

CONSOLIDATED ACT ON THE PROTECTION OF COMPETITION

ACT No. 143/2001 Coll. of 4 April 2001 on the Protection of Competition and on Amendment to Certain Acts (Act on the Protection of Competition) as amended by Act No. 340/2004 Coll. of 4 May 2004, Act No. 484/2004 Coll. of 5 August 2004, Act No. 127/2005 Coll. of 22 February, Act No. 361/2005 Coll. of 19 August 2005, Act No. 71/2007 Coll. of 4 April 2007, Act No. 296/2007 Coll. of 1 January 2008, Act No. 155/2009 Coll. of 1 September 2009 and Act No. 360/2012 Coll. of 19 September 2012

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 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 “the 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 ¹⁾ (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 of competition laid down in Articles 81 and 82 of the Treaty^{1a)} (hereinafter referred to as “the Regulation”) and in

¹⁾ Article 17 *et sequentes* 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 establishing the European Community.

the Council Regulation (EC) on the control of concentrations between undertakings^{1b)} (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 general economic interest^{1c)} in so far as its application does not obstruct the provision of these services.

(4) This Act shall be applied similarly also to the proceedings against 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 for the Czech Republic, provides otherwise.

(7) This Act shall further not apply to the protection of competition against unfair competition²⁾.

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 homogenous 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 void⁴⁾, unless this Act or

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

^{1c)} For example Act No 29/2000 Coll., on postal services, Article 23 of Act No 6/1993 Coll., on Czech National Bank, subsequently amended by Act No 442/2000 Coll., Article 9 of Act No 468/1991 Coll., on radio and television broadcasting, subsequently amended, Act No 151/2000 Coll., on telecommunications.

²⁾ Article 44 *et sequentes* of Commercial Code, subsequently amended by Act No 370/2000 Coll.

⁴⁾ Article 39 of Civil Code, subsequently amended by Act No 509/1991 Coll.

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 fixing of prices 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 acceptance of 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 sector⁵⁾.

(2) The Office may also grant block exemptions to other categories of agreements, provided it is proved that the distortion of competition to which the block exemption would lead is prevailed by 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 at the same level of the product market shall be deemed horizontal agreements.

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

(3) Mixed agreements between undertakings operating at the same horizontal level as well as at 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 the 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 in favour of restoration of effective competition sufficient for the protection of competition, and the harmful situation is eliminated by their fulfilment, and the prohibited agreement did not result in substantial distortion of competition. In such decision the Office may lay down conditions and obligations necessary to secure 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 to the Office in writing within 15 days following the day, on which the Office delivered to them a statement in writing in which the Office shall inform about the basic *res gestae* of the case, their legal assessment and reference to main evidence on file (hereinafter referred to as

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 and trade in certain agriculture products (codified text).

“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, not to perform the agreement in its original wording, until the decision of the Office pursuant to paragraph 2 is issued.

(4) After the termination of the proceedings pursuant to paragraph 2, the Office may reopen 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.

Articles 8 and 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 from 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 dominant position to the detriment of other undertakings or consumers shall be prohibited. Abuse of dominant position shall consist particularly of:

- a) direct or indirect enforcement of unfair conditions in agreements with other participants in the market, 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 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 trading parties, 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 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 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 unfeasible 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 framework of proceedings concerning the matters pursuant to paragraph 1 that 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 commitments in favour of restoration of effective competition sufficient for the protection of competition, the harmful situation is eliminated by their fulfilment, and abuse of dominant position did not result in substantial distortion of competition. In such decision the Office may lay down conditions and obligations necessary to secure 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, not to perform the agreement in its original wording until the decision of the Office pursuant to paragraph 3 is issued.

