

CONSOLIDATED ACT ON THE PROTECTION OF COMPETITION

**A C T No. 143/2001 Coll.
of 4 April 2001**

**on the Protection of Competition
and on Amendment to Certain Acts
(Act on the Protection of Competition)**

**as amended by
Act No. 340/2004 Coll. of 4 May 2004, Act No. 484/2004 Coll. of 5 August 2004, Act No.
127/2005 Coll. of 22 February, Act No. 361/2005 Coll. of 19 August 2005**

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

P A R T O N E PROTECTION OF COMPETITION

S E C T I O N I INTRODUCTORY PROVISIONS

Article 1 Introductory provisions

(1) This Act regulates the protection of competition in the market of products and services (hereinafter referred to as “goods”) against its elimination, restriction, other distortion, or imperilment (hereinafter referred to as “distortion”) by:

- a) agreements between undertakings (Article 3 (1)),
- b) abuse of dominant position of undertakings, or
- c) concentration of undertakings.

(2) This Act further regulates the procedure for application of Articles 81 and 82 of the Treaty establishing the European Community (hereinafter referred to as “the Treaty”) by the authorities of the Czech Republic and certain issues of cooperation of these authorities with the Commission of the European Communities¹⁾ (hereinafter referred to as “the Commission”) and with the authorities of other Member States of the European Community in procedure pursuant to the Council Regulation (EC) on the implementation of the rules on competition

¹⁾ Article 211 et seq. of the Treaty establishing the European Community.

laid down in Articles 81 and 82 of the Treaty^{1a)} (hereinafter referred to as “the Regulation”) and in the Council Regulation (EC) on the control of concentrations between undertakings^{1b)} (hereinafter referred to as “the Merger Regulation”).

(3) This Act shall apply to undertakings which provide, on the basis of a special act or on the basis of a decision issued pursuant to a special act, services of general economic interest^{1c)} in so far as its application does not obstruct the provision of these services.

(4) This Act shall be applied similarly also to the proceedings in cases of undertakings, whose actions may affect trade between Member States of the European Community pursuant to the Articles 81 and 82 of the Treaty.

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

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

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

(8) This Act shall further not apply to actions of undertakings in the field of production of and trade in agricultural products provided they act in compliance with the law of the European Communities.^{3a)}

(9) This Act shall further not apply to actions of undertakings that constitute a breach of duty laid down in the Act on the electronic communication^{4a)} or in a decision issued pursuant to this Act.

Article 2 **Definition of certain terms**

(1) Undertakings under this Act shall be deemed to mean natural or legal persons, their associations, associations of such associations and other groupings, including where such associations and groupings are not legal persons, provided they take part in competition or may influence competition by their activities, although they are not entrepreneurs.

(2) Relevant market shall be deemed to mean the market of goods, which are identical, comparable or mutually interchangeable from the point of view of its characteristics, price

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

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

^{1c)} For instance the Act No. 29/2000 Coll., on Postal Services and on amendments to several Acts (the Postal Services Act), Article 23 of the Act No. 6/1993 Coll., on the Czech National Bank, as amended by the Act No. 442/2000 Coll., Article 9 of the Act No. 468/1991 Coll., on Operation of Radio and Television Broadcasting, as amended, the Act No. 151/2000 Coll., on Telecommunications and on amendment to other Acts.

²⁾ Article 44 and et seq. of the Commercial Code, as amended by the Act. No. 370/2000 Coll.

^{3a)} Regulation No. 26 applying certain rules of competition to production of and trade in agricultural products

^{4a)} Act No. 127/2005 Coll. on Electronic Communication and on Amendment to Further Acts (Act on Electronic Communication)

and their intended use in the area, where the competition conditions are sufficiently homogenous and which can be clearly distinguished from neighbouring areas.

SECTION II AGREEMENTS DISTORTING COMPETITION

Article 3

(1) All agreements between undertakings, decisions by associations of undertakings and concerted practices (hereinafter referred to as “agreements”) which result or may result in the distortion of competition shall be prohibited and null and void,⁴⁾ unless this Act or a special act provides otherwise, or unless the Office for the Protection of Competition (hereinafter referred to as “the Office”) grants an exemption from this prohibition by its implementing regulation.

