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**Directorate for Financial and Enterprise Affairs  
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## **Annual Report on Competition Policy Developments in the Czech Republic**

**-- 2017 --**

**6-8 June 2018**

This report is submitted by the Czech Republic to the Competition Committee FOR INFORMATION at its forthcoming meeting to be held on 6-8 June 2018.

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## 1. Changes to competition law and policy

### 1.1. Legislative Developments

1. In 2017, the Act No. 143/2001 Coll., on the Protection of Competition (hereinafter referred to as “Competition Act”) was amended twice. The First amendment was adopted in the context of the adoption of the Act on the Liability for Offences and Proceedings Relation Thereto, the second amendment Act reflected the changes related to the adoption of the Act No. 262/2017 Coll., on Damages in the Area of Competition.

2. Considering changes in provisions on administrative penalties, competition terminology relating to this area, in particular, has been modified. Newly, the Competition Act provides the term *offences* for all infringements of competition law rather than the former term *administrative offences*. A general limitation period is 10 years and regarding the offences arising from breaking a seal, failing to provide assistance or information, the limitation period is 3 years. Simultaneously, as the administrative proceedings conducted in cases of the protection of competition have their own specific characteristics, a number of exceptions from applying provisions of the Act on Offences were established regarding the situations when the Office deals with offences laid down in the Competition Act.

3. The Ministry of Justice and the Office for the Protection of Competition (hereinafter referred to as “Office”) has been responsible for coordination of the preparation and the implementation of the Act No. 262/2017 Coll., on Damages in the Field of Competition, through which the Directive 2014/104/EU of the European Parliament and of the Council of 26 November 2014 on Certain Rules Governing Actions for Damages under National Law for Infringement of the Competition Law Provisions of the Member States and of the European Union has been transposed into Czech law. The purpose of new legislation is to establish and clarify rules on the right to full compensation caused by the restriction of competition and unify basic principles of its application at Member State level. Apart from the specification of parties entitled to take an action, parties who have capacity to be a defendant and means of claiming damages, the Act also provides ways in which the claimant may be able to obtain necessary evidence such as introducing a new procedure concerning the disclosure of evidence.

4. Following the adoption of the abovementioned Act, it was necessary to amend the Competition Act and its provisions relating to the access to a file. In addition to facilitate the access to the file it was necessary to provide Leniency applicants with adequate protection. Documents relating to the Leniency application will be placed in the file not earlier than after the adoption of the Statement of Objections and will be excluded from the provision of access to the file for everyone except the parties to the proceedings and its representatives. After the decision becomes effective, such documents may be disclosed to public authorities. The court may verify the nature of such documents.

## 2. Enforcement of competition law and policy

5. In 2017, the Office issued a total of 49 first instance decisions in the field of competition. In a total of 8 administrative offence proceedings, fines in the total amount of CZK 382,930,000 were imposed for the identified anticompetitive offences. During 2017, the Office initiated 57 administrative proceedings. Apart from that, 5 cases were solved on the basis of competition advocacy without opening administrative proceedings.

For the purposes of detecting anticompetitive conduct and ensuring evidence at undertakings' premises, the Office conducted 21 dawn raids. Besides this, the Office dealt with more than 200 complaints and responded to 115 enquiries concerning the issue of competition law.

**Table 1.**

Number of Complaints Received by Area	
Concentration between Undertakings	2
Prohibited Agreements	111
Supervision of Public Authorities (Article 19a)	23
Abuse of Dominant Position	67
Other	4
Total	207
<b>Related information</b>	
Leniency applications	4
Sector Inquiry	2
Number of Proceedings Initiated by Area	
Concentration between Undertakings	39
Prohibited Agreements	15
Abuse of Dominant Position	1
Supervision of Public Authorities (Article 19a)	2
Total	57
Number of Decisions Issued	
Concentration between Undertakings	38
Prohibited Agreements	7
Abuse of Dominant Position	2
Supervision of Public Authorities Article 19a	2
Total	49

## 2.1. Prohibited Agreements

6. In the field of prohibited agreements, a total of 7 decisions were issued. A sanction was imposed in 5 of these cases. Fines in the total amount of CZK 13,892,000 were imposed. The Office benefited successfully from the settlement procedure as it had been applied in all cases with fines imposed. All undertakings facing the risk of being fined applied for the settlement procedure which enables a reduction of the fine of 20 % in case the applicant has admitted liability for the administrative offence. Consequently, no appeal was brought against the Office's decisions which are final now.

7. Bid rigging as a prohibited agreement concluded between bidders have been considered to be the clear priority of the Office's activity. In a total of 7 terminated cartel proceedings, undertakings were investigated for bid rigging in 6 cases.

