This annual report is submitted by the Delegation of the Czech Republic to the Competition Committee FOR INFORMATION at its forthcoming meeting to be held on 6-7 June 2007.
Executive Summary

1. Last year the Office for the Protection of Competition of the Czech Republic continued to implement its new approach, preferring prevention to fines, and putting the accent on competition advocacy. However, this does not mean that the Office will stop imposing harsh sanctions against notorious offenders. Whenever the competitors break the respective laws wilfully, sometimes seriously and blatantly, they must be prepared to bear severe and uncompromising sanctions. Many companies, which had breached the Act on Protection of Competition and then had been sanctioned by the Office, demand a reversal of the Office’s decision by means of legal actions. It might not be off the point to mention that in the last year the Office won the majority of these legal actions.

2. In 2006 the Office for the Protection of Competition commemorated 15 years since the competition law was applied in the Czech Republic and the 15th anniversary of the Office. On this occasion a an international conference was held in late November 2006 called “Competition and Competitiveness”, which was attended by top experts in competition from all over the world. It was the first event of its kind to be held in the Czech Republic and was very positively received by the professional public.

3. The year 2006 was characterised also by the further development of the Office’s international activities and strengthened involvement in the operation of world and European structures for the protection of competition. The Office established a new system of how to respond to the activities of international organisations and how to present its own activities outwards. On this basis the transfer of hot world trends and information in the area of the protection of competition into the Office’s practice was speeded up as well as the information transfer from the Office outwards. The Office had a better chance to compare its tools and methods with international partners.

1. Proposed or adopted changes to competition laws and policies

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

4. In 2006 there was no change in Act No. 143/2001 Coll., on the Protection of Competition (hereinafter referred to as the “Act”). Nonetheless, one legislative proposal was discussed and finally not approved and one legislative proposal, which is supposed to come in force in 2007, was approved by the Government. Apart from this, the Decree of the Office for the Protection of Competition No. 368/2001 Coll. (hereinafter referred to as the “Decree”), setting the notification form for mergers, was amended.

1.1.1 The Economic Dependence Proposal

5. The Chamber of Deputies proposed on its own motion an amendment of the Act, which should have adopted the legal regulation of economic dependence and its abuse.

6. The draft Act was about to enable the Office to sanction the abuse of economic dependence between competitors, which so far has been able to be solved only on the civil law level within the framework of protection against unfair competition. It should have concerned behaviour of such entities that are not dominant within the meaning of the Act, which, however, possess substantial economic power enabling them to enforce unilaterally profitable trade conditions. Such conduct may lead to the distortion of competition; however, so far it lies outside the scope of the Act.

7. According to the above mentioned bill, economic dependence should have been deemed to mean such relationship of competitors, where the bargaining position of one of the competitors enables it to enter contractual relations with an economically dependent competitor under substantially more profitable conditions than it would have been able to without such bargaining position. An economically dependent
competitor should have been deemed to mean a competitor who is forced to accept unprofitable trade conditions because it has no possibility to choose another comparable way of purchase or sale of goods with similar extent of fulfilment under bilaterally balanced trade conditions.

8. The Office was supposed to assess the economic dependence of competitors mainly according to the market share of the competitor in the relevant market. This should have been done up to the extent of required fulfilment of such trade conditions that are in obvious disproportion to the consideration, to the possibility of choice of a different comparable way of sales of goods with the competitor in the position of supplier, to the extent of general knowledge of special labelling of goods of the competitor in the position of supplier, to the extent of the sale of goods labelled with an attribute typical of the competitor in the position of customer, and to the extent of a potential threat to competition as a consequence of economic and financial power of the competitor in the position of customer.

9. This proposed legislation was however during the later stages of the legislative process amended in such a way that was unacceptable from the Office’s point of view, especially for its too broad an interpretation of what was to be taken of abuse of economic dependence. For example, an abuse should have been constituted by mere acceptance of an offer, proposed by an economic dependant undertaking, under the terms of which the price offered was below the costs of such an undertaking.

