

Procedure

for settlement in cases of anti-competitive concerted actions and abuse of a monopoly (dominant) position on the market

I. General provisions

1.1. This Procedure defines the mechanism of application by the Antimonopoly Committee of Ukraine (hereinafter referred to as the Committee) of the settlement procedure in cases of violations of the legislation on protection of economic competition in the form of anti-competitive concerted actions of undertakings or abuse of a monopoly (dominant) position on the market in accordance with Article 46-1 of the Law of Ukraine “On Protection of Economic Competition” (hereinafter referred to as the Law).

1.2. In this Procedure, the terms are used in the following meanings:

guarantees of the defendant – any verified with documents, actually implemented or planned as mandatory measures that ensure or will ensure the cessation of actions (inaction) recognized as a violation, elimination of their causes and/or consequences (if any), in particular, adoption of binding decisions, including those that change the economic behavior of the undertaking;

settlement application in cases of anti-competitive concerted actions and/or abuse of a monopoly (dominant) position on the market (hereinafter referred to as the settlement application) – a written appeal by a person who is the defendant in a case initiated on grounds of violation of the legislation on protection of economic competition in the form of anti-competitive concerted actions (except for the violations provided for in Clause 4 of part two of Article 6 of the Law) or abuse of a monopoly (dominant) position on the market (hereinafter referred to as the case), about the intention to initiate settlement procedure in the case and conclude an agreement on settlement of the case;

settlement procedure in the case – exchange of proposals, clarifying the positions of the defendant and the body of the Committee with the aim of reaching agreements between the body of the Committee, whose authority extends to making a decision in the case, and the defendant – by signing an agreement on settlement of the case, the essential conditions of which are determined by part seven of Article 46-1 of the Law;

agreement on settlement of the case – a bilateral agreement concluded in writing in accordance with provisions of Article 46-1 of the Law, which defines the rights and obligations of the defendant in the case and the body of the Committee during application of the settlement procedure in the case.

Other terms are used in the meanings given in the Law.

1.3. The settlement procedure in the case may not be applied, and the initiated settlement procedure in the case shall be terminated if:

anti-competitive concerted actions of undertakings (except for the violations provided for in clause 4 of part two of Article 6 of the Law), abuse of a monopoly (dominant) position on the market could not and cannot be stopped, and their causes and consequences could not and cannot be eliminated by actions the defendant;

the case was initiated within five years from the date of the decision to hold the defendant liable for the same violation of the legislation on protection of economic competition, committed earlier;

the defendant has been exempted from liability in accordance with third part three of Article 52-1 of the Law.

1.4. The settlement application with all attachments (materials for its consideration, information, documents, etc.) provided and received by the body of the Committee during consideration of such application and during negotiations aimed at agreeing on a draft agreement on settlement of the case and concluding such an agreement shall be an integral part of materials of the respective case.

1.5. The information received by the body of the Committee during application of the settlement procedure in the case shall be internal information. The body of the Committee may disclose information about the progress and content of negotiations regarding the settlement procedure in the case only with the consent of the defendant.

II. Submission of the settlement application

2.1. Receipt of the settlement application shall be the basis for consideration of the issue of applying the settlement procedure in the case by the Committee.

2.2. The defendant in the case has the right to apply to the Committee or its regional office for settlement before sending out of a copy of the statement of objections in the case. The date of the calendar stamp impression indicated on the address side of the postal item shall be the date of send-out of the copy of the statement of objections.

2.3. The settlement application must contain:

1) for a legal entity – name of the legal entity, including its abbreviation (if it has one), identification code of the legal entity in the Unified State Register of Legal Entities, Individual Entrepreneurs and Public Organizations of Ukraine (for legal entities registered in accordance with the legislation of Ukraine), organizational and legal form, location of the legal entity, e-mail address, as well as other means of communication with it;

for an individual entrepreneur – surname, first name and patronymic (if available), registration number of the taxpayer's registration card (if available) or series (if available) or passport number (for individuals who, due to their religious beliefs, have refused to accept the registration number of the taxpayer's account card and have notified the relevant supervisory authority and have a mark in their passport stating the right to make payments by series (if any) and passport number), location of the legal entity or declared/registered place of residence (stay), e-mail address, as well as other means of communication with the individual;

2) details of the order on the initiation of proceedings (number, date, body of the Committee that adopted it);

3) qualification of the violation(s) based on signs that prompted consideration of the case;

4) information about the defendant's intention to recognize the fact of committing a violation of the legislation on protection of economic competition, on the basis of which the case is being considered;

5) consent of the defendant to participate in the settlement procedure in the case in accordance with Article 46-1 of the Law;

6) the defendant's obligation not to disclose information that becomes known to the defendant during the application of the settlement procedure in the case.

