

QUESTIONS FOR National Reporters of LIDC Oxford 2011

Question A: Fines in Antitrust

What are the most important factors that should determine the level of fines imposed for infringements of competition rules? Should there be a binding framework determining the level of fines? Who should decide?

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1. General Background

It is the purpose of the report to analyse and compare the approach of the various national jurisdictions in their fine procedure, and to identify

- the most important factors (e.g. cooperation, compliance programmes, impact of the infringement, previous infringements and/or deterrence etc) determining the level of fines imposed for infringements of the competition rules,
- the importance of a binding framework determining the level of fine and
- the best placed body to decide e.g. judges, competition authorities, ministers and /or some other independent body.

For this purpose questions will first relate to the legal framework and the relevant institutions and secondly turn to "normative questions and recommendations against the background of the practice applied in your jurisdiction.

Please note that it is intended to give a specific emphasise to a broader approach taking into account also a wider criminal law/human rights perspective since a concern that has been expressed in this area is that fining procedure and methodology in the field of anti-trust may have become detached from the procedure and methodology that apply to other economic infringements or economic crimes. In particular, there are concerns that the procedures used may not reflect standards required when imposing penalties for other types of infringements/crimes or be consistent with national/international human rights standards, and that the amount of fines now imposed may have become disproportionate in relation to other types of economic infringements/crimes committed by corporate bodies.

2. Legal Framework

2.1 *Institutions*

- Which bodies are responsible for deciding the amount of the fine imposed for an infringement of competition law (“infringements”)?

(Please describe hereunder also the degree of independence from other public enforcement bodies and indicate also whether the same body investigates and decides over the fine; please describe whether an appeal is possible and to which body/institution (administrative body, independent tribunal etc..).

There is only one authority responsible for deciding the amount of fines imposed for an infringement of competition law being **the Czech Office on Protection of Competition** (“Úřad pro ochranu hospodářské soutěže”) (hereinafter referred to as “Office”).

The Office is a central administrative body entirely independent in its decision-making practice. The legal basis has been set by the Act No. 273/1996 Coll., on 1.11.1996, in the wording of its further amendments. The Office is headed by a Chairman, Ing. Petr Rafaj, appointed by the President of the Czech Republic on the proposal of the Government. The term of office of the Chairman is 6 years and the candidate can not be appointed for more than two successive periods. The Chairman of the Office must not be a member of any political party or political movement. The Office is divided into 4 sections. The first vice-chairman Hynek Brom heads Section of Public Regulation and Administration. The Section of Public Procurement is headed by the vice-chairman Kamil Rudolecký. At the head of the Competition Section is vice-chairman Michal Petr. Section of Legislation, Economics and International Affairs is headed by Petr Gajdušek.

The Office both investigates and decides over the fine. The judicial review of Office’s decision is available; it is performed within so called administrative judicial procedure under Act No. 150/2002 Coll., Administrative Justice Code, as amended. The effective decisions made by competition authority are reviewed on the basis of complaints lodged by dissatisfied party with the Office. The only competent court to deal with such petitions is the Regional Court in Brno - its administrative branch. So called cassation complaint can be lodged with the Supreme Administrative Court against the decision of the Regional Court in Brno. The Supreme Administrative Court serves as a final instance in those cases. The cassation complaints are not decided by a single specialized senate within the Supreme Administrative Court. As a last instance, it is possible to lodge a constitutional claim to the Constitutional Court.

2.2 *Nature of the Rules governing the assessment of fines*

What procedural rules are in place to govern the determination of fines? (administrative procedure, court procedure etc).

The fine is being determined by the Office in the administrative proceedings pursuant to Section 22 et seq. of the Act No. 143/2001 Coll., on protection of competition ("Competition Act") in connection with the Act No. 500/2004 Coll., the Administrative Act. By the judicial review of the decision of the Office, the courts have the competence to decrease the level of fines or even to withhold the fine.

