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NOTICE ON THE ENFORCEMENT OF ARTICLE 14-*QUATER* OF LAW 287 OF 10 OCTOBER 1990

A. Preamble

With this Notice, the Authority lays down, in accordance with EU law, the procedural rules for filing and assessing settlement submissions. It also specifies the criteria for determining the level of the fine reduction to be applied upon successful completion of the procedure established under Article 14-*quater* of Law 287 of 10 October 1990 (“**Law 287/1990**”), introduced by Article 34(1) of Law 118 of 5 August 2022. Specifically, Article 34(1) of Law 118 of 5 August 2022 provides for the insertion of the following after Article 14-*ter* of Law 287/1990: *«Article 14-*quater*. (Settlement procedure) 1. During an investigation opened pursuant to Article 14(1), the Authority may set a time limit for the undertakings concerned to express in writing their willingness to engage in discussions with a view to the possible submission of settlement proposals. 2. The Authority may inform the parties participating in settlement discussions of: a) the objections it intends to raise against them; b) the evidence used to establish the objections it intends to raise; c) non-confidential versions of any specified document listed in the case file at that point in time, insofar as this is justified to enable the party to ascertain its position regarding a time period or any other specific aspect of the cartel; d) the range of potential fines. Such information is confidential vis-à-vis third parties unless the Authority has expressly authorised its disclosure. 3. If the discussions are successful, the Authority may set a time limit for the undertakings concerned to decide whether to opt for the settlement procedure, by introducing settlement submissions that reflect the outcome of previous discussions and acknowledge their participation in an infringement of Articles 2 and 3 of this Act or Articles 101 and 102 TFEU, as well as their respective liability. 4. The Authority may decide to terminate settlement discussions at any time, in whole or in part, if it believes the procedure's effectiveness has been compromised. Before the Authority sets a time limit for the settlement submissions, the parties concerned have the right, upon request and in due time, to receive the information referred to in paragraph 2. The Authority is not required to consider any settlement submissions received after the specified time limit. 5. By means of a general measure, the Authority shall establish the procedural rules governing the submission and assessment of settlement proposals under this Article, in compliance with EU law and ensuring the right to*

be heard. The general measure shall also determine the level of the reduction of the fine under Article 15(1-bis), to be granted if the settlement procedure is successful».

B. Procedure

(i) Start of proceedings and pre-settlement stage

1. In proceedings opened pursuant to Article 14 of Law 287/1990 (the “**Competition Act**”) aimed at establishing an infringement of Article 101 or 102 of the Treaty on the Functioning of the European Union (the “**TFEU**”) and/or of Article 2 or 3 of the Competition Act, the Authority may – after the expiry of the time limit set out in Article 14-*ter*(1) of the Competition Act – assess the parties’ interest in reaching a settlement.
2. The Authority alone may initiate such assessment. Any request to this effect from the parties during the investigation, before receiving the communication referred to in point 4, is inadmissible.
3. In exercising its discretionary powers, the Authority shall consider, in particular, the likelihood of bringing the case to a rapid conclusion by successfully completing the settlement procedure with respect to all the parties concerned, also in light of their number.
4. Where the Authority finds that the case may, in principle, be resolved by settlement, it shall write to the parties against whom it intends to raise objections, inviting them to confirm their interest in joining settlement discussions. The parties shall have at least 15 days to respond. This communication may be sent at any stage of the proceedings, up until notification of the statement of objections.
5. Parties must state in writing, within the time limit under point 4, their interest in taking part in settlement discussions. Such written statement does not amount to an admission of infringement or acceptance of liability.
6. Where proceedings opened by the Authority involve multiple legal entities under the same corporate control, and those entities wish to take part in settlement discussions, they must appoint joint representatives – duly authorised to act on their behalf – and notify the Authority of such appointment within the time limit set out in point 4. The designation of joint representatives is solely intended to facilitate settlement discussions and shall not affect the attribution of liability for the infringement among the parties.
7. Following receipt of the communication referred to in point 4, it is no longer possible to request the non-imposition of a fine pursuant to Article 15-*bis* of the Competition Act: this is because starting the settlement procedure means the Authority has already gathered sufficient evidence to establish an infringement. However, under certain conditions, parties may still request a reduction of fines pursuant to Article 15-*ter* of the Competition Act, provided they do so within the time limit under point 4. Without prejudice to the time limit under Article 14-*ter*(1) of the Competition Act, the Authority shall not, as a rule, consider commitments submitted after receipt of the communication under point 4. The rejection of commitments

submitted prior to receiving such communication does not preclude the parties from accessing the settlement procedure.

