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

Annual Report on Competition Policy Developments in Czech Republic

-- 2023 --

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. New Legal Provisions of Competition Law and Related Legislation

1. On 29 July 2023, an amendment to Act No. 143/2001 Coll., on the Protection of Competition (hereinafter referred to as the "Competition Act") and Act No. 273/1996 Coll., on the Scope of Competence of the Office for the Protection of Competition (hereinafter referred to as the "Competence Act"), entered into force. At the same time, a related Decree on the details of Leniency applications and requests for international cooperation was published.

2. The amendment of the Competition Act transposed Directive (EU) 2019/1 into the Czech legal framework. The amendment also introduces changes in proceedings with public authorities and in the case of on-site inspections or leniency programme. There has also been modification of the settlement procedure, which creates better conditions for the administrative discretion of the Office for the Protection of Competition (hereinafter referred to as the "Office"). The amendment also introduces the concept of confidential information other than business secrets and the related right to confidentiality of identity for anyone who reports suspected anticompetitive conduct and requests such protection from the Office. It was also possible to include in the amendment a provision according to which the Office will be able to use wiretaps obtained by the Police during the investigation of competitive related crimes. The Office will be able to use this evidence only in future cases and only as a passive user of wiretaps obtained by the Police. Changes related to the transposition of the ECN+ Directive also affect the Competence Act. It explicitly emphasizes the independence of the Office and regulate in more detail the conditions for the exercise of the functions of the Chairman and Vice-Chairs as so called decision making bodies.

1.2. Other Relevant Measures, Including New Guidelines

3. In the context of the adopted amendment to the Competition Act, the Office published four revised soft law notices. These are the Settlement Notice, the Alternative Dispute Resolution Notice, the De Minimis Notice and the Leniency Notice.

1.3. Proposals for New Legislation

4. In response to the sharp rise in food prices in 2023 and media and political pressure on the Office, the adoption of another amendment to the Competition Act is on the agenda. It would lead to a broadening of the Office's powers. There has also been an initiative from the Government to strengthen the investigative powers of the Office and to introduce, among other things, a new competition tool for cases of market failure that cannot be dealt with by traditional competition tools. In this regard, the Office intends to continue to initiate and conduct an expert discussion on the current merger control regime and how it can be made more efficient, both substantively and procedurally, with the aim of summarising its findings by the end of the year and to start working on possible legislative changes, including amendments to the existing soft law. In relation to legislation, the Office will continue to monitor the adoption of new laws in general and to comment on those that would in themselves restrict competition without objective reasons or unnecessarily.

2. Enforcement of Competition Law and Policy

5. In the field of protection of competition, the Office received a total of 221 complaints, initiated a total of 68 administrative proceedings and issued a total of 75 decisions in 2023. The Office imposed 17 fines in the total amount exceeding CZK 268,277,000 for detected distortions of competition rules. There was a small decrease in the number of on-site inspections carried out, there were eight on-site inspections carried out in business premises of nine undertakings.

Table 1.

Number of complaints received	
Prohibited agreements	113
Abuse of dominant position	80
Concentrations between undertakings	2
Anticompetitive conduct of public authorities	17
Others	9
Total	221
Number of administrative proceedings initiated	
Prohibited agreements	10
horizontal agreements	7
vertical agreements	3
Abuse of dominant position	0
Anticompetitive conduct of public authorities	0
Concentrations between undertakings	57
standard procedure	12
proceedings in the second phase	2
simplified procedure	41
sanction procedure	2
Hindering on-site inspections	1
Total	68
Number of decisions issued	
Prohibited agreements	16
horizontal agreements	10
vertical agreements	6
Abuse of dominant position	3
Anticompetitive conduct of public authorities	0
Concentration between undertakings	55
standard procedure	12
proceedings in the second phase	2
simplified procedure	40
sanction procedure	1
Hindering on-site inspections	1
Total	75

2.1. Prohibited Agreements

6. Considering the field of competition, the 2023 was one of the most successful year in the history of the Office. The Office imposed 17 fines. A total of 16 of these penalties

were imposed in decisions on prohibited agreements, which is the highest number of resolved cases since 2004, when the legislation was significantly changed. The number of decisions adopted in this area increased by five compared to the previous year. Ten decisions concerned prohibited horizontal and six vertical agreements. The Office also initiated ten proceedings concerning possible collusive conduct.

