defined by the Act No. 143/2001 Coll., on the Protection of Competition. At the same time, the Office may apply Articles 101 and 102 of the Treaty on the Functioning of the European Union. The related competences of the Office concerning inter-banking fees have been regulated by the Act No. 370/2017 Coll., on Payment System.
- In the field of public procurement, the main legal framework is represented by the Act No. 134/2016 Coll., on Public Procurement, since October 2016. Nevertheless, the Office has supervisory power only, i.e. it supervises transparent, reasonable, non-discriminatory and fair approach of contracting authorities to tenderers. Some administrative proceedings are still being conducted pursuant to the previous Act No. 137/2006 Coll., on Public Contracts.
- The significant market power of retail chains vis-à-vis their food and agricultural suppliers is regulated by the Act No. 395/2009 Coll., on Significant Market Power in the Sale of Agricultural and Food Products and Abuse Thereof.
- The area of State aid is regulated mainly by the EU legislation, at the national level it is governed by the Act No. 215/2004 Coll., Amending Certain Relationships within the Area of State Aid and Altering the Act on Promotion of Research and Development.

IMPORTANT FIGURES FOR 2019

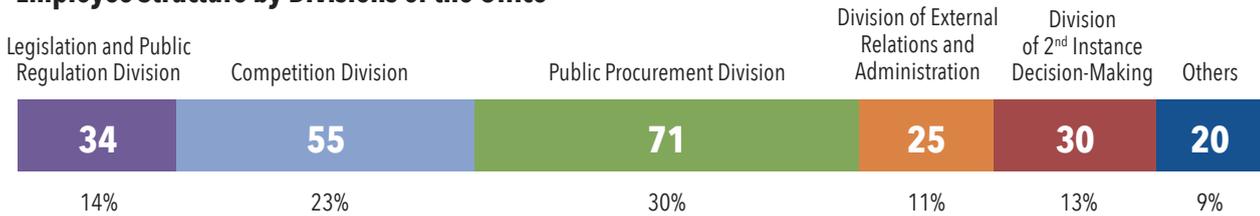
5,691
Acts Performed

2,056
DECISIONS ISSUED

673 Administrative
Proceedings
Initiated

CZK 677,000,000
AMOUNT OF FINES IMPOSED

Employee Structure by Divisions of the Office

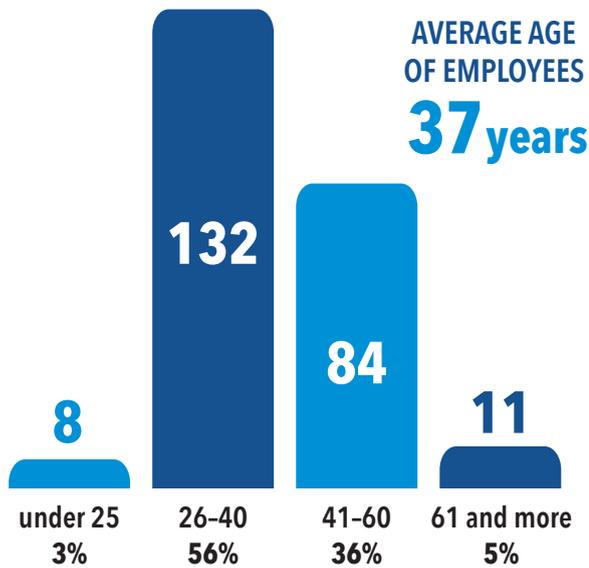


Total Number of Employees

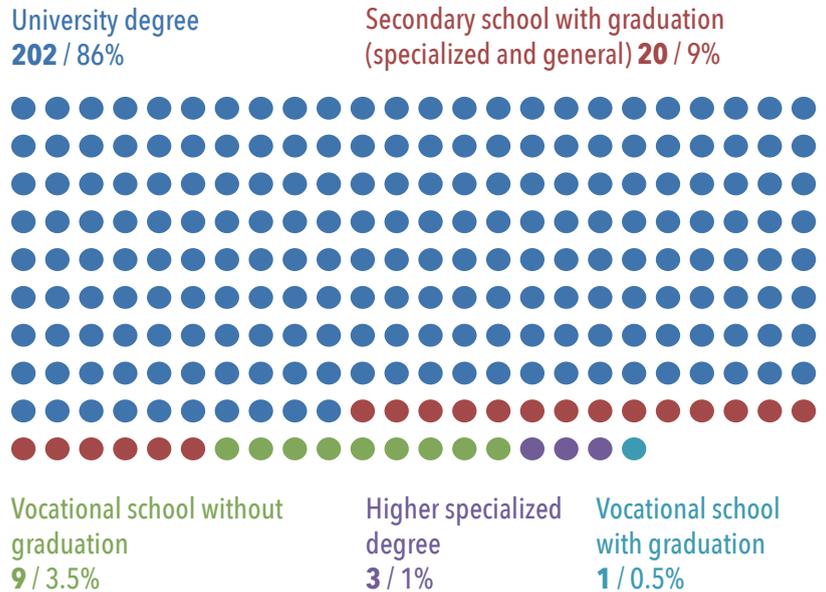
235

as of 31 December 2019

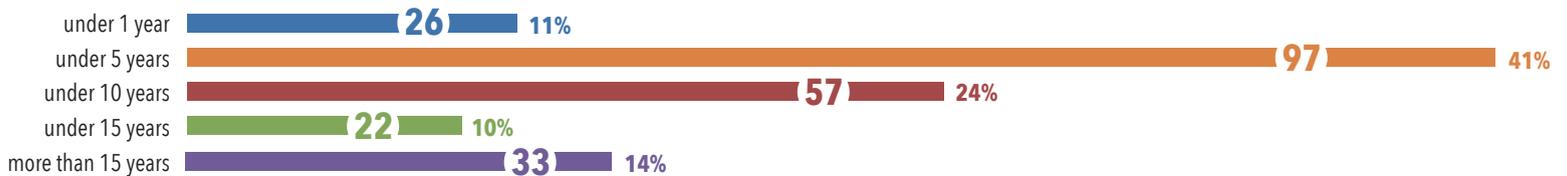
Employee Structure by Age



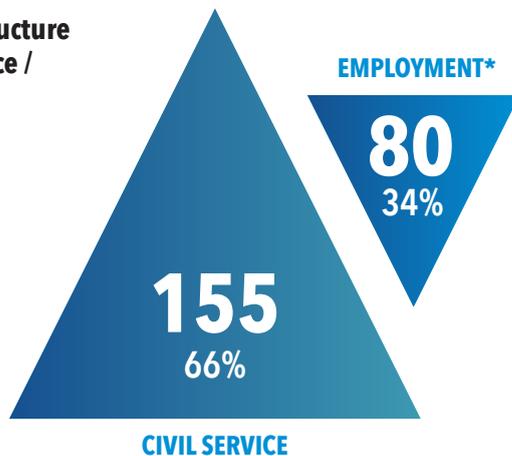
Employee Structure by Level of Education



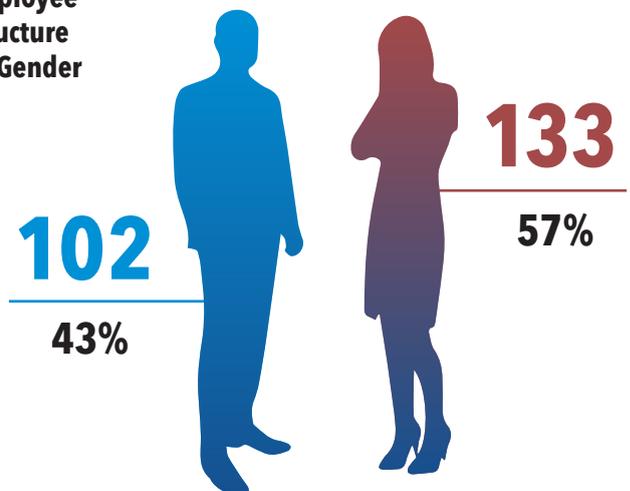
Length of Employment Relationship of Employees



Employee Structure by Civil Service / Employment



Employee Structure by Gender



* of which 37 employees were recruited pursuant to Article 178 of the Civil Service Act, i.e. as an employee in an employment relationship at a civil service post

COMPETITION

Competition between market players constitutes fundamental prerequisite for functioning free market economy. It is beneficial not only to consumers, to whom it brings lower prices and a wider variety of goods, but also to undertakings, as they are forced to increase efficiency and innovation in their production. In order to bring the above-mentioned benefits, the competition must not be distorted. The rules governing which conduct distorts and harms competition are laid down by the competition law.

The Office has been the authority responsible for supervising compliance with the competition law in the Czech Republic since 1991. It is currently carried out on the basis of the Act No. 143/2001 Coll., on the Protection of Competition (hereinafter referred to as "the Competition Act").

In particular, the Office shall ensure that competition is not distorted by:

- prohibited (cartel) agreements between undertakings,
- abuse of dominant position,
- as a result of concentrations of undertakings (mergers),
- discriminatory conduct by public authorities.

CZK 338 million

Total amount of fines imposed
in the second instance for infringement
of competition rules

LEGISLATION

There were no changes in the relevant legislation at the national level in 2019, however, the Office was actively involved in a major European legislative activity, resulting in adoption of the Directive (EU) 2019/1 of the European Parliament and of the Council to empower the competition authorities of the Member States of the EU to be more effective enforcers and to ensure the proper functioning of the internal market (hereinafter referred to as "ECN+ Directive"). The aim of this project is to enforce EU competition rules more effectively by the national competition authorities in the areas of untapped potential. Council Regulation (EC) No 1/2003 on the implementation of the rules on competition laid down in Articles 81 and 82 of the Treaty on the Functioning of the European Union (hereinafter referred to as "the Treaty" or "TFEU"), does not address specific tools and instruments through which national competition authorities apply EU competition rules, and many of these authorities do not have all the tools and instruments needed to effectively enforce Articles 101 and 102 of the Treaty. In particular, these are the areas of competition authorities' independence, appropriate enforcement tools for detection and punishing anticompetitive conduct including powers to investigate electronic storages and devices, options to impose considerable procedural fines and cross-border enforcement of sanctions. The fundamental part of the ECN+ Directive is the harmonisation of rules on so-called leniency programme in order to ensure a very robust common standard across the EU, so that undertakings have the same safeguards and procedural instruments of leniency programmes when infringing EU and national competition rules.

In this context, the Office focused on the evaluation of the content of the ECN+ Directive, the level of harmonisation of the rules and instruments concerned at the national level, in particular with regard to conditions of independence, cooperation with the police authorities, procedural fines and periodic penalty payments, the leniency programme and enforcement of foreign decisions in the field of competition. The Office has prepared a draft of a comprehensive amendment to the Competition Act in order to meet the requirements arising from the ECN+ Directive to the Czech legislation. The Office expects that the draft will be submitted to the legislative process in 2020.

During 2019 the Office focused also on the issue of so-called whistleblowers. This was a consequence of legislative changes on the EU level, where the Directive (EU) 2019/1937 of the European Parliament and of the Council on the protection of persons who report breaches of Union law was adopted. A comprehensive regulation has been put in place to ensure the conditions for the protection of individuals who alert to non-compliance with common rules in all areas of the rule of law, in order to give them maximum space while protecting them from being punished by entities entrusted with greater power (employers, public authorities, etc.), whose unfairness can be highlighted by a whistleblower. Increase in the number of quality complaints pointing out to possible anticompetitive conduct and the protection of the complainants was included in the Office's priorities for 2020.

OUTCOME OF PROTECTION OF COMPETITION

In 2019, the Office issued a total of 59 first-instance decisions in compliance with the Competition Act. A total of 53 administrative proceedings were initiated within the same year. For offences consisting in the infringement of the Competition Act, the Office imposed fines totalling more than CZK 107 million in the first instance, and in the second instance the final fines amounted to CZK 338 million.

The Office also conducted 20 unannounced inspections during which it secured evidence at the premises of undertakings.

The Office issued a total of 13 first-instance decisions concerning prohibited agreements, which are a long-term priority of the Office. Exactly nine of those were horizontal agreements, out of which in six administrative proceedings, an anticompetitive conduct was proven and fines were imposed. In particular, a final conclusion of the so-called construction cartel should be brought to attention, where, despite the impossibility to use evidence obtained during inspections, the Office proved the anticompetitive conduct in some parts and imposed fines totalling CZK 23,832,000 within three proceedings.

The Office also revealed four prohibited vertical agreements. In one of these cases, the company BABY DIREKT was fined in excess of CZK 40 million for resale price maintenance.

Also four administrative proceedings were concluded in whole or partially within the settlement procedure, which means that a party to the proceedings pleads guilty and cooperates with the Office, for which its fine is lowered by 20%. Such decision is usually not appealed by a party to the proceedings, so there is a significant saving of resources. The Office also received six leniency applications.

Furthermore, three administrative proceedings in cases of abuse of a dominant position were concluded. In this area, a fine of more than CZK 10 million was imposed on OSA – Ochranný svaz autorský pro práva k dílům hudebním (a professional association of composers, lyricists and musical publishers). Thanks to the intervention of the Office, the prices of spare parts for Renault Trucks vehicles for unauthorized service providers were reduced as well.

Finally, three decisions were issued in cases related to the infringement of Article 19a of the Competition Act, i.e. the anticompetitive conduct of public authorities. For the infringement consisting of discrimination of undertakings, in particular through the so-called lottery decrees issued by municipalities, fines were imposed in excess of CZK 1.5 million.

In the area of concentrations of undertakings, 40 decisions were issued, all of which approved concentrations in question. However, three administrative proceedings had to be moved to the second phase, and in two of these, concentrations were approved only under the condition of fulfilment proposed commitments to address Office's concerns of serious distortions of competition.

STATISTICS

Number of complaints received	
Concentrations between undertakings	1
Prohibited agreements	68
Anticompetitive conduct of public authorities	10
Abuse of dominant position	46
Others	8
Total	133

Number of administrative proceedings initiated	
Concentrations between undertakings	37
Prohibited agreements	12
Abuse of dominant position	1
Anticompetitive conduct of public authorities	3
Total	53

Number of decisions issued	
Concentrations between undertakings	40
Prohibited agreements	13
Abuse of dominant position	3
Anticompetitive conduct of public authorities	3
Total	59

SIGNIFICANT CASES

PROHIBITED AGREEMENTS

Civil Engineering Cartel Agreements

Parties to the proceedings: **AVE CZ odpadové hospodářství, s. r. o.**; **COLAS CZ, a. s.**; **DAICH, spol. s r. o.**; **HOCHTIEF CZ, a. s.**; **KOSTKA JH, s. r. o.**; **Lesostavby Třeboň, a. s.**; **NDC REAL ESTATE, a. s.**; **OHL ŽS, a. s.**; **SWIETELSKY stavební, s. r. o.**; **STRABAG, a. s.**; **VIALIT SOBĚSLAV, spol. s r. o.**; **VIDOX, s. r. o.**

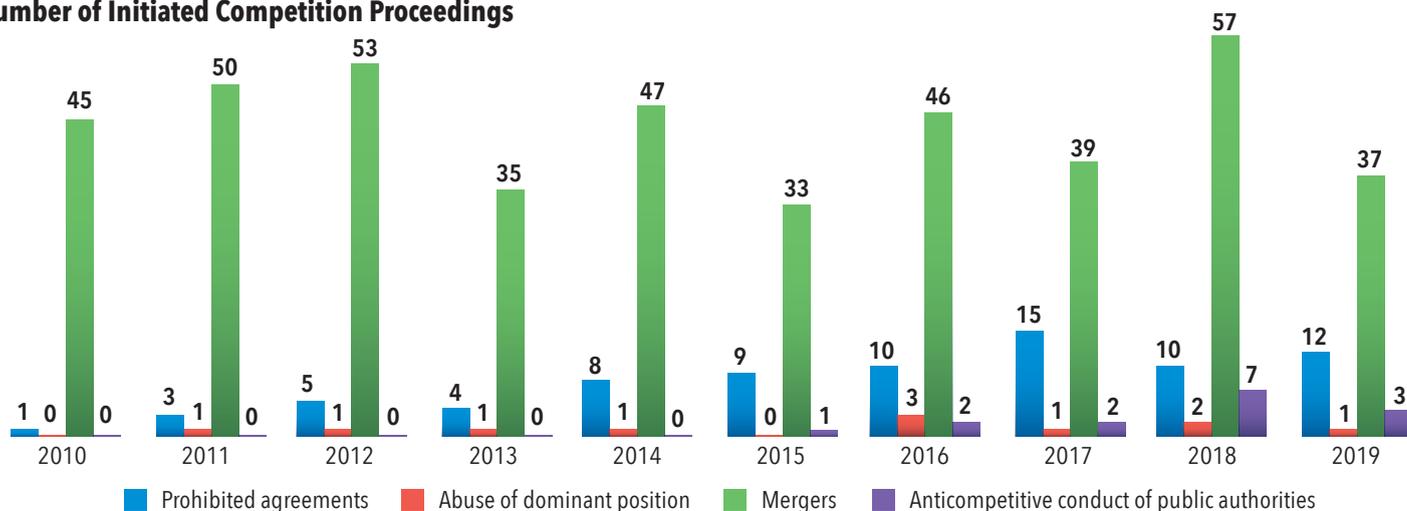
First-instance fines: CZK 23,832,000

(S0070/2019/KD, coming into force on 9 December 2019; S0071/2019/KD, coming into force on 21 October 2019; S0072/2019/KD, coming into force on 13 September 2019; S0426/2012/KD, coming into force on 29 October 2019)

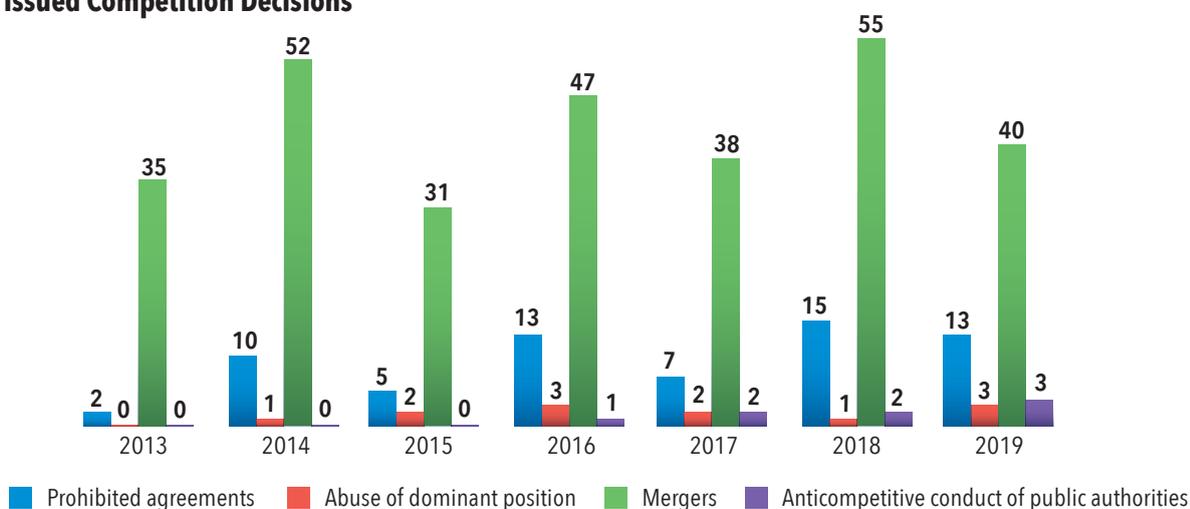
The Office imposed fines totalling CZK 23,832,000 within three administrative proceedings on six companies which participated in three bid rigging cartels in the context of public contracts awarded by municipalities of Hadravova Rosička, Drunč and Urbanov. In the administrative proceeding in question, the Office found infringements of the Competition Act in relation to three public contracts awarded in 2009, the amount of which totalled almost CZK 14 million excluding VAT. The most significant of these was the public contract "Kanalizace a ČOV Hadravova Rosička" ("Sewerage and WWTP Hadravova Rosička") with a total value of almost CZK 7 million. According to the Office, the companies in question infringed the Competition Act by coordinating participation and bids in tenders for the public contracts in question.

