

MERGER NOTIFICATION AND PROCEDURES TEMPLATE

THE CZECH REPUBLIC

April 2009

IMPORTANT NOTE: This template is intended to provide initial background on the jurisdiction's merger notification and review procedures. Reading the template is not a substitute for consulting the referenced statutes and regulations.

1. Merger notification and review materials (please provide title(s), popular name(s), and citation(s)/web address)

A. Notification provisions

Article 13 of the Act No. 143/2001 Coll. of 4 April 2001 on the Protection of Competition (Act on the Protection of Competition), as amended by the Act No. 340/2004 Coll., the Act No. 484/2004 Coll., the Act No. 127/2005, the Act No. 361/2005 and the Act No. 71/2007

B. Notification forms or information requirements

Merger notifications must contain all the information required by the Decree of the Office for the Protection of Competition No. 368/2001 Coll. (as amended by Acts 407/2005 and 471/2006), stipulating details relating to the notification of a concentration of undertakings (see the Decree and notification form
http://www.compet.cz/fileadmin/user_upload/Legislativa/legislativa_EN/Decree_368.doc

C. Substantive merger review provisions

Article 17 of the Act on the Protection of Competition deals with the appraisal of concentrations. The test is whether the concentration would significantly impede competition in the relevant market.

Article 16: 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.

D. Implementing regulations

Decree of the Office for the Protection of Competition No. 368/2001 Coll. (as amended by Acts 407/2005 and 471/2006). Available at:
http://www.compet.cz/fileadmin/user_upload/Legislativa/legislativa_EN/Decree_368.doc

E. Interpretive guidelines and notices

All guidelines and notices are available at:
<http://www.compet.cz/en/competition/guidelines-and-documents/>

2. Authority or authorities responsible for merger enforcement.

A. Name of authority. If there is more than one authority, please describe allocation of responsibilities.	The Office for the Protection of Competition of the Czech Republic (Úřad pro ochranu hospodářské soutěže)
B. Address, telephone and fax (including country code), e-mail, website address and languages available.	třída Kpt. Jaroše 7, 604 55 Brno, the Czech Republic tel.: +420-5-42167915 fax: +420-5-42167117 e-mail for international matters: katerina.sevcikova@compet.cz www.compet.cz Languages: Czech and English
C. Is agency staff available for pre-notification consultation? If yes, please provide contact points for questions on merger filing requirements and/or consultations.	Pre-notification contacts are highly recommended. In more serious cases, parties to the concentrations can request a pre-notification consultation. In 2008 the Office issued the Notice on pre-notification consultations: http://www.compet.cz/fileadmin/user_upload/Sekce_HS/Pre-notification_cotacts_mergers.doc

3. Covered transactions

A. Definitions of potentially covered transactions (i.e., concentration or merger)

Article 12 of the Act on the Protection of Competition:

(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 enterprise 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.

(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.

<p>B. If change of control is a determining factor, how is control defined?</p>	<p>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</p> <ul style="list-style-type: none"> • 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.
<p>C. Are partial (less than 100%) stock acquisitions/minority shareholdings covered? At what levels?</p>	<p>Minority shareholding may be covered depending on whether it confers control as defined under (B) above. There is no set level.</p>
<p>D. Do the notification requirements cover joint ventures? If so, what types (e.g., production joint ventures)?</p>	<p>Yes, the creation or establishment of a joint venture ("JV") constitutes a concentration provided that the JV performs on a lasting basis every function of an autonomous activity.</p>

4. Thresholds for notification

B. To which entities do the

According to Article 13 of the Act on the Protection of Competition, concentrations are subject to the approval by the Office, if:

- the aggregate net turnover of all the undertakings concerned in the last accounting period in the Czech Republic exceeds CZK1.5 billion and each of at least two of the undertakings concerned achieved in the Czech Republic in the last accounting period a net turnover exceeding CZK250 million; or
- if the net turnover achieved in the last accounting period in the Czech Republic of: (i) by one of the parties to the transformation; (ii) by the acquired enterprise or its part being acquired (iii) by the undertaking, over whose enterprise the control is acquired; or (iv) by at least one of the undertakings creating a joint venture; exceeds CZK1.5 billion and, at the same time, the worldwide net turnover of the other undertaking concerned for the last accounting period exceeds CZK1.5 billion.