8. Considering the field of prohibited agreements, the Office initiated further 15 administrative proceedings and at the end of 2017, the Office was conducting 20 administrative proceedings concerning cartels. Also, the Office received 4 Leniency applications.

### 2.1.1. Significant Cases

#### *Anticompetitive conduct of Association of towing service providers*

- Parties: Asociace silničních a odtahových služeb, z. s.
- File number: S0425/2016
- First instance fine: CZK 276,000
- Date of coming into force: 8 November 2017

9. On 17 October 2017, the Office imposed a fine by its first instance decision on the Association of road and towing services (*Asociace silničních a odtahových služeb*) which acts as an association of natural and legal persons providing directly road and towing services.

10. The Association of road and towing services issued and published pricelists with recommended prices for the period 2013/2014, 2015/2016 and a wholesale pricelist for the period 2016/2017 on its website. All these pricelists set recommended prices for towing service providers' activities for the period ahead. The mentioned conduct was able to influence business decisions of towing service providers.

11. By its decision, the Office has found that the Association infringed the Competition Act by adopting and implementing a prohibited and void decision by associations of undertakings, which had as its object the distortion of competition in the market for towing services within the territory of the Czech Republic, with effect from 13 September 2013 to 16 June 2016. The administrative proceedings were initiated on the basis of a complaint and following investigation of a possible infringement of law and ensuring the pricelists.

12. The Association fulfilled the criteria of settlement procedure which was applied during the proceedings upon its request; the Office reduced the fine by 20 %. Furthermore, the Office imposed a remedial measure consisting of the obligation to inform members of the Association about the issued decision. The decision was not appealed.

#### *Bid rigging in the field of construction equipment*

- Parties: Ascendum Stavební stroje Czech, s. r. o., Josef Červenka - HYDRAULIKSERVIS
- File number: S0770/2016
- First instance fine: CZK 6,747,000
- Date of coming into force: 13 January 2018

13. On 21 December 2017, the Office imposed a fine of CZK 6,747,000 on the undertaking *Ascendum Stavební stroje Czech* and refrained from imposing a fine on a natural person – entrepreneur *Josef Červenka – HYDRAULIKSERVIS*. Both undertakings infringed the Competition Act by concluding and implementing a market-sharing agreement, respectively customer-sharing agreement in the field of new Volvo construction machines distribution, primarily by coordinating the participation and/or bids in awarding procedures from 23 July 2012 to 2 September 2015.

14. The Office initiated the administrative proceedings upon a Leniency application submitted by the natural person – entrepreneur *Josef Červenka – HYDRAULIKSERVIS*. After carrying out a dawn raid, also the undertaking *Ascendum Stavební stroje Czech* applied for Leniency. As both undertakings met the conditions of the application of

Leniency programme, it was refrained from imposing a fine on the natural person – entrepreneur *Josef Červenka – HYDRAULIKSERVIS* and the fine imposed on the undertaking *Ascendum Stavební stroje Czech* was reduced by 40 %.

15. Furthermore, both parties to the proceedings met the conditions for the use of settlement procedure which was applied in the course of the administrative proceedings as well. Therefore, the fine imposed on the undertaking *Ascendum Stavební stroje Czech* was reduced by another 20 %. No appeal was brought against the Office’s decision.

## 2.2. Abuse of Dominant Position

16. Considering the field of abuse of a dominant position, the Office issued 2 decisions in 2017. In the first decision, a fine amount to almost CZK 370 million was imposed, in the second one; commitments were accepted by the Office. Beside this, the Office examined further 70 complaints regarding the potential abuse of a dominance position and initiated one administrative proceeding. At the end of 2017, a total of 3 administrative proceedings in this area were being conducted by the Office.

### 2.2.1. Significant Case

*The Office sanctioned České dráhy for exclusionary practices in the long-distance rail passenger transport*

- Parties: České dráhy, a. s.
- File number: S0180/2016
- First instance fine: CZK 367,805,000
- Date of coming into force: Appeal filed

17. In its first instance decision of 14 December 2017, the Office imposed a fine of CZK 367,805,000 on an undertaking *České dráhy* for abusing a dominant position by applying predatory pricing in order to exclude competitors from the market.

18. The undertaking *České dráhy* abused its dominant position in the market for the provision of long-distance rail passenger transport services in the public service obligation since it submitted a bid to the contracting authority – Ministry of Transport with a disproportionately low anticipated level amount of provable loss without objectively justifiable reasons in award procedures for concluding a public service contracts in passenger rail transport for the purposes of ensuring the transport needs of the state in relation to the track Plzeň – Most and Pardubice – Liberec, which made it the selected contractual provider of such services for the period of validity of the service timetable for 2006/2007 and for the subsequent annual timetable periods until the date of expiration of the timetable for 2013/2014 and for the whole period provided the mentioned services for the remuneration of provable loss which did not cover its avoidable costs of the operation of such services.