(2) Prohibited within the meaning of paragraph 1 shall be in particular agreements that result or may result in the distortion of competition due to the fact that they contain provisions on:

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

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

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

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

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

Article 4

Block exemptions

(1) The prohibition pursuant to Article 3(1) shall not apply to agreements that may not effect trade between Member States of the European Community pursuant to the Article 81 of the Treaty, which, however, fulfil other conditions laid down in block exemptions adopted on the basis of Article 83(1) of the Treaty in order to implement the Article 81(3) of the Treaty by relevant Commission or Council Regulations (hereinafter referred to as “the Community Block Exemptions”).

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

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

Article 5

Horizontal and vertical agreements

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

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

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

Article 6

(1) The prohibition of agreements pursuant to Article 3(1) shall not apply to:

- a) a horizontal agreement where the combined share in the relevant market of the parties to the agreement does not exceed 10%,
- b) a vertical agreement where the combined share in the relevant market of the parties to the agreement does not exceed 15%,
- c) agreements of sales organizations and associations of agricultural producers on sale of unprocessed agricultural commodities.^{3a)}

(2) The exemption from the prohibition of agreements pursuant to paragraph 1 shall not apply to the following agreements, even though they fulfil conditions laid down in paragraph 1:

- a) horizontal agreements on direct or indirect price fixing, restriction or control of production or sales or division of market or sources of supply or customers,

- b) vertical agreements on direct or indirect price fixing relating to resale of goods by the purchaser or granting the purchaser full protection for such resale in a defined market,
- c) individual agreements, forming a part of system of agreements pertaining to identical, comparable or substitutable goods, provided that
 - 1. the aggregate share in the relevant market of the parties to agreements forming such system, where at least one and the same undertaking is party to all these agreements, exceeds percentage limits set in paragraph 1 above, or
 - 2. the system of vertical or mixed agreements restricts access to the relevant market for undertakings which are not parties to such agreements and the competition in the relevant market is significantly restricted by the cumulative effect of parallel networks of similar vertical or mixed agreements entered into for the purpose of distribution of identical, comparable or substitutable goods provided the combined share of parties to the horizontal agreement or the share of any of the parties to the vertical agreement exceeds 5 % in the relevant market.

Article 7

(1) If the Office finds within the framework of proceedings concerning the matters pursuant to Articles 3 to 6, that a prohibited agreement has been concluded, it shall declare such fact in a decision, by means of which it shall prohibit performance of the agreement for the future.

(2) In proceedings pursuant to paragraph 1 the Office may impose on the parties the duty to fulfil measures, which they have jointly proposed, if such measures are sufficient for the protection of competition and if the harmful situation is eliminated by their fulfilment. Should the Office find such measures not sufficient, it shall communicate the reasons for such finding to the undertakings in writing and it shall continue with the proceedings; otherwise it shall impose fulfilment of such measures and terminate the proceedings.

(3) The parties to the proceedings may propose the measures pursuant to paragraph 2 to the Office in writing within 15 days following the day, on which the Office delivered to them its objections to the agreement; any proposal or changes in the proposed measures made after this period shall be taken into account by the Office only in cases deserving 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, until the decision of the Office pursuant to paragraph 2 is issued, they must not perform the agreement in its original wording.

(4) The Office may not issue a decision pursuant to paragraph 2, if the prohibited agreement has already been performed and if it resulted or could have resulted in a substantial distortion of competition.

(5) Following the termination of the proceedings pursuant to paragraph 2, the Office may reopen the proceedings pursuant to paragraph 1, where

- a) there has been a substantial change in circumstances on which the decision pursuant to paragraph 2 was based,
- b) the undertakings act contrary to the imposed measures, or

- c) the decision was issued on the basis of incorrect or incomplete documents, data or information.

Articles 8 and 9
Abolished.

SECTION III
DOMINANT POSITION AND ITS ABUSE

Article 10

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

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

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

Article 11

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

- a) direct or indirect enforcement of unfair conditions in agreements with other participants in the market, especially enforcement of performance, which is at the time of conclusion of contract conspicuously inadequate to the counter-performance provided,
- b) making the conclusion of contracts subject to acceptance by the other party of supplementary performance, which by its nature or according to commercial usage has no connection with the object of such contracts,
- c) application of dissimilar conditions to identical or equivalent transactions with other trading parties, thereby placing them at a competitive disadvantage,
- d) termination or limitation of production, sales or research and development to the prejudice of consumers,
- e) consistent offer and sale of goods for unfairly low prices, which results or may result in distortion of competition,

