

CZECH REPUBLIC

(1999)

Introduction

1. The president of the Czech Republic appointed Mr. Josef Bednář as new Chairman of the Office for the Protection of Economic Competition, with effect as of February 1, 1999.

2. In 1999, the activities of the Office for the Protection of Economic Competition (hereinafter the "Office") focused on the fulfillment of obligations pertaining to the Office under the Europe Agreement establishing an association between the European Communities and their Member States and the Czech Republic (hereinafter the "Europe Agreement"). Therefore, the Office began preparing a new Act on the Protection of Economic Competition and the Act on Supervision of Public Procurement. The aim of the aforementioned efforts is to attain a full compatibility of Czech legislation regulating the foregoing areas and that of the European Communities.

3. The scope of operation of the Office is the protection of economic competition and supervision of public procurement. Pursuant to an adopted Act on State Aid, the Office will further serve as a monitoring institution with respect to state aid, effective as at May 1, 2000. To this purpose, a department for state aid was created at the Office on December 1, 1999.

4. Generally speaking, the Office focused on the following priorities in its activities during the course of 1999:

- performance of obligations ensuing from the Europe Agreement, i.e. harmonization of the law and its due application;
- preparation for the assumption and performance of control over public support, i.e. monitoring and decision on the admissibility of state aid;
- improvement of legislative activities by means of more extensive cooperation with external experts;
- focus on the most serious breaches of competition rules;
- increase in transparency, both at the decision-making stage and with respect to information, interpretation and methodology;
- consistent defense of competition principles, in particular with respect to natural monopolies;
- more extensive cooperation with partner competition offices in EU Member States;
- reflection of topical issues in the application of competition law in legislative efforts.

I. Legal and institutional framework for the protection of economic competition

1. Institutional framework

5. The protection of economic competition is tackled by the Office for the Protection of Economic Competition, with its seat in Brno. The Office is headed by a chairman who is appointed and recalled by the president upon the proposal of the government. The ambit of the Office as defined by the law related to the support to and protection of economic competition against its unauthorized restriction, supervision of public procurement and further activities as stipulated by the relevant legal regulations. The Office is fully independent in its decision-making.

6. The position of the Office was strengthened in 1999 pursuant to Act No. 187/1999 Coll., which amended the Act on the Operation of the Office. The new provision of law sets out the conditions governing the performance and termination of the Chairman's term in the office. The Chairman is appointed by the country's president upon the proposal of the government for a 6-year term. The Chairman must not be a member of any political party or political movement.

7. In the protection of economic competition within the meaning of Act No. 63/1991 Coll., on the Protection of Economic Competition, as amended by Act No. 495/1992 Coll. and Act No. 286/1993 Coll., the Office focuses on the prohibition of agreements distorting competition, abuse of dominant position and merger control. The Office also serves as the supervisory body in relation to bodies of state administration and local self-administration whose decisions may contravene the Act on the Protection of Economic Competition. The Office is obliged to detect incorrect procedures and request that the same be rectified.

8. The Office further supervises public procurement pursuant to Act No. 199/1994 Coll., on Public Procurement, as amended by Act No. 148/1996 Coll. and lastly by Act No. 28/2000 Coll. The supervision involves in particular the review of objections raised by tenderers against acts taken by the contracting authorities in the award procedures, and imposition of fines for material or repeated violations of the Act.

9. Pursuant to Act No. 152/1997 Coll., on the Protection Against Dumping Product Imports, the Office was entrusted with cooperation in the anti-dumping proceedings to be conducted by the Ministry of Industry and Trade.

10. On February 24, 2000, the Parliament approved the State Aid Act pursuant to which the monitoring function currently performed by the Ministry of Finance will be performed by the Office for the Protection of Economic Competition as of May 1, 2000. As of December 1, 1999, a state aid department was established. It currently has 14 staff members, this number to be increased to 15 in the course of the year 2000.

11. So as to ensure a more efficient detection and prosecution of horizontal agreements harmful to competition, a cartel department was created. Such specialized department was created by the Office in an effort to introduce a more stringent prosecution of price fixing and market division agreements in particular, entirely in harmony with the current global trends.

