I. Legal and institutional arrangement of the protection of economic competition

1. Institutional arrangement

1. Protection of economic competition is administered by the Office for the Protection of Economic Competition, located in Brno. The Office is a central body of the state administration for the support and protection of economic competition against its prohibited restriction. Its scope of activity is set by the Act No. 273/1996 Coll. The Office is headed by the Chairman who is appointed and whose appointment can be revoked by the President of the Czech Republic upon a proposal from the Government.

2. The support and protection of economic competition is performed in areas regulated by the Act No. 63/1991 Coll. on the Protection of Economic Competition, as amended by subsequent regulations, and focuses on the prohibition of agreements distorting competition, abuse of dominant and monopoly positions, and merger control. The Office also supervises the conduct of bodies of municipal and state administration, decisions of which may contradict the Act on the Protection of Economic Competition. The responsibility of the Office is to disclose such improper acts and to seek the remedy.

3. Within the framework of its scope of activities, the Office also executes surveillance of public procurement awarding on the basis of the Act No. 199/1994 Coll. on Public Procurement, as amended by subsequent regulations.

4. The surveillance consists of the following:
   - reviewing objections raised by bidders against steps taken by the contracting authority;
   - review of procedures used by the contracting authority in the invitation to a public tender;
   - participation of representatives of the Office in the opening of envelopes containing the bids;
   - imposition of fines in cases of grave or recurrent violation of the legislation.

5. On the basis of the Act No. 152/1997 Coll. on Protection Against the Import of Dumped Products, the Office has been entrusted with co-operation in anti-dumping procedures, the execution of which is the responsibility of the Ministry of Industry and Trade.

2. The Existing Legal Arrangements and Legislative Changes

6. In 1998, the Office continued performing tasks arising from its scope of activity. It focused on further perfection of the protection of economic competition and more demanding execution of surveillance of public procurement awarding. In the legislative field the Office resumed basic principles of amendments of the Act on the Protection of Economic Competition and the Act on Public Procurement, adopted by the Government, and prepared drafts of amendments to both Acts. The Office also worked out a draft of the amendment of the Act on the Scope of Activities of the Office.

7. There were two reasons for submitting the draft of amendment of the Act on the Protection of Economic Competition. One objective was to employ and make the best of the practical knowledge and
experience hitherto gained by the Office in applying the Act for the period of its effectiveness. Another essential objective was to achieve a higher level of compatibility with the EC competition law and to reinforce legal certainty of application of both substantive and procedural law in the area of competition law.

8. The draft of the amendment is modelled on the EC law and takes into account the decisions of the EC Court, decision-making activities of the EC Commission, and the experience of OECD. It has to be emphasised in this connection that the existing legal arrangement of the economic competition is largely compatible with the EC competition law. It means that the Act adopted the provisions of Articles 85 and 86 of the Rome Treaty, basic institutes of so called secondary EC law, and enables the interpretation as implied by the decisions of the European Commission and the European Court of Justice.

9. The basic principles of the proposed amendment are as follows:

- Unanimous definition of the *de minimis* rule, it means definition of agreements that don’t affect great extent competition, hence are not subject to general prohibition and nullity of agreements distorting competition. *De minimis* rule was worded in compliance with principles of the European Commission notice on agreements of minor importance within the meaning of Article 85, paragraph 1 of the Europe Agreement. The proposed amendment defines agreements of minor importance by means of market share of the parties to an agreement on relevant market.

- Introduction of a definition of dominant position on the principle of market power, where the market share is a significant but not the sole criterion for the definition of dominant position. The definition of dominant position is contained in the EC competition law neither in the provisions of the Article 86 of the Agreement, nor in consequently adopted regulations and notices of the Council and Commission. This concept was interpreted by the ECJ judicature as such economically strong a position of the undertaking on the market, which makes it possible to prevent effective competition on the market and to a great extent behave independently of its competitors, customers, and consumers.

- Refinement of the definition of merger. Precise definition of merger forms not only one of the basic preconditions for effective control of economic mergers but also a precondition for legal certainty of undertakings. The existing definition of concentration contained in the Paragraph 8 of the Act results from the EC competition law but it does not specify an establishment of joint venture as a form of merger.

- Introduction of the turnover criterion for the notification of mergers. Next to the market share, already existing criterion for notification of the mergers, a turnover gained by all undertakings concerned during the last financial period is proposed to become an additional criterion. The purpose of introduction of the turnover criterion is both higher level of legal certainty of competitors and assurance of compatibility of the legislation with the EC law.

