This document is submitted by the Delegation of the Czech Republic to the Committee on Competition Law and Policy FOR DISCUSSION at its forthcoming meeting on 24-25 October 2000.
I. Introduction

1. Joint ventures are a competition policy growth area in which complex tradeoffs must be made between pro- and anti-competitive effects, and among various enforcement approaches. Moreover, it is an area where competition officials have come under pressure from the business community and parts of government and academia to clarify and liberalise policy ostensibly in order to improve dynamic efficiency and international competitiveness.

2. This note is intended to facilitate discussion of joint ventures by sketching out the important issues, posing some questions delegates might wish to explore, and steering the reader to some useful bibliography.

II. Definition

3. There are many ways in which joint ventures could be defined for competition policy purposes. Here is a small sample:

   ...entities that play a role in the marketplace in their own right and are owned or controlled by two or more persons...that are neither ordinary investors nor commonly controlled. [Werden (1998, 701-702) - footnotes omitted]

   ...an integration of operations between two or more separate firms, in which the following conditions are present: (1) the enterprise is under joint control of the parent firms, which are not under related control; (2) each parent makes a substantial contribution to the joint enterprise; (3) the enterprise exists as a business entity separate from its parents; and (4) the joint venture creates significant new enterprise capability in terms of new productive capacity, new technology, a new product, or entry into a new market. [Brodley (1982, 1526) - cited by Werden (1998, 701)]

   In the past - and to some extent, still today - practitioners and business executives have used the term "joint venture" to refer to a separate corporation owned by independent parents. A broader definition includes all cases where firms collaborate in carrying on some activity that each firm might otherwise perform alone. Sometimes the term has been used to refer to virtually any collaboration by competitors, short of merger. These definitions sweep in a vast range of joint activity, from a highly integrated production joint venture, to a loosely integrated marketing network, to a set of ethical rules regarding advertising. [Correia (1998, 738) - footnotes omitted]

4. For the purposes of this paper, "joint ventures" will be defined as participating firms agreeing by contract or otherwise to combine, other than by merger, significant productive (tangible or intangible) assets, and to do this by going beyond ad hoc co-operation. Crucially, they agree to perform a business function rather than simply agreeing to make a business decision in common. Inter-firm agreements that do not qualify as joint ventures will be referred to as "agreements".

5. Exactly how joint ventures are defined, and in particular how they are distinguished from mergers, could be critical in certain jurisdictions. This is because there could be important procedural differences in how joint ventures (or agreements in general) and mergers are treated.
Suggested discussion points

1. Please supply any definition of joint venture or strategic alliance, either general or specific to certain activities, contained in your law, regulations (including block exemptions), or policy guidelines. If there is no such definition, please describe how the courts in your jurisdiction define joint ventures. Regardless of where the definition is found, please describe how your jurisdiction distinguishes between joint ventures on the one hand, and agreements or mergers on the other.

6. The protection of economic competition in the Czech Republic is governed by the Act No. 63/1991 Coll. on the Protection of Economic Competition, as amended by Acts No. 495/1992 Coll. and No.286/1993 Coll. (hereinafter only “Act”). The Act governs all three institutes of competition law, namely agreements distorting competition, abuse of dominant position and control of concentrations between undertakings. Setting up a joint venture as a form of concentration within the scope of acquisitions is also the object of the statute. The Office for Protection of Economic Competition (hereinafter only “Office”) defines a joint venture as a company which is jointly controlled by several competitors. When applying competition law, the Office distinguishes between two types of joint venture:

• co-operative joint ventures whose aim is co-ordinating competitive behaviour of the parent undertakings that otherwise remain independent. These joint ventures are evaluated by the Office according to the regulations on agreements distorting competition;

• concentrative joint ventures which, on a permanent basis, perform all the functions of an independent economic unit and do not establish co-ordination between parent companies themselves and the joint venture. These joint ventures are evaluated as concentrations between undertakings within the meaning of the Act.

2. Do you have any data or, failing that, anecdotal evidence indicating a marked change in the last few years in the incidence of joint ventures? Does any such trend occur across the board or is it concentrated in certain sectors, and if so, which ones? If there is an increasing or decreasing use of joint ventures, what appear(s) to be the underlying cause(s)? How, if at all, are trends in the use of joint ventures related to:

a. globalisation; or

b. changes in enforcement policies towards alternative methods of inter-firm collaboration, i.e. other agreements and mergers?

