

AMENDMENTS AND COMPLETIONS BROUGHT TO THE COMPETITION LAW NO. 21/1996



It is intended to ensure additional juridical certainty to undertakings which will find themselves in the position to self-evaluate a certain economical behaviour, both in accordance with the national, but also EU legislation. Moreover, the Romanian Competition Council has the possibility to provide the courts of law with its opinion regarding a case and, in the same time, it is expressly stipulated that the national courts of law have the obligation to communicate the European Commission, by means of the Romanian Competition Council, the decisions issued in cases of infringement of the TFEU (art. 101 or 102).

An element of novelty is represented by the fact that the Competition Council decisions may be suspended by the Bucharest Court of Appeal only subject to the applicant posting security accounting for 30% of the fine imposed under the chal-

lenged decision. It is considered that this will bring urgency when solving law suits challenging the sanctions applied by the competition authority, by real and effective involvement of the undertakings which have already paid the security accounting.

Furthermore, according to the new legal provisions, the Competition Council may apply fines between RON 5,000 and RON 40,000 to local and central public authorities, in case such authorities have not provided the requested documents or information or have provided incorrect or incomplete information. The previous regulations allowed the Competition Council to apply fines only to economic agents.

Moreover, until now the sanctions applied in case of providing incorrect or incomplete information or in case of refusal to

Dear readers,

Please be informed that the Emergency Governmental Ordinance no. 75/2010 regarding the amendment and completion of the Competition Law entered into force on Thursday, August 5, 2010, by way of which the current procedural framework was improved and extended, the national norms and procedures being adjusted to the EU competition legislation.

The articles regarding anticompetitive agreements or practices and abuse of dominant position (art. 5 and 6) have been modified, aiming thus to bring the national legislation closer to the EU legislation, namely to the provisions of art. 101 and 102 of the Treaty on the Functioning of the European Union („TFEU”), both in terms of substance and procedure.



By this newsletter, you will find a short description of the main provisions in the aforementioned matters.

Yours Luiza Bedros

allow a down-raid where limited only to a maximum threshold of 1% of the total turnover archived in the previous financial year, whereas now the threshold is also limited to a minimum of 0,1%. The same applies for sanctions in case of infringement of art. 5 and 6, of the obligation to notify an economic concentration etc., when the fine is from 0,5% up to 10% of the total turnover archived in the previous financial year.

Another novelty is the fact that the acknowledgment of an undertaking of its anticompetitive deed is regarded as a mitigating circumstance, which will lead to the reduction of the fine with a percentage between 10% and 25% from the base value. These provisions with regard to the reduction of the fine are different from the ones regarding the "*clemency policy*", applicable when the undertaking voluntarily provides proofs to the authority.

The natural persons which deliberately and decisively take part to the organization of a cartel, may be sanctioned also by prohibiting the right to hold an office or to exercise a profession or to carry out an activity, of the nature of the one that was used to commit the offence. This provision comes to complete the one which allowed the punishment of natural persons by imprisonment from 6 months up to 4 years or the payment of a fine.

Starting with these new regulations, the Competition Council inspectors will be able, upon the request of the European Commission or other national competition authorities, to perform, on the national territory, down-raids for and on behalf of these authorities.

The new provisions eliminate the individual exemptions (in Rom. *dispensa*) and, as regards the block exemptions on different categories, as also applied in other member States (e.g. Germany, Spain), the new regulations make a direct reference to the EU regulations.

The Emergency Governmental Ordinance stipulates also the undertakings possibility to notify the intention of an economic

concentration, whereas, until now, the competition authority being notified only after the execution of the deed which led to the economic concentration. Moreover, the new provisions clarify the conditions and procedural framework based on which may be adopted interim measures or may be accepted commitments submitted by the involved undertakings in anti-competitive practices or in economic concentration operations.

The calculation method for the authorization fee in case of economic concentrations has been simplified, meaning that it represents 0,04% out of the aggregate turnover achieved on the Romanian territory, but no more than EUR 100,000 (the equivalent in RON). Based on the previous regulation, the authorization fee represented 0,1% of the aggregate turnover achieved on the relevant market on which the economic concentration operation took place. This amendment aims to help the undertakings, which will no longer have to calculate the turnover only for a particular segment of their activity, separately from the total turnover.

The normative deed also implements significant changes regarding the compatibility test of an economic concentration with a normal competition environment, from the "*dominance test*" to SIEC test („*substantial impediment of effective competition test*”). According to the previous regulations, the Competition Council firstly resolved the issues regarding the establishment or consolidation of dominant position due to the economic concentration and only afterwards analysed the effects implied by a possible significant restriction of the effective competition. The new regulations focus mainly on the effects of the economic concentration over the competitive environment, whereas the establishment or consolidation of dominant position does not mandatory represent a form of distortion or restriction of competition.

Additionally, the Competition Council, by means of orders issued by its President, approved a series of secondary regulations with respect to competition matters (e.g.

the new regulation on economic concentrations, the guidelines regarding the definition of the relevant market etc.), published with the Official Gazette no. 553 and 553 bis as of 05.08.2010 and which also entered into force starting with August 5, a.c.

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