



# Czech Republic ❖

– Daniel Stankov<sup>†</sup>

Located in Central Europe<sup>1</sup>, Southeast of Germany, the Czech Republic is also bordered by Austria, Poland, and Slovakia. The country's capital is Prague, and the Czech Republic is a parliamentary democracy.

Following the First World War, the closely related Czechs and Slovaks of the former Austro-Hungarian Empire, united to form Czechoslovakia. After the Second World War, the country fell into the ambit of Soviet influence.

With the collapse of the Soviet Union in 1989, the country regained its independence through a 'Velvet Revolution'. Five years later, by means of a 'Velvet Divorce', the country re-emerged as its two national components, the Czech Republic and Slovakia. The Czech Republic joined NATO in 1999 and the EU in 2004.

## Economy

The Czech Republic is a small open economy that has since 1990s undergone a major economic transformation from a centrally planned economic model to a functioning market economy based on principles of free and undistorted competition. The private sector accounted for a mere four percent of GDP at the start of transition. The state's withdrawal from the real economy has been rapid, boosting the private sector's share of GDP to more than 80 percent in 2002<sup>2</sup>.

Rapid economic growth in 1995-96 lifted GDP per head (at purchasing power parity exchange rates) to just over 50 percent of the EU average by 1996. Since then it has increased by a further 30 percent, to an estimated US\$27,100 in 2011, despite the intervening recession.

The main part of the Czech GDP consists of services (about 60 percent in 2011). Industrial production accounts for 38 percent of GDP (at current prices in 2011), compared with almost 48 percent in 1990. The relative contribution of agriculture, which was already small in 1990, at eight percent of GDP, has fallen as well, to 2 percent in 2011.

PROFILE	
Population:	10.5 million*
GDP (Current US\$):	215.2 billion*
Per Capita Income: (Current US\$)	18,520 (Atlas method)* 27,100 (at PPP)*
Surface Area:	78.87 thousand sq. km
Life Expectancy:	75.3 years
Literacy (%):	99 (of ages 15 and above)
HDI Rank:	27
<i>Sources:</i> - World Development Indicators Database, World Bank, 2011 - Human Development Report Statistics, UNDP, 2011 (* For the year 2011)	

Competition law and its enforcement have constituted, since the beginning of the economic transformation, one of the essential tools contributing to its success. And it keeps playing a vital role in safeguarding benefits of the market economy for consumers and other market participants not only in the Czech Republic itself, but also within the broader common market of the EU, to which the Czech Republic acceded in May 2004.

## Competition Evolution and Environment

The first mention of the cartel law in the Czech territories is found in the Austrian Coalition Act No. 43 of 1870, under which agreements between traders, made for the purpose of increasing prices to the disadvantage of customers, had no legal force.

After the establishment of Czechoslovakia in 1918, the first consistent law aimed at preventing the reduction of competition was enacted in 1933. It was the Act No. 141/1933 Coll., on Cartels and Private Monopolies, which was, in accordance with the then widely accepted European concept, based on the permissibility of cartel agreements, and only rejected their abuse. Although the Act was not

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explicitly revoked in the post-war period, it was deprived of any real force, in the context of a centrally planned economy established in Czechoslovakia, after the Communist coup in February 1948.

The concepts of market and competition were contemplated again during the short period of political as well as economic reforms in the 1960s, which also led to certain legislative measures aimed at improving the functioning of the national economy planning (Government decree No. 100/1966 Coll. and as amended by No. 169/1969 Coll.). The main aim of these measures was to reduce the influence of the arbitrary decisions of central planning bodies, by prohibiting them to limit competitive behaviour of organisations due to administrative measures or agreements.

Furthermore, a provision was introduced into the Economic Code prohibiting organisations to abuse their economic position *vis-à-vis* other organisations, but it was actually used only in one case. The era of 'normalisation' of the 1970s again returned to the concept of rigid central planning, with no space for competition and market forces.

It was only after the 'velvet revolution', overthrowing the Communist regime in 1989 that Czechoslovakia returned to the principles of the market economy, based on competition amongst market players. More than forty years of central planning resulted in a highly monopolised Czechoslovak economy, even as compared with other communist countries of Central Europe, such as Hungary or Poland.

