COUNTRY STUDIES

Czech Republic - The Role of Competition Policy in Regulatory Reform

2001

Introduction

The Review is one of a series of country reports carried out under the OECD's Regulatory Reform Programme, in response to the 1997 mandate by OECD Ministers. This report on the role of competition policy in regulatory reform analyses the institutional set-up and use of policy instruments in the Czech Republic. This report was principally prepared by Mr. Michael Wise for the OECD.

Overview

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FOREWORD

Regulatory reform has emerged as an important policy area in OECD and non-OECD countries. For regulatory reforms to be beneficial, the regulatory regimes need to be transparent, coherent, and comprehensive, spanning from establishing the appropriate institutional framework to liberalising network industries, advocating and enforcing competition policy and law and opening external and internal markets to trade and investment.

This report on *The Role of Competition Policy in Regulatory Reform* analyses the institutional set-up and use of policy instruments in the Czech Republic. It also includes the country-specific policy recommendations developed by the OECD during the review process.

The report was prepared for *The OECD Review of Regulatory Reform in the Czech Republic* published in 2001. The Review is one of a series of country reports carried out under the OECD's Regulatory Reform Programme, in response to the 1997 mandate by OECD Ministers.

Since then, the OECD has assessed regulatory policies in 16 member countries as part of its Regulatory Reform programme. The Programme aims at assisting governments to improve regulatory quality — that is, to reform regulations to foster competition, innovation, economic growth and important social objectives. It assesses country's progresses relative to the principles endorsed by member countries in the 1997 *OECD Report on Regulatory Reform.*

The country reviews follow a multi-disciplinary approach and focus on the government's capacity to manage regulatory reform, on competition policy and enforcement, on market openness, specific sectors such as telecommunications, and on the domestic macro-economic context.

This report was prepared by Michael Wise in the Directorate for Financial and Fiscal Affairs of the OECD. It benefited from extensive comments provided by colleagues throughout the OECD Secretariat, as well as close consultations with a wide range of government officials, parliamentarians, business and trade union representatives, consumer groups, and academic experts in the Czech Republic. The report was peer-reviewed by the 30 member countries of the OECD. It is published under the authority of the OECD Secretary-General.

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Executive Summary

Background Report on The Role of Competition Policy in Regulatory Reform

Competition policy is central to regulatory reform, because its principles and analysis provide a benchmark for assessing the quality of economic and social regulations, as well as motivate the application of the laws that protect competition. The Czech Republic's conception of competition policy fully supports pro-competitive restructuring and reform. Its institutions generally have the tools they need to effectively promote competition policy. The competition laws and enforcement structures are well-established and competent to the task of preventing or correcting collusion and monopoly now and after reform, and they have been active in encouraging pro-competitive reform since they were created.

The situation in the Czech Republic must be understood in the context of 10 years of reform, as the country moved from central planning to a modern market economy. Competition policy principles have been integrated into the general policy framework for regulation from the beginning of that process. For several critical years, which included key decisions about privatisation and restructuring, competition policy was a separate Ministerial portfolio, so that considerations of competition policy were raised directly in intra-government decision-making. Anti-competitive constraints have been avoided, for the most part, in designing new regulatory institutions, but in restructuring energy monopolies, some competition concerns remain.

The most important challenge is not one of competition policy, as that is usually conceived, but of improving competitiveness by completing the process of reforming the inherited industrial structure. This will require solving some of the problems of corporate governance and financing that have emerged from the privatisation process. Managers need more incentive — or discipline — to produce efficiently and deploy assets productively. Among other reforms, this may require a clean-sweep replacement of the cumbersome bankruptcy law, where incremental tinkering is postponing fundamental solutions. Competition policy may play a modest role, sorting out investment cross-holdings that may inhibit competition and reviewing proposed restructuring deals to ensure against the creation of market power.

As reform stimulates structural change, vigorous enforcement of competition policy is needed to prevent private market abuses from reversing the benefits of reform. The Czech Republic has a mainstream competition law and a healthy enforcement body, the Czech Office for the Protection of Economic Competition ("OPEC"). The Czech competition law is based on familiar European concepts, prohibiting restrictive agreements and abuse of dominance and requiring approval for major mergers. Some of the original features that were particularly appropriate for a transition setting, such as a strict test for dominance and merger control, are being revised now to conform to EU norms in anticipation of accession and to make it more useful as a tool of reform. The administrative approach in applying the competition law has worked well, but new tools are needed to deal with violations, such as horizontal cartels, that the parties do not report to the authorities. No sector is exempt from competition policy, and provision for special regulatory exemptions appear to be well controlled. Most recurring issues are similar to those faced by all competition enforcers, such as self-regulatory barriers to professional services and increasing pressure for rules to protect competitors against abuse of economic dependence.

A complement to competition enforcement is competition advocacy, the promotion of competitive, market principles in policy and regulatory processes. Some new institutions, such as sectoral regulators in infrastructure industries, were the result in part of such advocacy. As these new bodies are established, more formalisation of their relationship to the OPEC may be appropriate. And as the country implements its new regional layer of government, competition policy must remain vigilant about the risk of distortion of competition by government bodies.

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Box 1. **Competition policy's roles in regulatory reform**

In addition to the threshold, general issue, which is whether regulatory policy is **consistent** with the conception and purpose of competition policy, there are four particular ways in which competition policy and regulatory problems interact:

- Regulation can **contradict** competition policy. Regulations may have encouraged, or even required, conduct or conditions that would otherwise be in violation of the competition law. For example, regulations may have permitted price co-ordination, prevented advertising or other avenues of competition, or required territorial market division. Other examples include laws banning sales below costs, which purport to promote competition but are often interpreted in anti-competitive ways, and the very broad category of regulations that restrict competition more than is necessary to achieve the regulatory goals. When such regulations are changed or removed, firms affected must change their habits and expectations.

- Regulation can **replace** competition policy. Especially where monopoly has appeared inevitable, regulation may try to control market power directly, by setting prices and controlling entry and access. Changes in technology and other institutions may lead to reconsideration of the basic premise in support of regulation, that competition policy and institutions would be inadequate to the task of preventing monopoly and the exercise of market power.

- Regulation can **reproduce** competition policy. Regulators may have tried to prevent co-ordination or abuse in an industry, just as competition policy does. For example, regulations may set standards of fair competition or tendering rules to ensure competitive bidding. Different regulators may apply different standards, though, and changes in regulatory institutions may reveal that seemingly duplicate policies may have led to different outcomes.

- Take advantage of market incentives and competitive dynamics. Co-ordination may be necessary, to ensure that these instruments Regulation can **use** competition policy methods. Instruments to achieve regulatory objectives can be designed to work as intended in the context of competition law requirements.

1. COMPETITION POLICY FOUNDATIONS

Competition policy motivated by dynamic efficiency and modelled on European methods, adopted and developed during the decade of transforming the Czech economy and government institutions, strongly supports continued regulatory reform. The same principles may motivate solutions to the most important and difficult current reform tasks, of restructuring major enterprises to make them competitive in modern conditions. But competition policy tools will play a secondary role in these tasks, which will require reforms to the institutions of corporate governance and financing.

1.1. Context and history

Competition policy developed in the Czech Republic along lines similar to most of continental Europe until 1948. The first explicit statute on the subject was adopted in the late nineteenth century, when Bohemia already had the most highly developed industry under the Habsburg monarchy. That law declared that agreements among traders to increase prices to the disadvantage of customers were void.[1] Under this approach, which was common at that time, price fixing agreements were not necessarily prohibited by public law, but the conspirators could not use private law remedies to enforce their agreements against defectors. Later, in the inter-war period, Czechoslovakia adopted a program to register cartels and control abuses.[2] Cartels were permitted, subject to oversight to correct abuse. This law was not repealed, but it could not be enforced in the first two years after World War II.

From 1948 to 1989, when the economy was subject to monolithic central direction and planning, "competition policy" to regulate the resulting monopolies would have been incoherent. Some rules about unfair competition were added to the national planning regulations during the brief reform period in 1968-69.[3] In 1970, a rule against abuse of dominance was added to the Economic Code. But this rule was not a

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precursor of a move toward wider application of competition concepts. It addressed organisations dealing with each other in the context of a national plan, not a competitive market. And it was actually invoked only once. The central planning model appears to have been followed more consistently through the 1980s in Czechoslovakia than in some of its neighbours, which had begun to introduce market-pricing mechanisms and to anticipate the need to create new institutional structures for a market economy before 1989.

As the country revamped its institutions to shift to a market economy in 1990, one of the first steps was to draft a framework competition statute. The law on the "protection of economic competition" ("Competition Act") was adopted in 1991.[4] This law drew on European models and substantive concepts, but it also included features designed to address particular national problems, notably the historically monopolised structure of most markets. Not only were the "natural" monopolies in the utility sector still unregulated and unreformed, but also manufacturing and other industries were typically monopolies, at least within a domestic market. To apply the new law, the Czech National Council established the Office for the Protection of Economic Competition ("OPEC"), which began operation 1 July 1991. The competition agency's institutional status was upgraded in 1992, when the OPEC became the Ministry of Economic Competition. In that position, competition policy could intervene more directly in the privatisation process. After the June 1996 parliamentary elections, and as part of a general reorganisation of administration offices and functions, it became an "office" again.[5] The OPEC's headquarters is in Brno. Geographic separation from the other governmental institutions in Prague was intended to represent and re-enforce the competition policy body's independent decision-making position.

The basic competition law will be replaced by a new law to make its text conform fully to EU competition policy. The most significant changes will involve the treatment of mergers and the definition of dominant position. The new Czech law will also follow the EU's approach to exemptions and *de minimis* issues. This new law has been in preparation since 1999 (EC, 1999, p. 33). The government approved the amended competition act in August 2000, and the Parliament approved it in April 2001. It will enter into force on 1 July 2001.

1.2. Policy goals

The Competition Act's statement of purpose says that it is to protect "economic competition" against elimination, restriction, or "distortion". The draft new Competition Act would expand the law's coverage some, by adding a purpose to prevent threats, as well as actual, elimination, restriction, or distortion of economic competition. The meaning of "economic competition" is not elaborated further, but must be understood from the remainder of the law and from the practice of the OPEC in applying it.

The OPEC's description of its competition policy objectives emphasises the dynamic aspect of competition as an incentive for innovation, competitiveness, and growth. Competition rules are also applied to promote liberalisation — to prevent private practices that undermine liberalisation — and integration into the EU and other international market settings. A third goal is consumer welfare, broadly understood. Decisions applying competition policy consider the effects on ultimate consumers, including how those benefits are distributed.

Competition policy, as understood at the OPEC, follows an economic approach, but one that addresses structure and process more directly than outcome. In enforcing the law to create efficient competition, the OPEC's purpose is to remove barriers and increase the number of firms in a market. Establishing those structural conditions for rivalry is then expected to produce the desired outcomes, of pressure for innovation, improved competitiveness, higher quality jobs, and ultimately better products at lower prices for consumers.

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1.3. Competition policy in reform

The economic conception of competition policy supports a pro-competitive reform agenda. The dynamic elements, stressing innovation, competitiveness, and growth, are also goals of the broader restructuring that accompanies the establishment of institutions to support a market economy. One of the challenges in establishing vigorous market competition in the Czech Republic is to complete the unfinished business of the first stages of transformation, by putting in place stronger mechanisms of corporate governance and finance, making insolvency procedures more effective, and further reducing the state's exposure to industry demands for relief. The motivation and conception of competition policy is consistent with these other policy goals, although its tools and technical doctrines are not directly useful in helping to reach them.

Privatisation was a principal task of the early 1990s, accompanying the liberalisation of prices and trade. During that period, the process of restructuring state enterprises into joint stock firms and putting some of their shares into private ownership was substantially completed. The privatisation ministry closed down in 1996. But the state still retains substantial interests in many sectors, either directly or through the shareholdings of state-controlled banks. These interests amount to 43% of the equity (by market value) in all joint stock companies in the country, and 46% of the equity in the largest 60 companies (OECD, 2000, p. 75). The National Property Fund holds shares not only in 38 strategic companies (which it must hold by law), but also in 258 non-strategic companies, including golden shares in 60 (OECD, 2000, p. 82). Sectors involved include energy, mining, steel, banking, and agricultural land (EC, 1999). Two waves of voucher privatisation left most private shares in the hands of investment funds. The intention was to create a wide constituency for equity ownership and hence market-based reform, while concentrating holdings enough to give some investment bodies an interest in disciplining management. The investment funds' holdings in a single firm are capped at 20%, so no single fund can technically hold a controlling share. The funds are typically tied to or controlled by banks, so that banks are both the major creditors and ultimately the principal shareholders of major industrial firms (EIU, 2000).

