

**143/2001 Coll.**

**ACT**

of 4 April 2001

**on the Protection of Competition and Amending Certain Acts**

**(Act on the Protection of Competition)**

Amendment: 340/2004 Coll.

Amendment: 484/2004 Coll.

Amendment: 127/2005 Coll.

Amendment: 361/2005 Coll.

Amendment: 71/2007 Coll.

Amendment: 296/2007 Coll.

Amendment: 155/2009 Coll.

Amendment: 188/2011 Coll.

Amendment: 360/2012 Coll.

Amendment: 135/2016 Coll., 293/2016 Coll. (part)

Amendment: 293/2016 Coll.

The Parliament has enacted the following Act of the Czech Republic:

## **PART ONE**

### **PROTECTION OF COMPETITION**

#### **SECTION I**

##### **INTRODUCTORY PROVISIONS**

###### **Article 1**

###### **Introductory Provisions**

(1) This 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

- a) agreements between undertakings [Article 3(1)];
- b) abuse of a dominant position of undertakings;
- c) concentration of undertakings; or
- d) state administration authorities in the exercise of state administration, local government authorities in the exercise of self-government and the transferred state administration and self-governance authorities in the exercise of transferred state administration (hereinafter referred to as "public authorities").

(2) This Act further regulates the procedure for application of Articles 101 and 102 of the Treaty on the Functioning of the European Union (hereinafter referred to as “the Treaty”) by the authorities of the Czech Republic and certain issues of cooperation of these authorities with the European Commission<sup>1)</sup> (hereinafter referred to as „the Commission”) and with the authorities of other Member States of the European Union 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<sup>1a)</sup> (hereinafter referred to as „the Regulation”) and in the Council Regulation (EC) on the control of concentrations between undertakings<sup>1b)</sup> (hereinafter referred to as „the Merger Regulation”).

(3) This 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 a general economic interest,<sup>1b)</sup> in so far as its application does not obstruct the provision of these services.

(4) This Act shall also be similarly applied to the proceedings in cases of undertakings, whose actions may affect trade between Member States of the European Union pursuant to the Articles 101 and 102 of the Treaty.

(5) This Act shall also apply to actions of undertakings conducted abroad, which distort or may distort competition in the territory of the Czech Republic.

(6) This Act shall not apply to actions pursuant to paragraph 1, whose effects take place solely in a foreign market, unless an international treaty binding in the Czech Republic provides otherwise.

(7) This Act shall further not apply to the protection of competition against unfair competition<sup>2)</sup>.

## Article 2

### **Definition of Certain Terms**

(1) Undertakings under this Act shall be deemed to mean natural or legal persons, their associations, associations of such associations and other groupings, even in the instance that 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.

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

## SECTION II

### AGREEMENTS DISTORTING COMPETITION

## Article 3

(1) All agreements between undertakings, decisions by associations of undertakings and concerted practices (hereinafter referred to as “agreements”), which have as their object or effect the distortion of competition shall be prohibited and null and void,<sup>4)</sup> unless this Act or a special act

provides otherwise, or unless the Office for the Protection of Competition (hereinafter referred to as „the Office”) grants an exemption from this prohibition by its implementing regulation. Agreements with insignificant impact on competition shall not be prohibited.

(2) Particular agreements shall be prohibited within the meaning of paragraph 1, which have as their object or effect the distortion of competition due to containing provisions on

- a) direct or indirect price-fixing or other business terms and conditions;
- b) limitation or control of production, sales, research and development or investments;
- c) division of markets or sources of supply;
- d) making the conclusion of a contract subject to the acceptance of a further performance, which by its nature or according to commercial usage and fair business practices has no connection with the object of such contracts;
- e) application of dissimilar conditions to identical or equivalent transactions with other undertakings, thereby placing them at a competitive disadvantage;
- f) obligation of the parties to the agreement to refrain from trading or other economic co-operation with undertakings not being party to the agreement, or to otherwise harm such undertakings (group boycott).

(3) If the reason for prohibition relates only to a part of the agreement, only that particular part thereof shall be prohibited and null and void. Provided that it may be inferred from the nature, contents or purpose of the agreement, or the circumstances, in which the agreement was concluded that such part may not be severed from its remaining content, the whole such agreement shall be prohibited and null and void.

(4) The prohibition pursuant to paragraph 1 shall not apply to agreements, which

- a) contribute to improving the production or distribution of goods or to promoting technical or economic progress while allowing consumers a fair share of the resulting benefit;
- b) do not impose on the undertakings restrictions which are not indispensable to the attainment of the objectives pursuant to letter a);
- c) do not afford the undertakings the possibility of eliminating competition in respect to a substantial part of the market of goods, the supply or purchase which constitutes the objective of the agreement.

#### Article 4

#### **Block Exemptions**

(1) The prohibition pursuant to Article 3(1) shall not apply to agreements that may not effect trade between Member States of the European Union pursuant to the Article 101 of the Treaty, which, however, fulfil other conditions laid down in block exemptions adopted on the basis of Article 103(1) of the Treaty in order to implement Article 101(3) of the Treaty by relevant Commission or Council Regulations (hereinafter referred to as "the EU Block Exemptions"), or in the exemption for the agriculture sector<sup>5</sup>.

(2) The Office may also grant block exemptions to other categories of agreements, provided it is proven that the distortion of competition, to which the block exemption would lead, is prevailed by the benefit for other participants of the market, in particular consumers.

(3) The Office shall withdraw the benefit resulting from the exemption pursuant to paragraph 1 or 2 provided that as a consequence of market development, an agreement subject to such exemption would not meet the conditions laid down in Article 3(4).

#### Article 5

### **Horizontal and Vertical Agreements**

(1) Agreements between undertakings operating on the same level of the product market shall be deemed horizontal agreements.

(2) Agreements between undertakings operating on different levels of the product market shall be deemed vertical agreements.

(3) Mixed agreements between undertakings operating on the same horizontal level as well as on different vertical levels of the product market shall be deemed to constitute horizontal agreements. In case of doubts, any such agreement shall be deemed a horizontal agreement.

#### Article 6

### **Abolished**

#### Article 7

(1) If the Office finds within Framework of proceedings concerning the matters pursuant to Articles 3 to 5 that a prohibited agreement has been concluded, it shall declare such fact in a decision, by means of which it shall prohibit performance of the agreement for the future.

(2) Instead of a decision pursuant to paragraph 1, the Office shall decide on the termination of the proceedings on condition that the parties to the proceedings jointly proposed commitments to the Office in favour of restoration of effective competition, sufficient for the protection of competition and the harmful situation is eliminated by their fulfilment and that the prohibited agreement did not result in a substantial distortion of competition. In such decision, the Office may lay down conditions and obligations necessary to ensure the fulfilment of these commitments. Should the Office find such commitments insufficient, it shall communicate the reasons to the parties to the proceedings in writing and it shall continue with the proceedings.

(3) The parties to the proceedings may propose the commitments pursuant to paragraph 2 in writing to the Office within 15 days following the day, on which the Office delivered a written statement to them, in which the Office provides the basic *res gestae* of the case, their legal assessment and reference to the main evidence in the administrative file (hereinafter referred to as "the statement of objections"). Any proposal made after this period shall be taken into account by the Office only in cases worthy of special attention. The parties to the proceedings are bound by their proposal vis-à-vis the Office and vis-à-vis each other, or vis-à-vis third parties, and following the proposal, they may not to perform the agreement in its original wording until the decision of the Office pursuant to paragraph 2 is issued.

(4) Following the termination of the proceedings pursuant to paragraph 2 the Office may re-open the proceedings pursuant to paragraph 1, if

- a) circumstances decisive for the adoption of a decision pursuant to paragraph 2 have significantly changed;
- b) the undertakings act contrary to their commitments pursuant to paragraph 2; or
- c) the decision was adopted on the basis of incorrect or incomplete documents, data or information.

Article 8

**Abolished**

Article 9

**Abolished**

SECTION III

DOMINANT POSITION AND ITS ABUSE

Article 10

(1) One or more undertakings jointly (joint dominance) shall be deemed to have a dominant position in the relevant market, if their market power enables them to behave independently to a significant extent of other undertakings or consumers.