19. The infringement of competition law concerning the track Plzeň – Most lasted from 15 November 2005 to 13 December 2014 and the track Pardubice – Liberec lasted from 26 May 2006 to 13 December 2014.

20. Considering both tracks, the harm to an undertaking *VIAMONT* was caused by the conduct of the party to the proceedings. Besides this, regarding the track Pardubice – Liberec, the harm was caused to an undertaking *Connex Česká Železniční* as well. Such illegal conduct could cause a potential harm to consumers and, at the same time, have a

potential effect on trade between member states in providing the long-distance rail passenger transport services. By its conduct, the undertaking *České dráhy* infringed the Competition Act as well as the Article 102 of the Treaty on the Functioning of the European Union.

21. The Office prohibited the conduct of the undertaking *České dráhy* in its decision. When imposing the fine, the Office took into account the fact that the infringement consisting in applying exclusionary practices had been very serious, long-term and occurred in the liberalised market and for that reason it might have an impact on wider group of consumers. The decision is not effective as the appeal has been brought against it.

### 2.3. Anticompetitive Conduct of Public Authorities

22. In 2017, the Office issued 2 first instance decisions for the infringement of Article 19a of the Competition Act, both concerning the general local authorities' regulations governing gambling, lotteries and similar games. Furthermore, 2 administrative proceedings regarding the same provision were initiated by the Office.

#### 2.3.1. Significant Case

##### *The city of Děčín distorted competition by its Decree on Lotteries*

- Parties: The statutory city Děčín
- File number: S0444/2016
- First instance fine: CZK 499,000
- Date of coming into force: Appeal filed

23. By its first instance decision, the Office imposed the fine of CZK 499,000 on the statutory city *Děčín* for the infringement of Article 19a of the Competition Act, pursuant to which public authorities shall not prefer certain undertakings and thereby discriminate the others in competition matters.

24. The City of *Děčín* authorised the operation of gambling, lotteries and other similar games only in casinos on the basis of issuing a Decree No. 3/2013 on the regulation of the operation of gambling, lotteries and other similar games with the effect from 8 June 2013 to 7 November 2016 and its two Annexes. According to the Annex No. 1 to the Decree, the casinos might operate only at places specified in that Annex as well as the operation of 4 slot machines maximally was authorised at places specified in the Annex No. 2 to the Decree.

25. The selection of such location and the determination of the maximum number of authorised slot machines were not carried out on the basis of objective, non-discriminatory and transparent criteria.

26. The city of *Děčín* distorted without objectively justifiable reasons competition in the market of the operation of gambling, lotteries and other similar games and in the market for the operation of establishments in which gambling, lotteries and other similar games might be operated within the statutory city *Děčín*. The competition was distorted by preferring undertakings whose places of business were included in Annexes No. 1 and No. 2, and further preventing undertakings included in Annex No. 2 from the operation of other types of gaming devices than 4 slot machines at most. The decision is not final as the appeal has been brought.

## 2.4. Concentrations between undertakings

27. In this field, the Office issued a total of 38 decisions of which 30 decisions were issued within the simplified procedure and one case was terminated by adopting a decision after opening so called in-depth investigation. The Office did not find concerns about substantial distortion of competition in any case, therefore; no concentration was approved with commitments or unapproved. A total of 39 administrative proceedings were initiated.

### 2.4.1. Significant Case

*Concentration between MEDIA MARKETING SERVICES, a.s. / REGIE RADIO MUSIC, spol. s.r.o. / RADIOHOUSE, s. r. o.*

- File number: S742/2016
- Date of coming into force: 24 July 2017

28. In 2017, after initiating the administrative proceedings in December 2016 and following the opening of so called an in-depth investigation, the Office approved by its first instance decision a concentration between undertakings *MEDEA MARKETING SERVICES* (hereinafter referred to as “*MMS*”) and *REGIE RADIO MUSIC* (hereinafter referred to as “*RRM*”), on the one hand, and *RADIOHOUSE* (hereinafter referred to as “*RADIOHOUSE*”) on the other hand. The concentration of undertakings consisted of establishing a jointly controlled undertaking *RADIOHOUSE* which is newly jointly controlled by applicants and perform all functions of an autonomous economic entity on the lasting basis.

