

CZECH REPUBLIC

2001

Introduction

1. In 2001 major changes took place in the competition legislation in the Czech Republic. A new Act on the Protection of Competition has been adopted replacing the former ten years old legal regulation and nine implementing decrees have been issued as well. The adoption of this act secured compatibility of the competition legislation in the Czech Republic with the legislation of the European Communities.

2. In the last year, the Office for the Protection of Competition (hereinafter referred to as “the Office”) realised several organisational measures, which should contribute to qualitatively higher level of the decision-making activity. A major organisational change has been brought by the creation of a separate section specialised on decision-making related to the agreements distorting competitions and abuse of dominant position and a separate section adopting decisions on approvals of concentrations of undertakings (mergers). Separation of the above mentioned activities enabled more intensive concentration and specialisation in solutions of individual antitrust cases of similar or identical substantive nature and therefore also higher effectiveness of the proceedings.

3. Significant attention was paid in 2001 also to the expert training of employees, both in the area of application of the new Act on the Protection of Competition in effect as of 1 July 2001 and related implementing regulations and in the area of deepening the knowledge of the competition law of the European Communities. Within the framework of the decision-making activities of the Office the application of the act in line with the EC competition legislation has been secured. Furthermore, all decisions contain in their substantiation a reference to the practice of the European Commission and the case law of the Court of First Instance and the European Court of Justice.

Proposed or adopted changes to competition laws and policies*Summary of new legal provisions of competition law*

4. In 2001 the Office for the Protection of Competition elaborated number of legislative proposals. The most important adopted legal regulation is the new Act on the Protection of Competition (hereinafter referred to as “the Act”), which has come into force on 1 July 2001. In relation to this new Act the Office has also elaborated and issued eight decrees granting general (block) exemptions from the prohibition of agreements distorting competition. The Office has also issued another decree stipulating the details of requisites of the application for approval of concentration of undertakings, which has been in force since 17 October 2001.

New Act on the Protection of Competition

5. The basic aim of the new legal regulation was to achieve compatibility of the Act with the competition law of the European Communities in all the areas of the public competition law, i.e. in the area of the prohibited agreements distorting competition, abuse of dominant position and control of

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concentrations of undertakings. With regard to the necessity of ensuring compatibility, the new Act in comparison with the former regulation contains a number of significant changes. Thus a modern legal regulation has been adopted, which not only fulfils the requirement of compatibility with the EC competition law, but also enables to react to actual need of maintaining effective competition and to apply basic principles that are applied by the European Commission and the antitrust authorities of the member states of the EU. Adoption of the new Act has led to the strengthening of legal certainty of undertakings, which may establish themselves on the fact that the legal regulation, which they follow in the area of competition, is comparable to the European parameters. Therefore, they would not face several different competition regimes, which is very important also from the view of future accession of the Czech Republic to the European Union.

6. The Act explicitly regulates the application of the competition rules on undertakings, which provide the services of general economic interest. The Act fully applies to these undertakings with the exception of cases, when the application of the Act would obstruct the performance of the special tasks assigned to them.

7. The undertakings, i.e. the subjects to which the Act applies may be not only the natural and legal persons, but also the associations of these persons regardless if it is an association with legal subjectivity or without. The condition for awarding the statute of undertaking is always the possibility to at least influence the competition by the activity of the subject. The Act newly explicitly defines the concept of the relevant market as the market of a product, which is from the view of its characteristic, price and intended use identical, comparable and mutually interchangeable, on the territory where the conditions of competition are sufficiently homogenous and clearly distinguishable from the neighbouring territories.

