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Cartels & Leniency 2026

A practical cross-border resource to inform legal minds

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1 The Legislative Framework of the Cartel Prohibition

1.1 What is the legal basis and general nature of the cartel prohibition, e.g. is it civil and/or criminal?

Being a Member State of the European Union, in the Czech Republic, besides national law, one must always consider the provisions of the Treaty on the Functioning of the European Union (hereinafter the "**TFEU**", Art. 101), the relevant regulations, soft law and the case law of the European courts.

Since 2001, Czech Antitrust law is regulated by Act No. 143/2001 Coll. (hereinafter the "**Act**") which, besides the prohibition of cartels, is the basis for fines. The Act No. 40/2009 Coll. (hereinafter the "**Criminal Code**"), which entered into force in January 2010, provides additionally for criminal sanctions for various forms of horizontal hard core cartels. Private enforcement is governed by Act No. 262/2017 Coll. (hereinafter the "**Private Enforcement Act**"), subsidiarily by general civil law, i.e. the Civil Code and the Civil Procedure Code.

The law (also in English but not updated) and the relevant soft law (in Czech) can be downloaded at https://www.uohs.cz/cs/legislativa/hospodarska-soutez.html

1.2 What are the specific substantive provisions for the cartel prohibition?

The Act contains in Sects. 3–7 the material provisions for cartels. Sect. 3 para. 1 is almost identical to part of Art. 101 TFEU, declaring agreements between competitors, decisions of their associations as well as concerted practices to be prohibited and invalid unless an exemption exists in the law or is granted by the Czech Office for the Protection of Competition (the "**Office**"). Para. 2 contains a non-exhaustive list of six areas of arrangements; para. 4 excludes some agreements such as those leading to improvements in the production, etc.

Block exemptions are provided for in Sect. 4; at present, only the EU exemptions apply. The distinction between vertical and horizontal agreements is provided for in Sect. 5.

1.3 Who enforces the cartel prohibition?

The Office with its seat in Brno is the competent authority for enforcing the Act but with no competences under civil or criminal law. However, private enforcement in front of Czech civil courts is still a rarely used possibility. Damaged parties would usually decide for another jurisdiction to enforce claims.

1.4 What are the basic procedural steps between the opening of an investigation and the imposition of sanctions?

The Office may start proceedings on its own motion, for instance, information received through a sector enquiry, through the ECN or on the motion of third parties (e.g. anonymous tip-offs, leniency applications, etc.). The Office regularly performs dawn raids, both for violation of European law, as well as for violation of Czech antitrust law.

Most cases would, however, be started with a letter from the Office; at a later phase, once the Office has completed its fact finding, the results are summed up in a more formal statement of objections. The parties concerned usually have sufficient time to answer: an extension of terms is usually granted. During this phase, the Czech Office has a long-standing practice of competition advocacy and the possibility to agree on a settlement (now becoming a standard because of the 10–20% reduction of fines). The parties also have the possibility to offer commitments during this phase.

The proceedings will end with a decision, possibly imposing a fine, prohibiting performance of an agreement or continuation of a practice; the latter is also possible during the procedure. It is possible to appeal; the first review will be carried out by the Chairman of the Office. The last years have shown a comparatively high number of successful administrative complaints, even in the most spectacular antitrust cases.

1.5 Are there any sector-specific offences or exemptions?

We are not aware of any sector-specific offences. At the time being, only the EU exemption for agreements in the agricultural sector is relevant (Sect. 4 of the Act). This exception could be divided into three parts.

The first part is the exemption where the full application of the competition rules is not required, which applies to agreements, decisions and conduct with an object that promotes the integration of the national market (i.e. conduct that approximates the markets of the Member States). This exemption is currently not fully exploited and could be said to have fallen out of use over time as most national organisations focused on agricultural products have been replaced by the EU Common Agricultural Policy.

The second part of the exemption covers agreements that are necessary to fulfil the objectives of the EU's Common Agricultural Policy. However, this needs to be interpreted restrictively, as the application of this exemption is very complex due to the fact that all conditions under Article 39 TFEU must be met. These conditions are nothing else than the stated objectives of the EU's Common Agricultural Policy, which are, however, set out in very abstract terms and can be problematic in terms of interpretation.

The third and final part of the exemption concerns agreements between farmers (or associations of farmers) concerning the production, sale, storage or processing of agricultural products, provided that there is no condition to charge the same prices to customers and there is no risk of competition being jeopardised. A similar condition applies to fisheries. As with each exception, an exemption is determined on a case-by-case basis.

1.6 Is cartel conduct outside your jurisdiction covered by the prohibition?

Czech antitrust law historically followed the effects principle meaning that it covers foreign country circumstances only if they lead to an actual or potential disturbance of the Czech market, Sect. 1 para. 5 of the Act. At least for merger control cases, the effect on the Czech market has recently been interpreted quite generously.