10. The entire Bill was thereafter vetoed by the President.

1.1.2 The Electronic Communications Amendment

11. In the past two years the force of the Competition Law in the area of telecommunications was restricted under the rule of the Electronic Communications Act 127/2005 Coll. This restriction may have had an impact on the ability of the Office to apply the Community Competition Law; therefore the Commission of the European Communities instituted an infringement procedure with the Czech Republic on infringement of the Treaty establishing the EU. Although the Office repeatedly filed motions to abrogate the concrete regulations, it did not win support of the other sectors until on the basis of the Commission’s activities. The Office elaborated the amendment, which excluded the regulation limiting the extent of the application of the competition law, and in the autumn of 2006 it was submitted to the government. The Law entered into force on 1 May 2007.

1.1.3 The Decree

12. Last year the Decree on Elements of the Motion of Approval of mergers of undertakings was amended in association with the demands of the European Commission and primarily concerned the turnover criteria.

13. When reviewing the mergers the competencies are divided among the member countries and the Commission of the European Communities (hereafter only “Commission”). Mergers, which do not come under the Merger Regulation, fall under the competence of the member countries. On the contrary, mergers, which have a so-called Community dimension, institute exclusive competence of the Commission by course of article 1 of the Merger Regulation.

14. There is indeed an exception to these rules in the form of the so-called “two-thirds rule”. A Community dimension merger is not a merger of undertakings, unless each of the undertakings concerned achieves more than two-thirds of its aggregate Community-wide turnover within one and the same member state. In such a case the respective member country reviews the merger.

15. Member countries, on a regular basis, provide the Commission with statistical data and information necessary for its activities. Basing on statistical data the Commission shall evaluate the
functioning of the system and by 1 July 2009 submit a report to the Council on the application of thresholds, turnover criteria and the above said “two-thirds rule” and may submit a proposal to the Council to revise the thresholds and other criteria in order to assess the Community dimension of the merger.

16. At the present time the Commission is evaluating the practical functioning of this so-called two-thirds rule. In the Report on the functioning of the “two-thirds rule” in 2001 to 2005 it explicitly states that it will require data from the member countries contained in the supplement to the report and that it is the duty of the member countries to acquire such data. These data include identification of the mergers, which do not have a Community dimension, for the precise reason that the so-called two-thirds rule was applied.

17. Information required from the merging undertakings on the basis of a Questionnaire does not allow answering the requirements of the Commission. The amendment to the Decree ensures that the Czech Republic as a member country of the Community can carry out its duty to provide the Commission with the required information. This Decree amendment thus enables to find out, which mergers would have a Community dimension had there not been the so-called two-third rule and other associated data required by the Commission.

2. Enforcement of the Act on the Protection of Competition

2.1 Overall statistics on the enforcement activities of the Office

18. In 2006 a total of 68 new cases were opened by the Office, consisting of 4 cases of agreements distorting competition, 3 cases of abuse of the dominant position and 61 concentrations of undertakings. Total number of cases closed by a decision on the merits amounted to 78, consisting of 5 cases of agreements distorting competition, 6 cases of abuse of dominant position and 67 concentrations of undertakings. The total amount of fines imposed by a decision of the Office reached approximately CZK 575 million (approximately EUR 20.5 mil.).

2.2 Agreements distorting competition

2.2.1 Statistics

19. In 2006 a total number of 5 new cases of agreements distorting competition were opened, consisting of 4 cases of horizontal agreements and 1 case of vertical agreements. A total number of 6 cases of agreements distorting competition were closed by a decision of the Office, comprising 4 cases of horizontal agreements and 2 cases of vertical agreements. Out of these, 4 cases of horizontal agreements and 1 case of vertical agreements were closed by decisions prohibiting the agreements and imposing fines and 1 case of vertical agreements was concluded by a decision rejecting the complaint. In the area of agreements distorting competition, fines have been imposed in the total amount of CZK 168 million (approximately EUR 6 mil.). Leniency applications received 1.

2.2.2 Description of significant cases

Hard-core cartel of the main producers of PISU

20. The Office instituted administrative proceedings in August 2006. The reason was the previous submission of ABB, admitting participation in the cartel and providing relevant evidence. Here the Office refrained from imposing a fine within the so-called leniency programme.