The main objective of the economic transformation in the 1990s was, therefore, to restructure the Czechoslovak economy, in order to create conditions for effective functioning of the market forces. An integral part of such a transformation was already in its initial phase, taking into account the creation of modern competition rules, ensuring that inefficient state monopolies are not replaced by equally inefficient private monopolies and cartels.

### **Competition Legislation and Institutions**

In March 1991, the Act No. 63/1991 Coll., on the Protection of Competition came into force. Its purpose was to protect competition in the markets for goods and services, against restriction, distortion or elimination. In the course of preparation for this first modern competition legislation, it was necessary to find the basic principles, on which the Act should be constructed.

As already mentioned, the previous competition legislation did not correspond with the approach towards the protection of competition at the beginning of 1990s. Finally, the new Act was modeled on the well-established competition law of the European Union, based on the three main areas of application:

- agreements distorting competition;
- abuse of dominant position; and
- control of concentrations.

This approach was also chosen with respect to the anticipated establishment of more intensive relations with the European Union. Thus, the competition rules were, from the very beginning, largely compatible with the EU Law, which also enabled the use of the case law of the European Commission and the European Court of Justice, as guidance for the practical application of the new rules.

Apart from the usual legislative instruments modeled on the EU competition rules, the Act on the Protection of Competition, from 1991, also contained certain specific provisions reflecting the process of economic transformation and privatisation. These provisions concerned the privatisation of state property, by state and municipal bodies, and obliged them to ensure that structural conditions for the creation of competition are determined, and that state monopolies are not simply transformed into private monopolies.

Along with the adoption of the competition rules, the Office for the Protection of Competition (hereinafter referred to as "the Office") was established as a central body for the state administration responsible for the support and protection of competition, independent in its decision-making and equipped with enforcement and investigation powers pursuant to the Act on the Protection of Competition. The Office was not situated in Prague, the capital of Czechoslovakia, but in Brno, which underlined the independence of the new competition authority's decision-making.

In 1992, the Office was transformed into the Ministry of Economic Competition. This change of status reflected the undergoing economic transformation and, in particular, the role played by the competition authority in the privatisation process. Having a Ministerial status and a seat in the Government, thus, allowed the Ministry of Economic Competition to influence, more effectively, the privatisation process, and promote the principles of competition in the restructuring measures taken by the Government.

The last institutional change in the competition policy area came in November 1996, when the current Office began its activities as an independent body for central state administration, whilst preserving the competencies of the Ministry. This transformation of the Ministry, back into the Office, was one part of the change that took place in the structure of central bodies of state administration, and was decided after the Parliamentary elections in June 1996.

The establishment of the Office reflected the fact that major privatisation and restructuring steps had already been taken,

and it was considered that the effective enforcement of the competition rules was to be better secured by an independent administrative body. The independence of the Office was further strengthened by a special legislation regulating its status the Act No. 273/1996 Coll., on the Scope of Competence of the Office for the Protection of Competition, amended by Act No. 187/1999 Coll., Act No. 359/2004 Coll., Act No. 626/2004 Coll., Act No. 264/2006 Coll. This act stipulates, inter alia, that the Chairman of the Office is appointed by the President of the Czech Republic, on the proposal by the Government, for a period of six years. The act empowers the Office to create conditions for maintenance and protection of competition, to supervise public procurement award procedures and to perform other competences defined by special acts.

The Act No. 63/1991, Coll., on the Protection of Competition, subject to minor amendments in 1992 and 1993 (reflecting also the split of Czechoslovakia into two independent countries: the Czech Republic and the Slovak Republic), proved to be an effective instrument for protection of competition throughout the 1990s. Nevertheless, planned accession to the European Union required full compliance with the EU competition rules.

