

Annual Report

2022



OFFICE FOR
THE PROTECTION
OF COMPETITION

Office for the Protection of Competition

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Foreword

For the third year in a row, I have been presenting the annual summary of the activities of the Office for the Protection of Competition. However, not even this year is this happening in an atmosphere of positive economic developments and optimistic outlooks. For 2022, we were expecting a recovery after the setback caused by the COVID-19 pandemic, excessive and often unnecessary subsidies and the rising price of energy raw materials. Nevertheless, these hopes were completely undermined in February by Russia's unprecedented military aggression against Ukraine, which intensified the economic difficulties, especially the rise in inflation and price instability across all sectors. It is precisely in this difficult situation that it is necessary to be reminded that competition is a reliable and fast way to overcome the crisis and to reduce inflation.

Last year, the Czech Presidency of the Council of the European Union was an important milestone for the entire state administration. The Office also prepared for this important role within the framework of its substantive competences and in the second half of the year it fulfilled this task both in Brussels during the preparation of EU regulations and on the domestic scene by organising important conferences and professional events.

During the Presidency, representatives of the Office, together with representatives of the Permanent Representation of the Czech Republic to the European Union in Brussels, chaired the Working Party on Competition and coordinated negotiations between Member States on a number of forthcoming legislative acts. Among the most important are the Regulation on foreign subsidies distorting competition, the Enabling Regulation on State aid in rail, inland waterway and multimodal transport sector, and negotiations on revisions of other EU legislation, such as the Regulation on block exemptions for horizontal agreements or the Communication on the definition of relevant market.

At the same time, we attracted the top European competition policy makers to the Czech Republic for the European Competition Day conference. Margrethe Vestager, Executive Vice-President of the European Commission, was one of them. We also hosted a meeting of the representatives of the First Instance Public Procurement Review Bodies and the ECN Cartels Working Group.

Overall, I consider the Office's contribution to the Presidency to have been more than successful, both in terms of the legislation discussed and the international events we organised.

In terms of the Office's decision-making, we imposed one of the highest fines in history in the area of domestic competition protection, almost CZK 280 million for a cartel agreement between meal voucher issuers. The fine is currently not final, but the case is interesting because of the unusual way of competition restriction. High fines also continued to be imposed for vertical agreements. Experience shows that this is a very widespread anticompetitive behaviour affecting whole industries or sectors. Suppliers often do not realise that they can only recommend, but cannot dictate, the resale price to their customers.

Also in 2022, the Office again achieved the record number of on-site inspections conducted when the representatives of the Office made unannounced visits to three dozen firms looking for evidence of anticompetitive conduct. However, as the number of inspections increases, so does the number of undertakings which refuse to comply with an inspection. We were therefore forced to impose fines of the maximum possible amount in a total of five cases, one of which exceeded CZK 20 million. The Office will continue to treat obstruction of local investigations with the utmost severity in the future.

In the area of public procurement supervision, we continued to deepen transparent and open communication with contracting authorities and contractors and with the professional public, especially within the framework of the Methodology Days and the first annual May Conference on Public Procurement. In our decision-making activities, we continued to focus on rationalising decision-making and moving away from strict formalism, which was particularly evident in our efforts not to pursue purely formal misconduct by contracting authorities with no real impact on competition and instead to realistically examine the social harm of specific contracting authorities' behaviour. On the other hand, the Office has clearly declared that purposeful submissions are not desirable and that flagrant violations of public procurement law will continue to be severely punished.

In the area of significant market power, just before the end of the year, we managed to negotiate the amendment to the Significant Market Power Act transposing the Directive on unfair trading practices. This is an important milestone that should have a significant impact on buyer-supplier relations throughout the agricultural and food sector. The Office has already carried out a sector inquiry in this area in advance in order to be prepared for the post-amendment situation. We will then devote the beginning of 2023 mainly to awareness-raising activities in order to make farmers, food producers and retailers sufficiently familiar with the new rules.

After an extremely large number of COVID aid programmes in recent years, there has been a relative decrease in 2022 in the area of State aid. Although there is another crisis framework related to the consequences of the war in Ukraine, the Czech Republic has so far prepared only a small number of programmes. However, the overall level of State aid in the European Union, particularly in the context of the energy crisis, has increased significantly and the question is how the imbalance in the capacity of the individual Member States to provide aid, which may threaten the very future of the single market, will be resolved in the future.

In our role as a competition enforcer, the Office will continue to monitor compliance with the rules and act against infringements in these turbulent times to promote the development of competition in all relevant markets. Fair competition with the main goal to achieve a rapid recovery in most sectors of the economy will be more efficient than attempts at stronger regulation.



Petr Mlsna

Chairman of the Office for the Protection of Competition

About the Office

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

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

- The main legal framework in the field of competition is provided by the Act No. 143/2001 Coll., on the Protection of Competition. At the same time, the Office may apply Articles 101 and 102 of the Treaty on the Functioning of the European Union. The related competences of the Office have been regulated also by the Act No. 370/2017 Coll., on Payment System.
- In the field of public procurement, the main legal framework is represented by the Act No. 134/2016 Coll., on Public Procurement. Nevertheless, the Office

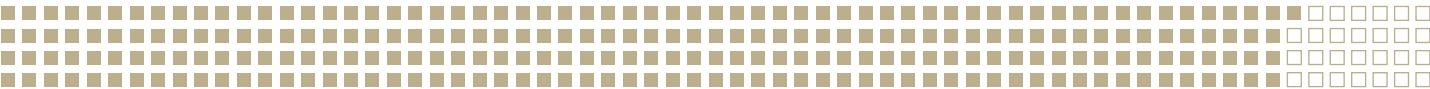
has supervisory power only, i.e. it supervises the transparent, reasonable, non-discriminatory and fair approach of the contracting authorities to tenderers. The Office also has similar supervisory powers pursuant to the Act No. 194/2010 Coll., on Public Passenger Transport Services.

- The matter of significant market power of retail chains vis-à-vis their food and agricultural suppliers is regulated by the Act No. 395/2009 Coll., on Significant Market Power and Unfair Trading Practices in the Sale of Agricultural and Food Products and Abuse Thereof.
- The area of State aid is regulated mainly by the EU legislation, at the national level it is governed by the Act No. 215/2004 Coll., Amending Certain Relationships within the Area of State Aid and Altering the Act on Promotion of Research and Development.

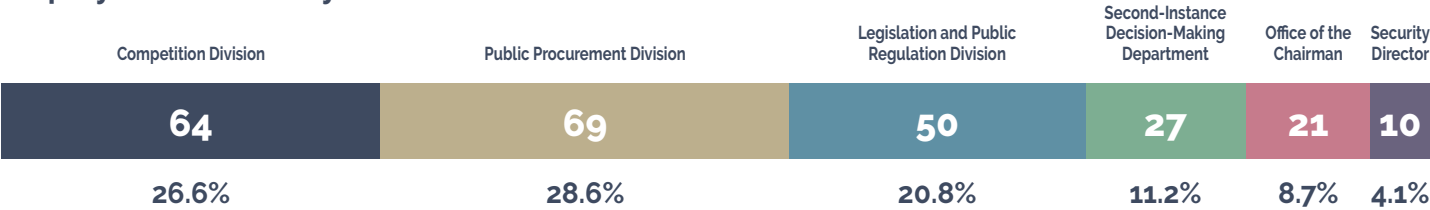
Human Resources Statistics

268 number of civil servant posts in the Office

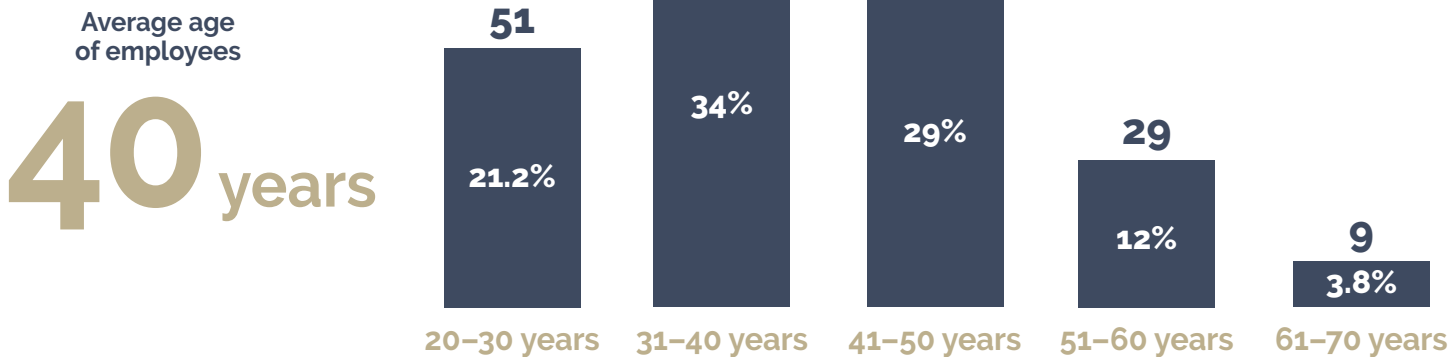
241 total number of employees of the Office as of 31 December 2022



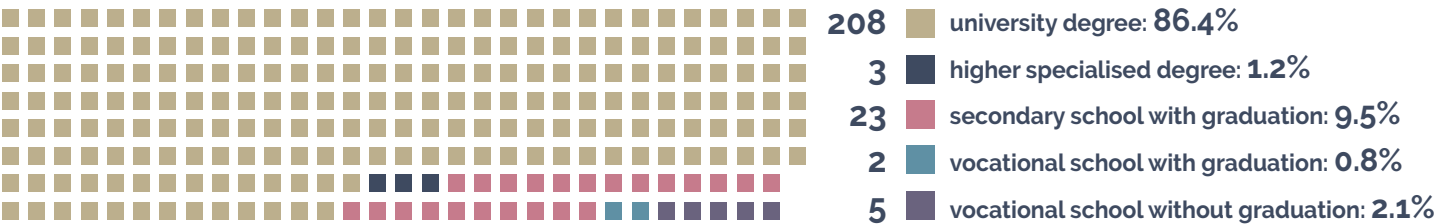
Employee Structure by Divisions of the Office



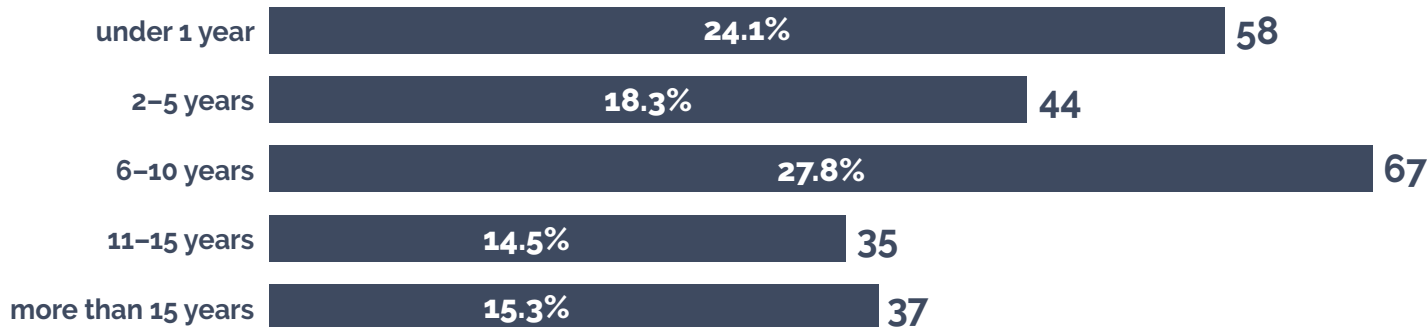
Employee Structure by Age



Employee Structure by Level of Education



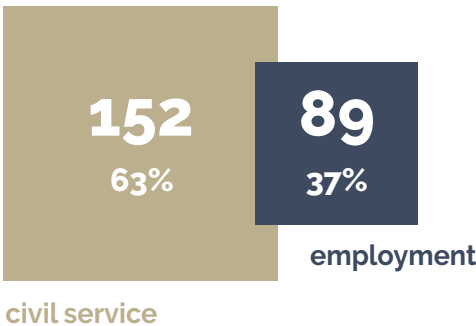
Length of Civil Service/Employment



Employee Structure by Gender



Employee Structure by Civil Service x Employment





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České předsednictví
v Radě Evropské unie

Role of the Office During the Czech Presidency of the Council of the European Union

In the second half of 2022, the Czech Republic held its second Presidency of the Council of the European Union (CZ PRES). During its Presidency, the Czech Republic primarily sought to find a broad consensus among the Member States on legislative and non-legislative proposals, whether this involved reaching a joint position in the Council of the European Union or in trialogues with the European Parliament. As the presiding country, the Czech Republic had an opportunity to determine to a considerable extent which legislative proposals would be discussed and what pace and direction the discussions would take. The country had a direct influence on the entire legislative process, foreign policy issues, as well as on the agenda of many events held in Czechia, in Brussels and elsewhere abroad. The Office was also involved in the exercise of CZ PRES, particularly in two areas. A joint team of experts from the Office and the Permanent Representation of the Czech Republic to the European Union in Brussels conducted negotiations on draft legislation within the Working Party on Competition (G12) belonging to the Committee of the Permanent Representatives of the Governments of the Member States of the European Union (COREPER I) and the Competitiveness Council. Within the home territory, the Office hosted and organised international conferences and working-level meetings during the Presidency.

Agenda of the Working Party on Competition

This working body of the Council chaired by Petr Solský, Vice-Chair of the Office, met four times during the Czech Presidency. The agenda of the group's meetings included, in particular, the discussion of the proposal for a Regulation on foreign subsidies distorting the internal market, which had already been initiated under the French Presidency. The Czech Presidency subsequently completed the legislative work and the entire process of adopting this piece of legislation. At the end of November 2022, the Council of the EU approved its final wording, and the Regulation was subsequently signed by

the President of the European Parliament and the President of the Council of the EU and published in the Official Journal of the EU. On 12 January 2023, the Regulation entered into force.

The purpose of the new legislation is to eliminate the possible advantages resulting from subsidies granted by third countries to companies competing for public contracts or benefit from such subsidies when implementing concentrations between undertakings operating in the EU. This should ensure fair competition between both European and non-European competitors operating within the EU internal market.

While State aid granted by the Member States to undertakings within the European Union is subject to strict rules, this does not apply to aid granted by third countries. As a result of the new legislative act, the European Commission gains exclusive power to review subsidies granted by non-EU countries to undertakings operating in the internal market. In particular, the Commission will be able to approve, on the basis of a pre-notification, major concentrations between undertakings with a value of more than EUR 500 million and bids for public procurement contracts with a value of EUR 250 million or more. In addition, the Commission will be entitled to examine relevant circumstances in the market. Should the Commission



Margrethe Vestager, Petr Mlsna



Petr Mlsna

find that a foreign subsidy has a predominant negative impact on the internal market, it is empowered to impose remedies or accept commitments to eliminate such negative impact.

At the beginning of CZ PRES, the European Commission introduced a proposal for an Enabling Regulation for rail, inland waterway and multimodal transport. It allows the Commission to adopt a new block exemption for land transport in the course of 2024, which will be based on this Enabling Regulation.

Working Party chaired by Czech representatives discussed the proposal for an Enabling Regulation in early September 2022. At a follow-up meeting in September, CZ PRES presented a compromise text introduced on the basis of the comments received from the Member States, which appreciated the proposal and welcomed fast pace of adoption. The European Parliament approved the Enabling Regulation proposal even before Christmas and, contrary to the original plan, the legislation could be adopted at the last Council of Ministers organised by the Czech Presidency.

The Enabling Regulation responds to the need to introduce specific rules to simplify procedures for the approval of State aid granted in the field of rail, inland waterway and multimodal transport. This is to support the ecological transformation by, inter alia, reducing greenhouse gas emissions and improving air quality.

At the last meeting of the G12 Working Party in mid-November 2022, the current activities of the European Commission in the framework of the revisions of the EU competition and State aid legislation, such as the Block Exemption Regulation for horizontal agreements or the Communication on relevant market definition, were presented. The current implementation of the European Commission Regulation on the application of Article 101(3) of the Treaty on Functioning of the European



Margrethe Vestager

Union (TFEU) to categories of technology transfer agreements (TTBER) and its future development was also discussed.

Conference and Working Level Events Organised by the Office

I Meeting of First Instance Public Procurement Review Bodies

On 23 September 2022, the eleventh regular meeting of the Network of First Instance Review Bodies on Public Procurement, hosted by the Office, took place in Prague as a part of CZ PRES. The meeting was organised by the European Commission's Directorate-General for Internal Market, Industry, Entrepreneurship and SMEs (DG GROW) together with the Office, and attended by almost fifty representatives of authorities responsible for the review of public procurement in the EU Member States.

This platform is aimed to share good practice between the individual public procurement review bodies of the Member States, both judicial and administrative. The Office chose current topics in the field of public procurement, namely the application of European regulations in response to the Russian aggression against Ukraine, the frequently discussed issue of excluding ineligible contractors from the tender procedure and, last but not least, the issue of unsubstantiated complaints to the supervisory bodies.

All topics were discussed extensively and met with a great response among the participants. The face-to-face event, following a series of online meetings due to the COVID-19 pandemic, provided a number of inspirations for addressing

common issues and also drew the attention of the European Commission to the areas of most concern for the review bodies and where the Commission's assistance in the interpretation and application of the procurement rules at European level is appropriate.

II European Competition Day

On 10 October 2022, the international conference European Competition Day was held within the premises of the Prague Castle Ballroom. The event was also organised by the Office as part of its activities related to CZ PRES. The conference was attended by over 150 participants, including representatives of the Czech government, high-ranking officials from the European competition authorities, representatives of the European Commission's Directorate-General for Competition (DG COMP) and other competition law experts.

The conference was opened by Petr Mlsna, Chairman of the Office, Margrethe Vestager, Executive Vice-President of the European Commission, and Pavel Blažek, Minister of Justice of the Czech Republic.

The expert panel on the challenges for competition policy in the context of the transition to a greener and digital economy addressed several topics. Kamil Nejezchleb, Vice-Chair of the Office, Olivier Guersent, Director General of the European Commission's Directorate-General for Competition, Margarida Matos Rosa, President of the Portuguese Competition Authority, Frédéric Jenny, Chairman of the Competition Committee from the Organisation for Economic Co-operation and Development, and Thibault Schrepel, Associate Professor of Law at VU Amsterdam, discussed, to which extent it is compatible and technically feasible to promote environmental objectives through competition policy, the new tools that competition authorities are using in their work, and aspects of artificial intelligence and its potential impact on competition, as well as new forms of anticompetitive conduct that may occur in the digital environment.

The second panel, composed of Michal Petr, Associate Professor at Palacký University Olomouc, Renato Nazzini, Professor of Law at King's College London, Michal Bobek, Judge of the Supreme Administrative Court, and Csaba Balázs Rigó, President of the Hungarian Competition Authority, addressed the issue of *ne bis in idem* principle in competition law. The speakers concluded that not even the recent change in case law practice by the Court of Justice of the European Union (CJEU) has had a major impact on the approach of competition authorities to parallel application. It remains therefore possible for a single case to be heard in parallel before different jurisdictions.

The last topic of the European Competition Day came from the field of State aid, as it is used to fund so-called Important Projects of Common European Interest (IPCEI). These projects, which typically involve private companies from a number of the Member States, aim to support the development and implementation of new strategic technologies, such as the production of electric batteries, the production and use of hydrogen, etc. The issue was discussed by Caroline Buts, Associate Professor at VU Brussel, Karl Soukup from DG COMP and Preben Pettersson from the Danish Ministry of Industry and Trade, while moderated by Petr Solský, Vice-Chair of the Office.

III ECN Cartels Working Group

The last CZ PRES event organised by the Office together with DG COMP was the meeting of the European Competition Network (ECN) Cartels Working Group, which took place on 25 and 26 October 2022 in Prague.

The ECN aims to coordinate the activities of the national competition authorities of the EU Member States and DG COMP.

The meeting of the ECN Cartels Working Group was opened by the Chairman of the Office, Petr Mlsna, who mentioned the difficult economic situation, which increases the demands related to activities of competition authorities. Actual cases dealt with by individual ECN competition authorities were presented during the meeting itself. Considerable attention was also paid to prohibited agreements capable of distorting competition by influencing the labour market (so-called no-poach agreements), such as agreements on non-takeover of employees or on wages or other terms and conditions of employment.

A substantial part of the programme also covered the forthcoming revision of the ECN Model Leniency Programme as one of the main tools of competition authorities to detect cartels. Within this programme, those undertakings involved in a cartel which report anticompetitive conduct to the competition authority, may be fully or partially exempted from fines.

The institute of leniency was also dealt with in the final discussion, as well as the appraisal of the use of the Directive on private enforcement for competition law infringements and/or its transposition into the legislation of individual Member States.

Competition

Competition between undertakings in the market is a fundamental component of a market economy. Undertakings operating in the market compete with each other for customers, primarily by offering lower prices, higher quality or a more varied range of goods. At the same time, competitive pressure forces them to make production more efficient and to innovate their products. However, this system only works if the individual players are genuinely competing with each other and are not trying to cooperate illegally instead of engaging in fierce competition.

Competition law, which is enforced by competition authorities, sets the rules for determining which conduct distorts and harms competition. In the Czech Republic, the Office for the Protection of Competition has exclusive jurisdiction in this area.

In particular, the Office ensures that competition is not distorted:

- by prohibited (cartel) agreements between undertakings;
- by abuse of a dominant position;
- as a result of a concentration between undertakings (mergers);
- by anticompetitive conduct of public authorities.

Legislative Changes

In 2020, the Office submitted a draft amendment to the Act on the Protection of Competition (hereinafter referred to as “the Competition Act”), the purpose of which was in particular to transpose into the Czech legal framework the Directive (EU) 2019/1 of the European Parliament and of the Council of 11 December 2018 to empower the competition authorities of the Member States to be more effective enforcers and to ensure the proper functioning of the internal market, the so-called ECN+ Directive. However, the draft law was not discussed in the Chamber of Deputies of the Parliament of the Czech Republic in the last electoral term. The Office has now re-elaborated the amendment and submitted the new draft, this time outside the legislative work plan for 2022 due to the expiry of the implementation deadline of the above-mentioned Directive. In January 2023, the draft amendment passed its first reading in the Chamber of Deputies.

The amendment brings, for example, changes in proceedings with public authorities pursuant to Article 19a of the Competition

Act, introducing the possibility of accepting commitments, while the Office should also have the possibility to prioritise these cases. In the case of on-site inspections, the Office will no longer have to specify in the mandate the exact premises of the undertaking where the inspection is to take place, a precise identification of the undertaking in question will be sufficient. Other public authorities shall only be able to access the information in the file after the final conclusion of the administrative proceedings, with the exception of law enforcement authorities, to whom the information can be provided after the statement of objections issuance. The changes will also affect the imposition of fines, such as penalties for non-compliance with the obligation to endure on-site inspections, disciplinary and coercive fines. The amendment also addresses the liability for payment of fines in the case of associations of undertakings and under what circumstances a member of an association is not liable for a fine.

The leniency programme is being regulated in more detail and directly in the Competition Act. This change includes, for example, summary applications or the determination of the order in which applications are submitted. In case of a successful leniency application, it shall not be possible to impose a ban on the performance of public contracts. A participant in a vertical agreement shall now also be able to apply for leniency.

A more detailed modification is also envisaged for the settlement procedure, which shall create better conditions for the Office's administrative discretion. For example, when granting a fine reduction, the Office will decide on the amount of the reduction in range from 10 to 20%, instead of the current flat reduction of 20%. Moreover, the settlement shall be negotiated by each party separately. The Office shall now also be able to impose a ban on the performance of public contracts in case of a settlement, but for a maximum period of one year.

The amendment also introduces the concept of confidential information other than business secrets and the related right to confidentiality of identity for anyone who reports suspected anticompetitive conduct and requests such protection from the Office. The documents and information provided by the notifying party will be excluded from the access to the file until the issuance of the statement of objections, after which it will be possible to get acquainted with them, however, in a form that does not reveal the identity of the notifying party.

Changes related to the transposition of the ECN+ Directive shall also affect the Act No. 273/1996 Coll., on the Scope of Competence of the Office for the Protection of Competition. It shall explicitly emphasize the independence of the Office and regulate in more detail the conditions for the exercise of the functions of the Chairman and Vice-Chairs.

Protection of Competition in Figures

The Office continued to be very active in decision-making in 2022. By the end of 2022, a total of 30 administrative proceedings relating to prohibited agreements were in progress, representing the highest number of parallel investigations in the Office's history. In total, 76 administrative proceedings were opened in 2022, including a record 20 in the area of prohibited agreements. First-instance fines totalling CZK 437 million were imposed for identified infringements of competition law.

In the area of prohibited agreements, a total of 20 administrative proceedings were initiated, of which eight on horizontal agreements and 12 on vertical agreements. A total of 11 decisions were issued, six concerning serious horizontal cartels and five concerning vertical agreements between suppliers and their purchasers. The most significant of the concluded cases is undoubtedly the cartel of meal voucher issuers, which for a number of years colluded to limit the number of meal vouchers which consumers could use to pay for a single purchase in supermarket chains. The fine for the long-term infringement of competition law amounted to almost CZK 280 million, but has not yet become final. Participants in horizontal cartels have been fined a total of CZK 370 million, while fines exceeding CZK 36 million have been imposed for vertical agreements.

A serious offence by undertakings, which became more frequent in 2022, was the hindering or interfering with unannounced on-site inspections by the undertakings subject to inspection. In five cases, the Office's inspectors were prevented from conducting on-site inspections, despite the fact that the Competition Act requires undertakings to provide the necessary assistance to the Office during on-site inspections. For these infringements, the Office imposed the maximum possible fines of up to 1% of the undertaking's turnover or CZK 300 thousand. The highest fine of this nature was imposed on the undertaking Beryko, s.r.o., namely CZK 22.5 million.

The Office noted a decreasing number of administrative proceedings in the area of anticompetitive conduct by public authorities, where one new administrative proceeding was

First-Instance Decision-Making in the Field of Competition in 2022

Number of complaints received	
Prohibited agreements	100
Abuse of dominant position	53
Concentration between undertakings	1
Anticompetitive conduct of public authorities	10
Others	4
Total	168

Number of administrative proceedings initiated	
Prohibited agreements	20
• horizontal agreements	8
• vertical agreements	12
Abuse of dominant position	0
Anticompetitive conduct of public authorities	1
Concentration between undertakings	50
• standard procedure	6
• simplified procedure	44
• sanction procedure	0
Hindering on-site inspections	5
Total	76

Number of decisions issued	
Prohibited agreements	11
• horizontal agreements	6
• vertical agreements	5
Abuse of dominant position	0
Anticompetitive conduct of public authorities	2
Concentration between undertakings	52
• standard procedure	7
• simplified procedure	43
• sanction procedure	2
Hindering on-site inspections	5
Total	70

initiated and two cases have not yet been finalized. The Office intends to deal with cases of this nature in the future in a rather non-sanctioning manner, which is also the aim of the proposed amendment to the Competition Act.

Fifty administrative proceedings were initiated in the area of merger control, with 52 decisions issued. In 43 cases, mergers were examined in simplified proceedings and in seven cases in standard administrative proceedings. No decision was

issued in 2022 approving a merger subject to fulfilment of the commitments. In two cases, fines were imposed for implementing the merger prior the Office's approval.

