

07 December 2020

Legal Bulletin



Competition Law

1. The Competition Council's Procedure Regulation, implemented by Order No. 377/2017 of the Competition Council's President
2. Guidelines on the conditions, terms and procedure for the acceptance and assessment of commitments, in anticompetitive practices, implemented by Order No. 724/2010 of the Competition Council's President
3. Guidelines on the individualization of penalties for the contraventions provided at Article 55 of Competition Law, implemented by Order No. 1037/2019 of the Competition Council's President

Competition Law: Amendments and supplementations of the secondary legislation

Several regulations and guidelines for the application of Competition Law No. 21/1996 (the "Competition Law") have been amended and supplemented, as detailed below:

1. **The Competition Council's Procedure Regulation, implemented by Order No. 377/2017 of the Competition Council's President**

The **supplementations** brought to the Procedure Regulation envisage the investigation procedure (paragraph 12), in particular the interaction between the investigation team and the investigated parties. The following three paragraphs were inserted:

- **Para. 2¹:** *The evidence and arguments submitted by the investigated parties shall be analysed by the case-handler. The case-handler shall analyse all the documents, data and information communicated by the investigated undertakings in their defence and may request in writing any clarifications which are necessary in relation to them.*
- **Para. 2²:** *For the appropriate information of the investigated parties during the investigation, the case-handler shall communicate to the parties any*

changes occurring in relation to the scope of the investigation, i.e. whether such scope is narrowed or extended, as the case may be.

- **Para. 2³:** *In achieving the purpose provided at para. (2²), the case-handler may request meetings with the relevant undertakings or may participate in meetings, at the request of the relevant undertakings, in principle every 6 months.*

2. Guidelines on the conditions, terms and procedure for the acceptance and assessment of commitments, in anticompetitive practices, implemented by Order No. 724/2010 of the Competition Council's President

The **supplementation** envisages the possibility to reopen discussions on the commitment procedure, if a first request was deemed inappropriate.

According to the new regulation, if the Competition Council rejects, on grounds of inappropriateness, the request of the investigated undertaking to initiate discussions on commitments, the investigated undertaking *no longer has the right to subsequently ask for the initiation of discussions on offering commitments, unless significant changes occurred on the market which justify a new request, in which case the undertaking may repeat only once its request for the initiation of discussions on offering commitments.*

3. Guidelines on the individualization of penalties for the contraventions provided at Article 55 of Competition Law, implemented by Order No. 1037/2019 of the Competition Council's President

Main amendments and supplementations:

- The statement of objections shall include a presentation on the factors of individualization for the proposed penalties (i.e., the manner in which the undertaking participated in the investigated act, the gravity of the investigated act, the duration of the act, any mitigating or aggravating circumstances).
- Undertakings can no longer benefit of the mitigating circumstance consisting in that, during the infringement, the turnover achieved from the sale of the products/services which are the subject-matter of the anticompetitive practice represent a relatively small part, i.e. up to 20% of the aggregate turnover of the undertaking, a mitigating circumstance for which the base level of the fine used to be reduced by up to 25%.
- If the fine is reduced for admission of guilt, the level of the fine shall be decreased even when such level was established at the minimal amount provided by the law, but the fine cannot be lower than **0.2% of the aggregate income registered in Romania by the undertaking or the association of undertakings in the financial year preceding the penalty.**

- If the undertaking initiates discussions concerning a potential admission of guilt in relation to the investigated acts **12 months** after it becomes aware of the commencement of the investigation, the fine shall be decreased for admission of guilt by **no more than 15%** of the base level. The previous regulation provided for a decrease of no more than 12% in such case.
- If the undertaking benefits of leniency, the maximal percentage for the fine reduction shall be determined by reference to the time when the guilt was admitted, as follows:
 - **20% of the baseline** - during the first 6 months as of the time when it becomes aware of the commencement of the investigation;
 - **15% of the baseline** - after the first 6 months, but not later than 12 months as of time when it becomes aware of the commencement of the investigation;
 - **10% of the baseline** -12 months after it becomes aware of the commencement of the investigation.
- As a novelty, the undertaking may ask for the decrease of the fine, after such fine was individualized, according to the tranches included in the table below:

| Weight of the income from the sale of products/services which are directly or indirectly related to the infringement, out of the aggregate turnover | DECREASE |
|-----------------------------------------------------------------------------------------------------------------------------------------------------|---------------------------------|
| From 0 to 1% | Over 75%, but not more than 90% |
| From 1% to 5% | 75% |
| From 5% to 10% | 45% |
| From 10% to 20% | 25% |

To calculate the weight of the income, one shall take into account the arithmetic mean of the annual weights of the income registered in Romania during the infringement period from the sale of the products/services which are directly or indirectly related to the infringement, out of the aggregate (worldwide) turnover of the undertaking to be penalized.

If the undertaking did not register income from the sale of such products/services, one shall take into account the weight of the income registered from the resale, irrespective of the territory, of the goods or

services which are directly or indirectly related to the infringement, out of the aggregate (worldwide) turnover of the undertaking to be penalized.

- If, during the year preceding the penalty, the income registered from the sale of the products/services which are directly or indirectly related to the infringement account for a relatively small part (i.e., no more than 30%) of the aggregate (worldwide) turnover registered by the undertaking during the financial year preceding the penalization, the fine may be decreased by up to 10%¹. The undertaking must justify the causes which determined the decrease of such income.
- In the end, the fine cannot be lower than 0.5% of **the aggregate income registered in Romania by the undertaking or the association of undertakings** in the financial year preceding the penalty in accordance with Article 55(1¹) of Competition Law, or in the year immediately preceding the reference year for the calculation of the turnover in view of applying the penalty, in accordance with Article 56(1) of Competition Law, except for the case provided at Article 57(2) of such law.

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¹ The income from the sales which are related to the infringement should not have been decreased artificially, by actions taken by the undertaking that committed the contravention during the investigation, in view of decreasing the potential fine.

Editors

The attorneys of Țuca Zbârcea & Asociații specialized in **Competition** provide legal assistance and consultancy services on the applicable regulations in the competition field, including in relation to aspects such as antitrust, domestic and cross-border transactions (mergers, acquisitions, joint ventures, etc.), and state aid. Our attorneys represent the interests of our clients before the national authorities in the competition field, and in disputes before the courts of law in relation to a wide range of specific matters, including unlawful competition.

Moreover, Țuca Zbârcea & Asociații developed a department for compliance with the regulations in the competition field (i.e. preliminary assessment of potential exposure, training programs) to help clients avoid the sanctions applicable as a result of breaching the competition laws. The activity in this field is appreciated by international legal directories as one of the best on the market, and the firm ranks first in the tables of Chambers Europe or other legal publications.



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