ANNUAL REPORT 2021

ÚOHS

OFFICE FOR
THE PROTECTION
OF COMPETITION

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FOREWORD

In 2021, the Office for the Protection of Competition celebrated thirty years of its existence and its regulatory activities not only in the field of protection and promotion of competition in all markets, but also in the fields of supervision of public procurement, control of abuse of significant market power and, last but not least, also in the State aid issues. We commemorated the anniversary with a ceremonial conference in the Liechtenstein Palace in Prague, which was attended also by the Prime Minister as well as the President of the Chamber of Deputies of the Parliament of the Czech Republic. The Office fully applies its 30 years of experience in the current difficult period when the Czech economy is being hit full force by the post-COVID inflation wave and the economic shock due to the unprecedented Russian armed aggression against Ukraine. As a result of these events, there is foreseeable a tendency towards an increase in anticompetitive behaviour and it has to be clearly stated that competition is the way to recover the economy and return faster to prosperity.

In course of 2021, I was able to fully develop the concept of open approach and intensive communication with the addressees of the Office's public administration activities and with the professional public as well. In order to make the Office's decision-making practice more transparent and predictable, we have strived to meet as often as possible with undertakings' representatives, contracting authorities and public procurement suppliers, State aid providers and recipients, professional associations, as well as with legal experts on these topics. I personally and my colleagues in the Office's senior management have spoken at dozens of conferences and workshops, seminars and other events where we have explained the legislation related to our scope of powers and its application by the Office. Specifically, I can mention in particular the Methodological Days on Public Procurement, which we already conducted by video streaming a total of five times. Over two thousand people interested in public investment watched interpretation of our experts on various topical issues in this sphere. We have also established a systematic cooperation with the major Czech universities. In general, we have seen more than positive feedback from the professional community responses to the change in the Office's communication.

At the very beginning of the year I also carried out an extensive renewal of the Appellate Commissions, about whose activities there were certain doubts that had to be dispelled. The new Appellate Commissions were reconstituted in a most transparent manner and on the basis of predetermined qualification and professional criteria. I have selected the new members of the commissions on the basis of nominations proposed by academic institutions (law and economics faculties as well as universities), state administration bodies, non-governmental organisations, the Czech Bar Association and other associations (the Union of Towns and Municipalities, Association of Local Authorities, Chamber of Commerce, Association for Public Procurement, etc.).

There has also been a change in top management of the Office, as I have proceeded to replace two of the three Vice Chairmen. As of 1 April, Kamil Nejezchleb, who has worked at the Office for more than ten years and is an outstanding expert in the field of detection and punishment of cartel agreements, took over leadership of the Competition Division. Since the beginning of July, I appointed Markéta Dlouhá to head the first-instance supervision of public procurement. She has also served for many years in leading positions within the Public Procurement Division and in a number of cases has contributed to the constitution of established decision-making practice in controlling the transparency and adequacy of the procedure of public contracting authorities. All members of the Office's management (the Chairman and Vice-Chairmen) are certified by the National Security Authority at the Secret level, which allows for more intensive communication and exchange of information with the security bodies.

In our competition decision-making, we detected a total of nine detected and sanctioned prohibited agreements, six of which related to the most serious horizontal cartels. In total, fines excessing CZK 160 million were imposed in first instance for competition offences. For the first time in history,

a ban on the performance of public contracts was imposed for participation in a public procurement cartel, so-called bid rigging. The sign of positive future development is the record number of 26 on-site inspections carried out by the Office at undertakings' premises last year, on the basis of most of which it initiated new administrative proceedings. We have also achieved considerable success in defending our decisions before the administrative courts, when the Regional Court upheld only two of the 12 actions submitted and the Supreme Administrative Court upheld the Office's decisions in all ten cases it reviewed.

In the field of public procurement supervision, we noted an increase in the number of administrative proceedings and complaints filed by approximately 40%, which has put a significant burden on our capacity, which we are also newly allocating to methodological and awareness-raising activities. We issued hundreds of decisions on the procedures of contracting authorities, the most significant of which were in particular the decision on fine of CZK 550 million to the Czech Ministry of Defence for infringement of the legal rules when purchasing military helicopters, the decision on additional deliveries of submachine guns and rifles for the Police of the Czech Republic or the decision on fire brigade concession contracts for services related to the centralised protection console and others.

In the field of State aid, the key issue in 2021 was still defending of COVID aid support programmes and measures, the approval of which we discussed in Brussels. As to the significant market power, we focused on analytical activity and, in particular, on legislative work related to transposition of the Unfair Commercial Practices Directive.

In 2022, in addition to the standard decision-making activities, the Office´s attention will focus in particular on the second half of the year, during which the Czech Republic will hold the Presidency of the Council of the European Union. To stand worthily in the role of the presidency will be an important task for the entire state administration and the Office is therefore already preparing itself responsibly for the agendas that the Office is likely to be responsible for, such as the issue of subsidies from third countries.

I firmly believe that the Office is on the right path, which will result in more effective decision-making in all areas of its competence, and that it will successfully continue in this direction in the years to come.

Petr Mlsna
Chairman of the Office for the Protection of Competition

ABOUT THE OFFICE

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

The definition of the core objective, 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.

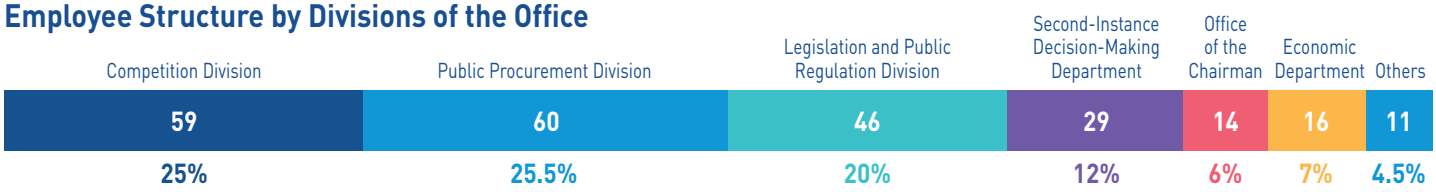
- The main legal framework in the field of competition is provided by the Act No. 143/2001 Coll., on the Protection of Competition. At the same time, the Office may apply Articles 101 and 102 of the Treaty on the Functioning of the European Union. The related competences of the Office have been regulated also 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. Nevertheless, the Office has supervisory power only, i.e. it supervises the transparent, reasonable, non-discriminatory and fair approach of the contracting authorities to tenderers. The Office also has similar supervisory powers pursuant to the Act No. 194/2010 Coll., on Public Passenger Transport Services.
- The matter of 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.

HUMAN RESOURCES STATISTICS

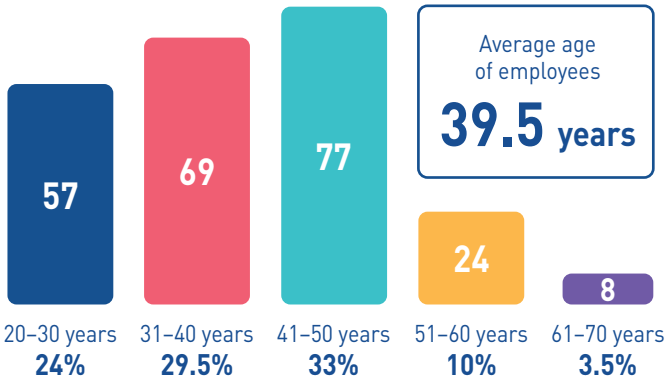
252 number of systemised posts in the Office

235 number of occupied positions as of 31 December 2021

Employee Structure by Divisions of the Office



Employee Structure by Age

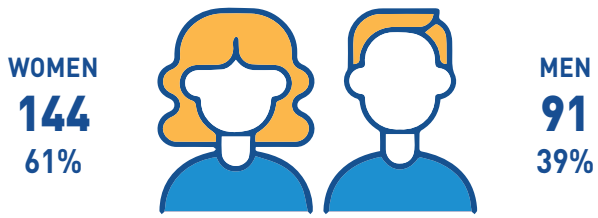


Employee Structure by Level of Education

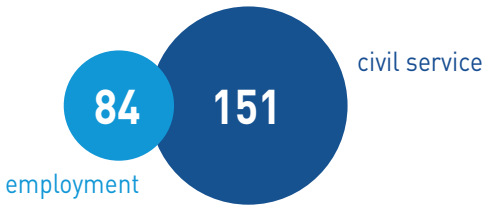
- university degree: **206 / 87.7%**
- higher specialised degree: **2 / 0.9%**
- secondary school with graduation: **21 / 9%**
- vocational school with graduation: **1 / 0.4%**
- vocational school without graduation: **5 / 2%**

Length of Civil Service / Employment

Employee Structure by Gender



Employee Structure by Civil Service x Employment



COMPETITION

Fair competition between undertakings is an essential element of a market economy, which results in consumers receiving the final product, i.e. the goods or services at a lower price, in higher quality or in an innovative form. Competition for customers is the driving force that pushes undertakings to streamline production and innovate. However, this principle only works if competition in the market is truly free and unrestricted. The benefits of a competitive environment are mainly beneficial for consumers, while for undertakings they are mainly stress and pressure to improve performance and overall efficiency. Undertakings may therefore seek to eliminate the competition principle, in particular by entering into agreements with their competitors, thereby circumventing competition. Similarly, undertakings with a high market share, if achieving a dominant position, may tend to abuse that position and to eliminate remaining competitors and hence competition in the market.

In countries operating their economies on market principles, the protection of competition is therefore one of the public interests that specialised institutions – competition authorities – are designed to protect. In the Czech Republic, it is the Office for the Protection of Competition, whose immediate predecessor was established in 1991. The basic legislation in this area is represented by Act No. 143/2001 Coll., on the Protection of Competition (hereinafter referred to as "the Competition Act"). Pursuant to this Act, competition protection is implemented in three main areas:

- prohibition of agreements distorting competition;
- prohibition of abuse of a dominant position;
- control of concentrations between undertakings.

In addition, the Czech law also regulates possible anticompetitive conduct of public authorities, which must not discriminate against some undertakings over others in their conduct (Article 19a of the Competition Act).

LEGISLATIVE CHANGES

The Office has again drafted a legislative proposal of the amendment to the Competition Act, the purpose of which was mainly to transpose 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 to be more effective enforcers and to ensure the proper functioning of the internal market (ECN+ Directive) into the Czech legislation.

As the originally drafted amendment had not been discussed by the previous Chamber of Deputies of the Parliament of the Czech Republic, the Office proceeded to revise it. In addition to the previously proposed changes related to the transposition of the ECN+ Directive, the final draft amendment included further modifications in order to improve and streamline the existing legislation. The changes concerned, for example, new definitions, the settlement procedure, the extension of leniency programme to vertical agreements, the issues of international cooperation, etc.

In 2021, an amendment to the Act on Offences and other Acts, including the Competition Act, was approved, which introduced significant changes in the field of competition law. In fact, with effect from 1 February 2022, if the accused continues to engage in the conduct for which the proceedings for a continuing, ongoing or collective offence of distortion of competition have been initiated even after the initiation of such proceedings, such conduct shall be considered to constitute a single act until the statement of objections.

This change has strengthened the role of the statement of objections, since its delivery to the parties to the proceedings has become the point at which the unity of the ongoing offence is broken, i.e. the distinction between the individual (ongoing) offences, if the offender maintains the unlawful condition. In the past, due to the lack of a specific regulation of administrative punishment, the Office was forced to apply by analogy the rules concerning the breaking of the unity of the offence in cases of continuing or ongoing criminal activity laid down in the Criminal Procedure Code, and in the practice of the Office the moment of the breaking of the unity of the offence was thus considered to be the moment of delivery of the notice of initiation of the administrative proceedings. However, the amendment to the Act completed the competition law legislation and thus the breaking of the unity of the offence in proceedings under the Competition Act now more appropriately refers to the moment of receipt of the statement of objections.

The breaking of the unity of the offence generally does not affect the question of the actual termination of the prosecuted act by the conduct of the accused, but establishes a substantive fiction of its termination, linked to a specific procedural activity of the administrative body. The moment of the statement of objections precisely defines the moment of the fiction of the completion of the ongoing offence, i.e. the act prosecuted.

PROTECTION OF COMPETITION IN FIGURES

In the field of competition, the Office initiated a total of 84 administrative proceedings, nine of which concerned prohibited agreements, two thirds of which concerned serious horizontal agreements. One administrative proceeding was initiated for a possible abuse of a dominant position and one for an infringement of Article 19a of the Competition Act, which prohibits public authorities from discrimination against certain competitors. The Office also initiated 65 administrative proceedings in the field of concentrations between undertakings, of which 51 in the simplified procedure, 12 in the standard procedure and two in the sanction proceedings for possible gun-jumping. In addition, eight proceedings were initiated in procedural matters, for example, for failure to provide information requested and on applications for access to the file by a third party or on the suspension of administrative proceedings.

A total of seven decisions on prohibited agreements were issued, six of which on horizontal agreements and one on a vertical agreement, with fines in total amount of CZK 153,730,000. Two decisions were issued in case of possible abuse of dominant position and one for an infringement of Article 19a of the Competition Act, with penalties of CZK 10 million and CZK 280,000 respectively.

A record number of 62 decisions were issued in in the area of concentrations between undertakings. A total of 52 administrative proceedings were held in the simplified procedure, where the Office decides within a shortened period of 20 days, nine proceedings were held within the standard 30-day length of proceedings. One sanction decision was also issued with a fine of CZK 4,505,000 for an early implementation of the concentration, i.e. before the Office's approval. The total amount of fines imposed in the first instance for competition offences amounted to CZK 168,615,000.

The significant activity of the Office is proven by a record number of unannounced on-site inspections carried out to obtain evidence of possible anticompetitive conduct. A total of 26 inspections were carried out in 2021, although for a part of the year the Office could not carry out dawn raids due to the COVID pandemic.

In addition, 181 complaints and 91 enquiries were resolved.

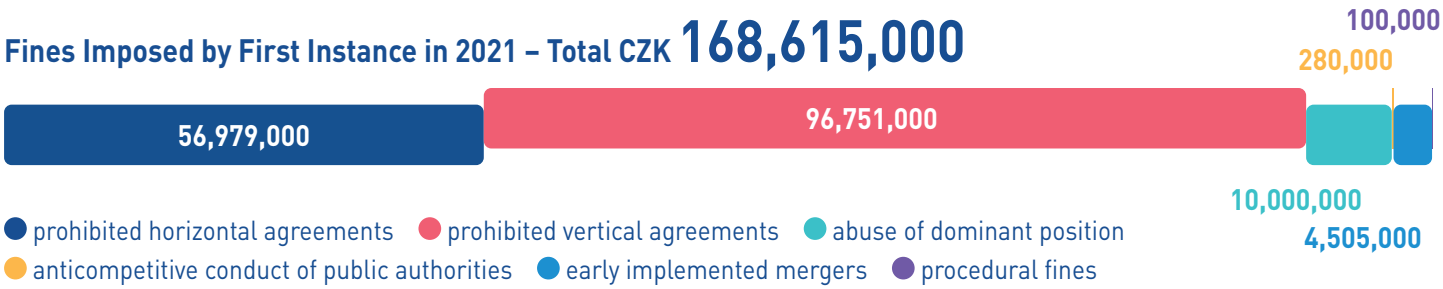
First Instance Decision-Making in the Field of Competition in 2021

Number of complaints received	
Prohibited agreements	82
Abuse of dominant position	72
Concentration between undertakings	4
Anticompetitive conduct of public authorities	20
Others	3
Total	**181**

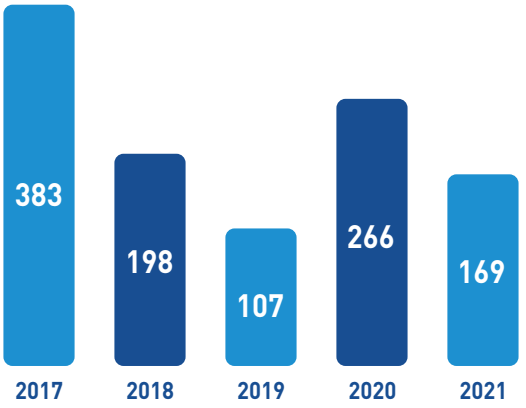
Number of administrative proceedings initiated	
Prohibited agreements	**9**
• horizontal agreements	6
• vertical agreements	3
Abuse of dominant position	**1**
Anticompetitive conduct of public authorities	**1**
Concentration between undertakings	**65**
• classical procedure	12
• simplified procedure	51
• sanction procedure	2
Procedural proceedings	**8**
Total	**84**

Number of decisions issued	
Prohibited agreements	**7**
• horizontal agreements	6
• vertical agreements	1
Abuse of dominant position	**2**
Anticompetitive conduct of public authorities	**1**
Concentration between undertaking	**62**
• classical procedure	9
• simplified procedure	52
• sanction procedure	1
Procedural proceedings	**2**
Total	**74**

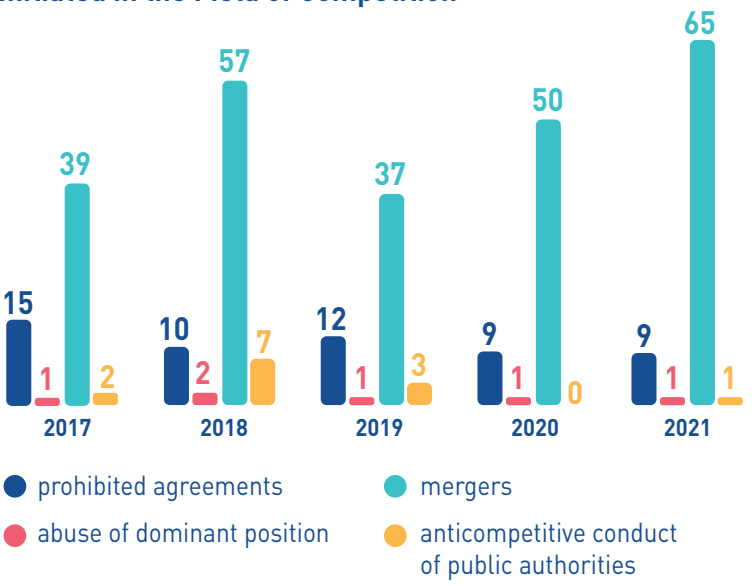
Fines Imposed by First Instance in 2021 – Total CZK 168,615,000



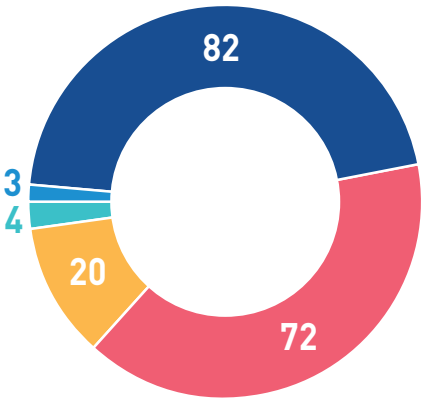
Amount of Fines Imposed by First Instance in the Field of Competition



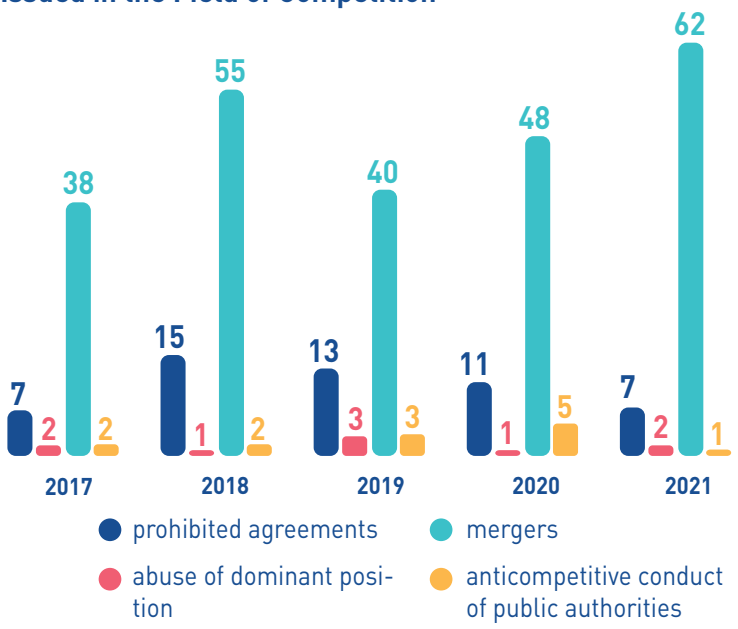
Number of First-Instance Proceedings Initiated in the Field of Competition



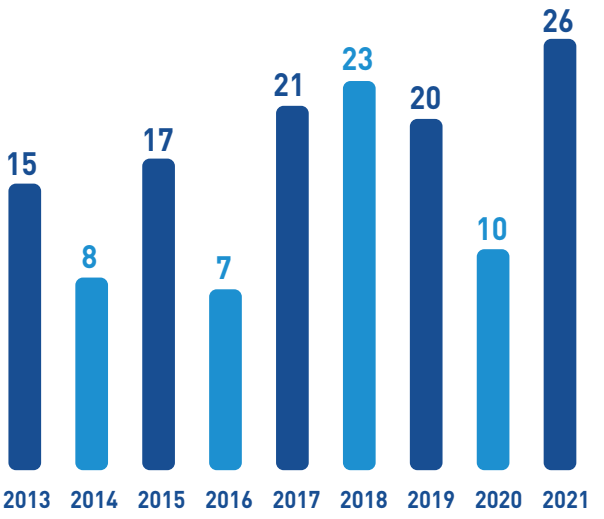
Complaints Received



Number of First-Instance Decisions Issued in the Field of Competition



Number of On-site Inspections



SIGNIFICANT CASES

Horizontal Agreements

Bid Rigging in the Area of Information Technologies in Olomouc

Parties to the proceedings: **AUTOCONT a. s. (successor undertaking of the undertaking AutoCont CZ a. s.); TESCO SW a. s.; MERIT GROUP a. s.; ICZ a. s.; Asseco Central Europe, a. s.; FPO s. r. o.; A-Scan s. r. o.**
First-instance fines: CZK 79,434,000 in total
(S0191/2017; coming into force on 28 August 2021, decision proving an infringement; returned in the part of the fine; hybrid settlement)

In the first-instance decision of 7 December 2020, the Office imposed fines on the above-mentioned undertakings for infringement of the Competition Act, which was based on the fact that through mutual contacts and exchange of information they divided the performance of the public contract "Development of e-Government Services in the Olomouc Region" and participated in the award procedure. The Olomouc Region was the contracting authority for the public contract (the public contract notice was published in the Public Procurement Bulletin on 27 March 2012). The aim of the companies was to influence the outcome of the award procedure so that the bid in question, in the performance of which they were to participate according to the agreement, would be the winning one. They subsequently carried out their plan on 30 April 2012, when they submitted two matching bids: a more advantageous bid from AutoCont CZ, which included the other undertakings mentioned above as subcontractors, and a cover bid from ICZ.
The conduct of these companies constituted a prohibited agreement aimed at distorting competition in the field of information technology in the Czech Republic and influencing the course and outcome of the award procedure.
The administrative proceedings were initiated on the basis of documents submitted by the Police of the Czech Republic. The undertaking A-Scan, which applied for a reduction of the fine, was granted a reduction of 20% imposed by the law. The other parties to the proceedings filed an appeal against the decision. The first-instance decision was confirmed by the Chairman of the Office with the exception of the operative parts of the decision imposing fines on the parties to the proceedings (with the exception of A-Scan, which did not file an appeal).
On 17 January 2022, the Office issued a second first-instance decision imposing fines on the parties to the proceedings (with the exception of the undertaking A-Scan) in the total amount of CZK 79,202,000.

Bid Rigging in the Area of Electrical Installation Public Contracts

Parties to the proceedings: **SPIE Elektrovod, a. s.; ASE, s. r. o.**
First-instance fines: CZK 33,917,000 in total
(S0377/2019; coming into force on 4 May 2021; settlement, leniency applications)

In its first-instance decision, the Office imposed fines in the total amount of CZK 33,917,000 on the undertakings SPIE Elektrovod and ASE for a cartel agreement concerning tenders for electrical installation work awarded by ČEPS, a. s. According to the Office's findings, these undertakings coordinated their participation and bids for three tenders of the contracting authority ČEPS between 28 February 2018 and 13 June 2018, namely the tenders "MIL – Repair of switches by replacement in the field AD 03, 06 and 09 – implementation"; "DAS – Replacement of DG (P.0473)" and "NOS – Replacement of switch in tertiary T402 (G.0127)". The value of these contracts exceeded CZK 18 million. The Office found evidence of anticompetitive conduct committed by the two undertakings on the basis of evidence in the form of their telephone and personal communication and communication via WhatsApp. The undertakings acted in concert by coordinating the activities of competitors in tenders (bid rigging) with elements of a market sharing agreement and a price agreement. These practices fall into the category of so-called hard-core cartels and constitute the most serious infringements of the Competition Act.
Both undertakings concerned requested the application of the leniency programme and the settlement procedure, for which their fines were significantly reduced to CZK 32,498,000 for SPIE Elektrovod and CZK 1,419,000 for ASE. Thanks to the leniency and settlement applications, these undertakings also avoided the prohibition on the performance of public contracts, which the Office can also impose for bid rigging.

Bid Rigging in the Construction Industry

Parties to the proceedings: **DEREZA, limited liability company; Auböck s. r. o.**
First-instance fines: CZK 6,559,000 in total
(S0014/2020; coming into force on 9 December 2021; settlement)

In its first-instance decision, the Office imposed fines in the total amount of CZK 6,559,000 on the undertakings DEREZA and Auböck for a bid rigging.
Both undertakings benefited from the leniency programme and the settlement procedure, resulting in a 36% reduction in the fines imposed, respectively a 52% reduction imposed on Auböck. These undertakings committed an infringement of the Competition Act in connection with the award procedure of the Municipality of Kralupy nad Vltavou "Reconstruction of the canteen and kitchen and an extension above the canteen in the primary school Komenského náměstí 198, Kralupy

nad Vltavou", which was implemented at the beginning of 2019. The Office found in the administrative proceedings that the undertakings DEREZA and Auböck coordinated their participation and bids in the award procedure, so that the undertaking DEREZA submitted the more advantageous bid. By doing so, they influenced the outcome of the award procedure and distorted competition.
The Office investigated the public contract of the Municipality of Kralupy nad Vltavou in the amount exceeding CZK 80 million on the basis of a complaint. During the administrative proceedings, both undertakings then applied for the leniency programme and provided the Office with details of their illegal conduct in exchange for a reduction of the fine. These revealed that the undertakings had agreed to provide an elaborated budget. Subsequently, this practice was in fact implemented and the undertaking Auböck used the budget from the undertaking DEREZA as a basis for preparing a fictitious non-competitive bid. The bid of the undertaking Auböck was then less advantageous from the point of view of the contracting authority than the bid of the undertaking DEREZA.
Although both parties to the proceedings applied for leniency and settlement, the undertaking DEREZA eventually filed an appeal, but only against the operative part of the decision on the fine. The Chairman of the Office dismissed the appeal on the grounds that the Office had acted in a transparent, predictable and reviewable manner in calculating the fines imposed on the individual parties to the proceedings and it could not be concluded that this procedure favoured or, on the contrary, harmed any of the parties to the proceedings. Nor did it accept the claim that the fine has a destructive effect.

