
**Directorate for Financial and Enterprise Affairs
COMPETITION COMMITTEE**

English - Or. English

Annual Report on Competition Policy Developments in Czech Republic

-- 2016 --

21-23 June 2017

This report is submitted by the Czech Republic to the Competition Committee FOR INFORMATION at its forthcoming meeting to be held on 21-23 June 2017.

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Table of Contents

| | |
|---------------------------------------------------------------------------------------------------------|-----------|
| 1. Changes to competition laws and policies | 3 |
| 1.1. Legislative Developments..... | 3 |
| 2. Enforcement of competition laws and policies..... | 4 |
| 2.1. Prohibited Agreements..... | 5 |
| 2.1.1. Significant Cases | 5 |
| 2.2. Abuse of Dominant Position..... | 7 |
| 2.2.1. Significant Case..... | 7 |
| 2.3. Concentrations between undertakings | 8 |
| 2.3.1. Significant Cases | 8 |
| 2.4. Second instance proceedings | 9 |
| 2.4.1. Significant Case..... | 9 |
| 2.5. Judicial Review | 10 |
| 3. The role of competition authority in the formulation and implementation of other policies ... | 11 |
| 3.1. Public Procurement and Concessions | 11 |
| 3.1.1. Significant Case..... | 11 |
| 3.2. State Aid | 12 |
| 3.3. Significant Market Power | 12 |
| 3.3.1. Significant Cases | 13 |
| 3.3.2. Anticompetitive Conduct by Public Authorities | 13 |
| 3.3.3. Significant Case..... | 13 |
| 4. Resources of competition authority in 2016..... | 14 |
| 4.1. Annual budget of the Office | 14 |
| 4.2. Number of employees: 225 | 14 |
| 4.3. Human resources in the field of:..... | 14 |
| 5. Summaries of or references to news reports and studies on competition policy issues..... | 14 |

Tables

| | |
|------------------------------------------------------------|---|
| Table 1. Complaints, Proceedings, Decision and Fines | 5 |
|------------------------------------------------------------|---|

In 2016, the Office for the Protection of Competition (hereinafter referred to as the “Office”) celebrated the 25th anniversary of application of competition law in the Czech Republic.

1. Changes to competition laws and policies

1.1. Legislative Developments

1. On 19 October 2016, the last amendment of the Act on the Protection of Competition (hereinafter referred to as “the Act”) came into force. The main reason for this amendment was to response to the recodification of private law and to adapt the terminology of the Act to the new legal regulation, in particular the new Civil Code. The amendment also defined the cases subject to the Article 19a (supervision of public authorities) and allowed its application by adding follow-up provisions, reworded certain provisions in order to make them more comprehensible and accurately reflective of requirements in practice, incorporated the Office’s option of requesting additional evidence from parties to the proceedings within simplified merger proceedings, added provisions facilitating international cooperation between competition authorities, defined the system for documentation containing business, bank or similarly classified secrets and other sensitive documents, moved certain disciplinary offences into the provisions on misdemeanours or administrative offences, and finally cancelled the exemption of certain provisions of the Administrative Code precluded from use.

2. In connection to changes regarding concentrations between undertakings a related implementing regulation was also amended - the decree stipulating the details of a notification of concentration between undertakings and evidence proving the decisive facts for the concentration. Decree No. 294/2016 Coll. also came into force on 19 October 2016.

3. The Office together with the Ministry of Justice of the Czech Republic also finalized a draft of the act transposing the Directive 2014/104/EU on certain rules governing actions for damages under national law for infringements of the competition law provisions of the Member States and of the European Union, and to eliminate deficiencies in the current legal regulation of the given field on a national level during transposition.

4. Following its approval by the Government of the Czech Republic, the draft of this act is still in the legislative process, specifically in the Chamber of Deputies of the Parliament of the Czech Republic under parliamentary press No. 991. Due to this fact, the Directive is not fully implemented through the valid legal regulations and that is why the possibilities for injured parties to apply their right to compensation before the national court by virtue of damage or loss sustained through infringements of competition law are limited.

