



COMPETITION COMMITTEE

**ANNUAL REPORT ON COMPETITION POLICY DEVELOPMENTS
IN CZECH REPUBLIC**

2003

Executive Summary

1. The activities of the Office for the Protection of Competition of the Czech Republic (“Office”) in 2003 were focused in particular on preparation for the accession to the European Union and on the application of the modernised EU competition rules. These preparations concerned both legislative changes in the competition law of the Czech Republic in the form of amendment to the Act on the Protection of Competition and institutional arrangements including training of the Office’s staff.

2. The enforcement activities of the Office continued to be directed primarily towards revealing and effectively sanctioning the most serious infringements of competition rules, such as horizontal cartels or serious abuses of dominance, especially those made by incumbent undertakings in the newly liberalised sectors. As regards the latter, a so far one of the highest fines ever imposed by the Office on an individual undertaking has been issued for abuse of dominance by incumbent telecommunications operator.

3. In the merger control area, the Office despite high numbers of notified transactions focused its investigations on several most important cases while the other concentrations were able to proceed after one month phase I proceeding. Nevertheless, one concentration leading to significant distortion of competition had to be prohibited and in seven cases remedies in the form of conditions or obligation were attached to the decision approving the merger.

4. Accordingly, the advocacy activities of the Office were aimed at newly liberalised sector such as energy and telecommunications, in order to ensure conditions for development of effective competition in these important sectors.

1. Proposed or adopted changes to competition laws and policies

1.1 Summary of new legal provisions of competition law and related legislation

1.1.1 Amendment to the Act on the Protection of Competition

5. The Office has prepared in 2003 an amendment to the Act No. 143/2001 Coll., on the Protection of Competition and to some other acts in order to react to new developments in the EC competition legislation and in particular to meet the obligations of the Czech Republic concerning effective application of the EC competition legislation on its territory.

6. The amendment aims to implement the principles of the modernised EC competition rules based on the Council Regulation No. 1/2003 on the implementation of the rules of competition laid down in Articles 81 and 82 of the EC Treaty. One of the main changes brought about by this Regulation is a more decentralised system of application of the EC competition rules by the European Commission and national competition authorities of the EU Member States co-operating within the framework of the newly established European Competition Network. The amendment therefore empowers the Office to apply directly Articles 81 and 82 of the EC Treaty and lays down necessary provisions governing application of the EC legislation by the Office and co-operation with the Commission and other national competition authorities. It provides for assistance in inspections carried out by the European Commission in the Czech Republic including, where appropriate, and also the assistance of the police and procedures for obtaining court authorisation for inspections in non-business premises.

7. The amendment is at the same time aimed at further harmonisation of the Czech competition legislation with the current EC competition rules, as there have been certain changes in the EC rules since adoption of the Act on the Protection of Competition in 2001. These changes include in particular the following:

- replacement of the notification system for agreements distorting competition by direct applicability of the relevant provisions for exemptions from the prohibition of agreements provided for by the Act on the Protection of Competition;
- increase of the market share thresholds for the so called *de minimis* rule to 10% by horizontal agreements and 15% by the vertical agreements;
- cancellation of the so called negative clearance procedure for agreements and abuses of dominance;
- introduction of the possibility for the Office to issue decision, which would make binding any commitments offered by the parties to the proceeding in order to remedy any alleged anti-competitive agreement or abuse of dominance without necessity to decide on existence of infringement of the Act on the Protection of Competition;
- more precise definition of the abuse of dominant position in relation to the essential facilities, where the concept should in the future relate not only to facilities owned by the dominant undertaking but also to those used by the dominant undertaking by any other legal means and should include also the intellectual property issues;
- new merger notification thresholds aimed at reducing the number of notified mergers and ensuring adequate local nexus to the Czech jurisdiction so that the Office may fully use its resources on the most serious cases;
- introduction of a new substantive test for assessment of concentrations of undertakings, under which the concentration may not be approved if it significantly impedes effective competition, in particular as a result of creation or strengthening of a dominant position in the market;
- introduction of time limits for submission of proposed remedies by the merging undertakings and provisions on extension of the deadlines for issuing a decisions by the Office in cases where remedies are offered.

