

ICN MERGER NOTIFICATION AND PROCEDURES TEMPLATE

Merger Working Group

Office for the Protection of Competition of the Czech Republic

March 2021

IMPORTANT NOTE: This template is intended to provide background on ICN jurisdiction’s merger notification and review procedures.

Reading the template is not a substitute for consulting the referenced statutes and regulations.

[Please include, where applicable, any references to relevant statutory provisions, regulations, or policies as well as references to publicly accessible sources, if any.]¹

1. Merger notification and review materials [references to publicly accessible sources (homepage address) and indication of the languages in which these materials are available]

Statutory Laws

A. Notification provisions

Articles 12 and 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 Coll., the Act No. 361/2005 Coll., the Act No. 71/2007 Coll., the Act No. 296/2007 Coll., the Act No. 155/2009 Coll., the Act No. 188/2011 Coll., the Act No. 360/2012 Coll., the Act No. 135/2016 Coll. and 293/2016 Coll., the Act No. 183/2017 Coll. and the Act No. 262/2017 Coll. (hereinafter referred to as “the Competition Act”)
The Competition Act is available in English as well in the Czech language at the web site of the Office for the Protection of Competition of the Czech Republic (hereinafter referred to as “the Czech NCA”): <https://www.uohs.cz/en/legislation.html> (in English) or <https://www.uohs.cz/cs/legislativa/hospodarska-soutez.html> (in the Czech language)

¹ Editor’s note: all the comments in [square brackets] are intended to assist the agency when answering this template but will be removed once the completed template is made public.

B. Substantive merger review Provisions	<p>Article 17 of the Competition Act deals with the appraisal of concentrations. The test is whether the concentration would significantly impede effective competition in the relevant market.</p> <p>Article 16 of the Competition Act stipulates that in the event that the Czech NCA finds that the concentration raises serious concerns as to a significant impediment to effective competition, in particular because it would create or strengthen a dominant position of the undertakings concerned or any of them, the Czech NCA shall inform the parties to the proceeding of this fact within the stipulated deadline and inform them that it is continuing the proceeding.</p>
C. Implementing regulations	<p>Decree of the Office for the Protection of Competition No. 252/2009 Coll., Stipulating details relating to the notification of a concentration of undertakings (hereinafter referred to as “the Decree”). It is available at the Czech NCA’s website: https://www.uohs.cz/en/legislation.html (in English) or https://www.uohs.cz/cs/legislativa/hospodarska-soutez.html (in Czech)</p>
D. Notification forms or information requirements	<p>Regulation of concentration notifications is stipulated in Article 15 of the Competition Act. Furthermore, the concentration notifications have to contain all information required by the Decree. The Competition Act and the Decree are available at the links mentioned in the previous answers.</p>
Interpretative Guidelines and Notices	
E. Guidance on Merger Notification Process [e.g., information on calculation of thresholds, etc.]	<p>All guidelines and notices are available at the Czech NCA’s website: https://www.uohs.cz/en/legislation.html (in English) or https://www.uohs.cz/cs/legislativa/hospodarska-soutez.html (in Czech). It includes</p> <ul style="list-style-type: none"> - Notice on the Requirements for Concentration Notifications (in Czech as well as in English) - Notice of the Office for the Protection of Competition on the Pre-notification Contacts with Merging Parties (in Czech as well as in English) - Notice of the Office for the Protection of Competition on Calculation of

	<p>Turnover for the Purpose of the Control of Concentrations between Undertakings (in Czech as well as in English)</p> <ul style="list-style-type: none"> - Notice on the Application of the Failing Firm Defense Concept in the Assessment of Concentrations of Undertakings (in Czech as well as in English) - Notice on the Notion of “Undertakings Concerned” under the Act on Protection of Competition (in Czech as well as in English) - Notice on the Prohibition of Implementation of Concentrations prior to the Approval and Exemptions thereof (in Czech as well as in English) - Notice on the Simplified Procedure regarding the Assessment of Certain Cases of Concentration of Undertakings (in Czech) - Notice on a Concept of the Term “Concentration of Undertakings” (in Czech)
F. Guidance on Substantive Assessment in Merger Review [Please include reference separately, if applicable]	No such guidance has been developed.
G. Has your agency published guidelines or directives on notification of mergers involving specific sectors (e.g., digital economy)? [If affirmative, please provide references and languages available]	No.
H. Other relevant notices, policy statements, interpretations, rules, or guidance on aspects of merger review or the agency’s decision-making process	Declaration of the Office for the Protection of Competition regarding Requirement of Certified Translations of Certain Documents that are part of Concentration Notification. It is available at the Czech NCA’s website https://www.uohs.cz/cs/legislativa/hospodarska-soutez.html (In Czech)

2. Agency (or Agencies) responsible for merger enforcement.	
A. Name of the Agency which reviews mergers. If there is more than one agency, please describe the allocation of responsibilities.	Office for the Protection of the Competition of the Czech Republic (or in Czech: Úřad pro ochranu hospodářské soutěže)
B. Contact details of the agency [address and telephone]	třída Kpt. Jaroše 7

<p>including the country code, email, website address and languages available on the website]</p>	<p>604 55 Brno the Czech Republic telephone contact at the International Department.: +420 542 167 795; official email address: posta@uohs.cz; NCA's website address: https://www.uohs.cz/en/homepage.html (in English) or https://www.uohs.cz/cs/uvodni-stranka.html (in Czech); The Czech NCA's website is available in Czech as well as in English.</p>
<p>C. Is agency staff available for jurisdiction/filing guidance? [If yes, please provide contact points for questions on merger filing requirements and/or consultations]</p>	<p>Yes. Issues regarding jurisdiction/filing guidance are highly recommended for a consultation within pre-notification contacts. Primarily, the Czech NCA recommends submitting a request for the pre-notification consultation in the written form. There is the following email address for such purposes: posta@uohs.cz. In case of any questions, it is possible to contact Mr. Martin Vitula, Head of Mergers Unit via the telephone number +420 542 167 309.</p>

<p>3. Covered transactions</p>	
<p>A. Thorough definition of potentially covered transactions [i.e., share acquisitions, asset acquisitions, mergers, de-mergers, consolidations, consortia, amalgamations, joint ventures or other forms of contractual relationships, such as partnerships and alliance agreements]</p>	<p>Article 12 of the Competition Act defines the term “concentration of undertakings” and stipulates as follows:</p> <ul style="list-style-type: none"> • A concentration of undertakings shall originate from the merger of one or more undertakings previously independently operating in the market. • A concentration of undertakings shall include the situation when one or more entrepreneurs 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 by a contract or by other means allowing them to control such undertaking or part thereof. <p>A part of an undertaking shall be deemed to mean also the assets of the undertaking, which are used for its activities and to which the turnover achieved by the sale of goods in the relevant market may be unequivocally assigned, even if it</p>

	<p>shall not form an independent organizational unit of the enterprise.</p> <ul style="list-style-type: none"> • Establishment of an undertaking jointly controlled by more undertakings that perform all functions of an autonomous economic entity on a lasting basis shall be deemed to constitute a concentration.
<p>B. What is the geographic scope of transactions covered?</p>	<p>According to the Competition Act, it is necessary to notify the Czech NCA such transaction which fulfils two basic criteria. Firstly, the transaction concluded among undertakings shall constitute a concentration of undertakings within the meaning of Article 12 of the Competition Act (please see the answer to the question 3.A above for more details); secondly, the turnover notification criteria specified by Article 13 of the Competition Act shall be met (please see the answer to the question 4.A for more information). If such transaction is also subject to notification to the European Commission (hereinafter referred to as “EC”), it shall be notified to the EC, as the Czech NCA does not have the competence to review such transaction.</p> <p>During the concentration approval proceeding, the Czech NCA assesses the impact of the concentration in relation to the territory of the Czech Republic. However, if the relevant markets are defined to be wider than the national (e.g. EEA-wide) markets, the impact of the transaction is assessed in relation to such wider geographical markets which include the territory of the Czech Republic as well.</p>
<p>C. If change of control is a determining factor, how is control defined and interpreted in practice?</p>	<p>The definition of the term “control” is provided by Article 12 of the Competition Act in the following way:</p> <p>Control shall be deemed to mean a possibility to perform a decisive influence on the activity of another undertaking or part thereof on the basis of a matter of law or fact, particularly on the basis of</p> <ol style="list-style-type: none"> a) property right or a right to use towards an enterprise of the controlled undertaking, or a part thereof; or b) right or other matters of law that provide a decisive influence on the composition,

	voting and decision-making of the controlled undertaking's bodies.
D. Are partial (less than 100%) stock acquisitions/minority shareholdings covered? At what levels? Are acquisitions of assets ever covered? If so, do the assets have to form a free-standing business or can the combination of the assets with the business of the acquirer be considered in order to have jurisdiction? Does the authority have jurisdiction over "bare" asset purchases, e.g. where the assets purchased do not relate to the acquirer's existing business?	<p>Minority shareholding/partial stock acquisitions may be covered depending on whether it confers control. Please see the answer to question C above for the definition of the term "control". There is no set level.</p> <p>Regarding acquisitions of assets, they are covered as well under the condition that they fall under the definition of a part of an undertaking.</p> <p>A part of an undertaking shall be deemed to mean also the assets of the undertaking, which are used for its activities and to which the turnover achieved by the sale of goods in the relevant market may be unequivocally assigned, even if it shall not form an independent organizational unit of the enterprise.</p>

