

## **NOTICE ON THE REQUIREMENTS FOR CONCENTRATION NOTIFICATIONS**

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### **I. INTRODUCTION**

1. In this Notice, the Office for the Protection of Competition (hereinafter referred to as "the Office") comments on some formal aspects of the requirements for concentration notifications, that shall be met when submitting a notification. The aim of the instructions contained in this Notice is to facilitate the smooth conduct of the concentration approval proceedings and to prevent any delays in the proceedings that could be caused by the need to eliminate the formal shortcomings of the concentration notification.<sup>1</sup>
2. In this Notice, the Office responds to the promulgation of Act No. 293/2016 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, and Act No. 135/2016 Coll. amending certain Acts in connection with the adoption of the Act on Public Procurement and which entered into effect on 19 October 2016, and to the promulgation of Decree of the Office for the Protection of Competition No. 294/2016 Coll., stipulating details of the justification of a concentration notification and documents certifying facts decisive for a concentration (hereinafter referred to as "the Decree"), which also came into effect on 19 October 2016.

### **II. REQUIREMENTS FOR THE CONCENTRATION NOTIFICATION**

3. If a transaction occurs that is a concentration of undertakings within the meaning of Article 12 of the Act on the Protection of Competition and is, due to exceeding the turnover thresholds of the undertakings concerned, which are defined in Article 13 of the Act on the Protection of Competition, subject to approval of the Office, the undertaking or undertakings referred to in

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<sup>1</sup> In terms of the content requirements for a concentration notification, which must be met by the notification, this issue is usually a matter of pre-notification negotiations between the undertakings concerned and the Office. See Notice of the Office for the Protection of Competition on the pre-notification contacts with merging parties, which is published on the website of the Office at <http://www.uohs.cz/cs/hospodarska-soutez/spojovani-soutezitelu/guidelines-ke-spojeni-soutezitelu.html>.

Article 15 (2) of the Act on the Protection of Competition<sup>2</sup> is/are required to submit a concentration notification (in accordance with Article 15 (1) of the Act on the Protection of Competition).

4. The submitted concentration notification must contain the following:

- Justification of the concentration notification (see Article 15 (3)(b) of the Act on the Protection of Competition);
- Details of the justification of the concentration notification and documents certifying the facts decisive for the concentration that are stipulated by an implementing legal regulation (see Article 15 (3)(b) of the Act on the Protection of Competition); such specific details are regulated by the Decree issued on the basis of statutory authorisation according to Article 26 of the Act on the Protection of Competition. According to the Decree, the details are as follows:
  - a. In the case of standard concentration approval proceedings a duly completed concentration notification questionnaire which is given in Annex 1 of the Decree, or in the case of simplified<sup>3</sup> concentration approval proceedings a duly completed simplified concentration notification questionnaire, which is provided in Annex 2 of the Decree;
  - b. Extracts from the Commercial Register, or any other similar register, not older than 3 months, covering all undertakings concerned, who are obliged to be registered in the Commercial Register or a similar register (see Article 1 (3)(a) of the Decree);
  - c. Documents, on the basis of which the concentration occurred or should occur, or documents certifying the existence of the concentration; in the case of a concentration consisting of the acquisition of securities in a public takeover offer, all undertakings concerned are required to submit such documents immediately after they are drafted (see Article 1 (3)(b) of the Decree). If the agreement, which results in the concentration, has been concluded and signed at the time of filing the concentration notification, the concluded and signed agreement (or more precisely its copy) must also be submitted. However, if the agreement establishing the concentration has not been concluded and signed at the time of filing the concentration notification or the final version of the agreement has not been drawn up, a draft of the agreement or a document, where the intention of the undertakings concerned to enter into the transaction representing the concentration of the undertakings is apparent, must be submitted to the Office. If the agreement is subsequently concluded during the administrative proceedings for the approval of the relevant concentration of undertakings, the undertaking, who files the notification (hereinafter also "notifying party"), shall additionally submit the signed agreement to the Office;
  - d. Annual reports, including the audit of annual financial statements for the last completed accounting period of all undertakings concerned who are required to perform the audit in accordance with special legislation (see Article 1 (3)(c) of the Decree);

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<sup>2</sup> In accordance with Article 15 (2) of the Act on the Protection of Competition, all undertakings, who under Article 12 (1), (2) and (5) intend to realise a concentration by merger or by acquisition of an enterprise or a part thereof, or intend to establish a jointly controlled undertaking, are required to submit a joint concentration notification.