8. This amendment to the Act on the Protection of Competition was approved by the Government of the Czech Republic on 5 November 2003, passed by the Parliament of the Czech Republic on 4 May 2004 and signed by the President of the Czech Republic on 20 May 2004. The amendment to the Act on the Protection of Competition entered into force on 2 June 2004, the day of its publication in the Collection of Laws under the number 340/2004.

1.1.2 New block exemption for agreements in the motor vehicle sector

9. A new block exemption decree of the Office for agreements in the motor vehicle sector has been prepared in order to align the Czech competition legislation with the new EC block exemption for this sector set by the Commission Regulation No. 1400/2002. The Decree of the Office No. 31/2003, Coll., on granting general exemption from the prohibition of agreements distorting competition pursuant to Article 3(1) of the Act No. 143/2001 Coll., on the Protection of Competition, for certain categories of vertical agreements on motor vehicle distribution and servicing entered into force on 1 July 2003. The new block exemption decree replaced a previous block exemption in this area set by the Decree of the Office No. 204/2001.

10. The new block exemption decree introduces stricter rules for exemption from the prohibition of anti-competitive agreements and creates more suitable conditions for effective competition between motor vehicle manufacturers, dealers and providers of services related to sale of new motor vehicles, spare parts and provision of repair and maintenance services. Pursuant to the new provisions the dealers should be able to sell motor vehicles of more brands and should not be obliged to provide also repair and maintenance services. The decree also creates more opportunities for competition on the market of repair and maintenance services from independent repairers.

11. In order to adjust the applicability of the new block exemption to the Treaty of Accession to the European Union setting transitional period for adapting existing agreements to the EC block exemption till 1 November 2004, the new block exemption decree of the Office contains the same transition period for agreements existing at the time of its entry into force and complying with the former block exemption decree.

1.1.3 Act No. 215/2004 Coll., Setting Certain Relationships in the State Aid Area

12. The accession to the European Union brings significant changes to the control and monitoring of state aid in the Czech Republic, which was originally ensured by the Office on the basis of the Act No. 52/2000 Coll., on State Aid. As of 1 May 2004, the EC state aid legislation is directly applied in the Czech Republic and the European Commission is the only institution with decision-making power in relation to exemptions from the prohibition of state aid. The aim of the Act No. 215/2004 Coll., Setting Certain Relationships in the State Aid Area and Amending the Act on Support to Research and Development, which replaces the Act on State Aid, is to create a legal framework ensuring fulfilment of obligations of the Czech Republic pursuant to the EC state aid rules and assistance to the European Commission in performance of its powers. Pursuant to this act the Office functions as a co-ordination and monitoring unit for state aid matters assisting the providers in making notifications of the state aid measures to the European Commission, monitoring state aid granted in the Czech Republic and preparing reports to the European Commission. The act also obliges providers and beneficiaries of state aid to provide the Office with information necessary for performance of its tasks and to submit to the inspections carried out by the European Commission. Furthermore, the act provides for provisions ensuring recovery of illegal state aid.

13. The Act No. 215/2004 Coll., Setting Certain Relationships in the State Aid Area was approved by the Government of the Czech Republic on 5 November 2003 and passed by the Parliament of the Czech Republic on 9 April 2004. The act entered into force as of 1 May 2004, i.e. from the day of accession to the European Union.

1.1.4 New Act on Public Procurement

14. The Office, together with the Ministry of Regional Development, prepared draft Act on Public Procurement, which has been approved by the Parliament of the Czech Republic in December 2003. The aim of the Act No. 40/2004 Coll., on Public Procurement was to ensure full transposition of the relevant public procurement directives of the European Union and also to utilise the practical experience of the Office, which acts as a review body in the area of public procurement. The new Act on Public Procurement will replace as of 1 May 2004 the former Act No. 199/1994. The new Act on Public Procurement not only ensures compliance with the EC legislation but also streamlines the whole process of awarding public contracts, ensuring thus more efficient and competitive tendering procedures.

2. Enforcement of the Act on the Protection of Competition

2.1 Overall statistics on the enforcement activities of the Office

15. In 2003 a total of 283 new cases were opened by the Office, consisting of 35 cases of agreements distorting competition, 9 cases of abuse of dominant position and 239 concentrations of undertakings. Total number of cases closed by a decision on the merits amounted to 252, consisting of 32 cases of agreements distorting competition, 7 cases of abuse of dominant position and 213 concentrations of undertakings. The total amount of fines imposed by a decision of the Office reached CZK 445,850,000 (approximately USD 15,795,000). In 2003 an appeal against the first stage decisions of the Office was

made in total in 32 cases and 8 petitions against the final decision of the Office were filed with the relevant review courts.

