Chapter 6

Czech Republic

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1 INTRODUCTION

1.1 Basis of National Competition Law

The legal foundations of the Czech market economy are enacted by fundamental provisions of Czech law. Article 26(1) of the Charter of Fundamental Rights and Freedoms guarantees everyone the right to engage in business as well as the conduct of other business activities. This system is protected by Section 41(1) of the Commercial Code, which enacts fundamental rules of economic competition and provides that

> natural persons and legal entities – even if they are not entrepreneurs ('undertakings') – participating in economic competition have the right to conduct economic activities freely for economic benefit and to associate for the purposes of conducting these activities. In doing so, however, they have an obligation to abide by applicable rules of economic competition and shall not abuse their participation therein.

The Commercial Code subsequently specifies prohibited aspects of unfair competition. Provisions for protection of economic competition as a general phenomenon are more closely specified in separate legislation – Act No. 143/2001 Coll. on the protection of economic competition, as subsequently amended (hereinafter, PECA).

Marjorie Holmes and Lesley Davey, *A Practical Guide to National Competition Rules across Europe*, pp. 153–180.

1.2 Interaction between Competition Law and European Community Law

As an EU Member State, the Czech Republic is generally bound by Community law. Articles 81 and 82 of the EC Treaty are directly applicable, and all natural persons and legal entities in the Czech Republic are bound to observe the provisions on competition set out in these Articles. The same is true of Council Regulation No. 139/2004 on the control of concentrations between undertakings. The domestic law takes full account of these principles. and incorporates them into procedural law, governing the conduct of the Office for the Protection of Economic Competition (hereinafter, 'the Office') during the exercise of its powers to regulate economic competition in cases involving agreements which may distort competition or abuses of dominant position, on the assumption that trade between Member States may be affected.

Substantive domestic competition law fully reflects Community law. Prohibitions under Section 3 PECA (agreements distorting competition) and Section 11 PECA (abuse of dominant position) are drafted in terms that correspond with those under Articles 81 and 82 of the EC Treaty, including a demonstrative list of prohibited practices. Further evidence of domestic competition law having accommodated Community legislation are the amendments to PECA following the major reforms of European competition law, set out in Council Regulation No. 1/2003. These reforms repeal provisions that permitted undertakings to file applications with the Office, seeking a determination on whether or not their conduct constitutes distortion of economic competition, and provisions allowing individual exemptions from the general prohibition on agreements distorting competition simply on the basis of a decision by the Office. As in European competition law, domestic legislation also applies the principle that undertakings should bear active responsibility for their conduct, and hence the Office has become a body predominantly concerned with punishment for breaching the rules.

Further proof of how domestic law and Community law inter-relate is the repeal (by recent amendments) of formerly applicable block exemptions from the general prohibition on agreements that distort competition. These exemptions have been replaced with provisions in PECA that broaden the application of the rules governing Community law block exemptions to include agreements that cannot affect trade between Member States.

1.3 Recent Changes and Developments in Your Competition Environment

In 2001, PECA superseded Act No. 63/1991 Coll. on the protection of economic competition (in force from 1 March 1991 to 30 June 2001). The new Act was adopted to facilitate incorporation into legislation of the practical experience obtained in application of competition rules and, primarily, to align domestic legislation with the principles of European competition law. Since its enactment, PECA has been amended four times. The recent changes, dating from 22 February

2005, exclude electronic communications in their entirety from the jurisdiction of PECA; changes introduced on 19 August 2005 extend applicability of Community block exemptions to agreements that cannot affect trade between Member States (already referred to above). These amendments have significantly altered some substantive and procedural provisions of law relating to concentrations between undertakings, as well as the rules governing the procedures adopted by the Office when applying community competition law and co-ordinating the activities of the European Commission and other domestic competition bodies.

2 COMPETITION AUTHORITY AND SECTOR REGULATORS

2.1 Competition Authority

In the Czech Republic, under Act No. 273/1996 Coll., the body responsible for ensuring protection of economic competition is the Office for the Protection of Economic Competition. The Office replaced the former Ministry for Economic Competition. Under the above Act, the role of the Office is to create conditions to support and protect economic competition, supervise public procurement and exercise the powers delegated to it under other legislation (e.g., state aid).

2.1.1 Main Areas of Responsibility

PECA grants the Office power to supervise whether and how undertakings have complied with their obligations under competition law, in enforcing the rules prohibiting restrictive agreements and abuse of the dominant position, and assessing merger applications. The Office also supervises the performance of obligations set out in its legally effective decisions, and has power to apply Articles 81 and 82 of the EC Treaty in circumstances that may affect trade between Member States. The Office is not an active regulator of conduct by undertakings and has no special powers to protect consumers. Its task is exclusively to protect economic competition as a social phenomenon, rather than to protect the interests of particular individuals involved in competition.

2.1.2 Organization and Structure

The Office is located in Brno and has a regional branch in Prague. It currently has approximately 114 employees.

The head of the Office is the chairman, appointed by the Czech president on the government's recommendations for a term of six years. The appointment is apolitical, and, in the exercise of his powers, the chairman is independent of the government. The recently appointed chairman has initiated a major re-organization of the Office structure: the objective is to modernize the existing system of management. The Office chairman is supported directly by the director of security and the internal audit department. Newly established departments include the chairman's

cabinet and five sections/departments (administration, protection of economic competition I, protection of economic competition II, public procurement, and state aid and international relations). The heads of these sections/departments are responsible directly to the chairman. The sections/departments are divided into sub-sections/departments. In addition, the chairman's cabinet comprises appeal/review commissions (bodies that advise the chairman during reviews of decisions issued at the first instance) for economic competition and public procurement, as well as advisors to the chairman.

Another recent development is definition of the tasks, responsibilities, and powers of each sector/department and sector/department heads. Complex cases and investigations are discussed and addressed in teams subject to a clear leadership structure.

2.1.3 Participation in the European Competition Network (ECN)

The Office is a member of the ECN and actively participates in several ECN groups, in particular with reference to abuse of dominant position and leniency programmes, and sector sub-groups for banking, energy, pharmaceuticals, insurance, professional services, telecommunications, and the environment.

As a member of the group dedicated to discussions on abuse of dominant position, the Office has focused on preparation of new recommendations on application of Article 82 of the EC Treaty and the proposed amendments to the wording of this Article. The leniency programme involves an exchange of the practical experiences of each national competition authority. The plan is to prepare a model leniency programme as the basis of new domestic programmes or to increase the effectiveness of existing ones. As part of the banking sub-section, Office representatives have reported on the position in the Czech Republic using information obtained from long-term analyses and investigations conducted by the Office at its own initiative and/or in response to complaints from the public.

