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This report is submitted by the Czech Republic to the Competition Committee FOR INFORMATION at its forthcoming meeting to be held on 16-18 June 2015.

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TABLE OF CONTENTS

Executive Summary3

1. Changes To Competition Laws And Policies, Proposed Or Adopted4

2. Enforcement Of Competition Law And Policies4

 2.1 Action Against Anticompetitive Practices, Including Agreements
 And Abuses Of Dominant Position4

 2.2 Mergers And Acquisitions7

3. The Role Of Competition Authorities In The In The Formulation And Implementation Of
 Other Policies, E.G. Regulatory Reform, Trade And Industrial Policies8

4. Resources Of The Office For The Protection Of Competition9

 4.1 Resources Overall (Current Numbers And Changes Over Previous Year)9

 4.2 Human Resources (Person-Years) Applied To:9

5. References To New Reports And Studies On Competition Policy Issues10

Executive Summary

1. The 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 2014.

2. The long-term objective of the Office is to promote the 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 174 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 year 2014 too.

3. The most important cases investigated by the Office in 2014 concerned prohibited agreements concluded among tenderers within 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 45 administrative proceedings and issued 52 decisions. In order to confirm its preference of prevention before repression, the Office has continued with application of alternative resolution of cases in practice. In 2014, 5 cases were concluded without initiating official administrative proceedings.

4. 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 %.

5. As for the public and media relations, approximately 105 press releases and 4 information bulletins were issued by the Office in 2014. 44 of them were related to competition, 33 to public procurement and 28 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 2014 these publications were focused on state aid modernization process, associations of undertakings and the application of the Office’s power to supervise the conduct of public authorities. The Office issued a publication summarizing the basic information on the structure and functioning of the Office and the legal framework of the Office’s scope of competence.

6. As regards the international cooperation 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 signed a Memorandum on Cooperation with the Antimonopoly Office of the Slovak Republic. The annual meeting of the platform European Competition Authorities was hosted by the Office in May 2014 in Prague. The Office also organized the traditional international St. Martin’s Conference in 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 competition issues, minority shareholdings in the merger review, anticompetitive practice of associations of undertakings and online sales of goods and services.

7. 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.

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

8. During the year 2014 no amendments to the Czech competition law have been adopted. However, the Office drafted a proposal of an amendment to the Czech Act on the Protection of Competition. The amendment reflects changes in terminology of civil law brought by new Civil Code. It should also clarify the Office's competence as regards the supervision of public bodies and establish missing procedural provisions. The amendment includes the rules for access to the administrative file containing business secret in a following manner. If the specific information constitutes evidence the party to the proceeding will have the right to get familiar with the information after the Statement of Objections is issued even if it represents the business secret. The proposal should also specify the rules for imposing fines for breaching obligation pursuant to the Act on the Protection of Competition.

9. In 2014 the Office issued a notice in order to increase the transparency and predictability of the Office's procedure. The notice focused on the application of the Article 19a of the Czech Act on the Protection of Competition. The Article 19a has set the power of the Office to review the conduct of public authorities and to sanction the possible anticompetitive behavior of public bodies. The notice provides guidelines for the public sector how to prevent the possible breach of competition rules.

10. 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. The application of the Act has been complicated since its very beginning and the Office was entrusted with a revision of the Act. The amendment was finalized at the end of the year 2014 and approved by the Czech Government at the beginning of the year 2015. The amendment contains a revision of the concept of the responsible entity that extends the liability for the abuse of significant market power also to suppliers. A list of prohibited acts was replaced by more general explanation of illegal conducts. The settlement procedure in this respect was also revised by the amendment in order to align the procedure with the Czech Act on the Protection of Competition.

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

2.1.1.1 Competition authorities

11. In the year 2014 the Office achieved to conclude a significant number of cases after a period of long and complex investigations. The number of closed cartel investigations in one year represents one of the highest in the history of the Office. In several cases the settlement procedure was possible to use which is also very beneficial for the Office as the settlement prevents the long lasting and resource intensive judicial review process.

12. The Office issued 10 decisions in the area of prohibited agreements. By 8 decisions sanctions were imposed and in 2 decisions the anticompetitive practices were not proved in the course of the investigations and the proceedings were closed. The Office received 6 leniency applications. In the area of abuse of a dominant position 1 decision was issued. 6 new administrative proceedings against alleged cartel agreements were initiated in 2014 and one proceedings against alleged abuse of dominant position.

13. The Office reviewed in total 174 complaints on possible distortion of competition (78 on abuse of dominant position, 91 on prohibited agreements and 5 on mergers). In 2014, 7 appeals were filed against first instance competition decisions and the Chairman of the Office issued a second instance decision in a total of 16 cases.

14. In general, 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. Fight against bid rigging is nowadays the top priority of the Office and the important fact is that the proceedings were initiated ex officio, not on the basis of a leniency application or other external notification.

