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**DIRECTORATE FOR FINANCIAL AND ENTERPRISE AFFAIRS  
COMPETITION COMMITTEE**

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

-- 2005 --

*This report is submitted by the Delegation of the Czech Republic to the Competition Committee FOR DISCUSSION at its forthcoming meeting to be held on 8-9 June 2006.*

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## **Executive Summary**

1. The most important event for the Office for the Protection of Competition of the Czech Republic in 2005 was a change in the position of its Chairman. On 2 September 2005, Mr. Martin Pecina was introduced to the position by the President of the Czech Republic. The new Chairman brought a substantial change into the Office's philosophy. The Office newly emphasises prevention by means of competition advocacy and resolving anti-competition issues at their very beginning with the aim to minimise harm to the competition environment. An overhaul of the organisational structure of the Office, aimed at ensuring transparency and effectiveness under the new leadership, was carried out at the end of 2005.

2. In the area of antitrust, an extensive amendment to the Act on the Protection of Competition became effective on 1 October 2005. The amendment mainly deals with criteria and rules of the assessment of concentration of enterprises in relation to the adoption of Council Regulation (EC) No. 139/2004 on the Control of Concentrations between Undertakings. It further regulates conditions for cooperation between the competition authorities and the European Commission. Another important change was the abolishment of the Office's block exemptions' system in the area of prohibited agreements and their replacement by direct use of the European Community block exemptions. At the same time, the implementing decree to the Competition Act, stipulating the prerequisites of the concentration notification was amended. In 2005, another amendment to the Act was prepared which should enable imposing sanctions for abusing economic dependence.

3. The year 2005 was characterised also by the development of the Office's international activities and strengthened involvement in operation of the World and European structures for the protection of competition. Last but not least, the Office commenced its long-term project aimed at fostering the competition culture in the Czech Republic by series of public presentations and expert meetings dealing with the current issues in the area of antitrust, state aid and public procurement.

### **1. Proposed or adopted changes to competition laws and policies**

#### ***1.1 Summary of new legal provisions of competition law and related legislation***

##### *1.1.1 Amendment to the Act on the Protection of Competition by the Act No. 127/2005 Coll. on Electronic Communication*

4. On 22 February 2005, the Chamber of Deputies adopted the governmental bill on electronic communication, supplemented, on the basis of the deputies' initiative, with an amendment to the Act on the Protection of Competition. This amendment, which had not been discussed with the Government of the Czech Republic, removed from the competence of the Office conduct of competitors constituting communication activity pursuant to the Act on Electronic Communication. The Office did not agree with the proposed provisions and subsequent amendments as they resulted in a situation, where the Act on the Protection of Competition is applicable to a narrower range of cases than the corresponding Community rules, thus creating legal uncertainty for undertakings.

##### *1.1.2 Amendment to the Act on the Protection of Competition by the Act No. 340/2004 Coll. (so called 2<sup>nd</sup> amendment)*

5. The so called 2<sup>nd</sup> amendment to the Competition Act, which became effective on 1 October 2005, responds to the adoption of the Council Regulation (EC) No. 139/2004 on the Control of Concentrations between Undertakings.

#### Changes in the area of assessment of concentrations

6. The amendment significantly changes the economic criteria for assessment of the concentrations' impact on competition. The concept for approval or disapproval of a concentration has been explicitly changed by amending the hitherto dominance test by a new system, combining the dominance and SLC (*Substantial Lessening of Competition*) test. The Czech system of merger control will be in future based on economic principles allowing prohibition of concentrations capable of causing negative impacts on competition regardless whether they occurred as a result of creation or strengthening of dominant position of the concentrating undertakings or other adverse effects of such concentration (especially the so called *unilateral effect*).

7. The amendment also explicitly prohibits implementation of any steps whatsoever aimed at implementation of a concentration before the approval by the Office. The prohibition covers for example holding of shares of the acquired company by the acquirer. A new exemption is stipulated for the case of receivables acquired in the stock exchange, to holding of which is the acquirer entitled upon meeting the legally defined conditions before the legal effect of the Office's decision. In such case, however, the acquirer may not execute the voting rights connected to the receivables. The amendment also stipulates that in case of non-compliance of the parties to the concentration with the prohibition, the Office may impose both a fine up to 10% of their turnover and the duty to restore the situation on the market existing before the concentration, e.g. sell an unlawfully acquired company.