ECN also provides an effective mechanism for notification of cases, and potential transfer or re-allocation thereof among the Commission and the competition authorities in each Member State. In 2005, the Office sent notifications through ECN Interactive of six cases that may affect trade between Member States, and in four instances subsequently initiated administrative proceedings under Community law.

2.2 Sector Regulators

In some exceptional cases, provided for by PECA or other specific Acts, the Office is not authorized to investigate and decide on anticompetitive conducts of undertakings. The bodies authorized to seek the remedy are the respective regulatory authorities.

The provisions of PECA do not apply to undertakings which, pursuant to special provisions of law or decisions issued under separate legislation, provide

services of a general economic interest, but only insofar as the application thereof would make the provision of these services impossible.

Further, there is an express exemption from applicability of PECA to the conduct of undertakings, which is a breach of obligation under the Act on electronic communications or decision issued thereunder.

2.2.1 Energy Supplies

The administrative body responsible for regulation of the energy sector is the Energy Regulation Office (ERO), which regulates the electric power, gas and heat sectors, which are progressively being opened up to competition:

- As of 1 January 2006, all end customers on the electricity market (defined as eligible customers) may select their power supplier;
- As of 1 January 2006, all end customers on the gas market also became eligible customers, save for households, which are due to become eligible customers as of 1 January 2007.[1]

2.2.1.1 Role

ERO's main objectives are to promote economic competition, use of renewable and secondary sources of energy, and to protect the interests of consumers in the energy sector where competition is not possible, in order to satisfy all reasonable demands for energy supplies. ERO exercises the powers of a regulatory body under Regulation No. 1228/2003 on the conditions of access to the cross-border electricity exchange network.

Some areas in which ERO has competence to issue decisions are:

- the granting of licences for the generation, transport, and distribution of electricity and gas, storage of gas, and generation and distribution of heat;
- obligations to supply power above thresholds stated in an existing licence;
- in emergencies, the obligation to enable power plants to generate power in excess of the thresholds stated in an existing licence (including creation of easements);
- regulation of prices under special legislation and selection of a supplier of last resort.

ERO has the power to issue implementing regulations governing:

- the required quality of supplies and services in connection with regulated activities in the electric power and gas sectors;
- conditions for connecting electricity plants, distribution networks, and offtake points at final customers to the power grid;

1. Given the non-competitive structure of the gas market, ERO has continued to regulate the conditions of gas supply.

- rules governing the electricity market, principles on the formulation of prices for activities by the market operator, and rules governing organization of the gas market;
- conditions for supply of electricity and gas to final customers, conditions for supply of electricity and gas to suppliers of last resort (i.e., by a supplier ordered by ERO to supply electricity or gas at prices specified by ERO to households and small customers at their request).

2.2.1.2 Organization and Structure

ERO is a central administrative body, seated in Jihlava. The head of ERO is the chairman, appointed (for a five-year term) and removed by the government. The existing organizational structure means that the sections for regulation (including electric power and gas departments), licences and strategy, as well as the ERO secretariat, are responsible to the ERO chairman.

2.2.2 Financial Services

The regulatory body with reference to financial services is the Czech National Bank (CNB). The CNB is also the central bank of the Czech Republic.

2.2.2.1 Role

CNB's main objectives include:

- formulation of currency policy;
- issue of bank notes and coins;
- control of the circulation of money, payments, and clearance between banks, branches of foreign banks, saving banks and co-operative lending societies, safeguarding their fluency and economic efficiency, as well as a shared role in ensuring security, reliability, effectiveness and development of payment systems;
- regulation of entities involved in financial markets, preparation of analyses of developments in the financial system, and safeguarding the secure operation and development of the financial market in the Czech Republic.

In particular, CNB regulates:

- banks, branches of foreign banks, savings banks, and co-operative lending societies;
- securities brokers, securities issuers, central depositories, investment companies and funds, and organizers of markets for investment instruments;
- insurance and assurance companies, money funds, and other entities involved in insurance and additional pension insurance;
- safe, reliable, and effective operation of payment systems.

This regulatory activity includes:

- decisions on licence applications;
- compliance with conditions in licences and authorizations already issued;
- compliance with the law and regulations and other measures issued by the CNB;
- obtaining information necessary for regulation;
- imposition of fines and remedial orders;
- proceedings on administrative delicts and breaches of the law.

2.2.2.2 Organization and Structure

CNB is a separate public law entity entirely independent of any other government body. It is located in Prague and has branches in other Czech cities.

The supreme management body of the CNB is the Bank Council, which has seven members (the governor, two vice-governors, and four other council members). Council members are appointed for a term of six years. The council is responsible for formulating currency policy and instruments for implementation thereof, and for adopting decisions on fundamental CNB currency policies, as well as measures governing regulation of the financial market.

The person responsible for acting on behalf of the CNB vis-à-vis third parties is the governor and, in his absence, an authorized vice-governor.

2.2.3 Postal Services

The body responsible for regulation of postal services is the Czech Telecommunications Office (CTO), whose basic task is to secure general accessibility of basic services in the whole of the Czech Republic.

2.2.3.1 Role

The CTO is responsible for the granting of postal licences authorizing the operation of postal services and has a duty to ensure that basic services are generally accessible in the whole of the Czech Republic. The CTO is also responsible for granting special postal licences in circumstances where it has concerns that the existing licence holder is unable to fulfil his/her obligations to provide basic services. CTO also regulates postal licence and special postal licences holders to ensure that they:

- comply with the obligations under the postal licence or special postal licence; and
- offer postal services to which postal obligations and special postal obligations apply under postal conditions approved by the CTO.

The CTO also:

- issues standpoints, upon request, on disputes in connection with the provision and procurement of basic services by the postal licence holder or special

postal licence holders in circumstances where such dispute resolution is required;
- publishes at least once annually a consolidated report on compliance with the obligations applicable to postal licence holders or special postal licence holders under statute;
- takes all such other steps and measures as required to safeguard due provision of basic services.

2.2.3.2 Organization and Structure

CTO is a central administrative body located in Prague.

CTO has a five member council (hereinafter, 'the CTO Council') whose members and chairman are appointed and removed by the government on the recommendation of the Minister of Information. The term of office of a CTO Council member is five years. The CTO Council chairman is one of the five members of the CTO Council and acts as its director on behalf of the CTO. The CTO is further sub-divided into separate sections and departments.