8. In the area of the agreements distorting competition the new Act maintains a general clause prohibiting all agreements between undertakings, decisions of their associations and concerted practices which lead or may lead to the distortion of competition. The Office may grant an individual exemption from this prohibition within a proceeding fulfilling the criteria stipulated by the Act or a general (block) exemption may be granted by way of a decree of the Office. In line with the EC legislation horizontal and vertical agreements are explicitly distinguished. This difference is important in particular in connection with the definition of the *de minimis* agreements, for which new thresholds are set, whereas under the fulfilment of the conditions provided for by the Act these agreements are not subject to the prohibition. The exemption from the prohibition for the *de minimis* agreements, nevertheless, does not apply on the horizontal agreements on prices and on sharing markets or sources of supply, on vertical agreements leading to resale price maintenance or providing to the buyer a total territorial protection and on the cases, when the competition on the relevant market is significantly restricted as a consequence of cumulative effect of parallel networks of similar agreements.

9. Conditions for granting the individual exemption from the prohibition of anticompetitive agreements are exclusively based on competition principles. In order to increase the legal certainty and secure equal position of the parties to the proceeding on granting an exemption, the Act also contains a provision stipulating that if the Office fails to decide within a defined period, it is presumed that the individual exemption is granted for the period required by the applicant (however for the maximum of two years).

10. A new institute established by the Act is the so-called negative clearance. In case the undertakings are not sure if the agreement, which they intend to conclude, is subject to the legal prohibition, they may file an application for assessment whether it is a prohibited agreement or not. This institute is provided for also in the area of abuse of dominant position.

11. The provisions concerning dominant position and its abuse also enjoyed significant changes. Dominant position is established on the principle of market power of undertakings, which is based on more criteria than just the market share. Thus the market share still remains important, but not the only criterion for the assessment of the position of the undertaking on the market. The broader concept of “market power” also comprises in particular economic and financial power of undertaking, barriers to entry into the market, the market structure etc. The Act newly introduces into the Czech competition law the institute of collective (joint) dominance of several subjects, while the content of the concept accords with the attributes defined by the case law of the European Court of Justice and the Court of First Instance.

12. The most significant changes were implemented in the legal regulation of concentration of undertakings. The concept of concentration is newly defined. As one of its forms the Act explicitly stipulates the establishment of a new undertaking jointly controlled by several undertakings (jointly venture) provided that the undertaking in the long term performs all the functions of individual economic unit and the concentration does not aim at co-ordination of competitive behaviour of the founders of joint venture.

13. Distinctively from the formerly valid regulation the Act has established the amount of turnover as the criterion whether the given concentration is subject to the approval by the Office. The Act is based on the principle that only such concentrations are subject to approval, which may significantly affect effective functioning of competition. The threshold values of the net turnover stipulated in the Act are set separately for the total world-wide net turnover and separately for the total net turnover achieved on the market of the Czech Republic. The Act also defines the concept of net turnover and the method of calculating the combined net turnover of the undertakings.

14. The new Act has introduced a two phase proceeding on approval of concentration of undertakings: the first phase lasts one month and the eventual second phase of investigation, undertaken in complicated cases, lasts another four months. It means that maximum period for issuing a decision in case of concentration of undertakings is five months from the day of initiation of proceeding. This modification of periods, in which the Office is obliged to issue a decision on concentration, provides for increase in legal certainty of undertakings. Newly established is also the prohibition for undertakings to implement the concentration before the decision of the office on approval of concentration enters into force. The Act at the same time provides for the exemptions from this principle as well as for the fines in case of breach of this rule.

15. In the proceeding at the Office the principle is maintained that the basic process institutes of the proceeding are regulated by the general act on administrative proceeding (the Administrative Code). However the Act contains several procedural provisions providing for some procedural specifics of the proceeding. At the same time the powers of the Office had been extended in collection of documents and information for its activity and their examination, which it is currently possible to carry out also outside the framework of the proceeding under the power of the Office to perform surveillance over the compliance with the Act.

16. According to the new Act the Office can impose a fine within three years from the day when it learned about the infringement of the Act (the deadline pursuant to the former act was 1 year). In line with the EC law the Act allows imposition of fine only on the basis of intentional or negligent behaviour of the undertaking.

17. The Act also contains a new obligation of the Office to maintain a cartel register, i.e. register of agreements from the prohibition of which it approved, prolonged or abolished an exemption, or in case of which it specified whether the agreement is subject to the prohibition. The public nature of the cartel

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register will contribute to the transparency of the activities of the Office and the competition situation on the given market.

