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Global Forum on Competition

QUESTIONNAIRE ON THE CHALLENGES FACING YOUNG COMPETITION AUTHORITIES

Contribution from the Czech Republic

-- Session III --

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--Czech Republic--

1. Countries that have been actively enforcing a competition law for a relatively short time

1.1. Organising your agency and preparing for work

This is a unique point in the life of a competition agency – creating a new organisation and preparing it to enforce a new law. Necessary tasks include recruiting senior officials and professional and administrative staff, obtaining office space and equipment, setting goals and priorities for the initial months and years, establishing internal procedures and creating regulations and guidelines implementing the new law.

1. Describe how you conducted this organisational phase. What went well, and what didn't?

Czech Office for the Protection of Competition (hereinafter referred to as “the Office”) started its activity on 1 July 1991. Since the very beginnings the Office’s headquarters has been in Brno, where the Constitutional Court, the Supreme Administrative Court, the Regional Court and the Supreme Public Prosecutor’s Office have also their seats. The Office had a branch in Prague as well.

Until 2007 the Office’s headquarters were located in the building of the Constitutional Court. The fact that the Office seated within the premises of another institution brought some troubles. Lack of convenient premises for meetings with undertakings and their lawyers especially in cases of complex mergers, but also for meetings with companies’ representatives in other cases, can be mentioned as an example. Further, the Office was unable to organise seminars or conferences. Prague branch had to change its seat several times which was highly inconvenient for the parties to the proceedings and their lawyers. New seat of the Office, built during the years 2007 – 2008, meets all the requirements for the modern public administration body, since it provides high-quality and pleasant working conditions with sufficient number of meeting rooms including a large conference room for organizing international conferences.

Working places for the Office were delimited from several ministries at first, especially Ministry of Economy, and thus it was easier to gain expert employees with public administration working experience. Due to the fact that the Office dealt with so far unfamiliar and complicated matters, most of the staff had left the Office soon and new staff was hired, both with economic and law education. Proportion of these professions has been set approximately to fifty-fifty. It has to be mentioned that there was an expert group established in 1989, i.e. even before establishment of the Office, within the Ministry of Finance, which was, along with several competition lawyers, preparing the competition act and some general concepts (relevant market definition, cartel agreements classification etc.), which were used during the beginnings of the Office’s enforcement activities.

Organisational structure of the new Office generally followed the model of German *Bundeskartellamt*. In fact, the biggest problem lied in prompt training of a sufficient number of qualified specialists in the area of competition law, a subject that had not been taught for decades at Czech universities, a field where neither relevant judicature, nor specialised literature had been introduced, and which represented completely new area in law.

In the beginnings it happened many times that new young recruits, having gained an experience with the Office’s work, were leaving to the private law firms or to the courts. Reason for that was, as in many other countries, insufficient financial valuation. Low salaries were also reason for which the Office failed to hire external experts.

It should be mentioned that the specialised training was accelerated; already in 1991 the Office provided its employees with highly specialised and long-term training in cooperation with FTC and DoJ (USA) and many expert seminars, prepared by the *Bundeskartellamt*. Continuity of the professional growth of the staff was also secured through the participation in the OECD meetings.

From the very beginnings of the Office's existence a library has been established along with information system enabling the intranet connection within the Office.

Recommendations

- Establish a group of experts on competition law and finalise draft of the competition act before the taking up of the competition authority's activities
- Assignment of an experienced, reputable and respected manager
- Secure an adequate level of salaries and do not focus only on young staff, hire older and more experienced experts
- Profit from benefits of external assistance (OECD, UNCTAD, EC)
- Find an adequate seat for the authority
- Establish a library
- Cooperate closely with universities

1.2. Competition culture and competition advocacy

Establishing a competition culture in a country new to competition enforcement – creating in the public awareness of and support for competition policy and the work of the competition agency – is vital to the success of a competition policy. In countries new to competition policy such a culture does not exist, and the competition agency performs an important educational role in helping to create it.

2. Describe the efforts that your agency made in its first years in promoting a competition culture in your country. Did you have any measurable success? What resistance did you encounter?

Before 1989 the economy had been centrally-planned, which didn't take into account the needs of competition control (as the competition virtually didn't exist) and establishing of the Office therefore meant a wholly new phenomenon among the rest of the central state administration bodies.

