



**International  
Competition  
Network**

# **ANTI-CARTEL ENFORCEMENT TEMPLATE**

**CARTELS WORKING GROUP  
Subgroup 2: Enforcement Techniques**

**Czech Republic**

**date of update: 15/06/2016**

# ICN ANTI-CARTEL ENFORCEMENT TEMPLATE

## IMPORTANT NOTES:

This template is intended to provide information for the ICN member competition agencies about each other's legislation concerning hardcore cartels. At the same time the template supplies information for businesses participating in cartel activities about the rules applicable to them; moreover, it enables businesses which suffer from cartel activity to get information about the possibilities of lodging a complaint in one or more jurisdictions.

Reading the template is not a substitute for consulting the referenced statutes and regulations. This template should be a starting point only.

## 1. Information on the law relating to cartels

<b>A. Law(s) covering cartels:</b>	Act No. 143/2001 Coll., on the Protection of Competition as amended (hereinafter referred to as "the Competition Act") Web page: <a href="http://www.uohs.cz/en/legislation.html">http://www.uohs.cz/en/legislation.html</a> Languages: Czech, English Act No.500/2004 Coll., on Administrative Procedure Code Web page: <a href="http://www.uohs.cz/cs/legislativa.html">http://www.uohs.cz/cs/legislativa.html</a> Languages: Czech
<b>B. Implementing regulation(s) (if any):</b>	None
<b>C. Interpretative guideline(s) (if any):</b>	Notice of the Office for the Protection of Competition from 4 November 2013 on Application of the Article 22ba of the Act on the Protection of Competition (Leniency programme)  Notice on Settlement Procedure with the Aim to Speed up the Process of Administrative Proceedings using Request for Sanction Reduction Pursuant to the Article 22ba (2) of the Act on the Protection of Competition

	<p>Notice of the Office for the Protection of Competition on Alternative Solutions of Competition Issues and on Postponing of the Subject Matter</p> <p>Language: Czech, English</p> <p>Web page: <a href="http://www.uohs.cz/en/legislation.html">http://www.uohs.cz/en/legislation.html</a></p> <p>Guidelines of the Office for the Protection of Competition on the Method of Setting Fines</p> <p>Language: Czech, English</p> <p>Notice of the Office for the Protection of Competition on agreements of minor importance which do not appreciably restrict competition (de minimis)</p> <p>Language: Czech, English</p> <p>Web page:  <a href="http://www.uohs.cz/cs/legislativa/hospodarska-soutez.html">http://www.uohs.cz/cs/legislativa/hospodarska-soutez.html</a>  <a href="http://www.uohs.cz/en/legislation.html">http://www.uohs.cz/en/legislation.html</a></p>
<b>D. Other relevant materials (if any):</b>	

## 2. Scope and nature of prohibition on cartels

<p><b>A. Does your law or case law define the term “cartel”?</b></p> <p><b>If not, please indicate the term you use instead.</b></p>	<p>The term "cartel" is defined within the Notice on Leniency Programme as a secret horizontal agreement between two or more undertakings with the object to coordinate their competition behavior and/or restrict competition by price fixing, market sharing, output limitation, bid rigging and restricting imports and/or exports.</p>
<p><b>B. Does your legislation or case law distinguish between very serious cartel behaviour (“hardcore cartels” – e.g.: price fixing, market sharing, bid rigging or</b></p>	<p>The Competition Act distinguishes between object and effect prohibited agreements and does not work with the term "cartel" at all. Nevertheless for leniency reasons the Leniency Programme defines the term cartel.</p> <p>In accordance with the Leniency Programm and practice of the Office for the Protection of Competition (hereinafter referred to as "the Office") cartels include agreements and concerted</p>

<p><b>production or sales quotas<sup>1</sup>) and other types of “cartels”?</b></p>	<p>practices on price-fixing, market-sharing, the allocation of customers and bid rigging.</p> <p>All the other horizontal agreements with the effect of restriction of competition but without the object to restrict competition are considered to be infringements but are assessed as less serious than cartels.</p> <p>Therefore, the Office differs between cartels and other prohibited horizontal agreements and does not distinguish between two types of cartels "classic cartels" and "hard core cartels".</p>
<p><b>C. Scope of the prohibition of hardcore cartels:</b></p>	<p>There is no special exception regarding cartels in any specific sector or industry.</p> <p>Theoretically, there is only general defence pursuant to the article 3 (4) of the Act, which is extremely improbable with regard to hardcore cartels and so far the Office does not have any relevant experience of successful application of this defence in cartel case.</p>
<p><b>D. Is participation in a hardcore cartel illegal <i>per se</i>?</b></p>	<p>Yes.</p>
<p><b>E. Is participation in a hardcore cartel a civil or administrative or criminal offence, or a combination of these?</b></p>	<p>In the Czech Republic combined system is applied.</p> <p>Cartel itself is an administrative offence for which the undertaking is held liable. In addition pursuant to Criminal Code natural person can be sanctioned for committing crime by concluding cartel.</p>