2. *Summary of new legal provisions of competition law*

2.1 *Amendment to the Act on the Protection of Economic Competition*

12. In 1999, the Office intensified its activities aimed at the attainment of full compatibility of Czech competition legislation with that of the EC. In 1998, the Office prepared an amendment to the Act on the Protection of Economic Competition which was approved by the government of the Czech Republic on April 21, 1999. The proposed amendment is currently being reviewed by the Parliament and is expected to enter into effect in mid-2000.

13. The proposed amendment contains the following changes:

- It expressly regulates the application of competition rules with respect to public undertakings and undertakings with special or exclusive rights;
- It defines, with greater precision, the criteria for *de minimis* agreements, which are thus not subject to the general ban on agreements distorting competition;
- It introduces new criteria for merger and acquisition notification based on the turnover of all the undertakings on the domestic market;
- In accordance with EC law, it defines a joint venture as one of the forms of concentration of undertakings and differentiates between cooperative and concentrative joint ventures.
- It sets out the procedure to be applied in the event undertakings endeavor to obtain control by purchasing shares in a public bid;
- It sets out the time limits within which the Office must decide on applications for approval of concentration;
- It introduces a definition of dominant position within the meaning of the case law of the EC Court of Justice;
- It strengthens the powers of the Office by authorizing the Office to decide that an undertaking is obliged to sell shares or interests in the event that a merger of undertakings had taken place without approval by the Office;
- It enables the undertaking to request that the Office issue a negative clearance and empowers the Office to request documents and information from bodies of state administration and local self-administration and review the same.

2.2 *New Act on the Protection of Economic Competition*

14. In light of the fact that not even the adoption of the amendment to the Act on the Protection of Economic Competition by the Czech Parliament will make the same fully compatible with EC legislation, the Office began drafting a new Act, with the draft to be submitted to the government by June 30, 2000. The new Act on the Protection of Economic Competition is to enter into effect on July 1, 2001.

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15. The new provision of the Act will consist in particular of the following:

- Harmonization of conditions for the granting of individual exemptions from the prohibition on agreements restricting competition and adoption of block exemptions;
- Harmonization of criteria for the approval of mergers and acquisitions in accordance with Council Regulation (EEC) No. 4064/89, as amended by Council Regulation (EC) No. 1310/97;
- Harmonization of proceedings before the Office within the meaning of Council Regulation (EEC) No. 17/62.

2.3 Amendment to the Act on the Protection of Economic Competition incorporating a new institute abuse of economic dependency

16. The proposal of the Office concerning the introduction of a new institute of breach of competition by abuse of economic dependency of undertakings into the Act was based on the analysis of new phenomena observed in a number of countries over the last 15-20 years for which the general competition law theory was not quite prepared. The proposal further draws on the approach undertaken by OECD and EU countries who are dealing with this issue and endeavor to design practical solutions.

17. The bill is currently being reviewed by the Czech Parliament as part of the amendment to the Act on the Protection of Economic Competition, referred to in Section 2.1 above.

2.4 Decree of the Office regarding the block exemption for certain categories of franchise agreements

18. The only area of EC competition law which is not part of the Act on the Protection of Economic Competition is the institute of block exemptions. The same can be regulated by means of decrees of the Office adopted pursuant to Article 6a of the Act. The Office intends to incorporate the entire block exemption system of EC competition law in connection with the drafting of a new Competition Act. As early as 1999, the Office prepared a draft decree containing block exemption from the general prohibition on agreements restricting competition pursuant to Articles 3 (1) and 4 (1) of the Act on the Protection of Economic Competition with respect to certain categories of franchise agreements. The said decree entered into force on March 1, 2000.

19. Franchise agreements generally provide consumers with reasonable benefits because they boast the advantages of a unified sales network, together with the existence of undertakings committed to the efficient operation of their companies. The permanent cooperation between the franchisor and franchisee ensures a consistent quality of goods and services.

20. The decree applies only to certain categories of franchise agreements, namely distribution franchise agreements relating to the sale of goods or provision of services. On the other hand, the decree shall not apply to franchise agreements pursuant to which the franchisee manufactures goods according to specifications supplied by the franchisor and sells such goods under the franchisor's trade mark. Such agreements are usually concluded among manufacturers and have a greater impact on economic competition, as they can result in division of market. The decree lists restrictions of competition which are acceptable and as such may be contained in a franchise agreement. The decree thus significantly increases

the legal certainty of the undertakings. The decree further introduces a list of contractual arrangements which must not be incorporated in a franchise agreement as they constitute breaches of economic competition not likely to have positive effects on competition. The decree further regulates the opposition procedure applicable to franchise agreements which constitute neither permitted nor prohibited restrictions on competition.