Bid Rigging in Tender for the Study of High-Speed Railway

Parties to the proceedings: **SUDOP PRAHA a. s.; Výzkumný Ústav Železniční, a. s. (Railway Research Institute)**
First-instance fine: CZK 9,302,000
(S0129/2019; coming into force on 12 February 2021; settlement)

The Office began to investigate the case on the basis of a submission from the Police and obtained evidence through cooperation with the High Public Prosecutor's Office and on the basis of a leniency application from Výzkumný Ústav Železniční. Subsequently, in its first-instance decision, the Office punished a cartel agreement on a public contract of Správa železnic, státní organizace (Railway Administration) for the preparation of a technical and operational study in the field of high-speed lines. A fine of CZK 9,302,00 was imposed on the undertaking SUDOP PRAHA. The fine was waived in relation to Výzkumný Ústav Železniční because it provided the Office with information on the existence of the prohibited agreement as part of the leniency programme.
The companies committed the anticompetitive conduct by coordinating their bids for the award procedure of Správa železnic for the public contract for the preparation of a technical and operational study in 2014–2015 with the aim that the contract would be won by an association whose leading member was the undertaking SUDOP PRAHA. The Office granted immunity from a fine imposition to the undertaking Výzkumný Ústav Železniční, which disclosed the existence and details of the cartel agreement of which it was a member, because it fulfilled all the conditions required for leniency. The leniency programme has again become an important tool for the Office to investigate anticompetitive agreements, whereby it has motivated a cartel participant to report the existence of the cartel to the competition authority in exchange, in this case, for not being fined.
The undertaking SUDOP PRAHA applied for the settlement and admitted committing an illegal conduct, for which the fine was reduced by 20%. No appeal was subsequently filed against the decision.

First Imposition of Ban on the Performance of Public Contracts

Parties to the proceedings: **EXPRES VAN s. r. o.; Lorenc Logistic, s. r. o.**
First-instance fines: CZK 2,854,000 in total (fines raised to CZK 3,167,000 in the second instance)
Ban on the performance of public contracts: two years for the undertaking EXPRES VAN s. r. o.
(S0149/2020; coming into force on 29 October 2021; filed appeal; filed action to the Regional Court in Brno)

The Office imposed fines in the total amount of CZK 2,854,000 for a cartel agreement on public procurement (bid rigging) on the logistics undertakings EXPRES VAN and Lorenc Logistic. In addition, the undertaking EXPRES VAN was imposed a ban on the performance of public contracts for a period of two years. This is historically the first imposition of this type of administrative penalty by the Office.
The Office investigated this case on the basis of its own activities. In 2014 and 2016, the undertakings in question coordinated their participation and bids in two tenders of Správa železnic, státní organizace (Railway Administration) for the transport of commercial parcels through mutual contacts so that both contracts were awarded to the undertaking EXPRES VAN. The cartel participants subsequently submitted coordinated bids to the contracting authority and the undertaking EXPRES VAN always won the tenders.
EXPRES VAN was fined CZK 754,000 for the infringement and prohibited from performing public contracts for a period of two years from the date of the of the decision coming into force. The undertaking Lorenc Logistic, on the other hand, agreed to the settlement procedure with the Office, for which it was not only granted a 20% reduction of the fine to CZK 2.1 million, but also avoided the imposition of a ban on the performance of public contract.
However, Lorenc Logistic subsequently filed an appeal against the amount of the fine, arguing, for example, that the conduct

had no impact on competition, the taxpayer or the contracting authority, that it did not benefit from it and that the fine was excessive and unfair when compared to the fine imposed on the undertaking EXPRES VAN.

Bid Rigging Cartel of Suppliers of Audio-Visual Technologies

Parties to the proceedings: **ApS Brno s. r. o.; AV MEDIA SYSTEMS, a. s.**
Total first-Instance fine: CZK 3,672,000 in total
(S0132/2018; coming into force on 18 September 2021; settlement)

The undertakings concerned coordinated their actions in the years 2014–2018 in tender procedures carried out in connection with certain public contracts for the supply of complex professional audio-video solutions and related equipment. The aim of the undertakings' illegal cooperation (bid rigging) was to mitigate or eliminate competition between them in these contracts. The first method of coordinated practice consisted in submission of two matching bids, one of which served as a cover bid. The second option was for one undertaking to submit a bid while the other withheld from submitting a bid. The anticompetitive conduct occurred in the following tender procedures of private and public contracting authorities, the total value of which exceeded CZK 15 million:

- Brno University of Technology: Reconstruction and extension of the University premises in Brno Purkyňova 118;
- Brno University of Technology: Modernisation of lecture hall and laboratories for the Faculty of Chemistry of the University – repetition;
- Tyršova 6, a. s.: Imperial hotel Ostrava – Reconstruction of congress facilities on the 2nd floor;
- Palacký University in Olomouc: Reconstruction of the University building Na Hradě 5, Olomouc;
- South Moravian Region: Construction of Emergency Medical Service Centre of the South Moravian Region p.o. – Education and training centre in Brno Bohunice.

The undertakings achieved a significant reduction in the penalties imposed because they cooperated with the Office. AV MEDIA SYSTEMS applied for leniency and provided the Office with information relating to the cartel agreement, for which its fine was reduced by 35%. In addition, both undertakings benefited from settlement procedure, which resulted in a reduction of fines by 20%.

Vertical Agreements

Undertaking GARLAND Damaged Consumers, It is Facing a Fine of Almost CZK 100 Million

Party to the proceedings: **GARLAND distributor, s. r. o.**
First-instance fine: CZK 96,751,000
(S0214/2019; appeal filed)

In its first-instance decision, the Office imposed a fine of CZK 96,751,000 on the undertaking GARLAND distributor for vertical agreements on resale price fixing. This is the historically highest fine imposed for this type of anticompetitive conduct. The decision has not come into force as an appeal has been filed against it.
According to the first-instance decision, the undertaking GARLAND committed an infringement by concluding and implementing prohibited agreements with its customers on direct resale price fixing at least from 18 June 2013 to 6 June 2019, i.e. for almost six years. The aim of these agreements was to exclude competition between the distributors of GARLAND Distributor in the markets for garden technology, garden equipment and tools for home (hobby) use in the Czech Republic. The Office prohibited the performance of these agreements and imposed a fine of almost CZK 97 million on the undertaking GARLAND Distributor. At the same time, the undertaking was required to inform all its customers about the prohibition and invalidity of the above-mentioned agreements. By this conduct, the undertaking GARLAND Distributor deliberately restricted competition at the horizontal level between the retailers which are supplied by GARLAND Distributor. They were therefore prevented from offering the goods to end consumers at prices lower than those set by GARLAND Distributor. The undertaking GARLAND Distributor initiated the price agreements itself, insisted on compliance with contracts and enforced it under threat of penalties such as blocking the customer's account in the ordering system. The enforcement of the price agreements by the undertaking GARLAND Distributor also led to customers themselves monitoring non-compliance with the set retail prices by other customers (their competitors) and requested the undertaking GARLAND Distributor to remedy possible non-compliance, i.e. to ensure unified (higher) retail prices. As a result of such conduct by GARLAND Distributor, competition was distorted by excluding price competition between retailers, maintaining a higher price level for the goods it distributed, clearly to the disadvantage of end consumers.

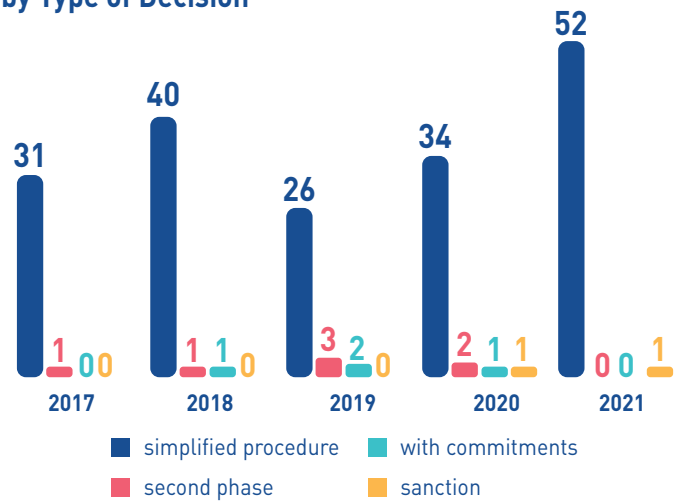
Concentration Between Undertakings

Unapproved Concentration Between Undertakings Implemented by CSG INDUSTRY, a. s.

Party to the proceedings: **CSG INDUSTRY, a. s.**
First-instance fine: CZK 4,505,000
(S0491/2020; coming into force on 15 July 2021; settlement)

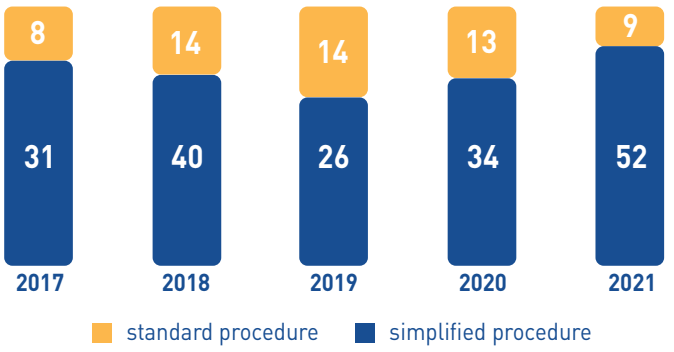
On 12 October 2020, the Office approved the undertaking CSG INDUSTRY to acquire sole control over the undertakings Hyundai Centrum CB, s. r. o., Hyundai Centrum Praha, s. r. o., Car Star Praha, s. r. o., Car Star Fleet, s. r. o., Car Star Immo, s. r. o. and Whare factory s. r. o. in a simplified proceeding. The concentration between undertakings took place mainly in the areas of retail sale of new and use passenger vehicles,

Concentration Between Undertakings by Type of Decision



light commercial vehicles and motor homes, provision of service, maintenance and repair of passenger vehicles and light commercial vehicles, wholesale and retail sale of spare parts and car accessories, arrangement of financing for the purchase of vehicles and rental of passenger vehicles, light commercial vehicles and motor homes.
At the time before the assessment of the concentration, the Office had a suspicion whether the concentration had not already been implemented at the time before the notification of the merger to the Office and before the adoption of the clearance decision, and, therefore, initiated administrative proceedings for a possible infringement of Article 18(1) of the Competition Act.

Concentration Between Undertakings – Decisions Issued in Simplified and Standard Procedures



In the course of the administrative proceedings, the Office found that the undertaking CSG INDUSTRY exercised control over the undertakings Hyundai Centrum CB, Hyundai Centrum Praha, Car Star Praha, Car Star Fleet, Car Star Immo and Whare factory at least since 22 February 2019, for example by appointing certain managing directors of the acquired companies. The acquirer continued the infringement until 11 October 2020, i.e. until the day preceding the entry into force of the decision to authorise the aforementioned concentration. The Office may impose a fine of up to CZK 10 million or up to 10% of the turnover for committing this type of infringement. Since the party to the proceedings applied for the settlement procedure and fulfilled all the necessary conditions, the Office reduced the fine by 20% to the final amount of CZK 4,505,000.

Anticompetitive Conduct of Public Authorities

A Fine for the Municipality of Lysá nad Labem for Its Local Regulation of the Operation of Gambling Activities

Party to the proceedings: **Municipality of Lysá nad Labem**
First-instance fine: CZK 280,000
(S0329/2019/VS; coming into force on 8 November 2021; confirmed in appeal proceedings)

The Office imposed a fine of CZK 280,000 on the Municipality of Lysá nad Labem for infringement of the Competition Act by applying in the period from 1 December 2012 to 3 September 2019 a regulation on its territory allowing the operation of gambling games, lotteries and other similar games/gambling only at the address locations listed in the annex to the generally binding decrees issued since 2011, without selecting these address locations on the basis of objective, non-discriminatory and previously known criteria. The conduct was eligible, without objectively justifiable reasons, of distorting competition in the market for the operation of gambling games, lotteries and other similar games/gambling and in the market for the operation of facilities where these games are operated in the territory of Lysá nad Labem by favouring undertakings which could continue to operate these games and facilities at the authorised address locations. The Municipality appealed against the first-instance decision. In the appeal proceedings, the decision was confirmed.
Municipalities have an unquestionable right to regulate gambling in their territory, but, at the same time, it is necessary that the form of regulation they choose fulfils the principle of proportionality, i.e. it is proportionate to the specific local conditions, does not discriminate and does not distort competition more than is necessary to achieve their objectives. Thus, if a municipality decides to allow gambling only in certain locations, it must lay down sufficient and non-discriminatory rules for the selection of those locations, which must be known in advance and be reviewable.

Cases Settled Outside the Administrative Proceedings

The Association of Millers and Bakers and the Association of Industrial Mills

The Office's investigation revealed indications of a possible infringement of the Competition Act by Společenství mlynářů a pekařů ČR, z. s., (Association of Millers and Bakers of the Czech Republic) and Svaz průmyslových mlýnů České republiky z. s., (Association of Industrial Mills of the Czech Republic). The Office investigated public price statements made by these associations of undertakings operating in the milling and baking sectors and representing associations of major primary producers and processors through the media. The statements made by these associations concerned expected increases in flour prices. The reasons given for the increase in prices were, in particular, rising input prices and high demand for the commodity.

In the context of the inspection it launched into the matter, the Office encouraged the two associations to consider very carefully what information they would provide to the media in the future about their pricing policy or the prices requested by their members. External objective circumstances influencing the price of certain foods must not be used as a justification for conduct aimed at excluding or restricting competition. Representatives of business associations must consider that any information about the need to increase the price of goods offered by members of the association, for example, constitutes an infringement of the Competition Act by issuing a prohibited and invalid decision of an association of undertakings. In its negotiations with the associations, the Office emphasised that under any circumstances it shall not inform about the price level achieved by its members, shall not assess it and shall not publicly call for a change. Even an indirect recommendation or a seemingly informal statement by an association's representative can cause an infringement of the Competition Act. Such conduct by competitors in the market is always likely to have a negative impact on the free and independent price-fixing of the members of the association, either by leading to price unification or by providing individual undertakings with detailed information on the actual price level or on its planned change.

Both associations subsequently took remedial measures and informed their members of the illegality and anticompetitive nature of the conduct in question, and only non-addressed (objective) communications which are not intended to exclude the competitive behaviour of a particular group of undertakings may be published in the media in future.

Funeral Association

During its surveillance activities, the Office found that the website of Sdružení pohřebnictví v ČR, z. s., (Funeral Association of the Czech Republic) contained a document called the Code of Honour, the content of which limited the manner and extent of advertising promotion of the association's members, while the rules set out in the Code restricted the association's members beyond the scope of the current legal regulation of advertising. According to the Office, the restriction of advertising promotion is capable of distorting competition, as the promotion of services is the key to operating in a competitive market.

The Office therefore invited the association to consolidate and remove the provisions in question from the Code, which the association accepted and the Code was withdrawn from the website.

Public Relations Association (APRA)

As part of its activities, the APRA association has published on its website data from the past concerning average hourly rates in Czech PR agencies for 2018 and 2019, along with an accompanying text relating to the pricing rules in the PR market. Subsequently, in the course of its investigation, the Office found by asking APRA members that some of them perceive the data published on APRA's website as a price list and use it in their own pricing and in negotiating prices with their clients.

The Office has long advocated that associations of undertakings should not in any event issue, even in the form of non-binding recommendations, any price lists or calculation models for services and goods supplied to the market by their members. Any publication of a price list (even if it consists of prices from the past) or the establishment of a pricing model can be considered a potential infringement of the competition rules, as it may lead to price unification in the market and/or to the elimination of uncertainty among mutual competitors regarding their pricing strategy.

As part of the investigation, the Office invited representatives of the APRA association to an oral hearing to inform them of the substance of the possible conflict of the price list publication with competition law. At the same time, the Office requested APRA to withdraw the price list including the accompanying text from its website and to inform its members about the inspection conducted by the Office and its opinion. APRA agreed to the remedies and promptly accepted and implemented them. The Office also offered the APRA association the possibility to consult on the competition law aspects of its conduct in case of any uncertainties so that it could avoid any further potentially anticompetitive conduct in the future.

VETCENTRUM Duchek

The Office received a complaint about possible anticompetitive conduct of the undertaking VETCENTRUM Duchek, operating the internet shop and wholesale business Rebel Dog, which consisted in concluding vertical agreements on resale price fixing. The Office found that the undertaking VETCENTRUM Duchek obliged its customers to sell to final consumers only and required them to accept its recommended retail prices.

In the course of the inspection, the Office also found that the undertaking VETCENTRUM Duchek was divided and all activities related to the internet shop and wholesale business Rebel Dog were transferred to a new operator, which was the company Rebel Dog, s.r.o. With this division, the terms and conditions were changed and no longer contained any anticompetitive provisions. In other words, Rebel Dog company itself took the initiative to modify the conditions of distribution and resale of its goods and removed all potentially anticompetitive provisions before the first investigative step by the Office against it. Moreover, Rebel Dog company proposed and implemented measures consisting of explicit informing of its customers of the nonvalidity of these commitments and of the fact that the undertaking Rebel Dog would not enforce or monitor their compliance in any way and that the commercial policy of its customers would be left entirely to their discretion.

OTHER ACTIVITIES

In 2021, the Office focused more on the issue of recovery of damages caused by infringement of competition law. Such damages may arise as a result of the existence of a prohibited agreement between undertakings (for example, if there is a cartel agreement in the field of public procurement, so-called bid rigging, in the vast majority of cases, the damage is incurred by the contracting authority whose contract was affected by this conduct) or from abuse of a dominant position, and their compensation can be recovered through a private legal action brought before the civil courts. This recovery is governed by Act No. 89/2012 Coll., Civil Code, but is simplified and supported in certain aspects by Act No. 262/2017 Coll., on Compensation for Damages in the Field of Competition. The latter Act facilitates the way in which persons damaged by infringement of competition law can claim damages before the courts and seeks, above all, to overcome the information asymmetry which, in practice, makes it significantly more difficult to enforce such claims. This special Act became effective on 1 September 2017, but has so far rarely been applied in practice. In the opinion of the Office, the reason for not using this Act is also the lack of awareness of this possibility among public administration bodies, which include, inter alia, municipalities, regions and other public administration authorities. Therefore, the Office has now started to actively alert public authorities that have been damaged by cartel conduct in public procurement to the fact that they can recover damages under the Act on Compensation for Damages in the Field of Competition. The Office also offers methodological assistance to public authorities affected by anticompetitive conduct, explaining the possibilities provided by this Act and the procedure by which damages can be claimed. In particular, the Office has addressed a number of public contracting authorities (ministries, regions, municipalities, state organisations, etc.) within its awareness-raising activities in the area of private enforcement of competition law. Specifically, during 2021, the Office sent 65 letters to public contracting authorities to draw their attention to the possibility of private enforcement of such compensation.

In 2021, the Office also published on its website an opinion on the position of associations of undertakings, as it is aware that undertakings, including their associations, often cannot comprehensively assess the risks of their action on the market and thus avoid sanctions by the Office. In its opinion, the Office therefore summarises the obligations of associations of undertakings according to the competition law, the limits of disclosure of information by representatives of associations of undertakings (for example, with regard to media appearances – in particular commenting on the market situation or predicting price increase), what specific actions of associations of undertakings may be considered anticompetitive, and what sanctions the Office may impose on associations of undertakings.

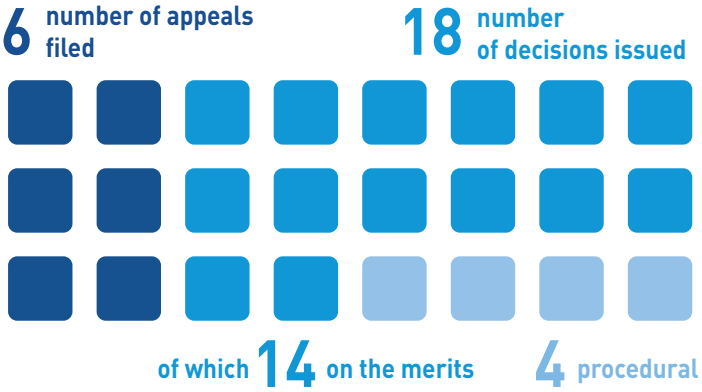
The Office has also published on its website information which serves as a guide for undertakings who provide the Office with information, documents and business records necessary for its activities in identifying information constituting their business secrets. This material describes in general terms what constitutes a business secret, what features must be met and what the case law says in specific cases. It also describes the procedure for proper indication of business secret in the documents and information requested or received by the Office, including practical examples.

SECOND-INSTANCE DECISION-MAKING

In 2021, six appeals were filed against first-instance decisions of the Office, four of which concerned the prohibited agreements under investigation and one each in cases of abuse of dominance and infringement of Article 19a of the Competition Act. A total of 18 second-instance decisions were issued, of which 14 on the merits and four procedural ones. Out of the decisions on the merits, in eight cases the first-instance decision was confirmed, in five cases the first-instance decision was amended and in the case of the so-called IT cartel in Olomouc the decision was partially annulled, namely only the fine sentences were annulled. Four appeals of a procedural nature were dismissed by the Chairman of the Office.

Within the above-mentioned decisions, the final fines in total amount of CZK 51,933,000 were imposed, of which CZK 26,733,000 for prohibited agreements, CZK 20,799,000 for abuse of dominant position, CZK 2,039,000 for violation of Article 19a of the Competition Act and CZK 2,362,000 for failure to cooperate.

Second-Instance Decision-Making in the Field of Competition



SIGNIFICANT CASES

Abuse of Dominant Position by INTERGRAM Association Confirmed

Party to the proceedings: **INTERGRAM, nezávislá společnost výkonných umělců a výrobců zvukových a zvukově-obrazových záznamů, z. s. (a collective administrator of rights for performing artists and producers of phonograms and audio-visual fixations)**
Final fine: CZK 20,799,000
(R0236/2020; coming into force on 1 June 2021)

The Chairman of the Office rejected the appeal of the collective administrator INTERGRAM, and, thus, confirmed the first-instance decision imposing a fine of CZK 20,799,000 on this undertaking for abuse of dominant position.
According to the contested decision, the collective administrator INTERGRAM committed infringement of the Competition Act and EU competition rules by imposing unreasonable commercial terms on accommodation operators between the years 2009 and 2014 by requiring them to pay remuneration for the use of works via audio and audio-visual devices placed in the rooms of accommodation facilities.
In particular, INTERGRAM did not consider the occupancy of rooms in accommodation facilities in its tariff during the period in question. The accommodation operators thus paid remuneration to the party to the proceedings even when no guests were actually staying in the room. Therefore, in such a case, INTERGRAM did not provide any consideration for the payment of remuneration and it was thus not a reasonable commercial condition.
The party to the proceedings filed an appeal in which raised a number of objections ranging from procedural errors, incorrect legal assessment, failure to prove distortion of competition, inadequate assessment of damages, and objections to the calculation of the fine. The Chairman of the Office dealt with all the objections in detail and did not find them to have reasonable grounds.

Appeal Filed Within Settlement Procedure

Party to the proceedings: **Lorenc Logistic, s. r. o.**
Final fine: CZK 2,413,000
(R0115/2021; coming into force on 29 October 2021)

According to the appealed decision, the party to the proceedings and another logistics company infringed Article 3(1) of the Competition Act by coordinating their participation and bids via mutual contacts in connection with public contracts of Správa Železnic, státní organizace (Railway Administration) with the aim to obtain a public contract by an undertaking designated by them and subsequently submitted the coordinated bids with a unified intention. In the first instance decision, the Office assessed the conduct described in the first instance decision as a prohibited concerted practice aimed at distorting competition in the tenders in question, since this negative result also occurred.
The party to the proceedings admitted to the alleged conduct and applied for the settlement procedure, for which the calculated fine was reduced by 20% to CZK 2.1 million, and thanks to the settlement it was not banned from participating in public procurement. The party to the proceedings, however, filed an appeal against the amount of the fine imposed on it. In its appeal, the party to the proceedings challenged the incorrect determination of the individual gravity of the infringement, the incorrect assessment of mitigating circumstances and the unfairness of its fine compared to the fine imposed on the other undertaking.
The Chairman of the Office did not find any reasonable grounds for the objections of the party to the proceedings to the fine imposed. However, in the context of the review of the legality of the penalty imposed, the Chairman of the Office had to correct the error of the first-instance body, which incorrectly took into account the turnover for 2019 when calculating the fine from the net turnover of the party to the proceedings, when it should have based it on the turnover for 2020, which was higher than the turnover for the previous year, on which the Office had incorrectly based the fine. The Chairman of the Office thus proceeded to a partial correction of the calculation of the fine, using the correct accounting basis (year 2020), while maintaining the Office's procedure for calculating the fine. In his decision, the Chairman of the Office also emphasised that in administrative proceedings before the Office conducted under the Competition Act, a general ban on changing the contested decision to the disadvantage of the appellant does not apply. It is therefore possible that the decision on the appeal may also increase the fine imposed in the contested decision. Any person filing an appeal must therefore be fully aware of this fact.

JUDICIAL REVIEW

The year 2021 was extremely successful for the Office in terms of judicial review of its competition decisions. Of the twelve judgements of the Regional Court in Brno, the action against the decision of the Office was dismissed in nine cases and withdrawn in one case. At the Supreme Administrative Court, the Office did not lose a single case, as nine of the judgements were in favour of the Office and one other cassation complaint was withdrawn. A total of 22 new actions and seven cassation complaints were brought before the Regional Court in Brno.