(5) After the termination of the proceedings pursuant to paragraph 3, the Office may reopen the proceedings 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 acquisition of an enterprise⁷⁾ of another undertaking or a part thereof on the basis of a contract, auction or by other means. For the purpose of this Act, a part of an enterprise shall be deemed to mean also a part of an enterprise of the undertaking, to which turnover achieved by the sale of goods in the relevant market may be unequivocally assigned, even if it shall not form an independent organization unit of the enterprise^{7a)}.
- (3) As a concentration of undertakings pursuant to this Act shall further be regarded a situation, when one or more persons who are not entrepreneurs already control at least one undertaking, or when one or more entrepreneurs acquire the possibility to directly or indirectly control another undertaking, in particular:
- a) by acquisition of equity shares, business or membership interests, or
 - b) by a contract or by any other means allowing them to control another undertaking.
- (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 on the basis of matter of fact or law, particularly on the basis of:
- a) property right or right to use towards an enterprise of the controlled undertaking, or its part or
 - b) right or other matters of law that provide decisive influence on 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 "joint venture") on a lasting basis shall be deemed to constitute a concentration.

⁷⁾ Article 5 of Commercial Code, subsequently amended by Act No 370/2000 Coll.

^{7a)} Article 7 of Commercial Code, subsequently amended by Act No 370/2000 Coll.

(6) The extent to which the establishment of a joint venture establishing a concentration pursuant to paragraph 5 has as its object or effect the coordination of competitive behaviour of undertakings controlling such joint venture that remains independent in the market. Such coordination shall be assessed in compliance with criteria pursuant to paragraph 3.

(7) Two or more concentrations which are mutually conditioned and which by their nature, time and staff have mutual connections shall be assessed as one concentration.

(8) A qualified stake held by a bank in a legal entity by virtue of payment of the issue price of shares by a set-off of the bank's receivables from such legal entity 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 entity 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 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. 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) Further, delegation of certain powers of the statutory bodies of undertakings to persons engaged in activities pursuant to special legal regulations, e.g., a liquidator⁸⁾ or an insolvency trustee⁹⁾, 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 acquired enterprise or a substantial part thereof,
 3. in the case of a concentration pursuant to Article 12(3) by the undertaking, over whom the control is acquired, or
 4. in the case of a concentration pursuant to Article 12(5) by at least one of the undertakings establishing a joint venture

⁸⁾ Article 70 *et sequentes* of Commercial Code, subsequently amended by Act No 370/2000 Coll.

⁹⁾ Act No 182/2006 Coll., on bankruptcy and solutions thereof (act on insolvency), as subsequently amended.

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 turnover¹⁰⁾ of 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 undertakings concerned after 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 sale of goods between the undertakings concerned and the persons referred to in paragraph 2, letters 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 net turnover.

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

(6) As regards banks¹¹⁾, credit and other financial institution, with the exception of insurance companies, 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 companies¹²⁾, 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) In cases within the meaning of Article 12(1), (2) and (5), a concentration notification shall be filed jointly by the parties to the concentration, who intend to realise a concentration by merger or by acquisition of an enterprise or a part thereof on the basis of a contract, or intend to establish a joint venture. In cases within the meaning of Article 12(3), the undertaking

¹⁰⁾ Article 20 (2a) of the Act No 563/1991 Coll., on accountancy, as subsequently amended.

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

¹²⁾ Article 2(a) of Act No 363/1999 Coll., on insurance industry and amendment of related acts.

which is to acquire the possibility to control another undertaking directly or indirectly shall be obliged to file a concentration notification.

(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, documents certifying the facts decisive for the concentration and the requisites set out by the implementing legal regulation [Article 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 submission of objections against this 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 the concentration raises serious concerns as to a significant impediment to competition, as it would primarily create or strengthen a dominant position of the undertakings concerned or any of them, the Office shall inform the parties to the proceedings 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 above, 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 Regulation¹³⁾ the Office may request the Commission to conduct proceedings and assess a concentration by itself. Until the decision of the Commission is issued on whether it will assess such concentration by itself, the Office shall suspend its proceedings. Provided the Commission decides that it will assess such concentration by itself, the Office shall terminate its proceeding.

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

(5) If the Office informs the parties to the proceedings pursuant to paragraph 2 above in writing that it is continuing the 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 deadlines.

