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

## Annual Report on Competition Policy Developments in Czech Republic

-- 2021 --

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 2021, 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 2021.

#### **1.3. Proposals for New Legislation**

3. The Office has again drafted a legislative proposal of the amendment to the Act No. 143/2001 Coll., on the Protection of Competition (hereinafter referred to as “the Competition Act”), the purpose of which was mainly to transpose 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”).

4. Given that the amendment as originally drafted was not discussed by the previous Chamber of Deputies of the Parliament of the Czech Republic,<sup>1</sup> the Office proceeded to redrafting of the amendment. The final draft amendment includes, in addition to the previously proposed changes related to transposition of the ECN+ Directive, further modifications in order to improve and streamline the existing law. The changes concern, for example, new definitions, adjustments in the settlement procedure, the extension of leniency programme to vertical agreements, issues of international cooperation etc.

### **2. Enforcement of Competition Law and Policy**

5. In the field of protection of competition, the Office initiated a total of 84 administrative proceedings and issued a total of 74 decisions in 2021. For offences consisting in the infringement of the Competition Act, the Office imposed fines totalling more than CZK 168 million in the first instance. The Office also conducted a record number of 26 unannounced inspections, during which it secured evidence at the premises of undertakings.

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<sup>1</sup> There is a new Chamber of Deputies after the elections in October 2021.

**Table 1. Administrative proceedings and decisions**

<b>Number of complaints received</b>	
Concentrations between undertakings	4
Prohibited agreements	82
Anticompetitive conduct of public authorities	20
Abuse of dominant position	72
Others	3
Total	181
<b>Number of administrative proceedings initiated</b>	
Concentrations between undertakings	65
Prohibited agreements	9
Abuse of dominant position	1
Anticompetitive conduct of public authorities	1
Procedural proceedings	8
Total	84
<b>Number of decisions issued</b>	
Concentrations between undertakings	62
Prohibited agreements	7
Abuse of dominant position	2
Anticompetitive conduct of public authorities	1
Procedural proceedings	2
Total	74

## 2.1. Prohibited Agreements

6. The Office issued seven first-instance decisions concerning prohibited agreements in 2021, six of those on horizontal agreements and one on a vertical agreement. The imposed fines exceeded CZK 153 million. Nine new proceedings have been initiated, of which six concerned serious cartel agreements.

### 2.1.1. Description of Significant Cases

#### *Bid Rigging in Tenders Concerning Electrical Installation Works*

7. Parties to the proceedings: SPIE Elektrovod, a.s.; ASE, s.r.o.

8. First-instance fines: CZK 33,917,000

9. (S0377/2019/KD)

10. In this first-instance decision, the Office imposed fines in the total amount of CZK 33,917,000 on SPIE Elektrovod, a.s. and ASE, s.r.o. for a cartel agreement concerning tenders for electrical installation works awarded by ČEPS, a.s., the Czech electricity transmission system operator.

11. The decision has not been appealed and is therefore final. The parties to the proceedings benefited from the leniency programme and the settlement procedure, for which their fines were reduced.

12. The competitors coordinated their participation and bids for three public contracts of the contracting authority ČEPS, a.s., which namely involved the award procedures "MIL

– Repair of Switches by Replacement in the AD 03, 06 and 09 Field - Implementation"; "DAS - Replacement of DG (P.0473)" and "NOS - Replacement of Switch in the T402 Tertiary (G.0127)". The value of these contracts exceeded CZK 18 million.

13. The Office proved the anticompetitive conduct of both undertakings on the basis of the evidence of their phone, instant messaging and in-person communications. The undertakings coordinated their activities in tenders (bid rigging) and thus concluded a market division agreement and a price fixing agreement. These practices fall into the category of so-called hard-core cartels and constitute the most serious infringements of the Competition Act.

14. Both companies applied for leniency and for settlement procedure, for which their fines were significantly reduced to a total of CZK 32,498,000 for SPIE Elektrovod and CZK 1,419,000 for ASE. Thanks to leniency and settlement applications, the undertakings also avoided the ban on public contracts performance, which may also be imposed by the Office for bid rigging cartels.

