

**NOTICE OF THE OFFICE FOR THE PROTECTION OF COMPETITION DATED 7/29/2023 ON THE
SETTLEMENT PURSUANT TO ARTICLE 22BB OF THE ACT ON THE PROTECTION OF
COMPETITION**

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PREAMBLE

This Notice of the Office for the Protection of Competition of 29 July 2023 on the settlement pursuant to Article 22bb of the Act on the Protection of Competition, defines a specific settlement procedure in the context of administrative proceedings before the Office for the Protection of Competition (hereinafter referred to as the "**Office**") pursuant to Article 22bb(1) of the Act on the Protection of Competition (hereinafter referred to as the "**Competition Act**").¹ The application of the settlement shall enable maximum simplification of the administrative proceedings and simplification of certain procedural acts. Before applying this procedure, the Office shall always examine its adequacy and effectiveness with regard to the specifics of each particular case, and the decision to apply it is entirely within its discretion.

I. INTRODUCTION

1. The Office may initiate settlement procedure in the context of administrative proceedings for distortion of competition for the sake of procedural savings if a party to the proceedings states in writing and within the time limit set by the Office that it will enter into the settlement.
2. Settlement procedure may be applied for in the course of administrative proceedings concerning an offence committed by an undertaking who enters into an agreement contrary to Article 3(1) of the Competition Act, abuses its dominant position in violation of Article 11(1) of the Act or implements a concentration in violation of Article 18(1) of the Act. The settlement may also be applied for by public authorities in case of distortion of competition in violation of Article 19a(1) of the Competition Act. The settlement may also be used in cases where the Office applies EU competition law in addition to Czech competition law.

¹ Act No. 143/2001 Coll., on the Protection of Competition and Amending Certain Acts.

3. In the context of a settlement, a party to the proceedings may submit an application for a reduction of a fine by way of settlement in which it admits to the distortion of competition stated in a statement of objections (hereinafter referred to as the “**settlement application**”).² The settlement application shall be submitted no later than 15 days after the date on which the statement of objections was delivered to the party to the proceedings. The Office shall take into account the application submitted later only in cases of special consideration.³
4. If the Office finds a party to the proceedings guilty of distortion of competition, it shall reduce the fine of which it informed the party in the statement of objections by 10 to 20 %.⁴ For the offence referred to in Article 22a(1)(b) of the Competition Act, committed in connection with public procurement or award of a public contract or in connection with the conclusion of a contract on public passenger transport services, a prohibition on the performance of public contracts and the provision of public passenger transport services for a maximum period of one year may be imposed in the settlement.⁵
5. In setting the specific percentage of reduction of the fine or the length of the period of the prohibition on the performance of public procurement and the provision of public passenger transport services, the Office shall take into account the procedural savings achieved by the individual parties to the proceedings, in particular the overall length and course of the settlement procedure, the number of oral hearings held as part of the settlement, as well as the complexity of the case. The Office may reduce a fine for the settlement within the legal limit to different amounts for individual parties to the same administrative proceeding or impose a ban on the performance of public contracts/provision of public passenger transport services for different lengths of period.
6. The settlement may occur even if not all parties to the same administrative proceedings exercise this opportunity.⁶

II. SETTLEMENT

II.1. Settlement Procedure

7. A settlement is applied in several steps:

² A reduction of the fine cannot be applied for if no settlement has been initiated.

³ Article 22bb(2) of the Competition Act. In cases of special consideration, the party to the proceedings must inform the Office of the reason as soon as possible.

⁴ The reduction of the fine by 10 to 20% is calculated on the basis of the final fine calculated by the Office in accordance with its Procedure for Determining the Amount of Fines Imposed for Infringements of the Act on Protection of Competition and after any reduction of fines under the leniency programme. Therefore, the reduction of the fine under the leniency programme and the settlement is not calculated cumulatively, but gradually; by combining, for example, Leniency type II (reduction of the fine by up to 50%) and settlement (reduction of the fine by up to 20%), a maximum reduction of 60% can be achieved.

