

Competition law amended: Heads up!



Significant amendments to the Romanian Competition Law no. 21/1996 (the "Law") will come into effect on August 5, 2010, including:

◆ **ANTITRUST:**

- **Increased market share thresholds for the application of Art. 5(1) of the Law; turnover-related requirement removed:** unless hardcore restrictions of competition are involved in an agreement or concerted practice, Art. 5(1) only applies if (a) for horizontal arrangements, the **combined** market share of the undertakings concerned (competitors) exceeds **10%** on any of the relevant markets affected by the agreement or practice in question, or (b) for vertical arrangements, the **individual** market shares of any of the undertakings concerned (non-competitors) exceed **15%** on any of the affected relevant markets; where it is difficult to determine whether an arrangement is vertical or horizontal, the 10% threshold applies.
- **Abolishment of individual exemption procedure:** individual exemptions from the application of Art. 5(1) of the Law are no longer available. Compliance with the Law of a particular agreement or practice will therefore have to be self-assessed by the undertakings concerned.
- **Block exemption – direct reference to (and application of) the relevant EU acts:** no new Romanian block exemption rules will be enacted; whether an agreement or practice would meet the conditions qualifying it for the benefit (safe harbour) of a block exemption will be assessed solely based upon the relevant acts (regulations) of the EU Council or Commission.

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◆ **MERGER CONTROL:**

- **Calculation of the clearance fee and ceiling:** the calculation of the merger clearance fee shifted from a calculation based on turnovers recorded in the concentration's **relevant markets** to a calculation based on the **total** turnovers recorded in Romania by the undertakings concerned. The new clearance fee is **0.04%** of such total turnover, but may not exceed the equivalent in RON of **Euro 100,000**.
- **Intention-based notification introduced:** parties to a notifiable transaction (concentration) may now also file the notification for clearance **prior** to the signing of the contemplated transaction's documentation, provided that the parties can demonstrate to the competition authority their "good faith" intention to enter into such a transaction.
- **Extension of concentration's assessment term:** a notified concentration (compulsorily notifiable) will be assessed by the competition authority, and the corresponding decision will be issued, within 45 days from the date the notification is deemed complete (30 days prior to the amendments).

◆ **MISCELLANEOUS:**

- **Increase of fines; new basic levels:** "floors" for the basic levels of the fines have been introduced; hence, fines of **0.1%** up to 1% of the relevant turnovers are provided for minor offenses (generally failures to supply correct and complete information to the authority or resistance to dawn raid), and fines of **0.5%** up to 10% of the relevant turnovers are provided for minor offenses that include omission of notification of a concentration (the fine was up to 1% prior to the amendments), or breaches of Art. 5 of the Law (and Art. 101 TFEU) or Art. 6 of the Law (and Art. 102 TFEU).
- **Absence of a turnover not relevant for the application of fines:** newly established undertakings, i.e., who had no turnover recorded for the year preceding that of the sanctioning, may still be subject to fines of **RON 20,000 up to RON 2 million, or RON 30,000 up to RON 5 million**, depending on the type of the infringement.



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- **“Guilty plea”, a fine’s amount reduction factor:** under certain circumstances, undertakings found to have breached Art. 5 of the Law (and Art. 101 TFEU) or Art. 6 of the Law (and Art. 102 TFEU) may benefit from a reduction of 10% to 25% of the basic level, if they expressly admit to having committed the infringement.
- **New type of sanctions for criminal offenses:** in the case of a breach of the Law amounting to a criminal offense, in lieu of imprisonment, fines may be imposed accompanied by a restriction preventing the offender from holding an office or carrying out an activity similar in nature to that involved in committing the criminal offense.
- **Suspension of sanctioning decisions subject to bail:** where a sanctioning decision is challenged, the suspension of its enforcement may now be granted by the court only subject to the payment of a bail of **30%** of the fine imposed by the challenged decision.

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