- f) refusal to grant other undertakings access, for a reasonable reimbursement, to own transmission grids or similar distribution networks or other infrastructure facilities, which are owned or used on other legal grounds by the undertaking in dominant position, if other undertakings are unable for legal or other reasons to operate in the same market as the dominant undertakings without being able to jointly use such facilities, and such dominant undertakings fail to prove, that such joint use is unfeasible for operational or other reasons or that they cannot be reasonably requested to enable such use; the same proportionately applies also to the refusal of access, for a reasonable reimbursement, of other undertakings to the use of the intellectual property or access to the networks owned or used on other legal grounds by the undertaking in a dominant position, if such use is necessary for participation in competition in the same market as the dominant undertakings or in any other market,

(2) The provision of paragraph 1(f) shall not apply to actions of undertakings constituting performance of the communication activity^{5a)} pursuant to Act on Electronic Communication.

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

(4) In proceedings pursuant to paragraph 3 the Office may impose on the parties the duty to fulfil measures, which they have jointly proposed, if such measures are sufficient for the protection of competition and if the harmful situation is eliminated by their fulfilment. Should the Office find such measures not sufficient, it shall communicate the reasons for such finding to the undertakings in writing and it shall continue with the proceedings; otherwise it shall order fulfilment of such measures and terminate the proceedings.

(5) The parties to the proceedings may propose the measures pursuant to paragraph 4 to the Office in writing within 15 days following the day, on which the Office delivered to them its objections to their behaviour; any proposal or changes in the proposed measures made after this period shall be taken into account by the Office only in cases deserving 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, until the decision of the Office pursuant to paragraph 4 is issued, they must not perform the agreement in its original wording.

(6) The Office may not issue a decision pursuant to paragraph 4, if the abuse of dominant position has resulted in a substantial distortion of competition.

(7) Following the termination of the proceedings pursuant to paragraph 4, the Office may reopen the proceedings pursuant to paragraph 3, where

- a) there has been a substantial change in circumstances on which the decision pursuant to paragraph 4 was based,
- b) the undertakings act contrary to the imposed measures, or
- c) the decision was issued on the basis of incorrect or incomplete documents, data or information.

^{5a)} Article 6 of the Act No. 127/2005 Coll. on Electronic Communication and on Amendment to Further Acts (Act on Electronic Communication).

SECTION IV
CONCENTRATIONS OF UNDERTAKINGS

Article 12
Definition of terms

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

(2) A concentration of undertakings pursuant to this Act shall include the acquisition of an enterprise⁷⁾ of another undertaking or a part thereof on the basis of a contract, auction or by other means. For the purpose of this Act, a part of an enterprise shall be deemed to mean also a part of an enterprise of the undertaking, to which turnover achieved by sale of goods in the relevant market may be unequivocally assigned, even if it shall not form an independent organization unit of the enterprise^{7a)}.

(3) As a concentration of undertakings pursuant to this Act shall further be regarded a situation, when one or more persons who are not entrepreneurs, but already control at least one undertaking, or if one or more entrepreneurs acquire the possibility to control directly or indirectly another undertaking, in particular:

- a) by acquisition of equity shares, business or membership interests, or
- b) by a contract or by any other means, allowing them to control other undertaking.

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

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

(5) A concentration within the meaning of paragraph 3 shall be constituted also by establishment of a joint control over an undertaking (hereinafter referred to as "joint venture") that performs on a lasting basis all functions of an autonomous economic entity.

(6) Establishment of a joint control over a joint venture, the purpose of which is coordination of competition behaviour of the persons controlling the undertaking, which remain independent competitors in the market, shall be assessed as an agreement of undertakings pursuant to Section II.

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

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

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

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

(8) Further, delegation of certain powers of the statutory bodies of undertakings to persons engaged in activities pursuant to special legal regulations, e.g., a liquidator⁸⁾ or a bankruptcy trustee⁹⁾, shall not be deemed to constitute a concentration between undertakings.

