

**Directorate for Financial and Enterprise Affairs  
COMPETITION COMMITTEE****Annual Report on Competition Policy Developments in Czech Republic****-- 2020 --**

This report is submitted by Czech Republic to the Competition Committee FOR INFORMATION.

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## *Czech Republic*

### 1. Changes to Competition law and policy

#### 1.1. Legislative Developments

1. In 2020, no substantial changes to the Czech competition law have been made.

#### 1.2. Other relevant measures, including new guidelines

2. There have been no significant changes in the field of soft law issued by the Office for the Protection of Competition (hereinafter referred to as “the Office”) in 2020.

#### 1.3. Proposals for new legislation

3. The Act No. 143/2001 Coll., on the Protection of Competition (hereinafter referred to as “the Competition Act”) is to be amended in connection with the transposition of the Directive (EU) 2019/1 of the European Parliament and of the Council of 11 December 2018 to empower the competition authorities of the Member States to be more effective enforcers and to ensure the proper functioning of the internal market (hereinafter referred to as “the ECN+ Directive”). During 2019, the Office prepared a draft of a an amendment in order to meet the requirements arising from the ECN+ Directive to the Czech legislation. The government adopted the draft of the amendment on 21 September 2020 and in October, it was submitted to the Parliament. The Office expects the final adoption of the amendment in 2021.

### 2. Enforcement of competition law and policy

4. In 2020, the Office issued a total of 65 first-instance decisions pursuant to the Competition Act. A total of 60 administrative proceedings were initiated within the same year. For offences consisting in the infringement of the Competition Act, the Office imposed fines totalling more than CZK 266 million in the first instance, and in the second instance the final fines amounted to CZK 78 million. The Office also conducted 10 unannounced inspections during which it secured evidence at the premises of undertakings.

**Table 1.**

<b>Number of complaints received</b>	
Concentrations between undertakings	6
Prohibited agreements	83
Anticompetitive conduct of public authorities	18
Abuse of dominant position	66
Others	2
<b>Total</b>	<b>175</b>

<b>Number of administrative proceedings initiated</b>	
Concentrations between undertakings	50
Prohibited agreements	9
Abuse of dominant position	1
Anticompetitive conduct of public authorities	0
Total	60
<b>Number of decisions issued</b>	
Concentrations between undertakings	48
Prohibited agreements	11
Abuse of dominant position	1
Anticompetitive conduct of public authorities	5
Total	65

## 2.1. Prohibited agreements

5. The Office issued a total of 11 first-instance decisions concerning prohibited agreements. Seven of those were cartel agreements, out of which in six administrative proceedings, an anticompetitive conduct was proven and significant fines were imposed in the total amount of approximately CZK 221 million. The Office also revealed four prohibited vertical agreements, usually concluded between suppliers and retailers, and imposed fines in the total amount exceeding CZK 16 million for those.

### 2.1.1. Description of significant cases

#### *Cartel Agreement in Rail Freight Transport*

Parties to the proceedings: Rail Cargo Austria AG, AWT Čechofracht a.s., SPEDICA, s.r.o., INTERFRACHT s.r.o., ARGO LOGISTICS, s.r.o.

First-instance fines: 18,426,000

(20/055 – S0632/2016)

6. By its first-instance decision, the Office imposed fines in the total amount of CZK 18,426,000 on AWT Čechofracht a.s., INTERFRACHT s.r.o., ARGO LOGISTICS, s.r.o. and SPEDICA, s.r.o. for cartel agreement in the field of international rail freight transport and forwarding. The Office did not impose a fine on Rail Cargo Austria AG as it had provided the Office with the key information on the existence of the cartel within leniency programme.

7. The above-mentioned competitors entered into a prohibited agreement effective from 2004 till 2013 in connection to projects called Carpathia, Sylvania and New Carpathia. On the basis of secret illegal cooperation, they allocated their customers and goods transport contracts, coordinated prices for these services and exchanged sensitive information. The cartel agreement distorted competition in the market of rail freight transport and forwarding and was able to affect trade between the EU Member States as well. Rail freight transport companies infringed not only the Czech Competition Act but also Article 101 of the Treaty on the Functioning of the European Union.

