**Report for the Czech Republic**

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[For the sake of clarity, the questions and related description of the context as provided in the questionnaire remains in the text of the report in the original font. The text of the report for the Czech Republic is included in the blue font.]

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**Questionnaire for question A**

**Is the concept of the abuse of relative market power beyond market dominance necessary to ensure a functioning competition and what criteria should be used to assess it?**

# Background and context

The term ‘relative market power’, also known in other jurisdictions as ‘economic dependence’, superior or unbalanced bargaining power’ or ‘significant imbalance in commercial relations’, is used to describe circumstances in which a company exploits its superior bargaining position vis-à-vis business partners. These rules exist all over the world, from Europe to South Korea or Brazil. In contrast to the traditional concept of dominance, the concept of relative market power is concerned with the analysis of asymmetric dependencies or bargaining positions in business- to-business (B2B) relationships, irrespective of a dominant market position or monopoly power in the traditional sense. This is relevant to business-to-business relationships, including distribution, franchising, subcontracting, supply chains and others, in both traditional and digital markets.

This additional tool for regulating unilateral conduct has recently received renewed attention, reflecting a broader trend in the regulation of business-to-business (B2B) relationships. In recent years, several jurisdictions in Europe, including France, Belgium, Switzerland and Austria, have introduced or updated legislation targeting the abuse of economic dependence or relative market power. The proliferation of these legislative measures highlights the need for transparent, predictable and enforceable criteria for assessing relative market power, situations of dependence and imbalances in bargaining power in the B2B context. It also raises the question of the extent to which such provisions serve to maintain effective competition and thus form part of competition, anti-monopoly or antitrust law as it is commonly understood. This study aims to examine how these criteria are applied in practice, the challenges of enforcement and the wider implications of this regulatory trend for competition policy and the economy.

The following list of questions should be understood as a reminder of issues that may rise in the relevant jurisdiction. National rapporteurs are free to structure the report as they wish, covering only issues relevant to their jurisdiction or discussing other issues arising in their jurisdiction that are not mentioned in this questionnaire.

# Introduction: Origin and Development of the Rules in your Jurisdiction

**Does your jurisdiction have rules or case-law dealing in one way or another with relative market power or economic dependence?**

In the Czech Republic, the concepts of “relative market power” or “economic dependence”,[[1]](#footnote-1) *i.e.* legal rules for dealing with the circumstances in which a company exploits its superior bargaining position vis-à-vis business partners, are not specifically regulated.

However, similar concepts and rules can be inferred either (i) from certain rather general legal provisions, or (ii) for a specific category of entities. These include especially the following:

1. a protection of a weaker contracting party in B2B or B2C economic relations[[2]](#footnote-2) pursuant to Section 433 of the Czech Civil Code;[[3]](#footnote-3)
2. general provisions on the protection against unfair competition under Section 2976 *et seq.* of the Czech Civil Code;[[4]](#footnote-4)
3. a prohibition of abuse of a superior economic position by the seller or buyer in order to obtain undue financial benefit pursuant to Section 2(3) of the Czech Price Act;[[5]](#footnote-5)
4. a breach of the Czech Significant Market Power Act[[6]](#footnote-6) by a buyer in the position of a food business operator against a (weaker) supplier, particularly in the form of unfair commercial practices – this act, however, only concerns entities in the agricultural and food supply chain.

**What is the nature of the rules: are they part of competition law or other specific laws or general contract law? Where is there discussion or debate about how best to deal with such concerns?**

The aforementioned legal rules stem from (i) general private (civil) law statutes (esp. in case of the rules regarding the protection of the weaker party under the Czech Civil Code), (ii) general public law pricing regulations (provisions of the Czech Price Act), and (iii) sector-specific public law regulation regarding the misuse of the significant market power in the segment of agricultural and food supply chain, respectively.

The concept of the abuse of “relative market power” as such does not form a part of the Czech competition (antitrust) law.

There is a more general debate about whether competition law should focus solely on protecting the competitive process (competition as a phenomenon) or extend to protecting individual competitors or weaker parties (*e.g.*, small suppliers). The Czech competition law (including especially the Czech Competition Act[[7]](#footnote-7)) is based on the protection of competition as a phenomenon, rather than the protection of individual competitors (against the actions of one towards another).[[8]](#footnote-8) This is in line with the approach that the purpose of antitrust law shall not to regulate asymmetrical bargaining positions between traders or to provide paternalistic protection to one of them.[[9]](#footnote-9)

In this regard, the Czech Competition Act recognizes the following types of anti-competitive conduct:

1. agreements restricting competition (e.g., cartel agreements and, in general, agreements between undertakings, decisions of their associations, and concerted practices of undertakings the object or effect of which is to restrict economic competition);[[10]](#footnote-10) and
2. abuse of a dominant position (by the means of, *inter alia*, imposing unfair conditions, discriminatory pricing, restricting market access, *etc.*);[[11]](#footnote-11) and
3. prohibited concentrations of competitors (*i.e.*, mergers and acquisitions that could significantly impede competition in the market).[[12]](#footnote-12)

Thus, the abuse of relative market power could be taken into consideration under the Czech antitrust law only if it occurs within the scope of one of the aforementioned types of anti-competitive conduct under the Czech Competition Act. In practice, this could occur, for example, in a situation where the respective abuse of relative market power would be exercised by an undertaking in a dominant position if the conduct would reach such intensity that it would amount to an abuse of a dominant position within the meaning of the Czech Competition Act. However, the potential existence of a dominant position would have to be established on the relevant market as such (i.e., not just in a single supplier-purchaser relationship). The existence of a “relative market power” (e.g., if shown to exist by some empirical evidence regarding the conduct of the undertaking in question towards its commercial partners) could be taken as a potential supporting evidence for the finding of dominance. However, more general factors relating to the market overall (such as, e.g., the market share, barriers to entry etc.) would have to be taken into account as well.

Even in such a case, however, the matter would be prosecuted under the Czech Competition Act solely within the scope of the possible abuse of a dominant position, and not as an abuse of relative market power. This is due to the fact that the Czech competition law, does not concern itself with the fairness of a commercial relationship, but rather with the impact of conduct on the competitive environment in the relevant market as a whole.[[13]](#footnote-13) Nevertheless, such conduct might be in parallel prosecuted also, for example, as a violation of the Section 2(3) of the Czech Price Act.[[14]](#footnote-14)

**When were rules on relative market power or abuse of economic dependence introduced in your jurisdiction? Discuss how the rules and their implementation have evolved over the years.**

No specific rules on relative market or abuse of economic dependence (beyond the concept of abuse of a dominant position on the market) power have been enacted in the Czech Republic and we are not aware of any such contemplated new legislation being in the legislative process or under immediate consideration.

