



International
Competition
Network

ANTI-CARTEL ENFORCEMENT TEMPLATE

CARTELS WORKING GROUP
Subgroup 2: Enforcement Techniques

Czech Republic

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ICN ANTI-CARTEL ENFORCEMENT TEMPLATE

IMPORTANT NOTES:

This template is intended to provide information for the ICN member competition agencies about each other's legislation concerning anti-competitive practices, particularly hardcore cartels. At the same time the template supplies information for businesses participating in cartel activities about the rules applicable to them; moreover, it enables businesses and individuals which suffer from cartel activity to get information about the possibilities of enforcement of their rights in private law in one or more jurisdictions.

Reading the template is not a substitute for consulting the referenced statutes and regulations. This template should be a starting point only.

1. Information on the law relating to cartels

A. Law(s) covering cartels:

- Act No. 143/2001 Coll., on the Protection of Competition and Amending Certain Acts, as amended (hereinafter referred to as "the Competition Act")

Language: Czech

Web page: <https://www.uohs.cz/cs/legislativa/hospodarska-soutez.html>

Language: English

Web page: <http://www.uohs.cz/en/legislation.html>

- Act No. 262/2017 Coll., on Competition Damages and on Amendment of the Act No. 143/2001 Coll., on the Protection of Competition and on Amendment of Certain Acts, as amended (Competition Damages Act)

Language: Czech

	<p>Web page: https://www.uohs.cz/cs/legislativa/hospodarskasoutez.html</p> <p>Language: English</p> <p>Web page: https://www.justice.cz/documents</p> <ul style="list-style-type: none"> - Act No. 500/2004 Coll., Code of Administrative Procedure - Act No. 250/2016 Coll., on Responsibility for the Administrative Offences and the Procedure on it <p>Language: Czech</p> <p>Web page: https://www.uohs.cz/cs/legislativa.html</p>
<p>B. Implementing regulation(s) (if any):</p>	<p>None</p>
<p>C. Interpretative guideline(s) (if any):</p>	<ul style="list-style-type: none"> - Notice of the Office for the Protection of Competition of 4 November 2013 on Application of the Article 22ba of the Act on the Protection of Competition (Leniency Programme) - Notice of the Office for the Protection of Competition of 8 November 2013 on the Procedure Focused on Speeding up the Administrative Procedure Using the Institute of Application for a Reduction of Fine under Article 22ba (2) of the Act on the Protection of Competition (Settlement Procedure) - Procedure of Setting Fines Imposed Pursuant to the Act on the Protection of Competition - Notice of the Office for the Protection of Competition on Agreements of Minor Importance Which Do Not Appreciably Restrict Competition (<i>de minimis</i>) <p>Language: Czech</p> <p>Web page: https://www.uohs.cz/cs/legislativa/hospodarska-soutez.html</p> <p>Language: English</p> <p>Web page: http://www.uohs.cz/en/legislation.html</p> <ul style="list-style-type: none"> - Notice of the Office for the Protection of Competition on Alternative Solutions of Competition Issues and on Postponing of the Subject Matter <p>Language: Czech</p> <p>Web page: http://www.uohs.cz/cs/legislativa/hospodarskasoutez.html</p>
<p>D. Other relevant materials (if any):</p>	<p>-</p>

2. Scope and nature of prohibition on cartels

<p>A. Does your law or case law define the term “cartel”?</p> <p>If not, please indicate the term you use instead.</p>	<p>The term "cartel" is defined within the Competition Damages Act as</p> <p><i>“horizontal agreement or a concerted practice between two or more competitors aimed at coordinating their competitive behaviour on the market or influencing the relevant competitive parameters by means of practices such as, in particular, setting or coordinating purchase or selling prices or other commercial conditions, including intellectual property rights, allocation of production or sales quotas, sharing of markets and purchasers, including market sharing, import and export restrictions, or anti-competitive behaviour directed against other competitors”.</i></p> <p>Other definition is established in the Notice on Leniency Programme, where the cartel is described as</p> <p><i>“secret horizontal agreement between two or more undertakings with the object to coordinate their competition behaviour and/or restrict competition by price fixing, market sharing, output limitation, bid rigging and restricting imports and/or exports”.</i></p>
<p>B. Does your legislation or case law distinguish between very serious cartel behaviour (“hardcore cartels” – e.g.: price fixing, market sharing, bid rigging or production or sales quotas¹) and other types of “cartels”?</p>	<p>The Competition Act distinguishes between prohibited agreements by object or by effect. It does not operate with the term "cartel" at all. Nevertheless, the Competition Damages Act sets the basic definition of cartel and for leniency reasons the Leniency Programme defines this term.</p> <p>In accordance with the Leniency Programme and practice of the Office for the Protection of Competition (hereinafter referred to as "the Office"), cartels include agreements and concerted practices on price-fixing, market-sharing, allocation of customers and bid rigging.</p> <p>All other horizontal agreements which restricts competition by effect, with the exception of those which restricts competition by object, are also considered to be infringing competition. However, these agreements are assessed as less serious than cartels.</p> <p>Therefore, the Office makes distinction between cartels and other prohibited horizontal agreements and it does not distinguish between "classic cartels" and "hard core cartels".</p>
<p>C. Scope of the prohibition of hardcore cartels:</p>	<p>There is no special exception regarding hardcore cartels in any specific sector or industry.</p> <p>In fact, the Competition Act contains only general exemption pursuant to the Article 3 (4) of the Competition Act, stating that: <i>“(4) The prohibition pursuant to paragraph 1 shall not apply to agreements, which</i></p>

¹ In some jurisdictions these types of cartels – and possibly some others – are regarded as particularly serious violations. These types of cartels are generally referred to as “hardcore cartels”. Hereinafter this terminology is used.