Only the acquired entity is of concern in the analysis, but the whole of the acquiring entity.

<p>merger notification thresholds apply, <i>i.e.</i>, which entities are included in determining relevant undertakings/firms for threshold purposes? If based on control, how is control determined?</p>	
<p>C. Are the thresholds subject to adjustment: (e.g. annually for inflation)? If adjusted, state on what basis and how frequently.</p>	<p>No.</p>
<p>D. To what period(s) of time do the thresholds relate (e.g., most recent calendar year, fiscal year; for assets-based tests, calendar year-end, fiscal year-end, other)?</p>	<p>The thresholds relate to the last fiscal year for which the accounts have been audited.</p>
<p>E. Describe the methodology for identifying and calculating any values necessary to determine if notification is required, including the value of the transaction, the relevant sales or turnover, and/or the relevant assets?</p>	<p>(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.</p> <p>(2) Aggregate net turnover shall include net turnovers achieved by:</p> <ul style="list-style-type: none"> • a) all the undertakings concerned, • 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.
<p>F. Describe methodology for calculating exchange rates.</p>	<p>The amount of the turnover of an undertaking must be stated in CZK (Czech crowns), according to the Czech National Bank's foreign currency average exchange rate for the fiscal year.</p>
<p>G. Do thresholds apply to worldwide sales/assets, to sales/assets within the jurisdiction, or both?</p>	<p>Thresholds apply to sales worldwide and in the Czech Republic.</p>

<p>H. Can a single party trigger the notification threshold (e.g., one party's sales, assets, or market share)?</p>	<p>No.</p>
<p>I. How is the nexus to the jurisdiction determined (e.g., sales or assets in the jurisdiction)? If based on an "effects doctrine," please describe how this is applied. Is there a requirement of local presence (local assets/affiliates/subsidiaries) or are import sales into the jurisdiction sufficient to meet an "effects" test?</p>	<p>The concentration must have domestic effects, which are assessed by the notification thresholds containing local nexus. No requirement of local presence.</p>
<p>J. If national sales are relevant, how are they allocated geographically (e.g., location of customer, location of seller)?</p>	<p>The relevant criterion is primarily the location of the customers.</p>
<p>K. If market share tests are used, are there guidelines for calculating market shares?</p>	<p>Non applicable.</p>
<p>L. Are there special threshold calculations for particular sectors (e.g., banking, airlines, media) or particular types of transactions (e.g. joint ventures, partnerships, financial investments)?</p>	<p>Special rules apply to banks and insurance companies (Article 14 (6) of the Act on the Protection of Competition). As regards banks, 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, net turnover shall be deemed to mean the sum of insurance premiums prescribed pursuant to all the insurance contracts concluded.</p>
<p>M. Are any sectors excluded from notification requirements? If so, which sectors?</p>	<p>No.</p>
<p>N. Are there special rules regarding jurisdictional thresholds for transactions in which both the acquiring and acquired parties are foreign?</p>	<p>No. A concentration involving foreign companies is subject to notification, as long as it has domestic effects and reaches the turnover thresholds.</p>

O. Does the agency have the authority to review transactions that fall below the thresholds?

No.

5. Notification requirements and timing of notification

	Yes.
	All concentrations subject to notification have to be notified before they are completed and may not be completed until they have been cleared.
	Yes, but the Office would issue the decision that such merger is not subject to assessment.
	The notification may be filed prior to conclusion of the agreement establishing the concentration or prior to acquisition of control over another undertaking in any other way. The parties to the concentration may notify the Office of their intent to implement a concentration and at any time. The notification must, nevertheless, fulfill the criteria defined in the Act on the Protection of Competition, which amongst others requires submission of documents establishing the concentration or certifying its origination together with the notification. This means that, at least, draft documents (contracts etc.) establishing the concentration are required together with certification of a good faith intention to proceed with the concentration as described in the draft documents.
E. Must notification be made within a specified period following a triggering event? If so, describe the triggering event (e.g., definitive agreement) and the deadline following the event. Do the deadline and triggering event depend on the structure of the transaction? Are there special rules for public takeover bids?	No. Nevertheless, the concentration may not be implemented before the decision of the Office is issued. No specific provision on public takeover bids.