#### Changes in the area of prohibited agreements

8. The amended Competition Act contains a so called reception clause, which enables application of the Community block exemptions to behaviour with no effect on the trade between the EU Member States. The Office does not carry out transformation of the Community block exemptions into the national law by means of its decrees precisely adopting the block exemptions wording anymore. Newly it applies directly the relevant EC Regulations also to the competition behaviour without the Community dimension. This measure significantly simplifies the legal regulation, as it abandons simultaneous existence of two systems of legal regulation with principally identical content.

#### Changes in the procedural area

9. The adopted amendment shall ensure smooth functioning of the Czech Competition Office in the merger control system brought by the new EC Merger Regulation. For this purpose the amendment especially introduces procedural rules which shall ensure proper contacts between the Office, the Commission and other competition authorities in the case referrals.

10. A new investigation power of the Office's employees was introduced, consisting in the power to seal for the purpose of investigation the business premises, or cupboards, cases, business books and other business records located there, for the period necessary for performance of the investigation.

Amendment of the Decree of the Office for the Protection of Competition No. 368/2001 Coll. by the Act No. 407/2005 Coll.

11. In connection with the 2<sup>nd</sup> amendment to the Act on the Protection of Competition it was necessary to harmonise the terminology of the Act and the implementation decree No. 386/2001 Coll. stipulating the prerequisites of the concentration notification. This task was completed by the amendment made on the basis of Decree No. 407/2005 Coll. Besides united terminology the Decree also brought completion of the set of information required by the Office at the filing of a merger notification. Such information was previously requested by the Office only during the administrative procedure, which caused a lot of delay in the process.

*1.1.3 Prepared amendment of the Act on the Protection of Competition*

12. The European Community law accepts that national legislature may contain provisions prohibiting or sanctioning abusive conduct towards enterprises with economic dependence (see clause 8 preamble of the Council Regulation (EC) No. 1/2003). The adoption of legal regulation of economic dependence and its abuse is thus left to each Member State, whereby a number of states have already used this option.

13. The Chamber of Deputies of the Parliament of the Czech Republic is now discussing the parliamentary bill on the amendment to the Act on the Protection of Competition, which is supported both by the government and the Office. The draft Act should enable the Office to sanction the abuse of economic dependence between competitors, which so far has been able to be solved only on the civil law level within the framework of protection against unfair competition. This concerns behaviour of such entities that are not dominant within the meaning of the Act on the Protection of Competition, which, however, possess substantial economic power enabling them to enforce unilaterally profitable trade conditions. Such conduct may lead to the distortion of competition; however, so far it lies outside the scope of the Act on the Protection of Competition.

14. According to the above mentioned bill, economic dependence shall be deemed to mean such relationship of competitors, where the bargaining position of one of the competitors enables it to enter contractual relations with an economically dependent competitor under substantially more profitable conditions than it would have been able to without such bargaining position. An economically dependent competitor shall be deemed to mean a competitor who is forced to accept unprofitable trade conditions because it has no possibility to choose another comparable way of purchase or sale of goods with similar extent of fulfilment under bilaterally balanced trade conditions.

15. The Office should assess the economic dependence of competitors mainly according to the market share of the competitor in the relevant market. This should be done up to the extent of required fulfilment of such trade conditions that are in obvious disproportion to the consideration, to the possibility of choice of a different comparable way of sales of goods with the competitor in the position of supplier, to the extent of general knowledge of special labelling of goods of the competitor in the position of supplier, to the extent of the sale of goods labelled with an attribute typical for the competitor in the position of customer, and to the extent of a potential threat to competition as a consequence of economic and financial power of the competitor in the position of customer.