7. In total, the Office imposed fines of CZK 234 million for agreements distorting competition, with the majority of the imposed penalties becoming final at the first-instance proceedings due to the frequent use of the settlement procedure. In particular, it imposed fines exceeding CZK 80 million for horizontal agreements and more than CZK 150 million for vertical agreements.

2.1.1. Description of Significant Cases

Bid rigging in Contracts for Security and Modernisation of Railway Crossings

- Parties to the proceedings: AK signal Brno a.s., SIGNALBAU a.s., STARMON s.r.o.
- Total first-instance fine: CZK 51,522,000
- (Case No. S0205/2021; in the appeal proceedings, the fine was reduced to 42,933,000 CZK; in force from 21 December 2023; settlement; compliance)

8. The undertakings concerned infringed the Competition Act when in April 2015 coordinated their participation and bids in the public procurement for the public contract "Increasing safety at railway crossings in the track section Vrané nad Vltavou (outside) - Dobříš", which was awarded by the Railway Administration. The aim of the agreement was that the most advantageous bid should be submitted by the association "Vrané nad Vltavou – Dobříš Company", with AK signal Brno as most important member. Coordinated bids were submitted subsequently. In the administrative proceedings, the Office proved, through a detailed analysis of the bids, that the above undertakings acted in concert to infringe the law, thereby affected the outcome of the procurement procedure and distorted competition.

9. The amount of fines imposed in this case is not based on the turnover of the parties, but on the value of the affected contract, which totalled CZK 210,477,375. However, the Office took into account that the parties had enhanced their competitive compliance programmes in the meantime and complied with the settlement conditions.

Cartel in Contract for Security and Modernisation of Railway Crossings

- Parties to the proceedings: KTA technika, s.r.o., První SaZ Plzeň a.s.
- Total first-instance fine: CZK 3,173,000
- (Case No. S0347/2021; in force from 8 November 2023; settlement; compliance)

10. The Office found that parties to the proceedings acted in concerted practise when in May 2015 coordinated their bids in the public procurement for the public contract "Modernization of level crossings on the line Pňovany - Bezdrůžice", which was awarded by the former Railway Infrastructure Administration. The purpose of the anti-competitive conduct was to ensure that the most advantageous bid was submitted by KTA technika. The harmonised bids were subsequently actually submitted. The coordination of the undertakings was proven by the Office, in particular through the identical bids and identical metadata in some of the documents from the bids of both undertakings. The conduct of KTA technika and První SaZ distorted competition and therefore constituted an infringement of the Competition Act.

Xiaomi Electronics Distributors Cartel

- Parties to the proceedings: Beryko s.r.o., Witty s.r.o.
- Total first-instance fine (only for Beryko): CZK 24,467,000
- (Case No. S0241/2022; in force from 10 April 2023; leniency, settlement; compliance)

11. In the period under review, Beryko and Witty were the main distributors of Xiaomi electronics in the Czech Republic (mainly mobile phones, smart watches, bracelets and other smart devices, other electronics and related equipment). They supplied these products to other sub-distributors and retailers and also acted as retailers themselves. The illegal conduct lasted through the period from 2018 to the end of May 2019. During that time, representatives of both companies communicated and coordinated with each other in various ways to set sale prices and other pricing parameters (such as the amount and duration of discount promotions), allocate customers and exchange sensitive business information in the wholesale and retail sale and distribution of Xiaomi products in the Czech Republic. By this conduct, the undertakings infringed not only Czech but also EU competition rules, as their conduct was capable to affect the trade between Member States of the European Union.

12. The Office gained basic knowledge of the illegal conduct through a leniency application from the undertaking Witty. On the basis of this application, Witty was granted full immunity because it was the first to report the anti-competitive conduct and allowed the cartel to be detected. The undertaking Beryko subsequently applied for leniency as well, fulfilled the legal conditions for its application and a reduced fine was imposed on it. In addition, the settlement and the implementation of a compliance programme were also taken into account.