#### *The First Imposition of Ban on Public Procurement*

15. Parties to the proceedings: EXPRES VAN s. r. o.; Lorenc Logistic, s. r. o.

16. First-instance fine: CZK 2,854,000 (in second-instance, increased to CZK 3,167,000)

17. (S0149/2020)

18. The undertakings EXPRES VAN s.r.o. (hereinafter referred to as “EXPRES VAN”) and Lorenc Logistic, s.r.o. (hereinafter referred to as “Lorenc”), through mutual contacts, coordinated their participation and bids in connection with public contracts of the Railway Administration entitled “Transport of Commercial Packages 2014-2016” and “Transport of Commercial Packages 2016-2018” in order the contracts to be awarded to EXPRES VAN. The cartel participants subsequently submitted the coordinated bids to the contracting authority. In its decision, the Office found that the participants to the cartel had operated with the aim of distorting competition in the above-mentioned tenders, and had indeed achieved this result. The illegal conduct took place from 27 August 2014 to 29 August 2016. The Office detected this case on the basis of its own activity.

19. EXPRES VAN was fined CZK 754,000 for the offence committed and was banned from participation in public procurement for a period of two years from the date of the decision's legal force, as it did not cooperate with the Office during the course of proceedings. This is the first imposition of this kind of administrative penalty by the Office. On the other hand, Lorenc applied for settlement procedure, for which it not only reduced the fine by 20% to CZK 2,100,000, but also avoided the imposition of a ban on the performance of public contract.

#### *The Undertaking GARLAND Harmed Consumers, and It Now Faces a Fine of Almost CZK 100 Million*

20. Parties to the proceedings: GARLAND distributor, s. r. o.

21. First-instance fine: CZK 96,751,000

22. (S0214/2019)

23. In its first-instance decision, the Office imposed a fine of CZK 96,751,000 on GARLAND distributor, s.r.o. for vertical agreements on resale price maintenance. This is the highest fine ever imposed for this type of anticompetitive conduct. The decision is not final as it has been appealed.

24. According to the decision of the Office, the undertaking GARLAND committed an administrative offence by concluding and executing prohibited agreements with its customers on the direct fixing of resale prices in the period from at least 18 June 2013 to 6 June 2019, i.e. for almost six years. The aim of these agreements was to exclude competition between GARLAND's distributors in the markets for garden machinery, garden equipment and tools for home (hobby) use within the territory of the Czech Republic. The Office prohibited the execution of the above-mentioned agreements and imposed a fine of almost CZK 97 million on GARLAND. At the same time, it was also required to inform all its customers about the prohibition and the invalidity of the agreements.

25. By this conduct, GARLAND deliberately suppressed competition at the horizontal level between retailers of its goods. They were therefore prevented from offering these goods to end consumers at prices lower than those set by the party to the proceedings. GARLAND itself initiated the price agreements, insisted on compliance with them and enforced them under threat of sanctions, such as blocking the customer's account in the ordering system. The enforcement of the price agreements by the undertaking GARLAND also forced customers themselves to check possible non-compliance from the side of other customers (their competitors) with the fixed retail prices and requesting GARLAND to apply remedial measures, i.e. to ensure unified (higher) retail prices.

26. As a result of this conduct, GARLAND distorted competition by eliminating price competition between retailers and maintaining a higher price level for the goods it distributed, clearly to the detriment of end consumers.

## 2.2. Abuse of Dominant Position

27. In two proceedings, the Office decided on abuse of dominance and imposed fines in the amount of CZK 10 million. The Office also initiated one new administrative proceeding in this area in 2021.

## 2.3. Anticompetitive Conduct of Public Authorities

28. One decision was issued with regard to cases related to the infringement of Article 19a of the Competition Act, i.e. the anticompetitive conduct of public authorities, with fine being imposed. The case consisted as usually in discrimination of undertakings through so-called lottery decrees issued by municipalities. One new administrative proceeding was initiated by the Office.

## 2.4. Concentrations Between Undertakings

29. In the area of concentrations between undertakings, the Office issued an all-time highest number<sup>2</sup> of 62 decisions in 2021. In 61 of those, it approved concentrations in question, of which 52 was approved in so called simplified procedure. In remaining case, the Office imposed a fine of approximately CZK 4.5 million for early implementation of the concentration.

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<sup>2</sup> Under the effectiveness of the existing notification criteria, i.e. since 2005.

