

Unclassified

CCNM/GF/COMP/WD(2003)21



Organisation de Coopération et de Développement Economiques
Organisation for Economic Co-operation and Development

20-Jan-2003

English text only

**CENTRE FOR CO-OPERATION WITH NON-MEMBERS
DIRECTORATE FOR FINANCIAL, FISCAL AND ENTERPRISE AFFAIRS**

CCNM/GF/COMP/WD(2003)21
Unclassified

OECD Global Forum on Competition

**THE OBJECTIVES OF COMPETITION LAW AND POLICY
AND THE OPTIMAL DESIGN OF A COMPETITION AGENCY**

-- CZECH REPUBLIC --

This note is submitted by the Czech Republic under Session I of the Global Forum on Competition, to be held on 10-11 February 2003.

JT00137877

Document complet disponible sur OLIS dans son format d'origine
Complete document available on OLIS in its original format

English text only

CZECH REPUBLIC

OBJECTIVES OF COMPETITION LAW AND POLICY AND OPTIMAL DESIGN OF A COMPETITION AGENCY WITHIN THE OVERALL GOVERNMENT

1. Objectives of Competition Law

The Office for the Protection of Competition (hereinafter as "the Office") has reflected during its action significant changes, which were realizing in economy, and it has adapted and broadened protection of competition policy objectives. From 1993 till 1995 when broad privatization and restructuring took place, active participation of the Office in this process was ensured, and it contributed to the establishment of conditions for the development in particular areas, during allocation of resources and strengthening of competitiveness of undertakings. The privatization process was perceived as a unique opportunity when the Office may influence creation and development of competitive environment via removal, or at least weakening, of previous monopoly or dominant positions of undertakings, or by acting against the establishment of new monopolies. The final objective of the Office in the privatization process is effectiveness of market structure.

Nowadays, the Office is intensively focusing on new competition law trends and priorities: e.g. usage of economical approach when assessing agreements distorting competition, or stricter sanctioning of hard-core cartels. Action against serious competition law distortions and establishment of effective competition is enabled by removal of barriers to entry to the market, i.e. increasing the number of undertakings on the market, which leads to the creation of competitive pressures and strengthening of area innovation dynamics, including the establishment of high quality jobs. The abovementioned facts enable to launch new products with higher quality and lower price in favor of final consumer.

The new Act on the Protection of Competition No. 143/2001 Coll. reflects contemporary protection of competition policy objectives, such as support of small and medium size enterprises by implementing decrees, which stipulates block exemptions for certain categories of agreements distorting competition. Therefore, legal certainty of enterprises is strengthened, and costs rising from regulation according to the competition law are being decreased. At the same time, the Office is able to concentrate on serious distortions of competition.

2. Optimal Design of the Competition Agency in the System of State Administration

2.1 *Position of the Office in General*

The Office is a central body of state administration in the area of promotion and protection of competition that is entirely independent in its decision-making activities; no other body of state administration including the Government may interfere in the decision-making of the Office and any political control over its decisions is excluded. The Office is bound only by Government resolutions setting legislative tasks.

A specific position of the Office within the framework of state administration has been recently taken into account also within the process of preparation of state institutions for implementation of systemisation and organisational arrangement of these institutions in line with the Act No. 218/2002 Coll.,

on Service of State Employees in Administrative Bodies and on Remuneration of Those Employees and Other Employees of Administrative Bodies (Civil Service Act). The specific position of the Office has led also to the fact that after the entry into force of the Civil Service Act, with the aim to ensure independence and impartiality of the Office, there will not be established a position of the state secretary, as is the case at the bodies of state administration with the status of a ministry.

The seat of the Office is not Prague as centre of most bodies of state administration, but Brno – the centre of the highest judicial bodies. In Brno there are seated the Constitutional Court, the Supreme Court, the Supreme Administrative Court, the Supreme Public Prosecution Office and the Ombudsman.

The Office is headed by the Chairman appointed by the President of the Czech Republic on the proposal of the Government. The Office shall create conditions for the promotion and protection of competition, execute surveillance over public procurement and control over provision of state aid, and perform other tasks stipulated by special acts.

The Office is independent in decision-making activities. When conducting proceedings it is bound solely by generally binding legal regulations, case-law of the High Court, results of the collection of evidence and the principle of administrative discretion. The decisions of the Office may be reviewed by the court, whereas as of 1 January 2003 a reform of the administrative judiciary has been implemented and the actions against the decisions of the Office are now reviewed by the regional court and, in the last instance, by the Supreme Administrative Court.

2.2 *Protection of Competition*

As the protection of competition is ensured by the Office at the central level for the whole territory of the Czech Republic, there are no problems connected with parallel application of competition law at the central and lower levels. On the other hand, the legal regulation of the protection of competition and decision-making practice of the Office is significantly influenced by the EC legislation enforced by the Commission and the Community courts.

In the area of prohibited agreements distorting competition the Office is empowered:

- to declare existence of a prohibited agreement;
- to prohibit execution of a prohibited agreement; and
- to impose obligation to remedy and set appropriate deadlines for its fulfilment.

The Office is further empowered to decide on granting of exemptions from the prohibition of agreements, to set conditions for granting such exemptions and to monitor their fulfilment. In case these conditions are not fulfilled or in case the reasons for granting the exemption have lapsed, the Office is empowered to revoke the exemption granted.