Block exemptions

18. New Act on the Protection of Competition empowered the Office to adopt a complex system of so called block exemptions applied in the EU. On 5 June 2001 the Office has issued eight decrees on approval of general exemption from the prohibition of agreements distorting competition. These decrees have come into force on the same day as the new Act, i.e. on 1 July 2001. The general exemptions cover certain categories of vertical agreements, agreements on research and development, agreements on transfer of technologies, specialisation agreements, agreements in the area of insurance, agreements concerning consultations on prices allocation of slots in passenger air transport, agreements on distribution and servicing of motor vehicles and agreements in the area of rail, road and inland waterway transport.

19. The adoption of general exemptions has led to increase in legal certainty of undertakings as well as to decrease of administrative burden of the Office, which is thus able to concentrate on more serious distortions of competition (hardcore cartels, abuse of dominant position).

Decree of the Office stipulating the details of requisites of the application for approval of the concentration of undertakings

20. Proceeding on approval of concentration pursuant to the Act is always initiated on the basis of an application. The Act defines general requisites of the application and explicitly refers to the decree of the Office, which should stipulate these requisites in detail. The Office therefore issued a Decree stipulating the details of the requisites of the application for approval of concentration of undertakings, which has come into force on 17 October 2001. The Decree is based on the principles of Commission Regulation No. 447/98 on the notifications, time limits and hearing provided for in Council Regulation No. 4064/89 on control of concentration between undertakings.

21. The issue of the Decree defined in a clear and transparent way what documents and other requisites shall be included in the application. Integral part of the Decree is the questionnaire, which contains questions concerning the detailed information on the intended concentration. When dealing with the information provided, all rights of the parties to the proceeding pursuant to the relevant regulations must be properly secured including the protection of business secrets.

Other relevant measures, including new guidelines

Leniency programme of the Office

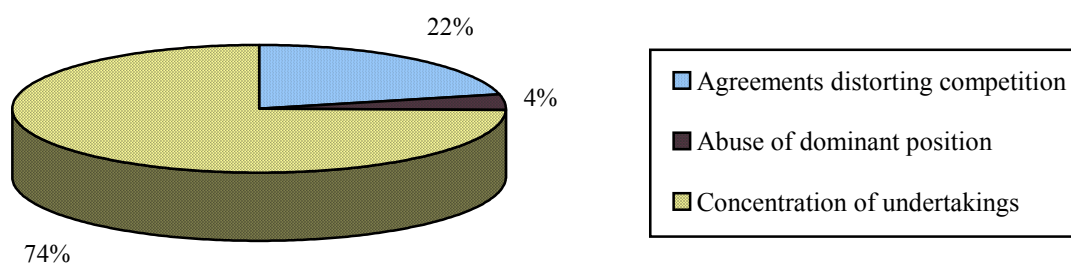
22. On 1 July 2001 the Office had adopted Declaration of non-imposition or reduction of fines in cartel cases (so called leniency programme). The declaration was inspired by the successful programme of the European Commission. The level of reduction of fine always depends on the time of providing the cooperation to the Office and importance of the information provided by the undertaking – the party to collusive cartel agreement. In March 2002 the Office has reviewed its leniency programme in order to follow the principles of the new leniency programme issued by the European Commission in February this year. The leniency programme of the Office is published on the Internet pages of the Office www.compet.cz.

Enforcement of competition law and policies

Statistics

23. In 2001 a total of 185 new cases were open by the Office consisting of 36 cases of agreements distorting competition, 9 cases of abuse of dominant position and 140 concentrations of undertakings. Total number of cases closed amounted to 158 consisting of 34 cases of agreements distorting competition, 6 cases of abuse of dominant position and 118 concentrations of undertakings. The total amount of fines imposed reached CZK 67,520,000 (USD 1,775,067). In 2001 a total of 11 appeals against the first stage decisions of the Office were made and 3 petitions against the final decisions of the Office were filed with the High Court.