⁵ Article 22a(6) of the Competition Act.

⁶ The Office prefers to initiate the settlement procedure with all or as many parties to the proceedings as possible, as in this case the basic purpose of the settlement, i.e. significant procedural savings in the proceedings, is most likely to be achieved.

- a) an initiation by the Office - transmitting a request to a party to the proceedings in order to determine its interest in applying the settlement;
- (b) a written notification by the party to the proceedings that it is interested in entering into the settlement;
- (c) an initiation of the settlement;
- (d) an oral hearing with the party to the proceedings;
- (e) an announcement of the party's interest in pursuing the settlement;
- (f) an issuance of a brief statement of objections;
- (g) a settlement application – the formal request by the party to reduce the fine by settlement;
- (h) an issuance of a brief decision in the case.

II.2. Initiation of Settlement

8. There is no legal claim to initiate a settlement procedure. It is within the Office's discretion to assess whether the settlement is justified in a particular case. The Office always considers on a case-by-case basis whether it is reasonable and effective to initiate the settlement procedure. When considering whether to initiate the settlement procedure in an individual case, the Office takes into account the possibility of achieving procedural savings, i.e. particularly the state of play, the complexity and development of an administrative proceedings and the number of parties to the proceedings. The Office also considers whether there is effective national or EU case law on the type of anti-competitive conduct in question; the Office will not generally initiate the settlement procedure in cases providing fundamental guidance for future practice so that its findings can be reviewed in a judicial review.
9. The Office shall initiate a settlement by a written **request for expression of interest** in the settlement addressed to a party to the proceedings. For this purpose, it shall stipulate a deadline for the submission of such expressions.
10. In case that a party to the proceedings **expresses an interest in the settlement** application within the specified deadline in its response to the Office's request, the Office shall initiate the settlement procedure by issuing a written **notification of the Office on the initiation of the settlement procedure**, which it shall send to the party to the administrative proceedings.⁷

II.3. Settlement Oral Hearing

11. Once a settlement procedure has been initiated, the Office shall hold **an oral hearing with a party to the proceedings** to determine whether the early settlement application can be concluded in particular case. The oral hearing shall be bilateral,⁸ without the presence of the other parties, and brief protocols shall be taken.

⁷ The Office shall initiate the settlement with each party separately.

⁸ Article 22bb(3) of the Competition Act.

12. During an oral hearing, the Office shall summarise the basic facts of a case and the main evidence in the case,⁹ its legal assessment, and inform the party on the expected amount of a fine it intends to impose in the final decision, including the specific percentage of reduction of the fine for the settlement ranging from 10 to 20 %, and, where appropriate, whether and for how long a ban on the performance of public contracts and the provision of public passenger transport services will be imposed.
13. Following the oral hearing, the Office will request the parties to express whether they intend to pursue the settlement. **The expression of interest to pursue the settlement** shall be made by the party within the stipulated deadline set by the Office and shall state that, after having been informed of the factual and legal classification of its conduct, the expected amount of the fine and, where appropriate, the duration of a prohibition on the performance of public contracts and the provision of public passenger transport services, the party is still interested in pursuing the settlement. The expression of interest in pursuing the settlement is neither the settlement application nor an admission of liability for anti-competitive conduct.

II.4. Statement of Objections in Context of Settlement

14. After receiving the expression of interest from parties to the proceedings, the Office shall issue a brief statement of objections.¹⁰
15. In the statement of objections, the Office will provide a description of the conduct, identify the main evidence, the legal classification of the conduct and the administrative penalty it intends to impose, including the specific percentage of reduction of the settlement fine, ranging from 10 to 20 %, and where appropriate, the length of a ban on the performance of public contracts and the provision of public passenger transport services.