## **2. Enforcement of the Act on the Protection of Competition**

### ***2.1 Overall statistics on the enforcement activities of the Office***

16. In 2005 a total of 71 new cases were opened by the Office, consisting of 5 cases of agreements distorting competition, 4 cases of abuse of dominant position and 55 concentrations of undertakings. Total number of cases closed by a decision on the merits amounted to 84, consisting of 8 cases of agreements distorting competition, 9 cases of abuse of dominant position and 56 concentrations of undertakings. The total amount of fines imposed by a decision of the Office reached CZK 492.1 million (approximately USD 21,9 million). In 2005 an appeal against the first stage decisions of the Office was filed in total in 13 cases and 11 legal actions against the final decision of the Office were filed with the relevant review courts. The Courts have not decided any of the legal actions against the 11 final decision of the Office yet. However, in 2005 courts decided on 16 legal actions against the final decision of the Office from previous years. The leniency programme of the Office was applied to undertakings, which voluntarily announced a cartel and submitted evidence on its existence in one case.

17. In the framework of involvement in the European Competition Network the Office in 2005 received information about 386 cases of behaviour in breach of Article 81 and 82 of the EC Treaty. The impact on competition on the territory of the whole Europe Union, including the Czech Republic, was identified in 42 cases. None of these cases resulted in commencement of the Office's proceeding under the competition rules of the EC Treaty. In 2005 the Office sent via the ECN Interactive overall 6 notifications of cases with possible impact on the territory of more than one EU Member States. In 5 of these 6 cases the Office initiated an administrative proceeding pursuant to the EC Competition Law.

## **2.2 *Agreements distorting competition***

### **2.2.1 *Statistics***

18. In 2005 a total number of 5 new cases of agreements distorting competition were opened, consisting of 2 cases of horizontal agreements and 3 cases of vertical agreements. Out of these new cases, 1 case of horizontal agreements and 3 cases of vertical agreements were opened on the Office's own initiative. The remaining one case of a horizontal agreement comprised application for a leniency program. An overall number of 8 cases of agreements distorting competition were closed by a decision of the Office, comprising 4 cases of horizontal agreements and 4 cases of vertical agreements. Out of these, 3 cases of horizontal agreements and 3 cases of vertical agreements were closed by decisions prohibiting the agreements and imposing fines. 1 case of a horizontal agreement was concluded by a decision rejecting the complaint. The remaining case concerned an individual exemption decision. In the area of agreements distorting competition fines have been imposed in the total amount of CZK 279.25 million (approximately USD 12.4 million). 1 leniency application was received.

### **2.2.2 *Description of significant cases***

- **Banking charges**

19. In November 2005, the Office ceased the administrative procedure with the three largest banks operating in the Czech Republic. The administrative procedure was preceded by an investigation concerning the increase of charges for services related to keeping a current account provided by banks in the Czech Republic and introducing a charge for cancelling a current account. From 2003 to the end of April 2005, the Office received a number of complaints from citizens concerning the amount of charges for banking services and also complaints from the Consumers Defence Association. All of them were related to the charge for cancelling a current account, which in fact prevented consumers from switching among the banks. The citizens' complaints were focused not only on the inadequate rise of charges, but also on the insufficient competition between the largest banks and a possible abuse of the dominant position of these entities. Within the framework of the administrative procedure, which commenced in May 2005, the Office proved that there have been numerous contacts between the parties to the procedure. However, it was not proved that such contacts were means for the coordination of the banks' actions.

- **Price fixing agreement on the ADSL technology market**

20. The Chairman of the Office confirmed the decision of the administrative body of the first instance, which declared that the party to the proceeding, ČESKÝ TELECOM a.s., by means of its General Contracts for the supply of ADSL modems, concluded on 21 August 2003 with companies JOYCE ČR, s.r.o. and Lucent Technologies Česká republika, v.o.s., had bound the purchasers not to sell goods, specified in Annexes to the contracts, to other companies in the territory of the Czech Republic for prices lower than those stated in these contracts. Thus, the law was breached in the period from 21 August 2003 to 1 December 2003 by concluding prohibited and invalid agreements on price fixing. The agreements could have lead to the distortion of competition on the market with supplies of modems and equipment for

connecting to the internet through ADSL technology. ČESKÝ TELECOM, a.s., by including the provision in question into its contracts with companies JOYCE ČR, s.r.o. and Lucent Technologies Česká republika, v.o.s., limited its competitors in the possibility to obtain better prices for ADSL modem supplies in case they entered into contracts with JOYCE ČR, s.r.o. and Lucent Technologies Česká republika, v.o.s. The Chairman of the Office concluded in its decision that this obligation, in combination with the system of quantity discounts contained in the abovementioned contracts could have resulted in a situation when the competitors of the party to the proceeding would have been obliged to purchase ADSL modems through ČESKÝ TELECOM, a.s. The incumbent would then have been able to profit from the quantity discounts provided by individual suppliers, which are always present in each contract.