Prohibited Agreement of Construction Companies from Wallachia

- Parties to the proceedings: aostav s.r.o., EFIOS stavební s.r.o., HERYÁN RECONSTRUCTIONS s.r.o., natural person – entrepreneur K. K.
- Total first-instance fine: CZK 3,157,000
- (Case No. S0163/2022; in force from 10 February 2023; settlement)

13. The bid rigging cartel occurred in the context of a procurement for the revitalisation of a residential apartment block, which was awarded to the unit owners' association of the building in 2020. According to documents and communications found by the Office, the suppliers illegally cooperated with each other and coordinated the budgets in their bids. They subsequently submitted such coordinated bids to the Contracting Authorities, with the most advantageous bid being submitted by aostav, thereby distorted competition.

14. When setting the fines, the Office based its calculation on the value of the public contract in question, which exceeded CZK 11.5 million. All parties to the proceedings fulfilled the conditions for settlement. As a result, their fines were reduced by 20%.

2.2. Abuse of Dominant Position

15. The Office also adopted three decisions on abuse of dominant position in which no penalties were imposed, but the remedy of the competitive issue was achieved through commitments.

2.2.1. Description of Significant Case

Honeywell Commitments

- Parties to the proceedings: **Honeywell, spol. s r.o.**
- Binding decision
- (Case No. S0527/2020; in force from 9 March 2023)

16. The Office has terminated the administrative proceedings against Honeywell for possible abuse of a dominant position. This was after the undertaking did not require participants in the certification training to purchase the products in question (the certification training concerned the provision of the service of installation, inspection, maintenance and repair of electrical fire alarm and/or evacuation radio equipment).

17. The conditioning of participation in training on the purchase of products, which Honeywell has introduced since September 2017, has, according to the preliminary findings of the Office, raised concerns that operators that focus only on operability testing, maintenance and/or repair or minor installations and do not have a valid certificate will see their costs increase due to the need to subcontract these services or be excluded or potentially excluded from the market. Compliance with the proposed commitments shall ensure that effective competition in the field is maintained.

2.3. Anticompetitive Conduct of Public Authorities

18. In 2023, the Office did not adopt any first-instance decision in this area.

2.4. Concentrations Between Undertakings

19. In the field of concentration between undertakings, the Office adopted after a long period of 19 years a decision prohibiting the concentration between undertakings. The prohibited decision concerning the proposed merger of Česká pošta (Czech Post) and První novinová společnost did not become final because the party to the proceedings withdrew its application during the appeal proceedings. Furthermore, the Office cleared the telecoms merger between Cetin and Nej.cz only subject to fulfilling commitments to secure access to a wholesale fixed-point internet access offer with handover at a central location. The Office examined a total of 54 concentrations between undertakings, 40 of them in simplified procedure and 12 in standard procedure.

Table 2.

Concentration Between Undertakings – By Type of Decision	
Standard Procedure	12
Second Phase	2
Simplified Procedure	40
Sanction Procedure	1

2.4.1. Description of Significant Cases

Conditional Clearance of Merger of CETIN and Nej.cz

- Parties to the proceedings: **CETIN a.s.**

- Decision to clear the merger with commitments
- (Case No. S0392/2023; in force from 10 November 2023)

20. The Office cleared the merger between CETIN and Nej.cz in the so-called second phase of the administrative proceedings, subject to the fulfilment of commitments proposed by the party to the proceedings to eliminate concerns about possible distortion of competition. In the course of the administrative proceedings, the Office identified that the merger could have a negative impact on competition in the market for the provision of retail fixed Internet access and therefore examined the merger effects in more detail in the so-called second phase of the investigation. The party to the proceedings proposed a number of behavioural commitments to eliminate concerns about possible distortions of competition, which the Office found sufficient.

21. CETIN has committed to maintain its wholesale offer in 187 municipalities for a period of five years, or to create a new wholesale offer based on the offer valid on 31 October 2023, allowing the provision of wholesale fixed-site Internet access service with handover at a central location. It will provide open and non-discriminatory access to that wholesale offer for all interested parties at a price that is economically justified considering reasonable cost and reasonable profit. At the same time, CETIN shall invest a minimum of CZK 3.5 billion in the development of more advanced technology in its network to enable the provision of wholesale and retail access to the fixed-site Internet. The implementation of the commitments shall be reported annually to the Office, which will assess and monitor the implementation of the commitments.