Chart 1: Decisions of the Office in 2001



Agreements distorting competition

24. The priority of the Office in the area of agreements distorting competition remains the revelation of hardcore cartels. In 2001 a total number of 36 cases of agreements distorting competition were opened, consisting of 7 cases of horizontal agreements and 29 cases of vertical agreements. A total number of 34 cases of agreements distorting competition were closed by the Office, comprising 1 case of horizontal agreement and 33 cases of vertical agreements. In 2001 the effect of the adoption of eight decrees on approval of general exemptions from the prohibition of agreements distorting competition on the number of proceedings did not fully appear.

Description of significant cases

Agreement on fixing the sale prices of insemination doses of breeding bulls for customers

25. Eight undertakings operating in the area of breeding live stock breached the Act by concerted practice in setting the sale prices of insemination doses of breeding bulls for their customers – cattle breeders. The concerted practice was implemented by the fact that they had informed each other in advance on the level of their sale prices of insemination doses of breeding bulls as well as on their future changes. Furthermore, they had implemented and maintained joint intention of not to sell these doses for the prices lower than the price set by the owner of the breeding bull. Within the proceeding it was further proved that three of the mentioned undertakings had concluded also mutual written agreement on the intention not to sale the insemination doses of the breeding cattle for prices lower than the price set by the owner of the bull. Thus also a prohibited agreement on prices had been concluded. The above mentioned action of the

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parties to the proceeding caused a distortion of competition on the market of insemination doses of breeding cattle. The Office in its decision prohibited the above-described behaviour and simultaneously prohibited performance of the agreements on prices concluded by the three parties to the proceeding.

26. The Office imposed for the breach of the Act on eight parties to the proceeding fines amounting to CZK 2,570,000 in total. The parties to the agreement have appealed the decision of the Office. The decision on the appeal has not been reached yet.

Setting retail resale prices

27. The Office established that the company GILLETTE CZECH, s.r.o. had breached the law by obliging its customers - wholesale sellers in agreements to follow the recommended prices for retail customers according to its price lists. This practice was classified by the Office as a prohibited and void agreement leading to resale price maintenance that in years 1998 and 1999 resulted in distortion of competition on the market of products for wet shaving, on the market of products for mechanical tooth cleaning and on the market of cosmetic preparations before, for and after shave. The distortion of competition was strengthened by the fact that company GILLETTE CZECH,s.r.o. holds a dominant position on the relevant market and has available a very extensive distribution network. For the breach of the Act the Office imposed a fine amounting to CZK 800,000. The company GILLETTE CZECH,s.r.o. had appealed the decision of the Office. In the appeal proceeding both the infringement and the amount of the fine have been upheld.

Decision of association of undertakings on price fixing

28. Repeated decisions of specialised body of the Chamber of Veterinary Physicians from years 1998 and 1999 on minimum price in the amount of CZK 350 for assessment of X-ray shot of hip bones for the purpose of diagnosis of displays of dog hip joints were classified by the Office as a prohibited and void decision of association of undertakings on price fixing. The Office imposed on the Chamber of Veterinary Physicians a fine amounting to CZK 200,000. Simultaneously an obligation was imposed on the Chamber to abolish the decision on setting minimum price for the mentioned service and to inform all its members about the reasons for this abolishment. The Chamber fulfilled the imposed remedy measure and informed all its members by means of its professional magazine.

Agreement setting prices on the market of plaster board

29. The Office found during the investigation within the framework of a proceeding that a company RIGIPS restricted individual distributors of its products in their freedom to set prices for the final customers, forasmuch it bound the distributors in its agreements to follow the usual price level in given region. Company RIGIPS had reasoned this requirement by stating that it considered offering goods for prices significantly lower than prices of the given region a liquidation action and principally an action of unfair competition. The distributors faced contractual fine in case of breach of the mentioned prohibition. The Office assessed the action as a prohibited agreement on resale price maintenance, which may lead to distortion of competition on the market of plasterboard in the Czech Republic. The Office imposed for this action on company RIGIPS a fine amounting to CZK 500,000 and simultaneously ordered the company RIGIPS to modify the contracts with the distributors so that the anticompetitive provisions are abolished. The company RIGIPS appealed the decision and it has not been decided on the appeal yet.