4. Thresholds for notification	
A. What are the general thresholds for notification? [If the thresholds are subject to adjustment, state on what basis and how frequently (e.g., for inflation, annually)]	<p>According to Article 13 of the Competition Act, a concentration shall be subject to the approval by the Czech NCA, if:</p> <ul style="list-style-type: none"> 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 <ul style="list-style-type: none"> 1. in the case of a concentration in the form of a merger at least by one of the parties to the merger; 2. in the case of a concentration in the form of an acquisition of a control by the undertaking or a part thereof over whom the control is acquired; or 3. in the case of a concentration in the form of establishing a jointly controlled

	<p>undertaking at least by one of the undertakings establishing the jointly controlled undertaking 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.</p>
<p>B. To which entities do the merger notification thresholds apply, i.e., which entities are included in determining relevant undertakings/firms for threshold purposes? If based on control, how is control determined?</p>	<p>According to Article 14 of the Competition Act an aggregate net turnover of parties to the concentration shall include net turnovers achieved by</p> <ul style="list-style-type: none"> a) all the undertakings concerned; b) persons, who will control the undertakings concerned after the implementation of the given concentration, and persons, who are controlled by the undertakings concerned; c) persons controlled by the person, who 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>“Undertakings concerned” are direct parties to the concentration.</p> <p>The joint net turnover of the undertakings concerned shall not include the part of the turnover, which was achieved by the sale of goods between the undertakings concerned and the persons referred to in paragraph 2 item b), c) and d).</p> <p>The term “control” is determined as follows:</p> <p>Control shall be deemed to mean a possibility to perform a decisive influence on the activity of another undertaking or part thereof on the basis of a matter of law or fact, particularly on the basis of a) property right or a right to use towards an enterprise of the controlled undertaking, or a part thereof; or b) right or other matters of law that provide a decisive influence on the composition, voting and decision-making of the controlled undertaking’s bodies.</p>

<p>C. 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 in practice. If national sales are relevant, how are they allocated geographically (e.g., location of customer, location of seller)?”</p>	<p>The concentration has to have domestic effects, which are assessed by the notification turnover thresholds containing local nexus.</p> <p>Regarding the geographical allocation of the net turnover, the Czech NCA applies following rules for the calculation of the net turnover achieved by the undertakings concerned within the area of the Czech Republic:</p> <p>Generally, when determining the geographical location where the turnover was achieved, the Czech NCA does not discriminate between the sale of products, goods, or services. The turnover is generally geographically allocated to the place where the customer was located at the time of the transaction, or where the goods or products were delivered to the customer. If these two places differ, then place where goods or products were delivered to the customer is considered the place of the transaction. Therefore, the turnover would generally be allocated to such a geographical location and not to the place where the deal was made.</p> <p>The turnover achieved through provision of services is generally geographically allocated to the place where the service is provided to the customer.</p>
<p>D. Can a single party trigger the notification threshold (e.g., one party’s sales, assets, or market share)?</p>	<p>No.</p>
<p>E. Are any sectors excluded from notification requirements? If so, which sectors? 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>There is no sector excluded from notification requirements in the Czech republic.</p> <p>The thresholds relate to the last accounting period of undertakings concerned. It may be both the most recent calendar year as well as the most recent fiscal year. When determining the turnovers of the undertakings concerned, they shall base their calculation on their audited final accounts.</p>

<p>F. Are there special threshold calculations for specific sectors (e.g., banking, airlines, media, digital markets) or specific types of transactions (e.g., joint ventures, partnerships, financial investments)? If yes, for which sectors and types of transactions?</p>	<p>According to Article 14 of the Competition Act, special rules apply to banks, credit and other financial institutions and insurance companies.</p> <p>As regards banks, credit and other financial institutions, with the exception of insurance companies, the net turnover shall be deemed to mean the sum of income items, in particular income from interest securities and asset shares, fees and commissions and profits from financial operations.</p> <p>As regards insurance companies, the net turnover shall be deemed to mean the sum of insurance premiums prescribed pursuant to all the insurance contracts concluded.</p>
<p>G. Are there special rules or exceptions/exemptions regarding jurisdictional thresholds for transactions in which both the acquiring and acquired parties are foreign (foreign-to-foreign transactions)? [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>No. A concentration involving foreign companies is subject to the notification, as long as it reaches the turnover thresholds.</p>
<p>H. Does the agency have the authority to review transactions that fall below the thresholds or otherwise do not meet notification requirements? If so, what is the procedure to initiate a review? [Describe methodology for calculating exchange rates]</p>	<p>No.</p>
<p>I. Are current notification criteria catching relevant transactions related to digital markets?</p>	<p>The Czech NCA is not aware of any merger related to digital markets which had a negative effect on competition in the Czech Republic and which did not fall within the scope of merger control regime in the Czech Republic.</p>
<p>Calculation Guidance and related issues</p>	
<p>J. If thresholds are based on any of the following values, please describe how they are identified and calculated to</p>	<p>According to the Competition Act, thresholds are based on the relevant sales or turnover.</p>

determine if notification is required:

- i) the value of the transaction;**
- ii) the relevant sales or turnover;**
- iii) the relevant assets;**
- iv) market shares;**
- v) other (please describe).**

In its Article 14, the Competition Act provides that the net turnover of the undertakings concerned shall be deemed to mean the net turnover achieved by the individual undertakings solely by means of the activity, which constitutes their business objective (meaning this it is the turnover achieved through the sale of goods, products and services). 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 commonly practice.

The aggregate net turnover shall include net turnovers achieved by

- a) all the undertakings concerned;
- b) persons, who will control the undertakings concerned after the implementation of the given concentration, and persons, who are controlled by the undertakings concerned;
- c) persons controlled by the person, who 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.

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

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 the net turnover.

If two or more concentrations take place between the same undertakings within a two-year period, such concentrations shall be assessed as one concentration.

Special rules apply as regards banks, credit and other financial institutions, with the exception of insurance companies. In such cases, the net turnover shall be deemed to mean the sum of income items, in particular income from interest securities and asset shares, fees and commissions and profits from financial operations. As regards insurance companies, the net turnover shall be deemed to mean the sum of insurance

	<p>premiums prescribed pursuant to all the insurance contracts concluded.</p> <p>For more details, please see the guidelines of the Czech NCA called <i>Notice of the Office for the Protection of Competition on Calculation of Turnover for the Purpose of the Control of Concentrations between Undertakings</i> available at the Czech NCA's website (in English):</p> <p>https://www.uohs.cz/en/legislation.html</p>
<p>K. Which entities are included in determining relevant investment funds for threshold purposes? If based on control, is the definition of control in these cases any different from the definition of control in general (question 3C)? If yes, how?</p>	<p>In this case, the applied legal framework is the same and the definition of the term control as well.</p>
<p>L. In case an investment fund is part of a transaction, are its controllers required to present turnover information related to other funds under same manager (general partner) control? Are those other funds considered as part of the transaction for turnover purposes?</p>	<p>Yes, investment fund controllers are required to present turnover information related to other funds under the same manager control and those funds are considered as part of the transaction for the assessment whether turnover notification criteria are met.</p> <p>As those other funds belong to the business group of the notifying party; then they are considered as part of the transaction for turnover purposes.</p> <p>The following general rule apply:</p> <p>The aggregate net turnover shall include net turnovers achieved by</p> <ul style="list-style-type: none"> a) all the undertakings concerned; b) persons, who will control the undertakings concerned after the implementation of the given concentration, and persons, who are controlled by the undertakings concerned; c) persons controlled by the person, who will control the undertakings concerned after implementation of the given concentration; and

	<p>d) persons controlled jointly by two or more persons referred to in (a) to (c) above.</p> <p>However, as mentioned above, firstly, it is necessary to identify the person(s) who is/are exercising the control in the investment fund in reality.</p>
<p>M. Describe the methodology applied for currency conversion [e.g. which exchange rates are used].</p>	<p>The amount of the turnover of an undertaking has to be stated in CZK (Czech crowns). For this reason, financial data in foreign currency has to be converted into Czech crowns, thus using average exchange rate of exchange market quoted by the Czech National Bank for the period such financial data relates to. Exchange rates necessary for conversion of foreign currency into Czech crown can be found on the website of the Czech National Bank.</p>
<p>5. Pre-notification</p>	
<p>A. If applicable, please describe the pre-notification procedure and whether it can be mandatory or not [e.g., time limits, type of guidance given, etc.].</p>	<p>The pre-notification procedure may be characterized in the following way:</p> <ul style="list-style-type: none"> • The aim of the pre-notification contacts is to help a fluent process of the subsequent proceeding on the merger approval. • The pre-notification dealings are initiated and conducted on the basis of a voluntary request by the merging parties. • The pre-notification contacts may be initiated upon the proposal of the merging undertakings as soon as they are ready to provide the Czech NCA with relevant information about the nature of the transaction and information relating to the markets which may be affected by the intended transaction. The Czech NCA recommends initiating the pre-notification consultation at least two weeks before the scheduled day of the submission of the merger notification. The duration and scope of the pre-notification consultation depend on the complexity of the case. • The request for the pre-notification consultation must contain (i) a short description of the transaction, (ii) a short description of the areas and markets where the impacts of the transaction will appear, and (iii) a short description of the possible impacts of the transaction on competition in the relevant markets. In addition the request for the pre-notification consultation may contain a filled

in draft of the notification questionnaire.