29. The undertaking *MMS* is a part of the Czech media group *Media Bohemia* which owns and operates more than 30 regional radio stations in the Czech Republic, further, the group *Media Bohemia* operates an internet media representation or its own internet (on-line) projects. The undertaking *RRM* belongs to the French group *Lagardere Group* which among others operates two national radio stations and several regional radio stations in the Czech Republic. The acquired undertaking *RADIOHOUSE* operated as a joint media representation of undertakings *MMS* and *RRM* which took over services previously provided by these undertakings to their connected persons as well as marginally to third parties. When assessing impacts of the concentration, the Office took into account in particular the field of providing advertising space on the radio, online advertising space and radio broadcasting.

30. In order to assess the impact of the mentioned concentration of undertakings on competition, the Office requested competitors and purchasers of services of undertakings concerned for providing information and opinions, further it analysed the structure and functioning of relevant markets, assessed the economic and financial power of the undertakings concerned and potential barriers to enter relevant markets.

31. After taking into consideration all the circumstances of the mentioned case and analysing possible negative impact resulting from the horizontal integration of activities of undertakings concerned, the Office concluded that the assessed concentration of undertakings does not raise serious competition concerns.



## 2.5. Second instance proceedings

32. In 2017, total amount of 11 appeals was brought against first instance decisions relating to competition and further, a total of 13 second instance proceedings were initiated. The Office issued 3 decisions on the substance and 5 decisions on procedural issues. Regarding the issued decisions, the operative part of the first instance decision was confirmed in 3 cases and once the operative part regarding the guilty was confirmed whereas the operative part regarding the sanction was amended.

### 2.5.1. Significant Case

*The municipality of Bílina – the infringement of Article 19a by the public authority*

- Parties: The municipality of Bílina
- File number: R007/2017
- First instance fine: CZK 245,000
- Date of coming into force: 13 November 2017

33. According to the Office’s first instance decision from 2016, the *municipality of Bílina* infringed Art. 19a of the Competition Act by authorising the operation of gambling within its territory and the operation of lotteries and other similar games (hereinafter referred to as “the lotteries”) only at 4 places (so called address points) specified in decrees published and kept in force during the period from 2013 to the date of the adoption of the first instance decision. In the Office’s view, the municipality failed to carry out the selection of locations for lotteries (the address points) on the basis of objective, non-discriminatory and transparent criteria, thereby it distorted competition without objectively justifiable reasons in the market for the operation of lotteries and the market for the operation of establishments for the operation of lotteries within the territory of *Bílina*.

34. Throughout the administrative proceedings, the municipality raised among other a key objection that by its practice, the Office challenged the right of local self-administration guaranteed in the Czech Constitution, more specifically in Article 8 and further specified in Chapter 7 of the Constitution. The party to the proceedings referred in particular to Article 104 (3) of the Constitution, pursuant to which the municipal council is entitled to issue decrees within their respective competencies. After assessing the objection, the second instance decision making body concluded that although the municipal council is entitled to do so, there are also limits arising from the generally accepted hierarchy of norms, according to which the legal effects of secondary legislation consisting also of decrees are less pronounced; therefore, the decrees may laid down rights and obligations of individuals only in accordance with the law.

35. In the present case, the Office is legally entitled to do so under the Article 19a of the Competition Act, pursuant to which the Office shall have the power to sanction distortion of competition by public authorities. The way of interference in activities of the municipality is provided by law (the Competition Act) with the purpose of the interference consisting of the protection of lawfully protected interests in maintaining genuine undistorted competition. The conditions for the state intervention (the Office in this case) in activities of local authorities within the meaning of Article 101 (4) of the Constitution were fully satisfied.

## 2.6. Judicial Review

36. In 2017, a total of 5 actions against decision of the Office were brought to the Regional Court in Brno. Further, a total of 9 cassation complaints against decision of the Regional Court in Brno were filed to the Supreme Administrative Court. The Regional Court issued 15 judgements, of which it dismissed the action against the Office's decisions in 13 cases. The Supreme Administrative Court decided a total of 9 cases of which 7 judgements were in favour of the Office and 1 found an error on the part of the Regional Court. A total of 14 judicial proceedings (out of abovementioned 24) were definitely closed meaning no cassation complaint was filed in these cases or the cassation complaint was dismissed. As regards these judicial proceedings, a total of 13 decisions of the Office were confirmed by the Supreme Administrative Court. These were notably cases of the infringement of merger rules by an undertaking *REWE*, the prohibited vertical agreements *Candy*, two decisions on the chicken breeders' cartel, the KIS bid rigging cartel and several judgements regarding alleged unlawful interference of the Office. The Constitutional Court decided 4 cases concerning *Delta Bakeries*, *RWE* and *Sokolovská uhelná* in favour of the Office.