Assigning competition policy to a separate Ministerial portfolio from 1992 to 1996 permitted more intimate participation in government privatisation decisions. The ministry's goal was to strengthen enterprise competitiveness and help shape the development of a competitive environment, by removing or at least weakening former monopolies and dominant firms and preventing the formation of new ones. Competition ministry representatives were on the boards of the telecoms, railways, and newspaper-postal delivery firms in 1995-96, participating in the early stages of privatisation planning. Although it is no longer in the government, the OPEC still participates directly in the privatisation process by submitting (non-public) opinions to the Commission for Privatisation. The Competition Act contains "temporary" provisions that were designed to ensure that the process of creating a privately-owned economic base would not simply transform state-owned monopolies into privately-owned ones (Art. 19). State property was not to be transferred to new ownership — even to a state-owned joint-stock company — if that would create a firm with a dominant position. If there was reason to think the new firm might be dominant, the office proposing the transaction had to prepare a market analysis and consult with the OPEC; if the OPEC disapproved of the proposed transaction, the dispute would be resolved by the cabinet. Similarly, local authorities were required to ensure that assets were not spun off to firms that would have dominant positions in local markets (Art. 20).[6] A vivid example of the importance of getting the structure right is the bus system. When the bus firms were privatised, the OPEC advocated keeping the terminals in public hands, to prevent private monopolisation. Experience confirms the wisdom of that advice: where the private firms control the terminals too, they try to favour their own operations and limit their competitors' access. Similarly, the OPEC has opposed including oil pipelines in the chemical industry holding company, out of concern that the holding company could tie up feedstock and thus prevent competitive entry into the chemical industry.

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The ownership and governance structure that resulted from the privatisation process may have created some potential competition problems. Voucher privatisation produced fragmented and non-liquid shareholdings, in a market where information about issuers is inadequate. Capital interconnections among banks and the privatisation investment funds could have created conditions supporting collusion or concerted practices affecting product market competition. For example, until 1998 the investment funds of two banks might together control 40% of an issuer, a share that could be smaller than legal "control" but large enough to exercise influence. Yet the creation or persistence of such holdings need not be reported to the OPEC. Moreover, a single bank's direct or indirect holdings could extend to a substantial share of a sector, but that fact would be unlikely to be reported to the OPEC. And in both situations, competition policy might be powerless to correct such structures that may inhibit competition (OECD CLP, 1998*a*). The risk of such combinations was substantially reduced when the ceiling for investment fund holdings in a single firm was reduced to 11% in 1998. Of course, competition policy would prohibit overt conduct that restricts competition. And now that the state property has been transferred to joint-stock companies, further privatisation transactions are likely to take the form of acquisitions or mergers, and as such they will be subject to the general law enforcement oversight attention of the OPEC.

An important consequence of the more thorough-going central planning tradition in Czechoslovakia, compared to its neighbours, is that it is taking a long time and considerable effort to restructure the heavy-industry backbone of the Czech economy into economically viable, coherent units. (Fingleton *et al.*, 1996, p. 11) Some of the accumulated problems of restructuring Czech industry have ended up in the hands of the Revitalisation Agency, which is moving into a few large, troubled firms to reorganise their operations, clean up their debts, and offer the viable parts for sale. So far, it has taken on only 9 firms, and few have completed the process. Some of the Revitalisation Agency's initial projects involve firms that are, or should be, operating in international markets such as steel, vehicles, and industrial machinery. Disposing of their assets to other firms may not raise substantial competition issues, because the likely markets are large. But about 4 500 firms remain in the portfolio of the *Konsolidacni banka*, which was set up in 1991 as a vehicle for taking over the bad debts of ailing enterprises (EIU, 2000). If the Revitalisation Agency gets further into this inventory of problem firms, domestic markets may be involved and the need for competition policy oversight could greater. It could be important to set up a way to do this in advance, rather than review transactions only pursuant to standard merger approval procedures. Otherwise, competition policy may be injected at an awkward moment, when there is already a deal in hand and the government may be anxious to declare an end to the problem even if there are adverse competition consequences.

Similar problems could arise in other restructuring actions in the course of bankruptcy proceedings. The Czech bankruptcy process is widely recognised to be unsatisfactory, particularly in its application to larger firms. For small and medium sized enterprises, the bankruptcy process closes down firms and pays off creditors reasonably quickly. But the bankruptcy process is not often applied to large, failing firms; instead, many of them are being restructured in a more *ad hoc* way or through the Revitalisation Agency. The bankruptcy law has been revised 11 times, but some critical changes still have not been made. Changes recently made (or proposed) in the laws about bankruptcy and liquidation, and related parts of the criminal code, address some technical problems and try to make the process work more smoothly.[7] But the bankruptcy law is still directed principally to the goal of paying off creditors, rather than to facilitating or encouraging reorganisation to make assets productive. The criterion for requiring that a firm be liquidated, rather than reorganised, is stringent. Small creditors can block a settlement, even if holders of most of the debt would approve it. High-priority creditors that do not participate in the settlement do not necessarily lose their claims as a result. These weaknesses discourage resort to the legal process and encourage the alternative of repeated *ad hoc* bailouts. It will be difficult to break this cycle as long as the tax administration and state-owned banks are the firms' principal creditors (and, indirectly, shareholders). State-connected creditors may be reluctant to demand restructuring that would weaken the state-connected banks' balance sheets and lead to job losses.

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2. SUBSTANTIVE ISSUES: CONTENT OF THE COMPETITION LAW

If regulatory reform is to yield its full benefits, the competition law must be effective in protecting the public interest in markets where regulatory reform enhances the scope for competition. The Czech competition law is based on familiar European concepts, prohibiting restrictive agreements and abuse of dominance and requiring approval for major mergers. Some of the original features that were particularly appropriate for a transition setting are being revised now, to conform to EU norms in anticipation of accession and to make it more useful as a tool of reform.

Box 2. **The competition policy toolkit**

General competition laws usually address the problems of monopoly power in three formal settings: relationships and agreements among otherwise independent firms, actions by a single firm, and structural combinations of independent firms. The first category, **agreements**, is often subdivided for analytic purposes into two groups: "horizontal" agreements among firms that do the same things, and "vertical" agreements among firms at different stages of production or distribution. The second category is termed "**monopolisation**" in some laws, and "**abuse of dominant position**" in others; the legal systems that use different labels have developed somewhat different approaches to the problem of single-firm economic power. The third category, often called "**mergers**" or "**concentrations**," usually includes other kinds of structural combination, such as share or asset acquisitions, joint ventures, cross-shareholdings and interlocking directorates.

Agreements may permit the group of firms acting together to achieve some of the attributes of monopoly, of raising prices, limiting output, and preventing entry or innovation. The most troublesome **horizontal** agreements are those that prevent rivalry about the fundamental dynamics of market competition, price and output. Most contemporary competition laws treat naked agreements to fix prices, limit output, rig bids, or divide markets very harshly. To enforce such agreements, competitors may also agree on tactics to prevent new competition or to discipline firms that do not go along; thus, the laws also try to prevent and punish boycotts. Horizontal co-operation on other issues, such as product standards, research, and quality, may also affect competition, but whether the effect is positive or negative can depend on market conditions. Thus, most laws deal with these other kinds of agreement by assessing a larger range of possible benefits and harms, or by trying to design more detailed rules to identify and exempt beneficial conduct.

Vertical agreements try to control aspects of distribution. The reasons for concern are the same — that the agreements might lead to increased prices, lower quantity (or poorer quality), or prevention of entry and innovation. Because the competitive effects of vertical agreements can be more complex than those of horizontal agreements, the legal treatment of different kinds of vertical agreements varies even more than for horizontal agreements. One basic type of agreement is resale price maintenance: vertical agreements can control minimum, or maximum, prices. In some settings, the result can be to curb market abuses by distributors. In others, though, it can be to duplicate or enforce a horizontal cartel. Agreements granting exclusive dealing rights or territories can encourage greater effort to sell the supplier's product, or they can protect distributors from competition or prevent entry by other suppliers. Depending on the circumstances, agreements about product combinations, such as requiring distributors to carry full lines or tying different products together, can either facilitate or discourage introduction of new products. Franchising often involves a complex of vertical agreements with potential competitive significance: a franchise agreement may contain provisions about competition within geographic territories, about exclusive dealing for supplies, and about rights to intellectual property such as trademarks.

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Abuse of dominance or **monopolisation** are categories that are concerned principally with the conduct and circumstances of individual firms. A true monopoly, which faces no competition or threat of competition, will charge higher prices and produce less or lower quality output; it may also be less likely to introduce more efficient methods or innovative products. Laws against monopolisation are typically aimed at exclusionary tactics by which firms might try to obtain or protect monopoly positions. Laws against abuse of dominance address the same issues, and may also try to address the actual exercise of market power. For example under some abuse of dominance systems, charging unreasonably high prices can be a violation of the law.

Merger control tries to prevent the creation, through acquisitions or other structural combinations, of undertakings that will have the incentive and ability to exercise market power. In some cases, the test of legality is derived from the laws about dominance or restraints; in others, there is a separate test phrased in terms of likely effect on competition generally. The analytic process applied typically calls for characterising the products that compete, the firms that might offer competition, and the relative shares and strategic importance of those firms with respect to the product markets. An important factor is the likelihood of new entry and the existence of effective barriers to new entry. Most systems apply some form of market share test, either to guide further investigation or as a presumption about legality. Mergers in unusually concentrated markets, or that create firms with unusually high market shares, are thought more likely to affect competition. And most systems specify procedures for pre-notification to enforcement authorities in advance of larger, more important transactions, and special processes for expedited investigation, so problems can be identified and resolved before the restructuring is actually undertaken.

2.1. Horizontal agreements

The basic rule prohibiting restrictive agreements is substantially identical to the EU treaty provision. The prohibition extends to agreements and concerted practices among competitors and to decisions by trade associations, if they may result in the "distortion" of economic competition. (In the Czech law, the general term "distortion" is defined to include restriction or elimination, too). The list of specifically prohibited agreements — to fix prices or terms, limit or control production, divide markets, boycott other firms, discriminate against some buyers, or impose unconnected obligations — also follows the EU list, plus agreements to boycott. Agreements to fix prices or divide markets are prohibited *per se*. The sanctions the OPEC may impose include fines, orders prohibiting the agreement (or other conduct) and orders to remedy the effects of the violation. Fines can range up to CZK 10 million or 10% of the party's net turnover for the previous calendar year (Art. 11 and Art. 14). This basic range of sanctions also applies to violations of the law's other basic prohibitions.

Three types of agreement are exempt from the statutory prohibition: "terms cartels" about payment and delivery conditions, "rationalisation" and "specialisation" agreements, and *de minimis* agreements that affect less than 5% of a national market or 30% of a local one (Art. 3(4)). The OPEC must approve each such agreement, but a "silence is consent" rule deems an agreement approved if the OPEC has not acted within 60 days after receiving it.

The *de minimis* rule depends on market share and hence on market definition. The OPEC defines markets by the same means for all purposes. Product markets are defined principally from the consumer's perspective. Products or services that the consumer can interchange or substitute, taking into account characteristics, prices, and intended uses, are in the same relevant market. Geographic markets are defined principally by differences in conditions of competition between the areas where the firms involved operate and other areas. Factors considered include the nature of production and the costs of transportation.

Parties to any agreement can apply to the OPEC for an exemption, for which the criteria are similar to those applied by the EU (Article 5). An otherwise prohibited agreement might be exempted if it benefits the whole economy (by improving production or distribution or promoting technical or economic progress), if consumers get a fair share of the benefit, if the restrictions are indispensable to attaining these benefits — that is, there is no less restrictive way to do it — and if competition is not eliminated for a

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"substantial part" of the market. In theory, an exemption could be granted for an agreement that had a net negative effect on competition; however, the OPEC has never found that such an agreement would be in the public interest. To date, the provisions for "block" exemption by decree (Art. 6a) have never been applied to horizontal agreements. Several block exemptions are being prepared, though, to become effective with the revised competition act. These will cover research and development, specialisation agreements, insurance, and transport. They are based on an economic approach, the OPEC's experience with individual exemption applications in these areas, and the EU block exemptions for the same subjects. Treating these kinds of agreements with block exemptions should save on administrative costs, for applicants and the OPEC, and thus make resources available for enforcement against hard-core problems.

Relatively few enforcement actions have targeted hard-core horizontal price fixing so far, but the subject is getting increasing attention. Of the OPEC's 54 decisions in 1999 involving restrictive agreements, only 3 dealt with horizontal price fixing and one dealt with market division. An agreement among 4 poultry producers to set minimum prices for sales to chain stores was prohibited and the firms were fined CZK 7.8 million. An early case, from 1994, challenged a co-ordinated price increase among the major coffee producers, effected through their trade association. Large fines, of CZK 7 million against the firms and CZK 50 million against the association, were overturned on appeal. (One reason for reversal was that the agreement could not be proved in enough detail because a key witness had left the country).