- During the pre-notification phase, the Czech NCA and the merging parties discuss procedural issues, particularly those relating to the establishment of the Czech NCA's scope of powers to the review of the given transaction (thus the fulfillment of the notification criteria pursuant to Article 12 and Article 13 of the Competition Act), and issues connected with the planned transaction and the definition of relevant markets. The issue whether the given transaction should be assessed within the standard or the simplified procedure may be covered in the context of pre-notification consultation as well. In exceptional cases, preliminary concerns about the distortion of the competition in the market may be also dealt with during the pre-notification consultation. Moreover, the pre-notification consultation may cover the completeness of the merger notification and the individual details it should contain, particularly the questionnaire for the merger review.
- The pre-notification contacts does not (and cannot) lead to a final or binding opinion of the Czech NCA to the question, whether the given transaction may have an impact and of what kind on the competition in the market.
- The dealings in the pre-notification phase are of a strictly confidential nature.
- Information and documents which are submitted by the merging undertakings in the course of the pre-notification dealings are available only to the Czech NCA and the merging undertakings and do not form a part of the file for the subsequent administrative proceeding. Such information and documents may be made available to third parties only upon a written approval by the merging undertakings.

For more information, please see the guidelines of the Czech NCA called *Notice of the Office for the Protection of Competition on the pre-notification contacts with merging parties* available at the Czech NCA's website (in English):

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

<p>B. If applicable, what information or documents are the parties required to submit to the agency during pre-notification?</p>	<p>As mentioned above, the request for the pre-notification consultation has to contain</p> <ol style="list-style-type: none"> i. a short description of the transaction, ii. a short description of the areas and markets where the impacts of the transaction will appear, and iii. a short description of the possible impacts of the transaction on competition in the above mentioned markets. In addition the request for the pre-notification consultation may contain, and it is recommended, a filled in draft of the notification questionnaire. <p>Also, depending on issues that are required by the parties to be discussed during the pre-notification contacts, the applicant provides the Czech NCA with other documents such as transaction documents, a shareholders' agreement, annual reports or consolidated financial statements.</p>
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<p>6. Notification requirements and timing of notification</p>	
<p>A. Is notification mandatory? [Please describe if notification is mandatory in pre-notification phase, post-merger or voluntary]</p>	<p>Yes.</p> <p>All concentrations subject to notification have to be notified before they are completed and may not be completed until they have been cleared.</p>
<p>B. If parties can make a voluntary merger filing when may they do so?</p>	<p>Not applicable.</p>
<p>C. What is the earliest that a transaction can be notified (e.g., is a definitive agreement required; if so, when is an agreement considered definitive?)</p>	<p>The Competition Act does not stipulate an exact moment of notifying the transaction to the Czech NCA. It only provides that the concentration notification 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.</p> <p>The notification has to, nevertheless, fulfil the requirements defined in the Competition</p>

	Act, 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.
D. When must notification be made? If there is a triggering event, 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?	The Competition Act does not state an exact moment for filing the concentration notification. Nevertheless, the concentration may not be implemented before the decision of the Czech NCA enters into force. Such rule does not apply to the implementation of the concentration that should occur on the basis of a public bid to assume equity shares or on the basis of a sequence of operations with shares and securities accepted for trading in the European regulated market, due to which control shall be acquired by various entities, provided the application for the initiation of the proceeding was filed immediately and provided the voting rights attached to such shares and securities are not exercised.
E. If there is a notification deadline, 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.	No. there is not such deadline for filing the concentration notification to the Czech NCA.

7. Simplified Procedures	
A. 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 information requirements, etc.).	<p>There is a possibility to launch a simplified administrative proceeding.</p> <p>The simplified procedure is characterized by following features:</p> <ul style="list-style-type: none"> • It is initiated on the basis of a simplified notification of a concentration

	<p>containing among others a simplified questionnaire requiring less information about affected markets than the standard one,</p> <ul style="list-style-type: none"> • the period for issuing a simplified decision allowing the concentration is shorter and lasts for 20 days from the day the Czech NCA obtained the notification, • the content of the simplified approval decision is shorter as the grounds of the decision shall contain the identification of the undertakings concerned, the relevant market or sector, in which the undertakings concerned operate, and the reasons, due to which the decision was issued in the simplified proceeding. <p>In case the criteria for filing the simplified notification are fulfilled, it is a notifying party decision whether the party submits the simplified or standard concentration notification. The Czech NCA recommends the parties to the proceeding launching the pre-notification consultation for the purposes of discussing whether the concentration should be assessed within the simplified procedure or not.</p>
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<p>B. Describe the criteria adopted to consider a transaction under the simplified procedure.</p>	<p>In addition to the standard criteria relating to the concentration notification, Article 16a of the Competition Act stipulates that the simplified notification of a concentration containing all requisites pursuant to the Decree may be filed in the case of a concentration when:</p> <ul style="list-style-type: none"> a) none of the undertakings concerned is operating in 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 participated in joint control so far.
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<p>8. Information and documents to be submitted with a notification</p>
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A. Describe the types of documents that parties must submit with the notification (e.g., agreement, annual reports, market studies, transaction documents, internal documents).

The merger notification has to contain all the information and documents required by the Decree. It states the the notification shall be accompanied by:

- a duly completed concentration notification questionnaire or simplified concentration notification questionnaire,
- extracts, not older than three months, from the Commercial Register, or other similar register, concerning all the undertakings concerned, which are under an obligation to be included in the Commercial Register or other similar register,
- documents which established or will establish the concentration or documents certifying the existence of the concentration; in case of concentration resulting from an acquisition of participating securities by means of takeover bid, all undertakings concerned are under an obligation to submit these documents immediately after drawing them up,
- annual reports including the audit of yearly financial statements for the last finished accounting period of all the undertakings concerned, who are under an obligation to conduct the audit pursuant to special legal regulations,
- consolidated financial statements for the last finished accounting period of all the undertakings concerned which are under an obligation to compile consolidated financial statement pursuant to special legal regulations, and
- the scheme and method of turnover calculation, the amount of which substantiates the submission of notification,
- analyses, reports, studies, surveys, and any comparable documents prepared for any member(s) of the board of directors, or the supervisory board, or the other person(s) exercising similar functions (or to whom such functions have been delegated or entrusted), or the shareholders' meeting, for the purpose of assessing or analysing the concentration with respect to competitive conditions, undertakings (actual and potential), the rationale of the concentration, potential for sales growth or expansion into other product or geographic markets, and/or general market conditions. For each of these documents, indicate (if not contained in the document itself) the date of preparation, the name and title of each individual who prepared each such

	document.
B. Is there a distinction between tangible and intangible (e.g., customer portfolio, data on consumers, etc.) assets in the description of the transaction? [In respect to digital markets, state if the agency considers the amount of user data the companies have, and which will be passed on in the transaction]	No.
C. Are documents proving the efficiencies of the transaction required? [If applicable, please provide the type of documents normally required]	No. However, the parties to the proceeding are obliged to provide the Czech NCA with information regarding the efficiencies of the transaction as the concentration notification questionnaire submitted to the Czech NCA with the concentration notification contains a question about such issue.
D. What information is required in case the target company is experiencing financial insolvency?	There is no special provision on requesting additional information required in case the target company is experiencing financial insolvency.
E. Is there a specific procedure for obtaining information from target companies in the case of hostile/ unsolicited bids?	No. In such case, the general procedure for requesting information and/or documents is applied. On the Czech NCA's written request, the target companies shall be obliged to provide the Czech NCA with requested information and/or documents within the deadline stipulated by the Czech NCA under threat of fines. Such information and/or documents shall be provided complete, correct and truthful.
F. Are there any document legalization requirements (e.g., notarization or apostille)? What documents must be legalized?	Generally, the documents such as transaction documents, annual reports and/or consolidated financial statements may be original or copies. In case of copies, it is necessary to accompany the documents with a declaration of a party to the proceeding declaring that copies of the originals are submitted truthful and complete.