Legal awareness was in the start-up phase of the Office's activities on a very low level both among the undertakings and lawyers. This resulted into frequent confusion among cases of unfair competition which fall within the courts powers, cases which fall within the powers of different administrative bodies or municipal bodies and cases of protection of competition. As an illustration – out of total number of 169 complaints solved in the 1992 only 76 concerned the antitrust.

Moreover, cooperation with the representatives of the consumers' community was not efficient enough. The Office failed to explain comprehensively obvious achievements of its interventions losing the possibility to extend the interest of people in the Office's activity and sub-sequent support of the general public in securing the protection of competition.

To ensure the general awareness of the public as broad as possible, employees of the Office had published promptly annotation on the act, using recently gained experience from the decision-making practice. Annual report from the 1993 had stated, as one of the priorities, necessity to continue in introducing the general principles of the protection of competition to the public.

Number of press releases related to the activity of the Office increased significantly and the general public was more informed about the current activities of the Office. What should be mentioned is the decision of the Office on prohibited agreement in the area of television broadcasting of football matches, agreement on prices concluded among the coffee producers or agreement on prices in taxi services. Issuing the decision, which enabled the TV companies to make records of the football matches, provided millions of football fans with proof of real advantages which can be expected from the effective competition enforcement and convinced the general public that the Office's interventions are meaningful.

Furthermore, the competition advocacy has become an integral part of the Office's activities since the first years of its operation. Especially the process of privatisation was regarded as unique opportunity to crush or at least to weaken monopolistic or dominant position of then existing companies and to avoid emergence of newly established companies with monopolistic or dominant position in the market. That's why the Office made its efforts to obtain powers to issue its opinions on particular privatisation projects in the times of shaping the new structure of Czech economy. In these opinions the Office strived to enforce pro-competitive positions (it was especially necessary to assess the analyses of founding ministries on "potential abuse of companies' position according to the relevant market share in the period of following two years" or "competitive ability of a new enterprise". This was achieved on the basis of the governmental decree, which was put through by the Office).

In 1992 total number of 200 analyses introduced by the particular founding ministries were assessed and approximately 5 % of the Office's positions were negative regarding the pro-posed way of privatisation and potential creation of an entity with dominant position (mainly in the area of food industry). Enhanced competition advocacy played its role in the important transformation intentions, e.g. in energy sector.

As early as after one year of its existence the Office prepared a recommendation for the economic ministers' meeting to (according to the European Energy Charter) unbundle the dominant electric power producer from the transfer network operator and to create an independent electric power trader.

Through the competition advocacy the Office also supported the unbundling of the communications sector into telecommunications, radio-communications and postal services.

As successful case (i.e. when the competition advocacy proved to be a suitable tool) should be mentioned the case of possible abuse of dominant position of the *Česká pojišťovna* company through setting high rates of compulsory insurance for motor vehicles. The Office initiated an administrative proceeding with the insurance company and at the same time it elaborated an analysis and assessment for the economic ministers' meeting. Recommendations included in the document were fully accepted by the meeting.

Moreover, competition advocacy through the "passive legislation" has been a very effective tool in enforcing the pro-competitive standpoints (the Office has been the consultative body in the legislative process since 1991).

Two years after the initiation of its activities the Office elaborated, for its own purposes, an internal methodology “COMP”¹ for assessing the market structures in process of privatisation. It was an original methodology for indicative assessment of the competition environment quality in particular relevant markets, based on quantification of 5-criteria quantities, used (with several modifications) in USA and some OECD countries, for analyzing the market power of companies and conditions of their entry in the market, including the recognition of the level of market concentration in particular area (according to HHI). Barriers to entry are observed, such as fund exigency, innovative dynamism, existence of patent rights, vertical integration etc. After the “privatisation wave” the use of the COMP methodology was abandoned, though its practical application was really useful.

Recommendations

- Explain the Office’s powers and scope of activities from the very beginning
- Cooperate with consumers (consumers associations)
- Promptly elaborate annotation on the act, using recently gained experience from the decision-making practice
- Use media to bring attention of the general public to the cases which may influence wide range of consumers to demonstrate utility of the Office’s actions
- Use competition advocacy during the process of privatisation and insist on participation of the competition authority in specialised committees and legislation process
- Promote sectoral organisation in the area of energy and telecommunications in compliance with OECD standards
- Elaborate and use any methodology for assessment of competition environment (see the “COMP” methodology) as an internal rule of thumb in the privatisation process

1.3. Conduct cases and investigations – abuse of dominance and restrictive agreements

Prosecuting conduct investigations and cases can be difficult at first. Both the competition agency and the business community are unfamiliar with the legal and evidentiary standards that the law has created, and investigators lack important experience in developing cases of this kind. The investigation tools (fact gathering) and sanctioning powers (fines and remedial orders) provided by the new law may not be adequate for the task. Case handling procedures may be cumbersome and inefficient.