(2) The Office shall assess the market power pursuant to paragraph 1 above on the basis of the amount of ascertained volume of sales or purchases in the relevant market for the goods in question (market share), achieved by the relevant undertaking or undertakings in joint dominant position during the period examined pursuant to this Act. Also on the basis of other indices,, in particular the economic and financial power of the undertakings, legal or other obstacles for other undertakings to enter into the market, the level of vertical integration of undertakings, market structure and size of the market shares of their immediate competitors.

(3) Unless proven otherwise by means of the indices pursuant to paragraph 2 above, an undertaking or undertakings in joint dominance shall be deemed not to be in a dominant position if its/their share in the relevant market achieved during the examined period does not exceed 40%.

Article 11

(1) Abuse of a dominant position to the detriment of other undertakings or consumers shall be prohibited. Abuse of a dominant position shall consist particularly of

- a) direct or indirect enforcement of unfair conditions in agreements with other market participants, especially enforcement of performance, which is at the time of conclusion of contract conspicuously inadequate to the counter-performance provided;
- b) making the conclusion of contracts subject to acceptance by the other party of the supplementary performance, which by its nature or according to commercial usage has no connection with the object of such contracts;
- c) application of dissimilar conditions to identical or equivalent transactions with other market participants, thereby placing them at a competitive disadvantage;

- d) termination or limitation of production, sales or research and development to the prejudice of consumers;
- e) consistent offer and sale of goods for unfairly low prices, which results or may result in a distortion of competition;
- f) refusal to grant other undertakings access for a reasonable reimbursement to own transmission grids or similar distribution networks or other infrastructure facilities, which are owned or used on other legal grounds by the undertaking in a dominant position, provided other undertakings are unable for legal or other reasons to operate in the same market as the dominant undertakings without being able to jointly use such facilities, and such dominant undertakings fail to prove that such joint use is infeasible for operational or other reasons or that they cannot be reasonably requested to enable such use. The same also applies in due proportion to the refusal of access for a reasonable reimbursement, of other undertakings to the use of intellectual property or access to networks owned or used on other legal grounds by the undertaking in a dominant position, provided such use is necessary for participating in competition in the same market as the dominant undertakings or in any other market.

(2) If the Office finds within the course of proceedings concerning the matters pursuant to paragraph 1 that the abuse of a dominant position has been committed, it shall declare such fact in a decision and it shall by this decision prohibit such action for the future.

(3) Instead of a decision pursuant to paragraph 2, the Office shall decide on the termination of the proceedings on condition that the parties to the proceedings jointly proposed to the Office commitments in favour of the restoration of effective competition, which are sufficient for the protection of competition, the harmful situation is eliminated by their fulfilment and abuse of the dominant position did not result in a substantial distortion of competition. In such decision, the Office may lay down conditions and obligations necessary to ensure the fulfilment of these commitments. Should the Office find such commitments insufficient, it shall communicate the reasons to the parties to the proceedings in writing and it shall continue with the proceedings.

(4) The parties to the proceedings may propose the commitments pursuant to paragraph 3 to the Office in writing within 15 days following the day, on which the Office delivered to them the statement of objections. Any proposal made after this period shall be taken into account by the Office only in cases worthy of special attention. The parties to the proceedings are bound by their proposal vis-à-vis the Office and vis-à-vis each other, or vis-à-vis third parties, and following the proposal, they may not proceed in the manner, which is subject to the Office's objections until the decision of the Office pursuant to paragraph 3 is issued.

(5) Following the termination of the proceedings pursuant to paragraph 3 the Office may re-open the proceedings and issue a decision pursuant to paragraph 2, if

- a) circumstances decisive for the adoption of a decision pursuant to paragraph 3 have significantly changed;
- b) the undertakings act contrary to the commitments pursuant to paragraph 3; or
- c) the decision was adopted on the basis of incorrect or incomplete documents, data or information.

## SECTION IV

### CONCENTRATIONS OF UNDERTAKINGS

#### Article 12

##### **Definition of Terms**

(1) A concentration of undertakings shall originate from the merger of one or more undertakings previously independently operating in the market.

(2) A concentration of undertakings pursuant to this Act shall include the situation when one or more entrepreneurs or one or more persons, who are not entrepreneurs but control at least one undertaking, acquire the possibility to directly or indirectly control another undertaking or part thereof, in particular by acquiring equity shares, business or membership interests or by a contract or by other means allowing them to control such undertaking or part thereof.

(3) For the purpose of this Act, a part of an undertaking shall be deemed to mean also the assets of the undertaking, which are used for its activities and to which the turnover achieved by the sale of goods in the relevant market may be unequivocally assigned, even if it shall not form an independent organizational unit of the enterprise.

(4) For the purpose of this Act, control shall be deemed to mean a possibility to perform a decisive influence on the activity of another undertaking or part thereof on the basis of a matter of law or fact, particularly on the basis of

- a) property right or a right to use towards an enterprise of the controlled undertaking, or a part thereof; or
- b) right or other matters of law that provide a decisive influence on the composition, voting and decision-making of the controlled undertaking's bodies.

(5) Establishment of an undertaking jointly controlled by more undertakings that perform all functions of an autonomous economic entity (hereinafter referred to as "the jointly controlled undertaking") on a lasting basis shall be deemed to constitute a concentration.

(6) The extent to which the establishment of the jointly controlled undertaking constituting the concentration pursuant to paragraph 5 has as its object or effect the coordination of competitive behaviour of undertakings controlling such jointly controlled undertaking that remains independent in the market, such coordination shall be assessed in compliance with criteria pursuant to Article 3.

(7) Two or more concentrations, which are mutually conditioned and which are materially, time and personnel-related, shall be assessed as one concentration.

(8) A qualified stake held by a bank in a legal person by virtue of payment of the issue price of shares by a set-off of the bank's receivables from such legal person shall not be deemed to constitute a concentration of undertakings, where such qualified stake is held for the duration of the rescue operation or financial restructuring of such legal person for a maximum of 1 year. A situation, where undertakings providing investment services acquire interests in another undertaking temporarily for a period of up to 1 year for the purpose of the sale thereof, provided they do not exercise the voting rights attached to such interests, with the objective to determine or influence the competitive behaviour of such controlled undertaking, shall not be deemed to constitute

a concentration between undertakings pursuant to paragraph 2. The Office may extend the period of 1 year at a request of a bank or an undertaking providing investment services, provided the applicant proves that the purpose for which it acquired participation in another undertaking could not have been achieved during the original period for objective reasons.

(9) Furthermore, the delegation of certain powers of the undertaking's statutory bodies to persons engaged in activities pursuant to special legal regulations, e.g., a liquidator<sup>8)</sup> or an insolvency trustee,<sup>9)</sup> shall not be deemed to constitute a concentration between undertakings.

#### Article 13

##### **Concentrations of Undertakings Subject to Approval by the Office**

A concentration shall be subject to the approval by the Office, if

- a) the total net turnover of all undertakings concerned achieved in the last accounting period in the market of the Czech Republic exceeds CZK 1.5 billion and each of at least two of the undertakings concerned achieved in the market of the Czech Republic in the last accounting period a net turnover exceeding CZK 250 million; or
- b) the net turnover achieved in the last accounting period in the market of the Czech Republic
  1. in the case of a concentration pursuant to Article 12 (1) at least by one of the parties to the merger;
  2. in the case of a concentration pursuant to Article 12 (2) by the undertaking or a part thereof over whom the control is acquired; or
  3. in the case of a concentration pursuant to Article 12 (5) at least by one of the undertakings establishing the jointly controlled undertaking

is higher than CZK 1,500,000,000 and at the same time the worldwide net turnover achieved in the last accounting period by another undertaking concerned exceeds CZK 1,500,000,000.

#### Article 14

##### **Calculation of Turnover**

(1) The net turnover of the undertakings concerned shall be deemed to mean the net turnover achieved by the individual undertakings solely by means of the activity, which constitutes their business objective. Where the undertakings are not entrepreneurs, the net turnover shall be deemed to mean solely the turnover achieved by means of the activity, for which they were founded or which they commonly practice.

