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# **Influence of integration of Czech Republic into EU on form and protection of economic competition**

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The article is focused on area of economic competition. The basic pre-requisite of economic competition is assuring of freedom of entrepreneurship, freedom of partners choice, possibility to enter in and secede from branches, functional value system which ensures transparency of market and informed ness of subjects.

Policy of protection of economic competition is actively executed policy which contributes to maintenance of competitive environment, which eliminates obstacles that weaken competition. Within the frame of EU it is a coordinated policy. In Czech Republic economic competition is modified by economic competition law which is asserted by Board of protection of economic competition as central administrative authority.

Authoress adverts to problems connected with protection of economic competition, e.g. in connection with verification of fusions, unfair competition, exploitation of dominating position in the market.

## **Introduction**

Economic competition is realized among companies and it is the basic mechanism for functioning of market economy. Competition is efficient in case that market is formed by mutually independent companies that confront to the competitive advantage. Economic competition contributes to support of innovations, it makes possible to keep down costs and also it increases efficiency of economy. Companies that are stimulated by competitive surrounding, offer goods and services that are able to compete, as in light of the price and also in light of quality. For assuring competitive surrounding government realizes policy of economic competition protection. It determines rules of law within the frame of competitive right where it determines prohibited practices that keep down the competition. In case of encroaching of rules of law in Czech Republic Board of protection of economic competition intervenes. Its main goal is to eliminate negative influence for competition.

**Keywords:** Economic competition, competition law, competition, competitive advantage, limitation of competition, market power, dominating position, fusion, unfair competition, Board of protection of economic competition.

## **Economic competition in European Union and Czech Republic**

Policy of economic competition protection is defined as effort to increase of market surrounding competition or effort to eliminate barriers that weaken competition. Economic competition policy is one of the basic policies of EU. It is actively executed policy, systemic policy which constantly contributes to maintenance of competitive surrounding. For assuring economic competition it is necessary to ensure liberty of business, liberty of choosing partners, possibility to enter and leave the branch, functioning of value system which ensures transparency of market and informedness of subjects.

Carriers of protection of economic competition policy are organs that claim rules of law; they check their keeping or assert and punish non observance. There are specialized state institutions, antitrust or antimonopoly administrative department, commissions, ministries etc., that are characterized by specific level of independence. Competences of carriers are focused e.g. on area of permission of treaties among concurrent users, permission of exemption, imposing of fines because of violation of activities. A carrier of economic competition in EU is European Commission which functioned as national competitive administrative department. Parisian treaty about creation of European community of coal and steel in 1952 layed the foundations of competitive policy. But compact rules for protection of economic competition originated by subscription of Roman treaty (1957).

Competitive policy in European Union is considered as instrument serving to achievement of basic goals of Community. Constantly sustainable growth, support of stability and increases in living standard are ranked among them. Economic competition supports mentioned goals because it leads economical subject to increases in efficiency, improving the quality of production and price-cutting. Rules that competitive policy of EU is lead by, is focused on two areas, namely acts of entrepreneurial subjects and interventions of membership state. Entrepreneurial subjects can limitate the competition by closing deals or by exploitation of dominating position on the market. Accordingly, governments of membership states can disrupt economic competition by acting, e.g. conferment of privilege, thanks to which monopoly originates on the market, or by conferment of state support which prefer entrepreneurial subject or production of specific substance.

Specific mission of European competitive policy is to supervise on unity of internal market; it means to ensure functioning of competition within the frame of the whole European Union. Without existence of this policy it can come unwanted situation when subjects of market would share within the scope of branches European market according to the national key. Goal of this policy is to create a system which ensures that the competition on the internal market isn't affected. Therefore the goal is creation of internal market on which there are similar conditions as on home markets. Competitive policy isn't insisted on interests of participating parties but on economical interest of Community. Rules of law are addressed to companies or states. In application of general competitive rules European Commission insists of secondary legislation which is couple of decades of directions and regulations.

Competitive policy of European Union is based on 5 principles:

- prohibition of common agreements or practises that can influence business and obstruct or affect competition on internal market,
- supervision of help providing by membership states,
- preventive supervision of fusions with European dimension that lead to dominance,
- liberalization of sectors that take control of monopoly guaranteed by state.

Entrepreneurial subjects are trying to reduce or remove risk connected with competition and they want to achieve bigger stability of economical conditions and thereby advantages for them. There are for example determinations of different prices for different segments, agreements among producers, effort to obtaining a privileged position. Acquired economical power makes possible to influence market mechanism on the behalf of them and to the prejudice of other economic subjects. It is affected competitive environment and it can lead to fall of efficiency of allocation of resources, limitation of free entry into branches, origin of barriers for reducing of costs to production but also it can lead to limitation of freedom of consumer choice.