7. On the basis of its proceedings the Office can state that establishing joint ventures is especially characteristic of fast growing areas requiring initial capital. The main reason for establishing joint ventures is the fact that foreign companies are trying to enter the Czech market and Czech competitors are trying to get the necessary know-how (especially in the field of information technology and electronics) and improve their competitiveness on foreign markets (especially in the field of electronics, engineering and consumer industry). The following can be named as illustrative examples:

• establishing a concentrative joint venture in the field of information technologies – providing access to the Internet (the firm Contactel was set up by České radiokomunikace and Tele Denmark in 1999);

• establishing a concentrative joint venture in the field of electronics – transportation control systems (Eltodo was set up by Eltodo and Siemens in 1999);
• establishing a concentrative joint venture in the field of engineering – turbine production (ABB Alstom Power NV was set up by ABB and ALSTOM in 1999);

• establishing a co-operative joint venture in paper industry – waste paper management (joint venture called EURO WASTE a.s. was set up by AssiDoman Packaging Sturovo, a.s., Norske Skog Stetí a.s., AssinDoman Sepap a.s. and Papírny Bela a.s.).

III. Why do firms engage in joint ventures, and how do competition agencies deal with them?

8. Assuming that firms wish to combine in various ways to obtain greater efficiency and/or market power, why do they choose to do this through a joint venture rather than either a more *ad hoc* arrangement, or a merger? In theory, a joint venture could be mimicked by continuous detailed co-operation in making decisions about the use of resources remaining under the separate control of individual participants. A joint venture could, however, accomplish this with lower transactions and organisation costs. A degree of integration should foster greater commitment and trust than would a mere agreement, hence spare the parties having to fully specify their legal relationship in advance. Compared with a merger, a joint venture might be easier, quicker and cheaper to arrange, and permit a more flexible, hence efficient joining of forces. It could also be less commercially risky and easier to undo than a full-fledged merger.

9. There are no doubt some cases where participants agree to perform through a joint venture something which would not or even could not be undertaken by each participant acting alone. Except for such cases, joint ventures will involve some loss of actual or potential competition. It follows that an adequate competition policy towards joint ventures should consider both their pro- and anti-competitive effects.

10. Assessing a joint venture's pro-competitive effects essentially involves considering the static and dynamic efficiencies obtained through co-operation to develop and perhaps produce new products, processes or means of distribution. As for anti-competitive effects, assessment would normally begin by examining the terms of a joint venture's founding agreement(s) including: the governance structure adopted; the joint venture's duration; and the nature and extent of assets transferred to the joint venture versus those retained by the participants. The principal focus of this analysis would be to ascertain the degree to which the participants retain the freedom, ability, and incentive to compete with the joint venture and/or each other. Any exclusivity clauses affecting third parties would also deserve attention. Assuming that inter-party competition will be constrained in some way, the investigation may have to broaden to include making a formal market definition, estimating concentration levels, and considering the significance of any barriers to entry.

11. Clearly the above analysis should not apply to a sham joint venture, especially one containing sub-agreements ordinarily subject to summary condemnation and heavy sanctions, i.e. "naked" price fixing, output reductions, or market allocations. Scarce enforcement resources should not be expended assessing what, absent the disguise, is simply a "hard core cartel". The more difficult policy questions are whether and how competition agencies should:

   a. improve the transparency and predictability of their joint venture analysis;

   b. not only review a joint venture taken as a whole, but also engage in a supplementary examination of any sub-agreement that might have anti-competitive effects taken by itself; and

   c. work with joint venturers to encourage them to make commitments designed to reduce the risks of anti-competitive effects; and
12. It is difficult to spell out how a competition agency will analyse arrangements as potentially diverse as joint ventures. Nevertheless, even a general guide could prove helpful to businesses and their advisors and thereby facilitate arrangements benefiting consumers. Without such assistance, firms could understandably hold back from entering some net pro-competitive joint ventures. This is especially true of joint ventures which participants believe must contain sub-agreements that, standing alone, would be viewed as hard core cartels. It is important to draw a clear line between what will and will not be subject to summary condemnation coupled with severe penalties.

