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Recent Changes to Romania's Competition Law

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Competition Law No. 21/1996 (the “**Competition Law**”) was recently amended and supplemented by Law No. 347/2015 approving Government Emergency Ordinance No. 31/2015, and these amendments are applicable as of January 1, 2016.

In essence, the new changes may be briefly described as follows:

1. Incapacity to take legal action against administrative decisions granting access to confidential information

The new wording of Art. 26 para. (4) of the Competition Law no longer qualifies decisions granting access to confidential information as individual administrative acts, therefore likely to be appealed against according to the procedure under Law No. 554/2004 on administrative procedure.

The following decisions of the Competition Council may currently be challenged in an administrative court: (i) decisions ascertaining the infringement of the Competition Law and for applying appropriate sanctions; (ii) decisions ordering the measures necessary to restore the competitive environment; (iii) decisions settling claims under the provisions of the Competition Law; and (iv) applications and notifications regarding economic concentrations.

2. New parameters for the calculation of the fee for the authorisation of economic concentrations

In light of the new amendments to the Competition Law, the amount of the fee for the authorisation of economic concentrations shall be identified and calculated according to the following criteria:

a) the fee ranges between 10,000 EUR and 25,000 EUR for cases where the Competition Council issues an authorisation decision based on Art. 45 para. (2) of the Competition Law, when either (i) there are serious doubts as to its compatibility with a normal competitive environment, or (ii) serious doubts as to the compatibility with a normal competitive environment were removed in line with the commitments proposed by the parties and accepted by the Competition Council;

b) the fee ranges between 25,001 EUR and 50,000 EUR for cases where the Competition Council issues an authorisation decision based on Art. 45 para. (4) letters b) and c) of the Competition Law, when (i) the economic concentration does not represent a significant impediment to effective competition on the Romanian market or a substantial part thereof, or (ii) the council issues a conditional authorisation decision which sets out the obligations and/or conditions designed to ensure parties' compliance with the commitments undertaken in order to finalise a concentration that is compatible with a normal competitive environment.

3. Possibility of using information collected from public authorities and third party institutions

The Competition Law inserts a new wording in Art. 34 para. (21) according to which the Competition Council may, under the law, use the information and documents collected by other public authorities and institutions when carrying out their specific activities.



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4. The new concept of “competition whistle-blower”

According to the new legal framework, competition whistle-blowers are individuals who provide information on possible violations of this law to the Competition Council, on their own initiative. The Competition Council protects the identity of these persons and the provision of information in accordance with the new Article 34 of the Competition Law is not considered a breach of the confidentiality obligation under the Labour Code Law No. 53/2003, as republished, amended and supplemented, and under the employment agreement, respectively.

5. Waiver of attorney - client privilege on preparatory documents

In the previous wording of Art. 36 para. (8), the Competition Law stated that “preparatory documents exclusively drafted by the undertaking or association of undertakings under investigation for exercising its right to defence may not be removed or used as evidence”. This text has been removed, and, therefore, these types of documents are likely to be removed and used as evidence during the Competition Council proceedings.

6. Amendments to the recognition procedure

Another significant change of the Competition Law relates to the recognition procedure. In essence, the amendments have the following particularities:

- the undertaking under investigation may appeal to the recognition procedure, by submitting a specific request to that effect, but only before the hearings;
- in the case of a fine decrease as a result of recognition (namely, a discount of 10% to 30% of the amount of the fine), the fine may be reduced even below the minimum amount required by law, but the fine may not be less than 0.2% of the turnover recorded for the financial year before the application of the sanction;
- if the Competition Council does not accept the terms of the request of the undertaking, the fine shall not be reduced and the recognition will not be used as conclusive evidence;
- any exercising, by the undertaking, of an action for annulment of the decision of the Competition Council on matters covered by the recognition shall result in the loss of the benefit with regard to the decrease of the fine.