Regulation of services and professions has raised many issues about horizontal co-ordination. The most common problems are efforts to prevent new entry and to control the forms of service. The OPEC has also encountered price-fixing and minimum fee schedules among architects, assessors, contractors, and court experts. Professional and trade associations often contend that they operate pursuant to special authorising legislation that permits derogation from the Competition Act.[8] The number of cases involving professional associations has declined in recent years, as the OPEC's strict enforcement approach and public education efforts have increased the level of compliance.

As the problem of horizontal cartels has become a higher priority, the OPEC in 1999 set up a separate department to specialise in the subject. The department's tasks include to improve the OPEC's means of detection and to devise and impose more effective remedies. The department is studying how other OECD countries handle these issues, such as by holding natural persons liable and offering lenient treatment to those who disclose the cartel to the enforcement authorities and provide evidence to prove the case against it. The OPEC is now considering adopting its own leniency program.

Box 3. **The EU competition law toolkit**

The law of the Czech Republic follows closely the basic elements of competition law that have developed under the Treaty of Rome (now the Treaty of Amsterdam):

- **Agreements**: Article 81 (formerly Article 85) prohibits agreements that have the effect or intent of preventing, restricting, or distorting competition. The term "agreement" is understood broadly, so that the prohibition extends to concerted actions and other arrangements that fall short of formal contracts enforceable at civil law. Some prohibited agreements are identified explicitly: direct or indirect fixing of prices or trading conditions, limitation or control of production, markets, investment, or technical development; sharing of markets or suppliers, discrimination that places trading parties at a competitive disadvantage, and tying or imposing non-germane conditions under contracts. And decisions have further clarified the scope of Article 81's coverage. Joint purchasing has been permitted (in some market conditions) because of resulting efficiencies, but joint selling usually has been forbidden because it amounts to a cartel. All forms of agreements to divide markets and control prices, including profit pooling and mark-up agreements and private "fair trade practice" rules, are rejected. Exchange of price information is permitted only after time has passed, and only if the exchange does not permit identification of particular enterprises. Exclusionary devices like aggregate rebate cartels are disallowed, even if they make some allowance for dealings with third parties.

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- **Exemptions**: An agreement that would otherwise be prohibited may nonetheless be permitted, if it improves production or distribution or promotes technical or economic progress and allows consumers a fair share of the benefit, imposes only such restrictions as are indispensable to attaining the beneficial objectives, and does not permit the elimination of competition for a substantial part of the products in question. Exemptions may be granted in response to particular case-by-case applications. In addition, there are generally applicable "block" exemptions, which specify conditions or criteria for permitted agreements, including clauses that either may or may not appear in agreements (the "white lists" and "black lists"). Any agreement that meets those conditions is exempt, without need for particular application. Some of the most important exemptions apply to types of vertical relationships, including exclusive distribution, exclusive purchasing, and franchising.

- **Abuse of dominance**: Article 82 (formerly Article 86) prohibits the abuse of a dominant position, and lists some acts that would be considered abuse of dominance: imposing unfair purchase or selling prices or trading conditions (either directly or indirectly), limiting production, markets, or technological development in ways that harm consumers, discrimination that places trading parties at a competitive disadvantage, and imposing non-germane contract conditions. In the presence of dominance, many types of conduct that disadvantage other parties in the market might be considered abuse. Dominance is often presumed at market shares over 50%, and may be found at lower levels depending on other factors. The prohibition can extend to abuse by several firms acting together, even if no single firm had such a high market share itself.

- **Reforms in administration**: Recent and proposed reforms of EU competition policy reduce the scope of the prohibition against vertical agreements and would eliminate the process of applying for exemptions for particular agreements. Instead, exemption criteria would apply directly in decisions applying the law, and these decisions would increasingly become the responsibility of national competition authorities.

2.2. Vertical agreements

The same provision of the Competition Act applies to vertical agreements, in the chain of distribution, as to horizontal agreements among competitors. The new competition act will define the two separately and apply a different, less stringent market share threshold to the prohibition of vertical agreements.

Vertical agreements as generally regarded as less harmful, because they often improve distribution and benefit consumers by improving reliability and availability. So vertical agreements about distribution are usually considered "rationalisation" agreements, which enjoy a "statutory exemption" (Art. 3, paragraph 4). These agreements must be notified to the OPEC, but they are presumed to be approved if the OPEC has not objected in 2 months. The *de minimis* rule also often applies to vertical agreements, as do the standard criteria for exemption. One decree with the effect of a "block exemption" is now in place, as of March 2000, dealing with the terms of franchise agreements. The decree, which follows the EU's franchise block exemption regulation and EU decisions, should reduce administrative and compliance costs, by eliminating most of the individual exemption applications for franchise contracts, which had tripled between 1997 and 1998. The statute permits the OPEC to grant an individual exemption to a vertical agreement that impairs competition on the grounds that the claimed benefits to efficiency or technical progress outweighed concerns about competition, or that no less anti-competitive means could be found for achieving the same benefits. But the OPEC has never granted such an individual exemption.

The OPEC applies the statutory prohibition strictly against resale price maintenance agreements. A 1997 case imposed a fine of CZK 400 000 for fixing resale prices of frozen foods. But a supplier's "recommendation" about resale price would not necessarily be prohibited, as long as the supplier does not put pressure on the distributor to maintain the recommended price (for example, by threatening to cut off the distributor's supplies). Agreements that result in total territorial protection for a distributor are also strictly prohibited. Exclusive sale or purchase agreements have been approved where they can improve the efficiency of distribution. But the OPEC has taken action against a pattern of exclusive supply agreements

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that, taken together, had the effect of blocking entry by small and medium sized firms. An example was the practice of major breweries to enter exclusive supply contracts with restaurants. No single agreement would have impaired competition for the whole market, but the contracts tied up 60% of the restaurants in the country for 2 or 3 major brewers and significantly reduced the outlets available for small and medium sized brewers.

The new competition law will be accompanied by a new block exemption for vertical agreements, modelled on the new EU regulation adopted in 2000.

2.3. Abuse of dominance

Abuse of a dominant position is prohibited, but simply holding such a position is not. The particular abusive practices that are identified in the Competition Act are similar to those prohibited by other European laws. These include imposing unfair terms on other parties to contracts (especially enforcing obligations that are disproportionate to the other parties' reciprocal obligation), demanding acceptance of unusual, supplementary obligations as a condition of entering a contract, applying dissimilar conditions to different trading partners that put those partners at a competitive disadvantage, and curtailing production or technical development in order to attain "unjustified economic benefits to the prejudice of buyers" (Art. 9(3)). The sense of these prohibitions implies that the law is concerned about relative bargaining power, as much as about the adverse effects of abuse on overall economic efficiency. The statute's list is illustrative, and other practices not mentioned in the Act could also be treated as abuses.

A position of dominance is a condition in which a firm is not exposed to any substantial competition; in a monopoly, the firm faces no competition at all (Art. 9(1)). The Competition Act defines a dominant position in terms of the share of a relevant product and geographic market: 30% or more of annual sales (or purchases). The market share definition appears to be a conclusive presumption, which cannot be refuted by a showing that the firm actually faces substantial competition. Dominant firms (and firms that reach the dominance market threshold together, through an agreement) are required to notify the OPEC (Art. 9(1)). Evidently, this is an annual obligation, since dominance is defined in terms of annual market share.

Fines, either for abuse or for failing to notify the OPEC of a dominant position, are the same as for all violations (CZK 10 million or 10% of the firm's annual net turnover). In addition, where competition is seriously distorted, the OPEC can order divestiture, that is, dividing the company or selling some of its assets to another (Art. 11(2)). This power has not actually been used yet, though.

The statute's specific prohibitions do not include charging a high price, but that does not mean the law could not be used to find that high prices are an abuse of dominance. Most early complaints alleged abuse of dominance in the form of price increases. The OPEC rejected most of those complaints because it did not want to take on the role of price regulator. Rather, the objective is to prevent dominant enterprises from using their power against consumers and other competitors and to expand entry possibilities. Despite this history of scepticism about these early complaints, in December 2000 the OPEC launched three proceedings about pricing practices in cable TV service.

Increasingly, there are demands to apply competition law to protect suppliers against abuse of "economic dependence". The OPEC's views about this subject, which can overlap with traditional rules about unfair competition, appear to be evolving. A 1998 OPEC note about the Czech retail sector reported no complaints from suppliers and few competition problems, although there were some commercial disputes about sharp practices, such as delaying payment of invoices and pressuring suppliers for promotional favours (OECD CLP, 1998*b*). On balance, the 1998 report described a still-fragmented retail

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market in which chain stores were introducing efficiencies and buying from local sources. Some were engaged in loss-leader pricing, and in response to this intense competition, smaller retailers were forming joint purchasing and advertising groups.

In the intervening three years, though, the OPEC has concluded that disparate bargaining power between suppliers and retailers requires legislative action, so that smaller firms will not be forced out of the market. A study from 1998-99 was stimulated by complaints about abuse of economic dependence in the food market, such as demands for discounts or shelf space allowances that left suppliers no profit. Despite recognising that one result of the changes in the distribution system is lower consumer prices, the OPEC is concerned that eliminating small suppliers' brands reduces consumer choice, while increased private branding by retailers creates a barrier to entry by other suppliers. One approach to the situation, to apply the existing general principles to these market relationships, could be to define smaller markets in retail trade, following the approach of EC case law, while making clear that dominance can also appear on the buying side.

Other than a few cases about tying and exclusive dealing, most applications of the law about abuse of dominance have been in utility and infrastructure markets. Local utility monopolies often refused to connect a customer unless the new customer paid a lump sum fee that was not included in the firm's normal charges, or unless the new customer paid the overdue, unpaid bills of the old customer at that location. Those cases declined in numbers after it became clear that the OPEC would object to the practice. In telecoms, the OPEC intervened to end a tying arrangement, in which the dominant mobile phone operator required customers to use a voice-mail service too. In cable TV, the OPEC has investigated repeated complaints about high prices, leading to consideration of regulating these local "natural" monopolies.

The new law will expand the list of specified abuses to include refusing to grant reasonable access to an infrastructure transmission or distribution network that is an essential facility. This addition will make the general competition law apply explicitly to one of the most common problems encountered in restructuring traditional network monopoly industries. The new law will also generalise the substantive principle by incorporating the principles used by the EC Court of Justice, basing "dominance" on market power, rather than simply on market share. Market share will be a significant criterion, but not the only one, and not necessarily a conclusive one. The 30% threshold in the statute and the annual reporting requirement will be dropped. One market-share criterion will remain: a firm with a share below 40% will be presumed not to be dominant, but that presumption could be overcome by a demonstration of dominance in a particular case.

2.4. Mergers

The OPEC can prohibit mergers that would create or strengthen a dominant position or that may significantly distort competition (Art. 8a). The burden is on parties to a merger to demonstrate that any distortion of competition is outweighed by economic benefits. The OPEC's power to approve (or disapprove) mergers extends to the whole economy, without exception. No other body or sectoral regulator has the power to approve (or disapprove) mergers or acquisitions.

The OPEC's decision about a merger begins with industry structure, particularly the parties' post-transaction market share. The OPEC also considers the parties' "economic and financial strength", barriers to entry (paying closest attention to patents or other intellectual property or high capital requirements), vertical integration, and capacity utilisation. The statute has not directly followed the EC merger regulation, but the OPEC's merger analysis has been informed by it, and the OPEC has often followed the EC's findings defining relevant markets. The OPEC has developed a methodology for assessing structural

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factors quantitatively on a 25 point scale, with higher scores indicating stronger competition. This is an internal guideline, first proposed in 1992, which was particularly useful during that period of major structural change. The goal was to use this scale as a general tool, but the method has proven to be better adapted to mergers than to other kinds of violations. There is now a time series of data using this scale in merger and privatisation decisions. Based on this experience, the OPEC generally finds that a score below 16 corresponds to an insufficiently competitive environment.