13. Competition review of joint ventures might include two parts. The first part would perform at least a preliminary balancing of the joint venture's pro- and anti-competitive effects. In some cases, this preliminary test would be sufficient to condemn or clear the joint venture. However, in cases where the analysis appeared inconclusive and/or sub-agreements having clear anti-competitive effects were found, part two would apply. Each of the problematic looking sub-agreements would be subject to close scrutiny. For example, the competition agency could ask whether: a) the restraint is reasonably connected to the joint venture, and if so; b) is it necessary to the achievement of the joint venture's pro-competitive efficiencies? If either of the answers are negative, the restraint, but not the joint venture as a whole, would be prohibited. Such treatment would be especially appropriate for a restraint which, standing alone, would be summarily condemned as a hard core cartel. If the sub-agreement is instead reasonably connected to the joint venture and necessary to achieve its pro-competitive efficiencies, the competition agency could accept or reject it depending on its net competitive effect.

14. Neither part of the suggested approach would be easy to apply, but the second would be particularly difficult. The problem is how to define "necessary" in this context. A restraint on competition could be absolutely necessary in that the joint venture would be abandoned without it. Or it could be necessary in the sense that it is the least anti-competitive way in which certain pro-competitive effects can be assured. Or, as a kind of middle ground, a restriction could simply make a joint venture more attractive to its participants because it helps ensure commitment and reduces free riding.

15. Competition agencies could decide to go somewhat beyond the kind of analysis sketched out above. To be specific, they could encourage commitments that would make a joint venture less likely to be anti-competitive. For example, joint venturers could be urged to keep certain assets out of a joint venture, refrain from giving it any marketing functions, and/or licence third parties to use technology or products discovered or perfected by the joint venture.

16. As for the level of sanctions that should be applied to joint ventures, this too turns out to be a bit complicated. If a joint venture, other than a sham, is found to be anti-competitive at something like what was described above as part one of the analysis, there seems to be little reason for going much beyond prohibiting it. It should probably be treated approximately like a prohibited anti-competitive merger. If instead, during part two of the analysis, anti-competitive sub-agreements are found that are not sufficiently connected to the joint venture, there may be good grounds for subjecting them to the same penalties attaching to the behaviour outside a joint venture context. For example, in the context of a joint venture to produce automobile parts, an agreement to fix the price of refrigerators should presumably be punished as "naked" price fixing. Moving away from this extreme, which is akin to a sham, things get more difficult. If there is some reasonable connection to the joint venture and to the realisation of its pro-competitive efficiencies, but a clause is nevertheless prohibited because of its net anti-competitive effect leniency seems warranted. In specific, a prohibited clause should perhaps benefit from more favourable treatment than would have been meted out to the same type of behaviour outside the joint venture context. Such
leniency could be justified on fairness grounds as well as on a desire to avoid a chilling effect on pro-
competitive joint ventures.

17. A desire to avoid a chilling effect seems to have motivated a number of competition agencies to
publish enforcement guidelines regarding joint ventures. Some countries have gone considerably further
by adopting what amount to special joint venture regimes. There appears to be considerable variation in
this domain, but broadly speaking, one or more of the following measures have been used:

   a. employing various presumptions and burden shifting provisions to fine tune the treatment
      accorded to joint ventures;
   b. subjecting joint ventures to lower penalties;
   c. providing a safe-harbour exemption for joint ventures falling below certain market share
      thresholds; and
   d. providing general (block) exemptions for qualifying joint ventures.

18. There are a number of permutations possible in the above. For example, explicit joint venture
policies could be limited to R & D or production so as to exclude co-operation on marketing functions. In
addition, some kind of notice could be required for joint ventures to be eligible for more lenient treatment,
and the treatment itself could be either permanent or time limited.

Suggested discussion points

1. Which, if any, types of competitive restraints are subject to summary condemnation in your
jurisdiction, i.e. prohibited without much regard to their pro- or anti-competitive effects? If such
arrangements appear as part of a legitimate joint venture, how are they treated?

