

**Notice of the Office for the Protection of Competition
of 8 November 2013
on the procedure focused on speeding up the administrative procedure using the Institute of
application for a reduction of fine
under Article 22ba (2) of the Act on the Protection of Competition
(settlement procedure)**

I. Introduction

1. Pursuant to Article 22ba (2) of the Act on the Protection of Competition (hereinafter referred to as the “**Act**”),¹ the undertaking has the opportunity to confess to committing an administrative offence which the Office for the Protection of Competition (hereinafter referred to as the “**Office**”) defined in the statement of objections. In the event that the Office believes that regarding the nature and seriousness of the assessed administrative offence such a penalty is sufficient, it shall reduce the fine imposed to the undertaking, the amount of which was reported in the statement of objections, by 20 %.²
2. The Office may reduce the fine pursuant to Article 22ba (2) of the Act only based on an application submitted by the undertaking, which must include its confession of an administrative offence that was defined in the statement of objections (hereinafter referred to as the “**Application pursuant to Article 22ba (2)**”). The Application pursuant to Article 22ba (2) must be delivered to the Office within 15 days from the date when the statement of objections was delivered to the undertaking; an application submitted later will be processed only in special cases.³
3. If the party admits to committing an administrative offence in the Application pursuant to Article 22ba (2) and therefore does not conflict with the factual conclusions of the Office or their legal assessment, it can be assumed that the decision of the Office in the matter in this extent will not be appealed. Thanks to the above development, the administrative proceedings may be shortened and the decision of the Office will come into force sooner which will contribute to faster restoration of effective competition; resources, which the Office will not have to spend on the proceedings regarding appeals, can then be used to investigate other cases, thus also contributing to a more effective enforcement of competition law. In light of these positive benefits, it is appropriate to reduce the fine imposed on the party.

¹ Act No. 143/2001 Coll., on the Protection of Competition and on amendment to certain Acts (Act on the Protection of Competition), as amended.

² Provisions of Article 22ba (2) in connection with paragraphs 4 and 6 of the Act.

³ Provisions of Article 22ba (4 and 7) of the Act.

4. The purpose of the Application pursuant to Article 22ba is only to achieve procedural efficiencies, and thanks to them more effective enforcement of competition law. Therefore, it is not a tool of investigation and thus significantly differs from the Institute of leniency which is incorporated in Article 22ba (1) of the Act and specified in the Leniency Programme.⁴
5. However, procedural savings are maximized only if the activity of the parties is not limited only to the submission of the Application pursuant to Article 22ba (2) but it is showed already in earlier stages of the administrative procedure and also if all parties are involved. In this notice the Office therefore defines a specific procedure in the administrative proceeding that allows the parties to use the instrument of the Application pursuant to Article 22ba (2) (hereinafter referred to as the “**Settlement Procedure**”) most effectively. The use of the settlement procedure allows maximum acceleration of the administrative proceedings and simplification of some procedural acts. Given that all parties agree with the factual findings of the Office and with their legal assessment, it will be possible to issue a brief statement of objections and a brief decision in the proceedings.
6. An application pursuant to Article 22ba (2) may be submitted even if the parties do not use the settlement procedure. In this case, however, there is no guarantee that it will be possible to achieve all benefits brought by the settlement procedure beyond the reduction of the fine, particularly a significant shortening of the proceedings and the issue of a brief statement of objections and decision in the matter. This notice will further address only the settlement procedure, not the submission of the Application pursuant to Article 22ba (2) outside this procedure.

II. Settlement Procedure

II.1. Applicability of the settlement procedure and its course

7. The settlement procedure will generally be applied in several steps:
 - a. Initiation by the Office – sending the call to the parties to determine their interest in using the settlement procedure;
 - b. Commencement of the settlement procedure by the Office;
 - c. Oral hearings with individual parties within the settlement procedure;
 - d. Notice of the interest of the parties to continue with the settlement procedure;
 - e. Issue of a brief statement of objections by the Office;
 - f. Application for settlement – application of the parties for a reduction of the fine within the settlement procedure;
 - g. Issue of a brief decision in the matter.

⁴ Notice of the Office on the application of Article 22ba (1) of the Act on the Protection of Competition (hereinafter referred to as the “**Leniency Programme**”). The leniency programme and the settlement procedure can be used simultaneously within a single administrative proceeding.

