

**Template pursuant to Section 3 (a) of the
ICN Framework on Competition Agency Procedures**

The Office for the Protection of Competition, Czech Republic

The following template is submitted by **The Office for the Protection of Competition (= Úřad pro ochranu hospodářské soutěže), Czech Republic** pursuant to Section 3(a) of the ICN Framework on Competition Agency Procedures (“CAP”).

I. Introduction

The protection of competition in the Czech Republic is institutionally ensured by the Office for the Protection of Competition which is central state administration body based in Brno. The Office became operational on 1 November 1996 while continuing in the activity of the former Ministry of Competition. The scope of competencies of the Office is defined by the Act No. 273/1996 Coll. The Office shall create conditions for promotion and protection of competition, supervise public procurement award procedure and perform other competences defined by special acts (State Aid and Abuse of Significant Market Power in the Sale of Agricultural and Food Products).

Website: <https://www.uohs.cz/en/homepage.html>

II. Laws, Regulations, and Policies relevant for the implementation of the CAP

For each CAP Principle below, please explain how your competition law investigation and enforcement procedures meet the Principle. Please highlight important features relevant for the implementation of the CAP and explain limitations, if applicable. Feel free to include links or other references to related materials such as relevant legislation, implementing rules and regulations, and guidelines where helpful and appropriate.

Please update your Template reflecting significant changes as they relate to the CAP, as needed.

b) Non-Discrimination

Each Participant will ensure that its investigation and enforcement policies and Procedural Rules afford Persons of another jurisdiction treatment no less favorable than Persons of its jurisdiction in like circumstances.

Compliance with this principle is ensured by existing legislation.

1. Act No. 500/2004 Coll., Code of Administrative Procedure (hereinafter referred to as “Administrative Code”)

In the Article 7 (1) and (2) of the Administrative Code, there is adopted an assurance of non-discrimination during administrative proceedings in section referring to the basic principles of Administrative Authority operation.

“(1) In applying their process rights, persons concerned shall have an equal status. In respect of the persons concerned, the administrative authority shall proceed impartially and shall request all persons concerned to observe their process obligations equally.

“(2) Where the equal status of persons concerned could be jeopardised, the administrative authority shall adopt measures to safeguard such status.”

For English version of the Administrative Code, please see:

https://www.beck-online.cz/bo/attachments/EN_Sb_2004_500.pdf

2. Act No. 143/2011 Coll., on the Protection of Competition (hereinafter referred to as “Competition Act”)

The Competition Act includes in its Article 25a direct reference to usage of the Administrative Code and therefore the Administrative Code shall be used as a complementary regulation to the Competition Act.

“Unless otherwise specified by this Act, the Administrative Procedure Code shall be used in proceedings before the Office, with certain exceptions...”

For English version of the Competition Act, please see:

<https://www.uohs.cz/en/legislation.html>

c) Transparency and Predictability

- i. Each Participant will ensure that Competition Laws and regulations that apply to Investigations and Enforcement Proceedings in its jurisdiction are publicly available.*
- ii. Each Participant with the authority to adopt Procedural Rules will have in place such rules applicable to Investigations and Enforcement Proceedings in its jurisdiction.*
- iii. Each Participant will ensure that Procedural Rules that apply to Investigations and Enforcement Proceedings in its jurisdiction are publicly available.*
- iv. Each Participant will follow applicable Procedural Rules in conducting Investigations and in participating in Enforcement Proceedings in its jurisdiction.*

- v. *Each Participant is encouraged to have publicly available guidance or other statements, clarifying or explaining its Investigations and Enforcement Proceedings, as appropriate.*

Compliance with the Transparency and Predictability principle is ensured.

All competition legislation (i.) as well as competition soft law (ii., iii.) are publically available at the official website of the Office.

Please see: <https://www.uohs.cz/en/legislation.html>

The Office deals with the competition matters pursuant to the Competition Act. The general provisions applicable for administrative proceedings are set in the Administrative Code, which shall be used as a complementary regulation to the Competition Act. The Administrative Code ensures the applicability of the Procedural Rules which has to be followed in conducting Investigations and participating in Enforcement Proceedings (iv.).

