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

-- 2013 --

18-19 June 2014

*This report is submitted by Czech Republic to the Competition Committee FOR DISCUSSION at its forthcoming meeting to be held on 18-19 June 2014.*

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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 of the Czech Republic (hereinafter referred to as “the Office”) for the year 2013.

2. The long-term objective 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 decision-making activities and competition advocacy. In regard to these matters, the Office received a total of 327 submissions within the past year most concerning the abuse of dominant position and prohibited agreements. 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. More economic approach has been regularly used in antitrust proceedings of the Office during the 2013 too.

3. The most important cases investigated by the Office in 2013 concerned prohibited agreements concluded among tenderers in the awarding procedures for public contracts, so called bid rigging, cartel cases and also abuse of dominance. In the field of merger control the Office initiated 35 administrative proceedings and issued 35 decisions in 2013.

4. 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. Five less serious infringements in 2013 were concluded in cooperation with the parties without initiating official administrative proceeding.

5. As regards the human resources it is important to mention that the Office maintained the number of staff even during the ongoing period of financial crises and related budget cuts. 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 Office has substantively stabilized its human resources policy by keeping the job fluctuation below 10 %. Generally, staff age structure indicates positive development while the average age of the Office’s employees is 35 years.

6. Concerning the structure of the Office the new Section of 2<sup>nd</sup> Instance Decision-Making has been established. The Section covers already existing departments focused on 2<sup>nd</sup> instance decision-making in the area of competition and public procurement.

7. In order to increase the efficiency of the Office’s decision-making process a new Department of Legal Analysis has been established within the new Section. The mentioned Department is specialized in analysis of the Czech and the EU case-law. Also the Department is responsible for handling the requests for information where provision is obligatory pursuant to the Czech legal framework. Efficient provision of such information should increase transparency of the Office towards undertakings and the general public.

8. As for the public and media relations, approximately 113 press releases and 3 information bulletins were issued by the Office in 2013. 38 were related to competition, 49 to public procurement and 26 to the state aid issues. Within the transparency efforts, all the press releases and other publications of the Office are also made publicly available on its website. Moreover the Office publishes information bulletins that are aimed at professionals as well as general public. In 2013 these publications were focused on public procurement, leniency program and settlement procedure and the significant market power.

9. As regards 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 international St. Martin Conference at the end of November. The conference was focused not only on latest developments in competition law and policy both in the Czech Republic and abroad, but also more economic approach to merger review, private enforcement, the issue of resale price maintenance, competition in the fuel distribution sector and bid rigging.

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.uohs.cz/en](http://www.uohs.cz/en).

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

11. During the year 2013 no amendments to the Czech competition law have been adopted and no revisions have been drafted as last major revision came into force at the end of 2012. Therefore, the Office focused on drafting its own methodical documents and guidelines. The Office issued three notices in order to increase the legal certainty of undertakings and strengthen the transparency and predictability of the Office's procedure. Notices covered the leniency program, settlement procedure and alternative solution of competition problems. Notices should also increase the understanding of application of these legal institutes. The leniency program and the use of settlement procedure as well as prioritization provisions were enacted into the Czech legal framework by the last amendment of the Competition Act in 2012.

12. The leniency program has been enacted into the Competition Act also in order to increase its convergence with the Model Leniency Program of the European Commission. The Notice on the Leniency Program states the conditions and procedures of leniency applications and granting the immunity from or reduction of fines. The document explains conditions necessary for granting the immunity from or reduction of fines, particular procedural deadlines, protection of leniency related documentation within the administrative file, the marker system, non-imposition of ban to participate in public procurements and protection against criminal proceedings.

13. The settlement procedure has been applied by the Office since the year 2008 in the form of a soft law and it has been included into the Competition Act during its last revision. The Notice on the Settlement procedure specifies the process of initiation of the settlement procedure. It explains conditions for oral interview with applicants, the form of Statement of Objections and decisions issued on the basis of settlement procedure.

14. Last revision of the Competition Act provides the Office with the possibility of alternative solutions of competition problems covering the possibility of closing the case without the initiation of the administrative proceedings. The Notice on alternative solutions of competition problems describes this new power of the Office and its use. The main purpose of the Notice is to specify the circumstances when it is possible:

- To close the case after assessing the complaint without the initiation of the administrative proceedings even without tackling the particular competition problem,
- To restore competition without the initiation of the administrative proceedings; such process is newly possible even in case of certain hard competition restrictions as RPM;
- To accept commitments.

