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Private Enforcement of Competition Law – Note by Czechia

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Czechia

1. Introduction

1. The Office for the Protection of Competition (hereinafter the "Office") undoubtedly plays an important role in ensuring the effective enforcement of competition law in the Czech Republic, in particular through the detection, investigation and sanctioning of anticompetitive conduct. Effective enforcement of competition law, however, does not depend solely on the activities of competition authorities and the imposition of public sanctions. Private enforcement is also an important component of the competition law enforcement framework, enabling persons harmed by anticompetitive conduct to seek compensation for the harm suffered. While public enforcement primarily aims at detecting and sanctioning infringements of competition rules, private enforcement makes it possible to address the consequences of anticompetitive conduct also in the legal relationship between the infringer and the injured party.

2. The importance of private enforcement, however, extends beyond compensating the harm caused. The possibility for injured parties to seek compensation may also complement public enforcement of competition law and contribute to the overall effectiveness of its enforcement. This complementary relationship between public and private enforcement of competition law has gradually been reflected in legislative developments at the European Union level.

3. The Czech Republic has, however, long been a jurisdiction in which private enforcement of competition law has been used only to a limited extent. Against this background, the contribution aims to provide an overview of the legal and practical framework for the private enforcement of competition law in the Czech Republic and to identify the main factors that may hinder its more widespread use in practice.

2. General overview of regulatory framework

4. In the Czech Republic, claims for damages are generally governed by the Civil Code (Act No. 89/2012 Coll). The primary framework for liability and compensation is set out in Article 2894 et seq. of the Civil Code. Specific rules governing claims for damages arising from infringements of competition law are laid down in Act No. 262/2017 Coll., on Competition Damages (hereinafter the "Damages Act"). The act also transposed Directive 2014/104/EU of the European Parliament and of the Council of 26 November 2014 on certain rules governing actions for damages under national law for infringements of the competition law provisions of the Member States and of the European Union (hereinafter the "Directive 2014/104/EU").

5. Directive 2014/104/EU responded to the need to establish more effective conditions for the private enforcement of competition law in the EU Member States while harmonising the basic rules governing claims for damages. It addresses, in particular, access to evidence, the effects of decisions by competition authorities, limitation periods, liability for damages, the passing-on of overcharges, and the quantification of harm. The objective of the Directive is not only to ensure compensation for persons harmed by anticompetitive conduct, but also to remove practical and procedural obstacles that may hinder effective private enforcement.

6. The Czech Damages Act builds on this framework and establishes specific rules governing compensation for damage caused by infringements of competition law. In addition to the general rules on liability for damage, it therefore contains specific provisions relevant to competition law disputes. For the purposes of this contribution, the provisions concerning the right to compensation, the effects of decisions of the Office, access to evidence, and the determination of the amount of damage are of particular relevance.

7. As regards limitation periods, the Damages Act provides for a five-year limitation period. This period begins to run from the moment when the person entitled to compensation knew or could reasonably have been expected to know of the occurrence of the damage, the identity of the person liable to compensate it, and the existence of the anticompetitive conduct, but in any event not before the conduct has ceased. The limitation period is suspended for the duration of an investigation or proceedings before a competition authority concerning the same conduct and for one year following their conclusion. The limitation period is also suspended for the duration of proceedings concerning the disclosure of evidence.

8. An important relief for injured parties is the rebuttable presumption that cartel conduct causes harm. Under Article 3 of the Damages Act, it is presumed that cartel conduct has caused damage.[1] This presumption, however, concerns only the existence of damage and not its specific amount. An injured party therefore does not have to prove that it suffered any damage as a result of the cartel but must be able to establish the amount of the damage or provide evidence enabling its determination. The cartel participant may, at the same time, rebut the presumption that damage occurred. This approach follows directly from Directive 2014/104/EU, which justifies the introduction of such a presumption, inter alia, by the information asymmetry between the injured party and the infringer.