8. INTERFRACHT and ARGO LOGISTICS filed an appeal against the first-instance decision.

*Bid rigging in IT tenders*

Parties to the proceedings: AUTOCONT a.s., TESCO SW a.s., ICZ a.s., MERIT GROUP a.s., A-Scan s.r.o., Asseco Central Europe, a.s. a FPO s.r.o.

First-instance fine: CZK 74,622,000

(20/120 – S0191/2017)

9. By its first-instance decision of 7 December 2020, the Office imposed fines in the total amount of CZK 74,622,000 on AUTOCONT a.s., TESCO SW a.s., ICZ a.s., MERIT GROUP a.s., A-Scan s.r.o., Asseco Central Europe, a.s. a FPO s.r.o. for bid rigging agreement.

10. Alleged infringement of the Competition Act consisted in sharing the performance of the public contract (Development of E-government Services in Olomouc Region) by mutual exchange of contacts and information. The public contract was awarded by Olomouc Region (regional authority) in 2012. Undertakings which entered into cartel agreement also illegally participated in the creation of the public contract. This particular prohibited agreement was concluded with the aim to succeed in public tender by submitting the bid consisting in performance shared by all the undertakings. Undertakings concerned submitted two shared bids, the more advantageous bid by AUTOCONT a.s. (the rest of undertakings participating as subcontractors) and the cover bid by ICZ a.s.

11. A-Scan s.r.o. applied for a settlement procedure on the basis of which its fine was reduced by 20%.

**2.2. Abuse of dominant position**

12. In one proceeding, the Office decided on abuse of dominance of collective rights management organisation Intergram and imposed fine of CZK 20 million for inadequate commercial conditions within contracts concluded with accommodation facilities.

*2.2.1. Description of significant case**Intergram's Fees Charged for Unoccupied Rooms Followed Fine of CZK 20 Million*

Party to the proceedings: **INTERGRAM z.s.**

First-instance fine: CZK 20,799,000

(20/123 – S0250/2018)

13. By its first-instance decision of 14 December 2020, the Office imposed fine of CZK 20,799,000 on INTERGRAM z.s., a collective administrator of rights of performing artists and producers of phonograms and audio-visual fixations for abuse of dominant position.

14. INTERGRAM abused its dominant position by forcing providers of accommodation services in the Czech Republic to pay fee for the usage of copyrights of performing artists and producers of phonograms and audio-visual fixations not taking into account the real occupancy rate of rooms in accommodation facilities from 1 January 2009 to 6 November 2014. It required the operators of accommodation facilities to pay the fee even for unoccupied rooms, where the above-mentioned right could not be used. As INTERGRAM forced accommodation facilities to follow this inadequate commercial condition, it violated both the Czech Competition Act and also Article 102 TFEU.

15. INTERGRAM infringed competition rules similarly to the collective rights management organisation OSA - Ochranný svaz autorský pro práva k dílům hudebním, z.s. in connection to which the Office issued a decision imposing fine which has already come into force.

16. INTERGRAM filed an appeal against the decision.

### 2.3. Anticompetitive conduct of public authorities

17. Five decisions were issued in cases related to the infringement of Article 19a of the Competition Act, i.e. the anticompetitive conduct of public authorities. Most cases consisted as usually in discrimination of undertakings through so-called lottery decrees issued by municipalities, with the exception of a fine imposed on capital of Prague for its parking rules for hybrid vehicles.

### 2.4. Concentrations between undertakings

18. In this area, the Office issued 48 decisions in 2020. In 47 of those, it approved concentrations in question. However, two administrative proceedings had to be moved to the second phase – the concentration between REWE-ZENTRALFINANZ eG and Cestovní kancelář FISCHER, a. s. was approved after all, and in case of concentration between BJH and Comdata, the notifying party cancelled the transaction during the proceeding. One concentration was approved within the first phase under the condition of fulfilment of proposed commitments. In one case, the Office imposed a fine of almost CZK 4.5 million for early implementation of the concentration.