19. As stated above, in its proceedings the Office distinguishes between concentrative and co-
operative joint ventures.

20. Establishing a joint venture falls under the general prohibition of agreements distorting
competition (Article 3, par. 1 of the Act) provided it results in co-ordinating the behaviour between parent
companies or between these companies and the joint venture. The danger of anti-competitive effects of
such joint venture will be most imminent in a situation where parent companies are real or potential
competitors.

21. When assessing co-operative joint ventures the Office evaluates the negative impact on
competition on one hand, and at the same time pro-competitive effects of the agreement in question on the
other. In its analysis the Office considers the respective provisions of the agreement (e.g. obligations not to
compete by the parent companies) and aims at preventing these agreements from having unfair restrictions
of competition. The restraint on competition can only be such that is necessary for the establishment and
proper functioning of the joint venture.

22. Generally it can be said that provisions on market division or price fixing are prohibited, no
matter if they are agreed between parent companies themselves or between one of them and the joint
venture. Granting of an individual exemption for these agreements will be out of question. The Office also
considers whether it is possible to separate such provisions that distort competition from the agreement
establishing a joint venture. If it is possible to separate these provisions from other parts of the agreement,
they will be prohibited and void. If they cannot be separated, the whole agreement will be prohibited and void.

23. As far as concentrative joint ventures are concerned, the Act has a basic criterion on the control of concentrations between undertakings in one of its sections. Under Article 8a, par.2 of the Act, the Office must approve of a concentration if the applying firms prove that any detriment which may result from the distortion of competition will be outweighed by the economic benefits brought about by this concentration. In other cases, the Office must not approve of a concentration.

2. In order to be permitted in a joint venture context, do you require evidence that apparently anti-competitive clauses or sub-agreements are: a) reasonably linked to the joint venture's pro-competitive effects; and b) that they are also somehow necessary to achieve the joint venture's positive impact? If so, please describe the kind of evidence and factors you look for in order to make this determination. Do you insist that any competitive restraints found in a joint venture, represent the least anti-competitive means of attaining its pro-competitive effects? If so, please describe the kind of evidence you look for in order to make that assessment.

24. According to the Administrative Code is the Office obliged to find out all details about the actual state of affairs and request all the information necessary for its decision. With concentrations information is submitted by competitors in the form of a questionnaire that includes a number of facts and background information relevant for the decision on the given concentration (information about the parties, information concerning the given concentration, issues of ownership and control, personal and financial commitments, information about the relevant market and effected markets). The questionnaire also has a part on restrictions ancillary to concentrations that can be assessed together with the concentration itself. Firms are obliged to specify those restrictions of competition and explain the direct relation and the necessity for the implementation of the given concentration. It is in the undertakings' own interest to supply complete, correct and true information because otherwise the notification of a concentration may be considered faulty. In such a case the Office may interrupt the proceedings until the drawbacks in the notification have been removed. The Office can further require additional necessary information from the firms concerning the given concentration.

3. Do you encourage joint venturers to make commitments designed to ensure that their joint venture does not have a net anti-competitive effect (i.e. commitments intended to reduce anti-competitive effects and/or to enhance offsetting pro-competitive efficiencies)? If so, please cite some representative examples and describe whether such commitments were enforceable or not, plus any steps taken to reduce associated monitoring costs.

25. In its decision on the approval of a concentration under Article 8 par.2 of the Act, the Office can set some restrictions and obligations which it considers necessary for maintaining the economic competition. Basically they can be divided into five groups:

1. **Structural commitments, involving changes in the market structure** (such as selling part of the undertaking or a certain activity to a third party).

2. **Commitments concerning behaviour, having no influence on the structure of the market**, but which can influence the behaviour in the market. It is e.g. application of the non-competition clause for an unspecified period of time or the commitment to cease co-operation with another company or about the cessation of contractual relations with suppliers, making it thus possible for these suppliers to sell to a third party.
3. **Quasi-structural commitments connected to the transfer of intellectual property rights.** It is among others the commitment not to use a registered trademark in a particular area or selling some trade mark to a competitor specified by the Office or cessation of a licence agreement by a third co-operating party or granting a non-exclusive licence for patents and know-how to the competitors.

4. **The commitment to terminate personnel links in the bodies of the merging companies.**

5. **The commitment to submit reports about the state of implementation of commitments** or to inform the Office about future intentions concerning the acquisition of shares in other companies and to inform the Office about the changes in the number of employees and submit the annual accounts.