“(1) An administrative authority shall proceed in compliance with the acts and other legal regulations as well as international treaties which form part of the legislation (hereinafter referred to as "legal regulations"). Where law is mentioned herein, it shall also include international treaties forming part of the legislation.

(2) An administrative authority shall execute its powers only for those purposes for which it has been entrusted thereto by law, and within the scope determined thereby.”

The Office occasionally publishes information sheets on closed investigation and proceedings of the Office regarding certain competition issues. Further, the Office also publishes guidelines and opinions (v.) clarifying its procedures.

See the list of selected guidelines provided in English:

Antitrust:

- [Procedure of Setting Fines Imposed pursuant to the Act on the Protection of Competition](#)
- [Notice on the Requirements for Concentration Notifications](#)
- [Notice of the Office for the Protection of Competition on agreements of minor importance which do not appreciably restrict competition \(*de minimis*\)](#)
- [Notice of the Office for the Protection of Competition of 4 November 2013 on Application of Article 22ba\(1\) of the Act on the Protection of Competition \(Leniency Programme\)](#)

Mergers:

- [Notice of the Office for the Protection of Competition on the pre-notification contacts with merging parties](#)
- [Notice of the Office for the Protection of Competition on Calculation of Turnover for the Purpose of the Control of Concentrations between Undertakings](#)
- [Notice on the prohibition of implementation of concentrations prior to the approval and exemptions thereof](#)

<https://www.uohs.cz/en/legislation.html>

d) Investigative Process

- i. Participants will inform any Person that is the subject of an Investigation as soon as practical and legally permissible of that Investigation, according to the status and specific needs (e.g., forensic considerations) of the Investigation. This information will include the legal basis for the Investigation and the conduct or action under Investigation.*
- ii. Participants will provide any Person that has been informed that it is the subject of an Investigation, or that has notified a merger or other transaction or conduct, with reasonable opportunities for meaningful and timely engagement on significant and relevant factual, legal, economic, and procedural issues, according to the status and specific needs of the Investigation.*
- iii. Participants will focus investigative requests on information that they deem may be relevant to the competition issues under review as part of the Investigation. Participants will provide reasonable time for Persons to respond to requests during Investigations, considering the needs to conduct informed Investigations and avoid unnecessary delay.*

Compliance is ensured by the Competition Act – the Office has an obligation when requesting information to state the legal grounds and the purpose of the investigation (i.) pursuant to the Article 21e (2) of the Competition Act.

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

Similarly, the Office shall inform undertakings concerned about the legal reasons and the purpose of an investigation prior to initiation of an on-site inspection pursuant to the Article 21f (6) of the Competition Act (ii.).

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

The period provided for a reply to the requests on information has to be “reasonable”, as it is prescribed pursuant to the Article 39 (1) of the Administrative Code and it can be prolonged (iii).

“(1) The administrative authority shall determine a reasonable timeline for the party to complete an act, unless stipulated by law and where it is necessary to do so. The determination of the timeline must not jeopardise the purpose of the procedure or impede the equality of parties. The resolution on timeline determination shall be notified only to the person for whom it is intended and, if applicable, to persons otherwise directly affected thereby.”

In certain situations, the Competition Act sets minimal period for answer, for example in a case of deadline to propose amendments to evidence, which may not be shorter than 15 days (see Article 21b of the Competition Act).

e) **Timing of Investigations and Enforcement Proceedings**

Each Participant will endeavor to conclude its Investigations and aspects of Enforcement Proceedings under its control within a reasonable time period, taking into account the nature and complexity of the case.

Such standards are enshrined in the Article 6 (1) of the Administrative Code and maintain in practice of the Office.

The Office seeks to complete the investigation/proceedings without undue delay as mentioned in the Article 6 (1) of the Administrative Code, but due to the complexity of procedures, the exact deadlines set in the Administrative Code are not applied in the competition cases.

“(1) An administrative authority shall process cases without unnecessary delay. If the administrative authority fails to complete acts within statutory timelines or, where no statutory timeline has been established, within a reasonable period of time, provisions against protection from failure to act shall apply to remedy the situation (Article 80).”

