20 YEARS 1991 2011

ÚOHS

ÚŘAD PRO OCHRANU HOSPODÁŘSKÉ SOUTĚŽE
OFFICE FOR THE PROTECTION OF COMPETITION

ANNUAL REPORT 2011

CONTENT

01 Introduction by the Chairman 3

02 Competition 5

03 Public Procurement and Concessions 21

04 Significant Market Power 31

05 State Aid 35

06 International Relations 41

07 Human Resources and Information Activities . . 47

08 Important Events in 2011 55

2012 Agenda 59

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OFFICE FOR THE PROTECTION OF COMPETITION

tř. Kpt . Jaroše 7, 602 00 Brno, Czech Republic
Editorial Board: Milena Marešová, Daniel Stankov, Martin Švanda
Photographs: OPC archive, Lubomír Stehlík, Tomáš Vymětal
Telephone: +420 542 167 243, Fax: +420 542 167 117, E-mail: posta@compet .cz, www.compet.cz
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Introduction by the Chairman

The year 2011 marked the 20th anniversary of the establishment of the Office for the Protection of Competition. Compared to other such competition authorities worldwide, the Czech competition authority has one of the most extensive scope of competences. It was established on 1 July 1991 as the central government body for the protection of competition in the Czech Republic.

The twenty years of existence of the Office for the Protection of Competition also represent the history of the development of modern Czech competition law. The event of the year - the 5th St. Martin Conference also on the occasion of Twenty Years of Czech Competition Law - focused on the present state of and particularly on the future of Czech competition policy. About three hundred experts from 16 countries discussed trends in the development of competition law, public procurement, state aid and significant market power. Feedback on the conference received by the Office was very positive.

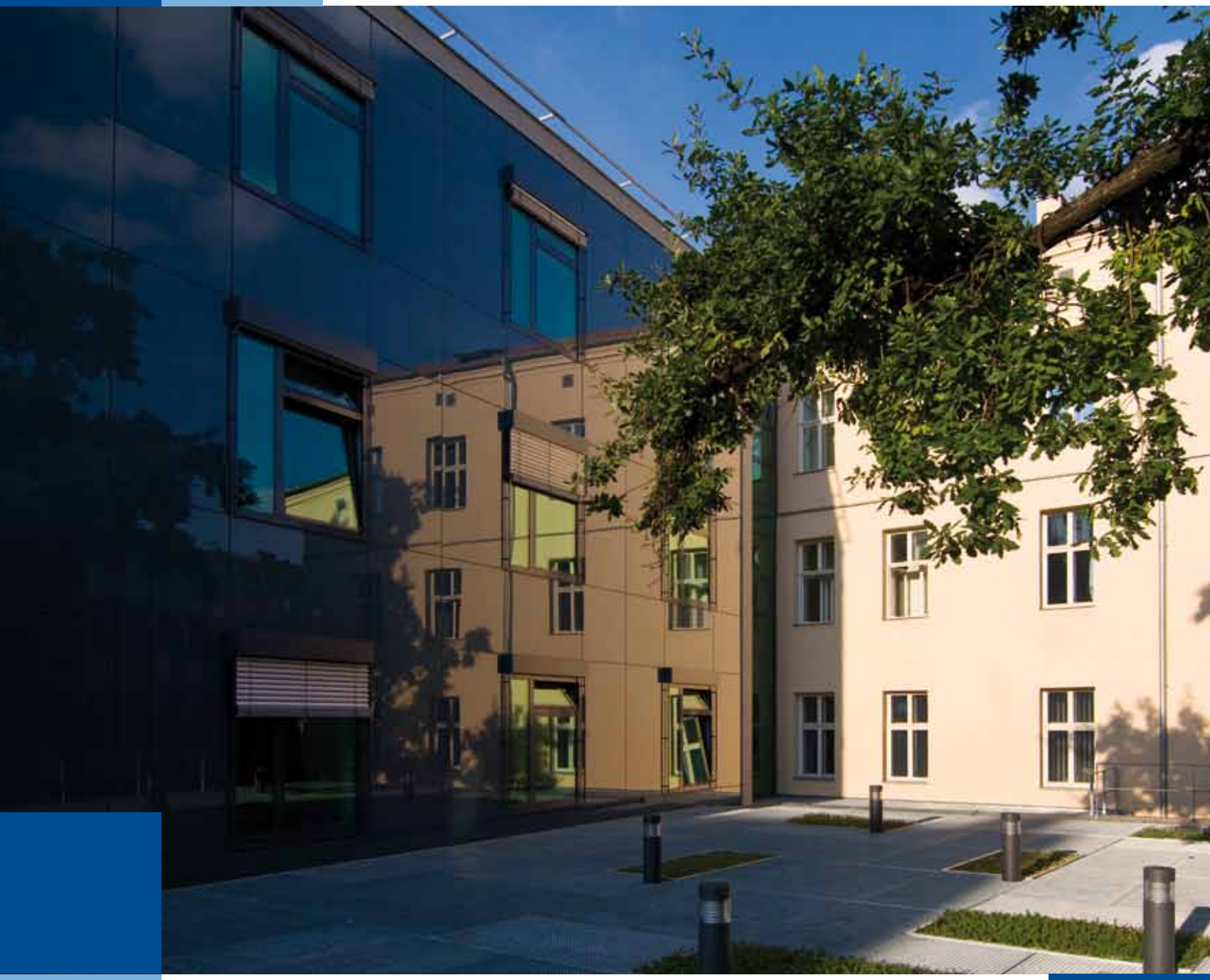
In addition to its usual agenda, the Office for the Protection of Competition also focused on legislative activities in 2011. At the end of October 2011, it submitted to the government a draft amendment to the Act on the Protection of Competition that would include into the wording of the Act institutions of leniency and settlement together with the prioritization of investigations, thereby allowing the Office to focus on the detection and investigation of socially more serious cases of infringement of competition rules. The leniency and settlement programme has been successfully applied by the OPC since 2001; however, for a better and more transparent application of competition law it is necessary to link these institutions to other statutory provisions.

Also in the area of public procurement, OPC experts participated in legislative work during preparation of an amendment to the Act on Public Procurement. The amendment will significantly influence the transparency of the public procurement process, and the expected consequences will be reflected primarily in the effective and economical use of public funds. However, the Office must be ready for a significant increase in complaints, and therefore it augmented its personnel in the public procurement department at the end of 2011. The recruitment of new employees shall continue in 2012.

Last year, the Office for the Protection of Competition received 2,300 submissions, petitions and appeals, issued over two thousand decisions and opinions, which on average means eight a day during the 253 working days last year, and it participated in 64 legal disputes. A number of important cases have been definitively terminated; these range from price cartels in the area of detergents and TV screens, to the first detected Czech case of a prohibited agreement of tenderers for a public contract, so-called 'bid rigging'. It is precisely the investigation of cases such as bid rigging that will remain a priority of the Office in the years ahead. This is borne out by the establishment of a new specialized division within the OPC and the start of a new project aimed at enhancing the awareness and transparency of contracting authorities.

I am delighted with the results of the Office, and I believe that in the coming years we will successfully face up to new challenges and continue on course we have set.

Petr Rafaj
Chairman of the Office for the Protection of Competition



01

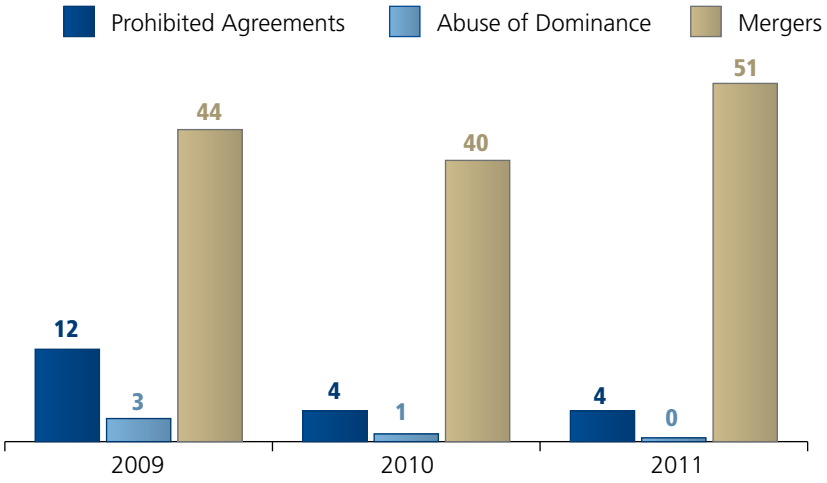
COMPETITION

In the application of competition law in the Czech Republic, the Office for the Protection of Competition (hereinafter referred to as "the Office" or "the OPC") monitors the behaviour of competitors and in the event of any distortion of competition, it intervenes as soon as possible and arranges for a remedy in the market. The functioning of markets is primarily distorted by competitors abusing their dominant position and entering into prohibited agreements. For a considerable time now, the Competition Section has been focusing on bid rigging, i.e. a prohibited agreement by which tenderers in a public contract act in concert. By entering into price agreements and dividing up the market they exclude other tenderers and eliminate competition, which is the purpose of every award procedure.

In addition to the aforementioned inefficient use of public funds, other consequences of competition law infringements also include, for example, an increase in prices above the market level, a restriction of the supply of goods and services and slower technological or economic development.

Number of Initiated Administrative Proceedings

Number of Issued Decisions



Legislation

Act No. 143/2001 Coll., on the Protection of Competition and on Amendment to Certain Acts (hereinafter also referred to as "the Act") saw its last major revision in 2009. Its current wording insufficiently reflects the current application of Office practice, consisting in the use of selected institutions of competition law which are commonly used by the European Commission and EU Member States to detect anti-competitive practices or to achieve procedural economies. At the present time, a legislative process is underway the key result of which will be the incorporation of leniency and settlement directly into the Act.

The leniency programme is a fundamental tool for detecting cartels and it has been effectively applied by the OPC since 2001. The enactment of the leniency programme will bring greater legal certainty to parties in cartel agreements who enable the Office to detect the cartel. The codification of leniency will also facilitate the alignment of other legal institutions necessary for the success of the leniency programme, particularly the amendment of access to administrative records and termination of criminal responsibility. The proposed amendment should incorporate two types of leniency - leniency I and leniency II. The substance of leniency I is the waiver of the fine for participation in a cartel for the competitor that first notified the Office of the agreement and met other legal conditions, for example confessed to participation in a cartel and actively cooperated with the Office throughout the administrative proceedings. When applying leniency II, the cartel fine will be reduced by up to 50 percent for those parties to a prohibited cartel agreement who inform the Office of such agreement second or later, meet other conditions required by law and provide the Office with information and documents on the cartel agreement with significant added value in relation to the probative value of documents and information acquired by the Office previously. In connection to the incorporation of leniency, there will also be an indirect amendment to Act No. 40/2009 Coll., Criminal Code, where Article 248a shall incorporate the termination of criminal liability for the criminal offence of distortion of competition law on the grounds of active repentance when meeting conditions required for the successful application of the leniency programme.

Settlement, the provision of which is also included in the amendment, will give the Office an option to reduce fines by 20 percent for those competitors that confess to committing an administrative offence, provided the Office believes that such fine will be sufficient in terms of the seriousness of the offence. The institution of settlement can be applied in cases of prohibited agreements, as well as in cases of abuse of dominant position or concentrations contrary to the law. Its purpose is mainly to achieve procedural economy in dealing with competition cases, i.e. to focus the limited resources of the Office on detecting first-instance infringements of the law and to eliminate the use of resources in second-instance proceedings and court proceedings.

The amendment will also allow the Office not to deal with marginal cases of law infringements. These have long been a burden on the Office, even though they do not have significant impact on the functioning of the market. When establishing its priorities, the Office will be entitled to choose not to initiate administrative proceedings after a preliminary investigation of a specific case if proceedings are not in the public interest with regard to the minimal impact of such practices on competition.

The government's strategy for 2011 and 2012 in the fight against corruption is reflected in the amendment with the incorporation of a ban on participation in public tenders for three years for

those entities committing an administrative offence consisting in the conclusion of a prohibited agreement in relation to an award procedure or a small-scale public contract.

Members of Parliament initiated discussion of the amendment to the Act in mid-March 2012. The Office expects that the amendment will become effective in the same year, after having been adopted by the Parliament of the Czech Republic.

More Economic Approach

In recent years, the trend towards the interdependence between legal and economic analyses in European competition policy has been validated. A more economic approach to solving cases of infringement of competition rules has been applied in all its areas, and has proven essential not only within administrative and sector investigations, but also for argumentation during possible judicial review. Its role in defining the relevant market is indispensable. The basic principle of the more economic approach is to prioritize the evaluation of the impact of a competitor's conduct on the market over any evaluation of the form of such conduct.

The Office uses a more economic approach particularly in cases of mergers of competitors, abuse of dominant position, sector investigations and market studies. In the area of competitor mergers, one such example was the merger of Prague Airport and ČSA (Czech Aeroholding) and Aelia/UG Air, in which the more economic approach was applied in defining the relevant market and evaluating the theories of harm, i.e. whether the concentration could adversely affect competition in the market. Case studies, margin analyses, consumer research and an analysis of critical harm were conducted as part of these analyses. Economic analyses are also playing an important role in an extensive investigation into the telecommunications market and in other cases where abuse of dominant position is being assessed primarily in connection with the price conduct of competitors.

Sector Inquiries

Sector inquiries are a tool used by the Commission and European competition authorities in particular to comprehensively map how relevant markets function and to subsequently eliminate long-term competition problems. Sector inquiries are one of the priorities of the Office, especially in sectors where so-called natural monopolies exist (for example energy and telecommunications) or in markets with a traditionally high concentration of large enterprises. In mid-2011, the Office initiated an investigation into the energy sector. The first phase of this sector investigation concerns the area of brown coal; follow-up phases are focused on the areas of electricity, gas and heat production.

In November 2011, the Office also initiated a sector investigation into forestry and mining, as well as the sale of timber.

Right of Due Process

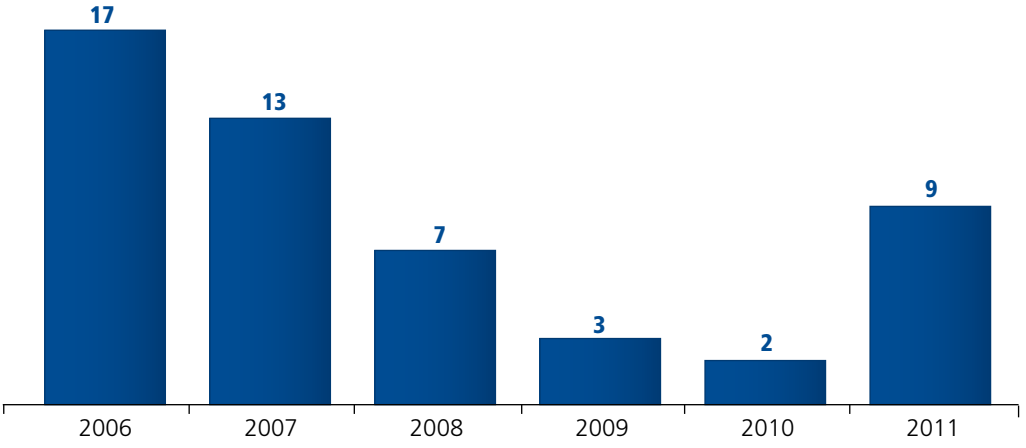
The issue of due process has been interwoven for several years with all activities of the Office in its struggle against competition infringements, particularly against cartel agreements. Access to all documents that form the administrative record, including the scope of a business secret and content of leniency applications, as well as issues of protecting the privacy of legal entities (competitors) against the unannounced inspections of officials, the right to refuse to answer based on the doctrine of non-self-accusation, the proper application of the ne bis in idem principle and other procedural aspects of the Office's investigative activities have, in terms of their significance, lately overlapped the factual concerns of the administrative proceedings themselves. Achieving a balance between protection of the affected entities (particularly parties to proceedings) on one side and ensuring the effective and sufficiently deterrent enforcement of competition law on the other is - besides introducing the principles of greater economic evaluation - one of the two main objectives of the Office in the area of protection of competition.