Prohibition of Concentration Between Česká pošta and První novinová společnost

- Parties to the proceedings: **Česká pošta, s.p.**
- Decision not to clear the merger (Case No. S0467/2021); the annulment of the decision at first-instance and termination of the proceedings (Ref. No. R0080/2023; in force from 26 October 2023)

22. In 2021, the Office received a proposal to clear the merger between Česká pošta and part of the company První novinová společnost, which is mainly engaged in the delivery of letters to final addressees. Within the five-month period, following a detailed second phase in-depth investigation, the Office adopted a first-instance decision by which it did not clear the merger. In the first-instance decision, the Office found, on the basis of an analysis of the relevant markets and the likely effects of the merger on them, supported by the opinions of the stakeholders concerned, that the implementation of the proposed concentration would lead to a significant distortion of competition. Alleged distortion consisted in the creation or strengthening of a dominant position of Česká pošta in the relevant markets for the delivery of ordinary postal items to final addressees in the Czech Republic, a substantial restriction of competition in the relevant market of the delivery of non-addressed direct mail in the Czech Republic and a restriction of potential competition in the relevant markets of the distribution of subscriptions and the delivery of printed matter in the Czech Republic.

23. An appeal against the decision was filed by Česká pošta and was decided by the Chairman of the Office. However, during the appeal proceedings, Czech Post withdrew its proposal for merger clearance. Following the withdrawal of the merger proposal, the Chairman of the Office issued a second-instance decision on 25 October 2023, by which he cancelled the first-instance decision of the Office and terminated the proceedings for the clearance of the merger.

2.5. Second-Instance Proceedings¹

24. Seven appeals in total were filed against first-instance competition decisions in 2023. A total of ten decisions on appeal were adopted, involving cases of prohibited agreements (3), concentrations between undertakings (3), the issues of Article 19a of the Competition Act (1) and non-cooperation during an on-site inspection (1). Out of eight decisions on merits, in two cases the appeal was dismissed, in the other three cases the decision was approved only to a certain extent and some aspects of the operative parts of the decisions were changed by the Chairman of the Office. One decision was partially approved, another part was modified and the rest of the decision was cancelled and returned for reconsideration. In two cases, the Chairman of the Office cancelled the decision and terminated the administrative proceedings. In two procedural cases, the appeal proceeding was terminated in one case and in the other case the proceeding was suspended.

2.5.1. Description of Significant Cases

- Confirmation of New Fine for Association of Language Schools
- Parties to the proceedings: Association of Language Schools, z. s.
- Total final fine: CZK 5,200,000
- (Ref. No. R0089/2023; in force from 6 November 2023)

25. The Chairman of the Office dismissed the appeal of the Association of Language Schools against the first instance decision imposing a fine in the amount of CZK 5,200,000 for infringement of the Competition Act. The Chairman of the Office dealt with the case for the second time, in November 2022 he confirmed the statement on committing an anti-competitive conduct, but returned the fine to the first instance for reconsideration.

26. The Association of Language Schools (hereinafter referred to as the “Association”), which brings together approximately 40 language schools, committed an administrative offence by setting a minimum allowable price per hour of foreign language lessons considering tenders for the provision of language training services. It published and applied this fixed price to its members and enforced it towards contracting authorities. The Association has been setting prices in this way since at least the second half of 2017 and has even updated the rates gradually.

27. For the first time in history, the Office imposed a fine for a prohibited decision on an association of undertakings based on the turnover of the members of the association. Following the previous cancellation of the fine by the Chairman of the Office, a new first-instance decision was adopted on 16 June 2023, reducing the fine to CZK 5,200,000, also as a result of a reduction in the period of the offence. The Chairman of the Office agreed with the reasons for which the Office had calculated the fine on the basis of the turnover of the all members of the association involved in illegal conduct and confirmed the decision in its entirety.

¹ The proceedings before the Office is two-instance procedure – a party to the proceedings may file an appeal against first-instance decision. The second instance is represented by the Chairman of the Office who decides on the appeal. The second-instance decision may be further challenged before an administrative court.

