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ANNUAL REPORT ON COMPETITION POLICY DEVELOPMENTS IN THE CZECH REPUBLIC

-- 2015 --

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This report is submitted by the Czech republic to the Competition Committee FOR DISCUSSION at its forthcoming meeting to be held on 15-17 June 2016.

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OFFICE FOR THE PROTECTION OF COMPETITION OF THE CZECH REPUBLIC
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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 (hereinafter referred to as “the Office”) for the year 2015.
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 287 submissions within the past year concerning the abuse of dominant position and prohibited agreements, the alleged anticompetitive behaviour of public authorities and merger related submissions. 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 2015 too.
3. The most important cases investigated by the Office in 2015 concerned prohibited agreements concluded among tenderers within the awarding procedures for public contracts, so called bid rigging, and also dominance issues. In the field of merger control the Office initiated 33 administrative proceedings and issued 31 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 2015, 2 cases were concluded without initiating official administrative proceedings.
4. 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. On the international level the Office continued to strengthen 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 the traditional international St. Martin’s Conference in November. The event 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, multilateral interchange fees, settlement procedure and restriction of competition by public administration.
6. 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

7. In the year 2015 no amendment to the Czech Act on the Protection of Competition was adopted. However, a revision of the mentioned Act was finalized and the legislative procedure was launched. 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. Among other changes, more detailed regulation of simplified procedure on the merger control has to be pointed out. The Office will gain the power to request further evidence without influencing the length and efficiency of the simplified procedure. 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 a business secret. The proposal should also specify the rules for imposing fines for breaching obligations pursuant to the Act on the Protection of Competition.

8. Moreover the amendment contains the provision on international cooperation that should provide the Office with the possibility to conclude a cooperation agreement with other competition agencies on transfer of confidential information. Another significant issue that is covered by the amendment represents the possibility to review the legality of the Office's procedure for unannounced inspection of the business premises of undertakings. It will be possible to do so in court proceedings on the protection against the unlawful conduct of administrative bodies. Therefore the Act on the Protection of Competition will expressly stipulate the possibility of judicial defense against the alleged illegality of the inspection of business or other premises conducted by the Office.

9. The Office has been currently working on a new legislative act related to the transposition of the Directive of the European Parliament and of the Council on certain rules governing actions for damages under national law for infringements of the competition law provisions of the Member States and of the European Union. The draft act was finalized at the beginning of 2016 and is currently a subject to the comment procedure.

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 the sale of agricultural products when an undertaking as a buyer abuses its significant market power towards other undertakings – its suppliers. Since the very beginning of its enactment serious doubts on merits of the Act arose and the Office was entrusted with a revision of the Act. The amendment proposed by the Office went through the legislative procedure in 2015 and was adopted in January 2016. 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 of:*

- **Competition authority**

11. In the year 2015 the Office achieved to conclude a number of cases after a period of long and complex investigations. Especially the record fine in the history of Czech competition law imposed on construction companies for cartel agreement should be stressed as a significant outcome of very complex and difficult investigation.

12. In general, the competition enforcement of the Office remained 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. As regards the sector priorities the Office has been focused on energy sector, telecommunications, transport and construction sector.

13. The Office issued 5 decisions in the area of prohibited cartel agreements. By 4 decisions sanctions were imposed. The Office received 10 leniency applications. In the area of abuse of dominant position 2 decisions were issued. 9 new administrative proceedings against alleged cartel agreements were initiated in 2015.

14. The Office reviewed in total 287 complaints on possible distortion of competition (98 on abuse of dominant position, 127 on prohibited agreements, 54 on anticompetitive behaviour of public bodies and 8 on mergers). 20 appeals were filed against first instance competition decisions and the Chairman of the Office issued a second instance decision in a total of 22 cases.

15. One of the successes of the year 2015 represents the initiation of the administrative proceeding pursuant to the Article 19a of the Act on the Protection of Competition that includes the supervision of the competitive conduct of public authorities. Therefore the Office showed that the provisions of the Article 19a enacted by the amendment in 2012 had its significant purpose.

16. The Office continued in the use of alternative solution of antitrust cases in order to reach more efficient conclusion of cases and save public resources. In 2015 two cases were closed without the initiation of administrative proceedings. Both proceedings were related to resale price maintenance and undertakings subject to the preliminary investigations acted in compliance with the requests of the Office in order to maintain efficient competition in the relevant markets.

- **Courts**

17. In 2015 the Regional Court¹ issued 15 competition related decisions. 8 of them upheld the Office's decision. The Supreme Administrative Court issued 11 judgments. 6 of them confirmed the decision of the Office and 1 judgment partially upheld the Office's decision.