21. The principle of the cartel is based on what is called bid rigging, when the participants to the proceedings – the largest world producers of the gas-insulated switching mechanism (PISU) – agreed between themselves on what prices they would quote for PISU to obtain the order of a pre-determined
firms. The participating parties also agreed on other prearranged and detailed mechanisms of cooperation. The scope of the cartel agreement was global (apart from the USA and Canada) and was concluded in Vienna in 1988. The members met every two weeks in various airport centres and hotels; once a year a general meeting was held to confirm continuation of the cartel and to specify the general future strategy. In the course of time the cartel members began to communicate by e-mail (information was encoded) and mobile phones (SMS messages). In terms of sophistication, extent and duration the cartel agreement had no analogy in the decision-making practice of the Office.

22. The PISU systems are the principle component of the substation and are used to control the power flow in the electric grid. The PISU unit is filled with gas, which allows a high level of insulation. It is a specialised mechanism, which is used particularly in large cities, but the main customers are state-owned firms. The overall amount of implemented PISU orders in the Czech Republic in 2001-2004 was estimated at CZK 700 million (i.e. EUR 25 million) (the above aggregate of anti-competitive behaviour of participants in the proceedings completely debarred competition on the market in the Czech Republic in order to maintain the market share and a certain price level of PISU in the period of 1991-2004).

23. Sanctions were imposed on a total of 16 companies, which participated in the cartel. The highest fine was imposed on Siemens AG (CZK 126.588 million, i.e. EUR 4.365 million). Within its statutory powers the Office fined only the prohibited behaviour for the period from 1 July 2001 to March 2004. The sanctions totalled almost 1 billion CZK (CZK 979.221 million, i.e. EUR 33 776 million). When determining the optimal level of the pecuniary fine imposed on individual firms aggravating circumstances, such as the initiating role or deliberate breach of law, were taken into account.

24. The Office has not yet come into force. Apart from the Office this case was also handled by other anti-monopoly institutions, for instance the Hungarian Competition Office and the European Commission.

Agreement among pharmaceuticals distributors

25. The Office issued a first-instance decision, by which it imposed fines of a total amount of CZK 113.064 million (i.e. EUR 4,35 million) on four of the largest distributors of pharmaceuticals in the Czech Republic, i.e. Alliance UniChem CZ (CZK 23.859 million, i.e. EUR 852,000), GEHE Pharma Praha (CZK 16.831 million, i.e. EUR 602,000), PHAR MOS (CZK 18.638 million, i.e. EUR 665,000) and PHOENIX Lékárenský velkoobchod (CZK 53.736 million, i.e. EUR 1.9 million).

26. These companies breached the Competition Law because in the period from 30 January 2006 to 14 February 2006 they jointly co-ordinated a plan whereby they intended to cut the supplies of the complete assortment of pharmaceuticals to three important teaching hospitals beginning 15 February 2006. From this date they co-ordinately implemented this intention, and in the following period supplied these hospitals with only vital pharmaceuticals at considerably reduced maturity dates.

27. At a press conference on 14 February 2006 the distributors jointly announced the cut of supplies of pharmaceuticals to these three hospitals and gradual reduction of the maturity date beginning 15 February 2006. They used these anti-competitive steps to achieve a joint objective, i.e. to liquidate the debts of these three hospitals.

28. In the course of these administrative proceedings the Office gathered almost twenty pieces of evidence, which proved that the procedure was coordinated. With the exception of Pharmos (from 21 to 28 February 2006 they temporarily resumed deliveries) none of the participants of the procedure applied their own independent market behaviour under truly competitive terms when delivering the
pharmaceuticals. This is a case of procedure by mutual agreement when the undertakings substituted the risk of mutual competition by intentional practical cooperation.