Meal Vouchers Cartel

- Parties to the proceedings: Pluxee Czech Republic a.s. (formerly Sodexo Pass Czech Republic a.s.), Edenred CZ s.r.o. and Up Czech Republic s.r.o.
- Total final fine: remitted for reconsideration
- (Ref. No. R133/2022; in force from 24 October 2023)

28. The Chairman confirmed the conclusions of the first instance decision on the anti-competitive conduct of Pluxee Czech Republic (formerly Sodexo Pass Czech Republic), Edenred CZ and Up Czech Republic, as a direct result of which customers could redeem a maximum of five paper meal vouchers for purchases in retail chains between 2004 and 2018. In his decision, however, in the context of the high standards set by the administrative courts, the Chairman clarified the legal assessment in some parts of the decision and, in the part concerning the imposition of a fine, which was set at CZK 279,152,000 in total in the first-instance decision, he cancelled the decision and remitted the case to the first-instance for reconsideration due to some formal mistakes.

29. The Chairman confirmed that the companies in question had coordinated their terms and conditions with regard to the acceptance of meal vouchers for a single purchase in the period from 1 May 2004 to 25 June 2018. This practice constituted concerted practices whereby the meal voucher providers concluded and implemented a prohibited agreement which distorted competition on the market for the issuance, sale and application of paper meal vouchers and related services in the Czech Republic and which was also capable of affecting trade between Member States of the EU. The parties to the proceedings have thus committed an infringement of national and EU competition law. The anti-competitive conduct was declared prohibited and invalid.

2.6. Judicial Review

30. In 2023, the Office continued its high success rate in defending its decisions before administrative courts, in particular the Supreme Administrative Court. The Regional Court in Brno, which has the special jurisdiction for reviewing the Office's decisions, decided on a total of nine cases, in five of which it confirmed the correctness of the Office's decisions and dismissed the particular actions, while in four cases it approved the action. Nine new actions were brought before the court.

31. The Supreme Administrative Court decided on a total of 14 cassation complaints, in 10 of which it decided in favour of the Office. In three cases, the judgment of the Cassation Court was decided in the favour of the opposing party. In one case, it was partly for the Office and partly for the applicant. In two other cases, the applicant withdrew its cassation complaint. Seven more cassation complaints were filed with the Supreme Administrative Court in 2023.

32. For the sake of completeness, it is possible to add two more resolutions of the Constitutional Court which rejected constitutional complaints filed in the matter of allegedly unlawful interventions in relation to on-site inspections conducted by the Office. The Constitutional Court thus reconfirmed the approach of the Office and the administrative courts.

3. Role of Competition Authority in Formulation and Implementation of Other Policies

33. The Czech CA has different competencies, besides the role of competition watchdog, it has the power to review public procurement, supervise unfair trading practices, it also monitors state aid. From 2024, it fulfils also the function of a national regulator in the field of access to railway infrastructure.

3.1. Significant Market Power

34. The supervision over unfair trading practices within the retail chains has been entrusted to the Office 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 the “Act on Significant Market Power”). The purpose of this legal framework was to regulate practices applied especially by retail chains towards food suppliers within a specific environment in 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 trading practices at the expense of weaker market players. The main objectives of the Significant Market Power Act have been reduction in the occurrence of abusive trading practices, protection of a weaker party and normalization of customer-supplier relations in the field of food purchase for resale. The fight against unfair trading practices is currently transferred to the European level.

3.1.1. Legislative Developments

35. On 1 January 2023, Act No. 359/2022 Coll. came into force, which introduced extensive amendments to Act on Significant Market Power, primarily due to the need to transpose Directive (EU) 2019/633 of the European Parliament and of the Council of 17 April 2019 on unfair commercial practices between undertakings in the agricultural and food supply chain.

36. The Directive and its transposition into the Czech legal system has changed the outlook on all the fundamental pillars of the existing legislation on food supplier protection. It has modified the definition of the purchasing markets subject to regulation, the concept of special buyer liability, as well as the facts of unfair trading practices that can be punished by the Czech CA through the Act. The change in the regulation of unfair trading practices has had a significant impact not only on selected businesses in the agricultural and food chain, but has also significantly extended the Office's powers to the entire food chain, from producers and processors to wholesalers and retailers.