The notification and review process is being revised. Now, parties to a full merger must apply to the OPEC for approval before submitting the proposed change in the business register. If the acquisition is less than a full merger, the parties must submit an application to the OPEC within a week of signing the contract (Art. 8a(3)). The Competition Act does not set any special deadlines, so the OPEC's action is subject to the generally applicable deadlines in the administrative code, which can be up to 60 days for complex matters. Applications are published in the Business Bulletin, in effect inviting comment from affected parties. Applications thus cannot be confidential. Sanctions for merging without requesting approval (or in defiance of an OPEC disapproval) include an order prohibiting the firms from performing their contract, divestiture (that is, an "order to terminate the merger" by selling shares or otherwise), or a fine]. Procedures are being amended to bring them more in line with the EC's approach. The notification obligation will be based on the firms' turnover in the domestic or world-wide market. The revised law will set deadlines and provide for hearing from third parties in the administrative proceeding. It will also apply the merger law to efforts to obtain control through public bid, as well as through privately negotiated agreement (OECD CLP, 2000*a*, p. 4).

"Industrial policy" is not a factor in merger decisions, which are based only on net competitive effects. Possible economic benefits from a merger could be lower costs, economies of scale or scope, higher quality, increased exports, or greater competitiveness in foreign markets. The OPEC will inquire whether there is a less anti-competitive way to achieve these benefits. Approval may be conditioned on structural or behavioural restrictions (Art. 8a(2)). In 1999, the OPEC imposed conditions on about 14% of the transactions it reviewed. Orders to maintain production or require access and to notify the OPEC of future changes appear common. For example, merging parties have been required to give all suppliers access to their distribution service, to maintain existing production for 5 years, or to keep local brands on sale for 5 years and "discuss with the OPEC" the potential sale of some assets. Conditions have not been based on price, though. Only one merger has been disapproved completely.

Several decisions approving mergers have promoted restructuring in traditionally monopolised industries. SPT Telecom's 1995 acquisition of Eurotel's data transmission operations was approved, even though Eurotel had a dominant position — indeed, a franchised monopoly — in public data networks, because the Ministry of Communications terminated Eurotel's exclusive licence and thus opened the possibility of entry. TelSource was permitted to acquire 27% of SPT Telecom, because the deal promised to improve service quality by meeting unmet consumer demand, evidenced by long waiting lists. French and British water companies have been permitted to buy local water supply companies, because these strategic investors brought capital and know-how to improve equipment and improve consumer service. Although these acquisitions have been considered "horizontal" because the acquiring firms are in the same business, they did not actually compete in the same local geographic markets.

Some other high-profile transactions may also require competition policy oversight. The government is restructuring the electric power industry in preparation for privatising it. These transactions, particularly transfers to new owners, might be reviewed under the merger law. Removing the market share threshold from the law may give the OPEC more flexibility to approve such transactions, since there will no longer be a strong presumption against approving a transaction involving a firm with a market share over 30%. The OPEC participated in the drafting group that prepared the government's restructuring plan, where it objected to the re-establishment of a monopoly through the distribution level. Having lost that

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argument in the drafting process, the OPEC is unlikely to disapprove these government-authorised transactions as they happen. The Revitalisation Agency is negotiating deals to restructure troubled firms. Presumably, many of these transactions will also need to be notified to the OPEC. There is a clear interest in re-organising these firms as quickly as possible. That may put some pressure on the OPEC to perform only a cursory competition review or to approve questionable transactions. To the extent the firms would otherwise fail and the assets exit the market, these concerns might be reduced. But it might also be prudent to involve the OPEC at the earliest opportunity, before commitments are made, in order to reduce the risk of pressure to approve financially attractive deals that could lead to market power.

The proposed amendments will substantially complete the process of making the Czech criteria for merger approval and processes for premerger notification conform to those of the EU (OECD CLP, 2000*a*, p. 4). The substantive rules will be generalised and the possibility of balancing competitive effects against other policy goals will be eliminated. The draft law would have included both a turnover measure (total turnover over CZK 400 million and of each entity over CZK 150 million) and market share test (aggregate of the merging firms over 25%), so that administration of the notification requirement would have depended on the uncertainties of market definition. The market share test was dropped from the notification criteria in the Act as it was finally adopted.

2.5. State aids

Subsidies and preferences can distort free competition and motivate otherwise unnecessary regulation. The OPEC has statutory responsibility to control anti-competitive state aids. Subsidies or preferences provided by the local or national governments at all levels may not distort competition by favouring some firms or products. The OPEC has the authority to order firms to return the aid provided or to order the agency providing the aid to eliminate the competitive distortion. This responsibility was transferred from the Ministry of Finance as of May 2000. The EU's regular *Accession Partnership Report* had criticised weaknesses of the state aid office at the Ministry of Finance, which had only 4 staff (EC 1999, p. 66). The OPEC's new department for state aids has a staff of 16 lawyers and economists.

So far, the OPEC reports that the law is being respected, and that parties are notifying the OPEC and submitting applications for approval or exemption. The OPEC is trying to be as transparent in decisions as possible. It has issued guidelines and a booklet instructing how to stay within the law. The OPEC can, and typically does, apply conditions, such as requiring that aid must not exceed some percentage of costs. In the first year (from 1 May 2000 to 15 May 2001), the OPEC considered 140 state aid matters, refusing to permit the aid in 2 cases, approving it in 12, and imposing conditions in 88. (Administrative proceedings were terminated in the other 38).

2.6. Public procurement

The OPEC also has statutory power to oversee the process of public procurement,[9] reviewing objections raised by tenderers against actions of contracting authorities in award procedures. The OPEC does not substitute its own judgement about the quality of bids or awards, though. The OPEC can respond to complaints or initiate action on its own, and it can impose fines for material or repeated violations ((OECD CLP, 2000*a*, p. 3). The OPEC has used consultations and seminars to educate officials about compliance. A draft law now being discussed by the Parliament will make the Czech rules fully compatible with EU requirements. The OPEC is trying to use information gained from its procurement responsibilities in its competition policy work. Bid rigging could violate both the competition law and the procurement law under certain conditions, such as if the grantor determined the "winner" before inviting bids or gave one bidder an unfair advantage in the process.

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2.7. Unfair competition

The law of unfair competition can protect markets and the competitive process, or it can protect competitors in ways that make markets work less well. The Commercial Code prohibits conduct *contra bonos mores* ("against good morals") that could damage other firms or consumers. Redress for such acts of unfair competition must be sought through private suits in court. Examples listed in the statute include bribery, deceptive advertising and marketing, misleading consumers about identity, using another firm's reputation, disparaging competitors, violating trade secrets, and endangering consumer health or the environment. These rules overlap both competition policy and consumer protection.[10]

Advertising is also subject to direct regulation. This is largely self-regulation by the Arbitral Commission for Advertising, which applies the International Chamber of Commerce's 1986 Code of Ethical Rules in Advertising. A forthcoming amendment to the Commercial Code would permit comparative advertising (under specified conditions) and would bring the law into harmony with the EU Council directive about deceptive advertising. The consumer protection laws also prohibit deception and discrimination, as well as requiring proper and accurate information and controlling the sale of adulterated food products.

2.8. Consumer protection

The relationship between competition policy and consumer protection policy, concerning issues and tactics in the debate over regulatory reform, is reasonably well understood, but not well implemented. Consumer protection responsibilities are divided among several institutions. In the Ministry of Industry and Trade, there is a small (12 member) Consumer Protection department, which has been in place for 2 years. These institutions and the OPEC have occasions to co-operate with each other, but these arise infrequently.

Outside the government, there are several consumer groups, whose impact on the reform process has been modest. The Consumer Advisory Committee, established in April 2000, brings together 7 NGO consumer organisations. These include TEST, which tests products and publishes a magazine, the national Association for Consumer Protection (which operates information centres), and regional organisations. A Consumer Consulting and Advisory Service publishes consumer information on the internet. Another umbrella group, the Association of Consumer Organisations, was established in January 2001. The Consumer Advisory Committee is a vehicle for NGO organisations to promote their positions in policy and comment on legislation. The Committee was asked for comment on the government's consumer policy plans for the next several years, and it has been consulted about such issues as consumer credit and guarantees. But except for some issues of specific consumer interest, the effect of consumer organisations on the process has been slight. Consumer groups argued unsuccessfully for more rapid opening of the telecoms market, for example. They have tried to comment about utility pricing decisions, but comment is only possible at the earlier stage, at the Ministry of Industry and Trade, rather than at the more important final stage, at the Ministry of Finance.

3. INSTITUTIONAL ISSUES: ENFORCEMENT STRUCTURES AND PRACTICES

Successful reform of economic regulation can depend on vigorous action to prevent abuses in developing markets. The administrative approach to applying the Czech competition law has worked well in the past, but new tools are needed to deal with problems that the parties do not report to the authorities.

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3.1. Competition policy institutions

The OPEC is the only body with the power to apply the Competition Act. The OPEC's chairman is appointed by the President, upon the proposal of the government.[11] The chairman may be dismissed by the same process, but only for causes that are specified in the law: bringing the OPEC into disrepute or impairing its independence or impartiality.[12] The appointment is for a 6 year term, which may be renewed once. The chairman must not be a member of a political party or movement. There is one director general who heads the antitrust section and one director who heads the merger department. Other staff sections deal with public procurement, state aids, legislation, and European integration and international issues. The chairman has a separate section which includes the economics department and a group that advises the chairman concerning "second-instance" decisions. This advisory group includes experts from outside the OPEC.

The OPEC was originally established in 1991. When it became a Ministry in 1992, headed by a member of a party in the governing coalition, the competition policy body gained an inside voice in important large-scale policy and structural decisions. The elevation of status demonstrated that competition policy was to be taken seriously. But being in the government may also have raised questions about the impartiality and independence of decisions, by suggesting that they might be subject to discussion and negotiation within the government. The fact that the law was later changed so that the chairman must not even be a member of a political party indicates that the problems of insider political access were adjudged to be greater than the benefits.

In 1996, the OPEC reverted to being an independent office. (The only other entity with similar status is the Czech Statistical Office). The OPEC is fully independent of government or political control in its decision-making. Its status may make it more effectively independent than the sectoral regulatory bodies, because the OPEC has no ties to any ministry and the appointment is by the President, not a minister. Independence from the government is underlined by placing the OPEC's office in Brno, rather than Prague.

Transparent processes reinforce independence. At one time, the Ministry had a reputation for relatively opaque and infrequent formal decisions (Fingleton *et al*., 1996; EC, 1999, p. 66), leading to criticisms about lack of transparency. Since then, the OPEC has made transparency in decision-making a high priority. Final decisions are published in the OPEC's *Collected Decisions* and are now posted quickly on its website.[13] These decisions, which are formally similar to court judgements, still tend to be somewhat more conclusory than similar decisions in common law jurisdictions, which are more likely to discuss alternative arguments and explanations, as well as the basic reasons for the decision. To explain its policies and actions in more depth, the OPEC issues a regular report (by 30 May each year), covering its activities and conditions in markets. This report is presented to the government. And to inform the public, the OPEC has issued guidelines about merger policies, and it is preparing guidelines on other topics. The OPEC (as well as other public agencies) must provide the public free access to information. As of 2001, OPEC compliance with freedom-of-information requirements will be a separate part of its annual report.

The OPEC has some formal contact with the policy-making process, but it is obviously less of an insider now than when it was a Ministry. The OPEC contributes to the work of government advisory bodies and *ad hoc* commissions about other policies. The OPEC chairman may attend meetings of Governmental Committee for European Integration (on his own request, or that of the Committee's chair). The OPEC's opinion must be sought by the Commission for Privatisation. The OPEC is consulted in the discussion and drafting of legislation, and OPEC staff participate in the working parties and drafting groups. Its authority to comment on the competitive implications of actions by other parts of the government is conferred by a government resolution,[14] and its participation in the legislative drafting process is provided under the legislative rules.

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3.2. Competition law enforcement

The Competition Act generally authorises the OPEC to enforce the law. It also sets out some procedures in more detail; to the extent it does not, OPEC proceedings follow the generally applicable Administrative Procedure Act.[15] That code sets out sound basic principles, but it needs to be updated to deal with complex administrative processes and economic policy issues; a reform of this act is in preparation. The draft amendments to the Competition Act will improve some of the OPEC's procedures, but it will not revise them substantially.

The Competition Act provides generally that the OPEC can require firms to "provide materials and information necessary for the activities of the [OPEC]", and the OPEC can examine their "legal and commercial documents" to determine whether a violation has occurred (Art. 11(1)(i)). Firms are required to provide requested materials and information punctually and in full, correct, and truthful form — and to permit the OPEC to verify that, by granting the OPEC access to facilities and premises to do so (Art. 12(5). The proposed amendments would add one legal protection to this process, by requiring the OPEC to state the legal grounds and purpose for its investigation when it requests documents and information. This proposal may be at least a partial response to the concerns expressed by some private practitioners about the need for preliminary procedures to narrow and define the scope of investigational demands.