These administrative proceedings were part of a broad investigation in the civil engineering sector launched in 2012, in which a total of six administrative proceedings were conducted. The initial decision of the second instance has been subject to a judicial review which resulted in a judgment of the Supreme Administrative Court of 30 January 2019, which found, inter alia, the illegality of inspections carried out in the context of the administrative proceedings and the inapplicability of the documents seized within them. On the basis of the conclusions of this judgment, the Office excluded three separate administrative proceedings from the original case, in which it imposed fines for anticompetitive conduct. In the remaining parts, the original proceedings were terminated.

Number of Initiated Competition Proceedings



Number of Issued Competition Decisions



In the first proceeding, the companies SWIETELSKY stavební, AVE CZ odpadové hospodářství and VIALIT SOBĚSLAV were fined in the total amount of CZK 16,524,000. In case of the undertaking NDC REAL ESTATE, the Office did not prove infringement of the Competition Act and fine was not imposed. Company SWIETELSKY stavební submitted settlement application and its fine was reduced by 20%. Companies AVE CZ odpadové hospodářství and VIALIT SOBĚSLAV filed an appeal against the decision, but the Chairman of the Office confirmed the decision on 6 December 2019.

The parties to the second administrative proceedings were DAICH, NDC REAL ESTATE and Lesostavby Třeboň. The companies DAICH and NDC REAL ESTATE were fined in the total amount of CZK 2,396,000, whilst the infringement of the company Lesostavby Třeboň was not proven. The appeal filed by the DAICH was rejected by the Chairman of the Office on 21 October 2019, and the first-instance decision was confirmed.

All parties to the third administrative proceedings, i.e. SWIETELSKY stavební, NDC REAL ESTATE and KOSTKA JH applied for a reduction of fine (settlement), and because they met all the legal requirements, the fines were reduced by 20%. The amount of fines imposed within these proceedings totalled CZK 4,912,000.

Significant Fine for Long-Term Anticompetitive Conduct

Party to the proceedings: **BABY DIREKT, s. r. o.**

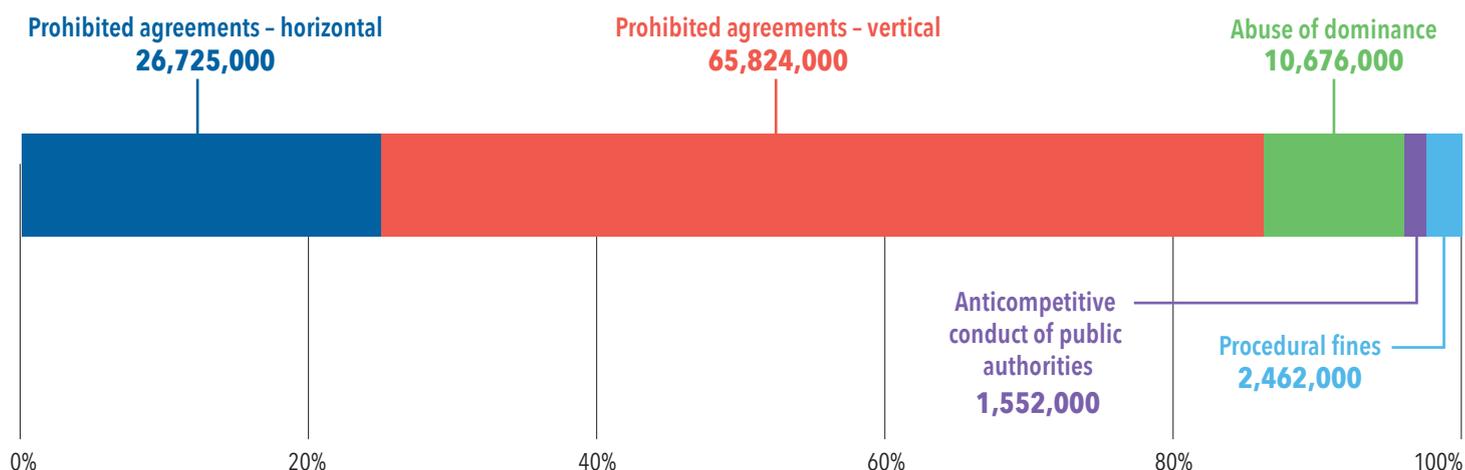
First-instance fine: CZK 40,793,000

(S0385/2018/KD; an appeal has been filed)

The Office imposed a fine on the company BABY DIREKT for infringement of the Competition Act as well as EU competition law.

During 2011–2018, BABY DIREKT entered into prohibited vertical price agreements mainly through oral or e-mail communication with its retailers of children's goods. BABY DIREKT threatened retailers with penalties for not complying with the minimum price limits or even penalized them in the form of non-delivery of goods.

Fines Imposed by First Instance in 2019 (in CZK)



Conclusion and implementation of prohibited agreements on the direct price maintenance for resale distorted competition in the relevant markets of the sale of strollers, car seats, children's furniture and vehicles within the territory of the Czech Republic and it had an impact on trade between Member States of the EU. The penalty was imposed under the new guidelines on fines published by the Office in 2018 and its amount was mainly influenced by the long-term infringement of competition law and also by the fact that already in 2014 the Office warned the company BABY DIREKT about possible anticompetitive nature of its conduct. Nevertheless, BABY DIREKT continued in its unlawful conduct despite this warning. An appeal has been filed against the decision.

ABUSE OF DOMINANT POSITION

The Office Imposed Fine on Collective Management Organisation OSA for Abuse of Dominant Position

Party to the proceedings: **OSA - Ochranný svaz autorský pro práva k dílům hudebním, z. s. (professional association of composers, lyricists and musical publishers)**

First-instance fine: CZK 10,676,000

(S0249/2018/DP; an appeal has been filed)

By its first-instance decision, the Office imposed a fine in the amount of CZK 10,676,000 on the collective management organisation OSA for abuse of dominant position.

The collective management organisation infringed both the Competition Act and EU competition rules by imposing inadequate conditions on accommodation facilities for acquiring licenses for usage of copyright by means of audio or audio-visual devices in rooms of accommodation facilities between 19 May 2008 and 6 November 2014.

The abuse consisted in the fact that within the above-mentioned period, the party to the proceedings did not take into account the occupancy of rooms in accommodation facilities. On that basis, the operators of accommodation facilities paid for licences even when the room was not occupied at all and the work could not be communicated to the public. It is worth mentioning that the party to the proceedings had taken the occupancy of rooms into account until 18 May 2008 as a relevant criteria for calculation of royalties, but it seized from this practice in connection to the introduction of statutory regulation of the maximum level of royalties.

The Office found that the requirement of royalty payment even in cases when it can be proved that the copyright work could not be used by the acquirer of the license, i.e. when the room was not occupied and therefore no consideration was provided, it cannot be seen as an adequate condition and thereby it does not fulfil the requirement of proportionality of mutual performance and consideration of the contract. Given the fact that the OSA represents foreign authors as well, the Office considered that the trade between the Member States of the EU had been affected.

The decision is not final, as an appeal has been filed.

The Office's Intervention Made Spare Parts Cheaper for Unauthorized Services

Party to the proceedings: **Volvo Group Czech Republic, s. r. o.**

Outcome of the proceedings: Acceptance of commitments
(S0060/2017/DP; coming into force on 7 August 2019)

The Office terminated the administrative proceeding with Volvo Group Czech Republic regarding possible abuse of a dominant position after the company had submitted commitments with the aim to adjust the discounts granted to independent repairers for the purchase of original spare parts for Renault Trucks.

The amount of the discounts set by Volvo to certain independent repairers, in particular those who were its authorized partners until the end of 2014, could reduce the competitiveness of these independent repairers, and thus limit their activity.

The party to the proceedings cooperated with the Office during the administrative proceeding and subsequently proposed commitments to eliminate the Office's concerns and to effectively address the situation. The Office concluded that the proposed commitments improve the competitiveness of independent repairers in the market and these are therefore sufficient. On this basis, the Office terminated the administrative proceeding.

ANTICOMPETITIVE CONDUCT OF PUBLIC AUTHORITIES

Municipalities Fined for Anticompetitive Lottery Decrees

Party to the proceedings: **Municipality of Česká Lípa**

First-instance fine: CZK 444,000

(S0516/2018/VS; coming into force on 2 July 2019)

Party to the proceedings: **Municipality of Krupka**

First-instance fine: CZK 280,000

(S0478/2018/VS; confirmed by the appeal decision, coming into force on 1 October 2019)

By its first-instance decisions, the Office imposed a fine of CZK 444,000 on the municipality of Česká Lípa and CZK 280,000 on the municipality of Krupka for the infringement of Article 19a of the Competition Act, which forbids public authorities to favour certain undertakings.

The administrative proceeding with Česká Lípa was concluded by means of a settlement procedure, which reduced the fine by 20%. The municipality of Česká Lípa achieved a further reduction of the fine by 20% by removing the harmful consequences of the offence shortly after the initiation of the administrative proceeding.

Both entities have committed infringements by authorising the operation of gambling, lotteries and other similar games within their territory only at certain locations set out in the relevant generally binding decrees, without selecting the locations on the basis of objective, non-discriminatory and transparent criteria, thereby distorting competition in the market for the operation of gambling, lotteries and other similar games and in the market of operating facilities, in which gambling, lotteries and other similar games may be operated.

This conduct has favoured undertakings who can continue to operate gambling, lotteries and other similar games and facilities, in which gambling, lotteries and other similar games may be operated at locations set in generally binding decrees.

Statutory City of Brno Did Not Comply with Its Own Rules

Party to the proceedings: **Statutory city of Brno**

First-instance fine: CZK 828,000

(S0232/2018/VS; an appeal has been filed)

By its first-instance decision, the Office imposed a fine of CZK 828,000 on the Statutory city of Brno for anticompetitive conduct of public authorities by failing to allow the activities of one of undertakings in the field of gambling in contrary to its own rules.

The Statutory city of Brno adopted rules containing the conditions for the inclusion of an additional location to a generally binding decree regulating the operation of gambling. However, the city did not allow the undertaking FORBES Casino to operate gambling when it failed to amend its generally binding Decree No. 12/2017 on the regulation of the operation of gambling, and did not include the facility of that undertaking between authorized sites as of 1 January 2018. This happened despite the fact that the undertaking fulfilled all the conditions laid down in the Decree and the request for the inclusion of the facility was served on time. The facility was included in the Decree later on 22 September 2018.

The city did not disclose any objective reasons why it infringed its own rules and did not place the FORBES Casino facility among the authorized sites in time. The city thus distorted competition in the market in question and infringed the Competition Act, which prohibits public authorities from discriminating against certain undertakings.

Concentrations Between Undertakings by Type of Decision



Concentration of Bakeries Approved under Commitments

Concentration of undertakings: **AGROFERT, a. s. / UB HOLDING, a. s.**

Decision: Approved, subject to commitments

(S0426/2018/KS; coming into force on 29 May 2019)

Within the second-phase investigation the Office approved the acquisition of UB HOLDING by AGROFERT, which gave the acquirer the opportunity to exercise exclusive control over UB HOLDING and its subsidiary UNITED BAKERIES subject to the fulfilment of several structural commitments. The proposed transaction constituted a horizontal merger of the two most important producers and wholesalers of bakery and confectionery products within the territory of the Czech Republic.

In the administrative proceeding, the Office dealt in particular with the impact of the concentration of undertakings in the relevant markets concerned for the wholesale of fresh bread and bread products, the wholesale of toasted bread, the wholesale of fresh rolls and the wholesale of other fresh plain bread. At the same time, the Office assessed the effects of the merger on the wholesale of fresh pastry, wholesale of durable sweet pastries, retail sales of bakery and confectionery products, wholesale of pre-baked and frozen pastries and wholesale of mill products.

In order to assess the impact of the proposed concentration, the Office reached out to all major producers of bakery and confectionery products in the Czech Republic and customers of the merging parties with a request for information and opinion. The evidence obtained from the third parties as well as the information submitted by the merging parties within the administrative proceeding showed that the concentration raised significant competition concerns resulting from the expansion of AGROFERT's activities in the wholesale markets for fresh bread and bread products, toast bread, fresh rolls and other fresh plain pastries. In particular, the merged entity would have a substantial market share when the other competitors would have a significant distance behind it, which would not allow them to create sufficient competitive pressure on AGROFERT in view of the other characteristics of the sector concerned.

In order to address the Office's competition concerns, AGROFERT accepted structural commitments as a result of which it is obliged to sell several production plants of the merging parties. The divestiture will result in substantial reduction of acquirer's market shares in the markets affected by concentration and creation of a new undertaking or strengthening one of the existing competitors, which will create a real competitive pressure on merged entity and thereby the competition maintain effective.

CASES SOLVED OUTSIDE ADMINISTRATIVE PROCEEDINGS

In 2019, the Office concluded an investigation of two professional associations, namely the Czech Society of Cinematographers and Associations of Professional Photographers in the Czech Republic. The Office launched an investigation on its own initiative, finding that both associations, as associations of undertakings, propose best practices for determining the amount of fees for services provided by professional cameramen and/or photographers respectively.

During a more detailed investigation, the Office found that only a small number of active undertakings were associated in each of the associations. The Office also found that both associations were primarily engaged in the professional aspect of the field and not in its commercial site, and the procedures in question for determining the amount of the fee for the services provided could be considered to be outdated and practically unusable in each field.

Immediately after the initiation of the investigation and, under the supervision of the Office, both associations took corrective measures informing its members and the professional public that the issue or enforcement of the recommended procedure, which would lead to the determination of the amount of the fee for the services provided, is a conduct of a professional association which is prohibited by law and is anticompetitive in its nature. In the light of the above-mentioned facts, the Office decided not to initiate the administrative proceedings, taking into account that each association had taken corrective action which the Office considered sufficient to remedy the illegal situation.

Merger in Sector of Wholesale of Non-original Spare Parts for Motor Vehicles

Concentration of undertakings: **LKQ German Holdings GmbH / heptus 292. GmbH (APM Automotive, s. r. o., STAHLGRUBER CZ, s. r. o.)**

Decision: Approved, subject to commitments (S0239/2018/KS; coming into force on 14 May 2019)

Within the second phase, the Office approved concentration of undertakings LKQ German Holdings and heptus 292. subject to commitments proposed by the merging parties in order to maintain and develop effective competition. The assessed concentration was part of a wider transaction already approved by the European Commission (hereinafter referred to as "the Commission"), in which the LKQ group acquired the exclusive control over the German company Stahlgruber. The Office requested the Commission to make its own assessment over a part of this concentration concerning the wholesale distribution market of non-original spare parts for light vehicles in the Czech Republic. In relation to the Czech Republic, LKQ was to acquire exclusive control of heptus 292. and through it the possibility to jointly control (with Ernst Markmiller) at CZ Aftermarket Holding. This company exclusively controlled STAHLGRUBER CZ and APM Automotive within the territory of the Czech Republic.

When assessing the impacts of the concentration, the Office focused on the wholesale of (non-original) light vehicle spare parts to independent car repairers (i.e. independent aftermarket) in the Czech Republic. Based on the impact assessment of the proposed transaction, the Office found out that the concentration raises concerns of significant distortion of competition resulting from the expansion of LKQ group's activities in the wholesale distribution market of non-original spare parts for light vehicles in the Czech Republic as well as at all of its sub-markets represented by the territory of particular regions of the Czech Republic.

However, the party to the proceedings proposed commitments in favour of maintaining effective competition. The commitments included, in particular, the transfer of APM Automotive and some of STAHLGRUBER CZ's stores to an independent entity which is competent to operate the wholesale distribution network for the supply of non-original spare parts for vehicles within the territory of the Czech Republic effectively. The Office approved the concentration on condition that the above-mentioned commitments shall be implemented.

SECOND-INSTANCE PROCEEDINGS

A total of 20 appeals were filed against first-instance decisions in the field of competition in 2019, and 20 second-instance decisions were issued. Within 14 decisions on merits, in 9

cases the appeal was rejected and the first-instance decision was confirmed, in 1 case the appeal changed the first-instance decision and in 3 cases, it was cancelled and returned to the first instance. In one case, the decision was partially confirmed and partially changed for some parties to the proceedings.

Fines totalling CZK 338,661,000 were imposed for anticompetitive conduct, of which CZK 63,257,000 in the area of prohibited agreements, CZK 274,797,000 in the area of abuse of dominant position and CZK 607,000 in the area of anticompetitive conduct of public authorities.

SIGNIFICANT CASES

České dráhy, a. s. – Abuse of Dominant Position

Party to the proceedings: **České dráhy, a. s. (Czech Railways)**

Final fine: CZK 274,797,000

(R0238/2017; coming into force on 15 July 2019)

According to the first-instance decision of the Office, České dráhy abused its dominant position in the market of provision of long-distance rail passenger transport services in a public service obligation in the Czech Republic by submitting bids on two lines with a very low amount of demonstrable loss and consequently it won the award procedure and became a service provider on these lines for several years.

The company was fined CZK 367,805,000 for the described conduct. The first decision was appealed and the Chairman of the Office decided in the second instance by confirming the verdict on guilt, but reduced the amount of the fine to CZK 274,797,000.

The first reason for the reduction of the fine was the fact that the Chairman accepted the objection of the party to the proceedings stating that in the first-instance decision, the Office found the aggravating circumstance with respect to intentional nature of the conduct of the party to the proceeding; however, according to the factual finding, the intention is already one of the constituent elements of the offence and as such, it should not be taken into account as an aggravating circumstance. Another reason for the reduction of the fine was the incorrect application of the absorption principle, when the Office, after determining the most serious offence (national offence on one line), aggravated the penalty for three other offences (another national and two EU offences) by 15% for each. Here, the second-instance body criticised the Office for too automatic procedure when increasing the fine for other offences without properly assessing the impact (severity) of the individual offences. The second-instance decision was challenged by an action brought before the Regional Court in Brno, which has not yet been decided.

STATISTICS

Number of appeals filed		20
Number of decision issued		20
of which	on the merits	14
	on the procedure	6
Other procedural acts		21

Fine for Booking.com for Prohibited Agreements Preventing Competition Development Confirmed

Party to the proceedings: **Booking.com B.V.**

Final fine: CZK 8,336,000

(R0219/2018; coming into force on 4 November 2019)

The Chairman of the Office rejected by his final decision the appeal of the company Booking.com and confirmed the fine amounting to CZK 8,336,000 imposed on the company for prohibited vertical agreements.

For the period from 1 May 2009 to 30 June 2015, Booking.com concluded prohibited vertical agreements with providers of short-term accommodation services within the territory of the Czech Republic, which led to distortion of competition on relevant market of mediation of online reservation of short-term accommodation in the Czech Republic and on relevant market of provision of short-term accommodation services in the Czech Republic. At the same time, the trade between Member States of the EU concerning providing services of online reservation of short-term accommodation was potentially affected by conduct of Booking.com. The decision was based, inter alia, on an extensive investigation, during which the Office addressed hundreds of accommodation facilities.

The anticompetitive conduct of Booking.com consisted in obliging its contractual partners to comply with the so-called broad price and availability parity (MFN clauses). Therefore, the Booking.com should have been granted the same or better conditions regarding the price of accommodation and the amount of free rooms available for booking than those published on the web sites of the accommodation facility or at other on-line or off-line distribution channel of a contractual accommodation facility. The accommodation facilities were limited in their own pricing policy, because according to these agreements, they were not allowed to offer better conditions (lower prices, higher availability) than the ones arranged with Booking.com. As a result of this, none of Booking.com competitors could get better conditions from the accommodation facilities. By its conduct, Booking.com prevented competition in the market, which could otherwise lead to better prices and conditions offered to the consumers looking for short-term accommodation.

Within the appeal proceeding, the Chairman rejected the objections of Booking.com concerning relevant market definition, demonstration of anticompetitive consequences or classification of the conduct under one of the statutory exemptions. The Chairman found the infringement being less serious in type, nevertheless not the minor one, and he confirmed the findings of the first-instance decision including amount of the imposed fine.

JUDICIAL REVIEW

The final decisions of the Office and its interventions may be reviewed by the administrative court – Regional Court in Brno. In 2019, a total of 30 actions were brought against the Office in competition cases, including 16 actions against decisions and 14 actions seeking protection against illegal interference. In addition, 6 cassation complaints against the judgments of the Regional Court in Brno were lodged with the Supreme Administrative Court.

The regional court ruled in a total of 12 cases, 8 times in favour of the Office. The Supreme Administrative Court ruled on 7 cases, 4 of which confirmed the correctness of the Office's decision.

Finally, 10 cases of judicial review ended in 2019, with the Office defending its decisions in 8 cases. The Office was unsuccessful only in 2 decisions related to the civil engineering cartel.