	<p>a) <i>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;</i></p> <p>b) <i>do not impose on the undertakings restrictions which are not indispensable to the attainment of the objectives pursuant to letter a);</i></p> <p>c) <i>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. ”</i></p> <p>This article is extremely improbable to be used with regard to hardcore cartels and so far, the Office does not have any relevant experience with successful application of this exemption in cartel cases.</p>
D. Is participation in a hardcore cartel illegal <i>per se</i>²?	Yes, but still we should keep in mind the abovementioned Article 3 (4) of the Competition Act.
E. Is participation in a hardcore cartel a civil or administrative or criminal offence, or a combination of these?	<p>Combined system is applied within the territory of the Czech Republic.</p> <p>Cartel itself is an administrative offence, for which the undertaking is held liable. In addition, pursuant to the Criminal Code, natural persons can be sanctioned for committing crime by concluding cartel.</p>

3. Investigating institution(s)

A. Name of the agency, which investigates cartels:	<p>Úřad pro ochranu hospodářské soutěže Office for the Protection of Competition</p>
B. Contact details of the agency:	<p>Úřad pro ochranu hospodářské soutěže Office for the Protection of Competition</p> <p>Address: třída Kpt. Jaroše 7, 604 55 Brno, Czech Republic</p> <p>E-mail: roman.pliska@uohs.cz; Ondrej.sychra@uohs.cz</p> <p>Web page: https://www.uohs.cz/ (available in Czech and English)</p> <p>Phone numbers:</p> <p>Operator Tel.: +420 542 167 111</p>

² For the purposes of this template the notion of 'per se' covers both 'per se' and 'by object', as these terms are synonyms used in different jurisdictions.

	<p><i>International Unit</i></p> <p>Tel.: +420 542 167 138</p> <p>Tel: +420 542 167 879</p> <p><i>Press Officer</i></p> <p>Tel.:+420 542 167 225</p>
C. Information point for potential complainants:	<p>Úřad pro ochranu hospodářské soutěže Office for the Protection of Competition</p> <p>Address: třída Kpt. Jaroše 7, 604 55 Brno, Czech Republic</p> <p>E-mail: roman.pliska@uohs.cz; Ondrej.sychra@uohs.cz</p> <p>Tel: +420 542 167 138 Tel: +420 542 167 879</p> <p>Web page: https://www.uohs.cz/ (available in Czech and English)</p>
D. Contact point where complaints can be lodged:	<p>Complaints can be submitted in written form in the following ways:</p> <p>Personally: třída Kpt. Jaroše 7, 604 55 Brno</p> <p>Office hours: Monday-Friday: 8.00am - 4.00pm</p> <p>Via post: třída Kpt. Jaroše 7, 604 55 Brno</p> <p>Via e-mail: posta@uohs.cz</p>
E. Are there other authorities which may assist the investigating agency? If yes, please name the authorities and the type of assistance they provide.	<p>The Police may assist at dawn raid upon request of the Office, however, such assistance has not been used so far.</p>

4. Decision-making institution(s)³

A. Name of the agency making decisions in cartel cases:	<p>Úřad pro ochranu hospodářské soutěže Office for the Protection of Competition</p>
B. Contact details of the agency:	<p>Úřad pro ochranu hospodářské soutěže Office for the Protection of Competition</p>

³ Meaning: institution taking a decision on the merits of the case (e.g. prohibition decision, imposition of fine, etc.)

	<p>Address: třída Kpt. Jaroše 7, 604 55 Brno, Czech Republic</p> <p>E-mail: roman.pliska@uohs.cz; Ondrej.Sychra@uohs.cz</p> <p>Web page: https://www.uohs.cz/ (available in Czech and English)</p> <p>Phone numbers:</p> <p><i>Operator</i> Tel.: +420 542 167 111</p> <p><i>International Unit</i> Tel.: +420 542 167 138 Tel: +420 542 167 879</p> <p><i>Press Officer</i> Tel.:+420 542 167 225</p>
<p>C. Contact point for questions and consultations:</p>	<p>Úřad pro ochranu hospodářské soutěže Office for the Protection of Competition</p> <p>Address: třída Kpt. Jaroše 7, 604 55 Brno, Czech Republic</p> <p>E-mail: roman.pliska@uohs.cz; Ondrej.Sychra@uohs.cz</p> <p>Tel: +420 542 167 138 Tel: +420 542 167 879</p> <p>Web page: https://www.uohs.cz/ (available in Czech and English)</p>
<p>D. Describe the role of the investigating agency in the process leading to the sanctioning of the cartel conduct.</p>	<p>Both the investigating and the decision-making part of the process are performed by the Office.</p>
<p>E. What is the role of the investigating agency if cartel cases belong under criminal proceedings?</p>	<p>Cartel in criminal proceedings is investigated by the Police, the Office solely provides relevant information or evidence (if it has any in its administrative file).</p>

5. Handling complaints and initiation of proceedings

<p>A. Basis for initiating investigations in cartel cases:</p>	<p>The Office initiates the investigation <i>ex-officio</i> on the basis of a complaint, leniency application, market studies or publicly available information.</p>
<p>B. Are complaints required to be made in a specific form (e.g. by phone, in writing, on a form,</p>	<p>Complaints can be submitted in any form (in writing, electronically or orally with the record).</p>

etc.)?	There is no specific form required for submitting a complaint.
C. Legal requirements for lodging a complaint against a cartel:	None
D. Is the investigating agency obliged to take action on each complaint that it receives or does it have discretion in this respect?	Pursuant to the Article 21 (2) of the Competition Act, the Office may decide not to initiate proceedings <i>ex-officio</i> after a preliminary investigation of the case pursuant to Article 20 (1a), unless there is a public interest in its proceeding. The Office shall consider particularly the nature of the conduct subject to investigation and the manner of its execution, significance of the relevant market and the number of affected consumers. The Office shall make a written record of not initiating the proceeding where it shall state why the proceeding was not initiated.
E. If the agency intends not to pursue a complaint, is it required to adopt a decision addressed to the complainant explaining its reasons?	The Office does not adopt any decision in this matter. Nevertheless, the Office informs applicants in written form about not pursuing complaint where it explains the reasons.
F. Is there a time limit counted from the date of receipt of a complaint by the competition agency for taking the decision on whether to investigate or reject it?	No

6. Leniency policy⁴

A. What is the official name of your leniency policy (if any)?	Leniency Programme https://www.uohs.cz/en/competition/antitrust/new-lenieny-programme.html
B. Does your jurisdiction offer full leniency as well as partial leniency (i.e. reduction in the sanction / fine), depending on the case?	The Office provides both full leniency (immunity from fines) and partial leniency (reduction of fines).
C. Who is eligible for full leniency?	An undertaking participating in a cartel can be eligible for full immunity from the fine if such undertaking is the first one to provide the Office with relevant information on the existence of the cartel of which the Office has not been aware yet, or on existence of which the Office has been informed but has not

⁴ For the purposes of this template the notion of ‘leniency’ covers both full leniency and a reduction in the sanction or fines. Moreover, for the purposes of this template terms like ‘leniency’ ‘amnesty’ and ‘immunity’ are considered as synonyms.