### 3. Investigating institution(s)

<p><b>A. Name of the agency, which investigates cartels:</b></p>	<p>Office for the Protection of Competition Úřad pro ochranu hospodářské soutěže</p>
<p><b>B. Contact details of the agency:</b></p>	<p>Office for the Protection of Competition Úřad pro ochranu hospodářské soutěže třída Kpt. Jaroše 7 604 55 Brno Czech Republic e-mail: roman.pliska@compet.cz; andrea.billova@compet.cz Phone numbers: Operator Tel.: +420 542 167 111</p>

<sup>1</sup> In some jurisdictions these types of cartels – and possibly some others – are regarded as particularly serious violations. These types of cartels are generally referred to as “hardcore cartels”. Hereinafter this terminology is used.

	<p>Fax: +420 542 167 112</p> <p>International Unit</p> <p>Tel.: +420 542 167 138</p> <p>Fax: +420 542 167 117</p> <p>Press Officer</p> <p>Tel.:+420 542 167 225</p>
<b>C. Information point for potential complainants:</b>	<p>Office for the Protection of Competition Úřad pro ochranu hospodářské soutěže.</p> <p>Address: třída Kpt. Jaroše 7, 604 55 Brno</p> <p>e-mail: roman.pliska@compet.cz; andrea.billova@compet.cz</p> <p>Tel: 542 167 111, Fax: 542 167 112</p> <p>Web: <a href="http://www.uohs.cz/cs/uvodni-stranka.html">http://www.uohs.cz/cs/uvodni-stranka.html</a> (in Czech and English)</p>
<b>D. Contact point where complaints can be lodged:</b>	<p>Complaints can be submitted in written form in the following ways:</p> <p>Personally: třída Kpt. Jaroše 7, 604 55 Brno</p> <p>Office hours: Monday-Friday: 8.00am-2.00pm</p> <p>Via post: třída Kpt. Jaroše 7, 604 55 Brno</p> <p>Via e-mail: posta@compet.cz</p> <p>Via fax: 542 167 112</p>
<b>E. Are there other authorities which may assist the investigating agency? If yes, please name the authorities and the type of assistance they provide.</b>	No.

#### 4. Decision-making institution(s)<sup>2</sup>

<b>A. Name of the agency making decisions in cartel cases:</b>	-
<b>B. Contact details of the agency:</b>	-
<b>C. Contact point for questions and</b>	-

<sup>2</sup> Meaning: institution taking a decision on the merits of the case (e.g. prohibition decision, imposition of fine, etc.)

<b>consultations:</b>	
<b>D. Describe the role of the investigating agency in the process leading to the sanctioning of the cartel conduct.</b>	-
<b>E. What is the role of the investigating agency if cartel cases belong under criminal proceedings?</b>	-

## 5. Handling complaints and initiation of proceedings

<b>A. Basis for initiating investigations in cartel cases:</b>	The Office initiates the investigation ex officio on the basis of a complaint, leniency application, market studies or publicly available information.
<b>B. Are complaints required to be made in a specific form (e.g. by phone, in writing, on a form, etc.)?</b>	Complaints can be submitted in any form (in writing, electronic form or orally in the record).
<b>C. Legal requirements for lodging a complaint against a cartel:</b>	None.
<b>D. Is the investigating agency obliged to take action on each complaint that it receives or does it have discretion in this respect?</b>	Pursuant to Article 21 (2) of the Competition Act the Office may decide not to initiate a proceeding ex officio after a preliminary consideration of the case pursuant to Article 20(1a), unless there is a public interest in its proceeding. The Office shall consider particularly the nature of the conduct subject to investigation and the manner of its execution, significance of the relevant market and the number of affected consumers. The Office shall make a written record of not initiating the proceeding where it shall state why the proceeding was not initiated.
<b>E. If the agency intends not to pursue a complaint, is it required to adopt a decision addressed to the complainant explaining its reasons?</b>	The Office does not adopt any decision in this matter. Nevertheless the Office informs applicants in written form about not pursuing complaint where it explains the reasons.
<b>F. Is there a time limit counted from the date of receipt of a complaint by the competition agency for taking the decision on whether to investigate or reject it?</b>	No.