- Establishing a ban on competitors to execute rights and duties resulting from the merger until the Office decides in favour or against the concentration. The obligation not to merge before the European Commission grants the approval is explicitly contained in the Council regulation on merger control.

- Introduction of time limits for issuing a decision granting or not granting the permission to merge. In the interests of assurance of legal certainty of the competitors, fixed time limits are being proposed for the decision of the Office in favour or against the merger. The European
Commission obligation to make decision on notified concentrations within legally binding time limits is one of the basic principles included in the Council regulations on merger control.

10. The Office also worked out a draft of the amendment to the Act on Public Procurement. The objective of the proposed legal arrangement is to improve the system of the competition in public procurement, transparency of public finance management, and public procurement procedures eliminating discrimination and protectionism and minimising the possibilities of bribery and corruption.

- The most important change, from this point of view, is the implementation of European regulations on co-ordination of procedures in the area of inviting to a public tender by bodies working in the sectors of water management, power-supply, transport, and telecommunication. There are so-called natural monopolies (utilities), which means that both public and private undertakings are not exposed to any competition. Hence it is in the interests of consumers that the procurements of these undertakings be awarded publicly and on competitive principle.

- Another significant change is extending of the scope of the Act on procurements, subject of which is protected by laws governing the rights of industrial and intellectual property.

11. The Government s plan of the legislative work takes into account working out of the new Act, fully compatible with EC law and consistently implementing the structure of European Public Procurement Directives.

12. Over the last years, there is a marked tendency in countries with highly developed market economy towards reinforcement of independence of the bodies for protection of economic competition when performing competition politics and issuing decisions. It is mainly in the interest of preservation of continuity of competitive environment and of protection of competition itself. Therefore the Office worked out a draft of the amendment of the Act on the Scope of Activity of the Office for the Protection of Economic Competition. The legal arrangement deals with the length of term of the office of the Chairman, reasons for its termination, reasons for submission of the proposal by the Government to revoke the Chairman etc. The proposed amendment is a systemic step towards reinforcement of the Office independence by means of arranging the position of its Chairman.

II. Enforcement of competition policy

1. Statistical data

13. The following table shows the number of administrative proceedings including appeals filed against decisions taken by a first-instance body, and the number of actions filed at the High Court against decisions taken by the Minister for Economic Competition and the Chairman of the Office with respect to appeals in the period 1992-1998:
2. Agreements distorting competition

a) General observations

14. The trend showing an increase in franchising agreements noticed in the period 1996-1997, continued in 1998. The number of these agreements in 1998 (43x) rose almost by 300 percent when compared with the number in 1997 (11x). The Office approved these agreements for reasons of the rationalisation of economic activities, with a significant positive impact on consumers (e.g. granting clean environment suitable for children in fast food restaurants, including sanitary goods packaging). In several different administrative proceedings the Office, however, always decided on the same type agreement (6x McDonald’s, 13x Barum Continental, 11x PC Pneu etc.) On the basis of this experience, an introduction of block exemption appeared to be necessary for franchising agreements, that make it possible to reach a specific identity and image of the whole network by combining a successful trading method of the franchiser and a personal initiative of the private owner. The Office will work out such block exemption in the form of decree.

15. In some cases, when an exemption was granted to the agreements distorting competition, the decisions of the Office specified limiting conditions the purpose of which was the protection of economic competition (OLMA / Realia / Mlekarna (Dairy) Frydek-Mistek).

16. In 1998, the Office intervened in two cases against professional associations of entrepreneurs (for example the Chamber of Czech Doctors). The decrease in number of such prohibitions, commencing in 1997, is probably due to a stricter attitude applied by the Office in the previous years to some of the actions of the professional associations and chambers.