21. In view of the fact that ČESKÝ TELECOM, a.s., had terminated its anti-competitive behaviour before a decision of the administrative body of the first instance was issued and had removed the anti-competitive provisions from both the General Contracts, and at the same time it had accepted formal legal defect of the provision in question, the Chairman of the Office reduced the penalty to CZK 10,000,000 (approximately USD 444,450).

- Decision of an association of undertakings – adoption and application of License Code

22. The Chairman of the Office decided that the adoption of Section 4, paragraph 1 of the License Code by the congress of delegates of the Czech Apothecary Chamber on 8 November 2002 in wording: “Certificate on the fulfilment of terms for the execution of private apothecary practice and for the execution of the capacity of expert representatives under Section 1 paragraph 2 letter a), b) expresses consent with the qualification, with the location of a pharmacy, including a possible detached department for issuing medicaments and sanitary means and with material, technical and personal equipment of a pharmacy for the extent of the provided apothecary care” is a prohibited and invalid decision of an association of undertakings, as its application could have lead to the distortion of competition on the market with apothecary services.

23. The Chairman of the Office took account of the judgment of the Municipal Court in Prague, ref. No. 28 Ca 69/2001-46, of 14 November 2001. This judgement stated that the Czech Apothecary Chamber had not been entitled to evaluate personal and material equipment or location of a non-state institution when assessing an application for the certificate to execute the capacity of an expert representative. The Chairman of the Office subsequently concluded that the use of Section 4 paragraph 1 License Code in case of applications for the certificate to execute the capacity of an expert representative of Droxi pharmacies of The Drogerie company could have had a negative impact on the competition on the market with apothecary services. The Czech Apothecary Chamber was imposed a fine of CZK 500,000 (approximately USD 22,220).

## **2.3 Abuse of dominant position**

### **2.3.1 Statistics**

24. In 2005 the Office opened 4 new cases concerning abuse of dominant position; all cases were opened on the Office’s own initiative. Total number of 9 abuse of dominance cases were closed by a decision of the Office, out of which 3 were decisions prohibiting the abuse and imposing fines. The total amount of fines imposed for abuse of dominant position amounted to CZK 212.85 million (approximately 9.47 million USD).

### 2.3.2 Description of significant cases

- Abuse of dominant position on the market with providing access to public telecommunication network to private lines and on the market with providing access to public telecommunication network to business entities

25. This breach of Article 82 of the Treaty Establishing the European Community consisted in the abuse of dominant position on the market with providing access to public telecommunication network to private lines and on the market with providing access to public telecommunication network to business entities at the detriment of other competitors and consumers by company ČESKÝ TELECOM, a.s. Since 2002, this telecommunication incumbent had offered price plans intended for households and small entrepreneurs, containing call credits or free minutes as a part of a monthly flat rate. The abuse of the dominant position of the ČESKÝ TELECOM consisted in bundling services together, i.e. the monthly flat rate offered on markets where it has a substantially dominant position and the services offered on markets where competitive environment is continually developing. ČESKÝ TELECOM thus ensured a fixed minimal part of its income from call charges and access to the internet in advance, regardless of the fact whether the customers with the price plans in question really used its services. The customers by purchasing a price plan containing a call credit or free minutes obtained certain calls “for free”, as these price plans appeared more advantageous for them. In case a customer telephoned less than the call credit or free minutes were, he or she had to pay the full monthly flat rate nonetheless, and the amount of payment did not reflect the fact that the call credit (free minutes) had not been fully used. The structure of the price plans in question did not enable to divide the payment into call charge and lease of the telephone line. Customers were for this reason less willing to call through other operators, because they did not want to lose something they obtained “for free” as part of the monthly flat rate. By this conduct, competition in telecommunication services was restricted. This competition could have developed more quickly if it had not been affected by the anti-competitive bundling of services.

