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

-- 2011 --

*This report is submitted by the Czech Republic to the Competition Committee FOR DISCUSSION at its forthcoming meeting to be held on 13-14 June 2012.*

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## Executive summary

1. This annual report describes recent developments in competition law and policy in the Czech Republic and summarizes the competition enforcement activities of the Office for the Protection of Competition (hereinafter referred to as “the Office”) for the year 2011.

2. The long-term objective of activities of the Office is the promotion of effective competition in all sectors of national economy. This aim has been followed by the Office since its establishment in 1991. It does so primarily by way of decision-making activities or competition advocacy. In regard to these matters, the Office received a total of 257 submissions within the past year. The harm to the competition can be caused by anticompetitive behaviour of undertakings as prohibited (cartel) agreements, abuse of dominant position or abuse of significant market power. In the process of detection of anticompetitive practices the Office makes continually greater use of all of the tools that it has available. Those include, among others, unannounced dawn raids, or the leniency programme, which allows for the remission of a fine for undertakings that fully cooperate with the Office and provide evidence leading to the detection of a cartel agreement. More economic approach has been regularly used in antitrust proceedings of the Office.

3. The most important cases dealt with by the Office in 2011 concerned prohibited agreements concluded among tenderers in the awarding procedures for public contracts, so called bid rigging), traditional cartel cases and also abuse of dominance. The administrative courts had to deal with several important legal issues with respect to the major cases of the Office, one of them was even brought before the European Court of Justice for preliminary ruling.

4. In the field of merger control the Office dealt with two very complex mergers, one of them was approved with structural as well as behavioural commitments. Overall, the Office cleared 50 mergers in 2011.

5. In order to confirm its preference of prevention before repression, the Office has continued with application of alternative resolution of cases and application of settlement procedure in practice. Nine less serious infringements in 2011 were concluded in cooperation with the parties without initiating official administrative proceeding and one case was solved by settlement procedure.

6. In regard to human resources a substantial change took place in 2011. Staff number increased from 126 to 153 during the year due to significant changes in the scope the Office’s powers . As the Office belongs to multi-function agencies, the human resources are divided among four areas of competence - protection of competition, public procurement review, monitoring of state aid and control of abuse of significant market power. The increase itself reflected requirements set up by the Amendment to the Act on Public Procurement that would substantially increase number of complaints concerning awarding procedures. Due to this fact, general budget was increased and some of the newcomers strengthened the competition enforcement, having on mind that some of the Office’s experts were during the previous years allocated to the Public procurement division.

7. The Office has substantively stabilized its human resources policy by adjusting the job fluctuation below 10 % while more than half of employees have been working for the competition authority for more than 5 years. Generally, staff age structure indicates positive development while 2/3 of employees are younger than 40 years.

8. As for the public and media relations, approximately 110 press releases, information bulletins and other publications were issued by the Office in 2011. Of them 49 were related to competition, 38 to public procurement and 13 to state aid issues. In view of maximum transparency, all the press releases and other publications of the Office are also made publicly available on its website, freely available to

download. Moreover the Office publishes information bulletins that are aimed at professionals as well as general public. In 2011 these publications were focused on Trade associations, 20 years of the Office and St. Martin Conference 2011.

9. Finally, on the international level, the Office has strengthened its participation within the work of EU institutions, the International Competition Network and the OECD, as well as bilateral links with many competition authorities worldwide. The Office organized major international St. Martin Conference at the end of November to celebrate twenty years of its functioning. The conference focused not only on latest developments in competition law and policy both in the Czech Republic and abroad, but also on the issues of public procurement, significant market power and state aid.

10. Public documents, including more detailed descriptions or full texts referred to in this document, are available on the Office's web-site in English at [www.compet.cz/en](http://www.compet.cz/en).

## **1. Changes to competition laws and policies, proposed or adopted**

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

11. The Act No. 143/2001 Coll., On the Protection of Competition, has been lastly amended in September 2009. There were no changes in national competition law in 2011. However, the current wording of the Act does not entirely reflect decision-making practice of the Office, especially as regards Leniency Program or Settlement Procedure. Both institutes are frequently used by the European Commission and EU Member States to detect anti-competitive practices or to achieve procedural economy. Therefore, the Office prepared draft amendment of the Competition Act which will result in incorporation of the Leniency program and settlement procedure directly into the legislation.