(2) Aggregate net turnover shall include net turnovers achieved by

- a) all the undertakings concerned;
- b) persons, who will control the undertakings concerned after the implementation of the given concentration, and persons, who are controlled by the undertakings concerned;
- c) persons controlled by the person, who will control the undertakings concerned after implementation of the given concentration; and
- d) persons controlled jointly by two or more persons referred to in (a) to (c) above.

(3) The joint net turnover of the undertakings concerned shall not include the part of the



turnover, which was achieved by the sale of goods between the undertakings concerned and the persons referred to in paragraph 2 item b), c) and d).

(4) If only a part of an undertaking is subject to the concentration, only the portion of turnover achieved by such part shall be included in the net turnover.

(5) If two or more concentrations take place between the same undertakings within a two-year period, such concentrations shall be assessed as one concentration.

(6) As regards banks, credit and other financial institutions, with the exception of insurance companies,<sup>11)</sup> the net turnover shall be deemed to mean the sum of income items, in particular income from interest securities and asset shares, fees and commissions and profits from financial operations. As regards insurance companies, the net turnover shall be deemed to mean the sum of insurance premiums prescribed pursuant to all the insurance contracts concluded.

## Article 15

### **Initiation of Proceedings**

(1) Concentration approval proceedings shall be initiated on the basis of a notification.

(2) A concentration notification shall be filed jointly by the parties to the concentration, who under Article 12 (1), (2) and (5) intend to realise a concentration by merger, to acquire the possibility directly or indirectly control another undertaking or its part, or to establish the jointly controlled undertaking.

(3) The concentration notification

- a) may be filed also prior to conclusion of the agreement establishing the concentration or prior to acquisition of control over another undertaking in any other way;
- b) shall contain substantiation and documents certifying the facts decisive for the concentration; details are set out by the implementing legal regulation [Articles 26 (1)].

(4) The concentration approval proceedings shall be initiated on the day when the Office receives the concentration notification containing all requisites pursuant to paragraph 3. In case the notification does not contain such requisites, on the basis of information received, the Office may only issue a written opinion specifying whether the concentration is subject to approval pursuant to this act and whether the notification is to be completed.

## Article 16

### **Course of Proceedings**

(1) Without delay the Office shall announce the initiation of concentration approval proceedings in the Commercial Bulletin and electronically through the public data network, whereas at the same time it shall stipulate therein a deadline for the submission of objections against such concentration.

(2) Once the proceedings have been initiated, the Office shall assess whether the concentration is subject to its approval. If the concentration is not subject to approval by the Office, the Office shall issue a decision to that effect within 30 days of the initiation of proceedings. In cases

where the concentration is subject to approval and will not result in a substantial distortion of competition, the Office shall issue a decision approving the concentration within the aforementioned deadline. In the event that the Office finds that the concentration raises serious concerns as to a significant impediment to competition, primarily due to that fact that it would create or strengthen a dominant position of the undertakings concerned or any of them, the Office shall inform the parties to the proceedings in writing of this fact within the stipulated deadline and inform them that it is continuing the proceedings.

(3) If the Office does not issue a decision on the concentration notification within the deadline stipulated in paragraph 2 or fails to inform the parties in writing that it is continuing the proceedings for reasons pursuant to paragraph 2, the Office shall be deemed to have approved the concentration upon the elapse of the aforementioned deadline.

(4) In accordance with the terms referred to in the Merger Regulation<sup>13)</sup> the Office may request the Commission to conduct proceedings and assess a concentration by itself. The Office shall suspend its proceedings until the decision of the Commission is issued on whether it will assess such concentration by itself. Provided the Commission decides that it will assess such concentration by itself, the Office shall terminate its proceeding.

(5) If the Office informs the parties to the proceedings pursuant to paragraph 2 in writing that it is continuing the concentration approval proceedings, it shall be obliged to issue a decision within 5 months of the initiation of proceedings. In the event that the Office fails to issue a decision on the concentration within the stipulated deadline, the Office shall be deemed to have approved the concentration upon the elapse of the aforementioned deadline.

(6) The Office may request the party to the proceedings in writing to supply further facts necessary for issuing a decision on the concentration approval or to supply further evidence of such facts. The deadlines pursuant to paragraphs 2 and 5 shall be suspended for the period between the day on which the party to the proceedings receives such request and the day on which this obligation is fulfilled. In the event that the concentration decision of the Office is annulled by the Chairman of the Office or by the Court, the deadlines pursuant to paragraphs 2 and 5 shall be reinstated from the date on which the decision of the Chairman of the Office or of the Court comes into force.

(7) The concentration may be registered in the Commercial Register only after the decision of the Office approving the concentration comes into force.

## Article 16a

### **Simplified Proceedings**

(1) Simplified notification of a concentration containing all requisites pursuant to Article 15(3)(b) (hereinafter referred to as “simplified proceedings”) may be filed in the case of a concentration when

- a) none of the undertakings concerned is operating in the same relevant market, or their combined share in such market does not exceed 15%, and at the same time none of the undertakings concerned is operating in the market vertically connected to the relevant market in which another undertaking concerned operates, or their share in every such market does not exceed 25%; or
- b) the undertaking acquires sole control over another undertaking or part thereof, in which it has participated in joint control so far.

(2) Without delay the Office shall announce the initiation of simplified proceedings electronically through the public data network and it shall stipulate a deadline for the submission of objections against this concentration; Article 16(1) shall not be applied.

(3) If the concentration is not subject to approval by the Office, the Office shall issue a decision on the matter within 20 days of the initiation of proceedings. In cases when a concentration is subject to the approval by the Office, but it does not result in substantial distortion of competition, the Office shall issue a decision on concentration approval within the same deadline. The grounds of the decision shall contain the identification of the undertakings concerned, the relevant market or sector, in which the undertakings concerned operate, and the reasons, due to which the decision was issued in the simplified proceedings. If the Office concludes that the concentration could raise serious concern about substantial distortion of competition, it shall request the parties to the proceedings within 20 days to file a complete concentration notification. The deadline for the issuance of a decision pursuant to Article 16 (2) shall start on the date of delivery of the complete concentration notification to the Office.

(4) If the Office does not issue a decision that the concentration is not subject to its approval or a decision allowing the concentration or does not request the parties to the proceedings to file a complete concentration notification within the deadline pursuant to paragraph 3, it shall be deemed to mean the Office has approved the concentration upon the elapse of the aforementioned deadline.

(5) The Office may request the party to the proceedings in writing to provide additional facts necessary for adopting a decision on the concentration approval or to provide additional evidence of such facts. The deadline pursuant to paragraph 3 shall be suspended for the period between the day on which the party to the proceedings receives such request and the day on which this obligation is fulfilled.

(5) Unless specified otherwise by this Act, a general provision on the assessment of concentration shall be applied in the simplified proceedings.

## Article 17

### **Assessment of Concentration**

(1) When deciding on concentration notification, the Office shall primarily assess the necessity of preservation and further development of effective competition, the structure of all markets affected by the concentration, the shares of the undertakings concerned in such markets, their economic and financial power, legal and other barriers to enter relevant markets by other undertakings, the alternatives available to suppliers and customers of the undertakings concerned, the development of supply and demand in the affected markets, the needs and interests of consumers and research and development provided that it is to the consumers' advantage and does not form an obstacle to effective competition.

(2) The decision on the concentration approval shall also apply to restrictions of competition declared by undertakings in their concentration notification, having direct connection with the concentration and indispensable to its implementation.

(3) The Office shall not approve a concentration provided it would result in a substantial distortion of competition in the relevant market particularly because it would result in or would strengthen a dominant position of the undertakings concerned. If the combined share of all undertakings concerned in the relevant market does not exceed 25%, it is presumed that their

concentration does not result in a substantial distortion of competition, unless proven contrary during the assessment of the concentration.

