

## **CONSOLIDATED ACT ON THE PROTECTION OF COMPETITION\***

**A C T N° 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  
and  
Act No. 484/2004 Coll. of 5 August 2004**

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 Object of the Act**

(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 Communities<sup>1)</sup> (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 laid down in Articles 81 and 82 of the Treaty<sup>1a)</sup> (hereinafter referred to as “the Regulation”).

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\* **Important Notice: the English version of this document is only for working purposes; the only authentic is the Czech version.**

<sup>1)</sup> Article 211 et seq. of the Treaty establishing the European Community.

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

(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<sup>1b)</sup> 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 international treaty, binding on the Czech Republic, provides otherwise.

(7) This Act shall further not apply to the protection of competition against unfair competition<sup>2)</sup>.

(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.<sup>3a)</sup>

## **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 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

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<sup>1b)</sup> 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.

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

<sup>3a)</sup> Regulation No. 26 applying certain rules of competition to production of and trade in agricultural products

distortion of competition shall be prohibited and null and void,<sup>4)</sup> 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

## **Article 5**

### **Horizontal and vertical agreements**

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

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

(3) Mixed agreements between undertakings operating at the same horizontal level as well as at 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.

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

## 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.<sup>3a)</sup>
- (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, division of market or sources of supply,
  - 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.

## 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.

### **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,
- g) direct or indirect requirement of pecuniary or non-pecuniary performance in exchange for listing by an undertaking in the position of a purchaser, for placement of goods in the business premises of an undertaking in the position of a purchaser, or direct or indirect requirement of special discounts and financial advantages in connection with opening of business premises or various promotional activities by an undertaking in the position of a purchaser.

(2) 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.

(3) In proceedings pursuant to paragraph 2 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.

(4) The parties to the proceedings may propose the measures pursuant to paragraph 3 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 3 is issued, they must not perform the agreement in its original wording.

(5) The Office may not issue a decision pursuant to paragraph 3, if the abuse of dominant position has resulted in a substantial distortion of competition.

(6) Following the termination of the proceedings pursuant to paragraph 3, the Office may reopen the proceedings pursuant to paragraph 2, where

- a) there has been a substantial change in circumstances on which the decision pursuant to paragraph 3 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.

## SECTION IV CONCENTRATIONS OF UNDERTAKINGS

### Article 12 Definition of terms

(1) A concentration of undertakings shall originate from the transformation<sup>6)</sup> 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 enterprise<sup>7)</sup> of another undertaking or a substantial part thereof by means of a contract on the sale of an enterprise.

(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 enterprise, or if one or more entrepreneurs acquire the possibility to control directly or indirectly another enterprise, 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 determine or influence the behaviour of the controlled undertaking.

(4) 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.

(5) 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.

(6) 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 pursuant to paragraph 2 above, 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, whose business involves trading in securities, 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 constitute a concentration between undertakings pursuant to paragraph 2 above. The Office may extend the aforementioned period by a reasonable time at the request of a bank or an undertaking trading in securities.

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<sup>6)</sup> Article 69 of the Commercial Code, as amended by the Act No. 370/2000 Coll.

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



(7) Further, delegation of certain powers of the statutory bodies of undertakings to persons engaged in activities pursuant to special legal regulations, e.g., a liquidator<sup>8)</sup> or a bankruptcy trustee<sup>9)</sup>, shall not be deemed to constitute a concentration between undertakings pursuant to paragraph 2 above.

### **Article 13** **Concentrations of undertakings subject to approval by the Office**

A concentration shall be subject to the approval of 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 transformation,
  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 whose enterprise the control is acquired, or
  4. in case of a concentration pursuant to Article 12(4) 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 turnover<sup>10)</sup> 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,
- b) persons, which will be controlling 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.

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

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

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



(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 banks<sup>11)</sup>, 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 companies<sup>12)</sup>, 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 (4), a concentration notification shall be filed jointly by the parties to the concentration, who intend to realise a concentration by the transformation or by the acquisition of an enterprise or a substantial 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 enterprise 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 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**

### **Decision on approval of concentration**

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

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

- (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 and does not create or strengthen a dominant position of the undertakings concerned or any of them, as a result of which competition would be significantly impeded, 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, 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) 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, or, where the concentration is to have the form of a public bid, within 2 months of the initiation of proceedings. In the event that the Office fails to issue a decision on the concentration within the stipulated deadlines, the Office shall be deemed to have approved the concentration upon the elapse of the aforementioned deadlines.
- (5) 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 4 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 4 shall start again from the date on which the Court judgement comes into force.
- (6) The concentration may be registered in the Commercial Register only after the decision of the Office approving the concentration comes into force.

