

competition - legislative retrospective

Amendments brought to Law no. 21/1996 (the “Competition Law”) and enactment of new secondary legislation. Following the publication of the Emergency Ordinance no. 75 into the Official Gazette dated June 30, 2010, several amendments were brought to the Competition Law, effective as of August 5, 2010. In a nutshell, these amendments are aiming to procure the alignment of the national competition legislation with the European one. Secondary legislation, aimed to implement in thorough details the amendments brought to the Competition Law, has been also published on August 5, 2010.

What we can first note is that the amended Competition Law defines a series of concepts, in line with the European standards (such as “undertaking”; the “relevant market” is also defined by reference to the SSNIP¹ test), and it further vests the national competition authority with the power to directly apply the provisions of articles 101 and 102 of the Treaty for the Functioning of the European Union (the “Treaty”), pursuant to the provisions of the Regulation on procedure no. 1/2003.

The provisions of articles 5 and 6 regarding anticompetitive practices and abuse of dominant position are reshaped, so as to comply in broad lines with the provisions of articles 101 and 102 of the Treaty; the Competition Law also expressly regulates the 40% threshold for dominant position.

It is also interesting to note that anticompetitive behaviors are subject to fines now ranging from 0.5% to 10% (minimum threshold precisely determined under the law), and that even newly established undertakings (not having any turnover in the previous year) may be fined; most importantly, in order to obtain the stay of a Competition Council decision (imposing a fine) a bond amounting to 30% of the amount of the fine must be paid by the party willing to have the effects of such decision suspended. The Competition Law also regulates a leniency system, whereby fined indicted for breach of articles 5 or 6 may be reduced by 10 to 25% in specific circumstances.

Another key amendment concerns the removal of the individual exemption procedure, and the introduction of the self-assessment system, as otherwise contemplated under European law. Undertakings may naturally enjoy the benefit of the block exemptions for specific categories of agreements pursuant to the European regulations available on the matter and directly applicable as such.

There have also been some changes in the procedure concerning economic concentrations. The authorization fee, that used to be calculated based on the turnovers recorded on the relevant markets, is now a result of a calculation applied to the whole turnover recorded in Romania (0.04% of such turnover), but is however capped to the RON equivalent of EUR 100,000. Parties may now notify the potential concentration prior to signing the documents for scrutiny by the Competition Council, if they can prove their “good faith” intention to closing the transaction. The competition authority will assess the notified concentration within 45 days (instead of 30 days) as of the full documentation having been filed therewith.

¹ *Small but Significant and Non-transitory Increase in Price*

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