Eleven cases were definitively terminated (either by a judgement of the Regional Court against which no cassation complaint was lodged or by dismissal of the cassation complaint), ten of which ended with a finding that the Office's decision was legal.

SIGNIFICANT CASES

Judgement of the Regional Court in Brno from 30 November 2021, No. 31 Af 70/2020-49 (ALEXANDRIA a. s.)

The action brought before the Regional Court in Brno dealt with the imposition of a fine on a competitor of undertakings operating in the tourism market, as the undertaking had failed to provide the documents necessary for the purposes of the administrative proceedings on the concentration application when requested to do so by the Office.
In order to obtain supporting documents for the assessment of the concentration in question, the Office usually uses (also in proceedings initiated *ex officio* by the Office) the authorisation under Article 21 of the Competition Act to request information from relevant undertakings which may be relevant for clarifying the subject matter of the proceedings. In the framework of the above-mentioned proceedings for the clearance of the concentration between undertakings, the Office contacted ALEXANDRIA to provide the business records requested by the Office to assess the concentration in question. However, the undertaking repeatedly refused to provide the Office with complete records, for which it was imposed a fine of CZK 100,000. The Chairman of the Office issued a decision on ALEXANDRIA's appeal, by which he reduced the fine imposed to CZK 75,000, as the requested information was subsequently provided after the imposition of the fine. However, he rejected the rest of the appeal as unfounded.
The undertaking ALEXANDRIA subsequently filed an action against the decision of the Chairman of the Office before the Regional Court in Brno. The Regional Court dismissed the action and expressed the legal opinion that the undertaking questioned by the Office, pursuant to Article 21e of the Competition Act, is not entitled to predict the final impact of individual answers on the assessment of the case, and, therefore, cannot appropriate the discretionary authority of the Office and assess which answers the Office needs and which it does not. If all the information requested relates to the relevant market and the answers to, it could provide the Office with information on the behaviour of the undertakings, their suppliers or customers, and, therefore, comprehensively on the state of competition and its possible development after a possible concentration between undertakings, the undertaking being questioned is obliged to provide this information to the Office in its complete and truthful form within the period set by the Office.
The undertaking ALEXANDRIA filed a cassation complaint against the Regional Court's judgement in early 2022.

83.3% the Office's success rate in competition proceedings before the Regional Court

Judgement of the Regional Court in Brno from 30 November 2021, No. 31 Af 55/2020-120 (Statutory City of Brno)

The Chairman of the Office confirmed the decision of the Office of 8 June 2020, Ref. No. ÚOHS- 20739/2020/310/AŠi, by which the Statutory City of Brno was found guilty of distorting competition in the gambling market without objectively justifiable reasons by excluding the undertaking FORBES Casino, a. s, from the possibility of operating gambling games in the territory of the City of Brno by failing to amend the general binding ordinance on the regulation of gambling operations to include its premises among the authorised gambling venues at the request of FORBES Casino, even though it complied with the conditions of the rules for the definition of locations which may be included among the venues on which gambling may be permitted, issued by the City of Brno. For this offence, the City of Brno was imposed a fine of CZK 828,000.
The City of Brno brought an action against the decision of the Chairman of the Office before the Regional Court in Brno, which the Court dismissed on the grounds that in areas where potential undertakings need the consent of the municipality to enter the market, distortions of competition may also occur if the municipal council resigns to facilitate such access for a potential undertaking. It is therefore clear that the council may exclude certain entities from participation in the relevant market also by its inaction and thus infringe the prohibition in Article 19a of the Competition Act.
According to the legal opinion of the Regional Court, the scope of this provision must therefore be interpreted as meaning

that the prohibition of distortion of competition will also apply to omissive conduct of public administration bodies based on inconsistent application of their market access rules. Such conduct (non-action) is also attributable to the municipal council as a whole, regardless of the fact of how a particular councillor voted and for what reason.

Judgement of the Supreme Administrative Court from 21 December 2021, No. 2 As 295/2019-99 (FORTUNA GAME a. s.)

The Supreme Administrative Court cancelled the judgement of the Regional Court in Brno of 3 October 2019, No. 62 A 77/2019–202, which declared that the Office had committed an illegal intervention consisting in conducting a dawn raid at the business premises of FORTUNA GAME a. s. on 12 March 2019.
According to the Regional Court, the Office had no real concrete indications of possible anticompetitive conduct by the undertaking before conducting the dawn raid. The Regional Court took the view that the main basis for the dawn raid was the complaint of the competitor SAZKA, a. s., and its supplement of one anonymous complaint. However, the Regional Court found the complaint of the undertaking SAZKA to be implausible and should have been inspected more extensively by the Office. The Regional Court saw the implausibility of this complaint in particular in the fact that it was submitted by a competitor of the undertaking under investigation and it is not excluded that it was submitted in the context of a competitive dispute as "retaliation", where the Office was to become an instrument in settling the scores between these competitors. With regard to this thesis, it further stated that if the complaint contains the aforementioned suspicion, it is necessary to investigate the complaint in more detail, which, according to the court, the Office did not do, and, therefore, the complaint could not serve as an input of the anticompetitive conduct under investigation, and, thus, could not be the basis for reasonable grounds to conduct a dawn raid, even if the information provided in the complaint does give grounds for suspicion.
The Office filed a cassation action against the Regional Court's judgement with the Supreme Administrative Court, which annulled the Regional Court's judgement and returned the case to the Regional Court for further proceeding.
The Supreme Administrative Court disagreed with the Regional Court's statement concerning the credibility and objectivity of the information contained in the complaint of the undertaking SAZKA. It noted that, logically, it is quite normal that complaints to investigate anticompetitive conduct will typically be submitted by competitors in the market which are not necessarily pursuing the public interest in an undistorted market environment, but more or less their own economic interests. However, any such complaint by another undertaking may be a means of competition, which is completely natural.

100% the Office's success rate in competition proceedings before the Supreme Administrative Court

However, the fact that the complaint is submitted by such a person, or by a person associated with a particular undertaking in the relevant market, does not automatically imply that the content of the complaint cannot be relevant and credible, i.e. that it could not provide sufficiently certain input information about possible anticompetitive conduct.
Moreover, such a person may have actually been harmed by the alleged anticompetitive conduct, so he or she may have had an economically understandable motivation to provide the information to the Office. Even his or her possible motivation to harm the competitors, however problematic it may be from a moral or civil law (competition) perspective, does not mean that the information obtained by the Office in this way cannot be used as an input for conducting the dawn raid.
Thus, the Supreme Administrative Court, unlike the Regional Court, concluded (and agreed with the Office) that the Office had sufficient concrete input to carry out the dawn raid from the point of view of the suitability test.

SIGNIFICANT MARKET POWER

The area of significant market power in the Czech Republic is regulated by Act No. 395/2009 Coll., on Significant Market Power in the Sale of Agricultural and Food Products and Its Abuse (hereinafter referred to as "the Significant Market Power Act").

Legislative Work on Transposition of Directive (EU) of The European Parliament and of the Council 2019/633 into the Significant Market Power Act

On 17 April 2019, 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 (hereinafter referred to as "the Directive") was adopted. The primary purpose of the new legislation is to adopt a minimum EU standard of protection against unfair trading practices in business-to-business relationships in the agricultural and food supply chain.

The Czech Republic has its own national regulation of unfair trade practices related to entities operating in the food chain, provided by Significant Market Power Act in the sale of agricultural and food products and its abuse. The Significant Market Power Act is the legislation closest in content to the Directive, so it was decided that the Directive would be transposed into this Act.

The Office, in cooperation with the Ministry of Agriculture and other relevant authorities, prepared a complete amendment to the Significant Market Power Act, including its explanatory memorandum, which took the individual legal institutes contained in the Directive into account in order to achieve the objective and purpose of the Directive.

According to the amendment to the Significant Market Power Act, which is going through the legislative process, there will be a significant modification of the definition of the entities responsible for unlawful conduct and an extension of the types of unlawful conduct to include the practices contained in the Directive.

Anyone who is in a position to buy agricultural or food products and has significant market power will be able to commit unfair trade practices.

In determining significant market power, the amendment, following the model of the Directive, is based on five turnover threshold criteria, which emphasise the protection of small and medium-sized enterprises. The amendment thus reflects the relative bargaining power of buyers and sellers. The calculation of annual turnover will be based on the Annexes to Commission Recommendation 2003/361/EC.

The definition of agricultural and food products also includes other products and articles in addition to food, such as living and dead animals, animal feed, live plants and floricultural products, or tobacco. Thus, agricultural and food products in many respects include both inputs and outputs within the agricultural and food chain.

It is clear from the Directive that one and the same entity can be both a buyer (potential offender) and a seller (potential victim). Thus, once the amendment becomes effective, it will be possible to affect a wide range of entities in the position of buyers of agricultural or food products who will be in a higher turnover band vis-à-vis their sellers. This will include not only traders who buy food for resale, but also various producers or processors of agricultural products or food products who purchase these products and commit any of the unfair trade practices in connection with their purchase. Compared to the current wording of the Significant Market Power Act, the amended text will contain only an exhaustive list of unfair trade practices.

The Concept of Market Power in the Directive on Unfair Trade Practices Between Undertakings in the Agricultural and Food Sector

Compared to the Czech legislation, the Directive does not provide for any rebuttable presumption, but works with an irrebuttable presumption in two ways (Article 1(2) of the Directive): the first concerns the presumption that a supplier who achieves a lower turnover than the customer will automatically be a vulnerable supplier, regardless of any other market criteria. This irrebuttable presumption is expressed in the Directive by means of five turnover thresholds, above which the buyer qualifies for a special position vis-à-vis suppliers who do not reach the same turnover threshold. The special liability relates to an annual turnover of EUR 2 million, i.e. roughly CZK 50 million. In contrast, suppliers with an annual turnover of more than EUR 350 million are no longer protected by the legislation.

At the same time, it may be noted that the annual turnover is newly calculated in accordance with the Commission Recommendation on the definition of micro, small and medium-sized enterprises.[1] In short, this means that the competition law concept of a single economic unit has been brought into the area of significant market power[2]: the annual turnover is calculated for the purposes of assessing the

1 Commission Recommendation of 6 May 2003 concerning the definition of micro-enterprises, small and medium-sized enterprises (2003/361/EC).

2 For example, the judgement of the Court of Justice of the EU in case C-110/13 of 27 February 2014 (HaTeFo vs. Finanzamt Haldensleben).

existence of relative significant market power by always adding the turnover of the so-called partner and linked undertakings forming a single business group (grouping, concern) to the turnover of single customer or supplier. The addition of turnover is done proportionally in the case of partner undertakings and in full in the case of affiliated undertakings. This change appears to be very significant for both parties to the contractual relationship, as the Czech legislator has so far viewed them as if they were independent undertakings.

In relation to the existing turnover threshold of CZK 5 billion, the Directive thus affects a much larger group of customers of agricultural and food products. This is reinforced by the fact that the Directive applies to the entire agricultural and food chain ("farm-to-fork" principle), with the exception of the end consumer market (B2B relationships). Within this chain, the existing supplier of the retail chain will thus become liable to its suppliers further down the distribution chain if it has exceeded the annual turnover threshold of at least EUR 2 million (i.e. in particular the liability of processors towards primary producers). The extension of the range of responsible customers will also affect so-called public authorities in position of purchasers of agricultural and food products (e.g. hospitals, retirement homes, municipalities, etc., generally B2G relationships), which are to be held responsible under the Directive for compliance with the prohibition of unfair trade practices towards all their suppliers with an annual turnover below EUR 350 million.

Finally, the last important extension of the scope of the Directive can be seen in a seemingly insignificant difference. While the Czech law currently applies liability to purchasers of food (products intended for human consumption), the Directive refers to agricultural products and food products as defined by Annex 1 of the Treaty on the Functioning of the European Union and products derived therefrom. The new legislation will therefore also apply to purchasers of agricultural products that cannot be considered as food, such as flowers, animal feed, cork, flax or hemp.

It can be summarised that the Directive constitutes a different regulation of the assessment of significant market power compared to the regulation in the effective version of the Significant Market Power Act. In addition to the retail chains, the new definition of the entities with special responsibility will include all customers in the distribution chain with a turnover of more than EUR 2 million as well as public institutions, which means supervision of hundreds or thousands of entities. As the Directive represents a minimum standard of protection, the forthcoming amendment to the Act will have to reflect this concept. Until its adoption, the Office interprets Article 3 of the current Act wording using the so-called indirect effect of the Directive.

EXAMPLES OF UNFAIR TRADE PRACTICES

Anticipating the hot weather, the wholesaler orders a large supply of melons from a small agricultural producer. The delivered melons are partly stored outside the cold store, as the warehouse is too small for such a delivery. However, due to a change in weather, the wholesaler sells fewer melons and part of the supply goes bad. The wholesaler has to scrap part of the delivery. When paying the supplier, the wholesaler deducts the discarded melons as waste. He will therefore pass on the supplier a loss which was not the supplier's fault, but which was caused by poor planning and storage on the part of the wholesaler.

A fish farmer sells fresh fish to a local fish factory for the production of canned fish fillets. He receives payment up to 40 days after delivery of the fish. Since he cannot force the fish factory to change its payment policy, he complains to the supervisory authority. The fish factory learns about this and threatens the fish farmer to stop doing business with him unless he withdraws the complaint. The fish factory commits two unfair trade practices; first, non-payment for delivery of the goods within 30 days, and second, application of retaliatory trade measures.

EXAMPLE OF FAIR BUSINESS CONDUCT

It's barbecue season, and the retail chain offers lamb chops. The retail chain wants to promote the sale of lamb chops and other barbecue goods and plans a complex marketing strategy that includes advertising on local radio and advertising lamb chops in leaflet, as well as providing retail space for seasonal goods, including staff dedicated to modifying such space. The chain wants a local supplier of lamb chops to participate in this marketing event by supplying the goods at a reduced price. The local farmer believes that this strategy is a good idea to promote the sale of his products. The chain and the local farmer are negotiating on the length and terms of the promotion campaign, clearly agree on the price of the promotional goods and the cost of the marketing campaign.

Analysis of the Unit Prices of Food Charged to Retailers and the Level of Negotiated Quantity Discounts

In 2020 and 2021, the Office prepared an analysis of quantity discounts negotiated in the market for the purchase of food by retailers for resale. The information requested related to the average unit prices of the ten most traded foods at each of the 21 food suppliers contacted from different segments, at which food ("products") were supplied to 28 food retailers, 12 of which the Office found to have significant market power, between 2016 and 2019. Almost 800 product price calculations were made in the course of the analysis. The unit food price was, as requested by the Office, broken down into individual sub-components in the following structure: invoice price, quantity discount, payments for logistics services, marketing payments and any other payments paid by the supplier to the customer or a third party and reflected in the final price of the product.

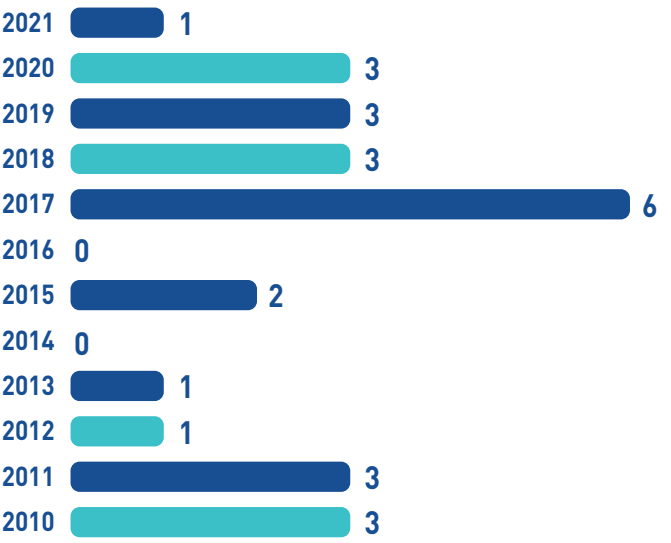
According to the Office's findings, the usual level of the percentage of quantity discount granted by food suppliers to their customers ranged from 0.1% to 31% between 2016 and 2019. An analysis of the unit food price calculations clearly showed that quantity discounts cannot be compared in isolation, i.e. without taking the final prices of the products into account, since the assumption that a higher quantity discount generally leads to a lower final food price (at which purchased by retailers) in cases where other payments (e.g. for marketing or logistics) are not substantially reflected in the final price of the product beyond the quantity discount was not confirmed. Due to the high variability of the invoice price of an identical product, situations where a product with a higher quantity discount has a higher final purchase price for the retailer compared to a product for which the supplier has negotiated a lower quantity discount occur with high frequency. This is due to the difference in invoice prices, with the higher invoice price going to the product with the higher quantity discount. The higher invoice price therefore in principle compensates for the higher quantity discount.

For 85% of the food price calculations, a lower weighted average of the final prices of products traded with customers with significant market power compared to the average of the final prices of customers without significant market power was observed. The final prices of an identical product traded across a wide range of individual retailers are highly variable, due to the already mentioned high variability of invoice prices, discounts and other payments reflected in the final price. The final price of the product is therefore the determining factor. For suppliers and customers, the individual components of the final price (invoice price, quantity discount, other payments) are often equivalent options. The Office benefited from this analysis of the unit food prices as it was possible to deduce from it the pricing strategies of food buyers and suppliers in negotiations.

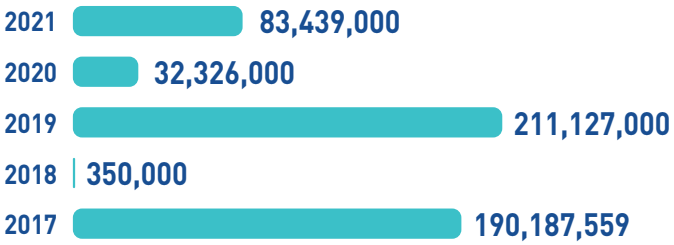
First-Instance Significant Market Power Control Statistics of 2021

Complaints received	**6**
Ex-officio investigations	**5**
Requests on the interpretation of the law received	**4**
Administrative proceedings initiated	**1**
Administrative proceedings completed	**1**
Cases solved by competition advocacy	**1**
Fines imposed for unfair practices in the field of significant market power	**2**
Total amount of fines imposed for unfair practices in the field of significant market power	**CZK 83,439,000**

Initiated Administrative Proceedings



Amount of Fines Imposed (in CZK)



SIGNIFICANT CASE

Use of Competition Advocacy in Assessing Arrangements of Contractual Penalties Contained in Contractual Documentation Concluded Between BILLA, spol. s r.o. and its Food Suppliers

Preliminary investigation: P0262/2018/TS
Alternative procedural steps: Adjournment of the case before the opening of administrative proceedings for lack of public interest in its conduct

Within its monitoring activities, the Office found differences in the contractual penalty arrangements contained in the framework purchase agreements concluded between BILLA and some of its food suppliers. Following these findings, the Office carried out a targeted investigation which confirmed these differences. The differences related to (i) the absolute values of the contractual penalties agreed and (ii) the amount of the contractual penalty agreed in relation to the value of the guaranteed breach of the obligation, i.e. to the relative value of the food not delivered properly and on time. Furthermore, according to the Office's findings, (iii) some food suppliers did not have any contractual penalty clauses in their framework purchase agreements. The initial indications identified by the Office suggested that the conduct complained of could have led to infringement of the provisions of Article 4(1), (2)(a) of the Significant Market Power Act, which prohibits the negotiation or application of contractual terms that create a significant imbalance in the rights and obligations of the parties to the contract.
In course of the investigation, BILLA stated that in the contractual negotiations it provides in the draft contractual documentation all its food suppliers with identical contractual penalty clause, which contains a "uniform level" of contractual penalties; however, some suppliers, who according to the company BILLA have bargaining power based on the amount of turnover or on offering a range of exceptional character ("must have products"), are able to achieve the elimination of these penalty clauses or a substantial reduction of their potential financial quantification.
BILLA has also committed to make changes to the contractual penalty clauses, namely to reduce the relative rates of contractual penalties in relation to the unrealised mark-ups and to reduce the maximum absolute amounts of the agreed contractual penalties in the case of failure to deliver goods properly and on time. This would limit the possible economic advantage of food suppliers having significant bargaining power.
According to the Office's findings, the number of suppliers whose framework purchase agreements with BILLA contained the conduct complained of was at a significantly lower level (less than 10% of suppliers) compared to other BILLA food suppliers whose contractual penalty clauses were in line with the objective criteria.
Taking the moderate seriousness of the conduct complained of into account, the Office further dealt with the financial quantification of the contractual fines imposed by BILLA and the duration of the conduct complained of. After a preliminary assessment of the evidence, the Office concluded that the conduct complained of was characterised by low level of seriousness and that there is no public interest in further investigation of the case. The Office therefore adjourned the case before the opening of administrative proceedings pursuant to Article 9(5) of the Significant Market Power Act.

Second-Instance Decision-Making and Judicial Review in the Area of Significant Market Power Control

In 2021, one appeal was filed against a first-instance decision and one administrative proceeding was initiated in the area of significant market power control. The Office issued two second-instance decisions in 2021, in both of which the first-instance decisions were annulled by the Chairman of the Office.

No action and/or cassation complaint in the area of significant market power control was brought before the Regional Court in Brno or the Supreme Administrative Court in 2021, and the courts did not issue any decisions in this area.

PUBLIC PROCUREMENT

The Office has been supervising public procurement and concessions since January 1995. Its activities in this context are currently governed by Act No. 134/2016 Coll., on Public Procurement (hereinafter referred to as "the Public Procurement Act"). The legal framework of the supervisory activity transposes the provisions of the European review Directives (Council Directives 92/13/EEC and 89/665/EEC, as amended by Directive 2006/97/EC of the European Parliament and of the Council); these Directives regulate the specifics of the review procedure in public procurement and strengthen the guarantees of the principles of transparency and non-discrimination in public procurement. Within the supervision over public procurement, the Office decides whether the contracting authority has acted in accordance with the Public Procurement Act when awarding a public contract (including a concession – see Article 2(2) of the Public Procurement Act) or in special procedures under Part 6 of the Public Procurement Act[3], imposes remedy measures, deals with offences committed by contracting authorities and imposes fines. The Office also carries out supervisory activities pursuant to Act No. 194/2010 Coll., on Public Passenger Transport Services. The purpose of the aforementioned Acts is to ensure free and open competition between the contractors (or carriers bidding to conclude a public passenger transport service contract within a public contract award procedure) and, at the same time, to carry out the selection of the most suitable tender in a transparent manner without discrimination between contractors/tenderers in a public contract award procedure. An equal, transparent and non-discriminatory competitive environment ultimately results in savings of public funds.

LEGISLATIVE CHANGES

When summarising the legislative changes, there is no other way to start than with the new public procurement principles. A completely new provision of Article 6(4) of the Public Procurement Act,[4] effective since 1 January 2021, establishes the obligation of contracting authorities to comply with the principles of socially and environmentally responsible and innovative procurement in all their procedures, where possible in view of the nature and purpose of the contract. As regards the interpretation or application of these principles, there has not been any comprehensive decision-making practice of the Office yet. However, in the framework of its methodological and awareness-raising activities, representatives of the Public Procurement Division have tried to present the supervisory authority's view on how to approach these obligations and thus raise awareness that the contracting authorities are obliged to take the new principles into account when awarding public contracts, including small-scale ones. It should also be noted that a responsible approach to procurement has always been possible, even if it has not yet been established as an obligation, and thus decisions on this topic can be found in the Office's decision-making practice. However, it is now evident that responsible procurement is becoming an increasing trend. The fact that contracting authorities will have to take multiple aspects into account may have positive consequences at a social level, as it is true that what the public sphere solves in cooperation with the private sector through strategic public procurement may not be subsequently addressed through other instruments, such as subsidies.

Another legislative change, specifically in the obligations of contracting authorities in identifying the beneficial owners of the selected contractor, became effective on 1 June 2021.[5] The change in question was reflected in the wording of Articles 122(4) and (5) of the Public Procurement Act. As before, the contracting authority will be obliged to ascertain the beneficial owner of the selected contractor for both the domestic and foreign legal entities; however, the novelty is that the sanction for the absence of the beneficial owner registration in the relevant register will take the form of exclusion of the selected contractor from the public contract award procedure. The contracting authority is obliged, in case of the selected contractor that is a Czech legal entity, to get the necessary information from the register of beneficial owners, the administrator of which is the Ministry of Justice. If the selected contractor is a foreign legal entity, the contracting authority does not ascertain the necessary information itself, but shall invite the selected contractor to submit an extract from a similar register or to submit relevant documents. Due to the absence of transitional provisions, this new procedure shall always apply, with the exception of the simplified procedure, if the identification of the beneficial owner takes place after the date of the Amendment Act coming into force, regardless of when the public contract award procedure was initiated.

3 I.e. design contest and public procurement through framework agreements and dynamic purchasing systems.

4 Adopted by Act No. 543/2020 Coll., amending certain acts in connection with the adoption of the Waste Act and the End-of-Life Products Act.

5 On the basis of Act No. 527/2020 Coll., amending Act No. 253/2008 Coll., on Certain Measures against the Legalization of Proceeds of Crime and Terrorist Financing, and other related laws, laws related to the adoption of the Act on the Registration of Beneficial Owners and Act No. 186/2016 Coll., on Gambling; and also Act No. 37/2021 Coll., on the Registration of Beneficial Owners.

In the past period, the newly adopted provision of Article 37a of the Public Procurement Act has also been widely discussed, even though it did not become effective until 1 January 2022.[6] The provision in question allows contracting authorities to give priority to local and regional food, food of EU quality schemes and products of organic agriculture in the food supply public contract award procedure. The purpose of this provision is to increase the self-sufficiency of food production, to implement European strategies and to reflect the principle of environmental responsibility.

In 2021, representatives of the Public Procurement Division, in cooperation with other divisions of the Office and the Ministry of Regional Development, were also intensively involved in commenting on the draft Regulation on Foreign Subsidies Distorting the Internal Market proposed by the European Commission. The aim of this proposal is to ensure a level playing field in the single market, as subsidies granted to foreign undertakings by third countries are not subject to any European regulation. In the field of public procurement, it is proposed, inter alia, to introduce a notification obligation for undertakings of foreign financial contributions received and to establish the power of the European Commission to carry out investigations and, where appropriate, to impose a ban on the award of a public contract to a contractor. It should be noted that, although the topic in question has not yet been widely discussed by the public and contracting authorities, it has been resonating quite strongly at the level of European legislation for some time.