5. The supervision of the compliance with the Act No. 395/2009 Coll., on the Significant Market Power in the Sale of Agricultural and Food Products and Abuse thereof (hereinafter referred to as “the Act on Significant Market Power”) has fallen within the scope of competence of the Office since 1 February 2010. After finalizing the draft amendment in the relevant legislative process and the following discussion in Parliament of the Czech Republic, the amendment of the Act was adopted in January 2016, published in the Collection of Law as the Act No. 50/2016 and became effective as of 6 March 2016. After the amendment, the Act on Significant Market Power does not

apply only to the regulation of significant market power in relation to the purchase and sale of food; the text of the Act on Significant Market Power now newly incorporates services related to the purchase and sale of food. According to the new legislation, both offences committed in the Czech Republic whose effects are apparent within the territory of the Czech Republic, and offences committed abroad with real effects within the territory of the Czech Republic should be penalized. The amendment further specified certain terms (such as food, supplier, buyer), and introduced some new ones (e.g. purchasing alliance).

2. Enforcement of competition laws and policies

6. The office issued a total of 64 first instance decisions in the field of competition. Among these the first decision on the infringement of the Article 19a of the Competition Act was issued. Fines in the total amount of CZK 466,220,000 were imposed for identified anticompetitive offences. A total of 61 new cases were initiated, with 7 dawn-raids conducted.

7. In 2016, the Office received 454 complaints from the public. Most of them, almost 300, concerned the potential abuse of dominant position and prohibited agreements.

8. In addition to handling these complaints, the Office also answered several dozen of inquiries concerning the issue of competition law.

Table 1. Complaints, Proceedings, Decision and Fines

| Number of Complaints Received by Area | |
|-----------------------------------------------|--------------------|
| Abuse of Dominant Position | 293 |
| Prohibited Agreements | 100 |
| Supervision of Public Authorities Article 19a | 49 |
| Other | 12 |
| Total | 454 |
| Number of Proceedings Initiated by Area | |
| Prohibited Agreements | 10 |
| Abuse of Dominant Position | 3 |
| Supervision of Public Authorities Article 19a | 2 |
| Concentration between Undertakings | 46 |
| Total | 61 |
| Number of Decisions Issued by Area | |
| Prohibited Agreements | 13 |
| Abuse of Dominant Position | 3 |
| Supervision of Public Authorities Article 19a | 1 |
| Concentration between Undertakings | 47 |
| Total | 64 |
| Total Amount of Fines Imposed by Area (CZK) | |
| Prohibited Agreements | 460,562,000 |
| Abuse of Dominant Position | - |
| Supervision of Public Authorities Article 19a | 275,000 |
| Concentration between Undertakings | 5,383,000 |
| Total | 466,220,000 |

2.1. Prohibited Agreements

9. A total of 10 first instance decisions on horizontal agreements were issued in the field of prohibited agreements, while 6 of these concerned concerted practice and 2 cases concerned prohibited decisions of undertaking's association. The Office also issued three decisions concerning vertical agreements. In total, 9 proceedings were concluded by applying the institute of settlement. First-instance fines in the total amount of CZK 460,562,000 were imposed.

10. During the year 2016, the Office initiated 10 new administrative proceedings. The Office also received 4 leniency applications. As in the previous period, the Office made intensive use of the settlement procedure, which it applied in 8 cases (initiated during 2016) of prohibited agreements. Settlement allows the case to be concluded in the first instance, thus avoiding the filing of appeal and subsequent court disputes. Hence, the said institute contributes significantly to procedural economy and allows for the allocation of human and material resources to investigating a larger number of cases.