2.4. The following shall be attached to the application:

1) power of attorney or other document certifying the authority of the person who signed the application;

2) documents confirming information on the amount of income (revenue) from the sale of products (goods, works, services) for the last reporting year preceding the year in which the defendant applies for settlement, or the absence of such income (revenue);

3) other documents that the defendant considers necessary to submit.

2.5. The settlement application shall be submitted by the defendant to the Committee in paper and/or electronic form in accordance with the requirements of the legislation regulating the organizational and legal principles of electronic document-flow and the use of electronic documents.

The settlement application and its attachments shall be signed by the head of the respondent legal entity (the person performing his/her duties) or an individual entrepreneur and certified with a seal (if available).

The settlement application may also be submitted by the authorized representative of the defendant, which specifies: name (for legal entities), its identification code in

the Unified State Register of Legal Entities, Individual Entrepreneurs and Public Organizations of Ukraine (for legal entities registered under the legislation of Ukraine) or surname, first name and patronymic (if available) (for individuals), surname, first name and patronymic (if available) of the representative, the latter's postal and e-mail addresses, as well as other means of communication with them.

Along with the settlement application, a power of attorney or other document confirming the authority of the representative is submitted.

Powers of attorney or other documents issued by authorized bodies of foreign countries in the prescribed form are recognized as valid in Ukraine if they are legalized, unless otherwise provided by law or an international treaty of Ukraine.

Copies of documents, extracts from them, submitted together with the application for settlement, are certified in accordance with the procedure established by law.

Documents containing information and information in a foreign language must be translated into Ukrainian and certified in accordance with the procedure established by law.

2.6. In the case of submitting a settlement application in paper form, an electronic data carrier is attached to it, which contains all the information and documents contained in the application and attached to it, recorded in a way that technically does not allow making changes to them.

Information provided in electronic form must correspond to information provided in paper form. The conformity of information in paper and electronic forms is confirmed by an entry in the settlement application.

2.7. In the case of submitting settlement application in electronic form:

the application for settlement, all attachments to it are submitted to the Committee by sending to the e-mail address specified by the order of the Chair of the Committee. Information about such an e-mail address is posted on the official website of the Committee;

a qualified electronic signature of the head of the respondent legal entity (the person performing his/her duties) / an individual entrepreneur or an authorized representative and an electronic seal (if available) are affixed to the settlement application and its attachments.

2.8. In the event that several defendants in the same case intend to apply for the settlement procedure in the case, each of them applies with a separate settlement application pursuant to clauses 2.3 - 2.7 of Section II. In the event that several legal entities and/or individual entrepreneurs, which are part of a group, recognized as one undertaking and is the defendant in the case, intend to apply the settlement procedure in the case, they have the right to submit a joint application.

III. Consideration of the settlement application

3.1. Within 15 working days from the date of receipt of the settlement application, the body of the Committee checks the compliance of such application and the materials attached to it with the conditions of the settlement procedure to be implemented in the case, provided for in clause 1.3 of Section I and clauses 2.3-2.7 of Section II of this Procedure, and notifies the defendant by means of postal communication or in electronic form by means of information and communication systems on:

consent to initiate the settlement procedure in the case if such an application meets the requirements established by this Procedure, as well as on the terms and procedure of negotiations regarding the draft agreement on the settlement of the case,

leaving the application for settlement without motion in case of non-compliance of the application with the requirements established in this Procedure.

Such a letter is signed by the state commissioner, whose powers include consideration of the relevant case (hereinafter referred to as the state commissioner)/ the head of the regional office of the Committee, who also determine the form of notification of the applicant, taking into account the method of submitting the settlement application.

3.2. If the settlement application and the terms of implementation of the settlement procedure in the case do not meet the requirements established in clauses 2.3 - 2.7 of Section II of this Procedure, the application remains without motion, as the state commissioner / head of the regional office of the Committee, within 15 calendar days from the date of receipt of the application, notifies the defendant by means of postal communication or in electronic form by means of information and communication systems and establishes a deadline to eliminate the deficiencies. In the event of non-fulfilment of the specified requirements within the prescribed period, the application remains without consideration, and the defendant is notified of this by means of postal communication or in electronic form by means of information and communication systems. Leaving the settlement application without consideration does not deprive the defendant of the right to apply to the Committee with a repeated application for settlement. The form of notification of the defendant is chosen by the state commissioner / head of the regional office, taking into account the method of submitting the settlement application.