2.2 *Agreements distorting competition*

Statistics

16. In 2003 a total number of 35 new cases of agreements distorting competition were opened, consisting of 18 cases of horizontal agreements and 17 cases of vertical agreements. Out of these new cases, 11 cases of horizontal agreements and 2 cases of vertical agreements were opened on the Office's own initiative. The rest of the new cases concerned either application for an individual exemption (11 in total) or application for negative clearance (also 11 in total). A total number of 32 cases of agreements distorting competition were closed by a decision of the Office, comprising 17 cases of horizontal agreements and 15 cases of vertical agreements. Out of these, 8 cases of horizontal agreements and 2 cases of vertical agreements were closed by decisions prohibiting the agreements and imposing fines and 2 cases of horizontal agreements were concluded by a decision rejecting the complaint. The rest of the cases closed concerned either individual exemption decision (10 in total) or negative clearance decision (also 10 in total). In the area of agreements distorting competition fines have been imposed in the total amount of CZK 326,050,000 (approximately USD 11,551,000).

2.2.2 *Description of significant cases*

- Cartel of six fuel distributors – concerted practice on prices

17. Six fuel distributors breached the prohibition stipulated in the Act on the Protection of Competition in the period between May 2001 and at least the end of November 2001. The anti-competitive behaviour consisted of concerted practices during the setting of sale prices of fuel sold at petrol stations in the above-mentioned period. Within the period of 15 hours (4 distributors) to 34 hours (all 6 distributors) in the end of May 2001, the participants to the proceeding increased considerably their sale prices of fuel by almost the same amount (around 1 CZK per litre) within the whole national network of petrol stations. Nevertheless, there was no objective justification for this rise in fuel sale prices on the market, as cost of purchases of this product had been showing descending tendency since middle of May 2001. The participants to the proceeding kept the high level of fuel sale prices until the end of November 2001 despite the continuing trend of substantial decreases in their purchase prices of fuel. For these practices of the participants to the proceeding in the given period, there was no reasonable justification other than their previous mutual concertation on the basis in particular of their direct or indirect contacts within the Czech Association of Petrol Industry and Trade and by means of their press statements relating to their plans of intended adjustments to fuel sale prices. The Office realised a dawn raid in the undertakings central premises, which led to discovering important proofs (e.g. e-mail correspondence and other electronic documents). The concerted practices distorted competition on the fuel market, in particular to the detriment of the final customer that purchased fuel from petrol stations. The Office prohibited the anti-competitive behaviour and imposed a fine amounting in the total to CZK 313 mil (approx. USD 10.6 mil), which constitutes the highest total fine imposed in a single proceeding in the history of the Office. Following appeals by the participants to the proceeding, the first-instance decision was confirmed by the second-instance decision of the Chairman of the Office issued in May 2004.

- Agreement on purchase prices and conditions between two retail chains

18. Two significant retail chain operators – Billa and Julius Meinl – have infringed the Act on the Protection of Competition by agreeing on the co-ordination of their purchase prices and conditions (bonuses, discounts related to the purchase of goods) vis-à-vis their suppliers. This conduct constituted a

prohibited agreement on prices and other trading conditions that led to distortion of competition in the market of daily consumer goods intended for retail sale to consumers. Within the administrative proceeding it has been proved that the two companies exchanged information about their purchase prices and bonus and discount systems. Subsequently, they compared them and required the suppliers to accommodate their existing financial terms for the purchase of goods to the level of the one of the two parties to the proceeding with more advantageous terms. Furthermore they required a financial compensation to balance any resulting differences. A requirement by both companies of another payment, a so called alliance bonus, was illegal as well and it was justified in fact only by the possibility to supply the same range of goods to both retail chains. In case the supplier refused to change the business terms accordingly, the two companies forced the supplier by threatening to refuse to purchase its goods. This constituted a substantial threat for the supplier involved as it would have considerable difficulties in finding alternative distribution channels for the volumes of goods usually supplied to the two retail chains. For this infringement of the Act on the Protection of Competition the Office imposed on these two retail companies fines amounting in total to CZK 51 million and at the same time ordered the undertakings concerned to inform their suppliers about the decision. The first-instance decision was upheld by the decision on appeal issued by the Chairman of the Office in October 2003.