In the area of abuse of monopoly or dominant position the Office is empowered:

- to declare abuse;
- to prohibit abuse; and
- to impose obligation to remedy and set appropriate deadlines for its fulfilment.

In the area of concentrations of undertakings, i.e. mergers, the Office is empowered to approve or disapprove mergers and impose conditions for approval of mergers.

The repressive element of the powers of the Office is represented by possibility to impose on undertakings that infringed the obligations provided for by the Act on the Protection of Competition a pecuniary fine. This fine may amount, in case of infringement of the substantive provisions, up to 10% of the net annual turnover of the undertaking.

2.2.1 Proceedings before the Office

The proceedings before the Office are governed by the Act No. 71/1967 Coll., on Administrative Proceedings (the Administrative Proceedings Code), the Czech generally binding legal regulation according to which the administrative proceedings before all administrative bodies are conducted. The proceeding may be initiated on the proposal or on own initiative of the Office. The general rules for administrative proceedings stipulated by the Administrative Proceedings Code are for the purpose of the proceedings before the Office complemented by special provisions of the Act on the Protection of Competition.

The first-instance decision of the Office can be appealed to the Chairman of the Office by all parties to the proceedings within 15 days from its delivery. If the appeal is not lodged, the decision comes into effect at the end of the 15-days deadline from its delivery.

The lodged appeal is decided by the Chairman of the Office on the basis of proposal of a special advisory commission. In line with the relevant legislation, there are nominated into this commission also persons belonging to renowned competition law experts both in the theoretical and practical areas who are not employees of the Office.

On the basis of results of the appellate proceeding, the Chairman of the Office may change or revoke the appealed decision or refuse the appeal and confirm the decision.

The Chairman of the Office reviews the decision as a whole, both as regards matters of fact and matters of law.

Within the framework of the judicial review of the administrative decisions, the parties to the proceeding may bring an action to the court against the final decision of the Chairman of the Office.

According to the new legal regulation in force as of 1 January 2003, the regional courts and the newly created Supreme Administrative Court seated in Brno decide in administrative judiciary matters. The most important change brought about by the new legislation is the capacity of the court to decide in so-called full jurisdiction, i.e. to establish newly the facts differently from the way they were established by the administrative body. The parties to the proceeding may, therefore, bring an action against the decision on the appeal issued by the Chairman of the Office to the regional court, whereas in the last instance the Supreme Administrative Court decides.

2.2.2 Legislative Powers of the Office

The Office has legislative powers provided for by the Act on the Protection of Competition that led to the issuance of 8 block exemptions from the prohibition of agreements distorting competition in the form of decree of the Office, which have come into force together with the entry into force of the new Act

on the Protection of Competition on 1 July 2001. Furthermore, decree of the Office No. 368/2001 Coll., Stipulating Details Relating to the Notification of a Concentration of Undertakings has been issued.

Within the framework of the block exemption, an agreement concluded in line with the rules set out in the relevant block exemption is considered automatically exempted from the general prohibition of agreements distorting competition and it is then not necessary to apply to the Office for individual exemption.

2.3. State Aid

On the basis of the Act No. 59/2000 Coll., on State Aid the Office performs also control over provision of state aid in the Czech Republic. When assessing the compatibility of state aid and state aid schemes with the Europe Agreement, the Office is bound by the Implementing Rules that have been published by the notice of the Ministry of Foreign Affairs No. 225/1998 Coll.

In line with the Implementing Rules, the assessment of compatibility is made on the basis of the criteria arising from the application of the rules of Article 87 (ex Article 92) of the Treaty establishing the European Community, including the present and future secondary legislation, frameworks, guidelines and other relevant administrative acts in force in the Community, as well as the case-law of the Court of First Instance and the Court of Justice of the European Communities and the special guidance to be developed pursuant to Article 4(3) of the Implementing Rules. The Act on State Aid, therefore, does not contain detailed provisions on substantive issues concerning state aid.

The process of assessment of state aid is based on the principle of *ex lege* prohibition with possibility to grant exemption from the prohibition of provision of state aid or on the other hand to withdraw a prohibited state aid already granted. This requires systematic monitoring of the provision of state aid. Therefore, the Office has a power to assess the state aid before it is actually provided, a power to prohibit the provision of state aid not compatible with the EC principles and as well a power to collect data from all entities granting state aid. Furthermore, the Office has been given a power to oblige the beneficiary of the state aid to return the state aid granted in breach of the Act on State Aid back to the provider.

2.4 Public Procurement

The Office executes surveillance of compliance with the Act No. 199/1994 Coll., on Public Procurement, as amended (the Act on Public Procurement), with regard to contracts awarded by entities listed in the Act on Public Procurement (in particular state institutions, regional and municipal bodies and other persons defined by the Act on Public Procurement), for which the contracting procedure set out by the Act on Public Procurement must be followed.

The surveillance by the Office of compliance with the Act on Public Procurement with respect to the award of public contract includes in particular:

- review of acts taken by a contracting authority;
- review of procedures employed by contracting authorities when awarding public contracts pursuant to the Act on Public Procurement;
- attendance of representatives of the Office at the opening of envelopes containing bids;

- provision of statistical data pertaining to the award of public procurement and their publication;
- imposition of sanctions under the relevant provisions of the Act on Public Procurement.

The procedure employed in the performance of the review and the relations between the Office and the contracting authorities being reviewed are governed by the Act No. 552/1991 Coll., on State Control, as amended, with the exemption of provisions on administrative fines.