	<p>been able to acquire sufficient amount of uncontested evidence from other sources. The full immunity is available only for one undertaking.</p>
<p>D. Is eligibility for leniency dependent on the enforcing agency having either no knowledge of the cartel or insufficient knowledge of the cartel to initiate an investigation?</p> <p>In this context, is the date (the moment) at which participants in the cartel come forward with information (before or after the opening of an investigation) of any relevance for the outcome of leniency applications?</p>	<p>The date when the undertaking submits the application does not matter. The only relevant factor is whether the Office has already conducted a dawn raid and/or the amount/nature of evidence that the Office possess at the time of leniency application.</p> <p>For more information see also 6C and 6F.</p>
<p>E. Who can be a beneficiary of the leniency program (individual / businesses)?</p>	<p>A beneficiary of the leniency program can be only undertakings.</p> <p>Natural persons can benefit from the leniency programme within criminal proceedings, when the leniency is applied by an undertaking.</p>
<p>F. What are the conditions of availability of full leniency:</p>	<p>The Office will grant the undertaking, which admits its involvement in the alleged cartel (hereinafter referred to as “the applicant”), immunity from any fine which would otherwise be imposed if: The undertaking:</p> <ul style="list-style-type: none"> a) is the first one to submit evidence which in the Office’s view, at the time it evaluates the application, will enable it to carry out targeted inspections in connection with an alleged cartel, relevancy of these information is evaluated by the Office; and the Office have not, at the time of the application, already had sufficient evidence to adopt an inspections decision or have not already carried out an inspection in connection with the alleged cartel arrangement, (called Leniency type IA) or is the first to submit evidence regarding alleged cartel that the Office has not acquired yet and which enables the Office to legally prove the cartel and the Office has not have enough evidence to prove the cartel at the time of submission of the application. Relevancy of these information and evidence is evaluated by the Office, (called Leniency type IB) b) has to admit its participation in the cartel c) no other immunity has not been granted regarding the cartel submitted within the application d) has to fully cooperate with the Office in the course of the whole proceedings e) terminated its involvement in the alleged cartel agreement already, or he will do so at the time of its leniency application; by its conduct the undertaking must not affect the conduct of dawn raid f) did not coerced others to participate in the cartel.

<p>G. What are the conditions of availability of partial leniency (such as reduction of sanction / fine / imprisonment):</p>	<p>The undertaking</p> <ul style="list-style-type: none"> a) has to submit evidence that has significant added value to the evidence which is already in the possession of the Office (especially evidence that enables to prove longer duration of the cartel, to sanction other undertakings, to prove that cartel covered other markets etc. – Leniency type II) b) has to admit its participation in the cartel c) has to fully cooperate with the Office during the whole proceedings d) terminated its involvement in the alleged cartel agreement already, or he will do so at the time of its leniency application; by its conduct the undertaking must not affect the conduct of dawn raid e) did not coerced others to participate in the cartel.
<p>H. Obligations for the beneficiary after the leniency application has been accepted:</p>	<p>Both immunity and fine reduction applicants have to put an end to their action pursuant to the prohibited agreement at the latest in the moment of provision of the relevant information.</p> <p>Applicants are obliged to:</p> <ul style="list-style-type: none"> a) not to disclose any information regarding the application b) submit all evidence regarding the cartel to the Office c) submit only true, complete and accurate information d) cooperate fully and genuinely with the Office e) not to destroy any evidence (not even after they start to consider the submission of the application) f) enable its employees for interviews.
<p>I. Are there formal requirements to make a leniency application?</p>	<p>The application can be submitted in written form or it can be also recorded orally.</p>
<p>J. Are there distinct procedural steps within the leniency program?</p>	<p>Yes, <u>conditional</u> immunity/reduction of fine is granted after the necessary criteria are met and the <u>final</u> immunity/reduction is granted by the final decision if the applicant fulfils also all other criteria, especially full and genuine cooperation with the Office in the course of the whole proceedings.</p>
<p>K. At which time during the application process is the applicant given certainty with respect to its eligibility for leniency, and how is this done?</p>	<p>Immediately after the Office assesses the application and all the conditions are met, the conditional immunity/reduction is granted by the Office.</p>
<p>L. What is the legal basis for the power to agree to grant leniency? Is leniency granted on the basis of an agreement or is it laid down in a (formal) decision? Who within the agency decides about</p>	<p>Legal basis for leniency is enshrined in the Article 22ba (1) and following of the Competition Act.</p> <p>Once the Office verifies that the provided evidence is sufficient for leniency, it will grant the undertakings conditional immunity from a fine in writing.</p> <p>Granting of leniency is laid down in final decision at the end of</p>