If the settlement application is submitted after the statement of objections in the case has been sent to the parties and third parties, such application remains without consideration, and the state commissioner / head of the regional office of the Committee, notifies by means of postal communication or in electronic form by means of information and communication systems the defendant within 15 calendar days from the date of receipt of the application for settlement of the fact.

3.3. The settlement procedure in the case is considered to have begun if the Committee body notified the defendant by means of postal communication or in electronic form by means of information and communication systems of the consent to implementation of the settlement procedure in the case.

IV. Negotiation of the terms of the draft agreement on settlement of the case

4.1. The exchange of proposals, clarification of positions of the defendant and the Committee or its regional office for the purpose of preparing and coordinating positions on a draft agreement on the settlement of the case (hereinafter – Coordination) is carried out in the following ways:

sending requests for information, proposals and receiving answers to them in paper form by means of postal communication or in electronic form by means of information and communication systems;

conducting negotiations regarding the settlement procedure in the case with the participation of defendants or their representatives, employees of the Committee and the state commissioner, or employees of the regional office of the Committee and the head of the regional office of the Committee (depending on the jurisdiction of the case) (hereinafter – negotiations). Negotiations can be conducted in the premises of the body of the Committee or through the use of telecommunication systems in an interactive real-time mode.

4.2. The method of carrying out the Coordination is determined by the state commissioner / head of the regional office of the Committee.

4.3. During the Coordination, the state commissioner / head of the regional office of the Committee, informs the defendant about:

actions (inaction) of the defendant, in which signs of violation can be seen;

established factual circumstances that testify to the presence of signs of violation in the actions (inaction) of the defendant;

legal assessment (qualification) of the actions (inaction) of the defendant regarding the presence of signs of violation;

the period during which the actions (inaction) that contain signs of violation continued (continue);

liability that can be applied to the defendant;

essential terms of the settlement agreement in the case.

The body of the Committee has the right to acquaint the defendant with certain evidence in the case.

4.4. In written requests for the provision of information, proposals of the state commissioner / head of the regional office of the Committee, the deadline for responding to them is indicated, which cannot be less than 15 working days.

The defendant has the right to submit a substantiated request for an extension of the deadline for preparing a response and submitting information under the request of the state commissioner / head of the regional office of the Committee for no more than 30 calendar days. The request shall be filed by means of postal communication or in electronic form by means of information and communication systems at the discretion of the defendant. Such a request may not be submitted again.

4.5. If the defendant does not submit a response to the request regarding the essential terms of the settlement agreement within the time limit set by the state commissioner / head of the regional office of the Committee, the consent to essential terms of the settlement agreement is deemed not to have been reached. In such a case, the state commissioner / head of the regional office of the Committee submits the issue of terminating the settlement procedure in the case for consideration by the body of the Committee authorized to make a decision in the case pursuant to clauses 5.5 and 5.6 of section V of this Procedure.

4.6. Negotiations are recorded in minutes. The minutes of negotiations, which reflects the progress and results of consideration of issues, is drawn up and signed within three working days from the day of the negotiations.

If there is a technical possibility, the progress of the negotiations may also be recorded using technical means, which the participants in the negotiations are informed about. In the case of audio or video recording of negotiations, the corresponding record is added to the minutes of negotiations and is an integral part of it.

A copy of the minutes of negotiations, no later than 3 working days after the date of the negotiations, is sent to the defendant and is attached to materials of the case.

4.7. During the Coordination, the defendant provides to the Committee, the regional office of the Committee in paper form by means of postal communication or by means of information and communication systems, in particular:

1) information on the cessation of actions (inaction) recognized as a violation, and documents confirming the specified circumstance (on changing prices, entering into contracts, changing the terms of contracts, lifting restrictions on the volume of production and sale or acquisition of goods, lifting restrictions on the sale of goods to certain categories of buyers or in certain territories, etc);

2) proposals and guarantees of the defendant regarding the elimination of the causes of actions (inaction) that are recognized as a violation, and the conditions that contributed to them (if any);

3) proposals and guarantees of the defendant regarding the elimination of the consequences of actions (inaction) recognized as a violation (if any).

The form of provision of this information is determined by the defendant.