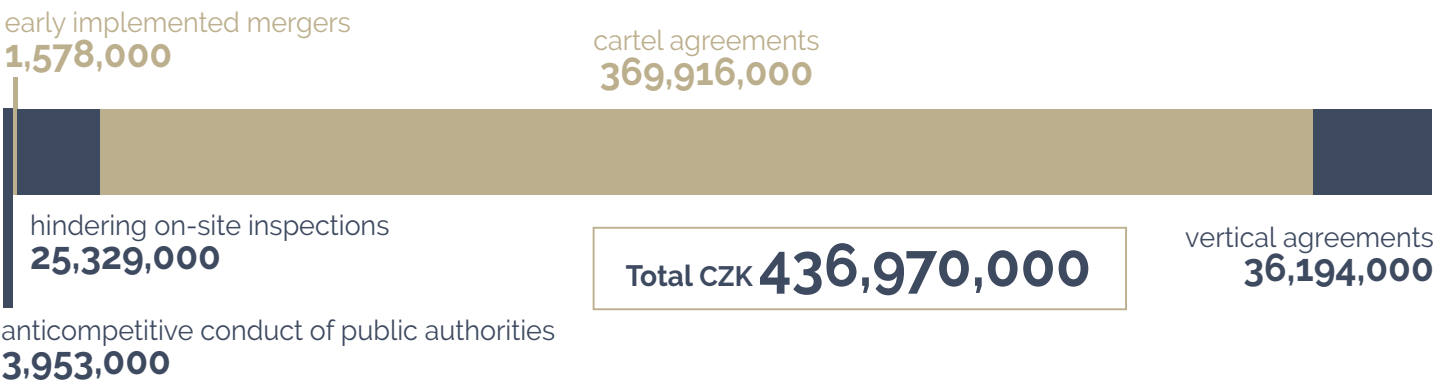
The Office has been very successful in using available investigative and procedural tools, such as leniency or settlement, to help detect anticompetitive conduct or to resolve cases more quickly and bring administrative proceedings to an end. In contrast to many European countries, the Office has noted an increase in the number of leniency applications in 2022 and it can be expected that, given the Office's increased activity and higher penalties, a continued interest in leniency is to be expected.

The Office also makes extensive use of settlement procedure, with the help of which a total of eight administrative proceedings

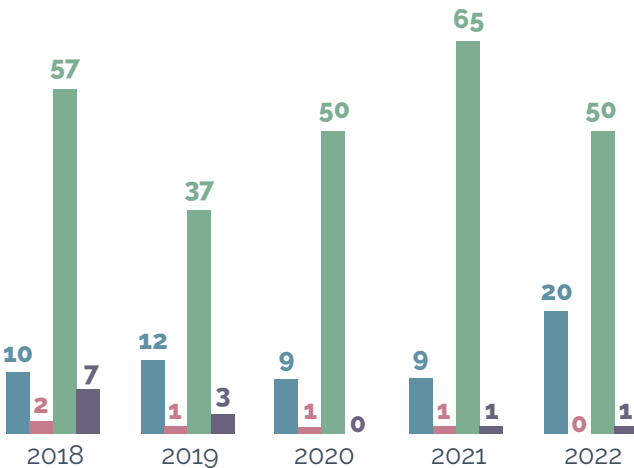
have been terminated. A party to an administrative proceeding which applies for a settlement has to agree with the facts and their legal qualification as described and determined by the Office, for which the fine is reduced by 20% and a shorter version of decision is issued. Generally, the settling party does not appeal against the first-instance decision.

The parties to the proceedings now also have the possibility to obtain a reduction of a fine in case they have implemented an effective competition compliance programme or implement it during the administrative proceedings. However, the Office will only reduce the fine if the undertaking's senior management was not involved in the anticompetitive conduct. A further condition is that the participant in question makes use of a parallel leniency programme or settlement.

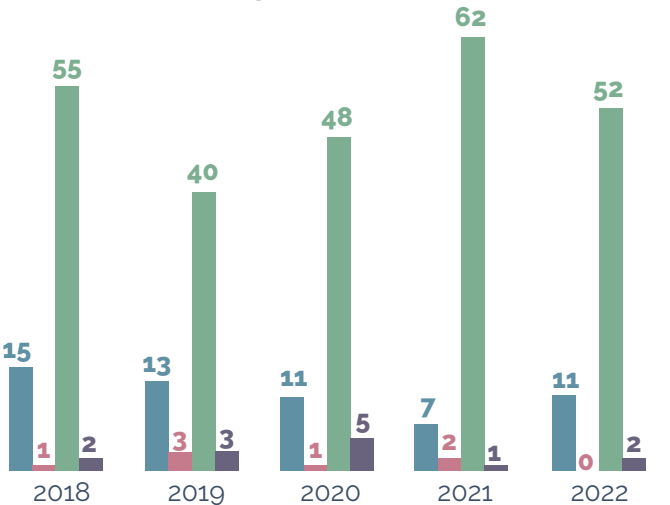
Fines Imposed in the Field of Competition by First Instance in 2022 (in CZK)



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

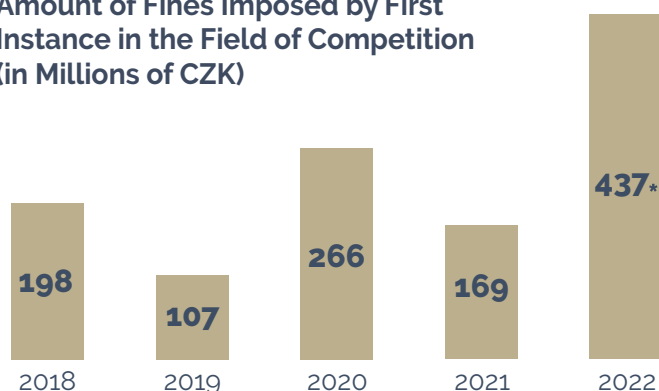


Number of First-Instance Decisions Issued in the Field of Competition



■ prohibited agreements ■ abuse of dominant position ■ mergers ■ anticompetitive conduct of public authorities

Amount of Fines Imposed by First Instance in the Field of Competition (in Millions of CZK)



* The fines for 2022 include a repeated fine for the IT cartel Olomouc and a fine for the Association of Language Schools, which the Chairman of the Office returned for recalculation.

Significant Cases

Prohibited Agreements

Cartel Agreement of Meal Voucher Issuers

Parties to the proceedings: **Sodexo Pass Česká republika a.s., Edenred CZ s.r.o., Up Česká republika s.r.o.**
Total first-instance fine: CZK 279,152,000 (S0242/2018; appeal filed)

According to the Office's decision, between 2004 and 2018, Sodexo, Edenred and Up coordinated their terms and conditions towards the retail chains regarding the maximum number of meal vouchers accepted per purchase. Their conduct thus distorted competition in the market for the issuance, sale and payout of paper meal vouchers and related services in the Czech Republic. This practice infringed not only the Competition Act but also the competition provisions of the Treaty on the Functioning of the European Union, as the agreement may have affected trade between Member States.

Since at least 2003, the parties to the proceedings have sought (including through their Association of Voucher System Operators and its predecessor) to introduce a commercial condition under which no more than five meal vouchers per purchase would be accepted in retail stores on the basis of a previous joint agreement. From April 2004 at the latest, the commercial condition consisting in limiting the number of meal vouchers accepted in payment for purchases to

a maximum of five was enforced in the most important retail chains, and compliance with this condition was subsequently monitored by the Association and by individual meal voucher issuers. The motivation for the limitation of the number of meal vouchers was also an effort by the issuers to eliminate criticism and to maintain the meal voucher system in the Czech Republic. The anticompetitive behaviour resulted primarily in the setting of identical terms and conditions for all the companies mentioned and in restrictions on consumers' use of meal vouchers.

Sodexo was fined CZK 132,271,000, Edenred CZK 101,940,000 and Up CZK 44,941,000 for the conduct described above. When the decision becomes final, the parties to the prohibited agreement have to inform their retail partners in the food retail sector within 60 days of the prohibition and invalidity of the conduct, publish this information on their websites for at least one year and modify all their contracts according to which their retail partner was not allowed to accept more than five meal vouchers per purchase. The decision has been appealed and is not final.

The Office Fined a Prohibited Agreement Between Suppliers of Audio-visual Equipment

Parties to the proceedings: **AV MEDIA SYSTEMS, a. s., " M plus ", spol. s r. o., Nowatron Elektronik, spol. s r. o., SCIENTICA AGENCY, s. r. o.**
Total first-instance fine: CZK 2,442,000 (S0040/2018; coming into force on 22 March 2022; settlement)

In its first-instance decision, the Office imposed fines in the total amount of CZK 2,442,000 on the undertakings AV MEDIA SYSTEMS, " M plus ", Nowatron Elektronik and SCIENTICA AGENCY for bid rigging.

According to the Office's decision, the undertakings operating in the field of audio-visual solutions and technology supply influenced the outcome of two tender procedures at the turn of 2016 and 2017, thereby distorting competition in the selection of suppliers.

All the parties to the proceedings requested the Office to apply the settlement procedure, whereby they accepted the facts and legal qualification found by the Office, for which they received a 20% fine reduction.

AV MEDIA SYSTEMS was fined CZK 1,695,000, " M plus " was fined CZK 507 thousand, Nowatron Elektronik was fined CZK 200 thousand and SCIENTICA AGENCY was fined CZK 40 thousand.

Infringement of Competition Act by the Association of Language Schools

Party to the proceedings: **Association of Language Schools**
First-instance fine: CZK 9,120,000 (S0022/2020; infringement proven in appeal proceedings, returned for fine recalculation)

The Association of Language Schools (hereinafter referred as "the Association"), which brings together approximately 40 language schools, committed anticompetitive conduct by setting a minimum allowable price per hour of foreign language lesson for tenders for the provision of language training services. It published this price, applied it to its members and promoted it with the contracting authorities. According to the Office's decision, the conduct had a direct impact on competition in the field of language training services in the Czech Republic and on the customers of those services, as it resulted in a substantial restriction of competition between the members of the Association, or affected the basic parameters of competition between them, and affected competition between providers of language education services.

The Association has been setting prices in this way since at least the second half of 2017 and has even gradually updated the rates. The Association has regularly discussed the issue of prices at its meetings and has monitored its members' compliance with the set rates and called on them to correct them.

For the first time ever, the Office imposed a fine for a prohibited decision of an association of undertakings on the basis of the turnover of the members of the association for the last completed financial year. The maximum amount of the fine could thus reach up to 10% of the members' turnover exceeding CZK 900 million. The language schools that are part of the Association shall be liable for the payment of the fine when the decision becomes final. Exempted from the liability are undertakings that have demonstrably disagreed with the minimum price and have brought the anticompetitive conduct to the attention of the Office.

In the appeal proceedings, the Chairman of the Office, Petr Mlsna, confirmed that the Association had committed anticompetitive illegal conduct, but changed the duration of the offence and the first instance will now have to decide again on the amount of the fine.

Hindering On-site Inspections

On-site inspections are one of the most important tasks in the administrative proceedings of the Office or even before the proceedings are initiated. It is a unique tool that allows the Office to gather and secure evidence of anticompetitive

conduct. At the same time, by its very nature, an on-site inspection is a non-repeatable event, and if it cannot be carried out, there is usually no other attempt. Therefore, undertakings have a legal obligation to cooperate with the Office and provide it with the necessary assistance when conducting an on-site inspection. Failure to do so constitutes an offence punishable by a fine of up to CZK 300 thousand or 1% of the undertaking's turnover. Strict fines were imposed on five undertakings in 2022.

Fines for Sellers of Metallurgical Materials

Party to the proceedings: **HK STEEL TRADING s.r.o. in liquidation**

First-instance fine: CZK 300,000 (V0059/2022; coming into force on 20 May 2022)

Party to the proceedings: **EUROTUBES, s.r.o.**

First-instance fine: CZK 333,000 (V0058/2022; coming into force on 26 May 2022)

Party to the proceedings: **Marc spol. s r.o.**

First-instance fine: CZK 326,000 (V0060/2022; coming into force on 21 December 2022; confirmed in appeal proceedings)

Party to the proceedings: **MIT METAL POWER, a.s.**

First-instance fine: CZK 1,870,000 (V0057/2022; coming into force on 22 December 2022; confirmed in appeal proceedings)

The managing directors of these undertakings prevented an unannounced on-site inspection during which the Office's employees were supposed to search for and secure evidence of possible anticompetitive conduct. In view of the gravity of the conduct, the Office imposed fines of the maximum amount. All these fines were imposed in the form of an order. Two of them were not opposed and the orders became final. Marc and MIT METAL POWER made use of the possibility to submit a statement of opposition and the Office therefore initiated the proper administrative proceedings in which the fine was imposed by decision. The companies subsequently filed appeals against the decisions, which were rejected by the Chairman of the Office as unjustified.

The Office Fined the Undertaking Beryko for Obstruction During an On-site Inspection

Party to the proceedings: **Beryko s.r.o.**

First-instance fine: CZK 22,500,000 (V0031/2022; coming into force on 26 January 2023; filed appeal was withdrawn)

The Office conducted an on-site inspection of Beryko's business premises due to suspicion of anticompetitive conduct in the distribution and sale of Xiaomi products in the Czech Republic. In the course of the inspection, one of the company's executives refused to hand over and

make available to the Office inspectors his mobile phone, while the other handed over a mobile phone and a laptop for inspection, but the contents of these devices had been deleted or changed. In addition, a large part of the content of the work email account of one of the employees was implicitly deleted and, even after a request, backups of the work email accounts of Beryko's employees were not made available to the Office inspectors. Throughout the course of the on-site inspection, the undertaking Beryko deliberately and purposefully took a number of steps to obstruct or significantly impede the Office's investigation, despite repeated warnings of the consequences of such conduct.

When imposing the fine, the Office considered that this was deliberately obstructive conduct motivated by an intention not to allow a proper examination of business records. Moreover, its seriousness was significantly increased by the fact that it originated directly from the managing directors and shareholders of the undertaking under investigation.

Vertical Agreements

First Fine Reduction for Effective Compliance

Party to the proceedings: **Z – TRADE s. r. o.**

First-instance fine: CZK 17,649,000 (S0365/2020; coming into force on 21 September 2022; settlement)

The undertaking Z-TRADE infringed the Czech Competition Act and EU competition law by distorting competition on the market for the supply of candles and "aroma products" of luxury brands (e.g. Yankee Candle, WoodWick and Millefiori Milano). The Office found that Z-TRADE set fixed minimum retail prices for its customers for sales to final consumers between 20 December 2013 and 24 September 2020. It made the start and continuation of business with its customers conditional on compliance with the prices set by it, monitored compliance with those prices by its customers and invited them in person, in writing or by phone to increase their prices to the level set. Z-TRADE threatened customers who wished to sell below the prices set with penalties in the form of termination of supply or cooperation, which it applied in several cases.

As a result of Z-TRADE's conduct, competition between individual wholesalers of the goods supplied by Z-TRADE was restricted. They were restricted in their ability to offer goods to customers at a lower price than that set by Z-TRADE. For at least seven years, the price level of the goods in question was thus increased to the detriment of end consumers.

The party to the proceeding confessed to the illegal conduct in the settlement procedure, for which the fine was reduced by 20%. A further reduction of the fine was due to the fact that

the Office, for the first time in its history, considered the fact that the undertaking had a compliance programme in place (a compliance programme aimed at preventing infringements of the law or ethical standards by its employees and the undertaking as a whole).

Retail Price Fixing and Online Sales Restrictions by EURONA

Party to the proceedings: **EURONA s.r.o.**

First-instance fine: CZK 12,773,000 (S0160/2021; coming into force on 5 January 2023; settlement)

Between 3 September 2018 and 16 November 2020, the undertaking EURONA set fixed retail prices for its customers at which to sell its products and, at the same time, restricted the online sale of these goods via e-shops operated by its customers. EURONA also checked whether its customers complied with the prices and conditions set and then enforced price adjustments or the withdrawal of products from online sales by e-mail, even under threat of penalties.

According to the Office's decision, EURONA's conduct constituted the conclusion and implementation of prohibited agreements with its customers to directly fix resale prices and prohibited agreements to restrict online sales, which resulted in distortions of competition in the Czech Republic on the markets for detergents, dishwashing detergents, household cleaners, body care products, plant care products, car care products, pet care products and treats and health food.

In this case, for the first time in history, the Office punished restrictions on internet sales. Vertical agreements to restrict internet sales suppress the use of an important sales channel and may therefore distort competition. Restrictions on internet sales are generally not permissible; only special distribution systems (e.g. selective/exclusive distribution) may be exempted in some circumstances.

In imposing the fine, the Office considered that EURONA voluntarily terminated the anticompetitive conduct before the opening of the administrative proceedings, informed all its customers about the new terms of cooperation, carried out a comprehensive revision of its contractual documentation, thereby bringing it into line with the Competition Act. The party to the proceedings also cooperated with the Office to a high standard by confessing to the conclusion and performance of the agreements under review and by providing the Office with previously unrevealed evidence relating to the anticompetitive conduct, which contributed significantly to the investigation and proof of the existence of the infringement. The Office therefore reduced the basic amount of the fine by more than half. EURONA also benefited from a settlement, which reduced the fine by a further 20%.

Determination of Retail Prices by Suppliers of Sewing Machines

Party to the proceedings: **STRIMA CZECH s.r.o.**

First-instance fine: CZK 4,446,000 (S0299/2020; coming into force on 2 July 2022; settlement)

The undertaking STRIMA is a supplier of sewing equipment (e.g. Janome, Texi, Husqvarna Viking, Pfaff, Singer). In the period from 28 September 2016 to 30 June 2020, it set minimum or fixed retail prices for household sewing equipment and accessories for sale to final consumers, monitored compliance by its customers and invited them by e-mail or short text messages to increase their prices to at least the level set, even under threat of penalties (denial of access to B2B), which it actually applied in case of non-compliance with the minimum or fixed prices, and the price increase requests were accepted by the participant's customers during that period.

This conduct was aimed at distorting competition and had actual negative effects on competition in the relevant markets in the Czech Republic and Slovakia. This constituted an infringement of Czech and EU competition law.

When imposing the fine, the Office considered, in mitigating circumstances, that the undertaking STRIMA voluntarily terminated the anticompetitive conduct, informed all its customers that the agreements in question were invalid and that the setting of retail prices was entirely at the discretion of the customers. The undertaking admitted to the anticompetitive conduct in the settlement procedure, for which the fine was reduced by a further 20%.

Party to the proceedings: **OK business, s.r.o.**

First-instance fine: CZK 192,000 (S0339/2020; coming into force on 9 August 2022; settlement)

The anticompetitive conduct occurred in relevant markets for household sewing equipment and accessories in the Czech Republic and Slovakia. OK business infringed the Competition Act and the Treaty on the Functioning of the European Union.

Between 8 March 2018 and 31 May 2020, OK business set fixed retail prices for the sale to final consumers of goods supplied by it, monitored compliance with those prices by customers and asked customers to comply with those prices, which customers complied with during that period. The object of the prohibited vertical price agreements was therefore to restrict customers from reselling the household sewing equipment and accessories supplied by OK business at prices other than the fixed prices set by the undertaking. The decision was issued in the context of a settlement procedure.

Party to the proceedings: **Šicí technika Brother s.r.o. (Brother Sewing Technology)**

First-instance fine: CZK 1,134,000 (S0298/2020; coming into force on 7 January 2023; settlement)

The undertaking Šicí technika Brother¹ deals with wholesale and retail sale of home sewing and needlework machines including accessories and is a distributor of Brother and Merrylock sewing machines and accessories.

The Office has found that the undertaking in the period from 5 September 2016 to 25 September 2018 set fixed or minimum retail prices for household sewing machines and accessories for sale to final consumers, monitored compliance with these prices by customers and invited customers by e-mail to increase prices to the level set, and informed some customers that it was prepared to take action in the event of non-compliance or that it had already suspended deliveries of goods, thereby forcing customers to comply with the fixed or minimum retail prices.

This behaviour had actual negative effects on competition in the relevant markets in the Czech Republic and Slovakia and infringed both national and EU competition law. The decision was adopted in the context of a settlement procedure.

Anticompetitive Conduct of Public Authorities

Fines for the Capital City of Prague for Anticompetitive Gambling Ordinances

Party to the proceedings: **Capital City of Prague**

First-instance fine: CZK 2,679,000 (S0517/2018; appeal filed)

In the period from 1 December 2012 to 20 December 2018, the Capital City of Prague applied a regulation within its area allowing the operation of betting games, lotteries and other similar games/gambling games (collectively "lotteries") only at the address locations listed in the annexes of three generally binding ordinances consecutively issued during the period. The selection of those venues was not based on objective, non-discriminatory and previously known criteria. This resulted in unjustified distortions of competition in the market for the operation of lotteries within the area of the capital city during the period in question and, in the period from 1 December 2012 to 31 December 2016, in the market for the operation of gambling establishments, by favouring undertakings which were able to continue to operate lotteries at the authorised address locations.

¹ Undertaking Šicí technika Brother s.r.o. is an independent distributor of Brother products without any corporate links or other affiliation with Brother Sewing Machines Europe GmbH.

The Capital City of Prague issued the ordinances under review with the aim of progressively limiting the availability of lotteries. The ordinances were based on the possibility to operate lotteries at precisely defined address locations or on zero tolerance, i.e. in some parts of the city the operation of lotteries was completely prohibited.

The Office found that the Capital City of Prague had selected the address locations in a completely discriminatory manner, for which there were no objective binding criteria to be applied in the selection process. The Capital City of Prague had also failed to demonstrate that the territories of the districts where a uniform regulatory regime in the form of zero tolerance was chosen had common specificities compared to the territories of other districts where the choice was made to fix the operation of lotteries at specific address locations.

Party to the proceedings: **Capital City of Prague**

First-instance fine: CZK 1,274,000 (S0461/2021; appeal filed)

The Capital City of Prague infringed the Competition Act when it allowed gambling only at the address locations listed in the Annex to the General Binding Decree No. 10/2015 Coll. of the Capital City of Prague, amending the General Binding Decree No. 10/2013 Coll. of the Capital City of Prague, which establishes the places and times at which lotteries and other similar games may be operated and which establishes measures to limit their promotion effective from 1 January 2016 to 31 December 2020. Similarly, live gaming (e.g. casinos) was permitted by the Capital City of Prague only in the districts of the capital city not listed in Annex 1 of the General Binding Decree No. 14/2020 Coll. of the Capital City of Prague which defines the conditions of gambling on the territory of the capital city effective from 1 January 2021. The selection of the address locations or districts was not made on the basis of objective, non-discriminatory and previously known criteria.

The Capital City of Prague thus distorted competition on the market for gambling on its territory by favouring undertakings which could continue to operate gambling at the designated locations without justifiable reasons. The anticompetitive conduct took place in the period from 21 December 2018 to 14 October 2021.

Concentration Between Undertakings

Implementation of Concentration Before the Office's Decision

Party to the proceedings: **Natland Group, SE**

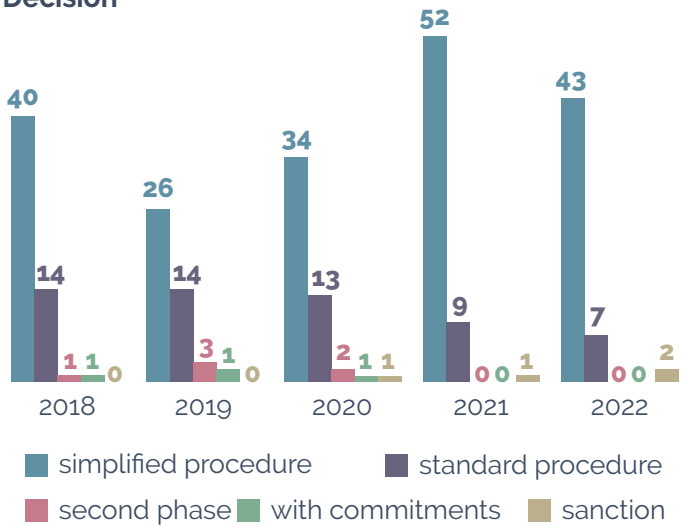
First-instance fine: CZK 1,435,000 (S0518/2020; coming into force on 8 February 2022; settlement)

The party to the proceedings, having acquired the possibility of exclusive control over the undertaking Energo Příbram, s.r.o, exercised this control by voting at the general meeting of Energo Příbram held on 9 December 2019 and then continued this exercise of control by taking decisions at other general meetings held in the period until 30 November 2020. The decisions taken by the participant at the general meetings concerned, in particular, the removal and appointment of the managing director and the removal of a member of the supervisory board of Energo Příbram, the increase in the share capital of Energo Příbram, the amendment of the content of its articles of association and the approval of its financial statements.

It was not until 1 December 2020 that the Office's decision approving the merger of Natland Group, SE, and Energo Příbram in a simplified procedure (Case Ref. No. ÚOHS-S490/2021) became final.

In the sanction proceedings, the party requested the application of the settlement procedure and, as it fulfilled all the settlement conditions, the Office reduced its fine by 20% to a final CZK 1,435,000.

Concentration Between Undertakings – By Type of Decision



Party to the proceedings: **Company New a.s.**

First-instance fine: CZK 143,000 (S0363/2021; coming into force on 14 May 2022; settlement)

The undertaking Company New acquired shares representing 100% of the share capital and voting rights in ZOOT, a.s., and thereby acquired the possibility to exercise exclusive control over this undertaking, and the transaction constituted a concentration between undertakings which, in view of the level of turnover achieved by the merging undertakings, was subject to clearance by the Office. On 13 August 2020, the undertaking adopted a resolution of the sole shareholder of ZOOT amending the wording of its articles of association and making changes to the positions of the members of its board of directors and supervisory board, on 17 September 2020, a resolution of the sole shareholder of ZOOT removing one of the members of its board of directors, and on 14 October 2020, a resolution of the sole shareholder of ZOOT amending its articles of association and appointing new members of its supervisory board.

Thus, the party to the proceedings committed an infringement of the Competition Act in the period from 13 August 2020 to 26 May 2021 by implementing the concentration between undertakings Company New and ZOOT prior to the notification of the transaction to the Office and before the entry into force of the decision of the Office authorising the merger. Since the party to the proceedings fulfilled all the conditions of the settlement procedure, the Office reduced the fine by 20%.

Cases Settled Outside the Administrative Proceedings

Pursuant to Article 21(2) of the Competition Act and after preliminary examination of the matter, the Office does not have to initiate administrative proceedings if there is no public interest in conducting such proceedings in view of the low degree of harmful effect of the conduct on competition. In 2022, it did so in the following cases.

Czech Insurance Association

The investigated entity issued public statements in the electronic media regarding anticipated price increases for insurance. The Office examined the statements of the Czech Insurance Association in the course of its activities and perceived them as a potential distortion of competition. The Office informed the investigated entity of the conduct that could be anticompetitive and potentially distorting competition and requested it to withdraw from the conduct in question and to take appropriate remedial action. The Office noted that the public statements of the association were made in the context of the legislative process in connection with the adoption of

the so-called tax package, which included a change in the way technical provisions of insurance companies were taxed, where the investigated entity sought to defend the interests of its members and to influence the resulting draft bill in this respect. Thus, the media statements of the investigated entity in this case could be seen as an argument in the debate over the legislative bill. The Czech Insurance Association accepted the Office's position and gave assurances during the meeting at the Office's headquarters that there would be no further possibly problematic negotiations.

Public statements on prices, exchange of information on prices or efforts to introduce a uniform price list for associations of undertakings have been dealt with by the Office outside the administrative proceedings in a number of other entities, for example, the Association of Driving Schools of the Czech Republic, the Association of Road Transport Operators ČESMAD BOHEMIA, the Czech Association of Meat Processors or self-employed persons in the field of lighting equipment for filming.

Cinema City Czech s.r.o.

The Office resolved possible anticompetitive behaviour concerning fees charged by the operator of the Cinema City multiplex chain without initiating administrative proceedings. The Office dealt with the case on the basis of a complaint alleging a possible abuse of dominant position by Cinema City Czech in connection with the charging of a Virtual Print Fee (hereinafter referred to as "the VPF") of EUR 500 for each theatre where a film will be shown.

The VPF started to be charged by cinema operators worldwide in around 2009. It was used to cover the costs of the digitisation of cinema screens, which mainly benefited film producers. The undertaking Cinema City has charged the VPF to film producers (via their distributors) since 2011. The undertaking concerned financed the digitisation of the cinema screens with its own resources and subsequently collected the VPF from the film producers to pay for it, without any predetermination of the total amount to be paid. From mid-2017, it gradually stopped collecting the VPF from a group of major Hollywood producers, with whom it was the only one to have signed agreements to cover the costs of digitisation with a fixed amount to be paid. The last of these contracts was terminated in mid-2020, but the VPF continued to be collected from other film producers with whom no contracts had been negotiated. This practice may have put Czech and European film producers in particular at a disadvantage when competing with Hollywood producers.

