# Chapter 3 Czech Republic

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This report focuses on an examination of the current methodology, legal framework and corresponding case law concerning market definitions in the media sector in the Czech Republic.

Part A introduces the relevant legal provisions and the main institutions concerned with the implementation of competition law in the Czech Republic. In part B, we focus on the relevant markets as they were defined by the Czech competition authorities in case law which dealt with publishing, music, film, broadcasting and the Internet. In connection with this, we review in detail the market definitions, methodology and reasoning used. Comparing these markets with the relevant markets outlined by the case law of the European Commission, the analysis will show that the same market definition methodology is used and the same principles are applied in most of the cases in the Czech Republic (part C).
A. Market definitions in competition and media law in the Czech Republic

I. Introduction

1. Regulatory framework

In the Czech Republic, the main legislation covering the area of economic competition is the Act on the Protection of Economic Competition (hereinafter “the Competition Act”). The Competition Act became effective on 1 July 2001. It replaced the previous Act on the Protection of Economic Competition and provided a completely new legislative basis for competition policy in the Czech Republic in order to achieve compatibility with European regulations on economic competition. The Competition Act regulates three basic pillars of competition law: (i) cartels, (ii) abuse of a dominant position and (iii) merger control.

The Competition Act applies to all competitors, i.e. individuals, legal entities and their associations, which participate in economic competition, unless the Competition Act or special laws provide otherwise. Its object is to maintain the existing level of economic competition, promote its development in the future and prevent anti-competitive practices.

In accordance with EC competition law, the Competition Act generally prohibits and declares invalid all agreements between competitors, resolutions of their associations and competitors’ concerted acts which result, or may result, in a violation of economic competition. However, the Antimonopoly Office’s decision or decree may stipulate an exemption from the above-mentioned principle.

The abuse of a dominant position to the detriment of other competitors or consumers is also prohibited by the Competition Act. A competitor (or more competitors

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3 § 3 et seq. of the Competition Act.
4 § 10 et seq. of the Competition Act.
5 § 12 et seq. of the Competition Act.
together) has (have) a dominant position on the market, if its (their) market power enables it (them) to behave, to a large extent, independently of other competitors.

Furthermore, the Competition Act regulates the procedure of the application of Articles 81 and 82 of the Treaty on Establishment of the European Community by the bodies of the Czech Republic and their co-operation with the EC Commission and other Member States’ bodies on the basis of the Regulation on the Implementation of the Rules on Competition.

In addition, in February 2005, the Czech Parliament started to discuss a draft amendment to the Competition Act whose objective is the implementation of the EC Merger Regulation. The proposed effective date is the date of the law’s promulgation (based on the legislative procedure, the law will probably become effective in the second half of 2005).

The Czech media and telecommunications sector is governed by various laws related to the specific segments of this sector, for example, the Telecommunications Act, the Act on the Press and the Act on Radio and Television Broadcasting.

2. **Relevant competition and regulatory authorities in the media sector**

The relevant Czech competition and regulatory authorities in the media sector are the following:

a) the Office for the Protection of Economic Competition (hereinafter “the Antimonopoly Office”);

b) the Ministry of Informatics and Czech Telecommunications Authority (hereinafter “the Telecommunications Authority”);

c) the Council for Radio and Television Broadcasting (hereinafter “the Broadcasting Council”).

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10 Úřad pro ochranu hospodářské soutěže, www.compet.cz; the competence of the Antimonopoly Office is specified in Act No. 273/1996 Coll., on the competence of the Office for the Protection of Economic Competition, as amended.


13 Rada pro rozhlasové a televizní vysílání, www.rrtv.cz
a) The Antimonopoly Office

The Antimonopoly Office is the national competition authority responsible for the protection of competition. It also has certain powers in the areas of public aid and public procurement. The Antimonopoly Office makes its decisions in individual cases independently. It is headed by a Chairman appointed by the President of the Czech Republic for a six-year term of office. The Antimonopoly Office is structured into several departments and is located in Brno.

The Antimonopoly Office enforces the prohibition of cartels, rules on the abuse of a dominant position and approves any concentration of competitors. Since the Antimonopoly Office is charged with the administrative enforcement of competition rules, it is empowered to initiate proceedings (on its own initiative or upon a third party’s input) and to take administrative measures. The Antimonopoly Office is the body which applies Articles 81 and 82 of the European Community Treaty in the Czech Republic. It has extensive investigation powers, comparable to those of the European Commission.

In the event of a violation of the Competition Act, the Antimonopoly Office can impose a fine and/or rectification measures. If the subject concerned disagrees with the Antimonopoly Office’s administrative decision, it can file an appeal against the decision with the Antimonopoly Office’s Chairman, who shall decide such an appeal on the basis of the proposal of a special commission established by him/her. The decision can be further challenged by an administrative action within administrative judicial proceedings.

The decisions of the Antimonopoly Office are publicly accessible on its website.

b) Ministry of Informatics and the Telecommunications Authority

The Ministry of Informatics and the Telecommunications Authority are the regulatory authorities of the telecommunications market in the Czech Republic. Their competences are laid down in the Telecommunications Act. The Ministry of Informatics, among other matters, sets out the basic principles of state regulation in the telecommunications sector, ensures the performance of the international obligations of the Czech Republic and formulates the national telecommunications policy, including the monitoring of its fulfilment. It also approves the frequency bands allocation plan.

The Telecommunications Authority is an independent administrative authority within the competence of the Government of the Czech Republic. It regulates the

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14 Act No. 151/2000 Coll., on telecommunications [zákon o telekomunikacích], as amended; effective as of 1 July 2000. We note in this connection that the legislative procedure of the adoption of the new Act on Electronic Communications, which will replace the current Telecommunications Act, is almost complete. The new law has not yet been promulgated in the Collection of Laws; it will become effective on the first day of the second month following the date of promulgation.
telecommunications market in the Czech Republic in the areas of, among others, licensing proceedings, access and interconnection of the public telecommunications networks, assignment of frequency spectra, pricing, etc. The Telecommunications Authority is headed by its Chairman and is structured into several departments and an internal audit section.

c) The Broadcasting Council

The Broadcasting Act established the Broadcasting Council as an administrative authority which executes government administration in the area of radio and television broadcasting and retransmission. The Broadcasting Council supervises the maintenance and further development of the plurality of programmes and the information provided in the area of radio and television broadcasting and retransmission, monitors the independence of its content and fulfils other tasks laid down by legal regulations.

The Broadcasting Council’s competence covers, among other issues, decision-making in the areas of licences for the operation of radio and television broadcasting, operation of retransmission, and cooperation with the Telecommunications Authority on the allocation plan for the frequency range dedicated to radio and television broadcasting. The Broadcasting Council has to submit annual reports to the Chamber of Deputies (i.e. the lower chamber of the Parliament of the Czech Republic), which must include specified information.

II. General approach to market definitions under Czech competition law

Based on the statutory definition of the term “relevant market” in the Competition Act, a relevant market is defined as a market of goods (i.e. both products and services) which are – from the point of view of their characteristics, price and intended use – (i) identical, comparable or mutually substitutable, and (ii) located in an area in which competition conditions are sufficiently homogenous and obviously distinguishable from neighbouring areas.

Besides the statutory definition of the term “relevant market” specified above, another relevant market definition, formulated by legal theory, is also generally accepted. A relevant market is also defined as a spatial and time concurrence of the demand and supply in respect of such goods, services and actions, which are identical or mutually substitutable from the perspective of the satisfaction of certain needs of their users.

When defining a particular relevant market, the Antimonopoly Office must develop the specific criteria that will be used and, as a second step, proceed to analyse the functioning of competition within this market. These specific criteria have to be applied to the product and geographical dimension of the relevant market. Generally said, when defining a relevant market, the factors usually examined are “who and

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15 Act No. 231/2001 Coll., on Radio and Television Broadcasting [zákon o rozhlasovém a televizním vysílání], as amended.
16 § 2 Par. 2 of the Competition Act
17 Ibid. sub 6, p. 33
where” satisfies the consumer’s needs. On the other hand, it is obvious that the relevant market exists only as a complex formed by the concurrence of material and territorial dimensions. These aspects cannot be examined separately, only mutually\(^{18}\).

In addition, a time dimension is sometimes considered as the third dimension of the relevant market (see below).