- Interconnection agreements between mobile phone operators containing anti-competitive provisions

19. Following application for negative clearance for two interconnection agreements concluded by one of the mobile phone operator in the Czech Republic with the remaining two operators, the Office concluded in two administrative proceedings that these agreements fell under prohibition pursuant to the Act on the Protection of Competition. The anti-competitive provisions in these agreements consisted in factual exclusion of a possibility to realise the interconnection between the respective two operators in any other (even cheaper) way than through interconnection points explicitly indicated in the agreements. Even though there was a real possibility to realise this interconnection through a third party (e.g. through operator of the fixed telephone services), which was under certain circumstances even cheaper than the direct interconnection, the agreements expressly prohibited this possibility. The use of an interconnection via a third party network was allowed only in cases of insufficient capacity at the direct interconnection points and, in this case, only for the same prices as agreed for the direct interconnection points, without taking into account possible different and in some cases even lower costs of interconnection via a third party. Taking into account the market position of the parties to the proceedings in the mobile phone sector, these anti-competitive provisions led to significant negative effects on competition in this sector with considerable impact on final consumers.

20. As these agreements had been performed and even actively enforced by their parties, the Office has on the basis of results of the negative clearance proceedings opened two infringement proceedings resulting in prohibition decisions imposing fines on the parties to these agreements amounting in total to CZK 44 million. The parties to the proceedings have appealed the first-instance decision to the Chairman of the Office and the decision on the appeal is pending.

- Pool of insurance companies for provision of an obligatory insurance against bankruptcy of travel agencies

21. The Office has been asked by members of the pool of eight insurance companies established for provision of an obligatory insurance against bankruptcy of travel agencies to prolong for a second time its exemption from the prohibition of agreements restricted competition. The Office granted the exemption for establishment of the insurance pool in 2000 for a period of two years and in 2002 prolonged it till the end of 2003, subject to fulfilment of several conditions. Following this application for extension the Office conducted in 2003 a thorough analysis of the market concerning provision of obligatory insurance against bankruptcy of travel agencies. Apart from the pool, only one other insurance company provided this

specific type of insurance, which nevertheless was at that time placed under a forced administration. Some other insurance companies showed interest to provide this type of insurance in the future but none of them could be positively regarded as a probable new entrant to the market. Therefore, the existence of the insurance pool in fact excluded any competition in a significant part of the market. The negative impact of the insurance pool was increased by continuing practice of its members using a common price list. The Office in its proceeding also established that none of the members of the insurance pool has taken any measures to secure necessary individual reinsurance, even though this constituted one of the conditions imposed by the decision prolonging the exemption in 2002. Taking into account all these factors, the Office found that the conditions for exemption pursuant to Article 8 of the Act on the Protection of Competition were not fulfilled and decided not to prolong the exemption. The members of the pool had during the three-year existence of the pool enough time to acquire experience with this specific type of insurance and to take necessary measure in order to be able to provide this insurance individually.

- Decision of the professional chamber of authorised engineers and technicians concerning prices

22. The board of directors of the Czech Chamber of Authorised Engineers and Technicians Active in Construction Industry has agreed on publication of a so called Performance and Fees Code setting hourly fees for individual performances of the authorised engineers and technicians, data concerning percentage points for calculation of the fees and data on fixed amount of the fees. The Office found this adoption of the Performance and Fees Code to constitute an anti-competitive decision of association of undertakings prohibited pursuant to Article 3 of the Act on the Protection of Competition. Such a decision fixing prices is capable of distorting competition in the market of services provided by authorised engineers and technicians in the construction industry sector. By its decision the Office prohibited this conduct of the professional chamber, imposed on the chamber concerned a fine amounting to CZK 500,000 and ordered it to inform its members about the decision of the Office. The first-instance decision has been appealed to the Chairman of the Office and the decision on the appeal is pending.