SIGNIFICANT MARKET POWER

TEN YEARS OF EXISTENCE OF SIGNIFICANT MARKET POWER ACT

In 2019, ten years passed since the adoption of Act No. 395/2009 Coll., on the Significant Market Power in the Sale of Agricultural and Food Products and Abuse Thereof (hereinafter referred to as “the Significant Market Power Act”). The reason for adoption of a completely new legal framework regulating the activities of retail chains towards food suppliers was a specific environment within the food sector, which was characterised by a significant imbalance in the business relations between customers and their suppliers, which led to the application of unfair trade practices at the expense of weaker market players. Due to the low level of concentration within the Czech retail market, it was not possible to respond to the situation by using standard competition rules. Thus, through the Significant Market Power Act, a reduction in the occurrence of abusive commercial practices, the protection of a weaker party and a normalization of customer-supplier relations in the field of food purchase for resale should be achieved.

Supervision of compliance with the Significant Market Power Act was entrusted to the Office, which had to deal with the numerous interpretive pitfalls of the new legislation at first. Nevertheless the Office has established its decision-making practice in this field over the past ten years. In addition to “regular” penalty instruments in the form of fines imposed in administrative proceedings, the Office uses other tools offered by the legislation as well, whether it is an imposition of commitments or a settlement procedure. In certain cases, the Office also significantly supports the possibility of elimination of inconsistent conduct by means of the so-called alternative procedures (i.e. without initiation of administrative proceedings).

LEGISLATION

Adoption of the Unfair Trade Practices Directive

In view of the legislative developments in the field of unfair trade practices, the adoption of Directive (EU) 2019/633 of the European Parliament and of the Council of 17 April 2019 on unfair trading practices in business-to-business relationships in the agricultural and food supply chain (hereinafter referred to as “the UTP Directive”), was the major milestone of 2019. The adoption of the UTP Directive was a very important achievement, as this concluded many years of efforts to establish a common European framework for combating unfair trade practices, which means practices that deviate significantly from the principles of fair trade, which are contrary to good faith and fair conduct and which are unilaterally forced by one trade partner to another.

The protection provided by the UTP Directive applies to agricultural producers and natural or legal persons (including producer organisations and associations of such organisations, whether recognised or not) supplying agricultural products and food products, depending on their relative bargaining power. The UTP Directive focuses on the commercial conduct of larger entities against those with less bargaining power, covering all levels of the agricultural and food supply chain. The directive uses dynamic approach based on the relative size of the supplier or the buyer in terms of annual turnover. Since unfair trade practices are particularly harmful to SMEs, protection is applicable to suppliers with annual turnover of up to EUR 350 million, buyers fall within the scope of the UTP Directive when they have an annual turnover of more than EUR 2 million.

Furthermore, the UTP Directive also provides a minimum list of prohibited unfair trade practices by buyers, such as late payments for the delivery of goods, cancellation of orders in insufficient time in advance, unilateral changes to the terms and conditions, demanding payments not related to the sale of the delivered goods, claiming compensation for deterioration of quality or loss of already delivered goods without the fault of the supplier, refusal of written confirmation of the terms of the contract, unauthorised use or disclosure of the trade supplier’s secrecy, retaliatory commercial measures for the exercise of contractual or legal rights of the supplier, demanding compensation for the costs associated with the investigation of customer complaints. The UTP Directive also lists practices that are prohibited in case these have not been clearly and unequivocally agreed in advance in the terms and conditions (for example, the return of unsold goods to the supplier without being paid by the buyer; demanding reimbursement of the cost of discounts on goods sold as part of the promotion; requiring payments for advertising of goods; payments for the placing on the market of goods; and payments for the adjustment of sales premises).

The Member States of the EU have a duty to designate an enforcement authority to enforce the rules on combating unfair trade practices and to define its powers. Member States’ competition law enforcement authorities are obliged to cooperate effectively and to report to the Commission.

The Directive is to be transposed into the legal systems of each Member State by 1 May 2021; the measures shall apply no later than by 1 November 2021.

Preparation of Amendment to the Significant Market Power Act

In case of the Czech Republic, the UTP Directive will be implemented in the form of an amendment to the Significant Market Power Act, so there is no need to introduce a completely new legal provision. Legislative work on transposition of the UTP Directive into Czech national legislation began immediately after its publication in spring 2019. The Office is actively involved in the legislative work and it also acted as a co-responsible body already in the preparation of the UTP Directive itself.

During the second half of 2019, a proposal of the amendment of the Significant Market Power Act was gradually drafted, aiming to implement rules introduced by the UTP Directive as well as to make the existing legislation more effective. The level of regulation in the field of unfair trade practices provided by the Significant Market Power Act should remain stricter than the one introduced by the UTP Directive.

Within many of the proposed options for the new text of the amendment, it was proposed, for example, to extend the existing scope of the Significant Market Power Act also to suppliers, which similarly to customers, could be in the position of a significant market power entity and would be subject to the relevant obligations and restrictions. This reciprocity would also be reflected in the list of prohibited abusive trade practices, the non-exhaustive list of which would be extended not only to certain practices defined by the UTP Directive, but also to unfair practices which suppliers should not be allowed to engage in. Furthermore, it was proposed to increase the turnover criterion proving the existence of significant market power, while retaining the rebuttable legal presumption and maintaining the auxiliary criteria for assessing significant market power (market structure, barriers to market entry, financial strength of the entity). Other changes under consideration also reflect the issue of dual-quality of food, which could be tackled for example by the proposed prohibition of preventing buyers from buying or selling food on the market in the Czech Republic, which are intended by the supplier for sale on the market in another Member State of the EU.

The final draft of the amendment to the Significant Market Power Act was not finalised during 2019, as the consultation procedure, which took place within the Ministry of Agriculture's responsibility, has not yet been concluded. The adoption of the amendment to the Significant Market Power Act is foreseen in the course of 2020.

SIGNIFICANT CASES

Commitments Accepted by Albert to Regulate Contracts for Suppliers' Benefit

Party to the proceedings: **Albert Česká republika, s. r. o.**

Decision with commitments

(S0209/2018/TS; coming into force on 26 July 2019)

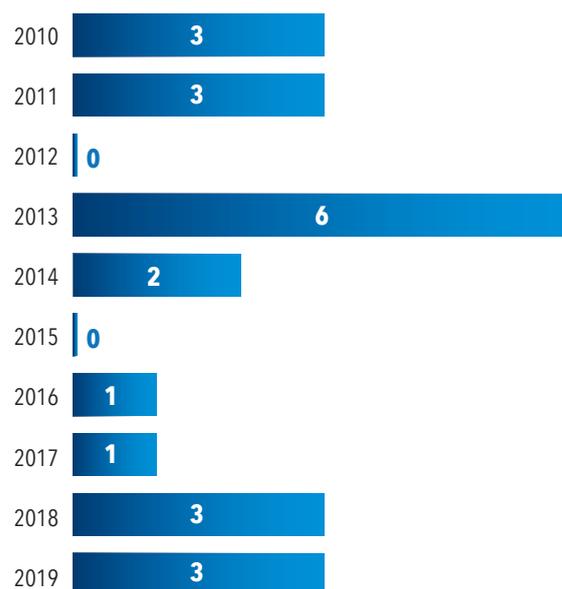
On 10 July 2019, the Office issued a decision on possible infringement of the Significant Market Power Act committed by Albert Česká republika (hereinafter referred to as "Albert"). Administrative proceeding was initiated in mid-2018 due to potentially illegal provisions contained in standardized contracts used by Albert in 2016 and 2017. The alleged infringement consisted in the fact that Albert had negotiated terms of contract with its food suppliers which included prevailing unilateral provisions to the detriment of suppliers. The problematic provisions concerned, for example, agreed property sanctions, on the basis of which the supplier was obliged to pay the customer a contractual penalty equal to tens of percent of the purchase price of the products not delivered in the event of delay in performance of the contract.

During the administrative proceedings, Albert proposed commitments to address the Office's concerns, as the position of the supplier as a generally weaker counterparty and some adjustment of the impaired customer-supplier relationship would be taken into account more appropriately. The Office assessed the commitments to be sufficient on the grounds that

Statistics of 2019

Complaints received	3
Ex-officio investigations	4
Requests on the interpretation of the law received	5
Administrative proceedings initiated	3
Administrative proceedings concluded	8
Cases solved by advocacy	1
Number of imposed fines	4
Total amount of imposed fines	CZK 210,932,000
Number of procedural fines	3
Total amount of procedural fines	CZK 195,000

Initiated Administrative Proceedings



Inspections Conducted



Total Amount of Fines Imposed in First Instance (in CZK)



they were capable of removing the objections arising from Albert's conduct and therefore terminated the administrative proceeding. All suppliers of this retail chain, to whom the proposal for the modification of existing contracts were to be submitted by 1 January 2020 at the latest, benefit from the outcome of the adopted solution.

Illegally Collected Bonuses by REWE Purchasing Alliance

Parties to the proceedings: **Rewe Buying Group, s. r. o.; BILLA, spol. s r. o.; Penny Market, s. r. o.**

Total final fines: CZK 164,372,000

(S0127/2017/TS; coming into force on 12 February 2019)

On 24 January 2019, the Office issued a decision concerning infringement of the provisions of the Significant Market Power Act allegedly committed by Rewe Buying Group (hereinafter referred to as "RBG"), BILLA and Penny Market.

The administrative proceeding was initiated on the basis of complaints which drew attention to RBG's conduct, which required the payment of the so-called RBG bonus from their suppliers as a condition of deliveries to BILLA and Penny Market. These complaints included a notice of conduct by BILLA and Penny Market, which, under the influence of the adopted amendment to the Significant Market Power Act, transferred all the bonuses required to the net prices of the supplied products and goods. Therefore, these companies applied and required the RBG bonus even after the adoption of an amendment to the Significant Market Power Act in a hidden form, in which the price of the goods and goods supplied was reduced by the bonus rate.

In the administrative proceeding, the Office demonstrated that the illegal conduct was committed by the above-mentioned companies as a purchasing alliance. The RBG bonus was introduced by the purchasing alliance before the Amendment to the Significant Market Power Act, i.e. before 6 March 2016, in the form of a cash transaction amounting to a percentage of the supplier's turnover. Following the amendment and the Office's investigation, in cases of some suppliers this bonus was transferred to the net prices of the supplied goods, and these suppliers were forced to accept the reduction in food purchase prices by a percentage of the RBG bonus, as they were afraid of supply constraints. In other cases, RBG bonus was transformed into a quantity discount and there was an increase in the already agreed quantity bonus by the percentage of the RBG bonus. Such an increase once again lacked a fair reason, but also the incentive aspect of the parties.

In the administrative proceeding, the Office also noted the situations of the application of the RBG bonus by only one of the parties to the proceedings (both on the basis of arranged RBG bonus with only one company or on the basis of arranging it with both companies and the payment is received only by one company). Such collection of the RBG bonus then completely lacked its meaning, since, as the parties stated in their communications, RBG bonus was intended to reflect, the quantity discount applied on the basis of the increased turnover of both companies.

The Office concluded that all the parties had followed the same intention as a purchasing alliance with significant market power. Pressure to conclude suppliers' cooperation with RBG and the application of RBG bonus from suppliers abused their market power in the sense that they gained an advantage over suppliers without any fair reason.

CASES SOLVED OUTSIDE ADMINISTRATIVE PROCEEDINGS

On the basis of the complaint from spring 2018, the Office examined the conduct of the purchasing alliance of entities associated around JIP východočeská (hereinafter referred to as "the purchasing alliance"). The preliminary investigation was narrowed down to two acts: (1) the deed consisting in the disproportionate setting of the quantity discount and (2) in the provision of marketing services to food suppliers under a contract that does not contain all the mandatory requirements under the Significant Market Power Act.

The Office concluded that the case was appropriate to apply an alternative procedure and ultimately terminated the case, as the purchasing alliance committed itself to take corrective action to remedy the illegal situation in customer-supplier relations.

The administrative proceeding was concluded by the imposition of a fine reduced by 20% within the settlement procedure to a total of CZK 164,372,000. Furthermore, the parties were prohibited from further committing the conduct from the date of the decision. No appeal was filed against this decision and it has already become final.

Makro Admitted Infringement and Took Advantage of Settlement Procedure

Party to the proceedings: **MAKRO Cash & Carry ČR, s. r. o.**

Final fine: CZK 46,560,000

(S0356/2018/TS; coming into force on 23 October 2019)

The subject of the preliminary investigation and subsequently the administrative proceeding was the conduct of MAKRO Cash & Carry ČR (hereinafter referred to as "Makro") in the field of provision of services related to the purchase or sale of food to suppliers of that company. In the period from 6 March 2016 to 31 March 2018, Makro demanded several types of payments for services on their suppliers. In the course of the investigation, the Office focused on payments for logistics services, marketing services related to the use of the sales channel and marketing services consisting in the reservation of the commercial premises.

After assessing the evidence collected, the Office found that the total amount of payments made by suppliers for the services in question often exceeded the 3% limit laid down in the Significant Market Power Act. Thus, although the suppliers received some consideration for their payments, the amount of the so-called subsidy in favour of Makro was not in compliance with the law.

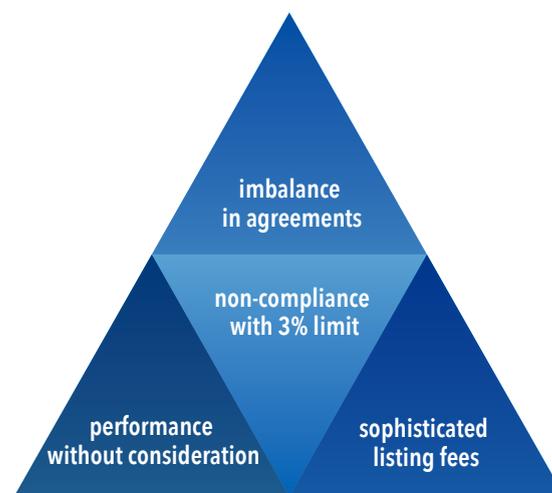
At the same time, the Office found that contracts for the provision of marketing services related to use of the sales channel of delivery service between Makro and the food suppliers do not contain all the elements of the contracts which the Significant Market Power Act expects as mandatory. In these contracts, there was no sufficient definition of the method of cooperation in the receipt and provision of services in terms of the scope of the services provided, the manner and duration of the services' performance. On the basis of these contracts, Makro was able to fulfil its contractual obligations to the supplier with only a very minimal consideration, even though the payments for the services were periodic and, in order to do so, the suppliers were not able to effectively check whether agreed services were actually provided to them. It was essentially at the consideration of Makro, to what extent the services would be provided to the supplier.

For two offences of a formal nature, the Office imposed the fine on Makro totalling CZK 46,560,000. The fine was imposed within the settlement procedure. The decision has already become final.

Types of Activities in the Field of Significant Market Power



Most Frequently Investigated Practices



PUBLIC PROCUREMENT

The Office has been supervising public procurement procedures since January 1995, currently pursuant to the Act No. 134/2016 Coll., on Public Procurement (hereinafter referred to as “the Public Procurement Act”). The Czech legislation on the supervision in this area transposes the provisions of the European Union review Directives (namely the Council Directives 92/13/EEC and 89/665/EEC, as amended by the European Parliament and Council Directive 2006/97/EC); these Directives regulate the specificities of the review procedure in public procurement and enhance the principles of transparency and non-discrimination in public procurement. When supervising public procurement, the Office decides whether the contracting authority has acted in compliance with the Public Procurement Act when awarding a public contract (including a concession) or during special procedures. In addition, the Office imposes remedies, investigates administrative offences of contracting authorities and imposes fines. The Office also exercises supervision pursuant to the Act No. 194/2010 Coll., on Public Services in Passenger Transport (hereinafter referred to as “the Public Services in Passenger Transport Act”). The objective of the above-mentioned acts is to ensure open and free competition among public procurement suppliers (or carriers applying for conclusion of a contract on public services in passenger transport within tender proceedings) and to ensure the selection of the most suitable bid in a transparent manner without discrimination of tenderers. Consequently, equal, transparent and non-discriminatory competitive environment brings savings in public budgets as well.

LEGISLATION

Undoubtedly, the abolition of Article 259 of the Public Procurement Act was the most significant change in the legislation. The provision was abolished with effect from 26 November 2019, when the Constitutional Court’s decision No. 309/2019 Coll. of 30 October 2019 in the case Ref. No. PI ÚS 7/19 was published in the Collection of Laws. The concerned provision originally set the fee of CZK 10,000 for filing the complaint to the Office in order to initiate administrative proceedings ex-officio (in relation to misconduct in the course of awarding a public contract). Therefore, except for the restriction mentioned in Article 258(2) of the Public Procurement Act, there is no other restriction of the right to file a complaint (the Office does not deal with complaints seeking initiation of administrative proceedings ex-officio filed by the complainant, which did not exercise its right to raise objections in the same case).

With the effect from 1 January 2020, there is also a change in financial limits set by Government Decree No. 172/2016 Coll. These financial limits determine whether the public contract is above threshold and whether the particular part of the public contract may be awarded in compliance with jurisprudence which is not so rigid. The level of these limits is based on the European Directives. The financial limit for public construction works’ contracts is CZK 137,366,000 and CZK 3,568,000 for public supplies and services. The level of limits in specific cases can be found in Government Decree No. 335/2019 Coll.

On 10 May 2019, the Commission published Commission notice on guidance on cooperative procurement in the fields of defence and security (the Defence and Security Procurement Directive 2009/81/EC). According to the Commission, this document should help the Member States of the EU in the unified application of the Directive 2009/81/EC and encourage the use of all the possible forms of cooperation it offers in awarding public contracts.

On 24 July 2019, the Commission issued Guidance on the participation of third country bidders and goods in the EU procurement market. This guidance includes practical advice for contracting authorities in Member States of the EU on how to deal with tenderers from countries outside the European Union.

In 2019, the amendment of the Public Services in Passenger Transport Act was published in the Collection of Laws under Ref. No. 367/2019. Provisions relating to the supervision of contracts’ conclusion become effective on 15 January 2020.

ACTIVITY OF PUBLIC PROCUREMENT DIVISION

In 2019 the decision-making activity of the Public Procurement Division concerned especially the Public Procurement Act (Act No. 134/2016 Coll.). Nevertheless, administrative proceedings concerning the procedures of contracting authorities are still conducted on the basis of provisions pursuant to the Act No. 137/2006 Coll., on Public Contracts, which are assessed by the Office in compliance with transitional provisions and the former legislation. Not only investigation of administrative offences (ex-officio administrative proceedings), but also the review of contracting authority procedures on the basis of application is concerned.

In 2019, the Office’s first instance decision-making practice clarified some of new tools of the Public Procurement Act (certainty of the reserved change of obligations in tender qualification criteria, termination of award procedure due to failure to send the notification on selection of the

30.51 days

Average time limit needed to issue the first-instance decision in 2019

supplier within effective period of bids, exclusion of the supplier due to its substantial and long-term misconducts during performance of the former contracts with contracting authorities and new concept of sectoral public contract), or deepened established decision-making practice of the previous two-year period (new approach towards the tool which concerned extremely low bid price in relation to the obligation to exclude the supplier, the emphasis on comprehensibility and completeness of the decision on objections which is the tool needed to expedite the whole award procedure). Unfortunately, the decision-making process has not yet included the change of contract's commitments pursuant to Article 222 of the Public Procurement Act. There is a need to point out that the Office is fully aware of the fact that contracting authorities would find this tool very useful. The Office deals with such issues rarely. Consequently, as the decision-making process in relation to the change of commitments is absent, the Office finds the recommendation mentioned in the opinion of the Ministry of Regional Development of the Czech Republic to be the most suitable solution for all stakeholders (contracting authorities and suppliers) even though it may be considered too strict. It should also be borne in mind that the defining and essential way of solving all the interpreting ambiguities connected with the application of the provision of Article 72 of the Directive 2014/24/EU of the European Parliament and of the Council of 26 February 2014 on Public Procurement and repealing Directive 2004/18/EC concerning the modification of contract's commitments shall be solved by the Court of Justice of the European Union, not the Czech administrative courts.