29. The Office fixed the level of the pecuniary fine on the basis of the annual turnover of the respective firms on the pharmaceutical market. Individual sanctions were modified according to the extenuating or aggravating circumstances. Taken into account was also the fact that the participants of the procedure did not terminate their participation in the coordinated behaviour on the basis of their own will but only after they achieved their objective, i.e. payment of the debts. The Office stated that the problem was not that the distributors wanted their debts to be settled but that to achieve this they may not coordinate their procedure when supplying the pharmaceuticals or concert the terms of trade i.e. to carry out cartel agreements and exclude competition.

30. The decision of the Office has not yet come into force.

2.3 Abuse of dominant position

2.3.1 Statistics

31. In 2004 the Office opened 3 new cases concerning abuse of the dominant position. The total number of 6 abuse of dominance cases were closed by a decision of the Office, out of which 5 were decisions prohibiting the abuse and imposing fines and 1 was a negative clearance decision. The total amount of fines imposed for abuse of dominant position as amounted to CZK 407 million (approximately EUR 14.5 mil.).

2.3.2 Description of significant cases

Abuse of dominant position in the gas industry

32. The Office has investigated the gas market since the late summer of 2005. In this period it obtained a number of incentives from the so-called eligible customers (at the time when the proceedings were instituted their number was 35 and they were so called „big customers“) who as of 1 January 2005, according to the law, had the possibility to select their own supplier of natural gas. The dominant natural gas supplier in the Czech Republic, RWE Transgas, has entered into contracts on supplying natural gas with eight regional distribution companies. At the time of preparations for opening the market RWE Transgas on its own initiative submitted a new portfolio of contracts, which responded to changes in legislation in association with the launching of the category of eligible customers for whom the price for the commodity and price for storage was not subjected to price regulations. RWE Transgas did not enable the unconsolidated regional distribution companies to enter into a contract concerning the purchase and sale of natural gas under conditions (namely specifying prices for the commodity and terms of trade), which would have in total enabled the operators of the distribution systems not belonging to the RWE holding compete effectively with operators of regional distribution systems that do belong to the RWE holding group. The Office termed the behaviour of RWE Transgas as abuse of dominant position on the market of natural gas supplies intended for the category of authorised customers to the detriment of other competitors.

33. Another case of RWE Transgas, which according to the Office was inconsistent with the rules of competition, was the refusal to supply the category of authorised customers with natural gas to whatever balance zone of the individual operators of regional distribution systems. This was an obstacle for the development of competition. In this way instead of gradually opening the market, prepared by legislation on a long-term basis, RWE Transgas created conditions making it very difficult to offer complex gas supplies to authorised customers by regional distribution systems other than those, in whose
balance zone the point of supply of the authorised customer is located. The Office considers such
behaviour as one of the most serious violations of competition rules as RWE Transgas abused its
dominant position on the market of natural gas intended for the category of authorised customers to the
detriment of undertakings. No other regional distribution system has comparable conditions for submitting
a competition offer to an authorised customer whose point of supply lies in its balance zone). RWE
Transgas also abused its position to the detriment of consumers. The choice for authorised customers of
natural gas supplier ensuring complex gas supplies was limited.

34. In the course of administrative procedure the Office conveyed its reservations to RWE and
pointed out the possibility to adopt commitments eliminating the anti-competitive situation on the market
and in this case also the chance of avoiding sanctions. However RWE did not respond sufficiently to this
proposal and on the other hand filed a complaint to the Regional Court in Brno against illegal procedure of
the Office (the court refused the complaint) and also a competence action to the Supreme Administrative
Court. The Office imposed the highest ever fine on one company within one administrative procedure, i.e.
a sanction of 370 million CZK (i.e. EUR 13,2 million) on RWE Transgas for abuse of the dominant
position on the gas market. The behaviour of the dominant company in this case was very serious because
it constitutes a very important barrier for gas traders in terms of the development of their business in the
liberalising sector. According to the Office RWE Trangas acted with the intent to strengthen as much as
possible the position of the regional distributors in the balance zones at variance with the intended and
ongoing liberalisation in the gas industry. The authorised customers were also affected and due to the
behaviour of RWE Transgas their choice of supplier was almost zero because the created conditions
virtually ruled out the possibility of making fully competitive offers.