The development of the afore-mentioned legal rules containing partially similar or related concepts in the Czech Republic can be summarized as follows:

1. **The Czech Civil Code and the protection of the weaker contracting party and protection against unfair competition:**

The Czech Civil Code came to the effect on 1 January 2014 and unified and replaced the then-existing (i) Act No. 40/1964 Coll., Civil Code, as amended, and (ii) Act No. 513/1991 Coll., Commercial Code, as amended (the “**Commercial Code**”). While the regulation of protection against unfair competition has been mostly preserved (as it has already been relatively comprehensively regulated under the respective previous Commercial Code), as regards the protection of the weaker contracting party, the (new) Czech Civil Code have led to the strengthening of the position and rights of a weaker contractual party, including (hypothetically) in B2B relationships.

1. **The Czech Price Act and the prohibition of abuse of a superior economic position by the seller or buyer in order to obtain an undue financial benefit:**

The evolution of the rules under the Czech Price Act has reflected transition from a centrally planned to a market-based economy, subsequent enactment of the Czech Competition Act and alignment with EU regulations.

As a result, certain aspects (such as the regulation of below-cost pricing by an undertaking with significant market power) were omitted and left primarily to be regulated by competition law. Furthermore, in Section 2(4) of the Czech Price Act was clarified that a “superior economic position” - which, pursuant to Section 2(3), must not be abused by a seller or buyer to obtain the so-called unjustified financial gain – shall be considered held by a seller or buyer who *“sets prices on the market without being subject to significant price competition, and whose economic position is assessed primarily based on the volume of goods sold or purchased, economic and financial strength, and legal or other barriers to market entry.”*

However, the legislation developments of the Czech Price Act have not led to the introduction of the concept of relative market power as such into the Czech legal system.

1. **The Significant Market Power Act and the prohibition of unfair commercial practices by the food business operators**

The current version of the Significant Market Power Act was introduced into the Czech legal system primarily as an implementation of the Directive (EU) 2019/633 of the European Parliament and of the Council of 17 April 2019 on unfair trading practices in business-to-business relationships in the agricultural and food supply chain (the “**Directive 2019/633**”) by an amendment to the previous wording of the Significant Market Power Act.

Prior to that amendment of the Significant Market Power Act in 2016, it could be inferred that it was aimed (similarly as the Czech Competition Act) not on the protection of weaker food/agricultural suppliers but also at the protection of economic competition as a phenomenon. However, following its amendment by the Act No. 50/2016 Coll., this principle has been left out from the respective act. Certain related sources have since suggested that this may have signified a shift in the Significant Market Power Act’s underlying purpose – i.e., leaning away from the protection of economic competition towards the systemic protection of (weaker) suppliers, regarded as a weaker contracting party in relationships with purchasers holding significant market power.[[15]](#footnote-15) This also follows from the respective explanatory memorandum regarding the amending Act No. 50/2016 Coll.[[16]](#footnote-16) as well as the respective related publications of the Czech Office for the Protection of Competition (*in Czech: Úřad pro ochranu hospodářské soutěže)*.[[17]](#footnote-17)

The Significant Market Power Act underwent significant amendments taking effects as of 1 January 2023[[18]](#footnote-18) as a result of which, inter alia, (i) it now applies to the broader range of entities in the food sector, (ii) the definition of the “significant market power” has been modified as the ability of a buyer to force an unfair advantage on suppliers (and is generally measured by a comparison of turnovers of the buyer and supplier in question), and (iii) it prohibits certain unfair commercial practices unless agreed in writing in advance and in general, the act insists on contractual arrangements being in writing.

However, the main characteristic Significant Market Power Act have not been affected, *i.e.*, it only relates to the entities active in the food supply chain and it only concerns the abuse of a significant market power in specific situations (esp. within the specific prohibited commercial practices).

**Which companies or economic sectors lobbied for the introduction of the rules?**

We are not aware of any specific lobbying activities for introduction of the relative market power rules in the Czech Republic.

However, the adoption process and subsequent amendments of the food-sector specific Significant Market Power Act was (and its practical interpretation still is) influenced by, *e.g.*, the following entities:

1. The Agrarian Chamber of the Czech Republic (representing food producers and lobbying for stricter protection against esp. large retail chains);
2. Trade associations (such as the Czech Association of Commerce and Tourism) and large retail chains advocating for less restrictive regulations to preserve their negotiating leverage over the smaller suppliers.

**Are these rules sector-specific ones or, on the contrary, general ones? In the latter case, are they applied to specific sectors or industries?**

The rules under Czech Civil Code and Czech Price Act are general ones, i.e., they apply to all industries.

The rules under the Significant Market Power Act only concerns the agricultural and food supply chain, targeting esp. unfair commercial practices by buyers (such as large retail chains) against suppliers.

**Has your jurisdiction enacted, or proposed the introduction of, *ex ante* regulation that deals with relative market power or economic dependence?**

Yes, partially. Certain provisions of the Significant Market Power Act constitute an *ex ante* regulation targeting relative market power in the sale of food products.

For the sake of completeness, an *ex ante* procedure would also apply in the context of assessing the marker power in case of merger clearance under Section 12 *et seq.* of the Czech Competition Act. However, such an assessment would not focus on the relative market power or economic dependence of the merging competitors as such, but rather on whether the respective merger would significantly impede competition in the respective relevant market (in terms of prices, quantity of supply, quality of products and/or prospects for innovation).

**Who is responsible for enforcing the rules? Are there many applications of these rules?**

With regard to the above-mentioned partially similar concepts, the following entities would be responsible for their enforcement:

1. a protection of the weaker contracting party in business (B2B or B2C) relationships and protection against unfair competition - private litigation adjudicated by the respective competent civil courts of the Czech Republic;
2. a breach of the Czech Price Act – usually Specialized Financial Authority (*in Czech: Specializovaný finanční úřad*) with the exception of sector-specific regulation, where esp. the respective sector-oriented specific regulators (e.g. Energy Regulatory Office) are responsible;
3. a breach of the Czech Significant Market Power Act – the Czech Office for the Protection of Competition (UOHS)*.*

There are, however, not many applications of those rules for the purposes of balancing or otherwise regulating relative or bargaining market power in B2B relations.

# Criteria for the Definition of Relative Market Power or of Similar Concepts

* 1. **Definition of Relative Market Power or of Similar Concepts**

**Does the legislative text contain a definition and/or criteria of relative market power or similar concepts?**

As above-mentioned, the Czech legislation lacks an explicit definition or criteria for "relative market power". The similar concepts, *i.e.* esp. (i) the protection of a weaker party pursuant to the Section 433 of the Czech Civil Code, (ii) prohibition of abuse of superior economic position under Section 2(3) of the Czech Price Act, and (iii) sector-specific abuse of the significant market power under the Significant Market Power Act, are discussed further in this questionnaire.

For the sake of completeness, as above-mentioned, provisions on the protection against unfair competition under Section 2976 *et seq.* of the Czech Civil Code could be also invoked, however, only in cases when the conduct in question would trigger the respective statutory conditions of unfair competition under the Commercial Code, *i.e.*, when it would constituted conduct (i) in the course of trade, (ii) contrary to good morals of competition, and (iii) capable of causing harm. The mere exercise of a stronger bargaining position shall not, in principle, be regarded as a conduct contrary to good morals of competition, but rather a natural aspect of competitive practice. Therefore, the unfair competition legal rules will not be addressed in greater detail further in this questionnaire.