(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 a 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 procedure of concentration approval**

(1) Simplified notification of a concentration containing all requisites referred to in implementing regulation (hereinafter referred to as “simplified proceedings”) may be filed in the case of a concentration when

- a) none of the undertakings involved is operating in the same relevant market, or their combined share in such a 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 operates, or their share in every such market does not exceed 25%, or
- b) the undertaking acquires exclusive control over the joint venture 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 submission of objections against this concentration; Article 16(1) shall not be applied.

(3) In case the Office comes to the conclusion in the simplified proceedings that the concentration is subject to approval and that it needs additional information for proper assessment, it shall send a request within 20 days of the initiation of proceedings to the parties to the proceedings to file complete concentration notification. The deadline for issuing a decision pursuant to Article 16(2) shall start on the day the complete concentration notification is delivered to the Office. Otherwise the Office shall issue a decision on concentration approval within the same deadline. The grounds of the decision shall contain only an indication of the parties to the proceedings, the relevant market, or a sector in which the parties to the proceedings operate, and the fact that the decision was issued in the simplified proceedings.

(4) If the Office does not issue a decision on the concentration approval within the deadline pursuant to paragraph 3, the Office shall be deemed to have approved the concentration upon the elapse of the aforementioned deadline.

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

Article 17

Examination of concentration

(1) When examining a notified concentration, 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 parties to the concentration 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 parties to the concentration, 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 review of the concentration.

(4) The Office may approve the concentration on condition of 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 not 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 after the deadline expiration 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 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 concentrations

(1) The undertakings must not implement the concentration before the day of filing 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 Article 1 shall not apply to 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 lists, the consequence of which control shall be acquired from different entities, provided the application for initiation of proceedings pursuant to Article 15(1) was filed immediately and provided the voting rights attached to such lists 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 implementation of the concentration pursuant to paragraph 1, where there is a threat of the undertakings or third parties sustaining considerable damage or any other significant detriment. The undertakings may file application for approval of an exemption together with the complete concentration notification pursuant to paragraph 15(3) letter b) or anytime 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 supply further facts necessary to issue a decision on granting the exemption, or to supply further evidence of such facts. The deadline pursuant to paragraph 4 shall be suspended for the period between the day such request was received and the day on which the 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 the event that 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 on granting the exemption in relation to certain actions covered by the application. In the rest, the Office shall turn down the application. The Office may stipulate in its decision on granting an exemption, 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 obligation to sell stakes, to transfer an enterprise or a part thereof acquired on a basis of the concentration or to 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 a concentration was implemented without filing concentration notification pursuant to Article 15(1). Imposing measures to re-establish competition shall not exclude parallel imposition of a fine pursuant to Article 22(1)d, (1)e or (1)f or Article 22a(1)d, (1)e or (1)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 by deceit or the parties to the proceedings fail to fulfil the conditions, restrictions or commitments subject to which the Office made the approval.

(2) The Office may initiate proceedings for revocation of a 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) Distortion of competition by providing aid favoring particular undertaking, or by other means, shall be prohibited to public authorities.

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

(3) Should the local government authority commit the distortion of competition in the exercise of self-governance or the transferred state administration, the Office shall send to the body relevant to perform supervision pursuant to special regulation^{19a)} the decision in force pursuant to the Paragraph 2 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 a special legal regulation¹⁴⁾. In addition to the powers stipulated by the other provisions of this Act, the Office:

- a) supervises the undertaking's fulfilment of the obligations stemming from this Act or the decisions of the Office adopted pursuant to this Act,
- b) supervises whether state authorities distort competition
- c) publishes concentration notifications and its decisions which have come into force.

(2) In cases where the situation in the individual markets indicates distortion of competition the Office shall conduct investigation into conditions of competition in such markets (hereinafter referred to as "sector inquiry") and shall propose measures for their improvement.

^{19a)} Act No. 128/2000 Coll. on Municipalities (the Municipal Order), as amended. The Act No. 129/200 Coll. on Regions (Establishment of Regions), as amended. The Act No. 131/2000 Coll. on the Capital City Prague, as amended.