21. In the context of EC competition law, franchise agreements are regulated by EC Regulation No. 4087/88 on the application of Article 85 (3) of the Treaty to categories of franchise agreements. The decree of the Office is fully compatible with EC law, in particular the aforementioned regulation of the European Commission and the related case law of the EC Court of Justice.

3. *Other relevant measures, including new guidelines*

22. One of the main priorities of the Office in 1999 was to improve transparency of the decision-making process. This effort was reflected in the preparation of a guide to the provisions of the - Competition Act which provides the undertakings with the basic principles of the Office's procedures during the assessment of concentrations. The Office has begun drafting further guide concerning definition of the relevant market in the Office's practice. The Office drafts such documents in accordance with the relevant notices of the European Commission. Another measure aimed at the attainment of greater transparency of the activities of the Office is the publication of all of the final decisions of the offices in the Collection of Decisions of the Office, as well as on the Office's own web page (www.compet.cz).

II. Enforcement of competition law

1. *Summary of activities*

23. 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 Competition¹ and the Chairman of the Office with respect to appeals in the period 1992 – 1999 :

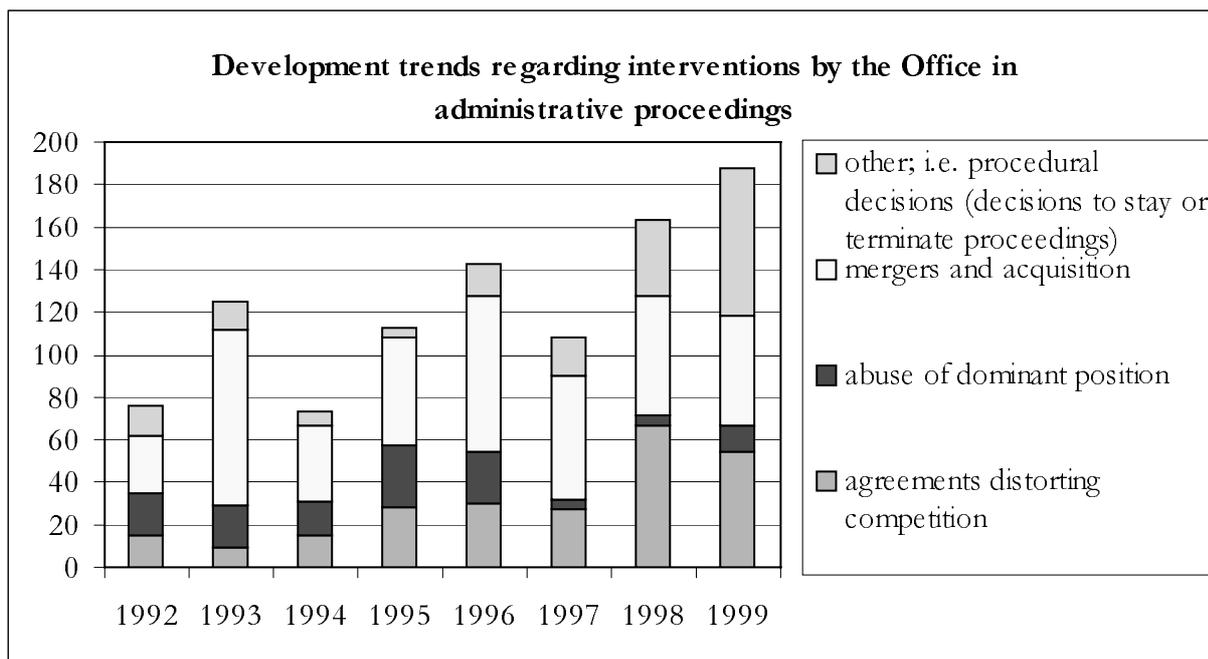
Administrative proceedings	1992	1993	1994	1995	1996	1997	1998	1999
Agreements harmful to competition	15	9	15	28	30	27	67	54
Abuse of dominance	20	20	16	29	24	5	4	13
Mergers and acquisitions	27	83	36	51	74	58	57	51
Other – terminated and suspended	14	13	6	5	15	18	35	70
Total – initiated, pending and final first-instance decisions	76	125	73	113	143	108	163	188