**Do the criteria defined in the legislative texts differentiate according to the nature of the parties (customer or supplier) or the nature of the relationship?**

Yes, to some extent. Section 433(2) of the Czech Civil Code establish a rebuttable presumption[[19]](#footnote-19) of the existence of a weaker position of a party who, in dealings in the course of trade with the entrepreneur, acts outside the scope of their own business activities (typically as a consumer).[[20]](#footnote-20) However, in B2B relations (in situations where both parties act in the course of their business activities), no such automatic presumption exists and the respective weaker position must follow from the respective circumstances in the given case and would have to be proven.

For the sake of completeness, the respective provisions only apply in B2B or B2C relationships, meaning that only an entrepreneur may be considered the stronger party (the respective provisions do not cover relationships between non-entrepreneurs).[[21]](#footnote-21) Nevertheless, even in such a case, the freedom of contract between non-entrepreneurs would not be absolute, particularly in light of the corrective principle of good morals under Section 580 of the Czech Civil Code that considers invalid a conduct that is contrary to good morals, as well as a conduct violating the purpose of the law.[[22]](#footnote-22)

The Czech Price Act treats sellers and buyers equally as it rather focuses on assessing the “superior economic position” without distinguishing between the roles of the parties involved.[[23]](#footnote-23)

On the other hand, the Significant Market Power Act explicitly differentiates by targeting buyers (*e.g.*, large retailers) with significant market power in the agricultural and food supply chain, emphasizing the presumed vulnerability of suppliers in the respective sector. This aligns with the Directive 2019/633, which emphasizes protection of suppliers in the food supply chains.

**To what extent is the concept of ‘intermediation power’ accounted for?**

The concept of intermediation power is not explicitly addressed in the Czech law; the concept of “intermediation power” is addressed only indirectly through the treatment of significant market power as described in other parts of this questionnaire.

**What elements of the criteria are defined in the legislation and what criteria have been developed through decision-making practice and case law?**

There are no additional criteria for the relative market power in the Czech legislation beyond the above-mentioned.

The Czech Price Act sets out in Section 2(4) that the economic position of the seller or the buyer is assessed in particular based on (i) the volume of goods sold or purchased, (ii) their economic and financial strength, and (iii) legal or other barriers to market entry.

The related relevant case law is also somehow limited. In its decision of 16 March 2021, ref. No. 23 ICdo 56/2019, the Czech Supreme Court emphasized that in B2B issues regarding the protection of a weaker party pursuant to Section 433 of the Czech Civil Code, it must be evaluated whether one party truly exploited its position to impose unfair obligations,[[24]](#footnote-24) rather than merely taking into account the unfavourable outcome for one of the parties (i.e., particularly disadvantageous contractual terms).

From the decision-making practice concerning the interpretation of the Czech Price Act, it follows, *inter alia*, that a person should not be held liable for an abuse of the superior economic position pursuant to Section 2(3) and (4) if it has been subject to “a substantial price competition”. This implies that the respective abuse usually will not occur in a significantly competitive environment, *i.e.*, in an environment where the given entity is exposed to a substantial price competition.[[25]](#footnote-25) The afore-mentioned, however, follows also from the wording of Section 2(4) of the Czech Price Act.

**Are there any legal or factual presumptions?**

Yes. The Czech Civil Code in the context of the protection of a weaker party (Section 433) presumes that a weaker position exists if the party is not an entrepreneur and he or she negotiates with an entrepreneur.

The Czech Price Act implies that a superior position exists if the party can set prices without being subject to effective competition (§ 2(4), Act No. 526/1990 Coll.).

The Significant Market Power Act sets out in Section 3 certain annual turnover thresholds the exceeding of which renders the respective entity as possessing significant market power.

# Criteria Related to the Market

**Are there criteria related to the market, the market structure or the market shares of the companies in the market?**

See above.

**Is there a market definition? Is the definition of the relevant market a prerequisite?**

There is no formal market definition for assessing concepts regarding the relative market power in the Czech law. Unlike the cases of an abuse of dominant position under the Czech Competition Act, where defining the relevant market is a prerequisite, the analogous concepts to the relative market power do not require any market definition.

A partial exception to this arises in the context of the Czech Price Act, where the assessment of a potential abuse of the superior economic position in setting prices under Section 2(3) hereof has been historically based on the criterion of price developments in the so-called comparable markets.[[26]](#footnote-26)

**If one of the criteria is alternatives for the undertaking that is dependent on another undertaking with relative market power, how are these alternatives assessed? Are the alternatives discussed in relation to the relevant market and the substitutability criteria, or can the alternatives be found outside the relevant market (e.g. in other goods or services)?**

The Czech law does not explicitly assess alternatives for a dependent undertaking in the context of relative market power.

**What is the relationship between relative market power and the classic institution of dominance? Is economic dependence or relative market power a criterion for dominance?**

No, in principle, an economic dependence or relative market power is not as such a criterion for dominance. Certainly not in the sense that without it a dominance could not be established or that, if present, a dominance would be automatically established. In other words, it is neither necessary nor sufficient for establishing the dominant position as it is understood under the Czech and EU competition laws. See above for further details.

However, if an economic dependence or relative market power were to be established it could be taken as a supporting argument for establishing the dominance because the factors that can be taken into account in connection with the dominance test are not exhaustively prescribed. The dominance would, however, be measured vis-à-vis the position on the relevant market as such (towards all market participants) not vis-à-vis a single contractual partner.

**Has there been a finding of relative market power in parallel with a finding of dominance? Conversely, has relative market power been denied in the presence of dominance?**

There is very scarce information about cases where there would be a finding of relative market power in parallel with a finding of dominance. There were some cases in the past which were investigated in parallel by UOHS (on the basis of an abuse of dominant position) and by price control authorities pursuant to the Czech Price Act. Those cases related primarily to B2B disputes between big companies that, for some historical reasons associated with privatization of formerly State-owned assets and related de-integration of previously vertically integrated undertakings, had established relationships of dependence in terms of deliveries of necessary inputs for production. One such case (or a line of cases) related to deliveries of the so-called liquid pig iron between a blast furnace company and a steel producer who was dependent on the deliveries of the pig iron for some parts of its steel production.[[27]](#footnote-27) Another related to a dispute between a lignite mining company and a coal powered electricity power plant which was dependent on the deliveries of that type of coal for its electricity production.[[28]](#footnote-28) In those cases, findings of both a dominance and a superior economic position under the Czech Price Act were made in the course of those investigations. The cases were settled between the parties at the end of the day.