Therefore, preparations for a new Competition Act began at the end of 1990s, aiming in particular at further harmonisation with the European legislation, and also reflecting the gained enforcement experience and up-to-date trends in developed competition regimes. These legislative activities led to the adoption of the Act No. 143/2001 Coll., on the Protection of Competition, which came into force on July 01, 2001. The main changes to the competition rules introduced by this act can be summarised as follows:

- the Act explicitly stipulates that it is fully applicable to undertakings, which provide the services of general economic interest, only with the exception of cases when the application of the Act would obstruct the performance of the special tasks assigned to these undertakings;
- the Act explicitly distinguishes horizontal and vertical agreements, and defines conditions for *de minimis* exemption for agreements of minor importance;
- the Act sets conditions for an exemption from the prohibition of agreements, exclusively on competition principles, reflecting Article 81(3) of the EC Treaty;
- the Act defines the dominant position on the basis of the concept of market power, taking into account other criteria than just the market share of the undertaking;
- the Act defines the concept of concentration of undertakings, and introduces the turnover thresholds as the relevant criterion, where concentration is subject to approval by the Office; and
- the Act introduces a two-phase proceeding for the approval of concentrations with strict deadlines (one month in Phase I + four months in Phase II), ensuring swift review of mergers.

### Box 1: Action Against Anticompetitive Practices of CRT Producers

Cartel agreements between competitors, concerning prices, represent one of the most serious infringements of competition rules. One such cartel was discovered in the sector of CRT producers, in 2010 in the Czech Republic.

A fine in the total amount of CZK 51.787 million was imposed on six undertakings for a cartel agreement in the CRT market. Between 1998 and 2004, the companies Samsung SDI Co., Ltd., Chunghwa Picture Tubes, Ltd., Koninklijke Philips Electronics N.V., Technicolor S.A., Panasonic Corporation, MT Picture Display Co., Ltd., Toshiba Corporation and LG Electronics, Inc. concluded and performed a cartel agreement in the market for colour picture tubes (CPT) for televisions.

The fact that some of the companies were involved in the agreement for a shorter period of time was considered by the Office in its decision. The CRT producers (CDT and CPT) held bilateral and multilateral meetings for several years; the negotiations and contacts started before 1998 and continued approximately until 2006. At the meetings, discussions primarily centered on prices and the exchange of sensitive business information. Price negotiations included determining target and minimum prices, the price range and pricing rules or adherence to agreed fixed prices.

The participants subsequently checked that the agreed prices were maintained. The Office began to tackle the cartel based on leniency application, as a result of which the fine imposed on Samsung was remitted and the fine for Chunghwa was decreased by 50 percent. The decision was legally upheld.

*Source: Annual Report 2010, Office for the Protection of Competition*

In connection with the new Act on the Protection of Competition, the Office also elaborated and issued eight decrees granting general (block) exemptions from the prohibition of agreements distorting competition, which came into force also on July 1, 2001.

On the same day, a so-called leniency program was adopted in the Czech Republic providing for a lenient treatment of cartel participants who voluntarily provide convincing proof about the existence of an illegal cartel agreement, of which the Office was not aware until the date of submission of the application. By adopting this modern competition law instrument, the Office demonstrated its intention to fight hard-core cartels, representing the most

serious anticompetitive practices significantly harming competitors and economy as a whole.

Adoption of this Competition Act not only introduced a modern and more efficient legal framework for the enforcement of competition rules, but also led to strengthened legal certainty of undertakings, which would be subject to competition rules comparable to the European Union law standards. Therefore, Czech market functioning would not be subject to several different competition regimes, an important benefit from the view of accession of the Czech Republic to the EU.

Following major changes to the EU competition rules in 2004 and in connection with accession of the Czech Republic to the EU in May 2004, the Act No. 143/2001 Coll., on the Protection of Competition was amended as of June 02, 2004. The main purpose of the changes, brought about by this amendment (for their summary see box 2), was to ensure the effective implementation of the modernised EU competition rules in the Czech Republic, and to empower the Office to apply Articles 101 and 102 of the TFEU (ex 81 and 82 of the EC Treaty) and cooperate with the European Commission, and other national competition authorities, within the framework of the newly established European Competition Network.

The year 2009 was significantly important for the Czech competition law as the Act on the Protection of Competition saw one of its major revisions. The Amendment consists of particular changes in its competences, in the field of cartel agreements, concentrations control, the formal proceedings and sanctions. Important changes have been approved mainly in the control of mergers.

The year 2009 was important also for the competition in the agricultural and food sector as the Czech Parliament approved the Act No. 395/2009 Coll. related to the significant market power. For two years now, the Office has been monitoring observance of the Act on Significant Market Power in the Sale of Agricultural and Food Products and Abuse thereof.