As far extracts from the Commercial Register or any other similar register, there are considered to be public documents. If the undertakings concerned are foreign entities registered in commercial registers or similar registers administered by authorities of foreign countries, the notifying party has to submit documents drafted in a foreign language as the originals and a certified translation into the Czech language. Also, the authenticity of the official stamps and signatures on public documents issued by foreign authorities has to be verified by the competent authorities. Therefore, as regards legalization requirements of such extracts, the following three regimes can be distinguished:

1. A regime of automatic applicability, when no authentication is necessary on the basis of bilateral agreements on legal assistance in civil law (waiving the authentication of documents). In this case, it is sufficient if the certified translation into the Czech language is carried out by a translator or interpreter registered in the list of court interpreters under the Act on Experts and Interpreters
2. A regime of Apostilles, which is regulated by the Convention Abolishing the Requirement of Legalisation for Foreign Public Documents adopted on 5 October 1961 at the 9th Session of the Hague Conference on Private International Law. It was agreed in the Apostille Convention that the signing countries will recognize each other's public documents as public documents that bear the so-called Apostille clause. In this case, the extract from the foreign commercial register or any other similar register submitted to the Czech NCA has to bear the Apostille and its certified translation into the Czech language must be carried out by a translator or interpreter registered in the list of court interpreters under the Act on Experts and Interpreters.
3. A regime requiring that documents need to be authenticated by consular superlegalization. The public document has to bear a higher authentication of the central state authority which is superior to the authority that issued the document and consequently superlegalized by the embassy of the Czech Republic in that country. This form of authentication is used in countries, which

	are not yet parties to the Apostille Convention and have not concluded a bilateral international treaty with the Czech Republic waiving the authentication of documents.
G. What are the agency's rules and practice regarding exemptions from information requirements (e.g., information submitted or document legalization) for transactions in which the acquiring and acquired parties are foreign (foreign-to-foreign transaction)?	There are no such rules or practice.
H. Can the agency require third parties to submit information during the review process? Can third parties voluntarily submit information or otherwise contact the agency to intervene?	<p>The Czech NCA is entitled to request third parties (typically competitors, suppliers and customers of the undertakings concerned) for providing it with further information in relation to the transaction during the review process.</p> <p>After the initiation of the concentration approval proceeding, the Czech NCA announces the initiation of the concentration approval proceeding in the Commercial Bulletin and electronically through the public data network and stipulates a deadline for the submission of objections against the concentration. After this announcement, the third parties may inform the Czech NCA about their opinion about the transaction and/or their competition concerns that the merger would significantly impede effective competition in the affected markets.</p>
I. Are parties allowed to submit information beyond what is required in the initial filing voluntarily (e.g., to help narrow or resolve potential competitive concerns)?	Yes.
J. Are there different forms for different types of transactions or sectors?	No, there is a unified form for the standard concentration notification and a unified form for the simplified concentration notification.

<p>K. With respect to investment funds:</p> <p>i) Is it requested that an investment fund taking part in a transaction provide a statement that its controllers do not manage any other investment funds in the same relevant market?</p> <p>ii) Should an investment fund be controlled by an entity that is also responsible for other funds in the same relevant market, are such funds considered part of the transaction? Is it requested that the controlling entity provide market information (e.g., market share) related to the other funds it manages and which are in the same relevant market?</p> <p>iii) Should there be no classic concentration, is there any sort of exemption regarding presenting certain information requested in the form?</p>	<p>As regards investment funds participating in the concentration of undertakings, there are no special rules/requirements stipulated in relation to the concentration notification in the Competition Act.</p>
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<p>9. Translation</p>	
<p>A. In what language(s) can the notification forms be submitted?</p>	<p>Primarily, the concentration notification including all its parts and attachments shall be submitted in the Czech language; however the Czech NCA accepts the notification including its parts and attachments received in the Slovak language as well.</p>
<p>B. Describe any requirements to submit translations of documents:</p> <p>i) with the initial notification; and</p> <p>ii) later in response to requests for information.</p> <p>In addition:</p> <p>iii) what are the categories or types of documents</p>	<p>There are the following requirements to submit translation of documents:</p> <p>(i) with the initial notification:</p> <p>In case of other documents required by the Czech NCA in relation to the concentration notification such as extracts from the Commercial Register, documents, on the basis of which the concentration occurred or should</p>

for which translation is required;
iv) what are the requirements for certification of the translation;
v) which language(s) is/are accepted; and
vi) are summaries or excerpts accepted in lieu of complete translations and in which languages are summaries accepted?

occur, or a documents certifying the existence of the concentration, annual reports, including the audit of annual financial statements, consolidated financial statements, analyses, reports, studies, surveys, and any comparable documents prepared for any member of corporate bodies for the purpose of assessing or analysing the concentration with respect to the conditions of competition, both actual and potential competitors, justification of the concentration, potential for business growth or expansion into other product and geographic markets, and general market conditions (hereinafter as "Studies"), it is applied the followong rule: If the originals of such documents are drawn up in a language other than Czech or Slovak, the Administrative Code provides that the notifying party has to submit the originals as well as their certified translation into the Czech language, unless the administrative body informs the notifying party that such a translation is not required.

As regards the certified translation into the Czech language, it is a translation made by a translator or interpreter registered in the list of court interpreters according to the Act on Experts and Interpreters.

The Czech NCA has made its declaration on its official notice board thereby waiving the obligation of the notifying party to make a certified translation into the Czech language for an indefinite number of concentration approval proceedings in the future (i) in the case of annual reports, including the audit of annual financial statements for the last completed accounting period of all undertakings concerned, who are required to carry out an audit under special legislation, and (ii) in the case of consolidated financial statements for the last completed accounting period of all undertakings concerned, who are required to prepare consolidated financial statements under special legislation, provided that the originals were drafted in English or German. When this condition is met, originals of these documents may be submitted to the Czech NCA without the need to make their certified translations into the Czech language. In the case the originals of the above documents are drafted in a foreign language other than Slovak, English or

	<p>German, the notifying party is required to submit the original document and its certified translation into the Czech language.</p> <p>In addition to this general waiver of the obligation to make certified translations of documents, when the original is in a foreign language, into the Czech language, the Czech NCA may in some individual cases of concentration notifications waive the notifying party's obligation to make certified translations into the Czech language of (i) those parts of the agreement establishing the notified concentration, or (ii) those parts of Studies that contain information not necessary for assessment of the notified concentration. If there are such parts of agreements or Studies with no relevance for the assessment of the notified concentration, it will, upon prior agreement with the Czech NCA, suffice to submit originals of those parts of the contract and parts of the Studies without the need to make their officially certified translations into the Czech language subject to the condition that the originals of the documents are provided in English or German. In the case the originals of the abovementioned documents, i.e. agreements establishing the concentration or Studies, are drafted in a foreign language other than Slovak, English or German, the notifying party is required to submit the original document and its certified translation into the Czech language to the Czech NCA.</p> <p>On the contrary, the notifying party will be required to make a certified translation into the Czech language of those parts of the agreement establishing the notified concentration and those parts of the Studies that are necessary for the assessment of the notified concentration. In the case of agreements establishing the notified concentration, such parts of the agreement relevant for the assessment of the concentration will be typically those arrangements that identify and define the parties or undertakings concerned, describe relations of the control between the undertakings concerned or arrangements that may be so-called ancillary restraints that may also be assessed by the Czech NCA in the process of impact assessment of the concentration (e.g. non-competition clause).</p>
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	<p>The Czech NCA will identify (i) those parts of the agreement establishing a notified concentration, and (ii) those parts of the Studies that the Czech NCA needs to assess the notified concentration of undertakings according to the circumstances of the particular case. Such issues might be discussed within the pre-notification procedure.</p> <p>As regards other documents that make up the requirements for the concentration notification, the obligation to make a certified translation into the Czech language also applies to the following: (i) a power of attorney granted to a representative of the notifying party; and (ii) extracts from the Commercial Register or any other similar register regarding the undertakings concerned.</p> <p>The following documents have to also be submitted in the Czech language: (i) the concentration notification itself and its justification; (ii) concentration notification questionnaire, or simplified concentration notification questionnaire; and (iii) scheme and method of calculating turnover, the amount of which justifies the filing of the concentration notification.</p> <p>(ii) later in response to requests for information. Such documents have to be submitted to the Czech NCA in the Czech or Slovak language or in case they are provided in any other language, a certified translation of such documents shall be submitted to the Czech NCA as well.</p> <p>(iii) what are the categories or types of documents for which translation is required; Please see the text above for the answer.</p> <p>(iv) what are the requirements for certification of the translation; A certified translation into the Czech language is a translation made by a translator or interpreter registered in the list of court interpreters according to the Act on Experts and Interpreters.</p> <p>(v) which language(s) is/are accepted; As far documents provided to the Czech NCA in the Slovak language, it is</p>
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	<p>not necessary to translate them into the Czech language. As regards further documents required in relation with the transaction, they may be provided in any language under the condition that a certified translation into the Czech language has been made. However, there are exemptions from the rule, as certain documents (e.g. the questionnaire has to be submitted only in Czech or Slovak) or certain documents drafted In English or German may be provided without the need to obtain a certified translation of them. Please see the text above for more information.</p> <p>(vi) are summaries or excerpts accepted in lieu of complete translations and in which languages are summaries accepted?</p> <p>Yes, the Czech NCA accepts also a certified translation of excerpts of certain documents instead of a complete translation of the whole document. However, such rule does not apply to the summaries of documents. Please see the answer to the part (i) of the question above for more details.</p>
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10. Review Periods	
<p>A. Describe any applicable review periods following notification.</p>	<p>An administrative proceeding before the Czech NCA starts with receiving either the complete (standard) notification of a concentration or the simplified notification of a concentration.</p> <p>In case of the simplified notification of a concentration:</p> <ul style="list-style-type: none"> • if the concentration is not subject to approval by the Czech NCA, the Czech NCA shall issue a decision on the matter within 20 days of the initiation of proceeding, • if the concentration is subject to the approval by the Czech NCA, but it does not result in substantial distortion of competition, the Czech NCA shall issue a decision on concentration approval within 20 days of the initiation of proceeding, • if the Czech NCA concludes that the concentration could raise serious concern