ACTIVITY OF PUBLIC PROCUREMENT DIVISION

The year 2021 was a year of change for the Office in relation to the agenda of public procurement. One of the most important was the change in the position of the Vice-Chair of the Office responsible for the Public Procurement Division. This fact, in connection with the earlier change to the position of the Chairman of the Office, necessitated a reorganisation and a certain redefinition of the Office's activities and direction, which also affected the Public Procurement Division. The objective of the new management is, inter alia, to improve the communication of the Office, both to the addressees of the Office's activities and to the professional public, towards whom the Office focuses mainly on awareness-raising activities in the field of public procurement, as well as to the potential jobseekers in the field of public procurement supervision. Related to the above, inter alia, is the implementation of the so-called methodological days. In 2021, the Office carried out five online methodological days focusing on specific procurement topics, which were attended by approximately 2,000 participants. Within its outward-oriented awareness-raising and methodological activities, the representatives of the Office regularly lectured at various conferences, seminars, trainings and other meetings, where they provided methodological recommendations on particular aspects and institutes of the Public Procurement Act and presented in context an overview of the most important recent decision-making practice and case law in the field of public procurement. At the same time, the representatives of the Office met with representatives of institutions having an impact on the procurement environment in the Czech Republic and together they discussed the possibilities of improving it in the future. A comprehensive overview of selected events in which the Office participated in this regard is available on the Office's website. In 2021, the Office also held its first ever Open Day,[7] which was aimed, in particular, at potential jobseekers.

The new management not only emphasizes the awareness-raising and methodological activities, but is also working to continue the successful cooperation with the Ministry of Regional Development, as gestor of the Public Procurement Act, and to establish and maintain cooperation with other entities influencing the public procurement process. In terms of decision-making, the Public Procurement Division's activities are already showing positive developments towards rationalising decision-making, for example by refraining from cancelling the award procedure for purely formalistic reasons.

The Office's decision-making practice in the field of public procurement in 2021 was characterised, in particular, by an increasing number of factually more complex cases, the assessment of which often required the conduct of relatively demanding investigations in order to answer technical questions, for example, of a technical nature, for which the Office, that deals with the interpretation and application of legal regulations relating to the public procurement, does not have the expertise or competence, but answering such questions is necessary for a proper decision of the Office on a given case.

On the other hand, in 2021, the Office also received an unusually large number of complaints alleging breaches of publication obligations of the contracting authority. In response to this fact and in order to educate contracting authorities on good practice, the Office issued a press release warning the contracting authorities of the need to comply strictly with the publication obligations, even in cases of small-scale public contracts.

In 2021, the Office also tried to respond proactively to current developments in the field of public procurement and to cultivate the domestic procurement environment through education and methodological guidance. An example is the

6 This provision was adopted as a result of an amendment to Act No. 174/2021 Coll., amending Act No. 110/1997 Coll., on Food and Tobacco Products and on amendments and additions to certain related acts and other related acts.

7 The Office Open Day took place on 6 October 2021.

preparation of expert opinions and methodological guidelines on topics that resonated in the public procurement area in the past year. In this context, the Office issued, for example, an opinion on recommendations for contracting authorities when awarding public contracts for the purchase of electricity or gas, and, in cooperation with the Ministry of Regional Development, also issued a joint opinion on the issue of the sharp increase in the price of building materials in the field of public procurement.

Looking back to 2021, we cannot forget the COVID-19 pandemic, the consequences of which have significantly affected not only the running of the Office but also the contracting community. In this respect, contracting authorities faced, in particular, with uncertainty regarding the performance of public contracts, and were forced to adapt their performance conditions to the current situation where, for example, significant delay or outright shortfall in deliveries, substantial increase in the price of supplies or a decrease in staff capacity necessary for performance of public contracts occurred.

PUBLIC PROCUREMENT IN NUMBERS

It is evident from the scope of the agenda handled by the Public Procurement Division in 2021, that the increasing trend in the number of administrative proceedings initiated continued. The Office initiated a total of 565 administrative proceedings, which is 166 more (41.6%) than in the previous year. This increase in the number of administrative proceedings initiated is due to an increase in the number of *ex officio* proceedings. There was an increase of 196 *ex officio* administrative proceedings (264%) compared to 2020. Although there was a decrease in the number of submitted applications from 280 to 250 (10.8%) compared to 2020, the number corresponds to a long-term trend with an average of 254.8 applications submitted between 2017 and 2020.

As in 2020, even in 2021 there was a substantial increase in the number of *ex officio* complaints received. In 2021, the Office received 634 complaints, which is 45.7% more than in 2020 and 286% more than in 2019. This increase in the number of complaints lodged was directly reflected in the number of *ex officio* proceedings initiated, as demonstrated by the increasing proportion of complaints containing relevant information on infringement of the law.

There was also an increase in the number of decisions issued in 2021, with an increase of 238 decisions on the merits (63%) compared to 2020. This increase in decisions on the merits was mainly driven by an increase in the number of decisions imposing a remedy or a fine, with an increase of 264 decisions (277%). This increase includes an increase in the number of orders issued, with an increase of 216 orders (422%) compared to 2020. The significant increase in the number of

26.53 days — average time for issuing a first-instance decision in 2021

decisions issued, imposing a corrective measure or a fine, thus corresponds to the increase in the number of complaints received.

In contrast, there was a significant decrease in the number of decisions on interim measure issued in 2021, with a decrease of 54 decisions (34.6%). This decrease in the number of decisions on interim measures is due to the lower number of applications received (by 10.8%) compared to 2020 and the overall decrease in the number of decisions on interim measure issued is also due to the fact that the Office decided within such time limits that it was not necessary to order interim measures, typically consisting in the ban on concluding a contract beyond the so-called blocking period pursuant to Article 246(1)(d) of the Public Procurement Act, so often.

In 2021, there was a significant increase in the number of fines imposed, by 222, which represents an increase of 442%. The total amount of fines imposed, excluding the specific case of the Ministry of Defence, where the highest ever fine of CZK 550 million was imposed for infringement of the Public Procurement Act, decreased slightly compared to 2020. Thus, although the number of cases where the Office has imposed a fine increased by almost 4.5 times, the absolute amount of fines imposed decreased. This situation was due to the nature of the cases, where, in 2021, a large number of cases concerning compliance with the publication obligations of contracting authority were considered, in which fines were imposed at an order of magnitude lower than in the case of other misconducts of contracting authorities.

Within its supervisory powers, the Office also performs inspection activities in compliance with the Inspection Code. In 2021, the Office initiated a check of the legality of the contracting authority's procedure for awarding eight public contracts, which was also completed in the same year. In 2021, no administrative proceeding was initiated as a result of the inspection. In 2021, the Office also completed five inspections initiated in 2020 and, on their basis, initiated three administrative proceedings in 2021, in which the Office found an infringement of the law in relation to the contracting authority's procedure, when it failed to properly assess the fulfilment of the condition of participation in the tender procedure in relation to the selected contractor (the submitted schedule of works and deliveries did not show that the tender conditions were met), and it also found a violation of the Act by dividing the public contract into two parts and the failure

to determine the estimated value of this contract based on the sum of the estimated values of both parts. The inspectors also found a breach of the principle of equal treatment in the case of the contracting authority's failing to send a letter informing about the publication of the tender documentation to at least five contractors, but only to three ones. At the same time, the contracting authority was found to have breached its procedure by failing to invite the selected contractor to submit the originals or certified copies of documents proving its qualification.

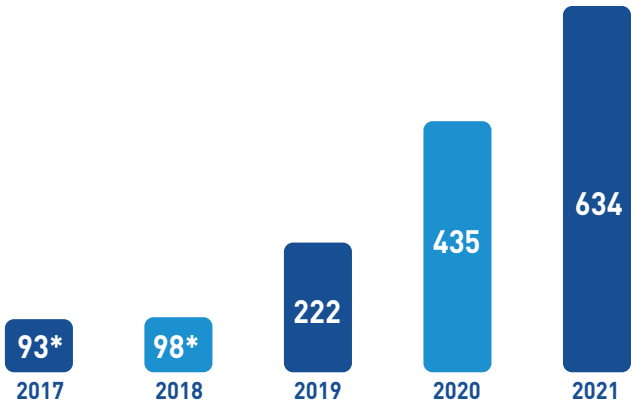
Overview of the Inspection Activity of the Office in 2021

Number of inspections initiated in 2021	1
• concluded in 2021	1
Number of inspections initiated in 2020 and concluded in 2021	5
Total number of inspections concluded in 2021	**6**

Outcome of Inspections in 2021

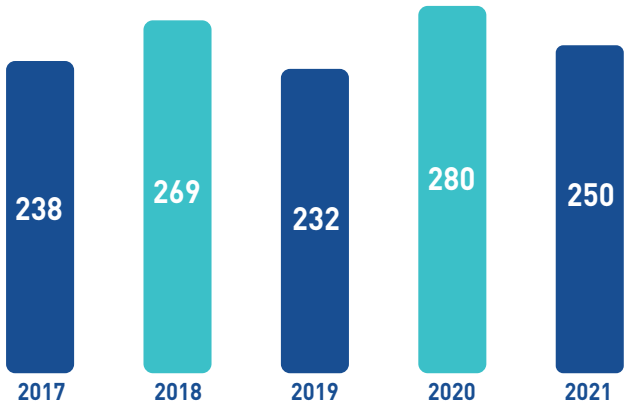
Infringement of inspected provision not found	3
Infringement of inspected provision found	3

Number of Complaints Filed



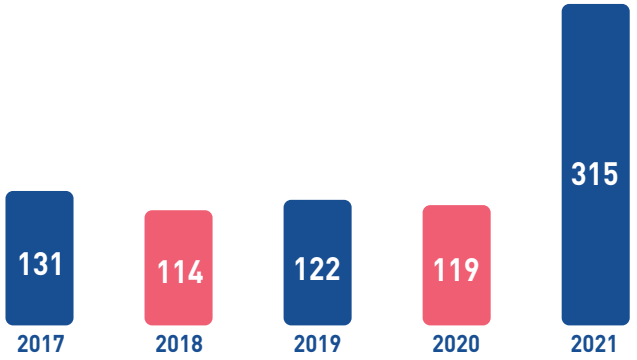
* Only paid complaints are concerned

Number of Received Applications to Initiate Administrative Proceedings



Total Number of Initiated Administrative Proceedings in First Instance

Number of Proceedings Initiated *Ex-officio*

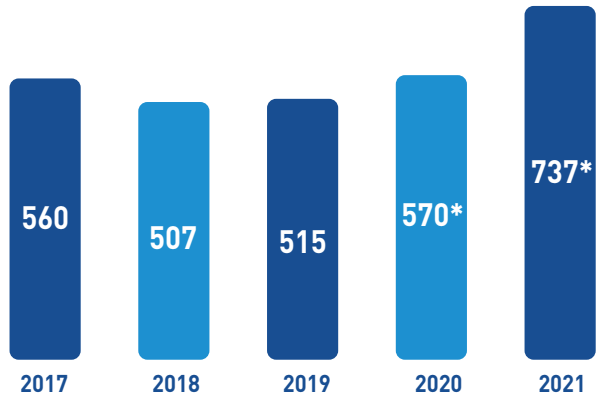


First-Instance Decision-Making in the Field of Public Procurement in 2021

	Complaints received	**634**
Administrative proceedings	Total number of initiated administrative proceedings, of which	**565**
	• initiated on the basis of the application	**250**
	• *ex-officio*	**315**
	o of which on the basis of inspections	**3**
First-instance decisions	Total number of first-instance decisions,[8] of which	**1,810**
	• decisions on the merits[9]	**615**
	• remedy or the fine imposed[10]	**413**
	o of which orders issued[11]	**283**
	• misconduct of the contracting authority not found[12]	**90**
	• procedural reasons[13]	**112**
	• interim measures	**122**
	• decisions on imposing interim measures	**102**
	• decisions on dismissal of interim measures	**20**
	• decisions on cancelation of interim measures	**0**
	• the other first-instance decisions[14]	**1,073**
Fines	Number of fines imposed[15]	**287**
	Total amount of fines imposed,[16] of which	**CZK 559,473,500**
	• 243 fines imposed by the order (the administrative objection not filed)	**CZK 2,474,000**
	• 44 fines imposed by decision	**CZK 556,999,500**
Costs of proceedings	Number of imposed costs of proceedings[17]	**105**
	Total amount of imposed costs of proceedings[18]	**CZK 1,932,000**
Deposits	Total amount of lodged deposits[19]	**CZK 82,466,870.62**
	Total amount of deposits forfeited in favour of state budget[20]	**CZK 50,289,388.17**

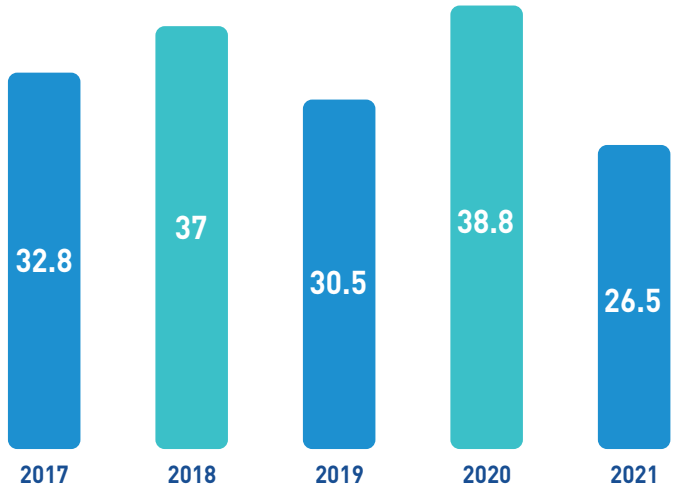
8 The number includes all the first-instance decisions issued in 2021 (decisions on the merits, decisions concerning interim measures and all the other first-instance decisions).
9 The number includes all the decisions issued in 2021, by which the administrative proceeding was terminated in the first instance.
10 The number includes all the decisions issued in 2021, by which in relation to at least part of the subject matter of the proceedings the fine or remedy was imposed.
11 The number even includes orders against which the administrative objection was filed.
12 The number includes all the decisions issued in 2021, 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 was imposed.
13 The number includes all the decisions issued in 2021, in which there were no reasons for substantive review of the procedure of the contracting authority.
14 The number includes all the other decisions issued in 2021 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.
15 The number includes cases where the fine was imposed on the basis of the order or by the decision issued in 2021 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.
16 The number includes the 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 2021. 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.
17 The number includes the number of cases in which the decision on the imposed payment of costs of proceedings was issued in 2021 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 2021. 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.
18 The number includes the financial volume of all the costs of proceedings imposed by the decision issued in 2021 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 2021. 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.
19 The number includes the sum of all the deposits lodged at the Office´s bank account in 2021; the number is not based only on the proceedings initiated in 2021.
20 The number includes financial volume of deposits forfeited in favour of the state budget in 2021; the number is not based only on the proceedings initiated in 2021.

Number of Decisions Issued in First Instance



* Only decisions on merits and on interim measures

Speed of First-Instance Decision-Making (in Days)



Most Frequent Misconducts of Contracting Authorities

In terms of proportional representation, in 2021, the most frequently reviewed public contracts were in the field of construction sector (in general), construction of transport infrastructure and information technologies, and, to a lesser extent, in the field of services related to the preparation of design documentation, deliveries of transport equipment or transport services provision. As to the category of contracting authorities, the most frequent subject of review are public contracts awarded by municipalities and cities, health care institutions, ministries and regions or entities operating in the field of administration and construction of transport infrastructure. As far as representation of the areas of public procurement most frequently reviewed, as well as the category of contracting authorities, there were no significant changes in 2021. In this context, no new factor has been identified that would have a major impact on the exercise of supervision and/or on the entities or areas being subject of the supervision.

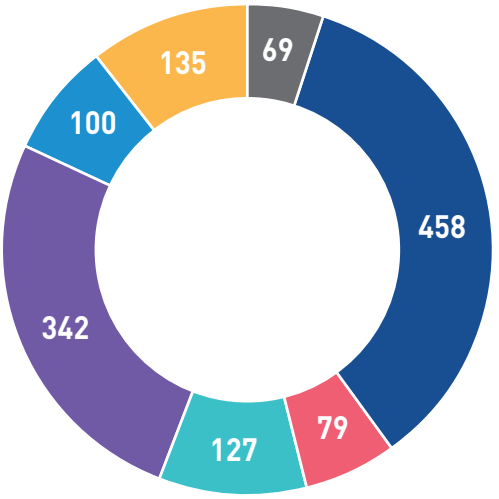
The most frequent misconducts of the contracting authorities include:

- vague, ambiguous or discriminatory definition of tender qualification criteria and/or inadequacy of these criteria, including qualification requirements;
- failure to comply with publication obligations;
- selection of a contractor who has not fulfilled the conditions of participation (it is not entirely clear from the notice of selection that the contractor´s qualification has been demonstrated, etc.).

Overview of Highest First-Instance Fines Imposed

Ref. No.	Contracting Authority	Fine in CZK
S0514/2020	Ministry of Defence	**550,000,000**
S0496/2020	TEPO, s. r. o.	**2,000,000**
S0048/2021	TS Městyse Nehvizdy, s. r. o. (Technical Services of Nehvizdy)	**1,200,000**
S0183/2021	Ministry of Interior	**800,000**
S0422/2021	Dobrovolný svazek obcí k zajištění přístavby školy v Nehvizdech (voluntary association of municipalities)	**500,000**
S0047/2021	Ředitelství silnic a dálnic ČR (Directorate of Roads and Motorways)	**300,000**
S0180/2021	Municipality of Neratovice	**200,000**
S0327/2020	Municipality of Mohelnice	**200,000**
S0049/2021	Hasičský záchranný sbor hlavního města Prahy (Prague Fire and Rescue Service)	**185,000**
S0248/2021	Municipal District of Prague 1	**150,000**

Statistics of Frequency of Assessed Legal Questions in Operative Parts of Decisions and Orders Issued in First Instance in 2021



- misconduct of the contracting authority found
- remedy imposed
- obligation to cover the costs of the proceedings imposed
- fine imposed
- application dismissed or administrative proceedings terminated due to the lack of misconduct (after the substantive review)
- administrative proceedings terminated for procedural reasons
- ban on conclusion of the contract imposed

SIGNIFICANT CASES

Purchase of Multi-Purpose Military Helicopters

Contracting Authority: **Czech Republic – Ministry of Defence**
Fine: CZK 550,000,000
(S0514/2020/VZ; coming into force on 7 April 2021 – confirmed by R0039/2021)

The administrative proceedings were initiated *ex officio*.
It concerned administrative offence proceedings, in which the Office concluded that the contracting authority had committed an offence pursuant to Article 268(1)(a) of the Public Procurement Act by failing to comply with the rules laid down in Article 246(1)(b) of the Public procurement Act, when it concluded a public contract with the United States government on 21 November 2019, pending the receipt of the decision on the objections filed by the complainant, which the contracting authority received on 20 November 2019 and it decided on those on 5 December 2019, delivering them to the to the complainant on the same day, thereby being able to influence the selection of the supplier, and awarded the contract.
In these administrative proceedings, the Office imposed the highest fine ever for an infringement of public procurement rules, however, the fine was still only around 37% of the maximum possible amount. In setting the amount of the fine, the Office took into account, inter alia, aggravating circumstances, including the fact that the contracting authority is experienced in the field of public procurement and has sufficient personnel and material basis to carry out the procurement procedures without serious defects and with full respect for all the rights of the supplier, or the fact that the contracting authority has repeatedly committed conduct threatening the same protected interest (cf. Decision of the Chairman of the Office No. ÚOHS-R0101/2019/VZ–22207/2019/321/EDo of 12 August 2019). Therefore, in the Office´s view, a lower fine would not fulfil a sufficiently repressive or preventive function.

Extension of the Primary School in Nehvizdy

Contracting Authority: **TS Městys Nehvizdy, s. r. o. (Technical Services of the Municipality of Nehvizdy)**
Fine: CZK 1,200,000
(S0048/2021; coming into force on 28 April 2021)

In the administrative proceedings initiated *ex officio*, the Office concluded that the contracting authority committed an administrative offence under Article 268(1)(a) of the Public Procurement Act by failing to comply with the rules set out in Article 2(1)(a) of the Public Procurement Act by awarding a sub-limited public contract for construction works, the subject of which was the performance of construction works for the extension to the Nehvizdy Primary School in 243 Bedřicha Moucha Street, with a total value of CZK 27,853,810 excluding VAT, without carrying out an award procedure, which it would have been entitled to use for a public contract with the same subject matter and the same estimated value, although it was obliged to do so, whereby it could have influenced the selection of the supplier, and it concluded partial contracts with more than 30 contractors for the performance of the subject matter of the public contract. Within the course of the administrative proceedings, the Office proved that the individual supplies for which partial contracts were concluded with the suppliers were related in time, place, substance and, above all, function and that they therefore constituted a single public contract. The contracting authority thus committed an unlawful division of the public contract by awarding the individual parts of the contract as a small-scale public contract and not as a below-the-limit public contract.
Given that the Office found mitigating circumstances but no aggravating circumstances in this case, and also took into account the lower income of the Municipality, which owns and controls 100% of the contracting authority, the Office

proceeded to impose a fine of only 35.6% of the maximum possible amount, despite the high gravity of the committed offence.

Delivery of 15 Battery-Powered Articulated Trolleybuses

Contracting Authority: **Dopravní podnik hlavního města Prahy, akciová společnost (Public Transport Company of the Capital City of Prague)**
Application rejected
(S0235/2021; coming into force on 8 November 2021 – confirmed by R0127/2021)

In the proceedings initiated on the basis of an application, the Office examined the legality of the tender qualification criteria. According to the complainant, the contracting authority infringed the Public Procurement Act by setting requirements for the technical qualification of the suppliers to an extent that did not correspond to the subject matter of the public contract and by allowing insufficiently experienced suppliers to participate in the procurement procedure; in particular, the contracting authority did not require experience in the delivery of a complete trolleybus, but, in order to meet the technical qualification, it was sufficient to demonstrate experience in the delivery of only a certain part of the production of a trolleybus. The Office concludes that the contracting authority did not err in setting such a technical qualification condition.
According to the Office, the contracting authority's practice of "opening up" competition to a larger number of potential suppliers by setting a lower level of technical qualification requirements that are clearly related to the subject matter of the public contract can generally be seen as consistent with the public interest. The purpose of the Public Procurement Act is to ensure the widest possible competition in public procurement, which is also reflected in the fact that in the above-limit regime the contracting authority has the right, but not the obligation, to require suppliers to demonstrate technical and economic qualifications. For this reason, it would not be contrary to the Public Procurement Act if the contracting authority did not require the demonstration of technical qualification at all in the procurement procedure in question.
The Office concluded that it would be contrary to the principles of logic if the contracting authority were to be found to have erred in setting the requirements for technical qualification too benevolently, when the contracting authority would not even have had to set any such conditions.

Repair of the Roadway I/38 Starý Kolín-Malín

Contracting Authority: **Road and Motorway Directorate of the Czech Republic**
Remedy: Cancellation of the decision and notice on the selection of the supplier
(S0026/2021; coming into force on 31 March 2021)

In the administrative proceedings initiated *ex officio*, the Office concluded that the contracting authority did not comply with the rules laid down for the award of the public contract, when it persisted in its conclusion regarding the fulfilment of the conditions of participation by the selected supplier even after the demonstration of fulfilment of the technical qualification criterion pursuant to Article 79(1) of the Public Procurement Act, while the contracting authority did not eliminate the doubts raised by the objections as to whether the selected supplier had carried out the construction work consisting in the laying of asphalt compacted layers within the framework of the submitted reference contracts with its own capacities, in a situation where the contracting authority reserved that the laying of asphalt compacted layers would be carried out directly by the selected supplier.
The Office concluded that although, in general, a supplier may generally prove compliance with the technical qualification pursuant to Article 79(2)(a) of the Public Procurement Act by means of reference contracts which it has carried out in the position of a so-called general contractor, in cases of activities which should be under Article 105(2) of the Public Procurement Act carried out directly by the selected supplier, it is not permissible for the selected supplier to prove compliance with the technical qualification by means of a reference contract, in which it acted as a general supplier, however, the activity was not carried out by the supplier itself, but through a subcontractor. Such a reference contract is not indicative of the supplier's ability to carry out this important activity on its own.

Contract for Cooperation in the Construction of a Centralised Protection Console System

Contracting Authority: **Fire Rescue Service of the Capital City of Prague**
Ban on performance of the contract
(S0305/2020; coming into force on 22 September 2021 – confirmed by R0120/2021)

The subject matter of the proceedings, in which the applicant sought to impose a ban on performance of the contract, was the question whether the contracting authority had acted in accordance with the Public Procurement Act when it failed to use the award procedure for the conclusion of a contract for cooperation in the construction of a centralised protection console system (hereinafter referred to as "the CPCS") as a result of the incorrectly determined amount of the estimated value of the concession, according to the applicant.
The Office found that the estimated value of the concession should include not only the income from payments made to the supplier by the users of the concession, but also all related payments necessary for the performance of the contract, even if paid by the users of the concession directly to the contracting authority. Thus, the Office concluded that the estimated value of the concession shall also include the payment for the permanent guarding of the electrical fire alarm system

(hereinafter referred to as "the EFAS") of the premises by the regional operations and information centre, the payment for the EFAS connection to the CPCS by means of a remote transmission device, and the payment for each false call, which are paid directly by the concession users to the contracting authority.
Furthermore, the estimated value of the concession shall include payments for the servicing of the device necessary for connection of the concession users' EFAS to the contracting authority's CPCS, paid by the concession users to the supplier, if the servicing is necessary for the performance of the subject-matter of the concession and if, at the same time, the provision of the concession also gives the supplier the advantage of concluding service contracts with the concession users.
The Office therefore concluded that in the given case, the estimated value of the small-scale concession was exceeded by a considerable amount, and the contracting authority was thus obliged to award the contract in a concession procedure or in another type of procurement procedure pursuant to Article 55 of the Public Procurement Act. As a remedy, the contracting authority was imposed a ban on performance of the contract, while the contracting authority failed to demonstrate a public interest requiring continued performance of the contract, since, according to the Office's findings, a certain possibility of using the connection service to the contracting authority's CPCS remained for existing and new users of the concession.
In the related administrative proceedings, the Office also found that the contracting authority had committed an offence pursuant to Article 268(1)(a) of the Public Procurement Act, when it concluded the concession contract, and imposed a fine of CZK 185,000 on the contracting authority, which was subsequently confirmed by the Chairman of the Office (R0078/2021; coming into force on 9 June 2021).