In December 2012, last Amendment of the Act on the Protection of Competition came into force. Its key result represent the incorporation of leniency and settlement directly into the Act. The leniency programme is a fundamental tool for detecting cartels and it has been effectively applied by the Office since 2001. The enactment of the leniency programme brought greater legal certainty to parties in cartel agreements who enable the Office to detect the cartel.

The amendment incorporated two types of leniency - leniency I and leniency II. The substance of leniency I is defined for the first participant of the prohibited cartel agreement who notifies the OPC about the agreement and who meets other legal conditions. When applying leniency

II, the cartel fine will be reduced by up to 50 percent for those parties to a prohibited cartel agreement who inform the Office of such agreement second or later, meet other conditions required by law and provide the Office with information and documents on the cartel agreement with significant added value in relation to the probative value of documents and information acquired by the Office previously.

The amendment also allows the Office not to deal with marginal cases of law infringements. These have long been a burden on the Office, even though they do not have significant impact on the functioning of the market

During 2011, experts of the Office contributed to legislative work on amendments to the Act on Public Procurement that falls within the scope of competence of the Office. The amendment comprehensively revised public procurement in the area of defence and security, which was published under No. 258/2011 Coll., with effect from September 12, 2011, was completed. This amendment transposed new EU legislation in this area.

Closely related to the competition law, the control of state aid aims at preventing the state authorities from providing subsidies to undertakings in a way that distorts competition in the market. In compliance with the Act No. 59/2000 Coll. on State Aid the Office continues in ensuring control of state aid in line with the EU rules. After the accession to the EU the Office plays mainly a role of a coordinator, advisor, consultant and does monitoring functions.

The rules prohibiting unfair competition between market participants are also a part of the Act No. 513/1991 Coll., Commercial Code, which in a general clause prohibits any unfair competition and provides examples of such practices, including, in particular, deceptive advertising; deceptive marking of goods; damaging the reputation of another undertaking; bribery or violation of trade secrets. Any entity affected by these practices may enforce compliance with these rules by a civil court action.

The Office has developed during the 20 years of its modern history into an effective instrument for protection and promotion of competition comparable to competition regimes in other developed countries.

### **Sectoral Regulation**

The Czech Republic has continued in the liberalisation process aimed at introducing competition in the previously monopoly sectors, mainly network industries. Activities of undertakings in these sectors are governed by special regulatory rules in compliance with the EU law. The European level is very important for the Czech Republic in this issue. In 2009 the Czech Republic successfully reached compromise among the EU Member States in the Third Package negotiations related to liberalisation of the energy sector.

## Box 2: Major Changes to the Competition Legislation in 2004

- Empowerment of the Office to directly apply Articles 101 and 102 of the TFEU (81 and 82 of the EC Treaty), and the introduction of procedural rules governing their application;
- Abolishment of the notification system, that allowed undertakings to apply for individual exemption from prohibition of agreements; and the introduction of direct applicability of the relevant provisions, for exemptions from the prohibition of agreements, provided for by Article 3(4) of the Act;
- Increase of the market share thresholds for the so called *de minimis* rule to 10 percent for horizontal agreements, and 15 percent for vertical agreements (with the exception of agreements dividing markets, consumers and resources, and setting prices for the final consumers);
- Abolishment of a so-called negative clearance procedure, for agreements and abuses of dominance;
- Introduction of the possibility for the Office to issue a decision that would make binding any commitments offered by the parties, in order to remedy any alleged anti-competitive agreement or abuse of dominance, without the need to decide on the existence of the infringement itself;
- More precise definition of the abuse of dominant position in relation to the essential amenities;
- New merger notification thresholds ensuring an adequate local nexus of notified mergers to the Czech jurisdiction;
- Introduction of a new substantive test for the assessment of concentrations of undertakings, under which the concentration may not be approved if it significantly impedes effective competition (called the 'SLC test'), especially as a result of the creation or strengthening of a dominant position in the market; and
- Introduction of time limits for the submission of proposed remedies by merging parties and provisions on the extension of deadlines, for issuing a decision by the Office, in case remedies are offered.