<sup>3</sup> For more details about the meaning of the term simplified proceedings see Article 16a of the Act on the Protection of Competition, which also defines the terms of its use, and the Notice on simplified proceedings for assessing certain cases of concentration of undertakings, which is published on the website of the Office at (<http://www.uohs.cz/cs/hospodarska-soutez/spojovani-soutezitelu/guidelines-ke-spojovani-soutezitelu.html>).

- e. Consolidated financial statements for the last completed accounting period of all undertakings concerned who are required to prepare consolidated financial statements in accordance with special legislation (see Article 1 (3)(d) of the Decree);
  - f. Scheme and method of calculating turnover, the amount of which justifies the submission of the notification and where it is clear what the net turnover - see Article 14 of the Act on the Protection of Competition - was achieved in the relevant accounting period by:
    - 1. The undertakings concerned;
    - 2. Persons, who will control the undertakings concerned after the implementation of the given concentration, and persons, who are controlled by the undertakings concerned;
    - 3. Persons controlled by the person, who will control the undertakings concerned after the implementation of the concentration;
    - 4. Persons controlled jointly by two or more persons referred to in items 1-3 (see Article 1 (3)(e) of the Decree); and
  - g. Analyses, reports, studies, surveys, and any comparable documents prepared for any member(s) of the Supervisory Board, a statutory body or any other person, who performs a similar function or who has been authorised to perform a similar function or to whom such a function was entrusted, or for the General Meeting for the purpose of assessing or analysing the concentration with respect to the conditions of competition, both actual and potential competitors, justification of the concentration, potential for business growth or expansion into other product and geographic markets, and general market conditions (hereinafter as "Studies"). Unless specified in the document itself, the date of preparation, name and position of each person, who prepared the document, shall be indicated for each of these documents (see Article 1 (3)(f) of the Decree; it must be noted that if the above Studies have not been prepared, the notifying party shall expressly mention this fact in the submitted concentration notification;
    - Along with the filing of the concentration notification, the notifying party will prove payment of the administrative fee (see Act No. 634/2004 Coll., on Administrative Fees, as amended<sup>4</sup>);
    - Power of attorney granted to a representative of the notifying party if represented in the concentration approval proceedings (see Article 33 (1) of Act No. 500/2004 Coll., Administrative Procedure Code, as amended<sup>5</sup>).
5. Regarding the (i) extracts from the Commercial Register or any other similar register (see item b. above), (ii) annual reports, including the audit of annual financial statements (see item d. above) and (iii) consolidated financial statements (see item e. above), it is required that these documents are submitted for "*all the undertakings concerned*" during the notification. When assessing, for which entities the above documents are submitted, it is necessary to interpret "*all the undertakings concerned*" in the context of the particular concentration of undertakings as:<sup>6</sup>
- (i) In the case of concentrations of undertakings in the form of merger of each of the

<sup>4</sup> Hereinafter referred to as "the Act on Administrative Fees".

<sup>5</sup> Hereinafter referred to as "the Administrative Procedure Code".