35. When specifying the level of the fine for RWE Transgas the Office took into account the fact that
RWE did not terminate negotiations, for which the Office had reproved it, was added to its debit; they
refused the necessary changes and insisted on conditions, which they themselves had unilaterally proposed.
On the other hand as extenuating circumstances it should be stated that so far the Office has not conducted
administrative procedure with this company for any other breach of competitive rules.

36. Participants in the proceedings filed an appeal against the first instance decision. The second-
instance decision confirmed the principal items of the Office’s first instance decision of August 2006. In
comparison with the first-instance decision the final amount of the sanction was reduced by CZK 130
million (i.e. EUR 4 643 million). Taken into account was particularly the fact that after part of the
company’s management was changed the participant in the proceedings began to cooperate with the Office
virtually immediately after the first-instance sanction was imposed. After discussions with the Office and
with the Energy Regulatory Office the company submitted and later concluded agreements with its
customers, which are now in accord with the rules of competition. The anti-competitive situation, because
of which the administrative proceedings had been instituted and because of which this exceptionally high
sanction had been imposed, has been eliminated and the gas market may open.

Abuse of the dominant position on the bus service market

37. In the period from 24 January 2005 and 15 May 2005 ČSAD Liberec refused to negotiate the use
of the bus station in Liberec, which they operate, with the STUDENT AGENCY, and prevented this
agency to use the bus station from 1 February 2005 to 6 June 2005. Against the rules of competition the
STUDENT AGENCY was prevented from regular operation of the national public passenger transport on
the Prague – Liberec return line.

38. ČSAD Liberec prevented its competitor from use of the bus station services in Liberec. Although
the STUDENT AGENCY buses could stop in the immediate neighbourhood of the bus station and on the
basis of a resolution of the Regional Court in Ústí nad Labem for a given period they were allowed to enter
the station, this had no principal effect on the damage the firm suffered. For instance, STUDENT AGENCY was not allowed to use the information system of the bus station, which was a great handicap compared to the other transporters. If passengers requested information about the Prague – Liberec line at the Liberec bus station they were offered information only about transporters filed in the system, without being informed that also other transporters operate the line.

39. ČSAD Liberec used its monopolistic position on one market (operating the bus station) to put its competitor at a disadvantage on the market of domestic bus transport where its position was not so strong. This was done in a situation when the entry of a new undertaking presented the danger of intensifying the competition environment. This behaviour damaged the STUDENT AGENCY, which operated the bus line from Liberec to Prague from 2 February 2005 to 18 February 2005 for a symbolic price of CZK 1.– with the aim to compensate the discomfort of the passengers caused by the non-existence of a specified place of departure and insufficient information about the departure times. Hence for a significant period of time the operation of STUDENT AGENCY on the market was not profitable.

40. The substance of the decision was confirmed at the second instance in May 2006 and the fine was cut down by half a million CZK. Ahead of the second instance decision ČSAD Liberec voluntarily removed the anti-competitive situation, which it had caused, determined equal and objective conditions for the use of the Liberec bus station and under these conditions permitted the transporters use of the bus station.

2.4 Concentration of undertakings

2.4.1 Statistics

41. In 2006 a total 61 cases of concentrations of undertakings were notified. The Office issued in total 67 decisions on the merits including decisions approving the concentration without any conditions, 3 decision approving the concentrations with conditions or obligations attached. Out of the 67 decisions on the merits 62 decisions have been issued within one month of notification in the phase I of the proceedings and 5 decisions have been issued in the phase II of the proceedings within 5 months of notification. These 5 phase II decisions included 3 decisions approving the concentration with conditions or obligations and 2 decisions approving the concentration without any conditions. In the phase I of the proceedings, no decision approving the concentration with conditions or obligations was issued.

2.4.2 Description of significant cases

The Karlovarské minerální vody/Poděbradka merger

42. On the basis of its decision of 29 May 2006 the Office approved the merger of Karlovarské minerální vody (KMV) with Poděbradka subject to commitments.