In the Czech Republic rules are enforced by independent sectoral regulators, which include particularly:

- **The Czech Telecommunications Office** in the telecommunication sector. The Act No. 151/2000 Coll., on Telecommunications and its later amendments transpose the relevant EU directives and aim at ensuring that sectoral regulation is applied only in areas where sufficient competition has not yet been developed, and where sole application of the general competition legislation is not sufficient for ensuring effective functioning of the market;
- **The Energy Regulatory Office** in the energy sectors (in particular electricity and gas sectors) administers the Act No. 458/2000 Coll., Energy Act; also this sector had to be adjusted to the EU regulations and prepared for further liberalisation;
- **The Czech National Bank** regulates the banking and financial services sectors.

Nevertheless, the existence of such sectoral legislation and regulators does not prevent the Office from enforcing the general competition rules in these sectors, and from promoting competition principles.

### Interface with Regulatory Agencies

The Act on the Protection of Competition relates to all the entities that may be subsumed under the concept of 'undertaking' and to all the sectors of economy without any exception, as well as to all public and private undertakings.

Regulation authorities, as the Czech Telecommunications Office or the Energy Regulation Office implement *ex ante* measures leading to substitution of competition

environment in the area, where effective competition does not exist, while the Office prosecute *ex post* the behavior of undertakings that distort competition or exceeds the framework of a special regulation act.

The combination of *ex ante* regulation along with the *ex post* protection of competition is considered as a useful tool for achieving effective protection of competition in the regulated industries, with the final aim of replacing regulation with competition.

The Office has established close relationship based on a memorandum of cooperation with the regulatory bodies. For instance, the memorandum with the telecom regulator was signed in January 2001. The Office cooperated with energy regulator on the creation of several decrees, in the course of which it enforced the competition principles. On the basis of a request by the energy regulator, the Office initiated one administrative proceeding in 2004 to assess whether a heat supplier abused its dominant position. The proceeding was anyhow stopped, as the Office did not find any indication suggesting abuse of dominant position.<sup>3</sup>

### Consumer Protection

The protection of consumers is ensured by the Act No. 634/1992 Coll., on Consumer Protection and its later amendments which oblige undertakings to trade fairly with consumers and prohibit unfair practices such as discrimination or deception of consumers. These rules are primarily enforced by the Czech Trade Inspection, Czech Agriculture, and Food Inspection Authorities.

The Office for the Protection of Competition is also the important actor in the field of consumer protection. By ensuring fair competition in the Czech market the Office

### Box 3: Abuse of dominant position Fine for Čecké dráhy

The Office imposed a fine of CZK 254 million on Česke drahy, Ltd. for abuse of dominant position in the market of railway freight transport of substrates transported in large volumes in the area of the Czech Republic. Concretely, Česke drahy had breached the law by charging its customers (without objectively justifiable reasons) different prices for services in railway freight transport with comparable calculation parameters, and it also applied different profit margins. Česke drahy caused material damage to those customers with whom it dealt under less favourable conditions, and indirectly also to end consumers. Moreover, the possibility for other freight transporters to establish themselves on the market was restricted.

Česke drahy provided better conditions to those consumers who had been offered transport services by its competitors and the competitors of Česke drahy were not able to react accordingly to such price policy. Further, from January 1, 2005 to November 30, 2007, Česke drahy without objectively justifiable reasons applied different conditions towards its customers regarding provision of so-called level prices (different volumes of transported

goods necessary for quantity rebates, and different rebates when achieving the defined volumes of the transported goods). Thus some of their customers, to whom were applied significantly less advantageous condition and applied level prices, were disadvantaged. The aim of Česke drahy was to ensure the loyalty of consumers in case of a bid offer by other competitors. Moreover, in 2006 and part of the year 2007 Česke drahy made it impossible for the companies SPEDIT-TRANS, Ltd. and ŠPED-TRANS Levice, Ltd. to conclude contracts on customer tariff and thus to obtain discount from the public pricelist, and it also took measures obliging the two companies to deposit 100 percent of the price for the rail freight transport services in advance. On January 5, 2006 Česke drahy terminated the Agreement on central clearing of transport charges with the above mentioned undertakings and thus placed them at competitive disadvantage. Česke drahy adopted these steps in reaction to highly competitive activities of both companies and the result of these steps was an actual refusal to deal with these companies. As a result these companies were excluded, or largely constrained, from further operating in the market.

stipulates firms to compete for customers by improving quality of their products and reaching the best possible price. So at the end consumers are the ones who benefit the most from the enforcement activities of the Office.