Protection of economical competition is focused on existence of economical competition and not being limited or affected. A difference between unfair competition and exploitation of economical competition is that unfair competition takes place within economical competition whereas exploitation of economical competition goes against competition in itself. In economical competition we consider unfair competition as action which is in conflict with good manners of competition and which causes detriment to other subjects, also consumers. Among unfair competition belongs especially:

- false advertising,
- false marking of goods and services,
- evocation of invocation in mistake danger,
- parasiting on reputation of company, products or services of other competitors,
- bribery,
- detraction,
- comparative advertising,
- encroaching of business secret,
- threatening of health of consumers and living environment.

Economical subjects are trying to reduce or eliminate risks connected with competition. Limitation of competition has a couple of forms:

- contract agreement, so-called cartel agreement are agreement of behaviour among particular participants of market about prices, volume of production, sale conditions etc. If cartels are prohibited, companies are trying to evade it and they compensate it by non formal agreements.
- exploitation of market power can have a form of price discrimination, direct exploitation of other subjects, privilege agreement, limitation of distribution etc. It can come to exploitation of market power if the stronger competition force to specific action or hamper to potential competitions to enter the market.
- synthesis of subjects, fusion, has a horizontal form, i.e. synthesis of subjects producing the same kind of product, vertical is synthesis of subjects creating different levels of production process and diagonal is synthesis of subjects among that commitment doesn't exist, neither horizontal nor vertical.
- state intervention or regulation that have a goal to avoid to private subjects to encroach the position, regulation can have the form of price regulation , implementation of taxes etc.
- unfair competition is acting that is in conflict with good manners of competition and that can cause detriment to other subjects. Among the most common forms of unfair competition belongs tricky advertising, tricky marking of goods, and danger of mistake, threatening of health and living environment, encroaching of business secret.

Policy of protection of economical competition is focused on prevention of impact of subject synthesis and it makes use of market conformal instruments so that impacts of synthesis are to the benefit of competitive environment. Its effects:

- against restrictive business practice of subjects that harm competitive environment,
- against exploitation of dominant position which subject has on the side of supply or demand in specific branch and it isn't exposed to any competition or not important competition,
- checking of fusions, which should avoid a creation of dominant position of subject,
- deregulation purposeful against state activities because regulations contribute to empower of monopoly structure, limitate entry to the branch and therefore they affect a competitive environment,

- against methods of unfair competition.

Within the frame of competitive policy there are regulated by law of European Commission:

- prohibition of specific agreements among companies,
- prohibition of dominant position exploitation,
- checking fusions and seizure,
- prohibition of state help affecting a competition and influencing a business among states,
- unified conditions and process in permitting a state help.

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Rules of dominance and direct impact of law of European Community are concerned also with Czech Republic. Below are mentioned some rules of law.

Agreements limitation a competition is modified by paragraph 81 of Treaty where it prohibits agreement and acting that limit ate economical competition and influence business among membership states. Prohibition of agreements is related to horizontal agreements and also vertical agreements among subjects. If agreements limitations a competition come under regulation of paragraph 81 of Treaty, they are considered as prohibited and from the beginning invalid. Companies participating on agreements can be penalized by European Commission up to 1 million ECU or 10% of the whole turn-over from the previous year. On the basis of paragraph 81 subparagraph 3 of Treaty by request of participants European Commission has a possibility to permit an agreement; there are agreements about exclusive sale, exclusive buy, distribution and service of self-propelled motor vehicle, specialization, investigation and development, in area of insurance and agreement about transfer of technologies.

Exploitation of dominant position is modified by paragraph 82 Treaty as prohibited and repugnant with common market if it can cause influence of business among membership states. It's for example subject business, discrimination.

Synthesis of subjects is modified by Regulation of Council no. 1310/97 which consider as synthesis of companies absolute synthesis of companies, obtaining control of other company and establishment of common companies constantly observant a function of singly managing entity. Regulation is based on three principles obligatory ex ante announcement of concentrations that is important in light of Community and in adopting a decision of European Commission. It has to be discussed the topic of company synthesis with worldwide turn-over more than 5 mld. EUR and turn-over at least of two companies more than 250 mil. EUR.

Paragraph 85 forbids whatever agreement which can influence a business among membership states and which contemplates to limit a competition on the common market. Paragraph 86 forbids exploitation of dominant position on the market and represents instrument for protection of small and medium enterprises. European Commission has large competences in area of competitive policy. To avoid acting that paragraph 85 and 86 forbids, European Commission is according to regulation 17/62 enabled to make decisions enforceable by means of fines. Regulation gives to European Commission a dominant competence to franchise according to the paragraph 85(3) and exemptions. National courts can interpret and apply block exemptions but they can't soften standards of European Commission.