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

In particular, the Office shall issue reports which contain recommendations for improvement of competition conditions.

(3) When performing supervision pursuant to paragraph 1(a) and while performing a sector inquiry pursuant to paragraph 2, the Office shall act appropriately pursuant to Article 21e, Article 21f and Article 21g and may initiate proceedings *ex officio*.

(4) If violation of obligations pursuant to Article 3(1), Article 11(1) or Article 18 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 parallel imposition of a fine pursuant to Article 22(1) b, c or d and Article 22a(1) b, c or d.

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, it shall be entitled to:

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

(2) By its decision, the Office may withdraw the benefit of the EU block exemption in individual case from an undertaking if the examined agreement's effects are incompatible with Article 101(3) of the Treaty in a territory of the Czech Republic or in a part thereof, which has all the characteristics of a distinct 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 European Union law,
- c) to exchange with the Commission and other competition authorities of the Member States and to use in 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 or 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 itself concerning a proposal on referral of a case before its notification^{14a)},
- b) to request the Commission to refer the case^{14b)},
- c) to request the Commission to assess the case, on conditions referred to in the Merger regulation^{14c)},
- d) to decide on a case referred to it by the Commission^{14d)}.

SECTION VI PROCEEDINGS BEFORE THE OFFICE

Article 21 Initiation of proceedings

(1) Concentration approval proceedings and proceedings for 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 a proceeding *ex officio* after a preliminary investigation pursuant to Article 20(1)a, if there is no public interest in its proceeding due to low level of detrimental effect on competition; the Office shall consider particularly the nature of the conduct and the manner of its execution, significance of the relevant market and the

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

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

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

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

number of affected consumers. The Office shall make written record about not initiating the proceeding stating the reasons for such conclusion.

Article 21a
Parties to the proceedings

(1) In concentration approval proceedings and proceedings for approval of an exemption from prohibition of 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 conclusion of the contract to the other undertakings, the Office may limit the status of a party to the proceedings to this undertaking only.

(4) In case the legal person suspected of conclusion of a prohibited agreement, abuse of dominant position or prohibited implementation of 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 shall also inform the parties to the proceeding about the intended amount of a 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 commercial, banking 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 a secret was removed or sufficiently detailed abstract which does not contain such secret.

(2) On the request of the Office, the person whose secret is protected by commercial, banking or any similar law, shall be obliged to provide the Office with both documents containing such a secret and also documents from which such a secret was removed, eventually a detailed extract from the documents which do not contain such a secret.

(3) The application for granting the immunity from 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.

(4) Moreover, parts of the administrative file that contain the application for granting immunity from a fine and application 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 be applied.

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 party to the proceedings does 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 the fulfilment of these commitments is sufficient for 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 restoration or maintenance of effective competition.

(3) On the Office's request, the party to the proceedings shall be obliged to provide evidence to prove 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 Provision of information

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

(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 fine imposed by the Office pursuant to Article 22c.

(3) The obligation to provide the Office on its request with written documents and information at their disposal free of charge shall also apply to public authorities and legal and natural persons who are not deemed as undertakings. Documents and information obtained by the public authorities, including criminal law enforcement authorities, may be used as a basis for the decision of the Office. In the request for information, the Office shall be obliged to stipulate provisions of the law which the requested scope of information is based upon and the objective which the given information is requested for.

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 proceedings the Office’s officials or other persons authorized by the Office shall be entitled to

- a) enter business premises of the undertakings under investigation,
- b) verify whether the documents and records are business records,
- c) look into business records which are on the business premises 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 situated 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 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 investigation in business premises, the Office’s officials 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 the estate of which the business premises are situated, shall be obliged to abide the investigation of these premises. In the case it fails to fulfil this obligation, the Office’s officials shall be empowered to obtain access to such business premises.