## 6. Leniency policy<sup>3</sup>

<p><b>A. What is the official name of your leniency policy (if any)?</b></p>	<p>Leniency Programme</p> <p><a href="http://www.uohs.cz/en/competition/antitrust/new-leniency-programme.html">http://www.uohs.cz/en/competition/antitrust/new-leniency-programme.html</a></p>
<p><b>B. Does your jurisdiction offer full leniency as well as partial leniency (i.e. reduction in the sanction / fine), depending on the case?</b></p>	<p>The Office provides both full leniency (immunity from fines) and partial leniency (reduction of fines).</p>
<p><b>C. Who is eligible for full leniency?</b></p>	<p>An undertaking, participating in a cartel, can be eligible for full immunity from fine if such undertaking is the first one to provide the Office with relevant information on the existence of the cartel of which the Office has by then not been aware, or on the existence of which the Office has been informed but has not been able to acquire sufficient amount of uncontested evidence from other sources. The full immunity is available only for one undertaking.</p>
<p><b>D. Is eligibility for leniency dependent on the enforcing agency having either no knowledge of the cartel or insufficient knowledge of the cartel to initiate an investigation?</b></p> <p><b>In this context, is the date (the moment) at which participants in the cartel come forward with information (before or after the opening of an investigation) of any relevance for the outcome of leniency applications?</b></p>	<p>The date when the undertaking submits the application does not matter. The only relevant fact is whether the Office has already conducted a dawn raid and/or the amount/nature of evidence that the Office possesses at the time of leniency application.</p>
<p><b>E. Who can be a beneficiary of the leniency program (individual / businesses)?</b></p>	<p>Undertakings which can be represented either by individual or also by businesses.</p> <p>Natural persons can benefit from the leniency programme within criminal proceedings from leniency applied by an undertaking.</p>

<sup>3</sup> For the purposes of this template the notion of ‘leniency’ covers both full leniency and a reduction in the sanction or fines. Moreover, for the purposes of this template terms like ‘leniency’ ‘amnesty’ and ‘immunity’ are considered as synonyms.

<p><b>F. What are the conditions of availability of full leniency:</b></p>	<p>The Office will grant the undertaking, which admits its involvement in the alleged cartel (hereinafter referred to as “the applicant”), immunity from any fine which would otherwise be imposed if:</p> <p>The undertaking:</p> <p>a) is the first one to submit evidence which in the Office’s view, at the time it evaluates the application, will enable it to carry out targeted inspections in connection with an alleged cartel; relevancy of these information is evaluated by the Office and the Office have not, at the time of the application, already had sufficient evidence to adopt an inspections decision/seek a court warrant for an inspection or have not already carried out an inspection in connection with the alleged cartel arrangement, (called Leniency 1A)</p> <p>or</p> <p>is the first to submit evidence regarding alleged cartel that the Office has not acquired yet and which enables the Office to legally prove the cartel and the Office has not have enough evidence to prove the cartel at the time of submission of the application. Relevancy of these information and evidence is evaluated by the Office. (called Leniency 1B).</p> <p>b) has to admit its participation in the cartel</p> <p>c) no other immunity has not been granted regarding the cartel submitted within the application</p> <p>d) has to fully cooperate with the Office in the course of the whole proceedings</p> <p>e) did not coerced others to participate in the cartel.</p>
<p><b>G. What are the conditions of availability of partial leniency (such as reduction of sanction / fine / imprisonment):</b></p>	<p>The undertaking</p> <p>a) has to submit evidence that has significant added value to the evidence which is already in the possession of the Office. (especially evidence that enables to prove longer duration of the cartel, to sanction other undertakings, to prove that cartel covered other markets etc.)</p> <p>b) has to admit its participation in the cartel</p> <p>c) has to fully cooperate with the Office during the whole proceedings</p> <p>d) did not coerced others to participate in the cartel</p>
<p><b>H. Obligations for the beneficiary after the leniency application has been accepted:</b></p>	<p>Both immunity and leniency applicants have to put an end to their action pursuant to the prohibited agreement at the latest in the moment of provision of the relevant information.</p> <p>Applicants are obliged to:</p> <p>a) not to disclose any information regarding the application</p> <p>b) submit all evidence regarding the cartel to the Office</p> <p>c) submit only true, complete and accurate information</p> <p>d) cooperate fully and genuinely with the Office</p> <p>e) not to destroy any evidence (not even after they start to consider the submission of the application)</p>