<sup>6</sup> The interpretation of the term "*all the undertakings concerned*" as used herein refers only to the determination, which undertakings are required to submit the documents referred to in this paragraph of the Notice.

undertakings, among which the merger takes place (each of these merging undertakings is considered to be the notifying party and a party to the proceedings), but not the other individual entities belonging to the group of companies of the merging undertakings, i.e. their subsidiaries or parent companies;

(ii) In the case of concentrations of undertakings in the form of acquisition of control over another undertaking or part thereof

1. on one side, the acquirer of sole or joint control (the acquirer(s) of control is/are considered to be the notifying party(ies) and party/parties to the proceedings); and

2. on the other side, the undertaking, over which the sole or joint control is acquired (the acquired undertaking is not considered to be the notifying party or a party to the proceedings);

but not the other individual entities belonging to the group of companies of the undertaking acquiring the possibility to control, i.e. its subsidiaries or parent companies, and individual entities belonging to the group of companies of the acquired undertaking, i.e. its subsidiaries;

(iii) In the case of a concentration of undertakings consisting of establishing a joint venture (a jointly controlled undertaking), the founders of the joint venture, who will exercise control over the joint venture (these founders are considered to be the notifying parties and parties to the proceedings), but not the individual entities belonging to the group of companies of these founding undertakings, i.e. their subsidiaries or parent companies.

6. The requirement to submit consolidated financial statements of the undertaking concerned is based on the assumption that all individual entities belonging to the group of companies of the "undertaking concerned" are consolidated in the financial statements. If, however, the group of companies of the "undertaking concerned" does not prepare consolidated financial statements, the "undertaking concerned" shall instead prepare financial statements of those individual entities belonging to the group of companies of the undertaking, where it is apparent that the turnover thresholds of the undertakings concerned, which are defined in Article 13 of the Act on the Protection of Competition, have been exceeded, and therefore the concentration of undertakings is subject to approval by the Office. When submitting financial statements of the individual entities belonging to the group of companies of the "undertaking concerned", it is appropriate to submit mainly financial statements of those individual entities that operate in markets affected by the concentration.

## **II.1. CONCENTRATION NOTIFICATION FILING FEE**

7. Filing the concentration notification is subject to a fixed amount which is set at CZK 100 000 according to the Act on Administrative Fees.<sup>7</sup> When filing the concentration notification, the notifying party shall prove payment of the administrative fee.<sup>8</sup>

8. If the notifying party fails to pay the fee and to prove such payment by the time of filing the concentration notification, the Office shall request the notifying party to pay the fee within 15 days from the day following the day of delivery of the request. The Office shall also notify the notifying party of the consequences of the failure to pay the fee. The request for payment of the fee may be appealed within 15 days from the day following the day of its delivery.<sup>9</sup>

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<sup>7</sup> See Part IV, item 63 a) of the schedule of fees which is attached to the Act on Administrative Fees.

<sup>8</sup> In accordance with Article 5 (2) of the Act on Administrative Fees, this fee specified in the schedule of fees as a fixed amount is due "either upon receipt of the submission or later, but not prior to the task, as defined in individual items in the schedule of fees, unless the schedule of fees provides otherwise."

<sup>9</sup> See Article 5 (2) of the Act on Administrative Fees. Pursuant to Article 5 (2) of the Act on Administrative Fees, the request for payment of the fee is considered to be a decision under special legislation regulating tax administration. Such special legislation is Act No. 280/2009 Coll., Tax Code, as amended (see Article 1 (1) thereof, according to which the Tax Code "regulates the procedure of tax authorities, rights

9. The consequences of failure to pay an administrative fee for the concentration notification are as follows:<sup>10</sup> If the notifying party fails to pay the fee within the prescribed period, the Office shall terminate the initiated concentration approval proceedings. If the notifying party pays the fee after that period, the Office shall proceed with the proceedings as if the fee had been paid in time, unless it has decided to terminate the proceedings.
10. The Office shall issue the result of the task always only after the payment of the fee, unless the schedule of fees states otherwise.<sup>11</sup> The rule set out in Article 5 (5) of the Act on Administrative Fees is important in this context, pursuant to which the deadlines for issuing a decision provided by special legislation (for the purpose of the control of concentration of undertakings, this special legislation is the Act on the Protection of Competition, which sets out the deadlines for issuing decisions in the matter of approving concentrations of undertakings in Article 16 (2) and (5) or Article 16a (3) of the Act on the Protection of Competition) shall not run between the date of the delivery of the request for payment of the fee until the demonstrable payment of the fee.
11. To ensure that the running of the time limits for issuing decisions in concentration approval proceedings is not suspended and decisions in concentration approval proceedings can be issued as soon as possible, the Office recommends the notifying party(ies) to include proof of payment of the administrative fee, such as a copy of the payment order for the administrative fee, in the concentration notification.
12. The administrative fee for filing (or receipt) of the concentration notification shall be paid into the account of the Office held with the Czech National Bank with the number 19-24825621/0710 (from abroad IBAN: CZ27 0710 0000 1900 2482 5621, BIC: CNBACZPP; a transaction fee must be added to the amount of the administrative fee). The constant code for cashless payment is 1148, the constant code for cash payment (postal order type A) is 1149, the variable code is the primary part of the taxpayer identification number.<sup>12</sup>