9. Effective private enforcement also depends critically on access to evidence, as a substantial part of the information necessary to establish an infringement and, in particular, to quantify the resulting harm may be exclusively under the control of the defendant or third parties. The Damages Act therefore allows a court, upon application by the injured party, to order a person who controls relevant documents to disclose them. The application must be sufficiently specific, and the applicant must, to the extent possible in light of the information reasonably available to it, substantiate the plausibility of its claim. Disclosure of documents is also subject to requirements of necessity and proportionality.

10. The Damages Act also establishes limits on access to certain documents obtained in proceedings before a competition authority, in particular documents containing certain types of confidential information. These rules are intended, in particular, to protect the effectiveness of public enforcement of competition law and the functioning of certain competition policy instruments.

11. At the same time, the Damages Act provides for sanctions for failure to comply with a final and binding order to disclose evidence; in such a case, the court may impose a fine of up to CZK 10 million (approximately EUR 410,000) or 1% of the undertaking's net turnover.

[1] The rebuttable presumption of harm applies only to cartels within the meaning of the Damages Act, which are understood to cover so-called by-object horizontal agreements between competitors, i.e. hard-core cartels. It therefore does not apply to abuses of a dominant position, vertical agreements, or other anticompetitive conduct that does not fall within the statutory definition of a cartel. In such cases, the injured party must establish the existence of harm in accordance with the applicable rules.

12. In addition to the Damages Act, Article 38 of Act No. 500/2004 Coll., the Administrative Procedure Code, is also relevant in this respect. It allows third parties to inspect an administrative file where they demonstrate a legal interest in doing so. For example, a public contracting authority that has suffered harm may have a legal interest in accessing the file, both for the purpose of bringing an action for damages resulting from anticompetitive conduct and for the purpose of assessing whether such an action should be brought in the first place, including in the context of proceedings concerning access to evidence.

13. Another important element of the Damages Act is the effect of decisions by competition authorities in subsequent proceedings for damages. A court is bound by a final and binding decision of the Office, another court or the European Commission establishing that an infringement of competition law occurred and identifying the person responsible for it. In the case of a decision by a competition authority of another EU Member State, a rebuttable presumption applies that the infringement occurred and that the relevant undertaking committed it.

14. Finally, the quantification of the amount of damage constitutes a separate issue. Although the Damages Act is based on the principle of full compensation and allows a court to determine the amount of damage on the basis of an equitable assessment of the circumstances of the individual case where the exact amount cannot be established, as discussed further below, this approach does not eliminate all practical difficulties associated with quantifying the damage.

15. In conclusion, the adoption of the Damages Act has established a relatively comprehensive framework for the private enforcement of competition law in the Czech legal order. The existence of an appropriate legal framework, however, does not in itself ensure that private enforcement is effectively used in practice. The extent to which private enforcement of competition law is actually used and the obstacles that may prevent its wider application therefore warrant further consideration.

3. Collective redress

16. The possibility of collective redress was introduced into the Czech legal order in 2024 by Act No. 179/2024 Coll., on Collective Civil Proceedings. The Czech system is based on an opt-in model, under which consumers (injured parties) must actively join the proceedings to be included in the claimant group. This requirement may limit the practical effectiveness of collective actions, particularly where individual losses are relatively small, and potential claimants have little incentive to participate. It is therefore uncertain whether the current framework will prove sufficiently effective in practice.

17. One possible way to strengthen collective redress in competition law cases would be to consider a specific opt-out mechanism, under which affected parties would be included in the proceedings unless they chose to opt out. This is currently the case, for example, in the United Kingdom, where an opt-in regime generally applies, whereas an opt-out regime applies to competition law cases.[2] Such a model could facilitate the aggregation of numerous individual claims and improve access to compensation for harm caused by competition law infringements. However, its effectiveness would also depend on appropriate safeguards, particularly regarding third-party litigation funding, potential conflicts of interest and the allocation of litigation costs.

[2] Cf. e.g. Miranda, S. C., Steen, L. (2026). *To Opt in or Opt out - That Is the Question*. Lexology.

