

In the fourth issue of Rands Business Bulletin, we bring you a few legal news related to civil, business and competition law due to the Czech Government's focus on lowering the state finance deficit in the period of the last quarter. We briefly mention the new **Act on Financial Collateral**, the **Consumer Lending Act** and changes of legal regulations occurred in connection with adoption of such acts. In the field of regulations under discussion we point out the significant proposal of the **amendment to the Civil Code** in flat lease relationships. Rands Business Bulletin also discusses important **decisions of the Office for Protection of Competition** in relation to so called "**predatory pricing**" and in relation to **cartel agreements of CRT monitor producers**. We looked at the interesting **decision of the Supreme Court of the Czech Republic** regarding the **possibility of insurance company to refuse insurance benefit payment**. And finally, we bring you information on **national and foreign databases of trademarks available free of charge on the Internet**.

#### ADOPTED ACTS

##### **Legislative changes relating to the adoption of the new Consumer Lending Act and amendment to the Trade Licencing Act**

As previous releases of our Bulletin have described, many legislative changes were made in 2010 in regard to new European consumer protection laws. In this context, the Consumer Lending Act No. 145/2010 Coll. has been adopted and will take effect as of 1 January 2011. As a result of this Act, all providers of credit will now be required to provide consumers with more detailed information about credit granted. Consumers have now gained a stronger position in terms of the termination of the Consumer Lending Contract, and in particular the right to rescind a contract without giving a reason within 14 days from the conclusion of such contract. This new regulation will also affect the Trade Licensing Act by the addition of a new professional trade; a trade that was previously considered an unqualified trade. However, entrepreneurs providing or procuring consumer lending were granted a one-year transitional period to comply with newly-introduced conditions for this new professional trade.

##### **Czech Telecommunication Office issues a new form for deciding on pecuniary performance**

A change of procedure by the Czech Telecommunication Office (CTO) for dealing with disputes between telecommunication service providers (particularly phone operators) and their customers occurred in connection with the Amendment to Electronic Communications Act No. 153/2010 Coll. These disputes are related, in particular, to outstanding payments for mobile phone or other phone services and Internet connections. As of 1 July 2011, the CTO has been granted more time for its decision-making, now up to 6 months instead of the previous 1 month. Petitions for decision in the dispute shall be submitted through an electronic form only. CTO Decree No. 360/2010, effective as of 1 January 2011 provides a legally-binding electronic form, which will be available at the CTO website [www.ctu.cz](http://www.ctu.cz).

##### **Act on Financial Collateral (408/2010 Coll.)**

A bill proposed by the government, which was adopted on 19 December 2010, shall introduce a new legal framework for financial collateral, which is currently regulated by the Commercial Code. The purpose of the bill is to update Czech legislation in order to maintain its compliance with EU law. Financial collateral is a specific institute used to secure obligations arising from

certain deals in the financial market. The new law defines more clearly and extends the number of bodies which are allowed to agree to financial collateral, and enables natural persons to benefit from the changes. For example, it will now be possible to make use of so-called credit claims as a subject of financial collateral. In connection with the new law the Parliament passed also the new act No. 409/2010 Coll. which amends the regulations related to financial collateral, such as the Commercial Code, the Act on Banks, the Civil Procedure Code, the Execution Procedure Code, etc.

#### REGULATIONS UNDER DISCUSSION

##### **Proposed new amendment to the Civil Code (Parliamentary press No. 188/0)**

The purpose of the proposed amendment to the Civil Code, which has been debated in the 2<sup>nd</sup> reading, is to modify relationship between a landlord and a tenant. If adopted, a partial reduction of an unreasonably wide protection of tenant, which has been preserved in the Civil Code until present days, will occur. The bill extends reasons of termination or reduction of the period, after which the landlord is obliged to provide a lease to persons upon which the lease passed after the death of the original tenant, for two years. It also proposes a landlord's right to terminate the contract without leave of court in case the tenant violates his/her obligations arising from the lease. These changes were to happen originally in connection with adoption of the new Civil Code, but the respective bill has been withdrawn after the resignation of the government in 2009. Adoption of the new Civil Code is included in the Policy Statement of the current government; however, it has not been proposed to the Parliament.