The OPEC can take action in response to a request or complaint or on its own initiative. Enforcement actions against abuse of dominance or cartels are considered "own initiative" cases, even if they begin with a complaint from a victim. To safeguard legitimate interests pending the final decision, and to preserve the possibility of enforcing a final order, the OPEC can issue interim, preliminary orders (Art. 12(7)).[16] Oral hearings may be held at the OPEC's discretion. Whether or not there is a hearing, parties must have an opportunity to communicate their positions about the matter to the OPEC, to respond to the findings of the investigation and the action, if any, that the OPEC intends to take. A final decision must set out the legal basis for the decision, explain the justifications such as the supporting facts and the considerations applied to assessing the evidence, and instruct the parties how to appeal.

Decisions must be reached on a tight timetable. The deadlines for official action are taken from the administrative code. The normal period is 30 days, or up to 60 days for exceptionally complex cases. The chairman may extend the 60 day deadline if circumstances make meeting it impossible, but the parties must be informed about an extension and the reasons for it. For matters that are initiated by an application or request, the time runs from receipt of the request. For "own initiative" matters, the time runs from the OPEC's first action concerning the participants. Thus, the OPEC can take time to study a situation and determine whether action might be needed. The deadline clock would start running when the OPEC contacts the participants directly and demands information.

The basic fine for all kinds of substantive violations is the same: up to 10% of annual net turnover or CZK 10 million, whichever is greater. If the violator profited from the violation, the fine must be at least as great as that profit. For failure to provide requested information, the fine can be as high as CZK 300 000, and for failure to attend a hearing, CZK 100 000. Failure to comply with an OPEC order can result in a fine of up to CZK 1 million. All of these fines are levied directly by the OPEC, although the funds go to the general treasury, and not to the OPEC's own budget.

A disappointed party may appeal the initial decision within the OPEC, for a *de novo* assessment of the facts and the law.[17] The OPEC notifies other parties when an appeal is filed and invites comment and, if necessary, more evidence. Parties may appeal the first-stage decision within 15 days to the chairman. The chairman decides the second-stage appeal, on the basis of a proposal from a special advisory board, which includes outside experts. The chairman may change or cancel the first-stage decision, reject the appeal and thus affirm the first-stage decision, or return the matter to the first-stage

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level for further investigation (in which case the first-stage decision is formally cancelled). Some practitioners have complained that internal appeal is not sufficient, because the chairman usually affirms the staff's decision. But the chairman has often disagreed with the staff's outcome and granted the appeal. In 1999 and 2000, out of 37 decisions appealed, the chairman affirmed only 19.

The next step for the disappointed party is to file petition for review by the High Court. The courts may review the OPEC's decision (including the result of internal appeal) for compliance with law, but the courts will not hear a full appeal on the merits of the evidence and the OPEC's reasoning. The number of petitions for review of second-stage decisions is declining; only 3 (out of 19 decisions) were filed in 1999. The High Court rejected one, and the others are still pending. No OPEC cases have been taken to the Constitutional Court for two years. The possibility of setting up specialised administrative courts, to hear full appeals on the merits of decisions by bodies like the OPEC, is under consideration. The constitution calls for a Supreme Administrative court, which has not yet been established. Changing the system to provide for judicial appeal will depend on other changes in the judicial system and on the availability of enough professional expertise.

3.3. Other enforcement methods

Private parties injured by violations of the Competition Act may sue in court for damages, disgorgement, and other monetary penalties, and for injunctions or orders voiding contracts (Art. 17). The statute tries to prevent claims from multiplying, by permitting only the first lawsuit filed about a violation to proceed. Other injured parties must join in that suit, rather than sue separately, and the decision will be binding against other with the same interests. (The special provisions in the Competition Act about private lawsuits are not included in the draft revisions, because equivalent relief is authorised under the generally applicable Civil Code, Commercial Code, and Civil Judicial Code). Because only the OPEC has jurisdiction to determine whether conduct violates the prohibitions of the Competition Act, private actions depend upon the OPEC's establishing the predicate violation, such as the existence of dominance and abuse. Few private cases about competition law violations have been filed One private suit among the parties to a contract raised the issue, whether the OEC would authorise what would otherwise be a prohibited agreement under the Competition Act.

The Czech Republic is adapting its law to that of the EU in anticipation of accession and the direct application of EU law to conduct in the country that has a community dimension. This process is guided by the "Europe Agreement", which entered into force 1 February 1995. When the EU treaty provisions become applicable, then the direct application of the competition policy prohibitions would support private suits in Czech courts.

3.4. International trade issues in competition policy and enforcement

Competition policy can play an important role in removing regulatory obstacles to competition from foreign producers. Czech competition policy has shown a commitment to trade liberalisation and a sensitivity about rules inhibiting import competition. In merger review, among the barriers considered relevant are regulations that hinder imports or exports. After Skoda repeatedly increased prices, the competition agency in 1994 called for lower import duties so that foreign production could provide competition in the market. More recently, the OPEC advocated removing the Ministry of Transport's power to appoint a person to grant "foreign visas", because the party with that power was itself in the foreign road transport market and was thus regulating its competitors. The Czech Republic has entered several free-trade agreements: a customs union with Slovakia, the Europe Agreement, agreements with EFTA and CEFTA, and bilateral agreements with several countries. The OPEC has sought clauses in these agreements about protecting competition and prohibiting restrictive agreements and abuses.

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Competition issues are sometimes raised in cases under the trade laws. The OPEC can participate in other proceedings under special acts, including the anti-dumping laws, where it may express its views about claims of damage and effects on competition from dumped imports and about proposed duties imposed in these cases. The Ministry of Industry of Trade is responsible for dumping determinations and orders, and in 2 or 3 cases it has asked the OPEC for its views. Most recently, the OPEC agreed with the October 2000 decision to impose dumping duties on table salt imported from Germany.

An "effects" test is applied (Art. 2(3)), so the Czech competition law may apply to conduct outside the country's borders if it affects domestic markets. Foreign mergers must be notified if they meet this "effects" test. Some of those transactions have produced significant OPEC decisions, notably the recent decision approving, with conditions, an acquisition by a major foreign beer producer.

Co-operation with competition agencies in other jurisdictions has increased, particularly with the EU and colleagues in Slovakia, Sweden, France, the Netherlands, and the UK. The OPEC has worked with the EC Competition Directorate on several occasions, notifying the Commission 2 times about cases in progress to co-ordinate common decisions and to inform about acquisitions that may have had Europe-wide impacts. The rules implementing the Europe Agreement specify what kinds of cases will be considered, the principles applied, the bodies competent to discuss them, and how confidential information will be protected. In general, the OPEC cannot share confidential information. But it does exchange non-confidential information about firms and industry conditions, market definitions, and other particular issues. Bilateral co-operation agreements have been signed with Russia, Bulgaria, Romania, and Ukraine, calling for exchanging personnel, sharing views about legal issues, scholarships for experts, and consultation on particular cases.

3.5. Agency resources, actions, and implied priorities

Budget and staff resources for competition policy have been adequate, and are increasing as responsibilities are added. Staff levels have held steady for several years, at about 90. Staff increases in 1999 and 2000 — and a 60% budget increase in 2000 — are due to new responsibilities related to EU accession, over state aids and procurement, and to strengthening efforts to punish more serious violations by setting up a new cartel department. (The disproportionate budget increase in 2000 is due principally to one-time costs of setting up the state aids office). The proportion of professionals (lawyers and economists in nearly equal numbers, and a smaller number of others) on the staff is increasing, from about 75% of the total in 1997 to over 85% now. The number of staff devoted to advocacy, regularly and *ad hoc* for particular matters, is also increasing, drawing as needed on sector experts and on the legislative, fundamental issues, and European integration and international departments. There is no separate, dedicated section of the staff for advocacy. The state aids and procurement responsibilities occupy over 40% of the OPEC's professional staff resources. The procurement workload appears to be increasing substantially, as the number of administrative proceedings increased 30% between 1998 and 1999, to nearly 600, and the number of cases imposing fines doubled, to nearly 60.

Like other offices in the Czech state administration, the OPEC has suffered some turnover and losses, as staff have left for more attractive opportunities in the private sector. Turnover slowed some from 1997-99, and the proposed new act on civil service may lead to more stability. The OPEC is trying to find ways to get people to stay the year it takes to learn how to do the job. But the budget limits what it can offer in pay. As part of the state administration, the OPEC must set compensation and other terms to be consistent with other public sector salaries and work within the standard recruitment process. The OPEC has tried to use bonuses, although not up to the 100% level that is theoretically authorised. Sometimes the OPEC must "outsource" for quality analysis, turning to law professors for help with drafting and consulting outside experts about unfamiliar questions of technology.

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Table 1. **Trends in resources**

	Person-years[1]	Staff turnover	Budget (CZK)
2000[2]	110		63 011 000
1999	88	17.0	37 835 000
1998	86	19.8	35 397 000
1997	90	20.0	34 571 000
1996	88	22.7	35 386 000
1995	80	13.8	29 424 000

1. Includes personnel responsible for public procurement and, for 2000, state aids.
2. Estimate based on first six months (106 person-years), and personnel level of 120 authorised by law in March 2000; budget is planned expenses for the year.
Source: OPEC, 2000.

Table 2. **Disposition of professional personnel**

	Competition Act	Public procurement	State aids[1]
2000[2]	61[3]	36	15
1999	47	21	14
1998	44	16	
1997	42	13	

1. Since 1 December 1999.
2. All personnel, including non-professionals.
3. Of this total, 11 are in the Legal department and the European integration and international department, which also deal with some state aid and public procurement issues.
Source: OPEC, 2000.

The higher priority now given to hard core cartels does not yet appear in the enforcement record. Horizontal price fixing accounted for only 3 cases in 1999, while there were 7 about resale price maintenance. The largest fines appear to apply in cases of abuse of dominance. In 1999, abuse of dominance cases accounted for nearly a third of the fines — CZK 10 million out of total fines of about CZK 36 million.

Cartel cases decreased from 1996 to 1997, as actions against professional associations declined. The trend turned upward again in 1999, when the OPEC set up a cartel department. Increasing numbers of franchise applications in 1997-98 led to the March 2000 “block exemption” decree, to deal with them systematically. Most actions against abuse of dominance — in 1996, 82% of them — concerned regional and local utility monopolies, and they usually targeted the same practice, of trying to hold up new customers with demands for extra payments. That conduct declined after repeated OPEC intervention. Restructuring of firms that had been strongly dominant may also explain the decline in abuse of dominance cases. But more attention to natural monopolies again in 1999 meant more cases. Mergers peaked in 1993, most of them actions representing foreign firms acquiring Czech firms, and again in 1996, as Czech firms began combining more with each other. The decline since then reflects the completion of most of the privatisation process.

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Table 3. **Trends in competition policy actions**

	Horizontal agreements	Vertical agreements	Abuse of dominance	Mergers
2000[1]: matters opened[2]	4	20	4	36
Sanctions or orders sought[3]	2	15	2	3
Orders or sanctions imposed[4]	1	5	2	0
Total sanctions imposed[5]	7 800 000	1 650 000	11 000 000	-
1999: matters opened[2]	16	48	14	54
Sanctions or orders sought[3]	13	45	9	7
Orders or sanctions imposed[4]	7	13	9	0
Total sanctions imposed[5]	10 400.000	1 465 000	23 090 000	-
1998: matters opened[2]	10	73	5	58
Sanctions or orders sought[3]	6	65	3	11
Orders or sanctions imposed[4]	3	8	3	2
Total sanctions imposed[5]	600 000	2 230 000	2 100 000	-
1997: matters opened[2]	10	35	10	61
Sanctions or orders sought[3]	7	30	6	6
Orders or sanctions imposed[4]	3	13	6	2
Total sanctions imposed[5]	20 000	4 920 000	1 550 000	-
1996: matters opened[2]	15	16	29	75
Sanctions or orders sought[3]	7	10	17	5
Orders or sanctions imposed[4]	7	3	17	1
Total sanctions imposed[5]	13 670 000	2 770 000	31 185 000	-
1995: matters opened[2]	20	12	32	58
Sanctions or orders sought[3]	18	6	18	1
Orders or sanctions imposed[4]	12	2	18	1
Total sanctions imposed[5]	2 504 000	100 000	18 698 000	-

1. First 6 months.
2. Open cases, including cases extending to the following year, cases investigated in the particular year but discontinued, and closed cases.
3. Agreements include those authorised (sometimes with conditions), prohibited, and fined. Mergers include those authorised subject to conditions.
4. Agreements prohibited and fined and mergers disapproved.
5. Amounts are in CZK. Fines ordered in the reported year, not necessarily those collected. Fines only include fines for substantive violations, not fines to enforce compliance with procedures.

Source: OPEC, 2000.