The above procedures are also confirmed by the practice of the Antimonopoly Office. So far, the Antimonopoly Office has not issued any particular informational material (e.g. guidelines, communications or information sheets) concerning the methodology or strategies it uses for defining relevant markets. However, from the year 1999 onwards, the Antimonopoly Office has published its decisions on competition matters on its website and these decisions can be studied in order to find some patterns. The decisions of both courts and administrative bodies play an important role in the interpretation of legal regulations and their practical application. From this perspective, we consider the Antimonopoly Office’s case law to be the key to discovering the Antimonopoly Office’s attitudes and methods in defining relevant markets.

1. The definition of the relevant product market

The purpose of the definition of the relevant product market as the initial stage of defining the relevant market is to define the scope of goods which are mutually substitutable, and to separate them from other goods which are not substitutable.

As mentioned above, the Competition Act defines the relevant market using a comprehensive definition and does not use the specific term “relevant product market”. From the statutory definition, it can be concluded that the relevant product market is a market of goods (i.e. both products and services) which are identical, comparable or mutually substitutable from the perspective of their characteristics, price and intended use. The statutory definition indicates what aspects are taken into account by the Antimonopoly Office when defining the relevant product market – namely the substitutability of the goods, the characteristics of the goods (including their price) and the particular features of their intended use. It is within the discretion of the Antimonopoly Office to decide what decisive criteria will be used in each particular case.

The relevant product market has two sides:

a) demand-side substitution, and

b) supply-side substitution.

a) Demand-side substitution

The practice of the Antimonopoly Office shows that the views of consumers with regard to the interchangeability and substitutability of particular goods (i.e. products or services) are the most important factors when defining the relevant product market.

\(^{18}\) Ibid sub 17
In other words, when defining the relevant product market, the consumer is the final “arbiter” who decides on the substitutability of goods from the perspective of their use and function. Goods which are only partially substitutable do not form a part of the relevant market. Generally, consumer preferences may influence the relevant market definition if they show long-term stability based on factors such as local or national habits. In this connection, it is necessary to emphasise that the consumer habits decisive for the relevant market definition change over the course of time. Therefore, the Antimonopoly Office does not mechanically rely on its previous case law, but examines possible shifts\textsuperscript{19}. Also, brand loyalty plays a role in the Antimonopoly Office’s practice of assessing market entrance barriers\textsuperscript{20}.

For an examination of the substitutability of particular goods, a price test (SSNIP test) is used. The price test covers the following three items: (i) a real price increase, which must be permanent, small and significant; (ii) simulation of consumer reaction; and (iii) the smallest market principle\textsuperscript{21}.

The price test simulated for demand-side substitution is also available for an examination of supply-side substitution. Usually, it is not possible to perform the price test in reality. Therefore, two aspects of substitutability are taken into account: functional and reactive substitutability. Functional substitutability means that two different products or services are substitutable on the basis of their physical and technical characteristics. Reactive substitutability reflects the extent of consumer reaction to a price change (small, significant, permanent – as specified above); this reactive substitutability is the subjective aspect of the relevant product market analysis.

In the Antimonopoly Office’s practice, the price test and other tests which focus on a study of prices are supplemented with a number of marketing methods (e.g. studying the target groups of an advertising campaign, comparing guarantee terms and conditions, etc.). The Antimonopoly Office also uses consumer polls, which provide the input data for the price test.

Legal theory formulates certain substitutability barriers. These are, however, of a relative nature, as their significance can vary over time and different consumers can view them differently. These barriers include the following situations:

\begin{itemize}
  \item Product A has better distribution, which can eliminate the transfer of demand to Product B
\end{itemize}

\textsuperscript{19} Dvořák, S.: Kontrola spojování souťažitelů [Control of concentrations], 1\textsuperscript{st} edition, Praha, C.H.Beck, 2002, p. 45

\textsuperscript{20} Ibid. sub 19. See also e.g. decision Ref. No. S 57/02-1321/02 date 3 April 2002 in Section 0.0. hereof.

\textsuperscript{21} The smallest market principle means the narrowest concentration of products, to which the consumers react. Ibid. sub 6, p. 36; Neruda, Robert: Relevantní trh a otázky související v teorii a praxi soutěžního práva - 1. část [Relevant market and connected issues in the theory an practice of the competition law – Part 1], in: Právní rozhledy, 12/2004, p. 447
• Product A is sold including accessories, causing additional costs if the demand transfers to Product B which is sold without accessories

• Product A requires investment into the construction of a special device\textsuperscript{22}.

From the practice of the Antimonopoly Office, we can summarise that a variety of reasons and differences in product characteristics play very important roles. Different technologies, different means of providing services (newspapers, Internet), providing services free-of-charge or for a charge, the nature of the financing of service providers\textsuperscript{23}, etc. are all indicators that two services (or products) are not substitutable and that each of them represents its own relevant product market.

\textbf{b) Supply-side substitution}

As mentioned above, the price test is also applicable for the purposes of the supply-side substitutability analysis. Moreover, as far as media markets are concerned, in the \textit{Kabel Plus} case\textsuperscript{24} a number of further issues were examined when defining the relevant product market. In the said decision, the Antimonopoly Office dealt with, among other criteria, production and technology perspectives, factual substitutability and the investment demands of entering the particular market.

\section*{2. The definition of the relevant geographical market}

The definition of the relevant geographical market is to be performed subsequent to the definition of the relevant product market since it must be defined in which territorial framework the consumers can transfer their demand. Based on the statutory definition of a relevant market, the geographical aspect of the relevant market relates to the area in which the competition conditions are sufficiently homogenous and obviously distinguishable from neighbouring areas.

In the \textit{CZ.NIC} case\textsuperscript{25}, the Antimonopoly Office defined the geographical dimension of the relevant market as an area in which the purchaser may try to find alternative sources of supply of the products (services) which were defined as the object of the products (services) market.

So far, the practice of the Antimonopoly Office has defined the relevant geographical markets as (i) national (i.e. the area of the Czech Republic), which prevails taking into account distances and current transportation options, or (ii) local.

The following are examples of the criteria used by the Antimonopoly Office when analysing whether a particular area can be separated as the relevant geographical market: main location of the business activities, concentration of the business activities in particular territorial areas, location of consumers and transportation costs.

\footnotesize
\begin{itemize}
\item \textsuperscript{22} Ibid. sub 21, the latter quotation, p. 454
\item \textsuperscript{23} Decision Ref. No. S 14/03-2248/03 dated 25 June 2003
\item \textsuperscript{24} Decision Ref. No. S 79/99-230 dated 16 August 1999
\item \textsuperscript{25} Decision Ref. No. S 156/98-184/99-210 dated 29 January 1999
\end{itemize}
In addition, despite the (limited) territorial competence of the Antimonopoly Office, the relevant geographical market may be defined to be even broader than the area of the Czech Republic. If the relevant market is defined in accordance with the Competition Act as being geographically broader, i.e. extends beyond the territory of the Czech Republic\(^{26}\), the Competition Act may not prevent the relevant geographical market being defined as supranational\(^{27}\). Although the supranational definition of the relevant market may also occur in the media sector, the practice of the Antimonopoly Office – as outlined below – shows that the relevant geographical market definitions usually cover either the territory of the Czech Republic or smaller (regional or local) areas, even in the case of the media sector.

3. Other criteria

In addition, a time dimension is sometimes considered as the third dimension of the relevant market. The time dimension represents the frequency (regularity and repeatability) of contact of demand and supply. Based on these criteria, there are two categories: permanent markets and random markets\(^{28}\).

Although EU law and the practice of European bodies do not usually deal with the time aspect of the relevant market, they do, at the same time, define a relevant market as a dynamic process. The Antimonopoly Office briefly defines the time dimension of a relevant market in almost all of its decisions dealing with relevant market definitions.

Conversely, a competitor-supplier of products which are in all other respects substitutable may, theoretically, be a person with a dominant position (or a monopoly) if a consumer – from the time perspective – is not able to find a substitutable product in a particular territory\(^{29}\).

However, the significance of the time aspect definition is less than that of the definitions for the relevant product and geographical markets. The time definition may play a more important role when defining, in particular, relevant markets in respect of certain periodically repeated products or services.