- To what extent is the level of fines determined by legislative rules (e.g. prescribing maximum levels of fines, the approach to be adopted in assessing fines)?

The Competition Act determines in its Section 22 et seq. the maximum level of fines to be imposed by the Office. The Office has further issued a *soft law* called Guidelines of the Office for the Protection of Competition on the method of setting fines ("Guidelines"). The purpose of the Guidelines is to openly state how the Office should proceed when setting fines on undertakings in proceedings conducted pursuant to the Competition Act.

- Are there other (further?) guidelines as to the level of fines or as to the methodology to be used in assessing fines?

Yes, kindly see above.

- If so: -
 - Who issues the guidelines? Are they binding for the body who determines the fine. Is there a requirement to consult the public on the guidelines and/or do they have to be approved by the legislature or by government ministers?

The Guidelines are issued by the Office itself and the Office has stated that it shall follow the Guidelines in the case of all initiated administrative proceedings in which a fine will be imposed, starting on the day following the publication of the Guidelines (i.e. April 2007). Publication of the Guidelines on the method of setting fines should provide the undertakings with at least an estimation of the amount of financial sanction they may face if they violate the law.

There is neither a requirement to consult the public on issuance of the Guidelines, nor to have them approved by the legislature or by government.

- To what extent is the competition authority or a judicial tribunal hearing an appeal, required to follow the guidelines in determining the level of fines in any particular case?

The Guidelines shall be binding upon the Office which has issued them in all cases investigating the infringements of the competition law, however, they shall not be binding in our opinion for any other authority including the court, who just voluntarily can accept them and/or revise whether they have been followed.

- To what extent do they reflect or relate to procedures used in national law to determine penalties or fines payable for other types of economic crimes/infringements (such as fraud/environmental law/consumer protection)?

The Guidelines refer only to the procedure of the Office when setting fines imposed for infringements of restrictions provided by the Competition Act. The Guidelines do not in anyway refer to the procedure of imposition of fines, or to the imposition of fines for actions contrary to enforceable decision including the default of measures imposed pursuant to the Competition Act, or to the imposition of fines for administrative offences pursuant to Act No. 137/2006 Coll., on Public Procurement, as amended.

- Is there a leniency program in place and what is the legal basis for the determination of the criteria for leniency (legislative rules, other binding/non-binding guidelines)?

Yes, the Office has issued in 2007 the Leniency programme on imposition of fines in accordance with the Article 22 of the Competition Act, on prohibited agreements distorting the competition, on condition that certain additional requirements are fulfilled the parties to the cartel can be granted immunity from a fine or a reduction of a fine („Leniency programme“). The Leniency programme has been issued in the form of a notification (*soft law*) and applies solely to horizontal cartel agreements. A participant of a cartel agreement may ask for a Leniency Type I (complete protection) or Leniency Type II (partial protection).

- Are there any rules that permit or require fines also to individuals?

Yes, Section 22 of the Competition Act applies to individuals (physical persons) who may be imposed a fine up to CZK 300 000 for breaking a seal while investigating an infringement and/or a fine up to CZK 10 million for committing an offence by breaching of competition law rules.

- What are the overall objectives of fining policy (e.g. to deter further infringements by the undertaking concerned, further infringements by other undertakings, or, to mark the seriousness of the infringement) and are those objectives made transparent (e.g. legislative materials, recitals etc.)?

The Office has openly stated in the Guidelines (Articles 13 and 16) that the imposed fines shall fulfil two basic functions:

- a repressive function: they shall ensure for a sufficient deterring effect (Article 16 of the Guidelines) and

- a preventive function: they shall prevent the anticompetitive conduct (Article 13 of the Guidelines).