Central Purchase of Original Consumables for Printers, Copiers and Multifunction Devices in 2020–2021

Contracting Authority: **Olomouc Region**
Application rejected
(S0263/2020; coming into force on 6 December 2021 – confirmed by R0164/2021)

The subject matter of the proceedings initiated on the basis of the application was the assessment of whether the central contracting authority had set the procurement conditions in accordance with the Public Procurement Act by requiring the supply of only original consumables designed and manufactured for use in printing devices by the manufacturer of those printing devices, while not allowing the supply of non-original products.
The Office noted that the contracting authority should set the conditions of participation in the award procedure and the subject matter of the performance in a way that they do not unreasonably and unduly restrict competition. At the same time, it is necessary to distinguish between what constitutes a legitimate and justified need of the contracting authority in relation to the determination of the subject-matter of the contract and what constitutes an authoritative determination of the manner of its solution, which is something that the contracting authority should avoid. In a situation where the purpose of a requirement can be achieved in different comparable ways, the contracting authority cannot prescribe only one of the possible equivalent solutions.
The evidence collected in the administrative proceeding showed that alternative performance in practice objectively entails a unique increased risk of qualitatively defective performance. While it is not always possible to automatically label every non-original consumable product as a poor quality or defective performance, it is reasonable to be concerned that, with the purchase of alternative consumable products, the contracting authority runs a higher risk of potential "operational damage" caused by their qualitative deficiencies.
The Office found that it would be unreasonable to require contracting authorities, where they wish to use only original toner cartridges, to examine at the same time the quality of non-original cartridges to see whether one or the other is of a higher quality and therefore a suitable alternative to the original cartridge, since the contracting authority does not currently have a real possibility of verifying the quality of the offered performance, since no certification or other testing authority deals with the issue of measuring the functional and quality characteristics of toner or ink cartridges and other consumables. The possibility of verifying the quality of the offered consumable products has proved not only difficult to implement but also impossible for the contracting authority and the contracting authority has no means of guaranteeing and verifying the comparable quality of the performance during the award procedure. The Office therefore concluded that, in such a situation, it would not be reasonable and fair to force the contracting authority to take the actual operational risks associated with the possibility of supplying low-quality consumables without having the possibility of obtaining a qualitatively verifiable performance in the award procedure.

Replacement of Public Lighting Fixtures in Český Krumlov – No. 2

Contracting Authority: **Municipality of Český Krumlov**
Fine: CZK 50,000
(S0243/2020; coming into force on 14 April 2021 – confirmed by R0040/2021)

In the administrative proceedings, the Office assessed the legality of the procedure of the contracting authority which awarded a public contract involving several types of public procurement as a small-scale public contract, i.e. outside the statutory regime. On the basis of the market survey, the Office also found that the construction works carried out within the public contract – electrical installation works – constitute

48 days

average time for issuing a second-instance decision in 2021

a minimum necessary prerequisite for ensuring the required functionality of the supplied lighting fixtures, respectively, they are only ancillary activities serving to enable the supplied fixtures to be used in accordance with the requirements of the contracting authority, i.e. it concluded that the construction works in question are necessary for the proper performance of the public contract, but their performance does not constitute the essential purpose for which the supplier's performance as a whole is provided. The Office therefore found that the contracting authority was not entitled to award the public contract in question as a small-scale public contract, since, with regard to its basic purpose, it was not a public works contract as classified by the contracting authority, but a public supply contract, which the contracting authority was obliged to award in the relevant award procedure pursuant to the Public Procurement Act, in view of its estimated value.

SECOND-INSTANCE PROCEEDINGS IN PUBLIC PROCUREMENT

In 2021, appeals filed against the first-instance decisions of the Office were examined by the Appellate Commissions in the new composition appointed by the Chairman of the Office, Petr Mlsna. The new Appellate Commissions are composed of external experts from the academic environment, state institutions, professional associations and chambers or the bar associations.

While the increasing trend in the number of administrative proceedings initiated at first instance continued in 2021, the number of administrative proceedings initiated at second

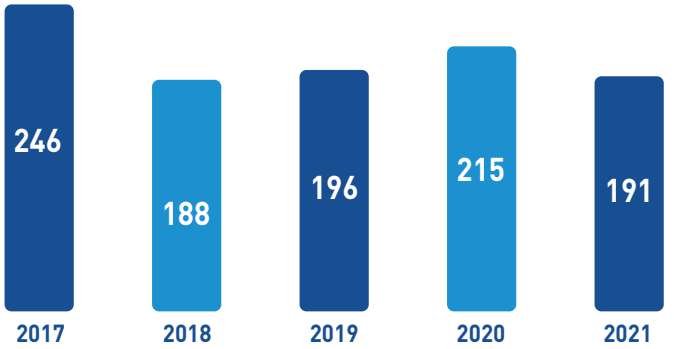
Second-Instance Decision-Making in the Field of Public Procurement in 2021

Number of appeals filed against the first-instance decisions		**191**
Initiated second-instance administrative proceedings		**191**
Second-instance administrative proceedings pending as of 31 December 2021		**30**
Issued decisions on appeals	Total number of issued decisions on appeals	**209 (of which 12 cases after judicial review)**
	of which:	
	• decision of the first instance confirmed and appeal dismissed	**127**
	• decision of the first instance cancelled and returned to re-examination	**30**
	• decision of the first instance cancelled and administrative proceedings terminated	**43**
	• appeal proceedings	**7**
	• decision of the first instance changed	**0**
	• appeal dismissed due to delay	**0**
	• appeal dismissed for inadmissibility	**1**
	• number of appeals settled in autoremedy by the Chairman of the Office	**0**
	• number of appeals settled in autoremedy by the first instance	**0**
	• decisions of the first instance cancelled	**1**
Decisions issued in review proceedings		**0**
Decisions issued in retrial		**0**
Decisions on imposing of interim measures		**3**
Corrective decisions		**3**
Procedural resolutions		**35**
Completed requests for inactivity measures		**3**
Other notifications or request		**19**
Fines	Total number of confirmed fines	**27**
	Total amount of confirmed fines	**CZK 561,635,500**

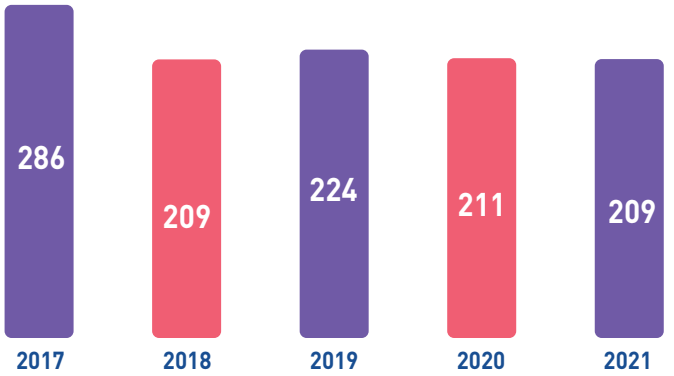
instance decreased by 11%. In 2021, an appeal was filed against approximately every third first-instance decision. The Chairman of the Office confirmed approximately 60% of the first-instance decisions. The significant increase in the total amount of confirmed fines in 2021 is caused by the confirmation of the highest fine ever imposed, amounting to CZK 550 million, on the Ministry of Defence for a public contract concerning the purchase of multi-purpose helicopters (R0039/2021).

Thanks to internal measures, the Office again managed to reduce the average time for issuing a second-instance decision to 48 days.

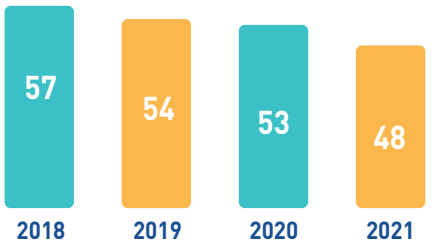
Number of Appeals Filed Against the First-Instance Decisions



Number of Issued Decisions on Appeals



Average Time for Issuing a Decision of the Chairman of the Office (in Days)



SIGNIFICANT CASES

Framework Agreement for the Supply of up to 33 Partial Trolleybuses

Contracting Authority: **Dopravní podnik města Ústí nad Labem, a. s. (Public Transport Company of the City of Ústí nad Labem)**
(R0134/2021; coming into force on 8 November 2021)

Within the context of the public procurement, the contracting authority requested trolleybuses with specific functional and technical characteristics. In the appealed decision, the Office found a non-compliance of the tender qualification criteria with Article 36(1) of the Public Procurement Act and the principle of non-discrimination, as the contracting authority did not reflect the specific aspects of the subject matter of the framework agreement and did not take into consideration the current situation on the relevant market when setting the economic and technical qualification criteria. The Office came to these conclusions on the basis of a thorough questioning of entities operating in the partial trolleybus market, when it found an almost complete dominance of a particular supplier (ŠKODA ELECTRIC, a. s.), the interconnection of some other suppliers with this dominant supplier and the nature of the market as a developing one.
The Chairman of the Office upheld the appealed decision. In this particular case, the contracting authority impermissibly restricted competition for the subject matter of the framework agreement by its set of requirements for economic qualification, technical qualification and demonstration of a sample of performance. In view of the very narrow market of potential suppliers and the existence of only one of them that could realistically meet all the requirements of the contracting authority as set out in the tender qualification criteria, it was appropriate in this case to waive or adequately moderate some of the conditions that otherwise correspond to the subject-matter of the public contract, so that suppliers with proven (even partial) experience in the supply of partial trolleybuses could also bid for the contract, while leaving the contracting authority with sufficient guarantees of a capable supplier.
In the case of a supply provided in a relevant market which is largely closed, new or developing, the contracting authority is obliged to adapt its requirements to the interest of opening up competition. In such case, general statements concerning, for example, the mere conformity of the subject-matter of the supply with the supplier's qualification requirements do not stand for the purpose of justifying the restriction of competition, since these in themselves tend to deepen the foreclosure of the relevant market or cause it to stagnate. The contracting authority should have to provide other specific reasons which, in a particular case, should outweigh the interest of the contracting authority in obtaining the supply from a narrower and highly specialised range of suppliers over the interest in opening up competition.

Providing Comprehensive Advisory Services Concerning Public Procurement for Digitalisation of Construction Procedure

Contracting Authority: **Ministry of Regional Development**
(R0085/2021; coming into force on 11 June 2021)

The contracting authority defined one of the categories of the dynamic purchasing system (hereinafter referred to as "DPS") as legal advisory services in the field of administration of ICT systems, which corresponded to the technical qualification for this category. However, the subject matter of the tender awarded under this category was, among other things, drafting of a technical specification for ICT systems, which corresponded to the requirements for a development team of five ICT specialists.
The Chairman of the Office upheld the original decision of the Office, stating that the drafting of a technical specification for ICT systems could not be subsumed under the subject matter of the DPS category as defined by the contracting authority and the technical qualification requirements it had added. Thus, the contracting authority invited only suppliers classified under the DPS category (legal consultancy) to submit a tender, even though the contract could also be performed by entities engaged in ICT consultancy. They could have used subcontractors for other (legal) parts of the contract or submitted a joint tender. However, the suppliers included in the category were also discriminated against, as they could not count on this type of performance and only had a deadline of 11 days to submit tenders to ensure that they would be able to perform the contract. All the suppliers who submitted a tender were thus forced to secure subcontractors.

Contract for Construction of Roads and Related Infrastructure

Contracting Authority: **Pražská plynárenská Servis distribuce, a. s (Prague Gas Company)**
(R0155/2021; coming into force on 20 December 2021)

The Office concluded that the company Pražská plynárenská Servis distribuce, a member of the Pražská plynárenská group, committed an administrative offence by failing to award a public contract under the relevant legal regime, being a public contracting authority.
The Office found that the company is a public contracting authority under Article 4(1)(e) of the Public Procurement Act, as it is other legal person established or set up for the purpose of meeting needs of public interest which are not of an industrial or commercial nature, and another contracting authority (in this particular case, the Capital City of Prague) may exercise decisive control over that company.
The decision of the Chairman of the Office annulled the first-instance decision and terminated the administrative proceedings. The Chairman of the Office found that the activities of the accused company – although it is involved in the operation of the gas distribution system – are of an industrial or commercial nature, the company being part of a concern which operates on the market under normal market conditions. It has not been established that the accused company, or the group as a whole, is in a position of close dependence on the public contracting authority, which is in fact its controlling entity. Thus, the condition under Article 4(1)(e) of the Public Procurement Act was not fulfilled in order to meet the conditions of a public contracting authority.

Technical and Transport Infrastructure for Construction of Family Houses in the Locality of Ciboušovská in Klášterec nad Ohří – Third Announcement

Contracting Authority: **Municipality of Klášterec nad Ohří**
(R0140/2021; coming into force on 3 November 2021)

The Office concluded that the contracting authority had committed an offence by acting contrary to the principle of equal treatment pursuant to Article 6(2) of the Public Procurement Act by not inviting one tenderer (in the position of the selected supplier) in accordance with Articles 46(1) and 122(6) of the Public Procurement Act to participate in the phase of providing cooperation before the conclusion of the contract pursuant to Article 122(3) of the Public Procurement Act and to clarify or complete the documents submitted on the basis of the request for assistance before concluding the contract, and by excluding it from participation in the award procedure, while inviting the other tenderer (in the position of another selected supplier) and concluding a contract with it.
In the decision on the appeal, the Chairman of the Office stated that the contracting authorities are obliged to invite a tenderer pursuant to Article 46(1) of the Public Procurement Act to clarify or supplement the bid (or, in conjunction with Article 122(6) of the Public Procurement Act, to clarify or supplement the documents submitted on the basis of the invitation pursuant to Article 122(3) of the Public Procurement Act) if they addressed a similar invitation to another tenderer who was in the same or similar position. However, if the tenderer in question is not in the same or similar position as another tenderer invited, the contracting authority does not breach the principle of equal treatment if it does not also invite the tenderer to clarify or supplement its tender or documents.
In the case under investigation, the Chairman of the Office concluded that the contracting authority, by providing assistance to one participant in the pre-contractual phase to clarify or supplement the documents submitted pursuant to the invitation under Article 122(3) of the Public Procurement Act, did not violate the principle of equal treatment, since the contracting authority applied the same approach to these participants in the procurement procedure, or rather the same rule, which it had notified to them in advance, and these suppliers were not in the same or similar position due to different procedural positions.

Therefore, in the present case, the contracting authority has not infringed the principle of equal treatment and has therefore not committed an infringement. In view of this, the Chairman of the Office decided in favour of the contracting authority and terminated the administrative offence proceedings.

Modernisation of Pavement in Kostelec, Along the I/1 Road, and Modernisation of Pavement in Hradiště, Along the III/4741 Road

Contracting Authority: **Municipality of Těrlicko**
(R0089/2021; coming into force on 28 June 2021)

The Office concluded that the contracting authority committed an administrative offence by not complying with the rule set out in Article 2(3) of the Public Procurement Act, when it divided the under-limit public contract, the subject of which is the performance resulting from the public contracts in question, in a way that reduced the estimated value of the public contract below the financial limit set out in Article 27(3)(b) of the Public Procurement Act. Additionally, it infringed Article 2(3) of the Public Procurement Act as it did not award the performance resulting from the public contracts in one of the eligible types of tender procedure pursuant to Article 3 of the Public Procurement Act, thereby potentially influencing the selection of the supplier, and it concluded works contracts for the subject matter of the said sub-limit contract.
The Office stated, inter alia, that the public contracts were temporally related and functionally related, and therefore the estimated value of both performances should have been summed up and the contracting authority should have awarded the construction works in the appropriate type of tender procedure chosen according to the amount of this sum.
The Chairman of the Office annulled the first-instance decision and terminated the administrative procedure. In the grounds of the decision, the Chairman stated that the Office had incorrectly assumed a local and functional link in the case of the public contracts in question and that the public contracts therefore did not form a functional unit. Each type of performance must be assessed individually in relation to the functional unit. In the case of the reconstruction of the pavements, it is not sufficient to establish a local link that the pavements were located in the same municipality, since the pavements in question were approximately four kilometres apart. Nor was there any other pavement connecting them, and it was therefore impossible to get from the beginning of one pavement to the end of the other pavement without the pedestrian walking most of the way along the road. In this case, the Office assessed the common purpose of the public contracts too broadly, as the assumed objective of safe pedestrian movement and barrier-free pavements did not correspond to the established functional link between the public contracts. The Chairman of the Office identified the corresponding objective of the public contracts as ensuring safe pedestrian movement in the area of the municipality or access to a public transport stop, which are functional benefits provided by the two pavements without interdependence. Thus, the public contracts together did not form a functional unit and the contracting authority was not obliged to sum up their estimated values pursuant to Article 18(2) of the Public Procurement Act.

Entry of the Municipality of Suchdol into the Water Management Company Vrchlice-Maleč, a. s.

Contracting Authority: **Municipality of Suchdol**
(R0133/2021; coming into force on 2 November 2021)

By the appealed decision, the Office decided to impose a ban on the performance of the public contract, as the contract was concluded despite the prohibition on its conclusion set out in Article 246(1)(c) of the Public Procurement Act, i.e. within the blocking period that ran following the submission of the applicant's objections to the contracting authority's procedure. The Chairman of the Office confirmed the first-instance decision and dismissed the appeal. In the reasoning of the decision, he stated that the actual intention of the contracting authority was to ensure the operation and management of the water infrastructure in its territory, and that the subscription of shares of the selected supplier was only one of the ways to achieve that intention. The applicant therefore had the active right to bring the application, since the possibility of harm had to be assessed in relation to the actual intention of the contracting authority and not to the possibility of securing the subscription of shares of the selected supplier. The applicant was thus threatened with potential harm consisting in the impossibility of realising the actual intention of the contracting authority. The Chairman of the Office also noted that although the applicant had objected to the contracting authority's procedure outside the tender procedure, it had also objected to the contracting authority's specific procedure aimed at concluding the contract. The objections to the procedure outside the tender procedure must be understood as objections to the type of tender procedure chosen and therefore, if the contracting authority did not deal with them in any way, the blocking period initiated by the objections lost its meaning and the contracting authority concluded the contract in breach of that blocking period, thus preventing the applicant from effectively defending itself against the conclusion of the contract by submitting a proposal to the Office.
Although the Chairman´s decision primarily deals with the active right of the applicant during the blocking period, it was also essential for the decision to assess what the actual subject matter of the public contract was and for what purpose the contracting authority awarded the contract. According to the findings of the Chairman of the Office, the contracting authority's objective was to ensure the proper management and operation of water infrastructure within its territory, which, however, could have been achieved by other practices that would not have restricted competition.

JUDICIAL REVIEW IN PUBLIC PROCUREMENT

In 2021, the decreasing trend in filing actions before the Regional Court continued (–28%). The success rate of the Office in public procurement proceedings before the Regional Court in Brno was the same as in the previous year, while the success rate before the Supreme Administrative Court improved slightly. Thus, the overall cumulative success rate of the Office in defending its decisions before administrative courts was approximately 90%.

Statistics of Judicial Review in Public Procurement in 2021

Number of actions brought before the Regional Court in Brno	31
Number of issued judgements by the Regional Court in Brno	54
• confirmed decisions of the Office (decided in favour of the Office)	40
• cancelled decisions of the Office (decided to the detriment of the Office)	14
Number of cassation complaints brought before the Supreme Administrative Court	26
Number of issued judgements by the Supreme Administrative Court	35
• decided in favour of the Office	22
• decided in the detriment of the Office	13
Statement of defence	35
Statement on the application for the suspensive effect of action	7
Statement on the application for interim measures	5
Replication or other opinions in court proceedings	15
Submission of cassation complaint by the Office	10
Statement on the cassation complaint	15

SIGNIFICANT CASES

Class II and III Road Network – Renewal of Horizontal Road Markings

Applicant (Contracting Authority): **Krajská správa a údržba silnic Středočeského kraje, příspěvková organizace (Regional Administration and Maintenance of Roads of the Central Bohemian Region)**
(R0203/2019; S0325/2019; coming into force on 4 July 2018)
Proceedings before the Regional Court in Brno conducted under the Ref. No. 31 Af 16/2020.

74%

success rate of the Office in public procurement proceedings before the Regional Court in Brno

The applicant sought the annulment of the Office´s decision, by which he was found to have committed an administrative offence consisting in the award of four small-scale public procurement contracts, each with a value of around CZK 5.9 million, even though the subject matter of performance consisted of a single functional unit and the contracts were awarded in a time-related context.
The Regional Court in Brno upheld the Office's conclusions that in the case of technically identical performance – repair of horizontal markings on class II and III roads with the unified aim of restoring road safety features so that they continue to perform their function, which will be carried out on the entire interconnected road network managed by the applicant, precisely where it is necessary due to wear and tear, all this with regard to the date of award of the contracts and the performance itself at the same time or period, it is appropriate, under Article 18(2) of the Public Procurement Act, to award these public contracts in accordance with the system according to the sum of the estimated values. However, the applicant failed to do so, thereby committing an administrative offence under Article 268(1)(a) of the Public Procurement Act.
The applicant did not succeed in any of its claims, arguing first of all that competition was not restricted by its conduct, since it invited several suppliers to submit bids for each contract, and also that the Office applied the provisions of the previous legislation to the assessment of the case. The court of first instance held that the Office was right that, despite the fact that a form of tender procedure had been carried out, the Public Procurement Act had been infringed, and that it was appropriate to use the procedures relating to the substantive, functional, local and temporal context to assess the case, since the Public Procurement Act followed the previous legislation in this respect, but only used the new concept of "functional unit", which had to be assessed on a case-by-case basis, which was the case here.

Selection of Public Regular Bus Transport Operator for Conclusion of Contract for the Provision of Public Passenger Transport Services in the Town of Třebíč and Selected Surrounding Municipalities

Applicant (Contracting Authority): **Municipality of Třebíč**
(R0016/2017; S0690/2016; coming into force on 13 May 2021)
Proceedings before the Regional Court in Brno conducted under the Ref. No. 30 Af 34/2017.
Proceedings before the Supreme Administrative Court conducted under the Ref. No. 8 As 124/2019.

63% success rate of the Office in public procurement proceedings before the Supreme Administrative Court

The applicant sought the annulment of the judgement of the Regional Court in Brno dismissing the action against the decision of the Office by which the applicant as a contracting authority was found to have committed an offence consisting in requiring, contrary to the principle of non-discrimination, the provision of covered parking spaces for the entire duration of the contract (eight years) in the context of a public procurement procedure for the selection of a bus service provider, which led to the submission of a single bid from the existing provider. The condition could have significantly influenced the selection of the most advantageous bid and the contract for the public procurement in question was concluded.
The Supreme Administrative Court upheld findings of the Regional Court in Brno, stating that there existed a hidden discrimination in the case by imposing an unlawful business condition, while the Office sufficiently dealt with the applicant's allegations concerning the reason for imposing the requirement in question, as it commented, inter alia, on the methods of removing ice and snow from the buses. The applicant argued that it had imposed the condition in question in order to comply with its obligation under the Road Traffic Act, which, according to the Supreme Administrative Court, is a legitimate objective, but it is primarily a matter for the supplier to decide how to achieve that objective in a particular way. However, the determination by the contracting authority of the manner of compliance with a legal obligation as a contractual condition is in itself indicative of discriminatory conduct if there are different, equally effective ways of achieving the stated objective and the solution determined by the contracting authority also favours the existing supplier. For other suppliers, compliance with the contracting authority's requirement would at the very least constitute an unreasonable restriction and would require them to incur significant costs without the certainty of winning the contract.

Public Tender – Leasing and Subsequent Operation of Sports Centre "Na Chobotě"

Applicant a (Contracting Authority): **Prague 17 City District**
Applicant b: **Infinit, s.r.o.**
(R0063/2018; S0477/2017; coming into force on 4 July 2018)
Proceedings before the Regional Court in Brno conducted under the Ref. No. 30 Af 88/2018.
Proceedings before the Supreme Administrative Court conducted under the Ref. No. 2 As 43/2021.

The decision of the Chairman of the Office was challenged by actions, which were dismissed by the Regional Court in Brno. The Supreme Administrative Court has not yet ruled on the cassation complaint.
In the case under review, a ban on the performance of the future lease contract was imposed, as it is a concession contract pursuant to Article 174(3) of the Public Procurement Act, the subject matter of which are services consisting in the operation of a sports centre, and therefore the applicant (the contracting authority) was obliged to award it in a tender procedure. The Chairman of the Office rejected the appeals of both applicants and confirmed the decision of the first instance.
The Regional Court firstly stated that the key issue was whether the contract constituted a service concession or was merely a private law transaction – a lease – in the award of which the contracting authority was not obliged to comply with the Act. The relevant question is whether an obligation to provide specific services can be inferred from the content of the contract. The obligation to provide services is clearly deducible from the wording of the future lease agreement and the cooperation agreement, which is closely related to it, as well as from the announcement of the tender conditions and the winning business plan. The applicant (b) was bound by that business plan (prior to the tender) and had no 'free hand' in his business. These facts confirm that this was not a pure lease, but that the contractor undertook to provide services to the contracting authority consisting in the operation of a sports centre according to specified conditions.
At the same time, the conditions of consideration of the contract and the transfer of operational risk were met. The Regional Court further emphasised that the public contract in this case was not the lease of the premises themselves, but the provision of services. According to the Regional Court, the fact that the conclusion of the lease agreement is only envisaged at some point in the future does not mean that the future contract does not fulfil the characteristics of a public service contract. It is already precluded, on the basis of the forward contract, that the operation of the sports centre could in fact be carried out for the benefit of the contracting authority by a contractor other than the contractor with whom the forward contract was concluded. No tender procedure was foreseen for the actual operation of the sports centre. The actual award of the public contract was therefore already made by means of a future contract.

Qualitative Standard for Decision on Objections

Contracting Authority: **Dopravní podnik města Olomouce, a.s. (Public transport company of the City of Olomouc)**
(R0054/2018; S0031/2018; coming into force on 13 June 2018)
Proceedings before the Regional Court in Brno conducted under the Ref. No. 31 Af 63/2018.
The decision of the Chairman of the Office was annulled by the judgement of the Regional Court.

Proceedings before the Supreme Administrative Court conducted under the Ref. No. 2 As 314/2020.
The judgement of the Regional Court was annulled by the Supreme Administrative Court and the case was returned to the Regional Court for further proceeding.
In a new decision of 27 January 2022, the Regional Court dismissed the action.