12. Leniency program as one of the basic policies for detection of cartels has been effectively applied by the Office since 2001. However, this application is solely based upon soft-law documents (Notice on Leniency) issued by the Office. Although the practice has been confirmed by administrative courts, the enactment of the Leniency program will bring greater legal certainty for cartel participants that want to report a prohibited agreement to the competition authority. Moreover, the amendment will harmonise other legal institutions that are necessary for successful functioning of the Leniency program, in particular the modification of access to administrative file and termination of criminal responsibility for leniency applicants. The proposed amendment should establish two types of leniency, leniency I and II. A cartel participant qualifies for leniency I, which means full immunity from sanctions, if it is the first one who provides the Office with sufficient information on undetected cartel and fulfils other conditions, in particular pleads guilt and fully co-operates with the authority. An applicant who did not step up first but fully co-operates with the Office and brings significant evidence regarding the cartel may receive up to 50 per cent reduction of a fine under leniency II.

13. The Act No. 40/2009 Coll., Criminal Code, is going to be amended in connection with Leniency program as well. Particularly, the Article 248a will stipulate abolishment of criminal liability for an offense of infringement of competition rules due to effective repentance, provided the conditions required for successful application of a leniency program were met.

14. Enactment of the Settlement procedure will provide the Office with an option to reduce a fine by 20 percent to a competitor, who pleads guilty to administrative offense, on condition that the Authority considers the fine to be appropriate to the seriousness of the infringement. Institute of settlement can be applied both in cases of prohibited agreements and the abuse of dominant position as well as for an implementation of merger without prior approval of the Office. Objective of this modification is to achieve better procedural economy in competition proceedings, i.e. focus limited resources of the Office on

detection of the most serious infringements of competition rules and not spending valuable resources on lengthy second-instance proceedings or judicial review.

15. The amendment also introduces institute of prioritization allowing the Office to terminate investigation of marginal violations of the Competition Act, which are currently great burden to the Office due to quantity. The Office will be authorised not to initiate an administrative proceeding provided the preliminary investigation revealed that there was only a negligible impact of the conduct on the relevant market.

16. Since 2010, the Office has also been enforcing the Act No. 395/2009 Coll., On Significant Market Power in the Sale of Agricultural and Food Products and Abuse Thereof. The Act defines the concept of the significant market power and its abuse for the purposes of the protection of competition and to set up tools for assessment and avoidance of such behaviour. The Act is applicable in cases concerning sale of agricultural products when an undertaking as a buyer abuses its significant market power towards other undertakings – its suppliers. Significant market power is defined by the Act as “the position of the buyer towards the supplier, whereas the supplier becomes dependent on the buyer in relation to delivery of goods to the customers as a result of the market situation and the market power enables the buyer to enforce unilaterally preferential terms”. There is a rebuttable presumption of significant market power if the net turnover of the buyer exceeds 5 billion CZK (approx. EUR 200 mil) in the last accounting period in the region of the Czech Republic. It is prohibited to abuse the significant market power to the detriment of suppliers; the abuse is to be understood as a systematic conduct which has as its object or effect significant distortion of competition in the relevant market. There is a list of conducts considered to be abusive in five annexes to the Act. The fines for breaching the Act can be imposed in amount of up to 10 million CZK or up to 10 % of the net turnover.

17. The application of the Act has been complicated since the beginning because of several ambiguous terms and definitions that were broadly criticised by law practitioners as well as stakeholders. In 2011, the Government of the Czech Republic decided that the law should be abolished and some of its parts transferred to the Competition Act and to the Price Act. The Office has been entrusted with the task to draw an amendment in this respect. However, the discussions about the amended continued and the overall concept has not been definitely drafted.

## **2. International cooperation**

### **2.1 Cooperation within the European Union**

18. At the European level, the Office places emphasis on participation in working groups of European Competition Network (ECN), namely Cartels, Mergers, Cooperation Issues and Dues Process, Forensic IT, Telecoms, Banking, Food and Pharmacy. Experts of the Office took part actively in a convergence project of leniency programs within the Cartels working group.

19. The Office also participated in preparations of soft-law materials which should simplify the international cooperation among competition authorities in the field of mergers.

20. The Office was also represented in advisory committees taking part in preparations of a new EU directives and regulations or revision of extension EU law. Representatives of the Office took part in the advisory committee on the revision of guidelines in the field of state aid (i.e. Guidelines for the use of the state aid rules in relation to rapid deployment of broadband networks or the Framework for state aid to shipbuilding industry proposed by the European Commission). Representative of the Office also participated in the meeting of the advisory committee Restrictive Agreements and Dominant Position as a *rapporteur*.