### **2.4.1. Description of Significant Case**

#### *The Office Imposed a Fine for Early Implementation of Concentration*

30. Party to the proceedings: CSG INDUSTRY, a. s.

31. Imposed fine: CZK 4,505,000

32. (S0491/2020)

33. On 12 October 2020, the Office authorised CSG INDUSTRY, a. s. to acquire sole control over Hyundai Centrum CB, s. r. o., Hyundai Centrum Praha, s. r. o., Car Star Praha, s. r. o., Car Star Fleet, s. r. o., Car Star Immo, s. r. o. and Whare factory, s. r. o. in a simplified procedure. The concentration concerned mainly sectors of retail sale of new and used personal, light commercial and recreational vehicles, provision of servicing, maintenance and repair of personal and light commercial vehicles, wholesale and retail sale of spare parts and car accessories, arranging financing for the purchase of vehicles and leasing of personal, light commercial and recreational vehicles.

34. Already at the time before the merger assessment, the Office had doubts as to whether the merger had not already been implemented before the notification of the merger to the Office and before the issuance of the clearance decision, and it therefore initiated administrative proceedings for a possible infringement of Article 18(1) of the Competition Act.

35. Within the course of the administrative proceedings, the Office found out that CSG INDUSTRY exercised control over Hyundai Centrum CB, s.r.o., Hyundai Centrum Praha, s.r.o., Car Star Praha, s.r.o., Car Star Fleet, s.r.o., Car Star Immo, s.r.o., and Whare factory, s.r.o., since 22 February 2019 at least, by, for example, appointing some of the managing directors of the acquired companies. The acquirer continued the unlawful conduct until 11 October 2020, i.e. until the day preceding the entry into force of the decision approving the concentration.

36. The Office may impose a fine of up to CZK 10 million or up to 10% of the turnover for committing this type of offence. Since the party to the proceedings applied for the settlement procedure and fulfilled all the prescribed conditions, the Office reduced the fine by 20% to a final amount of CZK 4,505,000.

## **2.5. Second-Instance Proceedings**

37. In 2021, six appeals were filed against first-instance decisions, four of which concerned prohibited agreements, one abuse of dominance and one anticompetitive conduct of public authorities. A total of 18 second-instance decisions were issued, of which 14 merits and four of a procedural nature. Of the decisions on the merits, in eight cases the first-instance decision was confirmed, in five cases the first-instance decision was amended and in one case, the decision was partially annulled. Four appeals of a procedural nature were rejected by the Chairman of the Office.

38. In the above-mentioned decisions, fines totalling CZK 51,933,000 were confirmed (or changed).

## **2.6. Judicial Review**

39. 2021 was an exceptionally successful year for the Office in terms of judicial review of its decisions. Out of 12 judgments of the Regional Court in Brno, the action against the decision of the Office was dismissed in nine cases and withdrawn in one case. The Office

did not lose a single case before the Supreme Administrative Court, as nine of the judgments were in favour of the Office and one appeal was withdrawn. There were 22 new appeals to the Regional Court in Brno and seven cassation appeals.

40. A total of 11 cases were definitively closed (either by a judgment of the Regional Court against which no cassation complaint was lodged or by the dismissal of the cassation complaint), 10 of which ended with a finding that the Office's decision was legitimate.

### **3. The Role of Competition Authority in the Formulation and Implementation of Other Policies**

#### **3.1. Significant Market Power**

41. 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 practices applied by retail chains towards food suppliers within a specific environment within the food sector, which was characterised by a significant imbalance in the business relations between customers and their suppliers. This 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 tools. The main objectives of the Significant Market Power Act have been 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.

42. The fight against unfair commercial practices has been transferred also to the European level, thanks to the new EU regulation described below.

##### ***3.1.1. Legislative Developments***

43. 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 to the above mentioned Act was 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. Decision-making activity in the field of significant market power in 2021**

Complaints received	6
Ex-officio investigations	5
Requests on the interpretation of the law received	4
Administrative proceedings initiated	1
Decisions issued	1
Number of imposed fines	2
Total amount of imposed fines	CZK 83,439,000

### 3.2. Public Procurement

44. 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.

45. 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.

46. In 2021, the Office initiated 565 administrative proceedings (41.6% annual increase). For administrative proceedings initiated ex officio, there was an increase of 196 cases (264%) compared to 2020. As in 2020, there was also substantial increase in the number of complaints received. In 2021, the Office received 634 complaints, representing 45.7% increase compared to 2020 and even 286% increase compared to 2019. This increase in total number of complaints received was directly reflected in the number of ex officio proceedings initiated, as evidenced by the increasing proportion of complaints containing relevant information on infringements of the law. There was also a significant increase in number of decisions issued (by 63% compared to 2020) and fines imposed (by 442% compared to 2020).