2.3 *General Methodology used in determining the amount of the fine*

- Please briefly summarise the methodology used to determine the amount of the fine (only key factors)

In determining the amount of fine, the Office uses a two-step methodology – first, the Office will determine a basic amount of the fine for each undertaking involved in the anticompetitive conduct in a way that the share of the value of sales (so-called basic share) will be multiplied by the time coefficient of duration of the infringement. Secondly, the Office will examine mitigating and aggravating circumstances which, relating to particular competitors, may adjust the basic amount of the fine upwards or downwards by the maximum of 50% (Section 17 of the Guidelines).

- Does the methodology vary depending on whether the infringement is unilateral (e.g. monopolisation/abuse of dominant position, failing to notify a merger) or multilateral (e.g. cartels)?

In case of multilateral infringement, the Office shall take into account when stipulating the basic share of fine also the common market share of all participating undertakings (Article 30 of the Guidelines).

- Is there a maximum fine that may be imposed? If so, how is that maximum amount determined?

Yes. The fine shall be imposed at a level of up to CZK 10,000,000 or up to 10 % of the total turnover achieved by the undertaking during the last full financial period depending on which of the amounts would be higher (Section 22 of the Competition Act).

- Insofar as the fine depends on the seriousness of the infringement, explain whether and (if so) how the following factors are assessed and taken into account:

- the role played by the undertaking in the infringement:

Should the undertaking play a leading role or has initiated the infringement, then it shall be assessed as an aggravating factor and taken into account all aggravating factors, the Office can increase the basic amount of fine up to 50%.

On the other hand, should the undertaking play a passive or “following” role in relation to other participants concerned, then it shall be assessed as a mitigating factor and taken into account all the mitigating circumstances, the Office can decrease the basic amount of fine by up to 50 %.

- the effects of the infringement;

The Competition Act stipulates that when setting a fine for a legal person the seriousness of the administrative offence shall be considered, particularly the manner of the commitment of the administrative offence and its effects, and the circumstances under which the administrative offence was committed.

The manner of the commitment of the administrative offence, in other words, the intensity of the breach of competition law is being distinguished by the Office in three characteristics, varying according to its threat for the competition:

- *most serious infringements*: which consist mainly of price fixing horizontal agreements, agreements on division of market or output-restriction agreements, abuse of dominant position of undertakings with significant impact on broader group of consumers, implementation of mergers contrary to legitimate approval of the Office and non fulfilment of the measures imposed by the Office pursuant to Section 18 (5) of the Competition Act,

- *serious infringements*: which consist of other horizontal agreements, vertical price fixing agreements relating to resale of goods, vertical agreements on division of market, other particular abuse of dominant position or infringements of the prohibition of mergers implementation,

- *less serious infringements*: other vertical agreements of lesser importance with limited impact on consumers, which have afflicted only small

proportion of the market, and other less serious distortions of the competition.

The intensity of the breach of competition law is important for calculation of the basic share of the fine (to be further multiplied with the time coefficient setting then the basic amount of fine). The basic share of the fine shall be set depending on the degree of gravity of the illegal conduct, generally

- Up to 3 % of the value of sales on the most serious infringements
- Up to 1 % of the value of sales on serious infringements , and
- Up to 0.5 % of the value of sales on less serious infringements.

(Article 29 of the Guidelines)

○ duration of the infringement;

The time of duration of the infringement helps to determine the basic amount of fine, i.e. the basic share of fine as calculated above shall be multiplied by the time of duration of infringement. The *Time coefficient* shall be set proportionally to number of years of infringement duration, whereas periods of less than one year will be counted as one and periods longer than ten years will be counted as three (Article 31 of the Guidelines).

○ the persons affected by the infringement (e.g. consumers or vulnerable groups);

The Office stipulates that in case the competitor gained a profit while involved in anticompetitive conduct, eventually caused *harm* to other competitors and/or consumers through this conduct, the fine, in order to fulfil the repressive and preventive function, should be higher than gained profit or caused harm. In cases where the unjustified profit, gained as a result of anticompetitive conduct, or harm caused can be adequately estimated, the Office will increase the amount of fine in order to exceed the amount of profits or caused harms (Article 36 of the Guidelines).