2.3 Abuse of dominant position

Statistics

23. In 2003 the Office opened 9 new cases concerning abuse of dominant position, out of which 6 cases were opened on the Office's own initiative and 3 cases concerned applications for a negative exemption. The total number of 7 abuse of dominance cases were closed by a decision of the Office, out of which 4 were decisions prohibiting the abuse and imposing fines and 3 were negative clearance decisions. The total amount of fines imposed for abuse of dominant position as CZK amounted to CZK 119,500,000 (approximately USD 4,234,000).

2.4 Description of significant cases

Fidelity rebates and other abusive practices of the dominant fixed-line telecommunications operator

24. At the end of 2002 the Office received several complaints in relation to preferential tariff programmes offered to some important business customers by the company Český Telecom, which is a former monopolist in the fixed-line telecommunications sector. The administrative proceeding initiated subsequently by the Office confirmed the existence of these preferential tariff programmes containing several anti-competitive provisions creating barriers to the development of competition in the market for provision of fixed-line telecommunications services to business customers. The anti-competitive conduct of the dominant telecommunications company consisted in offering more advantageous contracts to certain key business customers with the aim to retain these customers. These contracts contained several features

aimed at discouraging these most important customers from changing their telecommunications operator, including fidelity rebates granted in exchange for promise of long-term purchases and discriminatory practices. These contracts contained a commitment by the customer to make phone calls corresponding to a certain minimum amount that had to be paid even when it was not fully utilised. A special programme, called “winback/retention”, has been applied specifically for large customers who left to competitors in order to attract them back. At the same time this programme was used to persuade individual large customers, who planned to change their supplier, not to do so. Overall, these contracts were intentionally used to retain or win back the most lucrative customers and created thus significant barriers to growth of alternative telecommunications operators. Taking into account the gradual liberalisation of the telecommunications market, such conduct was considered by the Office as particularly detrimental to emerging competition in this sector and, as a consequence, also to the consumers of the communications services. Therefore, the Office in its decision prohibited these abusive practices and imposed a fine amounting to CZK 81,7 million, which represents the so far highest fine imposed on a single undertaking. The first-instance decision was upheld by the decision on appeal issued by the Chairman of the Office in January 2004.

- Refusal to supply in the petrochemical raw materials market

25. The Office initiated an administrative proceeding on its own initiative in relation to the conduct of the company Česká rafinérská vis-à-vis its customer, a major chemical company producing fuels. During negotiations on conditions of supply of petrochemical products conducted between these two undertakings, the company Česká rafinérská interrupted, without objectively justified reasons, for a period of 39 hours its supplies of petrochemical raw materials to the chemical company dependent on these supplies. The Office in its proceedings concluded that such behaviour of an undertaking with a dominant position in the market of petrochemical raw materials towards its long-standing customer constituted an abuse of dominant position in the form of refusal to supply to the detriment of this customer. The Office in its decision, which was upheld by the second-instance decision on appeal issued by the Chairman of the Office in May 2003, prohibited such behaviour for the future and imposed on the dominant company a fine amounting to CZK 6 million.

2.4 Concentration of undertakings

2.4.1 Statistics

26. In 2003 a total 239 cases of concentrations of undertakings were notified. The Office issued in total 213 decisions on the merits including 178 decisions approving the concentration without any conditions, 7 decisions approving the concentrations with conditions or obligations attached, 1 decision prohibiting the concentration and 27 decisions that the concentration does not fall within the scope of the merger control provisions of the Act on the Protection of Competition. Out of the 213 decisions on the merits 208 decisions have been issued within one month of notification in the phase I of the proceedings and 5 decisions have been issued in the phase II of the proceedings within 5 months of notification. These 5 phase II decisions included 1 prohibition decision, 2 decisions approving the concentration with conditions or obligations and 2 decisions approving the concentration without any conditions. In the phase I of the proceedings, 5 decisions approving the concentration with conditions or obligations were issued.