2.1.1. Significant Cases

Part of the cartel of construction companies was resolved through settlement

Parties: SWIETELSKY stavební s.r.o., DAICH spol. s.r.o., VIALIT SOBĚSLAV spol. s.r.o., CHALIŠ spol. s.r.o.

File number: S0236/2016/KD

First instance fine: CZK 39,840,000

Date of coming into force: 13 May 2016

11. The respective administrative proceedings were part of a wider investigation into an extensive cartel of construction companies, in which a total of 3 administrative proceedings were conducted and enforceable sanctions totalling CZK 2 billion were imposed. Investigations were initiated based on a proposal from the Police of the Czech Republic in 2012. Subsequently, the administrative proceedings were extended by more construction companies while, in the autumn of 2014, part of the proceedings were separated for an independent decision in the matter of the 4 above-mentioned public contracts - the “major construction cartel” administrative proceedings, which were finalised in February 2016 with the imposition of a fine equal to ca. CZK 1.66 billion. Another part - the “smaller construction cartel” - was separated into independent proceedings resulting in an enforceable sanction of CZK 300 million.

12. In remaining proceedings concerning seven public contracts, the Office in its first instance decision of 22 April 2016 imposed fines totalling CZK 39.840 million on SWIETELSKY stavební s.r.o., DAICH spol. s.r.o., VIALIT SOBĚSLAV spol. s.r.o. and CHALIŠ spol. s.r.o.

13. These undertakings operating in the construction sector infringed the Act on the Protection of Competition when they coordinated their participation and bids in award procedures for construction work in the field of civil engineering in the South Bohemian Region. The administrative proceedings concerned a total of 7 public contracts in the years 2007 to 2013; the participation of the individual parties to the proceedings in these contracts varied. The total volume of the affected contracts exceeded CZK 11 million excluding VAT, whereas the most important public contract was the “*Improvement of transport and technical infrastructure and appearance of the municipality of Třebětice*” called by the municipality of Třebětice in 2009, worth a total of almost CZK 4 million excluding VAT.

14. All parties to the proceedings met the conditions for a settlement procedure; therefore the Office reduced their fine by 20% as stipulated by the Act.

Bid rigging in the field of medical devices

Parties: HOSPIMED, spol. s.r.o., S-medics, s. r. o.

File number: S590/2014

First instance fine: CZK 2,523,000

Date of coming into force: 30 August 2016

15. In its first instance decision of 11 August 2016, the Office imposed fines for a total of CZK 2.523 million on companies HOSPIMED, spol. s.r.o. and S-medics, s.r.o. These undertakings violated the Act on the Protection of Competition when they coordinated their participation in 3 award procedures for the delivery of medical devices for the General University Hospital in Prague and the Strakonice Hospital.

16. The total volume of affected contracts exceeded CZK 8 million excluding VAT, whereas the most important was the public contract for a System for electrophysiological

examination of intra-cardiac potentials worth a total of almost CZK 7 million excluding VAT, awarded by the contracting authority General University Hospital in Prague.

17. The Office initiated administrative proceedings based on a complaint from the General University Hospital in Prague, in which it was made aware of particularities in this contract that could suggest bid rigging.

18. HOSPIMED, spol. s.r.o. and S-medics, s.r.o. met all conditions for the settlement procedure, which was applied to their applications within the given administrative proceedings, therefore the Office reduced imposed fines by 20% as stipulated by the Act. The decision was not appealed.

2.2. Abuse of Dominant Position

19. The Office issued a total of 3 decisions in the field of abuse of dominant position in 2016. In the case concerning the potential abuse of dominant position by ČEZ, a. s., the proceedings were terminated by the acceptance of obligations proposed by the party to the proceedings; in the cases of Flaga and Česká rafinérská, the administrative proceedings were suspended because no violation of the Act was proven. Moreover, 3 new administrative proceedings were initiated in this area. In fact, the Office initiated 4 proceedings as at 31 December 2016, one of which has been temporary suspended.