In response to the investigation and the subsequent invitation by the Office, the undertaking Cinema City stopped applying the VPF for the release of individual films in the Czech Republic

during 2021. As of 2022, the VPF is no longer charged to any domestic or foreign film producers in the Czech Republic. This removes concerns about possible distortions of competition and the Office has therefore not initiated administrative proceedings in the case.

Second-Instance Decision-Making

The administrative appeal proceedings, including the functioning and activities of the Appellate Commissions, are the responsibility of the Second-Instance Decision-Making Department. Cases in the field of competition are the responsibility of the Unit of Second-Instance Decision-Making – Competition.

In 2022, the Office received a total of 19 appeals against first-instance decisions, resulting in the same number of administrative second-instance proceedings. Of the cases investigated, four concerned prohibited agreements, one abuse of dominance, two unlawful interference and six were procedural.

In 2022, a total of 13 decisions were issued at second instance, of which seven were substantive and six were procedural. In seven cases, the first instance-decision was confirmed in full, in two cases the first-instance decision was partially reversed, in one case the decision was cancelled and the proceedings terminated, and in one case the decision was also cancelled and the case remitted for reconsideration. Fines totalling CZK 176,859,000 were imposed for the anticompetitive infringements, the vast majority of this amount (CZK 174,663,000) was attributable to the prohibited agreements cases, while the remaining CZK 2,196,000 were fines for obstructing on-site inspections.

Significant Cases

Chairman of the Office Definitively Confirmed Fines for the Olomouc IT Cartel

Parties to the proceedings: **AUTOCONT a.s.; TESCO SW a.s.; ICZ a.s.; MERIT GROUP a.s.; Asseco Central Europe, a.s.; FPO s.r.o.; A-Scan s.r.o.**

Total final fine: CZK 79,434,000 (R0011,0012,0013,0014,0017,0018/2022; coming into force on 19 April 2022)

The undertakings AUTOCONT (as the successor of AutoCont CZ, a.s.), TESCO SW, ICZ, MERIT GROUP, A-Scan, Asseco Central Europe and FPO infringed the Competition Act by dividing the performance of the public contract "Development of e-Government services in the Olomouc Region", which was

awarded by the Olomouc Region in 2012, through mutual contacts and exchange of information. The cartel members also illegally participated in the drafting of the award of the contract in question. The aim of the prohibited agreement was to influence the outcome of the award procedure so that the winning bid would be the one in which all parties of the award procedure would participate. They subsequently carried out their plan by submitting two matching bids on 30 April 2012, namely a more advantageous bid by AutoCont CZ, with the other parties as subcontractors, and a cover bid by ICZ.

This is the second decision of the Chairman of the Office in the case. In the previous decision of August 2021, the Chairman of the Office confirmed the finding that a cartel agreement had been concluded, but cancelled the sentences on the fines imposed and obliged the Office to re-examine the reasons for the fines in more detail. The repeated first-instance decision was issued in January 2022 and was also challenged by appeals. The Chairman of the Office has now dismissed all the appeals against the fines imposed, finding no illegality in the first-instance decision and considering the reasons for the fines to be substantiated.

The resulting fines for the parties are as follows: CZK 26,867,000 for ICZ; CZK 20,154,000 for MERIT GROUP; CZK 13,500,000 for Asseco Central Europe; CZK 11,422,000 for AUTOCONT; CZK 6,854,000 for TESCO SW; CZK 405,000 for FPO; CZK 232,000 for A-Scan (did not file an appeal in the past, coming into force therefore as early as 12/2020).

Confirmation of Record Vertical Agreement Fine for Garland

Party to the proceedings: **GARLAND distributor, s.r.o.**

Final fine: CZK 95,461,000 (R0003/2022; coming into force on 21 October 2022)

According to the final decision, between 18 June 2013 and 30 May 2019, Garland set minimum retail prices for the sale to final consumers of garden equipment, gardening equipment and tools for home (hobby) use supplied by it, monitored compliance by purchasers and invited them by e-mail, in person or by telephone to increase prices to the level it had set. The supplier itself initiated the price agreements, insisted on their observance and enforced them under threat of penalties such as blocking the purchaser's account in the ordering system. The enforcement of the price agreements also led to purchasers themselves checking non-compliance with the set retail prices by other purchasers and asking the supplier to remedy the situation, i.e. to ensure uniform (higher) retail prices. Through this conduct, Garland entered into prohibited vertical agreements to fix retail resale prices in infringement of the Competition Act. For this, the company was fined CZK 95,461,000.

However, the Chairman of the Office corrected the conclusions of the Office in his decision. He found that the administrative file did not contain evidence that would prove beyond reasonable doubt that the alleged conduct had continued until the date of the initiation of the administrative proceedings (6 June 2019), when the Office had linked the completion of the offence to that date. According to the second-instance body, the last partial offence was completed on 30 May 2019, when an agreement on price fixing with a customer was reached by email. This was reflected in a proportionate reduction of the fine imposed, which was reduced by more than CZK 1 million in the second instance.

The most important legal issue in the case under review was the issue of the definition of all the partial attacks of the continuing offence in the operative part of the decision. According to the Chairman of the Office, the text of the Act on Administrative Offences does not imply an obligation to describe in detail all the partial attacks. The Chairman of the Office also pointed to the previous decision-making practice, which has already been reviewed by the administrative courts, and to the approach of the European Commission, which does not list specific prohibited agreements or individual partial attacks in its decisions on infringements of EU competition rules. The Chairman of the Office also rejected the objections concerning the liquidity of the fine by economic arguments.

Judicial Review

In 2022, the Office followed up on its significant successes in defending its decisions before the administrative courts in the previous period. A total of 13 administrative actions were filed against the Office at the Regional Court in Brno, nine of them on the merits and four for unlawful interference during on-site inspections. The Court issued 19 judgments, dismissing the action in 18 cases and upholding the correctness of the Office's decisions. Only one action (the BABY DIREKT case) was successful before the Regional Court, but the Office filed a cassation complaint in this case. The Court issued four other procedural resolutions, three of which dismissed the

95%

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

82%

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

proceedings for withdrawal of the action and one of which dismissed the action.

In 2022, the Supreme Administrative Court received 16 cassation complaints related to decisions of the Office (eight on the merits and eight on unlawful interference). In nine of the eleven judgments issued, the court decided in favour of the Office, and the court also rejected two other cassation complaints filed by the applicants.

Also, in 2022, the Constitutional Court rejected two constitutional complaints concerning cases regarding anticompetitive conduct by public authorities pursuant to Article 19a of the Competition Act.

Resolution of the Constitutional Court of 4 October 2022, Ref. No. III. ÚS 1300/22 (General Binding Decree of the Municipality of Děčín)

The Municipality of Děčín filed a constitutional complaint against the judgments of the Supreme Administrative Court² and the Regional Court in Brno³, which rejected the Municipality's claim and upheld the Office's decision⁴ declaring an infringement pursuant to Article 19a of the Competition Act. Specifically, the case concerned an anticompetitive general binding decree regulating the operation of lotteries in the city. The complainant claimed protection against state interference in the activities of local authorities, arguing that the Office was not entitled to assess the compliance of the general binding decrees with the Competition Act.

The Constitutional Court rejected the complaint unequivocally, noting that the Supreme Administrative Court had reasoned in a constitutionally consistent manner that Article 101(4) of the Constitution expressly provides for state intervention in the activities of local authorities on the basis of the law if the protection of the law, in this case in the narrower sense of the protection of competition, so requires. The interpretation that

² from 5 April 2022, No. 7 As 60/2020-34

³ from 6 February 2020, No. 62 Af 64/2018-52

⁴ decision of the Chairman of the Office from 15 May 2018, No. ÚOHS-R145/2017/HS-14196/2018/310/AŠi

the normative activity of municipalities should be exempted from the scope of Article 19a of the Competition Act would not only be non-conceptual, but also to a certain extent discriminatory in relation to undertakings which do not have a similar instrument, such as professional or interest local governments.

The Constitutional Court has ruled that the authority of the Ministry of the Interior to assess the compliance of the general binding decrees with the law (Article 123 of the Municipalities Act) does not preclude another entity (in this case the Office) from also exercising supervision over a local government body. According to the Constitutional Court, the fact that Article 19a of the Competition Act can be applied to the standard-setting of municipalities in the form of general binding decrees follows, inter alia, from Article 19a(4) of the Competition Act. The supervisory remedies pursuant to Article 123 of the Municipalities Act and pursuant to Article 19a of the Competition Act can be applied side by side, the objects of their review do not overlap. Thus, according to the Constitutional Court, the Office may also assess the compliance of generally binding decrees of local government units with the Competition Act.

In the assessed case, the Constitutional Court did not find any infringement of the complainant's constitutionally guaranteed right to self-government or other rights. The Constitutional Court came to the same conclusions in a similar constitutional complaint filed by the Municipality of Varnsdorf.⁵

Office Defended All Its On-site Inspections at the Courts

In 2022, the Office recorded a number of positive judgments of the Regional Court in Brno and the Supreme Administrative Court, which reviewed the legality of the on-site inspections carried out. The Office defended all the inspections and none of them was declared illegal by the court, as claimed by the investigated companies. Thus, the administrative courts have repeatedly confirmed that, even outside the administrative proceedings, the Office has relatively extensive investigative powers which enable it to carry out effective supervision, which includes carrying out on-site inspections at the business and other premises of the undertakings.

According to the courts, the knowledge leading to the conduct of an on-site inspection need not be unequivocal or proven. If the Office already had evidence that an infringement of competition law had occurred, it would not even have to conduct an on-site inspection. While such knowledge might not in itself be sufficient to prove anticompetitive agreements

in the context of the relevant administrative proceedings, it may nevertheless be relevant as evidence leading to an on-site inspection. However, it is sufficient for reasonable suspicion if the supporting evidence, such as emails and other evidence, can be interpreted against the complaining undertaking. At the moment, it is not appropriate to argue which version is more likely, since the applicants usually come up with alternative explanations of the evidence obtained, but whether the evidence is also capable of leading to the conclusions drawn by the Office. The courts have also explained that requiring an extensive investigation before conducting the actual on-site inspection could have the effect of alerting potential participants in the anticompetitive conduct, which could result in the cover-up or destruction of evidence. Administrative courts are well aware that conducting an on-site inspection is usually the most effective and often irreplaceable tool to obtain crucial evidence to prove anticompetitive conduct.

The courts also recognize that there is no doubt that the public interest in uncovering anticompetitive behaviour is somewhat hampered by the procedural standards imposed by statute and case law on the Office's proceedings and the conduct of on-site inspections. At the same time, the Supreme Administrative Court is aware of the difficult position of the Office in uncovering anticompetitive conduct and obtaining relevant evidence to prove it. Therefore, the Office cannot be subjected to unreasonably high demands in terms of obtaining documents and knowledge to conduct on-site inspections. It is precisely in interpreting contentious issues, such as the obligation of an undertaking's representative to bring his communication equipment to the place of inspection, that the courts have relied on the meaning and purpose of the on-site inspection and have chosen an interpretation which does not make impossible to carry out the inspection.

⁵ The constitutional complaint was dismissed by resolution Ref. No. I. ÚS 3011/22 from 22 November 2022.

Significant Market Power

From a significant market power perspective, the year 2022 may be considered as a turning point. Following extensive preparations for the transposition of the Directive (EU) 2019/633 of the European Parliament and of the Council on unfair trading practices in business-to-business relationships in the agricultural and food supply chain (hereinafter referred to as “the UTP Directive”), the adoption of the Amendment Act No. 359/2022 Coll. (hereinafter referred to as “the Amendment Act”) amending Act No. 395/2009 Coll., on Significant Market Power and Unfair Trading Practices in the Sale of Agricultural and Food Products and Abuse Thereof (hereinafter referred to as “the Significant Market Power Act”). This amendment, effective from 1 January 2023, represents a significant change in the concept of significant market power after several years. Furthermore, the amendment to the Act extends the list of unfair trading practices and significantly expands the entities to which the Act will apply.

By harmonising the protection of the weaker party in contractual relations and unfair trading practices in the food supply chain, the Office has newly opened up the possibility of international cooperation with the supervisory authorities in other EU Member States. During the mutual meetings, the Office benefits from its extensive experience gained over almost fifteen years in the field of unfair trading practices.

Implementation of Directive (EU) 2019/633 on Unfair Trading Practices in Business-to-business Relationships in the Agricultural and Food Supply Chain into the Czech Legislation

The Department of Methodology and Supervision of Market Power actively participated in the legislative work related to the transposition of the UTP Directive into the Czech legal system. The UTP Directive aims to protect small and medium-sized enterprises (SMEs) in the agricultural and food supply chain, which are in the position of suppliers of agricultural and food products. The UTP Directive was transposed into the Significant Market Power Act No. 395/2009 Coll. with effect from 1 January 2023 through the Amendment Act

No. 359/2022 Coll. This transposition has, among other things, substantially increased the number of entities that are subject to statutory regulation (approximately hundreds compared to the original 10-13 entities), changed the concept of significant market power and the concept of unfair trading practices, and introduced international cooperation between sectoral regulators at EU level.

The Significant Market Power Act replaces the term “food” with the broader term “agricultural and food products” (Article 2e) of the Significant Market Power Act). Therefore, the Significant Market Power Act does not only provide for the control of large retail chains purchasing food for subsequent sale, but also regulates the legal relations of all entities engaged in the production, processing or trade of agricultural or food products, as defined in Annex I to the TFEU; it is understood that such agricultural and food products shall also include products not listed in this Annex but processed for use as food products using substances, products or goods listed in this Annex. The agricultural and food products thus include, for example, cereals, live plants and floricultural products, live and dead animals, meat, milk and dairy products, mill products, tobacco, cork, residues and waste from the food industry.

Another major innovation that will be relevant for the entire agri-food sector is the extension of the concept of significant market power to the entire buyer-supplier chain. The Significant Market Power term is still retained, but this concept is now based on a mutual measurement of the parties' turnover, which corresponds to the meaning and purpose of the UTP Directive (Article 3 of the Significant Market Power Act). The significant market power assessment will reflect the specific contractual relationship between the relevant supplier and the buyer of agricultural and food products. The Significant Market Power Act will therefore, following the example of the UTP Directive, set out five turnover threshold bands emphasising the protection of SMEs (see table). As a result, market power will be granted to any buyer of agricultural or food products along the buyer-supplier chain, as long as its annual turnover exceeds EUR 2 million and at the same time it is in a higher turnover band than its supplier. However, if the annual turnover of each of the contracting parties exceeds EUR 350 million, their legal relationship will no longer be subject to regulation by law.

Purchasing power of suppliers and buyers pursuant to the Significant Market Power Act is relative, based on five turnover threshold bands											
annual turnover											
supplier						buyer					
≤	EUR	2 million				>	EUR	2 million			
>	EUR	2 million	and	≤	EUR	10 million	>	EUR	10 million		
>	EUR	10 million	and	≤	EUR	50 million	>	EUR	50 million		
>	EUR	50 million	and	≤	EUR	150 million	>	EUR	150 million or > CZK 5 billion in the Czech Republic		
>	EUR	150 million	and	≤	EUR	350 million	>	EUR	350 million		

Pursuant to Article 3a(2) of the Significant Market Power Act, the calculation of the annual turnover of a buyer, supplier or alliance thereof shall be based on the annual turnover of the enterprise, independent enterprise, partner enterprise and connected enterprise as defined in the Commission Recommendation of 6 May 2003 concerning the definition of micro, small and medium-sized enterprises (2003/361/EC).

Article 4 of the Significant Market Power Act now provides an extensive list of unfair trading practices that can be committed only by a buyer with significant market power or an alliance of buyers against a supplier that is considered a weaker party under the turnover criteria set out in Article 3 of the Significant Market Power Act. As compared to the previous legislation, this is a complete and definitive list of unfair trading practices, that cannot be extended any further; the law no longer contains a general clause. A buyer with significant market power is therefore only committing an offence when its conduct fulfils all the statutory elements of the relevant offence.

Most of the practices prohibited by the Significant Market Power Act prior to 1 January 2023 remain in the list of unfair trading practices, but the wording has been clarified or the Significant Market Power Act no longer requires the element of consistency (cf. for example Article 4(2)(a) or (b) of the Significant Market Power Act). The Significant Market Power Act newly adopts certain practices from the UTP Directive, such as the unauthorised acquisition, use or disclosure of a supplier's trade secrets by a buyer with significant market power (Article 4(2)(i) of the Significant Market Power Act). Following the example of the UTP Directive, the Significant Market Power Act newly introduces so-called grey practices in Article 4(3), whereby it prohibits certain acts of buyers, assuming that the buyer has not agreed with the supplier in writing prior to their implementation.

The Significant Market Power Act, unlike the UTP Directive, continues to require written contractual arrangements to precede the supply of agricultural or food products or related services in order to increase transparency and enhance legal certainty (Article 3b of the Significant Market Power Act). The Significant Market Power Act also specifies the basic terms of such a contract. Non-compliance with the written form or content of the contract is considered an unfair trading practice (Article 4(2)(f) of the Significant Market Power Act). Pursuant to the transitional provisions to the amendment, the contracting parties shall bring contracts concluded before the amendment's entry into force, the terms of which are inconsistent with the amendment, into compliance with the amendment within 12 months of the amendment's entry into force, that is by 31 December 2023.

Under Article 10a of the Significant Market Power Act is newly established the principle of international cooperation. Effective protection against unfair trading practices is based on the cooperation of the Member States when investigating unfair trading practices.

Concerning the Office's supervisory and investigative powers, the amendment did not bring any substantial changes in this area. The provisions of the Competition Act, Act No. 500/2004 Coll., on Administrative Proceedings, and Act No. 250/2016 Coll., on Liability for Offences and Proceedings Thereon, shall continue to apply accordingly.

Sector Inquiry into the Purchasing Market from 2021 to 2022

Since the adoption of the UTP Directive at European level, it has become clear since mid-2019 that it is not only the relationship between retail chains and their food suppliers that is characterised by a certain degree of power asymmetry in the supply chain, which is reflected in unbalanced contractual conditions. A few months afterwards, the COVID-19 pandemic affected the availability of some non-perishable foods on the shelves and, significantly, caused a sharp increase in their prices. The similar impact on the food sector has been caused by the Russian aggression against Ukraine in February 2022. All these events were so crucial that encouraged the Office to conduct a sector inquiry into the market of purchasing foodstuffs for resale in the Czech Republic. However, due to the content of the UTP Directive, this market has not been defined as narrowly as it used to be (dealing primarily with the relations of suppliers with retail chains). The Office has shifted its focus to the lower levels of the food vertical markets, where food purchases are also made between businesses with different bargaining positions.

The sector inquiry provided the Office with a number of insights relevant to its future work. Firstly, the inquiry confirmed that significantly asymmetric relationships are common even in the lower levels of the agricultural and food supply chain in the Czech Republic. The situation can be demonstrated by the relationship between the small farmer and the buying company, which is often conditioned by the lack of comparable business partners, which causes a one-sided contract orientation with a significant disadvantage for the farmer as the weaker contracting party. A very similar relationship emerges between agricultural businesses and the so-called food brokers who buy up production on a large scale and then use their lines to put it into saleable form (e.g. freezers). A significantly more advantageous market position is also evident in the case of food processing companies (industrial food production), whose professional apparatus and the considerable volume of production under their own, often relatively well-known brand allow them to negotiate concessions with their weaker partners that would normally be impossible to achieve in a relationship with an equal contracting party.

As a characteristic feature of the business of the lower levels of the food chain can also be identified the trade mainly based on oral contracts. However, the Amendment Act requires buyers with significant market power to have written contracts, including specified content (Article 3b of the Significant Market Power Act). The affected buyers will be required to bring

these contractual terms into full compliance with the law during the 2023 transition period. The solution may consist, for example, of concluding pre-prepared and standardised framework contracts with suppliers followed by trade always on the basis of a written implementation agreement (e.g. in the form of an order and its acceptance). While the mandatory documentation will indeed represent a cost for the buyer with special liability, the subsequent transparency and clarity of the contract for both parties will undoubtedly outweigh this cost.

The supply chain has also operated on the basis of varying lengths of payment terms to date. While the Significant Market Power Act required supply chains to have a payment period of no more than 30 days from the date of delivery of the invoice, the lower levels of the vertical commonly applied Article 1963 of the Civil Code, under which, although the time limit was the default, the parties were allowed by derogating agreement to extend the time limit further, even beyond 60 days. The sector inquiry also revealed that thirty days is the predominant repayment period, but an agreed repayment period of 90 or even 120 days is no exception. The Amendment Act imposes an obligation for all buyers with significant market power to pay within 30 days from the date of receipt of the invoice, while derogating provisions of the contracts will fulfil the facts of unfair trading practices.

The Office also investigated the factors that have led to the sharp increase in retail food prices over the last two years (often in the order of tens of percent) and the level of profitability of the various links in the supply chain. In this context, it has been found that requests for food price increases (often repeated) have come mainly from suppliers who have been affected by significant increases in their production costs, in particular for energy (the objective component). On the other hand, there was another factor that played a role in the increase in food prices, which couldn't be explained by objective reasons and is based simply on the fact that some products became much inaccessible as a result of the crisis situation (whether it was non-perishable foodstuffs and fears of store closures during the COVID-19 pandemic, or the higher demand for some raw materials in Europe caused by the sudden supply shortage from Ukraine). Both of these components then boosted inflation, which was in 2022 roughly twice as high in the Czech Republic compared to the EU average. Turning to profitability, the available data shows that even the crisis situation did not cause cumulative losses for individual sectors in the food chain. This is however not the case of the catering and hospitality sector, where compulsory closures have resulted in a negative economic outcome for the sector.

The last important aspect analysed in detail by the sector inquiry concerned the services related to the purchase and/or the sale of food. The Office in this section stated that the

services and their connection with the sale or purchase of food must be understood in a material context and specified the basic conditions under which the services may be provided. Other parts of the sector inquiry focused on modernising access to services and mapping new types of services. As an example, the supply chain has started to promote services related to so-called master data, which used to be commonly provided free of charge between contracting parties. There are currently new platforms for their provision, which are already for a fee. It will always be necessary to assess the reasonableness of the performance and consideration for such

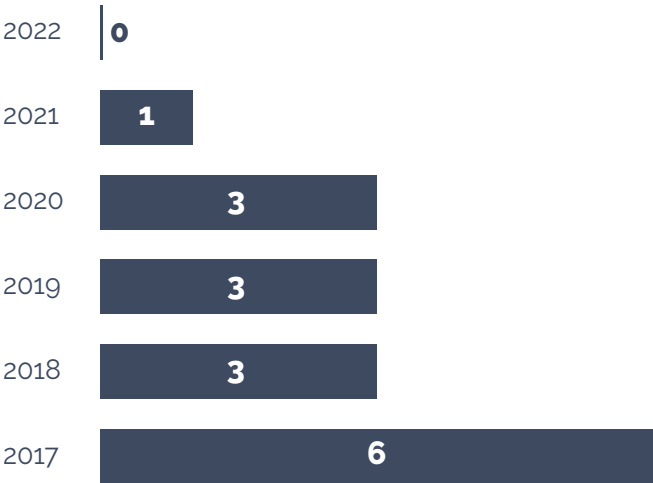
services and to determine whether the services in question represent a real benefit to the weaker party compared to normal business cooperation.

In conclusion, the sector inquiry provided the Office with many impulses for future action and clarified what aspects of the relationship between buyers with significant market power and suppliers of agricultural and food products to focus on. The report of the sector inquiry is available on the Office's website and therefore may provide some feedback and clarification of the purpose of the new legislation to actors in the supply chain.

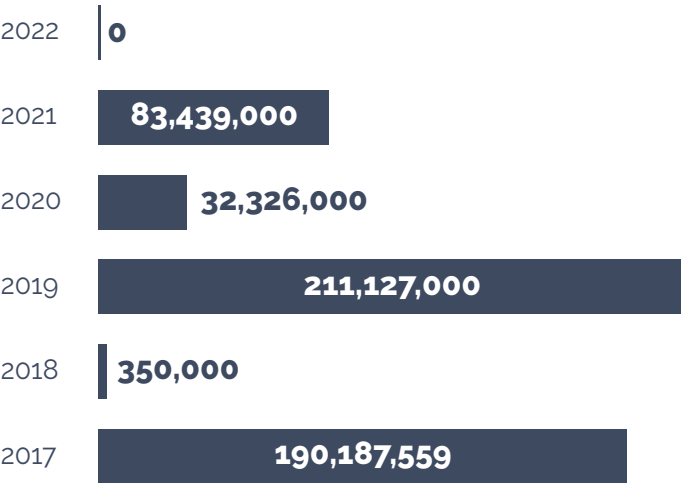
First-Instance Significant Market Power Control Statistics of 2022

Complaints received	14
Ex-officio investigations	11
Requests on the interpretation of the law received	12
Administrative proceedings initiated	0
Administrative proceedings completed	4
Cases solved by competition advocacy	3
Fines imposed for unfair practices in the field of significant market power	0
Total amount of fines imposed for unfair practices in the field of significant market power	0

Initiated Administrative Proceedings



Amount of Fines Imposed (in CZK)



Significant Case

Hruška Chain Has Committed to Return CZK 39.3 Million to Its Food Suppliers

Party to the proceedings: **Hruška, spol. s r. o.**
(S0026/2019; coming into force on 18 May 2022; S0200/2021; coming into force on 8 June 2022)

The Office issued two first-instance decisions in May 2022 (on 2 May and 23 May 2022), accepting the commitments proposed by Hruška to remedy the defective state and at the same time ordering Hruška to comply with them. Hruška was the party of two administrative proceedings for procedural reasons, which were different in the definition of the duration of the period of the alleged conduct. The decision of 2 May 2022 concerns the period from 1 July 2016 to 17 January 2019, and the decision of 23 May 2022 concerns the follow-up period from 18 January 2019 to 18 June 2021. This case had to be re-assessed by the first instance of the Office, as the Chairman of the Office annulled the previous decision of the Office in 2021 and referred it back for a new examination.

The Office accused Hruška for negotiating and applying a so-called full service with some of its food suppliers from the second half of 2016 to mid-2021, consisting in a reduction in the price of Hruška's inventory for food with an endangered warranty period, followed by the issuance of a corrective tax invoice by the supplier. Hruška applied the full service in cases in which the company failed to sell goods that were in danger of expiry of the warranty period. In practice, the goods with a threatened warranty period were not physically returned but rather revalued. The company claimed financial compensation from its suppliers for the difference between the original retail selling price, including VAT, and the sale price, including VAT, through an accounting revaluation of inventories. Through the conduct complained of, Hruška completely transferred the commercial risks and losses associated with the sale of goods with a compromised warranty period to the food suppliers.

The Office found in its decisions that Hruška's conduct constituted an unfair trading practice of negotiating or exercising the right to return purchased food. It was not decisive whether in practice there was a physical return of the food purchased or whether accounting operations were carried out to achieve a similar result.

When issuing the commitment decision, the Office was obliged to consider the existence of the UTP Directive, as the deadline for its transposition into Czech law had already expired by the time the decision was issued. Although the conduct complained of by the Office was committed by Hruška in relation to a higher number of food suppliers, as a result of the Euroconform interpretation, only those food

suppliers which according to Article I(2) of the UTP Directive fell into a lower turnover band compared to the turnover band in which Hruška was located could be considered to be injured.

Instead of issuing a sanctioning decision, Hruška preferred to terminate the administrative proceedings by accepting commitments. The company therefore proposed to the Office commitments to remedy the defective state. The Office assessed these commitments as sufficient, accepted them instead of imposing a fine and terminated the administrative proceedings. The obligation of Hruška to reimburse the 74 food suppliers concerned for the funds that Hruška had unlawfully obtained from them on the basis of full service was from the point of view of the Office absolutely essential and absolutely necessary. The amount in total was CZK 39,274,764 including VAT, and Hruška was obliged to repay it by 8 February 2023.