3.1.2. Description of Significant Case

The MAKRO chain has committed to modify the contractual terms in favour of its suppliers

- Parties to the proceedings: MAKRO Cash & Carry CZ s.r.o., METRO International AG
- Decision of 27 March 2023 on the acceptance of commitments to remedy the defective condition (Case No. S0419/2019/TS; in force from 21. April 2023)

37. In March 2023, the Office adopted its second first-instance decision, accepting the commitments proposed by MAKRO Cash & Carry CZ and METRO International to remedy the defective condition and imposing obligations on both companies to comply with them. The original decision of 2021, which was cancelled by the Chairman, imposed

a fine of CZK 83,123,000 on MAKRO Cash & Carry CZ and a fine of CZK 316,000 on METRO International for infringement of the Act on Significant Market Power in the sale of agricultural and food products. The companies abused their significant market power in connection with central clearing services provided to MAKRO by METRO. Between 1 October 2016 and 26 November 2019, the companies negotiated contractual terms with their suppliers that created a significant imbalance in the rights and obligations of the suppliers as the weaker party.

38. The way in which the parties set up the contracting agreement, namely the failure to inform MAKRO's suppliers of the existence and parameters of the central clearing system in the framework agreement and the failure to inform the suppliers of METRO's contractual conditions, which had a direct impact on the price of goods supplied to the MAKRO chain, essentially tied the negotiation of one contract to the other. Without the framework contract between MAKRO and its suppliers, the underlying central clearing platform could not be used and without the contract with METRO, payments received could not be matched to the relevant accounts receivable in a timely manner. The suppliers also did not have adequate information on the undercutting of the price for the goods they delivered by the payment to METRO. The suppliers had to take METRO's services either all as bundled services or not at all. The technical constraints created by the set-up of the central clearing system and the need to use METRO's paid service resulted in a restriction of suppliers' contractual freedom. Suppliers could not affect the content of METRO's service contract and were not free to decide whether or not they wanted to use the service package at all. The Office found unlawful conduct against approximately 500 suppliers.

39. Instead of issuing a fine decision, the Office finally opted for the alternative termination of the administrative proceedings consisting in the acceptance of commitments. The parties proposed commitments to the Office which remedied the illegal situation. The Office assessed these commitments as sufficient, accepted them instead of imposing a fine and terminated the administrative proceedings. The commitment to ensure that the central payment system is set up in such a way that the payment notification for payment of MAKRO's invoices for the supply of goods is sent by METRO to all suppliers at the latest one day before the payment is credited to the supplier's account was absolutely essential and absolutely necessary from the point of view of the Office. Such a payment advice must also contain all the necessary information supporting the payment and should be sent free of charge to all MAKRO suppliers. Equally important was the commitment that MAKRO should specify in the Framework Supply Agreement in detail that payments for deliveries of goods are made through a central payment system operated by a third company and what parameters or sub-processes, if any, are ensured by this system.

40. The Office obliged METRO to inform MAKRO's suppliers with whom METRO has concluded a contract for the provision of its services in writing that they may terminate the contract for METRO's services in writing within a specified period of time, without any consequences for the suppliers' business relationship with MAKRO. Finally, MAKRO has undertaken to implement an effective compliance programme in its internal rules.

3.2. Public Procurement

41. 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.

42. 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.

43. In 2023, there was an increase in the total number of administrative proceedings initiated, with a total of 751 proceedings before the Office. The increase in the total number of administrative proceedings initiated is due both to an increase in proceedings initiated on application and to an increase in administrative proceedings initiated ex officio. Taking into account the nature of the issues dealt with in individual cases, it is clear that in 2023, as well as in 2022, the proportion of cases involving factually and legally complex issues, where potential misconduct by Contracting Authorities with a higher degree of seriousness and therefore a greater negative impact on the competitive environment, is increasing in the long term compared to previous years. In terms of the development in the number of complaints received to initiate proceedings ex officio, there is a significant increase from 619 to 1016 in 2023 compared to 2022. In 2023, the Office dealt with 947 complaints, an increase of 394 complaints compared to 2022. There was also an increase in the number of decisions issued from 551 to 781. The reason for this dramatic increase in the number of ex officio administrative proceedings initiated, or the increase in the number of decisions issued, is the investigation of the large number of relevant complaints received by the Office, which subsequently led to the initiation of administrative proceedings and the issuance of a decision.

3.2.1. Legislative Developments

44. In 2023, a so-called “major amendment” to the Public Procurement Act was adopted. The amendment to this Act deals with some issues that have arisen in application practice, eliminates legislative and technical gaps in the text of the Act, incorporates some conclusions drawn from decision-making and case law and responds to criticisms from the European Commission regarding the insufficient transposition of several rules from the procurement directives into the domestic legal framework. Above all, it brings about a significant reduction of the administrative burden on both Contracting Authorities and suppliers and simplifies certain rules.