	f) enable its employees for interviews
<b>I. Are there formal requirements to make a leniency application?</b>	The application can be submitted in written form and also orally.
<b>J. Are there distinct procedural steps within the leniency program?</b>	Yes, conditional immunity/reduction of fine is granted after the necessary criteria are met and the final immunity/reduction is granted by the final decision if the applicant fulfills also all other criteria, especially full and genuine cooperation with the Office in the course of the whole proceedings.
<b>K. At which time during the application process is the applicant given certainty with respect to its eligibility for leniency, and how is this done?</b>	Immediately after the Office assesses the application and all the conditions are met, the conditional immunity/reduction is granted by the Office.
<b>L. What is the legal basis for the power to agree to grant leniency? Is leniency granted on the basis of an agreement or is it laid down in a (formal) decision? Who within the agency decides about leniency applications?</b>	Granting of leniency is mentioned within individual points in Article 22ba of the Act. In addition, detailed information can be found in leniency programme which is accessible on the website of the Office.  Web page: <a href="http://www.uohs.cz/en/competition/antitrust/new-leniency-programme.html">http://www.uohs.cz/en/competition/antitrust/new-leniency-programme.html</a>  Languages: Czech, English
<b>M. Does your legislation have a marker system? If yes, please describe it.</b>	Yes, marker system is defined in the leniency programme in the following way:  An undertaking wishing to make an application for immunity may initially apply for a “marker” which protects an applicant’s place in the queue for a given period of time and allows it to gather the necessary information and evidence in order to meet the relevant evidential threshold for immunity as agreed with the Office. To be eligible for a marker, the applicant has to provide the Office with its name and address as well as information concerning the parties to the alleged cartel, the affected product and geography market, the duration of alleged cartel and the nature of the alleged cartel conduct. An undertaking applying for immunity from fine should justify an application for a “marker”.  If the marker is granted, the Office determines the period within which the applicant has to complete the marker by submitting the information required to meet the relevant evidential threshold for immunity. If the applicant performs the marker within the set period, the information and evidence provided will be deemed to have been submitted on the date when the marker was granted.
<b>N. Does the system provide for any extra credit<sup>4</sup> for</b>	If the undertaking in the application discloses another cartel it is assessed as a separate leniency application.

<sup>4</sup> Also known as: “leniency plus”, “amnesty plus” or “immunity plus”. This category covers situations where a leniency applicant, in order to get as lenient treatment as possible in a particular case, offers to reveal information about participation in another cartel distinct from the one which is the subject of its first leniency application.

disclosing additional violations?	
<b>O. Is the agency required to keep the identity of the beneficiary confidential? If yes, please elaborate.</b>	No. The identity of the beneficiary is always disclosed in the final decision at the latest.
<b>P. Is there a possibility of appealing an agency's decision rejecting a leniency application?</b>	It is not possible to appeal the rejection of leniency application. However, the undertaking has the possibility to appeal the final decision of the Office when it comes into force.
<b>Q. Contact point where a leniency application can be lodged:</b>	<ol style="list-style-type: none"> <li>1. the postal address: třída Kapitána Jaroše 7, 604 55 Brno</li> <li>2. the e-mail address: leniency@compet.cz (exclusively for leniency applications), or e-mail address posta@compet.cz</li> <li>3. recorded oral submission of application (we recommend to arrange the meeting in advance by phone)</li> </ol> <p>Date and time of the submission of application will be recorded.</p> <p>Consultation on the Leniency Programme is possible (also anonymously) at the following telephone numbers:</p> <ul style="list-style-type: none"> <li>o Mgr. Igor Pospíšil: + 420 542 167 216</li> <li>o Mgr. Ing. Kamil Nejezchleb: + 420 542 167 284</li> <li>o Ing. Lenka Štaflová: + 420 542 167 308</li> </ul>
<b>R. Does the policy address the possibility of leniency being revoked? If yes, describe the circumstances where revocation would occur. Can an appeal be made against a decision to revoke leniency?</b>	Leniency is not granted in all cases in which the undertaking does not fulfill all necessary conditions. The undertaking has the possibility to appeal the decision in which the leniency is revoked. The Office has no experience so far with revoking leniency application in the final decision.
<b>S. Does your policy allow for "affirmative leniency", that is the possibility of the agency approaching potential leniency applicants?</b>	Application itself must be in any case at first submitted by applicant and the Office has no power to force anybody to submit leniency application. The applicant has the right to submit hypothetical application where no names and markets are revealed, consult it with the Office and eventually afterwards submit full application. The Office also enables informal consultations regarding potential application.
<b>T. Does your authority have rules to protect leniency material from disclosure? If yes, please elaborate.</b>	Pursuant to the Article 21c of the Competition Act leniency materials are kept outside of the administrative file until the Statement of Objections is issued by the Office. After the Statement of Objections the leniency materials are included into the administrative file. However, they are excluded from the provision of access to the file. Such parts of the file can be inspected only by the parties to the proceedings or their representatives.