In addition to returning full service amounts to food suppliers, Hruška has agreed (i) to refrain from negotiating or implementing full service, (ii) ensure that any individuals under its control refrain from such conduct, (iii) remove full service clauses from all types of contracts and agreements with low-turnover food suppliers, (iv) inform its low-turnover food suppliers in writing of the contents of the Office's binding decision and (v) develop and put into practice internal guidelines, administrative measures and control mechanisms that should result in the elimination of the risk of a violation of the Significant Market Power Act.

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

There were no appeal proceedings against the first-instance decision in the area of control of significant market power in 2022. However, one administrative proceeding has been suspended since 18 August 2020 until the decision of the Supreme Administrative Court on the Office's cassation complaint in the present case becomes final.

No significant market power action has been brought before the Regional Court in Brno and the Regional Court has not issued any judgement in this area. Similarly, no cassation complaint was filed with the Supreme Administrative Court in 2022 and the Supreme Administrative Court has not issued any decision in this area.

Public Procurement

The Office has been supervising public procurement and concessions since January 1995. Its activities in this context are currently governed by Act No. 134/2016 Coll., on Public Procurement (hereinafter referred to as “the Public Procurement Act”). The legal framework of the supervisory activities transposes the provisions of the European review directives (Council Directives 92/13/EEC and 89/665/EEC);⁶ these directives regulate the specifics of the review procedure in public procurement and strengthen the guarantees of the principles of transparency and non-discrimination in public procurement. Within the supervision over public procurement, the Office decides whether the contracting authority has acted in accordance with the Public Procurement Act when awarding a public contract (including a concession – see Article 2(2) of the Public Procurement Act) or in special procedures under Part 6 of the Public Procurement Act;⁷ imposes remedy measures, deals with offences committed by contracting authorities and imposes fines. The Office also carries out supervisory activities pursuant to Act No. 194/2010 Coll., on Public Services in Public Passenger Transport. The purpose of the aforementioned Acts is to ensure free and open competition between the contractor (or carriers bidding to conclude a public passenger transport service contract within a public contract award procedure) and, at the same time, to carry out the selection of the most suitable bid in a transparent manner without discrimination between contractors/tenderers in a public contract award procedure. An equal, transparent and non-discriminatory competitive environment ultimately results in savings of public funds. Within the framework of supervision over public procurement, the Office also carries out inspection activity pursuant to Act No. 255/2012 Coll., on inspection (Inspection Code), with regard to compliance of acts of contracting authorities in public procurement. Last but not least, the Office is significantly involved in awareness-raising and methodological activities. By its involvement in the field of public procurement, the Office therefore does not only play the role of a supervisory authority, but is also a public body that contributes to the shaping of the procurement environment through its activities, which go beyond decision-making. The establishment and gradual development of cooperation with academia is also worth mentioning.

Legislative Changes

In relation to legislative changes, the primary steps related to the adoption of a comprehensive amendment to the Public Procurement Act should be mentioned. Unfortunately, the legislative process could not be completed by 2022. From the perspective of public procurement law, this amendment represents a fundamental and long-awaited instrument, which is intended to resolve some ambiguities that have arisen in application practice; also, it is intended to respond to the European Commission's criticism of the insufficient transposition of certain rules from the procurement directives. However, in the past year, this amendment has been brought almost to the very end of the legislative process (as a Chamber of Deputies Print No. 249).⁸

Although a comprehensive amendment to the Public Procurement Act has yet not been adopted, some legislative changes affecting public procurement law were nonetheless made in 2022. Among others, there was an indirect amendment to the Public Procurement Act made in connection with the amendment to the Act No. 69/2006 Coll., on Implementation of International Sanctions. Thus, effective from 1 September 2022, new provisions have been incorporated into the Public Procurement Act and the Act on Public Services in Public Passenger Transport, which set out rules for the procedure of the contracting authority in award procedures whose participants or their subcontractors are subject to sanctions pursuant to the Act on Implementation of International Sanctions.⁹ In connection with the review of this type of contracting authorities' practices, the Public Procurement Act now contains special provision on the conduct of proceedings related to the application of international sanctions. The provision has been incorporated into Article 261a of the Public Procurement Act. The Office became the supervisory authority competent to actively intervene in the procurement process and to take remedial measures in this respect, but the enforcement of offences in relation to the proper implementation of sanctions under the Act on Implementation of International Sanctions remained within the competence of the Financial Analytical Office.

⁶ As amended by Directives 2006/97/EC, 2007/66/EC and 2014/23/EU of the European Parliament and of the Council.

⁷ I.e. design contest and public procurement through framework agreements and dynamic purchasing systems.

⁸ The draft of the Amendment to the Public Procurement Act is available in Czech language from <https://psp.cz/sqw/text/historie.sqw?o=9&T=249>.

⁹ Mainly provisions of Article 48a of the Public Procurement Act.

On 1 December 2022, Act No. 360/2022 Coll., on the Promotion of Low-emission Vehicles through Public Procurement and Public Passenger Transport Services, came into force. This Act sets minimum shares of low-emission vehicles that public procurers and public service contracting authorities in the field of transport will have to meet in their contracts.¹⁰ Supervision of compliance with the obligations under this Act, including the power to decide on possible offences for non-compliance with these obligations, has been conferred on the Office.

In the context of legislative changes concerning public procurement law, it is also worth mentioning Regulation (EU) 2022/2560 of the European Parliament and of the Council of 14 December 2022 on foreign subsidies distorting the internal market, the provisions of which affect, among other things, the field of public procurement, which was during the legislative process intensively commented on by the personnel of the Public Procurement Division of the Office.¹¹ The Regulation introduces a notification obligation for participants in the procurement procedures or dynamic purchasing systems in situations potentially indicating a possible distortion of the internal market by foreign subsidies. It also imposes an obligation on the contracting authority to reject a bid or request to participate in specific situations.¹²

Activity of Public Procurement Division

During 2022, the Office continued building on the trend established in the previous period in the area of public procurement review, which is mainly characterised by open communication towards the addressees of review activities, but also towards the professional and general public, as well as representatives of public institutions and stakeholders. However, in addition to active communication, the Office also focused in the past year on more comprehensive communication of topics (both from its own activities and from the field of public procurement in general) through its own website and social networks.

Firstly, it is necessary to emphasize the increasingly intensive methodological, support and awareness-raising activities that the Office carries out. One of the most significant activities in this respect is the organisation of Methodology Days on Public Procurement, which the Office began to organise in 2021. In 2022, three further Methodology Days were organised, focusing on selected topics in the field of public procurement. Although the Methodology Days are traditionally organised online, their outputs can be found on the Office's website, where they can also be accessed by those who did not participate in the online meetings.¹³ In the context of the events organised by the Office, the first May Conference on Public Procurement should be mentioned, which met with great interest of the professional public.

Representatives of the Office also actively participated and lectured at an exceptionally large number of conferences, seminars, training courses and discussions during the past year. They provided methodological recommendations from the perspective of the supervisory authority in relation to the interpretation and application of the Public Procurement Act, including relevant to some topical issues arising in connection with the recent turbulent situation on the market of certain commodities. At the same time, the representatives of the Office met with officials from institutions that have an impact on the procurement environment in the Czech Republic, and discussed the possibilities of improving the environment in the future. A comprehensive overview of selected events in which representatives of the Public Procurement Division took part is available on the Office's website.¹⁴ Last but not least, it can also be noted that, mainly thanks to the confidence in the quality of its work, the Office has become a respected and trusted partner for law enforcement authorities, to whom it provided its expert conclusions on a number of legal issues raised by, for example, the National Centre against Organised Crime or the Prosecutor General's Office.

In 2022, the Office also prepared or participated in the preparation of several interpretative opinions and guidelines focused mainly on the application of challenging provisions of the Public Procurement Act in the context of current situation. These opinions have become an important methodological tool, by which the Office continuously contributes to the development of the procurement environment in the Czech Republic. Particularly noteworthy is the methodological recommendation for the purchase of pharmaceutical

¹⁰ This is a transposition of the Directive 2009/33/EC of the European Parliament and of the Council on the promotion of clean and energy-efficient road transport vehicles and its Amendment Directive (EU) 2019/1161.

¹¹ The regulation is available from <https://eur-lex.europa.eu/eli/reg/2022/2560/oj>.

¹² Particularly in cases when the European Commission adopts a decision prohibiting award of a contract to a contractor, which the Commission will do if it finds that the contractor is benefiting from a foreign subsidy distorting the internal market and fails to offer commitments that fully and effectively remedy the distortion, or if these commitments are not, in the Commission's view, appropriate or sufficient enough to fully and effectively remedy the distortion.

¹³ Available in Czech language from <https://www.uohs.cz/cs/verejne-zakazky/metodicka-cinnost/metodicke-dny-verejneho-zadavani.html>.

¹⁴ Available in Czech language from <https://www.uohs.cz/cs/verejne-zakazky/metodicka-cinnost/uskutecnene-akce-v-ramci-metodicke-cinnosti/prehled-vybranych-akci-v-roce-2022.html>.

products, which responds to the malpractice of contracting authorities in the purchase of pharmaceuticals, which the Office sanctioned in the past year, and purpose of which is to provide a useful guide to good practice on purchasing pharmaceuticals in the framework of Public Procurement Act. Other issued opinion worth mentioning is the opinion on clarification and supplementation of bids in award procedures, reflecting, among others, the current decision-making practice of the Office and methodological materials on the correct procedure of contracting authorities in relation to energy purchases in the current tumultuous times. In the past year, the Office also published a compilation of decision-making practice in the field of public procurement in transport over approximately the last two years, with the aim of promoting good procurement practice not only in this market segment, as some of the conclusions from the decision-making practice are generally applicable to other markets as well.¹⁵

In the context of the methodological activities carried out, we should not overlook activities that may not be obvious at first glance to the addressees of the activities of the Office. For example, the Public Procurement Division has been involved in drafting statements in several proceedings before the Court of Justice of the European Union, as well as in commenting on draft legislation at both domestic and EU level, such as the Regulation on foreign subsidies distorting the internal market. The extensive questionnaire survey, through which Czech municipalities, as one of the largest and most vulnerable groups of contracting authorities, were contacted in order to identify the challenges and limits they face in public procurement, should not be overlooked as well. The main goal of the survey was to obtain more detailed information on what these contracting authorities have the biggest problems with in their contracting practice and which topics and suggestions in the field of public procurement the Office should focus on in its awareness-raising and methodological activities directed towards this group of contracting authorities. The results of the survey were then taken into account in other methodological activities.¹⁶

As regards the supervisory activity as such, the Public Procurement Division continued in 2022 with the already established trend of rational decision-making and a transition from strict formalism. The decision-making activity has been significantly influenced by a tendency not to pursue purely formal misconduct of contracting authorities with no real

impact on competition, but instead to actually examine the harmfulness of the contracting authorities' specific conduct. On the other hand, it should not be overlooked that the Office has clearly declared that frivolous submissions are not welcomed¹⁷ and that flagrant breaches of public procurement rules will continue to be severely sanctioned.¹⁸ In its supervisory activities, there has also been a clear increase in the number of cases in which the Public Procurement Division, as part of its fact-finding activities, has undertaken various forms of investigations into the situation and competition in the relevant markets so that the decisions issued are based on very specific findings of fact. The investigations carried out in the relevant market are often time-consuming, however, without the information thus obtained, which constitutes the essential factual findings, it is generally not possible to take a decision. At the same time, it should be noted that in 2022, the Public Procurement Division dealt with investigations into several public contracts of a periodic nature. These investigations have had a significant impact on the time taken to carry out the supervision activities of the Public Procurement Division, especially in view of the complexity of the fact-finding, in particular the amount of the estimated value of the public contracts, which required an above-standard number of partial calculations. The final output included several hundred-page decisions, the preparation of which placed a considerable burden on the Public Procurement Division.¹⁹

In 2022, the Public Procurement Division continued to investigate complaints received and to carry out other administrative activities, including the exercise of inspection activities under the Inspection Code. In general, the Office prefers to conduct investigations based on complaints, as this method of investigating the practices of contracting

¹⁵ All issued opinions and guidelines, as well as the abovementioned compilation, are available in Czech language from <https://www.uohs.cz/cs/verejne-zakazky/metodicka-cinnost/vykladova-stanoviska-a-metodiky.html>.

¹⁶ For example, within the Methodology Days or when attending the Days of the Small Municipalities.

¹⁷ See for example decision No. ÚOHS-17549/2022/500 of 25 May 2022, in which the Office stated on the basis of binding legal opinion declared in the decision of the Chairman of the Office No. ÚOHS-07479/2022/161 of 12 April 2022 that the complainant could not have suffered or be at risk of suffering any harm as a result of the contracting authority's objected procedure and thus the complainant does not have active legitimacy to file an application to initiate proceedings for review of the contracting authority's actions.

¹⁸ See for example the final decision No. ÚOHS-04169/2022/500 of 3 February 2022, by which a contracting authority was fined in the amount of CZK 800 thousand for committing infringement consisting in an excessively broadly defined subject matter of the public contract, which led to discrimination of contractors in the relevant market; or final decision No. ÚOHS-27023/2022/500 of 9 August 2022, by which a contracting authority was fined in the amount of CZK 600 thousand for the continuation of the offence of failing to award a public contract in one of the types of award procedures, although the contracting authority was obliged to do so.

¹⁹ See for example the final decision of the Office No. ÚOHS-25324/2022/500 of 27 July 2022.

authorities tends to be significantly more effective. In contrast to inspections under the Inspection Code, it is possible to react more flexibly to the facts found and, where appropriate, to initiate administrative proceedings as soon as possible. In some cases, it is even possible to take corrective action during the ongoing award procedure, i.e. before the award of the public contract.

In the context of the assessment of the year 2022, it can be concluded that in 2022 the Office managed to act as an independent and trustworthy authority in the field of protection of competition within the area of public procurement and through its activities contributed to the cultivation of the procurement environment in the Czech Republic, as well as to the dissemination of topics related to public procurement issues across the professional and general public.

Public Procurement Review in Figures

It is clear from the scope of the agenda dealt with by the Public Procurement Division in 2022, that there has been a slight decrease in the total number of administrative proceedings initiated, with a total of 507 administrative proceedings initiated before the Office in 2022, which is 58 less (by 10.3%) than in the previous year. The slight decrease in the total number of administrative proceedings initiated is mainly due to the decrease in the number of proceedings initiated on application, where the number of administrative proceedings initiated on application decreased from 250 to 190 (by 24%) compared to 2021. On the other hand, the number of administrative proceedings initiated *ex officio* increased from 315 to 317 (by 0.6%) compared to 2021. The reason for the decrease in the number of administrative proceedings initiated on application may be, among other things, the fact that the Office has significantly expanded its methodological and educational activities since 2021. This has been aimed both at contracting authorities – with the Office considering the specificities of the position of individual contracting authority groups and designing methodological support to meet the individual needs of these groups – and at the supply chain sector. This has led to a situation where contracting authorities are committing fewer misconduct that can be classified as trivial compared to previous years; i.e. the Office is now conducting a minimum number of administrative proceedings initiated on the basis of an application involving this type of misconduct.

In relation to the above, it cannot be overlooked that the decision-making practice of the Office, and hence of its Chairman, developed in 2022 in line with the previously established trend of rationalisation of decision-making and transition from strict formalism. Thus, the decision-making

practice has significantly reflected the tendency not to pursue purely formal misconduct of contracting authorities with no real impact on competition. At the same time, the Office has made it clear that frivolous submissions cannot lead to the success of complainants in administrative proceedings.

It can be concluded that these facts can certainly have an impact on the slight decrease in the number of administrative proceedings initiated on the basis of an application over the last two years. However, it should not be overlooked that one of the consequences of this situation is the increasing share of cases involving factually and legally complex issues, where potential misconduct by contracting authorities with a higher degree of seriousness and therefore a greater negative impact on the competitive environment is being examined, compared to previous years.

However, despite the facts mentioned above, the total number of administrative proceedings initiated in 2022 again exceeded the long-term five-year average of 441.6 cases.

In terms of the evolution of the number of complaints received to initiate proceedings *ex officio*, there is a slight decrease in 2022 compared to 2021, from 634 to 619 (by 2.4%) complaints, but the above number is significantly above the long-term five-year average of 401.6 cases. As compared to 2020, this represents an increase of 42.3%. That number of complaints filed in 2022 was directly reflected in the high number of *ex officio* proceedings initiated, which demonstrates that the significant proportion of lodged complaints contains relevant information about breach of law.

In 2022, the Office handled 553 complaints. In this context, it should be noted that the practice established in 2021 continued throughout 2022, whereby in cases where the Office found no grounds for initiating administrative proceedings, the contracting authority and the complainant (if known to the Office) are sent the reasoned results of the investigation of the complaint, which contain a legal assessment leading the Office to the conclusion that there are no grounds for initiating administrative proceedings *ex officio*. The Office considers that the application of such a transparent procedure, which goes beyond the minimum requirements set out in the legislation governing the handling of complaints, has contributed and is contributing significantly to raising legal awareness in the field of public procurement and ultimately leading to more efficient and swifter public procurement.

Although there was a slight decrease in the number of decisions issued in 2022 compared to 2021, from 615 to 551 (by 9%), this decrease must be seen both in the context of the decrease in the number of received applications to initiate administrative proceedings, with a 24% decrease compared to 2021, and in the context of the previous significant year-on-

27.5 days

average time for issuing a first-instance decision in 2022

year increase in the number of decisions issued in 2021, with an increase of 238 decisions (by 63%) compared to 2020. It is therefore clear that the total number of decisions issued in 2022 is consistent with the trend of high numbers of decisions issued, which first became apparent in 2021.

A closer examination of the individual results of the proceedings shows that they correspond to the above-described decline in the number of issued decisions on the merits. There has been a decrease from 2021 in the number of decisions on the merits imposing a remedy or fine from 413 to 379 (by 8.2%). That decline was also reflected in the case of orders issued, with a decrease from 283 to 264 (by 6.7%) orders issued compared to 2021. For decisions on the merits in which the contracting authority was found not to have committed misconduct, there was a decrease from 90 to 74 (by 17.8%) in 2022 compared to 2021, which is mainly due to a decrease in the total number of administrative proceedings initiated on application. In the case of decisions where there was no substantive review of the contracting authority's or contracting entity's action, i.e. there were procedural grounds for terminating the proceedings, there was a decrease from 112 to 98 (by 12.5%).

The number of decisions on interim measures issued in 2022 was *de facto* the same as in 2021, with the total number of decisions on interim measures issued decreasing from 122 to 121, while the number of decisions ordering interim measures increased from 102 to 103 and the number of decisions rejecting an application for interim measures decreased from 20 to 18 compared to 2021. Considering the above numbers of decisions on interim measures, it can be concluded that there was no significant circumstance in 2022 that would have a substantial impact on the number of decisions on interim measures issued.

In 2022, there was a slight decrease in the number of fines imposed, from 287 to 269 (by 6.3%). In terms of the total amount of fines imposed, there was a seemingly very dramatic decrease in the amount of fines imposed in 2021 from CZK 559,473,500 to CZK 11,857,500 (by 97.9%). However, in the context of the above figures, it must be taken into account that in 2021, the highest ever fine for a breach of the Public Procurement Act was imposed in the amount of CZK 550

million. In the case of a comparison of the amount of fines imposed in 2021 and 2022, excluding the aforementioned fine of CZK 550 million, on the contrary, in 2022 there was an increase in the total amount of fines by almost CZK 2.5 million. When comparing fines imposed on contracting authorities by decision – by order (and no statement of opposition was filed), in 2022, in terms of the number of fines thus imposed, there is a slight decrease from 243 to 230 (by 5.3%) compared to 2021, however, despite the aforementioned decrease in the number of orders issued, there was an increase in the amount of fines imposed, with fines in the total amount of CZK 2,474,000 being imposed by order in 2021 and fines in the amount of CZK 2,924,500 being imposed in 2022, representing an increase of 18.2%. In 2022, in addition to the fines imposed by order, a further 39 fines totalling CZK 8,933,000 were imposed. A summary of the highest fines is shown in the table below.

A total of 96 enquiries were also dealt with in the context of the Public Procurement Division's activities in 2022. This activity strengthens the role of the Office in its awareness-raising and methodological activities in the field of public procurement.

Within its supervisory powers, the Office also performs inspection activities in compliance with the Inspection Code. In 2022, the Office initiated seven inspections, two of which were also concluded. Within these concluded inspections, the Office found an infringement of the Public Procurement Act in connection with the procedure of the contracting authority which did not fulfil the conditions for the application of the exception pursuant to Article 29(b) of the Public Procurement Act, allowing the award of a public contract outside the award procedure. Furthermore, the Office concluded an inspection in which it examined the fulfilment of the conditions for the use of the negotiated procedure without publication with reference to Article 63(1)(a) of the Public Procurement Act, whereby it was found that the conditions specified in the relevant provision of the Act were not fulfilled in relation to the inspected public contract. At the same time, the Office concluded three other inspections in 2022, which were initiated before 2022. In one of these, the issue of purchase of medicines and medical devices by the contracting authority outside the award procedure through framework contracts and separate orders was addressed. In this case, in particular, the question of the determination of the estimated value in relation to each of the public contracts under review, which were public contracts of a periodic nature, was examined. The remaining two inspections addressed the question of compliance with the conditions of Article 222 of the Public Procurement Act, respectively the question of the materiality or non-materiality of the change of the obligation from the contract to the public contract in relation to the amendments concluded by the contracting authority to the contracts for the performance of the respective public contracts.

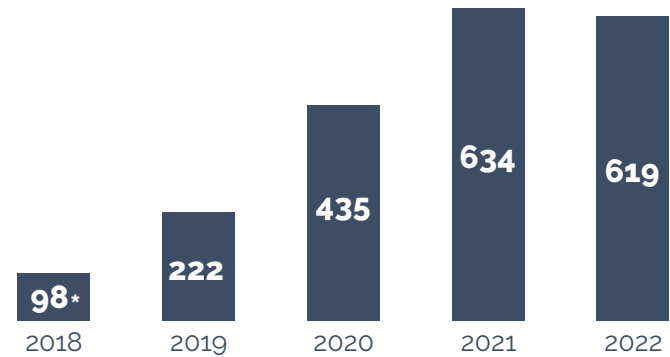
Overview of the Inspection Activity of the Office in 2022

Number of inspections initiated in 2022	7
• of which concluded in 2022	2
Number of inspections initiated before 2022 and concluded in 2022	3
Total number of inspections concluded in 2022	5

Outcome of Inspections in 2022

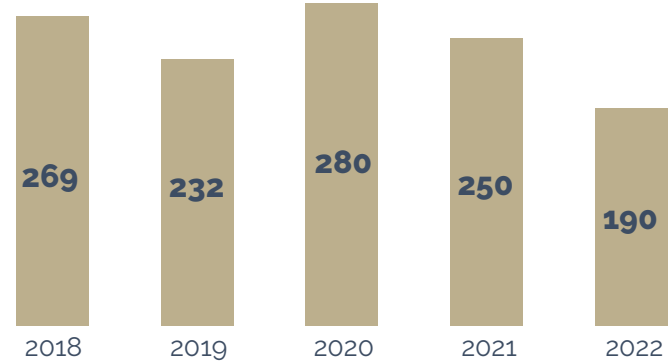
Infringement of inspected provision not found	0
Infringement of inspected provision found	5

Number of Complaints Filed

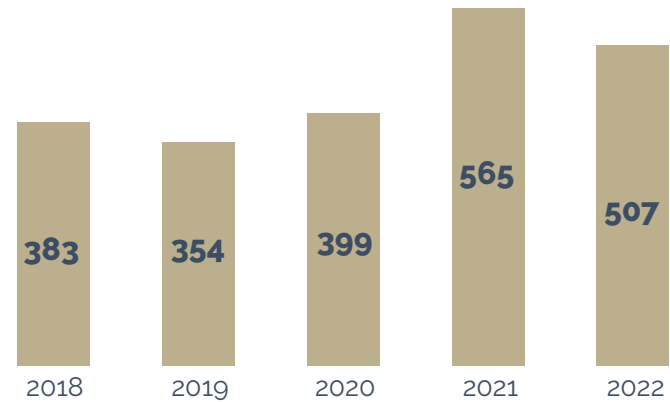


*Only paid complaints are concerned.

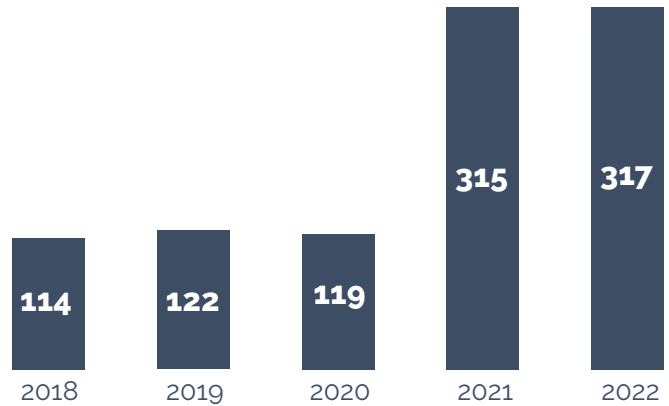
Number of Applications to Initiate Administrative Proceedings Received



Total Number of Administrative Proceedings Initiated in First Instance



Number of Proceedings Initiated *Ex-officio*



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

	Complaints received	619
Administrative proceedings	Total number of initiated administrative proceedings, of which	507
	• initiated on the bases of the application	190
	• <i>ex-officio</i>	317
	◦ of which on the basis of inspections	1
First-instance decisions	Total number of first-instance decisions, ²⁰ of which	1,704
	• decisions on the merits ²¹	551
	• remedy or the fine imposed ²²	379
	◦ of which orders issued ²³	264
	• misconduct of the contracting authority not found ²⁴	74
	• procedural reasons ²⁵	98
	• interim measures	121
	• decisions on imposing interim measures	103
	• decisions on dismissal of interim measures	18
	• decisions on cancelation of interim measures	0
	• the other first-instance decisions ²⁶	1,032
Fines	Number of fines imposed ²⁷	269
	Total number of fines imposed, ²⁸ of which	CZK 11,857,500
	• 230 fines imposed by the order (the statement of opposition was not submitted)	CZK 2,924,500
	• 39 fines imposed by decision	CZK 8,933,000
Costs of proceedings	Number of imposed costs of proceedings ²⁹	96
	Total amount of imposed costs of proceedings ³⁰	CZK 1,720,000
Deposits	Total amount of lodged deposits ³¹	CZK 70,049,211.91
	Total amount of deposits forfeited in favour of state budget ³²	CZK 21,471,118.80

20 The number includes all the first-instance decisions issued in 2022 (decisions on the merits, decisions concerning interim measures and all the other first-instance decisions).

21 The number includes all the decisions issued in 2022, by which the administrative proceeding was terminated in the first instance.

22 The number includes all the decisions issued in 2022, by which in relation to at least part of the subject matter of the proceedings the fine or remedy was imposed.

23 The number even includes orders against which the statement of opposition was submitted.

24 The number includes all the decisions issued in 2022, by which substantive review of the contracting authority's procedure was exercised and in relation to any part of the subject matter of the proceedings no remedy or the fine was imposed.

25 The number includes all the decisions issued in 2022, in which there were no reasons for substantive review of the procedure of the contracting authority.

26 The number includes all the other decisions issued in 2022 within the first-instance proceedings or in its relation such as setting the time limit for proceeding of the procedures of the tenderers, deciding on the objections of prejudice, deciding on participation in proceedings, awarding of experts and deciding on their remuneration, deciding on refusing the request to access the file, etc.

27 The number includes cases where the fine was imposed on the basis of the order or by the decision issued in 2022 in the first instance; if the case was assessed in the first instance repeatedly, the fine is counted just once. If the fine was imposed in the first

instance and consequently cancelled in the second instance, this fine is not to be included within this amount.

28 The number includes the financial volume of all the fines imposed in the first instance; in case the subject matter was assessed in the first instance repeatedly, the fine is counted only once in 2022. If the fine was imposed in the first instance and consequently cancelled in the second instance, this fine is not to be included within this amount.