26. The following examples can serve to illustrate the above mentioned division of commitments: in case of *Sklo a.s./Sklášská surovina, s.r.o.* (upholding the present production of rod glass, beaded semiproducts and component rods for the manufacture of mock jewels for the period of five years) or the decision concerning *Natura, a.s., Natuuramyl, a.s., Lusiana de brasil Comércio International e representaceo Ltec/Dr. Oetker* (maintaining the combine trade mark of the Czech product) or the commitment connected to intellectual property rights (safeguarding the trademarks accessibility of the concentrated breweries Plzeňský Prazdroj, Radegast, Gambrinus and Velkopopovický kozel in the internal market for five years) or the commitment to consult the Office in case of selling all or a major part of shares of Research Institute for brewery, a.s. outside the group South African Breweries when approving of the concentration between *Plzeňský Prazdroj, a.s.* and *South African Breweries International*.

27. Similarly, in a case of an exemption from the prohibition of agreements distorting competition, the Office may set conditions necessary to maintain economic competition.

28. In its decision-making practice the Office has not encountered a situation where the establishment of a joint venture would require a commitment to expand the pro-competition character of an agreement establishing a joint venture.

4. *If your country has an identifiable competition policy applied to "joint ventures" (as you define them), does it apply only if they have a particular legal form (e.g. equity participation in a separate legal entity), or a certain degree of permanence? If that is the case, why is it so?*

29. The Office has published Guidelines to legal regulations and procedures for merger control. These guidelines make it possible for the public to get acquainted with the Office’s main principals in the process of deciding on approval of concentrations between undertakings and is aimed at a better “transparency” of its proceedings.

30. When assessing joint ventures, the Office must, no matter what the legal form of the parent companies or the joint venture, take into consideration all joint ventures that meet the requirements of the Act and assess them from the point of view of their impact on economic competition.

31. For the joint venture to be considered concentrative and fall under the rules on the control of concentrations between undertakings, it is necessary that it performs its activities on a permanent basis. The Office, in line with the European Commission, accepts a minimum period of five years for the establishing of a concentrative joint venture. This approach reflects the fact that merger control is a tool
whose aim is to prevent permanent negative changes in the structure of concentrating undertakings and relevant markets.

5. If there has been empirical research tending to show that your joint venture laws and policies are either too liberal or not liberal enough, please identify that research and summarise the findings.

32. Up to now no analysis concerning joint ventures from the point of view of application of competition law has been made. However, an analysis of the decisions taken by the European Commission has been undertaken, where conditions and commitments were imposed on the parties participating in the merger. It follows from the experience that the Office has had so far that all cases of establishing a joint venture have been approved by the Office, no prohibition of an existing joint venture has been introduced and no changes in agreements establishing joint ventures to eliminate anti-competitive effects or to foster pro-competitive ones have been required either.

6. Does your agency balance the pro- and anti-competitive effects of a joint venture using a different "surplus" standard than it applies to mergers? For example, you might apply a strict consumers' surplus approach to joint ventures (e.g. cost reductions must be so great that price(s) will fall despite any increase in market power), but a more liberal total surplus approach to mergers (i.e. focus on net changes in the combined total of consumers' plus producers' surplus. Please explain, if pertinent, why two different standards are being applied.

33. The principal rule for approval of all concentrations between undertakings (including concentrative joint ventures) is laid down in Article 8a par. 2 of the Act. According to these provisions the Office must approve of a concentration if the applying firms prove that any detriment which may result from the distortion of competition will be outweighed by the economic benefits brought about by this concentration. In other cases, the Office must not approve of a concentration.

34. When assessing the impact on competition the Office does not apply the rules blindly. The assessed cases differ in a number of aspects. Nevertheless, each assessment from the point of view of impact on economic competition starts from the same basic procedure.

35. First it is necessary to clearly define the relevant market in which the parties operate. The greatest threat to competition are horizontal concentrations leading to a direct decrease in competition on the market. When assessing the detriment caused by the concentration between undertakings, the Office considers above all the following: the structure of the given market (especially the joint market share of the parties), barriers to market entry and vertical integration.