### 2.6.1. Significant Case

#### *The Bakers cartel*

- Parties: DELTA PEKÁRNÝ a.s., OK REST a.s., PENAM, a.s.
- File number: R20,21,22/2004-22410/2014
- Second instance fine: CZK 52,800,000
- Date of coming into force: 23 October 2014

37. The "saga" described in greater detail in the 2016 Annual report including the diagram for the complicated history of the case regarding a total of 16 decisions of both the Office as well as courts (meaning the Regional Court, the Supreme Administrative Court and also the Constitutional Court) continued by conducting judicial proceedings before the Supreme Administrative Court in 2017.

38. The Regional Court in Brno in the point 1 of operative part of its judgement dismissed all actions brought against the Office's decision. All parties to the proceedings filed the cassation complaint against such operative part. At the same time, the Regional Court annulled another Office's decision regarding the matter by the point 2 of the operative part of the judgement and referred the case back to it for further reconsideration as at the moment due to complicated procedural development it was the imposition of the second fine in this matter. Against such point of the operative part, the Office filed a cassation complaint.

39. The Supreme Administrative Court decided on the mentioned cassation complaints by the judgement on 21 December 2017 as it dismissed the cassation complaints of both parties. That means that the Office defended its decision on the guilt and sanction with ref. no. UOHS-R20,21,22/2004-1249/2009 of 2009 within full judicial review. This final decision imposed the fine of CZK 24,800,000 on *DELTA PEKÁRNÝ*, the fine of CZK 14,800,000 on *OK REST* and the fine of CZK 13,200,000 on *PENAM*.

40. The victory is even more valuable as the case was also reviewed by the European Court of Human Rights which criticised the Czech Republic for not providing dawn

raided undertakings with additionally effective safeguards to review the legality of dawn raids.

## 2.7. Alternative Solutions of Competition-related Problems

41. Considering cases in which the anticompetitive conduct has not been implemented so far and therefore there is no negative effect in the relevant market, the Office may assess the case within so called alternative solution rather than initiate administrative proceedings and impose a sanction on an undertaking concerned. In such case the undertaking concerned is allowed to eliminate a potential issue by adopting a corrective measure and if the Office finds them to be sufficient the case will be closed without the initiation of the administrative proceedings.

### 2.7.1. Significant Case

#### *Breweries – Export Prohibition Agreements*

42. From 2015 to 2016, the Office carried out a sector inquiry on the market for beer supplied for consumption on premises of pubs, among others in order to determine whether the cumulative effect of restrictive agreements had not resulted in negative foreclosure of the relevant market. From an extensive investigation based also on an analysis of agreements concluded between breweries and their suppliers, the Office found out that several breweries (such as *Lobkowicz*, *PMS Přerov* and *Budvar*) had negotiated export prohibition agreements concerning not only the abovementioned market (on-trade beer market) but also the market for beer supplies to other distributors or retail business establishments (off-trade beer market).

43. As a grounds for applying export prohibition agreements, the breweries concerned mentioned e. g. historical reasons for which potential economic, legislative and commercial risks had been evaluated, further an issue of labelling of goods, submitting complaints, quality of the goods, product liability and protection of the packaging account. Apart from that the breweries concerned stated that they had not inspected for the compliance with such agreements, and thus their performance had not been enforced and no sanction had been imposed for the non-performance.

44. In light of the above mentioned and taking into account small market shares reached by the breweries on the relevant market, the Office considered that the conduct alleged against the breweries could be dealt with by the form of competition advocacy. Such solution was also proposed by the breweries themselves. As the corrective measures, the breweries concerned proposed amendments to contractual provisions consisting of total removal of export prohibition agreements and new negotiation of the matter, respectively they undertook to inform their purchasers about the invalidity of export prohibition agreements in an appropriate manner.

45. All the breweries concerned complied with the measure and provided the Office with relevant evidence. The anticompetitive issue was eliminated in a short time period and so then it was possible to justify the Office's resignation from the authoritative declaration of unlawful conduct and imposing sanction.

## 2.8. Other Agenda

### *2.8.1. Sector Inquiry in the field of data and voice services to end customers*

46. The Office conducted a sector inquiry in the area of data and voice services provided through public mobile electronic communications networks to end customers in the Czech Republic. The Office found out that separate retail markets – the market for mobile data and voice services provided to unincorporated customers and the market for mobile data and voice services provided to corporate customers had existed. These markets may be further segmented. The market structure is strongly oligopoly, in none of them has any undertaking a dominant position and for that reason their transparency is relative due to the non-public bids.