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Administrative proceedings	1992	1993	1994	1995	1996	1997	1998	1999
Number of appeals	12	36	31	34	36	37	20	19
Petitions filed with the High Court		5	3	10	6	10	5	1
Fines imposed in 1999 - total (decisions issued in 1999)					CZK 35,905,000 (USD 968,834)			



2. Agreements distorting competition

24. In 1999, the trend of preceding years when the Office would approve a high number of franchise agreements, continued further. Although there was a drop in the amount of administrative proceedings in comparison to 1998 (from 43 to 19), this activity continues to place great demands on the administrative aspects of the process. The Office approved such agreements on the grounds of rationalization of economic activities involving a material benefit for the end consumer. The great administrative demands and time expended in the review of such agreements which generally feature pro-competition benefits outweighing restrictions on competition forced the Office to prepare a draft decree setting forth a block exemption from the prohibition on agreements distorting competition for certain categories of franchise agreements. This decree entered into force on March 1, 2000.

25. As in preceding years, the decrease in the number of administrative proceedings against professional associations continued in 1999.

Description of significant cases

Agreements on exclusive purchase of fuel

26. In 1999, the Office reviewed agreements on exclusive purchase of fuel, concluded between an oil refinery and five independent fuel distributors. The resultant exclusive purchase agreements, including the cumulative effect thereof, do not constitute a material restriction on economic competition; they help improve the quality of distribution, enable the supplier to organize and plan its production, including purchase of raw materials, and the buyer is assured of smooth supply of fuel to the petrol stations and consistent quality of the fuel being supplied. All of the above has a positive effect on the end consumer. For this reason, the Office permitted such agreements.

Price agreement regarding the distribution of batteries

27. The Office conducted an administrative proceeding regarding a battery distribution system. The battery producer entered into an illegal agreement with the distributor, which agreement contained the obligation of maintaining prices with respect to resale to the end consumer (resale price maintenance). The Office prohibited the agreement and imposed a fine on the parties thereto.

Concerted actions of poultry-processing companies

28. The Office took action against four trading companies on the grounds of breach of the competition law. The four companies acted in concert when negotiating poultry purchase prices. The Office prohibited the agreement and imposed a fine on the parties thereto.

Price setting agreement with respect to supplementary products sold at petrol stations

29. A company distributing fuel violated the Competition Act by setting the sales prices of supplementary products (i.e., lubricants and related products) sold at petrol stations by the lessees. The Office qualified such agreement as illegal and imposed a fine of CZK 800 000 (USD 21 587) on the distributor.

3. Abuse of dominant position

30. In 1999, most of the decision on abuses of dominant position had to do with abuses by administrative and local monopolies. An aggregate fine of nearly CZK ten million (USD 269 833) was imposed on the parties.

31. The Office supports the creation of independent regulatory bodies so as to respond to the general trend of abuse of dominance by companies engaging in activities which are not yet regulated. A clear definition of the ambit of such bodies and their sufficient powers ought to guarantee the prevention of abuse of dominance by the aforementioned companies.

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Description of significant case

Non-renewal of an agreement on the provision of medical care

32. A health insurance company enjoying a significantly dominant position on the market refused, without an objectively justifiable reason, to renew an agreement on the provision and financial coverage of medical care it had previously concluded with a health care facility providing laboratory testing, thus abusing its dominant position. A fine of CZK 100 000 (USD 2 698) was imposed on the health insurance company.

4. Mergers and acquisitions

33. In 1999, the Office devoted special attention to improving the quality, efficiency and transparency of the merger control process. The Office actively exercised its powers in connection with the control of mergers establishing a strong position on the market, and imposed conditions on the merging parties so as to eliminate negative impact on competition. The Office imposed restrictions or conditions in 14 percent of the cases it had reviewed in 1999.