○ the size of the affected market/relevant economic market;

The size of the affected market (in other words the geographic scope of infringement) shall be one of the factors taken into account when stipulating the basic share for fine unless it has been already taken into account when assessing gravity of the infringement (Article 30 of the Guidelines).

- the existence of a genuine compliance policy at the time of the infringement;

It may be considered as one of the mitigating factors for decreasing the fine.

- the involvement of senior management in the infringement;

N/A.

- any intention by the undertaking (or employees involved) to harm competition, or recognition that competition would be or would be likely to be harmed;

It may be considered as an aggravating factor for increasing the fine, should the participant commit the infringement intentionally.

- whether the infringing conduct could reasonably have been regarded as lawful or was of a type not previously found to be an infringement;

In certain cases the Office may impose only a symbolic fine, e.g. especially in case of such merits of the case that have not yet been the object of the Office's decision-making practice (Article 38 of the Guidelines).

- the leading or subsidiary role played by the undertaking in the infringement;

Kindly see answer to first bullet point above.

- previous infringements of competition law and or other serious economic crimes or infringements?

It may be considered an aggravating factor for increasing the fine, should the participant, by legitimate decision, already committed anticompetitive conduct distorting the competition in the past; particularly identical conduct committed in the past should be considered as especially aggravating factor (e. g. repeated conclusion of agreement on division of market) (Article 33 (d) of the Guidelines).

- co-operation (other than taking advantage of a leniency program) with, or obstruction of, the investigation, or by a decision not to contest the competition authority's allegations

An effective cooperation with the Office and evidence provided by the participant contributed to investigation of the case (not taking into

account any potential application for the Leniency programme) shall form a mitigating factor for stipulating the fine.

On the other hand in case of any obstruction when investigating the crime or in case of non-fulfilment of the request of the Office for information, a disciplinary fine may be imposed up to CZK 300,000 or 1% from the net turnover achieved by the competitor. The order fine may be imposed even repeatedly up to the maximum amount for fines for infringement (CZK 10 million or 10% of the net turnover of the competitor).

- measures taken by the undertaking since the infringement to prevent future infringements (e.g. to introduce a more effective compliance programme) or to compensate victims of the infringement?

It may be considered as one of the mitigating factors for decreasing the fine.

- Insofar as the fine depends on the size or economic power of the undertaking, explain whether and (if so) how the following factors are assessed and taken into account: -

- the turnover of the undertaking in the affected markets;

Yes, this factor is being assessed by the Office when setting the basic amount of fine as the basic amount of the fine shall reflect the particular competitor's sales of goods to which the infringement directly or indirectly relates in the relevant geographic market (Article 18 of the Guidelines).

- the overall size of the undertaking in the jurisdiction concerned;

Yes, the Office may take into account also the overall size of the undertaking in the jurisdiction concerned as in case the calculated fine does not lead to the imposition of fine which constitutes, in relation to particular competitor, adequate deterrent effect, to that end the Office will increase the fine to be imposed on undertakings which have a particularly large turnover from the sales of other goods or services than to which the infringement relates (Article 37 of the Guidelines).

- the overall size of the undertaking worldwide;

It may be taken into account should the undertaking claim its payment incapability.

- other measures of size or economic power such as profitability/assets;

The Office may request any information relating to the economic efficiency of the undertaking.

- the turnover of parent companies/subsidiary companies?

It may be taken into account should the undertaking claim its payment incapability.

- Is the size/economic power of the undertaking assessed at the time of the infringement or at the time of the fining decision? What happens if the undertaking has grown or shrunk in size since the date of the infringement, or (by reason of acquisitions or divestments) forms part of a larger or smaller group of companies than it did at the time of the infringement?