2.2.4 Rail Regulator

Regulation of the rail sector is the responsibility of the Czech Ministry of Transport, railway authorities (pursuant to delegated powers to municipalities), and the Czech Rail Inspectorate. Regulated matters include mainly rail transport, such as transport operated by a carrier to satisfy general transport requirements in accordance with transport conditions already in place, as well as published timetables and tariffs.

2.2.4.1 Role

Authorized regulatory bodies exercise their powers to ensure that during the operation of railways and railway transport, there is compliance with and performance of the obligations of the rail owner, operator and carrier as specified by law in the interests of safe operation of railways and rail transport. Railway transport on railway tracks cannot be operated without a licence. The railway administrative authorities issue licences to parties that comply with statutory requirements; if the licence holder ceases to comply with these requirements, the railway authorities have power to withdraw the licence. The Ministry of Transport or a Region is entitled to enter into an agreement with a carrier to provide public transport services pursuant to Article 14 Regulation No. 1191/69. This sets out the procedure to be adopted by the Member States in connection with obligations relating to public transport services on railways, roads and national waterways. Regional authorities or the Ministry of Transport will reimburse the service provider for all documented costs incurred in performance of its obligation to provide a public service.

2.2.4.2 Organization and Structure

Authorities with power to take decisions on the rights and obligations of entities operating in the railway sector are the Ministry of Transport and railway administrative authorities in the capacity of special municipality department in the performance of delegated powers.

2.2.5 Telecommunications

The purpose of regulation in the telecommunications sector is to compensate for the absence of economic competition, establish conditions for the proper operation of economic competition and protection for users, and other participants on the market pending the attainment of a fully competitive environment. Regulation affects communication activities. These are to:

- procure electronic communications networks;
- provide electronic communications services;
- operate equipment.

2.2.5.1 Role

CTO is responsible for the issue of general licences to conduct business in the telecommunications sector. The licence sets out specific conditions on which the licence holders are authorized to operate communications activities. CTO also has power to order entities active in the telecommunications sector to provide 'universal service,' i.e. a collection of services defined by law and available in a specified quality to all end users in the whole of the Czech Republic at a reasonable price. A reasonable price is defined as a price that takes account of the level of consumer prices and general public income. To reimburse service providers for the costs incurred with the operation of this service, CTO has established a 'universal services account,' contributions to which are made by all entities involved in the provision of telecommunications services.

In circumstances where analysis of the relevant market relating to interconnection or access shows that there is no effective competition on such market (in particular where unreasonably high or low prices are applied to the detriment of end users), the CTO has power to regulate prices on such a relevant market by issuing a price decision.

2.2.5.2 Organization and Structure

See 2.2.3.2 *above*.

2.2.6 Water

Statutory provisions govern some relations arising in the course of development, construction and operation of water and sewage mains for public use.

The body responsible for the highest level of supervision in this sector is the Ministry of Agriculture. Licences to operate water and sewage mains are issued by regional and local authorities in the exercise of delegated powers also conduct supervision.

2.2.6.1 Role

Regional authorities investigate the applicant's competence to operate water and sewage mains during proceedings for issue of operating licences and have power to withdraw a licence if the licence holder no longer complies with statutory requirements. Regional or local authorities have power to decide whether an obligation exists to provide a public service. For these purposes, a public service is defined as the activities of an operator in the water supply and sewage disposal sector which:

- exceeds the provision of usual services under statute and is not provided under contract, in particular, activities during the existence of risk to public health, property and public order; or
- has arisen owing to the loss of the ability of the existing provider to provide water supplies or sewage disposal under statute.

Documented costs incurred by the provider with an obligation to provide a public service by order of the competent public authority shall be borne by the public authority.

2.2.6.2 Organization and Structure

Regulation in this sector is divided among the above ordinary government authorities.

2.2.7 Other Relevant Regulators in your Jurisdiction

2.2.7.1 Civil Aviation

The Civil Aviation Authority (CAA) has been established for the administration of civil aviation. CAA fulfils the tasks of the domestic surveillance body in compliance with the directly applicable Regulation No. 549/2004, laying down the framework for the creation of the single European sky. It is located in Prague and subordinated to the Ministry of Transport. CCA cooperates with the European Aviation Safety Agency. The scope and conditions of such cooperation are set by a special agreement between these authorities.

Furthermore, there are rules for civil aviation stipulated by national legislation, according to which business aviation transportation may be operated only on grounds of a licence granted by CCA. Business aviation transportation is to be understood as the transportation of persons, animals, languages, things, and post for consideration.

2.2.7.2 Nuclear Safety

The State Office for Nuclear Safety is a regulatory body responsible for governmental administration and supervision in the fields of uses of nuclear energy and radiation and of radiation protection.

It is a central administrative body located in Prague. Among its main tasks are:

- licensing of activities for the setting and operation of nuclear facilities and workplaces handling very significant ionizing radiation sources, for handling ionizing radiation sources and radioactive wastes, transportation of nuclear materials and radionuclide emitters;
- state supervision of nuclear safety of nuclear facilities, nuclear items, physical protection of nuclear facilities, radiation protection, and emergency preparation of nuclear facilities and workplaces handling ionizing radiation sources.

2.2.7.3 Mining Administration

There is a specialized administrative structure performing surveillance over mining activities on the territory of the Czech Republic. It consists of the Czech Mining Office (CMO) as a central administrative body and nine Circuit Mining Offices, which represent local surveillance. The CMO fulfils the tasks of the supreme surveillance body over all mining activities and activities operated in the mining manner. The Circuit Mining Offices in particular decide on authorizations to perform particular activities in the mining sector.

As far as other areas are concerned, there are no specialized regulatory authorities, as the bodies vested with powers are mostly central bodies generally responsible for the respective sector policy, i.e., relevant Ministries.

3 CARTELS AND ABUSE OF THE DOMINANT POSITION

3.1 Cartels and Restrictive Agreements between Competitors

Czech law governing agreements that restrict competition are based entirely on Article 81 of the EC Treaty, ECJ settled case law, and decisions by the Commission. These decisions are reflected in the way in which the Office interprets the application of relevant rules in the course of individual proceedings.