43. The merger was approved on condition of the following commitments:

- the current trademarks of the Poděbradka products shall be preserved for a period of five months from the decision coming into force,
- for five years, also after implementation of the merger, Poděbradka shall negotiate all business conditions and terms of delivery with the customers (individual distribution chains) ensuring modern distribution separately from Karlovarské minerální vody,
- for a period of five years the prices of beverages produced by the merging undertakings shall be separate, i.e. the share of low-price beverages shall not be reduced,
• during the term of the commitments annual reports shall be submitted to the Office on fulfilment of the commitments.

44. In the course of the proceedings the Office reached the conclusion that the imposed commitments were sufficient to dispel any concerns that competition might be distorted. The Office had it that even though in this case an important undertaking was won by the leader, the situation on the relevant market was different from the situation of 2001 or 2002 when the merger was not approved.

45. On the basis of analyses the Office stated that the post-merger market share on the market of packaged natural water would be less than 50%. Compared to 2001, the import of natural water to the Czech Republic increased (e.g. product of the Kofola – Rajec company), as did the share of beverages sold under the mark of the store chains. We also saw a shift in terms of barriers to entry onto the market; on the one hand due to the accession of the Czech Republic to EU, and on the other hand in association with cost reductions of production technologies proved by the successful entry of some subjects onto the market. As a consequence of the above said factors, or their changes, coupled with the growth in consumption of soft drinks, the relevant markets cannot be considered stable or actually closed.

46. With regard to the above said the Office considers the commitments of KMV, accepted in favour of maintaining effective competition, in a situation when the market share of this company is declining and no substantial barriers prevent the entry or development of competitive subjects, as sufficient to remove competition concerns. If these limitations are accomplished, conditions shall be rendered to maintain and further develop the competitive environment on the relevant markets (market of packaged natural water and market of packaged flavoured soft drinks based on drinking water).

The Verlagsgruppe Passau/NTISK (Praha)/NOVOTISK Olomouc merger

47. The Verlagsgruppe Passau (resp. HKM Beteiligungs GmbH) group is on the Czech market namely through the VLTAVA-LABE-PRESS (VLP) Company and present on the basis of the Office’s decision may gain control over the NTISK (Prague) and NOVOTISK Olomouc Printing Offices (e.g. the Hospodářské noviny business daily, the AHA tabloid and the Haló noviny daily are printed there). The selling party in this transaction is the MEDIACORE Company.

48. The printing houses TYPOS, TYPOS-Digital Print (both based in Plzeň), SEVEROTISK (Ústí nad Labem), VIVAS prepress (Prague) and Svoboda Press (Prague – this acquisition was approved by the Office several weeks ago) belong to the Verlagsgruppe Passau group. Due to the fact that the structure of the market of printing printed material of a newspaper character is changing considerably as a consequence of the merger and that we see a considerable strengthening of the position of the Verlagsgruppe Passau group, the Office considered the merger within a 5-month term.

49. With regard to the above said and to the imminent possibility that the prices of services and products of Verlagsgruppe Passau would be influenced to the detriment of other customers, the merger was not approved until after submission of the commitments imposed in favour of maintaining and developing effective competition.

50. The Verlagsgruppe Passau group is obliged to ensure such investments in the printing houses falling under NOVOTISK and NTISK as to increase the maximal hour capacity of newspaper printing. It must also ensure that the current conditions and extent of deliveries to the present customers of NOVOTISK and NTISK shall be maintained. These commitments shall ensure the necessary capacity for newspaper production also for competitors of the participant in the proceedings. The period of maintaining the current extent of services should be sufficient for customers to adapt to the changed structure of the market or for any search for other options.
The UPC and Karneval Media merger

51. On the basis of its decision of 22 December 2006 the Office approved the merger of numbers one and two on the market of cable broadcasting in the Czech Republic. The UPC Company may control both its competitor Karneval Media and the Forcable Company, which operates the TV programme Karneval TV. The decision is final and conclusive.

52. Since the merger considerably strengthens the position of the market leader, it was approved only on the basis of five commitments, which UPC submitted to the Office. The proposed commitments respond to identified concerns that competition might be distorted, namely as a consequence of the strengthening of the market power and with it associated bargaining position of the firm towards the providers of the programmes, but also towards the end users.