21. The exchange of written information through secured ECN communication networks is also more and more frequent, where the staff of European competition authorities can, literally on a daily basis, deal with the current issues in competition law and policy that are common to several or many member states, or which one country needs to resolve with the help of the others. Within the working group Cooperation Issues and Due Process representatives of the Office actively took part in the preparation and testing of the new communication infrastructure called ECN-ET.

## **2.2 *Cooperation with other international organizations and national competition authorities***

22. In 2011, representatives of the Office continued to actively represent the Czech Republic through their appearances at international conferences and seminars. A lot of presentations and submissions were made by Czech delegates, e.g. at conferences and seminars held by the most important organizations dealing with competition issues (OECD, ICN), CECI seminars (Central European Competition Initiative), working group within the United Nations (UNCITRAL), International Conference “Public Sector Transition” etc. In 2011, the Chairman or staff of the Office participated in all three sessions of the Competition Committee and Working Parties of the Organization for Economic Cooperation and Development (OECD) in Paris. At each session, they presented their submissions in regard to the given topic and answered questions posed by OECD staff. The topics included, for example cartels in public procurements, digital economy, impact evaluation of decisions in the case of mergers and others.

23. Within the International Competition Network (ICN) in 2011, the Office was primarily engaged in working groups that, in the course of the year, prepared recommendations, reports, surveys and other non-binding documents serving to facilitate the work of the member competition authorities and to share experience in particular areas. For example, the Office participated in a working group dealing with cartels, mergers, a working group focusing on unilateral conduct issues, competition advocacy and effectiveness of the activities of competition authorities. The Czech delegation was present at the annual conference of the ICN in Haag and staff of the Office also made use of the opportunity for a further exchange of experience and recommended practices in the course of interactive ICN workshops focusing on mergers, cartels and abuse of dominance.

24. The Office also maintained successful relationships with its foreign counterparts in 2011. A fruitful and beneficial cooperation continued especially with Slovak competition authority. In November 2011 chairman of the Office Mr. Petr Rafaj held a meeting with chairman of the Slovak competition authority Mr. Tibor Menyhart in Brno. They discussed mainly the issue of regulators, sector inquiries and application of the leniency program. The Czech and Slovak competition experts were also discussing particular cases during the year. Several more meetings were held, focused mainly on amendments to the Czech and Slovak competition Acts and criminal liability for anticompetitive conducts.

25. The chairman or the staffs of the Office were invited to visit the competition authorities and competition conferences in Washington, Barcelona, Belgrade, Berlin, London, Budapest or Roma. The Office also continued in development of mutual cooperation with competition authorities in emerging economies within UNCTAD and also through bilateral contacts. In March 2011 representatives of the Office took part in conference organized for 10<sup>th</sup> anniversary of competition law in Armenia. Vice-chairman Michal Peter delivered a speech focused on the challenges for young competition authorities and issues that the Office faced at its 10<sup>th</sup> anniversary. The Office organized a trainee program for competition and state aid experts from the Turkish Republic of Northern Cyprus.

### 3. Enforcement of competition law and policies

#### 3.1 *Action against anticompetitive practices, including agreements and abuses of dominant position*

##### 3.1.1 *Alternative resolution of cases*

26. The Office utilises so called competition advocacy as an alternative resolution of competition issues in cases where competition was not harmed substantially and undertakings are interested in cooperating. This approach brings a number of benefits, among other faster rectification of a competition distortion and shorter investigation brings benefits of more efficient use of financial as well as human resources.

27. In practice, the Office may not initiate administrative proceedings in less serious cases and resolution is achieved by way of consultations in the course of the investigation of the submission. In some cases, the said procedure is the most appropriate way to resolve an unsatisfactory situation. Competition advocacy also includes cases in which administrative proceedings have been initiated but have been terminated under the condition of the fulfilment of commitments proposed by the parties to the proceedings without a declaration of anticompetitive behaviour and without penalties being imposed. In the course of 2011, the Office resolved nine cases by way of the competition advocacy, which is substantial increase in comparison to the previous year.

- Methodical Tool of Association of Driving Schools needed for calculation of training costs.