2.4.2 Description of significant cases

- Südzucker AG / Saint Luise Sucre, S.A

27. The merger of the German company Südzucker AG and the French company Saint Luise Sucre, S.A notified to the Office represented the concentration of two out of the three most important

undertakings in the sugar market in the Czech Republic. The assessment of this concentration conducted of the Office led to the conclusion, that its realisation would have led to creation of an entity with significant dominant positions in the market of sugar for consumers and market of industrial sugar. In assessing the case, the Office considered a number of factors, in particular the financial and economic power of the merged undertaking, its position in the neighbouring regions, its portfolio power, its possibilities to exploit economies of scope, its high market share in the relevant markets, reduction of possible new entry to the Czech sugar market (due to strong position of the merging companies in the neighbouring regions that are most likely sources of possible entry of new competitors) and also impacts of the realisation of the concentration on the consumer prices. Taking into account all these factors, the Office in its decision concluded that the concentration would have led to the creation of a dominant position causing significant distortion of competition in the relevant markets concerned. As no suitable remedies to these anti-competitive effects of the concentration have been proposed, the Office in its decision prohibited the concentration. The prohibition decision was confirmed by the second-instance decision of the Chairman of the Office.

- Zentiva B.V. / S.L. Pharma Holdings Gesellschaft M.B.H.

28. The basis of this concentration was acquisition of indirect control by the company Zentiva over the companies of the Slovakofarma group, which is the most important Slovak producer of generic pharmaceuticals. As Zentiva already controls the companies of the Léčiva group, representing the most important Czech producer of generic pharmaceuticals, there was in fact a concentration of companies Léčiva and Slovakofarma representing the leading pharmaceutical companies in Czech Republic and Slovak Republic respectively. The results of the investigation carried out by the Office had shown that this concentration would have led to significant strengthening of the market power of the merged entity leading to substantial distortion of competition in several relevant markets. It has been also taken into account that these markets are characteristic by existence of relatively high entry barriers due to necessity to register the pharmaceutical and due to the functioning of the public health insurance system preferring cheaper pharmaceuticals (which are in many cases supplied the merging companies). In addition, the merging undertakings own a number of well-established trademarks with a long tradition of consumption in the Czech Republic. The competition concerns of the Office related in particular to the following areas:

- In five relevant pharmaceutical markets delineated according to the appropriate expert international classification of drugs, the concentration would have led to significant increases of market shares of the merging undertakings. Taking into account the above-mentioned characteristics of the competition in these relevant markets, these horizontal overlaps would have led to the creation of dominant positions of the merged undertaking in these markets leading to significant distortion of competition. The competitive pressure between these two important direct competitors would have been eliminated, resulting in possible negative impact on the price competition, reduction of choice of products offered and foreclosure of certain markets.
- The concentration would have led to a significant strengthening of negotiating power of the merged entity that would have had disposed of a large product portfolio with a whole group of pharmaceuticals which are unique due to their quality, price and trademark. It would have thus become an unavoidable trading partner for distribution companies active in the selling of human pharmaceuticals. A danger of distortion of competition would then have existed in the market for distribution of pharmaceuticals in case the merged entity would have created an exclusive relationship with only one pharmaceutical distributor, threatening thus the existence of the other distributing companies.

29. In order to eliminate these competition concerns, the party to the proceeding entered into the following commitments, upon the fulfilment of which the Office made conditional its decision approving the concentration:

- In relation to the above-mentioned markets with significant horizontal overlaps, the merging undertakings have committed themselves to divest all assets connected with production and selling of three important pharmaceuticals offered in these markets. The divested assets must form an indivisible complex containing all elements (i.e. both tangible and intangible assets) necessary for the divested assets to be able to be further active in the market as a real competitor. This complex of assets thus also has to be divested to a single purchaser. At the same time, the merging undertakings have committed vis-à-vis both the Office and the purchaser of these assets not to compete for a certain sufficiently long period by producing pharmaceuticals of the same chemical composition as that of the divested pharmaceuticals. This set of commitments has reduced the increase in market shares of the merging undertakings in these markets and prevented thus the creation of dominant positions distorting competition. Furthermore, taking into account the fact that the merging undertakings obtain in this way several well-established trademarks of pharmaceuticals that would be available to independent undertakings, the implementation of these commitments leads also to reduction of entry barriers in these markets and to enhanced potential for third parties to enter these relevant markets and establish themselves there.
- Another set of commitments consisted in transfer of two well-established trademarks to third parties, without transferring any production or other connected assets. These are quasi-structural conditions where a sufficiently strong competitive impulse in the relevant markets is to be created by the fact that well-known trademarks for generic pharmaceuticals are gained by a new entity or a current competitor.
- With regard to the above-described danger of anticompetitive effects of the concentration in the vertically connected pharmaceutical distribution market, the merging undertakings made a behavioural commitment not to conclude exclusive distribution agreements with some pharmaceutical distributors and to ensure non-discriminatory treatment for all distributors of pharmaceuticals produced by the companies Léčiva and Slovakofarma.