53. The meaning of the first commitment is to ensure access of the other operators of TV networks to the programmes, to which UPC (or its owner the Liberty Global group) possesses or will acquire exclusive rights, under non-discriminating and commercially reasonable conditions. With the second commitment the participant of the proceeding met the demands of the Office, which was concerned that implementation of the merger and investments into the unification of the cable distribution system would require increased prices for services. Until the end of 2007 UPC may not increase prices for analogue transmission in its networks (including Karneval). In the following period (until the end of 2010) the prices may be increased only according to the rate of inflation, or be projected in increased prices for electric energy, copyrights etc.

54. The next commitment was to maintain the current offer of programmes for territories where the cable networks of UPC and Karneval overlap. The objective of this commitment is to prevent any nonrecurring and unexpected negative changes in the programmes. One commitment shall prevent abuse of the bargaining position with regard to the programme providers; it should prevent any intention of the dominant entity providing the TV signal to the end users and at the same time important provider of the programme to shut off their programmes to other “programmers” and in this way force them out of the market and gain their position. The commitment has the potential to ensure sufficient plurality of programmes offered by the dominant undertaking; at the same time however the parties to the proceedings were provided with possibility to refuse a certain programme fulfilling the given terms. In its last commitment UPC undertakes to keep on separate file the costs and profits to make it evident that no cross financing is taking place, i.e. for instance using the profits from cable TV to fund the UPS Direkt transmission.

55. The Office considers the proposed commitments, when on the one hand a dominant subject arises from the merger, and on the other hand it is expected that in the near future the competitive environment will strengthen, particularly with the coming of new technologies, as sufficient to do away with concerns that competition would be distorted. Accomplishment of such commitments will provide conditions for the maintenance and further development of the competitive environment on relevant markets.

2.5 Appeal and court proceedings

25.1 Appeal proceedings

- Total number of decisions appealed to the second-instance in 2006 6
- Total number of second-instance decision on appeals issued in 2006 16

56. In 2006 only 6 appeals were submitted, i.e. one half less than the previous year when 13 appeals were submitted. In 2006, in the second instance, a total of 16 second-instance decisions were issued, i.e.
approximately one third compared to the previous year when 52 second-instance decisions were issued. Seven of the first-instance decisions were cancelled and the case was brought back for new revision. In nine cases the decision of the Office was changed, although the changes were not substantial. Most of the fines were confirmed or in some cases partly reduced.

2.5.2 Actions filed against the decisions of the Office

- Total number of actions against final decisions of the Office filed in 2006: 10
- Total number of judgements on the actions against decisions of the Office in 2006: 20

57. During the year 2006, 10 court actions against second-instance decisions of the Office in the competition law area were filed, compared with 11 actions filed in 2005. In 2006 total 20 court judgements were issued on petitions against final decisions of the Office.

58. In 2006 the success of the Office’s decision-making practice was high because only 6 judgements ended up to the detriment of the Office, which is less than one third.

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

59. The Office uses an effective instrument for competition advocacy in relation to newly proposed legislative acts, policies or other materials in the form of a so called inter-departmental commentary procedure, within the framework of which the Office receives all these documents for comments before their adoption. If the Office indicates any of its comments as “essential”, the institution proposing the document may only agree with such comment in full and modify the material accordingly. Otherwise, that comment is subject to further consultations between the Office and the proposing institution. If agreement on the issue is not reached, it is finally resolved by the decision of the Government after consideration of arguments of both the proposing institution and the Office. However, most comments of the Office are fully accepted already by the proposing institutions. Apart from the inter-departmental commentary procedure, the Office co-operates closely in particular with sectoral regulatory institutions, such as the Czech Telecommunications Office or the Energy Regulatory Office. In 2006 with the help of competition advocacy the Office settled 17 cases. In the following text, some examples of competition advocacy activities of the Office in both these areas are described:

3.1 Film distributors

60. In November 2006 the Office brought the investigations into contractual relations between film distributors and cinema operators to an end. Indirect pricing on the market was in the so-called “minimal admission fees”. The anti-competitive regulation was confirmed in the general commercial terms for granting sub-licences for the dissemination of audiovisual programmes approved by the Association of Cinema Operators and Union of Film Distributors, on the basis of which most of the cinema operators and film distributors entered contractual relations. The Office called upon both of the above associations to remedy the situation by changing the respective provisions of the general commercial terms. However, the proposed changes, which the Union of Cinema Distributors submitted to the Office in early October 2006, did not answer the wording of the Law on Protection of Competition, to the contrary it allowed direct pricing. The second proposal for changes in the supplement of general commercial terms was in line with the comments of the Office that the rules of competition would not be distorted on the market of film distribution for cinema operators. The Union of Film Distributors replaced the so-called “minimal admission fees” with the legally not binding “recommended admission fees”. With regard to this fact the investigations were subsequently brought to a close.
3.2 Computer game market

61. At own incentive the Office launched investigations on the basis of information gleaned from the Internet sites of the Cd project company according to which this company cut the supplies of the computer games Heroes of Might and Magic V of the company electro World Ltd., which wanted to sell the game according to their fylsheets at CZK 499.- (i.e. EUR 18), although Cd projekt fixed the recommended price at CZK 999.- (i.e. EUR 36). In subsequent investigations the Office discovered that Cd projekt had indeed enforced electro World Ltd. to abide by their fixed recommended prices for the said game and subsequently they cut the supplies of the game. Although the Office did not discover that in the contract in writing with their customers Cd projekt had arranged an anti-competitive provision, in practice the end prices for customers were actually fixed. The Office brought this faulty action to the attention of Cd projekt and called on this undertaking to rectify it. Thereafter Cd projekt incorporated a provision into the contracts with customers saying that the recommended prices are not binding; on the Internet pages they published this provision in the conditions of business cooperation and provided information that the customer can opt to fix the end retail price upon own consideration.

3.3 Fixing the prices of watches

62. At their own incentive the Office launched investigations into the fixing of end selling prices of branded watches of the Swatch Group, which are distributed in the Czech Republic by the Hibernia Company. In the delivery contracts, which Hibernia as the supplier concluded with the customers, the Office discovered an anti-competitive provision. Factually the supplier had the right to change both wholesale and retail prices and on the basis of this change the customer pledged to reprice the goods. The Office asked the Gubernia Company to re-evaluate the price policy and to rectify the situation. Hibernia admitted the anti-competitive character of the articles of agreement and promised to draw up new distribution contracts, which would be consistent with the Competition Law. On 18 December 2006 the Office obtained the wording of all the agreements terminating the original contracts. Subsequently the investigations were terminated.

4. Resources of the Office

4.1 Annual budget of the Office in 2006

<table>
<thead>
<tr>
<th>Total expenditure in CZK:</th>
<th>137 million</th>
</tr>
</thead>
<tbody>
<tr>
<td>Total expenditure in EUR:</td>
<td>4.7 million</td>
</tr>
</tbody>
</table>

4.2 Number of employees of the Office as of 31 December 2006

<table>
<thead>
<tr>
<th>Lawyers</th>
<th>57</th>
</tr>
</thead>
<tbody>
<tr>
<td>Economists</td>
<td>39</td>
</tr>
<tr>
<td>Other professionals</td>
<td>7</td>
</tr>
<tr>
<td>Support staff</td>
<td>20</td>
</tr>
<tr>
<td>All staff combined</td>
<td>123</td>
</tr>
</tbody>
</table>
### 4.3 Human resources of the Office as of 31 December 2006 (according to activity areas)

<table>
<thead>
<tr>
<th>Activity Area</th>
<th>Number</th>
</tr>
</thead>
<tbody>
<tr>
<td>Enforcement of the Act on the Protection of Competition and of the competition principles</td>
<td>30</td>
</tr>
<tr>
<td>Surveillance over the public procurement process</td>
<td>31</td>
</tr>
<tr>
<td>Control of state aid</td>
<td>9</td>
</tr>
</tbody>
</table>