F. Can parties request an extension for the notification deadline? If yes, please describe the procedure and whether there is a maximum length of time for the extension.

Non applicable. See, response under 5(E) above.

6. Simplified procedures

Describe any special procedures for notifying transactions that do not raise competition concerns (e.g., short form, simplified procedures, advanced ruling certificates, discretion to waive certain responses, etc.).

The „Decree stipulating details relating to the notification of a concentration of undertakings“ provides that in case - it is possible to exclude that the undertakings concerned will reach combined market share of 15% or more following the concentration, if it is a case of horizontal concentration, or that the undertakings concerned will reach combined or individual market share of 25% or more, if it is a case of vertical concentration – merging parties can submit shorter notification form,

7. Documents to be submitted

A. Describe the types of documents that parties must submit with the notification (e.g., agreement, annual reports, market studies, transaction documents).

Merger notifications must contain all the information required by the Decree of the Office for the Protection of Competition No. 368/2001 Coll., (as amended by Acts 407/2005 and 471/2006), stipulating details relating to the notification of a concentration of undertakings:
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B. Are there any document legalization requirements (e.g., notarization or apostille)?

The documents may be original or copies. In case of copies, it is necessary to accompany the documents with a declaration of a party to the concentration declaring that it is submitted truthful and complete copies of the originals.

C. Are there special rules for exemptions from information requirements (e.g. information submitted or document legalization) for transactions in which the

No.

acquiring and acquired
parties are foreign?

8. Translation

A. In what language(s) can the notification forms be submitted?

The notification, including all its parts and annexes, shall be submitted in the Czech language.

B. Describe any requirements to submit translations of documents with the initial notification, or later in response to requests for information, including the categories or types of documents for which translation is required, requirements for certification of the translation, language(s) accepted, and whether summaries or excerpts are allowed in lieu of complete translations.

Translation into Czech language shall be submitted in case of documents in foreign languages, unless a special legal regulation or international agreement, by which the Czech Republic is bound, stipulates otherwise. The translation shall be accompanied by a declaration of a party to the proceeding, declaring that truthful and complete translations of the original documents are submitted.

However, the Office considers generally sufficient to be provided with the translation of the relevant parts of documents establishing the concentration and with copies of the annual reports.

In specific cases – if needed – the Office can request translation of full documents.

9. REVIEW PERIODS

Proceedings before the Office starts with the formal notification of the concentration. As a rule, the Office renders its decision within 30 days. Within this time limit, the Office either decides that the concentration is not subject to its consent or clears the concentration, provided that the concentration does not substantially reduce competition.

If the Office finds that there are serious risks that competition may be substantially reduced, the Office may continue the proceedings even after the expiration of the said time limit, but in this event, the Office is obligated to notify the parties. In any case, a decision must be rendered no later than five months from the date of opening of the proceedings, except when the concentration occurs on the basis of a tender offer, in which case the time limit for rendering a decision is only two months. If the Office fails to decide within the above time limits, the concentration is deemed to be approved. Before the effective date of the Office's decision, the undertaking concerned may not determine or influence the conduct of the

	<p>acquired undertaking, in particular by exercising the voting rights attached to the shares (interests) held by them or on the basis of control acquired otherwise. This means that until the Office renders its decision, the undertakings concerned may not take any steps implementing the concentration. However, the Office may grant, on the basis of a request by the parties, an exemption to this rule if the parties or any third parties run the risk of suffering substantial damage or other serious detriment. The Office must decide on such request without delay, but no later than within 30 days from the day of receipt. Undertakings may apply for such an exemption in the notification or at any time in the course of the proceedings.</p>
<p>B. Are there different rules for public tenders (e.g. open market stock purchases or hostile bids)?</p>	
<p>C. What are the procedures for an extension of the review periods, if any (e.g., suspended by requests for additional information, suspended at the authority's discretion or with the parties' consent)? Is there a statutory maximum for extensions?</p>	<p>The Office may clear the concentration upon the fulfillment of remedies proposed by the undertakings concerned. Remedies can be offered at any time, but not later than 15 days of the day when the parties to the proceedings are informed that the Office continues the proceedings. Proposals of commitments made at a later date, or changes to their content, shall be taken into consideration by the Office only in cases deserving special attention. If the parties to the proceedings propose commitments within the first 30 days of the proceedings, the first-phase deadline shall be extended by 15 days. In case the parties to the proceedings propose these commitments after the Office has informed them that it will continue the proceedings, the second-phase deadline for issuing a decision shall be extended by 15 days. There are no other specific provisions. However, in practice, the review periods can be extended by requests for additional information. There is no statutory limit for extensions.</p>
<p>D. What are the procedures for accelerated review of non-problematic transactions, if any?</p>	<p>None.</p>