Furthermore, there were some cases when the finding of abuse of dominance related to unfair treatment of consumers in their contractual relations with the dominant company esp. in energy sector. One such case related to RWE Transgas (a dominant retail seller of natural gas to end customers) who was found to abuse a dominant position by applying unfair terms in contractual relations with consumers (not modifying excessive advance payments for gas).[[29]](#footnote-29) It was pointed out that RWE Transgas had the upper hand in negotiations with consumers. RWE Transgas was also investigated by the Energy Regulatory Office on the basis of the Czech Price Act for abusing its superior economic position by applying excessive prices. It was held by the Czech Supreme Administrative Court that such parallel investigations (and potential sanctions) were all right due to the different legal objectives of the legal regulations in question.[[30]](#footnote-30) Other cases related to a significant mining company which allegedly applied excessive and discriminatory prices for lignite with its dependent customers (coal powered electricity and/or heat producers) and which resulted to investigations both under the Czech Price Act by price regulating authorities and the Czech Competition Act by UOHS.[[31]](#footnote-31)

Similarly, in a more distant past Czech savings bank was sanctioned for unfair treatment of consumers which pursuant to UOHS represented an abuse of dominant position and which was confirmed by the High Court in Olomouc in judicial review.[[32]](#footnote-32) The court in connection with this mentioned: “*It can be concluded that in both cases the contractual terms were found to be disadvantageous or even unusual for the clients. Since the conduct in question was committed by an undertaking with a dominant position, it always has the appearance of coercion, since the choice of the client is objectively limited by the degree of dominance of the competitor. That is the spirit and essence of the law, if it formulates the offence of abuse of market position at all. By the conduct described, the applicant abused its dominant position to the detriment of consumers.*”[[33]](#footnote-33)

In addition, there is now a pending formal investigation in front of UOHS regarding an alleged abuse of dominant position by FTV Prima (a significant privately owned TV operator in the Czech Republic) where UOHS concentrates on allegedly excessive prices and other unfair conditions in contractual relationships with TV content distributors (primarily some IPTV providers). The formal proceeding was started in April 2025 and is still pending. UOHS contemplates on establishing the dominance on the basis of the presence of the so-called “must have” TV channels (based on consumer survey) and the alleged exercise of relative negotiation power by FTV Prima when it negotiated with those distributors.

**How does the analysis change in the presence of two-sided, or multi-sided, markets?**

The Czech law does not specifically address two-sided or multi-sided markets in the context of relative market power or economic dependence. Thus, the respective analysis would not fundamentally change as – for example within the meaning of the Significant Market Power Act – the respective legal test would be still about whether the buyer(s) (including buyers alliance) can enforce unfair advantages over supplier(s).

# Criteria Related to the Company having a Relative Market Power

**Are there criteria that related to the size, turnover, products, brands or other elements of the company under investigation of relative market power? How are these assessed?**

Yes, but only with regard to the above-discussed similar concepts since the relative market power as such is not addressed under the Czech law.

The Czech Price Act takes into account when assessing the possible existence of a superior economic position, *inter alia*, the volume of the sold or purchased goods, economical or financial strength of the parties concerned, and market barriers.[[34]](#footnote-34)

The Significant Market Power Act uses turnover thresholds for buyers in the food sector,[[35]](#footnote-35) i.e. it presupposes that a significant market power is held by:

1. a buyer whose annual turnover exceeds EUR 2,000,000, in relation to a supplier whose annual turnover does not exceed EUR 2,000,000;
2. a buyer whose annual turnover exceeds EUR 10,000,000, in relation to a supplier whose annual turnover exceeds EUR 2,000,000 but does not exceed EUR 10,000,000;
3. a buyer whose annual turnover exceeds EUR 50,000,000, in relation to a supplier whose annual turnover exceeds EUR 10,000,000 but does not exceed EUR 50,000,000;
4. a buyer whose annual turnover exceeds EUR 150,000,000, in relation to a supplier whose annual turnover exceeds EUR 50,000,000 but does not exceed EUR 150,000,000;
5. a buyer whose annual turnover exceeds EUR 350,000,000, in relation to a supplier whose annual turnover exceeds EUR 150,000,000 but does not exceed EUR 350,000,000; or
6. a buyer that is the State, a territorial self-governing unit, another public law entity, or an association thereof, in relation to a supplier whose annual turnover does not exceed EUR 350,000,000;
7. a buyer whose annual turnover in the territory of the Czech Republic exceeds CZK 5 billion;
8. a buyer that is a controlled entity, whose annual turnover in the territory of the Czech Republic does not exceed CZK 5 billion, provided that its turnover, together with the turnover of the controlling entity, exceeds CZK 5 billion; or
9. a purchasing alliance whose combined turnover of its members in the territory of the Czech Republic exceeds CZK 5 billion.

In case of the protection of a weaker party under the Czech Civil Code, the following criteria would be assessed:[[36]](#footnote-36)

1. length (duration) of the respective business relationship;
2. specific technical equipment depending on the activities of the stronger party (logistical equipment, standardization);
3. difficulty/easiness to quickly change business partners;
4. share of turnover generated by the dependent party in transactions with the stronger party;
5. possible other criteria indicating the existence of an abuse of the weaker-stronger party relationship; however, *“an imbalanced contractual relationship is shaped more by economic dependence than by bargaining power. The common denominator is the restriction of autonomy of will for various reasons.”[[37]](#footnote-37)*

# Criteria related to the Company in a Dependency Situation

**Are there criteria that relate to the size, activity, turnover, economic situation, behaviour, specific investments or other elements related to the company under investigation of relative market power?**

Yes, but only with regard to the above-discussed similar concepts as the relative market power as such is not addressed under the Czech law.

The protection of a weaker party under Section 433 of the Czech Civil Code implies dependency based on economic imbalance, such as a weaker financial position or dependency on the stronger party. There are no specific criteria that would address size, turnover, or specific investments, but courts could consider them when assessing dependency.

The Czech Price Act does not address the characteristics of the dependent party. It focuses primarily on the pricing conduct of the respective stronger party, rather than the nature or attributes of the weaker one.

The Significant Market Power Act focuses on supplier's potential vulnerability in the food supply chain, considering turnover disparities (protection of suppliers with lower turnovers than those of the buyers) and bargaining power imbalances.[[38]](#footnote-38) Specific investments (e.g., tailored production for a buyer) may be relevant but are not among formalized criteria.

**If one of the criteria is alternatives for the undertaking that is dependent on another undertaking with relative market power, how are these alternatives assessed in relation to the dependent undertaking?**

There are no such explicit criteria under the Czech law (although the absence of alternatives may indicate such dependency).

**Is the cessation or abandonment of the activity considered as a valid alternative and, if so, under what conditions? To what extent are the economic consequences for the undertaking dependent on another undertaking with relative market power taken into account?**

This is not specifically addressed in the Czech law.

**To what extent is a commitment to diversify activities or to work with different counterparties a criterion?**

There is no such explicit criterion under the Czech law. Although the diversification may influence the factual assessment of dependency, the lack thereof should not be seen *per se* problematic under the Czech law.

**To what extent is the behaviour and willingness of the dependent party to reduce the risk of dependency over time a criterion?**

Similarly, there is no such explicit criterion under the Czech law. The respective focus remains primarily on the (potentially abusive) conduct of the economically stronger party.