(4) The Office may approve the concentration on condition fulfilment of commitments that are proposed by the undertakings concerned in favour of maintaining effective competition before initiating the concentration approval proceedings or during its course, but no later than 15 days of the day when the last of the parties to the proceedings receives its statement of objections. Proposals of commitments submitted on a later date or changes to their content shall be taken into consideration by the Office only in cases worthy of special attention, if they are submitted to the Office within 15 days following the termination of the deadline pursuant to the first sentence of this paragraph. In case the parties to the proceedings propose these commitments within the first 30 days of the proceedings, the deadline pursuant to Article 16(2) shall be extended by 15 days. In case the parties to the proceedings propose these commitments after being informed by the Office about continuation of the proceedings pursuant to Article 16(2), the deadline for issuing a decision pursuant to Article 16(5) shall be extended by 15 days. Provided the Office approves the concentration on condition of the fulfilment of commitments proposed by undertakings, the Office may lay down conditions and obligations necessary to secure fulfilment of these commitments.

## Article 18

### **Suspension of Implementation of Concentration**

(1) The undertakings may not implement the concentration before the day of filing the concentration notification pursuant to Article 15(1) and before the day the Office's decision on the concentration approval enters into force.

(2) Prohibition pursuant to paragraph 1 shall not apply to the implementation of concentration that should occur on the basis of a public bid to assume equity shares or on the basis of a sequence of operations with shares and securities accepted for trading in the European regulated market,<sup>19)</sup> due to which control shall be acquired by various entities, provided the application for the initiation of proceedings pursuant to Article 15(1) was filed immediately and provided the voting rights attached to such shares and securities are not exercised. The provisions of paragraphs 3 and 4 shall not be affected thereby.

(3) Upon application of the undertakings, the Office may decide on the approval of an exemption from the prohibition of the implementation of the concentration pursuant to paragraph 1 where there is a threat of sustaining considerable damage or any other significant detriment to the undertakings concerned or third parties. The undertakings may file application for approval of an exemption together with the complete concentration notification pursuant to Article 15(3)(b) or any time during the proceedings. The application shall be substantiated, made in writing and it shall indicate the extent of the requested exemption. The Office may request the parties to the proceedings in writing to provide further facts necessary for adopting a decision on the exemption approval or to provide further evidence of such facts. The deadlines pursuant to paragraph 4 shall be suspended for the period between the day of delivery of such request and the day on which this obligation is fulfilled.

(4) The Office shall decide on the application for approval of an exemption pursuant to paragraph 3 without delay, not later than 30 days of the receipt thereof. In deciding on the application, besides damage or any other detriment, the Office shall take into account the consequences of such exemption on competition in the relevant market. In case the Office fails to issue a decision within the stipulated period of time, the exemption shall be deemed to have been approved. The Office may also decide to grant an exception in relation to certain actions covered by

the application; in the rest, the Office shall turn down the application. In its decision on granting an exemption, the Office may stipulate conditions and restrictions in favour of maintaining effective competition.

(5) If the Office finds that the concentration was implemented contrary to the Office's decision in force, it shall decide on measures indispensable to re-establishing effective competition in the relevant market. For this purpose, the Office in particular shall impose on the undertakings an obligation to sell an undertaking or part thereof, where it acquired the possibility to control them, or discharge the contract, on the basis of which the concentration was realised, or to implement other adequate measures necessary for re-establishing effective competition in the relevant market. The Office may also issue such decision in the case, where it finds that the concentration was implemented without filing concentration notification pursuant to Article 15(1). The imposition of measures aimed at re-establishing competition shall not exclude parallel imposition of a fine under Article 22(1)(d), (e) or (f) or Article 22a(1)(d), (e) or (f).

#### Article 19

### **Revocation of Decision on Concentration Approval**

(1) The Office may revoke the decision on concentration approval where it finds that the concentration approval was based on documents, data and information, for the completeness, correctness and truthfulness for which the parties to the proceedings are responsible and which turn out to be incorrect or incomplete, in full or in part, or where the approval has been obtained after the parties to the proceedings mislead the Office or fail to fulfil the conditions, restrictions or commitments, subject to which the Office made the approval.

(2) The Office may initiate proceedings for the revocation of the decision on concentration approval within 1 year of learning about the facts referred to in paragraph 1, but not later than 5 years after such facts have occurred.

#### SECTION IVa

### SUPERVISION OF PUBLIC AUTHORITIES

#### Article 19a

(1) A public authority shall not distort competition in the exercise of its powers without justifiable reasons, in particular by

- a) favouring a certain undertaking or a group of undertakings;
- b) eliminating a certain undertaking or a group of undertakings from competition; or
- c) eliminating competition from the relevant market.

(2) The Office does not supervise the activities of public authorities pursuant to paragraph 1, which are

- a) carried out in the form of a decision or other acts under the Administrative Procedure Code and the Tax Code; or
- b) provided in the form of state aid, including providing *de minimis* state aid.<sup>22)</sup>

(3) Should the Office find within a framework of proceedings concerning the matters pursuant to paragraph 1 that the distortion of competition has occurred, it shall declare such fact in the decision.

(4) Should a local government authority commit distortion of competition in the exercise of self-government or in the transferred exercise of state administration, the Office shall send a final decision pursuant to paragraph 3 to the authority responsible for the supervision according to special legislation<sup>19a)</sup> and shall assign the administrative file if requested thereto.

## SECTION V

### THE OFFICE

#### Article 20

(1) The scope of competencies of the Office is governed by special legislation.<sup>14)</sup> In addition to the powers provided by the other provisions of this Act, the Office

- a) supervises whether and how the undertakings fulfil the obligations stemming from this Act or the decisions of the Office adopted pursuant to this Act;
- b) supervises whether public authorities distort competition;
- c) publishes concentration notifications and its decisions which have come into force.

(2) In cases where the situation in specific markets indicates a distortion of competition, the Office shall conduct investigation of level of competition in such markets (hereinafter referred to as “sector inquiries”) and shall propose measures for the improvement. In particular, the Office shall issue reports which contain recommendations for the improvement of competition.

(3) When performing supervision pursuant to paragraph 1(a) or (b) and when performing sector inquiries pursuant to paragraph 2, the Office shall proceed appropriately pursuant to Article 21e, 21f and 21g and may initiate proceedings *ex officio*.

(4) If the violation of obligations pursuant to Article 3(1), Article 11(1), Article 18(1) or Article 19a(1) is detected, the Office may impose remedial measures, the aim of which is to restore effective competition in the market and stipulate reasonable deadline for their fulfilment. Imposition of remedial measures shall not exclude the imposition of a fine pursuant to Article 22(1)(b), (c) or (d), Article 22a (1)(b), (c) or (d) or Article 22a(1)(b).

(5) On the basis of an international treaty, which is the part of the Czech legislation, the Office shall provide documents and information to a competition authority of the requesting country at its request, including information that contains business or bank secret or similarly classified information, for the purpose of enforcing competition law in the requesting country, provided that the level of protection of such information in the requesting country is comparable with that in the Czech Republic.

#### Article 20a

(1) The Office shall be empowered to apply Articles 101 and 102 of the Treaty to individual cases, if the behaviour of undertakings may affect trade between Member States within the meaning

of Articles 101 and 102 of the Treaty. For this purpose, the Office shall be entitled

- a) to require that an infringement be brought to an end;
- b) to order interim measures;
- c) to accept commitments;
- d) to impose fines.

(2) By its decision, the Office may withdraw the benefits of a EU block exemption from an individual undertaking if the agreements in a particular case have effects that are incompatible with Article 101 (3) of the Treaty in the territory of the Czech Republic or part thereof, which has all the characteristics of a separate geographic market.

(3) The Office shall furthermore be empowered

- a) to request the Commission to provide it with copies of documents necessary for the assessment of a case;
- b) to consult the Commission on any case involving the application of EU law;
- c) to exchange with the Commission and other competition authorities of the Member States and to use as evidence any matter of fact or of law, including confidential information;
- d) to request the Commission to include a case it deals with on the agenda of the Advisory Committee on Restrictive Practices;
- e) to submit observations on issues relating to the application of Articles 101 and 102 of the Treaty to courts and to request the relevant court to transmit any documents necessary for the assessment of the case;
- f) to conduct investigations on the basis of a request of a competition authority of any other Member State;
- g) to present its opinions on proceedings that the Commission conducts pursuant to the Merger Regulation;
- h) to issue decisions in cases where Regulations of the European Union adopted in compliance with Articles 103 to 106 of the Treaty empower the Office to adopt a decision;
- i) to adopt remedies, whose conditions and details were determined by the Commission and where the Commission authorised a Member State to adopt a necessary remedial measure pursuant to Article 105(2) of the Treaty.