Regulation no. 4064 which enables European Commission to deal checking of fusions effectively, originated not until 1989. Therefore regulation 4064 determined limits according to the turn-over of companies, in transcendence of these limits European Commission judges

a fusion. Decision of European Commission can be attacked, second instance is European Court.

Paragraph 92 says about a role of governments in distortion of economic competition by providing a state help and it is about conditions of its conferment.

Agreement about European Community doesn't include specific regulations concerning submitting of state commissions. Companies have to have the same opportunity to obtain a state commission. Agreement determines four principles for state commissions in defiance of their value:

- prohibition of discrimination by reasons of nationality (paragraph 12 of Agreement)
- free movement of goods and prohibition of any quantitative limitation of import and export (paragraph 28 of Agreement)
- freedom in business of citizens in one membership state in area of the other membership state (paragraph 43 of Agreement)
- freedom in providing services if citizens of membership states have domicile in different state than acceptor of services (paragraph 49).

European Commission can exercise control with domestic antimonopoly administrative departments. In investigation it can require necessary information's from governments of membership states or it can apply to domestic antimonopoly administrative department to lead investigation. For no duplicate operating the Institute of mutual announcing of incidents was established. It functioned also between European Commission and Czech Administrative department of protection of economic competition.

Economic competition in the whole Czech Republic is modified by Act no. 143/2001 of Digest, about protection of economic competition and then there is particular modification connected by unfair competition modified in Act no. 513/1991 of Digest, commercial code. Relevance of transfer of competitive rules of EU by Czech Republic was emphasized by European agreement from 1995.

Act no.143/2001 of Digest there are mentioned cases that there aren't prohibited. There are agreements fulfilling the conditions:

- agreement contributes to improvement of production or distribution of goods or to support technical or economical development
- agreement has to assign to consumers appropriate part of benefits
- agreement cant hamper to subjects
- agreement cant enable to subjects to eliminate a competition on the significant part of market of goods

There are prohibited mainly agreements included arrangement about:

- direct or not direct determination of prizes
- limitation or checking of production, sales, development or investment
- diversification of market or sale sources
- the fact that making a contract will be connected by acceptance of further performance
- exercise of different conditions compared with subjects
- the fact that participants of agreement wont transact business or cooperate with subjects that aren't participants of agreement or that will have a bad effect.

Law consider as exploitation of dominant position the direct or not direct exaction of inadequate conditions in contracts, union of acceptance with making a contract with

requirement that the other side will take away also other performance, exercitation of different conditions towards participants on the market, cessation or limitation of production, consumption or research and progress to the prejudice of consumers, long term offering and sale of goods for unequal low prices, rejection of provision an approach to their own transmission or distributing network to other consumers for adequate footage. Dominant position isn't occupied by company which achieved a market share less than 40% in particular period.

Law in area of joining of subjects distinguishes if the turn-over was achieved by company which works on market in Czech Republic or by company which doesn't work here yet and which is accompanied with company working in Czech Republic. Joining of competitors is especially fusion of two or more independent competitors. Fusion can be amalgamation and merger of a company. In case of merger of a company one or more companies become extinct and entire relations and asset of companies merge into company succession. In case of amalgamation the both companies become extinct and all their asset and relations merge into new established company. As joining of competitors is considered:

- acquirement of the new company of other competitor or its part by contract, public sale or in some different way,
- if one or more persons that aren't entrepreneurs check at least one of the competitors or if one or more entrepreneurs obtain a opportunity to direct or not direct check the other competitor, e.g. by acquirement of shares of Stock Exchange, membership parts.

Protection of economical competition in Czech Republic is institutional ensured by Administrative department of economic competition<sup>1</sup>. Administrative department of economic competition is central organ of state administration; it creates conditions for supporting and protection of economic competition. It executes supervision in submitting of public commissions and checking of providing of public support, it's absolutely independent on its decision actions. At the head of there is a chairman who is nominated on the proposal from government by president. Administrative department of economic competition regularly show to government of Czech Republic annual reports about acting of Administrative department of economic competition and it ensures an access to information's.

Market power is reviewed by Administrative department of economic competition according to he fact what is the market share achieved by competitor or competitors, it reviews economic and financial power, legal or other barriers to enter a market, level of vertical integration, structure of market and quantity of market share of the closest competitor. Administrative department works on joining of competitors that achieve or overreach allotted turn-over.

Permissions of Administrative department of economic competition are liable to joining of competitors that:

- are working on Czech market already and their total net sales are higher than 1,5 mld. crowns and at least two from these competitors achieve in the last fiscal period net sales higher than 250 mld. crowns,
- on the Czech market aren't working till now and whose worldwide net sales in the last fiscal period are higher than 1,5 mld. crowns with competitor who is working on the Czech market already and whose net sales on this market is also higher than 1,5 mld cowns.