<p>leniency applications?</p>	<p>the administrative proceedings.</p> <p>Upon a request, the Office issues acknowledgement of receipt of an application and all subsequent submissions.</p> <p>The Leniency applications are examined by case team from the Cartel Department.</p> <p>In addition, detailed information can be found in Leniency Programme which is accessible on the website of the Office.</p> <p>Web page: http://www.uohs.cz/en/competition/antitrust/newleniency-programme.html</p> <p>Languages: Czech, English</p>
<p>M. Do you have a marker⁵ system? If yes, please describe it.</p>	<p>Yes, marker system is defined in the Leniency Programme in the following way:</p> <p>An undertaking wishing to make an application for immunity may initially apply for a “marker” which protects an applicant’s place in the queue for a given period of time and allows it to gather the necessary information and evidence in order to meet the relevant evidential threshold for immunity as agreed with the Office. To be eligible for a marker, the applicant has to provide the Office with its name and address as well as information concerning the parties to the alleged cartel, the affected product and geography market, the duration of alleged cartel and the nature of the alleged cartel conduct. An undertaking applying for immunity from fine should justify an application for a “marker”.</p> <p>If the marker is granted, the Office determines the period within which the applicant has to complete the marker by submitting the information required to meet the relevant evidential threshold for immunity. If the applicant applies for the marker within the set period, the information and evidence provided will be deemed to have been submitted on the date when the marker was granted.</p>
<p>N. Does the system provide for any extra credit⁶ for disclosing additional violations?</p>	<p>If the undertaking in the application discloses another cartel, it is assessed as a separate leniency application.</p>
<p>O. Is the agency required to keep the identity of the beneficiary confidential? If yes, please elaborate.</p>	<p>No. The identity of beneficiary is always disclosed in the final decision at the latest.</p>
<p>P. Is there a possibility of</p>	<p>It is not possible to appeal the rejection of leniency application. However, the undertaking has the possibility to</p>

⁵ A marker protects an applicant’s place in the queue for a given period of time and allows it to gather the necessary information and evidence in order to meet the relevant evidential threshold for immunity.

⁶ Also known as: “leniency plus”, “amnesty plus” or “immunity plus”. This category covers situations where a leniency applicant, in order to get as lenient treatment as possible in a particular case, offers to reveal information about participation in another cartel distinct from the one which is the subject of its first leniency application.

<p>appealing an agency's decision rejecting a leniency application?</p>	<p>appeal the final decision of the Office when it comes into force.</p>
<p>Q. Contact point where a leniency application can be lodged:</p>	<ol style="list-style-type: none"> 1. the postal address: třída Kapitána Jaroše 7, 604 55 Brno, Czech Republic 2. the e-mail address: leniency@uohs.cz (exclusively for leniency applications), or e-mail address posta@uohs.cz 3. recorded oral submission of application (we recommend to arrange the meeting in advance by phone) <p>Date and time of the submission of application will be recorded.</p> <p>Consultation on the Leniency Programme is possible (also anonymously) at the following telephone numbers:</p> <p>Mgr. Igor Pospíšil: + 420 542 167 216</p> <p>Mgr. Petra Košťálová, LL.M.: + 420 542 167 293</p> <p>Ing. Lenka Štaflová: + 420 542 167 308</p>
<p>R. Does the policy address the possibility of leniency being revoked? If yes, describe the circumstances where revocation would occur. Can an appeal be made against a decision to revoke leniency?</p>	<p>Leniency shall be granted only if the undertaking concerned fulfils all necessary conditions. The undertaking has the possibility to appeal the decision in which the leniency is revoked. So far, the Office has no experience with revoking leniency application in the final decision.</p>
<p>S. Does your policy allow for "affirmative leniency", that is the possibility of the agency approaching potential leniency applicants?</p>	<p>Application itself must be in any case at first submitted by applicant and the Office has no power to force anybody to submit leniency application. The applicant has the right to submit hypothetical application where no names and markets are revealed, consult it with the Office and eventually afterwards submit full application. The Office also enables informal consultations regarding potential application.</p>
<p>T. Does your authority have rules to protect leniency material from disclosure? If yes, please elaborate which parts are protected and what does protection actually mean.</p>	<p>Pursuant to the Article 21c of the Competition Act, the leniency materials are kept outside of the administrative file until the Statement of Objections is issued by the Office. After the Statement of Objections the leniency materials are included into the administrative file. However, they are excluded from the access to the file. Such parts of the file can be inspected only by the parties to the proceedings or their representatives without the possibility of making copies of these documents.</p>

7. Settlement

<p>A. Does your competition regime allow settlement?</p> <p>If yes, please indicate its public availability.</p>	<p>Yes, the settlement procedure was enacted into the Article 22ba (2) and following of the Competition Act by the amendment approved in 2012.</p> <p>The Office has also issued a guidance document entitled Notice on the Settlement Procedure.</p> <p>Web page: http://www.uohs.cz/en/legislation.html</p>
<p>B. Which types of restrictive agreements are eligible for settlement?</p>	<p>Restrictive horizontal agreements, vertical agreements concerning abuse of dominance or infringement of merger provisions can be eligible for settlement procedure.</p> <p>The settlement procedure may also be used in cases where the Office applies EU competition law in addition to the Czech law.</p>
<p>C. What is the reward of the settlement for the parties?</p>	<p>If all statutory requirements are fulfilled, the fine imposed on the party to the administrative proceedings can be reduced by 20%.</p>
<p>D. May a reduction for settling be cumulated with a leniency reward?</p>	<p>Yes, the settlement procedure and the related fine reduction can be cumulated with the Leniency type IB.</p>
<p>E. List the criteria (if there is any) determining the cases which are suitable for settlement.</p>	<p>No further criteria for specific cases (sectors or markets) has been set. The Office shall reduce the fine if the undertaking admits liability for the administrative offence and if the Office considers such sanction to be sufficient with respect to the specific nature and seriousness of the administrative offense.</p> <p>The decision whether to accept the application for the settlement procedure in particular case is in a full discretion of the Office, which reviews the applications on case by case basis.</p>
<p>F. Describe briefly the system.</p>	<p>The Office initiates a consultation to determine the interest of the parties to the proceedings to lodge the application for the settlement. If the parties are interested in it, the settlement procedure is initiated by the Office and a series of hearing in person is held. The Office then issues a brief Statement of Objections. Within the statutory time limit, the parties send official application for the reduction of the fine. The Office issues a brief final decision.</p> <p>The Office may refrain from the settlement procedure any time and continue in conducting the infringement proceedings.</p> <p>In order to achieve maximum procedural savings, the Office initiates the settlement procedure as soon as the evidence provides sufficient idea of the administrative offence and the related liability.</p>
<p>G. Describe the procedural efficiencies of your settlement system.</p>	<p>Main procedural efficiencies include in particular: shorter length of proceedings, brief Statement of Objections and the final decision and related overall savings of human and financial resources due to the shorter proceedings and the absence of subsequent judicial review.</p>
<p>H. Does a settlement necessitate</p>	<p>Yes, the party has to acknowledge the liability for the</p>

that the parties acknowledge their liability for the violation?	infringement and it must not challenge the factual conclusions or the legal assessment in the matter conducted by the Office.
I. Is there a possibility for settled parties to appeal a settlement decision at court?	Yes, the action can be filed against the decision to administrative courts.