The deadlines applicable for particular competition issues can be found in Competition Act. For example, the Article 16 (2) of the Competition Act sets the deadline in merger cases for assessing the concentration of undertakings.

“(2) Once the proceedings have been initiated, the Office shall assess whether the concentration is subject to its approval. If the concentration is not subject to approval by the Office, the Office shall issue a decision to that effect within 30 days of the initiation of proceedings. In cases where the concentration is subject to approval and will not result in a substantial distortion of competition, the Office shall issue a decision approving the concentration within the aforementioned deadline. ”

On the other hand, Parties to the proceedings have a right to claim the “inactivity” of the Office pursuant to the Article 79 and following of the Act No. 150/2002 Coll., Code of Administrative Justice, when they assume that the Office is not respecting the above mentioned general principle.

See: <http://www.nssoud.cz/docs/caj2002.pdf>

“PROTECTION AGAINST INACTION OF AN ADMINISTRATIVE AUTHORITY

Art. 79

(1) The person who has ineffectively exhausted the remedies which the rules of procedure applying to proceedings before an administrative authority prescribe for the protection of the person against the inaction of an administrative authority may request by means of a complaint that the court oblige the administrative authority to issue a decision or an attest in the merits of the matter. This does not apply if a special law connects the inaction of an administrative authority with the legal fiction that a decision with certain contents has been issued or another legal consequence.

(2) The defendant is an administrative authority which in accordance with the claimant’s statement has an obligation to issue a decision or an attest.”

f) Confidentiality

- i. *Each Participant will have publicly available rules, policies, or guidance regarding the identification and treatment of confidential information.*
- ii. *Each Participant will protect from unlawful disclosure all confidential information obtained or used by the Participant during Investigations and Enforcement Proceedings.*
- iii. *Each Participant will take into consideration both the interests of the Persons concerned and of the public in fair, effective, and transparent enforcement regarding the disclosure of confidential information during an Enforcement Proceeding.*

The principle is ensured. The Office has published the document regarding the identification and treatment of confidential information on its website (i), see:

<https://www.uohs.cz/en/competition/decisions-guidelines-and-other-documents.html>

To ensure the protection of confidential information obtained or used during Investigations and Enforcement Proceedings (ii), these shall be excluded from the access to the administrative file pursuant to the Article 21c of the Competition Act.

“(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.”

Also leniency applications and settlement requests shall be excluded from the access to the administrative file.

Nevertheless, there are certain exemptions from the above mentioned provision. Sometimes the parties are able to access the file with a business secret (iii.), but they have to be informed about the consequences of the breach of confidentiality.

For example Article 21c (3) of the Competition Act:

“(3) Within proceedings concerning the infringement or prohibition pursuant to Article 3(1) (Prohibited agreements), Article 11(1) (Abuse of dominant position), Article 18(1) (Concentration of undertakings) or Article 19a(1) (Distortion of competition by public authorities), 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.”

g) Conflicts of Interest

Officials, including decision makers, of the Participants will be objective and impartial and will not have material personal or financial conflicts of interest in the Investigations and Enforcement Proceedings in which they participate or oversee. Each Participant is encouraged to have rules, policies, or guidelines regarding the identification and prevention or handling of such conflicts.

Compliance is ensured by the Article 14 of the Administrative Code, pursuant to which the case handlers (or generally the officials) shall be excluded from the proceedings in case of doubt upon its impartiality.