26. ČESKÝ TELECOM, a.s. concentrated on customers ranging from households, small entrepreneurs and customers using ISDN connection. If a customer behaved in an economical way, he or she called primarily within the free minutes, or the call credit, and only then considered if he or she would use the networks of competitors of the participant to the procedure for further calling. Moreover, customers of ČESKÝ TELECOM, a.s., were not informed when they had used up their free minutes, or call credits. Behaviour of the participant to the procedure caused harm also to its own customers, because they could not compare cost advantage of offers of individual telecommunication operators due to the non-transparent price conditions.

27. However, harm was caused primarily to the competitors of the party to the procedure, who got into situation when as a result of the anti-competitive behaviour of ČESKÝ TELECOM, a.s., they could assume just a role of insignificant competition. Thus, the development of sound competitive environment, from which consumers would have profited as the final result, was impeded. It was proven during the procedure that the conduct of the incumbent had unfavourable impacts on the structure of competition on the common market and on the trade between member states of the European Community. For the breach of Article 82 of the Treaty Establishing the European Community the party to the proceeding was imposed penalty in the amount of CZK 205,000,000 (approximately USD 9.1 million).

- ČSAD Liberec

28. The Office concluded that company ČSAD Liberec abused its dominant position on the market with services provided by a local bus station. For several months, without an objectively justifiable reason, the operator refused to negotiate about the use of the local bus station with STUDENT AGENCY, s.r.o., a company which intended to operate intrastate public passenger transport between the cities of Prague and

Liberec. Subsequently it refused to provide the local bus station to STUDENT AGENCY. Yet, both companies are competitors in the area of operating passenger bus lines. A penalty of CZK 2,500,000 (approximately USD 111,100) was imposed on ČSAD Liberec. An appeal was lodged against the decision, about which it has not been decided yet.

- Abuse of dominant position on the market for instant lottery (scratch tickets)

29. Company SAZKA a.s., abused its dominant position on the market with instant lottery (scratch tickets) due to the fact that, on the basis of the Contracts on Providing concluded since February 2002, it applied unreasonable business conditions towards the providers. The company was transferring its business risk on the tickets sellers by not allowing them to return tickets from activated packets, which had been accounted for. This applied both in case of the termination of an instant or cash lottery and in case of the termination of the provider's activity. Harm caused to providers was proved not only in non-material form consisting in transferring business risk, but also in monetary form, when three providers were not allowed to return the tickets they had been accounted for.

30. In the decision it was stated that the behaviour of the party to the procedure could have not been justified by the indiscipline of providers. Concerning the argumentation of the party to the procedure that non-refundable tickets might be scratched by the providers, the Chairman of the Office said that this situation could not be considered an adequate substitute for the investments with view to the uncertainty of their return.

31. The Chairman reduced the imposed fine to CZK 1,200,000 (approximately USD 53,330) after taking into account the proportion of the fine to the proved extent of harm which was caused only to three providers out of the total number of 4000. The Chairman of the Office maintained that for imposing the penalty it was necessary to evaluate the relevance of the anti-competitive behaviour of SAZKA, a.s., i.e. applying unreasonable conditions; however, this could not be viewed separately from the context of the whole contractual relationship, to the quantitative proportion of all the varied activities performed by the providers and to the structure of return ensuing from providing the activity.

## **2.4 Concentration of undertakings**

### **2.4.1 Statistics**

32. In 2005, total 55 cases of concentrations of undertakings were notified. The Office issued in total 53 decisions on the merits including 50 decisions approving the concentration without any conditions, 3 decisions approving the concentration with conditions or obligations attached and no decision prohibiting the concentration. The Office issued 3 decisions declaring that the concentration did not fall within the scope of the merger control provisions of the Act on the Protection of Competition. Out of the 53 decisions on the merits, 51 decisions have been issued within one month of notification in the phase I of the proceeding and 2 decisions have been issued in the phase II of the proceeding within 5 months of notification. These 2 phase II decisions included 1 decision approving the concentration with conditions or obligations attached.

33. The Office received 305 submissions via the ECN Network in the area of concentrations of undertakings in 2005. 28 of these submissions met the notification criteria set by the Competition Act, which is approximately 9,2 % of the overall number. As none of the cases meant a distortion of competition on the territory of the Czech Republic, the Office did not file any request for referral of a case with the European Commission.