1 The COMP methodology

In the 1990s, the Office created and applied a simple scale for measuring competition. This “COMP” system combined five measures:

- HHI index,
- capital requirements for entry,
- innovation (including access to intellectual property),
- vertical integration, and
- residual or excess capacity.

A value from 1-5 was applied to each element, with higher numbers related to greater competition. Observation of conditions in markets implied that competition was sufficient where the total score for a market was 16 or higher. The COMP method was used mostly in privatisation decisions. It was discontinued, at least as a regular practice, after about seven years, after the main privatisation wave had been completed. Any such measure could only be used as an internal rule of thumb. As a creation of the Office, not of the law, it could not be used to justify a decision; by contrast, something of similar authority adopted by the European Commission might be accepted as authority in Czech courts.

3. What problems did you encounter in investigating and prosecuting abuse of dominance and non-cartel restrictive agreements in your early years, and how did you address them? What were your successes, and what factors can you identify that contributed to those successful outcomes?

4. What difficulties did you encounter in developing an anti-cartel programme, and how did you address them? How long did it take for your anti-cartel programme to begin to show results?

In the first year of the Office's operation 15 alleged cartel agreements were examined, 14 out of that number assessed as prohibited agreements. Such a relatively high number reflects very low undertakings' awareness of the competition law at that time. On the other side, the Office had easier position in revealing such anticompetitive agreements. This period didn't last very long and detection of prohibited agreements has become more and more difficult or even – without application of Leniency program or similar tools - exceptional.

During the start-up phase the Office for example investigated a cartel of driving schools, while operators themselves provided the Office with the written agreement on tuition fees, signed and stamped by all parties to the agreement ("naive cartel"). Meanwhile it became obvious that revealing cartels would be very difficult without testimonies of witnesses, who left the companies for some reason and were aware of the cartel agreement, having contacted the Office and provided necessary information about the cartel. In one case, a witness had described exact room and particular table socket where the signed cartel agreement supposed to be, yet the Office didn't have any legitimate tool for dawn raid and therefore the evidence couldn't be obtained.

The first leniency program was adopted in 2001. Even though the material rules were drafted according to the then applied EC leniency program, it brought very poor results. The reason was lack of procedural guarantees for applicants, the ambiguity of some rules and reluctance of the Office to issue a preliminary statement of provisional applicability of the leniency in the given case. Under the 2001 leniency program, there were no significant enforcement matters mainly due to those reasons.

A new leniency policy was adopted in 2007. Compared to the previous program of 2001, it promises greater legal certainty to applicants who qualify. Unlike the previous program, the current leniency policy applies only to horizontal agreements. This has brought substantial progress in number of applications – five in 2008.

Vertical agreements represented a significant part of investigated agreements distorting competition, often in the form of applying different conditions when certain undertakings were disadvantaged (meat supplies, tires supplies, grass-seed supplies etc.) or in the form of output restriction obligations (agricultural products). Three of the Office's proceedings during the first year of its existence concerned decisions of chambers or professional associations (e.g. dental operations pricelist or real estate agencies' operational rules). Fines imposed in that period were very low, maximum CZK 1 million, but usually around app. CZK 50 thousand.

According to the original legislation, the parties entering any agreement that fell within the prohibition (even if the conditions for exemption were fulfilled) had to seek consent from the Office. Later, the Office had to grant individual exemptions in the given cases. Both systems might be appropriate in the early stage of competition enforcement, where there is a lack of awareness, expertise and experience with the competition law. It gives the parties higher legal certainty and the Office was informed of many agreements that might have been anticompetitive. However, at the same time, this system was administratively burdensome and majority of resources were devoted for this category, without possibility to focus and spent appropriate resources on real dangers to economy –

hidden and sophisticated hard core cartels. Therefore, we think, that for the later stages of competition enforcement, the system of automatic (legal) exemption from the prohibition is more appropriate.