(5) The conduct of inspection shall be authorized in written form by the Chairman of the Office or any other person authorized according to internal regulations of the Office. The authorization shall contain in particular a name or names, surname, function and signature of the person authorized to issue such permission, a date of issuance and an official stamp, legal provision under which the inspection shall be conducted, identification of the business premises of the undertaking where the inspection shall be conducted, a subject matter of the investigation and a date of its initiation as well as name, or names and surnames of the Office’s employees, or other persons authorized by the Office who shall conduct the inspection.

(6) Prior to initiation of inspection, the Office shall inform the undertaking in the business premises which are the subject of the investigation, of the legal reasons and the purpose of investigation. Moreover, it shall instruct the undertaking of its rights and obligations pursuant to this Act, including the possibility to impose a fine.

Article 21g **Inspection of other than business premises**

(1) If a reasonable suspicion exists that the business records are kept elsewhere than on the business premises, including the homes 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 on these premises with prior authorization by the court.¹⁵

(2) The provisions on investigation on business premises shall be applied accordingly, except for the provision of Article 21f(2)e.

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 upon decisions pursuant to Articles 7 and 11(2) to (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 Section VI and VII of this Act.

(3) In case the Office has initiated proceedings concerning infringement of Article 101 or 102 of the Treaty and the Commission initiates proceedings for 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 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.

¹⁵ Article 200h of the Act No. 99/1963 Coll., Code of Civil Procedure, as amended.

(6) If the Commission decides to conduct an investigation pursuant to Article 21 of the Regulation, the Commission or the Office shall file a proposal to the court to initiate the proceeding concerning the protection of competition.¹⁵

SECTION VII ADMINISTRATIVE OFFENCES

Article 22 Offences

- (1) A natural person commits an offence as an undertaking if it
- a) breaks the seal placed in the course of the proceedings pursuant to Article 21f(2)e
 - b) concludes an agreement contrary to Article 3(1),
 - c) abuses dominant position contrary to Article 11(1),
 - d) implements a concentration contrary to Article 18(1)
 - e) does not fulfil commitment pursuant to Article 7(2), Article 11(3) or Article 17(4) or does not fulfil measures pursuant to Article 18(5), or
 - f) does not fulfil remedial measures imposed by the Office pursuant to Article 20(4) or other obligation laid down by the Office's decision.
- (2) For an offence pursuant to paragraph 1(a) it shall be possible to impose a fine up to CZK 300 000 and for an offence pursuant to paragraph 1(b), (c), (d), (e) or (f) a fine up to CZK 10 000 000, unless further provided that a fine shall not be imposed.

Article 22a Administrative offences of legal persons and natural persons-entrepreneurs

- (1) A legal person or an entrepreneur commits an administrative offence if it
- a) breaks the seal place in the course of the proceedings pursuant to Article 21f(2)e
 - b) concludes an agreement contrary to Article 3(1),
 - c) abuses dominant position contrary to Article 11(1),
 - d) implements a concentration contrary to Article 18(1)
 - e) does not fulfil commitment pursuant to Article 7(2), Article 11(3) or Article 17(4) or does not fulfil measures pursuant to Article 18(5), or
 - f) does not fulfil remedial measures imposed by the Office pursuant to Article 20(4) or other obligation laid down by the Office's decision.
- (2) For an administrative offence pursuant to paragraph 1(a) it shall be possible to impose a fine up to CZK 300 000 or up to 1% of the net turnover achieved by the undertaking in the last accounting period and for an administrative offence pursuant to paragraph 1(b), (c), (d), (e) or (f) 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, unless further provided that a fine shall not be imposed.
- (3) If a fine pursuant to paragraph 2 is imposed on an association of undertakings, it can amount to 10% of total net turnover achieved in the last accounting period by the members of

¹⁵ Article 200h of the Act No. 99/1963 Coll., Code of Civil Procedure, as amended.

the association. Each member of the association shall 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 award procedure or conclusion of a small-scale public contract, the ban to execute public contracts for the period of three years shall be imposed together with a fine pursuant to paragraph 2, unless otherwise specified. The period of time for which the ban to execute public contracts shall be imposed, shall start running from the date when the decision determining the ban to execute public contracts came into force.