Statistical data regarding the number, size and type of mergers reviewed

Number of mergers and acquisitions	51
Number of mergers and acquisitions with restrictions or conditions attached	7
Prevailing merger type	Horizontal
Industries with strong merger tendencies	Food-processing Water treatment and supply engineering
Industries with weak merger tendencies	Ceramics Technical gases Telecommunications
Most common economic benefits as given by the parties to the notified merger	<ol style="list-style-type: none">1. Greater consumer comfort (better quality of goods, more comprehensive range of services, “packeting“ of goods)2. Procurement of investment for reconstruction and modernization of production for new technology. Direct financial resources for investment (improvement in the financial condition of the company, financial stability, cross-financing, etc.), strong capital structure3. Compliance with environmental standards, introduction of environmentally friendly products, greater safety of products for the consumer, environmental protection, better waste management

Description of significant cases

South African Breweries International (Finance) B.V. / Plzeňský Prazdroj, a.s.

34. The Office reviewed an application for the approval of a merger between South African Breweries International (Finance) B.V. (hereinafter "SAB") and Plzeňský Prazdroj, which was effected by virtue of purchase of stock in Plzeňský Prazdroj by SAB. Taking into account the condition of the competitive environment on the beer market where there currently are 52 undertakings and with regard to the 44 percent market share of merged companies, the Office permitted the merger on the following conditions:

- the brand produced by the merged brewery, Plzeňský Prazdroj, Radegast, Gambrinus and Velkopopovický Kozel, must remain available on the domestic market for the period of five years;
- any intention to sell all or some shares in Výzkumný ústav pivovarský a sladařský, a.s. (Beer and Malt Research Institute), owned by Plzeňský Prazdroj, a.s., Pivovar Radegast, a.s. and Pivovar Velké Popovice, a.s. outside the South African Breweries group will be consulted with the Office.

Deutsche Post AG / Danzas Holding AG / Nedlloyd ETD Holding B.V.

35. Administrative proceedings regarding a merger between Deutsche Post AG, Danzas Holding AG and Nedlloyd ETD Holding B.V. is conceptually in line with the previous transaction between Deutsche Post AG and Danzas Holding AG which was assessed by the European Commission in 1999 and declared compatible with the common market. The Office approved the above conglomerate merger without attaching any conditions.

III. The role of the Office in the formulation and implementation of other policies (Competition advocacy)

36. The Office supports the creation of independent regulatory bodies in the area of natural monopolies (energy, telecommunications, postal services, traffic infrastructure, heat and water supply and distribution) and endeavors to promote and enforce competition principles in the aforementioned areas.

37. In 1999, the Office in its opinions on the proposed privatization of the electrical energy sector supported the separation of electricity generation from the high-voltage transmission grid and distribution networks. The Office further promoted the creation of an independent regulatory body for this area. This request voiced by the Office was accepted and reflected in the new draft energy act.

38. The Office further strives to prevent the integration of the monopoly gas importer and gas distribution companies.

39. The Office succeeded in introducing a provision restricting the monopoly of the Czech Post with respect to mail into the new act on postal services.

40. During the review stage pertaining to the draft Act on the transformation of Czech Railways, the Office requested that the infrastructure be consistently separated from the actual transportation activities,

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and that any other activities of the Czech Railways be accounted for and financed independently of the operation of the railway and railway transportation.

41. The Office further participated in the work of the selection committee in the tender for the third GSM 1800 operator where it succeeded in putting forth the principle that the new operator must not be in any way connected to the current mobile telephony and fixed network operators.

IV. Resources of the Office

1. Overall financing and staffing

1.1 Annual budget

Budget of the Office (CZK)

	1997	1998	1999
total expenditure	34 571 000	35 397 000	37 835 000

Budget of the Office (USD)

	1997	1998	1999
total expenditure	932 713	954 998	1 020 774

2.2 Number of employees

	1997	1998	1999 (incl. the state aid department)
Lawyers	31	30	40
Economists	24	27	36
Other professionals	12	11	17
Support staff	22	21	13
All staff combined	90	90	106

2. Human resources (focus on activities)

	1997	1998	1999
Enforcement of the Act on the Protection of Economic Competition and the principles of economic competition	42	44	47
Supervision of the public procurement process	13	16	21
Supervision of the provision of state aid (state aid department was established with effect as of December 1, 1999)	–	–	14