2.2.1. Significant Case

Proceedings with ČEZ suspended upon acceptance of obligations

Party: ČEZ a. s.

File number: S594/2014/DP

Outcome: decision issued with obligations

Date of coming into force: 5 January 2017

20. The Office launched administrative proceedings with ČEZ, a. s. (hereinafter referred to as “ČEZ”) based on complaint from Sokolovská uhelná, právní nástupce, a. s., (hereinafter referred to as “Sokolovská uhelná”), in the matter of potential abuse of dominant position pursuant to the Article 11(1) of the Act. The Office perceived the violation of the Article 11(1) of the Act in the fact that during the period minimally from 1 January 2014, ČEZ has without objectively justifiable reasons been applying different conditions to the same or comparable fulfilment, consisting of the manner of stipulating the prices for lignite supplies vis-a-vis its suppliers, in particular vis-a-vis its supplier “Sokolovská uhelná”, and also of its refusal without objectively justifiable reasons to negotiate with this supplier on the definition of pricing conditions for the supply of these goods which would be comparable to the pricing conditions applied by ČEZ vis-a-vis its other suppliers. The Office considered this conduct on the part of ČEZ to be qualified to distort competition in the market of lignite supplies. On 2 December 2016, the Office received a letter from ČEZ containing a proposal of an obligation in favour of restoring effective competition. The Office assessed the proposed obligation and found it adequate to remedy the defective competition situation, and on 20 December 2016 it issued a first instance decision. In this decision, it imposed an obligation on ČEZ to conclude a new purchase contract for lignite supplies with Sokolovská uhelná. The decision came into force on 5 January 2017.

2.3. Concentrations between undertakings

21. In 2016 the Office issued a total of 47 decisions in the field of concentrations between undertakings. 14 decisions were issued within the standard 30-day period, of which 1 concentration was permitted after the parties to the proceedings accepted certain obligations. The simplified procedure was applied in a total of 30 cases. On the contrary, 2 administrative proceedings had to be forwarded to the so-called second phase due to their complexity, and decided within a 5-month period. In one case, the Office dealt with violation of the prohibition of concentration between undertakings before issuing of a decision on permission, for which it imposed a sanction of CZK 5,383,000 on BOHEMIA ENERGY entity s.r.o.

2.3.1. Significant Cases

Concentration between Rockaway Capital SE and Heureka Shopping s. r. o.

File number: **S0013/2016/KS**

Date of coming into force: **20 May 2016**

22. In its first instance decision, the Office permitted the concentration between Rockaway Capital SE and Heureka Shopping s.r.o. under the condition of fulfilling the obligations proposed by the party to the proceedings to eliminate potential concerns about distortion of competition. While the Rockaway Group operates in the Czech Republic primarily in the segment of online retail sale of consumer goods, the acquired company Heureka Shopping mainly operates price comparison tools focused on finding, comparing and mediating the purchase of consumer goods on the internet, most notably the comparison tool www.heureka.cz.

23. The Office thus examined the impacts of the concentration on the markets of price comparison tools and retail sale of consumer goods via the internet. During the administrative proceedings, the Office concluded that within its services, Heureka Shopping gathers a range of information about e-shops, some of which is sensitive business information. At the same time, some of the services provided by Heureka are relevant not only to consumers, but also to e-shop operators. Therefore, it was essential that the option of using these services remained minimally on the current level even after the concentration. In this connection, the Office received a number of complaints expressing concerns about the distortion of competition. In order to eliminate these concerns, the party in the first phase of administrative proceedings proposed obligations, which the Office accepted as sufficient to preserve effective competition in the market. These were behaviour obligations consisting of the public identification of e-shops and price comparison tools belonging to the Rockaway Group and the specification of conditions under which Heureka Shopping may offer the “*Verified by customers*” and “*Heureka selects quality shops for you*” services on the www.heureka.cz price comparison site.