47. In terms of the proportional representation, in 2021 the most frequently reviewed public contracts were from the field of construction and IT sector. As regards to 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.

48. 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. Decision-making activity in the field of public procurement in 2021**

Number of complaints received	634
Total number of initiated administrative proceedings	565
On a proposal	250
Ex officio	315
On a basis of inspection	3
<b>Decisions</b>	
Total number of the decisions issued in first instance	1,810
Decisions on the merits	615
Remedies/fines imposed	413
Misconduct of the contracting authority not found	90
Procedural grounds	112
Imposing interim measures	122
Dismissal of interim measures	20
Cancellation of interim measures	0
<b>Fines</b>	
Total number of fines imposed	287
Total amount of fines imposed	CZK 559,473,500
<b>Costs of proceedings</b>	
Number of imposed costs of proceedings	105
Total amount of imposed costs of proceedings	CZK 1,932,000
<b>Deposits</b>	
Amount of deposit lodged	CZK 82,466,870.62
Deposit forfeited to the state budget	CZK 50,289,380.17

### *3.2.1. Second-Instance Proceedings*

49. In 2021, appeals filed against the first-instance decisions of the Office were examined by a new composition of the appellate committee appointed by the Chairman of the Office, Petr Mlsna. The members of the appellate commissions are mostly external experts from the academic environment, state institutions and professional associations.

50. While the increasing trend in the number of administrative proceedings initiated at the first instance continued in 2021, the number of administrative proceedings initiated at second instance decreased by 11%. In 2021, an appeal was lodged against approximately every third first-instance decision. The Chairman of the Office confirmed approximately 60% of the first-instance decisions. The significant increase in the total amount of confirmed fines in 2021 is due to the confirmation of the highest fine imposed, amounting to CZK 550 million, on the Ministry of Defence for a public contract concerning the purchase of multi-purpose helicopters (R0039/2021).

51. Thanks to the implementation of certain procedural measures taken by the Chairman of the Office, the average time for issuing a second-instance decision has been reduced to 48 days.

### 3.3. State Aid

52. 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 State aid measure notifications to the European Commission. The Office also cooperates with the Commission and State aid providers in proceedings conducted by 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.

53. 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).

54. As regards the most important activities of the Office in this field, the beginning of 2021 was mainly marked by so-called "COVID" aid. A number of providers have prepared support programmes to compensate sectors affected by government measures. The primary legal basis for the approval of these aid schemes by the European Commission is the Commission Communication – Temporary Framework for State aid measures to support the economy in the current spread of the COVID-19 coronavirus (the Temporary Framework). The Temporary Framework was amended twice in 2021. The Commission discussed the proposed amendments with the Member States in an urgent, rapid consultation. The Office coordinated the preparation of comments and observations on behalf of the Czech Republic and subsequently sent these to the Commission.

55. The Office, in cooperation with the Ministry of Industry and Trade, has been intensively engaged in activities related to the proposed draft of the Regulation on Foreign Subsidies since the summer of 2021. In particular, it mainly prepared a framework position of the Czech Republic, which was approved by the Czech parliament.

56. In 2021, the Office cooperated with State aid providers in matters of monitoring by the Commission. These included monitoring of environmental and regional aid schemes.

57. In 2021, the Commission introduced a new SARI 2 system for annual reporting on paid State aid. The Office coordinated the accessibility of this system within the Czech Republic and provided advice to users on its use.

## 4. Resources of Competition Authority in 2021

58. **Annual budget of the Office:** CZK 253,982,875 (approx. EUR 10,216,528)

**Table 4. Human resources**

<b>Total number of employees</b>	<b>235</b>
Economists	64
Lawyers	142
Both economists and lawyers	13
Other professionals	57
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 2021 – First Year of the Chairman Petr Mlsna

59. In this bulletin, the Office summarised the most important events that took place during Petr Mlsna's first year as Chairman of the Office for the Protection of Competition.

60. It reports not only on important decisions, but also on other activities, in particular communication with stakeholders and professional public at dozens of conferences and seminars, important statements and calls addressed to undertakings or contracting authorities, and the initiation of cooperation with the major Czech universities. It also provides detailed coverage of the two largest events organised by the Office in the year 2021, namely the conference on 30 years of the Office's existence and the St. Martin Conference on the latest trends and developments in competition law and policy. Last but not least, it also deals with the upcoming Czech Presidency of the Council of the EU from the perspective of the Office.