3.1.1 Legislative Provisions

Agreements that distort competition are governed by Sections 3–7 PECA. Under Section 3 PECA, agreements that distort competition are prohibited and absolutely null and void (invalid). Section 3 sets out a demonstrative list of such agreements and governs conditions which, if satisfied, will exempt the agreement from the

general prohibition. Section 4 governs block exemptions, and Section 5 defines horizontal and vertical agreements. Section 6 sets out the conditions that need to be satisfied in order to exclude an agreement from the prohibition upon application of the *de minimis* rule and defines the most important agreements that cannot fall within the ambit of the *de minimis* exemption (hard-core agreements).

3.1.2 Assessing Cartel Behaviour

PECA defines a relevant market as a market for goods (i.e., products and services), the nature, price, and intended use of which are identical, comparable, or mutually interchangeable in a territory governed by rules of competition, which is sufficiently homogenous and clearly distinctive from neighbouring territories. As with Community rules, market analyses conducted by the Office are restricted by product and geographical dimensions, although in practice consideration may also be given to dimensions of time in relation to the relevant market – that is, the question of whether the market is a permanent or seasonal one. The market share of each undertaking is a statement in terms of the volume or value of supply or purchases achieved on the market for goods by the given undertaking during the period under consideration.

The prohibition on anti-competitive agreements is set out in Section 3 PECA. Section 3(1) PECA provides that any agreements between undertakings, decisions by associations thereof, and conduct by undertakings acting in concert are prohibited and invalid unless PECA or special provisions of law provide otherwise or unless the Office grants an exemption by way of an implementing regulation.[2] Section 3(2) PECA sets out a demonstrative list of expressly prohibited practices, such as:

- price fixing or fixing of other business conditions;
- sharing of the market or sources of supply;
- bundling and tying;
- discriminatory conduct; and
- group boycotts.

In addition, PECA sets out an exhaustive definition of prohibited agreements, irrespective of the size of market share held by participating undertakings. Such agreements include:

- horizontal agreements on direct or indirect price-fixing, restriction or control of production or sales and/or sharing of the market, sources of supply or customers;
- vertical agreements on direct or resale price maintenance or provision of full protection to the purchaser in respect of his downstream sales on the defined market.

Within the context of market conditions, prohibited agreements are also deemed to be agreements which would, in other circumstances, fall within the exempt

2. No such implementing regulation is currently in force.

category covered by the *de minimis* rule, if they are separate agreements but form part of a set of agreements in respect of identical, comparable or inter-changeable goods, and if

- the joint market share on the relevant market held by the parties to the agreements that form the set of agreements, at least one party to which is the same undertaking, exceeds the *de minimis* threshold; or
- access of potential participants (undertakings) to the relevant market is restricted under a set of vertical or mixed agreements and such participants are not parties to these agreements, and economic competition is significantly distorted by the cumulative effect of parallel networks similar to vertical or mixed agreements executed to distribute identical, comparable or inter-changeable goods, if the joint market share of parties to horizontal agreements or the market share of any party to the vertical agreements exceeds 5 per cent on the relevant market.

3.1.2.1 Horizontal Agreements

A horizontal agreement is defined by PECA as an agreement between undertakings that operate on the same level of the market for goods. Horizontal agreements are deemed to include mixed agreements between undertakings operating concurrently on the same horizontal level and different vertical levels of the market for goods.

3.1.2.2 Vertical Agreements

A vertical agreement is defined by PECA as an agreement between undertakings that operate at different levels of the market for goods.

3.1.3 Exemptions

PECA distinguishes between group (block) exemptions and exceptions for rationalization agreements.

The requirements for application of an exemption to the prohibition on agreements that distort competition for *rationalization agreements* are governed by Section 3(4) PECA: these fully reflect Article 81(3) of the EC Treaty. Hence agreements exempted from the general prohibition include potentially anti-competitive agreements which (a) contribute to improving the production or distribution of goods or to promoting technical or economic progress while allowing consumers a fair share of the resulting benefit; (b) place no restrictions on undertakings that are not strictly necessary to achieve the objective under a); and (c) do not afford undertakings the possibility of eliminating economic competition on a significant part of the market for goods, the supply or purchase of which is the subject matter of the agreement.

Provisions governing *block exemptions* under PECA fully reflect Community law. Section 4 PECA provides that the prohibition on agreements distorting competition does not apply to agreements that cannot affect trade between Member

States under Article 81 of the EC Treaty, but in all other respects comply with the requirements for the relevant block exemption adopted pursuant to Article 83(1) of the EC Treaty to implement Article 81(3) EC Treaty by the applicable Commission or Council Regulations. Under PECA, the Office has power to grant further block exemptions, although this power has not yet been exercised. The Office also has the power to adopt a decision to withdraw the benefit of a specific block exemption from an undertaking in circumstances where, owing to market developments, the undertaking no longer complies with the requirements for a rationalization agreement (Section 3(4) PECA).

3.1.4 Exclusions

If the joint market share of parties to horizontal agreements on the relevant market does not exceed 10 per cent, the prohibition on agreements distorting competition under Section 3(1) PECA will not apply to such horizontal agreements unless they are hard-core agreements. Furthermore, the prohibition under Section 3 does not apply to vertical agreements unless the market share of each party to such agreement on the relevant market exceeds 15 per cent (again, except as regards hard-core agreements).

3.1.5 Guidance Available

To date, the Office has not issued any notices that set out (in general terms) the procedure adopted by the Office when assessing prohibited agreements and anti-competitive conduct generally. Instead, its practice is to refer to the rules set out in the Commission Guidelines.

The Compliance Programme, compiled by the Office, may be perceived as a form of guidelines for use by employees of an undertaking when seeking to abide by competition law. The Compliance Programme sets out principles that apply upon establishment of programmes aimed to ensure compliance with competition law, together with principles governing supervision to ensure such compliance.

Accessible on the Office's web page are all decisions of the Office since 2000.[3] This is particularly useful for the legal profession, which thus has an opportunity to analyse procedures adopted by the Office in the past and, on this basis, to predict the outcome of future cases involving similar matters.

The Office has also sought to improve the transparency of its decision-making by issuing press releases on its decisions on important cases.

3.2 Abuses of the Dominant Position

3.2.1 Legislative Provisions

Provisions on abuse of dominant position are found in Sections 10 and 11 PECA. Section 10 PECA defines dominant position on the market and sets out criteria

3. <http://www.compet.cz/en/competition/decisions/>.

used to assess the market strength of an undertaking. A rebuttable presumption of dominance will arise if the undertaking attains a specified market share. The general prohibition on abuse of dominant position is set out in Section 11, which contains a demonstrative list of conduct deemed to constitute abuse of dominant position.