Abuse of dominant position

30. In 2001 the Office conducted in the area of abuse of dominant position significant proceedings with impact on large number of consumers, in which fines belonging to the highest ones in the history of the Office were imposed. The total amount of the fines imposed was CZK 65,570,000.

Description of significant cases**Abuse of dominant position by two telecommunication operators**

31. The most important cases of abuse of dominant position, dealt with by the Office in 2001, were the abuses of dominant positions by two operators in the telecommunication sector, companies Eurotel Praha, spol. s.r.o. and Radiomobil a.s., active on the market of provision of radiotelephony services in public mobile telecommunication networks.

32. The Office in the proceedings decided that company Eurotel had abused its dominant position on the market of mobile radiotelephony services in public mobile GSM telecommunication networks and its monopoly position on the market of mobile radiotelephony services in public NMT telecommunication networks and that company Radiomobil abused its dominant position on the market of mobile radiotelephony services in public mobile GSM telecommunication networks by charging, without objectively justified reason, their customers for one minute of call to the network of the third competitor, newly entering company Český Mobil, a.s. an amount higher than that charged mutually for calls between their networks.

33. By the above described practice the parties to the proceeding committed an abuse of dominant position to the prejudice of the company Český Mobil, which did not acquired the number of new customers as it would have under the conditions of fair competition, because of higher prices charged by companies EuroTel Praha and Radiomobil to their customers for calls to the network of company Český Mobil. Because of these higher prices the volume of outgoing calls from the networks operated by the parties to the proceeding to the network of the company Český Mobil decreased in comparison with the volume of incoming calls, by which the company Český Mobil was disadvantaged in the competition. The practice of the parties to the proceeding also resulted in harm to the consumers - customers of the parties to the proceeding, who paid for calls in some tariffs higher price for comparable service when calling to the network of company Český Mobil than for calls to the network of the other party to the proceeding. The Office by its decisions prohibited the above mentioned companies to continue to abuse their dominant position and imposed a fine amounting to CZK 48 million on company Eurotel and a fine amounting to CZK 15 million on company Radiomobil. In setting the amount of the fine the Office in both cases took regard of the fact that both the parties remedied their practice partially after initiation of the proceeding. Both companies appealed the decision of the Office. The decision on the appeal has not been reached yet.

Concentration of undertakings

	Year								
	1993	1994	1995	1996	1997	1998	1999	2000	2001
Number of notifications of concentrations of undertakings	83	36	51	74	58	57	51	57	140

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34. In 2001 a total 140 cases of concentrations of undertakings were notified. The Office issued 118 decisions including 6 decisions approving the concentrations with conditions and 1 decision not approving the concentration. By the adoption of the new Act a prerequisite for a substantial shortening of the proceeding on approval of concentration of undertakings has been created. Under the new Act a total number of 83 decisions were issued, all of them in the phase I of the proceeding within 30 days from its initiation. Serious doubts as to possible substantial distortion of competition were raised by 4 notified concentrations, for which the Office continued into the phase II of the proceeding where a decision shall be issued within 5 months from the initiation of the proceeding on approval of concentration. The substantial increase in the number of notifications of concentrations of undertakings is connected with the entry into force of the new Act. This Act contains as a condition for the obligation to notify either reaching the threshold value of the world-wide net turnover (CZK 5 billion) or of the turnover achieved in the Czech Republic (CZK 550 million), while in the second case at least two of the undertakings concerned must achieve turnover of at least CZK 200 million.

35. The Office in 2001 also dealt with the cases of concentrations of undertakings, which may be classified as transnational (for example Nestlé/Ralston Purina, Iveco/Renault/Irisbus, Aceralia/Arbed/Usinor, Hoechst/BASF, Tetra Laval/Sidel, Amdocs/Nortel Network, Havas Advertising/Tempus Group and others).