Alternative Solutions of Competition Cases

Competition advocacy is an alternative tool enabling the office to resolve less serious infringement of competition law without initiating administrative proceedings. The OPC does not impose sanctions provided the competitor timely submits commitments contributing to a remedy in the market. In 2011, the Office solved nine cases through competition advocacy outside administrative proceedings.

Settlement, when the competitor admits responsibility for anti-competitive conduct and eliminates it in exchange for a reduced fine, can also be considered a certain form of alternative solution. The Office has used this option in a number of cases in the past. A legislative process is currently underway as a result of which settlement will be incorporated in law (see the chapter Legislation, above).

Number of Cases Solved by Competition Advocacy



SELECTED CASES

Methodical tool of the Association of Driving Schools for calculating training costs

The Office applied an alternative way to solve a competition problem in a case involving the calculation of driving schools costs for category B training. A methodological tool for calculating category B training costs, which included calculations of a fictitious driving school and an unnamed real driving school, was published on the website of the Association of Driving Schools of the Czech Republic (Asociace autoškol ČR, o. s., hereinafter " the Association").

The Office concluded that the development and publication of the tool by the Association is highly likely to fulfil the characteristics of a prohibited decision by an association of competitors. Upon a request from the Office, the methodological tool was removed from the website of the Association and the Association informed its members of its possible conflict with competition rules. Given the limited impact of the assessed conduct on competition, and the compliance of the Association with measures stipulated by the Office, there ceased to exist any reason for further investigation or the initiation of administrative proceedings.

The Czech Bar Association sets a time limit for determining a mandatory supplier of lawyer gowns

On its own initiative, the Office examined a procedure of the Czech Bar Association (hereinafter referred to as "the CBA") which appointed a single mandatory supplier of lawyer gowns for its members. Subsequently, the Office also received complaints from several lawyers in this matter.

In the opinion of the Office, due to its conduct, the CBA denied other potential competitors the possibility to enter the market. Due to the statutory obligation to wear a gown during certain judicial proceedings, the assessed conduct of the CBA could affect, even if only indirectly, the market for legal services. The conduct of the CBA fulfilled the definition of a prohibited decision of an association. The CBA was therefore recommended by the Office to put a time limit on the validity of its decision. CBA representatives accepted the opinion of the Office and a change in the decision of the Board of the CBA No. 4/2011 allowed lawyers to obtain a gown at their own expense through a supplier determined by the CBA based on an award procedure, or one chosen individually. The CBA shall give its consent to the selected supplier for use of the registered industrial design of the lawyer gown for a fee under a license agreement. With regard to the less serious nature of the conduct in terms of competition, the Office decided to proceed informally in the matter, using so-called 'competition advocacy' without initiating administrative proceedings.

On 6 May 2011, the Chamber of Deputies approved a change in the Act on Advocacy which authorizes the CBA to appoint one or more suppliers of professional clothing based on an award procedure. In this context, it should be noted that the OPC expressed its disagreement with this change to the Act on Advocacy, because in competition terms it considers the amendment an unreasonable restriction of competition.

The OPC accepts the amendment of commercial terms and conditions of the operator of Aukro

The Office examined a complaint indicating the possible existence of a horizontal agreement of sellers on the auction server www.aukro.cz. The Office conducted an investigation and, based on an analysis of the findings, it concluded that there was evidence suggesting the possibility that a price agreement had been concluded for one kind of goods sold on Aukro. Given the very small impact of the probable agreement, the Office decided to eliminate the possible unfair conduct by sending

a request to the competitors involved. The competitors responded to the notice immediately by taking note of the contents of the request and refraining from possible anticompetitive behaviour. The Office also decided to negotiate an amendment to the Commercial terms and conditions for the operation and use of the auction system Aukro with its operator, so as to also take into account rules incorporated in the Act on the Protection of Competition.

Organizer rectifies contracts with Christmas punch vendors in city of Olomouc

In an effort to ensure high-quality punch is sold on Christmas markets in city of Olomouc, the company Kulturní Olomouc allegedly obliged vendors when renting them stalls to sell punch for at least CZK 30 per cup bearing the city logo. This was in response to a negative experience from the previous year. However, some provisions included in the contracts raised concerns of the OPC about the compliance of the selected procedure with regulations on the protection of competition.

On its own initiative, Kulturní Olomouc suggested an immediate amendment of the wording of the contractual obligations and submitted amended provisions of the contracts concluded with the stall tenants to the Office before Christmas markets started. The Office concluded that the proposed measure could be considered sufficient since it eliminated the potential market distortion. There were no reasons for the Office to any take further steps in the matter.

Competition rules also apply to the sale of pharmaceuticals

Within the amendment to Act No. 48/1997 Coll., on Public Health Insurance, as amended (hereinafter referred to as "the Act on Public Health Insurance"), the Office advocated a change to the proposed amendment which, among other things, banned the provision of any bonuses or benefits in connection with the dispensing of prescription medicines covered by public health insurance, and imposed significant financial sanctions for any infringement of this ban. In its opinion, the Office emphasized that it considers any legislation prohibiting the provision of any bonuses and benefits in connection with the dispensing of prescription medicines covered by public health insurance to be contrary to the rules for the protection of competition, because it could lead to a significant limitation of price competition between pharmacies. In the opinion of the Office, pharmacies are regular business entities that compete against each other in providing pharmaceutical care in the area of dispensing prescription drugs and non-prescription drugs, and are therefore entitled to use all legitimate methods to attract customers.

A provision (Article 32(6)) was added to the Act on Public Health Insurance under which cash or non-monetary bonuses, benefits and material or non-material gifts may be provided together with a reduction of the health insurance claim arising from the valid payment for the medicine to the relevant health insurance company.

The Office points out that it has been dealing with the market for pharmaceutical care for some considerable time and that it advocates against any restriction of competition between the entities engaged therein. The Office also monitors proposed legislative changes in this area and in the event of their conflict with competition protection norms it responds to them operatively (for example comments within the interdepartmental comment procedure, opinions of the Office on the plans of various chambers, etc.).

Prohibited Agreements

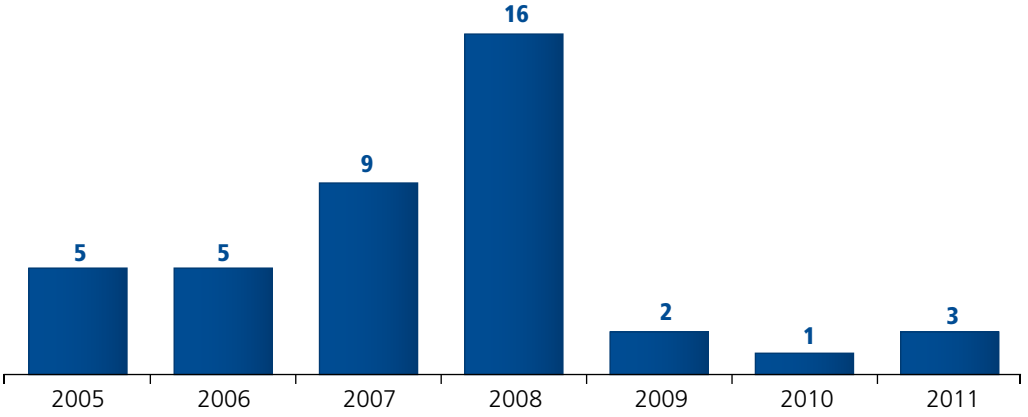
The absolute priority of the Office for the Protection of Competition in terms of investigating illegal practices is cartels. Bid rigging cartels concluded between tenderers in public contracts pose the greatest threat to the Czech economy: they directly drain public funds and harm all consumers (and tax payers). These cartel agreements are based on price fixing and repetitive market sharing, they lead to the elimination of competition between tenderers, to a maximum increase of prices and a significant limitation of competition in the quality of performance.

The existence of a bid rigging agreement can typically make a public contract 10-50 percent more expensive, whereas every tenderer participating in a tender as competitor outside such agreement makes the final performance up to five percent cheaper. Given that approximately 14 percent of gross domestic product, i.e. hundreds of billions of Czech crowns, is invested in public contracts every year, the devastating effects of tender cartels are obvious.

In 2011, a decision entered into force in the matter of a bid rigging agreement between tenderers in a contract for the operation of lodgings of the Military Accommodation and Construction Administration in Litoměřice. The contracting authority in 2006 was the Ministry of Defence of the Czech Republic - Military Accommodation and Construction Administration in Litoměřice. The Office opened the case in 2010 and the total fine imposed amounted to nearly CZK 5 million. Since then, other administrative proceedings have been initiated due to a suspicion that bids for tenders announced by public contracting authorities were coordinated; the most important of these cases should be closed in the first instance in 2012.

Cases initiated on the basis of the leniency programme are investigated in parallel with cases investigated on the initiative of the Office. For the first time in its history, the Office closed cartel administrative proceedings, in which leniency requests were submitted, within the settlement procedure. The Office intends to maintain the trend started in the Henkel case described below and to furthermore adapt to it the contents of the proposed amendment to the Competition Act.

Number of Initiated Administrative Proceedings in the Area of Prohibited Agreements



SELECTED CASES

First use of leniency and settlement in a cartel of cleaning products´manufacturers

(S169/2008) The Office imposed a fine totalling CZK 29.274 million on Procter & Gamble – Rakona, s. r. o. (CZK 23.778 million) and Reckitt Benckiser (Czech Republic), spol. s r. o., (CZK 5.496 million), both manufacturers of cleaning products. Companies from the Henkel Group (the other party in the cartel) received immunity within the leniency programme due to informing the Office of the cartel's existence. In these proceedings, the Office proved that in the course of their regular meetings and communications the tenderers implemented a price increase of some laundry detergents and set out a price range for determining laundry detergent prices, they coordinated and limited the frequency and value of promotional activities, particularly of discounts on laundry detergents, softeners and dishwashing detergents, with the aim of limiting competition in the laundry detergent market, the market for fabric softeners and the dishwashing detergent market in the Czech Republic, whereby they concluded and carried out a prohibited agreement on direct or indirect price fixing, or fixing other commercial terms, leading to distortion of competition in the above markets in the Czech Republic.

This case is very important in terms of the practice of the Office because it is the first case in which the leniency programme was used - both leniency I (Henkel) and leniency II (Procter & Gamble – Rakona, s. r. o., submitted the leniency application during the proceedings and achieved a 50 percent reduction of the fine as a result of fulfilling the conditions) - in parallel with the settlement procedure. Moreover, it is the first case ever to apply the settlement procedure in the matter of a horizontal agreement (cartel). The settlement process was used by all the above-mentioned companies and they were given an additional 20 percent reduction on the fine. Thanks to settlement, no appeals were filed against the decision and it became effective in the first instance on 2 March 2011.

Czech Waste Management Association influenced the market by estimating cost increases in waste management

(S98/2011) In its first-instance proceedings, the Office stated that the Czech Waste Management Association (hereinafter referred to as "the CWMA") adopted and enforced a prohibited and invalid resolution of an association of undertakings on prices which led to distortion of competition in the waste management market in the Czech Republic. Every year, the CWMA would determine, announce, send its members and publish in the media (internet, the magazine Odpady, etc.) the expected percentage increase in waste management costs for the following year. In its decision, the Office stated that the CWMA thereby infringed the Act on the Protection of Competition in the period from 11 November 2004 to 1 October 2008. The Office classified the assessed conduct as one continuous infringement.

The party to the proceedings is a civic association with approximately 110 members operating in the waste management market. The CWMA itself does not actively participate in competition in this market; however, it can affect such market by its activities. Geographically, the market was defined as the territory of the entire Czech Republic. The aggregate share of CWMA members in the above market is approximately 40-65 percent.

For reasons of speed and procedural economy, the Office identified the given proceedings as suitable for use of the settlement procedure. The CWMA subsequently requested the application of settlement and in its final settlement proposal it accepted its responsibility for the given conduct and its legal classification, as well as the duration of conduct. It also confirmed that it had already discontinued the given conduct.

After considering the legal foundations and basic principles for the imposition of sanctions, the fine was set at CZK 495,000. Since the party fulfilled all conditions for settlement, the Office reduced the fine by 20 percent to CZK 396,000. Proceedings were closed within seven months of their initiation. The party did not file an appeal and the first-instance decision of the authority became effective on 26 October 2011.

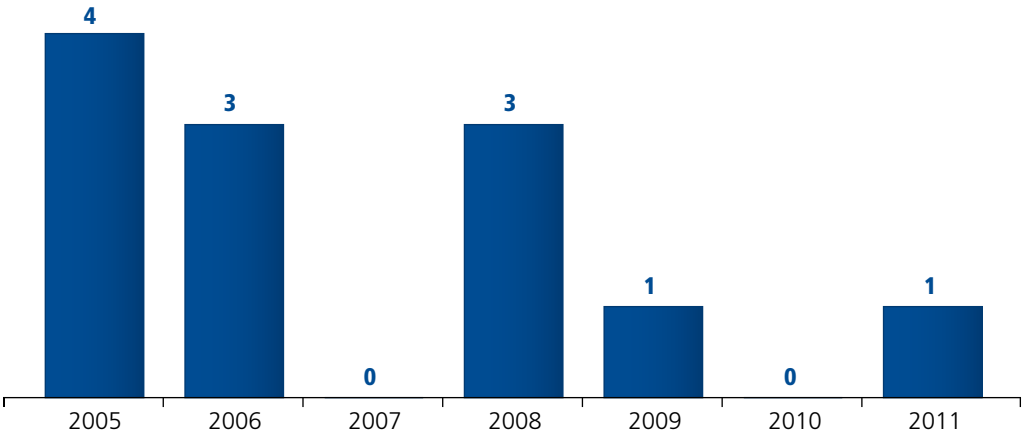
Abuse of Dominant Position

Similarly to other competition authorities, the OPC focuses its supervisory activities on competitors with a strong market position that could abuse their dominant position to the detriment of other competitors or consumers. In addition, stricter rules in terms of competition policy apply to these companies. One of the most serious forms of abuse of dominant position is the attempt to squeeze out competitors from the market.

In these cases, the Office uses economic and econometric market analyses, according to which it identifies the size of a company's market share, the economic and financial strength of its competitors, the degree of their vertical integration and other factors. A correct definition of the relevant market is a necessary prerequisite for resolving a case.

In 2011, the OPC dealt with 171 submissions objecting to abuse of dominant position. It initiated administrative proceedings in one of these cases. The Office is currently involved in three administrative proceedings in this area.

Number of Initiated Administrative Proceedings in the Area of Abuse of Dominant Position



SELECTED CASES

Funeral services market

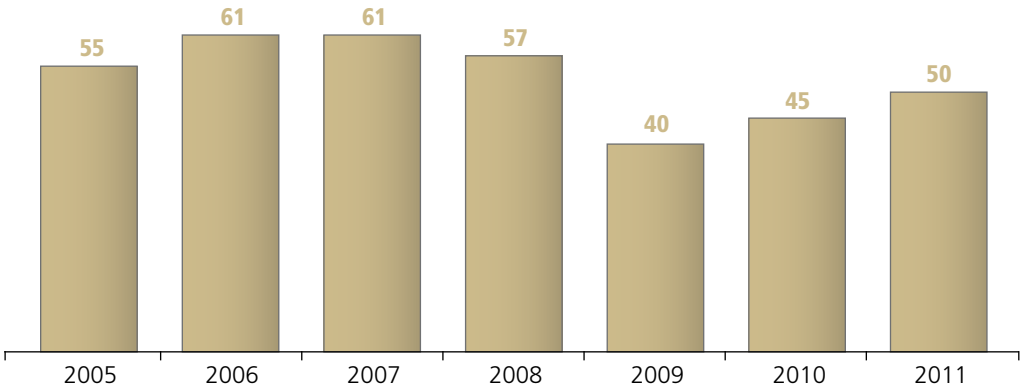
Upon a submission by the funeral services undertaking P. Ú. Musil s. r. o., the Office for the Protection of Competition initiated an investigation into the matter of access to the funeral hall in Vémyslice, Znojmo. The funeral hall is leased exclusively by Funeral Services Mikeš, which refused to admit the complainant to the funeral hall to perform a funeral ceremony.