17. Past year showed how topical the issue of exclusive purchasing agreements for beer is; such contracts are entered into between producers and customers within one distribution channel (Kralovsky pivovar Krusovice, Pivovar Radegast, Plzensky Prazdroj). The breweries and restaurant operators concluded purchasing agreements on beer deliveries and agreements on advertising, the cumulative effect of these agreements being one of the reasons for closing this market down and distorting economic competition.
18. The decision-making practise of the Office more and more reflects the decision-making practice of the European Commission and ECJ. This tendency is apparent in the case Jan Becher – Karlovarska Becherovka and Plzensky Prazdroj, where the part of the agreement for business co-operation and distribution of products, which contained an obligation to prevent parallel import, was qualified by the Office as an agreement distorting competition.

b) Selected cases of agreements distorting competition

PC PNEU

19. PC PNEU entered into “the Contract for using franchising Barum” with its distributors, that is an agreement between competitors within the meaning of competition act. In the contract the franchisor, on the basis of an agreement of franchising, is a bearer of franchising licence, distributor of tire shoes, bladders and linings protected by a trade mark BARUM, CONTINENTAL, and SEMPERIT, and a distributor of other goods. The franchisor has also the right to use business procedures, know-how in the sale and service of those products, and he has also the right to enter into contracts with other subjects with the aim of developing a uniform selling style Barum. To assess potential impact on the competitive environment, the Office carried out an analysis of the relevant market resulting in the conclusions that individual types of tire shoes were separate products markets.

20. The Office came to the conclusion that the agreements assessed are agreements of rationalisation character, because the standards of sale, service and proficiency of counselling at secondary selling places they will bring about, will equal the level of standards of Barum Continental’s primary trade chain. The decisions on these agreements have already come into force.

Pivovar (Brewery) Radegast

21. The purchasing agreements on beer supply Pivovar Radegast entered into bound its customers to collect, buy, serve and sell beer in barrels or tanks produced or distributed solely by Radegast. The agreements for on advertising obliged suppliers to advertise Pivovar Radegast by selling solely beer RADEGAST in the place of business.

22. Pivovar Radegast violated hereby the competition act, because the agreements, with respect to economic and legal context, contained null and void arrangements distorting economic competition on the market of beer supplied for consumption at business places. The Office also inquired whether the agreement entered into by Pivovar Radegast with consumers of beer in barrels and tanks is an outcome of freely expressed will of parties to an agreement that does not discriminate any of them, or whether it is an outcome of market power exerted by Pivovar Radegast. The agreements were found to have been entered into freely and without pressure. The Office imposed a fine on Radegast for violating the prohibition of agreements distorting competition, and the company was ordered to remedy above mentioned agreements so that the provisions concerned do not contradict the law. Pivovar Radegast filed an appeal against the decision. The first-instance decision was affirmed by the second-instance decision. The fine was decreased in the second instance and the time-limit for redress was extended; the second-instance body took into account that market parties and consumers may benefit considerably form agreements on exclusive purchase. The decision has come into force.
CZECH REPUBLIC

Benzina

23. In agreements on operation and agreements on petrol station rent, Benzina, a.s. bound contractual operators (entrepreneurs) of petrol stations to buy (collect) goods set by Benzina Company (not only fuels but also supplementary assortment) only from Benzina Company, and to maintain maximum resale prices of additional assortment. The Office qualified this act as an agreement that might distort economic competition that is null and void. Benzina was fined.

3. Abuse of a dominant position

a) General observations

24. The highest number of cases of abuse of a monopoly and dominant position in 1998 was in the area of natural monopolies. The experience of the Office in this area from previous years indicates the necessity of strengthening the role of regulatory bodies and extending co-operation among the regulatory bodies and the Office.

25. The high frequency of complaints referred to the Office relating to the practises of cable television companies was the cause of the initiation of negotiations with respect to the possibility of introduction of regulation in the given area. Cable television companies have a doubtless dominant market power and therefore it is reasonable to adopt certain rules determined for competitors with such exclusivity, or to subject them to regulatory rules governing the conditions of correct conduct in the market. For this reason the Office commenced preliminary negotiations on the aforesaid facts with representatives of the department of price regulation of the Ministry of Finance.

26. Abuse of the position of competitors with a monopoly or dominant position in a local market may have very negative effects for consumers. For example, Znojmia forced payments of monthly advances (instalments to be made in advance) for the steam supply in an amount exceeding the comparable monthly payment for such supplies in the previous year by 20-25 percent by establishing a condition under which the company was entitled to stop the supply of steam if the customer failed to comply with the terms of payment. Business interests of Znojmske mlekarny, which utilised the steam, became seriously endangered due to a lack of any other available source of heat power. In the second-instance the Office decided that Znojmia, abused monopoly position and fined it for such conduct. The decision was confirmed by the verdict of the High Court, the amount of the fine, however, must be re-determined by the Office.

b) Selected cases of abuse of monopoly and dominant positions

Vseobecna zdravotni pojistovna (General health insurance company)

27. Vseobecna zdravotni pojistovna CR (VZP), refused to renew a contract for provision and reimbursement (payment) of health care with a non-state immunological institution, thus abusing its dominant position in the market of public health medical insurance services. The behaviour of VZP fundamentally affects the situation on the market of medical insurance services by entering or not entering into a contract with a doctor or health centre. The behaviour of VZP has impact both on the structure of supply of medical services and outputs towards patients and on the very economic capacity of the existence of a health centre.
28. During the administrative proceeding VZP pointed to expensive medical examinations performed by the immunological institution, faults in documentation, in presentation of interventions, and in some formalities “on the side” of immunological workplace.