Description of significant cases

Karlovarské minerální vody, a.s./Hanácká kyselka, s.r.o./Poděbradka, s.r.o.

36. The Office did not approve the above-mentioned concentration, which consisted of the planned acquirement by the company Karlovarské minerální vody, a.s. of major business shares in the other two mentioned companies. The decision has been upheld also in the appeal proceeding.

37. All of the three merging companies are the producers of source water. The Office found that on the market of packaged source mineral and table water, which was decisive for the assessment of concentration, the so far more than 50% market share of the company Karlovarské minerální vody, a.s. would be increased. The Office concluded that the competition on the relevant market would be seriously distorted by creation of a subject with significant market power based besides the above-mentioned high market share also on the following other factors: large gap between the market shares of other competitors and the market share of the merged entity, current low utilisation of the capacities of mineral water sources of the merging companies (when the average capacity of sources of a usual competitor would be around 40 times lower than the combined capacity of the merging companies), strong financial background of the foreign owner of the merged entity, ownership of a large number of well known brands, considerable portfolio power of the merged entity, possibility to utilise the economies of scale of sales in large quantities (giving advantage in negotiations on sales conditions with the entities belonging to the system of so called modern distribution – hypermarkets, large and small supermarkets, discount stores), minimum volumes of imports of packaged source mineral and table water from abroad and the maturity and stability of the market, on which there were no significant fluctuations in the last three years. The harm caused by this distortion of competition would not be outweighed by the advantages of the concentration identified by its parties. At the same time remedies offered by the parties to the concentration during the proceeding were assessed as absolutely insufficient to ensure effective competition following possible realisation of the concentration.

38. The Office in its decision paid high attention to the arguments for non-approval of the concentration which were among others supported by a number of decisions of the European Commission

and the decisions of member states of the European Union in similar cases (e.g. Michelin – Case 322/81 NV Nederlandse Bedrijfsvereniging voor de Metaalnijverheid – Industrie Michelin vs Commission, 1983, ECR 3461; Case 85/76 Hoffmann – La Roche, 1979 and others, decision of German Bundeskartellamt of 20 September in the case of concentration of undertakings Henkel KgaA/Luhns GmbH and others) as well as by the decision making practice of American competition law in the area of monopolisation of the market.

Bijou Terra, s.r.o./Železnobrodské sklo, a.s.

39. The Office approved with conditions the concentration of undertaking Bijou Terra s.r.o. and Železnobrodské sklo, a.s., which was realised within the privatisation process by transfer of 89,26% of shares of company Železnobrodské sklo on the basis of the contract concluded by the National Property Fund and Bijou Terra. The concentrating undertakings operate in the glass industry and in the production of bijouterie. The Office approved the above mentioned concentration with several conditions: divestiture of a part of an ownership interest of one of the participants in the company Sklářská surovina s.r.o., the production of which is essential for glass industry and production of bijouterie, elimination of personal interconnections between affected companies, preservation of supplies of particular product assortment for customers during ten years and regular sending of written evaluation of fulfilment of the imposed conditions to the Office.

PRAGUE WATER CGE-AW/Pražské vodovody a kanalizace a.s.

40. The concentration was implemented by acquirement of 66% of shares of company Pražské vodovody a kanalizace (PVK) from the National Property Fund within privatisation by the company PRAGUE WATER CGE-AW. Company PRAGUE WATER operates on the market of production and distribution of water, purification of wastewaters, operation water facilities and advisory activity in the area of environment. PVK operates the water mains and sewers on the territory of the capital Prague and operates on the market of production of drinkable and utility water. The Office approved the concentration of undertakings, nevertheless imposed on the company PRAGUE WATER a duty to fulfil obligation in order to secure the protection of competition with regard to possible impacts of concentration on the final consumer. Within five years from the date of legal force of the decision PRAGUE WATER must in co-operation with the capital Prague achieve reduction of inter-annual increase of price of drinkable water and sewage charge from 7.6% in year 2001 to the inflation growth, unless fulfilment of this obligation is prevented by extraordinary investment costs of the capital Prague.