#### 2.4.1. Summary of significant case

##### *The Office Imposed a Fine for Gun-Jumping in Csg/Skyport Case*

Party to the proceedings: **Skyport, a. s.**

Imposed fine: CZK 4,487,000

(S0269/2020/KS)

19. The Office imposed a fine of CZK 4,487,000 on Skyport, a. s. (formerly CSG a.s.) for early implementation of the concentration prior to its clearance by the Office.

20. On 13 March 2020, the Office approved the acquisition of control over Skyport by CSG within simplified procedure. The concentration took place mainly in the areas of provision of ground-handling services and full airline catering services, as well as in the area of production of ready-made dishes at the Vaclav Havel Airport Prague.

21. When assessing the concentration, the Office became suspicious that the concentration had been implemented prior to its notification. Therefore, the Office initiated administrative proceeding on the possible infringement of gun-jumping rules provided by Article 18(1) of the Act on the Protection of Competition.

22. Within the course of the proceeding, the Office found out that CSG had exercised control over Skyport at least since 19 September 2019, when for example it dismissed the existing and appointed new members of the executive and supervisory board of the acquired company.

23. For this infringement of competition law, the Office may impose a fine up to CZK 10 million or up to 10 % of total turnover. In this case, the party to the proceedings applied for settlement, which resulted in 20% reduction of fine to the final amount of CZK 4,487,000.

## 2.5. Second-instance proceedings

24. A total of 20 appeals were filed against first-instance decisions in the field of competition during 2020 – 13 of which concerning prohibited agreements, five regarding anticompetitive conduct of public authorities and one in the case of abuse of dominance and one in a merger case (regarding imposition of a procedural fine). Within six decisions on merits, in five cases the appeal was rejected and the first-instance decision was confirmed, in one case the appeal amended the first-instance decision. Fines totalling CZK 78,013,000 were confirmed (or changed) within second-instance decisions.

## 2.6. Judicial Review

25. The final decisions of the Office may be reviewed by the administrative court (Regional Court in Brno). It can be concluded that in 2020, the Office was successful in defending its decisions in the field of competition before the court. The court decided in nine competition cases, and in seven of those, the action against the Office's decision was dismissed.

26. Supreme Administrative Court decided on four cassation complaints against the judgments of the Regional Court in Brno, and in all of those, it decided in favour of the Office. At the same time, Supreme Administrative Court initiated 15 new proceedings on cassation complaints.

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

### 3.1. Significant market power

27. The Office has been supervising the practice of unfair commercial practices within the retail chains since 2010 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"). The purpose of this legal framework is to regulate the activities of retail chains towards food suppliers was a specific environment within the food sector, which was characterised by a significant imbalance in the business relations between customers and their suppliers, which led to the application of unfair trade practices at the expense of weaker market players. Due to the low level of concentration within the Czech retail market, it was not possible to respond to the situation by using standard competition rules. The main aims of the Significant Market Power Act are reduction in the occurrence of abusive commercial practices, protection of a weaker party and normalization of customer-supplier relations in the field of food purchase for resale.

28. The fight against unfair commercial practices will be transferred also to the European level in 2021, thanks to the new EU regulation described below.

### 3.1.1. Legislative developments

29. The Directive (EU) 2019/633 of the European Parliament and of the Council of 17 April 2019 on unfair trading practices in business-to-business relationships in the agricultural and food supply chain (hereinafter referred to as “the UTP Directive”) will be transposed to the Czech law in the form of an amendment to the Significant Market Power Act, so there is no need to introduce a completely new legislation. Legislative work on the transposition of the Directive into Czech law began almost immediately after its publication in the spring 2019. The authority responsible for the transposition of the proposal is the Ministry of Agriculture in the cooperation with the Ministry of Industry and Trade and the Office. During the second half of 2019, an amendment was gradually drafted, the aim of which was to transpose the rules contained in the directive and to streamline the existing legislation. The Office actively participated in these legislative works. The draft of the amendment is now in the legislative procedure.