29. During the investigation the Office found out that recognised faults were done away with within a reasonable period and that there are no other comparable institutions as for the facilities of specialised examinations in this area.

30. The Office held that VZP had no objectively justifiable reason to refuse the contract. The Office took into account the fact that it was not the first case of such abuse of dominant position from VZP and the existence of judicial precedence decided and reviewed by the High Court. The Office prohibited said abuse of dominant position and imposed a fine on VZP. The decision has not come into force yet.

Sazka

31. Sazka and its business partners – lottery ticket and bet dealers - entered into agreements that contained a provision obliging dealers to sell tickets only for Sazka and not for any other operator of bets and lotteries.

32. Dealers, however, were independent entities. Sazka supplied them with on-line terminals, technology enabling better mechanism of receiving and handling of bets and extending of the offered services. According to the agreements dealers could sell bets only for Sazka, despite the fact that on-line technology could not be used for any other companies but Sazka. There are dealers working for Sazka who are not provided with on-line terminals. They were not forced to enter into agreement for exclusiveness; contrary to on-line dealers they are discriminated by narrower offer of services, earlier deadline etc.

33. Sazka has a strong dominant position on the market in numerical lotteries and bet gambling. Dealers who don’t work for Sazka form only a residual competition. There are a lot of, even plenty of people interested to get in on this business, namely by means of on-line technology, and Sazka can choose from them. Although the dealers enter into agreements with Sazka voluntarily, Sazka has such a position and such a negotiating position that it fixes the terms one-sidedly and has the right to change them in the course of execution of the contract. The Office stated that Sazka enforces agreements for exclusiveness with the aim of preventing other operators of bet gambling and lotteries to enter the outlets.

34. For the active enforcement of agreements for exclusiveness the Office imposed a fine on Sazka and such behaviour was prohibited. The decision has not come into force yet.

Kabel Plus Vychodni Cechy

35. The Office conducted first-instance and second-instance administrative proceedings against Kabel Plus Vychodni Cechy that enforced a new contract to both long-standing and new customers – buyers of television signal. The agreement contained a provision allowing the supplier to change the price by its own unilateral act. A disagreement with such a contract resulted in disconnecting of the signal for the customer. The Office took into account that the cable television signal cannot be substituted for the customer. And even if there is a possibility to substitute the signal, the change to another source of the signal would mean to get over a financial, technical and sometimes even an administrative barrier. There the Office qualified the cable television company behaviour as an abuse of monopoly position, prohibited such behaviour and imposed a fine on the company. The decision was confirmed by the second-instance body and has come into force.
4. Merger control

a) General observations

36. In 1998, 48 decisions were issued with respect to granting approval for mergers compared to 58 decisions in 1997. In 42 cases the administrative proceedings approved the concentration, two of which with conditions, in 2 cases the Office did not approve the concentrations and in 4 cases the approval proceedings were discontinued or ceased by stating that the concentration is not approved.

37. On the basis of an analysis of economic advantages put forward by the parties to the proceedings in the applications for approval of concentrations in 1998 it follows that the range of criteria was narrowed, which was broadest in 1997 (29 groups of advantages), to 18 groups. The arguments of the companies emphasised the broadening and perfection of the assortments of goods and services with the aim of strengthening the ability to compete, the assurance of entering foreign markets with broader export and shortened investment recovery due to an increase in costs and energy intensity of production. Last year, 1998, showed a decrease in the amount of reasons for concentration listed in previous years, e.g. to ensure investment in reconstruction and modernisation of production for new technologies, to gain direct financial resources as deposits for investment, and to ensure know-how in technologies. One of the reasons for mergers, considerably increasing in number compared to 1997 and becoming one of the five most often arguments, is the rationalisation of economy.