36. The economic benefits, which have to be justified by the parties to a concentration, arise from the benefits of a concentration and may include cost reduction, economies of scale, increased quality of production, better correlation between price and quality, improved ability to export and better competitiveness on foreign markets. It is also important for the firm to prove that these facts will be beneficial to third parties, i.e. to non-participating firms, consumers and the economy as a whole.

37. To answer the above question, it is generally possible to state that the Office, when assessing joint ventures, does not use any "surplus" standards. However, a particular emphasis is put on consumers' interests. This approach is illustrated by the ruling of the former Ministry of Economic Competition on the agreement to co-operate in cultivating a new breed of pig – the HYSUS Consortium. The Ministry approved of this agreement as consumers have benefited from the new breed of pig - having access to pork the quality of which is higher and which is leaner and in line with the European standards. Similarly in the
case of a co-operative joint venture set up to manufacture pet food for dogs and cats, consumers’ interests were considered. They could buy a good quality Czech product manufactured according to modern recipes using Czech ingredients.

7. Are there plans afoot in your jurisdiction to modify or introduce policies applied to joint ventures? If so, please describe why these changes are being contemplated.

38. In 2000 the Office has been working on the new draft bill on the protection of economic competition aimed at full compatibility with EU law. The bill was approved by the Czech government on August 30, 2000 and submitted to the Parliament of the Czech Republic. The new Act should enter into force on July 1st 2001.

The following are the main principles of the new Act concerning joint ventures:

- Refining the definition of concentrations between firms. A specification of the definition is one of the essential requirements for effective control of economic concentration and at the same time a prerequisite for legal certainty of the undertakings. It is thus important for the Act to include a standard wording such as that in Council Regulation No. 4064/89 as amended by Regulation No.1310/97. The proposed legislation states that the establishing of a joint venture is a form of a merger and it also includes criteria for distinguishing between co-operative and concentrative joint ventures.

- Introducing the criterion of turnover for the notification of concentrations of competitors. Apart from the market share as an existing criterion for the notification of concentrations between undertakings, the criterion of turnover achieved by the undertakings concerned in the preceding financial year has been suggested. Introducing the criterion of turnover is aimed at providing both compatibility with EU law and increasing legal certainty of the competitors. In accordance with EU law, different rules have been accepted for the calculation of turnover in banks and insurance companies. The net turnover of banks is a sum of revenues, especially those from interest, bonds and aggregate ownership interests, commission and fees generated by management of clients’ assets.

- Introducing criteria for approval of concentrations between undertakings based solely on the principles of competition. According to the bill, it is essential whether or not, as a result of the concentration, a dominant position will arise or be strengthened, resulting in substantial restriction of competition on the given market. The Office will only approve of the concentration if the proceedings prove that such dominant position will not arise. It will not approve of the concentration if it is the opposite case.

8. Please describe in detail one or more recent joint venture cases that your agency has worked on.

Establishing the CONTACTEL s.r.o. joint venture

39. The Office has worked on the merger between ČESKÉ RADIOKOMUNIKACE, a.s. (hereinafter only “ČRA”) and TeleDenmark A/S which has taken place after signing the agreement setting up Contactel, s.r.o. joint venture. The joint venture operates in the field of data and Internet services and voice telephony provided by means of hardwired telephone lines.

40. On the basis of the establishing agreement ČRA and TeleDenmark have become owners of a 50 per cent share of the Contactel s.r.o. company each and in this way have gained direct control of the company. Neither of the parent companies is supposed to make decisions about the company on their own. The joint venture is to be controlled by both parent companies.
41. In this particular case the Office has first assessed the type of the new joint venture – concentrative or co-operative type. Owing to the fact that Contactel is supposed to operate on the market as a fully fledged independent economic unit and the parent companies are not supposed to operate in the same field as the joint venture, the Office has evaluated the whole project as establishment of a joint venture of concentrative type.

42. The merger is supposed to increase the market share of its parent companies to more than 30 per cent on relevant markets of radio and television signal transmission. According to the provisions of Article 8a, par. 1 of the Act on the Protection of Economic Competition such concentration is to be approved by the Office, which must, under Article 8a, par. 2, approve of such concentration between undertakings, provided the applying competitors prove that any detriment which may result from the distortion of competition is outweighed by the economic benefits brought about by this concentration. The very fact of decreasing the number of competitors on the market or gaining or strengthening the dominant position can be considered to be a detriment to economic competition. The Office stated that in this particular case the competitors could compete on the product markets of telecommunication services and once the joint venture is created, the number of competitors in the market will decrease and can thus be considered as a detriment to competition.