(4) The Office shall be obliged

- a) to provide the Commission with all information necessary for the Commission to be able to carry out the duties assigned to it by the Regulation and the Merger Regulation;
- b) to afford the Commission the necessary assistance in case an undertaking opposes or obstructs an inspection pursuant to the Regulation or the Merger Regulation;
- c) to inform the Commission and the competition authorities of other Member States in writing of initiating proceedings on the basis of Articles 101 or 102 of the Treaty;
- d) to provide the Commission with a summary of the case, the envisaged decision and any other documents necessary for the assessment of the case no later than 30 days before the adoption of a decision pursuant to paragraph 1. The information may also be made available

to the competition authorities of other Member States;

- e) to appoint its representative in the Advisory Committee on Restrictive Practices and in the Advisory Committee on Concentrations;
- f) to conduct investigations, at the request of the Commission which they consider to be necessary.

(5) In a procedure pursuant to the Merger Regulation, the Office shall be empowered

- a) to express its opinion concerning a proposal on referral of a case before its notification;<sup>14a)</sup>
- b) to request the Commission to refer a case;<sup>14b)</sup>
- c) to request the Commission to assess a case, on conditions referred to in the Merger Regulation;<sup>14c)</sup>
- d) to decide on a case referred to it by the Commission.<sup>14d)</sup>

## SECTION VI

### PROCEEDINGS BEFORE THE OFFICE

#### Article 21

##### **Initiation of Proceedings**

(1) Concentration approval proceedings and proceedings for the approval of an exemption from prohibition of implementation of the concentration shall be initiated on the basis of a notification. Other proceedings pursuant to this Act shall be initiated *ex officio*.

(2) The Office may decide not to initiate proceedings *ex officio* after a preliminary examination of the matter pursuant to Article 20(1)(a), if there is no public interest in its proceedings due to the low level of detrimental effects of the conduct on competition; the Office shall consider particularly the nature of the conduct and the manner of its implementation, the significance of the relevant market and the number of affected consumers. The Office shall make a written record of the non-initiation of the proceedings, stating the reasons.

#### Article 21a

##### **Parties to the Proceedings**

(1) In concentration approval proceedings and proceedings on the approval of an exemption from prohibition of the implementation of the concentration such persons shall be parties to the proceedings who are obliged to file a concentration notification [Article 15 (2)].

(2) In other cases, the parties to the proceedings shall be those, whose rights and duties referred to in this Act shall be subject to the Office's dealings and decisions.

(3) In proceedings concerning agreements distorting competition due to a cumulative effect of vertical agreements entered into with the purpose of distributing identical, comparable or substitutable goods, where one of the parties to such agreement is always one and the same undertaking, who proposes the conclusion of the contracts to the other undertakings, the Office may



limit the status of a party to the proceedings to this undertaking only.

(4) In case a legal person suspected of the conclusion of a prohibited agreement, abuse of a dominant position or the prohibited implementation of a concentration ceased to exist, the proceedings pursuant to this Act shall be conducted with its legal successors.

#### Article 21b

#### **Statement of Objections**

The statement of objections issued by the Office notifies shall also inform the parties to the proceedings about intended amount of the fine which is to be imposed on them. After the statement of objections, the Office shall enable the parties to the proceedings to become acquainted with the basis of the decision and it shall stipulate a reasonable deadline for the parties to the proceedings to propose amendments to evidence. Such deadline may not be shorter than 15 days. Facts and evidence provided on a later day shall not be taken into consideration, unless such facts or evidence could not be applied earlier.

#### Article 21c

#### **Administrative file and provision of access thereto**

(1) Those parts of the documentation which contain a business, bank or similar secret protected by law shall be excluded from the access to the administrative file provided to the parties to the proceeding. Apart from the documents containing such secret, the administrative file shall also include documents from which such secret was removed or sufficiently detailed abstract which does not contain such secret.

(2) Upon the request of the Office, the person, whose business, bank or similar secret protected by law shall be obliged to provide the Office with both documents containing such secret and also documents from which such secret was removed, eventually a detailed extract from the documents which does not contain such secret. Should the person fail to do so, it shall be deemed that the presented documents do not contain any business, bank or similar secret protected by law.

(3) In proceedings concerning the infringement or prohibition pursuant to Article 3(1), Article 11(1), Article 18(1) or Article 19a(1), after the statement of objections a party to the proceedings or its representative may assess those parts of the file that contain a business, bank or similar secret protected by law which have been or will be used as an evidence, provided that they are informed in advance of the consequences of the breach of confidentiality about such facts and they sign a report regarding this notification. The provisions of Article 38(4) of the Administrative Procedure Code shall not apply.

(4) The application for refrainig from imposing a fine and for reduction of a fine pursuant to Article 22ba(5) as well as other documents and information that were submitted to the Office in relation to such applications are excluded from the administrative file until the statement of objections is issued. This also applies to requests and notifications which the Office sent to the applicants in connection with their applications.

(5) Moreover, parts of the administrative file that contain the application for refrainig from imposing a fine and for reduction of a fine pursuant to Article 22ba(5) as well as other documents and information that were submitted to the Office in relation to such applications shall also be excluded from the provision of access to the administrative file; such parts of the file may be

inspected in accordance with the conditions stated in paragraph 1 only by the parties to the proceeding or their representatives. Provisions of the Article 38(4) of the Administrative Procedure Code shall not apply.

#### Article 21d

##### **Burden of Proof**

(1) In case the parties to the proceedings in the matter of prohibited agreements claim that they are a subject to exemption pursuant to Article 3(4) or Article 4, they shall be obliged to provide evidence to prove the fulfilment of conditions for implementation of such exemption. In case the parties to the proceedings do not specify such evidence, the Office may consider such conditions as unfulfilled.

(2) In case the parties to the proceedings propose commitments pursuant to Article 7(2) or Article 11(3) or Article 17(4), they shall be obliged to provide evidence to prove that the fulfilment of these commitments is sufficient for the restoration or maintenance of effective competition. In case the parties to the proceedings do not specify such evidence, the Office shall not be obliged to prove that such commitments are not sufficient for the restoration or maintenance of effective competition.

(3) Upon the Office's request, the party to the proceedings shall be obliged to provide evidence to prove the fulfilment of commitments pursuant to Article 7(2) or Article 11(3) or Article 17(4), measures imposed pursuant to Article 18(5) and remedial measures pursuant to Article 20(4). In case the parties to the proceedings do not specify such evidence, the Office may consider such commitments and measures as unfulfilled.

#### Article 21e

##### **Heading deleted**

(1) When providing documents and information to the Office, including the business books and other business records or other records which may be important for clarification of the subject of the proceedings (hereinafter referred to as "business records"), everyone shall provide complete, correct and truthful documents and information.

(2) On the Office's written request, the undertakings shall be obliged to provide the Office with documents and information, including the business records within the deadline stipulated by the Office. When requesting documents and information, the Office shall state the legal grounds and the purpose of the investigation and advise that the failure to provide them or to enable their verification may be subject to a disciplinary fine imposed by the Office pursuant to Article 22c.

#### Article 21f

##### **Inspection of Business Premises**

(1) The undertakings shall be obliged to undergo the investigation of the Office on the land and on all premises, rooms and means of transport which they use in their business activity (hereinafter referred to as "business premises").

(2) Within the investigation, the Office's employees or other persons authorized by the Office shall be entitled to

- a) enter the business premises of the undertakings under investigation;
- b) verify whether the documents and records are business records;
- c) review business records which are present on or are available from the business premises regardless of their form of storage;
- d) copy or gain in any form copies or abstracts from business records;
- e) seal business premises, or cabinets, cases, or business records placed on the business premises for the period and to the extent necessary for carrying out the inspection;
- f) request cooperation necessary to conduct investigation, as well as the explanation of the business records, from the undertaking and persons in employment or other similar relation to the undertaking, or persons authorized by the undertaking to perform certain activities on its behalf.