45. It should also be noted that during 2023, a part of Regulation (EU) 2022/2560 of the European Parliament and of the Council of 14 December 2022 on foreign subsidies distorting the internal market (“the Foreign Subsidies Regulation”) entered into force, which also affects the area of public procurement. The Regulation introduces, inter alia, for certain situations potentially indicating a possible distortion of the internal market by foreign subsidies, a notification obligation for the tenderer or dynamic purchasing system towards the Contracting Authority and an obligation for the Contracting Authority to reject a tender or a request to participate in certain situations.

3.2.2. Description of Significant Case

Toyota Hilux - comprehensive AOT security

- Contracting Authority: Czech Republic – Ministry of Defence & Armed Forces
- Administrative proceedings terminated in part, because part of the application was not followed by early filed objections; the remaining part of the application was dismissed.
- (Case No. S0610/2022/VZ; in force on 7 June 2023)

46. In the proceedings initiated on the basis of the application, the Office dealt primarily with the question whether the selected supplier meets the technical qualification criteria pursuant to Article 79(2)(d) of the Public Procurement Act. The applicant considered, inter alia, that the selected supplier did not possess the required repair and service capacity enabling it to perform the service at a minimum of four service points located in the territory of the Czech Republic, or, if it possessed such capacity, then only through subcontractors, which, however, it did not identify in any way and therefore did not prove that it had service points.

47. The Office concluded that the selected supplier demonstrated this part of the technical qualification in a manner that did not give the Contracting Authority any reason for doubt, as it submitted the required declaration containing a list of technical equipment as well as the addresses of individual service points, which it subsequently clarified further upon the Contracting Authority's request. The Office dismissed the applicant's view that the selected contractor should have identified other subcontractors. A subcontractor is only a person who actually participates actively and knowingly in the performance of the public contract. According to the Office, it cannot be automatically concluded that the mere fact that the supplier does not have its own equipment or premises in its operations makes any entity that has such equipment or premises and concludes a contract with the supplier its subcontractor or supplier. Otherwise, ad absurdum, the subcontractor would effectively be anyone who supplies the supplier with any part of the supply or service to be used for the execution of the public contract, including the supplier of bricks or sanitary ware for the construction or the supplier of energy.

3.3. State Aid

48. 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.

49. 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).

3.3.1. Legislative Developments

50. The year 2023 was full of substantial legislative changes for the state aid area, which were mainly introduced at the beginning of the year by the Foreign Subsidies Regulation. The Regulation, which entered into force on 12 January 2023, with most of its provisions coming into force on 12 July 2023, is a new instrument that addresses internal market distortions caused by foreign subsidies with the aim of ensuring a level playing field for all actors operating in the internal market of the European Union. Member States have a rather limited advisory role in the area of foreign subsidies and are primarily obliged to provide an assistance to the European Commission.

51. Another significant legislative change is represented by the revision of Commission Regulation (EU) No 651/2014 of 17 June 2014 declaring certain categories of aid compatible with the internal market in accordance with Articles 107 and 108 of the Treaty (“GBER”). The revised Regulation is applicable from 1 July 2023 and is due to expire on 31 December 2026. In the context of the revised GBER, the Office addressed aid providers and informed them of their obligation to modify the terms of existing aid schemes to bring them into line with the current GBER within a six-month adaptation period (i.e. by 31 December 2023) and invited them to notify those changes to the European Commission via the Office on the prescribed form.

52. The new Temporary Crisis and Transition Framework was adopted in March 2023. It took into account the contributions of Member States to the survey and the targeted consultation. Its revision extended the possibility for Member States to further support the measures needed for the transition to climate neutrality. These include in particular schemes for the rapid deployment of renewable energy and energy storage and schemes for the decarbonisation of industrial production processes, which Member States can now set up until 31 December 2025.

53. On 13 December 2023, the Commission adopted a Regulation on de minimis aid. With effect from 1 January 2024, Commission Regulation (EU) 2023/2831 of 13 December 2023 on the application of Articles 107 and 108 of the Treaty on the Functioning of the European Union to de minimis aid replaced Commission Regulation (EU) No 1407/2013 of 18 December 2013 on the application of Articles 107 and 108 of the Treaty on the Functioning of the European Union to de minimis aid (hereinafter also referred to as the general de minimis Regulation).