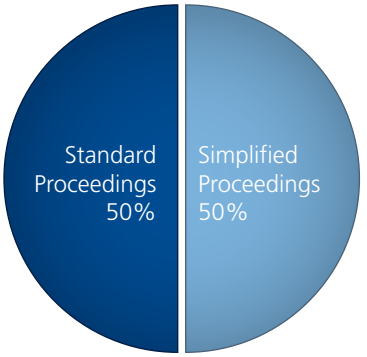
The Office concluded that due to the fact that the funeral hall in Vémyslice is the only one of its kind in the municipality and surrounding area, the tenant has such market power in the local market for services related to the organization of last farewell ceremonies in the civil funeral hall that it allows it to act to a certain extent independently of other competitors and consumers, and that therefore it has a dominant position within the meaning of Article 10 of the Act on the Protection of Competition. Unless there are objectively justifiable reasons to the contrary, it is therefore obliged to allow the complainant access to such a facility under reasonable conditions. The Office came to the preliminary conclusion that such conduct could lead to an abuse of dominant position and it proposed remedies. The tenant prepared a draft price list and draft agreement on access for funeral ceremonies to the local funeral hall, including reasonable and non-discriminatory commercial terms and conditions. Subsequently, the complainant accepted this proposal.

Concentration of Undertakings

In its supervision of concentration of undertakings, the Office for the Protection of Competition monitors whether a merger distorts competition in a given market. When assessing the impact of a merger on the horizontal market and on upstream and downstream markets, the Office applies a more economic approach. The possibility for potential future coordinated conduct of competitors in a given market is also of interest to the Office. The Act on the Protection of Competition sets out the obligation of enterprises meeting certain turnover criteria to announce any planned mergers.

Number of Initiated Administrative Proceedings in the Area of Concentration of Undertakings





In 2011, the OPC issued 51 decisions in the area of control of concentrations. Fifty of these were issued in the matter of merger notifications, while one decision imposed a fine on a competitor due to infringement of Article 18(1) of the Act by carrying out a concentration before submitting a petition to initiate proceedings. Twenty-five merger notifications were assessed under a simplified procedure. In 2011, commitments were accepted in favour of maintaining effective competition in the assessment of the concentration of the following undertakings: Czech Aeroholding/Prague Airport/Realitní developerská / Czech Airlines/HOLIDAYS Czech Airlines/Czech Airlines Handling/Czech Airlines Technics/Czech Airlines Landing Gears/CSA Services.

SELECTED CASES

Concentration of UPC Czech Republic, a. s./ Sloane Park Property Trust, a. s. approved in the second phase of proceedings

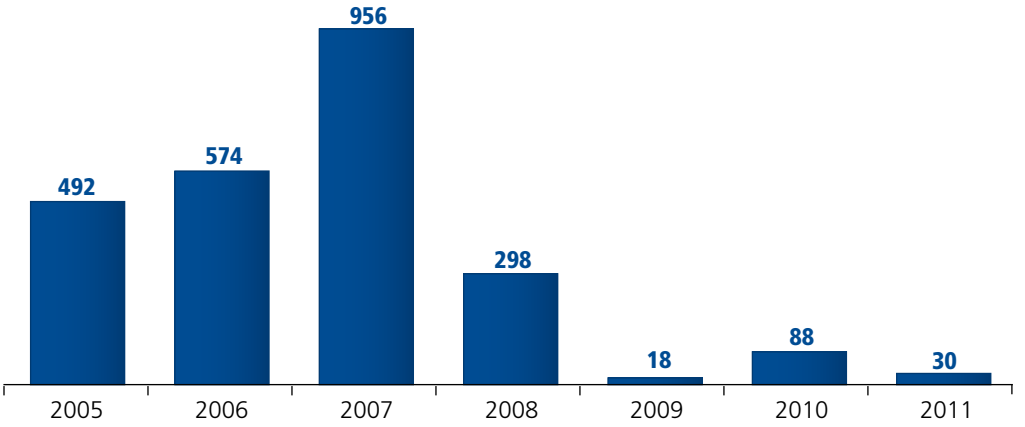
(S353/2010) The Office assessed the concentration of UPC Czech Republic, a. s. and Sloane Park Property Trust, a. s. (hereinafter referred to as "the? UPC" and "the SPPT"), in which UPC originally intended to obtain sole control over SPPT. UPC, as a member of the multinational group Liberty Global, distributes TV and radio signals by cable (cable TV), provides internet access (data services) and telecommunication services in the Czech market. SPPT is a wholesale operator in the Czech Republic providing electronic communication services via optical lines/cables and also provides IP connectivity, Ethernet, WDM, SDH transport, Telehousing and IP transit services to its customers.

Given that the assessed concentration would not result in an increase in market power of UPC in the relevant markets due to a direct increase in market share, the Office focused on assessing the effects resulting from vertical integration. During a detailed investigation in the second phase of the administrative proceedings, the Office found, however, that SPPT is not an entity with significant market power in the markets in which it operates. The Office was also not able to clearly prove any motivation to limit the access to wholesale IP connectivity of competitors in the area of retail internet connection. The Office concluded that if the merged entity attempted to limit access to wholesale internet connection for its competitors in the market for the retail provision of internet connection, it would not be able to effectively compensate the resulting loss of wholesale earnings and profit by strengthening its position in the retail market, since individual retail competitors could switch to other wholesale service providers. Based on a review of all established facts, the Office authorized the concentration of undertakings without commitments because it would not result in any substantial distortion of competition.

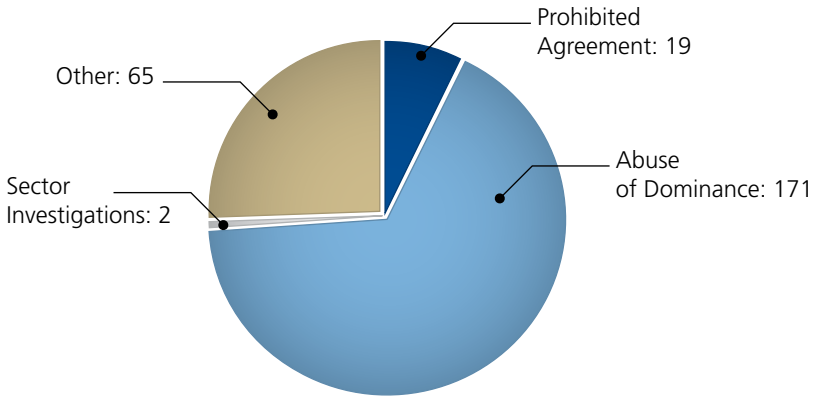
Establishment of Czech Aeroholding approved with remedies

(S178/2011) In a first-instance decision, the Office approved a concentration of undertakings consisting in the acquisition by Český Aeroholding, a. s. (Czech Aeroholding) of exclusive control over České aerolinie, a. s. (hereinafter referred to as "CSA"), Letiště Praha, a. s. - Prague Airport (hereinafter referred to as "PA"), Realitní developerská, a. s., HOLIDAYS Czech Airlines, a. s., Czech Airlines Handling, a. s., Czech Airlines Technics, a. s., CSA Services, s. r. o., and Czech Airlines Landing Gears, s. r. o. The positive decision was, however, subject to the fulfilment of structural and behavioural obligations because concerns regarding distortion of competition in the affected markets were raised during the merger assessment. Concentration occurred in the markets for scheduled and charter passenger flights, the provision of airport infrastructure services, the provision of ground handling services and air maintenance services. The Office was concerned about the potential distortion of competition resulting mainly from the horizontal interconnection of the activities of competitors concentrating in the market for ground handling services and from the vertical interconnection of the activities of the merging competitors, when the undertaking created as a result of the concentration would enjoy a significant position not only in the market of airport infrastructure services, which are necessary for operation in the markets of scheduled and chartered passenger flights, but also in the provision of ground handling and air maintenance services, in which the merging competitors also enjoy a significant position. To eliminate the concerns of the Office, Czech Aeroholding proposed obligations which mainly consisted in the preservation of equal and open access to the infrastructure of Prague-Ruzyně Airport for air carriers as well as for entities providing ground handling services and aircraft maintenance and repair services. Additional obligations stipulated the legal, accounting and personnel unbundling of the operator of Prague-Ruzyně Airport from other activities within the group of the party in the proceedings, furthermore, that the influence of PA and CSA on decisions of the entity Slot Coordination of the Czech Republic be weakened and finally, they required the sale of part of PA represented by the organizational unit Handling. The Office found the obligations to be sufficient in order to maintain effective competition and it approved the concentration under the condition that the obligations would be fulfilled.

Amount of Penalties Imposed in First-Instance (CZK millions)



Submissions Received by Area



Average Duration of Administrative Proceedings in Days

	2001	2002	2003	2004	2005	2006	2007	2008	2009	2010	2011
1st Instance	88	52	90	83	120	272	398	509	353	534	210
2nd Instance	261	228	260	335	325	185	152	299	383	175	214

Appeals and Judicial Review in the Area of Competition

In 2011, the Office for the Protection of Competition received seven appeals against its first-instance decisions and initiated six administrative proceedings, two of which concerned the concentration of undertakings and the remaining four were of a procedural nature. In 2011, the Office issued a total of 17 decisions of second instance; in 12 of them the Chairman Petr Rafaj upheld the decision of first instance. As of 31 December 2011, ten administrative proceedings were still ongoing.

In 2011, 20 lawsuits were filed with the Regional Court in Brno. The court dealt mainly with lawsuits filed in previous years and issued a total of 15 judgments; in eight cases it upheld the second instance decisions of the Office. The Supreme Administrative Court received four lawsuits against a decision of the OPC in 2011; it issued a total of 11 decisions, in six cases upholding the second-instance decision of the Office. In 2011, the OPC definitively terminated 12 lawsuits, of which its decisions were definitively upheld in six cases.

The total amount of fines imposed under second-instance decisions exceeds CZK 27 million, of which CZK 21.884 million were imposed for prohibited agreements and CZK 5.154 million for abuse of dominant position.

SELECTED CASES

The first purely Czech case of bid rigging in Litoměřice property management

(R97,98,101,102/2010) The decision of the Office Chairman Petr Rafaj in the matter of a prohibited bid rigging agreement in the "Litoměřice" case is one of the most interesting decisions during this period. By his decision, the Chairman upheld the decision of first instance (S159/2009) in which the Office declared five competitors culpable of concerted practices in an award procedure concerning public contracts procurement for the operation of lodgings at the operating centres of the Military Accommodation and Construction Administration in Litoměřice. The total amount of imposed fines reached almost CZK 5 million.

According to the Office's findings, after the contracting authority invited five tenderers (parties in the proceedings) to submit their bids, one company drew up bid prices for the other companies and sent them to the others by e-mail. Competitors then submitted bids with prices that exactly corresponded to the "fixed" prices. As a consequence, the contracting authority did not receive bids that were the product of tough competition between tenderers, rather it received coordinated bids whereby competition between tenderers had instead been completely eliminated and the contract was won by a predetermined tenderer. The conduct of parties to the proceeding was therefore entirely againts the rules for public procurement.

The Office therefore classified the conduct of the parties as a bid rigging agreement, i.e. an agreement between tenderers to influence bids. This type of agreement generally combines a price agreement with a market sharing agreement, i.e. the two types of most serious hard-core restrictions of competition, the essence of which is to eliminate competition between tenderers, which undermines the very purpose of a tender. Bid rigging agreements are thus also prohibited by the Office by their very object, regardless of the sizes of the market shares of parties to the prohibited agreement. Therefore, it was unnecessary to perform any economic analyses of the bid price, as was requested by the parties in an effort to prove that the offered prices were not inflated.

One of the most serious objections repeatedly raised by the parties to the proceedings throughout the entire first-instance and appeal proceedings concerned the impossibility of using e-mail correspondence between the parties obtained by the Police of the Czech Republic within criminal proceedings as evidence in administrative proceedings. The parties also challenged the legality of the evidence because it was obtained by the Police during a house search without prior consent of the court. However, according to the Chairman of the Office, this evidence was obtained legally since it was obtained in accordance with procedural regulations valid at the time, and as stated by the Constitutional Court, to the judgement of which the Chairman referred, the effects of annulling a judgement apply to the future, not to actions taken in the past.

The approach of the Office to penalizing bid rigging agreements in the abovementioned decision is also worth some attention. The Office considers these agreements a very serious infringement of the law, and therefore - in accordance with its methodology for the imposition of fines - it takes three percent of the value of sales, i.e. the highest value, as the base value for calculation of the fine. The fine was increased by 20 percent for the company which was "the architect of the cartel" and which sent bid prices to the others.

Detection of prohibited agreements involving bid rigging is one of the current priorities of the Office because the efficient use of public resources is in the general interest of society. It can be assumed that the approach adopted by the Office in the described decision will be followed in other cases of the same type, the increase of which can be expected.

Cartel of chicken breeders

(R138,147-152/2007) The case of a chicken breeder cartel was re-assessed by the Chairman of the Office after the previous decision was annulled by the Regional Court in Brno. Although the Court found in accordance with the Office that the breeders/processors of chickens had agreed a common strategy for pricing chicken for slaughter with the aim of achieving a gradual price increase for their customers, it was not proven that any single competitor had implemented the agreement. Since the additional presentation of evidence did not offer grounds for a contrary conclusion, it was necessary to modify the wording of the statement.

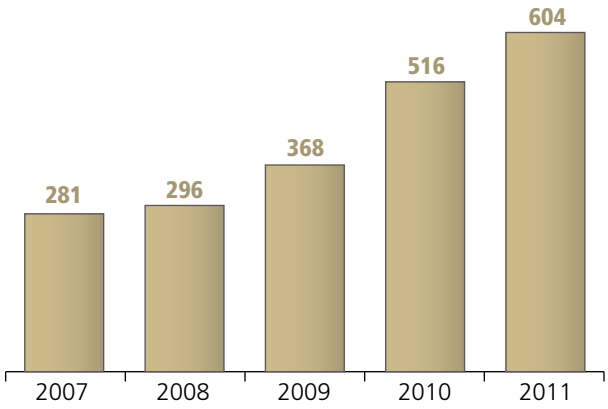
There is factually nothing new in the decision in terms of doctrine; it reflects the unwavering approach of the Office to assessing prohibited agreements by their object, assessing the participation of a competitor in an agreement, the possibility of applying de minimis, the imputability of the conduct of a competitor's employee to the competitor, and taking into consideration the favourableness of a later amendment to the Act on the Protection of Competition (after the amendment of 155/2009 Coll.), or indeed whether the dismal state of the market may be a reason to exonerate the parties.

The decision deserves some attention since in the second instance it increased the fine for one punished competitor. In his decision, the Chairman of the Office concluded - contrary to the first-instance decision - that all parties had deliberately infringed the law, and therefore it was appropriate when imposing fines for an aggravating circumstance to increase them for all parties, which the first instance authority did not do in the case of one party. The Chairman justified the increase of the fine by the need for an equal approach to all parties. In this context, however, it was necessary to consider whether any increase of the fine in the second instance decision infringed the prohibition of reformatio in peius. According to Article 25a of the Act on the Protection of Competition, the Office shall proceed in compliance with the Administrative Code, except for provisions which are expressly excluded from application. The excluded provisions include the provision on the prohibition against changing an appealed decision to the detriment of the appellant. For the sake of completeness, it should be noted that this principle applies in criminal law and that the principles of criminal law are generally applicable in administrative punishment. However, decisions of administrative courts show that the validity of the prohibition of reformatio in peius in administrative punishment may not be inferred without any express provision in substantive law. Where the legislation intended to establish such prohibition it has done so explicitly (for example, the Act on Misdemeanours). According to the administrative courts, it is also not the case that a ban on a change for the worse would be contrary to the principle of legal certainty or ultimately to the principle of a fair trial under Article 6 of the European Convention on Human Rights and Fundamental Freedoms.