(3) Over the course of the investigation, the undertaking shall be obliged to provide the Office with the necessary cooperation to perform its authority pursuant to paragraph 2 and abide the performance of such authority.

(4) For the purpose of an investigation in business premises, the Office's employees shall be empowered to obtain access to these premises, to open any closed cabinets or cases, or in any other way obtain access to business records. Any person, in whose facility the business premises are situated, shall be obliged to abide the investigation of these premises. If it fails to fulfil this obligation, the Office's employees shall be empowered to obtain access to these business premises.

(5) The investigation is carried out based on a written authorization issued by the Chairman of the Office or another person authorised to do so under internal regulations of the Office. The authorization shall contain in particular the name or names, surname, position and signature of the person authorized to issue such permission, the date of issuance and the official stamp, legal provisions, under which the inspection shall be conducted, identification of the business premises of the undertaking, in which the inspection shall be conducted, a subject matter of the investigation and a date of its initiation, as well as the name or names and surname of the Office's employees, or other persons authorized by the Office, who shall conduct the inspection.

(6) Prior to the initiation of an inspection, the Office shall inform the undertaking in whose business premises the inspection will be conducted about the legal reasons and the purpose of the inspection. Moreover, it shall instruct the undertaking of its rights and obligations pursuant to this Act, including the possibility to impose a fine.

(7) The undertakings can brought an action against an inspection conducted in their business premises.

(8) Paragraphs 1 to 7 shall apply mutatis mutandis to inspections conducted in the premises of public authorities.

## Article 21g

### **Inspection of Other Than Business Premises**

(1) If a reasonable suspicion exists that the business records are kept elsewhere than in the business premises, including the residences of natural persons that are statutory bodies of the undertaking or their members, or who are in employment or a similar relation with the undertaking (hereinafter referred to as “other than business premises”), the investigation may be conducted also in these premises with the prior authorization by the court.

(2) The provisions on the inspection in business premises shall be applied accordingly, except for the provision of Article 21f(2)(e) and paragraph(8).

## Article 21h

### **Proceedings with an EU Element**

(1) In case the Office initiates proceedings concerning infringement of Article 101 or 102 of the Treaty, it shall proceed with its proceedings and investigations pursuant to Section VI of this Act and with decision-making pursuant to Article 7 and Article 11(2) - (5).

(2) In case the Office conducts investigations pursuant to Articles 20(6), 21(4), 22(1) or (2) of the Regulation, or Article 12(1) or Article 13(6) of the Merger Regulation, it shall proceed pursuant to Sections VI and VII of this Act.

(3) In case the Office has initiated proceedings concerning the infringement of Article 101 or 102 of the Treaty and the Commission initiates proceedings for the adoption of a decision under Chapter III of the Regulation in the same matter, the Office shall terminate its proceedings.

(4) In case the Office has initiated proceedings concerning the infringement of Article 101 or 102 of the Treaty and the same matter is already dealt with or is to be dealt with by a competition authority of another Member State, the Office shall terminate or suspend its proceedings until a decision by this competition authority is adopted.

(5) When imposing fines and remedial measures in investigations or proceedings pursuant to paragraphs 1 and 2, the Office shall proceed pursuant to Article 20(4) and pursuant to Section VII of this Act.

(6) In case the Commission decides to conduct an inspection pursuant to Article 21 of the Regulation, the Commission or the Office shall file a proposal to the court to initiate proceedings concerning the protection of competition.

## Article 21i

### **Use of Data from Public Administration Information Systems**

(1) When exercising its powers under this Act, the Office shall use the following data from the basic register of inhabitants:

- a) surname;
- b) name or names

- c) address of residence;
- d) date, place and district of birth; for persons born abroad the date, place and country of birth;
- e) date, place and district of death; if the data subject died outside the Czech Republic, the date of death, place and country, in whose territory the death occurred; if the person has been declared dead by a court, the date, which is indicated in the decision as the date of death, or the date, which the person declared dead did not survive, and the date of entry into force of the decision;
- f) citizenship or enumeration of more citizenships(s).

(2) When exercising its powers under this Act, the Office shall use the following data from the information system of population register:

- a) name or names, surname; surname at birth
- b) date, place and district of birth;
- c) personal identification number;
- d) address of permanent residence;
- e) citizenship(s) or enumeration of more citizenships.

(3) When exercising its powers under this Act, the Office shall use the following data from the foreigners' information system:

- a) name or names, surname; surname at birth
- b) date, place and country of birth;
- c) citizenship or residency;
- d) type and address of place of residence;
- e) commencement of residence, and date of termination of residence if applicable.

(4) Out of the data pursuant to paragraphs 1 to 3, only data that are necessary to fulfil the relevant task may be used in a particular case.

(5) Data that are kept as reference data in the basic register of inhabitants shall be used from the information system of population register or the foreigners' information system only if they are in a form preceding the current status.

## SECTION VII

### ADMINISTRATIVE OFFENCES

#### Article 22

#### **Offences**

(1) A natural person commits an offence as an undertaking if it

- a) breaks a seal placed in the course of the investigation pursuant to Article 21f(2)(e);

- b) concludes an agreement contrary to Article 3(1);
- c) abuses a dominant position contrary to Article 11(1);
- d) implements a concentration contrary to Article 18(1);
- e) does not fulfil a commitment pursuant to Article 7(2), Article 11(3) or Article 17 (4) or fails to implement the measures pursuant to Article 18(5);
- f) does not fulfil a remedial measures imposed by the Office pursuant to Article 20(4) or another obligation stated in the Office's decision; or
- g) fails to provide complete, correct and truthful business records to the Office pursuant to Article 21e(1);
- h) fails to provide the necessary cooperation to the Office during inspection conducted in business premises or other than business premises pursuant to Article 21f(3); or
- i) violates the obligation to abide inspection conducted in business premises or other than business premises pursuant to Article 21f(4).

(2) A fine up to CZK 300,000 may be imposed for an offence pursuant to paragraph 1(a), (g), (h) or (i), and up to CZK 10,000,000 for the offence pursuant to paragraph 1 (b), (c), (d), (e) or (f), unless stated below that no fine shall be imposed for the offence pursuant to paragraph 1 (b).

#### Article 22a

#### **Administrative Offences of Legal Persons and Natural Persons-Entrepreneurs**

(1) A legal person or a natural person-entrepreneur commits an administrative offence as an undertaking if it

- a) breaks a seal placed in the course of the investigation pursuant to Article 21f(2)(e);
- b) concludes an agreement contrary to Article 3(1);
- c) abuses a dominant position contrary to Article 11(1);
- d) implements a concentration contrary to Article 18(1);
- e) does not fulfil a commitment pursuant to Article 7(2), Article 11(3) or Article 17(4) or fails to implement the measures pursuant to Article 18(5);
- f) does not fulfil a remedial measures imposed by the Office pursuant to Article 20(4) or another obligation stated in the Office's decision; or
- g) fails to provide complete, correct and truthful business records to the Office pursuant to Article 21e(1);
- h) fails to provide the necessary cooperation to the Office during inspection conducted in business premises or other than business premises pursuant to Article 21f(3); or
- i) violates the obligation to abide an inspection conducted in business premises or other than business premises pursuant to Article 21f (4).

(2) A fine up to CZK 300,000 or up to 1% of the net turnover achieved by the undertaking in the last accounting period shall be imposed for the administrative offence pursuant to paragraph 1(a), (g), (h) or (i) and a fine up to CZK 10,000,000 or up to 10% of the net turnover achieved by the undertaking in the last accounting period shall be imposed for the administrative offence pursuant to paragraph 1(b), (c), (d), (e) or (f), unless stated below that no fine shall be imposed for the

administrative offence pursuant to paragraph 1 (b).

(3) If a fine pursuant to paragraph 2 is imposed on an association of undertakings, it can amount to 10% of the total net turnover achieved in the last accounting period by the members of the association. Each member of the association shall be liable for payment of the imposed fine up to 10% of its net turnover achieved in the last accounting period.