## 7. Settlement

<p><b>A. Does your competition regime allow settlement?</b></p> <p>If yes, please indicate its public availability (link to the relevant rules, guidelines, etc.).</p>	<p>Yes, the settlement procedure was enacted into the Competition Act, Article 22ba (<a href="http://www.uohs.cz/en/legislation.html">http://www.uohs.cz/en/legislation.html</a>) by the amendment approved in 2012.</p> <p>The Office has also issued a guidance document, Notice on the Settlement Procedure (<a href="http://www.uohs.cz/en/legislation.html">http://www.uohs.cz/en/legislation.html</a>).</p>
<p><b>B. Which types of restrictive agreements are eligible for settlement [e.g. hardcore cartels, other types of cartels, vertical agreements only ...]?</b></p>	<p>Restrictive cartel agreements, vertical agreements, abuse of dominance or infringement of merger provisions can be eligible for settlement procedure.</p>
<p><b>C. What is the reward of the settlement for the parties?</b></p>	<p>If all legally set requirements are fulfilled the fine imposed on the party to the administrative proceedings can be reduced by up to 20 %.</p>
<p><b>D. May a reduction for settling be cumulated with a leniency reward?</b></p>	<p>Yes the settlement procedure and the related fine reduction can be cumulated with the Leniency type B which can be granted to the undertaking that is not the first one to notify the Office about the anticompetitive conduct. Such undertakings may obtain up to 50% reduction of the fine if they submit sufficient evidence to help to prove the cartel.</p>
<p><b>E. List the criteria (if there is any) determining the cases which are suitable for settlement.</b></p>	<p>No further criteria for specific cases (sectors or markets) has been set. The Office shall reduce the fine if the undertaking admits liability for the administrative offence and if the Office considers such sanction to be sufficient with respect to the specific nature and seriousness of the administrative offence.</p> <p>The decision whether to accept the application for the settlement procedure in particular cases is in a full discretion of the Office which reviews the applications on case by case basis.</p>
<p><b>F. Describe briefly the system [who can initiate settlement – your authority or the parties, whether your authority is obliged to settle if the parties initiate, in which stage of the investigation settlement may be initiated, etc.].</b></p>	<p>The Office initiates a consultation to determine the interest of the parties to the proceedings for application for the settlement. If the parties are interested the settlement procedure is initiated by the Office and a series of oral hearing is held. The Office then issues a brief Statement of Objections. Within legally set time limit parties send official application for the reduction of the fine. The Office issues a brief final decision.</p> <p>The Office may refrain from the settlement procedure any time and continue in conducting the infringement proceedings.</p> <p>In order to achieve maximum procedural savings the Office initiates the settlement procedure as soon as the evidence provide sufficient idea of the administrative offence and the related liability.</p>
<p><b>F. Describe the procedural efficiencies of your</b></p>	<p>Main procedural efficiencies include in particular shorter length of proceedings, brief Statement of Objections and the final</p>

<b>settlement system [e.g. shorter decision, etc.].</b>	decision and related overall savings of human and financial resources due to the shorter proceedings and the absence of subsequent judicial review.
<b>G. Does a settlement necessitate that the parties acknowledge their liability for the violation?</b>	Yes, the party has to acknowledge the liability for the violation and the legal assessment of the matter conducted by the Office.
<b>H. Is there a possibility for settled parties to appeal a settlement decision at court?</b>	Yes, the action can be filed against the decision to administrative courts.