The OPEC's top priority is, of course, enforcing the law generally and promoting competition by removing barriers to market liberalisation and consumer welfare. The OPEC also wants to ensure fair treatment of foreign investors in merger reviews, in order to encourage foreign direct investment. Introduction of competition in natural monopoly areas is also a matter for attention.[18]

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By sector, the largest number of competition policy enforcement actions has been in the food industry, where there is a trend toward higher concentration and an increase in franchising, followed by tyres, where many franchise agreements have been reviewed. By far the largest number of horizontal agreement cases have been in professional services, but these have declined recently. Another area of significant activity has been electric power and gas.

Table 4. **Competition Act actions by sector (1995-1999)**

Sector	Agreement		Abuse of dominance	Merger	Total
	Horizontal	Vertical			
Food products	6	49	6	30	91
Tyres		36		7	43
Electricity and gas		12	16	10	38
Tools and mechanical equipment	1		1	30	32
Professional services	21	3	1	5	30
Steel and metals	2	1		25	28
Public utilities			4	23	27
Distribution	8	13	1	4	26
Chemicals		5		20	25
Others services	1	1	5	15	22
Electronic machinery	1	5		13	19
Mineral processing, non-metal	1	4	1	13	19
Oil and petroleum	2	7		6	15
Glass		5		10	15
Telecommunications	2	1	6	5	14
Paper	2			11	13
Banking and Insurance		1	6	3	10
Vehicles and planes		1	2	7	10
Transport and related activities	2		3	4	9
Civil engineering	1	1		5	7
Furniture		7			7
Publishing		3		3	6
Pharmaceuticals				5	5
Sport, culture		1		2	3
Postal services			1	2	3
Textiles and clothing				2	2
Internet	1				1

Source: OPEC, 2000.

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The number of proceedings rose sharply (74%) from 1998 to 1999. But the number of appeals declined just as sharply. Internal appeals from first-instance decisions dropped 46%, and petitions for court review of the chairman's decisions dropped 90%.

Table 5. **Structure of decisions issued in 1999**[1]

	Number of proceedings		Number of proceedings	Percentage of proceedings
Existence of regulation	118	Regulated sector	19	16.1
		Unregulated sector	99	83.9
Ownership of entities involved	Of the 210 participants in these 118 proceedings:	Private ownership	189	90.0
		State majority	15	7.1
		Municipal majority	6	2.9
	Of 62 companies in 51 merger proceedings:	Private ownership	52	83.9
		State majority	4	6.5
		Municipal majority	6	9.6
Agreements distorting competition	54	Price fixing	3	5.6
		Resale price maintenance	7	12.9
		Market division	1	1.9
		Miscellaneous	43	79.6
	Of the 43 "miscellaneous" agreements:	Franchise	19	44.2
		Exclusive sale	6	14.0
		Exclusive purchase	8	18.6
		Rationalisation	8	18.6
		Exceptions under Art. 5	2	4.6
Abuse of dominant position	13 (7 in regulated areas)	Refusal to supply	4	30.8
		Discrimination	4	30.8
		Inappropriate conditions	1	7.6
		Miscellaneous	4	30.8
Market share (for mergers and abuse of dominant position)[2]	Distribution by market share of 51 analyses (64 cases in total):	30–50%	18	35.3
		50–70%	11	21.6
		70–100%	22	43.1[3]

1. Cases overlapping into the following year and cases that were discontinued without final decision are not included.
2. Where a proceeding involves several markets, it is counted here under the largest market share.
3. Mostly administrative and local monopolies.
Source: OPEC, 2000.

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4. LIMITS OF COMPETITION POLICY: EXEMPTIONS AND SPECIAL REGULATORY REGIMES

4.1. Economy-wide exemptions or special treatments

Czech competition policy applies generally, containing no specific exemptions for sectors or types of enterprises, and only a limited general provision for subordinating competition policy to other regulations. Thus the law provides a sound framework for broad-based regulatory reform.

The Competition Act contains few provisions that imply any exclusion or exemption from it. There is no exemption for particular kinds of institutions or entities; rather, competition policy applies to all kinds of entities that may be engaged in market competition, whether or not they would be considered businesses. Agreements that would otherwise be prohibited may be allowed if they are authorised by separate regulation (Art. 3(1)). The section of the Act prohibiting abuse of dominance does not contain any similar explicit provision, but a similar principle applies, most often in the context of natural monopolies subject to special regulatory laws and agencies. Such laws, or decisions of those agencies, can regulate behaviour in a way that restricts the scope of the Competition Act's prohibitions. There are few clear rules about the relationship between these special regimes and the general competition law. One clear principle has been established: competition policy can prohibit abusive conduct that exceeds what the special law or regulation actually authorised. Special legislation that effectively exempts some conduct by a firm does not exempt everything else that the firm does. An example is a recent case[19] which found that a gas company abused its monopoly position by charging customers a fee for installing gas meters, when the Energy Act required the company to install meters at its own expense.

The amended law will make clear that the Competition Act applies to public firms and to those granted special and exclusive rights by law to provide services of general economic interest. The language will follow Art. 86 of the EU treaty. This would represent a clarification, not a change in the Czech law. The amendment would make it explicit that the competition law would not apply only to the extent that applying it would prevent provision of "universal" services, those that must be provided widely, reliably, and at a reasonable price.

Not only are public enterprises fully covered by the law's prohibitions, but government bodies are under a statutory obligation not to impair competition. Agencies of the national government and local government administrative bodies may not restrict or eliminate competition, either in their own provision of services or by special support for favoured firms (Art. 18). The OPEC can investigate and call on the government body to correct the problem. But the OPEC cannot order mandatory corrections or sanctions.

The new law will delete Art. 18, leaving the actions of local officials governed only by the new article about services of general economic interest, modelled on Art. 86 of the EU treaty. In the inter-ministerial drafting process, other participants on the legislative committee argued that the Art. 18 rule was inconsistent with standards of quality drafting because there was no process or sanction for dealing with breach. The OPEC intends to see how the new draft law works in practice, and if municipalities misbehave, they will propose another change. So far, most municipalities have complied with the OPEC's requests even in the absence of sanctions. But not all have gone along: when the OPEC called on three cities to eliminate their anti-competitive controls on entry into the taxicab business, two of them complied, but the third refused. Repealing Art. 18 may undermine or even eliminate the OPEC's power to investigate problems and recommend changes, unless those functions are included in a general advocacy authority to study competitive conditions and make recommendations about them. Repealing Art. 18 may send the wrong signal to local governments. Municipal governments have several kinds of opportunities to take actions that could impair or distort competition, and the new regional bodies that are now being established may also have similar opportunities.

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Municipalities have statutory powers to provide some services, including waste collection and disposal and water supply and treatment, or to provide for them, such as for housing, transport, communications, education, public order, and social security. Localities can own infrastructure networks, by holding equity stakes in companies, or they may select operators through long term contracts. The locality assumes the role of regulator, for functions within its statutory powers. Some actions, such as long-term exclusive contracts with network operators or controls on competitive entry through zoning decisions or licensing methods, might violate the Competition Act, if the actions were not authorised by special laws about municipal services.

Water and sewer charges are regulated Community waste disposal is entirely under the municipalities' control, and there is no provision for regulating the price for this service, which is set by the municipal government. The OPEC has contended that the statute authorising municipal waste disposal service should provide some means of controlling abusive prices. Management of solid waste is essentially competitive, although local governments can control the location and operation of dumps. The OPEC rejected a complaint against a local rule requiring all collectors to use a single dump. By law the waste "belongs" to the municipality, and it can do with it what it wants.

Municipalities have tried to use their powers to favour their commercial interests. They have refused zoning permission to build gas boilers in new buildings, instead requiring that the projects be hooked up to the heating companies in which the cities had interests. The OPEC has intervened under Art. 18 to create arrangements that would allow the new projects to use gas heating. And sometimes municipalities have tried to demand measures unrelated to providing services. The OPEC found that one such effort, to demand a lump-sum payment in exchange for access to the water and sewer systems, was an abuse of dominance. The High Court upheld the OPEC's order, finding that this exercise of market power was not excused by being part of the municipality's scheme for fulfilling its service obligations.[20]

Small and medium sized business do not receive special treatment or consideration. The *de minimis* principle generally exempts agreements among firms with small market shares. But this principle does not necessarily depend on the size of the firm (although smaller firms are probably more likely to have smaller market shares). And the point of the rule is not to shield anti-competitive behaviour, but to save costs by identifying and excluding from enforcement attention behaviour that is not likely to be anti-competitive. Now, the *de minimis* rule applies to agreements among firms whose collective national market share is below 5%, or whose local market share is below 30% (Art. 3(4)(c)). Markets where firms appear to take advantage of the *de minimis* rule frequently include tyre sales, fast food, and bottled gas. The *de minimis* exemption is not available for agreements to fix prices or divide markets. The new law will modify the rule to conform to the EC's *de minimis* rule, setting a 5% market share threshold for horizontal agreements and 10% for vertical agreements, which will be directly applicable, with no filing or approval process. The rule will not exempt horizontal price fixing or market division, resale price maintenance, absolute territorial protections, or agreements whose cumulative effect is significantly anti-competitive. Executive decrees will also establish market-share-based block exemptions, which may tend to exempt the conduct of smaller firms.

4.2. Sector-specific exclusions, rules and exemptions

No sectors are fully exempted from the Competition Act, and provisions for sectoral regulation do not exempt regulated firms from the law generally. Regulated electric power distributors objected to an OPEC action against them for abuse of dominance, but the High Court found that a monopoly position is defined without reference to regulatory structure and that the law applies despite the regulation.[21]

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The OPEC has supported the creation of sectoral regulators for traditional natural monopoly sectors, believing that regulation is needed both to ensure proper conduct and to assure foreign investors that the regulatory system is effective and predictable. In 1998, the OPEC suggested that there should be a memorandum of understanding to govern co-operation and consultation between the OPEC and newly created independent regulatory bodies. Although the ministries made no formal response to the OPEC's proposal, it nonetheless had an impact, as those ministries have moved to establish independent regulators, whose powers are set out in separate laws. The OPEC and the telecoms regulator have established a close relationship based on a memorandum of co-operation, which was signed in January 2001 by representatives of the two institutions. The two bodies will consult about cases that come under the jurisdiction of both offices, exchange information about applications, and co-operate about legislation. The possibility of a similar agreement with the newly established Energy Regulatory Office is under consideration.

Insurance

The statute that liberalised auto liability insurance in 1999 provides for a three-year transition period of minimum and maximum price controls. This service was a monopoly until 2000, when about a dozen firms began offering policies. Controlling prices distorts incentives and prevents normal market forces from operating freely. But there was concern that firms would try to claim market share by aggressive low pricing. It is not clear whether the basis for this concern was that the firms would jeopardise their own solvency, or whether this competition would weaken the former monopolist. The OPEC recommended that maximum prices also be set during this transition period, to protect against the exercise of market power. In other respects, the Competition Act applies fully in the insurance sector.

Transport

Entry into the domestic trucking industry is generally open. Licences are required, but there are no quantitative limits and incumbents may not object to licensing new entrants. The trucking industry has expanded strongly in the competitive environment of the 1990s, in part at the expense of the rail sector. But international trucking services, which are subject to bilateral intergovernmental agreements controlling entry and cabotage, are less competitive. Entry into taxicab services is also open, although municipalities may impose fare caps. In bus services, some municipalities have moved to create competition with the traditional monopoly provider and improve services to remote areas. Transport issues are dealt with in more detail, particularly concerning trucks and railroads, in Ch. 6 of this review.

Broadcasting and other media

Regulation of entry and cross-ownership in television and radio broadcasting is intended primarily to ensure against dominance. It is not clear whether the concern is to preserve viewpoint diversity or to prevent media conglomerates from gaining large market shares. The Council for Radio and TV Broadcasting allocates spectrum and grants licenses for radio and TV broadcasting. Licence holders must comply with regulations concerning the length and placement of advertisements and with some public interest obligations, such as reflecting the plurality of opinion, supporting the cultural identity of ethnic groups, and providing closed-caption broadcasts for the deaf. Satellite and cable service providers need only register with the Council; no license is needed, and there is limited room for the Council to impose conditions on their program content.

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The OPEC has advocated legislation to prevent cross-ownership between different media. The OPEC's policy concerns in this sector are to prevent dominance and ensure competition in advertising markets, multiplicity of viewpoints, and transparency of ownership relationships. OPEC officials are on a commission established by the Ministry of Culture to prepare a new radio and TV broadcasting act, which would prohibit connections between radio and TV broadcasters and publishers of national periodicals and in other ways support plurality of information and transparency of ownership relations. There are no special rules about concentration of ownership in any single medium. The general standards about measuring dominance might apply, but occasions for doing so are not evident. Because licences are technically not transferable, the OPEC may have few occasions to analyse a merger among broadcasters.