8. Commitment

<p>A. Does your competition regime allow the possibility of commitment?</p> <p>If yes, please indicate its public availability.</p>	<p>Yes, pursuant to the Article 7 (horizontal and vertical agreements) and the Article 11 (abuse of dominant position) of the Competition Act, the Office may accept commitments submitted by undertakings.</p> <p>Web page: http://www.uohs.cz/en/legislation.html</p>
<p>B. Which types of restrictive agreements are eligible for commitment?</p> <p>Are there violations which are excluded from the commitment possibility?</p>	<p>Restrictive horizontal and vertical agreements and abuse of dominant position represent infringements eligible for commitments.</p> <p>No commitments are excluded from the commitment possibility.</p>
<p>C. List the criteria (if there are any) determining the cases which are suitable for commitment.</p>	<p>No such criteria have been enacted. The Office shall accept the commitments if they are sufficient for restoration of efficient competition, if the harmful effect is eliminated by their fulfilment and the competition infringement did not result in substantial distortion of competition.</p>
<p>D. Describe, which types of commitments are available under your competition law.</p>	<p>Any type of commitments (mostly structural or behavioural) that ensures the efficient competition in the market can be submitted to the Office under the Czech legal framework.</p>
<p>E. Describe briefly the system.</p>	<p>The parties to the proceedings may propose commitments to the Office within the 15 day time limit from the date when the Statement of Objections was delivered to them. The Office examines the submitted commitments and may either accept them and issue a commitment decision or reject the proposal should the commitments be insufficient. The parties are then informed about the rejection of commitments and the Office continues in the conduct of infringement proceedings.</p>
<p>F. Does a commitment decision necessitate that the parties acknowledge their liability for the violation?</p>	<p>Yes, the parties have to acknowledge the legal qualification of the conduct made by the Office and accept the liability.</p>
<p>G. Describe how your authority</p>	<p>On the Office's request, the party to the proceeding shall be obliged to provide evidence to prove the fulfilment of the</p>

monitors the parties' compliance to the commitments.	commitments. If the party does not provide the sufficient cooperation to such request, the Office may consider commitments to be unfulfilled and can reopened the proceedings.
H. Is there a possibility for parties to appeal a commitment decision at court?	Yes, the action can be filed against the decision to administrative courts.

9. Investigative powers of the enforcing institution(s)⁷

A. Briefly describe the investigative measures available to the enforcing agency such as requests for information, searches/raids⁸, electronic or computer searches, expert opinion, etc. and indicate whether such measures requires a court warrant.	<p>The Office has the following investigative powers:</p> <ul style="list-style-type: none"> - request for information - market study - dawn raids (every device within business premises can be inspected - computers, mobile phones, printed documents, etc.) - power to ask witnesses to testify within the administrative proceedings - order an oral hearing <p>Please note that none of these powers requires court warrant.</p>
B. Can private locations, such as residences, automobiles, briefcases and persons be searched, raided or inspected? Does this require authorisation by a court?	Dawn raid of non-business premises is possible but requires a court warrant. Cars and briefcases can be inspected if found at business premises or used for business purposes without court warrant.
C. Can servers located outside the territory (abroad or in a cloud) be inspected? Are there special rules for this investigative power? Please explain!	Yes, the Office can inspect also servers located outside the territory under the condition data on such servers are accessible from the business premises of the undertaking.
D. May evidence not falling under the scope of the authorisation allowing the inspection be seized / used as evidence in another case? If yes, under which circumstances (e.g. is a post-search court warrant needed)?	The evidence not falling under the scope of the inspection may be processed within the investigation in case it was found as a "visible subject" who cannot be omitted. Therefore, it is necessary to preserve this evidence, describe how the evidence was found and highlight that the evidence was found by chance. It is not possible to take into account this evidence for broader search within the running investigation, but it can be taken over and used in other proceedings or it can serve as a basis for future investigation.

⁷ "Enforcing institutions" may mean either the investigating or the decision-making institution or both.

⁸ "Searches/raids" means all types of search, raid or inspection measures.

<p>E. Have there been significant legal challenges to your use of investigative measures authorized by the courts? If yes, please briefly describe them.</p>	<p>There is a continuous legal debate on the issue whether the Office needs a court warrant to conduct dawn raids in business premises. The amendment to the Competition Act from 2016 introduced a provision on the possibility of the judicial review of the Office’s written authorization issued by the Chairman of the Office or another person authorized to do so under internal regulations, authorizing the dawn raid. Therefore the court warrant is not needed. However, the possibility of the review of the authorization should ensure sufficient level of procedural rights.</p>
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10. Procedural rights of businesses / individuals

<p>A. Key rights of defence in cartel cases: Please indicate the relevant legal provisions.</p>	<p>The undertaking shall be notified of a suspected infringement of competition law.</p> <p>The undertaking has a right to legal representation.</p> <p>The undertaking has a right to access the administrative file.</p> <p>The undertaking can make a written statement or can be heard orally.</p> <p>The undertaking has the possibility to suggest new evidence.</p> <p>The undertaking can question the witnesses or representatives of companies.</p> <p>The undertaking has a right to appeal the Office’s decision.</p>
<p>B. Protection awarded to business secrets (competitively sensitive information): is there a difference depending on whether the information is provided under a compulsory legal order or provided under informal co-operation? Please indicate the relevant legal provisions.</p>	<p>Art. 24 of the Competition Act:</p> <p><i>A person in an employment or any other relation to the Office, on the basis of which he/she performs an activity for it, shall not disclose any facts which he/she learned during this activity and which constitute a business secret or confidential information; this obligation shall continue after the termination of this relation.</i></p> <p>Pursuant to the Article 21c of the Competition Act documents containing business secret are protected when providing access to the file. Business secret cannot be disclosed and parties have access only to description of documents containing business secret.</p> <p>Art. 21c of the Competition Act:</p> <p><i>“(1) Those parts of the documentation which contain a business, bank or similar secret protected by law shall be excluded from the access to the administrative file provided to the parties to the proceeding. Apart from the documents containing such secret, the administrative file shall also include documents from which such secret was removed or sufficiently detailed abstract which does not contain such secret.</i></p> <p><i>(2) Upon the request of the Office, the person, whose business, bank or similar secret protected by law shall be obliged to provide the Office with both documents containing such secret and also documents from which such secret was removed, eventually a</i></p>