Concentration between CN Invest a.s. / enterprise of Serafico investment s.r.o. (respectively part of the enterprise of Mladá fronta a. s.)

File number: **S0862/2015**

Date of coming into force: **11 May 2016**

24. The Office in its first instance decision in 2016 approved, within the **second phase of administrative proceedings** which was launched during December 2015, the concentration between CN Invest a.s. and part of the enterprise of Serafico investment s.r.o., which consists of the former part of the enterprise of Mladá fronta a. s. engaged in the publication of daily newspapers and magazines and sale of advertising therein. While CN Invest, which belongs to the CZECH MEDIA INVEST a. s. group, operates in the area of publishing daily newspapers and magazines in printed and online format (e.g. *Blesk, AHA!, Sport, Reflex, ABC* etc.), in the area of selling advertising space in this press and in the area of operating newspaper printing shops, the acquired part of the enterprise of Mladá fronta was engaged in the same areas (except the area of operating newspaper printing shops), e.g. through daily newspapers and magazines in printed and online format such as *E 15, Betyňka, Mateřídouška, Sluníčko, Computer, Lidé a země*. After considering all the circumstances and analysing the potential impacts arising from the horizontal overlapping of activities of the merging undertakings, the Office came to the conclusion that the assessed concentration did not raise major concerns about the significant distortion of competition.

2.4. Second instance proceedings

25. In 2016, a total amount of 20 appeals against first instance decisions were filed. A total of 24 second instance proceedings were initiated, while 3 proceedings were initiated following cancellation of the previous decision by the court; 1 case was initiated based on a complaint). A total of 11 second instance decisions were issued, of which 5 were substantive. In these decisions, sanctions totalling CZK 1,971,324,000 were imposed, CZK 1,966,418,000 in the field of prohibited agreements and CZK 4,906,000 in the field of concentrations.

26. There were 2 particularly noteworthy decisions issued in the case of the cartel of construction companies (see above), which decided on 7 appeals. As a result, 3 first instance decisions were confirmed, with one involving the partial confirmation and partial amendment to the ruling. Procedural decisions concerned requests to view a file; 1 case concerned a decision on a request to suspend proceedings and 1 concerned review proceedings.

2.4.1. Significant Case

The fine for the “major construction cartel” amounts to CZK 1.66 billion

Parties: STRABAG a. s., EUROVIA CS, a. s., SWIETELSKY stavební s. r. o., M – SILNICE, a. s., Lesostavby Třeboň a. s., BERGER BOHEMIA a. s., Skanska a. s.

File number: S834/2014/KD-38118/2015/851/Lšt, R381,382,388,389,390,393,395/2015

Final fine: CZK 1,659,993,000

Date of coming into force: 11 February 2016

27. On 8 February 2016, the Chairman of the Office decided on the appeals against the first instance decision in the case of the so-called major construction cartel. The Chairman of the Office confirmed the decision on guilt, but proceeded to modify the value of the imposed fines due to the insufficient individualisation of penalties (assessment of the specific severity of impacts of the offence among the individual parties

to the proceedings). Enforceable fines totalling CZK 1,659,993,000 were imposed for distortion of competition in the market of civil engineering in the Czech Republic.

28. Members of the cartel infringed the Act on the Protection of Competition, consisting of using their mutual contacts to coordinate their participation and bids in award procedures for the public contracts “R4 Mirovice – Třebkov” (except for the party Lesostavby), “Písek – Reconstruction of the site Bakaláře – Stage I” (only the parties Strabag and Lesostavby) and “Reconstruction of Jeronýmova street in Třeboň” (only the parties Strabag and Lesostavby).

29. The Office obtained information about their anticompetitive behaviour during 12 unannounced inspections, conducted over the course of more than two years of investigation. The obtained evidence testifies that the cartel members arranged and prepared so-called cover offers for the said public contracts, some of which were deliberately incomplete or overpriced. In this manner, the cartel members entirely eliminated the element of competition in the award procedures and the company previously designated by the cartel was the winner.

