

Czech Competition Law and Competition Policy

**Czech Act on protection of
economic competition**

Sources of Czech Competition Law

1. Czech Law

- Act No. 273/1996 Coll., on the Scope of **Competence of the Office for the Protection of Competition**
- Act No. 143/2001 Coll., on **the Protection of Competition**
- Act No. 395/2009 of 9 September 2009 on Significant Market Power in the Sale of Agricultural and Food Products and Abuse thereof
- Soft Law issued by the Czech Competition Office
 - Leniency Programme, Guidelines of the Office for the Protection of Competition on the method of setting fines, Direct Settlement in Cartel Cases, Notice of the Office for the Protection of Competition on the pre-notification contacts with merging parties, Notice of the Office for the Protection of Competition on Calculation of Turnover for the Purpose of the Control of Concentrations between Undertakings, ...

2. European Law

- Primary Law: TFEU
- Secondary Law: 1/2003 Regulation, Merger Regulation, ...
- Soft Law

Development of Czech Competition Law

- The Communist era (1948-1989)
 - The advantages of **planned national economy** were emphasized
 - Instead of market and competition an institute of cooperation among socialistic organization as an adequate stimulant was established
- **1991** – the Act on Competition
- **2001** – current **the Act No 143/2001 Coll., on the Protection of Competition** – has been amended several times
- **1. 5. 2004** – Czech Republic became a member of the European Union
 - European competition rules became applicable in the Czech Republic → by the Czech Competition Office and Czech Courts

Czech Office for the Protection of Competition

- The Czech Office has its seat in Brno
- Independent state authority
- It actively cooperates with other European Competition authorities and the European Commission (DG Competition)
- It is a member of International competition network within OECD



Office for the protection of Competition Agenda (1)

1. Protection of competition

- Agreements between undertakings
- Abuse of dominant position
- Control of concentrations of undertakings

Office for the protection of Competition

Agenda (2)

2. Supervision of procedures of awarding public procurement and concessions

- The Office monitors whether the public funds are used economically and in accordance with the competition rules.
- The purpose is to achieve a free and open competition between the suppliers, along with a selection of the best proposal in a **transparent manner devoid of any discrimination.**



- Cartel agreements between the bidders → **bid rigging**
 - a separate category related to public procurement (as well as competition in general)

Office for the protection of Competition Agenda (3)

3. Monitoring of State Aid in the Czech Republic

- The Office ensures the compliance with the European legislation.
- The purpose is **to minimize the unjustifiable advantages** that some participants in the market or industry may have in competition at the expense of others.



- **Art. 107 – 109 of the TFEU**

„any aid granted by a Member State or through State resources in any form whatsoever which distorts or threatens to distort competition by favouring certain undertakings or the production of certain goods shall, in so far as it affects trade between Member States, be incompatible with the internal market“

Office for the protection of Competition Agenda (4)

4. Supervision of exercising of significant market power in the Sale of Agricultural and Food Products

- The new agenda of the Czech Competition Office
- **Significant market power** → the supplier becomes dependent on the buyer with regard to a possibility to supply own goods to consumers; the buyer may impose unilaterally beneficial trade conditions on the supplier.
- → The protection of suppliers against the practices of the distribution chains (that usually do not have a dominant position → abuse of dominant position may not be applied)



- The adoption of the Act on Significant Market Power was a controversial issue in the Czech republic

Czech Act on the protection of competition

- **Art. 1 and 2** – Introduction and definitions
- **Art. 3** - Agreements between undertakings
- **Art. 10, 11** - Abuse of dominant position of undertakings
- **Art. 12 and subsequent** - Concentration of undertakings
- **Art. 20** – The Office
- **Art. 21** – Procedure
- **Art. 22** – Administrative offences

- The Act also regulates the application of **Art. 101 and 102 of the TFEU** by the authorities of the Czech Republic and certain issues of cooperation of these authorities with **the Commission of the European Communities and with the authorities of other Member States of the European Community** in procedure pursuant 1/2003 Regulation and Merger Regulation.