Although the Ministry of Regional Development is responsible for methodological guidance in the field of public investment, the Office performed awareness-raising activities in the field of public procurement. In 2019, the Office published two volumes of the publication called Brief Guide to the Contracting Authority in the World of Public Procurement (hereinafter referred to as "the Guide"), the third volume was published in spring of 2020. As the contracting authorities repeat the basic misconducts in public procurement, the Office tried with the help of the above-mentioned Guides to inform contracting authorities about the significance and purpose of individual basic and crucial tools of public procurement and also about the way the Office perceived these from its point of view of a supervisory body. The publication also includes the connection to already established methodology and case law of administrative courts. The first volume of the Guide explains what the public contract and the contracting authority stand for and why it is important to respect the principles of transparency, non-discrimination, fair approach towards suppliers and proportionality. The second volume of the Guide focused on different types of the award procedure and included advice on what the contracting authority should consider when selecting the particular award procedure. In addition, the second volume includes qualification of suppliers and ways of proving the basic and professional eligibility as well as economic and technical qualification. The final chapter deals with the evaluation of bids (evaluation of price, price and quality or advanced methods of evaluation, for example, the costs of living). The text is accompanied by a large number of practical examples and tips for contracting authorities. The Guide was completed by the third volume in early 2020. The third volume is devoted in particular to the procedure of the contracting authority after the submission of bids, the termination of the award procedure and obligations to publish particular information. In addition, the protection against the incorrect procedure of the contracting authority (objections) and assessing objections and proceedings of the Office are concerned as well.



In terms of awareness-raising activities, the Office commenced cooperation with the Federation of Municipalities of the Czech Republic and prepared training program focused primarily on multi-criteria evaluation for small municipalities. The first trainings took place in November 2019 in Příbram and Zlín regions. This activity of the Office continues in 2020 as well.

In 2019, the representatives of the Office participated in expert discussion at various conferences on different topics, such as public procurement in health sector, change of contract's commitments, etc., and other events.

There is a need to point out that the Office identified certain issues when exercising its competences. When assessing some cases in 2019, the review process was delayed and some of the complex cases were negatively affected by complications during the awarding of expert opinions. In accordance with principles of administrative courts and the Administrative Code (except for cases the Office's representatives are expert enough to issue such an opinion), the Office is obliged to secure external expert opinion. Unfortunately, the Office usually has difficulties to find an expert willing to issue his expert opinion. Relatively low maximum remuneration for expert opinions is probably the reason for unwillingness of expert institutions to issue them. In addition, concerns of experts about the possible challenge of their expert opinion may probably be present. The Office would very much appreciate any improvement of the mentioned situation in the future.

Regardless the above-mentioned facts, the Office was able to assess cases within average time limit below the threshold set in compliance with the Administrative Code and to shorten the time limit in comparison to the previous year from 38 days to 30.51 days. Unfortunately, it is sometimes possible to come across conclusions of some of the non-governmental organisations which publicly present information about too long time limit within which the Office deals with the case or information finding the Office's review of contracting authority to be not accurate enough. Undoubtedly, the above-mentioned facts confirm that

if any possible delay in review procedure occurs, the Office is not the one to be blamed for it. This is also supported by results of public consultations. Entities questioned by the Office expressed their satisfaction with time limits within which the Office is able to issue its decisions.

Even in 2019, the Office often used the Office's order in cases where it is clear, derived from matters of fact that the conduct of contracting authority fulfilled merits of the administrative offence. The order which is the first act in proceedings informing the contracting authority about all the important facts and legal instruments streamlines review activity of the Office and reduces costs of parties to the administrative proceedings.

The Office also has the power to exercise the surveillance pursuant the Act No. 255/2012 Coll., on Inspection (Inspection Code). Within its control activities, the Office initiated 22 inspections in 2019, out of which 13 inspections were completed in 2019. As of 31 December 2019, 19 administrative proceedings were initiated on the basis of inspections initiated in 2019. The Office also completed eight inspections initiated in 2018 on basis of which 10 administrative proceedings were initiated in 2019. Moreover, one administrative proceeding was also initiated in 2019 on the basis of the inspections initiated and completed in 2018.

The contracting authority's procedure without awarding a contract in any type of award procedure pursuant to Article 3 of the Public Procurement Act was the most frequent infringement (within 6 inspections out of 21 completed inspections) found by the Office.

Furthermore, in four inspections the Office's representatives found an infringement of contracting authority not fulfilling the obligation to publish information regarding concluded public contract pursuant to Article 147a(1)a and (2) of the Act No. 137/2006 Coll., on Public Contracts, as amended, and/or pursuant to Article 219(1) of the Public Procurement Act four inspections proved the wrong procedure of contracting authority when fulfilling the obligation to ask the selected supplier to submit originals or certified copy of documents proving qualification and information and documents regarding the owner of the selected supplier or fulfilling the obligation to find out information about the ultimate owner of the selected supplier. In three inspections the Office's representatives found that the contracting authority had not fulfilled its obligation in relation to publishing information on notification of the result of tender proceedings. In two inspections the Office concluded that contracting authority had not fulfilled the obligation to publish written report.

Overview of Control Activity of the Office in 2019

Number of inspections initiated in 2019	22
• of which concluded in 2019	13
Number of inspections initiated in 2018 and concluded in 2019	8
Total number of inspections concluded in 2019	21

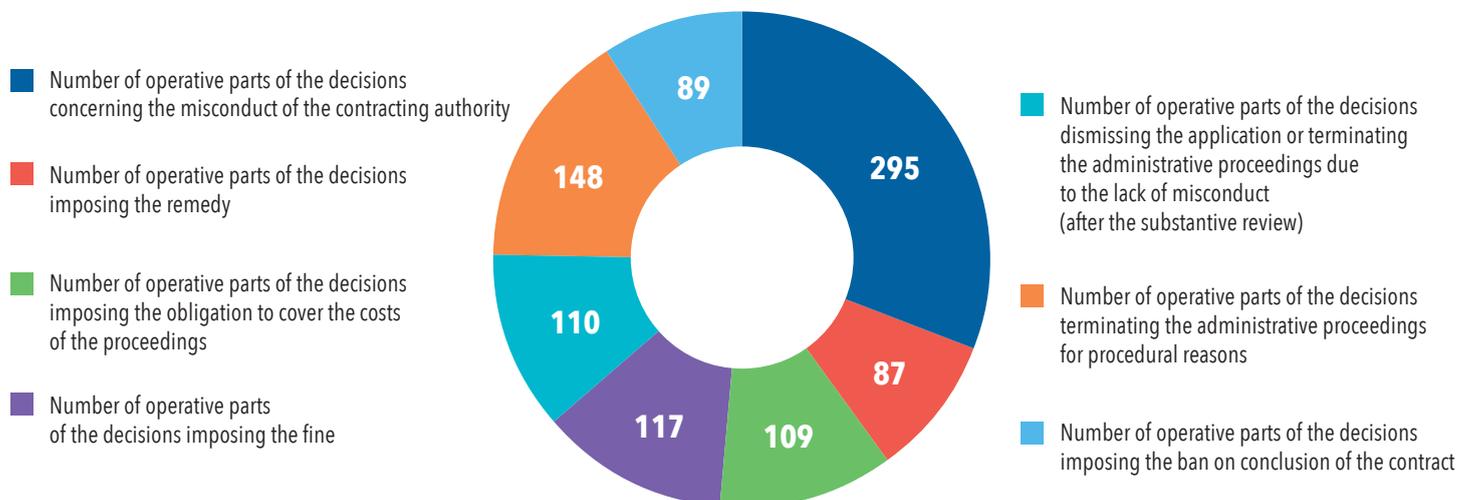
Outcome of Inspections in 2019

Infringement of inspected provision not found	3
Infringement of inspected provision found	18

PUBLIC PROCUREMENT IN NUMBERS

In 2019, the Office initiated 354 administrative proceedings, two thirds of which on the basis of the application and one third ex-officio. In comparison to the previous year, the number of applications slightly decreased (by 14%). However, the number of administrative proceedings initiated ex-officio increased. The administrative proceedings initiated on the basis of inspections increased as well (by 87.5%). The Office imposed remedy or fine to contracting authority in 199 decisions. Year-to-year, the number of fines imposed is approximately at the same level compared to the last year (only two more fines), nevertheless, the amount of imposed fines increased by 44%.

Statistics of Frequency of Assessed Legal Questions in Operative Parts of Decisions and Orders Issued in First Instance in 2019



*The diagram includes the number of operative parts of the decisions on the merits and on orders issued in the first instance in 2019. The extent of the decision-making activity is more explicit thanks to the above-mentioned diagram due to the fact that a decision or an order includes more operative parts, i.e. the number of assessed matters is higher than the number of decisions.

First-Instance Decision-Making Activity in Public Procurement

Complaints	Complaints received	222
Administrative proceedings	Total number of initiated administrative proceedings	354
	• of which initiated on the basis of the application	232
	• ex-officio	122
	o of which on the basis of inspections	30
The first-instance decisions	Total number of issued first-instance proceedings ¹	1,691
	• of which decisions on the merits ²	387
	o of which remedy or the fine imposed ³	199
	• orders issued ⁴	76
	o of which misconduct of the contracting authority not found ⁵	74
	o of which procedural reasons ⁶	114
	• of which interim measures	128
	• decisions on imposing interim measures	73
	• decisions on dismissal of interim measures	47
	• decisions on cancellation of interim measures	8
	• the other first-instance decisions ⁷	1,176
Fines	Number of fines imposed ⁸	91
	Total amount of fines imposed ⁹	CZK 11,166,000
	• of which 62 fines imposed by the order (the administrative objection not filed)	CZK 1,026,500
	• of which 29 fines imposed by decision	CZK 1,139,500
Costs of proceedings	Number of imposed costs of proceedings ¹⁰	88
	Total amount of imposed costs of proceedings ¹¹	CZK 2,148,000
Deposits	Total amount of lodged deposits ¹²	CZK 77,492,076.19
	Total amount of deposits forfeited in favour of state budget ¹³	CZK 12,368,314.12

1 The number includes all the issued first-instance decisions in 2019 (decisions on the merits, decisions concerning interim measures and all the other first-instance decisions).

2 The number includes all the decisions issued in 2019, by which the administrative proceedings was terminated in the first instance.

3 The number includes all the decisions issued in 2019, by which in relation to at least part of the subject matter of the proceedings the fine or remedy was imposed.

4 The number includes even orders against which the administrative objection was filed.

5 The number includes all the decisions issued in 2019, by which substantive review of the contracting authority's procedure was exercised and in relation to any part of the subject matter of the proceedings no remedy or the fine were imposed.

6 The number includes all the decisions issued in 2019, in which there were no reasons for substantive review of the procedure of the contracting authority.

7 The number includes all the other decisions in 2019 within the first-instance proceedings or in its relation such as setting the time limit for proceeding of the procedures of the tenderers, deciding on the objections of prejudice, deciding on participation in proceedings, awarding of experts and deciding on their remuneration, deciding on refusing the request to access the file, etc.

8 The number includes cases where the fine was imposed on the basis of the order or by the decision issued in 2019 in the first instance; if the case was assessed in the first instance repeatedly, the fine is counted just once. If the fine was imposed in the first instance and consequently cancelled in the second instance, this fine is not to be included within this amount.

9 The number includes financial volume of all the fines imposed in the first instance, in case the subject-matter was assessed in the first-instance repeatedly, the fine is counted only once in 2019. If the fine was imposed in the first instance and consequently cancelled in the second instance, this fine is not to be included within this amount.

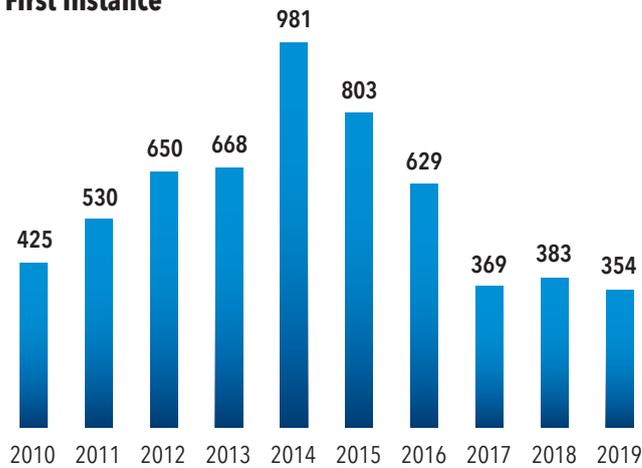
10 The number includes the number of cases in which the decision on the imposed payment of costs of proceedings was issued in 2019 in the first instance; if the subject-matter was assessed repeatedly in the first instance, the costs of the proceedings are included only once in 2019. If the costs of the proceedings were imposed in the first instance and consequently cancelled in the second instance, these costs are not to be included within this amount.

11 The number includes the financial volume of all the costs of the proceedings imposed by the decision issued in 2019 in the first instance; if the subject matter was assessed in the first instance repeatedly, the costs of the proceedings are included in 2019 only once. If the costs of the proceedings were imposed in the first instance and consequently cancelled in the second instance, these costs are not to be included within this amount.

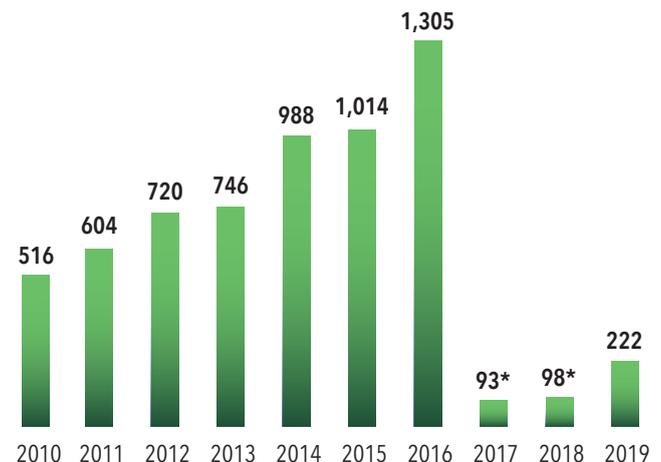
12 The number includes sum of all the deposits lodged at the Office's bank account in 2019; the number is not based only on the proceedings initiated in 2019.

13 The number includes financial volume of deposits forfeited in favour of the state budget in 2019; the number is not to be included in the proceedings initiated in 2019.

Total Number of Initiated Administrative Proceedings in First Instance

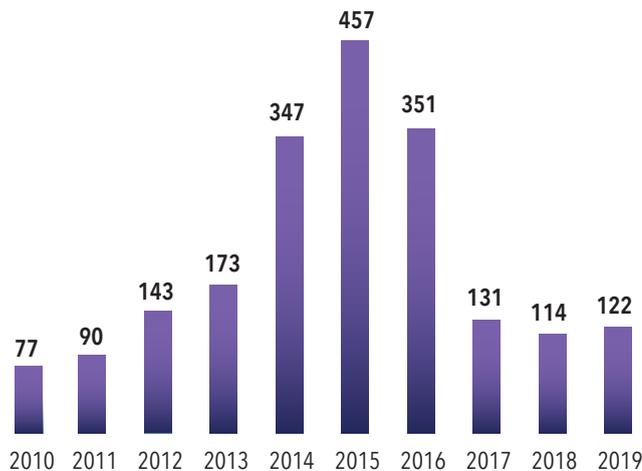


Number of Complaints Filed

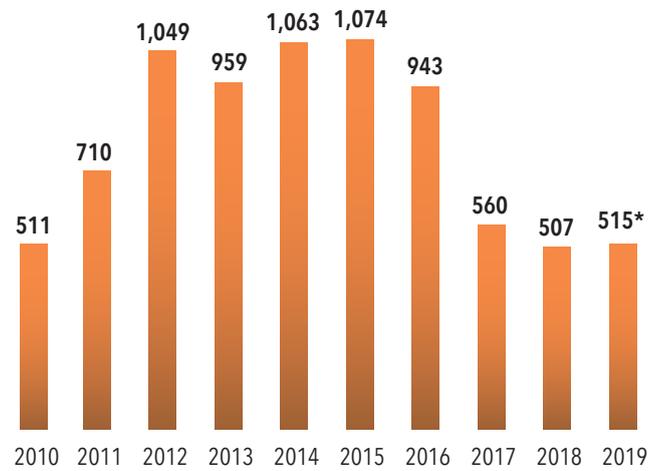


* only paid complaints are concerned

Number of Administrative Proceedings Initiated Ex-officio

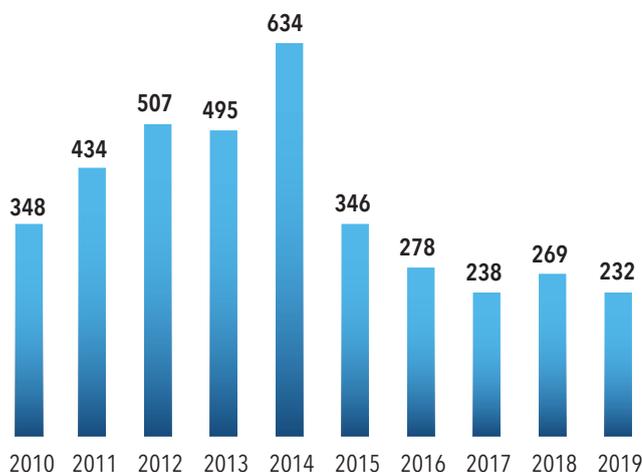


Number of Decisions Issued in First Instance

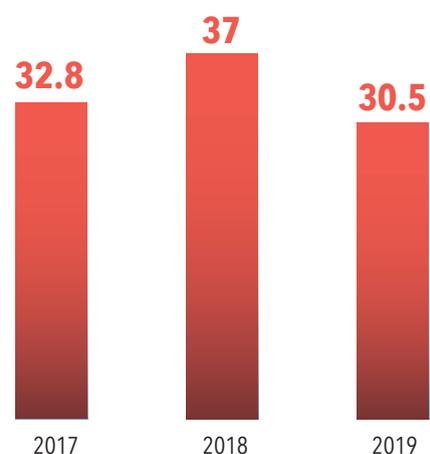


* decisions on merits and on interim measures

Number of Received Applications to Initiate Administrative Proceedings



Average Speed of Decision-Making (in days)



MOST FREQUENT MISCONDUCTS OF CONTRACTING AUTHORITIES

In terms of the proportional representation, in 2019 the most frequently reviewed public contracts came from the field of construction, IT and healthcare sectors and less frequently from the sector of transportation vehicles' supplies or public contracts for providing transport services.

As regards the category of contracting authorities, public contracts awarded by municipalities, healthcare facilities, ministries and entities active in the field of transport and transport engineering were the most frequently reviewed ones.

The most frequent misconducts include:

- indefinite and/or ambiguous definition of tender qualification criteria or the excessiveness of tender qualification criteria defined by the contracting authority;
- excessive (discriminatory) qualification prerequisites;
- missing decision or incomplete settlement of supplier's objections;
- selection of a supplier which did not meet conditions necessary for the participation in the public contract (it is not clear from the notification on the selection of the supplier that the qualification was proved, etc.).

SIGNIFICANT CASES

Part 2 – Disk Array Expansion – Public Contracts on “Supply of Servers and Disk Array Expansion”

Contracting authority: **Nemocnice Pardubického kraje, a. s. (Hospital of Pardubice Region)**

Remedy: Cancellation of the act – notice on cancellation of Part 2 of the award procedure (S0027/2019/VZ; coming into force on 19 April 2019)

The Office concluded that the contracting authority when cancelling the part of the award procedure had not complied with the principle of transparency. The notice of the cancellation of the part of the award procedure to tenderers was sent without mentioning reasons of particular interest due to which it was impossible to require the contracting authority to continue with the award procedure. In addition, the contracting authority did not mention the specific moment these reasons of particular interest are to be derived from in order to review the procedure of the contracting authority during cancellation of the part of the award procedure regarding legal reasons for cancellation of the award procedure.

Operation of Public Bus Transport Services in Břeclav in 2019-2029

Contracting authority: **Municipality of Břeclav**

Remedy: Cancellation of tender procedure (S0251/2019/VZ; coming into force on 18 September 2019)

The Office issued the decision in compliance with the Public Services in Passenger Transport Act and concluded that the contracting authority failed to set the tender qualification criteria in compliance with this act. Compensations provided to transport company were defined by the contracting authority in public procurement documentation in a way which was ruling out the commercial risk connected with the level of tickets' sales income for securing the public services in public transportation. Therefore, the condition required for taking place of tender procedure in compliance with the Public Services in Passenger Transport Act was not met.