Waiting periods / suspension obligations

10A. Describe any waiting periods/suspension obligations following notification, including whether closing is suspended or whether the implementation of the transaction is suspended or whether the parties are prevented from adopting specific measures (e.g., measures that make the transaction irreversible, or measures that change the market structure), during any initial review period and/or further review period.

All concentrations subject to notification have to be notified before they are completed and may not be completed until they have been cleared.

B. Can parties request derogation from waiting periods/suspension obligations? If so, under what circumstances?

Yes. According to Article 18 of the Act on the Protection of Competition, the Office may, upon request of the undertakings, decide on an exemption from the prohibition of implementation of the concentration before the decision of the Office enters into force, 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 notification or anytime during the proceedings. The application shall be substantiated and made in writing. The Office shall decide on the application for approval of an exemption without delay, not later than 30 days of its receipt. In deciding on the request, 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.

C. Are the applicable waiting periods/suspension obligations limited to aspects of the transaction that occur within the jurisdiction (e.g., acquisition or merger of local undertakings/business units)? If not, to what extent do they apply to the parties' ability to proceed with the transaction outside the jurisdiction? Describe any procedures available to permit consummation

The waiting period is applicable to the merger as a whole.

<p>outside the jurisdiction prior to the expiration of the local waiting period and/or clearance (e.g. request for a derogation from the suspension obligations, commitment to hold separate the local business operations, escrow agents.)</p>	
<p>D. Are parties allowed to close the transaction if no decision is issued within the statutory period?</p>	<p>Yes.</p>
<p>E. Describe any provisions or procedures available to the enforcement authority, the parties and/or third parties to extend the waiting period/suspension obligation.</p>	<p>Not applicable.</p>
<p>F. Describe any procedures for obtaining early termination of the applicable waiting period/suspension obligation, and the criteria and timetable for deciding whether to grant early termination.</p>	<p>Not applicable.</p>
<p>G. Describe any provisions or procedures allowing the parties to close at their own risk before waiting periods expire or clearance is granted (e.g., allowing the transaction to close if no "irreversible measures" are taken).</p>	<p>Not applicable.</p>

11. Responsibility for notification / representation

<p>A. Who is responsible for notifying – the acquiring person(s), acquired person(s), or both? Does each party have to make its own filing?</p>	<p>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.</p> <p>When control is acquired by acquisition of equity shares, business or membership interests, or by a contract or by any other means, allowing to control other undertaking, the undertaking which is to acquire the possibility to control directly or indirectly another undertaking shall be obliged to file a concentration notification.</p>
<p>B. Do different rules apply to public tenders (e.g. open market stock purchases or hostile bids)?</p>	<p>No.</p>
<p>C. Are there any rules as to who can represent the notifying parties (e.g., must a lawyer representing the parties be a member of a local bar)?</p>	<p>No.</p>
<p>D. How does the validity of the representation need to be attested (e.g., power of attorney)? Are there special rules for foreign representatives or firms? Must a power of attorney be notarized, legalized or apostilled?</p>	<p>External counsels are requested to provide a power of attorney (that does not need to be notarized, legalized or apostilled). There are no special rules for foreign representatives.</p>

12. Filing fees

- A. Are any filing fees assessed for notification? If so, in what amount and how is the amount determined (e.g., flat fee, fees for services, tiered fees based on complexity, tiered fees based on size of transaction)?**
- B. Who is responsible for payment?**

Yes. The filing fees are a fixed fee: 100,000 CZK

The parties to the proceeding.