The economic efficiency of the undertaking at the time of setting the fine shall be assessed. The legislation regulates only the situations when the undertaking ceased to exist.

- Please describe any adjustment made for "failing firms" (i.e. cases where the undertaking concerned cannot pay the fine or cannot do so without causing damage to innocent third parties such as creditors or employees)? How does the body responsible for determining the amount of the fine deal with cases where a "failing firm" argument is made? Are there any cases where a competition fine has led to the insolvency of an undertaking?

In exceptional cases, the Office may, while setting the fine, take into account the undertaking's long-term inability to pay, if provided with objective evidence, proving that imposition of the fine according to these guidelines would irretrievably jeopardize the economic viability of the undertaking concerned. On the contrary, no reduction of fine will be granted on the mere finding of an adverse or loss-making economic situation Article 39 of the Guidelines).

The Constitutional court has also ruled that the imposed fine shall not be liquidating for the undertaking (Pl. ÚS 3/02).

- Is there any evidence that the level of fines has increased over recent years? If so, to what extent has that been the result of changes in legislative rules or published guidance, or has it resulted from a change in decision-making practice by the competition authority?

The Office has declared in the past when issuing the Guidelines that its intention is to increase the fines which have been previously imposed on a very low level due to low awareness of the competition law. Because however, the importance

and consequences of the competition law have grown higher, the Office claimed that it will differentiate more between the administrative delicts committed and use the whole scale in order to distinguish adequately sanctioning of less serious infringements on the one hand and infringements with the most serious impacts on economy and consumers on the other. The most serious infringements of breaching the competition rules consisting of long duration, relevant to important market and having strong negative or irreparable impact on consumers shall be penalized with administrative sanctions which should be at the higher end of the scale as provided by law.

From the statistics published on the website of the Office it, however, does not seem so. In 2007 the imposed sanctions reached its top with CZK 956 million, in 2008 the level of imposed fines have decreased rapidly down to CZK 298 million, in 2009 to CZK 18 million and in 2010 to CZK 88 million.

- Are competition fines, and the procedures by which they are determined, consistent with international human rights standards (insofar as they apply to corporate bodies)?

We believe so.

2.4 *Comparison of Methodology used in competition matters versus other serious economic crimes or infringements*

- Are there any common rules to be applied to infringements of competition law and other serious economic crimes or infringements?

Yes, there are certain common principles applicable also in criminal law. For instance the competition law also applies the absorbing rule that a more serious delict absorbs any less serious delicts, therefore an undertaking shall be liable only for the most serious delict committed.

Furthermore, as in criminal law, if a delict has been committed prior to accession of the Czech Republic into EU and has been continued afterwards, such delict shall be split into two parts, whereas as one delict shall be assessed the infringement until the accession of the Czech Republic into EU and as second delict the infringement which continued thereafter. Based on the absorbing rules as mentioned above, only one delict therefore shall be assessed and the other one shall be considered as an aggravating factor when setting the fine.

- Is there any evidence that the level of fines imposed for competition infringements is out of proportion to the level of fines imposed for such serious economic crimes or infringements?

The level of fines for infringement of competition rules seems higher than fines in other sectors (e.g. public procurement), however, in overall context we do not consider the level of fines to be out of proportion.

2.5 *Other Material Aspects of the Rules governing the assessment of fines*

- To what, if any, extent is the competition authority, or a judicial tribunal hearing an appeal, required in determining the level of fines
 - to apply a consistent approach to different undertakings involved in the same infringement

The Office has declared that the imposed fine shall be individualized on each particular competitor, because only reasonably individualized fine imposed on particular competitor will correspond with the principle of equal and rightful punishment. Imposition of fines of different amounts on particular competitors for the same or similar anticompetitive conduct respects the principle when the economic efficiency of each competitor must be reflected during the setting of fines in order to ensure sufficient deterring effect (Article 16 of the Guidelines).

- to have regard to the level of fines imposed for similar competition infringements in previous cases?