In the case under review, the Office concluded that the contracting authority committed an administrative offence by dealing with the applicant's objections in infringement of Article 245(1) of the Public Procurement Act when it failed to provide a detailed and comprehensible explanation of the applicant's objections regarding the setting of unreasonable and discriminatory deadlines for the delivery of new trams in the grounds for the decision on objections. The applicant's main objection was that these deadlines were not objectively achievable for the supplier, except for the existing supplier or persons connected with it. The contracting authority stated in the decision on the objections that it found no reason to amend the tender conditions. It justified the length of the delivery periods on the basis of the experience gained in previous procedures and the limitation of the use of funds from the subsidy programme. However, the Office concluded that the contracting authority had dealt with part of the objections in very general terms, while some of the objections were not addressed at all, or, in most cases, the contracting authority's reasoning did not respond to the specific objections raised by the applicant.
The Regional Court annulled the decision of the Chairman of the Office. The Regional Court considered the contracting authority's handling of the objections to be sufficient and the reasons given by the contracting authority for setting the length of the delivery periods to be usual, sufficient and verifiable. The Regional Court found the Office's requirements for the manner in which the objections were settled in the decision on the objections to be unreasonable.
The judgement was annulled by the Supreme Administrative Court, because it disagreed with the Regional Court's assessment. The content of the decision on the objections did not meet the requirements of Article 245 of the Public Procurement Act. The Supreme Administrative Court stated that the decision on objections, although by its nature it is a certain opinion of the contracting authority on the complainant's objections, should lead, even if the objections are unfounded, to the removal of doubts about the contracting authority's procedure in awarding the public contract. It is therefore for the contracting authority to comment in a clear and detailed manner on all the facts set out in the applicant's objections, since it is the contracting authority which must know what it is asking for and how it is asking for it and must be able to defend its action. If the objections contain specific arguments, a detailed and comprehensible statement of reasons for the decision is a specific response to all the arguments put forward.
In a new judgement of 27 January 2022, the Regional Court decided to dismiss the action, not accepting any of the grounds of appeal.

Renewal of Public Lighting – Replacement of Fixtures

Contracting Authority: **Municipality of Uherský Brod**
Applicant: **ELTODO OSVĚTLENÍ, s. r. o.**
(R0039/2020; S0229/2019, coming into force on 18 May 2020)
Proceedings before the Regional Court in Brno conducted under the Ref. No. 31 Af 44/2020.

The Office examined the tender conditions, taking into account that there is probably only one single supplier that is able to meet the requirements of the technical criteria for the fixtures. The Office concluded that if competition is excluded and there is only one single supplier able to meet the technical conditions in question, then the contracting authority has to justify its requirements very carefully. The Chairman of the Office confirmed these conclusions in the decision on the appeal.
The Regional Court in Brno upheld the Office's conclusions that the contracting authority, by setting specific requirements for the technical parameters of the fixtures, was indeed aiming, on the one hand, to increase the efficiency of work in carrying out service tasks and, on the other hand, to increase work safety and compliance with ergonomic standards. All of these objectives are entirely legitimate and it cannot therefore be concluded that the technical requirements laid down were purposive. In particular, in the Regional Court's view, the desire to improve occupational safety (or to protect life, health and property at work) is such a fundamental motive (requirements leading to an improvement in occupational safety can be regarded as generally desirable) that it can justify even a more significant restriction of competition, as was the case in the present case. The Court therefore considers that the restrictive conditions referred to above are entirely proportionate to the reasons which led the contracting authority to impose them.
The Regional Court also held that even in cases where only one single supplier on the relevant market meets the specific requirements of the tender documentation, this does not automatically constitute indirect discrimination against other suppliers. The specificity of the conditions leading to a substantial restriction of competition only imposes a higher standard of justification (or, in particular, the relevance of the reasons for the contracting authority). This corresponds to the "stricter lens" applied by the Chairman of the Office. The Regional Court found that the conditions in question could also stand up under this approach, as they were supported by the legitimate and important needs of the contracting authority.

STATE AID

The Office for the Protection of Competition is the coordinating authority in the field of State aid, performing central coordinating, advisory, consulting and monitoring activities in all areas, with the exception of agriculture and fisheries, where the Ministry of Agriculture is responsible. These competences are exercised by the coordinating authorities in the areas concerned, irrespective of the origin of state (public) funds. The Office's exclusive role in the field of State aid is primarily cooperation with providers in the preparation of notifications of State aid measures to the European Commission; the Office also cooperates with the European Commission and the providers in proceedings before the Commission, both in proceedings concerning notified State aid and in cases of unlawful State aid, abuse of State aid, existing State aid schemes or where the Commission conducts on-site inspections within the Czech Republic territory. Within the framework of this statutory competence, the Office provides advisory and consulting services to aid providers, already at the stage of preparation of programmes or ad hoc aid, in particular if the defining features of State aid are cumulatively fulfilled in a given case. In this case, it will then recommend to the provider the application of an appropriate exemption from the prohibition of State aid or alert the provider to the need to notify the measure to the European Commission. In accordance with the relevant EU regulations, the Office submits to the Commission an annual report on State aid granted in the previous calendar year in the Czech Republic. The Office represents the Czech Republic in the negotiation and preparation of EU State aid legislation. It is also the administrator of the central register of *de minimis* aid and the national coordinator of the European Commission IT system – the Transparency Award Module (TAM). As part of the so-called ex post monitoring, the European Commission, through the Office, regularly carries out checks on compliance with State aid rules under notified aid schemes.

LEGISLATIVE CHANGES

Communication from the Commission – Temporary Framework for State Aid Measures to Support the Economy in the Current COVID-19 Outbreak

During 2021, this fundamental regulation was amended twice, at the end of January and in November. In the January amendment, the European Commission accepted the comments of many Member States not only to extend the regulation for the whole of 2021, but especially to increase the amount of direct aid that an undertaking may receive from the EUR 800,000 to EUR 1.8 million/undertaking (excluding agriculture and fisheries). For undertakings that have been particularly hit hard by the crisis and whose turnover has fallen by at least 30%, the state could now contribute up to EUR 10 million to cover fixed costs (the original amount was EUR 3 million). Furthermore, the Commission has allowed aid in the form of loans or guarantees to be converted into direct payments until the end of 2022. All this provided that compliance with the rules set out in the Temporary Framework is maintained.

This was followed in November by another – the sixth – change to the Temporary Framework. Firstly, the regulation was extended for another six months (until 30 June 2022) and the maximum ceiling for granting direct aid was increased from EUR 1.8 million/undertaking to EUR 2.3 million/undertaking (excluding agriculture and fisheries). There is also a new maximum amount of aid granted under section 3.12, which is now EUR 12 million per undertaking. In addition, the Commission has introduced two new measures – an investment and solvency support measures. These new instruments should help to further accelerate the process of economic recovery and revitalise of the European economy. Through investment promotion support measures, Member States can encourage undertakings to invest while using this tool to accelerate the green and digital transformation. This measure will be applicable until the end of 2022. The Solvency Support Measure was introduced to mobilise private funding for investment in SMEs, including start-ups and small mid-market capitalisation companies. This measure may be used until 31 December 2023.

Guidelines on Regional State Aid

In April 2021, the European Commission adopted revised guidelines on regional State aid. According to the guidelines, the Commission assesses the compatibility of an aid measure with the internal market on the basis of a notification submitted by the Member State. The new revised guidelines will therefore apply to those aid measures that do not qualify for the GBER. The guidelines will be applied by the Commission to aid to be granted after 31 December 2021. The regulation contains a number of modifications which should, among other things, help to meet new policy priorities related to the European Green Deal and the European Industrial and Digital Strategy. The main contribution of the revised guidelines is, in particular, to increase the overall coverage of regional aid to 48% of the population of the European Union and, in relation to the Czech Republic, to increase the maximum aid intensities

in regions eligible under Article 107(3)(a) TFEU. On the other hand, some of the more developed regions in the Czech Republic have been moved to regions eligible under Article 107(3)(c) TFEU. On the basis of these guidelines, the Office, in cooperation with the relevant ministries, notified a new regional aid map for the Czech Republic.

Regional Aid Map for the Czech Republic

On 29 July 2021, the European Commission issued a positive decision approving a new regional aid map for the Czech Republic. This map is approved for the period from 1 January 2022 to 31 December 2027. The regional aid map contains the maximum possible aid intensity and eligibility for regional aid for each NUTS II region within the Czech Republic. From 1 January 2022, the regions eligible under Article 107(3)(a) TFEU in the Czech Republic are the NUTS II regions of North-West, North-East, Central Moravia and Moravia-Silesia. The NUTS II regions of Central Bohemia, South West and South East are newly classified under Article 107(3)(c) TFEU and the aid intensity will be over the period of validity of the regional aid map changing and decreasing. An exception is made for districts neighbouring NUTS II regions eligible under Article 107(3)(a) TFEU. The maximum aid intensity in these regions is set at 25% of eligible costs for the validity of the map. Once the Fair Territorial Transformation Plan for the Czech Republic will be approved by the Commission, an amendment to the regional aid map will be notified in order to increase the maximum aid intensity for the areas to be designated for aid from the Just Transition Fund. The NUTS II Prague region remains ineligible for regional aid, as in the previous period.

Framework for State Aid for Research, Development and Innovation

In April 2021, the European Commission launched a public consultation on a proposal to revise the Framework for State aid for research, development and innovation (R&D&I). The Framework will be used in cases where the General Block Exemption Regulation (GBER) procedure or *de minimis* aid cannot be used for the intended aid. The Framework also regulates the conditions under which public funding in the field of RDI does not constitute State aid within the scope of Article 107(1) TFEU. According to the European Commission, the current proposal contains improvements and updates to the existing definitions of research and innovation activities eligible for support under the RDI Framework. It also introduces new provisions to allow State aid for technological infrastructures and simplifies some rules, for example by introducing a streamlined methodology for calculating indirect costs to determine eligible costs. The Office has prepared summary comments on the proposal for the Czech Republic and submitted them to the European Commission. The Commission has not adopted a new version of the framework by the end of 2021.

Guidelines on State Aid to Promote Risk Finance Investments

In December 2021, the European Commission adopted new Guidelines on State Aid to Promote Risk Finance Investments (2021/C 508/01). The new Guidelines have been adopted following a fitness check on State aid in 2019 and after a consultation of all stakeholders on the draft revised version of the Guidelines. The revised Risk Finance Guidelines limit the requirement to submit a funding gap analysis to the largest risk finance schemes and clarify what evidence is needed to justify the aid. In addition, the revised guidelines introduce simplified requirements for the assessment of schemes aimed exclusively at start-ups and SMEs, which have not yet made their first commercial sale, and reconcile some of the definitions contained in the Risk Finance Guidelines with those contained in the General Block Exemption Regulation. The revised Risk Finance Guidelines are applicable from 1 January 2022.

Commission Notice on the Enforcement of State Aid Rules by National Courts

A new European Commission Notice on the Enforcement of State Aid Rules by National Courts was adopted in July 2021 (2021/C 305/01). In 2019, the Commission published a study on the enforcement of State aid rules and on national court decisions on State aid. The study revealed that between 2007 and 2017 the number of State aid cases dealt with by a national court increased. These include cases where national courts are involved in drawing the consequences of unlawful aid implementation ("private enforcement") and cases where national courts are involved in implementing Commission decisions ordering aid recovery ("public enforcement"). However, national courts have only rarely granted remedies and successful damages claims have been a minority of cases. The study revealed that the cooperation between the Commission and national courts, introduced in 2009 by the Commission Notice on State Aid Enforcement by National Courts, is not widely used. A new Commission Notice on the Enforcement of State Aid Rules by National Courts was therefore adopted in 2021, considering developments in the case law of the General Court and the Court of Justice. The Notice is intended to provide national courts and other stakeholders with practical information on the enforcement of State aid rules at national level and to promote closer cooperation between the Commission and national courts by setting out all available tools for cooperation and dealing with the consequences of an infringement of State aid rules. The Notice focuses primarily on private enforcement and replaces the Commission's original 2009 Notice on the Enforcement of State Aid Rules by National Courts.

Revision of the General Block Exemption Regulation (GBER)

The European Commission adopted an amendment to the General Block Exemption Regulation (GBER) in July 2021, extending the scope of the Regulation to new categories of aid. The revised rules concern the support granted by national authorities for projects financed through certain centrally managed EU programmes under the new Multiannual Financial Framework (including the InvestEU fund) and the selected aid measures to achieve EU environmental and digital objectives.

The amendment thus harmonized the rules for EU funding with the State aid rules that apply to these types of funding, which should simplify the provision of this type of aid without the need for prior notification to the European Commission.

The revised Regulation also expanded further the possibilities for Member States to provide parallel transformation support for undertakings in need of funding to deal with the economic impact of the coronavirus pandemic, while supporting economic recovery and the transition to a green and digital economy. In this context, provisions on support for energy efficiency projects in buildings, support for low-emission charging and refuelling infrastructure for road vehicles and support for fixed broadband networks, 4G and 5G mobile networks or certain trans-European digital connectivity infrastructure projects have been added.

A further proposal for an amendment to the GBER was submitted by the European Commission in October 2021. This amendment aims to bring the GBER in line with the revisions to the rules governing State aid, covering regional aid, risk finance aid, research, development and innovation aid and environmental and energy aid of the European Union.

State Aid Rules for the Important Projects of Common European Interest (IPCEI)

At the end of November 2021, the Commission adopted the revised State Aid Rules for Important Projects of Common European interest (IPCEI), which came into force in 2022. The purpose of the regulation is to identify the basic criteria by which the Commission will assess projects of a transnational nature that are intended to bring an innovative approach in key sectors across the European Union. The main objective of the EU in adapting the regulation was to facilitate the involvement of SMEs in the Member States of the Union in these projects.

Climate, Energy and Environmental Aid Guidelines (CEEAG)

Although the Commission issued new Guidelines on State aid in the field of climate, environmental protection and energy at the end of 2021, their coming into force has been postponed until January 2022, once the Guidelines have been translated into all official languages of the EU. The new rules will allow the Member States to provide aid to help achieve the European Union's energy and climate goals, in particular by expanding the categories of investments and technologies that the Member States can encourage to meet the European Green Deal over time. New categories of support have been included in the Guidelines, for instance, support for the prevention or reduction of pollution other than greenhouse gas pollution, including noise, support for resource efficiency and circular economy, and support for biodiversity and environmental remediation. It also introduces new support for investment in clean mobility in line with the EU's green objectives and a scheme to reduce some electricity charges for energy-intensive users.

Proposal for a Regulation of the European Parliament and of the Council on Foreign Subsidies Distorting the Internal Market

The Proposal for a Regulation of the European Parliament and of the Council on Foreign Subsidies Distorting the Internal Market of 5 May 2021 was based on the analyses carried out and the White Paper on creating a level playing field in relation to foreign subsidies approved in 2020. The Proposal responds to the fact that while subsidies provided by the EU Member States are regulated by State aid rules, subsidies from third countries are not subject to such regulation and their activities may thus have a negative impact on the single market. The Proposal gives the Commission the power to address the distortive effects of foreign subsidies in general, and specifically to defend against foreign subsidies facilitating acquisitions of EU undertakings and to defend against foreign subsidies facilitating access to public procurement in the EU. The Proposal will be discussed in the Council's Competition Working Group meetings also in 2022, when it is expected to be approved.

Commission Communication on Short-Term Export-Credit Insurance

Following the fitness check, a review of the Commission Communication to the Member States on the application of Articles 107 and 108 of the Treaty on the Functioning of the European Union to short-term export-credit insurance was also carried out. This Communication sets out rules to ensure that State aid does not distort competition between private and public or publicly supported export credit insurers. The European Commission has adopted a revised Communication. The revisions were of a more technical nature. For example, the threshold for exemption from the scope of marketable risks for SMEs was increased. The exemption originally applied only to undertakings with a turnover of up to EUR 2 million, but in the new Communication the threshold has been raised to EUR 2.5 million. The revised Communication on Short-Term Export-Credit Insurance entered into force on 1 January 2022 without an expiry date.

In the context of the COVID-19 pandemic, all the countries were in 2020 temporarily removed from the Annex to the Commission Communication to Member States on the application of Articles 107 and 108 TFEU to short-term export-credit insurance, which contains a list of countries with tradable risks. Thus, according to the Communication, no country in the world was considered as having tradable risks. During 2021, the Commission sent two requests for information on the availability of short-term export credit insurance in order to assess the appropriateness of extending the list. The removal of all countries from the Annex is on a temporary basis and has been extended until 31 March 2022 following the latest consultation. In the context of the Communication from the Commission to the Member States on the application of Articles 107 and 108 of the Treaty on the Functioning of the European Union to short-term export-credit insurance, the Commission also launched a public consultation on minor technical amendments to the Communication.

Public Consultations

A public consultation on the draft revision of the General Block Exemption Regulation (GBER) was launched in February and October 2021. The winter consultation resulted in the publication of the revised regulation on 22 July. The October consultation aims at harmonising the regulation with the soft law of the European Commission and the final version of the regulation is expected by the middle of this year.

In April 2021, the Commission launched a public consultation on a proposal to revise Framework for State aid for research, development and innovation. On the basis of the present proposal, new definitions should be introduced in the Framework and some existing definitions should be clarified, introducing criteria for assessing compatibility in the case of support for technological infrastructures and reducing administrative burden, for example in the case of monitoring economic activities under the current Article 20 of the Framework.

In May 2021, the Commission launched a public consultation on a proposal to revise the Guidelines on State Aid to Promote Risk Finance Investments, simplifying and clarifying certain provisions of the rules on risk finance support. The revised Guidelines were adopted by the Commission in December 2021 and are applicable from 1 January 2022.

In the first quarter of 2021, the Commission launched a public consultation on a draft new Notice on the Enforcement of State Aid Rules by National Courts. This Notice is intended to provide national courts and other interested parties with practical information on the enforcement of State aid rules at national level and to encourage closer cooperation between the Commission and national courts by setting out all available tools for cooperation and dealing with the consequences of infringements of State aid rules. The new Notice was adopted in July 2021.

Between June and July 2021, a public consultation on the draft new Climate, Energy and Environmental Aid Guidelines took place, which was a very short period of time given the extensive changes to the regulations. The draft regulation entered into force in January 2022 and contains a number of amendments and suspensive conditions (for example, on the obligation to hold public consultations) compared to the original proposal.

The Commission published two initiatives in the transport sector in October. One of them concerned the intention to revise the existing Community guidelines on State aid to railway undertakings, which have been in force unchanged since 2008. In the second initiative, a proposal from the Commission was presented for the adoption of an enabling Council Regulation that would allow the introduction of a block exemption for aid for transport coordination (a separate public consultation is to be held on the block exemption proposal itself).

The Commission launched a public consultation in the second half of December on the revision of the Community guidelines on State aid to railway undertakings.

By the end of 2021, the Commission published a proposal to revise State aid rules for broadband deployment. These include in particular the introduction of new minimum speeds for State aid for gigabit fixed networks, new guidelines to support the deployment of mobile networks, and a new category of possible aid in the form of demand-side measures promoting the use of fixed and mobile networks. The proposed revision also includes additional clarification of some terms relevant for the Commission's assessment of State aid (mapping, pre-award public consultation, competitive tendering, wholesale access obligations, etc.).

ACTIVITY OF STATE AID UNIT

The beginning of 2021 was mainly marked by the so-called "COVID" aid. A number of providers have prepared support programmes to compensate sectors affected by government measures. The primary legal basis for the approval of these aid programmes by the Commission is the Communication from the Commission – Temporary Framework for State aid measures to support the economy in the current COVID-19 outbreak (hereinafter referred as the Temporary Framework). The Temporary Framework was amended twice in 2021. The Commission discussed the proposed amendments with the Member States in an urgent, rapid consultation. The Office coordinated the preparation of comments and observations on behalf of the Czech Republic and subsequently sent these to the Commission. The Office also participated in a number of work meetings held by teleconference when dealing with COVID cases before the Commission.

The Office has continuously updated its website concerning not only the "COVID" aid, both in the legislative part and in the overview of the Commission decisions approving aid under the

Temporary Framework. By the end of 2021, there were a total of 47 such decisions (including extensions of some of them).

The Office, in cooperation with the Ministry of Industry and Trade, has been intensively engaged in activities related to the submitted draft regulation on foreign subsidies since the summer of 2021. In particular, it prepared a summary opinion on the proposal based on the inputs received, which was sent to the Commission. In addition, instructions for the individual meetings of the Working Group on Competition (Council´s Working Group) had to be prepared; the Office prepared the instructions in cooperation with the Ministry of Industry and Trade and the Ministry of Regional Development. Among the main objections presented by the Office at the Working Group were the doubts of the Czech Republic about the advisability of strengthening the Commission's decision-making competence. Particularly in the case of public procurement, the decision-making powers should remain in the hands of the Member States in order to avoid delays in the procurement procedure and legal uncertainty resulting from the fact that the control of the public procurement would be carried out by both the Member States (in terms of the public procurement review) and the Commission (in terms of the foreign subsidy review).

In 2021, the Office cooperated with State aid providers in matters of monitoring by the Commission. These included monitoring of environmental and regional aid schemes.

In 2021, the Commission introduced a new SARI 2 system for annual reporting on State aid paid. The Office coordinated the accessibility of this system within the Czech Republic and advised users on its use.

In accordance with its statutory powers, the Office coordinated the comment procedures on revised EU regulations and the inputs to public consultations in the field of State aid (see more in the section Legislative Changes). In addition to cooperating with State aid providers and commenting points, it also prepared its own comments and sent them in summary form to the Commission. Subsequently, representatives of the State Aid Unit took part in the discussion of amendments to the regulations in question in the meetings with Member States and the Commission, which were held by videoconference in view of the situation.

Participation in Trainings and Working Groups

Within the advisory activities pursuant to Act No. 215/2004 Coll., representatives of the Office participate in the meetings of Working Groups and regularly prepare training courses for the State aid providers.

In 2021, the Office participated in regular meetings of the Council for European Union Funds at the working level organised by the Ministry of Regional Development (National Coordination Body). Standard agenda includes up-to-date information on the implementation of the 2014–2020 programming period and information on the preparation of the 2021–2027 programming period. The Office also actively participated in the meetings of Working Group on selected aspects related to the implementation of investments under the National Recovery Plan, as well as in a number of ad hoc Working Groups to address State aid issues with individual providers.

Representatives of the Office participated in the meetings of the International Subsidy Policy Group (ISPG) in 2021. This is a Working Group of the European Commission. The Commission presented here the latest developments in negotiating the individual trade agreements with third countries containing provisions on subsidies, and the progress of work on preparation of the Regulation on foreign subsidies distorting the internal market. Last but not least, the staff of the Office is significantly involved in the preparation of the Regulation on foreign subsidies distorting the internal market in the framework of the Competition Working Group of the Council of the European Union.

SIGNIFICANT CASES

SA.62018 (2021/N) – ROCET Programme

In summer 2021, the Commission approved an aid scheme with a budget exceeding CZK 1 billion for rail freight operators using electric traction. The aid takes the form of direct grants to rail freight operators to compensate for the costs associated with the "renewable energy charge" included in the payment by which the operators pay for the electricity consumed. The programme will be implemented over a period of five years. The aim of the measure is to promote a greener mode of transport and shift freight from road to rail; in addition, it promotes rail freight transport operated by electric trains as opposed to the more polluting diesel trains. This objective is in line with national and European Union climate policy objectives, including those set out in the Green Deal. The Commission has assessed the scheme under Article 93 of the Treaty on the Functioning of the European Union and the 2008 Commission Guidelines on State aid for railway undertakings. The Commission has verified, inter alia, that the measure is proportionate and necessary to achieve the objective pursued, namely to facilitate the transition from road to rail without unduly distorting competition.

SA.62375 (2021/N) – Czech Republic – COVID-19 – Damage Compensation Scheme for Rail Passenger Transport Operators

At the beginning of August, the European Commission approved a programme with a budget of CZK 800 million to compensate passenger rail operators for the damage caused by the COVID-19 outbreak and the restrictive measures introduced by the Czech government to limit the spread of the virus.

Under the scheme, rail passenger transport operators are entitled to compensation in the form of direct grants of up to 100% of the damages incurred between 12 March and 30 June 2020. The Commission has assessed the measure under Article 107(2)(b) of the Treaty on the Functioning of the European Union, which allows it to authorise State aid measures granted by Member States to compensate for damage directly caused by emergencies, including pandemics. The Commission has assessed that the aid scheme will compensate for damage directly linked to the coronavirus outbreak. It has also verified that the measure is proportionate, as the intended aid does not exceed the necessary compensation. On this basis, the Commission concludes that the scheme is compatible with the European Union State aid rules.