(ii) Start of the procedure: discussions to reach a settlement

8. If some of the parties to the proceedings express an interest in engaging in settlement discussions, the Authority may decide to start the settlement procedure by holding bilateral meetings with each prospective settlement candidate.

9. The Authority is under no obligation to start or continue settlement discussions, particularly where not all parties to the proceedings express an interest in participating or a concrete willingness to agree on the scope of the objections. In any case, the Authority may discontinue settlement discussions if the parties attempt to tamper with or destroy evidence relevant to establishing the infringement, any part thereof, or to setting the level of the fine.

10. The Authority has discretionary powers to decide whether and how often to hold bilateral settlement discussions with each undertaking, particularly with regard to the order and sequence of such discussions, in light of the overall progress made in the settlement procedure.

11. The purpose of the discussions is to reach a shared understanding of the content and scope of the objections that the undertakings concerned are willing to accept in exchange for the reduction of fines referred to in points 25 and 26. During the settlement procedure, the Authority does not negotiate the existence of the infringement or the amount of the applicable fine.

12. In any case, during the discussions, the parties shall be informed of the key elements considered up to that point, such as the disputed facts, their legal classification, the seriousness and duration of the alleged infringement, the attribution of liability, an indicative range of fines, and the evidence supporting the potential objections. Upon a reasoned request, as settlement discussions progress, the Authority may allow the parties to review non-confidential versions of accessible documents in the case file, to enable them to clarify their position on all aspects of the unlawful conduct.

13. Where the Authority deems that the procedure may lead to a shared understanding of the scope of the potential objections and the likely range of fines, it shall grant the undertakings a period of no less than 15 days to submit a settlement proposal. In exceptional circumstances, and if the undertakings submit a timely and reasoned request, the Authority may extend this time limit.

14. The parties to the proceedings may not disclose the content of any discussions or documents accessed during the settlement procedure without the Authority's prior express authorisation. Any breach of this obligation may lead the Authority to discontinue the settlement procedure at any time. Such disclosure may also amount to an aggravating circumstance pursuant to point 21 of the Guidelines for setting fines and may be regarded as a breach of the duty to cooperate under Article 15-*quater* of the Competition Act. The non-

disclosure obligation does not apply in the case of multiple entities under the same corporate control.

15. If the parties do not submit a settlement proposal, the case shall proceed under the general decision-making procedure instead of the one specific to settlements.

(iii) Settlement submissions

16. Parties opting for a settlement procedure must present a formal settlement request in the form of a settlement submission. The settlement submission must include:

- a) a clear and unequivocal admission of the parties' liability for the infringement, with a brief description of its scope, implementation (if any), key facts, their legal classification, including the parties' roles, the attribution of liability, and duration of their involvement – in line with the outcome of the settlement discussions;
- b) the maximum fine the parties expect the Authority to impose and which they would agree to as part of the settlement;
- c) confirmation by the parties that they have been properly informed of the objections the Authority intends to raise against them, and that they have been given sufficient opportunity to present their views to the Authority;
- d) confirmation that, in light of the above, the parties waive their right to access the case file for the sole purpose of the proceedings, to submit written briefs and to request a hearing under Article 14 of Presidential Decree 217/98 – unless the Authority's statement of objections or decision does not reflect their settlement submission.

17. At the request of the undertaking concerned, the Authority may allow settlement submissions to be made orally. Oral settlement submissions shall be recorded and transcribed at the Authority's premises. Undertakings submitting oral submissions are given the opportunity to review the technical accuracy of the recording – available at the Authority's premises – and to promptly correct the content of their oral submissions and any transcription errors.