	<p><i>detailed extract from the documents which does not contain such secret. Should the person fail to do so, it shall be deemed that the presented documents do not contain any business, bank or similar secret protected by law.</i></p> <p><i>(3) In proceedings concerning the infringement or prohibition pursuant to Article 3(1), Article 11(1), Article 18(1) or Article 19a(1), after the statement of objections a party to the proceedings or its representative may assess those parts of the file that contain a business, bank or similar secret protected by law which have been or will be used as an evidence, provided that they are informed in advance of the consequences of the breach of confidentiality about such facts and they sign a report regarding this notification. The provisions of Article 38(4) of the Administrative Procedure Code shall not apply.“</i></p> <p>There is no difference between the ways of possible collection of business secrets.</p>
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11. Limitation periods and deadlines

<p>A. What is the limitation period (if any) from the date of the termination of the infringement by which the investigation / proceedings must begin or a decision on the merits of the case must be made? Please describe potential suspension or interruption opportunities of this limitation period and the requirements for such rules to apply!</p>	<p>Pursuant to the Article 23 of the Competition Act, the Office applies the general limitation period of <u>10 years</u>.</p> <p>A limitation period for breaking a seal, failing to provide complete, correct and truthful business records, failing to provide the necessary cooperation during inspection conducted in business premises or non-business premises and infringing the obligation to abide an inspection conducted in business premises or non-business premises shall be <u>3 years</u>.</p> <p>These deadlines can be prolonged by duration of the proceedings conducted in line with the proceedings concerning the merit of the case before the administrative courts.</p> <p>The limitation period shall be interrupted:</p> <ul style="list-style-type: none"> - by notifying the initiation of proceedings, - by issuing the statement of objections, - by issuing a decision finding the accused entity guilty, - by the moment of transmitting the case by the Commission or a competition authority of a Member State to the Office. <p>A new limitation period shall begin to run by interrupting the limitation period.</p> <p>If the limitation period is interrupted, the liability for an offence ceases to exist no later than after a period of 14 years since it was committed.</p>
<p>B. What is the deadline, statutory or otherwise (if any) for the completion of an investigation or to make a</p>	<p>If the limitation period was interrupted, the deadline is 14 years after the infringement was terminated. The deadlines correspond with limitation period pursuant Article 23 of the Competition Act.</p>

<p>decision on the merits? Please describe potential suspension or interruption opportunities of this limitation period and the requirements for such rules to apply!</p>	<p>The Competition Act does not contain any statutory deadline for issuing a final decision. Therefore, the decision should be issued within the limitation period described in section 11. A.</p>
<p>C. What are the deadlines, statutory or otherwise (if any) to challenge the commencement or completion of an investigation or a decision regarding sanctions? (see also 15A)</p>	<p>The undertaking has the right to appeal the first-instance decision of the Office to the second-instance of the Office within the limitation period of 15 days that starts on the date when the decision is delivered.</p> <p>The undertaking has the right to file an action against the second-instance decision of the Office to the court within the limitation period of 2 months that starts on the date when the decision is delivered.</p> <p>Since 2016, the Competition Act in its Article 21f (7) states that an undertaking can bring an action against inspections conducted in their business premises. This action against unlawful interference has to be filed within two months from the day when the undertaking has learned of the unlawful interference, as it is described in the Article 84 of the Act No. 150/2002 Coll., Code of Administrative Justice.</p>

12. Types of decisions

<p>A. List which types of decisions on the merits of the case can be made in cartel cases under the laws listed under Section 1.</p>	<p>Prohibition decision and order to bring the infringement to an end:</p> <ul style="list-style-type: none"> - imposition of fines - imposition of remedies - commitments - interim measures - ban on participation in public procurement - termination of the case - no infringement has been found - damages <p>Remedies are usually imposed within sanction decision issued pursuant to the Article 20 (4) of the Competition Act eliminating the particular anticompetitive conduct/issues.</p> <p>Commitments are imposed on the proposal of undertakings with the aim to address competition concerns without adopting abovementioned sanction decision.</p> <p>The Office has the power to impose the ban to participate in public procurement for three-year period on undertaking in bid rigging cases concerning public procurement.</p>
<p>B. List any other types of decisions on the merits of the case relevant particularly in hardcore cartel cases under the laws listed under Section</p>	<p>Not applicable.</p>

1 (if different from those listed under 12/A).	
C. Can interim measures ⁹ be ordered during the proceedings in cartel cases? (if different measures for hardcore cartels please describe both ¹⁰ .) Which institution (the investigatory / the decision-making one) is authorised to take such decisions? What are the conditions for taking such a decision?	Yes. Pursuant to the Article 61 of the Administrative Code, the Office may, either <i>ex-officio</i> or upon request of the party, issue a decision ordering a provisional measure prior to the completion of the procedure, if it is necessary to provide for interim arrangements in respect of the relationships among parties or if there is a concern that the conduct of an execution might be jeopardised. An interim measure may be applied to order the party or another person to do something, refrain from something, to be obliged to bear something, or to seize a thing that may serve as evidence or a thing that may be subject to execution.