(4) For an administrative offence pursuant to paragraph 1(b) committed in relation to public procurement, the Office may impose, along with a fine pursuant to paragraph 2 a ban on public contracts for a maximum period of 3 years, unless stated otherwise below.

(5) A ban on public contracts shall mean a ban on participation in a tender, submission of applications for participation in the dynamic purchasing system and the prohibition to conclude an agreement for the performance of small-scale public contracts. The course of the period, for which the ban on public contracts is imposed, shall start on the day, when the decision imposing the ban on public contracts, enters into force.

(6) The Office shall administer a public register of persons prohibited from performing public contracts, which shall contain the identification details of the legal person or natural person-entrepreneur, who is banned from performing public contracts, the date, when the ban begins, and the date, when it ends, identification details of the decision imposing a ban on public contracts. The registry shall be published in a manner allowing remote access.

#### Article 22aa

##### **Administrative Offences of Public Authorities**

(1) A public authority commits an administrative offence if it

- a) breaks a seal placed in during the inspection pursuant to Article 21f(2)(e);
- b) distorts competition contrary to Article 19a(1);
- c) does not fulfil a remedial measure imposed in a decision of the Office pursuant to Article 20(4) or another obligation stated in the Office's decision;
- d) fails to provide complete, correct and truthful business records to the Office pursuant to Article 21e(1);
- e) fails to provide the necessary cooperation to the Office during an inspections pursuant to Article 21f(3); or
- f) violates its obligation to abide the inspections pursuant to Article 21f(4).

(2) A fine up to CZK 300,000 shall be imposed for an administrative offence pursuant to paragraph 1(a), (d), (e) or (f) and a fine up to CZK 10,000,000 shall be imposed for an administrative office pursuant to paragraph 1(b) or (c).

#### Article 22b

##### **General Provisions on Administrative Offences**

(1) A legal person or a public authority shall not be liable for an administrative offence provided they prove making every effort required to prevent the violation of the legal obligation.

(2) When setting a fine for a legal person or a public authority and when imposing and setting the duration of a ban on public contracts, the seriousness of the administrative offence shall be considered, particularly the manner of the committing of the administrative offence and the results, and the circumstances under which the administrative offence was committed. The conduct of a legal person or a public authority in the course of proceeding of the Office shall be also considered as well as their effort to eliminate detrimental consequences of the administrative offence. .

(3) The responsibility for the administrative offence shall cease to exist if the administrative authority initiates administrative proceedings no later than 5 years following the day on which it learned of the administrative offence, however, no later than 10 years after the administrative offence was committed.

(4) Administrative offences pursuant to this Act shall be dealt with by the Office in the first instance.

(5) Provisions of the Act on the criminal liability of legal entities shall apply to responsibility for conduct of a natural person in the course of business<sup>16)</sup> or in direct connection to it.

(6) The responsibility for an administrative offence of a legal person, which was dissolved, shall pass on to its legal successor. If the dissolved legal person has multiple legal successors, each of them is liable for the administrative offence. When setting a fine, the extent in which incomes, benefits and other advantages from the committed administrative offence passed on to the legal successor shall also be considered, as well as whether any of the legal successors continue in the activity by which the administrative offence was committed.

(7) If the legal person, who committed the administrative offence, ceased to exist after the decision imposing the fine for the administrative offence came to force, the obligation to pay the fine shall pass on to the legal successor of the dissolved legal person. In the case of multiple legal successors, they shall be liable for the payment of the fine jointly and severally.

#### Article 22ba

#### **Refraining from an Imposition of a Fine and the Reduction of Fine**

(1) Should the Office find the undertaking liable for an administrative offence pursuant to Article 22(1)(b) or pursuant to Article 22a(1)(b),

- a) it shall refrain from an imposition of a fine, provided that the undertaking
  1. is the first to submit to the Office an information and documentation about a secret horizontal agreement that have not been available to the Office so far and that justify the conduct of targeted inspection pursuant to Article 21f or Article 21g or prove the existence of such agreement pursuant to this Act,
  2. admits liability for participation in the agreement;
  3. does not coerce other undertakings to participate in the agreement; and
  4. actively cooperates with the Office in the course of administrative proceedings, in particular it provides the Office with all documentation and information about the agreement, or



- b) it shall reduce the fine, the amount of which was notified the parties to the proceedings in the statement of objections, by up to 50%, if the undertaking submits to the Office information and documentation about a secret horizontal agreement which have significant added value in relation to probative value of documentation and information already gathered by the Office, meets conditions pursuant to paragraph 1(a), letters (2) – (4); the Office shall consider the order of undertakings applying for a fine reduction, the time when they submit information and documentation about secret horizontal agreement to the Office and the extent to which information and documentation strengthen the possibility of the Office to prove the secret horizontal agreement.

(2) Should the Office find the undertaking liable for an administrative offence pursuant to Article 22(1)(b), (c) or (d) or pursuant to Article 22a(1)(b), (c) or (d), it shall reduce the fine, the amount of which the Office notified parties to the proceedings in the statement of objections by 20%, if the undertaking admits liability for the administrative offence and if the Office considers such sanction sufficient with respect to the nature and seriousness of the administrative offence.

(3) If the Office refrains from imposing the fine pursuant to paragraph (1)(a) or reduces the fine pursuant to paragraph (1)(b) or pursuant to paragraph 2, a ban on public contracts may not be imposed on the same undertaking for the same offence.

(4) The Office may refrain from imposing the fine pursuant to paragraph (1)(a) or reduce the fine pursuant to paragraph (1)(b) or pursuant to paragraph 2 only on the basis of application submitted by the undertaking.

(5) The application for refraining from imposing the fine pursuant to paragraph 1(a) shall be submitted on the day when the statement of objections pursuant to Article 21b was delivered to the undertaking at the latest. The application for the reduction of a fine pursuant to paragraph 1 (b) shall be submitted within 15 days at the latest from the day when the statement of objections pursuant to Article 21b was delivered to the undertaking. The application may be withdrawn within 15 days from the deadline of their submission. The application which was withdrawn as well as attached documentation and information shall not be considered in course of proceedings.

(6) The application for the reduction of a fine pursuant to paragraph 2 shall be submitted within 15 days at the latest from the day when the statement of objections was delivered to the undertaking pursuant to Article 21b.

(7) Any application submitted to the Office after the period specified in paragraphs 5 and 6 shall be taken into account by the Office in cases worthy of special attention..

(8) Should the Office find a public authority liable for an administrative offence pursuant to Article 22aa(1)(b), it shall reduce the fine, the amount of which was notified the parties to the proceedings in the statement of objections, by 20%, if the public authority admits liability for the administrative offence and if the Office considers such sanction sufficient with respect to the nature and seriousness of the administrative offence. Paragraphs 4, 6 and 7 shall apply mutatis mutandis to applications of a public authorities for the reduction of a fine.

#### Article 22c

#### **Disciplinary Fine**

(1) In the case an undertaking fails to fulfil an obligation pursuant to Article 21e(2), it shall be possible to impose a disciplinary fine on undertaking up to CZK 100,000 or 1% of the net turnover

achieved by the undertaking in the last accounting period.

(2) A disciplinary fine also may be imposed repeatedly. The total amount of repeatedly imposed fines may not exceed CZK 1,000,000 or 10% of the net turnover achieved by the undertaking in the last accounting period.

Article 23

**Abolished**

SECTION VIII

PROFESSIONAL SECRECY AND THE PROTECTION OF A BUSINESS SECRET

Article 24

A person employed by or in any other relationship with the Office, on the basis of which it performs an activity for the Office, shall not disclose any facts whatsoever which the person learned during this activity and which constitute a business secret or confidential information. This obligation shall remain in force after the termination of this relationship.