There were two specific features of the competition law of 1991, that concern the abuse of dominance that are not very useful in later stages of enforcement, that may, however, have positive effect in the initial stages. First, there was a legal irrefutable presumption that under-taking with 30 % market share was holding a dominant position. This system might be easier for new competition jurisdictions because it provides clear cut threshold rule. On the other hand, the application of this rule might be, in many cases, in contradiction with the economic theory and real situation in the market. Identification of dominance only according to the market share of 30 % proved to be problematic even in reality. An extreme example – under this system, there could be three undertakings with dominant position in the single relevant market. This provision of the act was amended in 2001 and standard proving of the dominant position according to the market power was introduced.

The second specific feature was the notification obligation – any undertaking, holding or gaining 30% market share (and thus dominant position) had a statutory duty to notify this to the competition authority. This system has contributed to the increase of the general awareness of the competition law among the undertakings as well as it provided the Office with detailed information about the structure in the every single market. However, the criticism of the 30% threshold system is fully applied here, as well. This provision of the competition act was abolished with the first amendment to the act. Looking backwards it is good to know that a certain positive aspect emerged in the fact that many of the undertakings, especially in the time of high concentration of all sectors, became more familiar with the competition law.

In the first year of the Office's operation 20 administrative proceedings were initiated on potential abuse of dominant or monopoly position. Most frequent form of an abuse of dominant position was mere non-announcement of such position to the Office (14 cases in total). It proved, that many undertakings were unable to assess their market share or even weren't aware of the obligation to report their dominance to the Office.

There was a very high number of cases in the electricity sector, telecommunications or water supply during the first year of the Office's existence. Various types of cases were investigated: restraints to enter the market, enforcement of unfair conditions (energy), dissimilar conditions in installation of telephone stations, discriminatory conditions on petrol stations' operators, bundling (telephone line assignment subjected to the fax machine purchase).

During the start-up phase the number of the Office's interventions against local monopolies, with an immediate negative impact on consumers, was increasing. The Office stood firmly against local electric power and natural gas distributors who refused to conclude contracts on supplies from supply points unless the applicant paid the dues of the previous consumer. In-sufficient legislative and regulatory framework had also contributed to this situation.

Therefore, The Office addressed appropriate ministries (with competence in the given area) referring to the described pitfall and outlining the powers and competences for particular regulators in order to establish essential conditions for business in these markets. In the process the cooperation with energy and telecommunication regulators has been established, which contributed to the cultivation of business manners in these particular sectors.

Recommendations

- Adopt leniency program with real guarantees and clear rules

- During the cartel investigation, actively use the testimonies of former employees of investigated companies, especially those who were forced to leave
- Establish provisions enabling dawn raids while drafting the competition act
- Include the market power as a criterion for dominance into the competition act
- Local and regional monopolies create very negative and immediate impacts on consumers
- Elaborate public notice (or any other transparent document) on fines, defining evaluation of particular infringements of the competition act since the very beginning (enabling imposition of fines of adequate amount)
- Endeavour to create regulatory mechanisms in the area of natural monopolies

1.4. Mergers

Some countries, especially those with small economies, elect not to incorporate merger control into a new competition law. They conclude that it would require too many resources compared to the benefits to competition that could result. They may plan to begin merger control at a later time. Most countries do adopt merger control at the beginning, however. For some the initial phases of this programme proceed relatively smoothly. Others, however, encounter problems associated with inefficient review procedures, over-inclusive notification regimes or uncertain application of substantive rules.

5. If your new law did not provide for merger control, have you encountered any problems because you don't have this power? What are the benefits to you, if any, of not having merger control?

6. If you have merger control, did it cause resource problems for you in your first years of operation, that is, requiring you to spend more resources on merger review than you thought efficient? If so, what did you do about it? If not, how did you avoid this problem? 7. If you have merger control, was it an important and useful part of your agency's activity in its early years? What were your successes in implementing your merger control programme? Your problems?

7. If you have merger control, was it an important and useful part of your agency's activity in its early years? What were your successes in implementing your merger control programme? Your problems?

Merger control has been enabled in the Czech Republic by the Act on the protection of the competition from the moment of its adoption in year 1991. Merger approval was necessary in cases when concentration distorted or was able to distort competition and market share of the merging undertakings exceed 30 % of total turnover of the product in the Czech Republic. Merger approval was also possible in cases when benefits for competition over-weighted the harm caused by the distortion of competition. In the beginning the Czech competition authority did not have a specific department that would deal only with concentrations. Merger review was conducted by the employees of the department that was responsible for the specific sector within organisation structure and in this time such organisation did not pose any problems.