## **II.2. POWER OF ATTORNEY OF THE NOTIFYING PARTY'S REPRESENTATIVE**

13. If the notifying party has a legal representative in the concentration approval proceedings, a power of attorney granted by the notifying party to its legal representative (agent) will be presented to the Office when filing the concentration notification. The obligation to present the power of attorney to the Office follows from Article 33 (1) of the Administrative Procedure Code. The notifying party may choose a representative in accordance with this provision. The authorisation for representation is demonstrated by a written power of attorney. A power of attorney may be also granted orally in an official record. The notifying party may only have one legal representative at a time in a single matter.

## **II.3. LANGUAGE OF THE CONCENTRATION NOTIFICATION**

14. The language, in which the concentration notification is filed and in which the administrative proceedings on concentration approval are conducted, is based on Article 16 of the Administrative Code regulating the language.
15. Pursuant to Article 16 (1) of Administrative Code, the proceedings are conducted and documents are drafted in the Czech language. The parties to the proceedings may also act in and documents may be submitted in the Slovak language.

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and obligations of taxpayers and third parties that arise to them in the administration of taxes") (hereinafter referred to as "the Tax Code"). Pursuant to Article 109 (2) of the Tax Code, an appeal (or remonstrance) against a decision has no suspensive effect, unless the law provides otherwise. The Act on Administrative Fees does not acknowledge any suspensive effect of an appeal (or remonstrance) against the request for payment of a fee.

<sup>10</sup> See Article 5 (4) and (5) of the Act on Administrative Fees.

<sup>11</sup> See Article 5 (5) of the Act on Administrative Fees.

<sup>12</sup> For details regarding the payment of the administrative fee for filing (receipt) of the concentration notification see website of the Office at: <http://www.uohs.cz/cs/hospodarska-soutez/spojovani-soutezitelu/spravni-poplatek.html>.