2.5. Judicial Review

30. A total of 19 actions against second instance decisions of the Office were filed to the Regional Court in Brno. The court issued judgements in 11 cases, confirming the Office decision in 8 of these. The Supreme Administrative Court received a total of 9 cassation complaints and issued 9 decisions, of which 4 were in favour of the Office and 1 found an error on the part of the lower-instance court. Worth mentioning among the substantive decisions is the definite confirmation of the correctness of the Office’s procedure in the case of an unauthorised concentration between the undertakings BEST/BETA. The Constitutional Court also decided about the Office’s decisions three times, rejecting *inter alia* the complaints on infringement of constitutional rights in the case of Student Agency and a cartel of CRT monitor manufacturers.

31. A legacy of the long-lasting complicated court proceedings is the case of bakery cartels, in which 16 decisions and judgements covering hundreds of pages of legal argumentation have already been issued up until 2017. The proceedings, initiated before 2004, were conducted by the Office for less than three years; the remaining time was spent on judicial review. This is a burning issue, given that in the past 15 years, the demands on conducting administrative proceedings and issuing of decisions have increased considerably. Hence, decisions issued entirely in accordance with standards at the time can now be cancelled due to formal deficiencies or simple changes in the opinions of the courts. Yet the guilt of the undertakings was confirmed by each judgement in the administrative review.

32. The case is relevant because of the judgement of the Regional Court in 2016, which again confirmed the correctness of the Office’s conclusions. It is notable that this judgment followed a reversal in the form of a judgement by the European Court of Human Rights, which found the Czech Republic to be at fault in the case. Nevertheless, the explanation and overall context showed that this misconduct consisted of the administrative courts’ insufficient dealing with the issue of legality of the conducted unannounced inspections. This flaw was corrected by the current judgement of the Regional Court in Brno, which found the Office’s procedure in conducting unannounced investigations to be fully legal. A cassation complaint from the complainants is now underway in the case.

3. The role of competition authority in the formulation and implementation of other policies

3.1. Public Procurement and Concessions

33. The Office has been supervising public procurement award procedures since January 1995, currently pursuant to the Act No. 134/2016 Coll., on Public Procurement. The legal framework of supervision activity transposes the provisions of European review directives. Towards the end of 2015 (with effect from 1 January 2016) the latest amendment to the existing Act No. 137/2006 Coll., on Public Procurement, as amended, was adopted following the adoption of the Act on Recovery Procedures and Crisis Management in the Financial Market. The change consisted of supplementing the new basic qualification requirement (only a supplier against whom temporary receivership or crisis management measures pursuant to the law governing the recovery procedures and crisis management in the financial market has not been imposed in the last three years will qualify), which may be considered technical. The real breakthrough, however, was the adoption and entry into force of a completely new act governing the awarding of public contracts (public procurement) in 2016. Act No. 134/2016 Coll., on Public Procurement, was published in the Collection of acts on 29 April 2016, and on 1 October 2016, when it came into effect, it replaced in its entirety (for newly initiated award procedures) the existing legislation contained in the Act on Public Contracts. One of the fundamental conceptual changes in the legal regulation is the fact that the new Act also includes regulations on the awarding of concessions, contained to date in the Act No. 139/2006 Coll., on Concession Contracts and Concession Proceedings, as amended; it thus unifies the legislation and eliminates certain redundancies in relation to these two areas.

34. Before the end of the year, the first amendment to the Act on Public Procurement was published in the Collection of Acts on 14 November 2016, namely the Act No. 368/2016 Coll. amending the Act No. 253/2008 Coll., on Selected Measures against Legitimation of Proceeds of Crime and Financing of Terrorism, as amended, and other related laws. Under this act, respectively its Part Twelve with effect from 1 January 2018, the method of identifying the real owners of legal entities, in respect of which records will be kept, will be amended as a result of the establishment of records of data about the real owners (the contracting authority will obtain the information directly from these records).