15. In the year 2014 the Office continued in the active use of dawn-raids as the Office considers dawn raid to be one of the most efficient tools in cartel investigations.

2.1.1.2 Courts

16. In 2014 the Regional Court issued 8 competition related decisions. 6 of them upheld the Office's decision; one partially upheld the Office's decision and one judgment remanded the case back to the Office. The Supreme Administrative Court issued 15 judgments. 4 of them confirmed the decision of the Office and 2 judgments partially upheld the Office's decision. In 2014 the Constitutional Court dismissed an appeal against the decision of the Office in case of cartel agreement in the grocery market.

2.1.2 *Description of significant cases*

2.1.2.1 Bid rigging within public tenders for medical equipment

17. The Office detected and sanctioned anticompetitive behavior of undertakings HOSPIMED, spol. s.r.o. and PURO-KLIMA, a.s within public tenders for medical equipment for hospitals and other equipment. In the years 2008 and 2010 mentioned undertakings coordinated their bids or their participation in public tenders for medical equipment. Concerted practices influenced the outcome of the awarding procedures and the competition was infringed in the market of medical equipment supplies in the territory of the Czech Republic.

18. The administrative proceeding was initiated among others on the basis of the Office's analysis of public tenders in the sector of medical equipment supplies in the years 2007 – 2010. According to the analysis a significant number of awarding procedures was won by undertakings Puro-Klima and Hospimed. Often only one bid was submitted in these tenders. Also for several contracting authorities the supplies were regularly provided by the same undertaking.

19. In the course of the administrative proceeding the Office secured information on numerous business contacts between Hospimed and Puro-Klima including correspondence proving the collusion in the relevant market. When reviewing particular awarding procedures, the Office found out that several bids of the parties to the proceeding were similar to a significant extent, bid prices were identical or they differed only very slightly and the offered prices were set right below the maximum price defined by the contracting authority.

20. According to the Office's decision collected evidence on communication and similar bids proved that parties to the proceeding colluded and influenced the awarding procedures to ensure that one of them would win the tender. The party that did not win the given tender was in several cases compensated by the other party through subcontracts.

2.1.2.2 Cartel in communal technology sector

21. The Office detected and proved the existence of agreements on market sharing and collusion within award procedures for public tenders for supplies of communal technology. The Office issued three decisions in this matter.

22. By the first decision the Office fined undertakings GARNEA a.s. and GARDEN Studio, s.r.o. for coordination of bids within the awarding procedure “Purchase of garden equipment” of National Heritage Institute. The collusion influenced the outcome of mentioned awarding procedure and restricted the competition in the market of communal technology.

23. The second decision covered anticompetitive conduct of companies KIS plus, a.s. and GARDEN Studio during the awarding procedure “Supply of communal vehicle” conducted by the contracting authority Municipal Transport Office Plzen, a.s. from the year 2010. The conduct had an actual impact on the outcome of the awarding procedure and restricted the competition in the market of communal vehicles.

24. In the third decision the Office proved that undertakings shared the customers and supplies of communal technology according to territorial principle. Undertakings applied for settlement procedure and admitted the legal qualification of their behavior. Therefore the fines were lowered by 20 %.

25. In all three cases the anticompetitive behavior has been proved based on collected evidence on communication of cartel participants and by comparing the bids. The largest of mentioned administrative proceedings conducted against the company KIS plus, a.s. had to be divided into two proceedings due to procedural reasons as the undertaking was not willing to apply for the settlement procedure.

2.1.2.3 Suppliers of fire equipment sanctioned for bid rigging

26. The Office imposed fines on undertakings Perpekta, spol. s.r.o and Požární bezpečnost s.r.o. for breaching the Act on the Protection of Competition. Mentioned undertakings coordinated their bids submitted within the public procurement award procedures for supply of fire and rescue technology. The object of the conduct was the restriction of competition in the sector of supply of fire and rescue technology and equipment. The contracting authorities were entities from public and private sector.

27. The correspondence gathered by the Office proves that the undertaking Požární bezpečnost was sending emails to undertaking Perpekta with requests for submission of competitive bid within award procedures. Emails included also documents, so called cover bids with stated prices and the undertaking Perpekta used these bids when participating in the award procedures.

28. Sanctions were lowered by 20 % as both parties to the proceedings applied for the settlement procedure. Consequently the three years ban to participate in public procurement award procedures has not been applied.

2.1.2.4 Chamber of Veterinarians restricted competition among its members

29. The Office sanctioned the Chamber of Veterinarians of the Czech Republic (hereinafter referred to as “the Chamber”) for anticompetitive practices. The Chamber committed a prohibited decision of association of undertakings by incorporating four anticompetitive provisions into its Professional Code. Mentioned provisions significantly restricted competition among its members in the relevant market of veterinary medical and preventive care.