Article 13

Concentrations of undertakings subject to approval by the Office

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

- a) the total net turnover of all undertakings concerned achieved in the last accounting period in the market of the Czech Republic exceeds CZK 1.5 billion and each of at least two of the undertakings concerned achieved in the market of the Czech Republic in the last accounting period a net turnover exceeding CZK 250 million, or
- b) the net turnover achieved in the last accounting period in the market of the Czech Republic
 1. in case of a concentration pursuant to Article 12(1) at least by one of the parties to the merger,
 2. in case of a concentration pursuant to Article 12(2) by the acquired enterprise or a substantial part thereof,
 3. in case of a concentration pursuant to Article 12(3) by the undertaking, over whom the control is acquired, or
 4. in case of a concentration pursuant to Article 12(5) by at least one of the undertakings establishing a joint ventureis higher than CZK 1 500 000 000 and at the same time the worldwide net turnover achieved in the last accounting period by another undertaking concerned exceeds CZK 1 500 000 000.

Article 14

Calculation of turnover

(1) The net turnover¹⁰⁾ of undertakings concerned shall be deemed to mean the net turnover achieved by the individual undertakings solely by means of the activity, which constitutes their object of business. Where the undertakings are not entrepreneurs, the net turnover shall be deemed to mean solely the turnover achieved by means of the activity, for which they were founded or which they usually practice.

- (2) Aggregate net turnover shall include net turnovers achieved by:
- a) all the undertakings concerned,

⁸⁾ Article 70 et seq. of the Commercial Code, as amended by the Act No. 370/2000

⁹⁾ Article 14 et seq. of the Act No. 328/1991 Coll., on Bankruptcy and Settlement, as amended

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

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

(3) The joint net turnover of the undertakings concerned shall not include the part of the turnover, which was achieved by sale of goods between the undertakings concerned and the persons referred to in paragraph 2, letters b),c) and d).

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

(5) If within a two-year period two or more concentrations take place between the same undertakings, consisting in the transfer of a part of an enterprise to another undertaking, such concentrations shall be treated as one and the same concentration.

(6) As regards banks¹¹⁾, net turnover shall be deemed to mean the sum of income items, especially interest income, income from securities and asset shares, fees and commissions and profits from financial operations. As regards insurance companies¹²⁾, net turnover shall be deemed to mean the sum of insurance premiums prescribed pursuant to all the insurance contracts concluded.

Article 15

Initiation of proceedings

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

(2) In cases within the meaning of Article 12(1), (2) and (5), a concentration notification shall be filed jointly by the parties to the concentration, who intend to realise a concentration by merger or by acquisition of an enterprise or a part thereof on the basis of a contract, or acquire control over a joint venture; in cases within the meaning of Article 12(3), the undertaking which is to acquire the possibility to control directly or indirectly another undertaking shall be obliged to file a concentration notification.

(3) The concentration notification:

- a) may be filed also prior to conclusion of the agreement establishing the concentration or prior to acquisition of control over another undertaking in any other way,
- b) shall contain substantiation, documents certifying the facts decisive for the concentration and the requisites set out by the implementing legal regulation (Article 26(3)).

(4) The concentration approval proceedings shall be initiated on the day when the Office receives the concentration notification containing all requisites pursuant to paragraph 3. In case the notification does not contain such requisites, the Office may, on the basis of

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

¹²⁾ Article 2 (a) of the Act No. 363/1999 Coll., on the Insurance Sector and amendments to certain related Acts (the Insurance Act)

information received, issue only a written opinion specifying whether the concentration is subject to approval pursuant to this act and whether the notification is to be completed.

Article 16

Course of proceedings

(1) The Office shall without delay announce the initiation of concentration approval proceedings in the Commercial Bulletin and it shall stipulate therein a deadline for submission of objections against this concentration.

(2) After initiation of the proceedings, 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 but will not result in a substantial distortion of competition, the Office shall issue a decision approving the concentration within the aforementioned deadline. In the event that the Office finds that the concentration raises serious concerns as to a significant impediment to competition, in particular because it would create or strengthen a dominant position of the undertakings concerned or any of them, the Office shall inform the parties to the proceedings of this fact within the stipulated deadline and inform them that it is continuing the proceedings.

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

(4) The Office may in the terms referred to in the Merger Regulation¹³ request the Commission to conduct proceedings and assess a concentration by itself. Until the decision of the Commission, whether it will assess such concentration by itself, is issued, the Office shall suspend its proceedings. Provided the Commission decides that it will assess such concentration by itself, the Office shall terminate its proceeding.

