



## CZECH REPUBLIC

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#### 1. Relevant legislation

The merger control provisions are contained in Part IV of [Act No. 143/2001 Coll., on the Protection of Competition](#) (the “APC”) and in [Decree No. 294/2016 Coll., stipulating details of the justification of a concentration notification and documents certifying facts decisive for a concentration](#).

#### 2. Authority

Office for the Protection of Competition (the “OPC”).

The OPC's website: <https://www.uohs.cz/en/homepage.html>

#### 3. Types of transactions caught

According to Section 12 of the APC, the following transactions may be subject to merger control:

- a merger of two or more undertakings previously independently active in the market;
- a transaction where an undertaking or more undertakings or one or more persons, who are not entrepreneurs but control at least one undertaking, acquire the possibility to directly or indirectly control another undertaking or part thereof, in particular, by acquiring equity shares, business or membership interests or on the basis of an agreement or by other means allowing them to control such undertaking or part thereof; and
- the establishment of a full-function joint venture.

#### 4. Thresholds

Pursuant to Section 13 of the APC, the merger shall be subject to the approval by the OPC, if:

- (a) the total net turnover of all undertakings concerned achieved in the last accounting period in the Czech market exceeds **CZK 1.5 billion** (approx. EUR 58 million) 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** (approx. EUR 9.7 million); or
- (b) the net turnover achieved by
  - (i) one of the merging undertakings as per 3(a) above; or

- (ii) the undertaking or a part thereof over whom the control is acquired as per 3(b) above;  
or
- (iii) one of the undertakings as per 3(c) above

in the last accounting period in the market of the Czech Republic is 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.

## 5. Exceptions

Exemptions from the definition of a merger:

- the temporary acquisition of shares by a bank in an undertaking by setting off its claims against the undertaking, if the acquisition is made in the context of a restructuring process for a period not exceeding one year;
- the temporary acquisition (not exceeding a period of one year) by an investment undertaking of shares in another undertaking only for the purpose of their sale, provided that the investment undertaking does not exercise its voting rights to influence the competitive conduct of the controlled undertaking; and
- the transfer of certain powers of statutory bodies of an undertaking to third parties pursuant to special legislation, particularly to a liquidator or an insolvency administrator.

The OPC may extend the period of one (1) year if the aim of the transaction as per 5(a) or 5(b) above could not be achieved within one (1) year period.

## 6. Notifying party(-ies)

A notification of the merger has to be submitted by:

- the merging parties in the event of a merger (see 3(a) above);
- the parties acquiring control in case of an acquisition (see 3(b) above);
- all undertakings participating in the creation of a full-function joint venture (see 3(c) above).

## 7. Submission deadline

A merger cannot be implemented before it is notified and approved by the OPC (i.e. before the decision of the OPC enters into force).

The notifying party may file the notification as soon as the legally binding transaction documents have been signed or prior to the signing of the relevant transaction documents.

## 8. Filing fee

The notification is subject to payment of an administrative fee in the amount of CZK 100,000 (approx. EUR 3,900).

## 9. Proceedings timetable

The APC distinguishes two types of merger control proceedings: (i) standard proceedings and (ii) simplified proceedings. The decision may be appealed and subsequently reviewed by courts.

#### I. Standard proceedings

- Phase I

The proceedings begin on the day the OPC receives a proposal for approval of the merger that has all the required requisites (refer to Decree No. 294/2016 Coll.). The OPC announces the commencement of the proceedings in the Commercial Journal.

Within **30 calendar days** from the commencement of the proceedings the OPC:

- (a) decides that the transaction is not subject to its approval;
- (b) decides on the approval of the transaction;
- (c) notifies the participants that there are concerns that the transaction could result in a substantial distortion of competition and continues with the proceedings (refer to Phase II below);
- (d) suspends the proceedings and proposes to the European Commission to decide on the transaction;
- (e) call upon the participants to submit further facts or evidence;
- (f) if none of the actions above is carried out within the time limit, the transaction is deemed approved.

- Phase II

If the OPC notifies the participants that there are concerns that the transaction could result in a substantial distortion of competition and continues with the proceedings the decision has to be made within **5 months** from the beginning of proceedings (see above in Phase I).