In case of securing of public transportation services by buses, the Public Services in Passenger Transport Act sets, among others, the requirement which is needed for taking place of tender procedure. The requirement shall consist of the fact that compensations provided by the contracting authority to transportation company does not rule out commercial risk of transport company, connected with the level of tickets' sales for securing public services in passenger transport. In order to meet this condition, the transportation company when securing these services shall bear a risk which goes hand in hand with it. More specifically, the transport company shall not be fully protected against imbalance of income in tickets' sales from passengers. Tender qualification criteria in concerned case proved that the contracting authority selected the method of compensation in such a way that the transportation company was to receive specific amount of money every month regardless of the ticket price charged to passengers by means of which the contracting authority ruled out the commercial risk connected with the level of tickets' sales income. Bearing in mind the fact that the tender qualification criteria were not in compliance with the law, the Office decided to cancel tender procedure by means of imposing the remedy.

Overview of Highest Fines Imposed

Ref. No.	Contracting authority	Fine in CZK
S0111/2019	Ministry of Defence	7,200,000
S0148,S0149/2019	Municipality of Varnsdorf	650,000
S0314/2018	Statutory city of Brno, Brno-North	330,000
S0097/2019	DPOV, a. s.	300,000
S0325/2019	Krajská správa a údržba silnic Středočeského kraje, příspěvková organizace (Subsidized organisation administering maintenance of roads in Central Bohemia Region)	300,000

Purchase of Servers for the Ministry of the Environment of the Czech Republic in 2019

Contracting authority: **Ministry of the Environment of the Czech Republic**

Application dismissed

(S0262/2019/VZ; coming into force on 22 November 2019)

Huawei Technologies (Czech), as an applicant, required the cancellation of tender proceedings in which the contracting authority imposed the obligation towards supplier to supply the additional server of the producer which is not obliged to follow the Warning of the National Cyber and Information Security Agency (hereinafter referred to as "NCISA", which is the central body in the field of the cybersecurity in the Czech Republic) of 17 December 2018. Warning of NCISA considered using of hardware and software of two Chinese companies, in particular the applicant's parent company and company ZTE, to be a potential threat in the field of cybersecurity.

The basic starting point in the assessment of the case was based on the fact that the contracting authority, when seeking to be in compliance with legal regulations valid in the field of cybersecurity, it is obliged to identify, analyse and evaluate potential risks and to manage them, among others. While doing so, the contracting authority is obliged to take into account warnings of NCISA as well. At the same time, the contracting authority is obliged to take requirements in connection to the selection of the supplier as for its information and communication system on the basis of security measures into account. Taking these requirements into account to the extent necessary for fulfilment of obligations in the field of cybersecurity shall not, pursuant to the Act No. 181/2014 Coll., On Cyber Security, be considered as an illegal infringement of competition or unjustified restriction of competition.

Consequently, the subject matter of the administrative proceeding became the question whether the contracting authority's analysis of risk or the whole process of risk identification and evaluation and following selection of measures to cope with them, which led to setting disputable tender qualification criterion, is in compliance with legal regulations and generally valid and recognized standards in the field of cybersecurity.

As the expert knowledge was needed to assess this case, the Office had addressed NCISA and on the basis of its opinion as well as the Office's own considerations, the Office came to the following conclusion. Even though the tender qualification criterion is the restrictive factor of effective competition (even though it should generate competitive disadvantages for specific suppliers), this restriction is justifiable. The contracting authority when setting disputable tender qualification criterion proceeded in compliance with relevant legal provisions and standards generally valid and recognized in the field of cybersecurity. Thus, the restriction was adequate, not excessive or unjustified in any way (the contracting authority was fulfilling its legal obligations in the field of cybersecurity on the basis of warning of NCISA from 17 December 2018 by means of this restriction). As a result, the Office dismissed the application as there was no reason for imposing remedy.

Purchase of Bicycles Intended for Bicycle-Sharing System for Statutory City of Kladno and Securing the Operation of Bicycle-Sharing System

Contracting authorities: **Statutory city of Kladno; Sportovní areály města Kladna, s. r. o.**

Fine: in total CZK 150,000 of which CZK 85,000 is to be paid by the Statutory city of Kladno and CZK 65,000 by Sportovní areály města Kladna (company representing sport facilities in the Statutory city of Kladno)

(S0441,0461/2018/VZ; coming into force on 9 April 2019)

The Office concluded that the administrative offences of two contracting authorities (the city and the city-owned company) consist in the fact that they awarded two small scale public contracts without award procedure. The aim of the mentioned contracting authorities was to purchase and operate bicycle-sharing system in the Statutory city of Kladno. Each of the public contracts was connected with separate contract. The Office in its decision concluded that each of the contracting authorities committed administrative offence by means of awarding the public contract without award procedure with incorrect setting of its probable value. These public contracts were part of the one functional unit; the subject of performance of each individual public contract always represented only the part of performance necessary for the intended purpose (operation of bicycle-sharing system). The intended purpose was realized by means of performance of both mentioned contracts connected with each other. Accordingly, the Office's opinion was based on the fact that the probable value of public contract was to be set as a sum of all probable values of both separately awarded public contracts. As a result, contracting authorities were obliged to award these small scale public contracts in one of possible forms of award procedure.

Intelligent Transportation System in Statutory City of Hradec Králové

Contracting authority: **Statutory city of Hradec Králové**

Application dismissed

(S0304/2019/VZ; coming into force on 30 December 2019 – confirmed R0193/2019/VZ)

The applicant claimed the award procedure cancellation within administrative proceeding due to the fact that tender qualification criteria were not determined sufficiently. Thus, the contracting authority delegated the responsibility for its accuracy to the supplier.

The Office concluded that the contracting authority, when defining tender qualification criteria, used the method called *design & build*. In Office's view, there is no reason to use this method only in construction public contracts, it is possible to use this method also in situations when the intended subject of public contract performance is realized using more ways of technical solution which are equivalent in terms of functionality. When setting specifications of this method, the contracting authority defines within award procedure the properties which are to be integral part of technical solution of the public contract regarding

the parameters which specify requirements of the contracting authority as for performance and the function. Eventually, the described function or needs of contracting authority are to be taken into account. Afterwards, the supplier or the selected tenderer is responsible for meeting these requirements, as these must be fully taken into account in the context of its own design of the solution (which is the part of its bid), however such design of tender qualification criteria allows it to apply its own solution. In case the contracting authority defines its requirements sufficiently enough for the resulting function and the purpose of the requested performance, it is not to be considered as an illegal delegation of responsibility for accuracy and completeness of tender qualification criteria from the contracting authority to the supplier. At the same time, this approach of the contracting authority reduces the risk of discriminatory definition of the tender qualification criteria in a significant way, for example by means of preferring or disabling usage of particular available solution.

The Framework Agreement for Supply of Police and Regular Cars and Supply of Equipment of Service Stations for Cars of Ministry of the Interior of Czech Republic for Period from 2018 to 2021

Contracting authority: **Ministry of the Interior of the Czech Republic**

Remedy: Cancellation of the award procedure

(S0037/2019/VZ; coming into force on 4 June 2019 – confirmed by R0054/2019/VZ)

The Office initiated the administrative proceeding ex-officio. It assessed whether the technical conditions determined by the central contracting authority are not set in a discriminatory way which could lead to unjustified competitive advantage of the supplier ŠKODA AUTO, and whether technical parameters of cars are justified in relation to the subject of the public contract as a whole unit, both in relation to the cars designed for the police but also in relation to the cars which will be used by the other delegating contracting authorities and thus will not be used by the police to perform its police duties.

The Office concluded that by means of mutual combining of technical conditions (the capacity of luggage compartment, car body of sedan/hatchback in 5-door version and inner proportion of certain types of vehicles) the contracting authority created unjustified competitive advantage to the supplier (ŠKODA AUTO). According to the Office, if the contracting authority is unable to justify the legality of the performance of the public contract subject as a whole unit, which the contracting authority was unable to do in relation to certain types of vehicles, the whole award procedure shall be considered as illegal. Thus, the Office cancelled the award procedure by means of imposing the remedy.

Tracked Infantry Fighting Vehicle and its Modifications - Purchase

Contracting authority: **Ministry of Defence of the Czech Republic**

Termination of administrative proceeding

(S0179/2019/VZ; coming into force on 21 June 2019)

The Office initiated administrative proceeding on the basis of the application. The Office reviewed the procedure of the contracting authority leading to bid invitation by means of general exemption.

In assessing the regularity of submitted application, the Office concluded that parts of the application concerning the contracting authority's alleged unauthorized using of exemption was not preceded by objections submitted in legal and timely manner. Thus, the Office terminated the administrative proceeding. In relation to the remaining part of objections concerning alleged illegality of public contract conditions, such as the requirement of the contracting authority for manned turret which were supposed to be discriminatory, the Office concluded that the concerned objections are not in compliance with the law and it is not possible to submit such objections in case of the public contract awarded on the basis of general exemption. Since the objections were not in compliance with the Public Procurement Act, as these are not mentioned within this act, the applicant was not able to submit them in a timely manner. Therefore, the Office terminated the administrative proceeding in that part of the application as well.

Unified Information System of Labour and Social Affairs - IS SOCIAL BENEFITS II.

Contracting authority: **Ministry of Labour and Social Affairs of the Czech Republic**

Remedy: Cancellation of the contracting authority decision to exclude the tenderer

(S0365/2019/VZ; coming into force on 28 December 2019)

The administrative proceeding was initiated on the basis of the application. The applicant claimed the cancellation of the decision on its exclusion after not being able to justify the extremely low bid price in the part of the performance concerning services connected with the development of the information system needed for payment of social benefits. The contracting authority did not assess transparently whether extremely low bid price of the applicant is justified as for the principle of transparency on the basis of technical solution details indicated by the applicant. Therefore, the applicant was excluded from the award procedure of the concerned public contract. In this regard, the Office concluded that the contracting authority is obliged to proceed when reviewing and clarifying of extremely low bid price in a transparent way. In addition, the situation which lies in the fact that transparent review of justification of extremely low bid price is absent in relation to particular technical solution presented by the applicant. At the same time, the Office concluded that the contracting authority did not assess the other facts by which the applicant justified its extremely low bid price.

Bearing in mind the fact that the contracting authority caused this misconduct during the award procedure which could influence the selection of the supplier (the contract was not concluded), by means of imposing the remedy the Office cancelled the decision of contracting authority on exclusion of the applicant from award proceedings and all the other following acts of the contracting authority exercised within the concerned award procedure.

Lease of System for Measurement of Road Speed including Relevant Software for Management and Processing of Offenses

Contracting authority: **Municipality of Varnsdorf**

Fine: CZK 650,000

(S0148,0149/2019/VZ; coming into force on 1 January 2020)

Originally, two administrative proceedings were conducted by the Office and consequently two decisions on merits were issued.

The Office in the decision concerning the small-scale public contract concluded that the contracting authority committed the administrative offence consisting of awarding the concerned public contract as a consequence of incorrectly set probable value out of the award procedure. In addition, it did not award the public contract in the above threshold mode. In order to assess this fact, it was necessary to thoroughly review the accuracy of the contracting authority procedure during setting of the probable value of the public contract as the basis for determining the mode which the public contract belongs to with respect to the price of the performance set in the form of the price for the performance unit. It was also necessary to review the market research carried out by the contracting authority, on which it claimed to establish setting of the probable value of the public contract. In fact, it was necessary to assess stated similarity of the different public contracts from the traffic intensity point of view, type of measured segment and type of measurement, evaluate the gained information on the number of offences in relation to over speeding in order to gain information on awaited average number of offences and to feed the bid price of the selected supplier into the control restatement of the probable value of public contract before the conclusion of the contract.

In relation to a public contract awarded in a negotiated procedure without publication, the Office concluded that the contracting authority committed the administrative offence by awarding the concerned contract in a negotiated procedure without publication. The contracting authority did not prove meeting of the conditions needed for usage of negotiated procedure without publication. Therefore, the Office assessed whether the conditions for application of negotiated procedure without publication were met. It was primarily desirable to thoroughly assess the urgency of circumstances which led to conclusion of the new contract with the selected supplier right after the automatic termination of the original contract. Thus, the Office assessed the statement of the contracting authority concerning the positive impact of the speed measuring on decreasing number of accidents on the road. At the same time, the Office assessed statement of contracting authority regarding the possible threat arising from the possible loss of measuring devices data leading to inability to claim fines. In addition, it was assessed whether the contracting authority could foresee the circumstances leading to the termination of the original contract and it did not cause them itself, and whether it was not possible to use a different type of the award procedure.

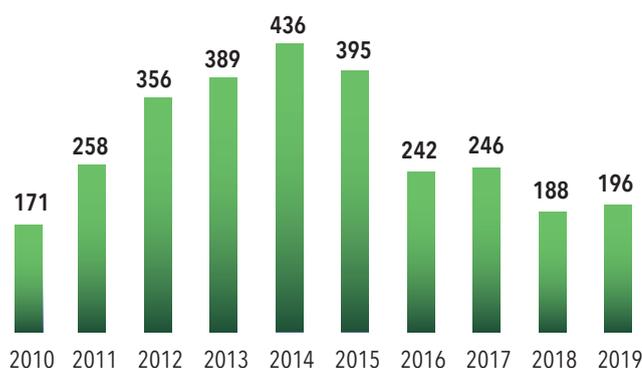
The Chairman of the Office decided on the basis of an appeal filed by the contracting authority to cancel both of the described decisions due to inaccurate procedure when imposing fine. At the same time, he considered both decisions to be sufficient as for veracity. The Chairman of the Office decided to join both proceedings within single administrative proceeding under Ref. No. S0148,0149/2019/VZ. As a result, it was necessary to carefully address the issue of punishing of converging administrative offences, while acknowledging the need to apply the principle of the absorption of punishments.

SECOND-INSTANCE PROCEEDINGS IN PUBLIC PROCUREMENT

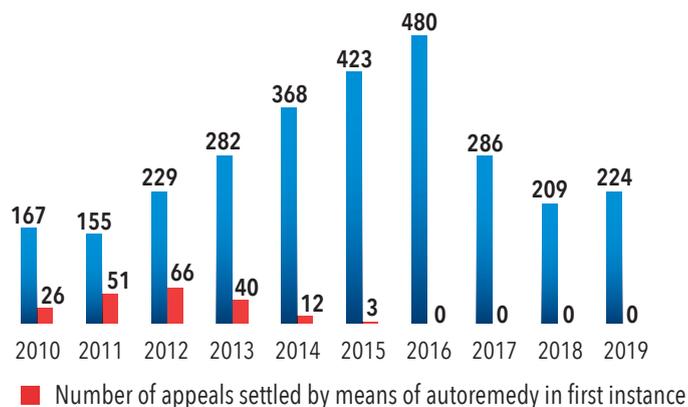
Year-to-year, there was a slight increase in the number of appeals filed against the first-instance decisions by 4% to 196 appeals. The number of second-instance decisions issued increased by 7% and decision-making speed increased as well. In 2019 the average time limit for issuing the decision on appeal was 54 days. 69% of the second-instance decisions confirmed the first-instance decisions, 16% of the first-instance decisions were cancelled and returned to further assessment. Approximately 10% of the first-instance decisions were cancelled and appeal proceedings terminated, for example due to becoming devoid of purpose. The Chairman of the Office confirmed 30 fines totalling CZK 10,323,000 in the second instance, the highest fine (CZK 7,200,000) was imposed on the Ministry of Defence of the Czech Republic (Ref. No. R0101/2019/VZ).



Number of Appeals Filed Against Decision of First Instance



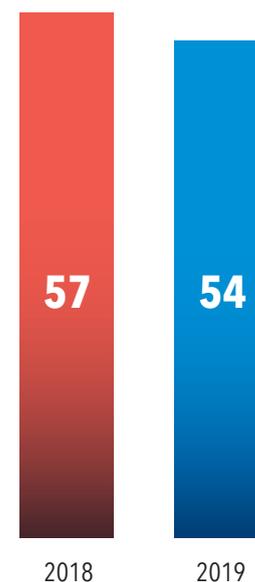
Number of Appeals Closed in Appeal Proceedings



Second-Instance Decision-Making in Public Procurement

Number of appeals filed against the first-instance decisions		196
Initiated second-instance administrative proceedings		196
Reopened administrative proceedings due to cancellation of administrative courts' judgements		14
Second-instance administrative proceedings pending as of 31 December 2019		33
Issued decisions on appeals	Total	224
	of which	155
	• decision of the first instance confirmed and appeal dismissed	36
	• decision of the first instance cancelled and returned for re-examination	23
	• decision of the first instance cancelled and appeal proceedings terminated	2
	• appeal dismissed for inadmissibility	1
	• decision of the first instance changed	4
	• resolution of the Chairman of the Office on termination of appeal proceedings (after withdrawal of appeal)	3
Decisions on the review proceedings		3
Decisions on retrial		1
Decisions on imposing of interim measure		5
Procedural resolutions of the Chairman of the Office		47
Requests for the measure against inactivity		4
Notifications or requests		4
Number of appeals solved by the first instance (autoremedy)		0
Fines	number of fines imposed	30
	amount of fines imposed	CZK 10,323,000

Speed of Decision-Making Activity on Appeals (in Days)



SIGNIFICANT CASES

Purchase of City Buses for Regional Transport in Ústí nad Labem Region - Partly Low-Floor Buses (10.5 m and 12 m long)

Contracting authority: **Dopravní společnost Ústeckého kraje, příspěvková organizace (Transport Company of the Ústí nad Labem Region, subsidized organisation)**

Remedy: Ban on performance of the framework agreements and purchase contracts

(R0079,81/2019/VZ; coming into force on 19 July 2019; R0080,82/2019/VZ; coming into force on 19 July 2019; R0207,0209,0211/2019/VZ; coming into force on 31 December 2019)

Originally, the public contract was awarded as a whole. Afterwards, due to the absence of bids, two separate framework agreements for the supply of two types of buses (partly low-floor buses 10.5 m long and partly low-floor buses 12 m long) were concluded with different suppliers in negotiated procedure without publication. The administrative proceeding was initiated on the basis of application. The applicant claimed imposing of the ban on the performance of the framework agreements and consequently, together with the other applicant, imposing of the ban on the performance of purchase contracts concluded on the basis of previously challenged framework agreements. The applicant claimed that the tender qualification criteria of the original award procedure were set in a discriminatory way. Tender qualification criteria restricted competition and consequently disabled the applicant to participate in the original award procedure. The procedure of the contracting authority, which consequently awarded the public contract in the negotiated procedure without publication, was illegal according to the applicant.

The Office concluded that the contracting authority set the requirement of minimal volume of fuel tanks of buses not pursuant to Article 36(1) of the Public Procurement Act so that these tender qualification criteria created unjustified obstacles to competition. The contracting authority's reason for setting the minimal volume of fuel tanks was the need for increased mileage per one full fuel tank of the bus not taking into account the fuel consumption. It was not possible to accept this justification and consequent procedure of the contracting authority in negotiated procedure without publication was illegal.

Therefore, the Office imposed the ban on the performance of the framework agreements on both types of buses and the ban on the performance of the purchase contract for the supply of 10.5 m long buses. The proceedings on the application concerning the ban on the performance of the purchase contract for the supply of 12 m long buses was terminated as the supplier had already performed the contract.

The proceedings were accompanied by a high level of activity of all tenderers and their numerous submissions (including objections concerning lack of the impartiality of representatives of the Office) had to be dealt with before the decision was issued.

I/20 Sedlec – Adaptation of Crossing Including Pedestrian Safety Measures; D5 Median (Guard Rails) Modernization, km 28–56; 1/39 VOLARY-CHLUM; 1/27 Horní Lukavice –Přeštice

Contracting authority: **Ředitelství silnic a dálnic (Road and Motorway Directorate of the Czech Republic)**

(R0083/2019/VZ; coming into force on 16 July 2019; R0088/2019/VZ; coming into force on 18 July 2019; R0094/2019/VZ; coming into force on 26 July 2019; R0095/2019/VZ; coming into force on 26 July 2019)

Actions against all of four decisions of the Office's Chairman were brought.

The Office, in all four administrative proceedings initiated on the basis of an application, reviewed the procedure of the contracting authority when excluding the applicant for serious and long-term misconducts committed in relation to the contracting authority when performing the previous contract – incorrectly used wearing course of the road and its insufficient thickness, insufficient strength of the connection between top and base of the road and significant delay in the construction of the road.