13. Sanctions for procedural breaches (non-compliance with procedural obligations) in the course of investigations

A. Grounds for the imposition of procedural sanctions / fines:	<p>The Office may by its decision impose procedural fines pursuant to the Article 22c of the Competition Act. The Office has the power to impose fines for not complying with legal obligation to provide the Office with documents and information, including the business records within the deadline set by the Office.</p> <p>By amendment to Competition Act of 2016, the law newly considers the failure to provide complete, correct and truthful business records, failure to provide cooperation during inspection, breaking a seal placed in the course of the investigation and infringing the obligation to abide inspection as an administrative offence. The reason for this change was that the breach of an abovementioned duties should not be punished by disciplinary fine, since the assessment of the merits depends often also on the truthfulness, correctness and completeness of the information provided. These are therefore substantive offences.</p>
B. Type and nature of the sanction (civil, administrative, criminal, combined; pecuniary or other):	The Office can impose only administrative fines.
C. On whom can procedural	The fines can be imposed on the legal person(s) - undertakings.

⁹ In some jurisdictions, in cases of urgency due to the risk of serious and irreparable damage to competition, either the investigator or the decision-making agency may order interim measures prior to taking a decision on the merits of the case.

¹⁰ Only for agencies which answered “yes” to question 2.B. above

sanctions be imposed?	
D. Criteria for determining the sanction / fine:	<p>The Office has discretion in imposing fines. It follows its guidelines – Procedure of Setting Fines Imposed pursuant to the Act on the Protection of Competition, where the criteria for determining the fines can be found.</p> <p>Web page: https://www.uohs.cz/en/legislation.html</p>
E. Are there maximum and / or minimum sanctions / fines?	<p>There is no minimal level of the fines.</p> <p>Pursuant to the article 22c of the Competition Act, the procedural fine can be imposed on undertakings up to CZK 100,000 or 1% of the net turnover achieved by the undertaking in the last accounting period. These fines can be imposed repeatedly until the undertaking's obligation is fulfilled up to total amount of fines not exceeding CZK 1,000,000 or 10 % of its total net turnover achieved in preceding business year.</p>

14. Sanctions on the merits of the case

A. Type and nature of sanctions in cartel cases (civil, administrative, criminal, combined): On whom can sanctions be imposed?	<p>The Office can impose only administrative sanctions on the person(s) to whom an undertaking's conduct can be attributed.</p> <p>The Police and Public prosecutor can initiate criminal proceedings against natural persons that concluded cartel agreement pursuant to the Criminal Code. The court can consequently impose sanctions to such natural persons of up to 8 years of imprisonment.</p>
B. Criteria for determining the sanction / fine:	<p>The Office has discretion in imposing sanctions. It follows its guidelines for setting fines and always assesses gravity, duration, mitigating and aggravating circumstances and undertakings turnover.</p>
C. Are there maximum and / or minimum sanctions / fines?	<p>There is no minimal level of the fines.</p> <p>The maximum fine for each of the undertakings involved in the infringement (for cases named in the Article 22a (1) b), c), d), e) or f) of the Competition Act) shall be imposed up to CZK 10,000,000 or up to 10% of its net turnover achieved in the previous financial year.</p> <p>Concerning the offences pursuant to the Article 22a (1) a), g), h) or i), the Office shall 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.</p>
D. Guideline(s) on calculation of fines:	<p>Procedure of Setting Fines Imposed pursuant to the Act on the Protection of Competition:</p> <p>Web page: https://www.uohs.cz/en/legislation.html</p>

	Languages: English, Czech
<p>E. Does a challenge to a decision imposing a sanction / fine have an automatic suspensory effect on that sanction / fine? If it is necessary to apply for suspension, what are the criteria?</p>	<p>If the first-instance decision of the Office is appealed, there is an automatic suspensory effect. Nevertheless, within the judicial review, if the action is filed against the second instance decision of the Office, there is no such effect. Sanctioned undertaking may apply to the court for suspension of the obligation to pay the fine till the end of the court proceedings.</p> <p>The court shall grant a suspension only if criteria set in Code of Administrative Justice are met.</p> <p>Suspensory effect shall be granted if execution of the decision or other legal consequences of the decision would lead to significantly more serious harm for the undertaking, than the damage to third persons that would be caused by granting the suspensory effect and in case it shall not contravene important public interest.</p>

15. Possibilities of appeal

<p>A. Does your law provide for an appeal against a decision that there has been a violation of a prohibition of cartels? If yes, what are the grounds of appeal, such as questions of law or fact or breaches of procedural requirements?</p>	<p>The power to review the final decisions of the Office is entrusted to the administrative courts not specialised in competition law matters. The decision is scrutinised by the Regional Court in Brno. The Regional Court is concerned with matters of law and also of fact.</p> <p>Against the decision of the Regional Court a cassation complaint may be filed to the Supreme Administrative Court which can either reject the complaint or return the case for further consideration to the Regional Court. The Regional Court is bound by the legal position adopted by Supreme Administrative Court, which is concerned only with the questions of law.</p> <p>Against the decision of the Supreme Administrative Court, it is finally possible to file a constitutional petition addressed to the Constitutional Court if fundamental constitutional rights of the parties were allegedly breached. However, it is possible to file an action to Constitutional Court only with constitution related matters so this is not a common part of judicial review.</p> <p>An action to the Regional Court in Brno shall be filled within two months from receiving the final decision (i.e. secondinstance decision) of the Office.</p> <p>An action to the Supreme Administrative Court shall be filled within two weeks from receiving the Regional Court decision.</p>
<p>B. Before which court or agency should such a challenge be made?</p>	<p>See the point 15. A.</p>

16. Private enforcement

A. Are private enforcement of competition law and private damage claims possible in your jurisdiction? If there is no legal provision for private enforcement and damage claims, what are the reasons for it?

Yes, private enforcement of competition law and private damage claims are possible within the territory of the Czech Republic.