	At the time of the filing.
for making payments (e.g., accepted forms of payment, proof of payment required, wire transfer instructions)?	The payment shall be carried out on the account of the Office either by check or by means of bank transfer. The parties to the concentration are required to submit a proof of payment. The bank account number of the Office: 3711-24825621/0710. - 1148 (for payment by bank transfer); or - 1149 (for payment by check). Please mention the tax identification number.

13. Confidentiality

A. To what extent, if any, does your agency make public the fact that a pre-merger notification filing was made or the contents of the notification?	The Office announces, without delay, the launch of a merger control review in the Commercial Bulletin and will indicate a deadline for submission of objections/comments by third parties. The Office makes public the names of the parties, the nature of the concentration and the affected sector.
B. Do notifying parties have access to the authority's file? If so, under what circumstances can the right of access be exercised?	Yes, provided that the parties request it to the Office.
C. Can third parties or other government agencies obtain access to notification materials? If so, under what circumstances?	Yes, the Office may grant access to the notification material to third parties (naturally except for business secret), provided they demonstrate a legitimate interest.
D. Are procedures available to request confidential treatment of the fact of notification and/or notification materials? If so, please describe.	Yes, the Office has a power to request any information, but if the submitted documents contain business secrets, they shall be annexed to the notification as special appendices. Any document of such nature must be marked "Business Secret".
E. Is the agency or government a party to any agreements that	The Office is part of the European Competition Authorities Association (ECA), which organizes exchanges of non-confidential information relevant to multi-filing cases

permit the exchange of information with foreign competition authorities? If so, with which foreign authorities? Are the agreements publicly available?

- F. Can the agency exchange documents or information with other reviewing agencies? If so, does it need the consent from the parties who have submitted confidential information to exchange such information?

Agencies can exchange information, provided that the parties have given a waiver.

14.

Transparency

- A. Does the agency publish an annual report? Please provide the web address if available.
- B. Does the agency publish press releases related to merger policy or investigations?
- C. Does the agency publish decisions on why it cleared / blocked a transaction?

The Office publishes its annual reports on its webpage. See: <http://www.compet.cz/en/information-centre/annual-reports/>

Yes.

Press releases are available on its website: <http://www.compet.cz/en/information-centre/press-releases/competition/>

Yes.

Decisions are available only in Czech on its website: <http://www.compet.cz/en/competition/decisions/>

15.

Sanctions/penalties

- A. What are the sanctions/penalties for failure to file a notification and/or failure to observe any mandatory waiting periods/suspension

The Office may by its decision impose fines of: a) 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 , or otherwise refuses to submit to

<p>obligations?</p>	<p>investigations pursuant to the Act, b) up to 100,000 CZK 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. The Office may impose on undertakings fines of up to 10 mil. CZK or up to 10% of the net turnover achieved in the preceding calendar year where, either intentionally or negligently, they infringed the prohibition to implement the concentration before the decision of the Office enters into force. 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 Competition Act. The Office may impose a fine of up to 1 mil. CZK on undertakings that fail to comply with an enforceable decision. This fine may be imposed by the Office repeatedly.</p>
<p>B. Which party/ies are potentially liable?</p>	<p>The merging entities and third parties requested for information.</p>
<p>C. Can the agency impose/order these sanctions/penalties directly, or is it required to bring judicial action against the infringing party? If the latter, please describe the procedure and indicate how long this procedure can take.</p>	<p>No judicial action is required.</p>

16. Judicial review

Describe the provisions and timetable for judicial review or other rights of appeal/review of agency decisions on merger notification and review.

The merging entities may appeal to the Chairman of the Office against the decision of the Office within 15 days after receiving the decision of the Office.

Following this procedure, the merging entities may lodge an appeal before the court against the decision of the Chairman of the Office within 2 months after receiving the decision.

17. Additional filings

Are any additional

Yes. Competent authorities must grant an approval to the concentration in bank sector and in media sector.

filings/clearances required for some types of transactions, e.g., sectoral regulators, securities regulator?

18. Closing deadlines

When a transaction is cleared or approved, is there a time period within which the parties must close for it to remain authorized?

No.

19. Post merger review of transactions

Can the agency reopen an investigation of a transaction that it previously cleared or allowed to proceed with conditions? If so, are there any limitations, including a time limit on this authority?

Yes. 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.

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.