3.2.2 Assessing Dominance

The rules under point 3.1.2 are applied to define the relevant market and to determine the market share of an undertaking.

Under Section 10(1) PECA, an undertaking (itself or together with other undertakings) will have a dominant position on the market if the market strength of such undertakings allows them, to a large extent, to act independently of other undertakings or consumers. Market strength will be principally determined according to:

- the market share held by an undertaking(s) during the period being investigated;
- the economic and financial strength of the undertakings;
- legal or other obstacles to enter the market for other undertakings;
- degree of vertical integration of the undertakings;
- market structure; and
- the size of the market share of the closest competitors.

There is a rebuttable presumption under PECA that an undertaking(s) will not have a dominant position if its market share during the investigated period is less than 40 per cent.

3.2.3 Identifying Abuses

Section 11 PECA enacts a general prohibition on abuse of dominant position to the detriment of other undertakings or consumers. The Section sets out a demonstrative list of the most typical forms of abuse:

- direct or indirect pressure to accept unreasonable conditions in contracts with business partners;
- conditioning consent to enter into a contract on the agreement of the other party not to undertake other performance unrelated (*de facto* and according to usual business practice) to the subject matter of the agreement concerned;
- termination of or restriction on production, sales or research and development to the detriment of the consumer;
- predatory pricing;
- refusal to grant other undertakings access (upon payment of a reasonable fee) to its own transmission networks or similar networks and other infrastructure belonging to or used by the dominant undertaking in circumstances where other undertakings cannot, for lawful or other reasons, operate in the

same market as the dominant undertaking without shared use of such facilities, and where the dominant undertaking has not shown that shared use is not impossible on technical grounds or cannot be reasonably required of it;
– refusal to permit other undertakings (upon payment of a reasonable fee) to make use of intellectual property or gain access to networks belonging to or used by the dominant undertaking, if use thereof is essential for participating in economic competition on the same market as the dominant undertaking or on another market.

3.3 Penalties for Cartel Behaviour and Abuse of a Dominant Position

3.3.1 Administrative Penalties

Where the Office becomes aware that an undertaking has intentionally or negligently committed a breach of the prohibition on agreements distorting competition or an abuse of dominant position on the market, it has power to fine the undertaking up to CZK 10 million[4] or 10 per cent of its net turnover for the last completed accounting period. The time limit for imposition of a fine is three years from the date on which the Office became aware of the breach, but no later than ten years from the date on which the breach occurred.

In addition to imposition of fines, the Office has the power to order the undertaking to remedy the position and specify a reasonable time limit for compliance. The provisions and extent of such orders cannot exceed the PECA framework.

The Office also has power to take interim measures.

3.3.2 Criminal Penalties

Legal entities cannot bear criminal liability under Czech law. Hence, only natural persons, either as employees/members of statutory bodies of the undertakings or entrepreneurs participating in economic competition, may under certain circumstances face criminal prosecution for breach of competition law.

The respective rules are set forth in the Criminal Code. The subject matter of this particular crime is defined as 'an essential breach of the rules of economic relations, stipulated in generally binding statutory provisions, with the intention to acquire for oneself or someone else a substantial unjustified advantage.' Thus the Criminal Code can sanction all behaviour, which goes beyond the legally outlined rules of economic competition. Since, according to certain renowned legal commentaries, PECA belongs to generally binding statutes falling under this clause, the above-mentioned provision of the Criminal Code can thus be applied to cases of unfair restriction of economic competition resulting from conclusion of a cartel agreement or from an abuse of a dominant position.

4. As of 31 December 2006, 1 euro = 27.43551 Czech koruna (CZK).

3.4 Key Decisions and Case Law

3.4.1 Cartels

In recent history, the Office has performed investigations and issued important decisions penalizing prohibited cartels between undertakings in the areas of petrol retail services, bakery products manufacturing, sugar production, and construction saving banking. The decisions mainly deal with the exchange of information leading to uniform setting or increasing of prices of the main producers or service providers on the market. The majority of these decisions was challenged before the relevant courts and some proceedings are still pending before the Office or the courts.

3.4.2 Abuse of Dominant Position

3.4.2.1 Decision by Office Chairman in the Case of Český Telecom (CT)

CT operated a fixed line telecommunications network in the Czech Republic and provides voice and data services. Under legislative changes to deregulate the telecommunications sector, other operators were given right of access to the network and the right to operate voice telephony and provide internet services to end users who opted to receive their services (carrier selection/pre-selection). To obtain the benefit of these services, the customer had to retain its connection to CT's fixed line network and pay CT a separate fee for network connection in accordance with the applicable monthly tariff. At the relevant time, CT gave customers a certain number of free minutes (or provided services free of charge up to a certain price threshold). In light of this discovery, the Office initiated proceedings against CT for potential breach of Article 82 of the EC Treaty. The Office held that CT had abused its dominant position on the market for provision of access to the public telecommunication network by making use of its network contingent on concurrent use of its voice telephony and internet services. This decision was based on the fact that the above tariff structure encouraged the average user, intending to use the services of another operator, to make initial use of CT's services until such time as all allotted free minutes had been used up. This prevented other operators from providing their own services insofar as CT offered these services free of charge.

3.4.2.2 Decision by Office Chairman in the case of Eurotel, T-Mobile v. Oskar

Eurotel (more recently, the mobile division of Telefónica O2) and T-Mobile have been fined by the Office for abuse of their respective dominant positions vis-à-vis their competitor, the third mobile operator on the market of provision of mobile telecommunications services. According to the findings of the Office, the abuse consisted of charging different prices to the customers, which resulted in making the entry of Český Mobil (now Vodafone) to the market more difficult. The

Supreme Administrative Court later cancelled one of the decisions imposing fines on the affected undertakings.

4 ENFORCEMENT AND INVESTIGATION

4.1 Powers of Investigation

4.1.1 Requests for Further Information

In the course of its investigations, the Office has the power to demand information and documents from undertakings and public administrative authorities (unless stated otherwise in special provisions of law) necessary to conduct its activities and to verify the completeness, veracity, and accuracy thereof. For these purposes, Office employees have the power to enter all buildings, areas, and transport used by undertakings during their business activities ('business premises'), inspect business books and similar records, make copies, and demand immediate oral explanations.