4. Claiming damages in cartel cases

18. Between 1998 and 2024, courts in the European Union, Norway, Switzerland and the United Kingdom awarded damages for harm caused by cartel conduct in 115 cases, with the amount of damages being specifically determined in the respective judgment.[3] The Czech Republic, however, is not yet among the jurisdictions in which courts have regularly awarded damages to injured parties as a result of cartel conduct. Indeed, it is not even among the jurisdictions where damages caused by cartel conduct have been awarded to an injured party at all.[4]

19. This cannot be explained by an absence of cartel cases. Since its establishment in 1991, the Office has uncovered numerous cartel agreements, including dozens of cases of bid rigging in public procurement. As noted in the literature, bid-rigging agreements established by final and binding decisions in the period 2014–2024 are likely to have caused substantial harm to Czech public contracting authorities, potentially amounting to the equivalent of several million euros in total.[5]

20. The Office actively informs injured public contracting authorities of final and binding decisions. It has also drawn their attention to the fact that, in light of the obligation of state organisational units and territorial self-governing units to manage public funds with due care, it may be inferred that they should seek compensation for damage caused by anticompetitive conduct.[6]

21. One practical obstacle to pursuing such claims may be the difficulty of quantifying the damage suffered. Public procurement procedures are often one-off competitive processes, and, given their heterogeneity, sufficiently comparable procurements may not be available to allow comparator methods, whether simple or econometric, to be applied reliably.[7] This was also confirmed by attempts in the literature to quantify the damage caused in specific affected Czech public procurement procedures.[8] Although the Damages Act allows a court to determine the amount of damage on the basis of an equitable assessment of the circumstances of the individual case where its exact amount cannot be established, in practice this generally presupposes that the claimant has made every

[3] Laborde, J.-F. (2025). *Cartel damages actions in Europe: How courts have assessed cartel overcharges*. Concurrences, p. 4.

[4] Laborde, J.-F. (2025). *Cartel damages actions in Europe: How courts have assessed cartel overcharges*. Concurrences, p. 5.

[5] Milich, R. (2026). *Ekonomické dopady bid riggingu na veřejné zadavatele (Economic impact of bid rigging on public procurers)*. Masaryk University, p. 95-99.

[6] The Office for the Protection of Competition (2021). *Předseda ÚOHS upozornil veřejné zadavatele, že mají vymáhat škody způsobené protisoutěžním jednáním*. https://uohs.gov.cz/cs/informacni-centrum/tiskove-zpravy/hospodarska-soutez/2944-predseda-uohs-upozornil-verejne-zadavatele-ze-maji-vymahat-skody-zpusobene-protisouteznim-jednanim.html

[7] Other methods are also available, such as the cost-based method involving the determination of a reasonable profit margin, which, however, requires knowledge of the profit margins in both affected and unaffected contracts.

[8] Milich, R. (2026). *Ekonomické dopady bid riggingu na veřejné zadavatele (Economic impact of bid rigging on public procurers)*. Masaryk University, p. 65-90.

reasonable effort to quantify the damage.[9] Moreover, it has been argued that, even where this provision is applied, a Czech court cannot determine the amount of damage entirely *ad hoc* and that some evidentiary basis or at least a rough estimate provided by the claimant is therefore still required.

22. One possible way of mitigating this practical obstacle could be to introduce a rebuttable presumption that damage occurred in a specified amount, as is reportedly the case, for example, in Hungary (10%), Latvia (10%) and Romania (20%).[10] The practical effects of these arrangements cannot, however, yet be assessed conclusively. Nevertheless, there are currently no plans to introduce a similar presumption into Czech law.