The Office on one hand claims that it will try to ensure for adequacy and predictability of imposed fines, but on the other hand the Office claims that the requirement for having regard to the amount of the sanctions imposed during the previous proceedings should not be understood as a requirement for setting the same amount of fine like in previous cases solved by the Office. As resulting from the practice of the European courts, which also can be regarded, the amount of the imposed fines can be modified by the competition authority if the effective application of the competition law requires so. Higher amount of the fine imposed compared to the previous practice, even in similar cases, shall not be deemed as procedure contrary to law per se, or more precisely, as procedure which might be contrary to the principle of sanctioning only pursuant to the Competition Act (Article 12 of the Guidelines).

- to have regard to the level of fines imposed on corporate bodies for other serious economic crimes or infringements (e.g. in the areas of fraud/environmental law/consumer protection)?

N/A.

- to take into consideration the amount of fines already imposed (or likely to be imposed) on the same corporate body or bodies for the same infringement(s)?

In case the undertaking already had committed (and was punished) in the past similar infringement, then it shall be considered as an especially aggravating factor that the undertaking has committed a particularly identical conduct and the basic fine may be increased up to 50%.

- Is it possible to appeal against the amount of the fine to an independent judicial tribunal? Yes. If so: -

- On what grounds may such an appeal be brought?

The appeal may be brought by anybody, who claims that their rights have been prejudiced directly or due to the violation of their rights in the preceding proceedings by an act of an administrative authority (the Office in this case) whereby the person's rights or obligations are created, changed, nullified or bindingly determined may seek the cancellation of such a decision, or the declaration of its nullity, unless otherwise provided for by the Act or by a special law (Section 65 of the Administrative Justice Code).

- What approach is adopted by the appeal tribunal (e.g. is the appeal confined to correcting errors of law or manifest errors of appreciation, or is it a redetermination of the fine *de novo*)?

Yes, the approach is limited to correct errors of law, to which, however, the plaintiff must explicitly point out in its claim. The court may also decrease or even withhold the fine, should it consider the fine to be out of proportion (provided the plaintiff has suggested it in its claim). The court, however, shall not in any case replace the Office regarding its professional supervisory competence or replace its administrative discretion, it shall purely revise, whether the decision of the Office has arisen out of a comprehensive finding of facts and is in compliance with the law.

- Does the appeal tribunal have power to increase the amount of the fine, and, if so, when is that power used?

No.

- Is there a right of further appeal to a superior court, and if so on what grounds?

Yes, there is an option to file a cassation complaint to the Supreme Administrative Court. A cassation may be submitted only on grounds of the claimed

- unlawfulness consisting in incorrect consideration of a legal issue before the court in the previous proceedings,
- fault of proceedings consisting in that the merits of the matter from which the administrative authority proceeded in the contested decision had no support in the documents or is in contradiction with them, or in that in determining the merits of the matter the law was violated in provisions on proceedings before the administrative authority in a way that could have affected its lawfulness, and for this justly claimed fault the court deciding on the matter should have quashed the contested decision of the administrative authority; such procedural faults include non-reviewability of the administrative authority's decision on grounds of its incomprehensibility,
- irregularity of proceedings before the court consisting in the absence of conditions for the proceedings, in the decision being made by an excluded judge, in the court being incorrectly staffed, or in the decision being made to the detriment of the party as a consequence of the judge's criminal act,
- non-reviewability consisting in incomprehensibility or lack of causes for a decision, or in some other procedural fault before the court, if such a fault could result in an unlawful decision on the matter itself,
- unlawfulness of the decision on rejection of the petition or on discontinuation of the proceedings.

- Is the procedures used to determine the amount of the fine in anti-trust cases consistent with constitutional/international human rights standards?

We believe so.