B Overview of the relevant product and geographical markets in the media sector in the Czech Republic

This part of the report provides an overview of the relevant markets in the media sector as defined by the Antimonopoly Office. Although the number of such decisions is not very large, and the reasoning in some cases is not very extensive or

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\(^{26}\) In other words, the coincidence of the supply and demand in respect of a particular product, which was defined as a relevant product, takes place on a broader area than the territory of the Czech Republic.

\(^{27}\) Ibid. sub 21, the latter quotation, p. 448

\(^{28}\) Ibid. sub 25; see also decision Ref. No. S 67/01-1492/01-OF dated 11 September 2001

\(^{29}\) Ibid. sub 21, the latter quotation, p. 449
precise, it nevertheless gives a good overview of the particular sectors and allows a
general comparative evaluation to be made. This will be done in part C of this work.
The sectors described in this part are publishing, music, broadcasting (radio and
television) and the Internet. Both the relevant product markets and the relevant
geographical markets are presented in each of the sub-sections of the following
analysis.

Based on our research, it seems that the Antimonopoly Office has not reviewed the
relevant market of the film industry. However, it is highly likely that the
Antimonopoly Office, when defining relevant markets in the film industry, would
apply the general principles mentioned in this chapter.

I. Publishing

In its practice, the Antimonopoly Office has dealt with several cases in the publishing
sector. We summarize the most important ones below.

1. Press

In the Dispress case\(^{30}\), which dealt with the merger of companies active in the area of
press distribution, the Antimonopoly Office defined the relevant product market as
“the market of services connected with press distribution”. The relevant geographic
market was defined as the area of the Czech Republic and the market was
characterised as consisting of permanent supplies.

An interesting definition of the relevant market in the area of dailies was included in
the Vydavatelství VLTAVA\(^{31}\) case, concerning the merger of Vydavatelství VLTAVA
and PRAGOPRINT, which both publish dailies. Vydavatelství VLTAVA operates in
the regions of South, West, Central and East Bohemia, while PRAGOPRINT
publishes “Večerník Praha”, a Prague daily. The Antimonopoly Office stated that
“Večerník Praha” brings news from both the Czech Republic and abroad. However,
domestic news focuses on Prague and the surrounding region (except for the sport
news). Advertising forms an integral part of the daily. With regard to (i) the
gеographical focus of the daily, i.e. the region of Prague, and (ii) the manner and time
of distribution (in most cases through news vendors after 10 a.m.), the daily
“Večerník Praha” is not interchangeable with other daily publications.

In addition, for comparison, the Antimonopoly Office analysed the above-specified
criteria in respect of another daily distributed in Prague. The daily “METRO” is a
free-of-charge publication whose news focuses mainly on Czech and foreign events.
The advertising space is also aimed at entities operating on a national basis. Its format
is similar to that of a national daily rather than a regional publication. Regarding its
content and free-of-charge distribution, “METRO” is not interchangeable with other
dailies on the market.

\(^{30}\) Decision Ref. No. S 74/97-230 dated 14 November 1997

Furthermore, based on research, the Antimonopoly Office concluded that “Večerník Praha” is not – with regard to its specific content, time of publishing and form of distribution – interchangeable with other dailies sold within the area of Prague (the relevant product market was defined as the market of dailies distributed within the area of Prague). With respect to the above conclusions, the relevant geographical market was also defined as the area of Prague.

A definition of both the product and the relevant geographical markets in the press industry is available in the *RINGIER CR* case\(^{32}\) and the *IMAGE ČR* case\(^{33}\). The competitors involved were active in two broad markets: (i) the press market, where customers purchase publications as source of information, and (ii) the market of advertising space, where other customers purchase advertising space for the purposes of sales support and marketing. From the perspective of the information media market as a whole, television and radio can be considered as potential substitutes for the written press. However, from the point of view of the final customer, television and radio are not written press substitutes; therefore, they cannot be compared with the written press. The Antimonopoly Office reasoned in favour of this conclusion when it took into account the physical characteristics, information transmission differences and the manner of the information being offered to the final customers, which is characterised by a faster reaction to new events. The Antimonopoly Office used European Commission decision IV/M.423 as a corroborating argument.

Furthermore, from a reader’s perspective, the written press market is divided into the daily newspaper market and the market of other journals and magazines (i.e. which are not published daily) since both these categories satisfy the different information needs of the customers. Other reasons for distinguishing between these two groups are the different technological and distributional methods they employ. In addition, dailies also belong to another price range due to their lower production costs in comparison with other journals and magazines.

The daily newspaper market is divided into the markets for national dailies and regional dailies. It is possible to fragment these markets further into special categories. The Antimonopoly Office provided a more detailed analysis of these particular markets in the *Mediaprint & Kapa Pressegrosso* case (for details, please see below).

In its decision in the *SanomaWSOY Corporation* case\(^{34}\) of 2001, the Antimonopoly Office provided a brief general guideline for distinguishing between individual types of press titles. The Antimonopoly Office stipulated that the frequency of issue of a title may be one of the factors consumers use to distinguish between press titles. Therefore, there are markets for dailies and other periodicals (weeklies, monthlies). Both product groups satisfy different consumer needs, in particular with respect to the type and content of the information provided. The Antimonopoly Office reasoned that the dailies serve mainly for purposes of information about current issues, while magazines are rather intended to provide entertainment and deliver more wide-
ranging and comprehensive information in a particular area. Moreover, dailies are
significantly cheaper than magazines. As a conclusion, dailies and magazines form
two separate relevant markets.

There are also several decisions of the Antimonopoly Office from the years 2002 and
2003 which formulate partial conclusions in respect of defining the relevant product
markets in the publishing sector. In one case\textsuperscript{35}, the relevant product market for press
and supplements was defined as the kiosk-based retail of books, newspapers, journals
and supplements. No detailed reasoning was available. In another case, the
Antimonopoly Office defined a relevant product market as the market of magazines
focused on motor sport\textsuperscript{36}. Furthermore, the relevant market of publishing professional
titles was defined in one case\textsuperscript{37}, unfortunately without detailed reasoning.

In addition, as mentioned above, the Antimonopoly Office has defined the market of
advertising space. It stated that the newspaper advertising in respect of a certain group
of products and services may be interchangeable with some other advertising media,
such as television or radio. However, the use of some kinds of advertising media may
be limited from the perspective of the numbers of readers/watchers/listeners by the
target group of customers for which the given product or service is intended. The
market of advertising space in the written press differs from the market in television
and radio due to its different style and form. Moreover, television and radio
advertising space is used more by companies than by individuals due to its price,
technical possibilities, and the marketing needs of the specific products and services.

Another interesting decision of the Antimonopoly Office is the \textit{ASPI Publishing} case\textsuperscript{38}, concerning the sale of a business acquired by ASPI Publishing from
Accounting Services (the vendor). The business activities of the purchaser included
the provision of legal and economic information, both in printed and electronic form.
The products manufactured by the purchaser were divided into the following three
groups: (i) software: an electronic product consisting of automated legal information,
including legal regulations, selected legal literature, case law, explanatory reports,
etc., both in CD-ROM and on-line versions; (ii) literature: legal and economic
professional literature, and (iii) professional periodicals focused on legal,
accountancy, tax and similar areas. The seller’s business activity was concentrated
mainly on rendering information for accountants and auditors exclusively through an
Internet portal. When defining the relevant product market, the Antimonopoly Office
dealt with the question of whether services based on the rendering of financial
information through an Internet portal are interchangeable or substitutable with a) the
services of Internet portals providing general information (including search engines),
and b) financial information in the daily press.

As regards the assessment of the interchangeability and/or substitutability of services
based on the provision of financial information and general (common) information,

\textsuperscript{35} Decision Ref. No. S 240/02-4426/02 dated 27 December 2002
\textsuperscript{36} Decision Ref. No. S 70P02-1494/02 dated 16 April 2002, decision Ref. No. S 257/02-176/03
dated 24 January 2003
\textsuperscript{37} Decision Ref. No. 106/01-1644/02 dated 3 May 2002
\textsuperscript{38} Decision Ref. No. S 14/03-2248/03 dated 25 June 2003
the Antimonopoly Office declared that the financial (specific) information is used by only a narrowly focused circle of Internet users and, therefore, the provision of such information forms a separate relevant market (in the same way that the market of monthlies focusing on motor sport does).