The Office in all these cases concluded that reasons set out in the decision on exclusion are to be considered as proved and the procedure of the contracting authority during exclusion of the applicant as transparent. The Office in its challenged decisions dealt with fulfilling all the conditions for the application of the provision of Article 48(5)(d) of the Public Procurement Act and concluded that all the signs of this provision were fulfilled. Afterwards, the Office decided to evaluate the transparency of procedure of the contracting authority concerning the decision on exclusion. The Office concluded that the reasons for exclusion existed and the contracting authority fulfilled the obligations required by law in the application of the procedure pursuant to Article 48(5)(d) of the Public Procurement Act, the contracting authority's procedure was found to be transparent and in compliance with basic principles of public procurement.

The Chairman of the Office agreed with the conclusions expressed within the challenged decisions and confirmed them. When dealing with objections the Chairman concluded that the contracting authority proceeded in a transparent way and fulfilled all conditions of the provision of Article 48(5)(d) of the Public Procurement Act, therefore, the contracting authority excluded the applicant in compliance with the law.

Purchase of Ammunition 2017/I – Assault Hand Grenades 2

Contracting authority: **Ministry of Defence of the Czech Republic**

(R0101/2019/VZ; coming into force on 12 August 2019)

Fine: CZK 7,200,000

Administrative proceeding initiated ex-officio. The Office concluded that the contracting authority had committed the administrative offence pursuant to Article 268(1)(a) of the Public Procurement Act by failing to comply with the rule pursuant to Article 246(1)(a) of the Public Procurement Act. The contracting authority concluded the contract for the performance of the public contract before the expiry of a time limit for the submission of objections against the decision on the selection of the supplier. It did not send a notice on the selection of the supplier pursuant to Article 123 of the Public Procurement Act to tenderers, thereby affecting the selection of the supplier, and concluded a contract with the selected supplier for the performance of the public contract and thus awarded the public contract. The Office imposed a fine of CZK 7,200,000 on the contracting authority for this administrative offence.

In previous administrative proceeding Ref. No. S0038/2018/VZ (confirmed by the decision of the Chairman of the Office, Ref. No. R0086,0087,0088/2018/VZ), the Office imposed the ban on the performance of the contract to the contracting authority as it was concluded before ending of the time limit for submission of objections against the decision on the supplier selection. As the contracting authority proved reasons of particular interest in connection to public interest which required the contract performance to continue in 2018, the Office postponed the ban on the performance of the contract by seven months. Therefore, the contracting authority was enabled to fulfil that part of the performance of the contract which was to be fulfilled in 2018.

In the course of administrative offence proceeding, the contracting authority did not deny committing the offence, however, it maintained that the substantive aspect of the merits of this administrative offence was not fulfilled. By delaying the ban on the performance of the contract by seven months the Office was allegedly informed about the complete performance of the contract. The Office stated that such a conclusion did not follow from the decision on the ban of the performance. On the contrary, it was pointed out that the contracting authority was allowed to carry out that part of the performance, which is the subject of the contract in 2018, in order to ensure the combat readiness of the Armed Forces of the Czech Republic in 2018. Thus, the contracting authority could carry out only the necessary part of the contract performance and then carry out new award procedure for the remaining part of the contract performance. Setting time limit exceeding seven months would enable the contracting authority to carry out the whole public contract and there would be no reason for conducting this administrative proceeding regarding the ban on the performance of the contract. Finally, this situation occurred, as the contracting authority carried out the whole public contract and it did not award the new one in compliance with the Public Procurement Act. The delay in the ban on the performance did not lead to legality of the procedure of the contracting authority but on the other hand did not minimize its misconduct. The fact that the contracting authority enabled in a suspensive time limit completion of the performance of the whole public contract made the situation even worse. Thus, the substantive aspect of the administrative offence was fulfilled.

JUDICIAL REVIEW IN PUBLIC PROCUREMENT

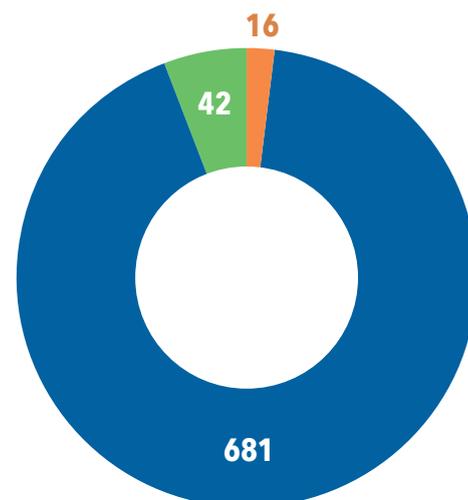
In the area of judicial review, after a previous decrease, the number of cassation complaints brought before the Supreme Administrative Court increased by almost 45%. The number of actions brought before the Regional Court in Brno increased by 11.5%. On average, almost every fourth decision on appeal was challenged by the action. At the Regional Court in Brno, 49 of 78 actions against the Office were dismissed and at the Supreme Administrative Court the Office succeeded in 24 of 40 cassation complaints. In relation



Statistics of Judicial Review

Number of actions brought before the Regional Court of Brno		58	
Number of cassation complaints brought before the Supreme Administrative Court		42 (of which 20 filed by the Office, 20 by prosecutor, 2 by stakeholders)	
Number of issued judgements		the Regional Court in Brno	78
		the Supreme Administrative Court	40
of which	in favour of the Office	the Regional Court in Brno	49
		the Supreme Administrative Court	24
	in favour of opposing party	the Regional Court in Brno	29
		the Supreme Administrative Court	16
The Chairman expressed his opinion towards the Regional Court in Brno		Concerning actions	58
		Concerning the application for admitting suspensory effect of the action	15
		Concerning the application for imposing interim measure	9
The Chairman expressed his opinion towards the Supreme Administrative Court		Concerning cassation complaints of the complainant	19
The Chairman expressed reply or other opinions in relation to both courts			8
The Constitutional Court cancelled judgement of the Supreme Administrative Court and the Regional Court in Brno			1
Percentage of success of the Office's decisions with respect to total number of decisions issued by the first and the second instance in 2019 (i.e. 739 decisions)			97.83%

Success Rate of Decision-Making in Public Procurement by Office in 2019



- Number of decisions of the Office issued in the first and the second instance not challenged by the action (including orders which have already come into force)
- Number of the Office's decisions challenged by the action of the Regional Court in Brno (without conclusively abolished decisions)
- Number of the Office's decisions conclusively abolished by administrative courts

to the administrative fee paid for filling the complaint to the Office, the Constitutional Court of the Czech Republic cancelled the judgement of the Supreme Administrative Court and of the Regional Court in Brno as well. In relation to the total number of decisions of the Office issued in both the first and second instance (739), the success rate is 97.83%. Only 2% of decisions issued by the Office in this field were canceled.

SIGNIFICANT CASES

Construction of Troja Bridge

Title of the public contract: Complex of Constructions of the City Ring – the construction No. 9515 Myslbekova Street – Prašný Bridge, the construction No. 0080 Prašný Bridge – Špejchar, the construction No. 0079 Špejchar – Pelc Tyrolka, the construction part and the construction No. 0012 – stage 0007, part 11 Flood Safety Measures of Troja

Contracting authority: **Capital city of Prague**

(R0005/2017, S0909/2014; coming into force on 16 March 2017)

Fine: CZK 11,000,000

The case decided pursuant to the Act No. 137/2006 Coll., on Public Contracts

Review proceeding before the Regional Court in Brno conducted under the Ref. No. 62 Af 48/2017

The decision of the Chairman of the Office was challenged by the action which was dismissed by the Regional Court in Brno.

In the case concerned, the contracting authority committed the infringement by making a substantial modification of the rights and obligations arising from the special-order contract concluded for the contract in question with the selected tenderer. The contracting authority therefore changed the subject matter without the use of legal type of the award procedure by which it extended the subject matter of the contract in order to include other construction works which were required by this change. After implementation of the change, the construction of the Troja Bridge was no longer in accordance with the original assignment specified in procurement documents, especially in terms of parameters, the price and the visual part of the project. In addition, the contract was modified by a series of follow-up steps by the contracting authority within the period from 30 March 2009 till 24 May 2012. The contracting authority committed a continuous infringement as it caused the illegal situation which lasted for a specific period of time.

The contracting authority brought the action against the decision of the Chairman of the Office which dismissed the appeal against the first-instance decision. The Regional Court in Brno did not accept the objections mentioned in the action and dismissed it as well. The Regional Court in Brno firstly dealt with the question of the limitation period for the infringement and concluded that liability of the contracting authority was not ceased before the final dealing with the case. Regarding the ban of the substantial modification of the contract before the amendment of the Act No. 137/2006 Coll., on Public Contracts came into force (i.e. before amending by the Act No. 55/2012 Coll.) which expressly provides this ban, the Regional Court in Brno expressed the opinion that this change was not acceptable even before the above-mentioned amendment. The contracting authority was obliged to conclude the contract in compliance with the proposal of the contract included in the bid of the selected tenderer bearing in mind the fact that it is also obliged not to interfere or modify its content in detail. From the judgement of the Regional Court in Brno it is clear that it is necessary to insist on the ban of the substantial modification of the contract even before the amendment expressly providing this ban becomes effective.

Provision of Critical Activities Necessary for Street Lighting in Capital City of Prague after 1 January 2017

Contracting authority: **Capital city of Prague**

(R0077,0078/2017/NZ-20038/2017,S0076/2017; coming into force on 10 July 2017)

Remedy: Ban on performance of the contract with a delay of enforceability by six months

The case was decided in compliance with the Public Procurement Act.

Review proceeding conducted before the Regional Court in Brno registered under the Ref. No. 62 Af 68/2017

The decision of the Chairman of the Office was challenged by the action which was dismissed by the Regional Court in Brno.

The public contract was awarded in negotiated procedure without publication pursuant to Article 63(5) of the Public Procurement Act. The conditions for conducting such procedure are, in particular, the necessity to conduct the award procedure in extremely urgent circumstances which the contracting authority could not foresee and did not cause. At the same time, it is not able to comply with the time limits for conducting an open procedure, a restricted procedure or a negotiated procedure with publication. In this case, the contracting authority concluded the contract for an indefinite period of time without establishing the termination clause, i.e. without any time limit of the effective period of the obligation.

The contracting authority brought the action against the decision of the Chairman of the Office which confirmed the first-instance decision. The Regional Court in Brno dismissed the action as being unfounded. In its statement of reasons the Regional Court in Brno mentioned the fact that supply and services may be secured via negotiated procedure without publication pursuant to Article 63(5) of the Public Procurement Act only for the necessary period of time, until it will be able to ensure the contract performance within effective competition, i.e. by means of open procedure. The contracting authority did not meet the condition of necessary period of time by the conclusion of the contract for the performance for the indefinite period of time without termination clause as it did not limited the effective period of the obligation. Therefore, the Regional Court in Brno concluded that even though the requirement for the limitation of time period of the obligation of the contract is not expressly provided by the Public Procurement Act, it is necessary, especially in case of the long-term and repeating performance to limit the period of the obligation.

Supply of 15 Electric Three-Car Units

Contracting authority: **České dráhy, a. s. (Czech Railways)**

(R328/2015, S0464/2015; coming into force on 8 November 2016)

Fine: CZK 200,000

The case decided in compliance with the Act No. 137/2006 Coll., on Public Contracts

Review proceeding before the Supreme Administrative Court registered under the Ref. No. 9 As 153/2019

The decision of the Chairman of the Office was challenged by the action which was upheld by the Regional Court in Brno which cancelled the decision of the Chairman of the Office. The judgment of the Regional Court in Brno was then cancelled by the Supreme Administrative Court and its binding legal opinion. Subsequently, the Regional Court in Brno dismissed the action by the judgment Ref. No. 62 Af 130/2016-553, against which a cassation complaint was filed and which was dismissed by the Supreme Administrative Court.

In this case the contracting authority infringed Article 120(1)(a) of the Act No. 137/2006 Coll., on Public Contracts by means of concluding subcontract to the purchase contract with the selected tenderer which is not in compliance with the principle of equal treatment and on the basis of which it is not permitted to ask the selected tenderer to pay stipulated fine for delay in supply of electric unit for the period during which the unit is to be operated by the contracting authority in test run with passengers. Concluding the subcontract, the contracting authority did not make use of the possibility to require paying the fine from the supplier.

In its final judgment, the Supreme Administrative Court stated that the contracting authority is obliged to conclude the public contract in compliance with tender qualification criteria and it is not authorized to modify these conditions in a detailed way. Therefore, in case the contracting authority concludes the subcontract, which influences the deadline for the supply and possible fine in case the concluded performance is not fulfilled, then, the substantial modification which is to influence the most suitable bid is concerned. The suppliers think about the participation in the award procedure and modify the form of their bids on the basis of procurement documents and they are not able to foresee the future modification. In case the contracting authority set the tender qualification criteria in the same form in which they were after making of the modification by the subcontract, it could enable the participation even of the other suppliers.

The Supreme Administrative Court expressed a similar legal opinion on the merits registered under the Ref. No. 7 As 325/2018, in which the contracting authority concluded the subcontract to the existing contract with the significant modification of tender qualification criteria, which could influence the selection of the most suitable bid.

STATE AID

The Office acts in the field of State aid as a coordination authority performing central advisory, consultancy and monitoring activities in all areas, with the exception of agriculture and fisheries, where the Ministry of Agriculture is competent authority. These competences concerned shall be carried out by relevant coordination authorities, irrespective of the origin of state (public) funds. The Office's exclusive role in the field of State aid consists primarily in the cooperation with the State aid providers on preparation of the notification of State aid measures to the European Commission. Moreover, the Office cooperates with the Commission and the State aid providers within proceedings before the Commission, both in proceedings related to the notified State aid and in cases of unlawful State aid, abuse of State aid, existing State aid schemes or where the Commission carries out on-the-spot inspections in the Czech Republic. The Office shall provide expert advice and consultancy to State aid providers already at the stage dealing with preparation of programmes or ad hoc aid. Moreover, it examines whether the conditions defining the State aid are cumulatively met in the assessed case and, if so, it shall recommend the application of an appropriate exemption from the prohibition of State aid and, where appropriate, recommends notification of the applied measures to the Commission. The Office shall submit to the Commission, in accordance with the relevant EU rules, an annual report on State aid granted in the previous year in the territory of the Czech Republic. Concerning the legislation, the Office represents the Czech Republic when discussing and preparing European Union legislation in the field of State aid. The Office is also the administrator of the Central register of *de minimis* aid and since 2016 onwards, the national coordinator of the electronic information system of the Commission called *Transparency Award Module* (hereinafter referred to as "the TAM system"). In the context of so-called ex post monitoring, the Commission, through the Office, carries out regular inspections on State aid provider's compliance with the State aid rules under notified aid schemes.

LEGISLATION

Fitness Check and Extension of Validity of Certain State Aid Rules

During 2019, the evaluation of effectiveness (the so-called fitness check) of the existing EU rules on State aid was performed and, at the same time, the Commission submitted the proposal to extend by two years validity of seven rules on granting of State aid, which would otherwise expire at the end of 2020. As regards the proposal for the validity extension of the selected rules, the Commission consulted the Member States of the EU on the prolongation of following rules until the end of 2022:

- Commission Regulation (EU) No 651/2014 of 17 June 2014 declaring certain categories of aid compatible with the internal market in application of Articles 107 and 108 of the Treaty, so-called general block exemption regulation (GBER);
- Commission Regulation (EU) No 1407/2013 of 18 December 2013 on the application of Articles 107 and 108 of the Treaty on the Functioning of the European Union to *de minimis* aid;
- Guidelines on regional State aid for 2014-2020;
- Communication from the Commission – Guidelines on State aid to promote risk finance investments;
- Communication from the Commission – Guidelines on State aid for environmental protection and energy 2014-2020;
- Communication from the Commission – Guidelines on State aid for rescuing and restructuring non-financial undertakings in difficulty;
- Communication from the Commission – Criteria for the analysis of the compatibility with the internal market of State aid to promote the execution of important projects of common European interest.

Through the evaluation process, the Commission, in line with the Commission's Better Regulation Guidelines, has set itself as an objective to analyse mentioned legislative acts as well as other State aid rules adopted as a part of the extensive modernisation of State aid carried out in 2012-2014. The evaluation is intended to provide the basis for a follow-up Commission's decision whether the rules under examination should be further extended after 2022 or amended and if so, to what extent. The evaluation includes the following rules adopted as a part of State aid modernisation:

- Commission Regulation (EU) No 651/2014 of 17 June 2014 declaring certain categories of aid compatible with the internal market in application of Articles 107 and 108 of the Treaty, so-called general block exemption regulation (GBER);
- Commission Regulation (EU) No 1407/2013 of 18 December 2013 on the application of Articles 107 and 108 of TFEU to *de minimis* aid;
- Guidelines on regional State aid for 2014-2020;

- Communication from the Commission on Framework for State aid for research and development and innovation;
- Communication from the Commission – Guidelines on State aid to promote risk finance investments;
- Communication from the Commission – Guidelines on State aid to airports and airlines;
- Communication from the Commission – Guidelines on State aid for environmental protection and energy 2014-2020;
- Communication from the Commission – Guidelines on State aid for rescuing and restructuring non-financial undertakings in difficulty.

The “fitness check” will also focus on the Guidelines on State aid for railway undertakings from 2008 and on the Communication on short-term export-credit insurance from 2012. These rules have not been revised as part of the modernisation of State aid, but its evaluation is relevant in view of developments in EU legislation and compliance with the Commission’s decision-making practice. The “fitness check” will include internal Commission’s analyses and public consultations as well as in some cases the studies carried out by external consultants or targeted consultations with specific stakeholders. The outcome of this examination will be summarised in the Commission Staff Working Document. Fitness check outcome should be available during 2020.

Public Consultations

The Czech Republic submitted its contributions to the consultation on the rules on access to finance for SMEs; namely it concerned the Commission Communication – Guidelines on State aid to promote risk finance investments (2014/C 19/04) and the relevant provisions contained in the Commission Regulation (EU) No 651/2014, General Block Exemption Regulation – GBER (see Chapter 3 of the Regulation). The consultation intends to enable the Commission to learn more about Member States’ experience when applying the above mentioned rules. The outcome of the consultation is supposed to be published in the Commission Staff Working Document, which should be adopted in the first quarter of 2020.

At the end of July, the Commission launched a public consultation on State aid rules to compensation granted for provision of services of general economic interest (so-called SGEI) in health and social sector as well as the *de minimis* Regulation on SGEI. Representatives of state administration bodies and municipal authorities could participate in this targeted consultation by completing the relevant questionnaire.

In May, the targeted consultation on the Commission Regulation (EU) No 1407/2013 of 18 December 2013 on the application of Articles 107 and 108 TFEU to *de minimis* aid was launched.

In the context of fitness check, the Commission initiated the public consultation on two aviation provisions, namely the Commission Communication – Guidelines on State aid to airports and airlines and the Commission Regulation GBER in a part concerning the promotion of regional airports.

In all these cases, the Office coordinated contributions of central government authorities to these public consultations.

Revision of State Aid Legislation

In 2019, part of State aid legislation was revised and updated. In particular, it is an example of the amendment to the Communication from the Commission – Commission Notice on the recovery of unlawful and incompatible State aid, which was preceded by a public consultation involving stakeholders from all the Member States of the EU. The draft Communication explains the rules and procedures governing the recovery of State aid and how the Commission cooperates with the Member States of the EU to ensure compliance with the particular obligations. The revised Communication is intended to replace the Notice from the Commission Towards an effective implementation of Commission decisions ordering the Member States to recover unlawful and incompatible State aid which is effective from 2007.

In 2019, the Commission presented a proposal to extend Regulation (EU) No 651/2014, the General Block Exemption Regulation (GBER), with new categories of State aid related to the following areas:

- 1) Funding from the Member States of the EU provided on the basis of contributions from EU financial instruments or budgetary guarantees centrally managed by the Commission;
- 2) Research, development and innovation projects which received the so-called seal of excellence under Horizon2020 or Horizon Europe Programme;
- 3) Promotion of European territorial cooperation.

The proposed new categories are subject to InvestEU Programme and to funding provided by the Member States of the EU. In the field of research, development and innovation, the newly proposed categories should allow a combination of Horizon Europe and Member State’s funding or, in case of projects which have received a seal of excellence, to replace central funding with national funding. According to the Commission, promotion of European territorial cooperation has been the main priority of EU cohesion policy for many years. The current State aid rules allow European territorial cooperation projects to be financed by public funds, taking into account the GBER. The Commission intends to extend the existing GBER to include another category focusing on territorial cooperation.