3. Statistics

- It would be helpful if you could provide a list of the fines imposed in your jurisdiction over the last 10 years and a brief description of the infringement (e.g. price-fixing/information sharing/exclusionary abuse). If that is not practical, could you indicate the range of fines that has been imposed over that period, pointing out any general trends (such as a general pattern of increasing fines)?

There have been adopted lots of decisions in the past 10 years, please find below the indicative list thereof. Where the litigation is still pending, we are informing you accordingly.

<i>Year of</i>	<i>Name of the case/ Parties</i>	<i>Amount of fine</i>	<i>Type of Infringement</i>	<i>Comment if</i>
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LIGUE INTERNATIONALE DU DROIT DE LA CONCURRENCE
INTERNATIONAL LEAGUE OF COMPETITION LAW
INTERNATIONALE LIGA FÜR WETTBEWERBSRECHT

<i>final fine decision</i>	<i>Names</i>		<i>Cartels</i> (please give further details e.g. vertical/horizontal infringement, price fixing, market sharing, etc) <i>Abuse of Dominance</i> (please give further details e.g. exclusionary abuse) <i>Merger control</i> (please give details, e.g failure to notify, infringement of commitments)	<i>any</i>
2001	AGIP Praha, a.s, Aral ČR a.s., BENZINA a.s., CONOCO Czech Republic s.r.o., OMV Česká republika, s.r.o. a Shell Czech Republic a.s.	313 mil CZK	Cartel - the petrol companies have entered into a price agreement	The litigation procedure is still pending
2003	ČESKÝ TELECOM, a.s.	81,7 mil CZK	Abuse of dominance- The telecommunication company misused its dominance by providing the services to its customers	The litigation procedure is still pending
2003	BILLA, spol. s r.o. JULIUS MEINL, a.s.	51 mil CZK	Cartel - Agreement about the purchase prices of the products	
2003	LINDE TECHNOPLYN a.s.	12 mil CZK	Abuse of dominance - the customers were forced to by the gas from the dominant	
2004	Českomoravská SS, Raiffeisen SS, SS České spořitelny, Modrá pyramida, Hypo SS, Wüstenrot SS	484 mil CZK	Cartel and abuse of dominance - the societies fixed prices and coordinated the business	The fine was completely cancelled by the court.
2004	ČESKÝ TELECOM, a.s.	210 mil CZK	Community acts infringement	
2005	DELTA	120 mil CZK	Cartel - bakery companies have made	

LIGUE INTERNATIONALE DU DROIT DE LA CONCURRENCE
INTERNATIONAL LEAGUE OF COMPETITION LAW
INTERNATIONALE LIGA FÜR WETTBEWERBSRECHT

	PEKÁRNÝ a.s., ODKOLEK a.s. a PENAM spol. s r.o.		an agreement about the prices of the bakery products	
2005	EASTERN SUGAR ČESKÁ REPUBLIKA, a.s., Moravskoslezské cukrovary, a.s. a Cukrovary TTD a.s.	118,7 mil CZK	Cartel – sugar producing companies have made an agreement about the price of the sugar	The fine was cancelled by the Office itself
2005	ČESKÝ TELECOM, a.s.	90 mil CZK	The telecommunication company hindered competition to other companies with respect to ADSL services	
2005	ŠKODA AUTO a.s	55 mil CZK	Abuse of dominance – different conditions when providing the same services	Cancelled by the Office itself.
2006	RWE Transgas	370 mil CZK	Abuse of dominance – discrimination of the competitors	The litigation procedure is still pending
2006	Alliance UniChem CZ , GEHE Pharma Praha, PHARMOS a PHOENIX Lékárenský velkoobchod	113,064 mil. CZK	The Czech largest medical distributors have made agreement about boycotting the distribution into 3 hospitals	
2007	ALSTOM (Société Anonyme) AREVA T&D Hitachi Fuji Electric Japan AE Power Systems Corporation Mitsubishi Electric Corporation	941.881 mil CZK	bid rigging – companies which produce gas isolating switching equipment made agreement about winning the tenders The largest fine ever in Czech Republic	The litigation procedure is still pending