1. Agreements between undertakings (Cartels) under the Czech Competition Act

- *All agreements between undertakings, decisions by associations of undertakings and concerted practices (hereinafter referred to as “agreements”) which have as their object or effect the distortion of competition shall be prohibited and null and void, unless this Act or a special act provides otherwise, or unless the Office for the Protection of Competition grants an exemption from this prohibition by its implementing regulation. Agreements with insignificant impact on competition shall not be prohibited.*
- The Czech Act prohibits the same/similar kinds of agreements as the European legislation
- Application of Block exemptions

Recent well-known cartel case decided by the Czech Competition Office

- **Gas insulated switchgear cartel**



Gas insulated switchgear cartel (1)

- **16 companies** - manufacturers of gas insulated switchgear
 - ALSTOM (Société Anonyme), AREVA T&D SA, AREVA T&D AG, AREVA T&D Holding SA, Fuji Electric Holdings Co., Ltd., Fuji Electric Systems Co., Ltd., Hitachi Ltd., Hitachi Europe Limited, Japan AE Power Systems Corporation, Mitsubishi Electric Corporation, Toshiba Corporation, Siemens AG, Siemens Aktiengesellschaft Österreich, VA Tech Transmission & Distribution GmbH & Co KEG, Siemens Transmission and Distribution Limited, Nuova Magrini Galileo S.p.A.
 - were sanctioned by the Czech Competition Office for the infringement of Art. 3 (1) of the Czech Act on the Protection of Competition
- the administrative proceeding was commenced on the basis of the leniency notice filed by the Company ABB (→ no fine on ABB was imposed)
- Total amount of fine about **1 billion CZK** (approximately **40 million Euro**) → the highest fine in the history of the Czech Competition Office

Gas insulated switchgear cartel (2)

- Between 1991 and 2004 (March), the companies:
 - **rigged bids for procurement contracts,**
 - **fixed prices,**
 - **allocated projects to each other,**
 - **shared markets,**
 - **exchanged commercially important and confidential information**
- The competition in the relevant market in the Czech republic was excluded
- Czech Competition Office dealt with the infringement of Czech Competition law → not the European Competition rules, as the infringing behavior took place before the Czech Republic became a member of the EU
- The European Commission fined (the total amount of fine about 750 million Euro) the companies for the same anticompetitive behavior under Art. 81 of EC Treaty (now Art. 101 of the TFEU)

2. Abuse of dominant position

- Abuse of dominant position to the detriment of other undertakings or consumers shall be prohibited.
 - Recent well-known cases:

Student agency



RWE Transgas



Student Agency case

- Student Agency abused its dominant position in the market with **provision of public passenger bus transportation from Prague to Brno** and back with **the intention to exclude another competitor** – ASIANA – from the relevant market.
- On the basis of economic analysis the Office concluded that railway transportation between Prague and Brno does not fall into the scope of the same relevant market.
- Within the period between December 2007 and March 2008 – Student Agency applied **predatory prices**
 - The price for one way credit tickets to CZK 50 (approximately EUR 2), later to CZK 95 (approximately EUR 4) for all respective competing lines with the aim to harm ASIANA
- Following the withdrawal of its competitor, Student Agency increased the fare above the price charged prior to the initiation of competition.
- Student Agency distorted competition and caused harm to company ASIANA and consumers in consequence.

RWE Transgas case

- RWE Transgas was punished for abuse of dominant position on the market for natural gas.
 - RWE Transgas was offering a portfolio of contracts to local distribution system operators („LDSOs“) → terms and conditions offered to consolidated LDSOs (those belonging to the RWE group) being more favourable than those offered to non – consolidated LDSOs (those not belonging to the RWE group)
 - RWE Transgas has restricted possibility to supply gas outside the territory which is covered by separate LDSOs by setting a system of contracts regulating conditions of gas supply only to balance zone of separate LDSOs.
 - It constitutes significant barrier for other gas suppliers to development of their businesses on gradually opening market.
- The Office imposed the highest fine in its history upon one undertaking within one administrative proceeding (**370 million Czech crowns** – approximately **13,2 million EUR**)

