

LEGAL AND TAX ALERT, August 8th, 2014

New infringements in the unfair competition field

The provisions of Law no. 11/1991 on combating unfair competition (the “**Law**”) were amended and supplemented¹ and, hence, this legislative act will be republished, with the texts being renumbered.

According to the new legal provisions, the acts that qualify as unfair competition practices and which can entail administrative liability, if they are not committed in such conditions to constitute criminal offences, are: (i) denigrating a competitor or its products/services, by disclosing or releasing untruthful information about a competitor’s activity or products, which could cause damages to its interests; and (ii) embezzling the clientele of an enterprise by using commercial secrets, for which the respective enterprise took reasonable security measures and whose disclosure could cause damages to its interests. If guiltily committed, such acts are sanctioned by fine amounting between RON 5,000 and RON 50,000, for legal entities, and, as the case may be, by fine between RON 1,000 and RON 5,000 for individuals.

Moreover, as a novelty, certain acts (such as providing inaccurate, incomplete or misleading information or failure to provide the information and documents requested by the competition inspectors, the unjustified refusal of the inspection or failure to comply with the measures imposed by the Competition Council) guiltily committed during the unfair competition practices investigations proceedings also constitute administrative offences, the applicable sanction being, as the case, fine between RON 1,000 to RON 10,000 (if the acts are committed by undertakings, authorities or public institutions) or fine between RON 500 to RON 2,000 (if committed by individuals).

The sanctions calculation criteria provided by the Law are the seriousness of the act, its effects, as well as the sanctions applied during the previous two years to the concerned individual or legal entity.

At the same time, according to the new regulations, there are forbidden any other commercial practices consisting in the behaviour of an enterprise directly relating to the promotion, sale or supply of a product, which is against the honest market practices (as assembly of practices or rules generally acknowledged applicable between undertakings) and the general principle of good faith and which cause or could cause damages to any of the market players (as the case may be, undertakings or consumers).

¹ The Government Ordinance no. 12 as of the date of July 31st, 2014 on amending and supplementing the Law no. 11/1991 on combating unfair competition and other legislative acts regarding protection of competition was published in the Official Gazette, Part I, no. 586 as of the date of August 6th, 2014 and will enter into force on August 9th, 2014, except for certain provisions which will enter into force in a 30 days term as of the publishing date.

Also, the provisions of the previous regulation regarding the incrimination as infringements of certain acts of unfair competition are still in force.

The new provisions of the Law detail the terms and conditions under which an individual or legal entity having a legitimate interest can file a complaint with the Competition Council with respect to possible unfair competition practices. The term for settlement of the complaint is, in principle, of 60 days from the date of filing a complete complaint. In case the Competition Council considers the effects of an unfair competition practice to be minor or that the complaint is not grounded, the Competition Council shall communicate to the complainant within 30 days a grounded reply. During the investigation period, the competition authority may order ceasing the unfair competition practices.

Ex officio or following a complaint, the Competition Council may decide upon forbidding the unfair competition practices and/or applying administrative fines, if the unfair competition practice represents an administrative offence. The ascertaining decisions and, as the case, sanctioning decisions can be challenged before the Bucharest Court of Appeal, administrative contentious section, within 30 days as of the communication thereof.

The Inter-institutional Council in the sector of combating unfair competition (the “**Council**”) is established as a temporary entity, with the purpose of defining and implementing the public politics in the sector of combating unfair competition. The Council will be coordinated by the Ministry of Public Finance and its other members will be representatives of the following authorities: the national competition authority, the national authority responsible for safeguarding the rights in the audio visual sector, the national authority for consumer protection, the authority responsible for the protection of industrial property and the authority responsible for the protection of copyright and related rights.

Annually, the Council will issue a report on the implementation of laws in the sector of combating unfair competition, also including proposals with regard to public politics in this sector, which will be presented to the Government. The manner of appointing the members, the Council's role, as well as its functioning and organizing will be set by a Government Decision, on proposal of the Ministry of Public Finance.

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