Bivideon B.V./České Radiokomunikace, a.s.

41. The Office approved the concentration of Bivideon B.V and České Radiokomunikace, a.s. (ČRa) which was implemented on the basis of transfer of shares representing 51% of the basic assets of ČRa. In the given case it was a case of a conglomerate merger, by means of which strengthening or creation of dominant position would not occur on the defined relevant markets. The above-mentioned concentration took place on dynamically growing market of telecommunication services of multifunction network. The market is influenced by the backwardness of the past years and also by the increase of demand for given services. The concentration of undertakings will lead to faster transposition of results of research and development, which is very important for this sector with fast innovation cycle. This will mean improvement of supply and quality of services, which will bring positive impact on the final consumer of given services in the Czech Republic.

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Appeal and court proceedings

Appeal proceedings

- Total number of appeals lodged in 2001 11
- Total number of decision on appeals in 2001 12

42. The decision making practice of the Office shows positive trend of decreasing number of appeals as in year 1999 appeals were lodged against 19 decisions, in 2000 against 16 decisions and in the year 2001 the number decreased to 11 decisions. In most cases the second stage decision principally upheld the infringement of the Act by the parties to the proceeding in the form presented by the first stage decision.

Actions filed against the decisions of the Office

- Total number of actions filed in 2001 3
- Total number of judgements on the actions 5

43. In all five judgements in 2001 the High Court dismissed the actions against the decisions of the Office, thus upholding these decisions. These cases were among others the significant cases of abuse of dominance – cases of JMP (Jihomoravská Plynárenská – regional gas distributor) and ČEZ (Českomoravské Energetické Závody - major producer of electricity) and Český Telekom (dominant operator of fixed telephone network). In the case of JMP the court stated that the abuse of dominant position may constitute a practice by which the monopoly undertaking systematically breaches the act regulating the execution of the subject of its activity (in the given case it was the Energy Act and related implementing regulations), if it causes harm to consumers from which it requires reimbursement for certain performance related to the supply of its goods exceeding the framework of this particular act. In the case of ČEZ the High Court upheld the decision of the Office that unbalanced reduction of supplies contracted from individual long-term suppliers in extraordinary situation on the market constitutes abuse of dominant position in purchases of given goods. In the case of Český Telekom the High Court confirmed that this dominant operator of the fixed telephone network abused its position by refusing to conclude an agreement with its competitor concerning the conditions of interconnection of networks and distribution of fees in case of so called Internet calls, by which this competitor was economically harmed.

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

Competition advocacy in relation to the draft new legal regulations

44. The Office, pursuant to the rules obligatory for all the central authorities of the state administration, belongs to institutions, to which all legislative and other documents must be sent for comments. These rules were adopted by the government and must be followed by all the persons submitting legislative document designed for discussion by the government – i.e. bills, by-laws (pursuant to so called legislative rules of the government), but also the documents of non-legislative nature – e.g. privatisation intentions, long-term strategies, concepts and policies (pursuant to the procedural rules of the government).

45. Pursuant to these rules the Office may before elaboration of the final draft of such document apply all its comments, especially those aimed at promotion of pro-competitive principles in the mentioned documents.

Decree on the conditions of connection and transportation of electricity in electrification system

46. On the basis of a comment applied by the Office the text of the decree was modified in order to make it clear that new applicants for the transportation or distribution of electricity and for connection of a facility to the system take part on eligible costs of the operator in the same way as the applicants, who are already active on the market. Their position in reimbursement of a part of eligible costs is therefore the same and no discrimination occurs.

Draft measure for further development of competition on the telecommunication market in the Czech Republic

47. The Office is highly interested in strengthening the competition climate on the market of provision of telecommunication services by means of public fixed telephone network and it therefore requested to be able to take part on the preparation of the amendment to the Act on Telecommunication in force. This requirement has been fulfilled and the Office became a member of the working group established to elaborate the draft amendment to the Act on Telecommunications. Other requirement of the Office, aimed at covering by the amended Act on Telecommunications also services provided by the cable television operators, was also fulfilled. This industry is at present not subject to any regulation and therefore for example no conditions for the access to the network are set.