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<sup>1</sup> Act 264/2006 Digest, about action of Administrative department of economic competition.

## **In fine there are mentioned examples from area of economic competition**

European Commission published in regular annual report about economic competition policy and its contribution for economic progress certain examples. In area of unfair practises it fined seven cartels in total amount of 1,846 EUR in a year 2006. Number of joining published by European Commission was record 356. In area of cartels it accorded seven definite permissions and it fined 41 companies by fine in total amount of 1846 mil EUR. Commission rendered 710 decisions for state support. European Commission judged 244 notifications of national regulating organs and it rendered 156 decisions. In area of state help it was approved modernization of current frame of rules, e.g. more targeted support, less number of them, increase of transparency, emphasis on economic analysis, simplification of connivance of regional support, support of education, new frame of state support of research, progress and innovations.<sup>2</sup>

In 2008 chairman of Administrative department of economic competition confirmed by its decision an assessment of sanction in amount of 500 000 crowns to corporate town Karlovy Vary for its process in public commission Výstavní, sports and cultural congressional centre. Chairman of Administrative department of economic competition confirmed in March 2008 imposing a fine 100 000 crowns to submitter Pec pod Sněžkou when the town submitted a commission more than 16 mil crowns for modification and extension of local elementary school without selection procedure but straight to the company BAU-INVEST Pec pod Sněžkou, Limited Company. From 1<sup>st</sup> of July 2006 there is a new Act no.137/2006 Digest, about public commissions. Act no.139/2006 Digest licence law determines a process of public submitter in making a licence contract in the frame of cooperation among public submitters and other subjects. The highest fines in area of public commissions imposed by Administrative department of economic competition in one administrative proceeding from time 1997-2007 are presented in the following figure.

### **Fines in area of public commissions imposed by Administrative department of economic competition in crowns**

<b>Submitter</b>	<b>Amount of fines</b>	<b>Year</b>
Moravské naftové doly, s.p.	5 000 000	2007
Corporate town Zlín	3 000 000	2007
Capital Praha	715 000	2002
Town Hradec Králové	700 000	2005
Carrier Zlín-Otrokovice	500 000	2005
Department of Labour and Social Affairs	500 000	2006
Corporate town Karlovy Vary	500 000	2007
Corporate town Brno	480 284	2002
České dráhy, joint stock company, Praha	300 000	1997
Municipality Dolní Třebonín	300 000	2004
Vítkovice Aréna joint stock company	300 000	2007

<sup>2</sup> [http://ec.europa.eu/comm/competition/annual\\_reports](http://ec.europa.eu/comm/competition/annual_reports)



In 2006 Administrative department of economic competition rendered six decisions and fined in total amount of 407 mil crowns. In 2006 for exploitation of dominant position Administrative department of economic competition fined Dopravní podnik in Ústecký region by amount of 700 000 crowns.<sup>3</sup> In 2007 it fined by the highest fine (941,881 mil. crowns) producers of so-called closing arrangement isolated by gas (PISU) when participants of process made a deal about offering a price of PISU because they wanted the commission to be assigned to a prearranged company.

In 2008 Administrative department of economic competition repeatedly fined company Linde Gas joint stock Company in amount of 12 mil crowns. Subject committed a purposeful breach of the law about protection of economic competition when it offered low prices to some customers; the purpose was to keep them in case they would obtain a preferable competitive proposal. Low prices were offered to the prejudice of higher prices for other clients.

In January 2008 Administrative department of economic competition permitted a union in area of building savings. Raiffeisen Bausparkassen Holding GmbH can obtain a hundred-percent share of HYPO building and loan association joint stock Company.

### **Literature**

CIHELKOVÁ, E., JAKŠ, J. A KOL. Evropská integrace - Evropská unie. Praha: Oeconomica, 2004. ISBN 8024508540.

PELLEŠOVÁ, P. Hospodářská politika A. Distanční studijní opora. Karviná: SU OPF, 2006. ISBN 80-7248-370-6.

VINCUR, P. A KOL. Teória a prax hospodárskej politiky. 2. vydanie. Bratislava: Sprint, 2006. ISBN 80-89085-60-1.

ŽÁK, M. Hospodářská politika. Praha: VŠEM, 2006. ISBN 80-867-30-04-2.

Evropská Unie - Ekonomicko-právní informační systém. Vydavatel: GRAND, s. r. o. ISBN GRAND007.

[www.compet.cz](http://www.compet.cz)

[www.ec.europa.eu](http://www.ec.europa.eu)

[www.europa.eu.int](http://www.europa.eu.int)

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<sup>3</sup> <http://www.compet.cz/informace>