

# Amendments to the Unfair Competition law and Competition law

11 August 2014

## In brief

Government Ordinance no. 12 dated 31 July 2014 amending and supplementing Law no. 11/1991 on unfair competition and other acts in the field of competition (“**GO 12/2014**” or the “**Ordinance**”) was published in the Official Gazette no. 586 dated 6 August 2014.

## In detail

### *The main amendments to Law 11/1991 on unfair competition (“Law 11/1991”) are:*

- Unfair competition practices are described extensively, with denigration offences being deemed to exist where statements are:
  - (a) not true; and
  - (b) likely to harm the interests of competitors. It was previously necessary to have “false statements that are detrimental to the welfare of the company”.
- The decision procedure is unchanged: the Competition Council receives complaints and resolves them within 30 days, if they are rejected, and within 60 days of the date on which the notification is complete if it analyses the factual background. In certain cases, however, the complaint will be solved in the Plenum / Committee of the Competition Council and may be rejected, even if it poses minor harm to the industry sector.
- The Competition Council may:
  - (a) order cessation of the conduct during the process of solving the complaint, as an interim measure;
  - (b) forbid the unfair practice;
  - (c) impose fines.
- Complaints are settled by way of decision, in the form of an executory deed. Decisions are published on the Competition Council’s website. When making its decision, the Council takes into account:
  - (a) the gravity of the deed;
  - (b) its effects on the market; and
  - (c) other deeds of the company on the market in the previous two years.
- The fines are higher than those in the previous legislation. For legal entities, the fine for unfair practices ranges from **RON 5,000 – RON 50,000** (as opposed to RON 1,000 – RON 10,000).

- Supplying inexact, inaccurate or misleading information is punishable with a fine ranging from **RON 1,000 to RON 10,000** for legal entities.
- The Interministerial Council **for fighting unfair competition** practices has been established, without the law clearly defining its responsibilities and powers. The Council includes the Ministry of Finance, the National Council for Audio-visual, the National Authority for Consumer Protection, the State Office for Inventions and Trademarks and the regulatory authority for copyright protection.
- If, after the launch of an investigation *ex officio*, no sufficient evidence of violation is found that could have led to the application of sanctions, the Competition Council closes the investigation by order of the President and not by a decision of the Plenum, as was previously necessary.
- The parties concerned are allowed access to the file and can obtain copies and / or excerpts in electronic format. This eliminates the hard copy format along with the related costs.
- Confidential documents, data and information from the files are not accessible for inspection and / or obtaining copies and / or excerpts, except by order of the President.

***The main amendments to Competition Law no. 21 dated 10 April 1996 (“Law 21/1996”) are:***

- The Plenum of the Competition Council is validly constituted only in the presence of the majority of its members (and not a minimum of five members as in the previous regulation) and adopts decisions by the majority vote of the members present.
- The Competition Council can prioritise cases based on the potential impact on effective competition, the general interest of consumers or the strategic importance of the economic sector concerned.

As a result of these various amendments, for better understanding and clarity of legal texts, and for a uniform interpretation thereof, it was decided to republish and renumber the articles of both Law 11/1991 and Law 21/1996.

GO 12/2014 enters into force 30 days after publication in the Official Gazette.

[Source: Romanian Official Gazette no. 586 of 6 August 2014]

### ***The takeaway***

The main amendments to Law no. 11/1991 cover the sphere of practices considered unfair and the sanctions imposed.

The main changes to Competition Law relate to issues of Competition Council competence and its ability to prioritise cases based on the potential impact on effective competition, the general interest of consumers or the strategic importance of the economic sector concerned.

## Let's talk

For a deeper discussion of how this issue might affect your business, please contact:



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