

Settlements of Potential Competition Law Violations in Serbia



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Amendments to the Competition Act, in force as of November 2013, introduced much needed changes to the competition regime in Serbia and now allow undertakings the possibility to effectively settle their potential competition law violations.

What is a settlement?

A settlement allows undertakings under formal investigation by the Commission for the Protection of Competition (Commission) for a potential competition law violation to propose measures to remedy the potential violation. If accepted, the Commission will cease its investigation rather than reach a definitive decision on the existence of the violation, which might also entail fines of up to 10% of total annual turnover.

When can a settlement proposal be made? Considerations?

An undertaking under investigation can make a settlement proposal starting from the moment the investigation is formally launched, but only until the Commission issues a statement of objections—meaning a formal notification to the undertaking informing it about the facts and evidence on which it intends to base its decision establishing a violation of competition law.

The settlement proposal can be based on the facts in the conclusion launching the investigation as well as the facts established in the course of the investigation. This allows the undertaking to have a detailed overview of the main potential competition concerns investigated by the Commission, and thus tailor its proposal so that it balances the requirement to remove such concerns and its need not to overtly disrupt its business operations.

However, the settlement proposal will be market tested. That is, the settlement proposal will be publicised as a summary of the main elements of the proposed measures, with all interested third parties invited to submit their written observations and opinions of the settlement proposal. Thus, the potential competition violation, although maybe concerning a limited segment of the market or a limited number of market participants, will become publicised to the entire market through the market test, and thereby also to market participants who had no knowledge or suspicion of the potential violation. This can result in adverse effects on the business ties and operations of the undertaking making the proposal.

What are the possible outcomes of a settlement proposal?

The Commission need not accept the settlement proposal, either as initially proposed by the undertaking under investigation or as market tested. If the Commission is not satisfied that the proposed measures would remove the competition concerns under investigation, it can reject the proposal and run its investigation to the end, potentially also imposing fines.

If, on the other hand, the Commission on the basis of the market test establishes that it is likely that the proposed measures will remove the competition concerns under investigation, it will, in line with the settlement proposal, render a conclusion specifying the measures to be observed by the undertaking, and cease its investigation.

However, the Commission may resume its investigation within three years as of the day it rendered the conclusion if (i) the (market) conditions prevailing at the time of its conclusion significantly change, (ii) the undertaking does not fulfil the conditions stipulated in the conclusion or does not furnish proof of fulfilment of those conditions to the Commission or (iii) the conclusion was based on false or incomplete data provided by the undertaking under investigation.

What are the implications of settlements for undertakings?

The main and most attractive implication of settlements from the perspective of undertakings is that a successful settlement can prevent a decision by the Commission establishing a violation of competition law. Such a decision would, in addition to measures similar to those agreed in the settlement, also entail a fine of up to 10% of total annual turnover of the violating undertaking.

By settling the case with the Commission, undertakings under investigation are able to resolve the investigation much more efficiently and expediently, as well as to influence the design of measures to be undertaken so as to remove competition concerns. Therefore, settlements allow undertakings not only to remove much of the uncertainties and risks that a Commission's definite decision at the end of its investigation would have (including the risks of fines) but also to have an important say in how their business operations will look in the future.

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