**Table 2.**

Complaints received	4
Ex-officio investigations	3
Requests on the interpretation of the law received	16
Administrative proceedings initiated	3
Decisions issued	2
Number of imposed fines	1
Total amount of imposed fines	CZK 32,326,000

### 3.2. Public procurement

30. The Office has been supervising public procurement procedures since January 1995, currently pursuant to the Act No. 134/2016 Coll., on Public Procurement (hereinafter referred to as “the Public Procurement Act”). The Czech legislation on the supervision in this area transposes the provisions of the European Union review Directives (namely, the Council Directives 92/13/EEC and 89/665/EEC, as amended by the European Parliament and Council Directive 2006/97/EC); these Directives regulate the specificities of the review procedure in public procurement and enhance the principles of transparency and non-discrimination in public procurement. When supervising public procurement, the Office decides whether the contracting authority has acted in compliance with the Public Procurement Act when awarding a public contract (including a concession) or during special procedures. In addition, the Office imposes remedies, investigates administrative offences of contracting authorities and imposes fines. The Office also exercises supervision pursuant to the Act No. 194/2010 Coll., on Public Services in Passenger Transport (hereinafter referred to as “the Public Services in Passenger Transport Act”). The objective of the above-mentioned acts is to ensure open and free competition among public procurement suppliers (or carriers applying for conclusion of a contract on public services in passenger transport within tender proceedings) and to ensure the selection of the most suitable bid in a transparent manner without discrimination of tenderers. Consequently, equal, transparent and non-discriminatory competitive environment brings savings in public budgets as well.



31. In 2020, the Office initiated 399 administrative proceedings (12.7% annual increase). However, an increase in the number of complaints received compared to previous years was crucial. In 2020, the Office received 435 complaints, which is 95.9% more than in 2019 and even 343% more than in 2018. However, it should be noted that the significant increase in the number of complaints did not simultaneously lead to an increase in the number of proceedings initiated ex officio, which may indicate that the complaints received may be unfounded.

32. In terms of the proportional representation, in 2020 the most frequently reviewed public contracts were from the field of construction, IT and healthcare sectors and less frequently from the sector of transportation vehicles' supplies or public contracts for providing transport services. As regards the category of contracting authorities, public contracts awarded by municipalities, healthcare facilities, ministries and entities active in the field of transport and transport engineering were the most frequently reviewed ones.

33. The most frequent misconducts included: indefinite and/or ambiguous definition of tender qualification criteria or the excessiveness of tender qualification criteria defined by the contracting authority; excessive (discriminatory) qualification prerequisites; missing decision or incomplete settlement of supplier's objections; selection of a supplier which did not meet conditions necessary for the participation in the public contract (it is not clear from the notification on the selection of the supplier that the qualification was proved, etc.).

**Table 3.**

<b>Decision-making activity in the field of public procurement in 2020</b>	
Number of complaints received	435
Total number of initiated administrative proceedings	399
On a proposal	280
Ex officio	119
On a basis of inspection	4
<b>Decisions</b>	
Total number of the decisions issued in first instance	1,833
Decisions on the merits	377
Remedies/fines imposed	149
Misconduct of the contracting authority not found	106
Procedural grounds	122
Imposing interim measures	156
Dismissal of interim measures	37
Cancellation of interim measures	0
<b>Fines</b>	
Total number of fines imposed	65
Total amount of fines imposed	CZK 11,904,000
<b>Costs of proceedings</b>	
Number of imposed costs of proceedings	101
Total amount of imposed costs of proceedings	CZK 2,016,100
<b>Deposits</b>	
Amount of deposit lodged	CZK 138,381,681.28
Deposit forfeited to the state budget	CZK 18,834,822.24