2 Investigative Powers

2.1 Please provide a summary of the general investigatory powers in your jurisdiction.

Table of General Investigatory Powers

Investigatory power	Civil / administrative	Criminal
Order the production of specific documents or information	Yes	Yes*
Carry out compulsory interviews with individuals	Yes	Yes*
Carry out an unannounced search of business premises	Yes	Yes*
Carry out an unannounced search of residential premises	Yes*	Yes*
Right to 'image' computer hard drives using forensic IT tools	Yes	Yes*
Right to retain original documents	Yes (but not the practice)	Yes*
Right to require an explanation of documents or information supplied	Yes	Yes*
Right to secure premises overnight (e.g. by seal)	Yes	Yes*

<u>Please Note</u>: * indicates that the investigatory measure requires the authorisation by a Court or another body independent of the competition authority.

2.2 Please list any specific or unusual features of the investigatory powers in your jurisdiction.

Whilst bid rigging and (since 2010) certain hard-core cartels can be qualified as a criminal act, it would usually be the Office, not police authorities, performing investigations in these areas.

2.3 Are there general surveillance powers (e.g. bugging)?

In criminal investigations, surveillance powers including bugging would be permitted under certain circumstances, however, the Office does not use such measures in cartel investigations.

2.4 Are there any other significant powers of investigation?

No, there are not.

2.5 Who will carry out searches of business and/ or residential premises and will they wait for legal advisors to arrive?

Teams from the Office (possibly together with EU investigators), and possibly aided by police, will carry out the investigation; a short waiting period for legal advisors to arrive may be granted.

2.6 Is in-house legal advice protected by the rules of privilege?

No, only with external counsel. It is recommended to have such advice marked as "attorney privileged" or similar.

2.7 Please list other material limitations of the investigatory powers to safeguard the rights of defence of companies and/or individuals under investigation.

The Office ceased dawn raids for almost two years following the DELTA PEKÁRNY decision by the European Court of Human Rights (hereinafter the "**ECHR**"); as such, we may now assume that control by courts is safeguarded. As follows from Sect. 21ca para. 1 of the Act, information and evidence supplied to the Office within leniency or regarding reduction of a fine payment cannot be used for other purposes than within proceedings conducted by the Office.

2.8 Are there sanctions for the obstruction of investigations? If so, have these ever been used? Has the authorities' approach to this changed, e.g. become stricter, recently?

Fines of up to 300,000 CZK (about 12,000 EUR) or 1% of the last annual worldwide turnover may be imposed for lack of cooperation or a breach of an Office seal (Sect. 22a/3 of the Act). For instance, in 2022, the Office issued five fines for above 1 million EUR overall for such breaches, and in the following years (2023 and 2024) only one fine for above 550,000 EUR, which was revoked in the later instance.

3 Sanctions on Companies and Individuals

3.1 What are the sanctions for companies?

The maximum fines imposed for cartels may be up to 10 million CZK (about 400,000 EUR) or 10% of the last annual worldwide turnover of the undertaking involved. The Office has published amended rules for establishing the amount of fines as soft law effective from 1 January 2024 (in Czech is available at https://uohs.gov.cz/cs/hospodarska-soutez/metodiky-a-dokumenty/zasady-stanovovani-pokut.html). In particular, the amended rules should lead to higher fines for hardcore cartels. In addition, exclusion from public tenders (one case in 2024) or criminal sanctions against the legal entity – in theory up to dissolution – may be issued but so far never have been.

3.2 What are the sanctions for individuals (e.g. criminal sanctions, director disqualification)?

Participation in bid rigging or horizontal hardcore cartels may also be a criminal act by the individual. To our knowledge, sanctions have been not extended to individuals so far. There is a legislative proposal by the Office for the possibility to fine individual persons for cartel behaviour also.

3.3 Can fines be reduced on the basis of 'financial hardship' or 'inability to pay' grounds? If so, by how much?

The fine will, in a final evaluation, be reduced if it would lead to economic liquidation of the undertaking that has breached competition law; mere losses in one business year will not be sufficient. The reduction depends on the individual case's circumstances and no upper limit is determined.

3.4 What are the applicable limitation periods?

According to the Act, Sect. 23, an objective limitation period of 10 years from the breach is to be applied; for procedural penalties, this is three years. This limitation period is stopped, e.g., by sending a statement of objections or referring to the European Commission which will then start anew. The absolute limit is 14 years; this is prolonged by the period of proceedings conducted (i) before an administrative court, (ii) for the same breach before the European Commission, or (iii) before the competition authority of another Member State.

3.5 Can a company pay the legal costs and/or financial penalties imposed on a former or current employee?

Penalties are never tax deductible; a gentlemen's agreement to pay a bonus in the amount of legal costs would be possible but certainly not favoured by the Office. D&O insurances are now very common.

