



Bundeskartellamt

Information Leaflet

Settlement procedure used by the Bundeskartellamt in fine proceedings

February 2016



Bundeskartellamt
Offene Märkte | Fairer Wettbewerb

An administrative fine proceeding can be concluded in the form of a negotiated agreement (settlement) between the Bundeskartellamt and the parties concerned to terminate the proceedings. A settlement generally expedites and shortens complex and resource-intensive cartel fine proceedings and reduces the fine imposed by the Bundeskartellamt.

1. Legal framework

Settlements are possible in all cartel administrative offence proceedings. If the Bundeskartellamt is generally willing to enter into a settlement agreement, it is open to discussions with all the parties concerned. A settlement is not conditional upon all the persons or companies concerned agreeing to terminate the proceedings by settlement.

There are no formal requirements under ordinary law for the agreement of a settlement to conclude the administrative offence proceedings of an administrative authority. The provision for reaching an agreement in criminal proceedings (Federal Law Gazette I, 2009, 2245), in particular as stipulated in Section 257 c of the German Code of Criminal Procedure, which is applicable to court criminal and administrative offence proceedings, does not apply in this instance because the legislator did not want to over-formalise the administrative fine proceedings of an authority (cf. legislative intent of the Act regulating negotiated agreement procedures in criminal proceedings, Bundestag Printed Paper 16/12310, p. 16.). The key constitutional requirements, as clearly defined by the German Federal Constitutional Court, must of course also be complied with in the context of the administrative fine proceedings of an authority.

2. Subject of a settlement agreement

A settlement agreement requires a statement of confession by the person or company concerned. The confession must contain not only a description of the offence but also information on the circumstances that are relevant for setting the fine. The formal requirement for a confession is that it includes a so-called settlement declaration in which the person or company declares that he/it acknowledges the facts of the infringement of which he/it is charged and accepts the fine up to the amount announced. A waiver of the right to appeal is not part of a settlement declaration.

A settlement declaration is considered a mitigating circumstance which results in a reduction of the fine (so-called settlement reduction). In the case of horizontal cartels a fine can be reduced by a maximum of 10%.

A settlement can be achieved irrespective of whether an application for leniency has been filed. In this case the settlement reduction is deducted from the amount of fine which has already been reduced following the application for leniency.

3. Procedure

There are no fixed rules on the timeframe for initiating a settlement procedure. If the Bundeskartellamt has already inspected the evidence in order to gain an adequate amount of information, settlement discussions can be proposed by both sides at any time; they are not conditional upon the despatch of an extensive notice of hearing.

If there is a general willingness to terminate the proceedings by settlement, the Bundeskartellamt informs the respective party orally or in writing of the facts of the infringement of which it is accused. It generally grants at least partial access to the file and hears the person or company concerned. Based on the latest state of the investigations it proposes an amount of fine which is not to be exceeded if a settlement is reached. Where applicable the person or company is offered the proposition of a settlement declaration including a summary of the results of the investigations and a deadline is set for accepting the settlement proposition. Full access to the file cannot be granted if investigations against other parties involved are still ongoing and such access would jeopardise the purpose of the examination. If the person or company decides to submit a settlement declaration, this can be done either in writing or orally during a hearing. However, the declaration must be signed by the person involved or in the case of a company, by a body authorised to represent it in the matter. The settlement negotiations are recorded in the file.

After a settlement has been reached the proceeding is concluded by way of a so-called short decision which only contains the minimum information required under Section 66 of the Administrative Offences Act. If in spite of a settlement the order imposing the fine is appealed, the Bundeskartellamt will withdraw the short decision and formulate a detailed fine decision (Section 69 (2) sentence 1 Administrative Offences Act).