The proposal was discussed by the Member States of the EU and the Commission in September 2019 during the meeting of the Advisory Committee on State Aid held in Brussels. The Czech Republic was represented by a representative from the Office. On the basis of the comments received, the proposal should be amended and presented by the Commission at the Advisory Committee on State Aid, which is expected to take place in 2020. The adoption of a newly extended regulation should take place in the course of 2020.

ACTIVITY OF STATE AID UNIT

In 2019, the Office cooperated with the State aid providers on cases of monitoring carried out by the Commission. This included monitoring of research, development and innovation schemes, regional investment State aid and State aid in the field of environmental protection. These monitorings were not concluded by the Commission even at the end of the year. Furthermore, the Commission carried out an investigation concerning the obligation of transparency, in which it sent questionnaires to the Member States of the EU in order to clarify the findings related to the notified State aid measures. In particular, it examined specific records in the TAM system, as well as the notified measures before 1 July 2016. The emphasis was given on the question whether the measures fall within the obligation of transparency and whether the legal acts establishing entitlement to aid are issued/concluded under the scheme in question also after 1 July 2016.

The Office coordinated comment procedures on revised EU rules and contributions to public consultations in the field of State aid (see part Legislation for more details). In addition to cooperation between the State aid providers and legislative consultation bodies, Office's summary comments were prepared and sent to the Commission. Subsequently, representatives of the State Aid Unit actively participated in discussions on amendments to the relevant legislation during the negotiations with the Member States of the EU and the Commission in Brussels.

During the year 2019, a number of complex cases had to be notified or discussed with the Commission – DG Competition. In cooperation with the relevant State aid providers, it was necessary to prepare a wide range of information and documents which created the basis for the Commission's decision. Several complaints concerning granting of allegedly unlawful State aid were also handled in cooperation with State aid providers. It was required to provide the information justifying the absence of State aid or its compliance with State aid rules. In some cases, it was necessary to coordinate the collection and processing of information from a large number of State aid providers.

SIGNIFICANT CASES

Welding Schools

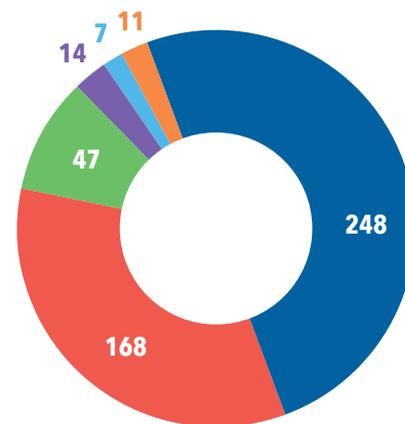
On 27 November 2019, the Commission issued a decision on the merits within the case State aid SA.52001 (2018/FC) – Czech Republic – Alleged aid to welding schools. The investigation was initiated by the Commission following a complaint on alleged incompatible State aid granted for the provision of commercial welding trainings by state-funded vocational high schools in the Czech Republic. The Czech authorities had provided several explanations and submissions in this case, on the basis of which the Commission concluded that the alleged financing of welding trainings provided by the public schools on a commercial basis does not entail state resources and therefore does not give rise to State aid pursuant to Article 107(1) TFEU.

Promotion of Electricity from Secondary Sources

On 26 September 2019, the Commission issued a decision in case SA.35179 (2015/NN) – Czech Republic – Promotion of electricity from secondary sources. It described State aid scheme aiming to provide aid to installations generating electricity from waste heat and from mining gases. The scheme contributes to resource efficiency by reducing the consumption of primary energy sources used for electricity production. The beneficiaries of the notified measure are operators of high efficient co-generation installations fired by waste heat located in the territory of the Czech Republic and connected, directly or indirectly, to the national grid. Only installations commissioned between 1 January 2013 and 31 December 2020 are eligible to receive aid under the notified measure. All beneficiaries must hold licences for the electricity generation and, in case of installations fired by waste heat, certificates of origin for electricity from high efficient co-generation production. The aid is granted in the form of a feed-in premium (the "green bonus"), which is set in the price decisions published by the ERO (Energy Regulatory Office) and is paid out by the Czech Electricity and Gas Market Operator (OTE).

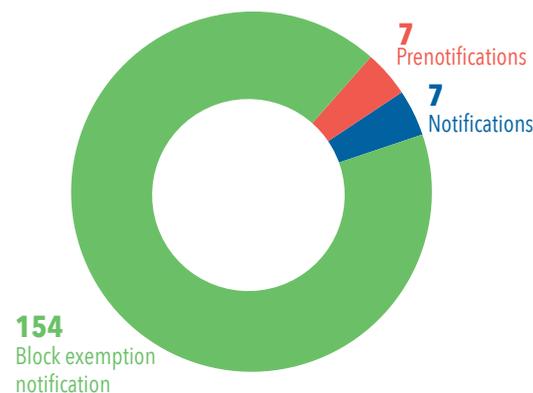
The Commission assessed the compatibility of the notified State aid scheme on the basis of Article 108(3) TFEU. The notified scheme aims to promote the generation of electricity from secondary sources. As a result, it falls within the scope of the current EEAG and, in part related to the period before the effectiveness of current EEAG, the aid was assessed directly on the basis of Article 107(3)(c) TFEU.

Selected Statistics in the Field of State Aid as of 2019

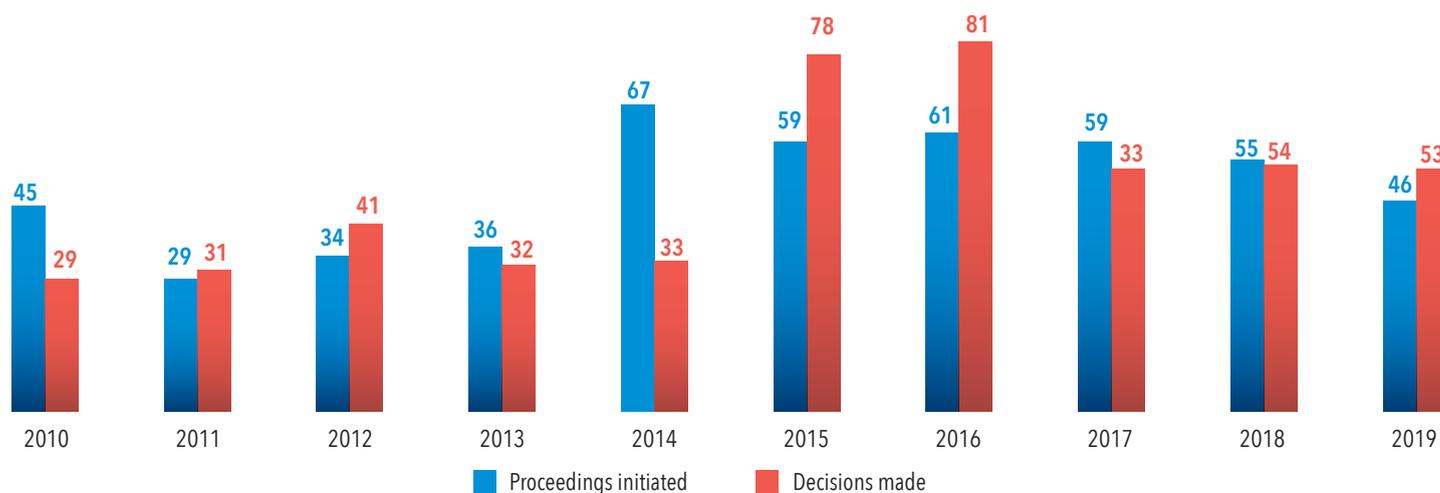


- Opinions in the field of State aid
- Prenotifications, notifications and notices pursuant to Commission Regulation (EU) No 651/2014
- Comments on Czech legislative acts proposals
- Participation in Advisory Committees and meetings dealing with the particular cases
- Request for information pursuant to Act No. 106/1999 Coll., on Free Access to Information
- Complaints submitted to EC and related agenda

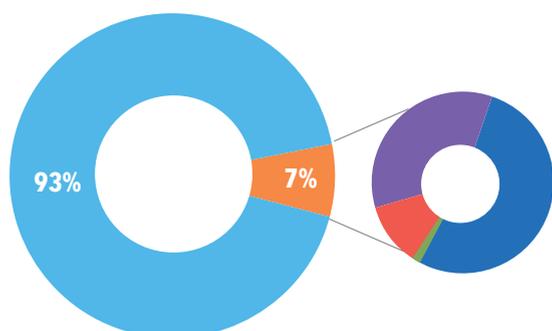
Notifications, Prenotifications and Notices Pursuant to Commission Regulation (EU) No 651/2014 as of 2019



Administrative Proceedings Initiated and Decisions Made within 2010-2019

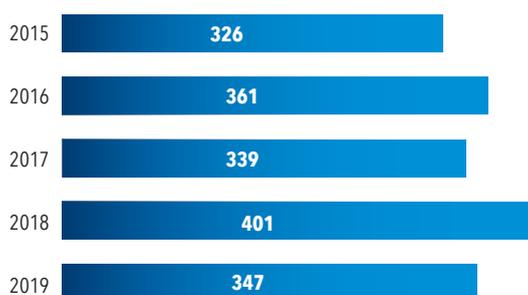


Statistics of Provided *De Minimis* Aid Pursuant to the Particular Regulations as of 2019



- Commission Regulation (EU) No 1408/2013 – primary agricultural production
- Commission Regulation (EU) No 360/2012 – services of general economic interest
- Commission Regulation (EU) No 717/2014 – fishery
- Commission Regulation (EU) No 1407/2013 – transportation
- Commission Regulation (EU) No 1407/2013 – others

Applications for Access to the Central Register of *De Minimis* Aid



DE MINIMIS AID

In the field of State aid, the Office conducts administrative proceedings against *de minimis* aid providers in respect of infringement of Article 3a(4) of Act No. 215/2004 Coll. The provision in question concerns recording of provided *de minimis* aid data, within the statutory deadlines, to the Central register of *de minimis* aid and provision of the reference to the title of the EU legislation as a part of the *de minimis* legal act on which the aid was granted. In addition to above-mentioned proceedings, the Office also carries out consulting and advisory activities in the field of *de minimis* aid and prepares methodological documents in cooperation with the Ministry of Agriculture related to the registration to the Central register of *de minimis* aid.

As it is mentioned above, the Commission launched a targeted consultation related to fitness check, asking additional questions in order to gather opinions and views on the implementation and compliance with *de minimis* regulation and to obtain information on possible deficiencies, overlaps or excessive regulatory burdens. The targeted consultation was carried out both in relation to the Commission Regulation (EU) No 1407/2013 of 18 December 2013 on the application of Articles 107 and 108 TFEU supporting *de minimis* aid and Commission Regulation (EU) No 360/2012 on the application of Articles 107 and 108 TFEU to *de minimis* aid granted to undertakings providing services of general economic interest.

SECOND-INSTANCE DECISION-MAKING

In 2019, in the context of administrative proceedings conducted by the Office concerning the registration to the Central register, one first-instance decision was appealed and one second-instance administrative proceeding was initiated. Also one second-instance decision confirming previous first-instance decision imposing the fine of CZK 100,000 was issued this year. Finally, one decision on partial discontinuance of proceedings was issued by the Office.

JUDICIAL REVIEW

Finally during 2019, one action was brought against a second-instance decision related to granting and registration of *de minimis* aid. However, no judgments on the decision-making practice of the Office in the field of provision and registration of *de minimis* aid have been issued.

INTERNATIONAL COOPERATION

The International Unit of the Office (hereinafter referred to as the "Unit") works primarily to develop relations with foreign institutions involved in establishment and enforcement of competition law. Representatives of the Unit gather knowledge and experience related to application of competition law, public procurement law and State aid rules abroad, and regularly inform the Office's employees on the latest developments. The Unit also organises all foreign business trips of employees and takes care of the programme for foreign visitors.

Due to the extensive involvement of the Office in various international organisations and platforms, such as the European Competition Network – ECN, connecting competition authorities of the Member States of the EU, or the International Competition Network – ICN, involving competition authorities across the globe. The Unit is the main contact point managing all organisational activities related to participation in individual working groups. As a result, the representatives of the Office have an opportunity to discuss up-to-date competition issues and cooperate in the exchange of information on cross-border cases within these working groups. Finally, the representatives of the Unit actively participate in regular meetings of the Organisation for Economic Cooperation and Development – OECD.

EUROPEAN COMPETITION NETWORK – ECN

Within the ECN network, there exist many working groups focused on partial aspects of the EU competition law and policy, which are actively attended by the Office's representatives responsible for particular issues discussed at the groups' meetings. The most active working groups are dealing with cartels, mergers or international cooperation between competition authorities (*Working Group on Cooperation Issues and Due Process*). The latter working group is currently dealing with the transposition issues of a Directive (EU) 2019/1 of the European Parliament and of the Council of 11 December 2018, to empower the competition authorities of the Member States of the EU to be more effective enforcers and to ensure the proper functioning of the internal market. The ECN+ Directive has a significant impact, inter alia, on cooperation between various competition authorities from the Member States of the EU. It was adopted at the end of 2018 and published in the Official Journal of the European Union on 14 January 2019. In terms of the working group in question, Unit representatives also participated in sub-projects focused on developing cooperation and coordination in the cross-border cases, as well as on issues related to the provision of information and synergies in such cases.

At the same time, the ECN platform is useful for direct communication and cooperation between the competition authorities of the Member States of the EU. The most common mean of cooperation represents an exchange of non-confidential information, which is carried out in a form of so-called Request for Information (RFI). In 2019, the Office received 77 RFIs, which concerned many aspects and practical issues of competition law, ranging from general experience in the collection of electronic evidence and the imposition of administrative sanctions to the details of leniency programmes. The Unit, in cooperation with other organisational units of the Office, worked out and submitted replies to all of these requests. The Office itself contacted the competition authorities of the other Member States of the EU in three cases.

Another integral part of the cooperation between competition authorities associated in the ECN platform are so-called requests for assistance in investigations pursuant to Article 22 of Council Regulation (EC) No 1/2003 on the implementation of the rules on competition laid down in Articles 81 and 82 of the Treaty. Such requests may be used by competition authorities in cases where they need to obtain more information for initiation of proceedings with a particular undertaking or to add relevant evidence to the file in the context of an infringement of Articles 101 and 102 TFEU.

	2017	2018	2019
Number of RFIs received	55	75	77
Number of RFIs submitted	2	2	3

	2017	2018	2019
Number of requests for an assistance pursuant to Article 22 received from the other Member States of the EU	1	3	6
Number of requests for an assistance pursuant to Article 22 submitted to the other Member States of the EU	0	1	3

INTERNATIONAL COMPETITION NETWORK – ICN

The ICN is a forum focused on the cooperation between competition authorities from all over the world. Within this platform, there are active individual working groups which, among other things, organise annual conferences or workshops. In 2019, the Office's representatives participated in an international conference in Cartagena, Colombia, at which a global initiative on the common practices of the competition authorities was adopted. The Office became one of the founding

members of this joint project with the official name *Framework for Competition Agencies Procedures (CAP)*. As part of the Office's activities within this project, the Unit worked out and subsequently published on the Office's website the official "ICN CAP Template" summarizing the compliance of domestic competition rules with set process standards pre-defined by the CAP initiative.

ORGANISATION FOR ECONOMIC COOPERATION AND DEVELOPMENT – OECD

The OECD has been always addressing new trends and innovations in the field of competition law. It is a platform that allows all participating countries to compare their experience of different types of policies, looks for answers to current competition issues and helps to coordinate domestic and foreign policy.

At the June and December meetings of the OECD Competition Committee and at the World Competition Forum meeting in December, representatives of the Office participated in thematic panels, where the most discussed topics concerned the functioning of competition law on labour markets, the relationship of competition law and licences to intellectual property law, and the issues of hub and spoke agreements. Unit representatives were directly involved in drafting of written contributions on the topics of *Access to the Case File and Protection of Confidential Information* and *Independent Sectoral Regulators and their Relationship with the Competition Authorities*, which were presented at Competition Committee meeting in December.

WORLD COMPETITION DAY 2019

For a long time the Office has promoted the initiative of the non-profit organisation CUTS International (Consumer Unity & Trust Society), which celebrates the date of 5 December as the World Competition Day. On this day, conferences, seminars and other activities are organised to inform the general public about the importance of competition policy and its impact on consumers. The theme of Competition Day 2019 was related to the issue of ensuring effective competition in an expanding world of online platforms and digital technologies.

BILATERAL RELATIONS

In addition to regular meetings with other competition authorities' representatives and experts on competition law within international platforms and conferences, the Office also develops the bilateral relations with partner competition authorities from all over the world.

At European level, the Unit is in daily contact with the European Commission, whether it concerns case-by-case consultations or general approach towards competition policy, or by consulting the possibilities of ongoing trainings of Office's employees. As part of the staff trainings and development programmes, in 2019, the Office sent its seconded national expert to the Directorate-General for Competition at the European Commission, where he has been allocated to the unit in charge of enforcing antitrust policy in the telecommunications sector. These internships help to build a closer relationship with the Commission and at the same time provide an opportunity to gain valuable experience, which could be useful for the future practice of the employees upon their return to the Czech Republic.

Moreover, the Office cooperates intensively with the Commission in the field of public procurement. Representatives of the Office regularly participate in the meetings of two working groups composed of representatives of the Member States of the EU and the Commission, dealing with the current problems of public procurement and supervision over tenders. Also the area of State aid is discussed by representatives of the Office and their colleagues from the Commission and the other Member States of the EU within the working groups set up for these issues.

Establishing relationships and sharing experience with other foreign partners, both in the area of competition and other competencies of the Office, is also an important aspect of international cooperation. The Slovak Competition Authority remains the Office's closest foreign partner. As an example of these above-standard relations, the Office would like to highlight rapid and mutually beneficial cooperation within the exchange of information, mutual assistance in dealing with cross-border cases and participation in regular meetings, where other possibilities of new cooperation are often constructively discussed.

At the end of the year 2019, the Office's representatives participated in a meeting with colleagues from the Polish Public Procurement Office in Warsaw. The subject of the negotiations was focused mainly on a joint discussion on the public procurement in both countries. This discussion dealing with practical issues of public procurement was especially beneficial for preparation works on the text of the amendment to the Czech Public Procurement Act. In this area, the Office cooperates intensively also with the Slovak Public Procurement Office.

During 2019, the Office welcomed three delegations from the State Administration for Market Regulation (SAMR) of the People's Republic of China. This administration, which is in charge of, among other things, the protection of competition, was created by the merger of several administrative offices and ministries in 2018, so its representatives draw inspiration for the ideal institutional setting of their authority through study visits abroad.

Awareness-raising activities represent also an integral part of the international activities of the Office. Within the World competition day, a conference held by the Polish competition authority on combating bid rigging in public procurement took place in Warsaw. The Office sent its expert to this event to present the latest experience of the Office in the field of combating and punishing bid rigging. Thanks to these activities, the Office informs the general public about developments and difficulties in its fight against bid rigging cartels, while it also has the opportunity to discuss the competition law issues with experts from other countries.

PUBLIC RELATIONS

The Office pays close attention to informing the professional as well as general public about its activities. Up-to-date information is provided primarily through the official website and Twitter. On its website, the Office publishes press releases, final decisions of the Office and judgments of administrative courts reviewing decisions of the Office, annual reports and information bulletins issued by the Office on particular topics, as well as summary of the Czech and EU legislation and information concerning all powers of the Office: protection of competition, supervision over public procurement, monitoring and coordination of State aid, control of abuse of significant market power and competences under Act No. 370/2017 Coll., on Payment system. New tool established during 2019 is the website *ABC of competition* (Abeceda hospodářské soutěže - www.abecedahs.uohs.cz; available only in Czech), which explains the basic benefits of competition in a comprehensive way and alerts small and medium-sized entrepreneurs that not only large companies can be alleged of infringement of the competition rules.

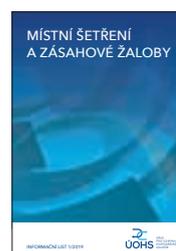
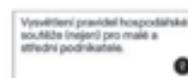
In 2019, the Office issued three information bulletins. In a bulletin dedicated to *On-the-spot inspections and actions against illegal intervention*, for reasons of greater transparency and predictability of the Office's procedures, both the competences of the Office and the overview of the rights and obligations of undertakings within the on-the-spot inspections are explained. Unannounced inspections are the most important investigative tool available to the Office in order to detect and investigate anticompetitive conduct. Another publication is a three-volume *Brief Guide to the Contracting Authority in the World of Public Procurement*, two volumes of which were published in 2019 and the third one was published in spring 2020. For more information about the content of the Guide, see the section Activity of Public Procurement Division of this annual report.