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

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

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

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

Article 17

Assessment of concentrations

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

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

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

(4) The Office may make the concentration approval subject to fulfilment of commitments that are proposed by the undertakings concerned in favour of preservation of effective competition before initiation of the concentration approval proceedings or during its course, but not later than 15 days of the day when the last of the parties to the proceedings is informed pursuant to Article 16(2) that the Office continues the proceedings. Proposals of commitments made on a later date or changes to their content shall be taken into consideration by the Office only in cases deserving special attention, if they are submitted to the Office within 15 days following termination of the deadline pursuant to the first sentence of this paragraph. In case the parties to the proceedings propose these commitments within the first 30 days of the proceedings, the deadline pursuant to Article 16(2) shall be extended by 15 days. In case the parties to the proceedings propose these commitments after the information of the Office about continuation of the proceedings pursuant to Article 16(2), the deadline for issuing a decision pursuant to Article 16(5) shall be extended by 15 days. Provided parties to the proceedings do not propose such commitments or provided commitments proposed by the parties to the proceeding are not sufficient for preservation of effective competition, the Office may lay down, in its decision on the concentration approval, conditions and restrictions not proposed by parties to the proceedings, if the undertakings agree with their assumption. Provided the Office makes the concentration approval subject to fulfilment of commitments proposed by undertakings, the Office may lay down conditions and obligations necessary to secure fulfilment of these commitments.

Article 18

Suspension of implementation of concentrations

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

(2) Prohibition pursuant to Article 1 shall not apply to implementation of concentration that should occur on the basis of a public bid to assume equity shares or on the basis of sequence of operations with lists, as the consequence of which the control shall be acquired from different entities, provided the application for initiation of proceedings pursuant to Article 15(1) was filed immediately and provided the voting rights attached to such lists are not exercised; the provisions of paragraphs 3 and 4 shall not be affected thereby.

(3) The Office may, upon application of the undertakings, decide on approval of an exemption from the prohibition of implementation of the concentration pursuant to paragraph 1, where there is a threat that the undertakings or third parties sustain a considerable damage or any other significant detriment. The undertakings may file the application for approval of an exemption together with the concentration notification or anytime during the proceedings. The application shall be substantiated and made in writing.

(4) The Office shall decide on the application for approval of an exemption pursuant to paragraph 3 without delay, not later than 30 days of the receipt thereof. In deciding on the application, the Office shall take into account, besides the damage or any other detriment, the consequences of such exemption on competition in the relevant market. In the event that the Office fails to issue a decision within the stipulated period of time, the exemption shall be deemed to have been approved. The Office may stipulate, in its decision on granting of exemption, conditions and restrictions in favour of preservation of effective competition.

(5) If the Office finds that the concentration was implemented contrary to the Office's decision in force, it shall decide on measures indispensable to re-establishing effective competition in the relevant market. For this purpose the Office in particular shall impose on the undertakings obligation to sale stakes, to transfer an enterprise or a part thereof acquired on a basis of the concentration or to discharge the contract, on the basis of which the concentration was realised, or to implement other adequate measures necessary for re-establishing effective competition in the relevant market. The Office may issue such decision also in a case, where it finds that a concentration was implemented without filing concentration notification pursuant to Article 15(1).

Article 19

Revocation of decision on concentration approval

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

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

SECTION V THE OFFICE

Article 20

(1) The scope of competencies of the Office is governed by a special legal regulation¹⁴⁾. In addition to the powers stipulated by the other provisions of this Act, the Office:

- a) supervises whether and how the undertakings fulfil the obligations arising for them from this Act or the decisions of the Office adopted on the basis of this Act,
- b) publishes concentration notifications and its decisions which has come into force.

(2) When performing the supervision pursuant to paragraph 1(a), the Office may initiate proceedings of its own initiative. Article 21(5) to (9) shall apply *mutatis mutandis* to the performance of supervision by the Office.

Article 20a

(1) The Office shall be empowered to apply Articles 81 and 82 of the Treaty in individual cases, if the behaviour of undertakings may affect trade between Member States within the meaning of Articles 81 and 82 of the Treaty. For this purpose, it shall be entitled to:

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

(2) The Office may, by its decision, withdraw the benefit of a community block exemption from individual undertaking if the agreements have, in a particular case, effects incompatible with Article 81(3) of the Treaty in a territory of the Czech Republic or in a part thereof, which has all characteristics of a distinct geographic market.