8. The settlement procedure in accordance with this notice may be initiated within ongoing administrative proceedings, but no later than the day on which the statement of objections within the meaning of Article 7 (3) in conjunction with Article 21b of the Act was delivered to the parties.
9. The settlement procedure can be used only within administrative proceedings concerning a matter relating to an administrative offence of an undertaking committed by the undertaking entering an agreement in conflict with Article 3 (1) of the Act, in conflict with Article 11 (1) of the Act abusing its dominant position or performing merger in conflict with Article 18 (1) of the Act.⁵ The settlement procedure may also be used in cases where the Office applies EU competition law in addition to the Czech law.
10. In administrative proceedings conducted by the Office with multiple parties, it is possible to gain all benefits that the settlement procedure brings only provided that all parties to the proceedings are involved. Therefore, the Office will not initiate the settlement procedure with only some of the parties.

II.2. Initiation of the Settlement Procedure

11. The Office determines at its sole discretion whether it is appropriate to use the settlement procedure in a particular case. The Office always makes the decision whether its initiation is appropriate and useful on a case-by-case basis. When considering the possibility of using the settlement procedure, the Office takes into account in the particular case mainly the nature and seriousness of the anticompetitive behaviour, the current status and development of the administrative proceedings, the number of parties and the expected amount of sanctions, including an assessment whether such sanction will be sufficient even after their reduction with regard to the nature and seriousness of the offence. The Office also considers whether there is established national or EU case law for the given case relevant to the given type of anticompetitive conduct; in cases that represent a fundamental guide for further practice, the Office will generally not initiate the settlement procedure so that its conclusions could be reviewed in court proceedings.
12. The initiation of the settlement procedure in a particular case always depends on the discretion of the Office. The Office initiates the settlement procedure by a written request for the expression of interest in its utilization addressed to all parties (hereinafter referred to as “the **Call**”). In the Call, the Office shall specify a time limit within which all parties must express their opinion.
13. The settlement procedure cannot be initiated before issuing the Call, not even in the case that some or all parties declare their interest in using the instrument of the Application pursuant to Article 22ba (2) in the given administrative proceedings.
14. In order to achieve maximum procedural savings, the Office shall initiate the procedure as soon as the status of inquiring gives a sufficient idea of the administrative offence and responsibility for it.

⁵ Provisions of Article 22ba (2) of the Act.

15. Successful achievement of the purpose of the settlement procedure essentially assumes the realization of oral hearings with the parties. In administrative proceedings with multiple parties, it is desirable to hold oral hearings within the settlement procedure always with a particular party without the participation of the other parties. In order for such bilateral oral hearing to take place, it is necessary that the other parties waive their right to participate in such a hearing.⁶ This does not affect their right to participate in the presentation of evidence by the Office during or outside an oral hearing.
16. In administrative proceedings with multiple parties, the settlement procedure may only be initiated if – with regard to the Call of the Office – all parties express their interest in using the settlement procedure and simultaneously waive their right to participate in future bilateral oral hearings held within the settlement procedure between the Office and other parties.
17. In the case that none of the parties to the administrative proceedings express their interest in using the settlement procedure within the stipulated time period or if in proceedings with multiple parties none of the parties waive their right to participate in future bilateral oral hearings within the settlement procedure between the Office and other parties, the Office will not initiate the settlement procedure and will continue in the administrative proceedings.⁷ The Office shall notify all parties of this fact.
18. In the event that all parties express their interest in using the settlement procedure within the stipulated time period in their responses, and in the event of proceedings with multiple parties all parties also waive their right to participate in future bilateral oral hearing within the settlement procedure between the Office and other parties, the Office shall initiate the settlement proceedings via a written **Notice of the Office on the initiation of the settlement procedure** sent to all parties to the administrative proceedings.

II.3. Oral hearing within the settlement procedure

19. After the settlement procedure is initiated, the Office will hold an oral hearing with individual parties in order to determine whether it is possible to reach an early submission of the application for a reduction of the fine within the settlement procedure in the given case. Hearings within the settlement procedure are fundamentally bilateral, without the presence of other parties and brief reports from these hearings are made.
20. During oral hearings conducted within the settlement procedure, the Office will briefly summarize the basic facts of the case and the main evidence of them,⁸ their legal

⁶ Provisions of Article 49 (1) of Act No. 500/2004 Coll., Administrative Code, as amended (hereinafter referred to as the "**Administrative Code**").

⁷ It is not excluded that the Office will invite competitors to express interest in using the settlement procedure multiple times within a single administrative procedure.

⁸ In the case of settlement hearings regarding a cartel agreement, the Office will also state during the bilateral hearings whether an application for the leniency programme was submitted in the given case, however, it will not allow access to this application for that moment, it will not disclose its full content or which party

assessment and the expected amount of the fine which it intends to impose on the party in the final decision.