3.6 Can an implicated employee be held liable by his/her employer for the legal costs and/or financial penalties imposed on the employer?

An employee is liable for damages caused to the employer in case of negligence and cannot exceed four and-a-half times the employee's average gross monthly earnings, in case of intent without limitation. Should the damage have been caused by an Executive/Member of Board, there is no limitation of liability and the burden of proof falls on that natural person.

3.7 Can a parent company be held liable for cartel conduct of a subsidiary even if it is not itself involved in the cartel?

Yes, it can. The parent company can be sanctioned without being personally involved in the infringement under certain conditions established in the case law of the Court of Justice of the European Union. In order to establish liability, it is necessary to verify the economic, organisational and legal relationships between the subsidiary and the parent company in order to determine whether the subsidiary's behaviour on the market could have been independent of the instructions and management of the parent company.

4 Leniency for Companies

4.1 Is there a leniency programme for companies? If so, please provide brief details.

On 29 July 2023, a new leniency programme was announced replacing the previous one from 2007.

It is worded along the ECN Model Leniency Programme and the European Commission leniency programme, including distinction between Type I and Type II leniency and providing for full immunity or fine reductions of up to 50%. In many businesses it is important that the exclusion from public tenders may also be lifted for the applicant. In vertical agreements, successful leniency application can lead to a reduction of a maximum of 30%. Most features are very similar to the European Programme, for instance, the ringleader exemption, the obligation to cooperate fully and to terminate the participation in the cartel unless otherwise agreed with the Office.

Many applications have been filed in the meantime and leniency is becoming a common consideration among the Czech antitrust community, nevertheless, the increase of private enforcement risk has led to a decrease. Applications for full leniency must be made before receiving the statement of objections; applications for reduction of fines must be made within 15 days from the receipt.

The application may be filed electronically with a qualified signature, in writing or orally. Fax applications must be confirmed in writing within five days from the filing in order to have the desired effect. The date and time of the received application is confirmed by the Office.

Should there be aspects of cartels reaching beyond the Czech Republic into other EU countries, a summary application ("*souhrnná žádost*") is sufficient if the applicant for Type I leniency files a full application with the European Commission.

4.2 Is there a 'marker' system and, if so, what is required to obtain a marker?

Yes, but the decision to grant a "marker" lies fully at the discretion of the Office, as does the duration given to the applicant for providing information and proofs.

The Office also allows for a no-name ("hypothetical") discussion of a cartel and the proofs and information to be provided by the potential applicant (usually with a lawyer); such discussion will not grant a marker. Moreover, the information that must be provided is already so extensive that usually one would recommend a fast application for obtaining a marker following that discussion.

4.3 Can applications be made orally (to minimise any subsequent disclosure risks in the context of civil damages follow-on litigation)?

The Office is fully aware of discovery problems and will accept oral deposits to be recorded.

4.4 To what extent will a leniency application be treated confidentially and for how long? To what extent will documents provided by leniency applicants be disclosed to private litigants?

As soon as the statement of objections is issued to the other parties of the cartel, they will learn about the application. They will also have access to the files once proceedings have been officially started but not to the degree the information has been marked as a business secret. The Office will also inform the other members of the ECN about the ongoing proceedings.

The Office states clearly that it cannot protect its files if they are to be handed over to a court or to investigators in criminal and civil procedures.

4.5 At what point does the 'continuous cooperation' requirement cease to apply?

Cooperation must be provided through the entire proceedings until legal force of the final decision.

4.6 Is there a 'leniency plus' or 'penalty plus' policy?

This is currently not applicable.

5 Whistle-blowing Procedures for Individuals

5.1 Are there procedures for individuals to report cartel conduct independently of their employer? If so, please specify.

The first cartel announced by a whistleblower was in 2019. In the meantime, the Ministry of Justice has set up a whistleblower structure, which was, however, hardly used. The Whistleblowing Act No. 171/2023 Coll., transposing the relevant European directive ensures that since December 2023, every Czech enterprise with 50 or more employees sets up an internal whistleblower structure and protects the whistleblower.

6 Plea Bargaining Arrangements

6.1 Are there any early resolution, settlement or plea bargaining procedures (other than leniency)? Has the competition authorities' approach to settlements changed in recent years?

Settlements are preferred by the Office and are becoming more common, in particular, in vertical agreements (mostly resale price maintenance) which still lead to the majority of cartel investigations. The Office can end investigations faster, the decisions are shorter and the probability of appeals is much lower. A new policy has been announced in July 2023 allowing a reduction of the fine by 10–20%; in Czech it is available at: https://uohs.gov.cz/cs/hospodarska-soutez/zakazane-dohody/narovnani.html

7 Appeal Process

7.1 What is the appeal process?

It is possible to appeal any decision by the Office. The first review will be carried out by the Chairman of the Office if the appeal is filed within 15 days from delivery of the decision to the undertaking concerned. Such appeal has suspensive effect. In the last years there were several cases of fines being reduced in this phase already.