3. Concentrations of undertakings (1)

- **A concentration of undertakings** = a merger of one or more undertakings previously independently operating in the market.
- The similar rules as under the European Merger Regulation
- The Office shall primarily assess:
 - the necessity of preservation and further development of effective competition,
 - the structure of all markets affected by the concentration,
 - the shares of the parties to the concentration in such markets, their economic and financial power,
 - legal and other barriers to enter relevant markets by other undertakings,
 - the alternatives available to suppliers and customers of the parties to the concentration,
 - the development of supply and demand in the affected markets,
 - the needs and interests of consumers and research and development provided that it is to the consumers' advantage and does not form an obstacle to effective competition
- If the combined share of all undertakings concerned in the relevant market does **not exceed 25 %** → it is presumed that their concentration **does not result in a substantial distortion of competition**

3. Concentrations of undertakings (2)

- **The turnover requirements:**
 - the total net turnover of all undertakings concerned in the last accounting period in **the market of the Czech Republic** exceeds **CZK 1.5 billion** (approximately EUR 60 million) and **each of at least two of the undertakings** concerned achieved in the market of the Czech Republic in the last accounting period a net turnover exceeding **CZK 250 million** (approximately EUR 10 million), or
 - the net turnover achieved in the last accounting period in the market of the Czech Republic by the undertaking, **over whom the control is acquired, is higher than CZK 1.5 billion** and at the same time the worldwide net turnover achieved in the last accounting period by another undertaking concerned exceeds **CZK 1.5 billion**
- Aggregate net turnover shall include net turnovers achieved by:
 - a) all the undertakings concerned,
 - b) persons, who will control undertakings concerned after implementation of the given concentration and persons, who are controlled by the undertakings concerned,
 - c) persons controlled by the person, who will control the undertakings concerned after implementation of the given concentration,
 - d) persons controlled jointly by two or more persons referred to in (a) to (c) above.

Concentration of undertakings

An example of decision

- The Czech Competition Office approved merger (October 2011) → the Company Czech Aeroholding may acquire exclusive control over companies Letiště Praha (Czech Airport), Czech Aero lines and their subsidiaries
- There was a serious doubt that the merger will significantly impede effective competition in the relevant market (= the market with regular and irregular air passenger transport, with provision of airport infrastructure services, ground handling services, maintenance and repair of aviation equipment in the Czech Republic) → the companies concerned adopted commitments → the Czech Competition Office made these commitments binding as the requirement for the approval of the merger



Procedure before the Czech Competition Office

- The current trends in the procedure before the Czech Competition Office:
 - Settlement
 - Leniency Notice

Settlement

- Reduction or even non-imposition of penalty to undertakings that stop the anticompetitive behavior
- **Kofola Case**
 - The first case before the Czech Competition Office that was solved by using a procedure fulfilling the main features of settlement (as defined by the OECD).
 - Kofola (soft drinks manufacturer) participated in vertical agreements on resale price maintenance with its customers.
 - The parties to the proceeding filed with the Office the formal Request for initiation of settlement procedure
 - → the parties repeated their intention to fully cooperate and informed that they had initiated an internal antitrust audit
 - The Czech Competition Office provided for up to 50 per cent discount of fine as an award for cooperation during administrative proceeding

Leniency Notice

- An effective instrument for revealing cartels
- The undertaking (a member of a prohibited agreement) **as the first** provides the Office with **such information and proofs**, which enables the Office **to conduct an investigation in place**, or if the undertaking as the first provides the Office with such information and proofs, which **enables the Office to prove the existence of a cartel agreement**
 - the Office should **not impose a fine** on them which it would otherwise impose
 - the Office may **decrease a fine**, if an undertaking does not provide the Office with information and proof as the first, but if this fact constitutes **a significant added value** in connection to information and proofs the Office already has at its disposal.