38. In 1998, privatisation and an entry of foreign subject in banks was executed. Residual state share of Investicni a Postovni Banka Praha (IPB) was sold to a financial company Nomura Europe plc. The sound part of Agrobanka Praha, the fifth biggest financial institution in the Czech Republic, was sold to General Electric Capital Corporation. A concentration of Vereinsbank (CZ) and Hypo-Bank CZ took place following the concentration of parent companies abroad. Bank Austria Creditanstalt Czech Republic was made of Creditanstalt and Bank Austria (CR). The said concentrations were not subject to the approval of the Office.

39. In 1998 a circle of foreign companies operating on the market in heat industry in the Czech Republic was expanded. The reason for entry of foreign companies into heat industry is to ensure financial means for completion of reconstruction and intentions to modernise heating plants or the distribution networks, and the ensure rationalisation of production and heat distribution with a relatively low price of heat for the citizens.

40. With respect to a great number of prevalently small building companies on the market, their concentrations represent a positive feature. A drop in the building activities in 1998 is one of the causes of the on-going concentration of some big building companies or foundation of joint ventures.

41. The ongoing concentrations in milk market, which took place in 1998 by concentration of the French company Bongrain, dairy TPK Hodonin, and works Velký Vatimov. The Office approved the concentration because the position of Bongrain, that acquired control over dairies Pribina Pribyslav and Povltavske Dairies Sedlcany, was not substantially strengthened.

42. In 1998, five concentrations took place in glass industry. The advantages of concentrations are as follows: broadening of assortment and export together with maintaining the rate of employment. The Office approved these concentrations.

43. In 1998, Bohemia Sekt Stary Plzenec and Vino Mikulov, two important industrial wine producers merged. This was a concentration of vertical character. Bohemia Sect, a.s., is a significant champagne...
producer for the production of which good quality raw materials from Moravian wine region (Vino Mikulov).

44. The aforesaid conclusions have been drawn from 42 cases of mergers that are subject to the approval of the Office. Such mergers involve companies possessing significant shares in relevant markets, and mergers that took place in local markets or state-wide markets but that are in fact insignificant from the economic point of view. This group of cases represents obviously only a fragment of the total amount of concentrations executed in the Czech Republic in the year concerned.

b) Selected cases of concentrations

Nomura Europe plc. London / Investicni a Postovni Banka Praha (IPB)

45. The Office approved a concentration of the above companies based on purchase contract of 36.29 percent of shares entered into by Nomura Europe plc., Great Britain, with the Fund of National Property of the Czech Republic.

46. The relevant market was identified as the market of bank services, including purchase and sale of shares on the territory of the Czech Republic. The Office approved the concentration because the concentration of capital strong financial company Nomura Europe with IPB, which operates a dense state-wide network of subsidiaries and controls extensive industrial assets, will ensure IPB capital reinforcement, will bring about development of IPB and long-term stabilisation of bank sector in the Czech Republic, and will be a positive signal for privatisation of others with a significant share of state ownership.

Messe Düsseldorf GmbH Germany / Brno Fairs and Exhibitions, a.s. Brno (Brnenske veletrhy a vystavy)

47. The merger of Messe Düsseldorf GmbH Germany with Brnenske veletrhy a vystavy BVV) took place on purchase contract of 73.03 percent of BVV shares, was concluded between Messe Düsseldorf GmbH and FINOP HOLDING Praha. The concentration was effected by companies whose activities lie in organising fairs and exhibitions at owned exhibition grounds. The above companies are potential competitors that have operated so far in different geographical markets; therefore there will be no decrease in the number of competitors in given relevant market. The advantage brought about by the concentration will include reinforcement of the above mentioned companies and making the international market more open to Czech fair companies. Another important outcome of the concentration will make it possible for fair companies to contribute efficiently to the development of fairs organising cities, and to reinforce the significance and development of the region in question and other regions.

Boeing Ceska, Praha / AERO Vodochody, Odolena Voda

48. The biggest North American plane producer The Boeing Company, merged with AERO Vodochody via company Boeing Ceska. The concentration was approved by the Office. The relevant market was identified as the market of training aeroplanes of weight lower than 8000 kilograms, produced by AERO. Boeing does not operate in this market and no producer is in competition with AERO product on the territory of the Czech Republic.