Draft Act on Packages

48. The Act on Consumer Protection stipulated that the amount of the deposit for individual types of returnable packages will be set by an agreement concluded on the vertical line producer – distributor – seller. The amount of deposit affects the final price for the product and as a consequence of this legal regulation the vertical agreements affecting final price of products in returnable packages, and therefore constituting agreements on components of prices distorting competition, would be legalised. The Office thus initiated a change of the Act on Consumer Protection via amendment incorporated into the Act on Packages. This change required that the amount of deposit would be set by a binding legal act – government regulation. This initiative of the Office led to establishment of this principle and the Act on Consumer Protection has been amended accordingly ensuring existence of an effective competition on the market to the benefit of final consumers.

Competition advocacy in the process of privatisation

49. On the basis of experience from other countries, which implemented vertical separation in the electricity sector, in particular the ownership separation of production and transmission, the Office promotes a similar concept also in the Czech Republic. The Office is convinced that it would lead to improvement of competition climate and to the reduction of prices for the consumer. These conclusions are confirmed also by the OECD Secretariat report on “Structural Separation in Regulated Industries” of 2001.

50. In the years 2001 the government proposed such a pattern of privatisation of electricity sector on the basis of which the vertical integration of the whole sector on the line production – transmission –

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distribution. The Office within its competition advocacy expressed its concerns about the quality of the competition climate after realisation of the plan. During the autumn 2001 several meetings were held of the working group established in relation to this problem, constituted of representatives of the Office and the institution submitting the plan, the Ministry of Industry and Trade. In all its positions from the second half of the years 2001 the Office pointed on the fact that the sale of the electricity system as a whole to one strategic investor in existence of further long-term restrictive conditions would not from the view of protection of competition lead to the preservation and development of effective competition. The vertical character of the proposed pattern of privatisation would lead to affection of all the markets in the area of electricity, i.e. production, transmission and distribution of electric power. Besides the dominant undertaking (company ČEZ) a number of smaller independent producers currently operates in the area of production of electricity securing certain part of supplies to the individual distribution companies. The mentioned pattern of privatisation would probably make this system impossible. Moreover, the independent producers of electricity would be economically dependent on this entity with regard to its significant economic and financial power. The future entity which would simultaneously control companies ČEZ (dominant producer of electricity), ČEPS (owner and operator of high-voltage transmission network) and most of the distribution companies, could reduce the prices of electricity, which are regulated as maximum prices, even below the level of economic profitability and compensate the resulting loss by higher prices for system services and the transmission of electricity charged to independent producers, i.e. in the areas where it would hold monopoly position. It would be very complicated in practice to verify the justifiability of cost items, on the basis of which the prices would be set by the newly established entity.

51. For these reasons the Office required that the privatisation in the area of electricity run separately in production and transmission of electricity. However no final decision was issued on the final pattern of privatisation in 2001.

The resources of the Office

Annual budget of the Office in 2001

Total expenditure in CZK: 57 422 000
Total expenditure in USD: 1 509 596

Number of employees of the Office in 2001

Lawyers	45
Economists	45
Other professionals	15
Support staff	15
All staff combined	120

Human resources of the Office in 2001 (according to classification)

Enforcement of the Act on the Protection of Competition and of the competition principles	50
Surveillance over the public procurement process	25
Control of state aid (state aid department was established with effect as of 1 December 1999)	16

Measures of the Office in the area of human resources

52. The Office in 2001 implemented a number of measures in the area of human resources. On one hand these measures were aimed at improvement of quality of the expert level of the employees (more strict examination of the expert level and knowledge in hiring new employees) and at increasing qualification of current employees (in the form of language courses, expert traineeships, internal and external training courses and seminars and also in co-operation with foreign competition authorities and the European Commission). On the other hand the Office strived for stabilisation of its employees, while the aim was to stabilise the employees who show very good working results (better rewarding, possibility of career promotion) and to hire good new employees.