4.8. The state commissioner / head of the regional office of the Committee performs actions aimed at a comprehensive, complete and objective clarification and analysis of the information and proposals provided by the defendant in accordance with clause 4.7 of section. IV

The state commissioner / head of the regional office of the Committee takes measures to receive comments and proposals from persons whose rights and interests are affected (may be affected) by the terms of the settlement agreement or the decision in the case.

In order to receive the specified comments and proposals, the information, proposals and guarantees specified in clause 4.7 of section IV, other than restricted information, may, with the written consent of the defendant, be communicated in writing to persons with the status of the applicant(s) and third parties in case, published on the website of the Committee, the regional office of the Committee.

The procedure and deadline for submission of comments and proposals is specified in the notification and publication regarding the disclosure.

The provided comments and proposals are discussed during the negotiation of provisions of the draft settlement agreement.

4.9. If several defendants in one case have applied to the Committee for settlement, the settlement procedure in the case is conducted separately with each defendant, except when the defendants belong to a group of persons recognized as a single undertaking within the meaning of Article 1 of the Law.

V. Conclusion of the settlement agreement

5.1. According to the results of the Coordination, the defendant, within the time limit determined during the Coordination, draws up two copies of the case settlement agreement, signs them and submits the signed copies of the agreement to the Committee or the regional office of the Committee, in which the case is considered.

5.2. The state commissioner / head of the regional office of the Committee, within 30 working days from the date of receipt of the settlement agreement signed by the defendant, checks such agreement for compliance with requirements of the Law and this Procedure and, if there are no comments, submits it to the body of the Committee, authorized to make a decision in the case, for consideration

5.3. If there are comments regarding the settlement agreement signed by the defendant, the state commissioner / head of the regional office of the Committee,

returns it in paper form by means of postal communication or in electronic form by means of information and communication systems to the defendant along with a comprehensive list of comments that must be taken into account, for revision and re-signing and submission within the time limit determined by the state commissioner / head of the regional office of the Committee, which is not less than 10 working days and no more than 30 working days from the date of receipt by the defendant of the returned agreement with the comments that must be taken into account.

The defendant has the right to submit in paper form by means of postal communication or in electronic form by means of information and communication systems a substantiated request for an extension of the deadline for finalizing the settlement agreement. Such a request may not be submitted again.

In case of refusal to satisfy the defendant's request to extend the deadline for finalizing the case settlement agreement, the defendant's failure to submit a finalized case settlement agreement taking into account the comments of the state commissioner / head of the regional office of the Committee within the established period, the state commissioner / head of the regional office of the Committee submits the issue of termination of the settlement procedure in the case in accordance with clauses 5.5 and 5.6 of section V to the body of the Committee, authorized to make a decision in the case, for consideration.

5.4. In case of non-receipt of the case settlement agreement sent to the defendant for finalization, agreement on the essential terms of the case settlement agreement is deemed not to have been reached. In such a case, the state commissioner / head of the regional office of the Committee submits the issue of terminating the settlement procedure in the case to the body of the Committee, authorized to make a decision in the case, for consideration.

5.5. The state commissioner / head of the regional office of the Committee submits for consideration by the body of the Committee, authorized to make a decision in the case, the question of:

- 1) approval of the settlement agreement signed and provided by the defendant;
- 2) termination of the settlement procedure in the case due to failure to reach an agreement on the essential terms of the settlement agreement;
- 3) termination of the settlement procedure in the case due to the fact that the defendant did not submit the case settlement agreement signed by the defendant to the body of the Committee within the terms stipulated by this Procedure;
- 4) termination of the settlement procedure in the case in connection with establishing the circumstances of implementation of the settlement procedure in the case provided for in clause 1.3 of section I of this Procedure.

In the event that the case is referred to the temporary administrative board of the Committee, the procedural actions provided for in clauses 3.1 of section III, clauses 4.1-4.5, 4.8-4.9 of section IV and clause 5.2 of section V of this Procedure shall be carried out by the state commissioner designated by the Chair of the Committee, if such procedural actions have not been previously committed by other bodies of the Committee.

5.6. Based on the results of consideration of the issues specified in clause 5.5 of section V, the Committee body adopts an order on:

- 1) approval of the case settlement agreement and determination of the state commissioner or head of the regional office of the Committee to sign this agreement;
- 2) termination of the settlement procedure in the case on the grounds specified in this Procedure.

In the event of termination of the settlement procedure in the case, a repeated appeal to the Committee with an application for settlement shall not be allowed.