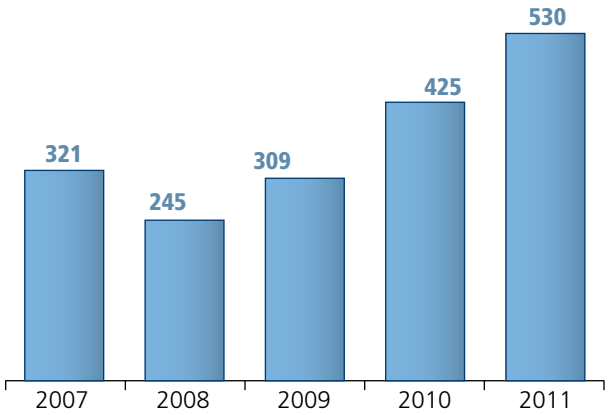
02

PUBLIC PROCUREMENT AND CONCESSIONS

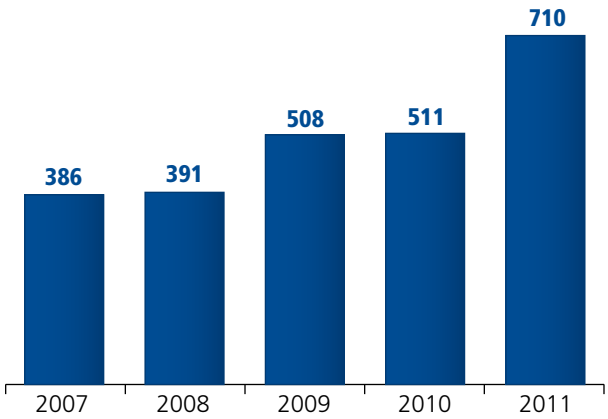
Number of Received Submissions



Number of Initiated First-Instance Proceedings



Number of Issued First-Instance Decisions



Since January 1995, the Office for the Protection of Competition has been supervising the awarding of public contracts with aim of ensuring equal, transparent and non-discriminatory competition and ultimately also to save public funds. The Office decides whether a contracting authority proceeded in accordance with law when awarding a public contract, imposes corrective measures and fines, processes administrative offences and performs other tasks stipulated by the relevant law. The OPC publishes its decisions on its website.

Expenditure allocated through public contracts represents a significant part of public spending and gross domestic product (GDP). According to preliminary statistical data from the Ministry for Regional Development for 2011, the rapid decline in the extent of the public procurement market, which started in 2010 and is probably associated with the impact of government savings measures, continued during this year. The public procurement market declined in 2011 to CZK 496 billion, which represents 13 percent of GDP. The highest value - 16.4 percent of GDP - was reached in 2006.

The lower volume of funds of contracting authorities increases competition among suppliers and significantly affects their behaviour. Statistics from the Public Procurement Section of the Office for the Protection of Competition for the year 2011 are probably linked to such factor. In 2011, the section received a record number of petitions and submissions to initiate administrative proceedings, representing an increase of a quarter compared to the previous year, with the actual number in excess of one thousand. In 2011, the Office issued 710 first-instance decisions, which is a 40 percent increase compared to 2010. The number of imposed fines also witnessed a proportionate increase of 48 percent, while their amount increased significantly (by 157 percent). In contrast, the amount of imposed administrative costs and paid deposits decreased. Another significant increase (by 92.5 percent) is evident in the number of administrative proceedings in which no error of the contracting authority or the supplier was found.

Contracting authorities erred most frequently by setting discriminatory and non-transparent tender terms

and conditions relating to the subject-matter of the contract, by requesting documents unrelated to the subject-matter of the public contract, and by requiring inappropriate qualifications in relation to the complexity, kind and extent of the subject-matter of the contract.

SUPPORT FOR PUBLIC CONTRACTING AUTHORITIES IN CASES OF BID RIGGING

In 2011, the Office for the Protection of Competition initiated the project Education and Transparency of Public Contracting Authorities, which was co-financed from EU structural funds. The project aims to increase the awareness of public officials in public procurement and in matters of prohibited agreements among public procurement suppliers (bid rigging). The project is being realized at several levels: the organization of specialized seminars for public employees, the launch of the website www.otvez.cz with an opportunity for on-line consultation, and the issue of a publication entitled Decision-Making Practices in Public Procurement and Bid rigging. The severity of the problem is also attested by the establishment in 2011 of a new department within the OPC tasked with monitoring public procurement and bid rigging.

Summary of Legislative Changes and Developments in 2011

During 2011, OPC experts contributed to legislative work on amendments to the Act on Public Procurement that will significantly affect public procurement in future.

One amendment comprehensively revising public procurement in the area of defence and security, which was published under No. 258/2011 Coll., with effect from 12 September 2011, was completed. This amendment transposed new EU legislation in this area - Directive 2009/81/EC.

Work continued throughout the year on another extensive amendment which should bring more transparency to public investment. At the end of the year, this amendment was discussed by the Chamber of Deputies and the Senate of the Czech Republic. During discussions on the amendment, the Office proposed and supported solutions that, in addition to the increased transparency of tenders, would lead to a smaller increase in the administrative burden while respecting the structure of the Act and Czech law. In connection with the amendment, which envisages, among other things, a fifty-percent reduction in the limits for small-scale public contracts, it is necessary to count on an increase in the number of public procurement cases investigated by the Office in future.

Some other amendments made in connection with legislative changes in the area of employment and the criminal liability of legal entities have also had a partial impact on the text of the Act on Public Procurement.

Overview of First-Instance Administrative Proceedings Conducted in 2011

Number of proposals received	434
Number of submissions received	604 (320 of which for the bid rigging department)

Administrative proceedings	
Initiated administrative proceedings in total	530
upon proposal	434
ex officio	96

Issued decisions	
First-instance decisions issued in total (including preliminary rulings and dismissed preliminary rulings)	710
Decisions issued on the merits	451
Remedial decisions and penalties	147
No violation found	77
Administrative proceedings suspended for procedural reasons	227
Preliminary rulings	144
Dismissed preliminary rulings	115

Fines	
Number of imposed fines	89
Total amount of imposed fines	CZK 28,815,000

Administrative costs	
Number of imposed administrative costs	64
Total amount of imposed administrative costs	CZK 1,746,000

Deposits	
Amount of deposits paid	CZK 26,977,646
Deposits lapsed to state budget	CZK 5,464,009

SELECTED CASES

First blacklist entry

(S196/2010) Besides a fine of CZK 500,000, the OPC imposed a ban on performance of public contracts for three years on the Ostrava company Stavoenergo, s. r. o. for forgeries used to demonstrate basic qualification requirements in the award procedure for the public contract Baška Sewerage. Stavoenergo submitted documents on indebtedness in which key data did not correspond to reality and which were not issued by the authorities under whose name they were supposedly issued. These consisted of false and untrue confirmations from the Tax Office and the District Social Security Administration purportedly demonstrating the basic qualification of the tenderer. During administrative proceedings, the Office learned that at the given time Stavoenergo had records of tax arrears, social security debt and a debt in its contributions to state employment policy, including penalties for non-payment of insurance premiums. A publicly accessible register of persons banned from performance of public contracts (blacklist) has been maintained by the Ministry for Regional Development since January 2010.

Division of the subject-matter of a public contract

(S351/2010) The city of Brandýs nad Labem-Stará Boleslav divided the subject-matter of a public contract for the basic maintenance of green areas owned by the city of Brandýs nad Labem-Stará Boleslav so that its estimated value fell below the financial limit stipulated by law, and consequently the city did not perform a tender. For committing the above offence, the Office imposed a fine of CZK 100,000 on the contracting authority. The contracting authority has the right to demarcate the subject-matter of a public contract according to its own decision; however, it must always observe the rule banning the division of the subject-matter of a public contract in order that the estimated value does not drop below the financial limits stipulated by the Act on Public Procurement.

Conclusion of contract without a tender

(S21/2010) The Technical High School in Prague 4 committed an administrative offence by avoiding the procedure stipulated by law when concluding contracts for the provision of school and staff catering, and did not perform an award procedure even though according to the estimated value the public contract exceeded the legal limit. This procedure could have significantly influenced the selection of the most suitable bid. Administrative proceedings were initiated ex officio and the Office imposed a fine of CZK 50,000 on the contracting authority.

The investigated case concerned the performance of services for which the contracting authority required a fee and which must be regarded as a public contract even though the fee was paid partly by the contracting authority and partly by other parties (students and employees). In order to determine the estimated value of a contract in those cases where the contracting authority sets out conditions for itself and third parties, the decisive factor is not only the amount charged to the contracting authority for catering, but also the amount paid for catering received by the school catering provider from third parties (students and employees), since this second payment from third parties forms part of the real price paid to the school catering provider for the provision of catering.

First imposition of a ban on the performance of a contract

(S448/2010) The Capital of Prague awarded an over-limit public contract valued at nearly CZK 197 million excl. VAT to T-Systems Czech Republic a. s. for the operation of a metropolitan network in a negotiated procedure without publication without having met the conditions stipulated by the Act on Public Procurement. This procedure on the part of the contracting authority could have signifi-

cantly influenced the selection of the most suitable bid. It also entered into a public contract for the operation of the metropolitan network without the mandatory publication of an announcement of the initiation of tender proceedings. For the above administrative offences, the contracting authority was fined CZK 1.1 million.

In these administrative proceedings, the Office imposed for the first time a ban on the performance of parts of a contract related to telecommunication and data services. The abovementioned parts of the contract became invalid by law. A negotiated procedure without publication, in which only one supplier is contacted and any competition for the contract is thereby fully eliminated, may be used only under extraordinary circumstances specified by law. In this case, the contracting authority claimed that only the selected contractor was able to perform the contract, primarily due to technical reasons as well as reasons of protecting the exclusive rights of T-Systems Czech Republic a. s. However, it is only possible to follow this procedure when there is only one supplier able to perform the subject-matter of the contract. The contracting authority is also obliged to prove this fact. In this case, the contracting authority established Pragonet a. s. in 1996 for the purposes of providing network and data services for the contracting authority. In 2003, this company was taken over by the chosen tenderer, whereby it entered into an agreement at the time of sale with the contracting authority in which the authority undertook not to withdraw for a minimum period of 10 years from any of the nine contracts concluded with Pragonet for an indefinite period, and further promised to extend 14 other contracts concluded for a definite period. In the summer of 2010, the contracting authority awarded the assessed public contract without an award procedure to T-Systems, and justified the necessity to select this particular contractor by the existence of contractual obligations.

A negotiated procedure without publication may be used provided the reasons for its use are objective, i.e. independent of the will of the contracting authority. However, in the investigated case, by following its own procedures the contracting authority found itself in a situation where it had to award the contract to T-Systems, which led to an infringement of the Act on Public Procurement. Nonetheless, according to the findings of the Office, there are at least two other operators in Prague with an optical network which could have been used in the performance of the contract.

The contracting authority can avoid risking a ban on the performance of the concluded contract imposed by the OPC, provided it voluntarily publishes a public notice of its intention to conclude a contract. In the investigated case, the contracting authority did make this formal announcement; however, in the opinion of the Office, its contents do not correspond to the subject-matter of the subsequently concluded framework agreement. Therefore, companies competing with the chosen contractor were not able to learn from the published announcement that the contracting authority intended to conclude a framework agreement for the provision of electronic communication services with the successful tenderer.

Defining the subject-matter of a public contract in detail sufficient for the drawing-up of a bid

(S392/2011) The statutory city of Teplice defined the subject-matter of a public contract for the reconstruction of technology, including an implementation project and modification of a substation facility for powering the trolley-bus overhead contact line of the trolleybus traction Teplice-Prosetice, in a manner causing the submission of mutually incomparable bids. This procedure could have significantly influenced the selection of the most suitable bid. The OPC cancelled the award procedure. In the given matter, the Office investigated whether or not the bid invitation documents gave rise to uncertainty by being objectively open to interpretation in the part describing the subject-matter of

fulfilment, i.e. whether or not the bid invitation conditions were clear, exact, precise and unambiguous in this part. In the description of the subject-matter of performance, the contracting authority used the term "reconstruction of current technology", whereupon five out of the six tenderers produced bids offering to replace the old technology with entirely new technology, while the successful tenderer only tendered to revitalize the technology, i.e. to maintain the existing technology, extend its life and eliminate any shortcomings arising due to the level of technology at the time of the original installation. Evidence showed that the costs of revitalization offered by the successful tenderer were lower than costs associated with the implementation of new technologies, and therefore the successful tenderer was able to submit a lower bid price than the other tenderers.

Contracting authority's qualification requirements

(S60,113/2011) In a public tender for the conclusion of a framework agreement for the provision of data services for the communication infrastructure of public administration information systems, the Ministry of Interior set out a criterion, assessing the period for implementing the service, in violation of the principle of non-discrimination. Also contrary to the law, the contracting authority required the submission of an ISO 27001 certificate for an information security management system in order to meet the technical qualification requirements. In Article 56(6), the Act on Public Procurement provides an extensive list (in contrast to economic and financial requirements) of documents appropriate for demonstrating fulfilment of technical qualification requirements. The contracting authority is not therefore entitled to require suppliers to produce any documents or means of proving fulfilment of qualification requirements other than those listed in the Act. Therefore, the procedure of the contracting authority could have significantly influenced the selection of the most suitable bid. The OPC cancelled the award procedure and also stated in its decision that awarding more points for implementing the service in a shorter time clearly unjustifiably favours current suppliers, for whom it might be supposed that such time would be shorter than the implementation time of other tenderers. Moreover, the criterion assessing the duration of the implementation of the service did not pursue objective facts that could justify any special importance for the performance of the service. The duration of the implementation of the service could, however, affect the bid price of those tenderers that are not currently service providers.

Expertise of members of the evaluation committee in relation to the subject-matter of a public contract

(S67/2011) When assigning a public contract for the construction of the centre of the municipality, the municipality of Smržice did not establish the evaluation committee so that at least one third of its members would possess relevant expertise in relation to the subject-matter of the public contract. Since in the investigated case the evaluation committee was not established by the contracting authority in accordance with the Act on Public Procurement, the OPC cancelled all actions taken by the authority in the given award procedure.

According to the Office, it clearly follows from Article 74(3) of the Act that it is necessary to ensure the relevant expertise of the evaluation committee if the subject-matter of a public contract consists of activities so specific that professional education or experience in a field directly related to activities performed in the implementation of the public contract are indispensible for properly assessing and evaluating bids. From the point of view of the Office, such necessity is particularly clear in the case of public tenders for construction work, where the bid must be evaluated, for example, in terms of the technological processes used, the quality of the used materials, the construction schedule, etc.

Extremely low bid price and its assessment and evaluation by the evaluation committee

(S110/2011) Following a petition from AZIMUT CZ s. r. o., the OPC led administrative proceedings against the Ministry of Agriculture and the Land Office Znojmo in the matter of the public contract entitled Simple Landscaping - Clarification of Allocation - Determination of Land Boundaries in the Cadastral Territory Kyjovice, and investigated the matter of an extremely low bid price and its assessment and evaluation by the evaluation committee. After examining the objections of the petitioning party and the opinion of the contracting authority, including documentation on the given public tender, the Office did not find grounds for the imposition of any corrective measure and dismissed the petition.

According to the Office, comparing the bid price of AZIMUT CZ s. r. o. with the prices of other tenderers is only one guide to drawing conclusions regarding the existence of an extremely low bid price. The institution of extremely low bid price is defined in Article 77 of the Act, where it states that the evaluation committee assesses the bids of tenderers in terms of the fulfilment of tender specifications, when it shall also assess bid prices in relation to the subject-matter of the public contract. If the evaluation committee concludes that a certain bid contains an extremely low bid price in relation to the subject-matter of the public contract, it shall request the tenderer to produce a written explanation of those parts of the bid critical for determining the bid price.

Cancellation of award procedure

(S41/2011) The statutory city of Liberec cancelled its award procedure for the revitalization of Soukenné náměstí without having encountered any significant reasons during the procedure that would have prevented requiring the contracting authority to continue in the award procedure. This procedure could have significantly affected the selection of the most suitable bid; however, no contract was concluded. The contracting authority committed an additional administrative offence by not dealing with the objections of SYNER, s. r. o., in accordance with the law. As a remedial measure, the Office cancelled the decision of the contracting authority to cancel the given award procedure, and it imposed a fine of CZK 100,000 and an administration fee of CZK 30,000 on the contracting authority.

