

# Amendments to Competition Law no. 21/1996

14 June 2017

## In brief

Government Emergency Ordinance no. 39/2017 for transposing into the national legislation Directive 2014/104/EU on actions for damages in the case of infringements of competition law, as well as for amending and supplementing Competition Law no. 21/1996 (“**GEO 39/2017**”), has been published in the Official Gazette.

## In detail

**The main provisions regarding the transposal of Directive 2014/104/EU are as follows:**

- The right of any person who has suffered harm, due to competition rules infringement by an undertaking or an association of undertakings, to ask the competent courts for **full compensation of the harm** suffered is hereby regulated.
- **New definitions** are provided, including the following concepts: action for damages, direct purchaser, indirect purchaser, leniency statement, final court decision regarding an infringement, undertaking, injured party, proposal for concluding a settlement, overcharge and alternative means of dispute resolution.
- Pursuant to GEO 39/2017, any person who has suffered harm caused by an anti-competitive practice prohibited under the provisions of Competition Law no. 21/1996 (“**Competition Law**”) may claim and obtain reparation in full for the harm in question. As such, it is stipulated that **full compensation has to be paid to parties who have suffered harm to the status in which they would have been had the competition rules not been infringed.** Moreover, full compensation includes both the actual harm suffered and the profit of which the injured party is deprived, as well as the payment of related interest.  
  
The jurisdiction for resolving such claims is attributed, in the first instance, to the Bucharest Tribunal.
- Some rules have been established concerning the possibility of **disclosure of evidence** included in the file of a competition authority in relation to actions for damages.
- Furthermore, it has been established that undertakings which have infringed competition law through **joint behaviour** are **jointly and severally** liable for the harm caused. As such, each of those undertakings is required to compensate the injured party in full. Anyone who has suffered harm may claim compensation, irrespective of whether the claimant is a direct or an indirect purchaser of the infringer, in accordance with the concept of so-called **overcharges.**
- Courts have the power to **estimate the level of harm** in disputes pending before them. A rebuttable presumption (which may be overturned) has been established to the effect that

- cartel-type infringements result in harm.
- Competent courts may **suspend** their ongoing proceedings regarding claims for damages for a maximum period of two years when the parties are involved in an **alternative resolution of that dispute**.
  - The payment of compensation following alternative dispute resolution proceedings may be regarded by the Competition Council as a **mitigating circumstance** in the individualisation of the fine.

***The main amendments and additions to Competition Law are as follows:***

- Undertakings operating in the field of modern trade with food and non-food products (such as supermarkets, hypermarkets, discount and cash & carry types) are **obliged to submit** to the Competition Council, at its prior request, **the sale prices of the commercialised products** in order to conduct analyses, market studies or price comparisons. Failure to comply with this obligation is subject to the application of **a fine ranging between RON 20,000 and RON 50,000**. This provision enters into force within 30 days as of the publication of GEO no. 39/2017 in the Official Gazette (i.e. 8 July 2017).

- In carrying out its activities, the Competition Council is to elaborate and adopt both its **Rules of Procedure** and its **Rules for the Functioning and Organisation** of the authority.
- It is expressly stipulated that, during dawn raids, the information stored or archived on electronic media **may be copied and collected in electronic form in full**, subject to the application of seals, and the information required for the investigation subsequently collected, in the presence of the undertaking's representative, at the Competition Council's headquarters.
- It is also stipulated that for offences committed in the merger control area by a **non-resident person**, the turnover in relation to which the fine is calculated is replaced by the sum of the following revenues:
  - the turnover generated by each of the undertakings registered in Romania and controlled by the infringer;
  - the revenues generated in Romania by each of the non-resident undertakings controlled by the infringer;
  - the own revenues generated in Romania by the infringer and recognised in its

individual financial statements.

Pursuant to the new legal provisions, a “*non-resident person*” is any foreign person, as well as any other foreign entities, including collective investment undertakings without legal personality, which are not registered in Romania under the law.

*[Source: Government Emergency Ordinance no. 39/2017 amending and supplementing the Competition Law no. 21/1996, as published in the Official Gazette of Romania no. 422 of 08 June 2017]*

***The takeaway***

The provisions of Directive 2014/104/EU have been transposed into national law and new rules established concerning, for example, the possibility of disclosing evidence included in the file of a competition authority; the passing-on of overcharges; the joint and several liability of undertakings guilty of infringement of competition rules; moreover, it has been established that courts of justice can decide the level of harm and that the undertakings concerned can seek alternative methods of resolving disputes pertaining to actions for damages.

The Competition Law has been supplemented and amended by the introduction of a new obligation incumbent on the parties involved in the modern trade of food and non-food products, namely the obligation to submit to the Competition Council, at its prior request, the sale prices of the commercialised products. Failure to comply with this obligation may result in significant financial sanctions of up to RON 50,000.

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**Let's talk**

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



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