15. 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 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. 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 last accounting period in the region of the Czech Republic. It is prohibited to abuse the significant market power to the detriment of suppliers.

16. The application of the Act has been complicated since its very 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 during 2013 and the overall concept has not been drafted.

## 2. Enforcement of competition law and policies

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

#### 2.1.1 *Summary of Activities of:*

##### 2.1.1.1 Competition authorities

17. In the year 2013 the Office experienced significant increase in number of leniency applications as a result of legislative changes of the year 2012.

18. The competition enforcement of the Office was focused on detection of **bid-rigging** agreements. As a multi-function agency with powers in the area of competition as well as in control of public procurement, the Office can make use of resulting synergies. The Office initiated a number of bid rigging investigations. From the total of 10 on-going cartel investigations 7 represent alleged bid rigging cases. The important fact is that the Office started the proceedings on the basis of its own findings not on the basis of a leniency application or other external notification.

19. Also the Office continued in the active use of dawn-raids as one of the most efficient tools for alleged cartel investigations. In the year 2013 the Office conducted 15 dawn-raids.

20. In the year 2013 a total of 4 new administrative proceedings concerning prohibited agreements were initiated by the Office and several administrative proceeding rolled over from the previous year. The Office reviewed in total 327 complaints on possible distortion of competition (124 on abuse of dominant position, 122 on prohibited agreements, 6 on mergers, 42 complaints on the conduct of public authorities and 33 others). Within the first instance, 2 decisions on prohibited agreements and 35 merger decisions were issued. The total amount of fines imposed by the first instance decisions of the Office reached CZK 25 million (EUR 0.96 million).

21. In 2013, 13 appeals were filed against first instance competition decisions. The Chairman of the Office issued a second instance decision in a total of 9 cases.

##### 2.1.1.2 Courts

22. Parties to the proceedings very often lodge actions against the decisions of the Office to administrative courts. The year 2013 was a very successful one as regards the judicial review of the

Office's decisions. In 2013 the Regional Court issued 15 competition related decisions. 7 of them upheld the Office's decisions; one partially upheld the Office's decision and 7 judgments remanded the cases back to the Office. The Supreme Administrative Court issued 14 judgments when 9 of them in favor of the Office's decisions.

23. In 2013 the Constitutional Court rejected a complaint of the company Sokolovská uhelná against the procedure of the Office.

### 2.1.2 *Description of significant cases*

#### 2.1.2.1 Agreements distorting competition

24. The Office continues to place an emphasis primarily on pursuing cartels, recently especially bid rigging cartels. Priority sectors for the year 2013 were energy sector, telecommunications, transport and waste disposal. The Office has been actively applying the leniency program and receiving leniency applications. In 2013 six applications were received. In matters concerning agreements distorting competition, the Office issued in total 2 decisions concerning the prohibited agreements and imposed a fine of CZK 802 000 (approximately EUR 31,000).

#### 2.1.2.2 Abuse of dominant position

25. In 2013 the Office initiated one administrative proceeding concerning the abuse of dominant position and three cases rolled over from the year 2012 as these kinds of cases were significantly complicated and required complex evaluation and analysis of a great amount of data.

### 1. Vertical agreements of CANDY

26. Company CANDY breached the Competition Act by concluding prohibited agreements on resale price maintenance (minimum level of prices was set) with its distributors and online sellers in the period of January 2010 – September 2012.

27. CANDY is a distributor of pet food for dogs and cats from following commercial brands NUTRAM, K-9, FELINE and CANDIE'S. Pet food was distributed by on-line direct sales to end consumers, through retailers and by wholesale dealers – its registered distributors.

28. During the investigated period CANDY issued terms and conditions that obliged distributors and online sellers to resale price maintenance. As distributors accepted terms and conditions such conduct was assessed by the Office as prohibited agreements with the object to infringe fair competition in the relevant markets. Also CANDY concluded prohibited price agreements through e-mail communication with operators of e-shops that also accepted the resale price maintenance request.

29. According to the Office's findings, CANDY was active in ensuring the compliance of distributors and online sellers conduct with the set price agreements by regular monitoring of price levels of pet food. CANDY also pushed its purchasers that were not willing to fulfil the price agreement. The Conduct of CANDY had a negative impact on competition and on end consumers as during the investigated period the price level of pet food was increased (in several cases more than 20 % increase) and the number of e-shops selling CANDY's products decreased.