## 8. Commitment

<b>A. Does your competition regime allow the possibility of commitment?</b>  If yes, please indicate its public availability [link to the relevant rules, guidelines, etc.].	Yes, pursuant to the Article 7 (horizontal and vertical agreements) and the Article 11 (abuse of dominant position) of the Competition Act ( <a href="http://www.uohs.cz/en/legislation.html">http://www.uohs.cz/en/legislation.html</a> ) the Office may accept commitments submitted by undertakings.
<b>B. Which types of restrictive agreements are eligible for commitment [e.g. hardcore cartels, other types of cartels, vertical agreements only ...]?</b>  Are there commitments which are excluded from the commitment possibility?	Restrictive horizontal and vertical agreements and abuse of dominant position represent violations eligible for commitments.  No commitments are excluded from the commitment possibility.
<b>C. List the criteria (if there are any) determining the cases which are suitable for commitment.</b>	No such criteria has been enacted. The Office shall accept the commitments if they are sufficient for restoration of efficient competition, if the harmful effect is eliminated by their fulfilment and the competition infringement did not result in substantial distortion of competition.
<b>D. Describe, which types of commitments are available under your competition law.[e.g.: behavioural / structural]</b>	Any type of commitments (structural or behavioral) that ensures the efficient competition in the market can be submitted to the Office under the Czech legal framework.
<b>E. Describe briefly the system [who can initiate commitment – your authority or the parties, in which stage of the investigation commitment may be initiated, etc.]</b>	Parties to the proceedings may propose commitments to the Office within the 15 days time limit from the date the Statement of Objections was delivered to them. The Office reviews the submitted commitments and may either accept them and issue a commitment decision or reject the proposal should the commitments be insufficient. The parties are then informed about the rejection of commitments and the Office continues in the conduct of infringement proceedings.

<b>I. Does a commitment decision necessitate that the parties acknowledge their liability for the violation?</b>	Yes, the parties have to acknowledge the legal qualification of the conduct by the Office and accept the liability.
<b>J. Describe how your authority monitors the parties' compliance to the commitments.</b>	On the Office's request party to the proceeding shall be obliged to provide evidence to prove the fulfilment of commitments. If the party does not provide the sufficient answer to such request the Office may consider commitments to be unfulfilled and reopened the proceeding.
<b>K. Is there a possibility for parties to appeal a commitment decision at court?</b>	Yes, the action can be filed against the decision to administrative courts.

## 9. Investigative powers of the enforcing institution(s)<sup>5</sup>

<b>A. Briefly describe the investigative measures available to the enforcing agency such as requests for information, searches/raids<sup>6</sup>, electronic or computer searches, expert opinion, etc. and indicate whether such measures requires a court warrant.</b>	<p>The Office has the following investigative powers:</p> <ul style="list-style-type: none"> <li>- request for information</li> <li>- market study</li> <li>- dawn raids (every device within business premises can be inspected - computers, mobile phones, printed documents etc.)</li> <li>- power to ask witnesses to testify within the administrative proceedings</li> <li>- order an oral hearing</li> </ul> <p>Please note that none of these powers requires court warrant.</p>
<b>B. Can private locations, such as residences, automobiles, briefcases and persons be searched, raided or inspected? Does this require authorisation by a court?</b>	<p>Dawn raid of non-business premises is possible but requires a court warrant.</p> <p>Cars and briefcases can be inspected if found at business premises or used for business purposes without court warrant.</p>
<b>C. May evidence not falling under the scope of the authorisation allowing the inspection be seized / used as evidence in another case? If yes, under which circumstances (e.g. is a</b>	No. The Office would need another authorisation for another infringement in such case to be allowed to seize evidence falling outside the scope of its original authorisation.

<sup>5</sup> "Enforcing institutions" may mean either the investigating or the decision-making institution or both.

<sup>6</sup> "Searches/raids" means all types of search, raid or inspection measures.

<p>post-search court warrant needed)?</p>	
<p><b>D. Have there been significant legal challenges to your use of investigative measures authorized by the courts? If yes, please briefly describe them.</b></p>	<p>There is a long-lasting dispute over the issue whether the Office needs a court warrant to conduct dawn raids in business premises. Next amendment to the Competition Act planned to be approved in 2016 contains a provision on the possibility of the judicial review of the Office's resolution to authorize the dawn raid. Therefore the court warrant will still not be needed. However the possibility of the review of the authorization should ensure sufficient level of procedural rights.</p>