The Office applied competition advocacy on the issue of calculation of driving school training costs of Type B licences (automobiles). Methodical Tool for Calculation of Costs for Training of Type B licences had been introduced, including calculation of virtual driving school and one not-specified existing driving licence school published on the webpage of the Association of Driving Schools of the Czech Republic, o. s. (hereinafter referred to as “the Association”). The Office came to a conclusion that drafting and publishing of Methodical Tool of the Associations most probably meets criteria of prohibited decision of association of competitors. Methodical tool was removed from the Association’s webpage on the basis of the Office requirement and Association informed its members about its possible non-compliance with competition rules. Having in mind the limited impact of assessed behaviour on competition and Association’s fulfilling of the measures determined by the Office, the Office had no other reason to launch the administrative proceedings.

- Czech Bar Association limited the determination of compulsory supplier of advocate robes

The Office on the basis of its own suspicion investigated the conduct of Czech Bar Association (hereinafter referred to as “the CBA”) which determined an exclusive supplier of advocate robes for its members. According to the statement of the Office, the CBA by its behaviour made impossible for other potential competitors to enter the market. Bearing in mind the fact that wearing this robe during a court proceeding is required by the law; the assessed behaviour of CBA could impact, though indirectly, even the market of advocate services. The behaviour of the CBA fulfilled the signs of prohibited decision of association of undertakings. That is why the Office recommended to CBA to limit the time validity of its decision. The representatives of CBA accepted the Office’s position and enabled advocates to secure the making the robe themselves at their own expenses using the services of one of the suppliers determined by CBA through an award procedure or separately. CBA will provide the chosen manufacturer with approval to use the registered design of advocate robe for the particular sum of money on the

basis of licence agreement. As the assessed behaviour was not found to be serious in connection to competition, the Office solved this matter in informal way by means of the competition advocacy without beginning the administrative proceedings. On 6 May 2011, the Chamber of Deputies approved the amendment of the Act on Advocacy, which authorizes CBA to determine one or more suppliers of advocate robe through the award procedure. The Office disagreed with this amendment of the mentioned Act, because from the competition point of view it considered its anticompetitive impacts on competition in relevant market.

- The Office accepted the modification of trading terms

The Office dealt with complaint regarding the possible existence of horizontal agreement of selling entities on the auction server [www.aukro.cz](http://www.aukro.cz). The Office investigated this case on the basis of analysis of facts and came to a conclusion that a proof existed indicating the possible conclusion of price fixing agreement of one type of goods sold by company Aukro. As the impact of this alleged agreement was not very significant, the Office started with elimination of possible negative behaviour by means of statement sent to particular competitors. The competitors reacted immediately and stopped the possible anticompetitive behaviour. Next, the Office started to negotiate about the modification of trading terms of Operating and Using the Auction System of Aukro with its operator in order to comply also with rules of the Czech Competition Act.

- Sale of Christmas punch in Olomouc

The Company called Kulturní Olomouc with aim to secure the selling of quality punch at Christmas fair in the town of Olomouc forced competitors in stands' lease agreements to commit themselves to selling punch for minimum price of 30 CZK for 1 cup. It was done on the basis of previous year's experience. Some enactments included in the agreements raised doubts about accordance of the chosen procedure with the competition rules. The company offered immediate modification of agreements and presented these modifications to the Office before starting of Christmas fair. The Office came to a conclusion that offered measure can be considered to be sufficient enough because it leads to complete elimination of the potential negative impact. There was no need for the Office to continue with investigation.

### *3.1.2 Statistics on number of cases*

28. In 2011 a total of 54 new administrative proceedings (including mergers) were initiated by the Office and several administrative proceeding rolled over from the previous year. The Office reviewed in total 257 complaints on possible distortion of competition (171 on abuse of dominant position, 19 on prohibited agreements, 2 on sector inquiries and 65 others). In the first instance 4 decisions on prohibited agreements and 51 merger decisions were issued in 2011. The total amount of fines imposed by the first instance decisions of the Office reached CZK 30 187 000 (€ 1 207 000).

### *3.1.3 Appeals and judicial review*

29. In 2011, 7 appeals were filed against first instance competition decisions. The Chairman of the Office issued a decision in a total of 17 cases; in 12 cases the previous first instance decisions were confirmed. Ten more second instance proceedings were pending at the end of 2011.