In this case, although the character of the information provided by the mentioned competitors and by the financially-oriented periodicals is identical, these services fundamentally differ in the nature of the manner of their spread. While the daily press is commonly available in retail outlets, the information from the Internet portals is available only by accessing the Internet. Furthermore, the Internet portals usually provide the information free-of-charge (despite the fact that the extended menu is available only for registered users, which may be considered as a form of reward), while the financial dailies, or dailies which provide economic information, must be paid for. In addition, the daily press is also financed from its sale, the only revenues coming from the operation of the Internet portals are advertising fees. The prospective volume of advertising is determined by the number of visits to the particular portals.

On the basis of the above argumentation, the Antimonopoly Office considers the market of the provision of financial information through Internet portals as a separate relevant market. The Antimonopoly Office defined the relevant product (service) market as the market of Internet portals providing financial information. The relevant geographical market corresponded to the area of the Czech Republic and, from a time perspective, the market was permanent.

Another important case, dealt with by the Antimonopoly Office in 2003, was related to the potential breach, by the publishing houses of agreements, between competitors, prohibited under the Competition Act. Based on the initiative of the company Mediaprint & Kapa Pressegrosso of October 2002, the Antimonopoly Office issued a preliminary measure against publishing houses (the companies RINGIER R, MAFRA, Borgis, eskoslovenský sport and ASTROSAT). The reason for this preliminary measure was that during September and October 2002, the above-mentioned companies terminated distribution contracts concluded with the company Mediaprint & Kappa Pressegrosso. In comparison with other decisions made by the Antimonopoly Office in the media sector (in particular, the RINGIER case; for further information, see above), the Antimonopoly Office performed a rather deep analysis of the relevant markets (please see below). The importance of this case is also stressed by the fact that it was mentioned in the Antimonopoly Office 2003 Annual Report.

In this case, the relevant market was examined in the area of the supply of press titles by the publishing houses. In the Czech Republic, the range of periodical press titles is rather broad and various; therefore, the Antimonopoly Office focused on the definition of specific groups of press titles within which individual titles are considered identical or mutually substitutable. According to the practice of the Union of Publishers, the press titles are divided into the following categories: (i) national news dailies, (ii) regional news dailies, (iii) news weeklies, (iv) supplements (enclosures usually included with news dailies once a week), (v) society and lifestyle titles, (vi) housing titles, (vii) women-oriented titles, (viii) programme listings

39 Decision Ref. No. S 238/02-OK-2222/03-ORP dated 24 April 2003
(schedule) titles, (ix) sport-oriented titles, (x) motor sport-oriented titles, etc. The Antimonopoly Office considered such defined groups of press titles as separate relevant product markets and it further analysed the groups specified in (i), (ii) and (iv) above.

The Antimonopoly Office concluded that the national news dailies and regional news dailies are mutually substitutable. The regional titles also include news which is not limited only to a particular region, while most Czech national dailies include a regional enclosure. The regional dailies are published in all regions of the Czech Republic and, therefore, their content covers the entire area of the Czech Republic. Moreover, the Antimonopoly Office took into account the fact that the nation-wide network of regional news dailies is controlled by the company VLTAVA-LABE-PRESS.

At least once a week, most of the news titles, including the regional ones, contain a supplement, i.e. a colour enclosure which focuses on various topics and often includes TV listings. Since such supplements are usually not-for-sale separately, the Antimonopoly Office does not consider them as a separate group of press titles. Given the similar news content of both the national and regional news dailies, and given the fact that they are supplied including supplements, the Antimonopoly Office defined the group of national news dailies, regional news dailies and supplements as a joint relevant market of news dailies. Other groups of press titles are considered by the Antimonopoly Office as individual relevant product markets and, therefore, supplies by publishers in the area of the press are defined as the relevant product markets of supplies of a particular group of press titles, as classified above.

As regards the definition of the relevant geographical market, the national dailies and other press titles cover the entire area of the Czech Republic. In respect of the regional dailies, the Antimonopoly Office stated that, as the publishing house VLTAVA-LABE-PRESS covers all the regions of the Czech Republic with its regional dailies, the relevant geographical market is also defined as the nation-wide market. The time dimension of the relevant market was classified as a permanent market characterised by the regular supply of periodical press according to the frequency of the particular press titles.

2. Literature

Considering the different business activities of the merged companies, the Antimonopoly Office did not define the relevant literature publishing markets in detail in the EUROMEDIA GROUP case\(^{40}\), which is the only available decision. However, it provided us with (i) a broad definition (i.e. the market of publishing of all books), and (ii) a narrow definition as the market of publishing “belles lettres”, poetry and infotainment literature (i.e. books other than textbooks and professional literature). Both categories of books are not interchangeable, as they satisfy different needs of readers.

\(^{40}\) Decision Ref. No. S 110/02-2036/02 dated 12 June 2002
II. Music

Two decisions of the Antimonopoly Office are available in respect of the definition of relevant markets in the music industry. In 2002, when approving the merger of companies active in the music sector, the relevant product market was defined as the market of the production and distribution of music recordings. According to the Antimonopoly Office’s reasoning, the relevant product market defined in this way covers the following activities: the discovery and acquiring of new artists; music recording; production of recordings; marketing and advertising of the recordings; and their wholesale and retail. In addition, in this case the Antimonopoly Office stated that the production of music videos is a part of the above-defined relevant market, as such video recordings are produced for marketing purposes. The relevant geographical market covers the area of the Czech Republic.

The Antimonopoly Office also dealt with further aspects of the relevant market of the production and distribution of music recordings, such as the existing competition and the possibilities of entering the market. The defined relevant market is characterised by strong competition on both the demand and the supply sides. On the supply side, competition exists not only among large recording houses, but also between them and smaller, independent companies. The market position of any recording company depends on its ability to acquire new artists and to keep its current ones. Based on this assumption, smaller recording companies are contractually more flexible. On the demand side, the strong competition is caused by the extraordinary importance of new recordings in comparison with ones marketed earlier. An important feature of the demand side is that customers show relatively low brand (i.e. particular recording company) loyalty. As regards market entrance, the Antimonopoly Office concluded that this is relatively easy and does not require a large investment. In addition, there are no legal or regulatory barriers as regards market entrance. Research and development do not play any role in the relevant market mentioned.

The above definitions of the product and relevant geographical markets in the music sector were confirmed by the Antimonopoly Office in its subsequent decision in the Sony BMG case of 2004. Despite the fact that the relevant product market was defined in a broader way in this case, i.e. as the market of music recordings, the content of this relevant market was characterised in the same way.

III. Broadcasting (Radio and TV)

In the broadcasting sector, only a few Antimonopoly Office decisions are available.

1. Radio

In the MAFRA MEDIA case, the Antimonopoly Office defined the relevant market of radio broadcasting. Radio broadcasting was generally divided into radio

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39  Decision Ref. No. S 57/02-1321/02 dated 3 April 2002
41  Decision Ref. No. S 57/02-1321/02 dated 3 April 2002
42  Decision Ref. No. S 265/03-1355/04 dated 25 March 2004
43  Decision Ref. No. 183/03-3991/03 dated 7 November 2003
broadcasting covering the entire area of the Czech Republic and regional broadcasting. Despite this broad definition, the Antimonopoly Office did not provide detailed argumentation.

2. **Television**

When assessing the merger in the *Kabel Plus* case,

[44] the Antimonopoly Office defined the relevant product market of services based on the supply of a TV signal through a cable network and of other information and services included in the cable output. The argumentation was, besides an in-depth analysis of the technical aspect of the TV signal provided by the cable network, based on the European Commission decision which declared that a special relevant market exists in respect of a cable TV network. The TV signal may be provided by terrestrial transmitters, by satellites or through cable networks. Cable TV is not substitutable with other kinds of TV as it requires maintenance of the cable network and does not require customers to install special devices. Also, from the perspective of the costs of the programme suppliers, cable TV is not considered substitutable with other types of TV. The Antimonopoly Office also added that the manner of receipt of the signal must be considered: the various methods ensure different qualities of the signal received, differing numbers of programmes received and different ways of obtaining the service (paying for the channels on offer, one-off payment for a special receiver, etc.).

**IV. Internet**

In several cases, the Antimonopoly Office has dealt with the competition issues related to entities operating in various segments of the Internet industry. Below, we summarize the most important cases.

There is one Antimonopoly Office decision available concerning the Czech top level domain `.cz` registration authority, the CZ.NIC association.