	<p>about substantial distortion of competition, the Czech NCA shall request the parties to the proceeding within 20 days of the initiation of proceeding to file a complete (standard) concentration notification. In such case the deadline for the issuance of a decision shall start on the date of delivery of the complete concentration notification to the Czech NCA.</p> <p>In case of the complete (standard) notification of a concentration:</p> <ul style="list-style-type: none"> • If the concentration is not subject to approval by the Czech NCA, the Czech NCA shall issue a decision to that effect within 30 days of the initiation of proceeding, • if the concentration is subject to approval and will not result in a substantial distortion of competition, the Czech NCA shall issue a decision approving the concentration within 30 days of the initiation of proceeding, • if the Czech NCA finds that the concentration raises serious concerns as to a significant impediment to effective competition, primarily due to that fact that it would create or strengthen a dominant position of the undertakings concerned or any of them, the Czech NCA shall inform the parties to the proceeding in writing of this fact within 30 days of the initiation of proceeding and inform them that it is continuing the proceeding. In this case the Czech NCA shall be obliged to issue a decision within 5 months of the initiation of proceeding. <p>In the event that the Czech NCA fails to issue a decision on the concentration within the stipulated deadlines, the Czech NCA shall be deemed to have approved the concentration upon the elapse of the aforementioned deadlines.</p>
<p>B. Are there different rules for public tenders (e.g., open market stock purchases or hostile bids)?</p>	<p>No.</p>

<p>C. What are the procedures for an extension of the review periods, if any? Do requests for additional information suspend or re-start the review period?</p>	<p>The Czech NCA may clear the concentration upon the fulfilment 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 proceeding are informed that the Czech NCA continues the proceeding. Proposals of commitments made at a later date, or changes to their content, shall be taken into consideration by the Czech NCA only in cases deserving special attention. If the parties to the proceeding propose commitments within the first 30 days of the proceeding, the first-phase deadline shall be extended by 15 days. In case the parties to the proceeding propose these commitments after the Czech NCA has informed them that it will continue the proceeding, the second-phase deadline for issuing a decision shall be extended by 15 days.</p> <p>There are no other specific provisions concerning the extension of the review periods. However, in practice, the review periods can be extended by requests for additional information sent to the parties to the proceeding.</p>
<p>D. Is there a statutory or other maximum duration for extensions?</p>	<p>No, there is no statutory or other limit for extensions.</p>
<p>E. Does the agency have the authority to suspend review periods? Does suspending a review period require the parties' consent?</p>	<p>The Czech NCA is not allowed to suspend the review period on its own discretion.</p> <p>Please see the answer to the question 10.C above for more details regarding the suspension of the review periods.</p> <p>In addition to the above mentioned, the Czech NCA may request the EC to conduct proceeding and assess the concentration by itself. The Czech NCA shall suspend its proceeding until the decision of the EC is issued on whether it will assess such concentration by itself. Provided the EC decides that it will assess such concentration by itself, the Czech NCA shall terminate its proceeding.</p>
<p>F. What are the time periods for accelerated review of non-problematic transactions, if any?</p>	<p>Please see the answer to the question 10.A above for more information regarding this question.</p>

<p>G. If remedies are offered, do they impact the timing of the review?</p>	<p>Yes. According to the Competition Act, the following possibilities may occur:</p> <ul style="list-style-type: none"> • In case the parties to the proceeding propose these commitments within the first 30 days of the proceeding (i.e. the first phase of the proceeding), the deadline (period of 30 days) shall be extended by 15 days. • In case the parties to the proceeding propose these commitments after being informed by the Czech NCA about continuation of the proceeding (i.e. the second phase of the proceeding), the deadline (period of 5 months) for issuing a decision shall be extended by 15 days.
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<p>11. Waiting periods / suspension obligations</p>	
<p>A. Describe any waiting periods/suspension obligations following notification (e.g., full suspension from implementation, restrictions on adopting specific measures) during any initial review period and/or further review period.</p>	<p>As a general rule, all concentrations subject to notification have to be notified before they are completed and may not be completed until they have been cleared by the Czech NCA.</p> <p>There is an exemption. Such general rule does not apply to the implementation of concentration that should occur on the basis of a public bid to assume equity shares or on the basis of a sequence of operations with shares and securities accepted for trading in the European regulated market, due to which control shall be acquired by various entities, provided the application for the initiation of proceeding was filed immediately and provided the voting rights attached to such shares and securities are not exercised.</p>
<p>B. Can parties request a derogation from waiting periods/suspension obligations? If so, under what circumstances?</p>	<p>Yes. According to Article 18 of the Competition Act, upon application of the undertakings, the Czech NCA may decide on the approval of an exemption from the prohibition of the implementation of the concentration prior it's decision on the concentration approval enters into force where there is a threat of sustaining considerable damage or any other significant detriment to the undertakings concerned or third parties. The undertakings may file application for approval of an exemption together with the complete concentration notification or any time during the</p>

	<p>proceeding. The application shall be substantiated, made in writing and it shall indicate the extent of the requested exemption. The Czech NCA may request the parties to the proceeding in writing to provide further facts necessary for adopting a decision on the exemption approval or to provide further evidence of such facts. The deadlines shall be suspended for the period between the day of delivery of such request and the day on which this obligation is fulfilled.</p> <p>The Czech NCA shall decide on the application for approval of an exemption without delay, not later than 30 days of the receipt thereof. In deciding on the application, besides damage or any other detriment, the Czech NCA shall take into account the consequences of such exemption on competition in the relevant market. In case the Czech NCA fails to issue a decision within the stipulated period of time, the exemption shall be deemed to have been approved. The Czech NCA may also decide to grant an exception in relation to certain actions covered by the application; in the rest, the Czech NCA shall turn down the application. In its decision on granting an exemption, the Czech NCA may stipulate conditions and restrictions in favour of maintaining effective competition.</p> <p>The application for approval of an exemption is subject to an administrative fee of CZK 10 000.</p>
<p>C. Are the applicable waiting periods/suspension obligations limited to aspects of the transaction that occur within the agency's jurisdiction (e.g., acquisition or merger of local undertakings/business units)? If not, to what extent can the parties implement the transaction outside the agency's jurisdiction prior to clearance (e.g., through derogation from suspension, hold separate arrangements)?</p>	<p>The waiting period is applicable to the concentration of undertakings as a whole.</p>
<p>D. Are parties allowed to close the transaction if no decision is issued within the statutory period?</p>	<p>Yes. As mentioned above, if no decision is issued within the statutory period, the concentration of undertakings is deemed to have been approved.</p>
<p>E. Describe any provisions or procedures available to the</p>	<p>Not applicable.</p>

enforcement agency, the parties and/or third parties to extend the waiting period/suspension obligation.	
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.	Not applicable.
G. Describe any provisions or procedures allowing the parties to close the transaction 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).	Not applicable.

12. Responsibility for notification / representation	
A. Who is responsible for notifying – the acquiring company(ies), acquired company(ies), or both? Does each party have to make its own filing?	<p>According to Article 15 of the Competition Act, the concentration notification shall be filed jointly by the parties to the concentration, who intend to realise a concentration by merger, to acquire the possibility directly or indirectly control another undertaking or its part, or to establish the jointly controlled undertaking.</p> <p>It follows that the subject responsible for notifying the transaction is the acquiring company(ies) and, in any event, it is not a target company. In case there are two and more acquiring companies, a joint concentration notification shall be filled to the Czech NCA.</p>
B. Do different rules apply to public tenders (e.g., open market stock purchases or hostile bids)?	No.