3.1.1. Significant Case

Delivery of attire for the Prague City Police

Contracting authority: City of Prague

File number: [S0476/2016](#)

Date of coming into force: 3 January 2017 (confirmed [R0246/2016](#))

Fine: CZK 500,000

35. The administrative proceedings were initiated ex officio, following a complaint. The Office had doubts whether the contracting authority defined a transparent method of evaluating the bids based on the evaluation criteria in the tender documentation for part A “Standard uniform articles and uniform accessories for work performance by Prague City

Police officers” of the public contract “Delivery of attire for the Prague City Police”, the subject of which was the delivery of uniforms for members of the Prague City Police.

36. In the administrative proceedings, the Office decided that the contracting authority committed an administrative offence pursuant to the Article 120(1)(a) of the Act on Public Procurement, by failing to define a transparent manner in the tender documentation the method of evaluating the bids according to the sub-criterion “weight of goods” and the evaluation sub-criterion “comfort and tailoring of goods” within the partial evaluation criterion “quality of offered goods”, because it did not stipulate adequately clear rules for assigning point scores for these sub-criteria and thus did not enable tenderers to get a clear idea before drafting their bids as to how the contracting authority will assess discrepancies from the recommended grammage of the goods, its preferences in terms of the appearance and functionality of the uniform articles and the specific parameters to actually be assessed in the tailoring of the goods. The contracting authority’s procedure could significantly influence the selection of the best bid, because has the contracting authority better defined the evaluation of bids within the given sub-criteria, the tenderers could have better adapted their bids to the contracting authority’s preferences and achieved a better evaluation. Moreover, the contracting authority’s procedure could have dissuaded other suppliers from submitting bids.

37. The Office also concluded that the contracting authority committed an administrative offence pursuant to the Article 120(1)(f) of the Act on Public Procurement, by not sending the Office the complete documentation for the public contract by the deadline stipulated by the Act (within 10 days from delivery of the Office’s request) within the framework of investigating the proposal to initiate administrative proceedings *ex officio*. Yet the timely sending of complete documentation about the public contract is an essential condition for reviewing the contracting authority’s procedure by the Office and concluding the administrative proceedings by the statutory deadlines.

3.2. State Aid

38. In the field of state aid, the Office performs the functions of the coordinating body, consisting of central coordination, advisory and consultancy activities and monitoring activities in all areas except agriculture and fishing. The Office is the administrator of the central register for small-scale aid, and since 2016 has also been the national coordinator of the European Commission Transparency Award Module system (hereinafter referred to as the “European Commission TAM system”).

39. The central theme for 2016 was the completion of the work related to the newly implemented obligation for providers to register certain data about aid schemes and individual aid exceeding the limits stipulated in the modernised rules on state aid on the summary website as of 1 July 2016, and the related development of this website. The European Commission TAM system serves these purposes as of the given date. The provider must register every individual state aid provided since 1 July 2016 (including aid based on an aid scheme whose duration began before 1 July 2016) into the European Commission TAM system based on the regulations setting the rules for the providing of state aid and which exceed the stipulated limit.

3.3. Significant Market Power

40. The issue of unfair trading practice in relation to retail chains and their suppliers has been a subject of interest not only in the Czech Republic, but also in other Member

States and in the European Union itself. In 2013, a Green Paper was published on the issue of retail practices, which identifies the most common prohibited trading practices as well as the methods and options of solving this issue in the individual European Union Member States and proposals for a potential unified solution to this matter. This activity was followed by a discussion of the given issue on the level of the European Parliament and regular meetings organised by the European Commission through DG Growth and DG Competition. In June 2016, the European Parliament adopted a resolution in which it expressed the conviction that in order to ensure the proper functioning of the common market, it is essential to adopt measures that solve the issue of unfair trading practices in the food supply chain.