30. One of the provisions did not allow veterinarians to offer surgeries without previous request of a breeder. Veterinarians were therefore restricted in offering services in the market freely according to their preferences. The restriction prevented veterinarians against conducting active marketing and constituted a barrier to competition among veterinarians in the territory where other veterinarians were already active. Therefore it had similar impact as a cartel agreement on market sharing.

31. Another provision of the Professional Code identified by the Office as anti-competitive did not permit the participation of veterinarians in award procedures that were not launched pursuant to the Act on

Public Contracts. Therefore, Chamber members were not able to submit an offer to parties potentially interested in their services. In particular, this led to a decrease of price competition among veterinarians.

32. Other two anti-competitive provisions were focused on prevention of mutual competition for customers. The Chamber sought to prevent the situation when a veterinarian gains a customer of another veterinarian without the consent of the previous veterinarian. Also veterinarians were prohibited from accepting an order from breeder who was a regular customer of other veterinarian before the breeder has terminated all rights and obligations towards the first veterinarian. Also in this case the Chamber tried to influence the competitive conduct of its members when preventing veterinarians to actively compete for customers or accept a demand for veterinary services of the breeder.

33. Anti-competitive provisions were capable of influencing the business decision-making process of veterinarians that were obliged to comply with the set provisions under the threat of a sanction. Mentioned provisions might have led to similar effects as prohibited agreement on market sharing or price agreements. Also the market entry of new Chamber members was restricted.

2.1.2.5 Abuse of dominance in the sector of gas distribution

34. In 2014 the Office repeatedly issued a decision in the matter of abuse of dominant position of the undertaking RWE Supply & Trading CZ. The previous decision from the year 2006 stated that the undertaking abused its market power by preferring operators of regional distribution networks that were part of RWE group before independent operators. Independent operators of regional distribution networks were not provided with the possibility to sign contracts on gas purchase and sale that would allow them to compete with operators of the RWE group. Also the Office considered to be anticompetitive the RWE's refusal to supply the independent operators with gas dedicated to the category of authorized customers into any balance zone of each individual operators of regional distribution networks. Administrative courts partially quashed the Office's decision. Therefore a new decision in compliance with the court ruling was issued.

2.2 *Mergers and acquisitions*

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

35. In 2014 the Office was very active in the area of merger control. As regards concentrations of undertakings, the Office initiated 45 administrative proceedings. 52 decisions were issued when 36 cases were concluded under the simplified procedure. 11 concentrations were reviewed under the standard procedure and second phase of the proceeding had to be carried out in 5 cases. No merger was blocked in 2014. In two cases concentrations were cleared subject to conditions.

2.2.2 *Summary of significant cases*

2.2.2.1 Concentration of undertakings in the sector of aggregate extraction and cement production

36. The Office reviewed the acquisition of the possibility to control the undertaking Hocim Czech Republic by CEMEX Czech Republic. The acquisition formed a part of the European transaction and the Office examined only aspects related to the Czech market. The concentration was cleared in Phase II proceeding. CEMEX CZ is active in the market of production and sale of aggregates, cement and other construction materials. Holcim CZ was a part of Swizz group Holcim Ltd. that was active in the market of sale of aggregates, cement, asphalt and ready-mix concrete. The Office conducted the in-depth review of possible impacts of the proposed transaction in the markets of aggregates, cement and ready-mix concrete including possible coordinated and uncoordinated effects resulting from horizontal and vertical interconnection of activities of merging undertakings.

2.2.2.2 Merger of restaurant operators at the Prague Airport

37. The Office examined a proposed merger in the sector of sale of food products at the airport in particular in the context of the relations between restaurant operators and end consumers. In the course of the proceeding the Office concluded that the transaction could have significantly strengthened the market power of the merging parties that could have had a negative impact on consumer's choice and prices. However, the party to the proceeding offered commitments to ensure the efficient competition in the form of a sale of certain restaurants. Therefore the Office approved the transaction subject to conditions.

2.2.2.3 Concentration between retail chains Ahold and Spar approved, subject to conditions

38. The Office cleared the concentration between Koninklijke Ahold N.V. (Ahold) and undertakings SPAR Česká obchodní společnost s.r.o. (SPAR) and Imobilia Spa s.r.o. (Imobilia), subject to structural conditions accepted in order to ensure efficient competition in the relevant markets. Conditions included commitments to sale several stores in four regions. The undertaking SPAR conducted its business activities solely in the Czech Republic in the retail sector of goods of daily consumption. The undertaking Imobilia was active in the area of property rental and provision of commercial services provided almost solely to undertaking SPAR. In the course of the first phase of the administrative proceeding the Office concluded that the proposed merger raised substantial competition concerns and might have distorted competition in the territory of four cities where the activities of merging parties overlapped and their combined market share significantly exceeded the 40 %. At the same time the Office assessed possible impacts of notified concentration in individual markets of goods offered, among others, also in hypermarkets, supermarkets or retail stores where merging parties were active on the demand side of the markets. However, within these markets merging parties held relatively low market share and were subject to competition pressure from other market participants. Therefore the Office concluded that the concentration did not raise any competition concerns in such markets.