**To what extent is the fault of the company in a dependency situation a criterion?**

Not a criterion under the Czech law.

**How are these assessed?**

No particular assessment as the above-mentioned issues are not specific criteria for the dependency in the Czech Republic.

# Criteria related to the Imbalance of the Party’s Position

**Are there criteria to capture the relative position of one of the parties in relationship to the other, or that capture a possible imbalance in the bilateral relationship between the parties? How are they assessed?**

The Czech law includes criteria to capture imbalances in bilateral relationships, though not explicitly under the term “relative market power” as above-explained.

The protection of a weaker party under the Czech Civil Code addresses contractual imbalances by protecting weaker parties from abuse of economic position, focusing on unfair terms or conduct causing significant imbalance. The main criterion might the economic disparity between parties (manifested, *e.g.*, through an exploitation of the bargaining power) and the abuse thereof.

The Czech Price Act defines the superior economic position as the ability to set prices without significant competition, taking into account transaction volume, financial strength, and existence of market barriers. This captures imbalances in pricing power within bilateral relationships.

The Significant Market Power Act aims on abuse of the buyer-supplier imbalances in the food supply chain, using turnover thresholds and bargaining power disparities to identify significant market power. The list of the respective unfair practices is contained esp. in Section 4 of the Significant Market Power Act and includes, *inter alia*:

* negotiation or imposition of contractual terms that create a significant imbalance in the rights and obligations of the parties to the detriment of the supplier;[[39]](#footnote-39)
* application or receipt of a payment, discount or other consideration, the amount, subject matter, and scope of which, as well as the consideration provided in return, were not agreed in writing in advance;[[40]](#footnote-40)
* discriminatory (unequal) treatment of a supplier through the negotiation or enforcement of unequal contractual terms relating to the purchase or sale of agricultural products or foodstuffs, or the provision of related services, in situations involving comparable performance, without legitimate justification;[[41]](#footnote-41)
* unilateral and arbitrary alteration of contractual conditions relating to the purchase or sale of agricultural produce or food products.[[42]](#footnote-42)

It shall be noted that the relatively broad provisions of a public law nature prohibiting discrimination in strictly B2B relations are considered potentially risky, if interpreted too broadly.[[43]](#footnote-43) In this respect, the Czech Constitutional Court has addressed the interpretation of the above-mentioned *"legitimate justification"* for the possible application of discriminatory (unequal) treatment of suppliers under Section 4(1)(c) of the Significant Market Power Act. The Court concluded that this refers to cases involving *“an objective reason consistent with the logic of supplier–buyer relationships*”.[[44]](#footnote-44)

# Other Criteria and Considerations

**Are there specific criteria depending on the industry or business model under investigation?**

Czech law applies industry-specific criteria only in the food sector as the Significant Market Power Act applies exclusively to agricultural and food supply chain. This aligns with the respective Directive 2019/633 which is implemented into the Czech law by the Significant Market Power Act. The Czech Price Act is not industry specific even though in practice the respective provisions similar to “relative market power” abuse were applied predominantly in sectors were a vertical de-integration occurred especially as a result of privatization of formerly State-owned enterprises (esp. in the energy sector).

**Are these criteria applied to current business relationships or also future or potential business relationships?**

The criteria apply primarily to existing relationships. The Significant Market Power Act targets primarily existing buyer-supplier relationships in the food supply chain, focusing on unfair practices in current contracts. Potential or future relationships may be relevant in cases of refusal to deal exercised by a stronger contracting party (the buyer).

**What kind of economic assessments, studies or industry expert opinions are used to refine the criteria?**

Economic assessments and industry data shall be used primarily by UOHS within the scope of its supervision over compliance with the Significant Market Power Act. Those might include, *inter alia*, market and other economic analysis, including turnover data, contract terms, statement of suppliers *etc.* However, in practice, UOHS does not rely much on economic analysis when applying the Significant Market Power Act.

**What discretion does the enforcers have?**

UOHS has significant discretion in interpreting unfair practices under the Significant Market Power Act, including setting sanctions and accepting commitments. Similarly, the Specialized Financial Authority (and/or other authorities responsible for overseeing compliance with the Czech Price Act) which supervises compliance with the Czech Price Act has also relative wide discretion in assessing pricing abuses.

Courts also have broad discretion given the general (relatively vague or open worded) nature of the legal rules on the protection of a weaker contractual party under the Czech Civil Code.

# Abuse of Relative Market Power

**Is there a requirement of abusive behaviour (or a similar concept), or is the imbalance of power and dependency sufficient for legal regulatory?**

Yes, under the Czech law, the **abusive conduct is generally required** in this context. The mere existence of an imbalance or dependency is not sufficient on its own.

The Czech Civil Code requires the abuse of a stronger economic position (such as imposing unfair contractual terms that cause significant imbalance). A Mere dependency or imbalance is insufficient without an abusive conduct.[[45]](#footnote-45)

The Czech Price Act similarly prohibits the abuse of a superior economic position to obtain unjustified financial gain, *i.e.*, it requires a specific pricing misconduct.[[46]](#footnote-46)

The Significant Market Power Act prohibits certain unfair trading practices if imposed by a buyer with a significant market power, thus it also requires the abusive behaviour to be present.[[47]](#footnote-47)

**If there is a requirement of abusive conduct, is it the same as or different from abuse of a dominant position?**

Abusive conduct under the concepts similar to the abuse of relative market power in the Czech law may have some similarities with an abuse of a dominant position under competition laws but it is conceptually different.

More details were provided under the above points 1., 2.1 and 2.2 above. To put it briefly, the abuse of a dominant position under Section 11 of the Czech Competition Act requires an abuse of dominant position (from the respective relevant market perspective, not merely vis-à-vis certain other party) and harm to the competition on a relevant market (assessed primarily as a harm to consumer welfare). In contrast, the respective provisions of the Czech Civil Code (*i.e.*, Section 433 hereof), the Czech Price Act and the Significant Market Power Act target bilateral imbalances in B2B relationships, focusing rather on exploitation of economic dependence without the need of market-wide effects or dominance on the market.

Consequently, unlike the abuse of a dominant position under the Czech law, these other concepts focus rather on achieving “fairness” in individual transactions (B2B relations) rather than on market-wide competition effects. That said, there may be cases where both competition laws and, e.g., the Czech Price Act could be applied in parallel as described especially under point 2.2 above.

**Is a restriction of competition necessary for an abuse to be found and, if so, how is it assessed?**

No, a restriction of competition (in the sense applied under competition laws, i.e., esp. as a negative effect on key parameters of competition such as price, quantity and quality of supply or innovations) is notrequired for such a finding under the above-discussed analogous concepts to the abuse of “relative market power” as they prioritize a protection of dependent parties in individual relationships over market-wide impacts.

**Does the definition of abusive behaviour focus on exploitative or exclusionary behaviour, or both?**

The respective related definitions encompass both exploitative and exclusionary types of behaviour, however, with a stronger emphasis on the exploitative types of conduct.