47. In addition to fully-fledged mobile operators, the virtual mobile operators are also active in the market. However, these operators have not reached a higher market shares and their competitive constraint could not be seen as a strong one so far. Price competition consisted primarily of non-public bids, and competition affects especially the way how to reach new and how to maintain existing customers. The Office has not concluded the infringement of competition rules, not even in the form of concluding a prohibited agreement or abusing a dominant position. Regarding the telecommunication issues, the Office closely cooperates with the Czech Telecommunication Authority on a lasting basis.<sup>1</sup>

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

### 3.1. Significant Market Power

48. Since 2010, the Office has been supervising the practice of unfair commercial practices within the retail chains on the basis of the Act. No. 395/2009 Coll., on significant market power in the sale of agricultural and food products and its misuse (hereinafter referred as to “Act on Significant Market Power”). Since 2017, the European Union became as well more active in this issue. The current development could result in creation of the uniform European legal framework for combating unfair commercial behaviour.

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<sup>1</sup> For the purposes of ensuring closer cooperation between the Czech Telecommunication Authority and the Office, a joint working group was established at the end of 2016. The group focuses primarily on the field of providing services via public mobile electronic communications networks and other topical and ad hoc issues.

**Table 2.**

Activity statistics at first instance	
Number of complaints received	293
Number of complaints investigated from Office's proper initiative	10
Number of queries relating to interpretation of the law	12
Number of initiated administrative proceedings	6
Number of concluded administrative proceedings	4
Number of cases resolved by competition advocacy	2
The number of fines imposed at the first instance	2
The total amount of fines imposed at the first instance	CZK 190,187,559

### 3.1.1. Significant cases

#### *The fine for the Globus retail chain for unsolicited accounting services*

- Party to the proceedings: Globus ČR, k. s.
- File number: S138/2017/TS
- First instance fine: CZK 183,187,559
- Date of coming into force: Appeal filed

49. In mid-December 2017, the Office for the Protection of Competition issued a first instance decision penalising retail chain *Globus* for violating 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 “Act on Significant Market Power”) through exploitative practices towards some food suppliers.

50. Regarding the issue of significant market power, the Office focused in particular on two administrative offenses within the meaning of Art. 4 para. (2) letter b) and e) of the Act on Significant Market Power. Under those provisions, purchasers with significant market power are forbidden to negotiate or obtain any payment or other benefit for which no service or other consideration has been provided or this payment is disproportionate to the value of the consideration provided, as well as the negotiation or application of payments or other consideration for the receipt of food for sale.

51. The documents contained in the file show that within the period from 6 March 2016 to 30 June 2017 *Globus* made trade arrangements with some food suppliers conditional upon the conclusion of a contract, which led to the involvement of suppliers in the so-called “Markant” system. Within this system, suppliers were provided with accounting services, which would not be demand by suppliers on their own initiative. However, if suppliers did not participate in the system, *Globus* threatened to unilaterally terminate their cooperation. The pressure to pay certain fee for participation within the system has been assessed by the Office as unlawful application of prohibited “filing fee”, that is to say, the fee for accepting foodstuffs within the *Globus* network of business premises.

52. However, according to the Office's findings, suppliers involved in Markant's scheme, also paid the cost of *Globus* participation in the system, so the retail chain used Markant's accounting and marketing services for free. Specific suppliers have been charged with an additional fee that Markant has used to cover the services used by the "member company" in the system. The Office concluded such conduct as obtaining of consideration without any consideration.

53. In view of the gravity of the conduct in question, the Office imposed a fine of CZK 183,187,559 on *Globus*. In addition, the Office in its decision prohibited *Globus* from this kind of abusing its significant market power vis-à-vis the suppliers concerned. This support measure should remedy the defective situation in supplier-purchaser relations, and thus restore a fair trade partnership between *Globus* and suppliers concerned. The decision is not final as the appeal has been lodged.

### **3.1.2. Judicial review**

54. In the area of significant market power, an important judgement of the Supreme Administrative Court was issued at the end of 2017, concerning the Office's investigative powers in matters of significant market power. The Supreme Administrative Court upheld the previous judgement of the Regional Court, which dismissed the action of one retail chain for the unlawful interference, which has been supposed to be conducted in the Office's sector inquiry. Although according the original wording of Act on Significant Market Power, the Office did not explicitly have the right to conduct sector inquiries, administrative courts had no doubt about Office's power to carry out supervisory activities in the area of the protection of competition before initiating the administrative proceedings and to use the instruments provided by the Competition Act, specifically the request for information and to carry out inspection of business premises or non-business premises. In view of administrative courts the Office was entitled to use such investigative tools in question, notwithstanding the fact that the procedure was justified by the Office in its request for cooperation with imprecise statement that its purpose was a sector inquiry.