2.2.2.4 Merger of refinery operators

39. The Office cleared the merger of undertakings UNIPETROL and ČESKÁ RAFINÉRSKÁ in Phase II investigation. Impacts of the investigated merger were examined in particular in the context of the wholesale of oil products. In the relevant markets mentioned undertakings did not hold a market share exceeding the 15 % and therefore no competition concerns had to be addressed. The existence of sufficient number of alternative wholesale suppliers was confirmed also by the majority of purchasers addressed by the Office. However the decision was appealed by the third party that filed complaints already in the course of the administrative proceeding.

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

40. 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.

41. In this context the adoption of the Act on Public Service in its final form has to be mentioned as one of the achievements of the Office. Provisions of the original draft raised some concerns that it could affect the independence of the Office in the exercising its HR policy and might led to reduction of the independence in budgetary issues. The professional team of the Office reached a consensual decision with the legislators that these stipulations were not in compliance with the efficient development of the Office and the draft has been revised. Therefore the independence in HR, budgetary and prioritization policy of the Office has not been affected by newly adopted Act on the Public Service.

42. In terms of advocacy efforts the Office was also very active in the sector of lottery regulation. The Office sought to ensure fair competitive environment as regards the regulation of the lottery market. Public authorities have been empowered to regulate the operation of lotteries in their territory. However the Office stressed that the regulation must be in compliance with the competition rules and all lottery operators must be treated in the same manner.

43. In 2014 revision of legal provisions covering the market of executor services was initiated. The Office sought to uphold the efficient competition rules in this sector as the new provisions proposed a certain territorial restrictions in provision of executor services. The drafting process was not finished at the end of 2014.

44. The Office has been conducting an administrative proceeding against the state-owned transportation company Czech Railways due to the alleged abuse of a dominant position in the market of rail transportation. The proceeding has been significantly complicated due to incomplete and insufficient documentation of the Czech Railways activity, in particular documents on its costs and profits. The Office asked the Ministry of Transport to impose legally binding obligation on Czech Railways to document its activity in a sufficient manner.

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 2014

		Change over previous year
Approved budget in CZK	244 million	+ 13.8 million
Approved budget in EUR	8.79 million	+ 0.49 million
Approved budget in USD	11.09 million	+ 0.59 million

4.1.2 Number of employees (person-years) as of December 31, 2014 (For all the competences of the Office – antitrust, public procurement, state aid)

		Change over previous year
Economists	64	+6
Lawyers	124	+24
Other professionals	20	-6
Support stuff	31	+1
All stuff combined	239	+25

4.2 Human resources (person-years) applied to:

		Change over previous year
Enforcement against anticompetitive practices, advocacy efforts	37	+3
Merger review enforcement	7	
Significant market power	6	
Surveillance over the public procurement	86	+7
State aid control	10	+2

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

Information Bulletin: The Office for the Protection of Competition (<http://www.uohs.cz/en/information-centre/publications.html>)

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

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

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

Press release: Sellers of communal technology sanctioned for cartel agreement (<http://www.uohs.cz/en/information-centre/press-releases/competition/1906-sellers-of-communal-technology-sanctioned-for-cartel-agreements-in-public-procurements.html>)

Press release: Suppliers of fire equipment sanctioned for bid rigging (<http://www.uohs.cz/en/information-centre/press-releases/competition/1890-suppliers-of-fire-equipment-sanctioned-for-bid-rigging.html>)

Press release: Concentration between Ahold and Spar approved (<http://www.uohs.cz/en/information-centre/press-releases/competition/1834-concentration-between-retail-chains-ahold-and-spar-approved-subject-to-conditions.html>)

Press release: Chamber of Veterinarians restricted competition among its members (<http://www.uohs.cz/en/information-centre/press-releases/competition/1826-chamber-of-veterinarians-restricted-competition-among-its-members.html>)

Press release: St. Martin's Conference 2014 (<http://www.uohs.cz/en/information-centre/press-releases/competition/1898-st-martins-conference-2014.html>)

Press release: ECA Meeting in Prague (<http://www.uohs.cz/en/information-centre/press-releases/competition/1815-the-office-organized-eca-meeting-in-prague.html>)

Press release: Memorandum on Cooperation with the Antimonopoly Office of the Slovak Republic (<http://www.uohs.cz/en/information-centre/press-releases/competition/1809-the-office-for-the-protection-of-competition-signed-a-memorandum-on-cooperation-with-the-antimonopoly-office-of-the-slovak-repub.html>)