30. The Office imposed a fine of CZK 802,000 (approximately EUR 29,700), CANDY has been prohibited to continue in mentioned conduct and remedies related to the anticompetitive conduct have been imposed.

## 2. Cartel of fuels distributor

31. In the year 2013, the Office closed the administrative proceedings investigating six fuel distributors. Mentioned distributors were fined in the year 2003 and a long period of judicial review followed. The case was very complicated due to the issue of legal succession related to selling of one of the parties to the proceedings to another undertaking. Gathering the evidence required by the Court was impossible for the Office after such long period of time and a decision terminating the proceedings was issued.

## 3. Resale price maintenance by Emitex company

32. Without initiation of administrative proceedings the possible competition concern has been solved. On the basis of purchasers initiation the undertaking Emitex products s.r.o. included into newly set agreements a commitment to maintain the recommended prices. The Emitex contacted the Office and required consultation regarding the mentioned clause. Subsequently Emitex submit to the Office new agreements and committed itself not to intervene in the price policy of its purchasers. After assessing the new agreements and other documentation the Office accepted the commitments and concluded it is not necessary to initiate the administrative proceedings.

### 2.2 *Mergers and acquisitions*

#### 2.2.1 *Statistics on number, size and type of mergers notified and/or controlled under competition laws*

33. As regards concentrations of undertakings, the Office initiated 35 administrative proceedings and issued 35 decisions. 16 cases were concluded under the simplified procedure. 17 mergers were investigated under the standard procedure. Second phase of the proceeding had to be carried out in 4 cases. No merger was blocked in 2013. Two decisions imposed sanctions on undertakings for failing to notify the concentration and for not fulfilling commitments.

#### 2.2.2 *Summary of significant cases*

##### 2.2.2.1 Litvínovská uhelná/ Chvaletice power plant

34. The Office cleared a concentration of undertakings Litvínovská uhelná a.s. and Chvaletice power plant a.s.

35. The main business activity of Litvínovská uhelná represents mainly mining and processing of brown coal. Chvaletice power plant is an operator of brown coal power plant Chvaletice through which it is active in the sector of production and wholesale supply of electricity, thermal energy supply and other energy products. Before the merger the Chvaletice power plant was owned by ČEZ (joint-stock company with the Czech Republic as a majority owner). The sale of Chvaletice power plant represented one of the commitments offered by ČEZ within antitrust proceedings of the European Commission.

36. The Office assessed mainly impacts of the merger on downstream and upstream markets of brown coal supplies and production and supply of electricity that are significantly concentrated. However assessment of all relevant facts and analysis of possible impacts did not raise any competition concerns and the Office cleared the merger.

#### 2.2.2.2 REWE not fulfilling commitments

37. The Office sanctioned the company **REWE** for not fulfilling commitments agreed in a REWE/Plus Discount merger case.

38. The merger was assessed in 2008. In course of the administrative proceeding, the Office found out that this transaction which merged retail chains Billa and Penny Market with PLUS stores could distort competition in several local markets. In response to these findings, REWE proposed commitments in the form of the sale of four stores in the regions concerned. The Office concluded that the proposed commitments are sufficient to eliminate the competitions concerns and cleared the merger, subject to the proposed commitments.

39. The sale of four stores should have taken part within one year after the decision had been issued, however REWE several times applied for a postponement of the deadline for the implementation of commitments and their reassessment. The Office partially adjusted the commitments, however neither these were implemented. At the end of 2010, the administrative proceeding for non-compliance with the imposed commitments was initiated.

40. The Office thoroughly investigated the activities of REWE related to its efforts to fulfil the commitments. In the year 2013, the Office issued a decision in which it concluded that REWE had not made sufficient efforts to their implementation. The obligation laid down in the decision on REWE/PLUS-DISCOUNT merger was therefore not fulfilled and the fine was imposed. In calculating the fine, the Office took into account the turnover of the undertaking in regions concerned.

#### 2.2.2.3 KAREL HOLOUBEK – Trade Group a.s. – failure to notify

41. The Office also investigated a case of failure to notify a merger of undertakings and imposed a fine of CZK 530,000 (approximately EUR 20,384) on the company KAREL HOLOUBEK – Trade Group a.s. for implementation of concentration with the company Karlovarská teplárenská a.s. prior to notification and the approval by the Office.