B. Laws regulating private enforcement of competition law in your jurisdiction

- Act No. 262/2017 Coll., on Competition Damages and on Amendment of the Act No. 143/2001 Coll., on the Protection of Competition and on Amendment of Certain Acts, as amended (Competition Damages Act)

Language: Czech

Web page:

<https://www.uohs.cz/cs/legislativa/hospodarskasoutez.html>

Language: English

Web page: <https://www.justice.cz/documents>

- Act No. 89/2012 Coll., Civil Code

Language: Czech

Web page: <https://aplikace.mvcr.cz/sbirka-zakonu>

Language: English

Web page: <http://obcanskyzakonik.justice.cz/>

- Act No. 99/1963 Coll., Civil Procedure Code

Language: Czech

Web page: <https://www.aspi.cz/>

C. Implementing regulation(s) on private enforcement (if any):

- Act No. 262/2017 Coll., on Competition Damages and on Amendment of the Act No. 143/2001 Coll., on the Protection of Competition and on Amendment of Certain Acts, as amended (Competition Damages Act)

Language: Czech

Web page:

<https://www.uohs.cz/cs/legislativa/hospodarskasoutez.html>

Language: English

Web page: <https://www.justice.cz/documents>

<p>D. On what grounds can a private antitrust cause of action arise? / In what types of antitrust matters are private actions available?</p>	<p>Private actions are, beside other, possible in all cases dealing with damage caused by anti-competitive conduct, as the general principle of private law establishes the option for this kind of private enforcement.</p>
<p>E. What pleading standards must the plaintiff meet to file a stand-alone or follow-on claim?</p> <ul style="list-style-type: none"> • is a finding of infringement by a competition agency required to initiate a private antitrust action in your jurisdiction? What is the effect of a finding of infringement by a competition agency on national courts/tribunals? • if a finding of infringement by competition authority is required, is it also required that decision to be judicially finalised? 	<p>Decision on finding the infringement of competition laws issued by a competition agency is not absolutely necessary – the claimant can file an action anyway. In that case, the claimant has to prove the anticompetitive conduct of the undertaking within judicial proceedings (he has a burden of proof). Than the court can issue the decision on the case.</p> <p>However, in a situation where exists final decision of the competition authority stating infringement of competition law, the court has to follow it.</p>
<p>F. Are private actions available where there has been a criminal conviction in respect of the same matter?</p>	<p>Yes, these private actions are available in this matter.</p>
<p>G. Do immunity or leniency applicants in competition investigations receive any beneficial treatment in follow-on private damages cases?</p>	<p>Pursuant to the Article 5 (1) of the Competition Damages Act,</p> <p><i>“(1) If the competition is restricted by joint action of several undertakings, the undertakings compensate damage jointly and severally; the court cannot decide that the undertaking compensates damage commensurate to his participation in the actions leading to the harmful consequence.</i></p> <p><i>(2) The person obliged to pay damages jointly and severally with others, settles with them commensurate to his participation in the damage caused.”</i></p> <p>In cases of leniency applicants, there exist limitations for compensation for damages pursuant to the Article 6:</p> <p><i>“(1) In the case of damage caused by several undertakings, the cooperating undertaking compensates the damage only to his direct or indirect purchasers or suppliers; he compensates the damage to other injured parties only if the claims for compensation against other undertakings participating in causing the damage are irrecoverable.</i></p> <p><i>(2) The cooperating undertaking is not obliged to pay damages to injured parties other than his direct or indirect purchasers or suppliers, if the claims for damages of other injured parties against other undertakings are barred by limitation.</i></p> <p><i>(3) In the undertakings’ settlement, the cooperating undertaking is not obliged to provide more than the extent of the damage he caused to his direct or indirect purchasers or suppliers; that does not apply, if the damage was caused to persons other than his direct or indirect purchasers or suppliers.”</i></p>

<p>H. Name and address of specialised court (if any) where private enforcement claims may be submitted to</p>	<p>In the first instance, the regional courts have jurisdiction over proceedings on competition damages.</p>
<p>I. Information about class action opportunities</p>	<p>Not applicable.</p>
<p>J. Role of your competition agency in private enforcement actions (if at all)</p>	<p>Even if the Office is not a party to the proceedings, it may issue amicus curiae brief setting out its legal opinion on the subject matter.</p> <p>In line with the Article 15 and 16 of the Competition Damages Act, the Office has to also make accessible certain parts of a file on request of the parties, if the court approves such disclosure within the proceeding.</p>
<p>K. What is the evidentiary burden on plaintiff to quantify the damages? What evidence is admissible?</p> <ul style="list-style-type: none"> • Role of your competition agency in the damage calculation (if at all) 	<p>The claimant has to quantify the damages. Pursuant to the Article 4 of the Competition Damages Act, the damage is compensated in full if it compensates also devaluation of money, which emerged due to passage of time since the damage occurred. However, damages cannot lead to overcompensation.</p> <p>If it is not possible to exactly determine the amount of damages, it is subject to discretion of court considering individual circumstances of the case.</p>
<p>L. Discovery / disclosure issues:</p> <ul style="list-style-type: none"> • can plaintiff obtain access to competition authority or prosecutors' files or documents collected during investigations? • is your competition agency obliged to disclose to the court the file of the case (in follow-on cases)? • summary of the rules regulating the disclosure of confidential information by the competition agency to the court • summary of the rules regulating the disclosure of leniency-based information by the competition agency to the court 	<p>For the facilitation to execute the right to compensation for damages caused by breach of the competition rules, specific documents from the file of the Office might be obtained within the procedure before civil courts according to the Competition Damages Act.</p> <p>On the other hand, some documents are not accessible at all and others may be accessed only after the investigation of the Office is terminated or after its decision in administrative proceedings becomes final.</p> <p>There are three categories of documents:</p> <ol style="list-style-type: none"> 1. documents regarding immunity and leniency applications 2. documents regarding settlement applications 3. all other documents prepared only for purposes of administrative proceedings conducted by the Office <p>The first two categories are completely protected from disclosure even after the investigation is concluded no matter how. However, the court may verify whether the documents include protected information (obligation to disclose whole file to the court). The third category of documents may be disclosed only after the investigation is terminated.</p> <p>The key idea of access to the file of the Office according to the Competition Damages Act is that the damage claimant can obtain access to such documents preferably directly from the sued party or generally any other third person but not from the Office. Therefore the access to the file is relatively limited and should be applied only as the last option.</p> <p>Regarding the obligation to disclose the file, see also 16J.</p>

M. Passing-on issues:

- **how is passing-on regulated / treated in your jurisdiction?**
- **is standing to bring a claim limited to those directly affected or may indirect purchasers bring claims?**

Pursuant to the Competition Damages Act, the direct or indirect purchasers or suppliers can file an action on competition damages, so the passing-on is admissible.