Postal services

Legislation adopted in 2000 sets out a framework for liberalisation of postal services. The historic provider, Czech Post, will retain the monopoly as the only licensed provider of letter and small package (under 350 grams) delivery services. As of 2003, there will be a tender for 20 year licences for these services, which will be subject to universal service obligations. Licences will be issued by the Ministry of Transport and Communications. Prices are controlled only by price caps, administered by the Ministry of Finance. Entry into other package delivery and courier services is open.

Professional services

Professional associations control entry and practice in many sectors, such as medical care, law, accounting, engineering, and architecture. This self-regulation generally monitors compliance with professional qualifications and quality of service. The OPEC has tried to challenge anti-competitive self-regulatory controls, particularly those that constrain pricing freedom or that limit entry more than would be reasonable to ensure quality. Professions claim that their authorising legislation amounts to special regulations permitting derogation from the Competition Act; however, the High Court has held that the Competition Act also applies to firms whose activities are governed by special legal regulations.[22] Even after the OPEC's enforcement efforts, some controversies about price lists continue, particularly in the property-related professions such as assessors, architects, and contractors. The OPEC sued to block the architect's minimum fee schedule, and the order was affirmed in court. Some of the associations' membership controls still appear potentially discriminatory. The notaries' long training period and high admission fee suggest that they have tried even harder than others to prevent entry.

Pharmacists have presented several problems. The OPEC successfully challenged the professional association's effort to control the number of pharmacies in individual municipalities. It also objected to discriminatory controls on entry. The association required a separate approval to operate a pharmacy. An individual or firm that was not a licensed pharmacist would of course be required to hire a licensed pharmacist in order to operate the pharmacy — and the non-pharmacist would have to pay CZK 1 000 000 for that operating privilege, while a licensed pharmacist would only pay CZK 1 000. In addition, the association imposed stricter requirements, of experience and education, for a pharmacist to work in a pharmacy owned by a non-pharmacist. The result, and no doubt the intent, was to make it difficult for non-pharmacy firms to get into the sector. The OPEC's order to stop these restraints was affirmed.[23] (Pharmacy margins, like drug prices generally, are controlled by ceilings set by the Ministry of Finance, as an element in the national program of obligatory publicly-provided health insurance and coverage).

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Table 6. **Self-regulation by professional associations**

	Requirements for entry				Association-issued price list
	Citizenship	Permanent residence	Experience (years)	Application fee (CZK)	
Doctors	No[1]	Yes[2]	3	500–1 500	No
Pharmacists	Yes[1]	Yes[2]	5[3]	1 200–4 000	No
Lawyers	No	No	3	6 000	No
Architects	Yes	Yes	3–6	6 000	Yes
Engineers	Yes	Yes	3–6; 8	2 500	Yes
Auditors	No	No	2	2 600–15 000	No
Tax advisors	No	No	No	4 000	No
Notaries	Yes	No	5	30 000	No[4]

1. The Ministry of Health Care can accept foreign education.
2. Inferred from the application form, which requires a statement of permanent residency.
3. For the responsible representative.
4. Fees are set by the Ministry of Justice.

Source: OPEC, 2000.

5. COMPETITION ADVOCACY FOR REGULATORY REFORM

Promoting the principles of competition in the restructuring of the Czech economy and regulatory system has been an important function from the outset. This has been done not just by offering advice, but also by direct participation in key restructuring decisions. During the critical period of the mid-1990s, the OPEC (then a Ministry) had representatives on the supervisory boards and boards of directors of strategic plants and enterprises, such as SPT Telecom, Czech Railways, and the First Newspaper Distribution Company. From those positions, it could press for competition policy goals in fundamental decisions about privatising and restructuring. More recently, the OPEC was represented on the commission that selected bidders for GSM telecoms licences. One goal was to ensure that fixed-line operators did not participate in the auction for this potentially competing service.

Box 4. **Advocacy to counter abuse of dominance: insurance**

In the early 1990s, the provider of auto insurance increased premiums sharply, contending that the increases were needed to cover equally severe losses. Consumers complained that the premium hikes were an abuse of its dominant, indeed monopoly, position. Rather than simply take action against the firm under the Competition Act, the OPEC studied the situation in more depth and investigated the approaches that insurance firms were taking in other countries. The OPEC recommended regulatory and operational changes to reduce losses and increase efficiency, such as surcharges, higher deductible amounts, division of risks, and tailoring policies to individual risks, among others. The insurance regulator, prodded by the government, instructed the insurance company to adopt the OPEC's proposals to reduce losses. Premiums declined 20%.

Source: OPEC, 2000.

Efforts to create special exemptions from general competition policy have generally been resisted successfully. The OPEC objected to a proposal to exempt the entire agriculture sector, and to another that would exempt all agreements about copyright royalties. It succeeded in preventing the adoption of a statutory exemption for resale price maintenance that was sought by the association of booksellers and publishers. Advocacy has also helped design regulations to avoid competitive problems or help markets

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work better. In health care, the OPEC suggested more transparency, or encouragement for new entrants, to correct proposed rules that favoured incumbents in a way that could have left no room for new entry. And the OPEC has supported legislation to set uniform terms for returnable packaging.

Other parts of the government support competition policy goals. One of the most significant is the Ministry of Finance. The Ministry sets prices in the sectors, mostly utility services, where prices are still controlled. The Ministry must consider how price structures affect barriers to markets and promote market-based arrangements where competition is still limited. The Ministry tries to promote market institutions in its enterprise sector financing program, and to avoid distortions of competitive markets in setting tax policies. And it undertakes to promote market principles in financing health and social security programs.

The Legislative Rules require that all draft bills and decrees must be presented to the OPEC, so that it has an opportunity to comment in the inter-ministerial commentary procedure. A government decree authorises the OPEC to assess and comment on other government actions that could affect competition, such as decisions, "conceptual" policy proposals, administrative and municipal decisions, and privatisation proposals. The OPEC need not wait for a request for its views. It can and does offer advice on its own initiative, often based on its findings in other activities. The OPEC has always tried to be involved at the earliest stage, because it may not be possible to fix problems later on, as the OPEC could not overturn a government decision. Despite the formal authority, there is no guarantee of OPEC involvement and consultation. The OPEC has to take the initiative to be sure its views are heard.

Advocacy extends beyond the intra-government process, as the OPEC is occasionally invited to explain its positions to Parliamentary committees. Sometimes the OPEC takes positions about amendments being offered in the legislature, objecting to proposals that would weaken a program, or calling for changes to improve or correct problems in the government draft.

Advocacy has succeeded in 36% of the "major" situations, according to the OPEC. This figure reflects adoption of the OPEC position in proceedings at the level of the national government, and does not include advocacy involving local government issues. That rate is comparable to the success rates reported in several other jurisdictions that have tried to track this, notably Italy and Denmark. It is lower than the rate reported in Korea, where the competition agency enjoys more direct access to the policy process. Advocacy activity in the Czech Republic increased after the agency's status changed from being a Ministry to being an independent office again. It may be that the Ministry could perform the advocacy function less formally and visibly, in intra-government debate and through direct action as a member of many boards of directors. Also at about the time that the status changed, there was an upsurge in enforcement about problems often subject to advocacy: professional services, cable TV, and actions by government bodies.

Advocacy has concentrated on sectors characterised by utility-service monopoly or self-regulatory controls. Most advocacy has been in utility sectors — power, water & sewer, telecoms, transport — corresponding to and supporting trends toward liberalisation. A series of papers since 1994 has supported electric power reform and the establishment of a regulatory structure in advance of privatisation, as well as separating power generation from transmission and distribution; however, the OPEC did not persuade the government to maintain vertical separation in the privatisation plan. The OPEC has called for separating rail infrastructure from rail operation and for financial and accounting separation between railways and non-rail operations. In telecoms, the OPEC tried to ensure that the new GSM 1800 operator would not have ties to current fixed or mobile operators. In postal services, the OPEC called for limiting the incumbent's monopoly term. In water and sewer service, the OPEC recommended clearer rules about the source of project funding for public companies.

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Table 7. **Competition advocacy interventions**

	1993	1994	1995	1996	1997	1998	1999	Total
Electricity sector		1	3	1	2	2	3	12
Professional services		1	2		2	1		6
Public utilities		1		1		3	1	6
Telecommunications			2		1	2	1	6
Gas industry		1		2		1	1	5
Road transport		1				1	3	5
Banking and insurance	1	1		2				4
Foods			1	1	2			4
Oil			1			3		4
Health insurance		1			1		1	3
Mining					1	2		3
Publishing, newspapers	1	1			1			3
Tourism					2	1		3
Cable TV				1	1			2
Ceramics				1		1		2
Chemical industry						1	1	2
Motor vehicles		1		1				2
Pharmaceutical industry						1	1	2
Postal services						1	1	2
Railway transport							2	2
Retail distribution			1				1	2
Security services							2	2
Taxi service					1		1	2
Waste management						1	1	2
Airports						1		1
Collection of laws					1			1
Companies register					1			1
Copyrights							1	1
Entertainment				1				1
Estate agencies				1				1
Export promotion policy				1				1
Health care							1	1
Need for independent regulators						1		1
Privatisation policy						1		1

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	1993	1994	1995	1996	1997	1998	1999	Total
Returnable packaging							1	1
Steel				1				1
Tobacco							1	1
Trade licensing							1	1
Wood processing			1					1
Total	2	9	11	14	16	24	25	101

Source: OPEC, 2000.

Enforcement experience has sometimes supported advocacy and regulatory solutions. Frequent proceedings about abuse of dominance by local cable TV monopolies have led to proposals to regulate prices in that sector, for example. After numerous complaints about professional services, the OPEC helped rewrite the basic legislation in 1994, taking the position that giving associations exclusive rights to control entry (by requiring practitioners to be members) could be anti-competitive. The subject of anti-competitive professional regulation is perennial, though. The OPEC has argued against a draft law requiring interpreters to leave the practice at age 65, saying that instead competency evaluation should be individual, and against shifting power over qualifications, examinations, and entry from the Ministry of Finance to the associations of auditors and tax consultants.

Table 8. **Competition policy enforcement linked to competition advocacy**

	1993	1994	1995	1996	1997	1998	1999	Total
Professional services				7	3	2		12
Cable TV			1		7	1		9
Electricity sector		2		2	3		1	8
Public utilities		2	1		2	1		6
Actions of state and local authorities				6				6
Gas industry			1	1			1	3
Health insurance			1				1	2
Taxi service		1	1					2
Banking and insurance			1					1
Road transport				1				1
Telecommunications							1	1
Total	0	5	6	17	15	4	4	51

Source: OPEC, 2000.

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6. CONCLUSIONS AND POLICY OPTIONS

Competition policy institutions are sound, and help point the way to dealing with other issues.

In reorganising its institutions over the last decade, the Czech Republic has been able to avoid most anti-competitive economic regulations and to establish competition policy laws and institutions that support the substantive and process goals of reform. The more important remaining challenge to improving the competitiveness of the Czech economy is improving the institutions of corporate governance and finance, not those of competition policy. Competition policy's foundations and goals, to encourage dynamic adaptability and consumer welfare, show the direction that solutions to those other problems should take, although the institutional tools of competition policy are not well suited to resolving those problems directly.

Competition policy and principles apply generally throughout the economy. There are no significant or unusual exemptions or exclusions from coverage. The process for accommodating special legislation that derogates to some extent from competition policy seems to work well, and the scope of such special legislation is modest. The principal remaining area of controversy, professional services, calls for balancing divergent consumer interests in ensuring quality service and in preventing the exercise of market power. The judicious combination of law enforcement with advocacy and regulatory reform — and continuing vigilance — is the best that can be done in this commonly encountered situation.

Sensible applications of competition policy reflect realistic priorities. After the introductory period, of clearing up rules about vertical restraints as market-based distribution systems were established, disciplining abuses of dominance, mostly by utility firms, and correcting anti-competitive self-regulation, attention is now turning to the more difficult problem of horizontal cartels. From the outset, the OPEC has calibrated its actions to the likely injury from different types of violations, concentrating the heaviest fire on collusion and monopoly. Although the number of decisions about horizontal agreements has been smaller, so far, than about vertical agreements, the severity of the sanctions imposed for violations has been 4 times greater, averaging over CZK 1 million per horizontal violation. The most recent fine in a horizontal cartel case was CZK 7.8 million. The average sanction for abuse of dominance violations has been about CZK 1.6 million.