18. Settlement proposals may not be withdrawn unilaterally by the parties who submitted them, unless they are not accepted by the Authority. A settlement proposal shall be regarded as not accepted by the Authority if its content is not reflected in the statement of objections and, subsequently, in the final decision. The statement of objections shall be deemed to reflect the settlement submission if it sets out the elements listed in point 16, letter a). Furthermore, for the final decision to be regarded as reflecting the settlement submission, the fine imposed must not exceed the maximum amount indicated therein.

(iv) Notification of the statement of objections and the parties' response

19. Where the statement of objections reflects the parties' settlement proposal, the parties concerned must respond to that statement within a time limit of at least fifteen days set by the

Authority. In their response, they must simply confirm (unequivocally) that the statement of objections reflects the content of their settlement submissions and that they therefore remain committed to the settlement procedure, waiving their right to access the case file for the sole purpose of the proceedings, to submit written briefs and to request a hearing under Article 14 of Presidential Decree 217/98. If no such response is received, the Authority shall consider the party to have breached its commitment and may discontinue the settlement procedure.

20. The Authority nevertheless retains the right to issue a statement of objections that does not reflect the parties' settlement submission. In such circumstance, the case shall resume under the general procedural rules. Any admissions made by the parties in their settlement submission shall be considered withdrawn and may not be used as evidence against any of the parties to the proceedings.

(v) The Authority's decision and reduction of the fine following settlement

21. Once the parties confirm the elements listed in point 19 of this Notice in their reply to the statement of objections, the Authority may adopt the final decision without further procedural steps, after obtaining the opinions required by law.

22. The Authority nevertheless retains the right to adopt a final decision that departs from the position set out in the statement of objections incorporating the parties' settlement proposals. Should it decide to proceed in this manner, the Authority shall inform the parties and notify a new statement of objections, thereby enabling them to exercise their rights of defence and participate in the proceedings, in accordance with the general procedural rules. Any admissions made by the parties in their settlement submission shall be considered withdrawn and may not be used as evidence against any of the parties to the proceedings.

23. The final amount of the fine shall be determined in the decision by which the Authority establishes the infringement and imposes a fine pursuant to Article 15 of the Competition Act.

24. In line with the Authority's practice, the fact that an undertaking or association of undertakings cooperated under this Notice during the administrative proceedings shall be acknowledged in the final decision, to set out the reasons justifying the level of the fine. However, any additional cooperation that the parties are required to provide in the context of the settlement procedure shall not constitute a separate mitigating circumstance when setting the fine.

25. Where the settlement procedure is successfully concluded in a case not involving a secret cartel, the Authority shall reduce the fine to be imposed by 20%, after applying, if necessary, the 10% cap laid down in Article 15(1-*bis*) of the Competition Act.

26. Where the settlement procedure is successfully concluded in a case involving a secret cartel, the Authority shall reduce the fine to be imposed by 10%, after applying, if necessary, the 10% cap laid down in Article 15(1-*bis*) of the Competition Act.

27. Where the Authority's settlement decision concerns undertakings that are also eligible for leniency, the reduction of the fine granted under the settlement procedure shall be added to the reduction granted under the leniency programme.

C. General remarks

28. This Notice applies to all investigation proceedings opened after its publication in the Authority's Bulletin, as well as to ongoing investigations, provided that the statement of objections has not been notified yet.

29. Access to settlement submissions is granted only to recipients of the statement of objections who have not submitted a settlement proposal, provided that they undertake not to copy – by any mechanical or electronic means – any information contained in the settlement submissions to which they are granted access, and to use such information exclusively in judicial or administrative proceedings for the enforcement of national and EU competition rules at issue in such proceedings. No other party to the proceedings shall be granted access to the settlement submissions.

30. Where required, settlement submissions under this Notice shall be shared exclusively with the Commission and other national competition authorities of Member States, pursuant to Article 12 of Regulation (EC) 1/2003.

31. The Authority reserves the right to amend or supplement this Notice one year after its publication, based on insights gained from its practical enforcement.