5.7. In the event that the relevant body of the Committee adopts an order approving the settlement agreement signed by the defendant, such an agreement is signed within three working days by the state commissioner or the head of the regional office of the Committee, and within three working days from the date of its signing, one copy of such agreement together with a copy of the order of the body of the Committee on its approval is sent to the defendant in paper form by means of postal communication or in electronic form by means of information and communication systems. The second copy of the agreement is attached to materials of the case.

The settlement agreement enters into force on the day of its signing, unless otherwise provided in this agreement.

5.8. If the body of the Committee adopts an order to terminate the settlement procedure in the case, a copy of it is sent to the defendant within three working days.

VI. Final provisions

6.1. The settlement agreement concluded between the body of the Committee and the defendant shall be the basis for the decision of the body of the Committee in the case regarding this defendant in accordance with the terms of the specified agreement.

The amount of the fine imposed on the defendant by the decision in the case, in case of concluding a settlement agreement in the prescribed manner, shall be reduced by 15 percent compared to the amount of the fine, determined in accordance with the procedure for determining the amount of the fine imposed for violation of the

legislation on protection of economic competition, adopted in accordance with part eight of Article 52 of the Law.

The conclusion of the case settlement agreement shall be indicated as a basis for reducing the amount of the fine in the statement of objections and in the descriptive and motivational part of the decision in the case.

6.2. The defendant may not withdraw the settlement application after conclusion of the settlement agreement.

6.3. After concluding a case settlement agreement, the body of the Committee may not refuse to implement it or change it, except in cases when:

1) on the date of sending a copy of the statement of objections in the case, the body of the Committee has evidence of the defendant's violation of the essential conditions of the case settlement agreement, the deadline for implementation of which has arrived - which is then reflected in the decision in the case;

2) on the date of the decision in the case, the body of the Committee has evidence of the defendant's violation of the essential conditions of the case settlement agreement, the deadline for the implementation of which has arrived - which is then reflected in the decision in the case;

3) if the decision in the case is revisited on the grounds provided for in paragraphs two and three of part one of Article 58 of the Law.

6.4. If a partial exemption from liability for violation of the legislation on protection of economic competition in the form of anti-competitive concerted actions is applied to the defendant simultaneously with the application of the settlement procedure in the case, the amount of the fine imposed on the defendant, compared to the amount of the fine determined when making the decision provided for in paragraphs two and seven of part one of Article 48 of the Law, shall be reduced by the amount consisting of 15 percent of the amount of the fine determined in accordance with the procedure for determining the amount of the fine imposed for violation of the legislation on protection of economic competition adopted in accordance with part eight of Article 52 of the Law and the reduced amount of the fine in accordance with part four of Article 52-1 of the Law.

6.5. If the defendant is fully exempted from liability for violation of the legislation on protection of economic competition in the form of anti-competitive concerted actions in accordance with part three of Article 52-1 of the Law, the settlement procedure in the case shall be terminated, and the relevant order of the state commissioner / head of the regional office of the Committee, shall be adopted, and the defendant shall be notified within three working days from the day of its adoption.

6.6. If the defendant filed an application for exemption from liability for violation of the legislation on protection of economic competition in the form of committing anti-competitive concerted actions in accordance with part three of Article 52-1 of the Law, received a marker in the manner, established in legislation, and applied for settlement, the state commissioner / head of the regional office of the Committee stops consideration of the settlement application until a decision is made on exemption from liability for violation of the legislation on protection of economic competition in the form of anti-competitive concerted actions in accordance with Article 52-1 of the Law. An order is made on the suspension and resumption of consideration of the settlement application, which is notified by means of postal communication or in electronic form by means of information and communication systems to the defendant within three working days from the day of its adoption.

6.7. In the event of failure to reach an agreement on the essential terms of the settlement agreement, including in the case of unilateral withdrawal by the defendant of the settlement application, the defendant's consent to participate in the settlement procedure in the case, materials, in particular, explanations, conclusions, facts (circumstances), information, data, documents, evidence, etc., provided by the defendant during implementation of the settlement procedure in the case, cannot be considered as recognition by the defendant of the fact of committing a violation of the legislation on protection of economic competition in the form of anti-competitive concerted actions (except for the violations provided for in clause 4 of part two of Article 6 of the Law) or abuse of a monopoly (dominant) position on the market and be used as evidence of its commission.

6.8. The defendant's provision of information and evidence in the case during implementation of the settlement procedure in the case shall be considered a sign of his cooperation with the body of the Committee during consideration of the case.

6.9. The application of the settlement procedure in the case does not prevent the collection and analysis of evidence in the case, the preparation and forwarding of a statement of objections in the case.