Competition policy institutions appear well adapted to their conditions. Institutional independence has become clearer, now that the OPEC is no longer a Ministry in the government. The early experiment of granting full ministerial status to competition policy was probably appropriate at that stage. It ensured high-level direct access to decision-making during a critical period of the economic transformation. The shift back to an independent "office" since then may be better for an agency whose principal task is law enforcement. There is no doubt about its decision-making independence. Not only is this provided formally by statute, but the history of stability in leadership at the OPEC (and the Ministry) confirms it.

Formal independence does not necessarily mean that the OPEC is oblivious to the government's policies or to potential ramifications of its decisions. In theory, for example, the OPEC may have the power to take an independent decision about an acquisition implementing a privatisation decision, and even disapprove it on competition grounds. But the OPEC is highly unlikely to reject a formal, final government decision; that is why it prefers to submit its opinions about privatisation proposals early in the process, before those decisions are made. And some observers find that decisions about mergers may respond to publicly raised concerns outside of competition policy.

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Independence and distance from the government may tend to weaken the voice of competition policy in the policy process, though. Overall, the advocacy "success" rate is average. The OPEC will need to make the most of its reputation for solid, dispassionate professionalism and enforcement as a basis for public argument and advocacy, to ensure that competition policy is taken seriously in policy-making.

Practitioners who deal with the OPEC regularly find it to be prompt and professional, conscientious and thorough, and improving its analysis as it gains experience. Transparency is no longer a significant concern, as decisions are appearing promptly on the internet, although some practitioners have observed that the reasons for decisions are sometimes unclear. For example, decisions do not always explain the reasons why markets are defined one way rather than another.

Co-ordinating competition policy with other regulatory programs seems not to have raised major problems yet. In financial services, for example, the OPEC consults where appropriate with the prudential regulator (the Czech National Bank), which must approve substantial changes in holdings of banks' shares. The OPEC has permitted bank consolidations to improve efficiency, while it has also investigated banks for possible co-ordination about fees. Independent regulators are just being established for liberalising infrastructure sectors, so experience is limited and relationships are not formalised.

Capacities for and impediments to change

Much of the reform program is energised and driven by the EU accession process, guided by the Europe Agreement. In competition policy, some adjustments in details of law and process will conform Czech law better to the *acquis communautaire*. These changes are anticipated to be effective by mid-2001.

The integration of competition policy into regulation proceeds along several paths. Not only does the competition law apply to regulated sectors, but the revised law should provide a particularly useful additional tool for doing so. The draft amendments will make it clear that denial of access to an infrastructure network, which is a common controversy in liberalising sectors, is a competition policy problem, not just a regulatory technicality. Already, there is a substantial history of applying the competition law to abuses by infrastructure firms. One feature of the law remains in reserve, namely the power to order restructuring to correct repeated abuses. Instead, restructuring is being done through legislation. Restructuring as a result of law enforcement is a strong step, one that is not often taken in any jurisdiction. Disuse may make this theoretical power irrelevant, though.

Co-ordination through the policy process is equally important. The OPEC is a member of the *ad hoc* interdepartmental working group on regulatory reform, which was created in August 2000 to co-ordinate work on this OECD study. This body could become the agency for more systematic, permanent horizontal oversight of regulatory quality, including its effects on competition. This could be timely, for there are signs that competition policy issues are not getting the attention they deserve elsewhere in the government. A key element of the competition policy advice was disregarded in the plan to restructure the electric power sector. The OPEC is unlikely to use its legal power of merger control to stand in the way of implementing the restructuring plans, despite the OPEC's concern that the structure is not competitive.

The OPEC plans to increase its capacity for advocacy at the same time as it is shifting enforcement attention toward cartel agreements and adding the capacity to perform new statutory responsibilities concerning state aids. Enforcement against cartel agreements will present novel and complex problems for an institution that has historically been involved more in administration than in investigation and prosecution. The new state aids responsibility and expanded attention to public procurement are valuable complements to the other competition policy enforcement functions, ensuring independent oversight of the troublesome problem of government-imposed distortions and restraints.

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Thus the creation of a new regional layer of government presents both an opportunity and a set of new problems. The proposed change in statutory treatment of government-imposed distortions, by repealing Art. 18 and substituting a provision based on Art. 86 of the EU treaty, sends conflicting signals. It eliminates the clear prohibition against such distortions and introduces a more complex and less familiar rule. On the other hand, it connects Czech competition policy directly to a wide range of precedents and experience from other jurisdictions about the appropriate reach of the exemption and about what would be an essential, universal service.

Policy options for consideration

The following short to medium term options are presented for consideration to strengthen the scope, effectiveness and enforcement of competition policy, by eliminating gaps in coverage, enforcing competition law vigorously where conduct or conditions risk frustrating reform, and providing competition authorities with the authority and capacity to advocate reform and for competition policy and institutions to participate effectively in the transition to effective competition in deregulating, restructuring industries.

- *Consider formalising the relationships between the OPEC and new independent sectoral regulators.*

Before problems occur, it could be prudent to set out some ground rules about the respective jurisdictions, roles, and consultation responsibilities of these regulators and the OPEC. The OPEC may soon be in a position to take action over denial of access to networks that are under the regulators' jurisdiction (if it is not already in that position). Primary reliance on the competition law would be the best long-term approach, but co-ordination with the regulator could avoid surprises and inconsistencies.

- *Reconsider eliminating Art. 18, setting a competition policy standard for government action.*

Where regulators take actions that restrict or eliminate competition, Art. 18 empowers the OPEC to intervene, although the OPEC cannot order the other government body to change its conduct. The principle, prohibiting action by government authorities that restricts or eliminates economic competition, is valuable even if there is no mandatory sanction for violating it. Incorporating something like Art. 86 will help compensate for the elimination of Art. 18 in the draft of the new law, but the two provisions are not equivalent. Art. 18 is a clear, unambiguous prohibition, which applies to governments as such. By contrast, the language of Art. 86 applies to "undertakings" and thus the prohibition would apply only to government entities in their business capacity, not in their regulatory capacity. Moreover, it authorises exemption, if applying competition law would obstruct performance of their authorised services of "general economic interest" or "revenue-producing monopoly". Another way to control government action distorting competition could be to authorise the OPEC to initiate constitutional court proceedings challenging other regulators' actions. A proposal to that effect was eliminated from the draft law, though

- *Apply substantive rules and investigative tools where they can help solve problems raised by industrial restructuring.*

Although the role of competition policy in most of the remaining restructuring tasks is secondary, there may be some issues where competition policy can play a role. Patterns of large investment holdings that are short of legal "control" could encourage company managements to avoid competition. This situation would pose an investigation problem. Such conditions may not come to enforcement attention, as they would not be covered by merger reporting obligations, even when those obligations apply to open-market acquisitions as well as formal merger agreements. Second, there could be a substantive problem. It may stretch the law too far to try to treat these potentially anti-competitive conditions as prohibited "concerted practices". This is a difficult issue, which perhaps cannot be addressed except through vigilance

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in identifying non-competitive market conditions and applying the law strictly to observed infringements. The scope for these problems has already been reduced, by lowering the ceiling on investment fund holdings in a single firm.

A simpler task is ensuring timely competition policy review of restructuring projects. Although most such deals will not raise competition policy problems, some of them may, and those deals may be the high-profile ones. The understandable pressure for expedition in wrapping up transactions emerging from the Revitalisation Agency or bankruptcy proceedings could threaten the integrity of competition review. The obvious solution is to consult at an early stage with the OPEC, perhaps even before bids are solicited.

- *Implement the planned leniency program to make cartel enforcement effective.*

The OPEC is studying how it could implement a leniency program, to assist in the investigation of secret hard-core cartels. This is a high-priority issue. Details of such a program will have to depend on details of the administrative and judicial processes, as well as on the credibility of the sanctions that parties could avoid by seeking leniency. Increasing attention to horizontal cartels may lead to unanticipated issues. Many cartels that are being unearthed in other jurisdictions have operated in international markets. It would be illuminating, and greatly complicating, if some of the major Czech firms that are now in the process of being reorganised are revealed to have been participating in such international cartels, or have been invited to do so.

Managing regulatory reform

The principal impediment to a healthier, competitive economy is the still-unresolved status of the inherited industrial structure. Managers of these enterprises need incentives to operate efficiently, disciplined by the demands of capital markets and the interests of equity holders, without recourse to direct or indirect public bail-outs and *ad hoc* fixes. Funds and elite attention are diverted to these high-profile entities. Concern to protect their interests probably slows needed general reforms to make market institutions work better. One such reform that is needed is a replacement of the bankruptcy law with one better designed for these large-scale reorganisations, rather than for winding up small firms and paying off creditors.

These problems are, in a sense, a consequence of what had been a virtue, the relatively well-developed high-technology industrial sector in the Czech Republic before 1990. Since then, the country has had the good fortune to have designed and established sound competition policy institutions and principles with a minimal number of exemptions and special regulatory regimes. That example, and the principles on which competition policy is based, could guide the restructuring process.

As the market economy puts down deeper roots, pressure will build to establish special regulatory protections against competition. The OPEC will have to resist that pressure through advocacy. Unlike the competition agencies in several neighbouring countries, the OPEC does not combine competition with other functions such as consumer protection and utility pricing. The combination can raise the agencies' public profile and demonstrate consumer benefits from enforcement oversight. The OPEC's somewhat narrower targets may have simplified its tasks and focused its efforts and resources. But concentration on competition policy in the sense of restrictive business practices provides fewer opportunities to demonstrate the value of competition oversight to the public. To be sure, there is no sign that OPEC lacks support. Its budget and personnel resources are sufficient, even increasing, and it participates regularly in policy debate. But it is likely that it will have to take an even higher public profile on regulatory issues, to maintain the pro-competitive direction of reform.

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NOTES

1. Sec. 4, Austrian Coalition Act No. 43 of 1870.

2. Act No. 141/1933 Coll., on Cartels and Private Monopolies.

3. Amendment (No. 169/1969 Coll.) to Government decree No. 100/1966 Coll.

4. Act No. 63/1991 Coll., on the Protection of Economic Competition, as amended by Act No. 495/1992 Coll. and Act No. 286/1993 Coll.

5. References to the "OPEC" herein include the Ministry, with respect to the period 1992-96.

6. Articles 19 and 20 are not included in the draft of the new Competition Act, because they have become obsolete.

7. Creditors can petition the court to appoint a preliminary asset administrator to step in and ensure that the bankrupt firm's management does not strip assets pending the completion of the process. Administrators will have less incentive to delay, too, under the new compensation scheme. Other changes may help overcome creditors' reluctance to put debtor firms into bankruptcy involuntarily. Lower priority claims have a better chance of being paid at least in part. The settlement process can now propose issuing shares or securitising receivables, as well as paying creditors in cash.

8. The section below about these exemptions describes the situations of particular professions in more detail.

9. Act No. 199/1994 Coll., on Public Procurement, as amended by Act No. 148/1996 Coll. and Act No. 28/2000 Coll.

10. The general prohibition of unethical conduct that harms other firms might include some of the conduct that is considered abuse of economic dependence, such as refusing to comply with normal contract terms about payment

11. The appointment process and terms of office were changed by 1999 law, Act No. 187/1999 Coll., which amended the Act on the Operation of the Office, Act No. 273/1996.

12. The statute also permits dismissal of the chairman if he has not been in the office for more than 6 months. This provision may respond to a particular event, namely the previous chairman's extended period of incapacity following a serious automobile accident,

13. www.compet.cz.

14. Resolution No. 610, 16 September 1998.

15. Act No. 71/1967 Coll..

16. This power does not appear in the draft of the amended law. An equivalent power is granted to the OPEC and other agencies under Sec. 43 of the general Administrative Order (act 71/1967 Coll., on administrative procedure).

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17. This appeal process is set out in the general administrative code, Secs. 53 *et seq*., Act No. 71/1967 Coll.

18. In the OPEC's latest annual report, nearly all of its leading priorities are policy-related. Some of these may be explicit responses to externally-applied demands or goals, such as the EU accession process):

Performance of obligations under the Europe Agreement, such as harmonisation of the law and its application;

Preparation for the assumption and performance of control over state aids;

Improvement of legislative activities by more extensive co-operation with outside experts;

Focusing on the most serious breaches of competition rules;

Increasing transparency, both at the decision-making stage and with respect to information, interpretation, and methodology;

Consistent defence of competition principles, in particular with respect to natural monopolies;

More extensive co-operation with partner competition offices in EU Member States; and

Reflection of topical issues in the application of competition law in legislative efforts.

19. Second-instance decision of the Office No. R 1/2000.

20. Judgement of the High Court No. 2A 9/97.

21. Judgement of the High Court No. 2A 6/97.

22. Judgement of the High Court No. 6A 78/95-24, 29 January 1999.

23. Judgement of the High Court No. 7A 134/95.

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