

KINSTELLAR

Settlement procedure:

Overview for businesses in light of
Ukraine's new competition law



The Law of Ukraine "On Amendments to Certain Legislative Acts of Ukraine on the Improvement of the Activities of the Antimonopoly Committee of Ukraine" came into force on 1 January 2024. In accordance with this law, the Antimonopoly Committee of Ukraine ("AMC") approved an Order "On the Approval of the Procedure for the Settlement of Cases of Anti-Competitive Concerted Actions of Business Entities and Abuse of a Monopoly (Dominant) Position in the Market". The document came into force on 30 January 2024.

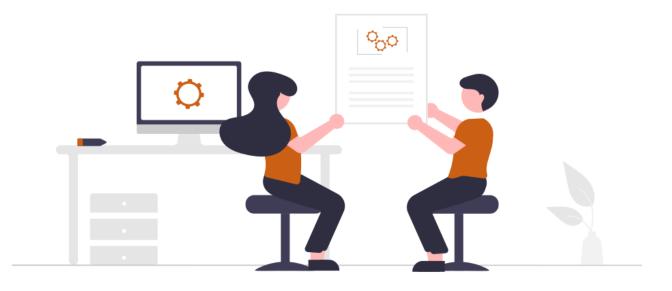
Purpose and grounds



Speeding up investigations of the most serious competition law violations and saving the resources of the AMC that are required to conduct such investigations. The process involves the cooperation of a business entity with the AMC by (1) acknowledging that it has committed a competition law violation, (2) ceasing such a violation, and (3) eliminating its causes and consequences for a 15% reduction of the applicable fine ("Settlement Procedure").

A defendant's request to settle a case ("**Application**").





Settlement procedure: what businesses should know

Admissibility

The Settlement Procedure is applicable only for the (i) abuse of dominance and (ii) anticompetitive concerted practices cases. It does not apply:

1-

For bid-rigging cases

2

Where the anticompetitive concerted practices or abuse of dominance cannot be stopped, and their causes and consequences cannot be eliminated by the defendant's actions

3

For repeated violations, i.e., if a case is initiated within five years from the date of a decision to seek liability from the defendant for the same type of violation

4

In case a leniency procedure has been already applied to the defendant

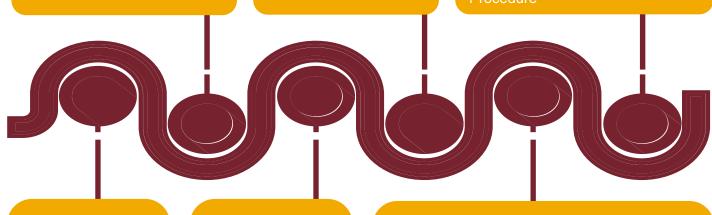
Requirements to the Application

The Application should contain:

The name of the business entity/individual and an identification code

The defendant's intention to admit a

An obligation not to disclose any information that becomes known to a defendant during the Settlement Procedure



Details of the order to start the proceedings on a violation A qualification of the violation under which the case is being considered The following documents shall be annexed:

- A Power of Attorney;
- Documents confirming the amount of revenue from the sale of goods/services for the last reporting year; and
- Other documents, which the defendant deems necessary to provide

Settlement procedures: what businesses should know

Settlement Procedure Steps

First stage:

Filing the Application to the AMC. Within 15 business days after receiving the Application, the AMC verifies the compliance of the Application with the terms of the Settlement Procedure and notifies the defendant of:

- 1) either consent to initiate the Settlement Procedure, or
- 2) leaving the Application without a motion due to the identified deficiencies. The AMC may allow the defendant time to refine and/or correct the Application. Otherwise, the AMC will not consider the Application. However, the defendant may refile.



Second stage:

The exchange of proposals, a clarification of the positions of the defendant and AMC in order to prepare and agree on a draft settlement agreement ("Agreement") via in-person negotiations or via correspondence.

Third stage:

Entering into the Agreement.

Essential Terms of the Agreement



The defendant's admission of committing the violation



The facts and circumstances of the violation admitted by the defendant



The defendant's proposals and guarantees to eliminate the root causes of such a violation and to eliminate its consequences

A reduction of the levied fine by 15%



The cessation of the violation

The AMC has approved the template of the Agreement outlining the above essential terms and allowing setting the maximum amount of the fine that may be imposed by the AMC in its final decision.



Those needing more detailed guidelines on settlements or seeking special training in this respect, please contact



Olexander Martinenko

Partner

Partner
Head of Dispute Resolution
olexander.martinenko@kinstellar.com



Yulia Eismont

Counsel
Competition & State Aid
yulia.eismont@kinstellar.com



Olena Tsygulska

Associate
Competition & State Aid
olena.tsygulska@kinstellar.com

For those keen on staying informed about updates in Ukrainian competition law, please click here



The above does not constitute legal advice and does not create an attorney-client relationship between Kinstellar and any recipient. It is meant for marketing purposes only. The material cannot be circulated to any other person or published in any way without our consent. We retain no liability for the contents of this paper however it may be used by any recipient.