## 10. Procedural rights of businesses / individuals

<p><b>A. Key rights of defence in cartel cases:</b></p>	<p>The undertaking shall be notified of a suspected violation of law.</p> <p>The undertaking has a right to legal representation.</p> <p>The undertaking has a right to access the administrative file.</p> <p>The undertaking can make a written statement or can be heard orally.</p> <p>The undertaking has the possibility to suggest new evidence.</p> <p>The undertaking can question the witnesses or representatives of companies.</p> <p>The undertaking has a right to appeal the Office's decision.</p>
<p><b>B. Protection awarded to business secrets (competitively sensitive information): is there a difference depending on whether the information is provided under a compulsory legal order or provided under informal co-operation?</b></p>	<p>Art. 24 of the Act: A person in an employment or any other relation to the Office, on the basis of which he/she performs an activity for it, shall not disclose any facts which he/she learned during this activity and which constitute a business secret or a confidential information; this obligation shall continue after the termination of this relation. Pursuant to Art 23(3) of the Administrative Procedure Code, the Office is obliged to take measure in order to ensure that state, economic or service secret or legally imposed professional secrecy is not disclosed in the course of the provision of the access to the file.</p> <p>Pursuant to the article 21c documents containing business secret are protected when providing access to the file. Business secret cannot be disclosed and parties have access only to description of documents containing business secret.</p> <p>There is no difference between business secrets on the basis the way of their collection.</p>

## 11. Limitation periods and deadlines

<p><b>A. What is the limitation period (if any) from the date of the termination of the infringement by which the investigation / proceedings must begin or a decision in the merits of the case must be made?</b></p>	<p>The Office applies objective limitation period 10 years after the infringement has been terminated in which the decision on the merits has to be issued and subjective 5 years limitation period to initiate the proceedings after the date the Office becomes aware of the infringement.</p>
<p><b>B. What is the deadline, statutory or otherwise (if any) for the completion of an investigation or to make a decision in the merits?</b></p>	<p>10 years after the infringement was terminated</p>
<p><b>C. What are the deadlines, statutory or otherwise (if any) to challenge the commencement or completion of an investigation or a decision regarding sanctions?</b></p>	<p>The undertaking has the right to appeal the first-instance decision of the Office to the second-instance of the Office within the limitation period of 15 days that starts on the date when the decision is delivered.</p> <p>The undertaking has the right to file an action against the second-instance decision of the Office to the court within the limitation period of 2 months that starts on the date when the decision is delivered.</p>

## 12. Types of decisions

<p><b>A. Please list which types of decisions on the merits of the case can be made in cartel cases under the laws listed under Section 1.</b></p>	<p>Prohibition decision and order to bring the infringement to an end:</p> <ul style="list-style-type: none"> <li>imposition of fines</li> <li>imposition of remedies</li> <li>commitments</li> <li>termination of the case - no infringement has been found</li> </ul> <p>The Office has the power to impose the ban to participate in public procurement for three-year period on undertaking in bid rigging cases.</p>
<p><b>B. Please list which types of decisions on the merits of the case can be made in hardcore cartel cases under the laws listed under Section 1 (if different from those listed under 10/A).</b></p>	<p>Without the acceptance of obligations the Office can impose all sanctions mentioned in point 10.A. of this questionnaire.</p>

<p><b>C. Can interim measures<sup>7</sup> be ordered during the proceedings in cartel cases? (if different measures for hardcore cartels please describe both<sup>8</sup>.) Which institution (the investigatory / the decision-making one) is authorised to take such decisions? What are the conditions for taking such a decision?</b></p>	<p>Yes.</p>
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### 13. Sanctions for procedural breaches (non-compliance with procedural obligations)<sup>9</sup>

<p><b>A. Grounds for the imposition of procedural sanctions / fines:</b></p>	<p>The Office may by its decision impose procedural fines as it is mentioned in the Act. The Office has the power to apply procedural fines for example for breach of seal, non-cooperation during down raid, non-submission of information.</p>
<p><b>B. Type and nature of the sanction (civil, administrative, criminal, combined):</b></p>	<p>The Office can impose only administrative sanctions.</p>
<p><b>C. On whom can procedural sanctions be imposed?</b></p>	<p>On the natural or legal person(s).</p>
<p><b>D. Criteria for determining the sanction / fine:</b></p>	<p>Turnover of the undertaking, seriousness of the violation.</p>
<p><b>E. Are there maximum and / or minimum sanctions / fines?</b></p>	<p>There is no minimal sanction. Maximal sanction is CZK 300.000 or 1 % of the undertakings net total turnover. These fines can be imposed repeatedly till the undertaking's obligation is fulfilled up to total amount of fines not exceeding 10 % of its total net turnover achieved in preceding business year.</p>

<sup>7</sup> In some jurisdictions, in cases of urgency due to the risk of serious and irreparable damage to competition, either the investigator or the decision-making agency may order interim measures prior to taking a decision on the merits of the case [e.g.: by ordering the immediate termination of the infringement].