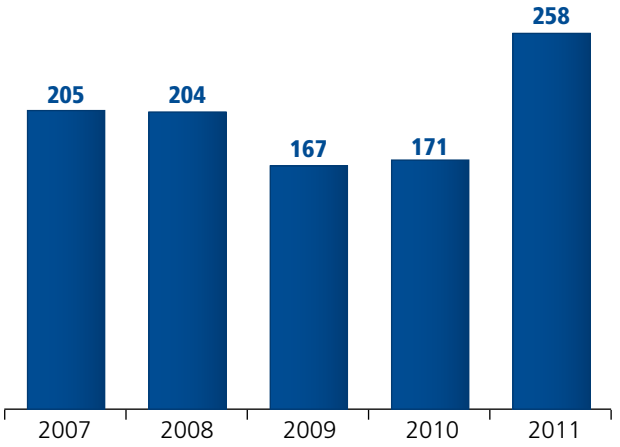
The statutory city of Liberec stated as the main reason for cancellation of the award procedure the lack of funds due to an unapproved budget for 2011. However, according to the decision of the OPC, such justification may not be considered a reason worthy of special consideration occurring during the award procedure and due to which it would not be possible to require the contracting authority to continue in the award procedure. In general, reasons for cancellation of a public tender may be a lack of funds necessary for the performance of the public contract where the occurrence of such situation was exceptional, unforeseen, and occurred during the award procedure itself.

Appeals and Judicial Review in the Area of Public Procurement

A significant statistical increase is also evident in appeal procedures and judicial reviews. In 2011, 258 appeals against first-instance decisions were filed, which is a 50 percent increase compared to the previous year. The number of second-instance decisions issued was 242; in 80 percent of them the Chairman Petr Rafaj upheld the first-instance decision of the Office.

The number of lawsuits filed with the courts in 2011 likewise experienced a 50 percent increase. The Regional Court in Brno and the Supreme Administrative Court issued a total of 38 decisions; 65 percent of which upheld the decision of the Office for the Protection of Competition.

Number of Filed Appeals



Overview of Second-Instance Administrative Proceedings and Judicial Reviews in 2011

Appeals		
Appeals against first instance decisions		258
Unfinished appeals initiated in 2011		103
Issued decisions on appeals filed in 2011	upheld	127
	dismissed	28
Decisions on appeals from 2010 issued in 2011	upheld	67
	dismissed	20

Judicial review		
Number of lawsuits filed in 2011		36
Number of definitively closed court proceedings in both instances in 2011	upheld	23
	canceled	15
Success rate of OPC in judicial review		65,2%

03

SIGNIFICANT MARKET POWER

For two years now (since 1 February 2010), the Office for the Protection of Competition has been monitoring observance of the Act on Significant Market Power in the Sale of Agricultural and Food Products and Abuse thereof.

In 2011, the OPC issued its first decisions in which it found an infringement of the Act on Significant Market Power in the matter of infringement of provisions relating to due dates, discounts and fees for the assignment of receivables to third parties. Kaufland, which was given a fine of CZK 13,628,000 by the Office, appealed the decision and the case is being reviewed within second-instance proceedings.

Administrative proceedings with Ahold were suspended by the OPC because it had found the obligations proposed by the party sufficient to ensure the remedy of the detrimental situation and had accepted them.

In three other administrative proceedings initiated in 2011 with Lidl, Globus and Tesco, the Office is continuing administrative actions which should lead to the issue of administrative decisions during 2012.

In 2011, the Office dealt with 57 submissions relevant for initiating administrative proceedings.

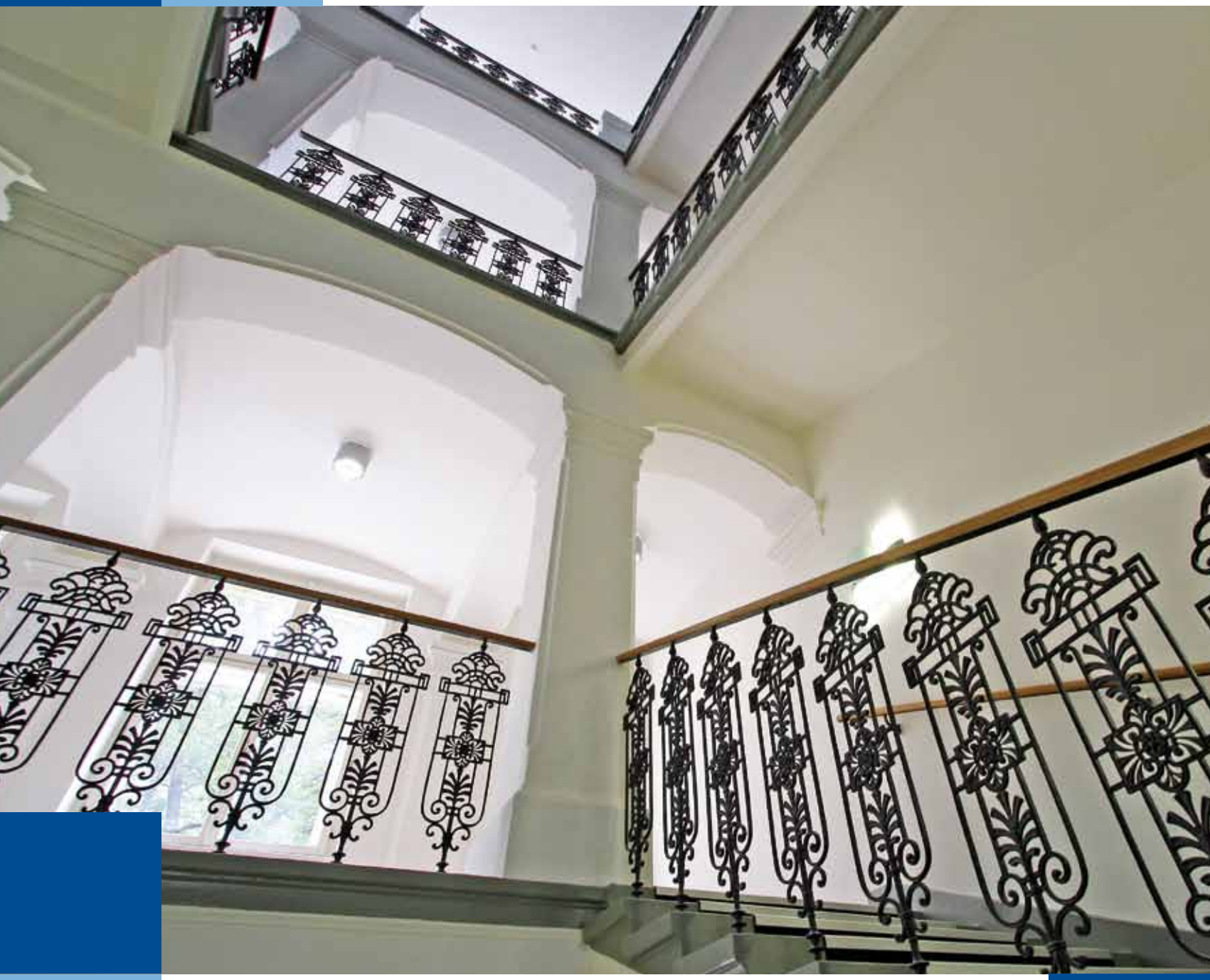
During 2011, experts from the Office actively participated in preparations for an amendment to the Act on Significant Market Power so that it better addresses the needs of recipients. Representatives of the Office participated in discussions of interdepartmental working committees and in finalizing legislative comments on the given proposal. There is a genuine expectation that the new legal regulations may be approved in 2012.

Experts of the OPC regularly participate in meetings of the Food working groups of the Directorate General for Competition of the European Commission in Brussels. Outputs from these meetings form the basis for determining the rules within the European Union. The ambition of the European Commission in this area is at least to unify the opinions of Member States.

Appeals and Judicial Review in the Area of Significant Market Power

In 2011, the Office for the Protection of Competition received one appeal in the area of significant market power and launched an administrative proceeding which have not yet been closed.

No lawsuit was filed with and no decision was issued by the Regional Court in Brno or the Supreme Administrative Court in the area of significant market power.



04

STATE AID

The Office for the Protection of Competition performs central coordination, advisory, consulting and monitoring activities in the field of state aid, and does so in all areas with the exception of agriculture and fisheries. The Office works primarily with state aid providers in the preparation of notifications to the European Commission (hereinafter referred to as the "Commission") as well as during proceedings before the Commission. In accordance with the relevant EU regulations, the Office submits to the Commission an annual report on existing aid schemes, issues opinions on submissions of the provider made before the initiation of and during proceedings before the Commission, and it is also the administrator of the central register of de minimis aid.

In early 2011, the European Commission initiated a review of six major projects of the Operational Programme Research and Development for Innovation with respect to the presence of state aid in its public funding. The Office participated not only in numerous negotiations in this matter between representatives of the Czech side and the European Commission, but also, in cooperation with the Ministry of Education, Youth and Sports, it was involved in developing the argumentation for the compliance of the provision of subsidies to the abovementioned projects with the rules for state aid. The result of these activities was the approval of a financial contribution from the European Regional Development Fund for all six major projects.

The Office also cooperated with the Ministry of Labour and Social Affairs in implementing the activity entitled Czech and European Legislation on the System of Social Services, Including their Funding in the Context of Orienting Services towards the Public Interest, specifically as part of the individual MLSA project Support for Processes in Social Services. This cooperation included commenting on two analytical legal studies in the field of social services, representation on the expert panel created to discuss the outcomes of the analyses, and also participating at the final round table, where the considered analyses and their divergent opinions were presented and discussed by the forum, and conclusions taking into account the raised objections were summarized. In terms of state aid, this discussion was particularly beneficial in formulating a clear recommendation to providers not to provide aid in social services under the de minimis aid scheme, but to use other tools permitted under current EU legislation, particularly for those services of general economic interest.

To deepen knowledge of state aid, the Office organized a number of educational activities in 2011. Foremost in this regard was the traditional Spring Conference on Current Issues in State Aid, at which speakers were not only national experts in state aid, but also representatives of the European Commission and the Permanent Representation of the Czech Republic to the European Union in Brussels. Part of the St. Martin Conference organized on the occasion of the 20th anniversary of the Office for the Protection of Competition also focused on the issue of state aid. The State Aid Department's training of towns and municipalities in eight regions of the Czech Republic should also be regarded as an equally significant activity. Training focused mainly on small-scale aid, the central register of de minimis aid, and services of general economic interest. As part of these educational events, towns and municipalities were able to learn about the practical application of the aid rules in those cases they deal with most frequently. This educational campaign was followed up by a change in the relevant websites of the Office, which were supplemented with practical tips and instructions for state aid providers.

Moreover, it is the information awareness and knowledge of providers to which we can attribute the decrease recorded by the Office in late entries to the central register of de minimis aid compared to

2010. In 2011, 600 errors relating to late entry in the register were found. A total of 29 administrative proceedings were initiated, 31 administrative decisions were issued and 17 fines in a total amount of CZK 197,700 were imposed.

Statistical Data on State Aid

Opinions on the subject of state aid issued for providers/beneficiaries	601
Pre-notifications, notifications, communications under block exemption	39
Complaints submitted to EC and related agenda	9
Comments on draft legal regulations in the Czech Republic and government documents	91
Participation in EU advisory committees and European Commission meetings concerning notified cases	29

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

Initiated proceedings	29
Decisions issued	31
Number of imposed fines	17
Amount of imposed fines	CZK 197,700
Fines paid according to the Czech National Bank statement	CZK 196,700

Legislative Changes

CZECH REPUBLIC

During 2011, an amendment to Act No. 215/2004 Coll., Amending Certain Relationships within the Area of State Aid was prepared on the basis of findings resulting from the operation of the central register of de minimis aid, which has now been running for almost two years. The main change primarily contains clarification of the definition of the date of small-scale aid provision, which limits the provider's discretion when setting this date to certain prescribed forms (Article 2d). Another change includes the specification of information required from the provider under the obligations to report on state aid provided in the previous year (Article 5(1a)). The amendment is expected to become effective in the first half of 2012.

EUROPEAN UNION

A public consultation and multilateral meeting of Member States were held in connection with the preparation of new rules for state aid in the area of support for film and other audiovisual works, and in the area of the introduction of broadband networks. Opinions and comments of Member States

and interested parties presented during these events shall form the basis for the European Commission in drafting new rules for the above areas.

In the shipbuilding industry, a new Framework on State Aid to Shipbuilding was adopted in 2011 which extends and simplifies the rules for the provision of state aid for innovation relating to the construction of floating and moving offshore structures and it also extends the scope for the application of rules to new specialized market segments, i.e. aid for shipyards or for ship owners in the case of export credit. The validity of the new framework was limited to two years from 1 January 2012 to 31 December 2013. After this date, the European Commission expects that the rules governing provision of state aid for innovation in shipbuilding will be incorporated into the new version of the Community Framework for State Aid for Research, Development and Innovation, and that regional aid for this area will be incorporated in the prepared rules for the provision of regional aid.

A reform of the rules regulating the provision of compensation for the performance of services of general economic interest was passed during 2011. The result is a package of three legal regulations that came into force on 31 January 2012. Among other things, the newly adopted rules clarify the basic terms related to services of general economic interest, they introduce a more accurate methodology for determining the amount of compensation, including reasonable profit, the requirement to introduce an incentive for increasing the efficiency of compensation mechanisms, the requirement for compliance with the EU rules for public procurement, and for equal treatment of providers of the same service when determining compensation. Furthermore, the limit for applying the EC decision on the application of Section 106(2) of the Treaty on European Union to state aid in the form of public service compensation granted to certain enterprises authorized to provide services of general economic interest was set for EUR 15 million. The turnover of the compensation recipient is no longer relevant. The notification requirement does not apply to hospitals and social services for which the limit for compensation is unrestricted. In spring 2012, the European Commission is expected to adopt a regulation establishing de minimis aid for enterprises providing services of general economic interest. According to the proposal of December 2011, it would be possible to provide de minimis aid of up to EUR 500,000 to such enterprise for any three-year period.

IMPORTANT CASES

Programme for reduction of air pollution in heavily affected areas of the Moravian-Silesian Region

On the basis of European Union guidelines on state aid in environmental protection, the European Commission approved state aid in the amount of CZK 6 billion for projects aimed at reducing air pollution in heavily affected areas of the Moravian-Silesian Region. The Commission concluded that the given scheme was in accordance with rules on state aid. Funds will be provided on the basis of an open and transparent tender procedure, effectively ensuring the lowest level of aid necessary for achieving environmental benefits to companies that increase the level of environmental protection in areas where no EU regulations apply, or where the achieved results exceed such regulations. The state aid scheme is part of the Operational Programme Environment, and Czech authorities intend to provide subsidies for existing or new facilities intended for the reconstruction of non-combustion sources so that pollution is reduced below current pollution limits or - where no such limits have been introduced – so that the level of environmental protection is increased. Given that the scheme focuses on non-combustion sources, it is available to enterprises in sectors such as the manufacture

of coke and refined petroleum products, the manufacture of basic metals and the supply of electricity, gas, steam and air conditioning.

Extension of Aid Programme to the amount of EUR 500,000 under the temporary framework for applications received by providers by 31 December 2010

On 6 April 2011, the European Commission approved the extension of the applicability of the Aid Programme to the amount of EUR 500,000, which is provided under the Temporary Union framework for State aid measures to support access to finance in the current financial and economic crisis (2011/C 6/05). The basic condition for use of the approved programme was to have delivered the application for subsidy submitted to the provider within this scheme by 31 December 2010. The provider had the opportunity to process these applications on the basis of the above approved programme during 2011, and to issue, under the conditions set out in the original decision of the European Commission No N236/2009 Czech Republic – Limited amounts of compatible aid under the Temporary Framework, a legal act on the provision of aid according to the conditions and requirements of EC decision No N236/2009. The programme was not therefore intended for receiving new applications for subsidies within the Temporary Framework in 2011, but only for completing the administration of applications already received within this scheme (it was widely applied, especially in the well-known Green Savings Programme).