(3) The Office shall furthermore be empowered

- a) to request the Commission to provide it with copies of documents necessary for the assessment of a case,
- b) to consult the Commission on any case involving the application of Community law,
- c) to exchange with the Commission and other competition authorities of the Member States and to use in evidence any matter of fact or of law, including confidential information,
- d) to request the Commission to include on the agenda of the Advisory Committee on Restrictive Practices a case it deals with,
- e) to submit to courts observations on issues relating to the application of Articles 81 and 82 of the Treaty and to request the relevant court to transmit any documents necessary for the assessment of the case,

¹⁴⁾ Act No. 273/1996 Coll., on the Scope of Activities of the Office, as amended by the Act No. 187/1999 Coll.

- f) to conduct investigations on the basis of a request of a competition authority of any other Member State,
 - g) to present its opinions on proceedings that the Commission conducts pursuant to the Merger Regulation,
 - h) to issue decisions in cases, where Regulations of the European Communities adopted in compliance with Articles(83) to (86) of the Treaty empower the Office to adopt a decision,
 - i) to adopt remedies whose conditions and details were determined by the Commission and when the Commission authorised a Member State to adopt a necessary remedial measure pursuant to Article 85(2) of the Treaty.
- (4) The Office shall be obliged
- a) to provide the Commission with all information necessary for the Commission to be able to carry out the duties assigned to it by the Regulation and the Merger Regulation,
 - b) to afford the Commission the necessary assistance in case an undertaking opposes or obstructs an inspection pursuant to the Regulation or the Merger Regulation
 - c) to inform in writing the Commission and the competition authorities of other Member States about initiation of proceedings on the basis of Articles 81 or 82 of the Treaty,
 - d) to provide the Commission, no later than 30 days before the adoption of a decision pursuant to paragraph 1, with a summary of the case, the envisaged decision and any other documents necessary for the assessment of the case; the information may be also made available to the competition authorities of the other Member States,
 - e) to appoint its representative in the Advisory Committee on Restrictive Practices and in the Advisory Committee on Concentrations and in the Advisory Committee on State aid,
 - f) to conduct, at the request of the Commission, investigations which they consider to be necessary.
- (5) In a procedure pursuant to the Merger Regulation, the Office shall be empowered:
- a) to express itself concerning a proposal on referral of a case before its notification^{14a)},
 - b) to request the Commission to refer the case^{14b)},
 - c) to request the Commission to assess the case, on conditions referred to in the Merger regulation^{14c)},
 - d) to decide on a case referred to it by the Commission^{14d)}.

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

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

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

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

SECTION VI PROCEEDINGS BEFORE THE OFFICE

Article 21

(1) Parties to the proceedings shall be deemed to be an applicant and those, whose rights and obligations shall be subject to the Office's dealing and decision-making within a proceeding.

(2) In proceedings concerning agreements distorting competition due to a cumulative effect of parallel networks of similar vertical agreements entered into with the purpose of the distribution of identical, comparable or substitutable goods pursuant to Article 6(2)(c), where one of the parties to such agreement is always one and the same undertaking who proposes conclusion of the contract to the other undertakings, the Office may limit the status of a party to the proceedings to this undertaking only.

(3) An application for initiation of proceedings against undertakings who are parties to the agreements distorting competition or undertakings who abuse dominant position or against the bodies of public administration, or an application filed with respect to matters falling outside the scope of this Act, shall be deemed to be an application for investigation about whose acceptance, rejection or referral to another body the Office shall inform the applicant in writing without issuing a decision. When the Office initiates proceedings of its own initiative in a matter forming the object of the application, the Office shall inform the applicant of the results of investigation or issuance of a decision only if such applicant is not party to proceedings pursuant to paragraph 1.

(4) Parties to the proceeding shall be obliged to specify the evidence proving the facts they claim, in accordance with the directly binding legal act of the European Communities^{14e)}. Provided a party to the proceeding proposes commitments pursuant to Article 17(4), it shall be obliged to specify the evidence to prove that fulfillment of these commitments shall be sufficient for the preservation of effective competition; before implementation of the concentration the party must specify the evidence necessary for proving that these commitments, or conditions and obligations imposed by the Office pursuant to Article 17(4), were fulfilled. The party to the proceeding shall be also obliged to specify the evidence necessary to prove the fulfillment of the obligations imposed by the Office pursuant to Article 18(5).