During the start-up phase of the Office the privatisation of industry was in process, which meant that large number of mergers (about 50 per year) concerned the entrance of a foreign or a Czech investor into previously state companies. As many sectors were concentrated and many companies were in dominant position, the entrance of strategic investor was not able to influence market structure (except for a limited number of mergers of two independent undertakings). Nevertheless strategic investor could already have its own affiliated company in the Czech Republic and for this reason the merger was able to influence competition. Therefore the Office strictly required guarantees that possible harm would be compensated by benefits for competition. Such commitments were supposed to serve as reasons for economic benefit of the merger and were reviewed by the Office.

After two years of the merger control it was obvious that the crucial commitments for the merger approval were: securing of investments in reconstruction and modernisation of production for new technologies, securing the entrance into foreign markets, securing of know-how and technology.

Subsequently, when the Act was in force for 8 years, works on a new competition act aiming at the full compatibility with the EU competition law were started. The area of merger control was regulated in conformity with the Council Regulation 4064/89 as amended by the Regulation 1310/97. A new definition of concentration of undertakings, new notification criteria based on the turnover of the merging parties and fixed deadlines for issuing of the decision, etc., were stipulated.

The new act was adopted in 2001 and the changes in the area of mergers caused an increase in the number of decisions (about 4 times higher number) and in 8 cases the Office imposed structural remedies and commitments. A new trend was recognised, the third parties started to ask to be considered as a party to the proceeding in approval of merger or the merging parties asked for exemption from stand still clause. While reviewing mergers the Office made use of the decision-making practice of the European Commission, the European Court of Justice and other EU competition authorities.

The Office also issued large number of expert opinions to methodological questions concerning mergers and conducted number of consultation in this area. In 2003 the Office drafted another bill which aimed at an effective application of national and Community law after the accession of the Czech Republic to the EU. Significant changes concerned a new definition of notification criteria. According to the previous legal state it was necessary to notify also mergers with negligible impact on the Czech market. According to the amendment to Competition Act of 2004 only mergers with clear local nexus to the national market were to be notified, which enabled the Office to concentrate on reviewing the most significant merger cases. Following the adoption of recast Council Regulation 139/2004 on the control of concentrations between undertakings, a full transposition of Community legal regulations was proposed – especially the application of substantive test for the merger review. An explicit change in the concept was carried out according to which the merger will or will not be approved, while the change is represented by adding combined dominance test and SLC test (substantial lessening of competition); only dominance test was used before. This enables the Office to block a merger with possible negative impact on competition, regardless if they were caused by creation or strengthening of dominant position of merging parties or by any other negative factors of such merger (especially non-collusive oligopolies). The new act entered into force on 2 June 2005 and due to specificities and demands of the merger approval procedure the new merger department was established within the Office.

Recommendations

- Give the competition authority merger control powers regardless the size of the country
- Establish an independent merger control department in order to tackle the specificity and intensity of economic analysis
- From the very beginning outline a clear definition of concentration of undertakings and notification criteria based on turnovers of merging parties; turnover criteria must be continuously reviewed and adapted to local nexus
- Apply experience of the European Commission and the ECJ and CFI
- Provide the undertakings with expert consultations
- Make the approval procedure simple
- Consider whether to apply only dominance test or only SLC test or combination of both
- For less complicated and complex merger cases introduce certain level of flexibility – simplified procedure

- Engage in pre-notification talks.

1.5. Judicial appeals

In most countries decisions of the competition agency can be appealed to the courts. Judicial systems vary across countries. In some, competition cases are appealed, at least in the first instance, to a court having special jurisdiction, perhaps extending only to competition cases or more broadly to commercial cases. In others, competition cases are heard by courts of general jurisdiction. While in some countries the judicial process proceeds relatively smoothly and predictably, in others judicial review has proved to be a major impediment to the efficient and effective enforcement of the competition law. Judges may be unfamiliar with the principles of competition analysis. The competition agency may find itself losing an unacceptable number of its cases in court. The judicial process may take much too long, effectively frustrating enforcement of the law.

8. Can decisions of your agency be appealed to the courts? If so, have you been satisfied with your rate of success in court cases? With the amount of time that it takes for cases that reach the courts to be finally decided? If you have encountered problems, what are the reasons for them, in your opinion? To the extent that you have experienced success, what factors contributed to it?