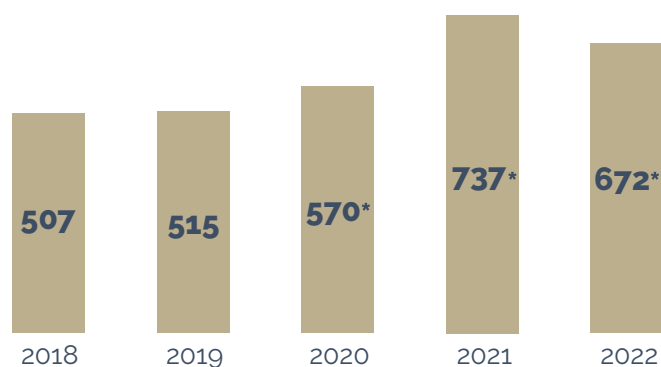
29 The number includes the number of cases in which the decision on the imposed payment of costs of proceedings was issued in 2022 in the first instance; if the subject matter was assessed repeatedly in the first instance, the costs of the proceedings are included only once in 2022. If the costs of the proceedings were imposed in the first instance and consequently cancelled in the second instance, these costs are not to be included within this amount.

30 The number includes the financial volume of all the costs of proceedings imposed by the decision issued in 2022 in the first instance; if the subject matter was assessed repeatedly in the first instance, the costs of the proceedings are included only once in 2022. If the costs of the proceedings were imposed in the first instance and consequently cancelled in the second instance, these costs are not to be included within this amount.

31 The number includes the sum of all the deposits lodged at the Office's bank account in 2022; the number is not based only on the proceedings initiated in 2022.

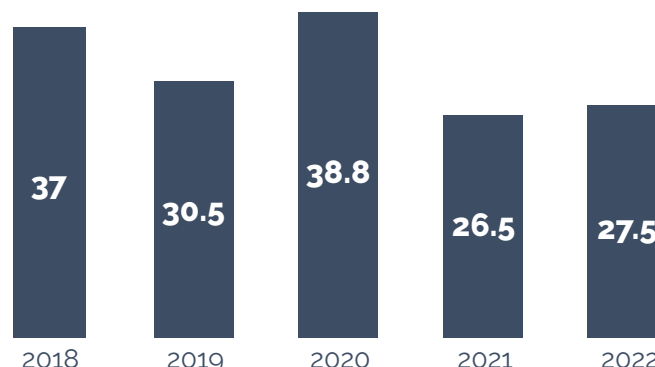
32 The number includes financial volume of deposits forfeited in favour of the state budget in 2022; the number is not based only on the proceedings initiated in 2022.

Number of Decisions Issued in First Instance



*Only decisions on merits and on interim measures.

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



Most Frequent Misconducts of Contracting Authorities

In terms of proportional representation, in 2022, the most frequently reviewed public contracts were in the field of construction sector (in general), information technologies, healthcare, and, to a lesser extent, in the field of telecommunication, transport services and waste disposal. As to the category of contracting authorities, the most frequent subject of review are public contracts awarded by municipalities, health care institutions, ministries and regions or entities operating in the field of administration and construction of transport infrastructure. As far as proportion of the areas of public procurement most frequently reviewed, as well as the category of contracting authorities, there were no significant changes in 2022. In this context, no new factor has been identified that would have a major impact on the exercise of supervision and/ or on the entities or areas being subject of the supervision.

The most frequent misconducts of contracting authorities, found by the Office when performing supervision over public procurement, include:

- vague, ambiguous or discriminatory definition of tender qualification criteria and/or inadequacy of these criteria, including qualification requirements;
- selection of a contractor who has not fulfilled the conditions of participation (it is not entirely clear from the notice of selection that the contractor's qualification has been demonstrated, etc.);
- exclusion of a contractor in breach of the law or the tender qualification criteria (the decision on exclusion does not specify in the necessary level of detail the

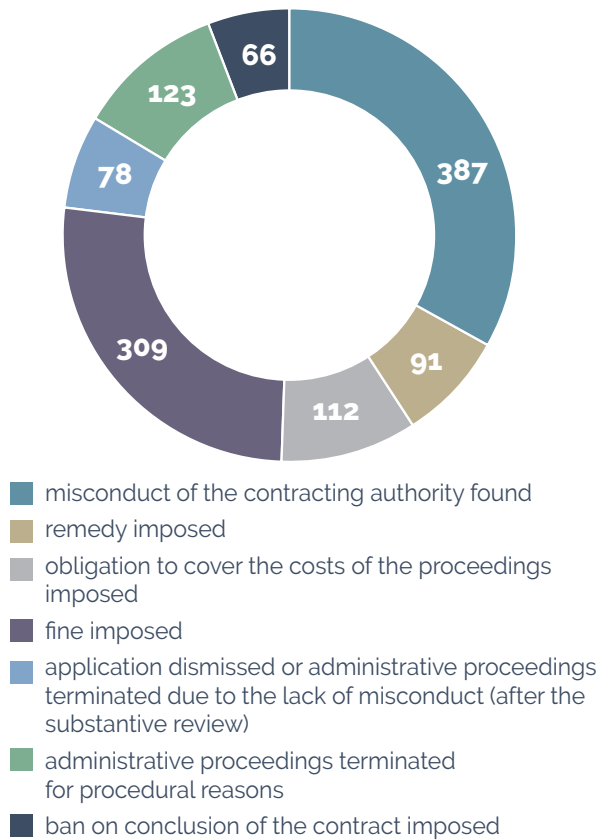
facts on the basis of which the contracting authority decided to exclude a particular contractor; alternatively, these reasons are not reflected in the specified tender qualification criteria);

- failure to comply with publication obligations.

Overview of Highest Fines Imposed in 2022

Ref. No.	Contracting Authority	Fine in CZK
S0257/2022	Capital City of Prague	2,600,000
S0653/2021	National Library of Technology	800,000
S0269/2022	Technické služby města Chomutov (Technical Services of Chomutov)	600,000
S0371/2022	Municipality of Kyjov	500,000
S0162/2022	Municipality of Mirošovice	360,000
S0316/2022	"Svazek vodovodů a kanalizací" měst a obcí (Municipal Water Supply and Sewerage Association)	300,000
S0220/2022	Úrazová nemocnice v Brně (Trauma Hospital Brno)	300,000
S0508/2021	Dopravní podnik hl. m. Prahy, a.s. (Public Transport Company of the Capital City of Prague)	200,000
S0224/2022	Capital City of Prague	200,000
S0535/2022	Municipality of Planá	200,000
S0587/2022	Silnice LK a.s. (Road Maintenance of the Liberec Region)	200,000

Statistics of Frequency of Assessed Legal Issues in Operative Parts of Decisions and Orders Issued in First Instance in 2022



Significant Cases

Renovation of Public Lighting in Drahanovice

Contracting Authority: **Municipality of Drahanovice**
Fine: CZK 50,000
(S0159/2022; coming into force on 18 July 2022 – confirmed by R0076/2022)

The Office assessed within these proceedings the legality of the procedure of the contracting authority, which in the course of 2021 concluded two amendments to the contract of 27 July 2021, the subject of which was the performance of a tender for the renovation of public lighting. Both amendments extended the deadline for the completion of the works, mainly due to the shortage of chips and aluminium alloy on the world markets. In course of the proceedings, the Office concluded that the contracting authority could have foreseen the facts justifying the conclusion of the amendments in question, as the problem of the shortage of chips and aluminium alloy was already present in the spring of 2021, i.e. at the time of the launch of the award procedure, and it was common knowledge. The

contracting authority could have therefore already reacted to these facts when preparing the tender qualification criteria and reflected them in the deadline for the completion of the work, or reserved the right to amend the contract pursuant to Article 100(1) of the Public Procurement Act.

The Office therefore found that the contracting authority committed two offences pursuant to Article 268(1)(a) of the Public Procurement Act by failing to comply with the rule laid down in Article 222(1) of the Public Procurement Act by allowing a substantial change in the contract obligation by concluding contract amendments, that is to say, it made a change which, pursuant to Article 222(3)(a) of the Public Procurement Act, would have allowed the participation of other contractors or might have affected the selection of the contractor in the award procedure if the terms of the original tender had corresponded to that change.

Purchase of Pharmaceuticals

Contracting Authority: **St. Anne’s University Hospital Brno**
Fine: CZK 70,000
(S0559/2022; coming into force on 13 December 2022)

In the proceedings, the Office dealt with the assessment of the contracting authority’s procedure for repeated procurement of pharmaceutical products. It found that the contracting authority had regularly procured the relevant pharmaceutical products in the course of 2018 and was therefore obliged to proceed pursuant to Article 19 of the Public Procurement Act when determining the estimated values of individual public contracts. According to the estimated values of the individual public contracts calculated in this way, the Office concluded that the public contracts in question were below or above the thresholds, which the contracting authority should have awarded in the relevant procurement procedure or followed another procedure as accepted under the Public Procurement Act – for example, by firstly concluding a framework agreement or introducing a dynamic purchasing system and subsequently awarding the public contracts within their framework. However, the contracting authority did not proceed this way.

Therefore, the Office concluded that the contracting authority committed a continuing offence pursuant to Article 268(1)(a) of the Public Procurement Act by failing to comply with the rule set out in Article 2(3) of the Public Procurement Act by procuring pharmaceutical products belonging to the relevant group according to the anatomical-therapeutic-chemical classification of pharmaceutical products for consideration during 2018, i.e. awarded individual public supply contracts without carrying out an award procedure, although it was obliged to do so, as the contracts were below or above the tender thresholds according to their estimated values, thereby potentially affecting the selection of the contractor.

Alternative Toner Cartridges

Contracting Authority: **Czech Republic – Ministry of Defence**

Application rejected

(S0167/2022; coming into force on 23 August 2022 – confirmed by R0081/2022)

In the proceedings initiated on the basis of an application, the Office addressed the question of the application of the principles of socially and environmentally responsible procurement set out in Article 6(4) of the Public Procurement Act. The applicant argued, among other things, that the contracting authority had not sufficiently implemented the principles in question, specifically referring to the contracting authority's chosen methods of demonstrating and ensuring the requirements of environmentally and socially responsible award procedure.

The Office concluded that the contracting authority had reflected the principles set out in Article 6(4) of the Public Procurement Act through the terms and conditions set out in the tender qualification criteria, where the contracting authority had obliged the contractor to ensure compliance with specified aspects of socially responsible procurement reflected throughout the supply chain and aspects of environmentally responsible procurement in terms of the contractor's general operation in order to carry out the requested performance. The Office did not find the way in which these principles were incorporated into the award procedure to be insufficient or inconsistent with the Public Procurement Act. The contracting authority is allowed certain discretion to choose the specific way of implementing these principles, and it is not for the Office to require the contracting authority to use a more "responsible" solution. All potential participants to the award procedure were bound to participate in the award procedure and to submit bids by the set conditions, and the obligation to comply with these requirements was thus also implicitly reflected in the selection of the contractor and the evaluation of bids, so that the meaning of Article 6(4) of the Public Procurement Act was met in this context as well. The Office also concluded that the provisions of Article 6(4) of the Public Procurement Act do not oblige the contracting authority to lay down conditions which make it possible to check, before the conclusion of the contract, whether the contractors are not acting in breach of the contracting authority's requirements in question.

Reducing the Energy Performance of Inpatient Ward of the University Hospital Ostrava – Reconstruction of Facade and Roof

Contracting Authority: **University Hospital Ostrava**

Application rejected pursuant to Article 265(a) of the Public Procurement Act

(S0230/2022, coming into force on 13 October 2022 – confirmed by R0112/2022)

In the proceedings initiated on the basis of an application, the Office assessed whether the contractual condition set by the contracting authority concerning the date of handover and takeover of the site, which is also the date of start of the construction works, was set in accordance with the principles of transparency and proportionality pursuant to Article 6(1) of the Public Procurement Act, also in the context of the other objected circumstance consisting in the failure to include an inflation clause in the tender qualification criteria (terms and conditions). The deadline was linked to a written invitation from the contracting authority, which the contracting authority was obliged to make to the selected contractor within six months of signing the contract, and the selected contractor was subsequently obliged to commence performance of the contract within ten calendar days of receipt of the written invitation.

The Office concluded that the stipulated condition is not in conflict with the principle of transparency, as the method of setting the handover and takeover date is sufficiently clearly defined, or the time period within which the contracting authority is to invite the selected contractor to handover and takeover of the site is clearly defined, and at the same time the time limit within which the selected contractor is to subsequently take over the site is clearly set. The findings show that the contracting authority has set the time limit within which it has to invite the contractor to handover and takeover of the site in view of its operational needs, where the works are to be carried out in operation and the site has to be properly prepared. The Office further stated that although the date of handover and takeover of the site set in this way poses certain risks to the contractors, which are aggravated by the current market situation, these risks are not of such a nature as to constitute an excessiveness of the condition, even in the context of the absence of an inflation clause.

The Office pointed out that it is up to the contracting authorities how they will take into account the changing situation with prices of construction materials when awarding public contracts, especially with regard to their real financial possibilities. According to the Office, it is generally advisable to include mechanisms in the public procurement contract that allow flexible responses to changes in the market (e.g. inflation clauses) or to adjust the terms and conditions during its performance. However, it is always at the discretion of the contracting authority whether or not to introduce such mechanisms. If the contracting authority decides not to introduce such mechanisms after considering all the circumstances, this is a purely business decision and cannot be considered contrary to the Public Procurement Act.

Supplies of Pharmaceuticals and Medical Devices

Contracting Authority: **Trauma Hospital Brno**

Fine: CZK 300,000

(S0220/2022; coming into force on 16 September 2022 – confirmed by R0095/2022)

The Office assessed the legality of the contracting authority's procedure, which concluded several framework agreements for the purpose of securing the supply of pharmaceuticals and medical devices without conducting an award procedure. The contracting authority defended its procedure by arguing that it had concluded the framework agreements with St. Anne's University Hospital Brno in the context of horizontal cooperation.

On the basis of the evidence, the Office found that the conditions of the Public Procurement Act were not met for the chosen procedure of the contracting authority. The contracting authority failed to prove that the first feature of horizontal cooperation pursuant to Article 12 of the Public Procurement Act, namely cooperation for the purpose of achieving joint objectives aimed at meeting general interest, was fulfilled, as there was no joint strategy between these contracting authorities to achieve general interest. The alleged cooperation between the contracting authorities was limited to the delegation of activities from the contracting authority to St. Anne's University Hospital Brno. The performance of the activity was therefore entrusted only to the second contracting authority, which was reimbursed by the first contracting authority and did not participate in the alleged cooperation. The contracting authority was therefore obliged to proceed in securing the supply of pharmaceuticals and medical devices in one of the award procedures pursuant to the Public Procurement Act.

Since the Office found significant mitigating circumstances in the case in question and no aggravating circumstances, it proceeded to impose a fine of 26.65% of the maximum possible amount despite the seriousness of the offence committed, which was then further reduced by the Chairman of the Office.

Construction Management for the Reconstruction and Completion of Industrial Palace

Contracting Authority: **Capital City of Prague**

Application rejected

(S0208/2021; coming into force on 10 June 2022)

During the proceedings initiated on basis of an application, the Office established a breach of the Public Procurement Act by the contracting authority when setting the requirement for the demonstration of technical qualification for a member of

the construction team. However, the Chairman of the Office cancelled the decision in question on the basis of an appeal filed, as the active legitimacy of the applicant was not properly assessed (R0020/2022/VZ). In the reassessment of the case, the Office decided to reject the application pursuant to Article 265(b) of the Public Procurement Act on the grounds that it had been submitted by an unauthorised person.

The Office pointed out that the essence of the subject matter of the contract was "construction management" and not the provision of legal services (although a lawyer should have been part of the team). However, the applicant is an attorney-at-law, whose scope of business is defined by Act No. 85/1996 Coll., on Legal Profession, and professional rules, and as such is not authorized to provide construction supervision services, which were primarily required by the contracting authority in the performance of the public contract. The applicant has not even claimed that it has any other business authorisation. Consequently, the applicant was not authorised, even in theory, to carry out the subject-matter of the contract.

It was also relevant that the applicant's objections were directed against the tender qualification criteria which did not concern a part of the public contract which the applicant could have performed and therefore did not directly threaten it with any prejudice. At the same time, the applicant did not bear the burden of proof even as regards the consequential harm, since it did not indicate anything about the main contractor with whom it planned to submit a joint bid and it was therefore not possible to verify its status as a (sub)contractor, the threat of harm to it or the link between the main contractor and the applicant. In addition to the above, the Office took into account that it is not usual for a lawyer with a marginal share in the performance of a public contract to seek a main contractor in an unrelated field. Therefore, according to the Office, the condition of the existence of an incurred or imminent prejudice to the rights of the applicant was not fulfilled, nor was the applicant's active legitimacy to apply for the initiation of proceedings for the review of procedures.

Second-Instance Proceedings in Public Procurement

The second-instance proceedings are handled within the Office by the Second-Instance Decision-Making Department, when its Public Procurement Units 1–3 are assigned to the agenda concerning appeals against first-instance decisions in the area of public procurement supervision. However, their task is not only to process the decisions of the Chairman of the Office and to ensure the hearings of Appellate Commissions. A significant part of their agenda is also to ensure the harmonisation of the Office's decision-making practice. Another core activity of the

Second-Instance Decision-Making in the Field of Public Procurement in 2022

Number of appeals filed against the first-instance decisions		148
Initiated second-instance administrative proceedings		148
Second-instance administrative proceedings pending as of 31 December 2022		19
Issued decisions on appeals	Total number of issued decisions on appeals	165 (of which 8 cases after judicial review)
	of which:	
	• decision of the first instance confirmed and appeal dismissed	97
	• decision of the first instance cancelled and returned to re-examination	29
	• decision of the first instance cancelled and administrative proceedings terminated	30
	• decision of the first instance cancelled and changed	1
	• appeal proceedings terminated	3
	• appeal dismissed due to delay	2
	• appeal dismissed for inadmissibility	2
	• number of appeals settled in autoremedy by the Chairman of the Office	1
	• number of appeals settled in autoremedy by the first instance	0
	• decision of the first instance cancelled	0
Decisions issued in review proceedings		4
Decisions issued in retrial		0
Decisions on imposing of interim measures		5
Corrective decisions of the Chairman of the Office		0
Procedural resolutions of the Chairman		35
Completed requests for inactivity measures		6
Other notifications or requests		35
Fines	Total number of confirmed fines	25
	Total amount of confirmed fines	CZK 4,415,000

Second-Instance Decision-Making Department is the handling of the judicial agenda, i.e. the preparation of statements on actions filed against decisions of the Chairman, representing the Office before administrative courts, filing cassation complaints to the Supreme Administrative Court or statements on cassation complaints. In addition to the above-mentioned agendas, the staff of the Second-Instance Decision-Making Department is also involved in the preparation of statements on preliminary questions referred to the Court of Justice of the European Union as well as in legislative activities, in particular commenting on draft laws.

The number of appeals filed in 2022 fell by 22.5% compared to the previous year, with a corresponding decrease in the number of decisions issued, by 21% (30 administrative proceedings not concluded in 2021 were decided in 2022). The Chairman of the Office confirmed the first-instance decision and dismissed the appeal in 58.8% of cases, in 17.6% of cases

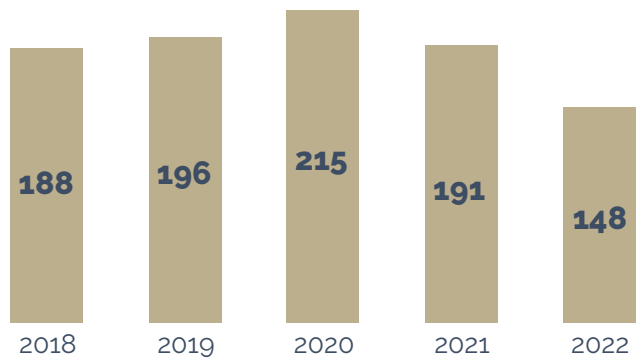
he cancelled the first-instance decision and returned it to the Office for further re-assessment, and in 18% of cases he cancelled the first-instance decision and terminated the administrative proceedings. In 2022, the Office again managed to reduce the average length of second-instance administrative proceedings from the referral of the case by three days to 45 days.

45 days

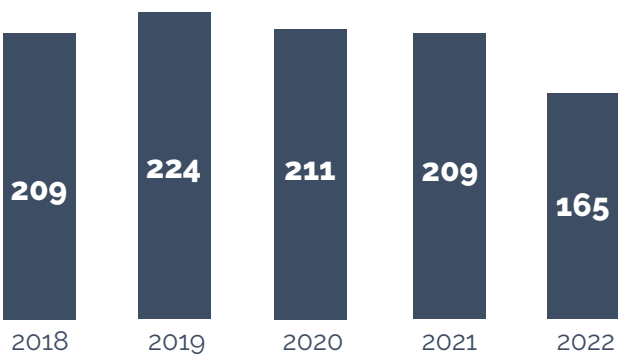
average length of second-instance proceedings in 2022

The Office confirmed only two fewer fines at second instance in 2022 compared to the previous year, yet the amount of fines confirmed decreased significantly, as the record fine of CZK 550 million imposed on the Ministry of Defence for a public contract concerning the purchase of multi-purpose helicopters (R0039/2021) was confirmed in 2021. The highest fine in 2022 amounted to CZK 800 thousand and it was confirmed against the National Library of Technology (R0027/2022).

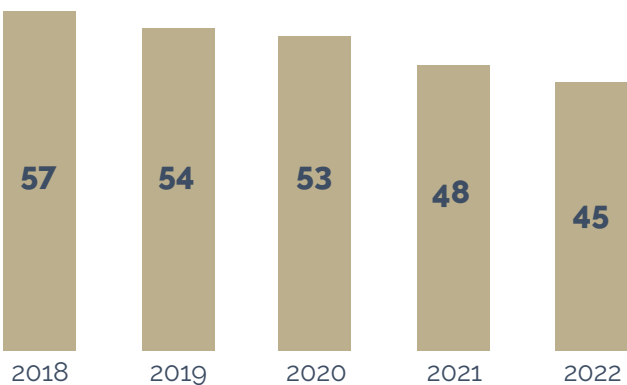
Number of Appeals Filed Against the First-Instance Decisions



Number of Issued Decisions on Appeals



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



Significant Cases

Framework Agreement for Geotechnical Surveys of Medium and Large Road Constructions 2022

Contracting Authority: **Road and Motorway Directorate of the Czech Republic**

(R0119/2022; coming into force on 12 November 2022)

The Chairman of the Office dismissed the applicant's appeal and confirmed the first-instance decision of the Office, by which the application was rejected pursuant to Article 265(b) of the Public Procurement Act on the ground that it was not filed by an authorised person.

Pursuant to Articles 241(1) and 244(3) of the Public Procurement Act, the complainants are obliged to state in their objections what harm they have suffered or are threatened to suffer as a result of the alleged unlawful conduct of the contracting authority. The scope of the allegations depends on the specific facts of the case, in particular the subject-matter of the contract and the person of the complainant. If the complainant is not normally active in the market and is not authorised to perform the essential parts of the contract, it must describe the existence of the harm suffered or threatened in a greater degree of detail than a contractor who normally provides the performance sought by the contracting authority.

In the assessed case, the applicant did not have a commercial licence to perform the essential parts of the framework agreement and derived its active legal capacity to file the objections and the application from another contractor who should have had the necessary licences (without whose participation it could not have obtained and performed the public contract). In view of that, he was obliged to identify that other contractor (its business partner) in its objections, to describe the form of their involvement in the procurement procedure and the performance of the framework agreement and to provide information on the basis of which it would be possible to assess the prejudice of that other contractor and whether his prejudice was transferred to the applicant in the form of the impossibility of submitting a joint bid. The applicant did not allege these legally relevant facts in its objections (nor in its application) and therefore the Office concluded that it had not carried its burden of proof as to its standing to file its objections and application and therefore correctly dismissed its application without further delay pursuant to Article 265(b) of the Public Procurement Act.

Hraniční Street – Coordinated Junction, Signalling and Lighting Equipment

Contracting Authority: **Municipality of Olomouc**

(R0126/2022; coming into force on 7 November 2022)

The contracting authority excluded the contractor AŽD Praha on the grounds of submitting a simple scan of the guarantee document for the electronic bank guarantee, i.e. not its original as required by law. The original was then submitted after the deadline for the submission of bids.

In the first-instance decision, the Office rejected the application against the exclusion of the contractor, but the Chairman of the Office annulled this decision as excessively formal. He stated that the form of the provisions of the legislation on the security and, consequently, the bank guarantee was conceived at a time when guarantee documents existed and were submitted in paper form; it was therefore necessary for the contracting authority to have the original of such a document. However, as in the present case, electronic guarantee documents are often not required for the drawing of a guarantee. It was therefore necessary to accept that the contracting authority's need for a guarantee document had changed. The shift in practice with regard to digitalisation was also reflected. At the same time, the contracting authority in the present case could not have doubted that the purpose of the bank guarantee was fully fulfilled, since it knew all the relevant information even from the copy of the guarantee document. Moreover, at the time when the contracting authority decided to exclude the applicant from the award procedure, it already had the original of the guarantee document at its disposal.

In future, therefore, the bank guarantee should be treated with a lower degree of formalism, and its purpose should be examined first and foremost – whether or not, as presented, it provides the contracting authority with a guarantee and protection.

Waste Storage and Disposal for Businesses (Order No. 033/001/2022) and Waste Storage and Disposal for individuals (Order No. 038/001/2022)

Parties to the Contract: **Technical Services of Nymburk and the Municipality of Radim**

(R0100/2022; coming into force on 22 September 2022)

On the basis of the application, the Office imposed a ban on the performance of the contract concluded between the contracting authorities Technical Services of Nymburk and the Municipality of Radim, the subject of which was the storage and disposal of waste from the town of Nymburk for a normal fee at a landfill operated by the Municipality of Radim. The contract was concluded outside the award procedure with reference to horizontal cooperation between the contracting authorities, but the Office held that the conditions for horizontal cooperation were not fulfilled.

The Chairman of the Office upheld the first-instance decision and concluded that the generally expressed common interest

of the contracting authorities in the disposal of waste was not sufficient to fulfil the conditions of horizontal cooperation, since it was otherwise a standard supplier-customer relationship. The Municipality of Radim, as the operator of the landfill, did not pursue any self-interest beyond the pursuit of profit.

Horizontal cooperation between the contracting authorities requires a higher level of involvement of the individual contracting authorities, where each contracting authority should actively contribute to the achievement of a common objective from which all benefit. Horizontal cooperation should not result in profits for the contracting authorities, and any payments should only cover the necessary costs.

The case is thus an example of a misinterpretation of horizontal cooperation between contracting authorities.

Land Rental for the Purpose of Providing Recreational and Accommodation Services, with an Obligation to Demolish Existing Cottages and Build New Ones

Contracting Authority: **Municipality of Vimperk**

(R0187/2021; coming into force on 8 February 2022)

In this case, the contracting authority – the Municipality of Vimperk – published on its official notice board an intention to rent land, including the buildings on it (recreational cottages), for the purpose of providing recreational and accommodation services. The tenant's commitment was to include the demolition of the existing cottages and the construction of new ones according to the instructions of the contracting authority. In the first-instance decision, the Office found that the contracting authority's described procedure was aimed at awarding a public contract without using an award procedure and prohibited the continuation of this procedure.

The Chairman of the Office confirmed the first-instance decision. He noted that the performance of the rental agreement consists in fact of the provision of construction work, since the tenant will have to demolish the old cottages and build new ones according to the design agreed by the contracting authority. The payment for the construction will then consist of the right of the operator to rent out the cottages for recreation (i.e. to take the benefits of the operation of the buildings). The concession condition is also fulfilled by the fact that the operational risk associated with renting out the cottages for recreation is to be borne by the selected operator of the recreation area (i.e. the builder of the cottages).

Although the contracting authority has a primary interest in securing the rental, it must assess what other services it has linked to the rental in deciding whether to comply with the Public Procurement Act.