Grant System of Prague in culture and the arts for the Years 2010-2015

In June 2011, the European Commission approved the Grant System of Prague in Culture and the Arts for the Years 2010-2015, which supports cultural activities and their accessibility for Prague's residents and visitors. Within the Grant System, aid will be granted in the areas of theatre, music, dance and nonverbal arts, the visual arts, photography and new media, literature (with the exception of periodicals having supra-regional or national reach), audiovisual art and other areas, including multidisciplinary projects and audiovisual works.

The Grant System was assessed by the European Commission to be a measure establishing state aid in the sense of Article 107(1) SFEU, and was declared compatible with the internal market under Article 107(3d) SFEU. In its decision, the Commission also stated that any distortion of competition resulting from the measure in question and its impact on business will most likely be limited for most activities. The budget of the given measure will be divided among a large number of projects in seven different areas of art, and therefore it is unlikely to significantly affect the market. Prague decided to support projects related to audiovisual arts within the de minimis scheme.

Appeals and Judicial Review in the Area of State Aid

In 2011, the Office for the Protection of Competition received eight appeals against its first-instance decisions on state aid and initiated eight administrative proceedings, two of which were not closed this year. In the field of state aid, 15 second-instance decisions were issued in 2011, in two of which the Chairman upheld the first-instance decision of the Office. The total amount of fines imposed on the grounds of second-instance decisions reached CZK 90,000.

In 2011, no lawsuit was filed with the Regional Court in Brno or the Supreme Administrative Court in the field of state aid and no judgment was issued in this area.

ÚŘAD PRO OCHRANU
HOSPODÁŘSKÉ SOUTĚŽE

05

INTERNATIONAL RELATIONS

The establishment and development of contacts with foreign institutions and authorities with similar scopes of competence play an important role in the activities of the Office. Maintaining international relations and cooperation is beneficial particularly in terms of the exchange of experience and knowledge acquired within the decision-making practice of competition authorities. Cooperation with other countries takes place at multiple levels - from bilateral relations with individual partner institutions to close involvement in the collective institutions of the European Union. It is not only members of top-level management of the OPC who are involved in such activity: virtually all expert employees of the Office participate.

The most intensive cooperation traditionally takes place in the area of competition, particularly thanks to the targeted effort of the European Union to achieve a high level of coordination and integration in the enforcement of competition rules.

European Union

Since 2004, the key area for cooperation between the European Commission and competition authorities from EU Member States has been the European Competition Network (ECN). This network operates on the basis of multilateral communication among members, and has a number of working groups and sectoral subgroups operating within its activities.

The priorities for the activity of the ECN are determined at the meeting of the heads of national authorities led by the Director General for Competition of the European Commission and the Commissioner responsible for competition policy, and also at the plenary meeting of the ECN. Projects originating from the work of individual working groups were approved at the meeting of heads of competition authorities in 2011. Considerable attention was also paid to issues of transparent and due process, as well as problems in the food sector, in which some negative effects have come to light that are difficult to solve using current competition rules.

Among the working groups, the Cartel Working Group was very active, particularly in its intensive work on the project for leniency programme convergence. As a part of this project, issues such as the methodology for allocating so-called "markers" to leniency applicants, the question of access to administrative files in leniency cases, and the issue of joint leniency requests, are all dealt with in detail.

The Merger Working Group was preparing soft-law materials to facilitate and improve cooperation between national competition authorities in cases of mergers approved by competition authorities in multiple Member States (multi-jurisdictional mergers). The document, which deals in detail with information exchange methods in the abovementioned type of merger, was approved after a public discussion and was published in November 2011 as Best Practices on Cooperation between EU National Competition Authorities in Merger Review.

The Working Group on Cooperation Issues and Due Process was primarily engaged in preparing and testing the new information infrastructure for communication between members of the ECN.

Projects focusing on the comparison of investigative and decision-making competences of national competition authorities also continued.

The use of investigative techniques in securing digital evidence of anti-competitive conduct has undergone rapid development in recent years. A reflection of this trend is the activity of the Working Group on Forensic IT, since the ability to obtain and secure information and evidence in digital form has proven crucial for investigating any cartel case. A number of meetings have also taken place in sectoral subgroups for food, banking and telecommunications, etc.

One of the most significant one-off events in the European area is the European Competition Day, organized by the Member State that holds the Presidency of the Council of the European Union. In 2009, it was organized by the OPC in Brno under the Czech Presidency. The first competition day in 2011 was organized in May by Hungary, which presented to delegates the topic of the right to due process and competition law convergence. Discussions mainly centred on those areas of competition law in which it is appropriate to promote further convergence. The conference was opened by the Commissioner for Competition, Joaquin Almunia, while the Director General (DG COMP) of the European Commission Alexander Italianer was also present, as well as a number of heads of competition authorities from EU Member States. The aforementioned senior figures in European competition law were also present at the second European Competition Day, held in November in Poznan, Poland. The main topic of the conference was the relationship between competition and consumer protection, and therefore the topics dealt with included the method for calculating damages suffered as a result of anticompetitive conduct and whether protection of competition always has a positive impact on consumers.

ICN

One of the most important global events in terms of competition law is the annual conference of the International Competition network (ICN), which is a platform for cooperation of antitrust authorities from around the world. Last May, representatives of the OPC attended a meeting in The Hague, Netherlands. In addition to the regular summary of the activities of working groups in the area of cartels, mergers, unilateral conduct, competition advocacy or agency effectiveness, with their numerous accompanying panel discussions, a special project concerning the relationship between competition enforcement and consumer welfare was launched.

OECD

In 2011, the meetings of the Competition Committee of the Organization for Economic Cooperation and Development (OECD) were once again held in Paris. The February meeting of the Global Forum on Competition, which is the traditional get-together of all the representatives of competition authorities, addressed the issue of cartels in public procurement and showed that the OECD has lately been focusing on a general vision for competition policy in which the application of competition law

is reflected in its broader context and other economic interests of the state are given greater weight. During the February meeting, the "digital economy" project was launched. This seeks to analyze potential competition problems in the field of modern communication technologies.

In June 2011, representatives of the OPC participated in discussions on corrective measures and the application of the de minimis rule in the concentration of undertakings, and they took part in the discussion on the complex issue of assessing the impact of decisions on a concentration of undertakings. An important item on the Paris agenda was also the support for implementing a competition law compliance programme as an effective preventive means of competition law enforcement.

During the autumn meeting of the OECD Competition Committee in October 2011, representatives of the OPC presented an annual report on the development of competition law and policy in the Czech Republic and participated in a round table discussion on the issue of public services. Other topics discussed included the continuation of the "digital economy" topic and the role of competition authorities in the legislative process.

CECI

The Czech Office for the Protection of Competition also plays an active role in the CECI (Central European Competition Initiative), members of which are the Czech Republic, Hungary, Poland, Slovakia and Austria. At the March meeting in Warsaw, the Chief Economist of the Office Milan Brouček presented a paper summarizing economic theories on vertical pricing agreements, which was substantiated by case studies from OPC practice.

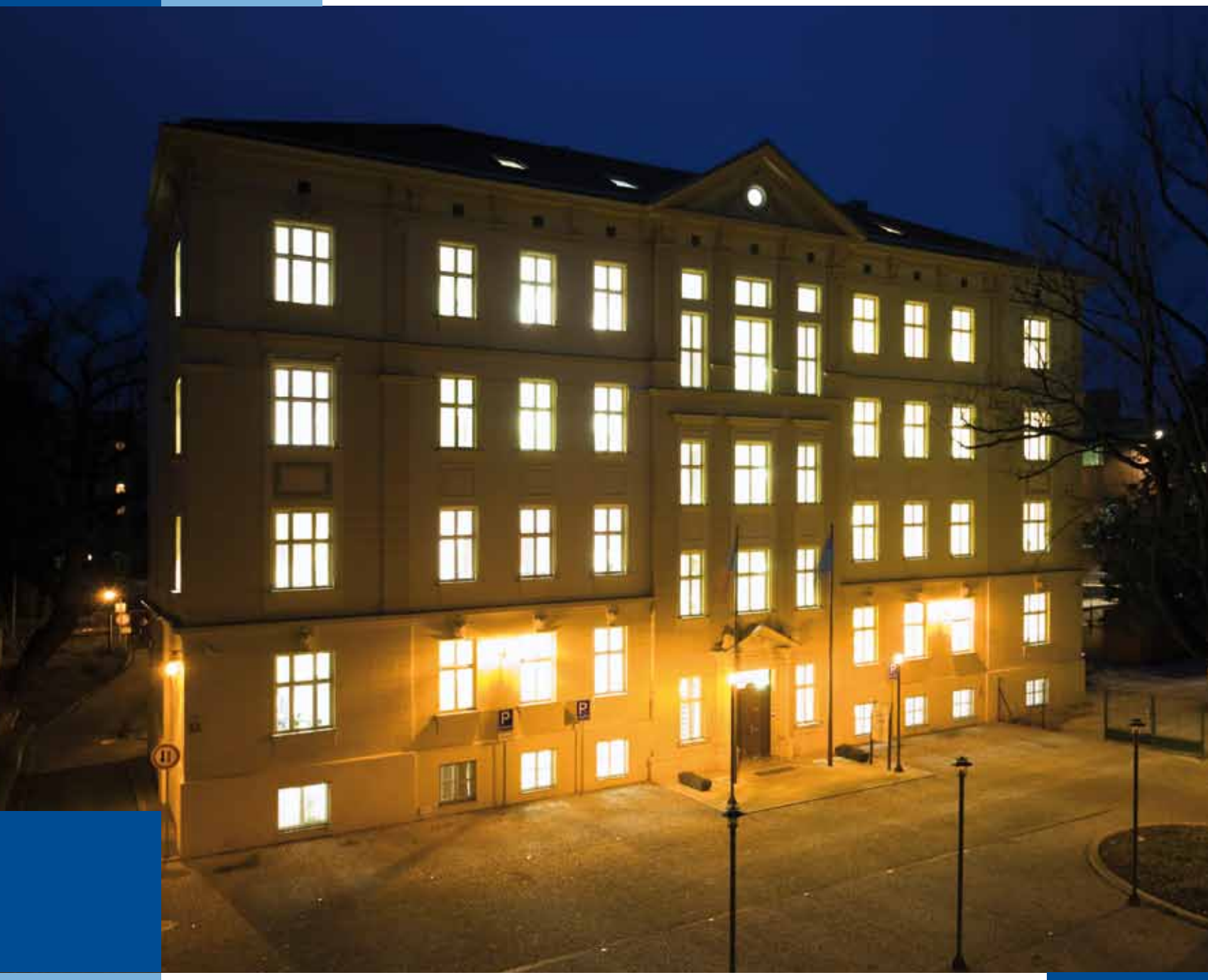
Cooperation in Public Procurement at the EU Level

In early 2011, the Office drew up its comments and suggestions for the Green Paper on the modernization of EU public procurement policy. The Commission published results of its comprehensive review of the efficiency and cost-effectiveness of current European public procurement rules in June 2011. They indicate that following the implementation of directives, costs decreased by 4 percent and that savings amounting to EUR 20 billion were made throughout the European Union. The European Commission also published data showing that public authorities spend approximately 18 percent of EU GDP on goods, services and works. There can be no dispute, therefore, that public expenditure is or could be an important factor for economic growth. In the Czech Republic alone, the Ministry for Regional Development estimates the allocation of public funds to be approximately CZK 500 billion a year.

Bilateral Relations

The Czech competition office traditionally enjoys very close ties to its Slovak counterpart. In 2011 too, several mutual visits took place. In March, the Vice Chairman of the OPC Michal Petr had a meeting in Bratislava with the Chair of the Antitrust Office of the Slovak Republic Danica Paroulková on cooperation with sectoral regulators, the performance of sector investigations and the application of leniency and settlement. They also discussed several specific ongoing cases. Nor was close cooperation affected by the arrival of new management at the Slovak Antitrust Office when Tibor Menyhart was appointed its new Chairman in autumn 2011. The Chairman of the OPC Petr Rafaj met his new colleague in November in Brno on the eve of the St. Martin Conference. Their discussion focused particularly on how both offices are organized and the efficiency of their work. A further meeting of departmental heads took place in Bratislava in the same month, at which the revision of competition laws in both countries and criminal liability for anticompetitive offences were addressed.

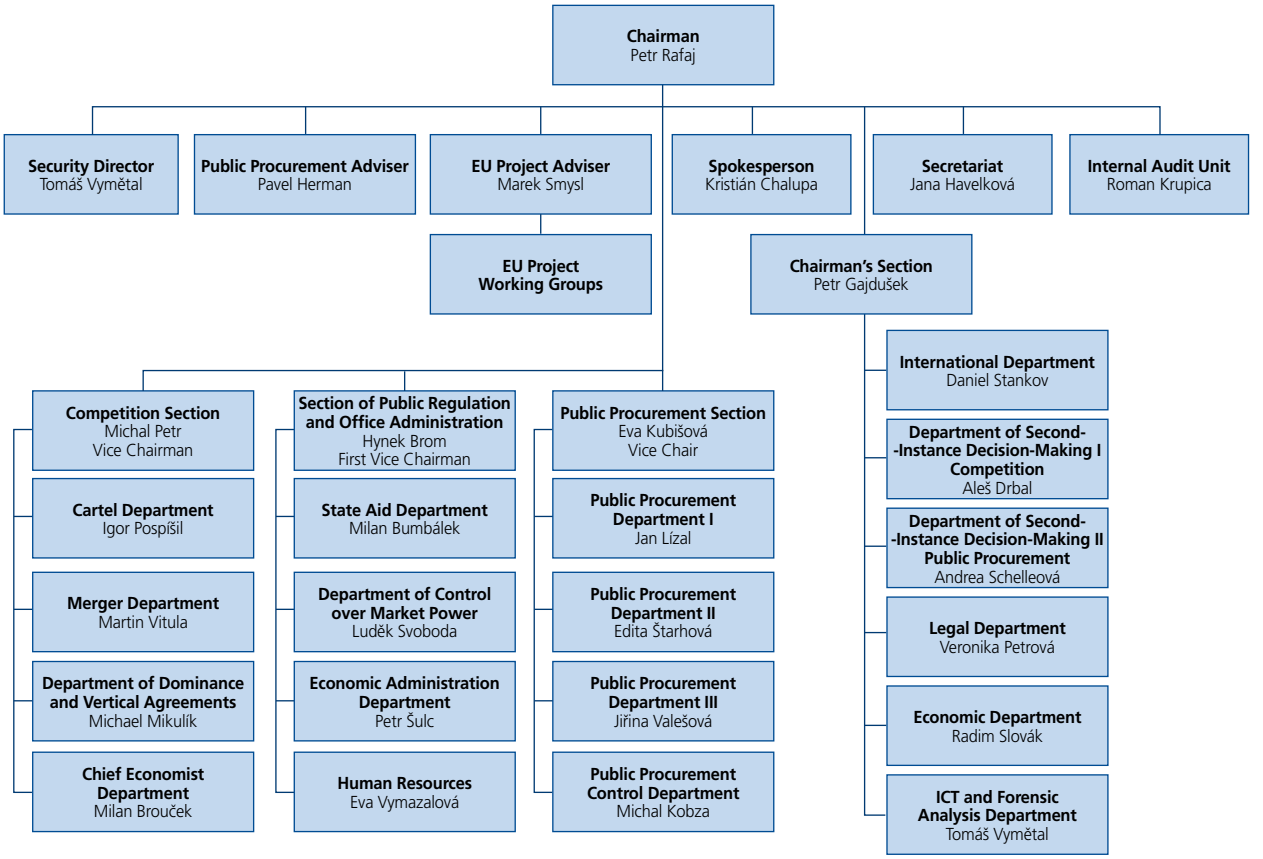
The OPC also maintains friendly relations with competitive authorities from emerging economies, both as part of the United Nations Conference on Trade and Development (UNCTAD) and at the bilateral level. In March 2011, representatives of the OPC participated in a conference organized to mark the 10th anniversary of the introduction of competition law in Armenia. In his speech in Yerevan, the Vice Chairman of the OPC Michal Petr concentrated largely on the challenges faced by an antitrust office which has taken its initial steps and is now entering "middle age". In the summer of 2011, staff of the Competition Council from the Turkish Republic of Northern Cyprus participated in a multiple-day internship at the OPC. They became thoroughly familiar with the functioning of the Office and its competences, particularly in the area of state aid.