9. Did your agency develop a programme for interacting with judges and helping them to become familiar with competition analysis? If so, please briefly describe.

Until 1 January 2003, when the new Act on the Administrative Judiciary came into force, it was possible to appeal the decision of the Office to the High Court in Olomouc. There was no possibility of further appeal against the decisions of this court (with the exception of Constitutional Court). The High Court had a senate focused on competition issues and this senate was chaired by a lawyer who used to work for the Federal Office for the Protection of Competition of the former Czechoslovakia. This fact facilitated decision-making and above all dealing with a particular economic category of law – relevant market. After 1 January 2003 new system was established within the judiciary which extended the possibility of appeal. In the first instance the Regional Court in Brno decides on the appeal against Office's decisions and in the second instance the Supreme Administrative Court in Brno decides on appeals against Regional Court's decisions. The undertaking (plaintiff) may appeal the decision of the Supreme Administrative Court at the Constitutional court.

There is only one senate dealing almost solely with competition and public procurement issues at the Regional Court in Brno. To the contrary, the competition agenda is dividend between number of senates at the Supreme Administrative Court (at present, there are five non-specialised senates that can be assigned a competition case)

The courts are concerned principally with legal issues, but the courts may also examine the sufficiency of the evidence. The reviewing court may affirm the decision or cancel it and re-turn the matter to the Office for further proceedings. The court does not have the power to enter its own decision contradicting the Office's finding about liability. The court may, however, reduce the level of a fine.

The rate of success in court cases is simply expressed fifty-fifty. For example in 2008 (till the beginning of December) the Supreme Administrative Court ruled in 10 cases, out of which it overruled the appeal against the Office's decision in 4 cases and sustained it in 6 cases. The Regional Court in Brno ruled in 10 cases as well, out of which 5 appeals were overruled and 5 sustained. The average duration of judicial proceeding before the Regional court is approximately 2 years. Recently, it has not been exceptional that the ruling of the Regional Court was overruled by the Supreme

Administrative Court and remitted for a new decision; out of 10 judgements of the Regional Court appealed by the Office, the Supreme Administrative Court has ruled in favour of the Office in 8 cases.

After the accession of the Czech Republic to the EU it was possible to use the expert counselling help of a twinner – competition expert from Italy, who acted within the Czech competition authority. On this occasion the twinner organised several competition training courses for judges. The Office did not develop a special programme for interacting with judges but the Office regularly organises various seminars and conferences dealing with new trends in competition and the judges are always invited to attend. At the same time the experts from the Office are often invited to take part in events focusing on training of judges in the area of competition law (with respect to their independence). A mid-term training of judges in Community competition law is planned for the future, in which the Office would no doubt participate as a natural domestic partner.

To sum up, the Czech Republic has an experience with both one level, strictly specialised, and centralised jurisdiction of courts in competition matters (till 2002), on one hand, and system of two-level, non specialised and partly decentralised jurisdiction, on the second hand. Both systems have their pros and cons. Due to the complexity and low frequency of competition cases, some specialisation might be necessary. However, at the same time, if the specialisation is too intensive (so that there is only one senate deciding all competition cases), there might be a risk of dominance of a single approach without any real possibility to seek remedy. In such cases, there is certain risk of subjective point of view of an individual judge, which is in some cases hardly separable. The right of both parties (incl. the competition authority) to appeal the decision of first instance court seems to be vital feature. In addition, we think, that at least at upper instance, the competition cases should be distributed among more senates in order to prevent possible monopolisation of thinking in competition issues.

Recommendations

- Multi-instance judicial review of competition authority's decisions is in the interest of undertakings
- Special competition senate within the court might be an advantage, but avoid a monopolisation of appeals
- Relatively long time that it takes for cases that reach the courts to be finally decided seems to be an obvious phenomenon, occurring in many countries
- Try to establish a partnership with judges, share experience with them, participate in their training and invite them into the expert debates on the competition matters.

1.6. Resources

Every competition agency encounters budget problems. A new competition agency may be especially vulnerable in this regard, as those who set its budget probably do not fully understand or appreciate the agency's mission.

10. Did your agency have sufficient resources, financial and personal, to begin your enforcement activities? Did it have resources to grow in subsequent years? If you felt that your budget was inadequate what strategies did you employ to try to increase it?

In the chart below there are financial resources destined for the Office from the state budget and numbers of employees in selected years.