[45] The Antimonopoly Office was asked by CZ.NIC to approve the (sample) Contract on Domain Name Registration and the Terms of Domain Name Registration.

[46] As a domain name is a necessary condition for the existence of any subject in the Internet environment, the Antimonopoly Office defined the product’s relevant market as the market of services related to the assignment of domain names. Since the registration services are provided throughout the whole territory of the Czech Republic, the relevant geographical market was defined as being nation-wide. From the time perspective, it was concluded that the relevant market was permanent.

In the field of the Internet, the Antimonopoly Office approved the merger of the dominant Czech telecommunications operator with a company which was active in the provision of Internet search engines and Internet advertising.

[47] The decision

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[45] Ibid. sub 25

[46] Based on the reasoning, the documents were of a character of non-prohibited agreements under the legal regulation effective at that time, i.e. Act No. 63/1991 Coll., on the protection of economic competition.

analysed future developments in the mass media sector with a focus on Internet advertising. The relevant product (service) markets of the merged entity were defined as the two following separate markets: (i) internet advertising, and (ii) paid-for provision of Internet search engines. The Antimonopoly Office argued in favour of this conclusion, since these two activities generated profits in different ways and from different resources. Moreover, these activities are often performed by different subjects and they demand substantially different inputs. For its reasoning, the Antimonopoly Office also used corroborating European Commission decisions from the years 1998\textsuperscript{48} and 1985\textsuperscript{49}. Based on the latter, the European Commission found that the abuse of a dominant position occurred in two markets: a) the TV advertising market, and b) the telemarketing market. The Antimonopoly Office considered the European Commission’s definition of the TV advertising market as an independent market as a corroborative argument in favour of the Antimonopoly Office’s definition of the above relevant market.

In addition, in 2001, the Antimonopoly Office dealt with the merger of the dominant Czech telecommunications operator and a company whose main business activity was the provision of computer applications in the form of the ASP (application service provider) business model\textsuperscript{50}. As the business activities of the said competitors did not overlap and the competitors did not operate in the same relevant markets, the Antimonopoly Office classified the merger as a conglomerate merger. The relevant product (service) market was specified as the market of the provision of computer application services. The relevant geographical market was determined as the area of the Czech Republic, without detailed reasoning. The relevant time market was declared as permanent, characterised by regular supplies (services) through the entire calendar year which are not subject to significant fluctuations.

For further details regarding the Antimonopoly Office’s practice in the Internet industry, in particular the definition of the relevant product (service) market of Internet domains/portals rendering financial services, please see the decision in the ASPI Publishing case in Section 0.0.0 above.

\textsuperscript{48} IV/JV.1-TELIA/TELENOR/SCHIBSTED dated 27 May 1998
\textsuperscript{49} 311/1984 dated 3 October 1985, Compagnie Luxembourgeoise
\textsuperscript{50} Decision Ref. No. S 67/01-1492/01-OF dated 11 September 2001
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<th>Submarkets (2nd Level)</th>
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<td>National dailies</td>
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<td>Society and lifestyle titles</td>
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<td>Programme listings (schedule) titles</td>
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<td>Market of publishing “belles lettres”, poetry and infotainment literature</td>
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**Internet**

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<tr>
<th>Market Category</th>
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<tr>
<td>Internet Markets</td>
<td>Internet portals providing free general Information (including search engines)</td>
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<td>Paid-for provision of internet search engines</td>
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<td>Internet portals providing specific financial information</td>
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<td>Advertising markets</td>
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<td>Music Markets</td>
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The previous two parts of this report have outlined the main characteristics of the contemporary competition policy in the Czech Republic and provided an analysis of the practice of the Antimonopoly Office in making decisions with regard to relevant market definitions in the media sector. This part compares the relevant market definitions as made by the Antimonopoly Office with the approach followed in the respective sectors by the European Commission. The overall conclusions and evaluations are presented in the final subsection of this part.

### C  Comparative analysis of the media market definitions adopted by the European Commission and those adopted under Czech competition law

The legislative regulation of competition in the Czech Republic is considered to be in harmony with the European Community competition rules. The demanding process of the Czech Republic’s accession to the EU also implied strict compliance with the requirements of the *acquis communautaire* in the competition field. From the legislative perspective, the Czech Republic attained full compatibility with the EU competition rules in 2001, when the Competition Act became effective. In its letter dated 22 January 2003, the European Commission declared that the Czech Republic had performed its obligations related to economic competition. Except for certain restructuring plans concerning public aid in the steel industry, no transitional arrangements were agreed upon the date of accession.
The decision-making practice of the Antimonopoly Office analysed in the two previous chapters shows a clear tendency towards aligning the reasoning of the Antimonopoly Office with that of European institutions. From the 1990s onwards, the Antimonopoly Office has been making explicit references to the decisions/guidelines of the European Commission.

The Antimonopoly Office has delineated both dimensions of the relevant market on most occasions when dealing with competition cases. As far as the relevant product market is concerned, the views of consumers with regard to certain goods (products and services) are the decisive ones. Hence, the demand-side substitutability test is employed by the Antimonopoly Office in the majority of its decisions. Similarly to the European Commission’s Notice on Market Definition, product characteristics play the crucial role in the Antimonopoly Office’s practice in delineating markets. The other criteria examined (price test, etc.) also correspond to the practice of the European Commission’s reasoning.

In respect of the geographical dimension of the relevant market, in most cases the Antimonopoly Office defines this relatively broadly as the entire area of the Czech Republic. In several cases, it has relied on the unique specific market conditions in a certain territorial area, which have thus allowed this particular territory to be separated from a general nation-wide definition.

As a result, the variety of tests examined by the Antimonopoly Office when defining the relevant product and geographical markets corresponds to the practice of the European Commission. Nevertheless, especially in the 1990s, there were decisions in which the Antimonopoly Office did not provide any reasoning, or the argumentation was very limited and vague.

II. Comparative analysis

1. Publishing

The Antimonopoly Office has identified a few markets with regard to newspaper publishing and newspaper distribution.

As early as the 1990s, and in accordance with the European Commission’s decision-making practice, the Antimonopoly Office has, in several cases, defined the readers’ market of daily newspapers on the one hand and that of non-daily (weekly, monthly) magazines on the other. From a consumer perspective, the Antimonopoly Office found that magazines and daily newspapers – due to their different frequency of publication – satisfy different needs: the daily press provides information about events the day after they have taken place, whereas weekly magazines cannot offer such immediate coverage. Furthermore, weekly magazines are substantially more expensive than daily newspapers. The market for daily newspapers could – with

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51 Commission Notice on the definition of the relevant market for the purposes of Community competition law (97/C 372/03)

52 For example, see the Vydavatelství VLTAVA case in Section 0.0.0 above.
regard to content – be further subdivided into three main categories: general information, sports and financial newspapers.

In line with the European Commission’s suggestions, the Antimonopoly Office has also sub-divided the general magazine publishing market into further sub-markets according to topic and target reader.

With regard to the book sector, the Antimonopoly Office has provided both (i) a broad definition (i.e. the market of publishing of all books), and (ii) a narrow definition as the market of publishing “belles lettres”, poetry and infotainment literature (i.e. books other than textbooks and professional literature). Both categories of books are not interchangeable, as they satisfy the different needs of readers. Conversely, the European Commission has not adopted a definition as broad as the retail market for book sales, but has given consideration to a number of more specific markets. The Commission usually distinguishes between consumer books and other books, although this difference has not led to the adoption of any corresponding market definitions.

Geographically, the market is usually limited either to a country or a particular region. However, a competitor who publishes/distributes regional newspapers in all regions of the Czech Republic is considered to operate in the relevant geographical market covering the entire area of the Czech Republic.

2. Music

On a Community level, this market was delineated with regard to the principal activities of record companies, the manufacturing and selling of records. The Antimonopoly Office, which has dealt with the relevant market definition in the music sector in only a few cases, also defined the relevant product market as the market of the production and distribution of music recordings.

From the Community perspective, the market for recording and distributing music was thought to be subdivided into several segments according to the different types and characteristics of music. The major dividing line with regard to the characteristics of music was drawn between classical and pop music. As mentioned above, the Antimonopoly Office did not further sub-divide the music market, although it provided a list of activities covered by the defined relevant market. Due to the small number of Antimonopoly Office decisions in this area, it is not possible to effectively qualify and compare the decision-making practice of the Antimonopoly Office with that of the European Commission in respect of defining the relevant product markets.