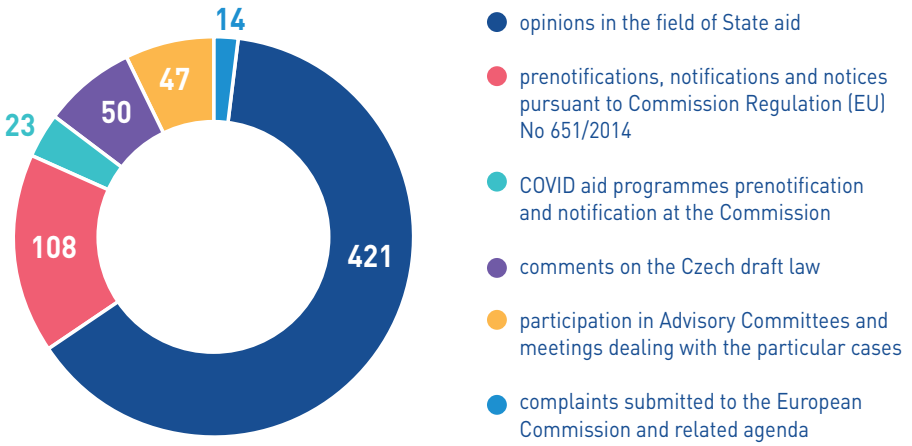
SA.62477: COVID Uncovered Fixed Costs / SA.62471: Umbrella Scheme for Aid Granting Under Section 3.1 of Temporary Framework

The European Commission has recommended the Czech Republic to notify an umbrella scheme under the Temporary Framework due to the need to notify a number of measures to address the crisis situation caused by the coronavirus pandemic. Individual measures could be included under such scheme if fulfilling both the conditions of the Temporary Framework and the conditions of the given scheme without having to be notified individually to the European Commission. The Czech Republic took advantage of this recommendation and prepared two umbrella schemes in cooperation with the Ministry of Industry and Trade and the Office: under sections 3.1 and 3.12 of the Temporary Framework. Both schemes were subsequently notified to the European Commission.
First, the European Commission issued a decision for the State aid scheme SA.62477: COVID uncovered fixed costs, the main objective of which was to help undertakings affected by the coronavirus pandemic with reimbursement of uncovered fixed costs. The scheme was approved under section 3.12 of the Temporary Framework for State aid measures. This umbrella scheme, with a budget of up to CZK 50 billion, was intended for all undertakings regardless of size or specific sector, with the exception of the financial sector. The aid could be granted in the form of direct subsidies for part of the uncovered fixed costs incurred by the beneficiaries between March 2020 and December 2021. Eligible undertakings were those whose turnover had decreased by at least 30% in the relevant period compared to the pre-pandemic period (at least 50% in specific cases). The maximum amount of aid for 2021 was EUR 10 million per undertaking, with the reservation that undertakings were eligible for aid up to a maximum of 70% of their fixed costs and up to 90% in case of micro and small enterprises. Two separate programmes of the Ministry of Industry and Trade, Call 1 and Call 2, were included under this umbrella scheme. The second decision issued by the European Commission was the State aid scheme SA.62471: umbrella scheme for aid granting under section 3.1 of the Temporary Framework. The budget for this scheme was set at CZK 50 billion; the measure was intended for undertakings of all sizes operating in all sectors of the economy except financial services. The aid could take the form of direct grants, guarantees or loans to compensate beneficiaries for expenses incurred between February 2020 and December 2021. The main objective of the measure was to provide beneficiaries with sufficient liquidity to continue their business activities. Under this scheme, individual measures such as Aid to regional airports, Call 3.3 of the COVID – Culture Programme, COVID 2021 and Call 3.4 of the COVID – Cultural Heritage Programme were included. The individual measures did not have to be notified separately to the European Commission but had to meet the conditions set out in the umbrella scheme to be included under the scheme. The Temporary Framework was extended by the sixth amendment of November 2021 and, on the basis of the amendments, the above schemes were extended until 30 June 2022.

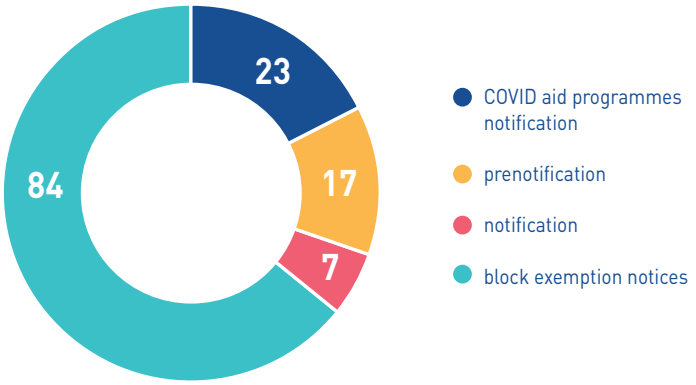
Activities in the Field of State Aid in 2021

Opinions in the field of State aid	**421**
Prenotifications, notifications and notices pursuant to Commission Regulation (EU) No 651/2014	**108**
COVID aid programmes notification at the Commission	**23**
Comments on the Czech draft law	**50**
Participation in Advisory Committees and meetings dealing with the particular cases	**47**
Request for information pursuant to Act No. 106/1999 Coll., on Free Access to Information	**0**
Complaints submitted to the European Commission and related agenda	**14**
Central register of *de minimis* aid	**4**

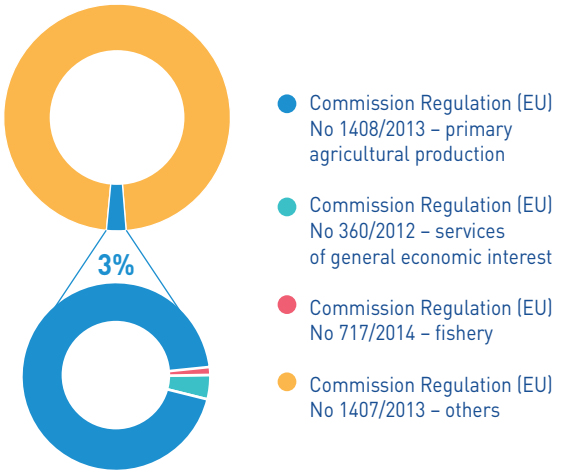
Activities in the Field of State Aid in 2021



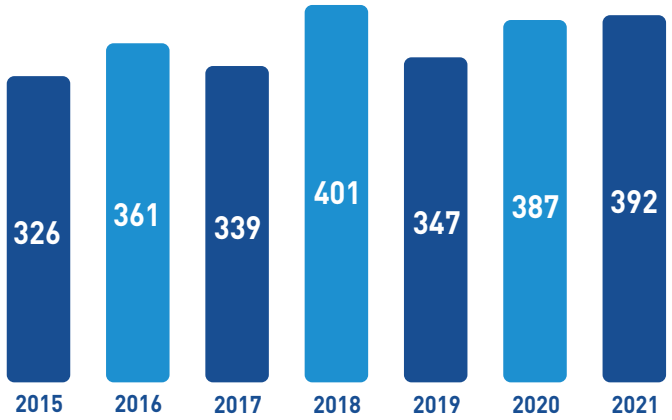
Notifications, Prenotifications and Notices Pursuant to Commission Regulation (EU) No 651/2016 as of 2021



Statistics of Provided *De Minimis* Aid Pursuant to the Particular Regulations as of 2021



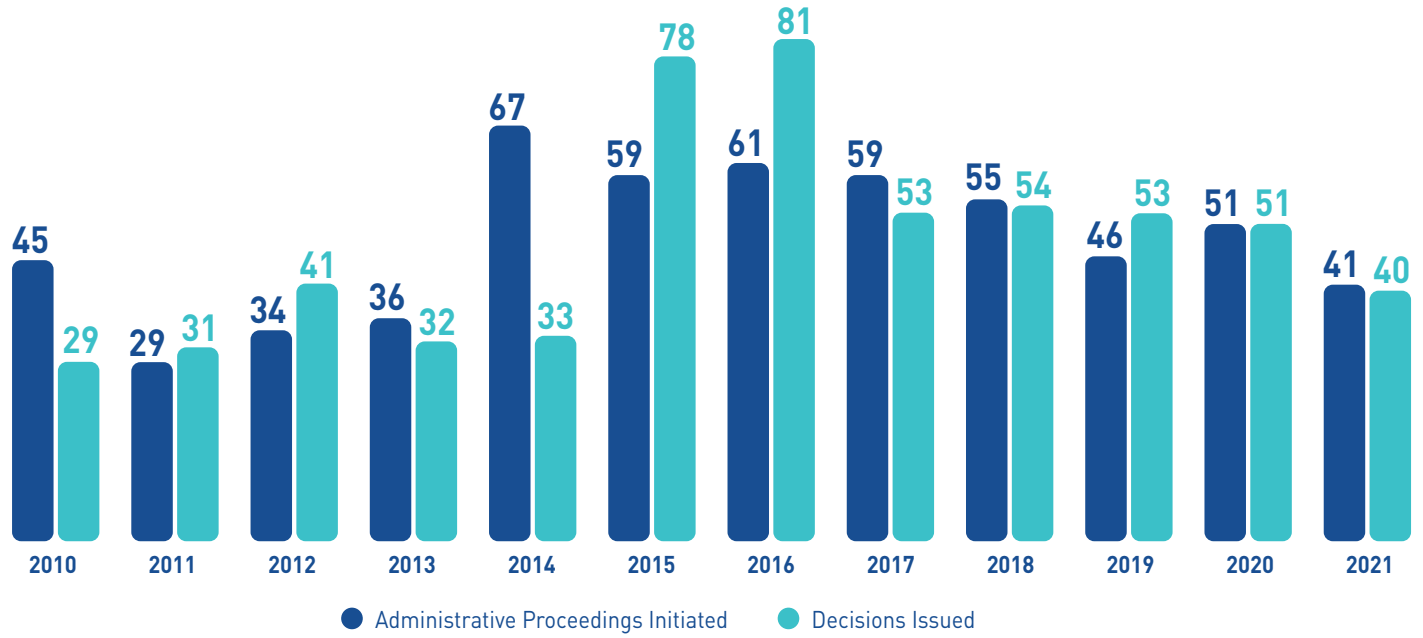
Applications for Access to the Central Register of *De Minims* Aid



First-Instance Decision-Making in State Aid

Number of administrative proceedings initiated	41
Number of pending administrative proceedings	7
Number of decisions issued	40
• misconduct not found	9
• remedy and fine imposed	4
• fine imposed	27
Total amount of fines imposed in first instance	CZK 317,389

Administrative Proceedings Initiated and Decisions Issued in First Instance



SECOND-INSTANCE DECISION-MAKING AND JUDICIAL REVIEW IN STATE AID

In 2021, three appeals were filed against first-instance State aid decisions, three administrative proceedings were initiated and three second-instance decisions were issued. The Chairman of the Office upheld one decision, in another proved an infringement but annulled the fine imposed, and in a third case annulled the first-instance decision. The total amount of fines imposed on the basis of second-instance decisions in the field of State aid reached CZK 100 thousand.

In 2021, one action was filed with the Regional Court in Brno in the area of State aid (*de minimis*). The Regional Court issued one decision in this area in which it upheld the decision of the Office. One cassation complaint in the field of State aid was filed with the Supreme Administrative Court. No decision in this area was issued by the Supreme Administrative Court in 2021.

INTERNATIONAL COOPERATION

The International Unit provides the Office's cooperation with foreign institutions involved in all areas in which the Office is entrusted with decision-making power. Primarily, it ensures communication and exchange of knowledge and experience in the application of competition law, public procurement law and State aid rules abroad and communicates this information to the representatives of the Office.

Due to the Office's extensive activity within the international platforms such as the European Competition Network (ECN), bringing together competition authorities from all the Member States of the European Union, or the International Competition Network (ICN), involving competition authorities around the world, the International Unit represents the main point of contact and coordination for all organisational activities related to participation in individual working groups within these platforms. Within these groups, representatives of the Office discuss current issues and cooperate in the exchange of information on cross-border cases. Last but not least, representatives of the Office actively participate in regular meetings of the intergovernmental Organisation for Economic Co-operation and Development (OECD).

INTERNATIONAL COOPERATION DURING A PANDEMIC

As in the previous year, international cooperation was affected by the COVID-19 pandemic. The vast majority of international meetings at bilateral and multilateral level were once again conducted online, for example, meetings of most ECN, OECD and ICN working groups. However, the content of the international cooperation agenda was not much affected by the pandemic in 2021.

EUROPEAN COMPETITION NETWORK – ECN

Within the ECN, there exist many working groups focused on partial aspects of the EU competition law, which are actively attended by the Office´s representatives responsible for particular issues discussed at the groups´ meetings. The most active working groups have traditionally been the Cartels and Mergers groups and the Cooperation Issues and Due Process (CIDP) group, which have dealt in particular with further updating the rules of mutual cooperation, coordination in resolving the cross-border cases, harmonisation of the rules for calculating fines in certain areas of competition and reimbursement of expenses incurred in cases of mutual assistance in inspections.

The ECN platform is also useful for direct communication and cooperation between the individual competition authorities of the EU Member States. The most common mean of such communication and cooperation represents exchange of information, which is carried out in a form of the so-called RFIs (Request for Information). In 2021, the Office received 68 such RFIs. In terms of their focus, it can be noted that they dealt with issues such as the transposition of Directive (EU) 2019/1 of the European Parliament and of the Council of 11 December 2018 on strengthening the role of competition authorities in the Member States so as to enable them to enforce the rules more effectively and to ensure the proper functioning of the internal market (ECN+), the issues concerning digital markets, significant market power, mergers, the internal functioning and procedures of the Office, or issues related to the definition of relevant markets (even with regard to the pandemic and its impact on these markets). The Office itself addressed the competition authorities of the other EU Member States in three cases.

	2019	2020	2021
Number of RFIs received	**77**	**76**	**68**
Number of RFIs submitted	**3**	**4**	**3**

Another integral part of the cooperation between competition authorities associated in the ECN platform is represented by the so-called requests for assistance in inspections 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 to initiate proceedings with a particular undertaking, or to add relevant evidence to the file in the context of an ongoing proceedings for infringement of Articles 101 and 102 of the Treaty on Functioning of the European Union (TFEU). In 2021, the Office requested assistance of foreign competition authorities in two cases. On the other hand, the Office received four requests pursuant to Article 22 from other competition authorities, which means a significant increase compared to the last year when the Office received no requests due to the pandemic.

	2019	2020	2021
Number of requests for an assistance pursuant to Article 22 received from the other Member States of the EU	**6**	**0**	**4**
Number of requests for an assistance pursuant to Article 22 submitted to the other Member States of the EU	**3**	**3**	**2**

Another aspect of cooperation between competition authorities are the so-called Advisory Committees, which are organised for individual cases (Antitrust and Mergers) dealt with by the European Commission. Within these Advisory Committees, the Member States may ask for and comment on the Commission's conclusions before the Commission takes a decision in specific cases. During 2021, twenty meetings of the Advisory Committees were held, exclusively in an online format.

INTERNATIONAL COMPETITION NETWORK – ICN

The ICN is a forum focused on the cooperation between competition authorities from all over the world. Within this platform, various working groups are active, which, inter alia, organise annual conference or workshops. Also this year, due to the unfavourable development of the pandemic situation, almost all activities organised by the ICN were conducted in an online format.

The most important event within the ICN is the annual ICN conference. In 2021, it was also held only in online format and hosted by the Hungarian Competition Authority. The ICN Cartel Workshop in Lisbon was held in November in hybrid format. In addition to workshops and conferences, competition authorities are generally involved in the activities of this platform through various questionnaire surveys or other forms of information sharing. In 2021, this included a questionnaire on case prioritisation within the ICN Agency Effectiveness working group.

ORGANISATION FOR ECONOMIC COOPERATION AND DEVELOPMENT – OECD

The OECD is an international organisation that, in cooperation with governments, professionals and the public, seeks to set international standards and find solutions to social, economic and environmental issues. In the field of the protection of competition, the OECD develops its activities through the Competition Committee and its two working groups.

The OECD Competition Committee meets regularly twice a year, whereas the meetings in June and November 2021 were again organised fully in online format. As every year, representatives of the Office participated in the thematic blocks discussing the important issues of the competition law and policy, such as the environmental aspects of competition law, ex-ante regulation of digital markets or competition neutrality.

WORLD COMPETITION DAY 2021

Every year, the institutions entrusted with protection and enforcement of competition rules, as well as the general professional public, commemorate 5 December as the World Competition Day. It was established by the International Network of Civil Society Organisation on Competition in reference to the date on which the United Nations (UN) adopted the universally accepted set of competition rules (Set of Multilaterally Agreed Equitable Principles and Rules for the Control of Restrictive Business Practices) in 1980. The aim of this initiative is to promote competition globally. The topic of the World Competition Day 2021 was the competition policy for inclusive and resilient economic policy. To promote this important day, the Office published on its website a short video of the Chairman, Petr Mlsna, on the continuing importance of functioning competition, especially during the current pandemic and the crisis that accompanies it.

LEGISLATIVE ACTIVITY AT EUROPEAN LEVEL

In the area of European Union legislative activities, the main topic for the Office in the past year was the discussion on two important legislative proposals – a proposal for a Regulation of the European Parliament and of the Council on fair markets open to competition in the digital sector (Digital Markets Act) and a proposal for Regulation of the European Parliament and of the Council on foreign subsidies distorting the internal market – at the Working Group on Competition (G12) within the Council of the European Union. The Office's representatives participated actively in the discussion of the draft of Digital Markets Act, in particular by drafting the Czech Republic's framework position for the Parliament of the Czech Republic or the instructions for individual Working Group meetings, but also by direct participation in the Working Group's meetings. The Office was also the main point of contact and coordination for comments or suggestions from other ministries, as well as third parties, in particular from undertakings operating in the digital sector or their associations. The discussion of the draft Digital Markets Act in the Council of the European Union was successfully concluded at the end of the year with the approval of the general approach at the meeting of the Competitiveness Council, which was

also attended by the Chairman of the Office, Petr Mlsna, on behalf of the Czech Republic. The proposal is now subject of a so-called trialogue under the ordinary legislative procedure between the European Commission, the Council of the European Union and the European Parliament. If successful, the adoption of this completely new ex-ante regulation of large digital platforms can be expected during 2022. As regards the proposal for a regulation on foreign subsidies, it is still under discussion within the aforementioned G12 Working Group, and the Office is also responsible for this proposal.

MEETING BETWEEN THE CHAIRMAN OF THE OFFICE AND THE EXECUTIVE VICE-PRESIDENT OF THE EUROPEAN COMMISSION MARGRETHE VESTAGER

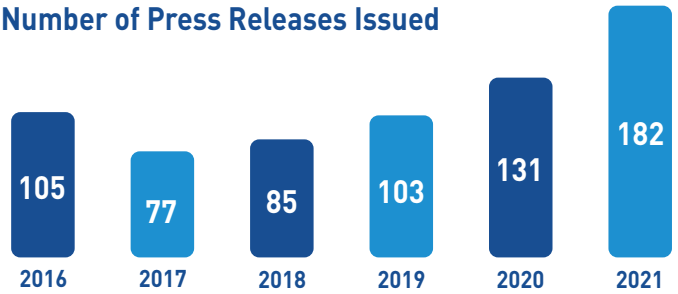
During their autumn official visit to Brussels in order to attend the Competitiveness Council meeting, the Chairman of the Office Petr Mlsna and the Vice-Chairman Petr Solský also met with the Executive Vice-President of the European Commission Margrethe Vestager, who is also the Commissioner for Competition. Their discussion dealt, for example, with the ECN+ Directive, which has not yet been transposed into the Czech law, the Office´s achievements in the fight against bid rigging and the measures and State aid schemes that the Czech Republic, through the Office, has notified to the European Commission for approval. The Chairman of the Office also informed Commissioner Vestager about the preparations for the upcoming Czech Presidency of the Council of the European Union.

PUBLIC RELATIONS

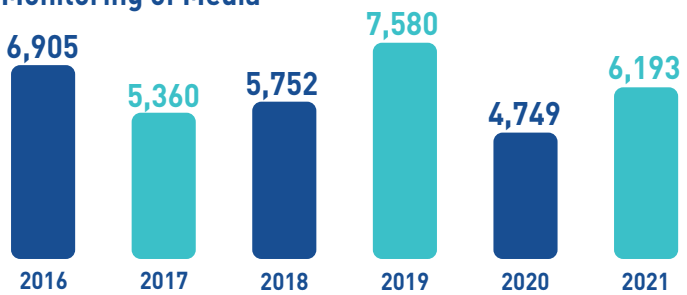
In the area of external communication and awareness-raising, 2021 marked a significant expansion of the Office's agenda. In addition to Twitter, the Office has also started to actively share posts via LinkedIn, Facebook and Youtube, however, the primary public relations tool remains its official website www.uohs.cz.

Compared to the previous year, the number of press releases issued in 2021 increased by almost 40%, which was reflected, inter alia, in a 30% year-on-year increase in mostly neutral publicity (94% of articles). According to the annual media monitoring analysis prepared by Newton Media, the Office has achieved a smooth reputation with the public in 2021. The greatest media impact (GRP) was recorded in the case of the Ministry of Defence, which erred in a public contract for the purchase of army helicopters, as well as in the case of tenders for regional bus services. The largest number of media reports was devoted to the Office's administrative proceedings related to public contracts in the construction sector (e.g. construction of metro line D, stadium in Hradec Králové). In the field of competition, the largest number of articles was devoted to concentrations between undertakings authorised by the Office. Positive reactions in media related to the sector inquiry into the pharmaceuticals market and the process of appointing the new Appellate Commissions. The closing of cases from previous years was reflected in minimal negative publicity (1%) that once again reminded of the problematic personnel links of the Office's former management. The media were ambivalent (5% of articles) about the fines imposed by the Office on regional transport contracts (especially the Liberec Region) and in the case of fine imposed on the Ministry of Defence. MfDnes and Czech Television were the ones which most often reported on the Office.

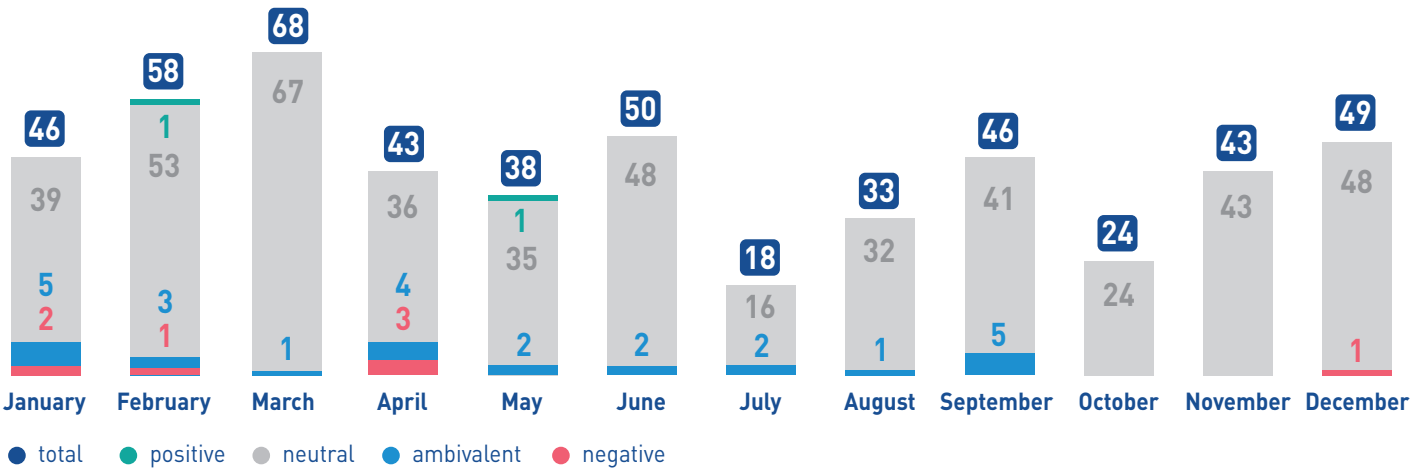
Number of Press Releases Issued



Number of Articles Mentioning the Office Within Monitoring of Media



Development of Media Coverage in the National Media in 2021



30TH ANNIVERSARY OF THE OFFICE FOR THE PROTECTION OF COMPETITION

The year 2021 marks the 30th anniversary of the establishment of the Office for the Protection of Competition, and thus of the introduction of competition law into the Czech legal framework. Other activities have gradually been added to the protection of competition: supervision of public procurement, coordination, advice, consultation and monitoring of State aid and supervision of compliance with the Significant Market Power Act. On 22 September, the Office held a commemorative conference in the Liechtenstein Palace in Prague, attended by over 100 representatives of the state administration, local authorities, professional associations, advocacy and academic institutions. Petr Mlsna, Chairman of the Office, in the introduction to the conference recalled the uniqueness and usefulness of the concurrence of these agendas: *"Competition is the focus of interest in State aid matters and broad competition between suppliers is the leitmotif of public procurement"* and noted that the synergies resulting from the concurrence of these powers are used by the Office, for example, in detecting cartel agreements between tenderers for public contracts.

The other speakers were Radek Vondráček, the former President of the Chamber of Deputies of the Parliament of the Czech Republic, or the Prime Minister Andrej Babiš, who spoke, inter alia, about the role the Office played in approving State aid to overcome the consequences of the COVID-19 pandemic. He also praised the Office for detecting cartels among tenderers for public contracts, as the Office is one of the best in Europe in this area. Stanislav Bělehrádek, the first ever Chairman of the Office, spoke about the first years of the Office's activity. He revealed to the conference participants the circumstances of the establishment of the Office, the difficulties and problems in its establishing, the formation of the initial team of experts and the process of its subsequent transformation to a Ministry and back to an Office.

In the second part of the conference, the current Vice-Chairs of the Office Kamil Nejezchleb, Markéta Dlouhá and Petr Solský introduced the audience to the most important topics that the Office is or will be dealing with in its individual areas of competence.

Petr Mlsna

Stanislav Bělehrádek


Markéta Fialová, Petr Mlsna


Josef Bednář, Petr Mlsna, Stanislav Bělehrádek, Petr Rafaj

ST. MARTIN'S CONFERENCE 2021

The 14th annual conference took place on 10 and 11 November after a one-year break caused by the COVID-19 pandemic. In his opening remarks, the Chairman of the Office, Petr Mlsna, warned, inter alia, against addressing the current economic difficulties through anticompetitive behaviour between undertakings. The pandemic has also affected the Office's activities: the State aid agenda has grown significantly and the Office has devoted more space to analytical and methodological activities, for example launching a major sector inquiry into the pharmaceutical industry. *"We are trying to start a comprehensive mapping of some markets, to check whether there is functional competition or whether there are some distortions. The result should then be recommendations to the government and legislators to take action against this,"* said Chairman Mlsna. The Chairman also touched on some of the topics that were subsequently raised in the conference panels, particularly the current issue of digital markets and platforms. *"We face the fundamental question of what to do next. Aren't the digital giants a major danger to competition and society as a whole? When we talk about regulating them today at European level, we are starting to change the paradigms of competition policy, because competition is no longer just there for ex post regulation, but we are giving it ex ante tools as well."*

Petr Mlsna

The first panel of the conference was traditionally devoted to a summary of the most important information on the activities of the competition authorities in the Czech Republic and Slovakia, joined this year also by Hungary and Austria. Kamil Nejezchleb, Vice-Chairman of the Office, announced

Kamil Nejezchleb, Boris Gregor, Csaba Balázs Rigó


Roman Pliska, Jan Měkota, Anatoly Subočs, Petr Zákoucký

Martin Vitula, Radovan Kubáč, Robert Neruda


Martin Nedelka

Stanislav Bělehrádek, Josef Bejček

Petr Solský, Dana Večeřová, Tomáš Prouza, Jacek Marczak, Pawel Kužma


Pavel Breinek, Jiří Kindl

Igor Pospíšil, Ivana Halamová Dobišková, Marek Šulc

that the Office had carried out the highest number of on-site inspections ever in the last year, namely 26, and stressed the importance of this tool in investigating complaints. The results of the Slovak Antimonopoly Office were presented by its Deputy Chairman Boris Gregor, the statistics and important cases from Hungary were commented by Csaba Balázs Rigó, President of the Hungarian Competition Authority GVH, and the Austrian results, including the development of a large cartel in the construction sector, were presented by Martin Janda, representative of the Austrian Authority.