¹ The Regional Court in Brno is the competent authority for deciding on actions filled against the Office's decisions.

18. In 2015 the Constitutional Court issued one ruling related to antitrust case, alleged unlawful use of evidence. The Constitutional Court confirmed the procedure of the Office and stated that the right for a due process was not breached.

2.1.2 Description of significant cases

- **Cartel of construction companies**

19. The Office imposed a record fine in the history of the Czech competition law enforcement for cartel agreement concluded by construction companies. For the competition infringement in the market of engineering constructions in the Czech Republic legally effective fines of CZK 2,039,420,000 (approximately EUR 73,466,713.6) were imposed on undertakings STRABAG, EUROVIA CS, SWIETELSKY stavební, M-SILNICE, BERGER BOHEMIA, Skanska, and Lesostavby Třeboň.

20. Above mentioned undertakings breached the Act on the Protection of Competition by coordinating their participation and bids within the award procedures for public procurement on the construction of major roads. Concerted practices of the parties to the proceedings influenced the outcome of the award procedures and restricted competition.

21. The Office initiated the administrative proceeding based on the submission of the Police that referred to the Office the anonym complaint related to public procurement awarded by the Písek city. The Office gathered information on anticompetitive conduct in the course of twelve dawn-raids that were conducted within more than two-year long investigation. Gathered evidence proved that participants to the cartel agreement agreed on and prepared so called cover bids for mentioned public procurements. Some of them were intentionally incomplete or overvalued. By this means cartel participants entirely excluded the effect of competition from the award procedures and the winner was the undertaking previously chosen by the cartel members.

- **Bid rigging within public tenders for medical equipment**

22. The Office detected and sanctioned anticompetitive behavior conducted by undertakings HOSPIMED and PURO-KLIMA within public procurements for medical equipment for hospitals and other equipment. The total volume of tenders reached almost CZK 200 million (EUR 9.1 million) without VAT. 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.

23. The administrative proceeding was initiated among others on the basis of the Office's analysis of public tenders in the mentioned sector. 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.

24. Within the administrative proceeding the Office secured information on numerous business contacts between Hospimed and Puro-Klima including correspondence proving the collusion in the market. The Office found out that several bids of the parties to the proceeding were similar to a significant extent, amount of 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. The party that did not win the given tender had sometimes been compensated by the winner through subcontracts.

25. In the course of the appeal procedure the Office's Chairman had to cancel part of the decision related to one of public procurement as the subjective three year-time limit for imposing the sanction already expired. Fines for both parties to the proceedings were consequently reduced in adequate manner.

- **Prohibited vertical agreements on Resale Price Maintenance**

26. The Office initiated the administrative proceeding against the undertaking GORENJE for alleged infringement of the Act on the Protection of Competition and the Article 101 of the Treaty on the Functioning of the European Union. The Office conducted dawn-raids in premises of GORENJE and MORA MORAVIA (both members of Gorenje Group). The Office imputed the liability only to GORENJE that applied its own pricing policy in the territory of the Czech Republic and Slovak Republic when selling the products of GORENJE and MORA brands.

27. The Office proved that GORENJE concluded agreements with its distributors on increase of prices of products dedicated to end consumers to the level of minimum resale price set by GORENJE. Prohibited agreements concerned household appliances and heating products. GORENJE held significant market power in markets of mentioned products. The Office assessed the agreements as the resale price maintenance with the object to infringe competition that had the actual negative impact on particular markets. The negative impact on consumers in the form of increased prices was also proved.

28. GORENJE terminated its conduct in the course of the administrative proceeding and sent an information notice to all its distributors stating that prices set by GORENJE are only recommended and will not be enforced. As the undertaking applied for the settlement procedure and fulfilled all the requirements of this procedure the final sanction was decreased by 20 %.

- **Abuse of dominant position in the market of updated information on public transport timetables**

29. Based on a complaint submitted by the undertaking Seznam.cz the Office initiated administrative proceeding against the undertaking CHAPS for alleged abuse of dominant position pursuant to the Czech Act on the Protection of Competition and the Article 102 of the Treaty on the Functioning of the European Union.

30. The Office proved that CHAPS rejected to provide information on updated public transport timetables to other undertakings without any sound reasoning. CHAPS gathered such information for the purpose of managing the National Information System on public transport timetables. Undertakings requiring data from CHAPS wanted to offer products for which the updated information on timetables represented an indispensable input.

31. The conduct of CHAPS had the actual impact on other undertakings and consumers and potentially influenced the trade among EU Member States in mentioned market. CHAPS abused its dominant position and infringed competition in the market of automatic search of public transport connections. A fine was imposed on CHAPS. The decision has been appealed.