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)?	No.
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>External counsels are requested to provide a power of attorney (that does not need to be notarized, legalized or apostilled).</p> <p>There are no special rules for foreign representatives.</p> <p>However, as mentioned above, the official language for providing the Czech NCA with information and documents is the Czech language. Furthermore, Czech legislation enables to submit documents to administrative bodies also in the Slovak language. For that reason, the power of attorney shall be provided to the Czech NCA in either the Czech or Slovak language. Please see the answers in the section 9 above for more details regarding language translations and related requirements.</p>

13. 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)? [Please provide the amount in local currency and in USD as of December 31st, 2020]	<p>Yes. Filing the concentration notification is subject to a fixed fee in a total amount of CZK 100 000 per a notification.</p> <p>The amount of CZK 100 000 is equal to approximately USD 4 676.</p>
B. Who is responsible for payment?	The notifying party/parties.
C. When is payment required?	The payment should be made shortly before the notification of the transaction to the Czech NCA that prefers the submission of a receipt of such payment with the concentration notification. In case the notification is submitted to the Czech NCA and the payment has not been made, the Czech NCA requests the notifying party to make the payment. The deadline for issuing the decision on the matter shall be suspended for

	the period between the day on which the notifying party receives such request and the day on which this obligation is fulfilled.
<p>D. What are the procedures for making payments (e.g., accepted forms of payment, proof of payment required, wire transfer instructions)?</p>	<p>The payment shall be carried out on the account of the Czech NCA held with the Czech National Bank either by check or by means of bank transfer. The parties to the concentration are required to submit a proof of payment.</p> <p>The bank account number of the Czech NCA: 19-24825621/0710.</p> <p>As regards a constant symbol, one of the following possibilities should be selected:</p> <ul style="list-style-type: none"> - 1148 (for payment by bank transfer); or - 1149 (for payment by check). <p>As a reference number, the tax identification number of the notifying party should be mentioned.</p> <p>As far as an international payment, the order has to contain the following details:</p> <p>IBAN: CZ27 0710 0000 1900 2482 5621;</p> <p>BIC: CNBACZPP,</p> <p>Also it should be taken into consideration that to the amount of the filing fee has to be added an interchange fee per transaction.</p>

14. Process for substantive analysis and decisions [Please give a brief summary and provide information on relevant Guidance papers]	
<p>A. What are the key procedural stages in the substantive assessment (e.g., screening mergers, consulting third parties)?</p>	<p>After launching an administrative proceeding upon the concentration notification, the Czech NCA reviews the impact of the concentration on the competition. Within such phase of the proceeding, it may request the parties to the proceeding as well as third parties for providing it with further information. In case the Czech NCA finds that the transaction may raise serious concerns as to a significant impediment to effective</p>

	<p>competition, the party to the proceeding may propose commitments. It may either result in issuing an approval decision / a decision stating the concentration is not subject to the approval / a commitment decision, or opening the second phase of the proceeding.</p> <p>During the second phase of the proceeding, the Czech NCA is entitled to request the parties to the proceeding as well as the third parties for providing it with further information as well. In such phase of the proceeding, in case the transaction results in a substantial distortion of competition, the Czech NCA issues the statement of objections before issuing its decision. Also, in case the transaction raises serious concerns as to a significant impediment to effective competition, the party to the proceeding may propose commitments. The second phase of the proceeding results in issuing either the approval decision with or without commitments or the prohibition decision.</p> <p>No guidance paper has been developed regarding the description of procedural stages.</p>
<p>B. What merger test does the agency apply (e.g., dominance test or substantial lessening of competition test)?</p>	<p>The Czech NCA applies the test whether the concentration results in a significant impediment to effective competition in the relevant market particularly because it would result in or would strengthen a dominant position of the undertakings concerned.</p> <p>The legal framework is stipulated by the Competition Act and no guidance paper has been developed regarding the issue.</p>
<p>C. What theories of harm does the agency consider in practice?</p>	<p>The considered theory of harm differs depending on the nature of the transaction.</p> <p>As far horizontal mergers, the Czech NCA considers (i) in case of non-coordinated effects whether the transaction may significantly impede effective competition in a market, in particular by creating or strengthening a dominant position by eliminating important competitive constraints on one or more firms, or (ii) in case of coordinated effects whether the concentration may significantly impede effective competition, in particular by changing the nature of competition in such a way that firms that</p>

	<p>previously were not coordinating their behavior, are now significantly more likely to coordinate and raise prices or otherwise harm effective competition.</p> <p>As regards non-horizontal mergers, in the event of vertical mergers, the Czech NCA considers (i) in case of non-coordinated effects whether the merger is said to result in the input foreclosure or the customer foreclosure; or (ii) in case of coordinated effects whether the merger may make coordination easier. In the event of conglomerate mergers, the Czech NCA assesses (i) in the case of non-coordinated effects whether the merger may result in market foreclosure; or (ii) in case of coordinated effects whether the merger may facilitate anticompetitive co-ordination in markets.</p> <p>The Czech NCA's consideration regarding the theories of harm is based on the guidelines provided by the European Commission at its webpage: https://ec.europa.eu/competition/mergers/legislation/notices_on_substance.html</p>
<p>D. What are the key stages in the substantive analysis? Does this differ depending on the type of transaction (e.g., joint venture)?</p>	<p>According to Article 17 of the Competition Act, when deciding on the concentration notification, the Czech NCA shall primarily assess the necessity of preservation and further development of effective competition, the structure of all markets affected by the concentration, the shares of the undertakings concerned in such markets, their economic and financial power, legal and other barriers to enter relevant markets by other undertakings, the alternatives available to suppliers and customers of the undertakings concerned, 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.</p> <p>As regards the first phase of the proceeding, the Czech NCA examines and defines possible relevant markets, further it assesses the structure of such markets and other characteristics in general way. If the Czech NCA finds that the concentration raises serious concerns as to a significant impediment to effective competition, it launches the second phase of the proceeding. In the course of the second phase of the proceeding,</p>

	<p>the Czech NCA reviews other characteristics in-depth.</p> <p>As far both phases of the proceeding, on regular basis, the Czech NCA requests information from competitors, suppliers and/or customers of the undertakings concerned as well as associations of undertakings active on affected markets. Further, within both phases of the proceeding, the undertakings concerned are allowed to propose commitments in favour of maintaining effective competition. Also, a statement of objection shall be issued in case the concentration is assessed within the second phase of the proceeding and the concentration raises serious concerns as to a significant impediment to effective competition.</p> <p>No guidance paper has been developed regarding the issue.</p>
<p>E. Are non-competition issues ever considered (in practice or by law) by the agency? If so, can they override or displace a finding based on competition issues?</p>	<p>No.</p>
<p>F. What are the possible outcomes of the review (e.g., unconditional/conditional clearance, prohibition, etc.)?</p>	<p>After reviewing the concentration of undertakings, the Czech NCA shall issue one of the following outcomes:</p> <ul style="list-style-type: none"> • Decision that the concentration is not subject to approval by the Czech NCA, • Decision on the concentration approval, • Decision on the concentration approval with commitments, • Decision on the prohibition of the concentration of undertakings. <p>Also, the parties to the proceeding may withdraw the concentration notification during the proceeding. In such case, the Czech NCA decides on the termination of the proceeding.</p>
<p>G. What types of remedies does the agency accept? Is there a preference on any particular type of remedies? How is the process initiated and conducted?</p>	<p>Regarding the remedies, the Czech NCA is not limited to accept only one or two type(s) of remedies. According to the Competition Act, the Czech NCA may approve the concentration on condition fulfilment of commitments that are proposed by the</p>

	<p>undertakings concerned in favour of maintaining effective competition. For achieving such purpose, the Czech NCA may accept e.g. structural commitments, behavioral commitments or quasi-structural commitments.</p>
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<p>15. Confidentiality</p>	
<p>A. To what extent, if any, does the agency make public the fact that a premerger notification filing was made or the contents of the notification? If applicable, when is this disclosure made?</p>	<p>The Czech NCA announces, without delay, the initiation of the concentration approval proceeding in the Commercial Bulletin (as regards the standard procedure) as well as electronically through the public data network (as regards both – the standard as well as simplified procedure) and it shall stipulate a deadline for the submission of objections/comments against this concentration by third parties.</p> <p>The Czech NCA makes public the names of the parties, the day of the initiation of the proceeding, the type of the procedure, the nature of the concentration and the affected sector/markets.</p>
<p>B. Do notifying parties have access to the agency's file? If so, under what circumstances can the right of access be exercised?</p>	<p>Yes, the notifying parties are entitled to access an administrative file upon their request.</p> <p>Article 21c of the Competition Act provides conditions regarding the provision of the access to the administrative file. It states that those parts of the documentation which contain a business, bank or similar secret protected by law shall be excluded from the access to the administrative file provided to the parties to the proceeding. Apart from the documents containing such secret, the administrative file shall also include documents from which such secret was removed or sufficiently detailed abstract which does not contain such secret.</p>
<p>C. Can third parties or other government agencies obtain access to notification materials and any other information provided by the parties (including confidential and non-confidential information)? If so, under what circumstances?</p>	<p>Yes, the Czech NCA may grant access to the notification material to third parties (naturally except for business secret), provided they prove their legal interest in the matter or any other serious reason, if none of the rights of any of the parties to the proceeding or other persons concerned or the public interest are not prejudiced thereby.</p>