## **Article 17**

### **Appraisal 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 Office shall by its decision refuse to approve a concentration if the concentration significantly impedes competition in the relevant market.

(3) 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(4) shall be extended by 15 days.

### **Article 18** **Suspension of implementation of concentrations**

(1) The undertakings shall not determine or influence competitive behaviour of the controlled undertaking, in particular by execution of voting rights attached to the holding of equity shares, business or membership interests or otherwise acquired control, before the day of entry into force of the Office's decision on the concentration approval. The undertaking shall also not take any measures that would lead to irreversibility of the implemented concentration and change the market structure on a lasting basis.

(2) Where the Office finds that the undertakings have implemented the concentration without notification of the concentration, it may impose on the undertakings a duty to sell the interests, transfer the enterprise acquired by the concentration or a part thereof, terminate an agreement or take any other measures that may be necessary for restoring effective competition in the relevant market.

(3) The Office may, upon application of the undertakings, decide on an 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.

### **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 regulation<sup>14)</sup>. 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 withdraw the benefit resulting from one of the exemption regulations within the meaning of Article 81(3) of the Treaty if the agreements have in a particular case effects

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

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,
  - f) to conduct investigations on the basis of a request of a competition authority of any other Member State.
- (4) The Office shall be obliged
- a) to provide the Commission with all necessary information so that the Commission is able to carry out the duties assigned to it by the Regulation,
  - b) to afford the Commission the necessary assistance in case an undertaking opposes or obstructs an inspection;
  - 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, 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,
  - f) to conduct, at the request of the Commission, investigations which they consider to be necessary.

## **SECTION VI**

### **PROCEEDINGS BEFORE THE OFFICE**

#### **Article 21**

(1) A party to the proceedings shall be deemed to mean any person on whose rights or obligations stipulated by this Act a decision is to be taken within the proceedings.

(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) The parties to the proceedings and the applicant, in case it is not a party to the proceedings, shall be obliged to specify the evidence proving the claimed facts in accordance with the directly binding legal act of the European Communities<sup>14a)</sup>.

(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. If a reasonable 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 court<sup>15)</sup>, 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 4. 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.

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<sup>14a)</sup> 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

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

(9) On the proposal of the party to the proceedings or 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(2) to (6).

(2) In case the Office conducts investigations pursuant to Articles 20(5), 21(4) or 22(1) or (2) of the 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 suspend or terminate its proceedings until the adoption of a decision by this competition authority.

(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 competition<sup>15</sup>.

## **SECTION VII** **FINES AND REMEDIES**

### **Article 22**

- (1) The Office may by its decision impose fines
- a) of up to 300 000 CZK 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,



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 preceding calendar year 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 commitments accepted pursuant to Article 7(2) or Article 11(3). 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 fail to comply with an 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 regulation<sup>17)</sup>. 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

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

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**

### **GENERAL, EMPOWERING, TRANSITIONAL AND REPEALING PROVISIONS**

#### **Article 25a**

##### **Use of the Administrative Proceedings Code**

Unless otherwise specified by this Act, the Administrative Proceedings Code<sup>18)</sup> shall be used in proceedings before the Office.

#### **Article 26**

##### **Empowering provisions**

(1) The Office shall permit by its implementing legal regulation further general exemptions from the prohibition pursuant to Article 3(1) for certain categories of agreements, when it finds that the distortion of competition resulting from such general exemption is outweighed by benefits to other participants in the market, in particular consumers.

(2) The Office shall by a decision addressed to an individual undertaking withdraw the benefits of a general exemption in the event that due to developments in the market, the agreement covered by the general exemption fails to meet the conditions laid down by Article 3(4).

(3) The Office shall stipulate by its implementing legal regulation details concerning requisites of the concentration notifications.

#### **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.

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<sup>18)</sup> Act No. 71/1967 Coll., on Administrative Proceedings (the Administrative Proceedings Code), as amended

**PART FOUR**  
**Entry into force**

**Article 31**

The Act shall enter into force on 1 July 2001.

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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).