However, it arises from the Antimonopoly Office’s practice that, in accordance with the European Community practice, the relevant geographical market was national (although the market for music recording and distribution showed some international aspects). The main reason cited by the European Commission was that record distribution was mainly organised nationally.

3. Broadcasting

From the European Commission perspective, the main distinction in the TV broadcasting sector is drawn between paid-for and free TV. However, we were not
able to effectively compare the Antimonopoly Office and the European Commission practices due to a lack of decisions by the Czech competition authority. The Antimonopoly Office defined the relevant product (service) markets of (i) radio broadcasting, and (ii) services based on the supply of a TV signal through a cable network and of other information and services included in the cable output.

4. Internet

In its decision-making practice, the Antimonopoly Office has not dealt with access markets or many of the other relevant product (service) market definitions provided by the European Commission.

However, as regards the Czech top level domain .cz, the relevant product (service) market was delineated as services related to the assignment of domain names. In addition, further relevant product (service) markets in the area of the Internet were defined as separate markets: (i) internet advertising, (ii) paid-for provision of the content of the Internet. Furthermore, the market of provision of computer applications services in respect of the ASP business model was classified by the Czech competition authority. These definitions correspond to the European Commission practice in this area.

III. Reasons for divergent results

The comparative analysis of the market definitions in the media sector as used by the Antimonopoly Office and the European Commission has not found any major discrepancies or inaccuracies in the approach of the two authorities. Inconsistencies, if any, are not of major importance and are caused by the fact that the Antimonopoly Office has had to deal with specific issues in the media sector in several cases. Although we can classify its decision-making practice to be in line with the European Commission practice, the Antimonopoly Office has, in some cases, come up with special definitions for the relevant markets which were supported with the special characteristic of the respective case. As a result of this, in several cases the definitions cannot be compared to the European Commission decisions due to the absence of corresponding decisions on the Commission’s side. Also, the inaccuracies can be related to the lack of experience in dealing with particularly specific and complicated subject matters. In several cases, either the Antimonopoly Office or the European Commission has provided too broad a definition, which could not be effectively compared to the other authority’s definition.

IV. Conclusions

The decision-making practice of the Antimonopoly Office in respect of the definition of the relevant markets in media sector cases seems to be in line with the approach followed on the European level by the European Commission. The methodology applied in defining relevant product and geographical markets covers most of the criteria applied by the European Commission when delineating markets. The market definitions on various occasions are similar or identical to those of the Commission in similar cases (the Czech competition authority often uses the EC Commission’s case law when reasoning its decisions). Moreover, mainly in its current decisions (i.e.
during the periods pre- and post-EU accession), the Antimonopoly Office clearly tries to adjust its practice to the European Commission approach by making explicit reference to the decision-making practice of the EU Commission. Hence, the general tendencies of the Antimonopoly Office’s practice seem to comply with the European pattern.

D Impact of different (media) regulatory frameworks on market definitions

I Regulatory frameworks in the Czech Republic having an impact on the media sector

1. Constitutional provisions

Freedom of speech and receiving of information are guaranteed (Constitution – Bill of Rights, art. 17, § 1).

2. Sector-specific regulations

Relating to radio and/or television, press, telecommunications, copyright, etc.

a) Legal framework

- Act Nr. 231/2001 Coll. on radio and television broadcasting operation and on changes of other acts as amended - Broadcasting Act (zákon o provozování rozhlasového a televizního vysílání a o změně některých zákonů),

- Act Nr. 151/2000 Coll. Telecommunications act (Zákon o telekomunikacích),

- Act Nr. 483/1991 Coll. on the Czech Television as amended (Zákon o České televizi),

- Act Nr. 484/1991 Coll. on the Czech Radio as amended (Zákon o Českém rozhlas),

- Act Nr. 46/2000 Coll. on the Periodical Press (Tiskový zákon),

- Act Nr. 273/1993 Coll. On some conditions of the production, dissemination and archivation of the audiovisual works (Zákon o některých podmínkách výroby, šíření a archivování audiovizuálních děl).


- Act Nr. 121/2000 Coll. Copyright Act (Autorský zákon),

- Act No. 143/2001 Coll. on the Protection of Competition and on amendment to certain Acts (Zákon o ochraně hospodářské soutěže a o změně některých zákonů).

II Regulatory authorities in the Czech Republic having an impact on the media sector

1. Council for radio and television broadcasting (Broadcasting Council)

   a) Legal basis

   The Broadcasting Council was established by the act Nr. 231/2001 Coll., from 17 May 2001, on radio and television broadcasting operation and on changes of other acts (Broadcasting Act), which also lays down its tasks. The Broadcasting Council has thirteen members appointed by the Chamber of Deputies. The members are independent and may not be bound by any form of instructions.

   b) Functions/competencies

   The Council shall have the following powers and duties:

   • supervision over fulfilment of legal regulations in the area of radio and television broadcasting and of the conditions stipulated in the decision on granting the licence or in the decision on registration,

   • granting, changing and withdrawing of licences for the operation of radio and television broadcasting,

   • granting, changing and cancelling decisions on registration to operate retransmission,

   • managing of records on broadcasters and operators of retransmission,

   • regular publication of the list of licence and registration applications, list of granted licences and their changes, list of granted registrations and their changes, as well as the overviews of utilisation of frequencies within the range dedicated to radio and television broadcasting,

   • imposing of sanctions pursuant to the Broadcasting Act,

   • monitoring of broadcasting.

   c) Linkage with general competition authorities

   There is no direct linkage with other regulation authorities. There is cooperation between Broadcasting Council and the Telecommunication office in technical matters.
2. Czech Telecommunication Office (ČTÚ)

a) Legal basis

The Czech Telecommunication Office (ČTÚ) was established by the act Nr. 151/2000 Coll. on the telecommunications, which also lays down its tasks.

b) Functions/competencies

ČTÚ is the independent national regulatory authority having the competencies for telecommunication and is also competent in infrastructure related aspect of a communications network or services are concerned. The important competence assigned to the regulatory authority is the arbitration of interconnection disputes. This has so far primarily dealt with complaints of new market entrants against the Czech telecommunication incumbent Czech Telecom. ČTÚ is under the process of revision at the moment (parliamentary processes are in progress). In order to transpose the new EU regulatory framework a new law on the electronic communications will enter in force soon. After the new law, ČTÚ will have flexible competencies in imposing specific obligations on providers with significant market power.

c) Linkage with general competition authorities

ČTÚ concluded an agreement on cooperation in telecommunication matters with the Office for the Protection of Competition.

3 Office for the Protection of Competition

The office was established by the Act No. 143/2001 Coll. of 4 April 2001 on the Protection of Competition and on amendment to certain Acts (Act). Act regulates the protection of competition in the market of products and services (hereinafter referred to as “goods”) against its elimination, restriction, other distortion, or imperilment (hereinafter referred to as “distortion”) by:

- agreements between undertakings
- abuse of dominant position of undertakings, or
- concentration of undertakings.

The Act further regulates the procedure for application of Articles 81 and 82 of the Treaty establishing the European Community by the authorities of the Czech Republic and certain issues of cooperation of these authorities with the Commission of the European Communities and with the authorities of other Member States of the European Community in procedure pursuant to the Council Regulation (EC) on the implementation of the rules on competition laid down in Articles 81 and 82 of the Treaty. Act shall apply to undertakings which provide, on the basis of a special act or on the basis of a decision issued pursuant to a special act, services of general economic interest in so far as its application does not obstruct the provision of these services. Act shall be applied similarly also to the proceedings in cases of undertakings, whose actions may affect trade between Member States of the European Community pursuant to the Articles 81 and 82 of the Treaty. Act shall also
apply to actions of undertakings, occurred abroad, which distort or may distort competition in the territory of the Czech Republic. Act shall not apply to actions, whose effects take place solely in a foreign market, unless international treaty, binding on the Czech Republic, provides otherwise. Act shall further not apply to the protection of competition against unfair competition.

a) Definition of an undertaking 3.98

Undertakings under the Act shall be deemed to mean natural or legal persons, their associations, associations of such associations and other groupings, including where such associations and groupings are not legal persons, provided they take part in competition or may influence competition by their activities, although they are not entrepreneurs.

b) Definition of the relevant market 3.99

Relevant market shall be deemed to mean the market of goods, which are identical, comparable or mutually interchangeable from the point of view of its characteristics, price and their intended use in the area, where the competition conditions are sufficiently homogenous and which can be clearly distinguished from neighbouring areas.