41. Interest in the issue of prohibited trading practices in the supplier-customer food chain was significantly increased in 2016 primarily in connection to the amendment to the Act No. 395/2009 Coll., on Significant Market Power in the Sale of Agricultural and Food Products and Abuse thereof (hereinafter referred to as the “Act on Significant Market Power” or the “Act”). The Act No. 50/2016 Coll. amending the previous Act was announced on 5 February 2016 in the Collection of Acts and subsequently came into force on 6 March 2016.

3.3.1. Significant Cases

42. In the course of 2016, the Office had to deal with two important decisions of the administrative courts. In the Kaufland case, the Regional Court in Brno bound the Office to apply the Act in a more lenient manner (for the party to the proceedings). According to the Regional Court in Brno, the interpretation of the Act should be based on the relative notion of significant market power. Should the Office continue applying the Act before the amendment, it would have to reconsider conditions of economic dependence of each individual supplier on its buyers. Such interpretation of the Act overturns existing practice in the application of the Act by the Office, which regarded market power as a systemic means of protection for suppliers against unfair practices by retail chains (absolute notion). Court proceedings are still underway before the Supreme Administrative Court.

43. Another important decision is the judgment of the Regional Court in Brno regarding a sectoral inquiry launched by the Office in May 2016, the purpose of which was to ascertain the impacts of the amendment to the Act on buyer-supplier relations. The entire sectoral inquiry was delayed owing to the action of one of the investigated chains; however, the outcome of the court proceedings is favourable to the Office and the Office is entitled to conduct sectoral inquiries through requests for information and documents. Court proceedings are still underway before the Supreme Administrative Court.

3.3.2. Anticompetitive Conduct by Public Authorities

44. The Office solved fifty complaints in the field of anticompetitive conduct by public authorities, which mainly concerned the lottery ordinances of cities and municipalities. Only 1 first instance decision was issued, and 2 additional administrative proceedings were initiated.

3.3.3. Significant Case

Lottery ordinance of the City of Bílina

Party: City of Bílina

File number: S0538/2015/VS

Fine: CZK 275,000

Date of coming into force: Appeal filed

45. On 20 December 2016, the Office for the Protection of Competition imposed the first sanction in history for the violation of the Article 19a of the Act on the Protection of Competition, pursuant to which public authorities must not favour a certain undertaking. The fine of CZK 275,000 was imposed for violation of this provision on the City of Bílina in connection to its issued lottery decrees. The decision is not yet in force, because it was appealed by the statutory deadline.

46. The City of Bílina committed anticompetitive conduct when it permitted the operation of betting games, lotteries and other similar games on city premises at only four specific locations stipulated in generally binding decrees, which were issued and effective from 2013 until the present, without selecting these locations based on objective, non-discriminative and predefined criteria, thereby without justifiable reasons distorting competition in the market of operating betting games, lotteries and other similar games and in the market of operation of establishments for the purpose of operating betting games, lotteries and other similar games in the City of Bílina. The city's conduct gave advantage to undertakings which could continue to operate the defined betting games, lotteries and other similar games and establishments for the purpose of operating these games at the permitted addresses.

4. Resources of competition authority in 2016

4.1. Annual budget of the Office

242 431 117 CZK (approx. 9 675 816 USD)

4.2. Number of employees: 225

Economists: 44

Lawyers: 127

Other professionals: 32

Support staff: 22

4.3. Human resources in the field of:

Enforcement against anticompetitive practices: 37

Merger review and enforcement: 7

Advocacy efforts: N/A

5. Summaries of or references to news reports and studies on competition policy issues

47. Information Bulletin 11/2016 – **Bid rigging:** Concise fact sheet clarifies concept of bid rigging and outlines possibilities for procurers how they should prevent bid rigging or inform the Office about the suspected ongoing practices of tenderers.