(5) For an administrative offence pursuant to paragraph 1(b) committed in relation to concession procedure, the ban to execute concession contract for the period of three years shall be imposed together with a fine pursuant to paragraph 2, unless otherwise specified. The period of time for which the ban to execute concession contract shall be imposed, shall start running from the date when the decision determining the ban to execute concession contract came into legal force.

(6) The Office shall inform the Ministry for Regional Development about entry into legal force of the decision determining the ban to execute public contracts pursuant to paragraph 4 or the ban to execute concession contracts pursuant to paragraph 5.²⁰

Article 22aa **Administrative offences of public authorities**

(1) Public authority commits an administrative offence if it distorts competition pursuant to Article 19a(1).

(2) For administrative offence pursuant to paragraph 1 a fine up to CZK 10 000 000 shall be imposed.

Article 22b **General provisions on administrative offences**

(1) A legal person or a public authority shall not be responsible for the administrative offence provided they prove that they made every effort required to prevent violation of the legal duty.

(2) When setting a fine for a legal person or a public authority the seriousness of the administrative offence shall be considered, particularly the manner of the commission of the administrative offence and its 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.

²⁰ Article 144 of the Act No. 137/2006 Coll., on Public Contracts, as amended. Article 31a of the Act No. 139/2006 Coll., on Concession Contracts and Concession Procedure (the Concession Act), as amended by the Act No. 417/2009 Coll.

(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 responsibility and sanctions of a legal person shall be applied accordingly to the responsibility for activity of a natural person in the course of business or in direct connection to it.¹⁶

(6) The responsibility for an administrative offence of a legal person, which was dissolved, shall pass to a legal successor of this person. Provided the dissolved legal person shall have more legal successors, each of them is responsible 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 continues in the activity by which the administrative offence was committed.

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

Article 22ba

Refraining from an imposition of a fine and reduction of a fine

(1) Should the Office find the undertaking liable for an administrative offence pursuant to Article 22(1)b or 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 information and documents about secret horizontal agreement that have not been available to the Office so far and that justify the conduct of targeted inspection of premises pursuant to Article 21f or Article 21g or prove the existence of such agreement pursuant to this Act,
 2. admits liability for the participation in the agreement
 3. does not coerce other undertakings to participate in the agreement, and
 4. actively cooperates with the Office in course of the administrative proceeding, in particular it provides the Office with all documents and information about the agreement, or
- b) it shall reduce a fine of which amount the Office notified parties to the proceedings in the statement of objections by up to 50%, if the undertaking submits to the Office information and documents about secret horizontal agreement which have significant added value in relation to probative value of documents 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 documents about secret horizontal agreement

¹⁶ Article 2(2) of the Commercial Code, as amended by the Act No. 85/2004 Coll.

to the Office and the extent to which information and documents 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, (1)c or (1)d or pursuant to Article 22a (1)b, (1)c or (1)d, it shall reduce a fine of which amount 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 as sufficient with respect to nature and seriousness of the administrative offence.

(3) If the Office refrains from imposing a fine pursuant to paragraph 1(a) or reduces a fine pursuant to paragraph 1b or paragraph 2, it is not, in consequence, possible to impose the ban to execute public contracts or the ban to execute concession contract on the same undertaking.

(4) To refrain from imposing a fine pursuant to paragraph 1(a) or to reduce a fine pursuant to paragraph 1(b) or paragraph 2 is possible solely on the basis of application submitted by the undertaking.

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

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

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

Article 22c **Disciplinary fine**

(1) In the case an undertaking fails to fulfil an obligation pursuant to Article 21e(1) or (2) or Article 21f(3) it shall be possible to impose a fine on the undertaking of up to CZK 300 000 or 1% of the net turnover achieved by the undertaking in the last accounting period.

(2) A fine may also be imposed repeatedly. The total of repeatedly imposed penalties may not exceed CZK 10 000 000 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 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 he/she learned during this activity and which constitute a business secret or a confidential information. This obligation shall remain in force after the termination of this relationship.