## **3.2. Public Procurement and Concessions**

55. The Office for the Protection of Competition has supervised public procurement since January 1995, currently according the Act No. 134/2016 Coll., On Public Procurement (hereinafter referred to as "Public Procurement Act"). The legal framework for its supervisory activities transposes the provisions of the European review directives which regulate the specificities of the review procedures for public procurement and strengthen the guarantees of the principles of transparency and non-discrimination in public procurement. In its supervision of public procurement, the Office decides whether the contracting authority has proceeded in accordance with the law in awarding a public contract (including concession) or special procedures under the Public Procurement Act, imposes corrective measures, deals with offenses of the contracting authorities and imposes fines. The Office also supervises activities pursuant to Act No. 194/2010 Coll., on public passenger transport services. The purpose of the abovementioned laws is to ensure free and liberal competition between suppliers of public contracts (or contracts awarded after tendering procedure) and, at the same time, to make the most appropriate bid in a transparent manner without discrimination of tenderers.

### **3.2.1. Public Procurement Division of the Office in 2017**

56. 2017 was a year of getting used to the application of new Public Procurement Act, which entered into force in the autumn of 2016. However, the Office still conducted a number of review procedures concerning public procurement initiated in accordance with the previous Act.

57. The new Public Procurement Act contains a different regulation of the procurement itself and its review as well. Compared to the previous Act, the new one also

included, inter alia, the rationalisation of the constituent elements of the offenses prosecuted by the Office, for example in the area of contracting authorities' disclosure obligations. The new Public Procurement Act also brings new changes concerning the charging submissions leading to initiation of administrative proceedings ex officio.

58. In 2017, the Office issued 560 decisions, which is less than in previous years. Generally, it follows from the fact that the most of administrative proceedings are terminated by adopting decisions on merits rather than decisions on procedural issues (approx. 25 %). The administrative proceedings might be also suspended for grounds such as committing an error by the petitioner (e. g. failing to deposit a statutory deposit) or withdrawing the proposal by the contracting authority (there is nothing to decide).

59. In clear cases where there is no doubt about committing of administrative offenses (misdemeanours) of the contracting authorities, the Office continue to rely on the instrument of the administration law – so called “order”, which was issued in a total of 44 cases in 2017. The issuing of the order is the first step in the proceedings, it takes few days (however, in terms of complexity, concerning the preparation of the order, the same requirements are demanded as for a standard decision), the orders therefore represent a significant acceleration and efficiency of the Office's decision-making activity.

**Table 3. Decision-making activity in the field of public procurement in 2017**

	Total number of initiated administrative proceedings	369
Administrative proceedings	On a proposal	238
	Ex officio	131
Decisions	Total number of the decisions issued in first instance	560
	Substantive decisions	403
	Remedy + sanction	229
	Infringement was not proved	63
	Procedural grounds	111
	Preliminary injunction	74
	Dismissal of the preliminary injunction	66
	Annulment of decision concerning preliminary injunction	17
Fines	Total number of fines imposed	130
	Total amount of fines imposed	CZK 24,735,000
Costs of proceedings	Number of imposed costs of proceedings	114
	Total amount of imposed costs of proceedings	CZK 3,014,000
Deposit	Amount of deposit posted	CZK 96,027,436
	Deposit forfeited to the state budget	CZK 9,318,388
Complaints	Number of complaints received with the fee paid	93

### 3.2.2. Significant cases

60. Although the new Public Procurement Act is in force and the Office has already issued many decisions under this Act, cases have often been decided on the basis of the previous Act. However, conclusions contained in these cases may be also applied to the contracting authority's procedure under the new Public Procurement Act.

*Czech Technical University in Prague - Project documentation's elaboration for the reconstruction of building B, Thákurova 7, Prague 6*

- Contracting authority: České vysoké učení technické v Praze (Czech Technical University in Prague)
- File number: S0323/2017
- Date of coming into force: 2. 2. 2017<sup>2</sup>
- Corrective measure: Cancellation of tenderer's bids in connection with the evaluation of tenders

61. The Office initiated administrative proceedings on a proposal. The petitioner has objected to numerous mistakes made by the contracting authority (*Czech Technical University in Prague*) in assessing and evaluating individual bids. The Office found certain part of the petitioner's statements to be legitimate. The Office concluded inter alia that the contracting authority failed to comply with the principle of transparency by not awarding the bid of the petitioner on the ground that his bid is incomplete due to the fact it does not include a member of a team - a budget expert - although the tenderer (the petitioner) was not excluded, and this fact could have influenced selection of the contractor.

62. Furthermore, the Office concluded that the contracting authority failed to comply with the procurement rule stating that the contracting authority shall draw up a written report on the evaluation of bids in which the description of the assessment shall be indicated and made obvious both evaluated data from bids corresponding to the evaluation criteria as well as the description of data evaluation from bids regarding the individual evaluation criteria in conjunction with the principle of transparency by failing to provide the description of evaluation in accordance with the abovementioned.