16. The Office's experience on the control of the concentration of undertakings shows that a foreign undertaking acts frequently as the notifying party, another undertaking concerned or previous owner of the undertaking concerned. This leads to situations where the originals of those documents relating to a notified concentration and the undertakings concerned, which are required for the concentration notification, when those are particularly agreements establishing the concentration of undertakings, extracts from the Commercial Register or any other similar register regarding the undertakings concerned, annual reports, including the audit of annual financial statements, consolidated financial statements of undertakings concerned, copies of Studies or a power of attorney of the notifying party's representative, are drafted in a language other than Czech or Slovak.
17. In the case of the Slovak language, it is not necessary to translate the abovementioned documents into the Czech language because the rule set out in Article 16 (1) of the Administrative Code shall apply, where parties to the proceedings may act in and documents may be submitted in the Slovak language.
18. However, if the originals of the abovementioned documents are drawn up in a language other than Czech or Slovak, Article 16 (2) of the Administrative Code provides that the notifying party must submit the originals as well as their certified translation into the Czech language, unless the administrative body informs the notifying party that such a translation is not required. The administrative body may make such a declaration on its official notice board and for an indefinite number of future proceedings.
19. A certified translation into the Czech language is a translation made by a translator or interpreter registered in the list of court interpreters according to the Act on Experts and Interpreters.<sup>13</sup>
20. The Office has made its declaration under Article 16 (2) of the Administrative Code on its official notice board<sup>14</sup> thereby waiving the obligation of the notifying party to make a certified translation into the Czech language for an indefinite number of concentration approval proceedings in the future (i) in the case of annual reports, including the audit of annual financial statements for the last completed accounting period of all undertakings concerned, who are required to carry out an audit under special legislation, and (ii) in the case of consolidated financial statements for the last completed accounting period of all undertakings concerned, who are required to prepare consolidated financial statements under special legislation, provided that the originals were drafted in English or German. When this condition is met, originals of these documents may be submitted to the Office without the need to make their certified translations into the Czech language. In the case the originals of the above documents are drafted in a foreign language other than Slovak, English or German, the notifying party is required to submit the original document and its certified translation into the Czech language.
21. In addition to this general waiver of the obligation to make certified translations of documents, when the original is in a foreign language, into the Czech language, the Office may in some individual cases of concentration notifications waive the notifying party's obligation to make certified translations into the Czech language of (i) those parts of the agreement establishing the notified concentration, or (ii) those parts of Studies that contain information not necessary for assessment of the notified concentration. If there are such parts of agreements or Studies with no relevance for the assessment of the notified concentration, it will, upon prior agreement with the Office, suffice to submit originals of those parts of the contract and parts of the Studies without the need to make their officially certified translations into the Czech language subject to the condition that the originals of the documents are provided in English or

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<sup>13</sup> Act No. 36/1967 Coll., on Experts and Interpreters, as amended (hereinafter referred to as "the Act on Experts and Interpreters").

<sup>14</sup> This declaration is published on the website of the Office at: [www.uohs.cz](http://www.uohs.cz).

- German. In the case the originals of the abovementioned documents, i.e. agreements establishing the concentration or Studies, are drafted in a foreign language other than Slovak, English or German, the notifying party is required to submit the original document and its certified translation into the Czech language to the Office.
22. On the contrary, the notifying party will be required to make a certified translation into the Czech language of those parts of the agreement establishing the notified concentration and those parts of the Studies that are necessary for the assessment of the notified concentration. In the case of agreements establishing the notified concentration, such parts of the agreement relevant for the assessment of the concentration will be typically those arrangements that identify and define the parties or undertakings concerned, describe relations of the control between the undertakings concerned or arrangements that may be so-called ancillary restraints<sup>15</sup> that may also be assessed by the Office in the process of impact assessment of the concentration (e.g. non-competition clause).
23. The Office will identify (i) those parts of the agreement establishing a notified concentration, and (ii) those parts of the Studies that the Office needs to assess the notified concentration of undertakings according to the circumstances of the particular case.
24. As regards other documents that make up the requirements for the concentration notification, the obligation to make a certified translation into the Czech language<sup>16</sup> also applies to the following:
- (i) A power of attorney granted to a representative of the notifying party; and
  - (ii) Extracts from the Commercial Register or any other similar register regarding the undertakings concerned.
25. The following documents must also be submitted in the Czech language:
- (i) The concentration notification itself and its justification;
  - (ii) Concentration notification questionnaire, or simplified concentration notification questionnaire; and
  - (iii) Scheme and method of calculating turnover, the amount of which justifies the filing of the concentration notification.
26. In order to ensure early identification of those parts of the agreement establishing the notified concentration and those parts of the Studies that are necessary for the assessment of the notified concentration and the subsequent smooth course of the proceedings, the Office recommends the undertakings concerned to use the so-called pre-notification contacts with the Office.<sup>17</sup>

#### **II.4. EXTRACTS FROM THE COMMERCIAL REGISTER OR ANY OTHER SIMILAR REGISTER**

27. With regard to another of the requirements for the concentration notification – extracts from the Commercial Register or any other similar register, not older than 3 months, regarding all undertakings concerned, who are obliged to be registered in the Commercial Register or a similar register – it is necessary to take into account the fact that these documents are public ones.<sup>18</sup>

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<sup>15</sup> See Article 17 (2) of the Act on the Protection of Competition and Commission Notice on restrictions directly related and necessary to concentrations (2005/C 56/03), which is additionally taken into account by the Office when evaluating so-called ancillary restraints.