II.5. Settlement Application

16. A party to the proceedings shall submit a **settlement application** within 15 days of the statement of objections; the Office shall take into account the late application only in cases of special consideration.¹¹

The settlement application shall include an admission of the distortion of competition of which the party to the proceedings was notified in the statement of objections, i.e. full and unconditional acceptance of liability for infringement, the facts and legal assessment of which were set out in the statement of objections. Furthermore, the application shall contain a declaration that the party concerned understands the amount of a fine and, where appropriate, duration of the prohibition on the performance of public contracts and

⁹ In the case of settlement negotiations regarding a classified agreement, the Office will also inform in bilateral negotiations whether a leniency application has been filed in the case, but will not allow access to the application for the time being, will not inform the full content of the application, which party has filed the application, and how many leniency applications have been filed in the administrative proceedings so far.

¹⁰ In the case of the settlement involving only some of the parties, it will generally be necessary to issue a full statement of objections.

¹¹ Article 22bb(2) of the Competition Act.

public passenger transport services set out in the statement of objections. In the application, the party shall also declare that it does not propose to complete the evidence or to exercise any other procedural steps.

II.6. Settlement Decision

17. If the Office receives a settlement application from a party to the proceedings within the stipulated deadline, which complies with all the prescribed requirements pursuant the Competition Act and this Notice, it shall adopt a brief decision on the matter,¹² in which it reduces a fine imposed on the party to the proceedings, and/or a ban on the performance of public contracts or the provision of public passenger transport services, as notified to it in the statement of objections.

II.7. Termination of Settlement

18. A settlement procedure terminates with¹³

- (a) an issuance of a decision on the matter;
- (b) an expiry of the deadline stipulated for expressing interest in pursuing the settlement;
or
- (c) a failure to submit the settlement application within the deadline; or
- (d) a notification by a party to the proceedings to the Office that it is no longer interested in participating in the settlement procedure;
- (e) a notification by the Office to the party to the proceedings that it is terminating the settlement procedure.

19. A party to the proceedings may, without any reason, until the time of submission of the settlement application, notify the Office that it no longer has an interest in participating in the settlement procedure. In such case, the Office shall terminate the settlement.

20. The Office may also terminate a settlement without any reason until a decision is adopted. In particular, the Office shall terminate the settlement if it is obvious from the negotiations with a party to the proceedings that it is inconsistent with the Office's factual and legal assessment of the case with regard to the conduct under consideration, or if new evidence emerges and it becomes necessary to take further evidence or the conduct under consideration needs to be reclassified. In an administrative proceedings involving more than one party, the Office may also terminate the settlement in respect of only one or more parties to the proceedings.

21. If the Office decides to terminate a settlement procedure, it shall send written **notice of the termination of the settlement** to a party to the proceedings and shall pursue to conduct the proceedings.

¹² In the case of the settlement between only some of the parties, it will generally be necessary to adopt a full decision.

¹³ Even if the settlement has been terminated, the Office may decide to reinstate it again.

22. Even if a party to the proceedings has benefited from the settlement within the administrative procedure, it may file an appeal against the decision issued therein.

III. FINAL PROVISIONS

23. The settlement application, the record of the oral hearing held in the context of the settlement, as well as other documents and information submitted in connection with the settlement procedure shall be excluded from the access to the file until the statement of objections is issued. The same applies to requests and notices sent by the Office to the applicant in connection with his application.¹⁴ After issuing the statement of objections, only the party to the proceedings or its representative may access to these parts of the file under the conditions laid down in Article 21c(3) of the Competition Act; Article 38(4) of the Code of Administrative Procedure shall not apply.¹⁵

24. This Notice enters into force on 29 July 2023 and applies to all administrative proceedings initiated after 29 July 2023 and replaces the previous Notice of the Office of 8 November 2013 on the procedure aimed at simplifying administrative proceedings by using the institute of the application for reduction of the fine pursuant to Article 22ba(2) of the Act on Protection of Competition (settlement procedure).

DISCLAIMER:

This is not an official translation.

Translated by the Office for the Protection of Competition.

¹⁴ Article 21c(4) of the Competition Act.

¹⁵ Article 21c(5) of the Competition Act.