Undertakings have an obligation to furnish the Office with complete, true, and accurate information within a specified time limit and permit verification of such information. This obligation also applies to public administrative authorities (unless stated otherwise in special provisions of law). When requesting information and documents, the Office is required to state the grounds for and purpose of the investigation and to warn the undertaking that failure to provide such information and documents could result in a fine.

The maximum fine for failure due to the fault of the undertaking to furnish the Office with the requested information and documents, or in circumstances where the information and documents provided are incomplete, untrue or inaccurate is CZK 300,000, or 1 per cent of the undertaking's net turnover in the last completed accounting period.

4.2 Disclosure of Documents

Besides the powers mentioned above in relation to obtaining information, the Office employees have the power to seal business premises, cabinets, boxes, business books, and other business records for a period and insofar as necessary for the investigation in order to safeguard the purpose of the investigation. In the event of reasonable suspicion that business books or other business records are located in places (including personal apartments of natural persons, being statutory bodies and/or members thereof and employees) other than business premises, ('non-business premises'), the investigation may also be conducted in such non-business premises with the prior court's consent.

Failure to produce business books or other business records or a failure in the verification of such books and records may result in a fine of up to CZK 300,000 or 1 per cent of the net turnover.

4.2.1 Dawn Raids

In the course of its investigations on business or non-business premises, the Office has the power to demand access to such premises or open cabinets or boxes. Everyone whose property contains business or non-business premises has a duty to tolerate investigations by the Office on such property, and Office staff have the power to make alternative arrangements to gain access to the business or non-business premises in the event of failure by any persons concerned to comply with this obligation.

Investigations at any premises other than business premises require the prior consent of the court, issued in accordance with the general provisions of law relating to court proceedings.

4.3 Leniency Programme

The Office has issued guidelines setting out the rules governing application of the leniency programme.

In circumstances where an undertaking furnishes the Office with information, documents, evidence, and witness statements relating to the existence of an agreement distorting competition of which the Office had no knowledge before provision of such information, and/or in circumstances where the Office had been aware of the existence of an agreement distorting competition but could not obtain sufficient and reliable evidence from other sources, the Office may not fine the undertaking (upon compliance with the following conditions):

- The undertaking supplies all relevant information, documents and evidence available to it, and such information is true and reliable in showing the existence of a prohibited agreement distorting competition and allows the Office, in accordance with its own judgment and at its own discretion, reliably to prove the existence of a prohibited agreement distorting competition.
- The undertaking ends its conduct under such agreement no later than the date on which the relevant information, documents, and evidence above are provided to the Office.
- The undertaking puts no pressure on other undertakings to become party to the prohibited agreement distorting competition.

A fine imposed on an undertaking may be reduced if it furnishes the Office with information, documents, evidence, and witness statements relating to the existence of an agreement distorting competition, even though such undertaking fails to comply with the above requirements, provided that:

- the information, documents, and evidence provided are true and reliable and constitute the most important body of evidence necessary to show the existence of a prohibited agreement distorting competition; and

– the undertaking ends its conduct under such agreement no later than the date on which the relevant information, documents, and evidence are provided to the Office.

If the undertaking provides relevant information, documents, and evidence (first undertaking), the Office has the power to reduce the fine by 30–50 per cent.

If the undertaking provides relevant information, documents, and evidence (second undertaking), the Office has the power to reduce the fine by 20–30 per cent.

If any other undertakings provide relevant information, documents, and evidence, the Office has the power to reduce the fine by up to 20 per cent.

If, upon becoming aware of the results of administrative proceedings, an undertaking confirms such results of or matters ascertained in the proceedings, the Office has the power to reduce the fine by 20 per cent.

The actual sum of reduction will be determined by the Office with reference to the degree to which the evidence provided strengthens the position of the Office in proving important matters with reference to evidence already obtained thereby. Most significance will be attached to authentic documents and direct evidence.

4.4 Complaints and Third Party Rights

Anyone may file a complaint with the Office proposing investigation of alleged anti-competitive conduct. The Office has an obligation to deal with the complaints and to notify the party responsible for the filing of the outcome of its investigation. In the event that the Office fails to initiate the proceedings, the complainant can file an inquiry with the relevant administrative court (i.e., the Regional Court in Brno) for non-performance of the administrative body.

4.5 Market Investigations and Sector Enquiries

In instances where the Office holds that there is significant distortion of economic competition on a particular market or where a large section of the public demands investigation into certain practices by undertakings, the Office will conduct an investigation of the particular market or market sector. Past examples of such investigations include research into fuel price increases by petrol stations in the Czech Republic or the assessment of the amount and type of fees for services charged to customers by banks.

4.6 Appealing a Decision of the Competition Authority

Proceedings before the Office take place at two instances. Appeal against a decision at first instance (by the Office) may be filed with the Office Chairman within 15 days of the delivery date of the decision. Appeal against a legally effective administrative

decision may also be made to the relevant administrative court (i.e., the Regional Court in Brno) within two months of delivery of the Chairman's decision.

5 SUBSTANTIVE LAW RELATING TO MERGERS

Concentrations are defined by PECA as:

- the merger of two or more formerly independent undertakings;
- the acquisition of another undertaking's enterprise (business) or part thereof by agreement, public auction or in some other way;
- the acquisition of control over another undertaking by one or more entities which are not entrepreneurs but control at least one undertaking;
- the acquisition of control over another undertaking by one or more undertakings; or
- the creation of joint control of an undertaking that satisfies all the criteria for an independent economic unit on a long-term basis (joint-venture).

PECA defines 'control' as the opportunity to exercise a decisive influence on the conduct of another undertaking legally or *de facto,* pursuant to:

- ownership title or the right to use the business of the controlled undertaking or part thereof; or
- rights or other lawful circumstances allowing the exercise of a decisive influence on the constitution, voting, and decision-making by the bodies of the controlled undertaking.

5.1 THRESHOLDS

Concentration of undertakings requires the approval of the Office if:

(a) the overall net turnover of all merging undertakings for the last accounting period on the market in the Czech Republic exceeds CZK 1.5 billion, and in the last accounting period at least two of the merging undertakings have each had a net turnover exceeding CZK 250 million; or

(b) the net turnover in the last accounting period on the market in the Czech Republic is attained by:
  - at least one of the parties to the merger (in the case of mergers);
  - the acquired enterprise (business) or a significant part thereof (in the case of a concentration by acquisition of another undertaking's enterprise [business]);
  - the undertaking over which control is being acquired (in the case of a concentration by acquisition of control over another undertaking); or
  - at least one of the undertakings forming a jointly-controlled enterprise (business) exceeds CZK 1.5 billion, and concurrently the world-wide net turnover for the last accounting period of the other merging

undertaking is more than CZK 1.5 billion (in the case of a concentration by means of joint-venture).