4 Ministry of Informatics 3.100

The Ministry of Informatics was established on 1st January 2003 by merging the Office for Public Informations Systems, telecommunications Section of the Ministry of Transport and Communications and the Electronic Signature Section of the Office for Personál Data Protection as the central body of the state administration for e-Government, telecommunications and postal services. The Ministry of Informatics of the Czech Republic was established in reaction to the changing enviroment related to the dissemination of modern information and communication technologies and their significance for national economy as well as public administration. Three main commitments are: to build a fully fledged e-Government allowing the citizen a fast and simple communication with state authorities while generating state budget savings; to create suitable conditions for fair competition on the telecommunications market and promote the development of electronic commerce; to provide effective assistance in terms of availability and knowledge of communication technologies to as many people as possible.

III Market definitions and/or criteria upheld for market perception in the relevant sector - focused legislation 3.101

The telecommunications sector shows a definition of relevant markets, media regulations in the Czech Republic contain only few information how markets can be defined.
1. **Publishing**

The law on the periodical press provides the legal basis for the periodical press. The Ministry of Culture provides the registration of the periodical press. The press law provides a definition of the periodical press – publication of press issued at least twice in a year. Definition of a newspaper – publication of press issued at least five times in a week.

2. **Music – copyright**

In the Czech Republic the Copyright Act (Autorský zákon) provides the legal basis for collecting societies. The collecting societies task consist of the granting of licences for the usage of works on their own behalf but by the virtue of exclusive rights of usage granted by the author, to control the usage of works on their own behalf but by virtue of exclusive rights of usage granted by the author, to control the usage of works, to levy considerations for usage as a trustee of the author and proceed against violations of copyright.

Collecting societies shall conclude over-all-contracts with factually competent professional associations of users. These contracts shall determine the content of single contracts concerning the granting of licences, especially clauses about the amount and the calculation of considerations and settlement of disputes. If the collecting society and the users should not reach an agreement, they can appeal to an arbitration commission and demand regulation by a statute. Collecting societies may only operate on permission of the Ministry of Culture. In practice, there are 3 main collecting societies in the Czech Republic. OSA – it is the collecting society for music, DILIA for the literary works, Intergram for performing artists.

Collective administrator shall mean the entity which has acquired the authorisation to execute collective administration. A collective administrator may only be a legal entity resident in the Czech Republic and associating, directly or indirectly, rightholders whom he represents by collective administration. Collective administration shall be executed consistently, under its own name and liability. Collective administration is not a business enterprise. Collective administration shall be executed by the collective administrator as the main subject of his activity. The collective administrator may authorise another person with the exercise of the rights collectively administered by him only in the case of a foreign person, who, pursuant to the law of another state, executes on the territory of that state collective administration of the same rights, and in the case of a work, also of the same type of work, if the matter at issue is the execution of collective administration in such state, or a local collective administrator who is also authorised to execute collective administration, if the objective is efficient execution of collective administration. To be effective, the agreement on the authorisation must be in writing. Neither agreements on the association of rightholders in the person of the collective administrator, nor agreements authorising another person with the exercise of

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53 Law on the periodical press
54 Copyright Act
55 Copyright Act Art.97
collective administration shall be deemed agreements infringing economic competition according to special regulations.

3 Film

The system of film promotion is based on the Act Nr. 241/1992 Coll. on the State Fond for the Fostering and Development of the Czech Cinematography. For the purpose of the promotion of the Czech films, the Fond of the Czech Cinematography was founded. Czech citizens can apply for promotion, if they have their constant residence in the Czech Republic. Legal person can also file applications, if it is situated in the Czech Republic. The promotion of a Czech / foreign co-production is possible. Types of subsidies ran from the creation of a concept and screenplay, the project development, the production of the film, to the film distribution. The impact of the law on the market definition in the film sector is not significant. Nevertheless it could serve as an indication for a different market for Czech films.

4 Broadcasting

a) “Product market”

Radio and television broadcasting shall mean primary dissemination of original radio and television programmes and teletext, both intended to be received by the public in encoded or unencoded form, through ground radio transmission facilities, cable systems and satellites both in analogue and digital form. Radio and television broadcasting shall not mean:

- providing of communication services focused on delivery of information or other messages on the basis of individual requirements,

- operation of telecommunication equipment and providing of telecommunication services pursuant to specific legal regulation

- broadcasting radio and television programmes via satellite, if such programmes are disseminated by broadcasting operator on the basis of authorisation to operate radio and television broadcasting (hereinafter only "licence"), or in case of a broadcaster when such broadcasting serves solely for the purpose of transmission of code signal to transmitters,

- communication of information related to the operation of technical means used for the implementation of radio and television broadcasting.

Broadcasting law recognises three basic forms of broadcasting. Terrestrial transmission, transmission by satellite and by cable.

Broadcasting law contains provisions concerning the content of broadcasted programmes. Basic principles are objectivity of reporting and variety of opinions. Programmes may not affect human dignity and basic rights, may not induce to hatred

\[56\] Broadcasting Act Art. 2

\[57\] Broadcasting Act. Art. 31
on grounds of race, sex, religion or nationality and may not harm the development of minors.\footnote{58} The provisions contained in the Broadcasting Act impose stricter advertising rules on the Czech Television and on the Czech Radio and stricter content obligations on these broadcasters mainly concerning impartiality and independence. The Czech Radio and the Czech TV shall report about culture and produce cultural programmes itself. They have to create programmes for ethnic minorities.

b) “Geographic market”

Licences for radio and television broadcasting are granted for a certain service area. Licences are granted for the whole national territory or for a certain region.\footnote{59} Therefore it can be concluded, that the law obviously distinguishes between a national and several regional markets for broadcasting. The service area is defined as the national if more than 70% of the Czech population can receive the programme.

The broadcasting law contains „must carry“ provisions. Operators of cable networks have to deliver the programmes of the Public service broadcasters and national-wide broadcasters.\footnote{60}

c) Further relevant provisions

aa. The Securing of Plurality of Information in Local Radio and Television Broadcasting\footnote{61}  

- If any single legal entity or any single natural person is a holder of more licences to operate radio broadcasting other than nation-wide radio broadcasting, or to operate television broadcasting other than nation-wide television broadcasting, then the total coverage of the Czech Republic by such a legal entity's or natural person's broadcasting, counted as the sum of all such licences for the operation of radio broadcasting other than nation-wide radio broadcasting or the sum of all such licences for the operation of television broadcasting other than nation-wide television broadcasting, shall not exceed 70% of the total number of population of the Czech Republic, based on information from the last population census.

- Any single legal entity or any single natural person may only hold an ownership interest in the business of more than one broadcaster of radio broadcasting other than nation-wide radio broadcasting or in the business of more than one broadcaster of television broadcasting other than nation-wide television broadcasting insofar as the total coverage of the population of the Czech Republic by the broadcasting of all broadcasters of radio broadcasting other than nation-wide radio broadcasting or television broadcasting other than nation-wide television broadcasting does not exceed 70% of the total number of population of the Czech Republic.

\footnote{58} Broadcasting Act Art. 32  
\footnote{59} Broadcasting Act Art. 12  
\footnote{60} Broadcasting Act Art. 54  
\footnote{61} Broadcasting Act Art. 56
wide radio broadcasting or all broadcasters of television broadcasting other than nation-wide television broadcasting in whose businesses such an entity or person has an interest remains under or at 70% of the total population of the Czech Republic, counted on the basis of the information from the last population census.

- The duties referred to above shall not apply to digital broadcasting and to radio and television broadcasting disseminated over cable systems or via satellites.

bb. Formation of Programme Networks

No programme network may cover by radio or TV broadcasting more than 70% of the total population of the Czech Republic, counted on the basis of the information from the last population census.

cc. Consolidation of Broadcasters or Operators of Retransmission

The broadcaster or operator of retransmission shall notify the Council about any of the following circumstances:

- radio broadcasters consolidated and television broadcasters consolidated, such a consolidation taking the form of merger of two legal entities or sale of the enterprise or a substantial part thereof;

- a consolidation occurred between radio broadcasters and between television broadcasters wherein their statutory bodies or members of statutory or other bodies, or employees under direct management authority of such a statutory body or member thereof or under direct management authority of the managing clerk, are identical natural persons or persons who are related parties, or they run a joint business on the basis of a partnership deed, or are related parties;

- consolidation of radio broadcasters occurred whereby one legal entity or one natural person possesses a substantial interest in two or more radio broadcasters;

- consolidation of television broadcasters occurred whereby one legal entity or one natural person possesses a substantial interest in two or more television broadcasters.