“(1) Any person immediately involved in the execution of powers of an administrative authority (hereinafter referred to as an "official"), in respect of whom it is reasonable to presume that, due to its relation to the case, parties to the procedure or representatives thereof, it has such interest in the outcome of the procedure which appears to cast doubt upon its impartiality shall be excluded from any and all acts within the procedure through the conduct of which it could influence the outcome of the procedure.”

h) Notice and Opportunity to Defend

- i. Each Participant will provide Persons subject to an Enforcement Proceeding timely notice of the alleged violations or claims against them, if not otherwise notified by another governmental entity. To allow for the preparation of an adequate defense, parties should be informed of facts and relevant legal and economic reasoning relied upon by the Participant to support such allegations or claims.*
- ii. Each Participant will provide Persons subject to a contested Enforcement Proceeding with reasonable and timely access to the information related to the matter in the Participant's possession that is necessary to prepare an adequate defense, in accordance with the requirements of applicable administrative, civil, or criminal procedures and subject to applicable legal exceptions.*
- iii. Each Participant will provide Persons subject to an Administrative Proceeding with reasonable opportunities to defend, including the opportunity to be heard and to present, respond to, and challenge evidence.*

Compliance is ensured.

Concerning timely notice of the investigated subject of the alleged violations(i), the Office has an obligation when requesting information to state the legal grounds and the purpose of the investigation pursuant to the Article 21e (2) and Article 21f (6) of the Competition Act.

If the Office issues the notice of initiation of proceedings, the subject-matter of the proceedings and Parties to the proceedings shall be defined.

Before the decision, the Office sends Statement of Objections to the Parties pursuant to the Article 21b in connection with the Article 7 (3) of the Competition Act, implying conclusion of the investigation and possible sanction (ii.).

“Art. 21b

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

Art. 7 (3)

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

After sending the Statement of Objections, the Office provides the Party with the opportunity to express their view on completeness of evidence pursuant to the Article 36 (2) of the Administrative Code.

“(2) Parties shall have the right to express their opinion in the procedure. Unless the law provides otherwise, the administrative authority shall provide information about the procedure upon request of the parties.”

Concerning the “the right to be heard”(iii.), the Office has an obligation to order an oral hearing in case it is necessary for the achievement of the purpose of the procedure and application of rights of the Parties pursuant to the Article 49 (1) of the Administrative Code. If the Party requests oral hearing and the Office doesn’t allow it, then the Office has to justify in its decision why the oral hearing is not necessary in that case. This justification as a part of the decision is subject to the judicial review.

“(1) An administrative authority shall order an oral hearing in cases set forth by law, and, furthermore, if it is necessary for the achievement of the purpose of the procedure and application of rights of the parties. Unless there is a danger in delay, the administrative authority shall advise the parties of the oral hearing no less than five days in advance. This obligation shall not apply in respect of the party who waived its right to participate in the oral hearing.”

This purpose of this **limitation of the right to be heard is to accelerate the investigation** of the case as well as **eliminate obstructions** and unjustified requests for oral hearing.

i) Representation by Counsel and Privilege

- i. No Participant will deny, without due cause, the request of a Person to be represented by qualified legal counsel of its choosing.*
- ii. Each Participant will provide a Person a reasonable opportunity to present views regarding substantive and procedural issues via counsel in accordance with applicable law. Notwithstanding the foregoing, Persons may be required to provide direct evidence.*
- iii. Each Participant will recognize applicable privileges in accordance with legal norms in its jurisdiction governing legal privileges, including privileges for lawful confidential communications between Persons and their legal counsel relating to the solicitation or rendering of legal advice. Each Participant is encouraged to have rules, policies, or guidelines on the treatment of privileged information.*

Any person has a right to choose their legal representative, who will represent it before the Office (i., ii.) pursuant to the Article 33 and 34 of the Administrative Code.

“Art. 33 - Representation under the power of attorney

(1) A party may select a representative. The authorisation to represent shall be evidenced by means of a written power of attorney. The power of attorney may also be granted orally and recorded as an official report. A party may only have a single agent in the same case and time.

(2) The authorisation may be granted a) for a particular act, a group of acts or for a particular part of the procedure; b) for the entire procedure; c) for an indefinite number of procedures regarding a particular subject-matter which are to be commenced at a defined time or without limitation in the future; in such a case, the signature on the power of attorney shall always be officially attested and, until the commencement of the procedure, the power of attorney shall be deposited with the administrative authority with subject-matter jurisdiction, or granted and recorded as an official report; or d) within a different scope as per a special law.

(3) The agent may grant a power of attorney to another person to act on behalf of the party in lieu of the former, only if the power of attorney explicitly permits him/her to do so, unless a special law stipulated otherwise.