	Toshiba Corporation Siemens VA Tech Transmission & Distribution GmbH & Co KEG Nuova Magrini Galileo S.p.A.			
2008	České dráhy, a.s.	270 mil CZK	Abuse of dominance-different prices for speditors	The litigation procedure is still pending
2008	Kofola Holding	13, 552 mil CZK	Vertical agreement with the distributors	
2010	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 a LG Electronics, Inc.	51,787 mil CZK	Cartel - about the price of the televisions	

4. Normative Questions / Recommendations

- What body should determine the level of fines (judicial/administrative)? If administrative, should the decision-maker be separate from the team that investigated the infringement?

In our opinion the administrative body which is investigating the infringement should decide about the fine.

- To what extent should the methodology used/level of fines be determined by, or be subject to the approval of, the legislature or politically-accountable

government ministers, or should the level of fines and methodology used be left to independent competition authorities or courts?

We assume the maximum level of fines shall be set by the legislation (approved by the legislature), however, any other methodology for “internal” use of the administrative body within the given competence of the administrative body may be determined by the administrative body itself.

- What role should courts play in supervising the fining decisions of independent competition authorities? To what extent should they have regard to guidelines issued by competition authorities?

The court should review whether there have not been “errors” in law when setting the fine and whether the fines are proportionate. The courts may in our opinion assess whether the issued guidelines (parts thereof used in the relevant case) are in compliance with the legislation.

- To what extent should the level of fines reflect the size of the undertaking concerned? If so, how should “size” be measured? If turnover is to be used, what measure of turnover is appropriate (relevant market/overall turnover; year of infringement/year of fining decision)?

We believe the level of fines should be individualized to each undertaking in order to ensure a sufficient deterring effect. The size should be in our opinion measured by the overall turnover of the undertaking in the relevant market affected by the infringement in the year of fining decision.

- How should the seriousness of an infringement be judged? To what extent should the anti-competitive intentions of the undertaking or its employees be relevant?

We believe that the infringements shall be distinguished according to the intensity of the (potential) consequences on the market from the most serious to less serious. The fines shall then vary accordingly. Should the undertaking act intentionally, that should clearly be assessed as an aggravating factor when setting the fine.

- To what extent should the actual effects of the infringement be relevant? Should the amount of the fine exceed the harm caused (or likely to have been caused) by it, in order to provide suitable deterrence bearing in mind a low likelihood of detection?

Whether the anticompetitive behaviour has been actually realised, should be taken into account when setting the basic amount of fine. In our opinion the

amount of fine may exceed the harm caused (or likely to be caused) in case of infringements of most serious nature (price fixing horizontal agreements etc.).

- To what extent should the level of fines in competition cases be consistent with the level of fines imposed for other economic crimes/infringements (fraud/environmental law/consumer protection)?

In our opinion it may not be consistent with such infringements at all as the other infringements have different setting of fines (not taking into account the economic efficiency of the undertaking) therefore the amount of fines is usually at a very different level.

- To what extent should fines on an undertaking reflect its behavior after the infringement, such as co-operation/non-co-operation with the investigation/introduction of compliance measures/disciplinary action against employees involved/payment of compensation to victims?

Such behaviour may be assessed either as an aggravating or a mitigating factor when setting the fine.

- If competition fines are now high compared to fines for other economic crimes/infringements, is there any factor (such as the relative difficulty of detection) that might justify that difference, or is the difference not justifiable?

In our opinion the relative difficulty of detection would be certainly one factor for the difference. The other one may be the overall economic benefit the undertaking may have when pursuing the anticompetitive conduct. For other types of legal infringements/crimes the economic benefit may not be so large.

5. Contact Details and Time Table

Please kindly make sure that your reports are sent to us before 10 March 2011. Of course any questions beforehand are very welcome.

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