(5) In proceedings conducted by the Office pursuant to this Act, undertakings shall be obliged to submit to investigation by the Office. For the purpose of such investigations, the Office shall be authorised to request that undertakings and, unless a special legal regulation states otherwise, the bodies of public administration provide it with documents and information the Office needs for its activities, and to ascertain their completeness, truthfulness and correctness. For this purpose the Office's officials shall be empowered to enter any land, premises, rooms and means of transport, which are used by the undertakings in their business activities (hereinafter referred to as "business premises"), examine the books and other business records, take copies or extracts therefrom and ask for oral explanation on the spot. In order to secure the purpose of inspections, the Office's officials may seal business premises or cabinets, cases, business books and other business records situated in the business premises for the period and to the extent necessary for carrying out the inspection. If a reasonable

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

suspicion exists that books or other business records are being kept in other than business premises, including the homes of natural persons that are statutory bodies or their members or employees (hereinafter referred to as “other than business premises”), the investigation may be, with a prior authorisation from the court¹⁵⁾, conducted also in these premises.

(6) For the purpose of investigation in business or other than business premises, the Office shall be empowered to obtain access to these premises or to open any closed cabinets or cases. Any person, in the estate of which the business or other than business premises are situated, shall be obliged to abide the investigation in these premises; in case it fails to fulfil this obligation the Office’s officials shall be empowered to obtain access to the business or other than business premises.

(7) The undertakings shall be obliged to provide the Office at its request with complete, correct and truthful documents and information within the deadline stipulated by the Office and enable the Office to verify the same pursuant to paragraph 5. This obligation shall be applied *mutatis mutandis* also to the bodies of public administration unless a special legal regulation states otherwise.

(8) When requesting documents and information, the Office shall state the legal ground and purpose of the investigation and advise that the failure to provide them or to enable their verification may be subject to a fine imposed by the Office pursuant to Article 22.

(9) On the proposal of the party to the proceedings where it seems to be necessary with regard to the subject matter of the case, the Office shall order an oral hearing. The Office may also call to witness at the oral hearing other persons whose information may contribute to a complete, actual and reliably established state of affairs.

Article 21a **Proceedings with a Community element**

(1) In case the Office initiates proceedings concerning infringement of Article 81 or 82 of the Treaty, it shall proceed with its investigations pursuant to Article 21(5) to (9) and it shall take decisions pursuant to Articles 7 and 11(3) to (7).

(2) In case the Office conducts investigations pursuant to Articles 20(5), 21(4), 22(1) or (2) of the Regulation or Article 12(1) of the Merger Regulation, it shall proceed pursuant to Article 21(5) to (9).

(3) In case the Office has initiated proceedings concerning infringement of Article 81 or 82 of the Treaty and the Commission initiates in the same matter proceedings for adoption of a decision under Chapter III of the Regulation, the Office shall terminate its proceedings.

(4) In case the Office has initiated proceedings concerning infringement of Article 81 or 82 of the Treaty and the same matter is already dealt with or begins to be dealt with by a competition authority of another Member State, the Office shall terminate or, until a decision by this competition authority is adopted, suspend its proceedings.

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

(5) When imposing fines in investigations or proceedings pursuant to paragraphs 1 and 2, the Office shall proceed pursuant to Article 22.

Article 21b **Investigations conducted by the Commission**

In case the Commission by its decision orders an investigation to be conducted pursuant to Article 21 of the Regulation, the Commission or the Office shall apply to the court for initiation of proceedings in matters of the protection of competition¹⁵⁾.

SECTION VII FINES AND REMEDIES

Article 22

(1) The Office may by its decision impose fines

- a) of up to 300 000 CZK or up to 1 % of the net turnover achieved by the undertaking in the last accounting period on anyone who intentionally or negligently fails to provide the Office with the requested documents and information within the stipulated period of time, or provides incomplete, untruthful or incorrect documents and information, fails to submit requested books and other business records or fails to enable their review pursuant to Article 21(5), or otherwise refuses to submit to investigations pursuant to this Act, or if the seal affixed pursuant to Article 21(5) has been broken,
- b) of up to CZK 100 000 on anyone who intentionally or negligently without serious reasons fails to appear at a scheduled oral hearing, refuses to testify or otherwise obstructs the proceedings.