30. Parties to the proceedings very often lodge actions against the decisions of the Office to administrative courts. During the course of 2011, the Office received 24 actions concerning the competition cases. The Regional Court has issued 15 judgments, 8 of them in favour of the Office. Supreme Administrative Court ruled on 11 actions, in 6 cases confirmed the decision of the Office. In

connection with the gas insulated switchgear cartel case that was fined by the Office in 2007, the Regional Court submitted request for preliminary ruling to the European Court of Justice. The ECJ did not rule till the end of 2011, however Advocate General Juliane Kokott considered that the Commission's decision and the decision of the Czech competition authority do not relate to the same material acts, which means that the Czech competition authority did not infringe the prohibition against punishing the same offence twice (ne bis in idem principle).

- Decision on Lignite Export Bans confirmed

Regional Court in Brno dismissed an action against the decision of the Office in the case of Sokolovská uhelná, právní nástupce a.s (SUPN). In September 2010, the Office imposed a fine amounting to CZK 17 283 000 (approximately € 690 000) on SUPN for having concluded and implemented agreements containing export bans on lignite fuels. The Office found that some of SUPN customers had been prohibited from exporting lignite fuels outside of the territory of the Czech Republic. The undertaking therefore infringed Article 81 (1) of the EU Treaty (currently Article 101 TFEU) as well as national competition law.

The Regional Court stated that the formal aspects of the conduct at issue were fulfilled as the prohibited behaviour formed part of distribution agreements and the breach of the commitment not to export could have been penalized by SUPN. The Court also ruled that the anticompetitive purpose of the agreement was sufficiently proven by the Office and therefore it was not necessary to further assess the anticompetitive effects. The judgment also considered that the implementation of prohibited agreement was sufficiently proven by the fact that the distributors respected those provisions in their own contracts with third party companies. The judge emphasized that agreements on export bans are capable of affecting trade between Member States by their very nature and that such effects are appreciable if either the turnover of the parties exceeds € 40 000 000 or their market share the 5%.

### 3.1.4 *Description of significant cases*

- Agreements distorting competition

The Office continues to place an emphasis primarily on pursuing cartels, recently especially bid rigging cartels. The Office actively applies the leniency programme. Since the effective date of the new leniency programme, the Office has received leniency applications. Four applications were received in 2011, two of them were summary applications. In matters concerning agreements distorting competition, the Office issued in total four decisions concerning the prohibited agreements, two of them one the basis of the leniency application.

- Cartel of detergent producers

The Office issued on February 10, 2011 the first instance decision, by virtue of which it found liable the companies from Henkel, Procter & Gamble and Reckitt Benckiser groups of conclusion and fulfilment of prohibited agreement in the market of detergents, fabric softeners and hand dish cleaners. The Office prohibited further fulfilment of the agreement and imposed fines in the aggregate amount of 29.274 million CZK. The decision has not come into force yet. According to the findings of the Office, the manufacturers of „cleaning products“ during the course of regular meetings and communication had implemented rise in prices of some particular detergents and had set ranges for price fixing of detergents, and had mutually coordinated and limited frequency and value of promotion activities, namely the amount of price discounts provided for detergents, fabric softeners and hand dish cleaners. In particular, the Office found liable companies: HENKEL ČR, Ltd. Procter & Gamble – Rakona, Ltd.

a Reckitt Benckiser (Czech Republic), Ltd. The Office initiated investigation on base of application for Leniency. On these grounds the Office granted full immunity from fine to undertaking Henkel, because this party to the proceedings informed the Office as the first and provided required evidence. Further the Office decreased the amount of fine by 50 % for the undertaking Procter & Gamble, because Procter & Gamble had also met requirements for application of the Leniency Program, providing the Office with further evidence on the conduct in question and doing so substantially contributed to the successful conclusion of the case. Simultaneously, all parties to the proceedings took advantage of the settlement procedure, having acknowledged legal qualification and duration of the conduct in question as stated by the Office, and withdrew from suggesting further procedural steps during the proceedings. The Office considered this fact as special circumstance reasoning further 20 % decrease of final amount of fine for sanctioned undertakings.