63. As the abovementioned conduct of contracting authority could influence the contractor's selection and the contract was not yet concluded, the Office imposed by its decision, inter alia, a corrective measure in the form of cancellation of the tenderer's actions connected with the tender assessment mentioned in the *Report on the bids' review and evaluation* and, at the same time, nullified all the following steps of the contracting authority, including the decision concerning selection of contractor.

### 3.3. State Aid

64. The Office is active in the area of State aid as a coordinating body performing central coordinating, advisory, consulting and monitoring activities in all areas, with the exception of agriculture and fishery which the Ministry of Agriculture is competent for. The exclusive role of the Office in the field of State aid is mainly cooperation with providers in terms of preparation of notification of State aid measures to the European Commission, than the Office cooperates with the European Commission and the providers in the proceedings before the Commission, both in proceedings concerning notification of State aid, unlawful State aid, misuse of State aid, existing State aid schemes, or where the Commission carries out an on-spot investigation within the Czech Republic. In the area of legislation, the Office represents the Czech Republic in consultation and preparation of European Union legislation on State aid. The Office is also responsible for the administration of Central Register of Small-scale Aid and from

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<sup>2</sup> The decision was confirmed by second instance decision ref. n. R0206/2017.



2016 also extended its powers coordinating on the national level information system of EC Transparency Award Module (“the EC Electronic system TAM”). As part of so-called ex-post monitoring, the European Commission, through the Office, regularly checks compliance with the State aid rules under the notified aid programs. In 2017, the control intervenes to aid schemes provided under regional investment aid.

65. From the point of view of the rules on State aid, 2017 was characterised by the refinement of the interpretative tools and regulations arising from the modernisation of State aid. European Commission, in its current approach to focusing on difficult cases, leaving Member States to the stand alone its State aid measures, which are implemented on basis of block exemptions, extended and modified the scope of EC Regulation No. 651/2014 of 17 June 2014 declaring certain categories of aid compatible with the internal market in application of Articles 107 and 108 of the Treaty (hereinafter referred to as the “GBER”). The Commission has also updated analytical forms for the application of State aid rules on financing selected areas of infrastructure projects.

66. 2017 was also marked by the Commission’s first assessment of the transparency obligation of State aid. The transparency obligation was initiated on 1 July 2016 and on the basis of that obligation State aid providers have to record the prescribed data on aid schemes and individual aids exceeding their limits set in the relevant State aid rules to the EC Electronic System TAM. Among other Member states the Czech Republic the fourth highest number of data recorded. In total, 1 511 records were published on 31 December 2017 by the Czech Republic (in 2016 – 635 records, in 2017 - 876 records). An assessment of the transparency obligation was also addressed by the Advisory Committee, where the Commission presented the first evaluation of the system. Since the beginning of the obligation to record the aid, the Czech providers registered into the aid system an amount of almost EUR 1.5 billion as well as, from the perspective of time, all data were recorded into the system in accordance with the legal regulations. The Commission has also announced that also in 2018 it will be examining the transparency obligation and possible technical improvements of the EC electronic system TAM.

#### 4. Resources of competition authority in 2017

- **Annual budget of the Office:** CZK 253,766,753 CZK (approx. USD 12,285,972)

**Table 4.**

Number of employees	234
Economists	44
Lawyers	114
Both economists and lawyers	11
Other professionals	21
Support staff	44
Human resources in the field of	
Enforcement against anticompetitive practices	35
Merger review and enforcement	7
Advocacy efforts	N/A

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

### **5.1. Information Bulletin 2/2017 – Private Enforcement of Competition Law**

67. The Bulletin summarises the main news and changes reflecting the transposition of the Directive 2014/104/EU of the European Parliament and of the Council of 26 November 2014 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 into Czech law.

### **5.2. Information Bulletin 3/2017 – Dawn Raids and Bid Rigging**

68. The Bulletin provides information about new methods for detecting bid rigging agreements developed by the Office in cooperation with the Faculty of Economics and Administration of the Masaryk University as well as the overview of detected and sanctioned bid rigging cases. Regarding the area of dawn raids, the Bulletin analyses their legality in connection with recent judgements.

### **5.3. Information Bulletin 4/2017 – Procedural Updates in the area of Significant Market Power**

69. The Bulletin analyses concerns of alternative solution of cases and the Office's procedure regarding this area. Further, it provides information about all legislative amendments from 2017 as well as introduces possibilities consisting of the application of settlement procedure and concealing the supplier's identity.