42. In 2010, the Office cleared the concentration of undertakings KAREL HOLOUBEK – Trade Group a.s. (“KHTG”) and Karlovarská teplárenská a.s. However, in course of administrative proceeding the Office found out that KHTG had controlled, on the basis of Securities Lending Agreement, 51 % of voting rights of the Karlovarská teplárenská since 1 July 2002. The party to the proceeding performed its voting rights demonstrably during the general meetings of shareholders in 2002 - 2010. The representatives of the KHTG attended and influenced the meetings of board of directors of Karlovarská teplárenská.

43. Implementation of concentration prior to submission of notification and the Office’s decision in force approving the concentration infringes the most basic principles of supervision of concentration between undertakings. Uncontrolled concentrations between undertakings may cause the distortion of competition and harm consumers. In the investigated case, a significant negative impact on competition or consumers was not identified. The Office took this fact into account when calculating the amount of fine, on the other hand it considered the long duration of the offence. The undertaking used the settlement procedure by recognizing their responsibility for illegal conduct, legal qualification and the duration of the conduct. The fine was reduced by 20 % in exchange.

### 3. The role of competition authorities in the in the formulation and implementation of other policies, e.g. regulatory reform, trade and industrial policies

44. Promoting the procompetitive provisions within the Czech legislation belongs to a long term strategic goals of the Office. Experts of the Office constantly monitor the process of adopting the new legislation related directly or indirectly to competition, state aid and public procurement. Representatives of the Office attend government meetings on the working level and focus on competition related aspects of new legislative proposals with the aim to support procompetitive character of the proposals.

45. The Office is a member of the government's advisory committee focused on fighting the corruption as competition could not be efficient in the corrupted environment. The Anticorruption strategy of the Czech government is a part of transparency efforts, increasing the legal certainty and supporting the development of competitive environment. The advisory committee seeks to identify the most suitable anticorruption provisions, provides comments to government proposal focused on fighting corruption, identifies government priorities of anticorruption policies and determines potential risk areas for corrupted activity.

## 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 2013

		Change over previous year
Approved budget in CZK	<b>230.19 million</b>	<b>-16.3 million</b>
Approved budget in EUR	<b>9.21 million</b>	<b>-0.58 million</b>
Approved budget in USD	<b>11.5 million</b>	<b>-0.81 million</b>

#### 4.1.2 Number of employees (person-years) as of December 31, 2013:

46. For all the competences of the Office – antitrust, public procurement, state aid:

		Change over previous year
Economists	58	
Lawyers	100	+2
Other professionals	26	+3
Support stuff	30	-3
All stuff combined	<b>214</b>	<b>+3</b>

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

		Change over previous year
Enforcement against anticompetitive practices, advocacy efforts	34	+1
Merger review enforcement	7	
Significant market power	6	
Surveillance over the public procurement	79	+2
State aid control	8	

**4.3 Period covered by the above information**

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

47. Information Bulletin: Leniency and Settlement (<http://www.uohs.cz/en/information-centre/publications.html>)

48. Information Bulletin: State Aid (<http://www.uohs.cz/cs/informacni-centrum/informacni-listy.html>)

49. Information Bulletin: Bid Rigging (<http://www.uohs.cz/cs/informacni-centrum/informacni-listy.html>)

50. Press release: Fine for a Distributor of CANDY Pet Food (<http://www.uohs.cz/en/information-centre/press-releases/competition/1741-fine-for-a-distributor-of-candy-pet-food-confirmed.html>)

51. Press release: REWE not fulfilling commitments (<http://www.uohs.cz/en/information-centre/press-releases/competition/1665-fine-imposed-on-the-company-rewe-for-not-fulfilling-commitments-was-confirmed.html>)

52. Press release: Fine for failing to notify a merger (<http://www.uohs.cz/en/information-centre/press-releases/competition/1607-the-office-imposed-a-fine-for-implementation-of-merger-that-was-not-approved.html>)

53. Press release: The Supreme Administrative Court upheld the decision in STUDENT AGENCY case (<http://www.uohs.cz/en/information-centre/press-releases/competition/1692-the-supreme-administrative-court-upheld-the-decision-of-the-office-in-the-student-agency-case.html>)