- Forbidden price announcement of association of undertakings

The Office concluded that Czech Association of Waste Management Industry (hereinafter referred to as "the CAWMI") had agreed and implemented prohibited and void price resolution of association of undertakings that led to distortion of competition in the Czech market of waste management. In particular, CAWMI had been annually estimating percentage increase of cost in the industry, announcing it and distributing it among its members, having published it through the media at the same time. According to the Office, CAWMI had infringed national competition law from 11 November 2004 to 1 October 2008. The conduct was qualified as one continuous infringement. With regard to the proceeding economy, the Office found this case suitable for settlement procedure and the party to the proceedings asked for the settlement as well. Afterwards, CAWMI acknowledged its responsibility for anticompetitive behaviour as well as findings of the Office as regards legal assessment of the conduct and its duration. CAWMI also confirmed that it had refrained from the anticompetitive practice. A basic amount of fine had been set to CZK 495 000 (€ 19 800), however this sum was reduced due to conditions of the settlement procedure by 20 per cent to CZK 396 000 (€ 15 840). Moreover, in accordance with the settlement, the party did not file an appeal nor brought the case to court, so the administrative proceeding was concluded within 7 month period since its initiation.

- RPM Vodafone case

The Regional Court in Brno quashed decision of the Chairman of the Office for Protection of Competition. The decision in question declared that Vodafone Czech Republic fixed prices that its distributors charged final consumers for subscribed telecommunication services (Resale price maintenance). Approximately EUR 250.000 fine was subsequently imposed on Vodafone for price fixing agreements. The Regional Court in Brno was bound in its judgment by the reasoning of preceding appellate decision of the Supreme Administrative Court. Supreme Administrative Court held that subscribed telecommunication services provided by Vodafone constituted services of general economic interest. Act No. 151/2000 Coll., on Telecommunications, obliged Vodafone to inform on prices of its telecommunication services. This duty was aimed at consumer protection. Supreme Administrative Court inferred that it was necessary for Vodafone to have control over prices to fulfil this legal duty. According to Czech Act on the Protection of Competition, provisions of the Act shall apply to undertakings which provide, on the basis of a special act or on the basis of a decision issued pursuant to a special act, services of general economic interest in so far as its application does not obstruct the provision of these services. Supreme Administrative Court stated that in this case application of competition rules on Vodafone's telecommunication services would obstruct the provision of services of general economic interest.

- Abuse of dominant position

No administrative proceeding concerning the abuse of dominance was concluded in 2011, however, two administrative proceedings were launched, one of them is an investigation of an alleged margin squeeze in the market of broad band internet access by the incumbent telecommunication company TELEFONICA Czech Republic. During the course of investigation, the Office collected a large amount of evidence from the incumbent as well as from other undertakings that needs to be analysed in compliance with more economic approach.

- Czech Railways Company

On 12 May 2011, the Regional Court in Brno (the Court) upheld the CZK 254 000 000 (approximately € 9 585 000) fine imposed by the Office in its decision of 11 May 2009 on the Czech Railways company for having abused its dominant position on the market for the rail freight transport of large volume substrates by applying to consumers discriminatory prices for equivalent transactions without objective justification. The Regional Court held that the Czech NCA had proved in the course of the administrative proceedings that discriminatory prices and margins were applied by the Czech Railways company from 1 January 2004 to 30 November 2007. This was demonstrated by the Czech NCA in its initial decision, based on the price levels for rail freight transport in the years 2003-2006. The analysis carried out by the Czech NCA, based on consistent calculation parameters, revealed that the prices set for individual customers differed by more than 50%. The decision also rebutted the arguments of the party to the proceedings. The Czech Railways company had argued that its behaviour was justified by stating that there was no fixed level of margin for rail freight transport and that some profitable transports incurred high margins and other transports, in need of competitive prices, incurred minimal margins. The evidence gathered by the Czech NCA showed however that the Czech Railways company exercised a long term price policy based on preferential tariffs offered to selected customers in order to secure their loyalty.

In its judgment of 12 May 2011, the Regional Court confirmed that, the Railways company applied its tariffs in a selective and discriminatory manner, as other customers using the same volume of transport with similar costs did not benefit from the same preferential prices and were discriminated.

### **3.2 Mergers and acquisitions**

#### *3.2.1 Statistics on number, size and type of mergers*

31. As regards concentrations of undertakings, the Office initiated 50 administrative proceedings and issued 51 decisions on merit. Half of the notified cases were approved under simplified procedure. Second phase of the proceeding had to be carried out in two important merger cases Český Aeroholding and UPC/Sloane Park as preliminary investigations had indicated possible competition concerns. The first merger was approved on the basis of structural as well as behavioural commitments, the latter was approved unconditionally. The Office also imposed a fine of CZK 517.000 (€ 20 680) for breaching competition rules by implementing merger prior to its approval (Best a.s.), the party filed an appeal against the decision that was still pending at the end of 2011.