**What kind of abusive conduct is most often the focus of intervention?**

No detailed statistics are available, however, given the nature of the respective related legal rules, the interventions target more often exploitative conduct.

Among the most frequent breaches of the Significant Market Power Act (during the most recently monitored period in 2024) were failures to comply with the 30-day payment deadline for the purchase price of agricultural products or foodstuffs and substantive deficiencies in contractual documentation related to the provision of ancillary services, such as marketing, promotional, or intermediary services.[[48]](#footnote-48)

The protection of a weaker party under the Czech Civil Code may cover various situations of abusive conduct, however, it is not frequently applied in B2B relations.[[49]](#footnote-49)

The Czech Price Act focuses on exploitative pricing by a party in a superior economic position.[[50]](#footnote-50)

**Are there more findings of exploitative or exclusionary abuse?**

Exploitative ones. See above.

**Are there more price or non-price infringements?**

Although there is no exact comprehensive statistics, the non-price infringements are probably more frequent (under the Significant Market Power Act and the Czech Civil Code). As regards the Czech Price Act, it targets price-oriented abuses only.

The provisions on the protection of a weaker party under the Czech Civil Code focus primarily on non-price contractual imbalances, although the price-related abuses could also be covered by the respective legal provision.

The Significant Market Power Act mainly addresses non-price abuses, such as unilateral changes, unfair terms or late payments, and it also follows from available statistics that non-price infringements are more frequent.

**Is such conduct found in existing business relationships or also in future, potential ones (e.g. refusal to deal)?**

Abusive conduct is primarily found in existing relationships but it could be also found with regard the potential/future ones. The Significant Market Power Act primarily focuses on the current contract terms, however, it also prohibits certain negotiation or exclusionary practices (incl. possibly refusal to deal).

The Czech Civil Code addresses primarily imbalances in existing relationships (given that Section 433 covers a protection of the weaker contracting party), however, under certain circumstances, practices with negative prospective effects might qualify, *e.g.*, as unfair competition pursuant to Section 2976 *et seq.* of the Czech Civil Code.

The Czech Price Act applies to the existing relationships.

**What role does voluntary negotiation between the parties play in this context?**

We are not aware of any specific role it could play. To the extent parties would be negotiating voluntarily without any coercion, it is likely that the respective public authorities would be unwilling to intervene.

**What remedies are available?**

In civil court proceedings, the possible remedies include esp. cease-and-desist orders, invalidation of contracts, awarding damages or order restitution of unjust enrichment.

Under the Significant Market Power Act, UOHS can accept commitments and impose fines up to CZK 10 million or 10 % from the net turnover of the buyer with significant market power for the most recently completed 12-month accounting period.[[51]](#footnote-51) The Czech Price Act also enables to the respective authority to impose fines.[[52]](#footnote-52) Private litigation (esp. seeking cease-and-desist orders, damages or restitution of unjust enrichment) based on the infringements of those statutes is also possible.

**What discretion do enforcers and judges have to reshape the commercial relationship between the parties (e.g. to modify the terms of the contract in favour of one of the parties, to add contractual provisions to the contract)?**

The respective discretion varies. Civil courts may, under circumstances, invalidate the contracts or certain of its individual provisions, without, however, adding new ones.

UOHS, under the Significant Market Power Act, can accept/impose commitments the performance of which should eliminate the respective unlawful state.[[53]](#footnote-53) However, it cannot directly alter contracts.

The authorities authorized under the Czech Price Act lack such reshaping power. However, if they were to declare that the applied prices were contrary to the Czech Price Act that would change the pricing provisions in the applicable contracts as parties cannot validly agree upon prices that are contrary to price regulation.

**Are there instances where mandatory contract law provisions have been introduced under *ex ante* regulation to deal with relative market power and economic dependence?**

No such contract law provisions have been introduced in the Czech law potentially with the exception of the prescribed maximum duration of due dates for invoices by weaker supplier to purchasers having the significant market power under the Significant Market Power Act.

**Are abuses of relative market power punishable by fines?**

See above.

**Are there differences between remedies ordered by courts and other administrative bodies (eg competition authorities)?**

See above.

# General Assessment and Conclusion

**You are invited to draw conclusions on the main findings in your jurisdiction and to recommend improvements to the competition rules in your jurisdiction.**

**Should market criteria (eg market shares) be taken into account in the application of provisions on relative market power? Are relative market power provisions necessary for competition to function? Are they generally justified as part of the competition rules? Are they justified in certain sectors? Are the current rules predictable for companies?**

From our perspective, the current regulation of the abuse of relative market power between undertakings in the Czech Republic is, in principle, sufficient and need not be further extended, particularly not into the area of competition law, which (in the Czech Republic) pursues different objectives.

In our view, the protection of an entrepreneur as a weaker party should only be triggered in exceptional cases of substantially abusive (and unjustified) conduct by the respective stronger party and, in particular, should not serve as a tool for equalizing disparities between individual market players and/or as a tool for public intervention into private contractual relationships. Disparities between market players should be regarded as natural - and indeed desirable - in a market-oriented economy, as the possibility of achieving a relatively stronger market position provides a motivating incentive to individual market players and fosters healthy market dynamics where commercial success stems from market strength achieved through competition on the merits rather than from regulatory protectionism.

There appears to be a broader consensus over this in the Czech Republic.[[54]](#footnote-54)

1. For the avoidance of doubts, the terms and concepts of *“relative market power”*, *“economic dependence”*, *“superior or unbalanced bargaining power”*, *“significant imbalance in commercial relations”* are – throughout this questionnaire – used in accordance with the introductory (*“Background and context”*) of this questionnaire. [↑](#footnote-ref-1)
2. *Cf.* Bejček, J. *Smluvní svoboda a ochrana slabšího obchodníka* [*Freedom of Contract and the Protection of the Weaker Business Party*]*.* 1st edition. Brno: Masaryk University, Faculty of Law, 2016, p. 27 and 28 (own translation): *“Market power and the bargaining strength of contractual parties may differ significantly, not only in unilateral transactions (B2C) but also in bilateral transactions (B2B). In such cases, the abuse of rights to the gross detriment of the weaker party—an entrepreneur—may occur. A response to this issue is provided by the newly codified general protection of the weaker contractual party (§ 433 of the Civil Code) as well as certain public law regulations.”*  [↑](#footnote-ref-2)
3. *I.e.* the Act. 89/2012 Coll., Civil Code, as amended (the “**Czech Civil Code**”). Section 433 of the Czech Civil Code reads as follow (own translation):

   *“(1) An entrepreneur engaging in economic transactions with other persons must not abuse their professional expertise or economic position to create or exploit the dependency of the weaker party, nor to achieve an obvious and unjustified imbalance in the mutual rights and obligations of the parties.*