Judicial Review in Public Procurement

The number of actions filed before the Regional Court in Brno in 2022 was 55% higher than in the previous year. The number of cassation complaints filed with the Supreme Administrative Court is identical to 2021. The Office's success rate in public procurement proceedings before administrative courts has increased significantly. At the Regional Court in Brno in 2022, the success rate rose to 77.5%, i.e. 3.5% higher than in 2021. At the Supreme Administrative Court, the Office's success rate in proceedings rose to 88.9%, representing a 26% increase.

78% success rate of the Office in public procurement proceedings before the Regional Court in Brno

success rate of the Office in public procurement proceedings before the Supreme Administrative Court **89%**

Statistics of Judicial Review in Public Procurement in 2022

Number of actions brought before the Regional Court in Brno	48
Number of judgements issued by the Regional Court in Brno	49
<ul style="list-style-type: none"> confirmed decisions of the Office (decided in favour of the Office) 	38
<ul style="list-style-type: none"> cancelled decisions of the Office (decided to the detriment of the Office) 	11
Number of cassation complaints brought before the Supreme Administrative Court	26
Number of judgements issued by the Supreme Administrative Court	27
<ul style="list-style-type: none"> decided in favour of the Office 	24
<ul style="list-style-type: none"> decided to the detriment of the Office 	3
Statement of defence	46
Statement on the application for the suspensive effect of action	7
Statement on the application for interim measures	7
Replication or other opinions in court proceedings	9
Submission of cassation complaint by the Office	7
Statement on the cassation complaint	19

Significant Cases

Installation of Permanent Natural Science Exhibition on "Nature" and "Evolution" in Historical Building of the National Museum

Applicants: **GEMA ART GROUP, a. s.**, and **Gardenline, s. r. o.**

Contracting Authority: **National Museum**

(R0127/2020; S0139/2020; coming into force on 10 September 2020)

Proceedings before the Regional Court in Brno conducted under the Ref. No. 31 Af 73/2020; coming into force on 12 December 2022)

The applicant sought the cancellation of the decision of the Chairman of the Office as well as of the first-instance decision of the Office, by which the proceedings on the applicant's request were partially terminated and his application for review of the actions was partially dismissed, as no grounds for the imposition of remedial measures were found.

The contracting authority, following the applicant's objections, annulled the decision to select the contractor but subsequently invited the identical tenderer pursuant to Article 46 of the Public Procurement Act to clarify and complete its bid and consequently reselected it to perform the contract. In response to the invitation, the tenderer changed the subcontractors used to prove its qualifications.

The Regional Court in Brno upheld the Office's findings that the tenderer could, pursuant to Article 46 of the Public Procurement Act, supplement the bid with data not subject to evaluation, i.e. it could also change the subcontractors used to prove qualification. The purpose of the invitation pursuant to Article 46(1) of the Public Procurement Act is to enable contracting authorities to obtain the most economically advantageous bid, which would not be fully consistent with the automatic exclusion of a tenderer who submits the most economically advantageous bid but fails to demonstrate compliance with the conditions of participation set by the contracting authority. Similarly, the procurement directive

and European case-law state the same. It is irrelevant to the purpose of the provision whether the information is supplemented or amended. Moreover, the contractor may have used a subcontractor which it acquired after the deadline for the submission of bids.

The Court also agreed with the Office that the contracting authority is entitled to issue a call pursuant to Article 46(1) of the Public Procurement Act also against the selected contractor. The obligation to exclude pursuant to Article 48(8) of the Public Procurement Act is based on the fact that the contracting authority must assess the fulfilment of the conditions of participation of the selected contractor and cannot conclude a contract with a tenderer who does not fulfil the conditions. However, this does not contradict the possibility to clarify the bid. The applicant then failed in his other objections as well.

The judgment deals comprehensively with the concept of clarification and completion of the bid pursuant to Article 46 of the Public Procurement Act, including the change of subcontractor.

Nature Park Chropyně

Applicant (Contracting Authority): **Municipality of Chropyně** (R0028/2020; S0249, S0303/2019; coming into force on 21 April 2020)

Proceedings before the Regional Court in Brno conducted under the Ref. No. 62 Af 38/2020; coming into force on 16 May 2022

The applicant sought the annulment of the decision of the Office finding that the applicant had acted unpredictably and therefore in a non-transparent manner in the restricted procedure by not allowing participation in the restricted procedure to a contractor who had not expressed a preliminary interest pursuant to Article 58(5) of the Public Procurement Act, without the applicant having expressly reserved such a condition in the tender qualification criteria.

The Regional Court in Brno upheld the findings of the Office. Although it found that the contracting authority had stated in the preliminary notice initiating the restricted procedure pursuant to Article 58(5) of the Public Procurement Act that the invitation to apply for participation would be sent only to contractors who had expressed a preliminary interest, the Court held that the impossibility of the submission of a request for participation by contractors who have not expressed a preliminary interest cannot be inferred from that limitation of the addressees of the invitation to participate and, consequently, the impossibility of such contractors becoming a participant in the award procedure only by submitting a request to participate.

The Public Procurement Act does not explicitly provide for the situation where a request to participate is submitted by a contractor who has not expressed a preliminary interest. However, it allows at the same time for both options for a contractor to become a participant in a (restricted) procurement procedure, i.e. by expressing a preliminary interest and by submitting a request to participate. The Court concluded that, where a specific clear solution cannot be derived from either the Public Procurement Act or the tender qualification criteria, an interpretation which restricts competition as little as possible in public procurement is to be preferred. According to the Court, an interpretation aimed at limiting the participation of contractors in the award procedure is appropriate only if the limitation of the pool of contractors pursues a legitimate objective which has a basis in the Public Procurement Act (for example, the promotion of contractors employing persons with disabilities under the institute of reserved procurement pursuant to Article 38 of the Public Procurement Act). According to the Court, the conditions of the award procedure and the conditions of participation in the award procedure set by the contracting authority, which limit the potential range of contractors, cannot be interpreted extensively.

In a restricted procedure, the contracting authority must either expressly stipulate in advance that it does not allow applications for participation by those who have not expressed a preliminary interest or, on the contrary, leave it to the contractors to decide when to express their interest in participating in accordance with the Public Procurement Act. However, the interest of adequate competition must always be considered.

High-Speed Railway Line (Fast Connection 1) Prosenice – Ostrava-Svinov, Section I, Prosenice – Hranice na Moravě; Preparation of Design Documentation for Planning Permit

Contracting Authority: **Správa železnic, státní organizace (Railway Administration)**

Applicant: **PRO CEDOP s. r. o.**

(R0038/2021; S0465/2020; coming into force on 29 April 2021)
Proceedings before the Regional Court in Brno conducted under the Ref. No. 29 Af 43/2021; coming into force on 22 November 2022

The Office examined the nature of the contracting authority's qualification requirements and the assessment of their legality in the context of a specific public procurement. The Office concluded that, in view of the complexity and scope of the procurement, it considered the combination of the contracting authority's requirements (the requirement for authorisation combined with reference experience) to demonstrate technical qualification to be reasonable in this particular

case and therefore consistent with the Public Procurement Act. The Chairman of the Office upheld these findings in the decision on the appeal.

The Regional Court in Brno upheld the Office's conclusions that it is not unreasonable or otherwise contrary to the Public Procurement Act and its principles for a contracting authority to set the qualification parameters for a significant and (materially and financially) large contract, which is in fact only the basis for the implementation of a much larger follow-on contract, much more stringently than would be possible to comply with the minimum standard. The public contract will undoubtedly involve at least several dozen workers, and the contracting authority has quite reasonably and logically considered that in such a case, the supervision of a single (or a few) authorised persons is not sufficient for the specific performance, or for the assurance of its quality and timeliness, but that it is appropriate to require the contractor to have a team of experts with precisely defined roles. The Regional Court further held that the qualification requirement required by the contracting authority was directly related to and proportionate to the subject-matter of the public contract and that the contracting authority was therefore entitled to require the contractors to prove that they fulfilled it. The contracting authority also established a combination of requirements for professional staff in accordance with the Public Procurement Act. In fact, potential contractors (and thus the applicant) had the option of demonstrating the experience of their professional staff in several ways, both by using the qualifications of subcontractors and by "aggregating" the qualifications of several persons. While the combined technical qualification requirement was set more stringently than the Authorization Act, it was proportionate to the subject-matter of the contract and non-discriminatory. The appellant lodged a cassation complaint against the judgment of the Regional Court.

The Public Procurement Act does not preclude the contracting authority from setting even stricter qualification requirements, but they must be carefully justified by the specific characteristics of the required performance.

Framework Agreement for the Supply of Passenger Cars in Both Police and Standard Versions and the Supply of Service Station Equipment for Vehicles of Ministry of the Interior for a Period from 2018 to 2021

Applicant (Contracting Authority): **Czech Republic – Ministry of Interior**

(R0054/2019; S0037/2019; coming into force on 4 June 2019)
Proceedings before the Regional Court in Brno conducted under the Ref. No. 29 Af 62/2019; coming into force on 2 May 2022

The contracting authority requested the supply of police vehicles for which it specified a large number of parameters, such as the sedan/hatchback version (homologation), a five-door body (rear doors, lid including rear window, extending up to the roof), specific internal dimensions and a luggage compartment capacity of at least 500 litres. The Office annulled the award procedure for infringement of Article 36(1) of the Public Procurement Act, finding that the combination of the above requirements resulted in an unjustified competitive advantage for the contractor ŠKODA AUTO, a.s., and that the requirements were not proportionate to the subject-matter of the contract as a whole. As a remedy, the Office cancelled the award procedure pursuant to Article 263(3) of the Public Procurement Act.

The Regional Court agreed with the Office's reasoning that the parameters required by the contracting authority were set in a discriminatory manner. The contracting authority did not satisfactorily explain why it distinguished between sedan/hatchback and station wagon body types with regard to the intended use of each vehicle type. In fact, both saloon vehicles (with a boot lid extending up to the roof) and station wagons (hatchback vehicles with a boot capacity of at least 500 litres were not offered by any of the vehicle manufacturers interviewed by the Office) fulfilled their needs and requirements for the use of the vehicles, such as spaciousness, size of the boot and accessibility via the 'fifth door'. Also, in the opinion of the Regional Court, the contracting authority did not sufficiently justify how the sedan/hatchback vehicles are so different from estate cars that for a significant part of the public contract the contracting authority required the delivery of vehicles with sedan/hatchback type approval and at the same time with a basic boot capacity of at least 500 litres. None of the manufacturers interviewed by the Office offered a hatchback vehicle with a luggage compartment capacity of 500 litres, which is evident from the very nature of this body type, which is characterised by a rearward slant compared to a saloon vehicle and thus necessarily a smaller luggage compartment. The supply of vehicles in sedan or hatchback versions with a 'fifth door' and in the specified dimensions was essentially impossible for all potential competitors of ŠKODA AUTO, and it is therefore clear that it was the combination of these parameters, which was not justified in view of the needs of the contracting authority, which introduced an element of discrimination into the tender qualification criteria.

The setting of requirements for the subject-matter of a transaction which restrict competition (in this case to the extent that they lead to only one product) can only be justified if it has a reasonable basis in the needs of the contracting authority.

State Aid

The Office is the coordinating authority in the field of State aid, performing central coordinating, advisory, consultative and monitoring activities in all areas, except in the field of agriculture and fisheries, in which the Ministry of Agriculture is the relevant authority. The above-mentioned activities are exercised by the coordinating bodies regardless of the origin of state (public) funds. The Office's exclusive role in the field of State aid is primarily cooperation with the providers when notifying State aid measures to the European Commission. The Office shall also cooperate with the Commission and the provider in course of proceedings initiated by the Commission, both in proceedings concerning notified State aid and in cases of unlawful State aid, misuse of State aid, existing State aid schemes or in cases of on-site investigations carried out by the Commission within the territory of the Czech Republic. The Office provides advisory and consultancy support to State aid providers within the framework of this statutory competence, already at the stage of preparation of programmes or *ad hoc* aid, especially whether the final characteristics of State aid are cumulatively fulfilled in a given case. In such case, the Office recommends the provider to apply an appropriate exemption from the prohibition of State aid or advise of the need to notify the support measure to the European Commission. The Office shall submit to the Commission an annual report on State aid provided during the preceding calendar year within the territory of the Czech Republic in accordance with the relevant European Union legislation. Once every two years the Office reports on the implementation of the Commission Decision on the application of Article 106(2) of the Treaty on the Functioning of the European Union to State aid in the form of compensation for public service granted to certain undertakings entrusted with the operation of services of general economic interest. The Office represents the Czech Republic in the negotiation and preparation of EU legislation in the field of State aid. The Office is also the administrator of the central register of small-scale aid and the national coordinator of the European Commission's Transparency Award Module (TAM) information system. As part of the so-called *ex post* monitoring, the Commission regularly carries out checks on compliance with the State aid rules under notified aid schemes through the Office.

Legislative Changes

Communication from the Commission – Temporary Crisis Framework for State Aid Measures to Support the Economy Following the Aggression Against Ukraine by Russia

The economic measures and counter-measures taken in the context of Russia's military aggression against Ukraine have had a major impact on the entire internal market, especially by disrupting supply chains, reducing demand, interrupting existing contracts and increasing electricity and gas prices. Therefore, on 23 March 2022, the European Commission adopted the Communication – Temporary Crisis Framework for State aid measures to support the economy following the aggression against Ukraine by Russia, specifying the criteria for assessing the compatibility of State aid measures taken by the Member States to remedy the above-mentioned economic impacts. The aid granted under the Temporary Crisis Framework is intended for undertakings affected by military aggression and economic sanctions and aid measures to assist such undertakings are subject to notification to the European Commission. The Temporary Crisis Framework has been since its adoption during 2022 amended twice. The amendments have gradually increased the limits, while at the same time the number of aid categories has been expanded from the original four categories to seven (in October 2022). The Temporary Crisis Framework was extended until the end of 2023.

Guidelines on State Aid for Climate, Environmental Protection and Energy

The new Guidelines on State Aid for climate, environmental protection and energy (CEEAG) entered into force on 27 January 2022. The Regulation contains compatibility criteria for State aid measures in the field of environmental protection and measures in the field of energy aid which are subject to notification and are compatible pursuant to Article 107(3) (c) TFEU. The main purpose of the Regulation is to facilitate the transition to a low-carbon economy and to ensure the successful implementation of the objectives of the Green Deal for Europe.

Framework for State Aid for Research, Development and Innovation

Following a public consultation launched in April 2021, the European Commission revised the Communication on State aid rules for research, development and innovation. The Framework for State aid for research and development and innovation entered into force in October 2022. One of the objectives of the revision was to align the rules on research, development and innovation with EU policy priorities such as the European Green Deal and the Industrial and Digital Strategy. The Framework includes new definitions (e.g. infrastructure for testing and experimentation), and some existing definitions have been clarified (especially regarding the use of definitions in the context of digital technologies and digitisation activities). It has introduced criteria for assessing the compatibility of aid for testing and experimentation infrastructures needed for the development, testing and diffusion of technologies.

Guidelines on State Aid for Broadband Networks

At the end of 2022, the Commission adopted the revised State aid rules for broadband networks ("Broadband Guidelines"). The aim of the revision of these rules was, inter alia, to contribute to the EU's strategic objectives of ensuring gigabit connectivity for everyone and 5G coverage everywhere by the end of 2030, which is essential to achieve the digital transition of the Union. The Guidelines include criteria based on which the European Commission will assess the compatibility of the aid measure with the internal market in the notification procedure. The Guidelines have simplified some of the existing rules (for example in relation to wholesale access), introduced the possibility of aid through social and connectivity vouchers to motivate consumers and businesses to use broadband services, and clarified some key concepts.

Amendment to the Regional Aid Map for the Czech Republic

In 2021, the European Commission issued a decision approving a regional aid map for the Czech Republic for the period from 1 January 2022 to 31 December 2027. The regional aid map contains the maximum possible aid intensity and eligibility for regional aid and for each NUTS II region within the Czech Republic. From 1 January 2022, the regions eligible under Article 107(3)(a) TFEU are in the Czech Republic; some regions were newly classified under Article 107(3)(c) TFEU, resulting in lower aid intensity for such "c" regions. The NUTS II Prague region remains ineligible for regional aid, as in the previous period.

The Commission approved the Territorial Just Transition Plan for the Czech Republic in the second half of 2022. The Office has therefore initiated with the major regional aid providers

the notification of the amendment to the regional aid map. The amendment consists in increasing the maximum aid intensity for the territories designated for aid from the Just Transition Fund by 10 p.p. These territories are the Karlovy Vary, Ústí nad Labem and Moravian-Silesian regions.

Revision of the General Block Exemption Regulation (GBER)

There has been a further revision of the General Block Exemption Regulation (GBER) since October 2021. The aim of this revision is to put the GBER Regulation in line with the Commission's revised soft law rules on State aid, i.e. the Framework for Research, Development and Innovation, the Risk Finance Guidelines, the Environmental, Energy and Climate Aid Guidelines and the Regional Aid Guidelines. The European Commission presented a second proposal for an amendment to the GBER in the summer of 2022 as part of this ongoing revision. The GBER is expected to be extended until 31 December 2024 and the adoption of the revised GBER is expected in the first quarter of 2023.

Regulation (EU) 2022/2560 of the European Parliament and of the Council of 14 December 2022 on Foreign Subsidies Distorting the Internal Market

While subsidies granted by EU Member States to businesses are regulated by State aid rules, subsidies from third countries are not, and their activities can have a negative impact on the single market. The European Commission has consequently submitted the proposal for a Regulation of the European Parliament and of the Council on foreign subsidies distorting the internal market. The text of the Regulation was finalised during the Czech Presidency of the Council of the EU and signed on 14 July 2022. The Regulation was published in the Official Journal of the European Union on 23 December 2022. For information about the content of the Regulation, see the chapter on the Czech Presidency of the Council of the EU.

Council Regulation on the Application of Articles 93, 107 and 108 of the Treaty on the Functioning of the European Union to Certain Categories of State Aid in the Rail, Inland Waterway and Multimodal Transport Sector ("Enabling Regulation")

As part of the Czech Presidency of the Council of the EU, an additional EU regulation, namely the so-called Enabling Regulation, was adopted in December 2022. Following the necessity to simplify the procedures for approving State aid in the rail, inland waterway and multimodal transport sector, the proposal for a Council Regulation on the application of

Articles 93, 107 and 108 of the TFEU to certain categories of State aid in the rail, inland waterway and multimodal transport sector ("Enabling Regulation") was submitted on 6 July 2022. The Council has the power to determine the categories of aid which may be exempted from the obligation to notify State aid, and the Commission has the power to adopt regulations setting out the precise rules for these exemptions. The Enabling Regulation will provide the legal basis to allow the Commission to adopt a Block Exemption Regulation setting out the conditions under which may be granted State aid in the field of rail, inland waterway and multimodal transport. Once the Enabling Regulation enters into force, the Commission may start work on the proposal for a block exemption regulation for aid to rail and inland waterway transport and to multimodal transport.

Public Consultations

Regarding the forthcoming revision of the Community guidelines on State aid to railway undertakings, the Commission launched a public consultation in the form of an electronic questionnaire at the end of 2021. The questionnaire was divided into several sections, covering for example clean and sustainable transport, multimodal transport, transport infrastructure, rescue and restructuring of railway undertakings and the extension of the guidelines to inland waterway transport. The consultation was open for interested parties until mid-March 2022.

The Commission gave citizens and organisations an opportunity to express their views on the effectiveness, efficiency, relevance and coherence of the rules on State aid intended for banks in difficulty and their added value at EU level through a targeted consultation last spring. These rules have been in force since 2008 and the Commission requested public feedback to analyse to what extent the existing rules for banks in difficult situation were sufficient to preserve financial stability while minimising distortion of competition.

The Commission launched an evaluation of the Commission Communication on the application of Articles 87 and 88 of the EC Treaty to State aid in the form of guarantees in August 2022, which had not been revised since 2008. The aim of the evaluation was to determine whether the Communication has helped facilitate efficient and effective access to finance for both SMEs and larger companies, and whether the Member States have had difficulties interpreting it or implementing compliance schemes. As part of the evaluation of the communication on guarantees, the Commission sent a request to the Member States to provide information on the state guarantees provided and launched a public as well as an expert consultation.

The subject of the public consultation which concluded in November 2022 also became a proposal for new *de minimis* regulation to replace the existing Commission Regulation (EU) No 1407/2013 of 18 December 2013 on the application of Articles 107 and 108 of the Treaty on the Functioning of the European Union to *de minimis* aid (hereinafter referred to as "the Regulation No 1407/2013"), which will expire on 31 December 2023. Following the fitness check of the State aid rules in 2020 and the information and comments received from undertakings, business associations and public authorities in the framework of the call for proposals published in June and July 2022, the European Commission has prepared a proposal for a new *de minimis* regulation. The proposal contains two major changes compared to the existing Regulation No 1407/2013: (i) an increase in the limit on the *de minimis* aid that an undertaking may receive from a Member State for any three consecutive accounting periods; (ii) strengthening transparency requirements by introducing a central register of *de minimis* aid at national or EU level, which will allow easy access to information on *de minimis* aid granted by any Member State authority.

The European Commission presented to the public its intention to amend the regulation governing *de minimis* aid for services of general economic interest during the first half of December. The main considerations are to increase the limit currently applicable to this aid, to unify the concepts used in the so-called general regulation on *de minimis* aid (the Regulation No 1407/2013) and to increase transparency. The published initiative by the European Commission follows the 2019 evaluation of the services of general economic interest (SGEI rules) in the area of health and social services, which involved a general public participation.

Activity of State Aid Unit

The COVID aid programmes were still "running out" in the first quarter of 2022. Some existing aid schemes had to be re-notified to the Commission due to changes in the conditions for providing aid. There was also notification of a new programme to be used for compensating companies. In all these cases, the European Commission issued a positive decision. A new crisis situation arose in the first quarter of 2022, following the Russian invasion of Ukraine, the imposition of sanctions and the adoption of countermeasures by Russia. This situation had a major impact on the internal market. The Commission has adopted a Temporary Crisis Framework in the field of State aid in response to this situation and its economic consequences. Since its adoption in March 2022, the Temporary Crisis Framework has been amended twice. The draft of the Temporary Crisis Framework, and later

proposals for its amendments, were discussed between the European Commission and the Member States in a very fast consultation. The Office coordinated the preparation of comments and suggestions on behalf of the Czech Republic regarding these proposals.

Throughout the summer and autumn, the Office worked with aid providers in developing aid programmes to help businesses with increased energy costs. The cooperation with these providers, as well as with the European Commission, continued in the context of the pre-notification and subsequent notification of the programmes. The Office also dedicated a section of its website to inform about the options for dealing with the energy crisis in terms of State aid rules. The website also contains the decisions adopted by the European Commission under the Temporary Crisis Framework.

Since January 2022, there has been intensive preparation for the CZ PRES, during which the negotiation of two pieces of legislation was expected to take place – proposals for a Regulation of the European Parliament and of the Council on foreign subsidies and so-called Enabling Regulation. Moreover, in the first half of the year, the Office's representatives participated in a total of 11 meetings of the (Council) Working Party on Competition, during which the draft regulation on foreign subsidies was very intensively discussed.

The two-day annual Conference on State aid was traditionally held at the premises of the Office and was attended by experts from the Office, the European Commission, Ministries, as well as foreign experts from Belgium and Hungary. The conference focused mainly on the Green Deal and climate change, but also included more general topics related to *de minimis* aid and public service compensation.

The Office sent an annual report to the European Commission on the amount of aid granted in 2021, which was prepared in cooperation with the aid providers. The year 2022 also brought the obligation to submit to the Commission a report on the implementation of the Commission Decision of 20 December 2011 on the application of Article 106(2) TFEU to State aid in the form of public service compensation granted to certain undertakings entrusted with the operation of services of general economic interest. In order to facilitate the fulfilment of this obligation, the Office prepared a new IT application for providers, through which they submitted the required data to the Office.

There were further revisions to the State aid rules in 2022 as well. The Office coordinated the preparation of comments on behalf of the Czech Republic on the proposals. Moreover, the Office prepared inputs to the public consultation. Representatives of the Office also took part in a number of meetings throughout the year with the Commission and

the Member States on the revised regulations, as well as bilateral meetings with providers and the Commission on (pre-)notified State aid cases. Discussions remained mostly held by videoconference.

Participation in Advisory Committees and Working Groups

Representatives of the Office participate in meetings of both national and foreign working groups, *ad hoc* working groups and advisory committees of the European Union within the framework of their advisory activities provided for in the Act No. 215/2004 Coll.

Representatives of the Office and selected providers participated in a multilateral meeting organised by the European Commission in October 2022 in connection with the assessment of the Commission Notice on the application of Articles 87 and 88 of the EC Treaty to State aid in the form of guarantees. As part of the evaluation of the Notice on guarantees, the Commission invited the Member States to provide information on guarantees using this Notice. The scope and content of the information on guarantees provided as requested by the Commission from the Member States was explained in more detail at this meeting.

The first Advisory Committee of the European Commission on the proposal for *de minimis* regulation to replace the existing Commission Regulation (EU) No 1407/2013 of 18 December 2013 on the application of Articles 107 and 108 of the TFEU to *de minimis* aid was held in December 2022. During the meeting, the Office has presented the Czech Republic's main comments on the draft of *de minimis* regulation. The Czech Republic would welcome a larger increase in the limit of *de minimis* aid than proposed by the Commission. The Czech Republic opposed the Commission's proposal that the central register of *de minimis* aid should record information on the sector concerned on the basis of the classification of economic activities in the European Community (NACE classification).

The proposal for a Council Regulation on the application of Articles 93, 107 and 108 of the TFEU to certain categories of State aid in the rail, inland waterway and multimodal transport sector ("Enabling Regulation") was discussed at two meetings of the Council's Working Party on Competition (G12) during the CZ PRES. The proposal was presented to the Member States at the first meeting, and at the second meeting the Member States approved the compromise text drafted by CZ PRES, in this case introduced by representatives of the Office.

In order to resume the ongoing agenda initiated by the French presidency, meetings of the Working Party on Competition (G12) were held more frequently throughout 2022 and were

regularly attended by representatives of the Office. These meetings concerned the proposal for a Regulation of the European Parliament and of the Council on foreign subsidies distorting the internal market. The draft regulation was presented to the Member States during the Portuguese Presidency. All the provisions of the draft regulation were presented and discussed in the G12 Working Party under the Slovenian Presidency. The French Presidency had the ambition to achieve adoption of the Regulation during its Presidency of the EU Council and therefore set a very fast pace for submitting proposals and asking questions on the proposed text. The Office ensured rapid cooperation with all national players in order to be able to react in a timely and substantive manner to the FR PRES proposals. In the context

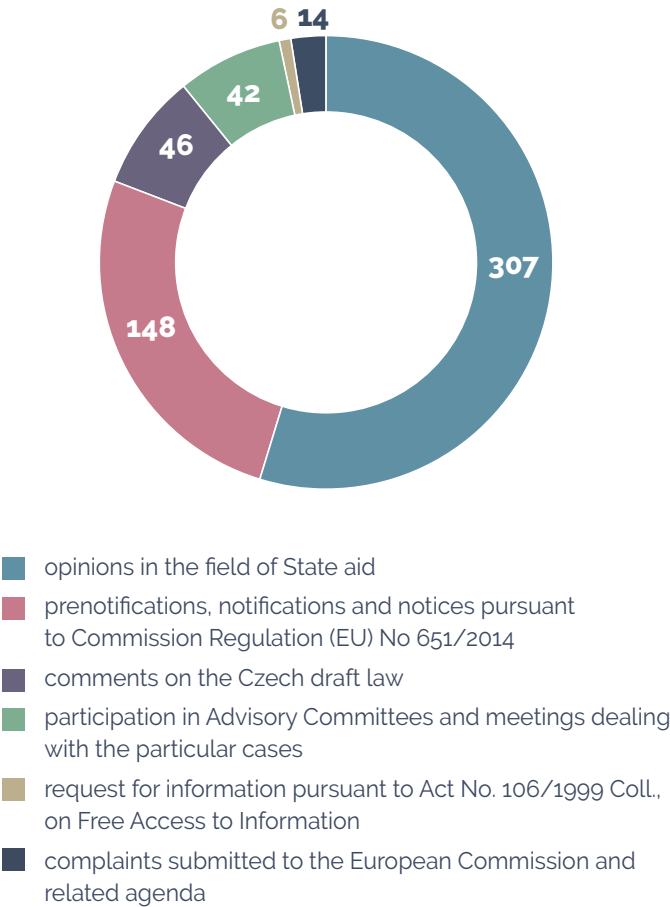
of the proposed Regulation, there were 11 meetings of the G12 Working Party. This was followed by six technical meetings (so-called technical dialogues) where the institutions tried to find a consensus on the final text of the Regulation. As the upcoming Presidency, the Czech Republic had the opportunity to passively participate in negotiations with the European Parliament in five "technical" dialogues and a final "political" dialogue. Consensus on the text of the Regulation was reached by all institutions on 30 June 2022 and the text was approved in trialogue. The CZ PRES held a G12 meeting on the subject of the draft regulation in early July 2022, at which the outcomes of the trialogue were presented. Further consultations on the finalisation of the Regulation were conducted in writing.