30. These commitments entered into by the merging parties have been assessed by the Office as sufficient to remove the identified dangers of substantial distortion of competition resulting from this concentration.

- Český Telecom a.s. / Eurotel Praha, spol. s r.o.

31. As a result of this concentration, the dominant fixed-line telecommunication operator Český Telecom became the sole owner of the mobile telecommunication operator Eurotel, which led to a change in the character of control of the company Český Telcom over this undertaking from previous joint control to a sole control. This concentration was predominantly of a conglomerate nature as there are no overlaps between activities of these two undertakings. Nevertheless, in some markets these two undertakings are in a vertical relationship and the concentration could under certain circumstances lead to potential discrimination of other undertakings (e.g. as regards the price for phone calls between mobile phone network and fixed network between these two undertakings as compared to prices in relation to other two mobile phone operators). In order to prevent such potential anti-competitive behaviour, the Office made approval of the concentration subject to condition of non-discrimination of consumers and competitors as regards the quality and price of telecommunications services provided.

- Karlovarské minerální vody, a.s. / Poděbradka, s.r.o – fine for non-compliance with a prohibition decision

32. This case concerned a concentration involving important producers of soft drinks in the Czech Republic in relation to which the Office had issued in 2002 a negative decision prohibiting the transaction in question because it would have led to a substantial distortion of competition in the relevant markets concerned. The party to the administrative proceeding lodged an action against this negative decision of the Office that was in 2003 pending before the Supreme Administrative Court. This action had no suspensive effect on the final prohibition decision of the Office. It is worth mentioning that subsequently the Supreme Administrative Court confirmed the prohibition decision of the Office relating to this concentration by its judgement issued in April 2004.

33. The Office later acquired information indicating that the merging parties might not respect this negative decision and implemented the concentration in practice even before the final decision of the Office. On the basis of this information the Office initiated in 2003 an administrative proceeding concerning alleged infringement of the prohibition to exercise control before issuance of the final decision. In the course of this proceeding, the Office conducted a surprise inspection at the premises of the two undertakings concerned and found that the acquiring undertaking had already got in its possession the shares of the acquired undertaking and that it had exercised control by voting at the general meeting of the acquired undertaking. The evidence collected (e.g. correspondence between management of both undertakings revealing factual influence of KVM over business activities of Poděbradka, establishment of common strategies towards trading partners, coordination of advertising activities of Poděbradka, influence of KVM over future investment plans of Poděbradka and mutual exchange of commercially sensitive information between the two companies) led the Office to conclusion that the acquiring undertaking exercises decisive control over the activities of the acquired undertaking and therefore exercises control in breach of the prohibition of implementation of concentration before issuance of a final decision. The Office has therefore imposed by its decision issued in March 2004 a fine on the acquiring undertaking amounting to CZK 10 million and ordered measures to restore the situation prevailing prior to the implementation of the concentration.

2.5 Appeal and court proceedings

2.5.1 Appeal proceedings

- Total number of decisions appealed to the second-instance in 2003 32
- Total number of second-instance decision on appeals issued in 2003 32

34. In 2003, in total 32 first-instance decisions have been appealed to the Chairman of the Office for review in the second-instance compared with in total 49 first-instance decisions in 2002. Out of the 32 second-instance decisions issued, 22 decisions concerned appeals lodged in 2002 and 10 decisions concerned appeals lodged in 2003. The most important cases decided in the second-instance are described above in the section on enforcement activities of the Office in individual areas of competition law.

2.5.2 Actions filed against the decisions of the Office

- Total number of actions against final decisions of the Office filed in 2003 8
- Total number of judgements on the actions against decisions of the Office in 2003 0

35. During the year 2003, 8 court actions against second-instance decisions of the Office in the competition law area were filed compared with 11 actions filed in 2002. Due to changes to the administrative judiciary system brought about by the Act No. 150/2002 Coll., Administrative Court Proceedings Code, these petitions were no longer lodged to the High Court but to the Regional Court in Brno, with possibility of further judicial review by the Supreme Administrative Court. In 2003, there were issued no court judgements on petitions against final decisions of the Office.