During the first day of the conference, the forthcoming amendment of Act No. 143/2001 Coll., on the Protection of Competition, which should transpose the EU Directive on strengthening the powers of competition authorities, the so-called ECN+ Directive, was also discussed. The Office intends to include new provisions in the text of the proposal.

There was an intense discussion within the panel on digital platforms. Speakers did not foresee that the *ex ante* regulation in the EU's draft Digital Markets Act would bring new solutions that would not be possible under the current competition rules. The last panel of the first day was focused on so-called gun jumping, i.e. situations where concentration between undertakings takes place before a clearance decision is issued by the competition authority.

The second day of the conference was devoted to significant market power, in particular the implementation of Directive (EU) 2019/633 of the European Parliament and of the Council on unfair trade practices into the Czech legal order. Petr Solský, Vice-Chairman of the Office, presented the basic characteristics and principles of the Directive, which will be implemented through an amendment to the Significant Market Power Act. The Ministry of Agriculture is the author of the draft amendment, the Ministry of Industry and Trade and the Office have also contributed to the draft, together with professional associations, in particular the Agrarian Chamber, the Food Chamber and the Confederation of Commerce and Tourism. The compromise draft amendment brings new regulation covering the entire supply and customer chain, not only the relationship between the retail chain and its supplier. Dana Večeřová, President of the Chamber of Food and Agriculture, summarised the process of drafting the compromise transposition amendment, its positives and shortcomings. Tomáš Prouza, President of the Confederation of Commerce and Tourism, expressed concern that the new legislation would not address possible abuse of position by strong suppliers or territorial sales restrictions.

The conference was concluded with three parallel workshops. The first one followed the panel on significant market power and focused on the issue of territorial restrictions on food supply as an unfair commercial practice of suppliers. The workshop on the procedures of the Office covered some aspects of the imposition of fines and the conduct of on-site inspections. The workshop on vertical agreements focused on

the competition law definition of the concept of agreements, the assessment of vertical agreements in terms of the degree of distortion of competition, including compliance with the conditions for which the EU block exemption may be applied to selected types of vertical agreements, and also on the proposed reform of the relevant EU legislation.

On the occasion of the St. Martin's Conference 2021, the Chairman Petr Mlsna awarded the first medals for contribution to competition and public procurement to Stanislav Bělehrádek, the former first Chairman of the Office, and Josef Bejček, the academician.

STATE AID CONFERENCE

After a one-year break caused by the pandemic and for the first time ever via webcast, the Office held its annual State aid conference on 9 June 2021. More than 200 attendees watched both the Czech and international experts speaking in particular about overcoming the effects of the pandemic, "COVID" aid and Temporary Framework. The amended GBER regulation and studies on the practical implications of the rules for science and research were presented.

Petr Mlsna, Chairman of the Office, in his opening remarks, inter alia, thanked the representatives of the European Commission Directorate-General for Competition for their cooperation with the Office in approving State aid measures to combat coronavirus pandemic.

Koen van de Casteele, DG Competition representative, summarised the latest regulatory developments, such as the extension of the General Block Exemption (GBER) to new areas related in particular to environmental aspects or digitalisation, informed about the results of the fitness check and outlined further scheduled revisions of the regulations or the timetable for their extension. As of the date of the conference, the Commission had issued a total of 555 decisions on COVID aid, on the basis of which Member States may grant aid exceeding EUR 3 trillion.

Petr Solský, Vice-Chairman of the Office, summarized the developments in the area of State aid from the Office's perspective. Graca da Costa (European Commission – DG Competition) discussed in detail the so-called Temporary Framework, under which most of the aid to overcome the consequences of the coronavirus pandemic is granted. A minor part of the COVID aid was also granted on the basis of Articles 107(2)b and 107(3)b TFEU. Libuše Bílá, Head of the State Aid Unit of the Office, followed up on this theme from the Czech perspective. Iva Příkopová, the other representative of the Office, focused on the amendments to the General Block Exemption Regulation and its extension to include new areas of aid. Caroline Buts from the University of Brussels discussed practical aspects of the rules concerning aid for research, development and innovation. Michael Kincl from the Supreme Court presented the decision-making practice of the European Commission, as well as important case law, exclusively in the field of non-COVID aid. The conference was closed by contributions of the Office representatives Vojtěch Horsák on the *de minimis* aid register and Lenka Vytásková on the practical aspects of aid under the Temporary Framework, in particular on the possibilities of aid cumulation, aid to undertakings in difficulty and how to meet the requirements of transparency.

COOPERATION WITH ACADEMIA

The Office has expanded its cooperation with academic institutions. In 2021, the Chairman Petr Mlsna concluded Memoranda with Martin Bareš, Rector of Masaryk University in Brno (26 April 2021), Martin Škop, Dean of the Faculty of Law of Masaryk University (20 July 2021), Tomáš Zima, Rector of Charles University (3 August 2021), Václav Stehlík, Dean of the Faculty of Law of Palacký University in Olomouc (13 October 2021) and Danuše Nerudová, Rector of Mendel University in Brno (19 October 2021). In these Memoranda, the Office and its academic partners declare their interest in mutual cooperation on scientific projects and in the pedagogical field as well. The Office offers students internships and placements as well as cooperation in the field of postgraduate studies.

METHODOLOGICAL DAYS IN PUBLIC PROCUREMENT

The organisation of methodological days in the field of public procurement is a novelty in the area of awareness-raising. In 2021, the Office organised five online meetings with contracting authorities, suppliers and public procurement experts, during which the Office's experts provided the supervisory authority's interpretation of certain problematic areas or institutes of public procurement legislation. For example, they discussed the new basic principles of responsible procurement pursuant to Article 6(4) of Act No. 134/2016 Coll, on Public Procurement; the definition of the subject of the public contract; the evaluation of tenders, both in terms of setting evaluation criteria and conducting the evaluation; the evaluation of tenders and notification of the selection of the supplier; the issue of prohibited agreements in public procurement; the conflict of interest pursuant to Article 44 of the Public Procurement Act; the clarifications, additions and amendments to the tender pursuant to Article 46 of the Public Procurement Act; the changes to contractual obligations pursuant to Articles 100 and 222 of the Public Procurement Act and other topics. The five methodological days held in 2021 were observed by over two thousand participants. Presentations and videos from the methodological days are available on the website of the Office in the Methodological Days section. The Office's new communication platform has proved its worth and the Office will continue it in the following year.

HUMAN RESOURCES

In 2021, the Human Resources (HR) Unit focused mainly on its activities arising from the Organisational Directives of the Office:

- coordination and development of organisational relations and systemisation, personnel management, remuneration and training of civil servants,
- preparation and implementation of procedures and actions within the service proceedings, processing of documents related to employment and civil service,
- organisation and administration of civil servants examinations,
- administration of personnel agenda, in particular keeping staff files, registering vacant posts and maintaining the occupational health agenda,
- organisation of educational programmes for staff, setting principles for staff appraisal and providing care for staff.

OVERVIEW OF AGENDAS HANDLED BY THE HR UNIT IN 2021:

- Regular staff appraisal of civil servants for the period 2019–2020 was processed until 31 March 2021 and a report on the results of the evaluation was prepared.
- Educational programme for staff was completed and forwarded to individual organisational units of the Office to propose additional staff training. The training took place during 2021.
- The HR Unit provided two training sessions for senior staff in the second half of 2021 – *"Employment Law Minimum for Senior Staff"* and *"Managing People – My People – My Calling Card"*.
- Three group trainings were organised for the Office's staff – *"Practical Experience in Criminal Proceedings"*, *"Economic Training for Lawyers"* and *"Selected Issues focusing on the Administrative Code and the Misdemeanour Act"*.
- Since September 2021, the HR Unit has also been organising English language training at the Office as a part of staff training.
- The internal service regulations – the organisational directives *"Management of Personnel Agenda and Related Processes"* and *"Staff Training and Appraisal"* – have been updated with effect from 1 January 2022.
- At the end of 2021, an upgrade of the personnel PER system was started and should be completed by the company GORDIC during 2022 as required by the Office.

PROVIDING INFORMATION PURSUANT TO ACT NO. 106/1999 COLL., ON FREE ACCESS TO INFORMATION, DURING 2021

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

Area	Number of requests received	Number of decisions issued
Competition	32	17
Public procurement	57	8
State aid	0	0
Significant market power	8	4
General	24	1
Total	**121**	**30**

2. Number of appeals filed against decisions of the Office pursuant to Act No. 106/1999 Coll.: 4
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: 5
   - judgement of the Supreme Administrative Court Ref. No. 4 As 225/2020-44 of 3 February 2021: the cassation complaint of the Office is rejected.
   - judgement of the Supreme Administrative Court Ref. No. 1 As 281/2020-42 of 5 February 2021: the cassation complaint of the Office is rejected.
   - judgement of the Supreme Administrative Court Ref. No. 6 As 5/2020-40 of 28 July 2021: the cassation complaint of the Office is rejected.
   - judgement of the Regional Court in Brno Ref. No. 62 A 8/2021-162 of 11 March 2021: the provision of the requested expert report was an unlawful interference.
   - order of the Regional Court in Brno Ref. No. 62 A 187/2020-70 of 13 January 2021: the action against the Office is dismissed for inadmissibility.
5. Results of proceedings on sanctions for non-compliance with Act No. 106/1999 Coll.: No proceedings were conducted.
6. List of exclusive licences granted: No exclusive licence was granted.

BUDGET FOR 2021

Indicators of Budget Chapter 353 for 2021 – Office for the Protection of Competition (in CZK)

Aggregates		
Total revenues		**5,500,000**
Total expenditures		**253,982,795**
Specific indicators – revenues		
Tax revenues[1)]		**3,800,000**
Total non-tax revenues, capital revenues and transfers received		**1,700,000**
of which:	other non-tax revenues, capital revenues and transfers received in total	**1,700,000**
Specific indicators – expenditures		
Expenditures on ensuring the fulfilment of the tasks of the Office		**253,982,795**
of which:	expenditures related to the performance of the Czech Presidency of the Council of the European Union	**325,920**
	other expenditures on ensuring the fulfilment of the tasks of the Office	**253,656,875**
Cross-sectional indicators		
Salaries of employees and other payments for work performed		**145,000,277**
Compulsory insurance premiums paid by the employer[2)]		**49,010,093**
Basic allocation of the fund for cultural and social needs		**2,859,942**
Salaries of employees in terms of employment, excluding staff at service posts		**19,905,357**
Salaries of employees at service posts pursuant to the Civil Service Act		**114,334,138**
Salaries of employees in terms of employment derived from the salaries of constitutional officials		**8,757,600**
Ensuring preparation for crisis situations pursuant to Act No. 240/2000 Coll.		**0**
Total expenditures included in the EDS/SMVS programme financing information system		**30,000,000**

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

AGENDA 2022

CZECH PRESIDENCY OF THE COUNCIL OF THE EUROPEAN UNION IN 2022

In the second half of 2022, the Czech Republic will take over the Presidency of the Council of the European Union for the second time (hereinafter referred to as "CZ PRES 2022"). The Presidency itself is a prestigious event and an extraordinary opportunity and challenge for the country holding the Presidency. During the six-months period, not only the Czech Republic as a whole, but also the Office itself will have a unique opportunity to properly present their name abroad and strengthen their influence in the structures of the European Union.

The Office of the Government of the Czech Republic has been entrusted with the role of a central coordinator for the preparation and performance of the Presidency, coordinating the activities of other central state administration bodies, including the Office, in preparation for CZ PRES 2022. Within the Office, the International Unit is responsible for all organisation and coordination of preparations for CZ PRES 2022.

At the working level, CZ PRES 2022 will bring the Office, in particular, the opportunity to organise and effectively chair meetings of the Competition Working Group (G12) in the Council of the European Union, which is one of the Working Groups of the Competitiveness Council (COMPET), in cooperation with the Permanent Representation of the Czech Republic to the European Union in Brussels. In terms of the CZ PRES 2022 events organised by the Office, which will take place in the Czech Republic, the most important event will undoubtedly be the international conference European Competition Day, for which the historical premises of Prague Castle are currently envisaged as the venue. This prestigious event, hosted by a Member State holding the Presidency of the Council of the European Union, is regularly attended by the heads of the European competition authorities, representatives of the European Commission and other prominent personalities in the field of competition law. Margrethe Vestager, Executive Vice President of the European Commission and Commissioner for Competition, has also promised to attend the conference. The Office will also organise a meeting of the Network of First Instance Review Bodies on Public Procurement in Prague in September 2022.

COMPETITION

The Office's main legislative priority in 2022 will be to finish the transposition of the ECN+ Directive, which further harmonises competition tools across the EU to enable them to enforce rules more effectively and to ensure the proper functioning of the internal market. Unfortunately, the original amendment to the Competition Act did not make it onto the agenda of the previous Chamber of Deputies of the Czech Republic, so the Office has now proceeded to revise it once again. In addition to the previously proposed changes related to the transposition of ECN+, the new draft also includes other modifications aimed at further improving and streamlining the existing legislation. The amendment is expected to become effective from 1 January 2023, but everything depends on the speed of the legislative process.

The legislative priorities within the Czech Presidency of the Council of the European Union will be primarily the conclusion of the adoption of the Digital Markets Act, if the French Presidency does not manage to finish it, and also further progress in the area of adjusting the rules on collective bargaining for self-employed persons in order to improve their position vis-à-vis strong purchasers of their services. As to the sustainability and the promotion of an environmentally friendly approach, as one of the European Union's key policy objectives, we consider it appropriate that it should be enforced primarily by promoting and striving to maintain a healthy competitive environment.

The fight against hardcore cartels and in particular bid rigging, i.e. cartels in public procurement, will continue to be a priority in the area of prohibited agreements in 2022. For this purpose, the Office will use, inter alia, the unique synergies of bringing together information from competition and public procurement and computational or econometric methods within a single institution. In order to increase the effectiveness of cartel investigations, the Office has established and will continue to deepen its cooperation, in particular, with public contracting authorities and law enforcement authorities. This enables the Office to obtain relevant evidence of potentially anticompetitive behaviour, especially hidden cartels, which would otherwise be very difficult for the Office to detect.

The Office will also focus on combating the agreements by object occurring in vertical relationships, in particular agreements on fixing prices of goods for resale. Based on the experience of the previous year, it is evident that these prohibited anticompetitive practices still occur in practice, although the Office has repeatedly sanctioned such practices and imposed significant penalties on undertakings in recent

years. It is therefore necessary to maintain the vigorous approach of the Office and to combat such anticompetitive agreements, as they have a major negative impact on the end consumers. In doing so, the Office intends to focus in particular on agreements negotiated by established undertakings with higher market shares and high turnover from goods sold, because they are the ones where elimination of competition as a result of prohibited agreements has the most pronounced anticompetitive effect.

In the area of abuse of dominant position, the Office will focus primarily on exclusionary practices or exploitative practices affecting a wider range of customers. In particular, priority will be given to monitoring liberalising sectors, sectors affected by the COVID-19 pandemic or dynamic changes in the market for supply of energy or other raw materials. The Office will also closely monitor developments in digital markets and platforms.

In the area of competition distortion by public administration authorities, the Office's ambition is primarily to educate and strive for maximum prevention and effective alternative solutions to potential competition problems rather than repression.

In the area of control of concentration between undertakings, in addition to its standard decision-making activities, the Office intends to update the methodological guidelines related to the merger control system in the Czech Republic, in particular with regard to the conduct of pre-notification meetings, simplified administrative merger clearance proceedings, calculation of the turnover of merging undertakings and the merger concept.

This year, the Office intends to continue to promote and develop the so-called more economic approach in its activities, which is a trend of competition authorities in developed countries. The Office intends to use the application of quantitative methods in particular to detect agreements between tenderers for a public contract (bid-rigging), which constitute serious infringement of competition law, and then in the areas of detection and investigation of the most serious cases, such as abuse of dominant position, where proof of negative impact on the market is crucial. In decision-making, a more economic approach should contribute not only to strengthening the assessment of the impact of investigated offences on the market, but also to deepening the procedures for defining relevant markets, especially in the most complex cases.

The Office will further deepen its cooperation with academic institutions in the field of scientific research, project and pedagogical activities and its involvement in a number of projects. Among the most important of these is the DATACROS II project, which aims to develop a risk assessment and management tool capable of increasing the success of public authorities in detecting cross-border financial crime schemes involving complex corporate structures, as well as corruption and collusion schemes in public procurement. The Office also participates in the Stanford University Computational Antitrust Project, which brings together academics, developers, policy makers and regulators to promote the automation of antitrust procedures and improve competition law analyses.

SIGNIFICANT MARKET POWER

In the area of control of significant market power, the Office will become more involved in the legislative process related to the implementation of Directive (EU) 2019/633 of the European Parliament and of the Council on unfair commercial practices between undertakings in the agricultural and food supply chains into the Czech legislation. The Office acts as a supervisory body in the given area of market relations, it is therefore appropriate that it can cooperate through its professional consultancy with the state administration authorities responsible for transposing the Directive and thus contribute to its proper and meaningful implementation.

Until the adoption of the amendment to the Significant Market Power Act, the Office will continue to enforce the obligations under the Act, including through the imposition of penalties. In exercising this competence, it will take the Euroconform interpretation of the Act into account so that the Office's decision-making activity is consistent with the requirements arising from the case law of the Court of Justice of the European Union.

The Office will conduct education of entities whose legal relationships are and will be subject to the regulation of the Significant Market Power Act following the implementation of the Directive. Compared to the current wording, once the Directive is implemented, the Act will regulate hundreds of entities active in the supply and demand chain in the agricultural and food sector. It will therefore be necessary to ensure that all those whose rights and obligations will be affected by the new Act have a realistic opportunity to find out how to proceed in negotiation and application of contractual relations in accordance with this Act. The Office will issue a new information sheet summarising its position on the application of the Significant Market Power Act, which will be available on its website. The Office will also carry out consultation and training activities relating to its agenda. These training sessions will be open to both the entities whose activities are subject to regulation under the Act and the various interest and professional organisations representing these entities.

The Office will focus on conducting sector inquiries allowing it to gain a deeper understanding of the interrelationships between market players active in the supply and demand chain in the agricultural and food sectors in the Czech Republic. A thorough knowledge of the market structures, ownership and contractual relationships in the given sector is a prerequisite for the supervisory activities of the Office to be carried out in a meaningful and effective manner, while avoiding unnecessary burdening individual market players.

Effective and mutual use of information synergies within the structures of the Office related to the agricultural and food sector, especially between the Department of Methodology and Control of Significant Market Power and the Competition Division, is another prerequisite for the proper exercise of the Office's competences both in the area of supervision of the Significant Market Power Act and in the area of supervision of the competition agenda.

PUBLIC PROCUREMENT

The objective of the Office for 2022 is to have a clear positive impact on the competitive environment in the Czech Republic. In this context, the Office intends to focus more on awareness-raising and methodological activities in the field of public procurement, which should be applied to a large extent especially in relation to towns and municipalities. Local municipalities are the largest domestic group of contracting authorities, and it is often the case that they do not have a sufficiently strong public procurement background. In this context, closer cooperation with the Office could have a positive impact on the efficiency of spending municipal, and hence public, funds.

The Office also intends to continue its awareness-raising activities, which it has successfully started to develop already in 2021. Here, we can mention, for example, the upcoming educational events for the general public as well as a conference on public procurement with an international dimension, which should take place in May 2022. The Office also intends to continue its cooperation with the Ministry of Regional Development, with whom it plans, inter alia, to consult on some interpretative issues that have been identified within the application of certain institutes and provisions of the Public Procurement Act, and possibly to proceed jointly with the draft amendment to this Act. As the Office has identified bottlenecks in the legislation in the context of its public procurement supervision agenda, it will also initiate negotiations on further possible amendments to the Public Procurement Act in order to streamline both the procurement process itself and its supervision.

STATE AID

Certain revised rules, on the basis of which the European Commission assesses the compatibility of aid measures with the internal market as a part of the notification process, are expected to be adopted in early 2022. This concerns in particular the Framework for State aid for research, development and innovation. In addition, an amendment to the General Block Exemption Regulation (GBER) should be adopted by the end of the first half of 2022.

The Czech Presidency of the Council of the European Union will give priority to the completion of new legislation in the area of State aid, in particular the draft Regulation on foreign subsidies distorting the internal market. Under the French Presidency of the Council of the European Union in the first half of 2022, the draft Regulation will be discussed. The Office, which is responsible for this draft, has a key role in the development of the Czech position and is actively participating in the discussions within the Competition Working Group where it is being discussed. In the first half of 2022, France will lead the negotiations and will try to achieve the adoption of a general approach at the Competitiveness Council (COMPET) – it will therefore deal with a compromise position within the Council of the European Union. In the second half of the year, France will hand over the Presidency to the Czech Republic, which will build on previous work on the draft and will probably start negotiations with the European Parliament and the European Commission (so-called trialogues). These negotiations should result in a political agreement on the final wording of the Regulation. The second legislative proposal should be an amendment to the so-called enabling Council Regulation to allow for the inclusion of new aid categories in the GBER.

During the first quarter of 2022, the results of the evaluation of the rules for granting State aid for health and social services of general economic interest are expected to be published. A public consultation seeking views on the effectiveness of the European Union's State aid rules for health and social services of general economic interest, as regulated in the 2012 SGEI package, took place from July to December 2019.

In spring 2022, the Office, in cooperation with ministries, state and regional authorities and a large number of municipalities, will again, after two years, prepare a regular report on the implementation of the Commission's decision on the application of Article 106(2) TFEU to State aid in the form of public service compensation granted to certain undertakings entrusted with the provision of services of general economic interest.

By 30 April 2022, all providers of State aid are obliged to provide the Office with information on the amount of State aid granted (i.e. paid out) for the calendar year 2021. This information obligation does not apply to measures granted under the small-scale aid scheme (*de minimis*) or under regulations governing the provision of services of general economic interest. The Office will then send a summary annual report for the Czech Republic to the European Commission.

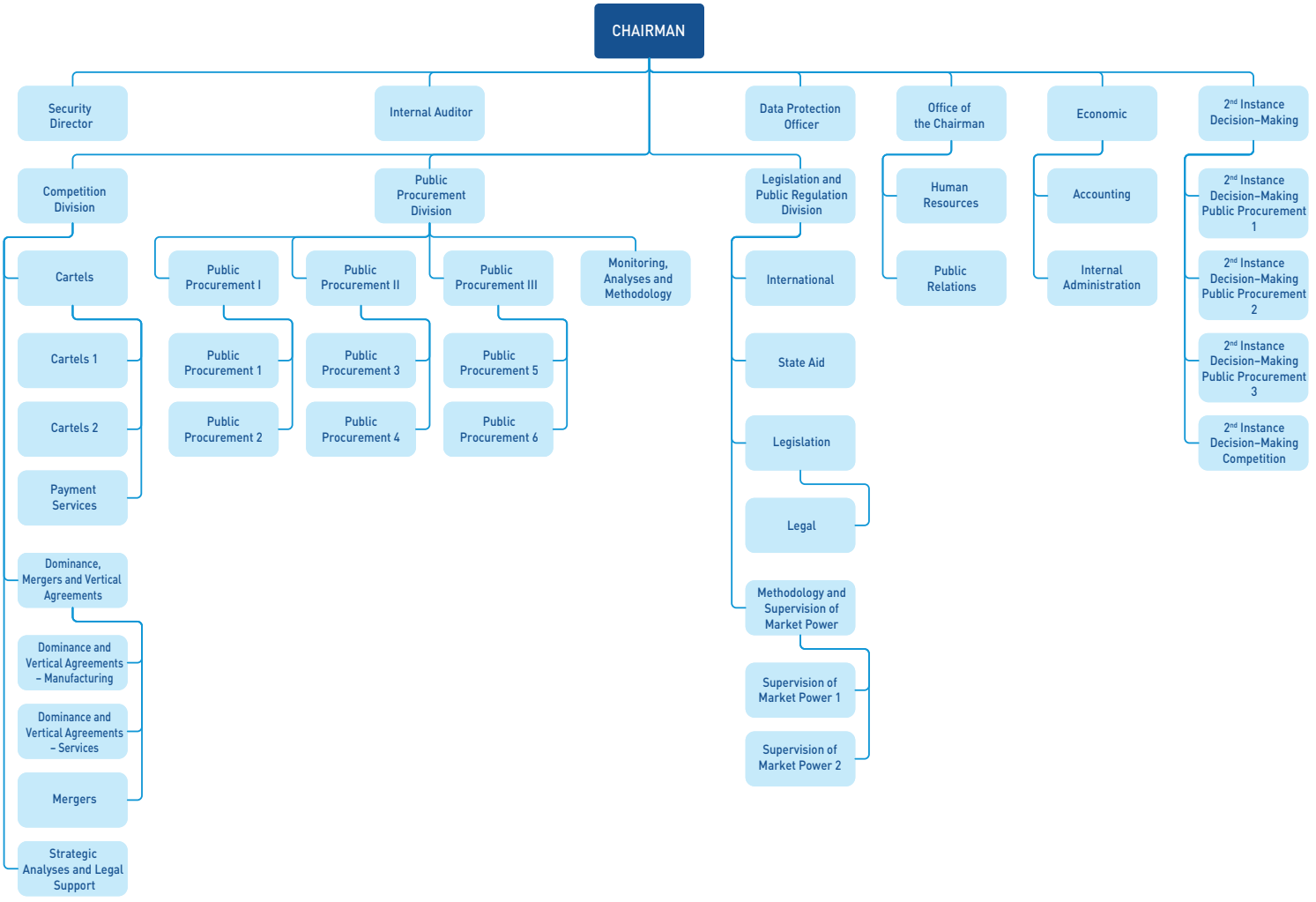
In mid-June 2022, the Office plans to organise another annual State aid conference.

There will also be continued negotiations with the European Commission on (pre)notified measures. In the context of the launch of aid under the National Recovery Plan and other tools (such as the Just Transition Fund), pre-notification or consultation can be expected to be launched to ensure that the changes made are consistent with the State aid rules.

In 2021, the Office received further new complaints alleging unlawful aid, which are being investigated by the European Commission and for which the European Commission has requested the Czech authorities to provide information. These complaints, as well as other complaints received in previous years, will continue to be dealt with in 2022. The Office is actively cooperating with the relevant providers of the alleged unlawful aid to resolve these cases.

STRUCTURE OF THE OFFICE

AS OF 31 DECEMBER 2021



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