49. The concentration will enable the products to enter foreign markets, thus securing the market not only of AERO products but also of series of subcontractors, who would otherwise perish. In addition, it will help to maintain the rate of employment not only in the given region.
EXXON CORPORATION / THE SHELL PETROLEUM COMPANY LIMITED

50. The merger of EXXON CORPORATION, USA, THE SHELL PETROLEUM COMPANY LIMITED, UK and Shell Oil Company, USA led to a fusion of world-wide activities in the area of research, production, marketing and sale of additives for the production of lubricants the effects of which are demonstrated on the territory of the Czech Republic. The Office approved establishment of joint venture, because it is a establishment of a concentrative joint venture not involving co-ordination of competitive behaviour of parties concerned. The relevant market comprises activities of the aforesaid companies in the area of production of additives for fuels and for the production of lubricants in the Czech Republic. The consumers will be offered a broader assortment and higher quality of additives enabling reduction of fuel consumption.

III. Other activities of the Office

1. Interventions against regional monopolies

51. During 1998, the Office investigated a conduct of electricity distribution companies in cases when the owner or user of the object with fixed electric lines asked for insulation of conductors for reasons of making repairs of exterior walls or the roof. The Office stated that the conduct of companies is not uniform, because some of them, in connection with insulation of conductors, requested applicants to pay a certain amount of money, whereas some companies did not request any payment and some companies requested it only in some certain cases. The Office held that the claim for payment of any amount of money is unjustified by the law. The Ministry of Industry and Trade came to the same conclusion and conveyed to the Office that it would inform all distribution companies about this view. In this case a remedy was achieved without conducting administrative proceedings.

2. Interventions against professional associations of entrepreneurs

52. The Office assessed conduct of the Chamber of Czech doctors the general assembly of which approved unequal amount of membership fees with respect to their positions: private physician, employed physician, or physician who have not passed the attestation. Since the different membership fees were not justified (the Chamber does not perform activities for private physicians different form those for the rest of physicians) the Office qualified the conduct of the Chamber as a decision of the association of entrepreneurs violating the Act on Protection of Economic Competition, and prohibited it. The Camber filed an appeal against the first-instance decision and a final verdict has not been issued yet.

3. Competition advocacy in the area of regulated sectors

53. In 1998, the Office addressed in a written form the Ministries whose scope of activities comprises the sectors of so called natural monopolies. After assessing the existing state in area of regulation of natural monopolies in its standpoint, the Office stated that the creation of independent regulatory bodies is a crucial precondition needed to assure well established economic environment resulting in acceleration of the total economic growth by gradually creating elements replacing competition. The regulation, however, must be founded on an extensive and elaborate legislation that will sufficiently and clearly define the competence of regulatory bodies. The regulatory bodies must be granted absolute access to information on regulated subjects. The Office expressed its readiness to take part in creation of a needed regulatory framework in the area of natural monopolies. The Office made comments on the draft of the Act on Telecommunications in this sense.
4. **Interventions against measures taken by bodies of the state administration and municipal bodies**

54. In 1998, the Office asked the municipal bodies to remedy their measures violating economic competition. Above all there was the conduct of the city of Karlovy Vary that decided to solve the situation of taxi parking in the centre of the city by entering into a lease contract with some operators of taxi long-distance controls on the basis of results of tenders. The contracts contained a provision binding the taxi drivers and controller to be through to each other. When interpreting the meaning of the contract, the operators of taxi long-distance control claimed, with the approval of municipal bodies of Karlovy Vary, that the use of parking places by taxi drivers is conditioned by their hiring a sender form the controller. Thus taxi drivers not interested in using controller’s services were excluded from using the parking places. The representative of the Office discussed the problem with the mayor of the city and asked the situation be remedied.

55. In 1998, as well as in 1997, the Office discovered cases, in which municipal bodies violated the Act on Protection of Economic Competition by taking certain measures, issuing decrees and amending zoning plans, prohibiting new builders or investors from building e.g. gas fire-rooms and forcing them to connect to the central heat supply. This effort was for the most part influenced by the fact that the municipalities own considerable property shares in heating-plant companies, which, in the given localities, provide heat to the major part of the municipality. The Office conducted proceedings in this regard with the representatives of the city of Jablonec nad Nisou where the requirements of the city were formulated in the decree. By negotiations the Office succeeded in getting the city of Jablonec nad Nisou not to violate the Act on Protection of Economic Competition when formulating its demands for building new heat resources or reconstruction of the existing ones. In other cases the Office consulted the wording of the decree under preparation, eliminating thus eventual anti-competition elements beforehand.