Statistics

Activities in the Field of State Aid in 2022

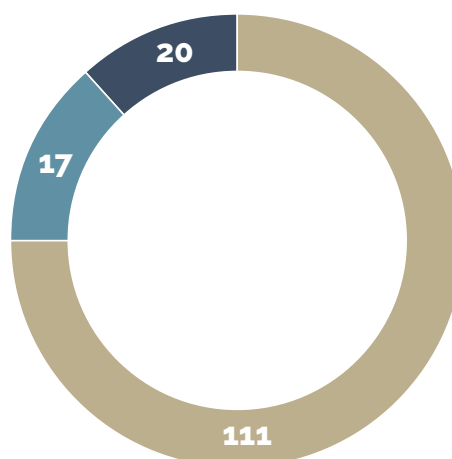
opinions in the field of State aid	307
prenotifications	20
notifications and other proceedings at the European Commission	17
notices pursuant to Commission Regulation (EU) No 651/2014	111
comments on the Czech draft law and government materials	46
participation in Advisory Committees and meetings dealing with the particular cases	42
request for information pursuant to Act No. 106/1999 Coll., on Free Access to Information	6
complaints submitted to the European Commission and related agenda	14

Selected Statistics in the Field of State Aid as of 2022

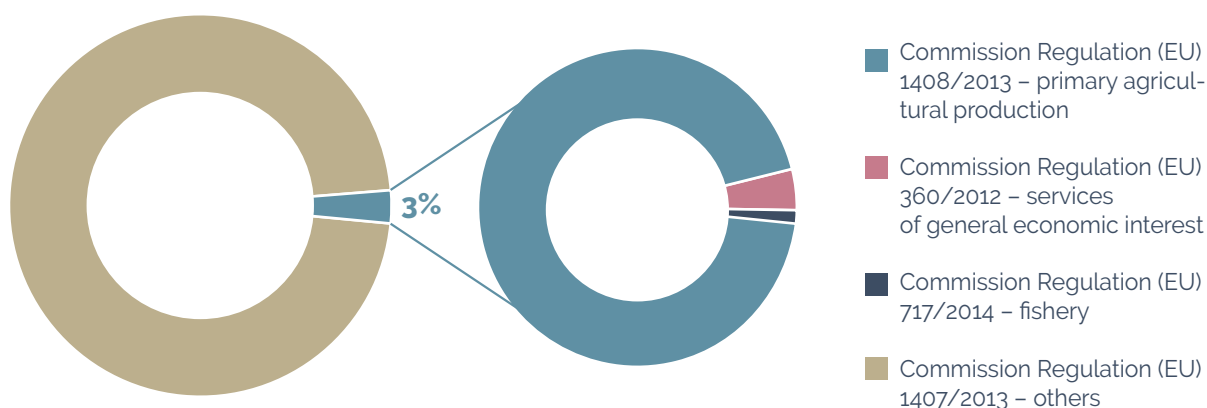


Notifications, Prenotifications and Notices Pursuant to Commission Regulation (EU) No 651/2014

- prenotifications
- notifications
- block exemption notices



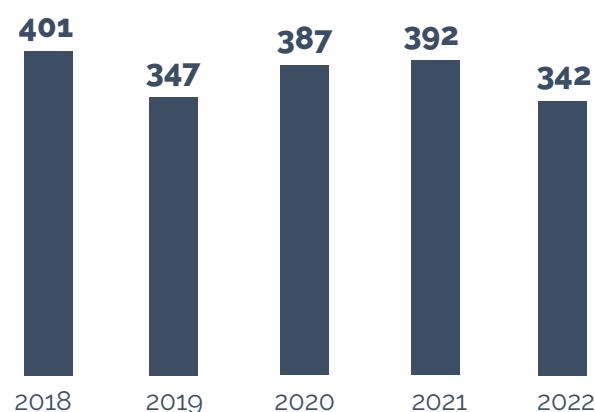
Statistics of Provided *De Minimis* Aid Pursuant to the Particular Regulations



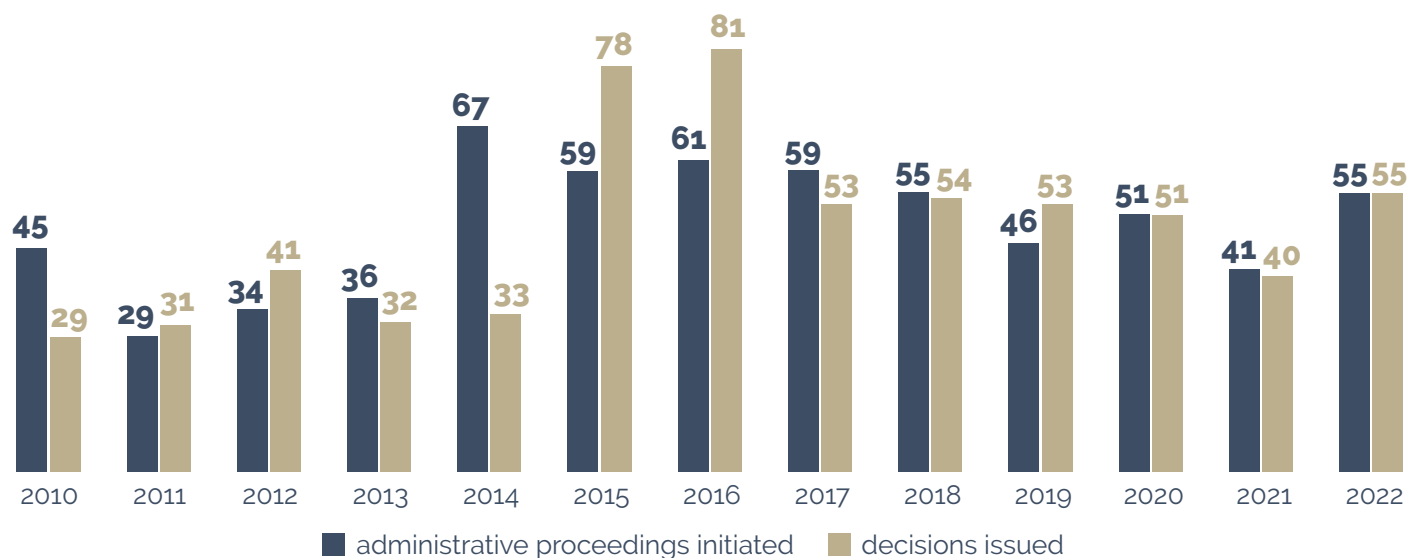
First-Instance Decision-Making in State Aid in 2022

Central register of <i>de minimis</i> aid	
number of administrative proceedings initiated	55
number of pending administrative proceedings	9
number of decisions issued	55
number of fines imposed	39
misconduct not found	16
remedy	0
total amount of fines imposed	CZK 342,642

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



Administrative Proceedings Initiated and Decisions Issued in 2010-2022



Significant Cases

SA.102508 Exemption from the Renewable Energy Surcharge – Rail Transport

The aid in the form of exemption for railway and public urban transport operators (tram, trolleybus and cable car) from the renewable energy surcharge, which was introduced by an amendment to the Act on Supported Energy Sources in autumn 2021, was approved by the European Commission after almost a year – in November 2022.

The aid for carriers using electric traction in the operation of their vehicles may be granted until the end of 2026 in an amount estimated at CZK 4.5 billion. The European Commission approved the aid by referring to Article 93 TFEU, which allows aid to be granted for, among other things, transport coordination, and to guidelines from 2008 on State aid to railway operators.

The main factors contributing to the approval of the aid were its environmental benefits (compared to road and diesel traction), the demonstration of its necessity, proportionality and the limitation of the aid to reducing the competitive disadvantage suffered by rail and urban transport using electric traction.

SA.55208 Czech Post

The formal investigation of aid granted in the postal services sector, which lasted more than two years, was concluded by the European Commission with an approval decision in July 2022. The subject of the investigation was aid granted to Česká pošta, s.p., (hereinafter referred to as “the Czech Post”) in the form of compensation for the fulfilment of the so-called universal postal service obligation in the years 2018-2022.

The reason for initiating the formal investigation consisted in the European Commission's doubts about the compatibility of the planned aid, which were reinforced by two complaints about alleged incompatible aid to Czech Post submitted by competitors.

However, the European Commission's investigation concluded that the amount of compensation of approximately CZK 7.5 billion for Czech Post does not exceed what is necessary to cover the net costs of the public service obligation and is in line with EU State aid rules.

SA.64640 IPCEI Hydrogen Technology

In summer 2022, the European Commission approved a major project of common European interest (IPCEI) to support research, innovation and first industrial deployment in the hydrogen value chain. This is the IPCEI Hy2Tech project, which brings together 15 Member States in 41 projects and involves 35 companies operating in one or more Member States. The Czech Republic is represented by IVECO Czech Republic, a. s.

The aid from the Member States should amount to up to EUR 5.4 billion, with private investment of around EUR 8 billion. The IPCEI project includes hydrogen production, fuel cells, storage, transport and distribution of hydrogen and end-user applications, especially in the mobility sector. The project should contribute to the development of important technologies such as new high-efficiency electrode materials, more efficient fuel cells and innovative transport technologies, including for the first time the deployment of hydrogen mobility. The project is expected to create around 20,000 new jobs.

The Commission has assessed the compatibility of the aid for the project under the Communication on important projects of common European interest. As the European Commission has stated, the projects should enable significant improvements in performance, safety, environmental impact and cost-effectiveness. This IPCEI also presents significant technological and financial risks, so the State aid is necessary to motivate companies to make investments. Aid to individual companies is limited to what is necessary, proportionate and does not distort competition unduly.

SA.103821 Scheme to Promote District Heating under the Modernisation Fund

The scheme to promote green and more efficient district heating was approved by the European Commission at the end of 2022. The compatibility of the aid was assessed under Article 107(3)(c) TFEU, which enables to support the development of certain economic activities subject to certain conditions, and under the new Guidelines on State aid for climate, environmental protection and energy. The scheme worth EUR 1.2 billion, financed by the EU Modernisation Fund, should promote district heating based primarily on renewable energy. It is aimed at decarbonisation and modernisation of heat generation units.

The scheme will support the installation of new heat generation units based on renewable energy or high-efficiency cogeneration to replace existing installations, and the modernisation of existing heat generation units to operate with biomass instead of coal. This scheme is expected to increase the share of renewable energy production in the district heating sector by approximately 8,022 TJ per year and to reduce CO₂ emissions by approximately 889,550 tonnes per year.

In assessing the compatibility of the aid, the Commission found that the aid has an 'incentive effect' as fossil fuels have a cost advantage over renewable heat and high-efficiency cogeneration. In the absence of aid, investments in new heat generation facilities would have been based on natural gas, potentially without the combined production of electricity,

resulting in lower levels of energy efficiency. In addition, investments in the modernisation of existing heat facilities would have been delayed or not taken place at all.

Aid beneficiaries will have to submit a complete funding gap analysis based on a detailed methodology. The aim of this analysis is to identify the net extra cost of the projects applying for support compared to the activity that would have been carried out in the absence of aid.

The Commission further stated that the positive effects of the aid on the decarbonisation of district heating systems in the Czech Republic outweigh any potential negative effects on competition and trade between the Member States. The scheme will support the modernisation and decarbonisation of the district heating sector, reducing greenhouse gas emissions, in line with the European Green Deal, without unduly distorting competition in the single market.

Second-Instance Decision-Making and Judicial Review in State Aid

There were three appeals against the first-instance decisions in the field of State aid in 2022 and three second-instance administrative proceedings were therefore initiated. All administrative proceedings were also concluded with a decision in the same year. The Chairman of the Office upheld the first-instance decision in one of these cases, modified the amount of the fine in two of them and confirmed the first-instance decision in the rest. The total amount of fines imposed in 2022 on the basis of second-instance decisions in the field of State aid amounted to CZK 179.958.

In 2022, there was one administrative action brought before the Regional Court in Brno in the area of State aid, but the Court has not adopted any judgement. The Supreme Administrative Court received no cassation complaints in 2022 and issued no judgments.

International Cooperation

The Office focuses primarily on bilateral and multilateral cooperation with foreign institutions having a similar scope of entrusted powers. The international agenda of the Office includes, in particular, mutual communication, exchange of knowledge and experience in the application of competition law, public procurement law, significant market power and State aid law. The International Unit shares newly acquired information with all the Office's staff.

The most important event of the past year in terms of international cooperation was undoubtedly the historically second Czech Presidency of the Council of the European Union. The specific activities of the Office during CZ PRES were already addressed in the introduction to the annual report. However, it is worth mentioning the most significant success in which the Office was directly involved, which is also mentioned in the evaluation report of the Government of the Czech Republic as one of the many successes achieved during the Presidency. Representatives of the Office, in cooperation with representatives of the Permanent Representation of the Czech Republic to the European Union in Brussels, participated directly in the negotiation and subsequent approval by the Council of the European Union of the Regulation on foreign subsidies distorting the internal market.

European Competition Network – ECN

The ECN, as a tool for cooperation between national competition authorities of the EU and the European Commission's Directorate-General for Competition (DG COMP) primarily in matters of infringements of Articles 101 and 102 of the TFEU, is the most important platform for international cooperation of the Office. An important aspect of the cooperation between the Member States is the work of its working groups focused on partial topics of the EU competition law, the meetings of which are actively attended also by the Office's representatives. The most active working groups have traditionally been the *ECN Cartels Working Group* and *ECN Mergers Working Group*, or the *Cooperation Issues and Due Process Working Group*, meetings of which are attended by representatives of the International Unit on behalf of the Office, and which in 2022 dealt, for example, with harmonisation of the rules for calculating fines in certain areas of competition or with coordination in resolving the cross-border cases.

Through the ECN2 system, the International Unit ensures notifications of infringements of Articles 101 and 102 of the TFEU to the European Commission.

The ECN platform is also useful for direct communication and cooperation between the individual competition authorities of the EU Member States. The most regular mean of such communication and cooperation represents exchange of information (*Request for Information – RFI*). In 2022, the Office received 73 such RFIs. The Office itself addressed the competition authorities of the other EU Member States in five cases, which related, inter alia, to the sector inquiries in the pharmaceutical sector, the consideration of recidivism in the calculation of fines or the assessment of resale price fixing agreements (RPM agreements).

	2020	2021	2022
Number of RFIs received	76	68	73
Number of RFIs submitted	4	3	5

The next integral part of the cooperation within the ECN platform is represented by the formal requests for information and documents pursuant to Article 12 of Council Regulation (EC) No 1/2003 on the implementation of the rules on competition laid down in Articles 81 and 82 of the Treaty and by the requests for assistance in inspection pursuant to Article 22 of the same regulation. Such requests may be used by competition authorities in case where they need to obtain more information to initiate proceedings, typically in case with cross-border impact, or to add relevant evidence to the file in the context of an ongoing proceedings for infringement of Articles 101 and 102 of the TFEU. In 2022, the Office requested assistance of foreign competition authorities in three cases and received two such formal requests.

Another aspect of cooperation between competition authorities within the ECN involves the so-called *Advisory Committees* organised for individual cases dealt with by the European Commission in the fields of prohibited agreements, abuse of dominant position and concentrations between undertakings. Within these *Advisory Committees*, the Member States may ask for and comment on the Commission's conclusions before the Commission takes a decision in specific cases. During 2022, ten meetings of the *Advisory Committees* were held.

International Competition Network – ICN

The ICN is a forum focused on the cooperation between competition authorities worldwide. Within this platform, various working groups are active, which, inter alia, organise annual conferences or workshops.

The most important event within the ICN is the annual ICN Conference, which, in 2022, was held in hybrid format and hosted by the German Competition Authority (*Bundeskartellamt*). Representatives of the Office participated, for example, in a seminar on the relationship between competition law and environmental protection. In December, Kamil Nejezchleb, Vice Chairman of the Office, attended the ICN Cartels Working Group meeting in Auckland, New Zealand, where he actively participated in a panel on raising awareness on cartel conduct.

In addition to workshops and conferences, competition authorities are generally involved in the activities of this platform through various surveys or other forms of information sharing. In 2022, for example, the Office responded to an extensive questionnaire on its functioning during the COVID-19 pandemic.

Organisation for Economic Cooperation and Development – OECD

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

The OECD Competition Committee meets regularly twice a year, whereas the meetings in June and November 2022 were organised in hybrid format. Representatives of the Office participated in the thematic blocks within these meetings, discussing the current issues of the competition law and policy, such as determining market power in the digital environment, competition in energy markets or remedies and commitments in cases of abuse of a dominant position. At the June meeting, a representative of the Office presented a written contribution on competition and regulation in local transport services. In addition, the forthcoming OECD competition policy instruments were commented on in the past period, such as the so-called *Competitive Neutrality Toolkit* or revision of the *Recommendation on Fighting Bid Rigging in Public Procurement*.

In addition, in 2022, the Office was involved in the development of a new OECD tool, the so-called *Competition Enforcement*

Co-operation Template, which was developed on the basis of extensive research and a follow-up report prepared jointly by the OECD and ICN in recent years.

Bilateral Relations

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

At European level, the Office is in daily contact with the European Commission, whether it concerns case-by-case consultations or general approach towards competition, or by consulting the possibilities of ongoing trainings of Office's employees. Establishing relationships and sharing experience with other foreign partners, both in the area of competition and other competencies of the Office, is also an important aspect of international cooperation.

The Slovak Competition Authority remains the Office's closest partner. As an example of these above standard relations, the Office would like to highlight mutually beneficial cooperation within the exchange of information, mutual assistance in dealing with cross-border cases and participation in regular meetings, where other possibilities of new cooperation are also constructively discussed. In 2022, during the European Competition Day, an international conference held in Prague, cooperation was agreed with colleagues from Ukraine, primarily discussing assistance with setting up the public support system in Ukraine.

World Competition Day 2022

Every year, the institutions entrusted with protection of competition, as well as the general professional public, commemorate the date of 5th December as the World Competition Day. The aim of this initiative is to highlight the importance and benefits of competition for the economy as a whole. The topic of the World Competition Day 2022 was the relationship between competition policy and climate protection. This issue is becoming increasingly important and environmental aspects are beginning to be addressed by, in principle, all the competition authorities. On this occasion, the Office published on its website a short video by the Chairman of the Office, Petr Mlsna, reminding that consumer welfare should be the main purpose and objective of the protection of competition, whereas nowadays it is standard practice that benefits in the form of environmental improvement may also be considered as certain broader aspect of this objective. Competition authorities can undoubtedly contribute to sustainability and climate protection through their policies, although this is not their core mission, that is the protection of competition.

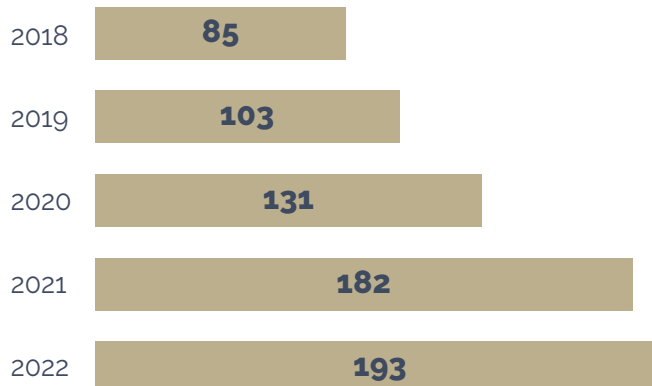
Public Relations

To inform the professional and general public through press releases, the Office uses the media, the Office's website www.uohs.cz, the social networks Twitter, LinkedIn and Facebook, and also issues publications – in addition to the annual report, the Office also published two information sheets in 2022 on the topics of *The Office and the Czech Presidency of the EU Council 2022* and *Anticompetitive Conduct of Public Administration Bodies from the Perspective of the Office*.

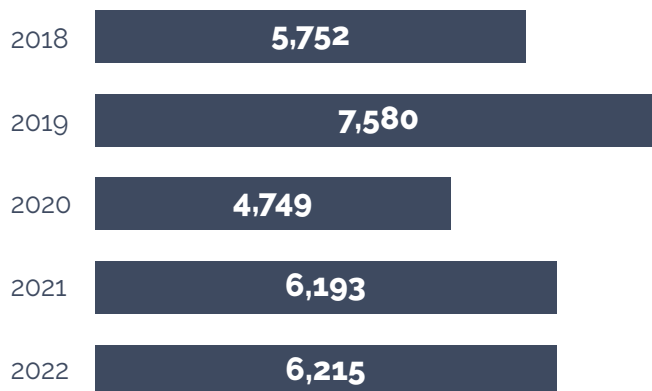
Information from 193 press releases issued by the Office in 2022 was reflected in 6,215 media articles. According to Newton Media, a company that prepares media analysis of the Office from selected media,³³ the number of articles about the Office increased by 55% year-on-year and the media impact increased by 51%. Most contributions were published in April, in connection with the Ministry of Agriculture's call for cooperation with the Office for the control of food prices, in December, when the Office allowed Česká spořitelna to acquire Sberbank's loan portfolio, and in August, in connection with the Ministry of Finance's announcement of a complaint to the Office due to the high margins of petrol stations. The other most shared topics of the Office's activities were the fine imposed on food voucher companies for cartel agreement; the permission for the acquisition of the daily newspaper Právo and the website novinky.cz to Seznam; the proposal of amendment to the Competition Act; approval of the merger between Credits and Expobank; position of the Office on mobile data price regulation; announcement of severe sanctions on companies hampering on-site inspections by the Office.

MF Dnes was the national daily newspaper paying the most attention to the Office, followed by Právo and Hospodářské noviny. Among the television and radio channels, ČT24 and Radiožurnál were the most interested in the Office's activities.

Number of Press Releases Issued

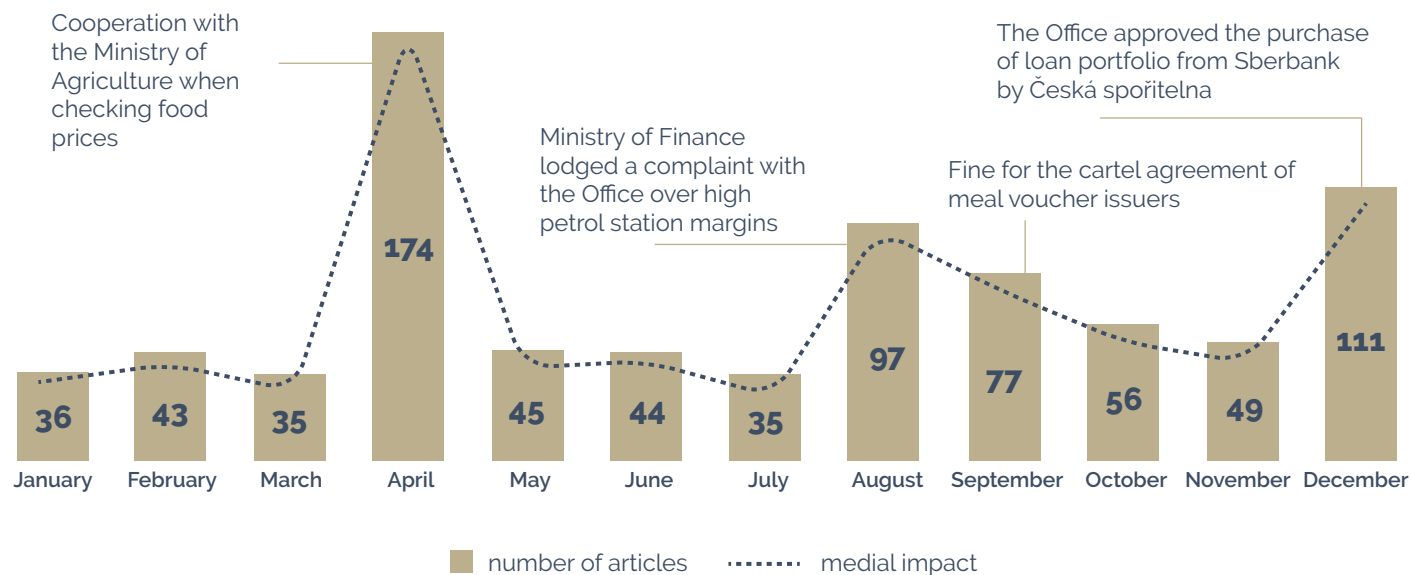


Number of Articles Mentioning the Office Within Monitoring of Media



³³ Newton Media analyses for the Office the publicity in the following selected media: Mladá fronta Dnes, Právo, E15, Hospodářské noviny, Lidové noviny, Blesk, ČT 1, ČT 2, ČT 24, TV Nova, FTV Prima, ČRo Radiožurnál, ČRo Olomouc, ČRo Hradec Králové, ČRo Rádio Česko, ČRo 6, ČRo Pardubice, ČRo Plzeň, ČRo Regina, ČRo Brno, ČRo Ostrava, ČRo Region Středočeský kraj, ČRo Region Vysočina, ČRo České Budějovice, ČRo Praha, ČRo Sever, Impuls, Frekvence 1.

Development of Media Coverage of the Office in Selected Media in 2022



Source: Newton Media

May Conference on Public Procurement 2022

In 2022, the Office started a new tradition of organising the annual May Conference on Public Procurement as a meeting of experts, representatives of the European Commission, the judiciary and contracting authorities. More than 100 participants attended the first edition of the May conference organised by the Office on 18 and 19 May 2022 and listened to presentations by two dozen experts from the Czech Republic and abroad. The conference was opened by the Chairman of the Office Petr Mlsna and on the second day it was also attended by Ivan Bartoš, Deputy Prime Minister for Digitalisation and Minister of Regional Development.

The session on new developments in public procurement was opened by Markéta Dlouhá, Vice-Chair of the Office, who introduced activities of the Office in the area of public procurement, considerations on supervision and anticipated activities of the Office. She highlighted complementary roles of the Ministry of Regional Development and the Office, which, in addition to its supervisory activities, issues methodological recommendations and statements on its own initiative, explains its decision-making practice and engages in awareness-raising and methodological activities in the field of public procurement. Vlastimil Fidler, Deputy Minister in charge of the Construction and Public Investment Section of the Ministry of Regional Development, devoted his contribution to

the process of amending the Public Procurement Act, which began in 2019 with the aim of transposing the procurement directive of the European Commission. Selected aspects of the amendment to the Public Procurement Act in the area of supervisory activities were addressed by Michal Kobza, Director of the Public Procurement Department of the Office. Zuzana Krajčovičová, Director of the Office of the Council of the Slovak Public Procurement Office, reported on the issue of dealing with intrusive submissions in Slovakia.

The second part of the conference was dedicated to modern trends and innovations in public procurement. Katharina Knapton-Vierlich presented the European Commission's view on innovative procurement. Procurement based on the "Best Value Approach" was described by Martin Vyklický from the Brno University of Technology, who drew from his considerable experience with this approach. The Slovak experience was provided by Jaroslav Lexa, Vice-Chair of the Slovak Public Procurement Office.