06

HUMAN RESOURCES AND INFORMATION ACTIVITIES

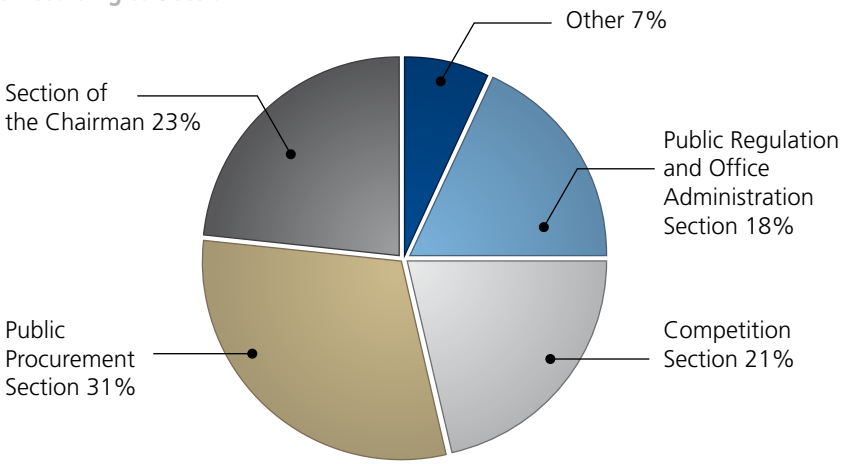
Organizational Structure as of 31 December 2011



The OPC is aware of the need to invest in skilled employees and therefore it pays special attention to human resources. 2011 was a year of major changes for the OPC, not only at an organizational level, but at the personnel level too. The long and detailed preparation for the amendment to the Act on Public Procurement, containing a considerable quantity of significant changes, was accompanied by an increase in the number of employees. The limit of permanent employees increased from its original figure of 126 to 153, 12 other staff are employed in various projects, on which six employees have also been contracted to work overtime. New employees have primarily been taken on by the Public Procurement Section, which is currently the largest section of the OPC, employing 31 percent of the total workforce. The employee base has therefore expanded significantly in 2011; young graduates in particular have joined its ranks and have entered the OPC with a wide range of expertise and skills. As in the previous year, two thirds of employees in 2011 fell into the age category 25-40; the average age of OPC employees is 36. The recruitment of new employees will continue in 2012, partly related to the planned physical expansion of the Office.

If the OPC is to continue to increase its efficiency, it must have a long-term and clear objective in the area of human resources. 2012 will therefore see the continuance of projects funded from EU

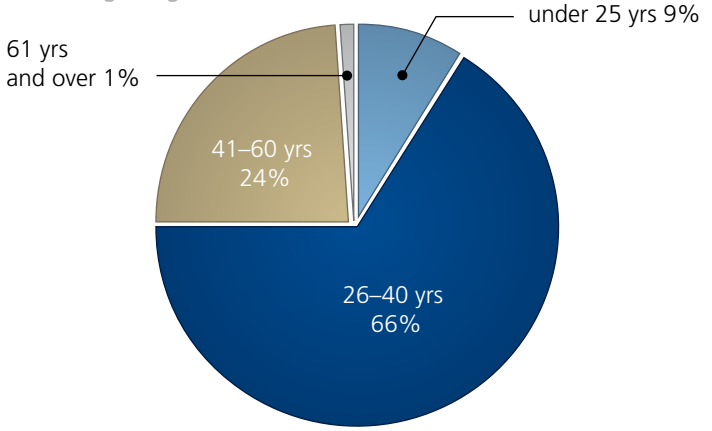
Division of Employees According to Section



structural funds that have been implemented since 2010 and which have focused on developing the organization and set-up of a new system of work with employees. These projects focus particularly on the education and development of employees, and also include the preparation of a new educational model that has been shaped to meet the requirements and suggestions of key OPC personnel.

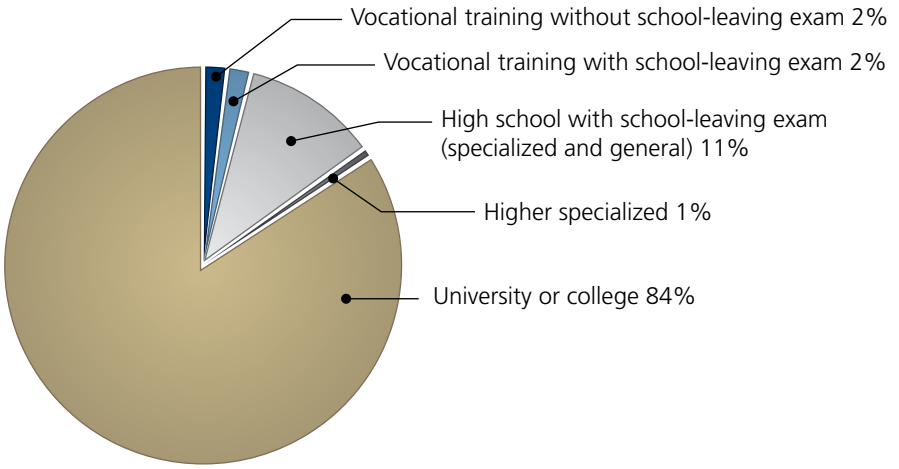
According to Act No. 273/1996 Coll., on the Scope of Competence of the Office for the Protection of Competition, the Office is led by the Chairman, who is appointed by the President for a six-year term. The current Chairman is Petr Rafaj, who has been in office since mid-2009. Hynek Brom occupies the position of First Vice Chairman and is in charge of the Public Regulation and Office Administration Section. Since June 2010, the head of the Competition Section has been Michal Petr. There has been a change in the Public Procurement Section, where Eva Kubišová has been in charge since September 2011, namely in the position of Vice Chair. The Director of the newly created Chairman's Section, formed as a result of the merger of the former Section of Legislation, Economy and International Affairs with the Second-Instance Decision-Making Department I and II and the ICT and Forensic Analysis Department, is Petr Gajdušek.

Division of Employees According to Age

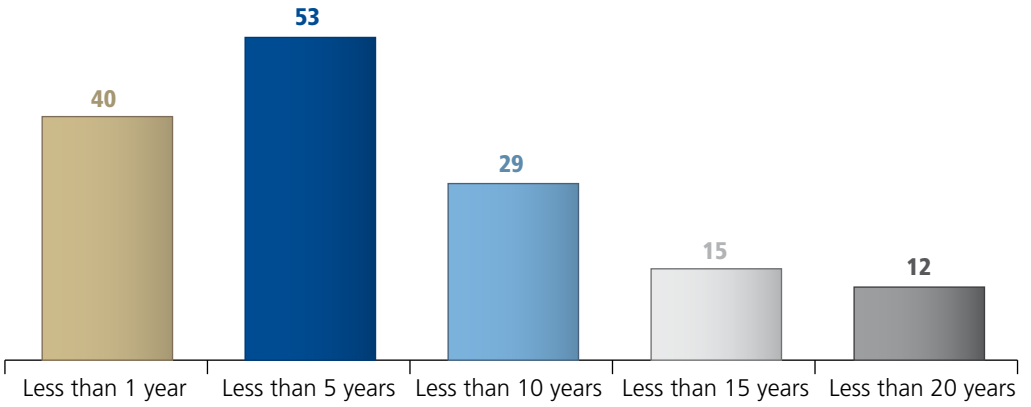


2012 will be a year full of important and difficult changes, particularly organizational changes - not only in connection with the performance of outcomes of ongoing projects, but also in connection with the increase in the number of employees and the relocation of a large number of them to the new OPC building.

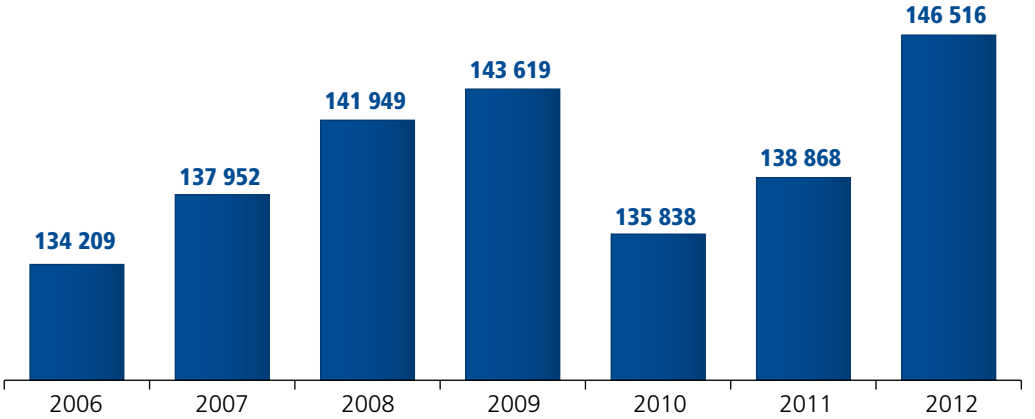
Structure of Employees According to Highest Achieved Level of Education



Duration of Employment



Approved OPC Budget (CZK thousands)



Use of EU Funds

HUMAN RESOURCES AND EMPLOYMENT OPERATIONAL PROGRAMME

SUPPORTING YOUR FUTURE
www.esfcr.cz

The Office for the Protection of Competition began actively using the opportunity to finance projects from the EU funds in 2010, when it successfully completed its first project, the Modification of Electronic Records Management and IT Support for Administrative Proceedings at the OPC.

Currently, the Office is implementing five projects within the Operational Programme Human Resources and Employment, most of which were initiated in 2011. The combined amount of funds associated with implementing these projects exceeds CZK 57 million. Eighty-five percent of this sum is funded from the European Social Fund, while the remaining 15 percent comes from the state budget of the Czech Republic.

The project Education and Transparency of Public Contracting Authorities was named by the Department of Structural Funds of the Ministry of Interior as one of the four most successful projects implemented in the Czech Republic. Another important success was the Best Project of December 2011 award for the project entitled Implementation of Efficient OPC System for Management and Human Resource Development.

Making Process Management at the OPC More Efficient is the name of a project initiated in response to the introduction of smart administration in public administration. It focuses on how to bring the Office closer to its clients, as well as to the needs of its employees. It includes three main activities – the implementation of process management, including education of selected employees; the implementation of a feedback system with users of the Office's services (the OPC image); and the integration of a system of financial, economic and econometric analyses within the management structure of the Office's activities.

The project entitled Setting the System for Strategic Management and Planning, Including the Development of a Management and Human Resources Development Strategy incorporates the creation and implementation of two strategic documents, namely the Development Strategy of the OPC and the Personnel Strategy, including a draft action plan to achieve established development goals. Ernst & Young s.r.o. was involved in the subject of fulfilment of both key activities.

The third project funded within the Operational Programme Human Resources and Employment is the Implementation of Efficient OPC System for Management and Human Resources, which follows on from the personnel strategy devised by the Office. In December 2011, the OPC employee education plan was completed. It was part of the overall strategy for developing the organization and establishing a new system of work with employees and employee motivation. The plan focused on identifying the training needs of employees in connection with performance of their duties, competencies and position within the organization.

The project Education and Transparency of Public Contracting Authorities focuses on raising the awareness of public employees in public procurement and in matters of prohibited agreements among tenderers (bid rigging). As part of this project, specialized seminars will be held in the period 2011-2014 for public employees and a new project website www.otvez.cz has been launched on which information related to public procurement and bid rigging issues are continuously posted. Online consulting and a publication called Decision-Making Practices in Public Procurement and Bid rigging are also available. The publication contains extracts from decisions of the Office for the Protection of Competition, decisions of national courts and the Court of Justice of the European Union (formerly European Court of Justice) that address these issues and provides a specific interpretation of some terms and institutions contained in the Act on Public Procurement. The above publication serves as additional training material for the needs of educational activities within the project. An important part of the project is also the establishment of a new unit inside the Office - the Department of Public Procurement and Bid rigging Monitoring.

The fifth and final project to date funded from the Operational Programme Human Resources and Employment is the project Setting the OPC Information and Communication Security System. The project is charged with the implementation of the information security management system (ISMS).

Information Activities

The Office for the Protection of Competition currently provides information about its activities on the website www.compet.cz. This primarily carries the results of administrative proceedings led by the Office and publishes the decisions of the OPC or the judgments of competent courts in the area of competition and public procurement from the collection of decisions. Overview of current legislation affecting each area of the Office's competence – competition, significant market power, public procurement and state aid – is also available on the website of the OPC. Professionals and representatives of public contracting authorities may also obtain information about upcoming conferences and seminars, and they have the opportunity on the website to subscribe to newsletters.

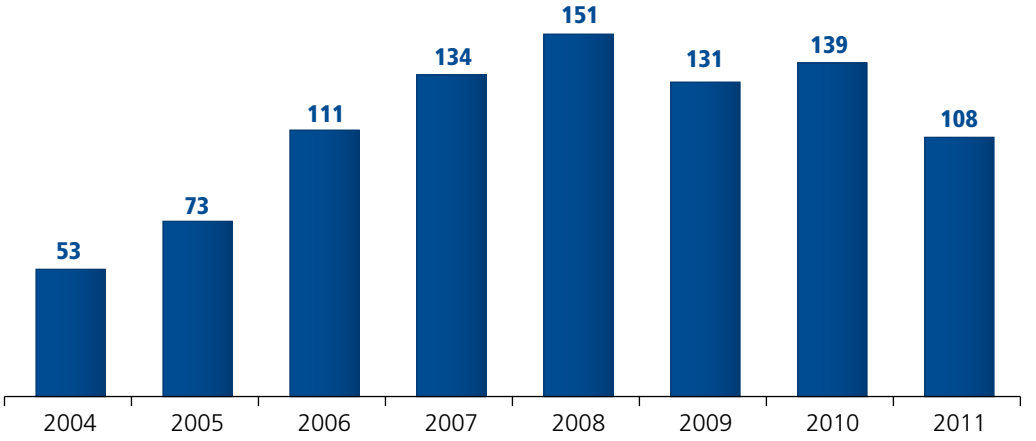
The media are provided with information through press releases or in answer to particular questions from journalists. In 2011, the Office issued 108 press releases, 49 of which were on competition, 38 on public procurement, 13 on state aid, and 8 on general topics, mainly on the preparation or progress of conferences and seminars. The media most frequently quoted Chairman of the OPC Petr Rafaj, who also appeared in live broadcasts on Česká televize, Český rozhlas, Press Klub on Frekvence 1, and gave numerous interviews and opinions, for example for ČTK, Hospodářské noviny, E15, Euro, Právo as well as other media outlets. Besides the results of administrative proceedings and opinions of the Office, the media also mentioned the 20th anniversary of the OPC. To mark this occasion extensive interviews with the Chairman Petr Rafaj were published, for example, in Hospodářské noviny, Ekonom and the publications Parlament, vláda, samospráva (Parliament, Government, Public Administration), Parlamentní magazín (Parliament Magazine), Veřejná správa (Public Administration) and Moderní obec (Modern Municipality). The magazine Leaders published an extensive photo report from the annual St. Martin Conference of the OPC.

Media monitoring reveals that, thanks to close cooperation with journalists, the number of articles in the media mentioning the OPC increased in 2011 to 11,418, i.e. more than double the number in the previous year. Last year the number of sources monitored increased, both printed and online. The high increase in the number of articles over the past year can be also attributed to greater media coverage of the specified keywords.

The Office for the Protection of Competition presents expert topics in information bulletins. In 2011, the first issue addressed the questions around marketing cooperatives. Information summarizing the development of Czech and EU law in this area is intended mainly for entrepreneurs operating in agriculture and for the wider interested public. A double issue published in Czech and English versions charted the 20-year history of the OPC. The culmination of the anniversary celebrations was the St. Martin Conference, for which a Czech-English catalogue was published.