43. On the other hand, the Office has assessed the benefits which follow from establishing the joint venture, especially taking the interests of the end user into consideration. The Office has considered the entry of a new competitor to the market of voice telephony services and creating effective competition for the up-to-now dominant Český Telecom, a.s. company to be the major benefit. The possibility to choose from several telecommunication operators will bring about reduced prices in telecommunication services. The consumer will profit from a higher quality and a wider portfolio of telecommunication services. TeleDenmark will provide the know-how and international experience from operating in telecommunication services. Higher quality of services is also desirable from the point of view of public interest, above all in order to provide versatile telecommunication services. Setting up the joint venture will also lead to increased competition on the market of Internet access providers as neither CRA nor TeleDenmark have so far provided these services.

44. Having assessed the benefits with regard to the distortion of competition, the Office has arrived at the conclusion that the benefits will outweigh the detriment caused by the concentration and has approved the concentration in the form of a joint venture of concentrative type.

IV. International Aspects of Joint Ventures and International Co-operation Among Competition Offices

45. In terms of frequency and the size of firms involved, international joint ventures appear to be more and more important. Moreover, as globalisation continues, even joint ventures confined to domestic firms could increasingly affect other countries' consumers. Although there is no necessary reason why joint ventures with international effects should be either more or less pro- or anti-competitive than strictly domestic joint ventures, they do face some particular problems. The balance of pro- to anti-competitive effects could vary from one country to another, and even where this is not the case, dissimilar competition policies could produce across country variations in treatment accorded to joint ventures having international effects. Complementing this point, competition agencies may experience pressure to give lenient treatment to both domestic and international joint ventures on the grounds that they are needed to assure the international competitiveness of a nation's firms.
46. Thus, there may be room for soft convergence in laws and enforcement policies as regards joint ventures. There might also be support for measures to co-operate in investigating and devising remedies for joint ventures, especially those having international effects.

**Suggested discussion points**

1. *Please describe any international joint venture cases you have dealt with where there have been differences in treatments accorded by the competition offices involved. In such cases, would facilitating information exchange or assisting in other jurisdictions' investigations have contributed to more similar resolutions being adopted in each country? Why or why not?*

47. In its proceedings the Office has not yet dealt with any case where there have been differences in treatment accorded by the competition authorities involved.

48. The Office for Protection of Economic Competition is fully aware of the growing importance of competition policy on the international scale resulting from globalisation and internationalisation of the economies. Due to globalisation there are more and more competition issues surpassing the frontiers of individual states. For this reason the Office has been supporting active co-operation between competition authorities in the process of application of competition law. Exchanging information between competition authorities is a prerequisite for a more effective implementation of competition law in cases which are subject to several national jurisdictions. For the purpose of arriving at the same evaluation of concentrations between undertakings by all competition authorities concerned, however, it is also necessary for the criteria of assessment to be based on the same principals and to be applied in a non-discriminatory way.

2. *Please give examples, if there are any, of your agency co-operating with competition agencies in other jurisdictions on joint venture cases. Whether or not you have had such cases, what do you see as the main costs and benefits of such co-operation?*

49. The Office has so far assessed only one case of joint venture that was also simultaneously dealt with by another competition authority. It was a concentration between undertakings in the form of establishing a joint venture by companies EXXON and SHELL, dealt with by the European Commission under Regulation No. 4064/89. The reason for the notification was in this case an attempt to provide identical assessment of the concentration by both competition authorities resulting in adopting the same rulings on the same matter.

50. The Office considers that co-operation between competition authorities in the form of exchange of information can be beneficial both to a more detailed assessment of the given case and can also lead to cost reduction for the participating undertakings (with respect to the necessity of notification of the concentration to several competition authorities).

3. *Please present any evidence you may be aware of that across country differences in policies towards joint ventures have prevented companies from making better use of international joint ventures, or have resulted in competitive distortions, i.e. one set of firms has been favoured over another.*

51. The Office has no information on such a case of differences in application of competition law.