   *(2) It is presumed that the weaker party is always a person who, in economic transactions with an entrepreneur, acts outside the context of their own entrepreneurial activities.”* [↑](#footnote-ref-3)
4. The application thereof presupposes the respective conduct to be contrary to good morals of competition, capable of causing harm to competitors and/or customers and occurring in economic competition relations. The respective general provision of the unfair competition pursuant to Section 2976(1) of the Czech Civil Code reads as follow: *“Whoever, in the course of economic transactions, acts contrary to the good morals of competition in a manner capable of causing harm to other competitors or customers commits unfair competition. Unfair competition is prohibited.”* [↑](#footnote-ref-4)
5. *I.e.* the Act No. 526/1990 Coll., on Prices, as amended (the “**Czech Price Act**”), The respective relevant section 2(3) and (4) read as follow:

   *“(3) Neither the seller nor the buyer may abuse their superior economic position to obtain an undue financial benefit.*

   *(4) A superior economic position as referred to in paragraph 3 is held by a seller or buyer who applies prices on the market without being subject to significant price competition. The economic position of the seller or buyer is assessed, in particular, based on the volume of goods sold or purchased, economic and financial strength, and legal or other barriers to market entry.”*  [↑](#footnote-ref-5)
6. *I.e.* Act No. 395/2009 Coll., on Significant Market Power and Unfair Commercial Practices in the Sale of Agricultural and Food Products, as amended (the “**Significant Market Power Act**”). The Czech Significant Market Power Act also implements to Directive (EU) 2019/633 of the European Parliament and of the Council of 17 April 2019 on unfair trading practices in business-to-business relationships in the agricultural and food supply chain. [↑](#footnote-ref-6)
7. *I.e.,* Act No. 143/2001 Coll., on the Protection of Economic Competition, as amended (the “**Czech Competition Act**”). [↑](#footnote-ref-7)
8. Kindl, J. et al. *Soutěžní právo* [*Competition Law*]*.* 3rd edition. Prague: C.H. Beck, 2021, p. 169. [↑](#footnote-ref-8)
9. This position is supported, for example, by prof. Bejček *in* Bejček, J. *Smluvní svoboda a ochrana slabšího obchodníka.* 1st edition. Brno: Masaryk University, Faculty of Law, 2016, p. 462. [↑](#footnote-ref-9)
10. *Cf.* esp. Section 1(1)(a) and Sections 3, 4, 5 and 7 of the Czech Competition Act. [↑](#footnote-ref-10)
11. *Cf.* esp. Section 1(1)/b) and Section 10 and 1 of the Czech Competition Act. [↑](#footnote-ref-11)
12. *Cf.* esp. Section 1(1)(c) and Section 12 *et seq.* of the Czech Competition Act. [↑](#footnote-ref-12)
13. *Cf.* Bejček, J. *Smluvní svoboda a ochrana slabšího obchodníka.* 1st edition. Brno: Masaryk University, Faculty of Law, 2016, p. 415, or Kindl, J. et al. *Soutěžní právo.* 3rd edition. Prague: C.H. Beck, 2021, p. 136-142. [↑](#footnote-ref-13)
14. See, *e.g.*, resolution of the Czech Administrative Supreme Court of 18 December 2007, ref. No. Komp 3/2006-511 (own translation): *“Thus, by stipulating excessive prices in the contracts, the plaintiff committed, on the one hand, an administrative offense under Section 2(3) of the Act on Prices, and on the other hand—since such conduct was carried out in the capacity of a dominant undertaking—also (or partially, as the conduct was part of a more complex factual scenario) fulfilled the elements of the abuse of a dominant position under Section 11(1) of the Act on the Protection of Competition. This does not constitute an overlap of competences, but rather a concurrence of offenses through a single act—that is, a situation where two distinct infringements are committed through the same conduct; each of these offenses, in the present case, falls within the competency of a different authority.”* [↑](#footnote-ref-14)
15. Kindl, J., Koudelka, M., Holásek, M. *Zákon o významné tržní síle a nekalých obchodních praktikách při prodeji zemědělských a potravinářských produktů. Komentář.* [*Act on Significant Market Power and Unfair Commercial Practices in the Sale of Agricultural and Food Products. A commentary.*]Praha: 2nd edition. Prague: C.H. Beck, 2024, p. 7. [↑](#footnote-ref-15)
16. P. 18 of the explanatory memorandum to the Act No. 50/2016 Coll.: *“In general, the objective of the regulation is to level the contractual relationship between the parties in such a way that the supplier and the buyer engage with one another as equal partners”* ([https://www.uohs.cz/download/Informacni\_listy/2016/UHOS\_infolist\_ 2016\_02.pdf](https://www.uohs.cz/download/Informacni_listy/2016/UHOS_infolist_%202016_02.pdf)). [↑](#footnote-ref-16)
17. Hereinafter referred to as the “**UOHS**”.Further in this regard, see UOHS's information paper 2/2016 *“Significant Market Power After the Amendment of the Law”*, p. 5: *“The essence of protection always lies in safeguarding the weaker contracting party. It is irrelevant whether the party in question is a domestic or a foreign entity."* [↑](#footnote-ref-17)
18. I.e., Act No. 359/2022 Coll., amending Act No. 359/2009 on Significant Market Power and Unfair Commercial Practices in the Sale of Agricultural and Food Products. [↑](#footnote-ref-18)
19. Zapletal, J. Section 433 [Protection of the Weaker Party] *in* Petrov, J., Výtisk, M., Beran, V. *et al. Občanský zákoník.* [*Civil Code*]*.* 2nd edition. Prague: C. H. Beck, 2024 (own translation): *“The presumption under paragraph 2 may likely be rebutted by the entrepreneur designated as the stronger party, if they can demonstrate that the fact the other party is acting outside the scope of their own business does not, for specific reasons, confer a decisive advantage on the part of the entrepreneur in the given relationship.”* [↑](#footnote-ref-19)
20. *Cf.* Bejček, J. *Smluvní svoboda a ochrana slabšího obchodníka.* 1st edition. Brno: Masaryk University, Faculty of Law, 2016, p. 40 (own translation): *“The entrepreneur, as a professional regardless of its size, is understood in relation to the consumer (B2C) as the stronger party, even though this may be far from the truth in a particular case.”* [↑](#footnote-ref-20)
21. Zapletal, J. Section 433 [Protection of the Weaker Party] *in* Petrov, J., Výtisk, M., Beran, V. *et al.* *Občanský zákoník*. 2nd edition. Prague: C. H. Beck, 2024. [↑](#footnote-ref-21)
22. In this regards cf. for example Bejček, J*. Smluvní svoboda a ochrana slabšího obchodníka.* 1st edition. Brno: Masaryk University, Faculty of Law, 2016, p. 53. [↑](#footnote-ref-22)
23. Czech Price Act, Section 2 (3), (4). [↑](#footnote-ref-23)