	<p>There are no special rules for the access to the file in relation to other government agencies.</p>
<p>D. Are procedures available to request confidential treatment of the fact of notification and/or notification materials? If so, please describe.</p>	<p>The mere fact that the Czech NCA has initiated the concentration approval proceeding cannot be considered to be a business secret. There is an obligation resulting from the Competition Act according to which the Czech NCA shall announce the initiation of concentration approval proceeding in the Commercial Bulletin and electronically through the public data network.</p> <p>Certain parts of documents submitted to the Czech NCA with the concentration notification may contain (and usually contain) information constituting the business secret. As regards documents containing the business secret, these shall be submitted to the Czech NCA in two versions – the one containing information constituting the business secret and marked as “Business Secret” and the second one which shall not contain information which are considered to be the business secret. Should the party to the proceeding fails to do so, it shall be deemed that the submitted documents do not contain any business secret protected by law.</p> <p>It should be also mentioned that the final word in deciding which information constitutes the business secret in accordance with the legal definition of term “business secret” is given to the Czech NCA.</p>
<p>E. Can the agency deny a party’s claim that certain information contained in notification materials is confidential? Are there procedures to challenge a decision that information is not confidential? If so, please describe.</p>	<p>Yes. The Czech NCA is entitled to decide that certain information provided by the party to the proceeding in the notification and its related documents does not constitute the business secret.</p>

<p>F. Does the agency have procedures to provide public and non-public versions of agency orders, decisions, and court filings? If so, what steps are taken to prevent or limit public disclosure of information designated as confidential that is contained in these documents?</p>	<p>Yes. The Czech NCA publishes its decisions on its website as it is obligation laid down by the Competition Act.</p> <p>After issuing the concentration decision, the Czech NCA requests the party to the proceeding to provide it with the version of the decision without the business secret. Subsequently, such version of the decision is assessed by the Czech NCA as often not all information identified by the party to the proceeding constitutes the business secret. If the Czech NCA finds that not all information identified by the party to the proceeding as the business secret constitutes the business secret according to Czech law, it informs the party to the proceeding about such conclusion and potentially sends him its explanatory opinion. After that, it finally publishes the public version of its decision on its website.</p>
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<p>16. Transparency</p>	
<p>A. Does the agency publish an annual report with information about mergers? Please provide the web address if available.</p>	<p>Yes, the Czech NCA publishes its annual reports regularly on its website in both the Czech language as well as in English. The annual reports contain among others the overview of the most significant cases covering the scope of the Czech NCA's activities to which the field of a concentration of undertakings belongs as well.</p> <p>The annual reports are available at the Czech NCA's website: https://www.uohs.cz/en/information-centre/annual-reports.html (in English), or https://www.uohs.cz/cs/informacni-centrum/vyrocní-zpravy.html (in Czech)</p>
<p>B. Does the agency publish press releases related to merger policy or investigations/reviews? If so, how can these be accessed (if available online, please provide a link)? How often are they published (e.g., for each decision)?</p>	<p>Yes. The Czech NCA publishes regularly press releases related to its activity, in particular in the field of decision-making practice and policies. As far the field of concentrations of undertakings; it informs the general public mostly about decisions approving concentrations of undertakings. The press releases are announced for each decision separately or a group of decision if they are issued within a few days.</p>

	<p>Press releases are available at the Czech NCA's website:</p> <p>https://www.uohs.cz/en/information-centre/press-releases/competition.html (in English), or</p> <p>https://www.uohs.cz/cs/informacni-centrum/tiskove-zpravy.html (in Czech)</p>
C. Does the agency publish decisions on why it challenged, blocked, or cleared a transaction? If available online, provide a link. If not available online, describe how one can obtain a copy of decisions.	<p>The public version of decisions of the Czech NCA relating to the field of competition are available to the general public at its website (however, only in the Czech language):</p> <p>https://www.uohs.cz/cs/hospodarska-soutez/sbirky-rozhodnuti.html</p>
E. Does the agency publish statistics or the number of annual notifications received, clearances, prohibitions, etc.? [if applicable, please provide a link for these figures]	<p>Yes, such statistical information is provided by the Czech NCA in its annual reports which are available at the Czech NCA's website as mentioned above.</p>

17. Cooperation	
A. Is the agency able to exchange information or documents with international counterparts?	<p>Yes, however, it is necessary to make the following distinction:</p> <p>According to Article 20 of the Competition Act, on the basis of an international treaty, which is the part of the Czech legislation, the Czech NCA shall provide documents and information to a competition authority of the requesting country at its request, including information that contains business or bank secret or similarly classified information, for the purpose of enforcing competition law in the requesting country, provided that the level of protection of such information in the requesting country is comparable with that in the Czech Republic.</p> <p>Furthermore, obligations and rights of the Czech NCA relating to cooperation between it and the EC and national competition authorities of the Member States including a possible exchange of information in the field of the concentration of undertakings are covered by Article 20a of the Competition Act. It stipulates as follows:</p>

	<p>The Czech NCA shall furthermore be empowered:</p> <ul style="list-style-type: none"> • to request the EC to provide it with copies of documents necessary for the assessment of a case; • to consult the EC on any case involving the application of EU law; • to exchange with the EC and other competition authorities of the Member States and to use as evidence any matter of fact or of law, including confidential information; • to present its opinions on proceedings that the EC conducts pursuant to the Merger Regulation;² <p>The Czech NCA shall be obliged:</p> <ul style="list-style-type: none"> • to provide the EC with all information necessary for the EC to be able to carry out the duties assigned to it by the Merger Regulation; • to afford the EC the necessary assistance in case an undertaking opposes or obstructs an inspection pursuant to the Merger Regulation; • to appoint its representative in the Advisory Committee on Concentrations; <p>In a procedure pursuant to the Merger Regulation, the Czech NCA shall be empowered:</p> <ul style="list-style-type: none"> • to express its opinion concerning a proposal on referral of a case before its notification; • to request the EC to refer a case; • to request the EC to assess a case, on conditions referred to in the Merger Regulation; • to decide on a case referred to it by the EC.
B. Is the agency or government a party to any	No.

² Meaning Council Regulation (EC) No. 139/2004 of 20 January 2004 on the control of concentrations between undertakings (hereinafter referred to as „the Merger Regulation”).

<p>agreements that permit the exchange of information with foreign competition authorities? If so, with which foreign authorities? Are the agreements publicly available?</p>	
<p>C. Does the agency need consent from the parties who submitted confidential information to share such information with foreign competition authorities? If the agency has a model waiver, please provide a link to it here, or state whether the agency accepts the ICN's model waiver of confidentiality in merger investigations form.</p>	<p>For the purposes of the exchange of confidential information submitted by the parties to the proceeding with other competition authorities, a waiver (consent) of undertakings concerned is required.</p> <p>As regards sharing (confidential) information of the undertakings concerned with other competition authorities located in the European Economic Area, the waiver has to be used as well. The model waiver is available at the Czech NCA's website (in Czech):</p> <p>https://www.uohs.cz/cs/hospodarska-soutez/spojovani-soutezitelu/souhlas-s-pouzitim-informaci-poskytnutych-uradu.html</p> <p>However, the waiver relates to providing information only for purposes of assessing impacts of the concentration to which the waiver has been granted on competition.</p>
<p>D. Is the agency able to exchange information or documents with other domestic regulators?</p>	<p>Yes.</p>

<p>18.Sanctions/penalties</p>	
<p>A. What are the sanctions/penalties for:</p> <ul style="list-style-type: none"> i) failure to file a notification; ii) incorrect/misleading information in a notification; iii) failure to comply with information requests; iv) failure to observe a waiting period/suspension obligation; v) breach of interim measures; vi) failure to observe or delay in implementation of remedies; 	<p>The Czech NCA imposes sanctions/penalties as follows:</p> <ul style="list-style-type: none"> (i) Regarding failure to file a notification The Czech NCA shall impose on: <ul style="list-style-type: none"> a. a legal person and natural person-entrepreneur a fine up to CZK 10 000 000 or up to 10% of the net turnover achieved by the undertaking in the last accounting period; b. a natural person a fine up to CZK 10 000 000. Further, where the Czech NCA finds that the concentration was implemented without filing concentration notification, it shall decide on measures

vii) implementation of transaction despite the prohibition from the agency?

indispensable to re-establishing effective competition in the relevant market. For this purpose, the Czech NCA in particular shall impose on the undertakings an obligation to sell an undertaking or part thereof, where it acquired the possibility to control them, or discharge the contract, on the basis of which the concentration was realised, or to implement other adequate measures necessary for re-establishing effective competition in the relevant market.

(ii) Regarding providing incorrect/misleading information in a notification:

The Czech NCA 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 for which the parties to the proceeding are responsible and which turn out to be incorrect or incomplete, in full or in part, or where the approval has been obtained after the parties to the proceeding mislead the Czech NCA.

