

### Amendments to the Competition Law published

On July 06, 2010 Emergency Government Ordinance 75/2010 (“**EGO 75**”), amending the provisions of the Competition Law 21/1996 (the “*Competition Law*”), has been published in the Official Gazette. EGO 75 will enter into force on 05 August 2010. Furthermore, an amended version of a number of secondary legislative measures (regulations and instructions) will also enter into force on the same day.

EGO 75 is the result of a relatively long process during which the Competition Council engaged in dialogue with representatives of the business community and requested input from interested parties, with a view to identify the main changes in relation to the somewhat outdated text of the Competition Law.

The amendments of the Competition Law aim to bridge the gap between the competition regulation at national level and at the European Union level. Among the most significant changes in the Competition Law are the following:

#### 1 Scope of the Competition Law

- 1.1 EGO 75 removes certain limitations regarding the scope of the Competition Law by providing that as of the entry into force of EGO 75 the Competition Law will equally apply to the labour and employment market as well as to the monetary and securities market.
- 1.2 In line with the provisions of EC Regulation 1/2003, EGO 75 clarifies that the Competition Council will directly apply and enforce the provisions of Article 101 and 102 of the Treaty for the Functioning of the European Union (“**TFEU**”).
- 1.3 For the purpose of applying articles 101 and 102 TFEU, the Competition Council may perform inspections upon the request of the European Commission or of that of a national competition authority of an EU Member State, based on the inspection order issued by the president of the Competition Council.
- 1.4 In order to remove any discrepancies between the Community block exemption regulations and Romanian block exemption regulations, EGO 75 provides that the categories of agreements benefitting from a Block exemption and the conditions and criteria to be fulfilled are those established by the European Union Block Exemption Regulations.

#### 2 De minimis Agreements

- 2.1 EGO 75 restricts the application of the Competition Law to agreements between competitors where the aggregate market share of the parties on the relevant market is above 10% and to agreements between non-competitors where the market share held by each of the parties on each of the affected relevant markets is above 15%.
- 2.2 EGO 75 introduces a relative presumption according to which a dominant position will only be held if the relevant market share is above 40%.

## Hot Topics.

### 3 Individual Exemption

- 3.1** Following the adoption of EGO 75 the undertakings will no longer be able to file a request for an individual exemption with the Competition Council if a certain agreement does not meet the conditions for benefiting of a block exemption. Under the amended Competition Law the respective undertakings will have to conduct a self assessment regarding the fulfilment of the individual exemption conditions.
- 3.2** All requests for individual exemption filed with the Competition Council at the time when EGO 75 enters into force will be considered terminated by effect of the law.

### 4 Merger Control

- 4.1** The approval of an economic concentration will no longer hinge on whether or not the respective economic concentration has the effect of creating or enhancing a dominant position. EGO 75 provides that economic concentrations “*which would raise significant impediments to effective competition*”, in particular through the creation or strengthening of a dominant position, are forbidden.
- 4.2** An economic concentration must no longer be notified within 30 days since signing of the documents on the basis of which control is acquired, but prior to the implementation of the transaction, following the conclusion of the agreement/ the announcement of the public offer or the acquisition of a controlling stake. Prior notifications can also be made, on the basis of a good-faith intention to conclude an agreement.
- 4.3** The authorization fee amounts to 0,04% of the total turnover derived by the undertakings on the Romanian territory, without exceeding 100,000 EUR, as opposed to the previous authorization tax of 0,1% of the total turnover achieved by the undertakings on the relevant Romanian market.
- 4.4** The Competition Council has 45 days since the notification has become effective to either issue a non-opposition decision or to launch an investigation, as opposed to 30 days in the previous version of the Competition Law.

### 5 Dawn Raids

- 5.1** The Competition Council may interview any natural persons or representatives of a legal person, who agrees to be subjected to an interview, for the purpose of collecting information relevant to the on-going investigation.
- 5.2** Undertakings may challenge the inspection order before the Bucharest Court of Appeal, administrative claims section, within 15 days from the communication of the decision; the decision of the Bucharest Court of Appeal may be challenged with a final appeal within 5 days from the communication of the decision.
- 5.3** The performance of inspections outside the premises of an undertaking and within the premises belonging to top-level management of the respective undertaking (e.g. managers' home, managers' car) is only possible once a judiciary authorisation, issued by the president of the Bucharest Court of Appeal, has been obtained. The court decision granting the judiciary authorisation may be challenged within 48 hours with a final appeal before the High Court of Cassation and Justice (the final appeal does not stay the enforcement of the resolution).

## Hot Topics.

### 6 Protected documents

**6.1** EGO 75 expressly provides that two categories of documents cannot be seized during dawn raids by the Competition Council inspectors, nor can they be used as evidence:

(i) Communications between the undertaking / association of undertakings and their lawyer, taking place for the exclusive purpose of exercising the rights of defence (either before or after the initiation of the investigation);

(ii) Preparatory documents drafted by the undertaking or the association of undertakings for the exclusive purpose of exercising the rights of defence, even if they have not been sent to the lawyer or have not been created with the purpose of being physically sent to a lawyer.

### 7 Sanctions

**7.1** The supply of inaccurate and / or incomplete information to the Competition Council during an antitrust or merger control proceeding, as well as during a dawn raid, and the refusal to allow the conducting of a dawn raid or obstructing a dawn raid will be sanctioned with a fine between 0.1% and 1% of the total turnover of the respective undertaking during the year previous to the sanctioning decision. If the infringing undertakings failed to derive any turnover the previous year, a fine between 2,000 RON and 2,000,000 RON will be applied.

**7.2** Breaching articles 5 and 6 of the Competition Law, articles 101 and 102 of the TFEU, failing to notify an economic concentration before implementation, implementing an economic concentration before a non-objection decision was issued or in breach of a prohibitive decision, and failing to comply with an obligation imposed through a decision will be sanctioned with a fine between 0.5% and 10% of the total turnover of the respective undertaking during the year previous to the sanctioning decision. If the infringing undertakings failed to derive any turnover the previous year, a fine between 30,000 RON and 5,000,000 RON will be applied.

**7.3** The sanctions may be challenged before the Bucharest Court of Appeal, administrative claims department, within 30 days as of the communication thereof. In order to request the suspension of the enforcement, the concerned undertakings will have to deposit a bail representing 30% of the fine.

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