Year	Approved budget (in millions of CZK)	Number of employees
1992	16 645	52
1996	35 476	98
2008	142 000	126

It is evident that the Office did not have sufficient financial resources at the beginning of its activities. While in 1996 the budget for almost 100 employees amounted only to 35.5 million CZK, in 2008 it is 142 million CZK for 126 employees. It is possible to say that the current budget of the Office is comparable with standard budget of similar state authorities.

Personal resources to begin the agency activities were sufficient in their number, but the expertise lacked. Knowledge of competition was missing in the Czech Republic in general and moreover many employees were new graduates from universities. This perception of the Office as the time-limited starting point after graduation and also rather strict working environment caused high rate of fluctuation for many initial years, bringing about inconsistency of practice. Only in last few years (under new management) the situation has improved – by introduction of better working environment, more competence on lower decision-making levels, better perception of the Office in public (openness) etc.

1.7. Independence

A competition agency should be independent as much as possible from other parts of government and from special interests, whether in terms of budget, management or law enforcement.

11. As a new agency, did you feel that you had sufficient independence? If not, what were the reasons, in your opinion, and what did you do about it?

The Czech Office for the Protection of Competition commenced its activity on 1 July 1991. The Office was seated in Brno, not in Prague, the centre of all state administration bodies, which should be a declaration of independence of the new competition authority's decision-making. In 1992 the Office was replaced by the Ministry of Economic Competition. The change was justified by the then running economic transformation, and, above all, by the role performed by the Ministry in the privatisation process, because thus the Ministry was allowed to interfere more effectively through its activity in the privatisation process.

At present the protection of competition in the Czech Republic is institutionally secured by the Office for the Protection of Competition in Brno. The Office began its activity under this name from 1 November 1996, following the activities of the former Ministry of Economic Competition, whose competences were preserved in full. The Ministry was transformed into the Office after parliamentary election in June 1996, when changes in the structure of central bodies of state administration were decided. The institutional change brought about the establishment of an independent competition authority.

The Office is the central body of state administration, fully independent in its decision-making activities; none of the bodies of state administration, including the government, can interfere with the decisions of the Office and political control over its decisions is out of the question. The Office, however, is bound by governmental regulations assigning both legislative and non-legislative tasks to it. The Office is headed by the Chairman, appointed by the President of the Czech Republic on the

proposal of the government. The Chairmanship is terminated when the Chairman resigns from his function, when his term of office expires, when he is divested of his capacity to legal acts or when he is found guilty of an intentional criminal act.

The Office proved its independence within the course of several merger cases review that stemmed from the privatisation decisions of the Government. For example, in 2002, the Office conditioned the approval of merger of ČEZ/electricity distributors with several substantive structural remedies that were non-compliant with the original privatisation project.

The Office also cooperates with regulatory bodies (energy, telecommunication) but is independent on them; the relationship between the Office and regulatory bodies is not regulated by law of the Czech Republic. The Competition Act applies to all sectors without exception. Whenever the Office carries out investigations in the areas subject to regulation it requires the opinion of the relevant regulatory body to the case in question. The regulatory body stand-points are non-binding regarding the decisions of the Office, just serving as a one of support materials for final decision in the case. According to the administrative procedure, each legal opinion expressed in the Office decision must be duly justified.

The above description shows that the Czech competition authority has all the prerequisites for a completely independent agency. Its initial status of a ministry was required by the general situation in the Czech industry undergoing privatisation in many sectors.

1.8. Conclusion

12. State (a) the five most important actions that you would recommend to a new competition agency to ensure a successful start, and (b) the five pitfalls that a new competition agency should avoid.

See recommendations at the end of each chapter above.

Some general recommendations in conclusion:

- Raise Public awareness of competition rules and the importance of their enforcement. Keep both general and expert public informed about the actions and decisions of the competition authority. Promote expert discussion with private sector about the various concepts of competition policy, it provides you with necessary feedback.
- Establish good relations with other state authorities in order to implement efficient competition advocacy, but keep independence of the competition authority.
- Get in touch with more advanced and experienced competition authorities and international organisations focusing on competition in order to learn the best practice and avoid pitfalls they have already avoided.
- Create flat organisational structure (not too many managing levels) providing space for communication among individual departments and employees and get ready for flexible changes if needed.
- Create internal environment which gives the staff incentives to stay with the authority or attracts experienced professionals, avoid excessive fluctuation.