The view of national judges on selected procurement issues represented the topic of the third session. Vendula Sochorová from the Regional Court in Brno discussed in detail the issue of vendor lock-in in the area of IT procurement and the consequent application of the negotiated procedure without publication. Petr Mikeš, the Supreme Administrative Court judge, spoke about the courts' interpretation of the basic principles of public procurement procedure.



Ivan Bartoš, Petr Mlsna, Jan Vodák, Mojmír Florian



Markéta Dlouhá, Michal Kobza, Vlastimil Fidler



Iveta Pospíšilíková, Hana Schneiderová, Rudolf Mládek Buchta



Iveta Pospíšilíková, Kamil Nejezchleb, Karin Schnabl, Goran Matešić

Foreign perspective on selected procurement issues were presented by Vítězslava Fričová from DG Grow of the European Commission, who analysed recent judgments on the issue of horizontal and vertical (in-house) cooperation, and Roberto Caranta, the professor of the University of Turin, who focused his lecture on the courts approach to the public procurement review.

The impact of the EU legislation on contracting authorities in the area of support for low-emission vehicles, which is to be introduced into the Czech legal framework on the basis of the EU Directive 2019/161, was presented by Markéta Adámková from the Ministry of Regional Development. The EU regulation on foreign subsidies distorting the internal market was presented by Vojtěch Horsák from the Office, and Petr Vévoda from the Office subsequently explained the expected specific impacts of the regulation on public contracting authorities, in particular on the course of the procurement procedure.

Kamil Nejezchleb, Vice-Chair of the Office, spoke about the possible consequences of serious misconduct by contractors, such as bid rigging. He emphasised that the main purpose of the public procurement rules is to ensure extensive competition for contracts and reminded the contracting authorities of the possibility to claim compensation for damages caused by a cartel.

The exclusion of contractors pursuant to Article 48(5)(d) of the Public Procurement Act was analysed by Iveta Pospíšilíková from the Office. The approach to the exclusion of tenderers in other EU Member States was presented by judge Karin Schnabl from the Administrative Court of Styria and Goran Matešić, Chairman Emeritus of the Croatian State Commission for the Supervision of Public Procurement Procedures.

The conference delivered a clear message that the responsible procurement is an unquestionable trend and the future of public procurement. Leona Gergelová Šteigrová from the Ministry of Labour and Social Affairs presented two important judgments of the Court of Justice, gave examples of common practice and described the process of implementing responsible procurement at an organisation. Martin Hadaš from the Masaryk University described the practice of responsible procurement at the University. Practical experience and issues gained from the administration of public procurement from the perspective of responsible procurement was shared by Miroslav Knob from OTIDEA LEGAL.

During the conference, the Chairman of the Office, Petr Mlsna, awarded the prize for his contribution to competition and public procurement to David Raus, who has been a judge of the Administrative Chamber of the Regional Court in Brno for many years and was one of the first to specialise in competition and public procurement within the judiciary.

Conference on State Aid

The Conference on State Aid has been held annually by the Office since 2009. Approximately one hundred participants representing the State aid providers and recipients and other experts in this field listened to nearly two dozen presentations during the two-day conference. The participants were welcomed by Petr Mlsna, Chairman of the Office. He reminded of the importance of State aid in overcoming the consequences of the COVID-19 pandemic, the role of the Office in the process of its approving and mentioned the clear trend of directing State aid to areas related to the environment, climate and sustainability. His words were confirmed by Maria Velentza from DG COMP of the European Commission, according to whom the current objective of EU competition policy is to ensure that the European economy is sufficiently resilient to overcome the difficult challenges it is nowadays facing. She commented the role of the State aid Temporary Framework for COVID-19 and the current Crisis Framework related to the war in Ukraine in restoring and strengthening the EU economy. The Commission places crucial importance to the transition to a green economy, which it supports through a series of State aid rules.

Petr Solský, Vice-Chairman of the Office, presented the Office's activities in the field of State aid and discussed in detail the forthcoming regulation on foreign subsidies. Libuše Bílá, Head of the State Aid Unit, presented an overview of the State aid legislation that have recently been revised as well as those that will be revised before the end of the year. Following contribution by Libuše Bílá concerned the possibilities of State aid granted by regions and municipalities, and she also focused on the obligations that local and regional authorities must fulfil as providers or recipients of State aid.



Petr Mlsna, Petr Solský, Maria Velentza, Libuše Bílá, Gabriela Kinclová

Koen Van de Castele from DG COMP of the European Commission analysed in detail the COVID-19 Temporary Framework and presented the already made and forthcoming GBER revisions.

Richard Nikischer from the Ministry of Regional Development informed the conference participants about the aid intended for the transition of coal regions and the development of economically and socially threatened areas within the framework of the Regional Development Strategy 2021+, RE:START Strategy and Territorial Just Transition Plan.

New Guidelines on State aid for climate, environmental protection and energy (CEEAG) were presented in detail by Iva Příkopová from the Office. Legislation in the field of agriculture and fishery was presented by Martina Břešťovská from the Czech Ministry of Agriculture. Ivan Mužík from the State Environmental Fund of the Czech Republic described functioning of the so-called Modernisation Fund and the areas that can be supported from it.

Markéta Kabourková, Chairwoman of the Czech National Sports Agency, addressed the aid issues for professional and non-professional athletes and sport clubs and the possibilities of granting aid for sports infrastructure.

The area of tourism promotion was addressed by Eduardo Cabrera Maqueda from DG COMP of the European Commission.

Caroline Buts from the VU Brussel and Zoltán Bartucz from the Hungarian State Aid Monitoring Office presented case studies on State aid for the German car company BMW and the Estonian bakery company Eesti Pagar. Michael Kincl from the Supreme Court analysed some interesting cases from the decision-making practice of the European Commission and the case law of the European Court of Justice.



Petr Solský, Markéta Kabourková, Eduardo Cabrera Maqueda, Caroline Buts, Zoltán Bartucz, Michael Kincl

St. Martin's Conference 2022

More than one hundred competition experts from the Czech Republic and abroad attended the fifteenth annual St. Martin's Conference on competition law and significant market power organised by the Office. In his opening speech, the Chairman of the Office, Petr Mlsna, presented activities of the Office during the Czech Presidency of the Council of the European Union, the results of its decision-making activities, as well as some important trends in competition policy.

Kamil Nejezchleb, Vice-Chair of the Office, summarised the activities of the Competition Division in 2021. He noted, for example, that the Office has received 10% more complaints in the field of competition compared to the last year and has conducted or is conducting the highest number of administrative proceedings concerning the prohibited agreements in its history. The Office also broke last year's record regarding the number of on-site inspections, conducting 31 inspections.

The activity of their respective institutions was then presented by Boris Gregor, Vice-Chair of the Slovak Competition Authority, and András Tóth, Vice-Chair of the Hungarian Competition Authority. The European Commission's work in the field of competition policy was presented by Maria Jaspers from DG COMP.



Petr Mlsna, Kamil Nejezchleb, Boris Gregor, Maria Jaspers, András Tóth



Igor Pospíšil, Ivana Halamová Dobišková, Kateřina Mandulová, Martin Nedelka

The relationship between competition policy and sustainability was addressed by Ivana Halamová Dobišková (Allen & Overy), who summarized the legislation that regulates or is supposed to regulate sustainability within the European Union and also discussed the different approaches in individual Member States. Kateřina Mandulová (PwC Legal) put the issue of sustainability in a broader context, pointing out the pressure from the private sector, especially the banking sector, for sustainable solutions. On the other hand, Martin Nedelka (Nedelka Kubáč advokáti) presented a rather fundamental criticism of the introduction of sustainability objectives into competition policy.

Dynamically developing markets have been addressed by economists Pavel Doležal from the Office, Goran Serdarević (Frontier Economics), Vitaly Pruzhansky (RBB Economics) and Jakub Chini (CompetitionSphere), who dealt with specific aspects of digital and technological platforms and the approach competition policy should take to them.

Lenka Svobodová, Director of the Dominance, Mergers and Vertical Agreements Department of the Office, summarised the cases of vertical agreements dealt with by the Office in the last few years and also gave a percentage of the fines imposed. She also announced that the Office would introduce the possibility of settlement for vertical agreements and the undertakings would be also allowed to obtain a reduction



Kamil Nejezchleb, Petr Mlsna



Pavel Doležal, Goran Serdarević, Vitaly Pruzhansky, Jakub Chini

of the fine through a compliance programme or by means of a very close cooperation with the Office. Petr Zákoucký (Dentons Europe) summarised the issue of vertical agreements abroad and presented case studies. Jiří Kindl (Skils) presented his critical view on the strict sanctioning of vertical agreements by the Office.

Petr Solský, Vice-Chair of the Office, recapped the progress of the preparation and important deadlines related to the legislative process of the Regulation of the European Parliament and of the Council on foreign subsidies distorting the internal market. Filip Křenek from the DG COMP described this regulation in detail. Professor Marek Martyniszyn from the Queen's University Belfast focused his presentation on the issue of market distortions by foreign countries and demonstrated a number of ways in which foreign states can distort competition in other countries to gain influence and drain their wealth.

The final workshops focused on the amendment to the Competition Act, which would primarily transpose the EU ECN+ Directive, but would also bring a number of other changes, on the relationship between competition and regulation, and on the significant market power, especially in the context of the amendment currently under discussion; for example, on the new concept of market power in the context of the Directive on Unfair Trading Practices.

Representatives of the Office Teach at the Faculty of Law of Masaryk University

In the autumn semester, the Public Procurement Law academic course was first introduced. The lessons were conducted by the staff of the Second-Instance Decision-Making Department of the Office. The course is being offered through the Department of Commercial Law of the Faculty of Law of Masaryk University.

The course covered individual institutes of the Public Procurement Act relevant to the conduct of the award procedure, as well as procedural rules governing administrative proceedings before the Office. The private, criminal and competition aspects of public procurement have not been left out. The individual institutes were explained using concrete examples dealt with in the decision-making practice of the Office. The aim was both to increase the interest of students in procurement issues and to prepare for the practical application of the law those who can subsequently join the ranks of procurement experts, both among contracting authorities, contractors and the supervisory body.

Providing Information Pursuant to Act No. 106/1999 Coll., on Free Access to Information, in 2022

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

area	number of requests received	number of decisions issued
Competition	22	9
Competition and public procurement	4	0
Competition and significant market power	4	0
Public procurement	33	7
State aid	6	3
Significant market power	4	2
General	24	0
Total	97	21

2. Number of appeals filed: 0
3. Number of complaints submitted: 1
4. Court judgements concerning the Office's competence in field of providing information
- judgement of the Regional Court in Brno Ref. No. 29 A 9/2020-105 of 29 April 2022 – the action against the decision of the Chairman of the Office is rejected;
 - judgement of the Regional Court in Brno Ref. No. 62 A 27/2021-67 of 8 July 2022 – the action against the decision of the Chairman of the Office is rejected;
 - judgement of the Supreme Administrative Court Ref. No. 8 As 164/2020-62 of 21 July 2022 – cassation complaint of the Office is rejected.
5. Results of proceedings on sanctions for non-compliance with Act No. 106/1999 Coll.
- No proceedings were conducted.
6. List of exclusive licences granted
- No exclusive licence was granted.

Action for Damages – Court Case

Applicant: **Kapsch Telematic Services, spol. s r. o.**

The judgement of the Municipal Court in Brno of 15 June 2021, Ref. No. 49 C 186/2020

The judgement of the Regional Court in Brno of 29 June 2022, Ref. No. 44 Co 132/2021

By its civil action lodged on 4 November 2020, the applicant claimed compensation for damages in the amount of CZK 383,442,146 including default interest, which it allegedly incurred as a result of the Office's conduct in the administrative proceedings (Ref. No. ÚOHS -S0406,0429,0504/2017,0016,0092/2018/VZ), the subject of which was to review the procedure adopted by the Ministry of Transport as a contracting authority in awarding the public contract for the Electronic Toll Collection System.

The damage claim alleged by the applicant should have been caused by the fact that the Office, in the context of the administrative proceedings in question, did not decide on an interim measure prohibiting the conclusion of the contract in the award procedure until the final closing of the administrative proceedings in question. The applicant considered that if the Office had done so, the Ministry of Transport would not have concluded a contract with a new contractor, and/or its existing contractual relationship with the Ministry of Transport would not have been terminated, but would have continued. The Office's action was thus to cause damage to the applicant pursuant to the Act No. 82/1998 Coll., on liability for damage caused in the exercise of public authority by a decision or incorrect administrative procedure and on amendment to Act of the Czech National Council No. 358/1992 Coll., on notaries and their activities (Notarial Code), as amended, consisting of loss of profits and other costs incurred in connection with

the administrative proceedings and the subsequent judicial proceedings. The applicant also claimed compensation for non-pecuniary damage.

The court of first instance did not accept the claimant's arguments and dismissed the action in its entirety, as all the prerequisites for liability for damages were not met. The applicant failed to establish a causal link between the Office's conduct and the damage allegedly suffered by the applicant. In relation to the fulfilment of the prerequisites for liability for damages, the court stated that, in view of the content of the contractual relationship, the applicant could not legitimately expect to continue to provide services to the Ministry of Transport beyond the time stipulated in the contract as the deadline for performance. At the same time the court noted that the Ministry of Transport terminated the contractual relationship before the expiry of the contract, which was in accordance with the contract. Since the applicant had no guarantee that the contractual relationship with the Ministry of Transport would continue even if the Office issued an interim measure, the applicant has not demonstrated any damage.

The applicant appealed against the judgment of first instance, but the court of appeal fully upheld the findings of the preceding instance. The judgment came into force on 20 September 2022.

Indicators of Budget Chapter 353 for 2022 – Office for the Protection of Competition

			in CZK
Aggregates	Total revenues		8,800,000
	Total expenditures		245,063,537
Specific indicators – revenues	Tax revenues ¹⁾		3,800,000
	Total non-tax revenues, capital revenues and transfers received		5,000,000
	of which:	other non-tax revenues, capital revenues and transfers received in total	5,000,000
Specific indicators – expenditures	Expenditures on ensuring the fulfilment of the tasks of the Office		245,063,537
	of which:	expenditures related to the performance of the Czech Presidency of the Council of the European Union	3,295,840
		other expenditures on ensuring the fulfilment of the tasks of the Office	241,767,697
Cross-sectional indicators	Salaries of employees and other payments for work performed		142,560,287
	Compulsory insurance premiums paid by the employer ²⁾		48,185,376
	Basic allocation of the fund for cultural and social needs		2,811,142
	Salaries of employees in terms of employment, excluding staff at service posts		19,805,357
	Salaries of employees at service posts pursuant to the Civil Service Act		111,994,148
	Salaries of employees in terms of employment derived from the salaries of constitutional officials		8,757,600
	Ensuring preparation for crisis situations pursuant to Act No. 240/2000 Coll.		0
	Total expenditures included in the EDS/SMVS programme financing information system		30,000,000

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

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

Agenda 2023

Competition

The key legislative priority for 2023 is to complete the transposition of the ECN+ Directive, as mentioned in the Competition chapter. Adoption of the Amendment Act is a key legislative objective for 2023, also in view of the ongoing infringement procedure by the European Commission since the deadline for proper transposition already passed on 4 February 2021. In the context of this forthcoming amendment to the Competition Act, the Office also intends to revise its related soft law concerning fines, leniency, settlement procedure and alternative methods of resolving competition issues. In doing so, it is prepared to consult on the proposed changes with the professional public.

The Office will continue the well-established trend of active cooperation with Czech universities. The Office's staff, including top management, will be again involved in lecturing on competition law and economics, organising *ad hoc* expert lectures and attending academic conferences. In cooperation with the Faculty of Economics and Administration, the Office intends to participate in the project of Technology Agency of the Czech Republic – Increasing the efficiency of public tenders in public transport. In cooperation with Charles University, selected representatives of the Office will also lecture in the new LL.M. program focused on competition law. In addition, in relation to cooperation with universities, in 2023 the Office announced a competition for the best theses in the field of competition, public procurement, State aid or significant market power. Next to these projects, the Competition Division of the Office plans to launch an e-learning course on the fight against bid-rigging intended for the public administration. In the field of educational projects, the Competition Division also intends to participate in the events of competition authorities within the ECN or ICN networks and to cooperate bilaterally, in particular, with neighbouring countries. Apart from its domestic cooperation projects, the Office will continue to participate in the international projects DATACROS II and Computational Antitrust which started in 2022.

In 2023, the Office will continue to host its traditional St. Martin's Conference, which is scheduled for November 8-9, 2023. In connection with the anticipated adoption of the amendment to the Competition Act as well as the forthcoming soft law amendment, the Office intends to organise an expert workshop on the new rules to be introduced.

In the area of supervision, the Office will continue combating hardcore cartel agreements, i.e. prohibited horizontal agreements on prices, market sharing, output limitation or bid rigging, and also on abuse of dominant position through exclusionary practices. In the area of prohibited vertical agreements, the Office will continue to sanction in particular the minimum price agreements or restrictive practices relating to limiting the use of the Internet as a distribution channel. In the area of vertical agreements, it however plans to focus more on major players with stronger market power. The Office also intends to deal with so-called no-poaching agreements, i.e. agreements on maximum wages or non-poaching of employees between competitors. In the context of mergers, the Office will continue to follow the established trend of assessing all notified mergers and will also consider, in relevant cases, the possibility of applying TDFEU 22 of the Council Regulation (EC) No 139/2004 on the control of concentrations between undertakings, which allows, inter alia, even in cases not meeting the notification turnover criteria, nevertheless affecting trade between the EU Member States and raising substantial competition concerns, to refer such cases to the European Commission for assessment. At the same time, the Office will continue to check whether there are no offences committed in the field of the merger control in the Czech Republic, e.g. in the form of gun-jumping. In the context of the supervision of distortions of competition by public authorities, the Office will continue to prioritise prevention over repression and, where possible, will seek to eliminate possible distortions of competition by alternative means without the initiation of administrative proceedings. The Office also intends to carry out fast-track inspections on several staple foods and to launch further sector inquiries in the course of 2023. Regarding the direction of competition policy, the consideration of environmental criteria and sustainability policy in competition impacts assessment is still a very topical and discussed issue; the Office is going to be rather reserved considering tolerating of anticompetitive behaviour in exchange for such benefits. However, it intends to severely punish practices aimed at slowing down the progress towards sustainable and environmentally friendly solutions by distorting competition. As part of its supervisory activities, the Office will continue to promote prevention in the field of competition and thus continue the well-established trend of considering effective compliance programmes as a mitigating factor in imposing fines under certain conditions. It also will promote private enforcement of damages

caused by anticompetitive behaviour, both in general terms by methodology means and by drawing attention to this possibility by encouraging potentially affected entities to use it.

Significant Market Power

In the upcoming year 2023, the most important event in the significant market power agenda is the entry into force of the Amendment Act No. 359/2022 Coll., on significant market power and unfair trading practices, as of 1 January 2023. Due to the extended scope of the Act (regulation of the obligations of several hundred entities active in the agri-food chain), it can be expected that there will be a significant increase of activities. Generally, it will consist of analytical, awareness-raising and preventive activities, and subsequently also repressive ones. First of all, the Office will have to analyse in detail the markets in the agri-food chain and the relationships between the various players active in these markets. Subsequently, it will moderate these relationships and methodically guide the business entities involved. The change in legislation will not only have a considerable impact on selected undertakings in the agri-food chain, but will also significantly extend the Office's powers across the entire food chain from producers, through food processors to wholesale and retail. The Office's supervisory activities will also focus on methodological guidance for market entrants. The Office will offer training to entrepreneurs active in these markets who have no experience with the new legislation. The Office has already started providing its interpretation of the new legislation.

In the following steps, the Office will focus on the identification of unfair practices in these markets, for example through sector inquiries. Last but not least, the Office will focus its activities on repressive measures and sanction the application of unfair trading practices in contractual relations between business partners.

Due to shifting the Office's focus from the final link in the food chain to the processing and primary production links, it is necessary to introduce preventive measures in relation to the retail market. This will primarily involve maintaining open communication on contractual terms with retail chains and establishing compliance with unfair trading practices regulation.

Public Procurement

In the area of public procurement, the Office will primarily continue the trends set in 2022. This means to focus on the efficiency of one of the main Office's activities consisting in the supervision of the procedures of contracting authorities and/or purchasers, as well as to develop and deepen methodological and awareness-raising activities, not only within the Office, but also outwardly. In this context, the Office intends to continue to meet with representatives of local authorities through special training sessions, as the Office is convinced that deepening cooperation focused on awareness and education in the field of public procurement can have a positive impact on the effectiveness of the allocation of public funds, while municipalities are a very important group of contracting authorities.

The Office will also continue to organise so-called Methodology Days on Public Procurement, which are traditionally held online and thus conveniently accessible to all those interested in deepening their awareness in the field of public procurement. The Office will also hold its annual May Conference on Public Procurement, which will host the leading Czech and foreign experts on public procurement issues in its two-day programme.

In 2023, the Office intends to continue to deepen its cooperation with the Ministry of Regional Development as a gestor of the Public Procurement Act. The aim of this successfully initiated cooperation is, inter alia, to jointly contribute to the improving the procurement environment and generally have a positive impact on the field of public procurement in the Czech Republic.

Since the Council of the European Union approved a new Regulation on foreign subsidies distorting the internal market at the end of 2022, which significantly affects also the area of public procurement, in 2023 the Office will be also involved in amending the Public Procurement Act as related to this Regulation.

State Aid

Also for 2023, the European Commission has announced revisions of further State aid regulations, in particular the amendment to the *de minimis* aid regulation or the rules on State aid for health and social services of general economic interest. The adoption of the revised General Block Exemption Regulation is expected in the first quarter, which, in addition to the awareness-raising, advisory and consultancy activities related to the interpretation and application of the new rules, will also necessitate updating of some existing aid schemes to harmonise them with the new general regulation. It will be necessary to notify the European Commission of regional aid schemes in the context of the European Commission's decision on the amendment to the regional aid map in order to increase aid intensity in regions eligible for a grant from the Just Transition Fund.

Following the approval of the new enabling regulation for land transport by the Council of the EU, the Commission is expected to present a proposal for the new block exemption for land transport in the course of 2023. This should be a separate regulation on block exemption, the existing general regulation will not be extended by such aid categories. Further legislative developments are also expected in the context of the approved regulation on foreign subsidies, for which rules for the application are to be adopted.

In 2023, the Office will also host its traditional annual Conference on State Aid. In the context of reporting on the implementation of the decision (SGEI), the Office will focus on simplifying the IT application for reporting, following the experience with its first version.

The information obligation on aid paid in 2022 must be fulfilled by providers to the Office by 30 April 2023. This obligation does not apply to measures granted under the *de minimis* aid scheme and under the rules regulating the provision of services of general economic interest. For the purpose of fulfilling this information obligation, the Office shall update the relevant form on its website. Providers with access to the SARI electronic system (State Aid Reporting Interactive Tool) will fulfil their information obligation by entering the required data into this system. After checking the information received, the Office will send a summary annual report on behalf of the Czech Republic to the European Commission.

The Office will continue to cooperate with providers and the European Commission in the negotiation of (pre-)notified aid measures, both from the national sources and from the National Recovery Plan or the Operational Programme Just Transition. Cooperation with providers and the European Commission will also continue with regard to dealing with complaints to the European Commission.

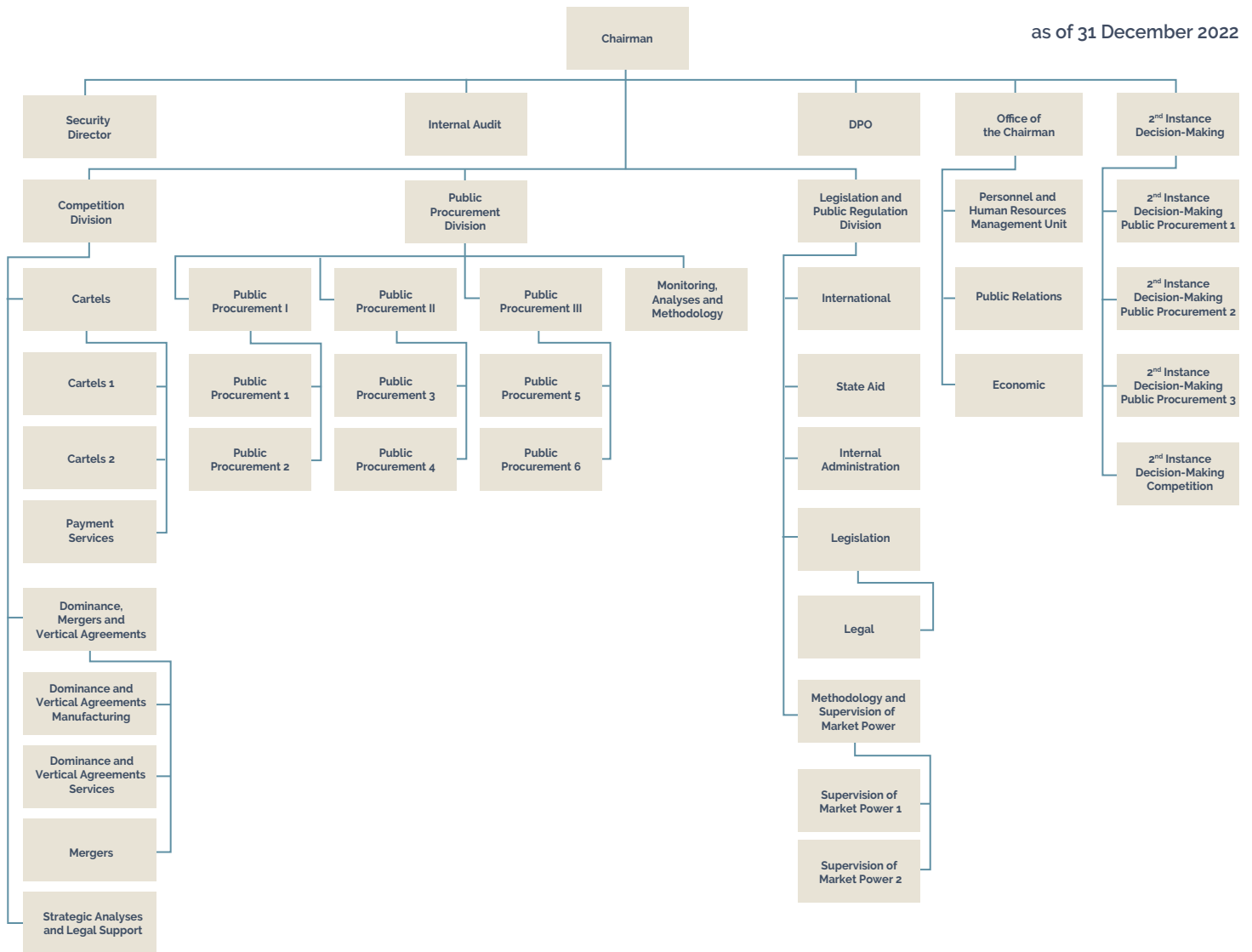
International Cooperation

From the perspective of European integration, the Czech Presidency of the Council of the European Union will reverberate in the first half of 2023, its retrospective evaluation will take place, and communication and close cooperation with Swedish colleagues in the context of handing over the agenda of the presidential trio will also be important.

In the area of multilateral relations, a Memorandum for Regional Cooperation in the Field of Competition Policy between the competition authorities of the Czech Republic, Poland, Slovakia, Hungary, Romania and the Baltic States, on the one hand, and the competition authorities of Ukraine and Moldova, on the other hand, can be expected to be concluded in 2023, inter alia, following the meeting of the Chairman of the Office with the Chairwoman of the Ukrainian Competition Authority during the European Competition Day and the subsequent announcement of cooperation between the two authorities. This Memorandum would contribute to strengthening efforts for the early integration of these two candidate states into the structures of the European Union.

In addition, the Office will continue its involvement in activities of international competition platforms ECN, ICN and OECD. In the context of the EU legislative process, the Office will continue to ensure the activities of the Working Party on Competition (G12) in Brussels within the Council of the EU and will also participate in the preparation of the COMPET meeting of the Council of Ministers in cooperation with the Ministry of Industry and Trade of the Czech Republic.

Structure of the Office



Annual Report 2022



OFFICE FOR
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