23. Other mechanisms could also be considered, such as contractual provisions specifying the amount of damages payable following a final decision by a competition authority establishing a bid-rigging agreement, an approach that has been adopted in certain Asian countries.[11]

24. Bid-rigging agreements are, of course, not the only forms of prohibited cartel conduct. It may nevertheless be particularly difficult for an individual consumer, for example, to pursue a claim for damages individually. First, the amount of damage suffered by an individual consumer will generally be relatively small (e.g. in the case of a cartel concerning the price of milk or consumer electronics), meaning that the costs of legal representation may be disproportionate to the amount of the claim. The introduction of collective redress in the Czech legal system in 2024 may provide consumers with a more effective means of obtaining compensation for harm resulting from cartel conduct whose existence and unlawfulness have been established by a final and binding decision, in particular by the Office or the European Commission. However, as of the date of this contribution, no judgment awarding damages for cartel conduct has yet been issued in the Czech Republic, including in bid-rigging cases, in which public contracting authorities are typically among the injured parties.

5. Claiming damages in cases of abuse of dominant position

25. Unlike cartel cases, the Czech Republic has already seen the first successful cases in which damages have been awarded in connection with the abuse of a dominant position. This is also significant given that the Damages Act provides for a rebuttable presumption that damage has occurred only in cases involving cartel conduct.

5.1. STUDENT AGENCY v. ASIANA

26. The first example of private enforcement of competition law in the Czech Republic is the dispute between ASIANA and STUDENT AGENCY, which followed a decision by the Office finding an abuse of a dominant position.

[9] Judgment of the Court of Justice of 16 February 2023 in Case C-312/21, *Tráficos Manuel Ferrer SL*, EU:C:2023:99; in the Czech context, see also the judgment of the Regional Court in Brno of 20 December 2018, Ref. No. (17) 25 Cm 141/2011.

[10] Cf. e.g. Kupčík, J. et al. (2024), *Moderní soutěžní právo a ekonomie (Contemporary competition law and economics)*. Praha: C. H. Beck, p. 669.

[11] Milich, R. (2026). *Ekonomické dopady bid riggingu na veřejné zadavatele (Economic impact of bid rigging on public procurers)*. Masaryk University, p. 99-101.

27. In 2011, the decision of the Office became final and binding,[12] imposing a fine of CZK 5.2 million (approximately EUR 211,000) on STUDENT AGENCY for abusing its dominant position on the market for public scheduled bus passenger transport services on the Prague–Brno route. According to the Office's findings, between 1 December 2007 and 1 March 2008, STUDENT AGENCY applied predatory pricing (setting prices below its average total cost per passenger transported) with the aim of eliminating its competitor ASIANA from the market. Following ASIANA's exit from the market, STUDENT AGENCY increased its prices again.

28. In assessing the case, the Office also relied on economic and econometric methods and took into account email correspondence between STUDENT AGENCY's management as evidence of its intention to eliminate the competitor from the market. The Office's findings were subsequently confirmed by the administrative courts.

29. The Office's decision was followed by private enforcement proceedings initiated by ASIANA. In 2011, ASIANA and ASIANA Transport brought an action against STUDENT AGENCY seeking damages of CZK 11 million (approximately EUR 450,000), together with default interest. They claimed that the harm had resulted from STUDENT AGENCY's anticompetitive conduct, as a consequence of which ASIANA had been forced to exit the relevant market. The damages claimed included, in particular, sunk costs incurred in entering the market and loss of profit, both from operating the bus service and from the period following the termination of its operation.

30. The damages proceedings subsequently lasted for a number of years.[13] In January 2024, the High Court in Olomouc upheld the judgment of the Regional Court in Brno,[14] which had ordered STUDENT AGENCY to pay ASIANA the amount claimed, together with default interest at a rate of 7.75% per annum from 30 November 2011 until payment.

31. The *ASIANA v. STUDENT AGENCY* case illustrates the practical interplay between public and private enforcement of competition law, whereby the Office's findings provided a basis for the successful pursuit by an injured competitor of a claim for damages before the civil courts. At the same time, the fact that the subsequent court proceedings lasted for more than ten years demonstrates the time-consuming and procedurally demanding nature of private enforcement and represents one of the practical obstacles to its wider use in the Czech Republic.

[12] Decision of the Office for the Protection of Competition of 3 November 2010, Ref. No. ÚOHS-S162/2008/DP-4490/2010/820/DBr; decision of the Chairman of the Office for the Protection of Competition of 18 February 2011, Ref. No. ÚOHS-R169/2010/HS-2676/2011/310-PGa.