(4) If deliveries of a written document to the agent are unsuccessful, the course of action stipulated by Section 32, paragraph 2(d) or Section 32, paragraph 3 shall be employed and the party shall be advised of this course of action as well as about the content of the written documents.

Art. 34

(1) A representative referred to under Article 32 and 33 shall act in the procedure on behalf of the represented person. The acts of the agent establish rights and obligations directly for the represented person.

(2) Except for cases where the represented person is to carry out something in the procedure personally, written documents shall be delivered to the representative only.

Delivery to the represented person shall have no effect upon the course of timelines, unless the law stipulates otherwise.

(3) In case of doubts regarding the scope of representation, the representative shall be authorised to act on behalf of the represented person within the entire procedure.

(4) An administrative authority may acknowledge acts conducted to the benefit of the party by a person other than the representative if the party requests so and no other party can be harmed thereby. Acknowledgement of the acts shall be decided on by the administrative authority by means of a resolution; where the applicant's request is not granted, only the applicant shall be notified of the resolution. "

The Office shall ensure that the confidentiality of the communication between the Party and its legal representative is respected (iii.). The treatment of the privileged information is enshrined in the Guideline on Protection of business secret and confidential information under the Act No. 143/2001 Coll., on the Protection of Competition. See:

<https://www.uohs.cz/en/competition/decisions-guidelines-and-other-documents.html>

j) Decisions in Writing

- i. Each Participant in charge of issuing decisions or orders will issue in writing its final decisions or orders in which it finds a violation of, or imposes a prohibition, remedy, or sanction under applicable Competition Laws. Such final decisions or orders will set out the findings of fact and conclusions of law on which they are based, as well as describe any remedies or sanctions. Each Participant will ensure that all final decisions are publicly available, subject to confidentiality rules and applicable legal exceptions.*
- ii. Each Participant will ensure that all commitments it accepts to resolve competition concerns are in writing. Subject to confidentiality rules and applicable legal exceptions, each Participant will (i) make public the commitments it accepts, and (1) describe the basis for the competition concerns or (2) reference public materials in which those concerns are expressed, or (ii) provide a summary explanation of the commitments and the reasons for them.*

Compliance is ensured by publishing Office's final decisions (i) pursuant to the Article 20 (1c) of the Competition Act:

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

.....

c) publishes concentration notifications and its decisions which have come into force."

The necessary requirements of these decisions are enshrined in the Article 68, Article 69 and following of the Administrative Code.

"Art. 68

(1) The decision shall contain an operative part, a rationale, and an advice for the parties.

Art. 69

(1) The decision executed in writing shall be entitled as “decision” or otherwise as set forth by law. Furthermore, the decision executed in writing shall contain an identification of the administrative authority issuing the decision, a reference number, date of execution, an official stamp, name, surname and position or service number and signature of the authorised official...

(2) The decision executed in writing shall specify the names and surnames of all parties.”

The protection of business and other legally recognized secrets is guaranteed (see principle f).

k) Independent Review

No Participant will impose on a Person a prohibition, remedy, or sanction in a contested Enforcement Proceeding for violation of applicable Competition Laws unless there is an opportunity for the Person to seek review by an independent, impartial adjudicative body (e.g. court, tribunal, or appellate body).

Compliance is ensured. The final decision of the Office can be reviewed by a Regional Court pursuant to the Article 65 and following of the Act No. 150/2002 Coll., Code of Administrative Justice.

“(1) Anyone who claims that their rights have been prejudiced directly or due to the violation of their rights in the preceding proceedings by an act of an administrative authority whereby the person’s rights or obligations are created, changed, nullified or bindingly determined (hereinafter “decision”) may seek the cancellation of such a decision, or the declaration of its nullity, unless otherwise provided for by this Act or by a special law.”

A court with a special competence to review the final decisions of the Office is the Regional Court in Brno. Against a review judgement of the Regional Court in Brno, either the Office or parties to the proceedings may bring a “cassation complaint” before the Supreme Administrative Court.