(2) The Office may impose on undertakings fines of up to CZK 10,000,000 or up to 10% of the net turnover achieved in the last expired accounting period where, either intentionally or negligently, they infringed the prohibitions stipulated in Article 3(1), Article 11(1) and Article 18(1), or fail to fulfil the measures imposed pursuant to Article 7(2) or Article 11(4) or pursuant to Article 18(5). When deciding on the amount of the fine, the Office shall take into account in particular the gravity, possible recurrence and duration of the infringement of this Act.

(3) The Office may impose a fine of up to CZK 1,000,000 on undertakings that act contrary to the enforceable decision.

(4) The fines provided for in paragraphs 1 and 3 may be imposed by the Office repeatedly.

(5) The fines provided for in paragraphs 1 to 3 may be imposed no later than 3 years following the day on which the Office learned about the infringement of the prohibition or the nonfulfilment of the obligations stipulated pursuant to this Act, however, no later than 10 years after the infringement of the prohibition or nonfulfilment of the obligation occurred.

(6) When collecting and enforcing the fines, the Office shall proceed pursuant to a special legal regulation¹⁷⁾. The revenues from fines are an income of the state budget.

Article 23

(1) When the Office establishes an infringement of the prohibitions or nonfulfilment of the obligations provided for in Article 22(2), it may, within the deadline stipulated in Article 22(5), decide, according to the subject matter of the case, to impose remedial measures and to set a reasonable deadline for the compliance therewith.

(2) The content and scope of the remedial measures shall not exceed the purpose of this Act. The imposition of a remedial measure does not preclude the concurrent imposition of a fine pursuant to Article 22(2).

(3) The provision of Article 22(3) shall apply *mutatis mutandis* to the imposition of a fine for a failure to comply with an enforceable decision on the imposition of a remedial measure.

SECTION VIII PROFESSIONAL SECRECY AND THE PROTECTION OF BUSINESS SECRET

Article 24

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

SECTION IX Abolished

Article 25 Abolished

SECTION X GENERAL, EMPOWERING, TRANSITIONAL AND REPEALING PROVISIONS

Article 25a Use of the Administrative Proceedings Code

Unless otherwise specified by this Act, the Administrative Proceedings Code shall be used in proceedings before the Office with the exception of the provision on solving the conflicts between the administrative agency that conducts the proceedings and the administrative agencies that are affected agencies, concerning the issue constituting the object of the decision-making¹⁸⁾, the provision stipulating who may be imposed a disciplinary fine and what amount the fine may reach^{18a)}, provision on prohibition of changes in an appealed

¹⁷⁾ Act No. 337/1992 Coll., on Administration of Taxes and Charges, as amended

decision to the detriment of the appealing party^{18b)}, provision on legal periods for issuing a decision^{18c)}, furthermore, from among the provisions on the special features of the appellation proceeding conducted by the central administrative bodies, the provision on composition of the appellation committee of a central administrative body and on possible termination of an appellation proceeding conducted by a central administrative body^{18d)}, and furthermore provision on parties to the proceeding^{18e)} and provision on procedure in doubts on whether an entity is a party to a proceeding^{18f)}; the provisions of the Administrative Code on parties to a proceeding pursuant to a special Act^{18g)} will, however, be applied.

Article 26 **Empowering provisions**

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

Article 27 **Transitory provision**

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

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

Article 28 **Repealing provisions**

The following legal regulations shall be repealed:

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

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

^{18a)} Article 62(1) and (2) of the Administrative Code

^{18b)} Article 90 (3) of the Administrative Code.

^{18c)} Article 71 of the Administrative Code.

^{18d)} Article 152 (3) and (5) of the Administrative Code.

^{18e)} Article 27 (1) and (2) of the Administrative Code.

^{18f)} Article 28 of the Administrative Code.

^{18g)} Article 27 (3) of the Administrative Code.

PART FOUR
Entry into force

Article 31

The Act shall enter into force on 1 July 2001.

* * *

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

The Act No. 484/2004 Coll., amending the Act No. 143/2001 Coll., on the Protection of Competition and on Amendment to Certain Acts (Act on the Protection of Competition) as amended by the Act 340/2004 Coll., the Act No. 513/1991 Coll., Commercial Code, as amended, and the Act No. 526/1990 Coll., on Prices, as amended, has entered into force on the day of its publication (7 September 2004).

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

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