A legal entity or natural person shall be regarded as having a substantial influence on a broadcaster insofar as

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62 Broadcasting Act. Art.57
63 Broadcasting Act. Art. 58
• it possesses a direct or indirect interest greater than 34% of the voting stock, an indirect interest being an interest held through a controlled party,

• it makes decisions regarding the majority of employees of the broadcaster who are under the direct managing authority of the statutory body or a member thereof, or makes decisions on the persons/entities who/which provide, on the basis of a mandate or any other agreement, significant administrative, managing or trading activities for the broadcaster,

• it has opportunities to exercise controlling influence on the management of the broadcaster upon the basis of a contract, a special provision in the Statutes, Articles of Partnership or Founder's Deed or agreement with persons who are partners to or shareholders of the broadcaster regardless of the validity or non-validity of such an agreement.

Duties specified above shall not apply to public service broadcasters or broadcasters possessing a short-term licence.

dd. Special provisions concerning the broadcasting of Events of a Major Importance for Society64

A television broadcaster may not exercise any exclusive rights in respect of the broadcasting of any event of a major importance for society in a manner that would deprive a substantial proportion of the public in the Czech Republic of the possibility of following that event via live coverage or via deferred coverage nation-wide television broadcasting in non-encrypted form without any special charge.

If an event of a major importance for society is - because of its nature - broadcast both live and via deferred coverage, then such a broadcasting shall represent a purposefully arranged and coherent whole. Broadcasting of an event of a major importance for society via deferred coverage may only take place if there simultaneously is a live transmission of another event for which the broadcasting of the record had to be delayed.

The event of major importance for society shall be any event on the List of Events of Major importance for society which is set out by a Decree of the Ministry of Culture upon consultation with the Broadcasting Council.

Also treated as an event of major importance for society shall be any event declared as an event of major importance for society by any of the Member States of the European Communities and published as such in the European Communities Official Journal. The television broadcaster may not exercise exclusive rights in respect of the broadcasting of any event of a major importance for society announced in the Official Journal of the European Communities in a manner which would, in contradiction with the legal regulations of the Member State of the European Communities where such an event was declared to be of a major importance for society, deprive a substantial proportion of the public in that Member State of the possibility to follow that event.

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64 Broadcasting Act Art. 33
via live coverage or via deferred coverage on free television. The list of events of a major importance for society, as made public in the Official Journal of the European Communities, shall be made available by the Council in a manner allowing for remote access.

Also treated as an event of major importance for society shall be any event declared as an event of major importance for society by any of the Member States of the Council of Europe and published as such in the determined manner on the basis of an international treaty by an appropriate body of the Council of Europe ("Event published by a Body of the Council of Europe"). The television broadcaster may not exercise exclusive rights in respect of the broadcasting of any event published by the body of the Council of Europe in a manner which would, in contradiction with the legal regulations of the Member State of the Council of Europe where such an event was declared to be of a major importance for society, deprive a substantial part of the public in that Member State to follow that event via live coverage or via deferred coverage on a freely accessible television channel. The list of events of a major importance for society, as made public by a Body of the Council of Europe shall be made available by the Council in a manner allowing for remote access.

e. The Broadcasting of Brief Information 65

The television broadcaster possesses the right to broadcast - as part of a regular news programme unit - brief topical information on any event of increased public interest though exclusive broadcasting rights in relation to such an event may be held by another television broadcaster, provided, however, that such an event is publicly accessible. The total time of broadcasting of such brief information on any such event shall not exceed 3 minutes daily.

The television broadcaster which exercises, in the Czech Republic, the exclusive rights in respect of any event of increased public interest shall provide a recording of such an event to the television broadcasters who were not allowed to be present at the site of the event for reasons of danger to public security or public order or to undisturbed course of the event, or for technical reasons or for reasons of lack of space on the organiser’s side, and shall do so without undue delay against reimbursement for the costs relating to the copying of the record of the event.

ff. Advertising 66

The broadcasting Act contains provisions concerning advertising. Advertising shall be recognisable and may not be misleading. These provisions cannot be seen as a basis for the distinction between a content market and an advertising market.

65 Broadcasting Act Art. 34
66 Broadcasting Act Art. 48-52
5. **Internet**

There is no specific legislation concerning market definition for the internet in the Czech law. Internet can be subsumed under the term electronic communication provided by the new telecommunication directives of the EU. After the new law on the electronic communication will ČTÚ (the Telecommunication office) define the markets with respect to the Commission recommendation on relevant product and service markets. The recommendation provides several markets related to internet. There has to be a distinction between the market for private consumers and the wholesale market. The law on the electronic commerce covers certain aspects of electronic commerce (especially information obligations and liability of providers and conclusions of contracts via internet).

Some definitions contained in the law on the electronic commerce: 67

- **Information society service** shall mean any service provided by electronical means at the individual request of a user submitted by electronical means, normally provided for remuneration; a service shall be provided by electronical means if it is sent via an electronic communication network and collected by the user from electronic equipment for the storage of data;

- **Electronic mail** shall mean a text, voice, sound or image message sent over a public electronic communication network, which may be stored in the network or in the user’s terminal equipment until it is collected by the user;

- **Electronic means** shall mean in particular an electronic communication network, telecommunications terminal equipment and electronic mail;

- **Service provider** shall mean any natural or legal person who uses an information society service;

- **User** shall mean any natural or legal person who uses an information society service, in particular for the purposes of seeking information or making it accessible;

- **Commercial communication** shall mean any form of communication designed to promote directly or indirectly, the goods, services or image of an enterprise, a natural or legal person, who pursues a regulated activity or is an entrepreneur pursuing an activity that is not a regulated activity, also advertising under a special regulation shall be deemed to be commercial communication. Data allowing direct access to the activity of a legal or natural person, in particular a domain name or ran electronic –mail adress shall not be deemed to be commercial communication; further data elating to the goods, services or image of a natural or legal person or ran enterprise acquired in an independent manner by the user shall not be deemed to be commercial communication.

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67 Law on the Electronic Commerce Art. 2
IV Market definitions and/or criteria for market perception in the media-sector, as upheld in sector specific practice of authorities and/or courts

The media regulator is responsible for licencing. It exercises supervisory function over the individual operator’s compliance with the applicable regulatory framework, such as in particular advertising, sponsoring etc. The telecommunications regulator (ČTÚ) has so far refrained to getting involved into issues of radio and TV operators.

The Office for the protection of the competition decided in the year 2003 and 2004 several procedures concerning media. In each case the market was defined separately.

S 78/03–OK-4900/03-ORP 4, a.s. and others. The Office declared an agreement between publicity agencies on participation in public procurement as distorting competition.

S 7/03-401/03 AURUM Media. Office approved merge of two small media undertakings.

S 102/03-2419/03 Mediaservis s.r.o.- Office approved merge of two small media undertakings.

S 72/04 -2495/04 VLTAVA-LABE-PRESS Office declared, that merge of media undertakings do not need its approval.

S 170/03 - Association agreement between two societies from the USA was possible under condition, that free access to the TV programmes delivered by one of the society in the Czech Republic will be preserved for all the users.

V Common factors and differences between these market definitions and the market definitions used in application of the national competition rules

There is no explicit market definition within the Czech media legislation. Some indications are in the broadcasting law. It is possible to distinct of a nation-wide market and several regional markets. These indications are followed by regulatory authorities. On the other hand these market definitions have a rather narrow scope of applications. Therefore the impact on general competition practise will be less significant. Competition law and sector specific law concerning the media sector are separate fields following different approaches.

VI Impact of the non-competition framework and practice on the work of the competition regulator, in particular when defining the relevant markets

In the Czech Republic, the regulation of the media is made medium by medium. There are no linkages between the different media authorities and the competition authorities. For each medium the definitions are made.