#### 2.4.2 *Description of significant cases*

- Concentration of bakeries

34. In 2005, the Office conducted two administrative proceedings concerning a merger of two largest companies in the area of bakery production, the company ODKOLEK and the company DELTA PEKÁRNY. In February 2005 the merger was not cleared due to a possible distortion of competition. At the end of 2005 the Office received a modified notification of the merger again, claiming that there had been changes in the competition environment. The Office investigated whether and to what extent changes on relevant markets occurred. An important change was found in the fact that none of the merging competitors operated on the market with mill products any more. In the period before the commencement of the new administrative procedure, the property share in UNIMILLS was transferred to Erste Wiener Walzmühle. The entity established by the concentration would thus have not been self-sufficient, unlike its competitors, as regards the access to raw materials and it would have gotten these materials from external suppliers. Another fact taken into consideration was that the merging competitors were not the only ones capable of supplying customers, mainly retail chains, within the whole of the Czech Republic. There was no doubt that the entity established by merger would have gained the leading position in the Czech Republic. However, it would still have to deal with competition from the part of the other bakery producers, whose market shares do not show a considerable distance. Moreover, its market force will be balanced by the growing market and bargaining force of chain stores which increase their proportion of bakery production. Therefore, the merger was eventually cleared without conditions

- Concentration of competitors ÚAMK/ABA

35. The concentration in question was realised in connection with the governmental resolution concerning the sale of ownership interest of the Czech Consolidation Agency in Autoklub Bohemia Assistance (ABA) to its direct competitor ÚAMK company. The proposed concentration of competitors concerned particularly the area of assistance service to drivers, traffic and moto-tourist information, distribution and sale of expressway coupons and related services. Both the merging entities operated, i.e. ÚAMK and ABA as well the companies controlled by them operated in these sectors. After the investigation within the five-month period, the Office issued the decision, whereby it permitted the concentration on condition of the fulfilment of obligations in favour of maintaining and developing effective competition. The conditions concerned maintaining conditions and extent of assistance and related services provided by the merging entities to customers for the period of five years from the legal force of the decision.

- Concentration of competitors Ahold/JULIUS MEINL

36. The concentration in question consisted in the acquisition of a part of the enterprise of JULIUS MEINL company, representing a retail network of 67 supermarkets in the territory of the Czech Republic by Ahold company. Activities of both the merging competitors overlapped in the area of retail sale of grocery goods and supplementary range of products of daily consumption to the final consumers through the retail network of supermarkets and hypermarkets. For the purpose of this decision the Office defined the relevant market from the material viewpoint as the market of retail sale of daily consumption goods and from the geographic viewpoint as the territory of the whole of the Czech Republic. The Office issued the decision permitting the concentration in question. In 2005, another important merger occurred on the same market, when Tesco company acquired Carrefour stores. This concentration had a Community dimension and the case was reviewed by the European Commission.

## **2.5 Appeal and court proceedings**

### **2.5.1 Appeal proceedings**

- Total number of decisions appealed to the second-instance in 2005: 13
- Total number of second-instance decision on appeals issued in 2005: 52

37. In 2005, in total 13 first-instance decisions have been appealed to the Chairman of the Office for review in the second-instance compared with 36 first-instance appealed decisions in 2004. Out of the 52 second-instance decisions issued, 1 decision concerned an appeal lodged in 2003, 24 decisions concerned appeals lodged in 2004 and 1 decision concerned an appeal lodged in 2005. The Appeal Commission of the Chairman also dealt with 3 proposals for review outside the appellate procedure and 2 proposals for the reopening of procedure.

### **2.5.2 Actions filed against the decisions of the Office**

- Total number of actions against final decisions of the Office filed in 2005: 11
- Total number of judgements on the actions against decisions of the Office in 2005: 16

38. During the year 2005, 11 court actions against second-instance decisions of the Office in the competition law area were filed, compared with 9 actions filed in 2004. In 2005 total 16 court judgements were issued on petitions against final decisions of the Office. In eight cases the actions were rejected as unreasonable. The Office filed a cassation complaint to the Supreme Administrative Court in Brno against 6 judgments of the Regional court in Brno, in which the action was found reasonable and the court declared vacuity of the Office's and the Chairman's decision. The cassation complaints have not been decided yet.