[13] Judgment of the Regional Court in Brno of 20 December 2018, Ref. No. (17) 25 Cm 141/2011-995, was quashed by the resolution of the High Court in Olomouc of 23 May 2019, Ref. No. 4 Cmo 44/2019-1125 (on procedural grounds). The judgment of the Regional Court in Brno of 19 May 2020, Ref. No. (17) 25 Cm 141/2011-1193, and the judgment of the High Court in Olomouc of 4 February 2021, Ref. No. 4 Cmo 170/2020-1338, were subsequently quashed by the judgment of the Supreme Court of 29 June 2022, Ref. No. 23 Cdo 1995/2021-1411.

[14] Judgment of the Regional Court in Brno of 13 December 2022, Ref. No. (17) 25 Cm 141/2011-1466; judgment of the High Court in Olomouc of 31 January 2024, Ref. No. 4 Cmo 31/2023-1531.

5.2. Heureka Group v. Google

32. Another example of private enforcement of competition law in the Czech Republic is the case brought by Heureka Group against Google. By decision of 27 June 2017,[15] the European Commission found that, since February 2013, Google had abused its dominant position on thirteen national markets for general search, including the Czech Republic, by favouring its own comparison shopping service in general search results to the detriment of competing comparison shopping services. For this conduct, the Commission imposed a fine of EUR 2.424 billion on Google.

33. In June 2020, Heureka Group brought an action for damages before the Municipal Court in Prague, claiming that Google's conduct had reduced traffic to its website and consequently resulted in loss of profit. Heureka Group sought CZK 395 million (approximately EUR 16 million). Google argued, among other things, that the claim was time-barred.

34. The issue of limitation was subsequently considered by the Court of Justice of the European Union. In its judgment,[16] the Court held that the Czech limitation rules applicable at the time were incompatible with Article 102 TFEU and the principle of effectiveness, as they could result in the limitation period starting to run before the infringement had ceased and before the injured party knew that the conduct in question constituted an infringement of competition law. The Court further held that EU law requires the limitation period to be suspended or interrupted for the duration of an investigation by the European Commission. According to the Court, the injured party will generally acquire knowledge of the relevant information only upon publication of the summary of the Commission's decision in the Official Journal of the European Union.

35. The judgment is also significant in the context of the delayed transposition of Directive 2014/104/EU into Czech law. The Court held that, even before Article 10 of the Directive became fully applicable, the Czech limitation rules had to comply with the principle of effectiveness and could not render the exercise of a claim for damages practically impossible or excessively difficult. Article 10 of the Directive is a substantive provision, meaning that its temporal application had to be assessed separately.

36. In the subsequent proceedings, on 25 August 2026, the Municipal Court in Prague ordered Google to pay Heureka Group CZK 250 million (approximately EUR 10 million) in compensation for loss of profit, together with statutory default interest at a rate of 10% per annum from 25 June 2020 until payment. The remaining part of the claim, amounting to CZK 145 million (approximately EUR 6 million), was dismissed. At the time of writing this contribution, the judgment had not yet become final.[17]

5.3. RegioJet v. České dráhy

37. An important case concerning the rules on disclosure of evidence in damages proceedings is the dispute between RegioJet and České dráhy, which ultimately resulted in a judgment of the Court of Justice of the European Union.

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[15] Decision of the European Commission of 27 June 2017 in Case AT.39740, *Google Search (Shopping)*.

[16] Judgment of the Court of Justice of 18 April 2024, *Heureka Group v. Google LLC*, Case C-605/21, EU:C:2024:324.

[17] ČTK (2026). *Soud přiznal Heurece 250 milionů korun od Googlu za vytlačování z trhu*. Seznam Zprávy; the text of the judgment had not been published at the time this contribution was prepared.