3.3.2. Description of Significant Case

54. In the context of the implementation of the Czech Republic's National Energy and Climate Plan and to meet the objectives of the Green Deal, the European Commission has approved two important programmes on renewable energy in 2023. Both programmes will last until 31 December 2025.

55. A €401 million programme to promote green distance heating based on renewable energy and waste heat was approved in the spring. The programme targets the installation of new renewable biomass and waste heat production units with a capacity of over 500 kW. It is primarily aimed at owners of heat production installations who hold a heat production licence and produce heat from biomass or waste. The support takes the form of a green bonus for heat sources for each gigajoule of heat delivered to the heat distribution system.

56. A €2.4 billion programme to support the construction and operation of new or converted sustainable biomethane plants was approved in the autumn. The measures

adopted are intended to help end dependence on Russian fossil fuels in line with the REPowerEU plan. The programme supports the production of sustainable biomethane injected into the gas grid or delivered to a filling station or dispensing unit for use in a number of areas. The programme targets biomethane producers who hold a gas production licence in the Czech Republic. The programme mainly aims at small and medium-sized enterprises or renewable energy communities for projects with an installed capacity of up to 6 MW. Under the programme, the aid will take the form of a green bonus for biomethane producers for each MWh of biomethane produced for a period of 20 years. The applicants for aid must meet the requirements set out in the European Union Renewable Energy Directive.

4. Resources of Competition Authority in 2023

4.1. Annual Budget of the Office

57. In 2023, the entire budget of the Office was CZK 273,353,093 (USD 11,530,480). Competition-related budget was CZK 73,805,000 (USD 3,113,215).

58. In 2022, the entire budget of the Office was CZK 245,063,537 (USD 10,337,180). Competition-related budget was CZK 66,167,155 (USD 2,791,038).

4.2. Number of Employees of the Office

59. Total number of employees of the Office as of 31 December 2023 was 249 + Chairman of the Office.

Table 3.

Employee Structure by Divisions of the Office:	2022	2023
Competition Division	64	67
Public Procurement Division	69	70
Legislation and Public Regulation Division	50	53
Second-Instance Decision-Making Department	27	27
Office of the Chairman	21	21
Security Director	10	10
the Internal Auditor	1	1

Table 4.

Total number of employees	249
Economists	59
Lawyers	142
Both economists and lawyers	9
Support staff	39
Human resources in the field of	
Competition law enforcement (agreements, abuse of dominance, merger control)	52
Cartel enforcement	25

5. Summaries of or References to News Reports and Studies on Competition Policy Issues

5.1. Information Bulletin 1/2023 – Significant Market Power After Transposition Amendment

60. On 1 January 2023, Act No. 359/2022 Coll. came into force and introduced extensive changes to Act on Significant Market Power, primarily due to the need to transpose 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. The purpose of this information bulletin is to provide an explanation of the basic principles underlying the new statutory regulation and to facilitate the understanding of the entities affected by the Czech legislation.

61. This Information Bulletin is available in English:

62. https://www.uohs.cz/download/Informacni_listy/2023/VTS-INFOLIST-Final-EN.pdf

5.2. Information Bulletin 2/2023 – Competitive Aspects of Labour Market Agreements

63. Agreements between undertakings concerning their employees have not received as much attention in the European Union, but in recent years the European Competition Authorities and the European Commission have increasingly focused on anti-competitive agreements between employers. These include agreements between competitors to fix the level of wages paid (wage-fixing) or agreements not to recruit, hire or solicit the other party's employees (no-poaching). In the course of its supervisory activities, the Office has not yet received any complaints of infringements of competition rules in the area of labour markets and therefore has no decision-making practice in this area, which is why the Office has decided to raise awareness of agreements in the area of labour markets by issuing this Information Bulletin. In it, it highlights the competition law aspects of the most common types of agreements between employers that can be considered anticompetitive, i.e. no-poaching and wage-fixing agreements. The fact sheet also provides a short excursion into the decision-making practice of foreign competition authorities, offers a number of model examples and is intended to serve as a practical tool for all parties to labour relations to assess the compliance of their practices with the Competition Act.

64. This Information Bulletin is available in Czech:

65. https://www.uohs.cz/download/Informacni_listy/2023/Informacni_list_2023_02_nopoaching.pdf