<sup>8</sup> Only for agencies which answered "yes" to question 2.C. above

<sup>9</sup> In some jurisdictions non-compliance with procedural obligations (e.g. late provision of requested information, false or incomplete provision of information, lack of notice, lack of disclosure, obstruction of justice, destruction of evidence, challenging the validity of documents authorizing investigative measures, etc.) can be sanctioned.



## 14. Sanctions on the merits of the case

<p><b>A. Type and nature of sanctions in cartel cases (civil, administrative, criminal, combined):</b></p> <p><b>On whom can sanctions be imposed?</b></p>	<p>The Office can impose only administrative sanctions on the person(s) whom an undertaking's conduct can be attributed.</p> <p>The Police and public prosecutor can initiate criminal proceedings against natural persons that concluded cartel agreement pursuant to the Criminal Code. The court can consequently impose sanctions to such natural persons of up to 8 years of imprisonment.</p>
<p><b>B. Criteria for determining the sanction / fine:</b></p>	<p>The Office has a discretion in imposing sanctions. It follows its guidelines for setting fines and always assesses gravity, duration, mitigating and aggravating circumstances and undertakings turnover. The undertaking has the right to claim inability to pay because of its detrimental economic and financial situation.</p>
<p><b>C. Are there maximum and / or minimum sanctions / fines?</b></p>	<p>For each of the undertakings involved in the infringement: up to CZK 10 million or up to 10% of its net turnover achieved in the previous financial year.</p> <p>For a failure to comply with an enforceable decision, the Office may impose a fine of up to CZK 1 000 000 on undertakings. This fine may be imposed repeatedly.</p>
<p><b>D. Guideline(s) on calculation of fines:</b></p>	<p>Guidelines on the method of setting fines</p> <p><a href="http://www.uohs.cz/en/competition/antitrust/guidelines-on-the-method-of-setting-fines.html">http://www.uohs.cz/en/competition/antitrust/guidelines-on-the-method-of-setting-fines.html</a></p> <p>Languages: English, Czech</p>
<p><b>E. Does a challenge to a decision imposing a sanction / fine have an automatic suspensory effect on that sanction / fine? If it is necessary to apply for suspension, what are the criteria?</b></p>	<p>If the first-instance decision of the Office is appealed there is an automatic suspensory effect. Nevertheless if the action is filed against the decision of the second instance there is no such effect. Sanctioned undertaking can apply to the court for suspension of the obligation to pay the fine till the end of the court proceedings.</p> <p>The court grants suspension only if criteria set in Code of Administrative Justice are met.</p> <p>- suspensive effect shall be granted if execution of the decision or other legal consequences of the decision would lead to significantly higher harm for the undertaking, than the harm of third persons that would arise by granting the suspensive effect and in case it shall not contravene important public interest.</p>

## 15. Possibilities of appeal

<p><b>A. Does your law provide for an appeal from a</b></p>	<p>The power to review the final decisions of the Office is entrusted to the administrative courts not specialised in</p>
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<p><b>decision that there has been a violation of a prohibition of cartels? If yes, what are the grounds of appeal, such as questions of law or fact or breaches of procedural requirements?</b></p>	<p>competition law matters. The decision is scrutinised by the Regional Court in Brno. Regional Court is concerned with matters of law and also of fact.</p> <p>Against the decision of the Regional Court a cassational complaint can be filed to the Supreme Administrative Court which can either reject the complaint or remand the case to the Regional Court. The Supreme Administrative Court is concerned only with the matters of law.</p> <p>Against the decision of the Supreme Administrative Court, it is finally possible to file a constitutional petition addressed to the Constitutional Court if fundamental constitutional rights of the parties were allegedly breached. However, it is possible to file an action to Constitutional Court only with constitution related matters.</p> <p>Right of parties to file an action to the regional court: within 2 months from receiving the decision.</p> <p>Right of parties to lodge a complaint against the regional court decision to the Supreme Administrative Court: within 2 weeks from receiving the regional court decision.</p>
<p><b>B. Before which court or agency should such a challenge be made?</b></p>	<p>See the point 13/A</p>