2.2 Mergers and acquisitions

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

32. In 2015 the Office was active in the area of merger control. As regards concentrations between undertakings, the Office initiated 33 administrative proceedings. 31 decisions were issued when 20 cases

were concluded under the simplified procedure and 9 transactions were reviewed under the standard procedure. No merger was blocked in 2015. Moreover the Office issued two decisions on the infringement of merger provisions related to the prohibition of merger implementation prior to the Office's approval.

2.2.2 Summary of significant cases

- **Unauthorized acquisition by the undertaking GRADIENT GROUP**

33. The Office sanctioned the undertaking GRADIENT GROUP for merger with the undertaking ALFA COMPUTER prior to the Office's approval. The settlement procedure was used as the party to the proceeding confessed the prohibited conduct. From publicly available sources the Office found out that GRADIENT acquired 100% of shares of the undertaking ALFA COMPUTER in 2013. As the transaction should have been the subject to the Office's review and the merging parties did not notify the case, the Office initiated the administrative proceeding for infringing the merger control provisions of the Act on the Protection of Competition.

34. The Office proved that GRADIENT influenced the conduct of ALFA COMPUTER through its voting rights. In the course of the administrative proceeding GRADIENT did notify the Office on the acquisition of ALFA COMPUTER and the concentration was then approved in simplified procedure. The unapproved merger may have negative impact on competition and consumers. However, the merger subject to investigation did not infringe competition or harm consumers. Such facts were considered in setting the fine. Moreover the sanction was lowered by 20 % due to the use of the settlement procedure.

- **Unapproved acquisition by the undertaking ARMEX Oil**

35. The Office imposed a fine on the undertaking ARMEX Oil for the acquisition of control of the undertaking TRANSCARGO without fulfilling the notification obligation and therefore prior to the Office's clearance. The administrative proceeding was initiated based on the merger notification submitted by the undertakings ARMEX Oil on the acquisition of sole control of TRANSCARGO by ARMEX. In the notification as well as in the application for pre-notification negotiations that preceded the merger notification, ARMEX informed the Office that the transaction was already conducted. The Office cleared the concentration in the simplified procedure.

36. Consequently the Office initiated proceeding against ARMEX for not fulfilling the merger notification obligations. The Office concluded that ARMEX acquired the 100% share of TRANSCARGO already in 2013 and since then influenced the conduct of TRANSCARGO. The Office took into account that ARMEX cooperated in the course of the investigation and submitted information on alleged infringement of competition rules. Under the mentioned circumstance the sanction was lowered by 50 %. However party to the proceeding appealed the decision.

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

37. Promoting the procompetitive provisions within the Czech legislative framework 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 governmental 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.

38. In 2015 the Office provided its expert opinion on a number of legislative acts, for example the Act on Criminal Liability of Legal Persons, the Act on Taxes and other related legal provisions on fuels and biofuels. The Office participated on the revisions of the Act on Payments, the Act on Postal Services, the Act on Intellectual Property, the Act on Viticulture and Enology and others.

39. 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 2015

		Change over previous year
Approved budget in CZK	237 million	- 7 million
Approved budget in EUR	8.54 million	- 0.25 million
Approved budget in USD	10.7 million	- 0.39 million

4.1.2 Number of employees (person-years) as of December 31, 2015:

(For all the competences of the Office – antitrust, public procurement, state aid)

		Change over previous year
Economists	48	-16
Lawyers	117	-7
Other professionals	13	-7
Support stuff	48	+17
All stuff combined	226	-13

4.2 Human resources (person-years) applied to:

		Change over previous year
Enforcement against anticompetitive practices, advocacy efforts	43	+6
Merger review enforcement	7	
Significant market power	7	+1
Surveillance over the public procurement	77	-9
State aid control	11	+1

REFERENCES TO NEW REPORTS AND STUDIES ON COMPETITION POLICY ISSUES

Annual Reports of the Office (<http://www.uohs.cz/en/information-centre/annual-reports.html>)

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: Cartel of construction companies (<http://www.uohs.cz/en/information-centre/press-releases/competition/2086-decision-on-cartel-of-construction-companies-confirmed-sanctiones-were-lowered.html>)

Press release: Bid rigging within tenders for medical equipment (<http://www.uohs.cz/en/information-centre/press-releases/competition/1929-puro-klima-and-hospimed-coordinated-their-bids-within-public-tenders-for-medical-equipment.html>)

Press release: St. Martin's Conference (<http://www.uohs.cz/en/information-centre/press-releases/competition/2045-competition-experts-met-again-at-the-st-martins-conference-2015.html>)