38. In 2015, RegioJet brought an action for damages allegedly caused by the abuse of a dominant position by České dráhy in the provision of passenger rail transport services on the Prague–Ostrava route. The case was complicated by parallel proceedings before the Czech and European competition authorities. In 2012, the Office initiated proceedings on suspicion of predatory pricing. After the European Commission launched its own investigation into the same conduct in 2016, the Office suspended its proceedings. RegioJet subsequently sought disclosure of documents relevant to its damages claim. The Czech Supreme Court therefore referred questions to the Court of Justice for a preliminary ruling as to whether a national court may order the disclosure of evidence while the damages proceedings are suspended pending the conclusion of the proceedings before the Commission.

39. The Court of Justice[18] confirmed that a national court may, subject to the requirements of necessity and proportionality, order the disclosure of evidence in such circumstances. At the same time, it must ensure that its decision does not anticipate the decision to be adopted by the Commission in the pending proceedings. The Court of Justice also found that the Czech legal framework was not fully compatible with Directive 2014/104/EU insofar as it excluded the disclosure of certain categories of documents solely on the ground that they had been prepared or submitted for the purposes of proceedings before a competition authority.

40. The case did not, however, ultimately result in a final award of damages. After the administrative proceedings before the Office[19] and the Commission[20] were discontinued, RegioJet and České dráhy announced an agreement settling all disputes between them, which also covered the damages claim amounting to CZK 717 million (approximately EUR 29 million), plus interest and other ancillary claims. The terms of the settlement were not disclosed.[21]

6. Impact of private enforcement on leniency programmes

41. At the EU level, particularly in relation to the European Commission's enforcement activities, the adoption of Directive 2014/104/EU has been linked in the literature to a significant decline in leniency applications and, consequently, in the number of cartel investigations. This decline has been attributed in particular to the fact that undertakings obtaining immunity from fines by being the first to report a cartel remain exposed to damages claims brought by injured parties, as immunity granted under a leniency programme does not exempt them from civil liability for the harm caused by the cartel.[22]

42. The Office notes, however, that no comparable negative impact on leniency applications and the number of cartel proceedings has been observed in the Czech Republic following the transposition of the Directive 2014/104/EU.

[18] Judgment of the Court of Justice of 12 January 2023, *RegioJet v. České dráhy*, Case C-57/21, EU:C:2023:6.

[19] Decision of the Office for the Protection of Competition of 10 February 2023, Ref. No. ÚOHS-06050/2023/872.

[20] Decision of the European Commission of 29 September 2022 in Case AT.40156, *Czech Rail*.

[21] České dráhy (2024). *České dráhy a RegioJet ukončují vzájemné spory v kauze Falcon.*

[22] Marvao, C., Spagnolo, G. (2024). *Leniency inflation, the Damages Directive, and the decrease in cartel cases*. VoxEU.

7. Final remarks

43. The Czech Republic has established a relatively comprehensive legal framework for private enforcement of competition law, particularly following the adoption of the Damages Act. The framework provides injured parties with important tools, including access to evidence, the binding effect of competition authorities' decisions and a presumption of harm in cartel cases.

44. Nevertheless, its practical application remains limited. The cases discussed above demonstrate that significant practical obstacles persist, particularly the quantification of damage and the length and complexity of judicial proceedings.

45. Despite these challenges, the Office considers private enforcement an important pillar of competition law enforcement. Public fines and damages serve different but complementary purposes: while fines aim primarily to deter competition law infringements, damages seek to compensate those harmed by such conduct. Effective private enforcement is therefore essential to ensure that infringers do not escape their obligation to compensate the victims of their conduct and that the resulting harm is not ultimately borne by injured parties or public budgets. The Office will continue to raise awareness among injured parties, particularly public contracting authorities, of potential claims for damages resulting from bid rigging and seek ways to provide further support to those pursuing such claims.

46. The future development of private enforcement will depend not only on the existing legal framework, but also on its practical application by courts and the development of case law and methodologies for quantifying competition harm. In cartel cases, consideration could also be given to mechanisms that would further reduce the difficulties faced by injured parties when proving the amount of damage.