### *3.2.1. Second-instance proceedings*

34. In 2020, the trend of a slight increase in the number of appeals against first-instance decisions continued. At first instance, 215 appeal proceedings were initiated. A total of 223 decisions of the Chairman of the Office were issued, of which approximately 66% confirmed first-instance decisions and rejected the appeal, 14% cancelled the decision and returned it to the Office for further proceedings, approximately the same percentage of decisions of the Chairman annulled first-instance decisions and terminated administrative proceedings on appeal (for example, due to the cancellation of the tender procedure or the act under review). In three cases, the appeal was rejected as inadmissible, in four cases the appeal proceedings were terminated for withdrawal of the appeal and in five cases the first-instance decision was changed.

## **3.3. State Aid**

35. Considering the field of State Aid, the Office acts as a coordinating body performing central advisory, consultancy and monitoring activities in all areas, with the exception of the area of agriculture and fisheries, where the Ministry of Agriculture is competent authority. The Office's exclusive role in the field of State Aid consists primarily in cooperation with the State Aid providers on preparation of notifications of State aid measures to the European Commission. This represented one of the Office's core activities in 2020 in connection with a large number of support programs adopted in response to the economic consequences of the global covid-19 pandemic. The Office also cooperates with the European Commission and State Aid providers in proceedings before the Commission, both in proceedings concerning notified State Aid and in cases of unlawful State Aid, misuse of State Aid, existing State Aid schemes or where the Commission carries out an on-the-spot investigation within the territory of the Czech Republic.

36. The Office provides advice and consultations to State Aid providers, already in the phase of program preparation or ad hoc support. In particular, it addresses the question of whether the criteria of State Aid are met cumulatively in the given case and, if so, it recommends the application of an appropriate exemption from the prohibition of State Aid, or it recommends that the measure should be notified to the European Commission.

37. The Office submits to the Commission, in accordance with the relevant provision of the EU law, an annual report on State Aid granted in the previous calendar year within the territory of the Czech Republic. In the field of legislation, the Office represents the Czech Republic in the discussion and preparation of EU legislation in the field of State Aid. The Office is also the administrator of the central register of small-scale subsidies and also the national coordinator of the European Commission's information system called the Transparency Award Module (TAM).

#### 4. Resources of competition authority in 2020

38. **Annual budget of the Office:** CZK 258 656 875 (approx. EUR 9 855 472).

**Table 4.**

<b>Total number of employees</b>	238
Economists	65
Lawyers	144
Both economists and lawyers	13
Other professionals	59
Support staff	37
<b>Human resources in the field of</b>	
Enforcement against anticompetitive practices	38
Merger review and enforcement	7

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

##### 5.1. Information Bulletin 1/2020 – Brief Guide to the Contracting Authority in the World of Public Procurement (*volume 3*)

39. The Office supplements by this Guide the methodological guidance in the field of public procurement performed by the Ministry of Regional Development. The guide informs contracting authorities about the significance and purpose of individual basic and tools of public procurement and also about the way the Office perceived these from its point of view of a supervisory body. The publication also includes the connection to already established methodology and case law of administrative courts.

40. This third volume of the Guide, which follows the previous two volumes issued in 2019, is devoted mainly to the contracting authority's procedure after the submission of bids, termination of tender procedure, publication obligations and protection against incorrect contracting authority's procedure, i.e. objections and decision-making on them as well as proceedings before the Office. At the same time, it contains a practical tool in the form of a checklist, which allows the contracting authority to verify whether it has taken into account everything relevant within the public procurement process.

##### 5.2. Information Bulletin 2/2020 – State Aid during the Coronavirus Pandemic

41. This bulletin explains the possibilities of providing State Aid targeting elimination of impacts of the COVID-19 pandemic according to the so-called Temporary Framework. It also provides up-to-date information on legislative developments in the field of State Aid.