21. If the Office finds during the hearing within the settlement procedure that further evidence is required in the given administrative proceeding,⁹ it shall terminate the settlement procedure.
22. Upon termination of oral hearings within the settlement procedure, the Office shall invite the parties to express their interest to continue with the settlement procedure. **Notice of interest to continue with the settlement procedure** must be submitted by the party within the time period stipulated by the Office; it must state that after becoming familiar with the factual and legal qualification of its conduct and the expected amount of the fine the party is still interested in continuing with the settlement procedure. Expression of the interest to continue with the settlement procedure is not the Application pursuant to Article 22ba (2) or confession of liability for anticompetitive conduct. If a party fails to submit the notice within the stipulated time period, it is considered that the party is not interested in continuing in the settlement procedure; in which case the Office will terminate the settlement procedure.

II.4. Statement of objections within the settlement procedure

23. After the Office receives the Notice of interest to continue with the settlement procedure from all parties to the proceedings, it shall issue a **brief statement of objections** containing the basic facts of the case, their legal assessment and reference to the main evidence on them as well as the amount of fines which it intends to impose on the parties.

II.5. Application for settlement

24. Within 15 days of receipt of the statement of objections, the parties must file an application for a reduction of fines meeting the requirements under the Act and this Notice (hereinafter referred to as “**Application for Settlement**”); applications submitted after this time period shall be processed by the Office only in special cases.¹⁰
25. The application for settlement must contain confession of the commission of the administrative offence, i.e. full and unconditional acceptance of responsibility for the administrative offence, the factual circumstances and legal assessment of which were stated in the statement of objections, and a statement regarding the fact that the party is familiar with the amount of the fine stated in the statement of objections and if all conditions stipulated by law and this notice are met, the fine shall be reduced by

submitted this application and how many applications for the leniency programme have been submitted in the given administrative proceedings.

⁹ In cases where the settlement procedure is terminated during its course due to the fact that new facts appear in the proceedings, the Office usually invites the parties after further presentation of evidence with regard to these new facts to express again whether they are still interested in initiating the settlement procedure, or attempts to initiate the settlement procedure respectively again.

¹⁰ Provisions of Article 22ba (7) of the Act.

20 %, and with the fact that it is not proposing any additions to evidence or the performance of any other procedural actions.

26. If none of the parties submit the application for settlement meeting all prescribed requirements according to law and this notice within the stipulated time period, the Office will terminate the settlement procedure.

II.6. Decision in the matter within the settlement procedure

27. If the Office receives an application for settlement that meets all the requirements prescribed pursuant to the Act and this notice within the specified time period from all parties, it shall issue **a brief decision in the matter**, in which it shall summarize the facts and references to the main evidence, on which the case is based, as well as their legal assessment and in which it will reduce the fines imposed on individual parties by 20 %;¹¹ in such a decision, the Office shall not impose a ban to execute public contracts or concession agreements.¹²

II.7. Termination of the Settlement Procedure

28. The settlement procedure ends by issuing a brief decision in the matter.
29. A party may, without giving any reason, until the time of submission of the Application for Settlement, notify the Office that it is no longer interested in participating in the settlement procedure. In this case, the Office will terminate the settlement procedure.
30. The Office may terminate the settlement procedure without giving a reason until it issues a brief decision in the matter.¹³
31. If the settlement procedure ends differently than with the issue of a brief decision in the matter, the Office shall send a written **Notice of Termination of the Settlement Procedure** to all parties and will continue with the proceedings.

III. Final Provisions

32. Documents that become part of the administrative file in connection with the settlement procedure will remain in the file even if the settlement procedure was terminated. The Office shall not take these documents into account when deciding on

¹¹ A reduction of 20% is calculated by the Office from the resulting fine according to the Principles of the Office for determining the amount of fines and after any reduction of fines according to the leniency programme. A reduction in the fine according to the leniency programme and settlement is not calculated cumulatively, but gradually, and with a combination of type II leniency (reduction in the fine of up to 50%) and settlement (reduction of the fine by 20%) a maximum reduction of the fine by 60% can be achieved.

¹² Provisions of Article 22ba (3) of the Act.

¹³ The Office will terminate the settlement procedure in the case that it is obvious from the hearings with the parties to the settlement procedure that it will not be able to find common agreement regarding the investigated conduct or if new evidence is found and it will be necessary to present additional evidence or re-qualify the investigated conduct.

the liability for an administrative offence in the event that the settlement procedure is not concluded by issuing a brief decision in the matter.

33. This notice shall take effect on 8 November 2013 and applies to all proceedings commenced after 1 December 2012 provided that no statement of objections has been issued in course of them yet.