## **3. The role of the Office in the formulation and implementation of other policies**

39. Similarly as in the previous years, the Office used as an effective instrument for competition advocacy in relation to newly proposed legislative acts, policies or other materials the so called interministerial commentary procedure, within the framework of which the Office receives all these documents for comments before their adoption. If the Office indicates any of its comments as "essential", the institution proposing the document may only agree with such comment in full and modify the material accordingly. Otherwise, the comment is subject to further consultations between the Office and the proposing institution. If an agreement on the issue is not reached, it is finally resolved by the decision of the Government after consideration of both the proposing institution and the Office's arguments. However, most comments of the Office are fully accepted already by the proposing institutions. Apart from the interministerial commentary procedure, the Office co-operates closely in particular with sectoral regulatory institutions, such as the Czech Telecommunications Office or the Energy Regulatory Office and where appropriate also with other relevant entities. The following text provides an example of competition advocacy activities of the Office:

### ***Electrical waste disposal***

40. In September 2005, a new legal regulation in the area of electrical waste disposal was adopted by means of the executing decree to the Act No. 185/2001 Coll., Act on Wastes. This decree was published in the Collection of Laws on 15 September under No. 352/2005 Coll. and became effective on the day of its declaration.

41. During a relatively short period of the existence of the decree, the Office received a number of complaints from the producers or suppliers of electrical equipment and other persons otherwise affected by the decree, who expressed their dissatisfaction with the Decree's wording. In response to these suggestions the Office started to deal with the issue in detail and concluded that the adopted legal regulation could have lead to the distortion of competition on the market with electrical waste disposal.

42. The Act on Wastes imposes duties on producers of electrical equipment and other persons engaged in separated collection, recollection, processing, use and disposal of electrical equipment and waste. On the basis of authorisation contained in the Act on Wastes the Ministry of Environment on the basis of an agreement with the Ministry of Finance issued the above mentioned decree, which executes the relevant provisions of the Act on Wastes. Provisions regulating the manner of treatment of electrical equipment from households are seen as problematic parts of the decree.

43. While the producer has the option to choose between three systems of the disposal of electrical equipment introduced on the market after 13 August 2005 (individual system, where the producer itself establishes an earmarked account for the financing of such waste disposal, on which it deposits financial means or provides financial guarantees in the form of insurance contracts; joint system, operated by two or more producers; and collective system, operated by a person different from the producer), in case of disposal of electrical equipment introduced on the market before 13 August 2005 the producer does not have such option.

44. Even though the Act on Wastes does not suggest anything in this sense, the decree states that for each group of electrical equipment the joint fulfilment of financing disposal of historical electrical equipment is ensured only by one collective system. On the basis of the above mentioned decree a monopoly in the area of financing historical electrical waste disposal was established. It is noteworthy that this requirement was not present in the original bill, submitted for the inter-departmental consultation procedure (it was a proposal of a decree specifying details of electrical equipment and electrical waste treatment and a proposal of a decree specifying details of financing the treatment of electrical equipment from households and electrical waste disposal).

45. Producers of electrical equipment are thus deprived of the possibility to agree on the conditions of the system functioning and instead are forced to accept conditions dictated to them by the administrator of the collective system chosen by the relevant ministry. At the same time it is possible to expect, and experiences from abroad support it, that due to the absence of competition on this market, the competitors are forced to bear higher costs related to the liquidation of electrical waste, than it would have been on the competitive market.

#### **4. Resources of the Office**

##### ***4.1 Annual budget of the Office in 2005***

Total expenditure in CZK: **134 million**

Total expenditure in USD: **6 million**

**4.2** *Number of employees of the Office as of 31 December 2005*

Lawyers	45
Economists	45
Other professionals	6
Support staff	27
<b>All staff combined</b>	<b>123</b>

**4.3** *Human resources of the Office as of 31 December 2005 (according to activity areas)*

Enforcement of the Act on the Protection of Competition and of the competition principles	40
Surveillance over the public procurement process	31
Control of state aid (state aid department was established with effect as of 1 December 1999)	9