SECTION IX

**Abolished**

Article 25

**Abolished**

SECTION X

GENERAL, EMPOWERING, TRANSITORY AND REPEALING PROVISIONS

Article 25a

#### **Use of the Administrative Procedure Code**

Unless otherwise specified by this Act, the Administrative Procedure Code shall be used in proceedings before the Office with the exception of the provision on solving conflicts between the administrative agency that conducts the proceedings and the administrative agencies that are the affected agencies concerning the issue constituting the object of decision-making,<sup>18)</sup> the provision on the prohibition of changes in an appealed decision to the detriment of appealing party,<sup>18b)</sup> the provision on legal periods for issuing a decision,<sup>18c)</sup> provisions on the special features of the appellation proceedings and the composition of the remonstrance commission and on the possible manner of termination of an appellation proceeding<sup>18d)</sup> and the provision on parties to the proceeding<sup>18e)</sup> and on the procedure when in doubts regarding whether an entity is a party to the proceeding.<sup>18f)</sup> However, the provisions of the Administrative Procedure Code shall apply on parties to the proceeding pursuant to special Act.<sup>18g)</sup>

Article 25b

The legal provisions on state inspection<sup>21)</sup> shall not apply to the procedure of the Office

pursuant to this Act.

#### Article 26

##### **Heading deleted**

(1) The Office shall stipulate by implementing legal regulation the details of the justification and documents certifying facts decisive for the concentration pursuant to Article 15(3)(b) and Article 16a(1).

(2) The Office may by legal regulation pursuant to Article 4(2) grant a block exemption from the prohibition of agreements pursuant to Article 3(1).

#### Article 27

##### **Transitory Provisions**

(1) The exemptions granted pursuant to the hitherto legal regulation are considered as the exemptions granted pursuant to this Act.

(2) Proceedings initiated prior to the entry into force of this Act shall be completed in accordance with the hitherto regulations.

#### Article 28

##### **Repealing Provisions**

The following legal regulations shall be repealed:

1. Act No. 63/1991 Coll., on the Protection of Competition.
2. Act No. 495/1992 Coll. amending Act No. 63/1991 Coll., on the Protection of Competition.

### **PART TWO**

#### **Amendment to Act No. 286/1993 Coll.**

#### Article 29

In Act No. 286/1993 Coll., amending Act No. 63/1991 Coll., on the Protection of Competition, as amended by Act No. 495/1992 Coll., and Act No. 513/1991 Coll., Commercial Code, as amended by Act No. 264/1992 Coll., Act No. 591/1992 Coll. and Act No. 600/1992 Coll., Articles I, II and IV shall be repealed.

### **PART THREE**

#### **Amendment to Act No. 132/2000 Coll.**

#### Article 30

In Act No. 132/2000 Coll., Amending and Repealing Certain Acts Related to the Act on Regions, Act on Municipalities, Act on District Offices and Act on the Capital City of Prague, Article XVI shall be repealed.

## **PART FOUR**

### **ENTRY INTO FORCE**

#### Article 31

The Act shall enter into force on 1 July 2001.

**Klaus m.p.**

**Havel m.p.**

**Zeman m.p.**

### **Selected Provisions of Amendments**

#### **Article III of Act No. 340/2004 Coll. Transitory Provisions**

(1) Proceedings initiated prior to the entry into force of this Act shall be completed in accordance with the hitherto regulations.

(2) In proceedings under Section IV of Act No. 143/2001 Coll. initiated before the entry into force of this Act, the Office for the Protection of Competition shall assess whether the concentration is subject to approval under this Act. In the case the concentration is not subject to approval, the Office for the Protection of Competition shall issue a decision that the concentration is not subject to approval.

(3) The data contained in the cartel register as of the effective date of this Act can be reviewed and copies and extracts of them can be made within the period of 10 years from the effective date of this Act.

(4) Exemptions from the prohibition of agreements distorting competition, decisions on which were issued by the Office for the Protection of Competition before the entry into force of this Act, shall remain in force for the period, for which they were granted in the decision.

(5) The Office for the Protection of Competition may change its decisions on concentration approval, which came into force before the force of this Act, at the proposal of at least one of the parties to the concentration approval proceedings by changing the conditions, restrictions or commitments, on the basis of which the conditional approval was given, or by replacing them with other ones, if the circumstances, which were decisive for the determination of such conditions, restrictions or commitments, changed substantially due to the accession of the Czech Republic to the European Union. Such proposal may be submitted within 6 months of the effective date of this Act. Parties to the proceedings are those ones who were parties to the proceedings in the concentration

approval proceedings.

**Article II of Act No. 361/2005 Coll.**

**Transitory Provision**

In case a proposal for the initiation of proceedings pursuant to Article 15 of Act No. 143/2001 Coll., in the wording effective until the date of entry into force of this Act, was filed to the Office before the date of entry into force of this Act in the matter of concentration notification at the Community level<sup>1)</sup>, and it has been notified to the Commission to this day<sup>2)</sup>, the Office shall suspend or does not initiate the proceedings in this matter.

**Art. II of Act No. 155/2009 Coll.**

**Transitory Provision**

Proceedings commenced prior to the entry into force of this Act shall be completed pursuant to Act No. 143/2001 Coll., in the wording effective until the date of entry into force of this Act.

**Art. II of Act No. 360/2012 Coll.**

**Transitory Provision**

Proceedings not finally completed prior to the entry into force of this Act shall be completed in accordance with the hitherto legal regulations.

**Art. II of Act No. 293/2016 Coll.**

**Transitory Provision**

Proceedings not finally completed prior to the entry into force of this Act shall be completed in accordance with the hitherto legal regulations.

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1) Article 17 et seq. of the Treaty on European Union.

1a) Council Regulation (EC) No. 1/2003 of 16 December 2002 on the implementation of the rules on competition laid down in Articles 81 and 82 of the Treaty.

1b) Council Regulation (EC) No. 139/2004 of 20 January 2004 on the control of concentrations between undertakings.

1b) Regulation (EC) No. 139/2004 on the control of concentrations between undertakings.

2) Article 2976 of the Civil Code.

4) Article 580 of the Civil Code.

5) Article 42 of the Treaty.

Council Regulation (EC) No. 1184/2006 of 24 July 2006 applying certain rules of competition to the production of agricultural products and trade (codified version).

8) Article 189 of the Civil Code.

9) Act No. 182/2006 Coll., on Bankruptcy and Possible Solutions (Insolvency Act), as amended.

11) Article 1(1) of Act No. 21/1992 Coll., on Banks, as amended.

13) Article 22(1) of Council Regulation (EC) No. 139/2004.

14) Act No. 273/1996 Coll., on the Competence of the Office for the Protection of Competition, as amended by Act No. 187/1999 Coll.

14a) Article 4(4) and (5) of Council Regulation (EC) No. 139/2004.

14b) Article 9(2) of Council Regulation (EC) No. 139/2004.

14c) Article 22(1) of Council Regulation (EC) No. 139/2004.

14d) Article 9(3) of Council Regulation (EC) No. 139/2004.

14e) Article 2 of Council Regulation (EC) No. 1/2003 on the implementation of the rules on competition laid down in Articles 81 and 82 of the Treaty.

16) Articles 420 and 421 of the Civil Code.

18) Article 136(6) of the Administrative Procedure Code.

18b) Article 90(3) of the Administrative Procedure Code.

18c) Article 71 of the Administrative Procedure Code.

18d) Article 152(3) and (5) of the Administrative Procedure Code.

18e) Article 27(1) and (2) of the Administrative Procedure Code.

18f) Article 28 of the Administrative Procedure Code.

18g) Article 27(3) of the Administrative Procedure Code.

1) Article 1 of Council Regulation (EC) No. 139/2004.

2) Article 4 of Council Regulation (EC) No. 139/2004.

19) Article 55 (2) of Act No. 256/2004 Coll., on Capital Market, as amended by Act No. 230/2008 Coll. and Act No. 188/2011 Coll.

19a) Act No. 128/2000 Coll., on Municipalities (Municipal Establishment), as amended.

Act No. 129/2000 Coll., on Regions (Regional Establishment), as amended.

Act No. 131/2000 Coll., on the Capital City of Prague, as amended.

21) Act No. 255/2012 Coll., on Control (Control Rules).

22) Act No. 215/2004 Coll., on the Regulation of Certain Relations in the Field of State Aid and Amending the Act on Research and Development Support, as amended.