A media analysis of the Office carried out on regularly basis by company Newton Media showed a 58% year-on-year increase in media coverage of the news concerning the Office in 2019, which is related to the toll tender case, police intervention in entities related to this case and the leak of police wiretaps. The toll tender case is almost exclusively related to the 22% increase in ambivalent and negative contributions about the Office. Yet the vast majority (67%) of reports on the Office in 2019 was neutral.

ST. MARTIN'S CONFERENCE

In November 2019, the Office held the thirteenth annual St. Martin's Conference on the current trends in competition law, which attracted more than 150 competition experts both from the Czech Republic and abroad to Brno. The conference was introduced by Petr Rafaj, the Chairman of the Office, who was followed by Hynek Brom, the First Vice-Chair of the Office, with an overview of the activities of the Office, in particular pointing out to the high number of proceedings in the area of concentrations of undertakings and prohibited agreements, due to which antitrust officials carried out 23 on-the-spot inspections during the last year. This is also connected with the greater number of actions against illegal intervention that the Office has recently faced, but in most cases these actions are dismissed by the court. Boris Gregor, a Deputy Chairman of the Slovak Competition Authority, spoke about the preparation of the transposition of the Directive ECN+ and the efforts to work better with the so-called risk indicators of collusion in public procurement. Natalie Harsdorf from the Austrian Competition

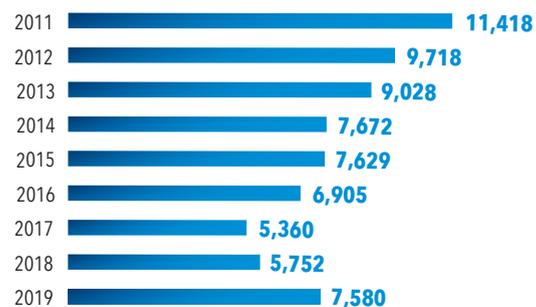
Abeceda hospodářské soutěže



Number of Press Releases Issued



Number of Articles Mentioning Office within Monitoring of Media





Authority reported on the results of market analyses in the health sector, in particular taking into account the pharmaceutical markets and health services in rural areas. Marek Niechcial, the President of the Polish Competition Authority, pointed to changes in the Polish competition and consumer law concerning geoblocking and late payments of invoices. Digital economy, the most discussed topic of contemporary competition policy, was the topic of a special keynote presentation of Renato Nazzini from King's College London. In his view, the digital economy represents fundamental challenge to competition policy, forcing it to look on certain basic concepts differently; however it is not a problem that cannot be managed under the current tools of competition law. Michael Mikulík from the Office stressed the importance of private law enforcement within the panel on Civil disputes related to competition and collective actions and briefly outlined the decision-making activities of the Court of Justice of the European Union in this area during the past year. Jiří Kindl from the law firm Skills focused on the disclosure of evidence (so-called Discovery procedure) in civil damages proceedings. Elizabeth Jordan from Linklaters, London, pointed out to the increasing number of civil claims in the UK, where consumer defence is available also for a collective claimant. Joseph Bell, Oxera economist, stressed the requirement of economic evidence quality in collective action taking into account the competition law point of view. Jan Balarin from the law firm Bedrna and Partners focused on the evaluation of the current draft law on collective actions and on the applicability of the opt-out system in the circumstances of the Czech civil process. As a part of the third panel on vertical agreements, Isabel Pereira-Alves from the DG Comp informed, inter alia, of the ongoing revision of the Vertical Block Exemption Regulation undertaken by the Commission and lasting from October 2019 to the end of June 2020, with the aim to obtain relevant information on the effectiveness of the current directive and to use it during the preparation of the new Directive. Joseph Wilson from McGill University in Montreal addressed the issue of vertical constraints in the era of the digital economy. A panel on the possible competitive aspects of the joint bids of undertakings within public tenders, the so-called joint bidding, was moderated by Kamil Nejezchleb from the Office, explaining the general characteristics of the submission of joint bids from the competition law point of view. He was followed by Michal Petr from Palacký University of Olomouc, who provided a summary of the most important foreign case law on this issue. Subsequently, Robert Neruda from law firm HAVEL & PARTNERS spoke about undertakings point of view. The panel was concluded by Bartosz Turno from law firm WKB, who explained the Polish experience on the issue.

Petr Solský, the Vice-Chair of the Office, introduced the panel on the area of significant market power and mentioned up-to-date statistics and important cases which the Office had investigated in this area. The most common anticompetitive practices investigated by the Office include contract imbalances, non-compliance with the three percent limit, non-consideration benefits and sophisticated listing fees. Further discussion concerned the implementation of Directive (EU) 2019/633 of the European Parliament and of the Council on unfair trading practices in business-to-business relationships in the agricultural and food supply chain. Kateřina Mandulová from Deloitte Legal summarised the ten-year history of the current Act No. 395/2009 Coll., on Significant Market Power in the Sale of Agricultural and Food Products and Abuse Thereof (hereinafter referred to as "the Significant Market Power Act"), in particular recalled that there is still a lack of objective regulation impact assessment (RIA), described the finding of the Constitutional Court of the Czech Republic on constitutional complaint challenging unconstitutionality of the law and asked a number of inspiring questions related to the preparation of the amendment. Martin Štěpánek from the Ministry of Agriculture characterized the current situation concerning the trade relations between enterprises in the agricultural and food supply chain and focused on new measures resulting from the adoption of the European Directive 2019/633 which the Czech regulator must implement by 1 May 2021 (with the effect from 1 November 2021). Pavel Vinkler from the Ministry of Industry and Trade summarised ministerial view on the Significant Market Power Act as well as on the new European Directive.

The final workshops focused on the implementation of unannounced on-the-spot inspections of the Office, the area of significant market power and private law enforcement of competition law.

CONFERENCE ON STATE AID

The Office in cooperation with the Ministry of Industry and Trade organised a three-day conference on State aid and issues of small and medium-sized enterprises (SMEs) in May 2019. The conference was introduced by Petr Rafaj, the Chairman of the Office, subsequently followed by Petr Solský, the Vice-Chair of the Office, who presented the activity of the Office in the field of State aid over the last year. He mentioned in particular the successful negotiations with the Commission concerning State aid for Czech Post, combined transport, school meals or periodical publications on Czech cinematography. Other contributions of the introductory panel were focused on State aid for high-speed internet networks. Pietro Pantalissi from the Directorate-General for Competition (hereinafter referred to as "DG Comp") presented the views of the Commission, and then Marian Piecha, the Deputy Minister at the Ministry of Industry and Trade, summarised the situation in the Czech Republic. Jaroslav Zajíček, Czech Ambassador from the Permanent Representation of the Czech Republic to the EU, explained the role of the Permanent Representation in the negotiation concerning State aid. Afterwards Libuše Bílá, the head of the State aid Unit, presented ongoing and upcoming revisions and changes to the legislation, in particular the Commission's proposal to extend the validity of a number of regulations by two years, i.e. until 2022. Iva Příkopová from the Office explained in her presentation the concepts of economic and non-economic activity. Her colleague, Jana Staroňová, subsequently summarised the general and specific obligations of State aid providers. Martin Fott from the DG Comp devoted his speech to State aid aimed at low-emission mobility, rules on State aid for science, research and innovation, and, last but not least, described so-called *Important Projects of Common European Interest* (IPCEI). Gabriela Kinclová from the Office in her contribution on State aid in the transport sector presented two projects of support for the construction and operation of Park&Ride parking lots, which were backed by the Ministry for Regional Development and the Capital City of Prague. Martina Břešťovská from the Ministry of Agriculture informed the audience about State aid in agriculture and the most important decisions of the Commission as well as the case law of the Court of Justice of the EU were summarized by Michael Kincl from the Supreme Court of the Czech Republic.

The second day of conference was dedicated to the issue of small and medium-sized enterprises. Graça da Costa from the DG Comp spoke about the way how the small and medium-sized enterprises are defined for the purposes of providing State aid. When determining the size of the enterprise, we have to take into account not only the number of employees and the turnover rate or the annual balance sheet, but also the relationships with other businesses. Practical experience with the enterprise size verification was then provided by Lucia Jenčová from the Ministry of Economy of the Slovak Republic, Renáta Mičická from the Audit Authority of the Ministry of Finance of the Czech Republic and Bohumil Šmucr from the Ministry of Industry and Trade. The latter speaker raised concerns about the complexity and ambiguity of the small and medium-size enterprise definition and mentioned the fact, that this definition isn't incorporated into the EU secondary law, but we can find it only in lower-ranking implementing provisions or even in soft-law. Marian Piecha, the Deputy Minister at the Ministry of Industry and Trade, has announced that any project shall be subject to control of SME's status. This obligation will be newly transferred solely prior to issuance of award decision. The problematic issues are seen in reliability of the information sources, reliability of the inspection carried out and its duration. Therefore Mr. Piecha recommended simplifying of SMEs definition with regard to the relationship of the enterprise with other individuals and its partners or employees. Balázs Greinstetter from the Hungarian Ministry of Finance, Patrycja Brudnicka from the Polish Ministry of Entrepreneurship and Technology and Lucia Jenčová from the Ministry of Economy of the Slovak Republic spoke about basically identical problems in applying the SMEs definition.



PROVIDING INFORMATION PURSUANT TO ACT NO. 106/1999 COLL., ON FREE ACCESS TO INFORMATION, DURING 2019

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

Area	Number of requests received	Number of decisions issued
Competition	44	24
Public procurement	45	10
State aid	6	1
Significant market power	4	1
Legislative/Legal requests	6	0
Other	15	4
Total	114	39

2. Number of appeals lodged against decisions of the Office pursuant to Act No. 106/1999 Coll.: 13

3. Number of complaints on maladministration with regard to requests pursuant to Act No. 106/1999 Coll.: 0

4. Court judgements concerning the Office's competence in field of providing information:

- 31 A 136/2017-42 Judgment of the Regional Court in Brno of 30 May 2019
- 8 As 133/2017-56 Judgment of the Supreme Administrative Court of 30 May 2019

5. Outcome of proceedings on sanctions for non-compliance with Act No. 106/1999 Coll.: 0

6. List of exclusive licences granted: No exclusive license was granted.

BUDGET FOR 2019

Indicators of Chapter 353 - Office for the Protection of Competition		CZK
Aggregates		
Total revenue		5,500,000
Total expenditure		254,126,162
Specific indicators - revenue		
Tax revenue ¹⁾		3,800,000
Total non-tax revenues, capital revenues and transfers received		1,700,000
of which:	revenue from the European Union budget without the common agricultural policy in total	0
	other non-tax revenues, capital revenues and transfers received in total	1,700,000
Specific indicators - expenditure		
Expenditure on securing the fulfilment of the tasks of the Office		254,126,162
Cross-sectional indicators		
Salaries of employees and other payments for work carried out		137,633,677
Compulsory insurance paid by the employer ²⁾		46,795,450
Transfer of the Cultural and Social Needs Fund		2,712,610
Salaries of employees in employment, excluding staff at service posts		18,949,547
Salaries of employees at service posts pursuant to Act on Civil Service		107,943,748
Salaries of employees in terms of employment derived from the salaries of constitutional officials		8,737,200
Ensuring preparation for crisis situations pursuant to Act No. 240/2000 Coll.		0
Total expenditure co-financed fully or in a part by the European Union budget excluding the common agricultural policy		0
of which:	from the state budget	0
	share of the European Union budget	0
Total expenditure included in the EDS/SMVS Programme Financing Information System		33,042,249

1 excluding revenues from compulsory social security contributions and contribution to the state employment policy

2 mandatory social security contributions and a contribution to the state employment policy and public health insurance premiums

AGENDA 2020

COMPETITION

As in previous years, the main priority of the Competition Division of the Office in 2020 remains combating hard core horizontal cartels, improvement of their detection, but also prevention of their occurrence, especially by supervising of the actions of the contracting authorities, for which the Office organises special trainings and provides methodology. In 2019, the Office organised trainings concerning its competition powers for all public prosecutors from the ones active within regional councils, including a large number of district public prosecutors. Furthermore, trainings were carried out for Krajské ředitelství policie ČR (regional police directorate) and employees from contracting authorities within regional authorities and their subordinate units at the municipal level. This agenda has not yet been completed and the Office intends to continue performing this activity also in 2020. The Office's priority in this context is to maximize the competition awareness of both contracting authorities and all the bodies of enforcement authorities active in criminal proceedings.

The Office will also continue its awareness-raising project, presenting the new tool (website) *ABC of competition* (Abeceda hospodářské soutěže – www.abecedahs.uohs.cz; available only in Czech), which provides simple information on the benefits of competition, ways leading to distortion of the competition and the penalties for anticompetitive conduct. The Office intends to expand the existing part of the website, which focuses mainly on prohibited agreements, with other related areas concerning the abuse of a dominant position, concentrations between undertakings or anticompetitive conduct of public authorities. The Office also plans to create videos that would explain some key phenomena, such as bid rigging, leniency programme, etc.

SIGNIFICANT MARKET POWER

In 2020, the Office expects intensive negotiations on the final draft of the amendment to the Significant Market Power Act. Not only the introduction of the concept of significant market power even in connection to the supplier, but also the appropriate setting of legal conditions for contractual relations between customers and suppliers will be challenging tasks for the Office. The representatives of the Office will also participate in the European Competition Network FOOD working group, where the participants can share the experience with other Member States of the EU in the field of unfair commercial practices in the food sector. Expert groups dealing with the interpretation of the new EU Directive on unfair commercial practices can also provide enriching insights to these issues as well as other Member States' views are highly appreciated.

In order to cultivate customer-supplier relationships, the Office will continue to cooperate with other state administration bodies and professional associations. Moreover, part of the agenda within the St. Martin's Conference will be devoted to current issues in the field of unfair commercial practices.

PUBLIC PROCUREMENT

The significant factor which will influence not only the activity of the Office in 2020 is the already mentioned abolition of the administrative fee connected with lodging the complaint. The contracting authorities will have to count with the fact that public contracts awarded by them will be assessed by the Office more frequently, and even with the delay in connection to awarding of their public contract. Hopefully the extension of the possibility to lodge the complaint leading to initiation of ex-officio proceedings, which the Office has to deal with, will not be connected with administrative burden of the Office of absurd and unfounded complaints which the Office experienced in the past. Unfortunately the Office has already come across the complaints stating: „all the public contracts awarded in our city were awarded not in compliance with the law”, for example. Assessing of these complaints requires significant administrative capacity, which would otherwise be set for assessing applications (decision-making of the Office of the pending award procedures). Therefore, the Office awaits the increase in agenda in this field in 2020. Securing the review of public procurement by the Office and maintaining it smooth and effective not causing the delay in the award procedure will be a challenging task for the Office.

During the year 2020, the technical amendment of the Public Procurement Act should be processed and presented to the Government of the Czech Republic. Ministry of Regional Development is the institution preparing the amendment, the Office shall only comment on the technical amendment. The Office's priority concerning the modification of the review of public procurement will be to enable the Office to access the procurement procedure documentation of contracting authorities in order to review public procurement even in different way than in the past (by means of enabling access to certified electronic tool without any time limitation). The Office also sees another important point in maintaining balanced proceedings of the Office (to provide advantage neither to the supplier nor the contracting authority) even after approval of the amendment of the Public Procurement Act, thus still enabling quick and effective review of the merits. Consequently, it is necessary to make sure the award of public contract is delayed by the review as little as possible.

In 2020 the Office will continue in awareness-raising activities, both by means of publishing several documents and by means of lecturing. The scope of awareness-raising activities will be adapted to the availability of current administrative capacities.

The Office will also be very active in improving public procurement in general. The Office is convinced that one of the ways how to improve it is leading contracting authorities to realize their responsibilities. The Office's experience regarding dealing with contracting authorities indicates that contracting authorities with legal awareness are the ones which are responsible in connection to managing state budget finances. The Office rarely comes across contracting authorities which would not have knowledge of the Public Procurement Act and decision-making practice of the Office. To conclude, even though some of the „problematic“ contracting authorities know correct procedures, they are not motivated to comply with the safe standards offered by the Public Procurement Act and extensive decision-making practice of the Office. The contracting authorities maintain their opinion without relevant reason even though there is the situation in the market concerning inappropriate demands of the contracting authorities within objections. The Office is aware of its responsibility; however, it is convinced that the behaviour of the contracting authorities is the key element of improving overall situation in the field of public procurement.

STATE AID

At the end of 2019, a new European Commission introduced its programme related, among other things, to the field of State aid. The European Commission's priorities were presented in the regular first half-year outlook at the beginning of 2020, and it mainly focused on ensuring long-term economic prosperity. The European Commission would like to achieve the objectives outlined, inter alia, through the so-called European Green Deal representing a new growth strategy linked with the goal to achieve climate neutrality by 2050.

Through the investment plan for a sustainable Europe, the European Union can support private and public green investment. This plan shall combine the funds earmarked to support sustainable investment with proposals to improve the regulatory framework, thereby mobilising sustainable investments across the EU. The InvestEU Programme will be used for these cases. National funding under InvestEU Programme will be subject to an ongoing revision of Commission Regulation No 651/2014.

Another source for financing climate measures and economic modernisation shall be accessible due to increase in revenues from the EU Emissions Trading System (EU ETS). These funds should be used to support achieving of 2030 climate and energy targets and to investments into the transition to climate neutrality.

In this regard, there will be a public consultation in 2020 on the draft Guidelines on certain State aid measures in the context of the greenhouse gas emission allowance trading scheme. The current regulation shall expire on 31 December 2020, so the proposal of the new Guidelines should cover the period from 1 January 2021. The purpose of the consultation is to gather feedback from stakeholders on the draft of new Guidelines, in terms of finding out an answer whether the proposal adequately addresses the risks of carbon leakage due to indirect emission costs (in particular as regards eligible sectors for compensation) while maintaining the incentives of the emission allowance trading scheme to cost-effectively decarbonise the economy and minimize distortions of competition in the internal market.

In 2020, the implementation of a sub-amendment to Commission Regulation (EU) No 651/2014 is expected, as well as the General Block Exemption Regulation, which should be extended to include new categories of State aid, such as the possibility of co-financing from the InvestEU Programme. Also the European Commission should adopt a decision to extend the effectiveness of seven State aid provisions that would otherwise cease to be effective at the end of 2020. The outcome of the evaluation of the relevant State aid provisions should be published during 2020. The optimistic scenario envisages the submission of more concrete proposals for possible legal changes.

During 2020, the Office in cooperation with ministries, regional authorities and municipalities, shall prepare a regular report on the implementation of the Commission's decision on the application of Article 106(2) TFEU on State aid in a form of overcompensation for a public service obligation imposed on certain undertakings entrusted with the provision of services of general economic interest. The report is prepared every two years and submitted to the European Commission by 30 June of the year in question.

As of 30 April 2020, all State aid providers are obliged to provide the Office with information on the amount of State aid granted in 2019. The information obligation in question does not apply to measures granted under the *de minimis* aid scheme or on the basis of rules governing the provision of services in the general economic interest. On behalf of the Czech Republic, the Office will send the European Commission a summary report on this issue.

Negotiations with the European Commission on (pre)notified measures that have already been initiated will continue also in 2020. In the context of changes to certain national legislation, further new consultations or notifications can be expected to be initiated in order to ensure compliance of the changes with State aid rules.

In 2019, the Office received four new complaints concerning alleged unlawful aid, which are now being examined by the European Commission and to which the European Commission has asked the Office to provide relevant information. The investigation of those complaints, as well as other complaints received in previous years, will also take place in 2020. The Office actively cooperates with relevant providers of alleged unlawful aid to deal with these cases.

INTERNATIONAL COOPERATION

The ongoing works on the transposition of the ECN+ Directive will be the most important issue of 2020. Moreover, discussions with the European Commission on some sub-questions within the transposition process are expected in this respect. At the same time, the International Unit will continue its work on project running under ECN platform, which aims at developing cooperation and coordination in cross-border cases. This project is closely linked to the transposition of the ECN+ Directive and requires constant communication of the International Unit representatives with the entire project team, in order to participate in the drafting of the amendment to ECN Cooperation Manual.

STRUCTURE OF THE OFFICE