24. Para. 67 (own translation): *Thus, if the entrepreneur is a natural person (as in the case of the debtor in the matter at hand), it cannot be ruled out that they may be entitled to legal protection as the so-called weaker party, provided the statutory conditions under Section 433 of the Civil Code are met—even if the contract is concluded with another entrepreneur in the course of their business activity—where the other party abuses its expert position to create or exploit the dependence of the weaker entrepreneur in order to achieve a manifest and unjustified imbalance in the mutual rights and obligations of the parties.* [↑](#footnote-ref-24)
25. Judgment of the Czech Supreme Administrative Court of 18 September 2015, ref. No. 4 As 169/2015 – 37. [↑](#footnote-ref-25)
26. Judgment of the Czech Supreme Administrative Court of 21 April 2004, ref. No. 6 A 45/2000 – 88 (translation own): “*Both the defendant and the administrative authority of first instance erred in linking the criterion of price development on comparable markets—which must be used as a benchmark when assessing the abuse of economic power in price setting under Section 2(3) of the Act on Prices—solely to the existence of a market characterized by effective economic competition. The Act on Prices, however, ties the relevant criterion only to the existence of a comparable market as such and to the price developments therein, without imposing the additional requirement that such a market must necessarily be one where effective competition exists.”* [↑](#footnote-ref-26)
27. *Cf.* multiple decisions of UOHS concerning a company VYSOKÉ PECE Ostrava a.s. (subsequently ArcelorMittal Ostrava a.s.) from 2003-2012. And also the judgment of Municipal Court in Prague Ref. No. 9 Ca 230/2007-696 of 28 April 2010 which dealt with the Czech Price Act and cancelled previous decisions of the Ministry of Finance. [↑](#footnote-ref-27)
28. Cf. the decision of UOHS Ref. No. ÚOHS-S594/2014/DP-49951/2016/820/TPi of 20 December 2016 (uohs.gov.cz). [↑](#footnote-ref-28)
29. *Cf.* the decision of UOHS Ref. No. ÚOHS­-S52/2009/DP-7933/2009/820 of 11 July 2009 (uohs.gov.cz). [↑](#footnote-ref-29)
30. Resolution of the Supreme Administrative Court Ref. No. Komp 3/2006-511 of 18 December 2007. *Cf.* also Petr, M. *Vztah českého a unijního soutěžního práva* [Relationship between Czech and EU competition laws] Prague : C.H. Beck 2018, p. 37-39, or Petr, M. et al. *Zakázané dohody a zneužití dominantního postavení v ČR* [Prohibited agreements and abuse of dominant position in the CR] Prague : C.H. Beck 2010, p. 71-72. [↑](#footnote-ref-30)
31. *Cf.* decision of UOHS Ref. No. ÚOHS-S069/2008/DP-15868/2009/820 of 10 December 2009 and also a judgment of the Supreme Administrative Court Ref. No. 9 Afs 66/2012 – 34 of 20 June 2013 which dealt with Czech Price Act issued. [↑](#footnote-ref-31)
32. Judgment of High Court in Olomouc Ref. No. 2 A 5/97 of 11 September 1997. [↑](#footnote-ref-32)
33. Ibid. (own translation) [↑](#footnote-ref-33)
34. Section 2(4) of the Czech Price Act. [↑](#footnote-ref-34)
35. Section 3 of the Significant Market Power Act. [↑](#footnote-ref-35)
36. Cf. Bejček, J. *Smluvní svoboda a ochrana slabšího obchodníka.* 1st edition. Brno: Masaryk University, Faculty of Law, 2016, p. 35 and 36. [↑](#footnote-ref-36)
37. *Ibid*, p. 36 (own translation). [↑](#footnote-ref-37)
38. See esp. Section 3(1) and (2) of the Significant Market Power Act. [↑](#footnote-ref-38)
39. Section 4(2)(a) of the Significant Market Power Act. [↑](#footnote-ref-39)
40. *Ibid,* Section 4(2)(b)*.* [↑](#footnote-ref-40)
41. *Ibid*, Section 4(2)(c)*.* [↑](#footnote-ref-41)
42. *Ibid,* Section 4(2)(d)*.* [↑](#footnote-ref-42)
43. Kindl, J., Koudelka, M., Holásek, M. *Significant Market Power Act. A commentary. (in Czech: Zákon o významné tržní síle a nekalých obchodních praktikách při prodeji zemědělských a potravinářských produktů. Komentář.)* Praha: 2nd edition. Prague: C.H. Beck, 2024, p. 170 (own translation): *“As a general rule, public-law prohibitions of discrimination can be regarded as a relatively problematic tool for regulating commercial relationships. As noted in legal literature dealing with competition law (see Kindl, Munková 2016, pp. 201–222), even the prohibition of discrimination imposed on dominant undertakings under Section 11(1)(c) of the Czech Competition Act, or Article 102(c) of the TFEU, entails significant risks. If interpreted too broadly, such a prohibition may, in and of itself, have anti-competitive effects and lead to inefficiencies. For this reason, it should be applied only in specific cases, which should be characterised by a demonstrable distortion of competition (either at the primary or secondary level) resulting from the application of dissimilar conditions. Accordingly, the prohibition should be applied only where it can be shown that the use of differentiated conditions disadvantages certain customers in the downstream market vis-à-vis others, thereby distorting competition among them. However, the Significant Market Power Act does not, in general, allow for such a reasonable limitation of the prohibition of discrimination in relation to suppliers of agricultural products or foodstuffs.”* [↑](#footnote-ref-43)
44. Judgment of the Czech Constitutional Court of 7 April 2020, ref. No. Pl. ÚS 30/16, para. 221. [↑](#footnote-ref-44)
45. Section 433 of the Czech Civil Code. [↑](#footnote-ref-45)
46. Section 2(3) of the Czech Price Act. [↑](#footnote-ref-46)
47. Sections 3(1) and 4(1), (2) of the Significant Market Power Act. [↑](#footnote-ref-47)
48. UOHS's annual report 2024, p. 23 (<https://www.uohs.cz/download/VZ_verejnost/UOHS-VZ-2024-CZ-web.pdf>). [↑](#footnote-ref-48)
49. Zapletal, J. Section 433 [Protection of the Weaker Party] *in* Petrov, J., Výtisk, M., Beran, V. *et al. Civil Code: A Commentary.* 2nd edition. Prague: C. H. Beck, 2024 (own translation): *“In relationships between entrepreneurs, it is also necessary to take into account the requirement of professionalism, the principle of competition, and the necessity to bear the risks associated with doing business. The application of the provision in question should therefore be considered only in exceptional cases.”* [↑](#footnote-ref-49)
50. Section 2(3) of the Czech Price Act. [↑](#footnote-ref-50)
51. Section 8 of the Significant Market Power Act. [↑](#footnote-ref-51)
52. Section 16 of the Czech Price Act. [↑](#footnote-ref-52)
53. Section 6(3) of the Significant Market Power Act. [↑](#footnote-ref-53)
54. *Cf.* similarly *Bejček, J. Smluvní svoboda a ochrana slabšího obchodníka.* 1st edition. Brno: Masaryk University, Faculty of Law, 2016, p. 461. [↑](#footnote-ref-54)