Supervision of the public procurement award procedures creates also an important aspect of consumers' interests. Effective and efficient use of public funds is beneficial for

both the public bodies and also the end consumers of public services.

There is also a Consumer Protection Department in the Ministry of Trade and Industry, which coordinates matters concerning consumer policy, including in those spheres of consumer protection that fall fully or partially under the competence of other state administration bodies.

### Box 4: First use of leniency and settlement in a cartel of cleaning product manufacturers

The Office imposed a fine totalling CZK 29.274 million on Procter & Gamble Rakona, s. r. o. (CZK 23.778 million) and Reckitt Benckiser (Czech Republic), spol. s r. o., (CZK 5.496 million), both manufacturers of cleaning products. Companies from the Henkel Group (the other party in the cartel) received immunity within the leniency programme due to their having informed the Office of the cartel's existence. In these proceedings, the Office proved that in the course of their regular meetings and communications the tenderers implemented a price increase of some laundry detergents and set out a price range for determining laundry detergent prices, they coordinated and limited the frequency and value of promotional activities, particularly of discounts on laundry detergents, softeners and dishwashing detergents, with the aim of limiting competition in the laundry detergent market, the market for fabric softeners and the dishwashing detergent market in the Czech Republic, whereby they concluded and carried out a prohibited

agreement on direct or indirect price fixing, or fixing other commercial terms, leading to distortions of competition in the above markets in the Czech Republic.

This case is very important in terms of the practice of the Office because it is the first case in which the leniency programme was used - both leniency I (Henkel) and leniency II (Procter & Gamble Rakona, s. r. o. requested leniency during the proceedings and achieved a 50 percent reduction of the fine as a result of fulfilling the conditions) - in parallel with the settlement procedure. Moreover, it is the first case ever to apply the settlement procedure in the matter of a horizontal agreement (cartel). The settlement process was used by all the above companies and they were given an additional 20 percent reduction on the fine. Thanks to settlement, no appeals were filed against the decision and it became effective in the first instance on 2 March 2011.

*Source: Annual Report 2011, Office for the Protection of Competition*

The Commercial Code prohibits conduct *contra bonos mores* ("against good morals") that could damage other firms or consumers. Examples listed in the statute include deceptive advertising and marketing, misleading consumers about identity, using another firm's reputation, and endangering consumer health or the environment. These rules overlap both competition policy and consumer protection.

### **Concluding Observations and Future Scenario**

The clear priority of the competition office continues to be the detection of cartels, particularly in relation to bid-

rigging. In cases of unilateral practices and concentration control, the more economic approach should now be fully applied. Much attention will be also paid to issues of due process, since procedural matters have become central to judicial reviews in recent years. Also the Office intends to continue in its activities to improve the Czech competition legislation to provide the best conditions for further growth of the Czech market. Strengthening the international cooperation is also a high priority for the Office as this is crucial for ensuring the application of the EU law and detection of anticompetitive conduct with cross-border character.

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### **Endnotes**

- 1 <http://www.cia.gov/cia/publications/factbook/geos/ez.html>
- 2 Economist Intelligence Unit (<http://www.economist.com/countries/CzechRepublic/>)
- 3 Annual Report 2009, Office of the Protection of Competition

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### **Suggested Readings**

Annual Reports, Office of the Protection of Competition  
<http://www.compet.cz/en/>

<sup>†</sup> *Daniel Stankov has served at the Czech Office for the Protection of Competition since November 2006, and served as a director of the International Department since February 2010. Since 2012 his responsibilities have covered both external relations of the Office and PR activities at the national level.*

*He focuses on international aspects of competition policy, European competition and consumer policy and questions of competition enforcement in emerging markets.*

*Daniel Stankov joined the Czech competition authority after his graduation at Masaryk University in Brno, received his master's degrees in political science and international relations. Before that, he studied Interdisciplinary Master's in East European Research and Studies at University of Bologna.*