Furthermore, the Czech NCA shall impose for failing to provide complete, correct and truthful business records on:

- a. a legal person and natural person-entrepreneur a fine up to CZK 300 000 or up to 1% of the net turnover achieved by the undertaking in the last accounting period;
- b. a natural person a fine up to CZK 300 000.

(iii) Regarding failure to comply with information requests:

In the case an undertaking fails to fulfil an obligation to provide the Czech NCA with documents and information, including the business records, at its request, it shall be possible to impose a disciplinary fine on undertaking up to CZK 100 000 or 1% of the net turnover achieved by the undertaking in the last accounting period.

Such fine also may be imposed repeatedly. The total amount of repeatedly imposed fines may not exceed CZK 1 000 000 or 10% of the net turnover achieved by the undertaking in the last accounting period.

(iv) Regarding failure to observe a waiting period/suspension obligation:

The Czech NCA shall impose on:

	<ul style="list-style-type: none">a. a legal person and natural person-entrepreneur a fine up to CZK 10 000 000 or up to 10% of the net turnover achieved by the undertaking in the last accounting period;b. a natural person a fine up to CZK 10 000 000. <p>(v) Regarding breach of interim measures:</p> <p>In general, according to Czech administrative procedural rules, the Czech NCA is empowered to impose an interim measure by its decision. However, as regards the Czech NCA's decision-making practice in the field of the concentration of undertakings, it has never happened so far.</p> <p>As mentioned, the interim measure shall be adopted by the means of the decision. Also, the Competition Act stipulates that the Czech NCA shall impose a fine in case another obligation stated in the Czech NCA's decision is not fulfilled. For such breach of the legal provision, the Czech NCA shall impose on:</p> <ul style="list-style-type: none">a. a legal person and natural person-entrepreneur a fine up to CZK 10 000 000 or up to 10% of the net turnover achieved by the undertaking in the last accounting period;b. a natural person a fine up to CZK 10 000 000. <p>(vi) Regarding failure to observe or delay in implementation of remedies:</p> <p>The Czech NCA shall impose on:</p> <ul style="list-style-type: none">a. a legal person and natural person-entrepreneur a fine up to CZK 10 000 000 or up to 10% of the net turnover achieved by the undertaking in the last accounting period;b. a natural person a fine up to CZK 10 000 000. <p>Also, if the Czech NCA finds that the concentration was implemented contrary to the Czech NCA's decision in force, it shall decide on measures indispensable to re-establishing effective competition in the relevant market. For this purpose, the Czech NCA in particular shall impose on the undertakings an obligation to sell an undertaking or part thereof, where it acquired the possibility to control them, or discharge the contract, on the basis of which the concentration was realised, or to implement other</p>
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	<p>adequate measures necessary for re-establishing effective competition in the relevant market.</p> <p>In addition to above mentioned, the Czech NCA may revoke the decision on concentration approval where it finds that parties to the proceeding failed to fulfil the conditions, restrictions or commitments, subject to which the Czech NCA made the approval.</p> <p>(vii) Regarding implementation of transaction despite the prohibition from the agency:</p> <p>The Czech NCA shall impose on:</p> <ul style="list-style-type: none"> a. a legal person and natural person-entrepreneur a fine up to CZK 10 000 000 or up to 10% of the net turnover achieved by the undertaking in the last accounting period; b. a natural person a fine up to CZK 10 000 000. <p>Besides, if the Czech NCA finds that the concentration was implemented contrary to the Czech NCA's decision in force, it shall decide on measures indispensable to re-establishing effective competition in the relevant market. For this purpose, the Czech NCA in particular shall impose on the undertakings an obligation to sell an undertaking or part thereof, where it acquired the possibility to control them, or discharge the contract, on the basis of which the concentration was realised, or to implement other adequate measures necessary for re-establishing effective competition in the relevant market.</p>
<p>B. Which party/ies (including natural persons) are potentially liable for each of A(i)-(vii)?</p>	<p>Potentially liable for committing an offence relating to:</p> <ul style="list-style-type: none"> (i) failure to file a notification are parties to the proceeding (a notifying party/notifying parties) (ii) providing incorrect/misleading information in a notification are parties to the proceeding. (iii) failure to comply with information requests are parties to the proceeding as well as third parties.

	<ul style="list-style-type: none"> (iv) failure to observe a waiting period/suspension obligation are parties to the proceeding. (v) breach of interim measures are persons on whom the interim measure has been imposed. (vi) failure to observe or delay in implementation of remedies are parties to the proceeding. (vii) implementation of transaction despite the prohibition from the agency are parties to the proceeding.
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.	The Czech NCA imposes these sanctions/penalties directly.
D. Are there any recent or significant fining decisions?	In December 2020, the Czech NCA imposed a fine in the total amount of CZK 4 487 000 on an undertaking Skyport a.s. for gun-jumping in a merger Skyport a.s. / Skyport Holding a.s. The unlawful conduct lasted for approx. 6 months.

19. Independence	
A. Is there possibility for any ministry or a cabinet of ministries to abrogate, challenge or change merger decisions issued by the agency or by a court? If yes, to which merger decisions does this apply (e.g., any decision, prohibitions, clearances, remedies)?	No, there is no such possibility.
B. What are the grounds for such ministerial intervention?	Not applicable.

C. Please provide any description or guidance regarding the ministerial intervention process and procedures [if applicable]	Not applicable.
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20. Administrative and judicial processes/review	
A. Describe the timetable for judicial and administrative review related to merger transactions.	<p>The parties to the proceeding may appeal to the Chairman of the Czech NCA against the decision of the Czech NCA within 15 days after receiving the decision of the Czech NCA.</p> <p>Following this procedure, the parties to the proceeding may lodge an appeal before the administrative court against the decision of the Chairman of the Czech NCA within 2 months after receiving the decision.</p> <p>Finally, as the last option, the parties to the proceeding may bring an appeal against the judgement of the administrative court within the period of two weeks after the delivery of such judgement. In this case, the review is carried out by the Supreme Administrative Court.</p>
B. Describe the procedures for protecting confidential information used in judicial proceedings or in an appeal/review of an agency decision.	<p>The administrative file shall contain two versions of those parts of the documentation which contain a business, bank or similar secret protected by law. Apart from the documents containing such secret, the administrative file shall also include documents from which such secret was removed or sufficiently detailed abstract which does not contain such secret.</p> <p>Upon the request of the Czech NCA, the person, whose business, bank or similar secret protected by law shall be obliged to provide the Czech NCA with both documents containing such secret and also documents from which such secret was removed, eventually a detailed extract from the documents which does not contain such secret. Should the person fail to do so, it shall be deemed that the presented documents do not contain any business, bank or similar secret protected by law.</p> <p>Before submission of the file to the appeal body, the documents containing the business</p>

	<p>secret shall be marked by the Czech NCA (its first instance decision making body) and not accessible to third parties in the case of accessing the file.</p> <p>Also, if there is an oral hearing before the court, the presiding judge may exclude the public, even for a certain part of the proceeding, only for certain reasons among others consisting of protection of classified information and a business secret. If such information is heard, the hearing may attend only those persons who are familiar with such information.</p>
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C. Are there any limitations on the time during which an appeal may be filed?	As mentioned above, an appeal may be filed within 15 days after receiving the concentration decision of the Czech NCA. For more details regarding the issue please see the answer to the question 20.A above.
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21. Additional filings	
A. Are any additional filings/clearances required for some types of transactions (e.g., sectoral or securities regulators or national security or foreign investment review)?	Yes. Competent authorities have to grant an approval to the concentration of undertakings in a bank and media sector.

22. Closing Deadlines	
A. When a transaction is cleared or approved, is there a time period within which the parties must close for it to remain authorized? If yes, can the parties obtain an extension of the deadline to close?	Such period is not expressly laid down in the Competition Act. However, according to the decision-making practice of the Czech NCA, the cleared transaction has to be implemented within the period of a year; otherwise, the former parties to the proceeding shall file the concentration notification once again.

22. Post Merger review of transactions	
A. 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	Yes. According to Article 19 of the Competition Act, the Czech NCA 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

<p>time limit on this authority?</p>	<p>truthfulness for which the parties to the proceeding are responsible and which turn out to be incorrect or incomplete, in full or in part, or where the approval has been obtained after the parties to the proceeding mislead the Czech NCA or fail to fulfil the conditions, restrictions or commitments, subject to which the Czech NCA made the approval.</p> <p>The Czech NCA may initiate proceeding for the revocation of the decision on concentration approval within 1 year of learning about the above mentioned facts, but not later than 5 years after such facts have occurred.</p>
<p>B. Does the agency publish studies regarding ex-post analysis of reportable transactions which have been cleared by the agency? Are these studies publicly available? How does the agency obtain data for carrying out these studies?</p>	<p>The Czech NCA has not carried out such study in the last 10 years.</p>