For these purposes, net turnover means the turnover achieved by:

- all the concentrating undertakings;
- entities controlled by the concentrating undertakings;
- entities which will have control over the concentrating undertakings after the concentration;
- entities controlled by the entity which will have control over the concentrating undertakings after the concentration; or
- entities jointly controlled by two or more entities in the above categories.

5.2 Notification

Undertakings that intend to merge in the manner set out above have a duty to file a notice of the proposed concentration at the Office if they meet the thresholds set forth in PECA, but do not fall within the turnover criteria specified in Regulation No. 139/2004.

The application for approval should be filed jointly by all undertakings intending to merge, acquire the enterprise (business) of another undertaking or part thereof under contract, or intend to acquire control over a joint venture. In cases of concentration by acquisition of control over another undertaking, the application for approval of concentration is required to be filed by the undertaking which intends to acquire control.

The application must set out reasons and be supported by documents confirming matters decisive for the concentration. A detailed description of all formal requirements in the application is set out in an implementing regulation.

Proceedings for concentration approval will commence on the date of receipt by the Office of the application, provided that it complies with all requirements and contains all mandatory annexes.

5.3 Administrative Fees

A fee of CZK 100,000 is charged for filing an application for concentration approval.

5.4 Substantive Test

For the purposes of assessing the impact of a concentration on competition, the most recent amendment of PECA incorporated the SLC test set out in Regulation no. 139/2004 Coll. in full. Hence, the matter for consideration is whether the concentration would significantly distort competition, in particular due to creation or strengthening of the dominant position of the merging undertakings or any one of them.

When assessing these matters, the Office takes into account several criteria, such as the need to preserve and develop effective economic competition, the structure of all markets affected by the concentration, market share of all the merging undertakings on such markets, their economic and financial power, lawful and other barriers to entry to the markets affected by the concentration faced by other undertakings, the opportunities for selecting customers or suppliers of the merging undertakings, conditions of supply and demand on the affected markets, needs and interests of consumers, and research and development, the outcome of which benefit consumers and do not hinder competition.

The Office assessment is also based on the rebuttable presumption that if the market share of the merging undertakings on the relevant market does not exceed 25 per cent, the concentration between them will not be deemed to significantly distort economic competition.

5.5 Timetable for Notification

Administrative proceedings for concentration approval commence upon receipt of an application for concentration approval containing all mandatory schedules. Within a period of 30 days, the Office will either confirm that the concentration does not require approval or grant approval of the concentration if approval is required but no significant distortion of competition will occur by virtue of the concentration.

If the Office holds that the concentration gives rise to major concerns of significant distortion of economic competition, it will so notify the parties to the proceedings within 30 days and the proceedings will continue. In such circumstances, the Office has the power to issue a decision on concentration approval within five months from the date on which the concentration proceedings commenced.

In cases where at the end of the 30 day time limit the Office fails to notify the parties that proceedings are continuing or fails to reach a decision on the concentration application within the specified five month limit, the Office is deemed to have approved the concentration.

The Office may serve written notice on the applicant demanding the provision of further information necessary for issue of the decision on concentration or further evidence in support of such information. The time from the date of delivery of such notice until the date of compliance with such obligation is not included for the purposes of calculating the time limits for issue of the decision by the Office.

5.6 Penalties for Non-Compliance

The undertakings cannot proceed with implementation of the concentration before concentration approval is granted by the Office. If the Office discovers that a concentration requiring approval has occurred without the notification filed with the Office or before the end of concentration approval proceedings, the Office has power to order the undertakings concerned to 'de-merge' or to comply with other measures necessary to restore effective competition on the relevant market.

The Office also has the power to fine the undertakings concerned up to CZK 10 million or 10 per cent of their net annual turnover.

If the concentration takes place contrary to the terms of a legally effective decision of the Office, the Office has power to impose remedial measures necessary to restore effective competition on the relevant market, including, for example, the obligation to sell shares, transfer a business or part thereof and/or an obligation to nullify the agreement pursuant to which the concentration occurred. The Office can also fine the undertakings in the terms set out above.

5.7 Appeals against Merger Decisions

Parties to the proceedings may file an appeal to the Office Chairman against a decision on concentration approval within 15 days. Parties to the proceedings may appeal against the subsequent decision by the Office Chairman by way of an action lodged at the competent administrative court.

5.8 Concentration Rules Applicable to Specific Sectors (EG Media, Newspapers, Film Distribution Sector etc)

There are no special rules under PECA or other Acts for decisions on concentration with regard to specific sectors.

5.9 Recent Key Cases

5.9.1 Decision by the Office Approving the Concentration of Non-Alcoholic Beverage Producers

Karlovarské minerální vody and Poděbradka: The concentration of these two major non-alcoholic beverage producers had not been permitted in the past, but the Office recently allowed the concentration, subject to compliance with specified conditions. According to the Office, the reason for permitting the concentration could be found in the change of conditions on the relevant market, which had experienced intensified competition in the interim.

5.9.2 Decision by the Office Approving the Concentration of Bakery Product Manufacturers

Delta Pekárny and Odkolek are two major manufacturers of bakery products in the Czech Republic. Concentration between these two entities had not been permitted in the past, in particular given their high market share and vertical integration. Recently, however, the Office issued a decision approving

the concentration without specifying any further conditions. The reason for this change in Office policy is that one of the merging entities divested its entire milling product sector, significantly weakening its vertical integration as compared with competing undertakings on the market. Another reason is the increased bargaining power of retail-chains, which are the bakery product manufacturers' largest customers, although recently they have also become significant competitors.

6 PRIVATE ENFORCEMENT FOR DAMAGES BEFORE NATIONAL COURTS

Enforcement of competition law by way of claims for compensation for damage has not become an extended practice in Czech law. This is also true of individual claims for breach of competition law (stand-alone actions) or with reference to decisions of competition bodies (follow-on actions). However, the Office has recently sent out signals that this position may soon change. The main barrier remains lack of sufficient support under existing Czech law.