The last years have also shown a comparatively high number of successful administrative complaints, even in the most spectacular antitrust cases. Such complaint must be filed within two months from delivery of the Chairman's decision.

The court decision itself can be challenged by so-called "*kasační stížnost*" to the Supreme Administrative Court in Brno within two weeks from the delivery of the court decision.

Finally, also in antitrust cases, constitutional complaints have been filed to the Constitutional Court; the term would be 60 days from delivery of the decision by the Supreme Administrative Court. The ECHR in Luxembourg has also become an institution to be thought of by Czech antitrust lawyers; the DELTA PEKÁRNY Decision changing the entire practice of dawn raids and in practice suspending them for almost a year.

7.2 Does an appeal suspend a company's requirement to pay the fine?

Yes. An appeal has a suspensive effect but only in the first phase of the proceedings (according to the Act, Sect. 25a in connection with Sect. 85 of Act No. 500/2004 Coll., the Administrative Procedure Code). Fines must be paid after the appeal decision by the Chairman. At the request of the plaintiff, the court may grant the suspensive effect to the action only under strict conditions (Sect. 85 of the Administrative Procedure Code).

7.3 Does the appeal process allow for the cross-examination of witnesses?

Witnesses can be heard, though cross-examinations (such as in American procedural law) are rare.

8 Damages Actions

8.1 What are the procedures for civil damages actions for loss suffered as a result of cartel conduct? Is the position different (e.g. easier) for 'follow-on' actions as opposed to 'stand alone' actions?

Since 2017 and transposing the relevant EU-Directive, the Czech Republic has a separate law, i.e. Private Enforcement Act (No. 262/2017 Coll.), governing follow-on actions. It introduces joint and several liability among the members of the cartel and for the first time in Czech civil law a system of Discovery enabling the plaintiff to request documents from the defendant(s). There is no specialised court competent but instead this is referred to second degree regional courts. A first case of a successful damage action (dragging over many years) has been reported in 2024.

8.2 Do your procedural rules allow for class-action or representative claims?

There are various ways to achieve this effect, even though the law on mass claims by consumers has not been passed yet. Nevertheless, a decision by the highest civil court in summer 2023 does not encourage such bundling of claims and this has been later confirmed by the Constitutional Court as well.

Since coming into force in July 2024, the Act on Mass Claims (No. 179/2024 Coll. transposing the Directive EU 2020/1828) allows for class action claims that originated after November 2020. The plaintiff must be entered into the list under the law on consumer protection. Due to several procedural difficulties and well-developed mechanisms in other jurisdictions, the Czech Republic will for the near future not become the primary jurisdiction for claims originating here.

8.3 What are the applicable limitation periods?

As a rule, the limitation period is five years, extended by up to one year during investigations.

8.4 Does the law recognise a 'passing on' defence in civil damages claims?

Yes, the Private Enforcement Act states expressly in its Sect. 29 that such defence is permitted.

8.5 What are the cost rules for civil damages follow-on claims in cartel cases?

Court fees (4% or 5% of the claimed amount, capped at 2 million CZK – about 80,000 EUR), costs for court experts and attorney costs under the Advocate's tariff will be borne by the losing party in the amount of the loss. The court decision on those claims will always deal with the cost sharing.

8.6 Have there been any successful follow-on or stand alone civil damages claims for cartel conduct? If there have not been many cases decided in court, have there been any substantial out of court settlements?

There have been very few reported cases; the first major reported case that has been decided concerned an abuse of dominant position (Asiana/Student Agency case dating from 2007/2008 and being in legal force 15 years later). Parties would usually opt for another jurisdiction with faster and more plaintiff-friendly proceedings. Also, litigation financiers generally prefer other jurisdictions in which they already have experience.

9 Miscellaneous

9.1 Please provide brief details of significant, recent or imminent statutory or other developments in the field of cartels, leniency and/or cartel damages claims.

The Office still focuses on easy-to-detect RPM cases but in the general opinion of competition law practitioners, it is not focusing enough on detecting horizontal agreements and in containing abuses of market power. In 2024, four administrative proceedings for cartel agreements were started, three of which were vertical agreements. One was for a presumed non-poach agreement. Sectors of expected increased activity are food (including the Act on Significant Market powers which is enforced by the Office), pharma/life sciences and energy.

9.2 Please mention any other issues of particular interest in your jurisdiction not covered by the above.

Compliance programmes will play a greater role in the future, not only as a mitigating factor in the setting of fines by the Office but also due to the new whistleblower legislation. Competition lawyers are also busy with the FDI control issues where the Czech Republic following the first regulation as late as in 2021 is slowly developing case law.

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