##### **Parliamentary print No. 177/0, amendment to the Payments Act**

The governmental bill amending the Payments Act (currently in the 2<sup>nd</sup> reading in Chamber of Deputies) brings changes, in particular, to time-limits provided for bank transfers. Unlike current legislation providing fixed time-limit of one working day for setting the payment to the recipient's bank account, the new regulation in the bill shall enable prolongation of such time-limit in certain cases through a mutual agreement of parties. Furthermore, the bill introduces a new regulation regarding so-called Electronic Money Institutions. The main purpose of this new institution rests particularly on its license to provide services relating to electronic money (i.e. pecuniary value representing a debt to an electronic money emitter). The amendment also

contains a regulation of action and operation of the Electronic Money Institution; the license shall be granted and supervision shall be carried out by the Czech National Bank.

## CASE LAW

### **Decision of the Supreme Court on the case of an insurance company rejecting an insurance claim payment on 12 October 2010 (32 Cdo 592/2009)**

In its decision on 12 October 2010, the Supreme Court provided terms under which an insurance company may reject the payment of an insurance claim. According to the decision, an insurance claim may be rejected when the insured person violates his/her duty to give a true and entire answer to the insurer's questions and, at the same time, such withheld information must be essential for the conclusion of an insurance contract and must be a cause of the insurance event.

### **Decision of the Office for the Protection of Competition in relation to so-called "predatory pricing"**

In November 2010, the Office decided that the actions of Student Agency, a travel agency, which allegedly set unreasonably low prices ("predatory prices") for its Prague-Brno return route, were anti-competitive, and imposed a fine of CZK 6 185 000 on the company. According to the decision of the Office, predatory pricing is a temporary loss of profits by setting an unreasonably low price for a product or service in order to exclude other competitors from the market or to prevent potentially new competitors from entering. As the Office decided, Student Agency, having a dominant market position, set predatory prices with the intention of excluding a competitor from the market. The decision is not yet final as Student Agency has filed an appeal. We will inform you when a decision is made on this appeal.

### **Decision of the Supreme Court on 22 September 2010 dealing with impossibility of filing a petition for preliminary ruling in connection with preventing prolongation of a lease contract (26 Cdo 2870/2008)**

The Supreme Court ruled that a landlord, who intends to prevent prolongation of a lease contract, must file a petition for eviction, provided that the tenant uses the premises after the termination of the lease. The Supreme Court highlighted that this lawsuit cannot be replaced by a petition for preliminary ruling, through which the landlord demands that the tenant be prohibited from entering the property.

### **Decision of the Office for the Protection of Competition regarding cartel agreements of CRT monitor producers**

The Office decided in this case that informal meetings of CRT monitor producers, having taken place over many years, in which prices of offered products were discussed, are contrary to legislation on the protection of competition. The Office considers such meetings as illegal in which the producers of monitors exchanged information stipulating target prices, minimal prices, range of prices, rules of pricing or the manner of maintaining the agreed prices. Parties to the proceedings in the 1st instance filed appeals to the Director of the Office. However, the Director dismissed them in his decision from 25 November 2010. Thus, the decision of the Office is final. After its publication, the decision may be found on the Office's web pages ([www.compet.cz](http://www.compet.cz)) or under the "Commercial Law Links" on our website. Considering the fact that the total amount of the fines exceeded CZK 50 million, an appeal against the decision can be expected.

## NEWS AND TIPS

### **Databases of industrial property rights information available free of charge on the Internet – Trade marks**

Below we bring you the brief list of national and foreign industrial property rights databases, which can be used for free of charge information searches.

**IPO (ÚPV)** - This database contains trademarks and trademark applications that have already been applied or registered by the Industrial Property Office, WIPO (with designation CZ or EU) and OHIM (<http://www.upv.cz/cs/sluzby-uradu/database-on-line/database-ochrannych-znamek/narodni-database.html>).

**OHIM** – Database containing Community trade marks (CTM). A CTM is valid in the European Union as a whole ([www.oami.europa.eu](http://www.oami.europa.eu))

**WIPO – Madrid Express** – This database contains data on international trade marks applications and designations, which have been applied by the The World Intellectual Property Organization Office in Geneva (<http://www.wipo.int/ipdl/en/search/madrid/search-struct.jsp>).

**WIPO – Romarin** – Database containing information regarding all international trade marks, that are currently in force in the International Register (<http://www.wipo.int/romarin>).

**TMView** – Database enabling access to information on trade marks registered by the national Industrial Property Offices of majority of the European countries ([www.tmview.europa.eu](http://www.tmview.europa.eu)).

**TESS** – This database contains data on trade marks registered in the United States (<http://tess2.uspto.gov/bin/gate.exe?f=tess&state=4006:lbrjq9.1.1>).

More information on national and foreign databases of trade marks available free of charge on the Internet can be found at the website: [www.upv.cz](http://www.upv.cz) or through our website: Links – Commercial Law.

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