Subsequently, the OPC either:

- (a) decides on the approval of the transaction;
- (b) approves the transaction under certain conditions;
- (c) decides on non-approval;
- (d) call upon the participants to submit further facts or evidence;
- (e) if none of the actions above is carried out within the time limit, the transaction is deemed approved.

#### II. Simplified proceedings

- Simplified proceedings pursuant to Section 16a of the APC applies if:
  - (a) none of the undertakings concerned is operating on the same relevant market, or their combined share in such market does not exceed 15%, and at the same time none of the undertakings concerned is operating in the market vertically connected to the relevant market in which another undertaking concerned operates, or their share in every such market does not exceed 25%; or
  - (b) the undertaking acquires sole control over another undertaking or part thereof, in which it has already participated in joint control.
- There are a number of possible deviations from the standard proceedings:

- (a) the proposal for the approval of the transaction may be submitted in a simplified form (pursuant to Decree No. 294/2016 Coll.);
- (b) the OPC does not announce the commencement of the proceedings in the Commercial Journal;
- (c) the time limit of 30 calendar days (refer above to Phase I of the standard proceedings) is shortened to **20 calendar days**;
- (d) if the OPC finds out that there are concerns that the transaction might result in a substantial distortion of competition it calls upon the participants to submit a full proposal for the approval of the transaction and the transaction will be assessed in standard regime (see above).

### Appeal

The notifying party may to appeal the decision of the OPC within 15 calendar days of the date of delivery of the decision. The appeal body is the Chairman of the OPC. The appeal has a suspensive effect.

### Judicial Review

The decision is further subject to the judicial review by the competent court (the petition has to be filed within 2 months of the date of delivery of the Chairman's decision). The court decision may be further appealed by filing a cassation complaint to the Supreme Administrative Court (within two weeks).

## **10. Availability of pre-notification/informal consultation**

Pre-notification consultation between the OPC and undertakings is not mandatory, and it is not a condition for subsequent submission of a merger notification. It can be initiated upon undertaking's request. The consultation is informal and confidential.

The request for the pre-notification consultation shall include:

- a brief description of the transaction;
- a brief description of the areas and markets in which the effects of the transaction occur;
- a brief description of the likely effects of the transaction on competition in the relevant markets.

The result of the pre-notification consultation is not a definitive or binding statement of the OPC.

## **11. Test for clearance/prohibition**

The OPC may not approve a merger which would result in a substantial distortion of competition in the relevant market.

The OPC is to consider particularly whether the merger would result in or would strengthen a dominant position of the undertakings concerned. If the combined share of all undertakings concerned in the relevant market does not exceed 25%, it is presumed that their merger does not result in a substantial distortion of competition (unless proven contrary).

When deciding on merger approval, the OPC assesses mainly: the necessity of preservation and further development of effective competition, the structure of all markets affected by the merger, the shares of the concerned undertakings in such markets, their economic and financial power, legal and other barriers to enter the affected markets, the development of

supply and demand in the affected markets, the alternatives available to suppliers and customers of the undertakings concerned, the needs and interests of the consumers and research and development etc.

## **12. Conditional clearance - remedies**

The OPC may subject the approval of the merger to obligations and conditions proposed by the undertakings in favour of maintaining effective competition.

The commitments can be offered by the undertakings before initiating the merger approval proceedings or during its course, but no later than within 15 calendar days of receiving OPC's statement of objections (this time limit may be extended in cases worthy of special attention).

## **13. Stand-still obligation**

The merger under the APC may not be implemented before the OPC's decision on the merger approval enters into force. The OPC may grant an exception if there is a threat of incurring considerable damage or any other significant detriment to the undertakings or third parties concerned.

## **14. Failure to notify/obtain clearance**

When the OPC finds that the merger was implemented contrary to its decision, or without filing a merger notification under the APC, the OPC may impose measures indispensable to re-establishing effective competition in the relevant market. Those measures may include an obligation to sell the undertaking or part thereof or an obligation to invalidate the relevant contract on the basis of which the merger was implemented.

Without prejudice to the above measures the OPC may further impose a fine amounting up to CZK 10,000,000 (approx. EUR 390,000) or up to 10% of the net turnover achieved by the undertaking in the last accounting period for the following breaches of the APC:

- (a) implementation of a merger without prior notification and the OPC's approval;
- (b) failure to implement imposed remedial measures;
- (c) failure to meet the conditions of the merger (see point 12 above).