3.2.2 *Description of significant cases*

- Merger UPC Czech Republic, a.s. / Sloane Park Property Trust, a.s., approved in the second phase

The Office assessed the merger of the UPC Czech Republic, a.s., and the Sloan Park Property Trust, a.s., (hereinafter referred to as “the UPC” and “the SPPT”) where the UPC would acquire full control of the SPPT. The UPC is a part of international group Liberty Global and in the Czech market it provides transmission of TV and radio signals (cable TV), internet connection (data services) and telecommunication services. SPPT is a wholesale operator in the Czech Republic and provides electronic communication services by optical path/fibers and services in IP connectivity, Ethernet, WDM, SDH transport, Telehousing and IP transit.

Presuming that the assessed merger would not cause any significant increase of UPC’s market power the Office focused on assessing the effects of vertical integration. During the detailed inquiry within the second phase of the administrative proceeding the Office found out that the SPPT wasn’t an entity with significant market power in the relevant markets. The Office did not prove any motivation to restrict the competitors in the sector of retail internet connection in their access to the wholesale IP connectivity. The Office concluded that should the UPC tried to limit the access of competitors to the wholesale IP connectivity the overall loss of UPC in wholesales incomes could not be covered by newly obtained market power in the retail market (obtained by controlling the SPPT) because the competitors in the retail market can change the provider of wholesale services. Having evaluated all relevant aspects and circumstances the Office decided to approve the merger of the aforementioned competitors without any commitments because it would not cause any significant distortion of the competition.

- Merger in the airport services industry approved conditionally

The Office approved concentration of undertakings in the airport services market, in particular the company Český Aeroholding a.s. notified acquisition of companies České Aerolinie a.s. (ČSA), Letiště Praha a.s. (LP), Realitní developerská a.s., HOLIDAYS Czech Airlines a.s., Czech Airlines Handling a.s., Czech Airlines Technics a.s., CSA Services s.r.o. and Czech Airlines Landing Gears s.r.o. The Office cleared the merger under condition of fulfilment of structural and behavioural commitments as preliminary investigation indicated potential competition concerns in the relevant markets. The merger was related to the markets with regular and irregular transportation of persons, provision of airport infrastructure services and ground handling services and services of aviation maintenance. The Office was concerned about the competition distortion resulting mainly from horizontal integration of merging competitors’ activities which could cause a creation of a significant market power in the relevant market. To remove the Office’s concerns, Český Aeroholding proposed commitments which are mainly focused on keeping fair and open access to infrastructure of the airport Praha-Ruzyně, on legal, accounting and personal unbundling, on decreasing of the LP and ČSA influence and on selling a part of the LP. The Office decided that the commitments are sufficient for maintaining effective competition and approved the merger subject to conditions.

#### 4. Resources of the Office for the Protection of Competition

##### 4.1 Resources overall (current numbers and changes over previous year)

###### 4.1.1 Annual budget of the Office in 2011

		Change over previous year
Approved budget in CZK	146,5 million	+5,5 million
Approved budget in EUR	5.86 million	
Approved budget in USD	7.32 million	

###### 4.1.2 Number of employees (person-years) as of December 31, 2011 (for all the competences of the Office – antitrust, public procurement, state aid)

		Change over previous year
Economists	37	+1
Lawyers	66	+8
Other professionals	20	+13
Support staff	26	+1
All staff combined	149	+23

##### 4.2 Human resources (person-years) applied to:

		Change over previous year
Enforcement against anticompetitive practices, advocacy efforts	33	+ 1
Merger review enforcement	5	0
Significant market power	5?	0
Surveillance over the public procurement	45	+ 3
State aid control	8	0

#### 5. References to new reports and studies on competition policy issues

Information Bulletin: The Office and trade associations. CZECH:

[http://www.compet.cz/fileadmin/user\\_upload/Informacni\\_listy/2011/Infolist\\_2011\\_01\\_Odbytova\\_dr\\_uzstva.pdf](http://www.compet.cz/fileadmin/user_upload/Informacni_listy/2011/Infolist_2011_01_Odbytova_dr_uzstva.pdf)

Information Bulletin: 20 years of the Office for the Protection of Competition. ENGLISH:

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