6.1 Procedural Issues

Czech law has no separate procedural rules governing private law enforcement of compensation for damage in competition matters. In the event of such claims, the parties proceed in accordance with the provisions of the Code of Civil Procedure generally applicable to claims for compensation for any kind of damage. Hence, disputes relating to compensation for damage arising due to breach of competition law are heard by the general civil courts – more specifically, by Regional Courts. In contrast with Czech administrative courts, which are responsible for review of decisions issued by the Office, Regional Courts have no experience in dealing with competition law matters.

In follow-on claims, the court asked to decide on compensation for damage is bound by the decision on merit issued by the Office or the European Commission insofar as regards the question of whether anti-competitive conduct has occurred, and the party responsible for breach of competition law. The court is not bound by any decisions to terminate administrative proceedings on grounds that the reasons for initiation of such proceedings no longer apply, or any decisions in which parties to the proceedings have been ordered (by the Commission or Office) to comply with remedial measures proposed by the parties, subsequently followed by an adjournment of the proceedings.

In stand-alone claims, the decision on the question of whether or not anti-competitive conduct exists must be taken by the court itself. However, the court may submit a notice to the Commission or Office with a request to commence proceedings and suspend the court proceedings pending the issue of an appropriate administrative decision.

6.1.1 Basis of Claim

As a general rule, with reference to anti-competitive conduct, a claim for compensation for damage may be based on breach of the obligation to abide by the lawfully applicable rules on economic competition under Section 41 Commercial Code. In cases of abuse of dominance or prohibited anti-competitive agreements that could distort competition on the Common Market, a claim for compensation for damage could also be based on a breach of the obligation directly applicable to undertakings under Articles 81 and 82 of the EC Treaty. Liability for damage is governed by Sections 373–386 Commercial Code. Liability thereunder is objective, i.e., it is not necessary to show fault on the part of the undertaking which has committed breach of economic competition. Compensation for damage will generally be paid in cash (compensation in kind will be granted only if the claimant so requests and provided that such method of compensation is possible and usual in the given case). Compensation for damage may be awarded to cover actual damage and loss of profit.

6.1.2 Limitation

There are no statutory restrictions on the right to seek compensation for damage under Czech law.

6.1.3 Claimants

As a general rule, a claim for compensation for damage may be filed by any person with capacity for rights and obligations. In this regard, there are no statutory restrictions on the group or category of persons suffering loss entitled to claim compensation for damage.

6.1.4 Cost and Funding

Costs of the proceedings comprise court fees and expenses incurred in prosecuting the action.

The current court fee for a claim for compensation for damage is 4 per cent of the sum claimed, up to a maximum of CZK 1 million. The court fee is borne by the claimant. In exceptional cases, the court may take into account the personal circumstances of the claimant and rule that the claimant need not pay the fee.

Each party to the dispute has a duty to bear the costs incurred in the proceedings, together with the legal fees paid to advocates or experts. As a general rule, the winner will be awarded costs by the court. Hence, the loser will be bound to bear its own costs and to pay the winner's costs insofar as ordered by the court.

6.1.5 Disclosure – Access to Evidence

The process of disclosure of evidence plays no part in Czech law. Each party to the proceedings has a duty to propose evidence in support of its assertions.

The court will then make its selection from the proposed evidence at its own discretion. The court may order the proposed evidence to be secured, even before commencement of the proceedings, if there are grave concerns that such evidence may subsequently become inaccessible or that such evidence will be accessible albeit only with great difficulty.

6.1.6 Burden and Standard of Proof

The claimant must show that:

- the defendant is guilty of unlawful conduct (i.e., breach of the law governing economic competition);
- damage has arisen; and
- there is a causal link between the anti-competitive conduct and the damage arising.

The burden of proof will shift to the defendant if he/she claims release from liability for damage on grounds of *force majeure* (circumstances excluding liability).

As already mentioned, if a legally effective decision of the Office or Commission exists confirming that anti-competitive conduct has occurred, the court will be bound by such a decision as to whether breach of the law has occurred and on the question as to which party committed a breach. Hence, in a follow-on claim, the claimant will have no obligation to show that the defendant is guilty of unlawful conduct.

6.1.7 Causation

There are no detailed provisions under Czech law governing the standard/quality of causality needing to be proved. Hence, for example, no distinction is made between direct and indirect causality and the claimant will have to show that the damage it has suffered arose due to breach of competition law. Case law indicates that where damage has arisen due to several causes, it is necessary to weigh up the significance of each and take account only of those decisive for the outcome under consideration.

6.1.8 Length of Proceedings

As a general rule, proceedings culminating in the issue of a decision on compensation for damage at first instance take approximately one year. The overall length of the proceedings may, however, depend on the nature of the evidence selected by the court and whether an appeal is lodged against the decision at first instance (to the Court of Higher Instance). An application for appeal may be filed within 15 days of receipt of the decision by the Regional Court. The Court of Higher Instance has power to decide on the merits of the case itself, or to nullify the decision of the Regional Court and return the matter to the Regional Court for re-consideration. Furthermore, the decision by the Court of Higher Instance may,

in certain circumstances, be further reviewed on an extraordinary appeal by the Supreme Court. Such an appeal may be filed only on grounds of allegedly wrongful legal assessment (the Supreme Court does not review the factual background of the case). An application for review of a decision by the Court of Higher Instance may be filed within two months of the date of receipt of such decision. The filing of an extraordinary appeal does not have any suspending effect (i.e., the decision of the Court of Higher Instance comes into force and becomes enforceable on the date of its delivery to the parties to the proceedings). Only in extraordinary circumstances will the Supreme Court be asked to postpone the enforceability of the decision of the Court of Higher Instance.

Where the party to the proceedings claims that fundamental rights are infringed by the allegedly wrongful decision, the decision may be also challenged before the Constitutional Court.

In addition to the reasons set out above, based on principles governing court procedure, significant delay may occur if the court decides to file a request with the competition authority and suspend the court proceedings pending the issue of a decision in the administrative proceedings.

In the light of the above and the overall complexity of competition cases, proceedings can be expected to take two to five years.

6.1.9 Level of Damages

There are no provisions under Czech law currently in force on treble compensation or damages awarded on a punitive basis. Damages are based on the principle of compensating a party for its loss. On this basis, the claimant is awarded compensation for actual losses, i.e., for a reduction of its existing property (*damnum emergens*) and assets that the party sustaining the loss could not add to its property as a result of breach by the defendant of its obligations (*lucrum cessans*).

6.2 Key Cases for Damage Claims before the National Courts

As far as publicly available to date, there are no legally effective decisions on compensation for damage for breach of competition law in the Czech Republic, although some follow-on proceedings are pending at the present time.