5. **Enforcement of pro-competition standpoint with respect to draft legal regulations**

56. In 1998, the Office repeatedly dealt with the draft act governing some legal relationships in the area of tourism. Considering the increased protection of customers, the new legal regulation supported the idea of registering the mentioned services as a licensing business, setting presentation of concluded insurance contract covering a risk of such business as one of the conditions for licence deed to be issued. The Office recommended that the applicant for operating a travel agency should be allowed to use, as an alternative for entering into an insurance contract, a different way of covering the risk, e.g. financial warranty, guarantee etc. The reason is that the practical application of the Act may result in limiting the access of competitors to the market in travel services on the part of commercial insurance companies (that have their own criteria for evaluation of client’s credibility and that are not obliged to enter into an insurance contract). It was regarded undesirable that another entrepreneurial entity should decide on the competitor’s entry in the market. This recommendation was not accepted.

57. In commenting on the draft regulation on introduction of a differentiated mark up on the pharmaceuticals prices put forward by the Ministry of Health, the Office held that the existing system of maximum mark up of 35 percent set by the price assessment both for wholesale and retail output, forces both parties, distributors and chemists, to inform each other of the rate of drawing of common mark up in order to find out the highest permissible pharmaceuticals prices for excess of which they might be affected by financial bodies. The Office considered the submitted material beneficial, from the competition point of view, with respect to introduction of split mark up set as maximum separately for both distributors and chemists. The government has not discussed this material, however, the Ministry of finance was placed to elaborate a new, more complex material concerning price regulation as such.
58. On the basis of knowledge gained from dealing with cases of potential abuse of monopoly (or dominant) position of competitors providing water supply and drainage and sewage water treatment services, the Office suggested to the Minister of Agriculture that the competencies of regulator should be modified with regard to the fact that the infrastructure is owned by a wide spectrum of owners – state enterprises, business corporations, municipalities, or alliance of municipalities. Development and modernisation of infrastructure property (including wastewater treatment plants) is highly demanding as far the investment is concerned. Since most owners have not ample means to carry out such plans, they request financial contributions to the investment from the applicants for connection to public water supply and sewerage network. Since they often have no possibility of direct pressure on the applicant – investor, they try to make every endeavour to obtain contributions via operator of infrastructure property. In the proposed Act on Public Water Supplies and Sewerage, the Ministry of Agriculture considered carefully the enactment of the possibility to request contributions from the investors in connection with their connection to the public network. With respect to all facts, the Office regarded as necessary to take the initiative in creation of a regulatory body that would assess the degree of encumbrance exercised on the applicant for connection, justifiability of demands for contribution in relation to the state of particular infrastructure property (not only from the technical point of view but also from the view of its actual capacity in relation to the load on the network by connected subjects). The body would evaluate the necessity of investment from the point of view of time schedule. In main principles of the Act on Public Water Supplies and Sewerage the Office emphasised that applicants should pay fees for connection. They should be specified by an independent regulatory body.
Appendix I