<sup>16</sup> The legal exemption applies to the Slovak language - see Article 16(1) of the Administrative Procedure Code.

<sup>17</sup> See Notice of the Office for the Protection of Competition on the pre-notification contacts with merging parties, which is published on the website of the Office at <http://www.uohs.cz/cs/hospodarska-soutez/spojovani-soutezitelu/guidelines-ke-spojenu-soutezitelu.html>.

<sup>18</sup> See Article 53 (3) of the Administrative Procedure Code. See Article 12 (1) of Act No. 91/2012 Coll., on Private International Law, as amended, pursuant to which "a document issued by a court, a notary or an authority in a foreign country that is considered in the location, where it was issued, to be a public document, or a public document issued by a diplomatic representative or consular officer operating in

28. If the undertakings concerned are foreign entities registered in commercial registers or similar registers administered by authorities of foreign countries, the requirements set out in Article 16 (2) of the Administrative Procedure Code shall apply. In accordance with this provision, the notifying party must submit documents drafted in a foreign language as the originals and a certified translation into the Czech language - see Chapter "II.3." of this Notice. In addition to this requirement, the rule set out in Article 53(4) of the Administrative Procedure Code shall apply with regard to the nature of the extracts from the Commercial Register or any other similar register as as a public documents, under which, unless an international treaty, which is part of the legislation, provides otherwise, the authenticity of the official stamps and signatures on public documents issued by foreign authorities must be verified by the competent authorities.
29. Requirements for the verification of extracts from such foreign commercial registers or other similar registers may vary depending on the rules agreed in international treaties, parties to which the Czech Republic and the country, where the undertaking concerned have been registered. The following three regimes can be distinguished in these requirements.
30. Firstly, there is a regime of automatic applicability, when no authentication is necessary on the basis of bilateral agreements on legal assistance in civil law (waiving the authentication of documents). In this case, it is sufficient if the certified translation into the Czech language is carried out by a translator or interpreter registered in the list of court interpreters under the Act on Experts and Interpreters. A list of countries that are subject to this regime can be found on the website of the Ministry of Justice of the Czech Republic. These are countries, the Czech Republic has concluded bilateral international treaties waiving authentication of documents with.<sup>19</sup>
31. Secondly, there is a regime of Apostilles, which is regulated by the Convention Abolishing the Requirement of Legalisation for Foreign Public Documents<sup>20</sup> adopted on 5 October 1961 at the 9th Session of the Hague Conference on Private International Law.<sup>21</sup> It was agreed in the Apostille Convention that the signing countries will recognise each other's public documents as public documents that bear the so-called Apostille clause.<sup>22</sup> In this case, the extract from the foreign commercial register or any other similar register submitted to the Office must bear the Apostille and its certified translation into the Czech language must be carried out by a translator or interpreter registered in the list of court interpreters under the Act on Experts and Interpreters. A list of countries that are subject to this regime can be found on the website of the Ministry of the Interior of the Czech Republic. These are countries that are parties to the Apostille Convention and have not concluded a bilateral international treaty with the Czech Republic waiving the authentication of documents.
32. Thirdly, it is a regime requiring that documents need to be authenticated by consular superlegalization. The public document must bear a higher authentication of the central state authority which is superior to the authority that issued the document and consequently superlegalized by the embassy of the Czech Republic in that country. This form of authentication is used in countries, that are not yet parties to the Apostille Convention and

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the Czech Republic, shall have the probative force of the public document also in the Czech Republic if it contains the prescribed certification".

<sup>19</sup> See [www.justice.cz](http://www.justice.cz). For more information on the requirements for the authentication of foreign public documents see visit the website of the Ministry of Foreign Affairs of the Czech Republic at: [http://www.mzv.cz/jnp/cz/cestujeme/overovani\\_listin/postup\\_pri\\_overovani\\_cizozemskych\\_listin.html](http://www.mzv.cz/jnp/cz/cestujeme/overovani_listin/postup_pri_overovani_cizozemskych_listin.html).