An illustrated publication charting the development of Czech competition law since 1991 was published to mark the 20th anniversary of the Office for the Protection of Competition. An interesting feature in the publication is the historical chapter about the Office's headquarters, which the authors trace right back to 1904.

Number of Issued Press Releases



Information provided under Act No. 106/1999 Coll., on Free Access to Information

Statistics for the provision of information in 2011 under Article 5(1g) of Act No. 106/1999 Coll., on Free Access to Information

Number of submitted requests for information under Act No. 106/1999 Coll.

Area	Number
Competition	4
Public Procurement	2
State Aid	4
Significant Market Power	1
General	1
Total	12

Number of submitted appeals and complaints against decisions under Act No. 106/1999 Coll.: 3
Decisions of the court in relation to the Office on the provision of information: 0
Results of penalty proceedings for violation of Act No. 106/1999 Coll.: no proceedings

07

IMPORTANT EVENTS OF 2011

20 Years of the OPC

The year 2011 marked the 20th anniversary of the Office for the Protection of Competition. Compared to analogous agencies worldwide, the Czech antitrust office is a competition authority with a particularly wide range of competences. It was established on 1 July 1991 in the former Czech and Slovak Federal Republic as the central body of public administration for the protection of competition in the territory of the Czech Republic. At that time, the Federal Office had its headquarters in Bratislava, before being dissolved on 1 January 1993 in connection with the division of the republic into two separate countries. Control over public procurement has been another competency of the Office since 1994. In 2000, state aid was added. After the Czech Republic joined the European Union in 2004, however, decision-making power in this area was transferred to the European Commission and in the area of state aid the Office now focuses on monitoring, coordination and consultation work. Included in 2010, controlling the abuse of significant market power is the latest activity to fall under the OPC's scope of competences.

The Office is headed by the Chairman, appointed by the President of the Czech Republic on the nomination of the Government. The first chairman of the OPC, in the years 1991-1998, was Mr. Stanislav Bělehrádek. In the period of accession process and entry of the Czech Republic to the European Union, the Office was headed by Mr. Josef Bednář (1999-2005). Mr. Martin Pecina was the Chairman in the years 2005-2009 and he also directed preparations of the Office for the Czech Presidency of the Council of the European Union. The current Chairman of the OPC is Mr. Petr Rafaj (since 2009).

St. Martin Conference 2011
Twenty Years of Czech Competition Law

The Fifth St. Martin Conference was the culmination of the celebrations of the 20th anniversary of the Office for the Protection of Competition. Sixteen countries, 15 competition authorities (with the heads of six) were represented at the three-day conference from 29 November to 1 December 2011 at the Holiday Inn Hotel Congress Centre in Brno. Besides Czech experts, the conference was attended by experts on competition law from the European Commission and the Court of Justice of the European Union

The conference was opened by the Chairman of the Office Petr Rafaj. The governor of the South Moravian Region Michal Hašek and the Minister for Regional Development Kamil Jankovský also came to welcome guests, while the Ministry of Industry and Trade was represented by the Deputy Minister Bedřich Danda. During the opening ceremony, speeches were given by the professor in competition law from the University of George Washington, Professor William E. Kovacic, from the USA, the presiding judge of the Regional Court in Brno David Raus, and Professor Josef Bejček, from the Faculty of Law of Masaryk University in Brno.

In its panel discussions, the St. Martin Conference addressed current topics and the latest developments in competition, a more economic approach to prohibited agreements, the private enforcement of competition law, bid rigging, the amendment to the Act on Public Procurement and the development and direction of public procurement at the European level, the future and the expected development of significant market power in relation to competition law, current trends and the outlook for state aid.

U.S. FTC Workshop on Economic Issues in Competition Law

The Federal Trade Commission of the United States (FTC), together with the Office for the Protection Competition, organized on 7-8 June 2011 in Brno the 4th Annual Workshop on Economic Issues in Competition Law. The workshop was attended by approximately fifty experts in competition law from Austria, Bulgaria, Czech Republic, Croatia, Estonia, Kosovo, Poland, Romania, Serbia, Slovakia and Slovenia.

The two-day programme was organized by FTC experts, senior lawyer Timothy Hughes and his colleague the economist Joel Schrag. The objective of the workshop was to provide employees of competition authorities with an overview of the principal microeconomics and judicature concepts that should be taken into account during investigation and decision-making in competition cases.

Both American lecturers set out step by step the theoretical and empirical tools for the assessment of significant market power, the economics of exclusive dealing and market share discounts, the economics of tying products and services, the economics of RPM agreements, the evaluation of agreements among competitors as joint ventures and trade associations, and last but not least, the news in US Merger Guidelines. Theoretical points were always accompanied by a relevant case study from FTC practice.

Positive conclusions can be drawn from the fact that Timothy Hughes underlined the great progress achieved by Central and Eastern European countries over recent years in the protection of competition, particularly in the use of a more economic approach and in consumer protection.

Spring Conference on State Aid

On 27 April 2011, the Office for the Protection of Competition organized the Spring Conference on State Aid. More than a hundred participants became acquainted with the planned amendment to Act No. 215/2004 Coll., Amending Certain Relationships within the Area of State Aid, which specifies the assessment of conditions for the provision of state aid, defines the date of the provision of small-scale aid, and for the first time imposes corrective measures. It also enables the provider to request the coordination authority to issue a preliminary assessment of the intended measure. The amendment should also newly define the position of the OPC as the coordinating body.

The Chairman of the OPC Petr Rafaj, the First Vice Chairman Hynek Brom, the Director of the State Aid Department Milan Bumbálek, representatives of the Directorate General of the European Commission for Competition Kristýna Deiderová and Radoš Horáček all gave presentations at the conference. Their contributions addressed the current situation and trends in state aid law and the policy of the European Union, as well as state aid in rail transportation. Ondřej Dostál from the Permanent Representation of the Czech Republic to the European Union focused his presentation on cooperation with the European Commission in solving state aid cases. Michael Kincl, assistant judge of the Supreme Court, presented some recent decisions of the European Commission in the area of state aid, and together with Iva Příkopová from the State Aid Department of the OPC in their final contribution they addressed issues concerning the central register of de minimis aid.

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2012 AGENDA

Competition

The clear priority of the Office for the protection of Competition continues to be the detection of cartels, particularly in relation to bid rigging. In cases of unilateral practices and concentration control, the more economic approach should now be fully applied. Much attention will be also paid to issues of due process, since procedural matters have become central to judicial reviews in recent years.

In 2012, we can expect the completion of an extensive bid rigging investigation in the area of waste management, as well as the first results of the sector investigation into the energy sector, particularly in the brown coal market.

The amendment to the Act on the Protection of Competition should also come into effect, thereby incorporating into law the leniency programme, which has hitherto only been governed by an Office Notice. The new enactment will also clearly set out the rules for so-called settlement, i.e. a procedure followed by the Office enabling it to decrease the fines imposed on parties to the proceedings, provided they accept the assessment of the Office that they violated competition law and abandon their anticompetitive conduct. The new legislation will require the Office to issue a series of new Notices on the procedure, not only a new Notice on leniency and settlement, but also on the imposition of fines and an alternative solution to competition issues, i.e. eliminating distortion of competition without having to initiate administrative proceedings, or having to issue a decision on an infringement of the law. The Office also plans new explanatory Notices in the control of concentrations, particularly a Notice of the Office on Calculation of Turnover and a Notice on the Concept of Concentrations of Undertakings.

Public Procurement

The application of the so-called major amendment to the Act on Public Procurement is one of the core activities in 2012. Since 1 January 1995, when the Office started exercising supervision over public procurement, there have been over 30 amendments. The first act governing this area was approved in 1994; it was followed by Act No. 40/2004 Coll., which came into effect on 1 May 2004, i.e. simultaneously with the accession of the Czech Republic to the European Union. Act No. 137/2006 Coll., which is currently effective, has been in effect since 1 July 2006. Although not all amendments have been significant, it is nonetheless obvious that the Czech legal environment for public funding has not been stable in the long term.

In this situation, contracting authorities, tenderers and indeed the Office and its employees are impatiently awaiting what the next amendment will bring. Discussions on the amendment in the Parliament of the Czech Republic will end on 31 January 2012 and it will become effective on 1 April 2012. Expectations for this amendment are high because the Act on Public Procurement is often perceived - mainly by the general public - as the primary anticorruption tool. However, the Office has long held the opinion that the main purpose of the Act on Public Procurement should always primarily be - from the viewpoint of a tenderer - to ensure fair competition in awarding public contracts

and - from the viewpoint of contracting authorities - to create a functional, simple and transparent legal environment for the selection of the best bid.

The abovementioned amendment to the Act will also bring an additional enormous increase in the activities of the Office, mainly due to a significant decrease in the lower financial limits for under-limit public procurement (from CZK 6 million or CZK 2 million, to CZK 3 million or CZK 1 million). The organizational management of the further expansion of the Office's administrative duties will pose a great challenge for the Office. This expansion comes at a time when in 2011 the Office had to handle the highest number of received petitions and submissions for the initiation of proceedings in its history. Following discussions on the amendment during the legislative process, the Office has sought to create corresponding material conditions to efficiently carry out its new scope of obligations in public procurement supervision in the Czech Republic. Within a very short space of time, the Office will have to recruit new, high-quality, qualified and responsible employees, provide training and integrate them into the organizational structure so that they are able to properly apply the Act on Public Procurement. Due to the increase in numbers of employees, the headquarters of the Office will be extended into the building directly adjacent, which was formerly home to the Military Accommodation Administration and was transferred to the Office free of charge. Depending on the Office's finances, this building shall gradually undergo a phased reconstruction.

In addition to the dynamic development of national law, in 2012 the Office will also have to actively respond to the activities and steps of the European Commission. The reform of legislation on public procurement at the European Union level is one of 12 priority measures stated in the Single Market Act approved in April 2011. The Commission therefore drew up a draft modernization package for the public procurement legislative framework, which aims to achieve a balanced policy that enhances demand for environmentally friendly, socially responsible and innovative goods and services. According to the European Commission, public procurement procedures should be simpler and more flexible for contracting authorities, while easier access to public contracts should be ensured for small and medium-sized enterprises. Strategic use of public procurement to influence other policy areas is an approach which will probably have to be allowed for in future.

In the first half of 2012, representatives of the Office will attend meetings of the European Commission on the Commission's legislative proposals.

Significant Market Power

The completion of existing administrative proceedings and the evaluation of sector investigations initiated in 2010 and 2011 are on the agenda for 2012. Another objective is also to consider whether to initiate further administrative proceedings on the basis of submissions received by the Department of Control over Significant Market Power.

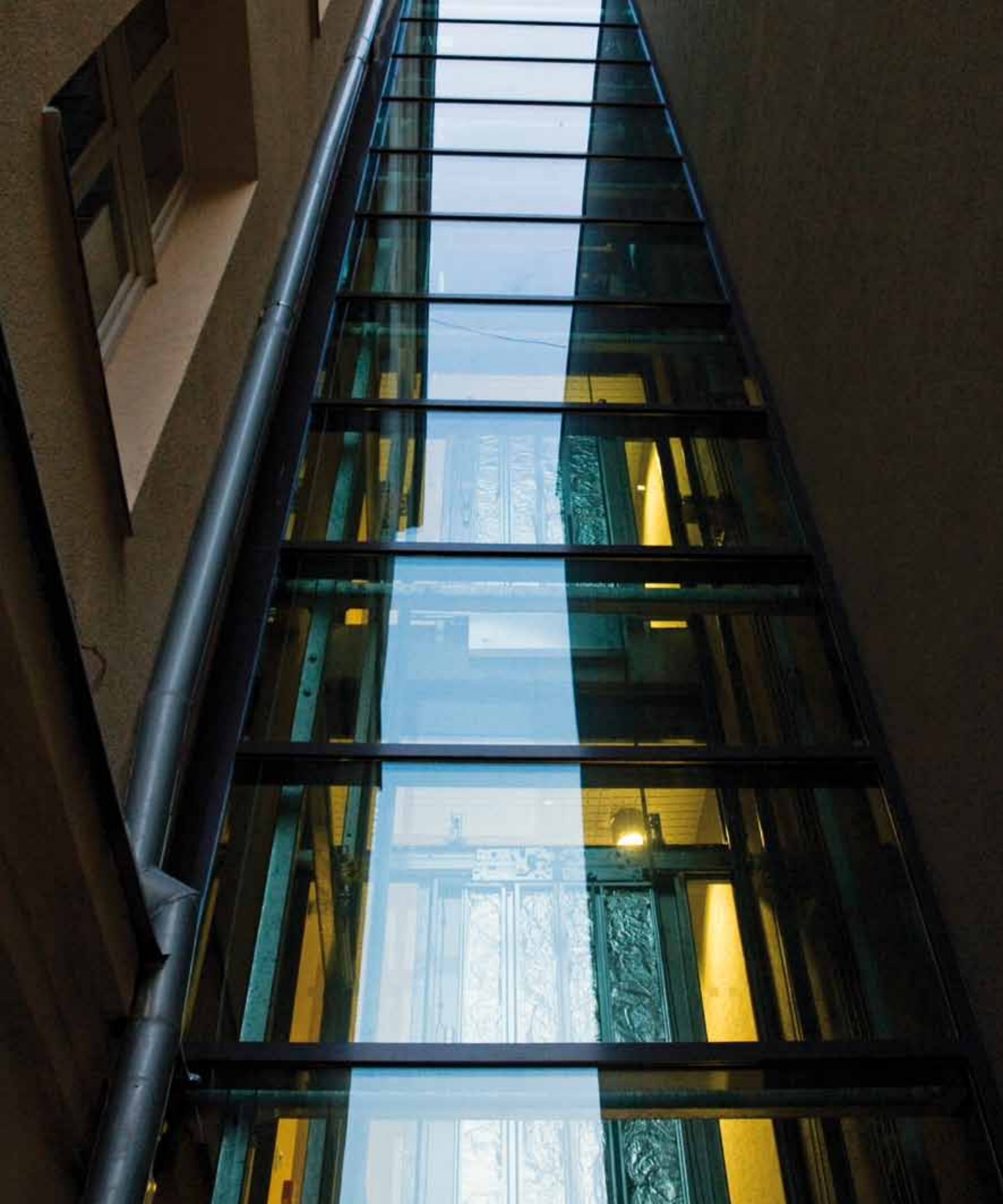
State Aid

In connection with the expiry of a number of EU regulations on state aid as of 31 December 2013, an increase in activities related to the preparation of new rules can be expected in 2012. For example, planned activities include a revision of the Community Guidelines for the application of State aid rules in relation to rapid deployment of broadband networks, the revision of the Commission Communication to the Council, the European Parliament, the Economic and Social Committee and the Committee of the Regions on certain legal aspects relating to cinematographic and other audiovisual works (Communication on Film), and the guidelines for rescuing and restructuring firms in difficulty. Consultations on the new wording of the Guidelines on National Regional Aid for 2007 - 2013 and the Community Framework for State Aid for Research and Development and Innovation were already initiated in 2011. These consultations will continue in 2012, and it is expected that specific proposals for changes will be submitted and discussed at the advisory committees of EU Member States in Brussels. The area of greenhouse gas emission allowance trading will be newly amended after 2012.

Another important expected change is the amendment of the enabling regulation of Council Regulation (EC) No 994/98 on the application of Articles 92 and 93 of the Treaty establishing the European Community to certain categories of horizontal state aid. This will allow the scope of the General Block Exemption Regulation (Commission Regulation (EC) No 800/2008 declaring certain categories of aid compatible with the common market in application with Articles 87 and 88 of the EC Treaty) to be extended in 2013.

The Czech Republic will contribute to all the abovementioned planned legislative changes through the Office, specifically in the form of comments on the proposed changes, as well as by participating in the working groups and meetings of the European Commission and Member States at which the proposals for the new wording of the rules will be discussed.

In connection with the obligation to submit annual reports on all existing aid schemes, starting in 2012 all Member States will submit these reports to the European Commission via the new online application SARI (State Aid Reporting Interactive). SARI is thereby replacing the current method of submitting annual reports via tables pre-filled by the European Commission and sent out to Member States.



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