SECTION IX

Abolished

Article 25

Abolished

SECTION X

GENERAL, EMPOWERING, TRANSITIONAL 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 of 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-making¹⁸⁾, the provision stipulating who may be imposed a disciplinary fine and to what amount a fine may total^{18a)}, the provision on prohibition of changes in an appealed decision to the detriment of the appealing party^{18b)}, the provision on legal periods for issuing a decision^{18c)}. Furthermore, from among the provisions on the special features of the appellation proceedings conducted by the central administrative bodies, the provision on composition of the appellation committee of a central administrative body and on possible termination of an appellation proceeding conducted by a central administrative body^{18d)}. Moreover, the provision on parties to the proceeding^{18e)} and the provision on procedure in doubts on whether an entity is a party to a proceeding^{18f)}. However, the provisions of the Administrative Procedure Code on parties to a proceeding pursuant to a special Act^{18g)} will be applied.

Article 25b

-
- ¹⁸⁾ Article 136(6) of the Administrative Procedure Code.
^{18a)} Article 62(1) and (2) 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.

The legal provisions on state inspection²¹ shall not be applied on the Office's procedure pursuant to this Act.

Article 26
Empowering provisions

(1) The Office shall stipulate by implementing legal regulation, the content and form of the concentration notification pursuant to Article 15(3) and Article 16(1).

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

Article 27
Transitory provision

(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 FOUR

Entry into force

Article 31

The Act shall enter into force on 1 July 2001.

* * *

Act No. 340/2004 Coll., amending Act No. 143/2001 Coll., on the Protection of Competition and on Amendment to Certain Acts (Act on the Protection of Competition), and some other acts, has entered into force on the day of its publication (2 June 2004).

Act No. 484/2004 Coll., amending Act No. 143/2001 Coll., on the Protection of Competition and on Amendment to Certain Acts (Act on the Protection of Competition) as amended by

²¹ Act No. 552/1991 Coll. on State Inspection, as amended.

Act 340/2004 Coll., Act No. 513/1991 Coll., Commercial Code, as amended, and Act No. 526/1990 Coll., on Prices, as amended, has entered into force on the day of its publication (7 September 2004).

Act No. 127/2005 Coll., on Electronic Communication and on Amendment to Further Related Acts (Act on Electronic Communication), entered into force on the first day of the second month following the day of its publication (1 May 2005).

Act No. 361/2005 Coll., amending Act No. 143/2004 Coll., on the Protection of Competition and on Amendment to Certain Acts (Act on the Protection of Competition) as amended by subsequent acts, and some other acts, entered into force on 1 October 2005, with the exception of Part I. Article I Clause 49, as far as paragraph 25(a) is concerned, that part shall enter into force on 1 January 2006.

Act No. 71/2007 Coll., amending Act No. 143/2004 Coll., on the Protection of Competition and on Amendment to Certain Acts (Act on the Protection of Competition) as amended by subsequent acts, entered into force on the first day of the calendar month following the day of its publication (1 May 2007).

Act No. 296/2007 Coll., amending Act No. 182/2006 Coll., on Insolvency and its Resolution (Insolvency Act), as amended by subsequent acts, and some acts in connection with its adoption, entered into force on 1 January 2008.

Act No. 155/2009, amending Act No. 143/2004 Coll., on the Protection of Competition and on Amendment to Certain Acts (Act on the Protection of Competition), as amended by subsequent acts, entered into force on the first day of the third month following the day of its publication (1 September 2009).

Act No. 188/2011 Coll., amending Act No. 189/2004 Coll., on Collective Investments, as amended by subsequent acts, and some other acts, entered into force on the day of its publication (15 July 2011).

Act No. 360/2012 Coll., amending Act No. 143/2001 Coll., on the Protection of Competition and on Amendment to Certain Acts (Act on the Protection of Competition) as amended by subsequent acts, and Act No. 40/2009 Coll., Criminal Code, as amended by subsequent acts, entered into force on the first day of the second month following the day of its publication (1 December 2012).