<sup>20</sup> Hereinafter referred to as "the Apostille Convention".

<sup>21</sup> See Communication of the Ministry of Foreign Affairs of the Czech Republic No. 45/1999 Coll., informing that the Convention Abolishing the Requirement of Legalisation for Foreign Public Documents was adopted on 5 October 1961 in The Hague and the Parliament of the Czech Republic approved of this Convention. For the Czech Republic, the Apostille Convention came into force on 16 March 1999. In this Communication, a translation of the Apostille Convention into the Czech language can be found as well as a sample Apostille clause.

<sup>22</sup> The Apostille clause is issued by one or more so-called Apostillation authorities in each country that entered into the Apostille Convention.



have not concluded a bilateral international treaty with the Czech Republic waiving the authentication of documents.

33. If the concentration notification is filed and the notifying party or another undertaking concerned is an entity registered in the Commercial Register or any other similar register of a country other than the Czech Republic, it is necessary to find out in relation to the relevant undertaking concerned, in which country it is registered and what the specific requirements for authentication and translation of the extract from the commercial register or a similar register are in the relevant case.

#### **II.5. BUSINESS SECRET IN CONCENTRATION NOTIFICATIONS**

34. The usual practice of the Office shows that the concentration notification and the documents and information submitted to the Office by the notifying party in the related administrative proceedings on concentration approval usually contain specific information that constitute a business secret of the undertakings concerned or bank or a similar classified information.
35. In such cases, the Office shall proceed in accordance with Article 21c (2) of the Act on the Protection of Competition, which stipulates that on the request of the Office, the person whose secret information is protected by commercial, banking or any similar law, shall be obliged to provide the Office with both documents containing such a secret information and also documents from which such a secret information was removed, eventually a detailed extract from the documents which do not contain such a secret information. According to this provision the Office is authorised to request that the notifying party as well as other persons providing documents and information to the Office during the administrative proceedings shall submit the concentration notification in two versions: firstly, a full version containing facts constituting a business secret<sup>23</sup> of the undertakings concerned or banking or other similar classified information, and secondly, a version, from which the information protected by this secret has been deleted.
36. If the notifying party provides a document or information in the course of the administrative proceedings on the concentration approval to the Office, it is also necessary to provide them in two versions: the first version containing classified information and the other version from which the confidential information has been deleted.
37. In this context, the Office points out, that the business secret may consist only of specific information<sup>24</sup> that meet the requirements of the business secret provided in Article 504 of Act No. 89/2012 Coll., Civil Code, as amended.

#### **II.6. CURRENCY OF FINANCIAL INFORMATION**

38. Financial data contained in the concentration notification, in particular the turnover of the undertakings concerned, which are essential for the assessment, whether the respective concentration of undertakings is subject to approval of the Office, must be given in Czech Koruna.
39. If financial data, i.e. in particular the turnover of the undertakings concerned, is given in a foreign currency, the notifying party shall convert this data from the foreign currency to Czech Koruna using the average exchange rate announced by the Czech National Bank for the period to which such financial data relates. – see the conversion rule set out in Article 2 of the Decree.

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<sup>23</sup> Documents and information submitted to the Office become part of the file in the administrative proceedings conducted in the matter of the concentration approval. Pursuant to Article 21c (1) of the Act on the Protection of Competition, parts of the file that contain a commercial, banking or similar proprietary secret are excluded from the access to the administrative file provided to the parties to the proceeding.

<sup>24</sup> Conversely, a business secret cannot be, for example, the full text of the agreement establishing the concentration of undertakings.

### **III. APPLICATION OF THE NOTICE**

40. This Notice is applicable to the concentration notifications submitted to the Office from 19 October 2016, when Act No. 293/2016 Coll. amending the Act on the Protection of Competition and the Decree entered into effect.

Brno, 11 October 2016