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<tbody>
<tr>
<td>1. Capital for investments into production reconstruction and modernisation, and for new technologies. Direct financial resources as a contribution towards capital investments (including an improvement in the financial situation of the company, financial stability and linking of resources, etc.), setting up a powerful capital structure</td>
<td>23 x</td>
<td>25 x</td>
<td>16 x</td>
<td>11 x</td>
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<tr>
<td>2. Technological know-how</td>
<td>9 x</td>
<td>11 x</td>
<td>15 x</td>
<td>7 x</td>
</tr>
<tr>
<td>3. Increase in export and access to foreign markets</td>
<td>10 x</td>
<td>11 x</td>
<td>13 x</td>
<td>15 x</td>
</tr>
<tr>
<td>4. Better product and marketing quality which reflects in increased competitiveness</td>
<td>8 x</td>
<td>18 x</td>
<td>22 x</td>
<td>20 x</td>
</tr>
<tr>
<td>5. Entry in well established distribution networks of the foreign or domestic partner</td>
<td>6 x</td>
<td>7 x</td>
<td>9 x</td>
<td>9 x</td>
</tr>
<tr>
<td>6. Broadening the assortment</td>
<td>5 x</td>
<td>17 x</td>
<td>11 x</td>
<td>21 x</td>
</tr>
<tr>
<td>7. Full use of existing production facilities, guaranteed sales, extending insufficient production facilities and benefits of the economies of scale</td>
<td>4 x</td>
<td>9 x</td>
<td>11 x</td>
<td>6 x</td>
</tr>
<tr>
<td>8. Harmonisation with international standards and norm, including the standard for the protection of life and health of employees</td>
<td>3 x</td>
<td>7 x</td>
<td>5 x</td>
<td>2 x</td>
</tr>
<tr>
<td>9. Adherence to environmental standards, including the introduction of environmentally-friendly products, higher product safety for customers, environment protection, improved waste disposal system</td>
<td>8 x</td>
<td>13 x</td>
<td>12 x</td>
<td>7 x</td>
</tr>
<tr>
<td>10. Know-how for effective company management (introduction of marketing, introduction of a total QA system, etc., unified system of basic assets)</td>
<td>3 x</td>
<td>9 x</td>
<td>1 x</td>
<td></td>
</tr>
<tr>
<td>11. Higher professional standards of work (training for employees, executive management, improved organisation of labour)</td>
<td>6 x</td>
<td>11 x</td>
<td>9 x</td>
<td>2 x</td>
</tr>
<tr>
<td>12. Improving customer comfort (better product quality, comprehensive services, offering groups of products in the form of packets)</td>
<td>2 x</td>
<td>16 x</td>
<td>9 x</td>
<td>-</td>
</tr>
<tr>
<td>13. Maintaining the rate of employment, creating new jobs, maintaining the existing level of social benefits</td>
<td>3 x</td>
<td>10 x</td>
<td>6 x</td>
<td>5 x</td>
</tr>
<tr>
<td>14. Shortening the return on investment period, cost savings, energy savings</td>
<td>3 x</td>
<td>17 x</td>
<td>9 x</td>
<td></td>
</tr>
<tr>
<td>15. Meeting the demand on telecommunications more quickly and flexibly</td>
<td>1 x</td>
<td>0 x</td>
<td>-</td>
<td></td>
</tr>
<tr>
<td>16. Cost savings in public transport services, which will be reflected in lower state subsidies requested for the region</td>
<td>1 x</td>
<td>1 x</td>
<td>-</td>
<td></td>
</tr>
<tr>
<td>17. Survival of a well-known brand name</td>
<td>4 x</td>
<td>2 x</td>
<td>-</td>
<td></td>
</tr>
<tr>
<td>18. Joint research, access to the latest technological data, optimum technological development</td>
<td>10 x</td>
<td>12 x</td>
<td>2 x</td>
<td></td>
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</tr>
<tr>
<td>19.</td>
<td>Stronger position in achieving smooth raw material imports and optimising the logistics of imports and of product shipments</td>
<td>9x</td>
<td>6x</td>
<td>-</td>
</tr>
<tr>
<td>20.</td>
<td>Cheaper products for domestic market</td>
<td>3x</td>
<td>2x</td>
<td></td>
</tr>
<tr>
<td>21.</td>
<td>Purchase of a building site for new technologies, construction of storage facilities and joint utilisation of the said facilities</td>
<td>5x</td>
<td>-</td>
<td></td>
</tr>
<tr>
<td>22.</td>
<td>Unification of technologies used, unified accounting record, information, etc.</td>
<td>2x</td>
<td>1x</td>
<td></td>
</tr>
<tr>
<td>23.</td>
<td>Production revitalisation</td>
<td>1x</td>
<td>-</td>
<td></td>
</tr>
<tr>
<td>24.</td>
<td>Rationalisation of economic activities (production, services, etc.)</td>
<td>6x</td>
<td>10x</td>
<td></td>
</tr>
<tr>
<td>25.</td>
<td>Better logistics on the Czech market and upgrade of existing marketing networks by their interconnection</td>
<td>7x</td>
<td>-</td>
<td></td>
</tr>
<tr>
<td>26.</td>
<td>Strategic security of the Czech Republic in supply of petrochemical products</td>
<td>1x</td>
<td>-</td>
<td></td>
</tr>
<tr>
<td>27.</td>
<td>Promoting the trust of banks and investors</td>
<td>1x</td>
<td>-</td>
<td></td>
</tr>
<tr>
<td>28.</td>
<td>Better rating on capital markets</td>
<td>1x</td>
<td>-</td>
<td></td>
</tr>
<tr>
<td>29.</td>
<td>Reduction of bureaucracy and overheads</td>
<td>7x</td>
<td>1x</td>
<td></td>
</tr>
</tbody>
</table>