3. The role of the Office in the formulation and implementation of other policies

36. The Office uses an effective instrument for competition advocacy in relation to newly proposed legislative acts, policies or other materials in the form of a so called inter-departmental commentary procedure, within the framework of which the Office receives all these documents for comments before their adoption. If the Office indicates any of its comments as “essential”, the institution proposing the document may only agree with such comment in full and modify the material accordingly. Otherwise, that comment is subject to further consultations between the Office and the proposing institution. If agreement on the issue is not reached, it is finally resolved by the decision of the Government after consideration of arguments of both the proposing institution and the Office. However, most comments of the Office are fully accepted already by the proposing institutions. Apart from the inter-departmental commentary procedure, the Office co-operates closely in particular with sectoral regulatory institutions, such as the Czech Telecommunications Office or the Energy Regulatory Office. In the following text, some examples of competition advocacy activities of the Office in both these areas are described:

- ***Draft amendment to the Energy Act***

37. The Office submitted essential comments to the draft act amending the Energy Act regulating the energy sector in the Czech Republic. These comments concerned in particular provisions ensuring effective vertical separation of certain activities in the energy sector, in line with the relevant directives of the European Union. The Office advocated a precise and concrete transposition of these directives, in particular as regards separation of gas transportation activity from other activities in the gas sector not related to transportation, i.e. not only production and trading activities as had originally been proposed in the draft act but also from gas distribution. Similarly, provisions for separation of gas distribution activities from other above mentioned activities were required by the Office. These comments of the Office have been accepted and the draft act changed accordingly in order to reflect more precisely the relevant EU directives and in particular to ensure creation of conditions for development of effective competition in the energy sector.

- ***Wholesale offer of ADSL services by the dominant telecommunication operator***

38. In 2003 the advocacy activities of the Office towards the Czech Telecommunication Office, based on a Memorandum on Co-operation signed between these two institutions in 2001, included among others the issue relating to introduction of ADSL telecommunication services in the Czech Republic by the dominant fixed-line operator Český Telecom. On the basis of complaints of alternative operators, the Office asked the Czech Telecommunication Office to take action in order to ensure as soon as possible that the dominant operator submits to these operators a wholesale offer on newly introduced ADSL service. Such wholesale offer was necessary to enable the alternative operators to compete from the very beginning with the dominant operator in provision of ADSL service. Otherwise, the dominant operator would gain competitive advantage by introducing these services as the first company in the Czech Republic. As a result of this initiative of the Office, the Czech Telecommunication Office has prohibited the dominant operator to offer its ADSL services to the customers until the time when the alternative operators is provided with a wholesale offer enabling them to compete effectively with the incumbent operator.

- ***Calculation of inter-connection charges for calls between fixed and mobile telecommunications networks***

39. The Office analysed complaints of alternative operators indicating that inter-connection charges for calls to mobile phone networks set by the Czech Telecommunications Office are too high. As a result, the fixed-line operators are allegedly less able to compete with mobile phone operators in cases when they offer to their customers calls from fixed to mobile networks via a so-called GSM gates. The alternative operators objected, that the inter-connection charges are not calculated on the basis of LRIC model and that due to old data used they no longer correspond to the current situation in the market. The Office in this matter contacted the Czech Telecommunications Office and recommended appropriate changes in the charges due to importance of these objections of alternative operators from the point of view of effectively functioning competition in the telecommunication markets. The Czech Telecommunication Office issued an updated decision on inter-connection charges in March 2004 lowering their amounts, which may have a positive effect on development of competition in this area.

4. Resources of the Office

4.1 Annual budget of the Office in 2003

Total expenditure in CZK:	69,209,000
Total expenditure in USD:	2,452,000

Number of employees of the Office as of 31 December 2003

Lawyers	42
Economists	43
Other professionals	15
Support staff	15
All staff combined	115

Human resources of the Office as of 31 December 2003 (according to activity areas)

Enforcement of the Act on the Protection of Competition and of the competition principles	50
Surveillance over the public procurement process	33
Control of state aid (state aid department was established with effect as of 1 December 1999)	15